

Standing Committee on Law and Justice

Back-end home detention

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Terms of Reference

That the Standing Committee on Law and Justice inquire into and report on whether it is appropriate and in the public interest to introduce a 'back-end' home detention scheme in New South Wales, including:

- a. the perceived benefits and disadvantages of back-end home detention,
- b. the relationship between back-end home detention and existing external leave programs,
- c. the impact of back-end home detention on the principle of truth-in-sentencing,
- d. the appropriate authority to determine whether an offender may proceed to back-end home detention,
- e. the criteria for eligibility for back-end home detention,
- f. the experience of other jurisdictions in implementing back-end home detention schemes,
- g. any other related matter.

That the Committee report by 7 April 2005.¹

¹ These terms of reference were referred to the Committee in the House by the Hon Greg Pearce MLC, Legislative Council Minutes of Proceedings No 58, 2 June 2004, pp 327-328. Note that the reporting date was later extended by Resolution of the House to 15 July 2005, Legislative Council Minutes of Proceedings No 105, 25 May 2005, p 1396

Committee Membership

The Hon Christine Robertson MLC Australian Labor Party *Chair*

The Hon Greg Pearce MLC Liberal Party *Deputy Chair*

The Hon David Clarke MLC Liberal Party

The Hon Amanda Fazio MLC Australian Labor Party

Ms Lee Rhiannon MLC The Greens

The Hon Eric Roozendaal MLC Australian Labor Party

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Chair's Foreword

The Committee believes that the back-end home detention inquiry terms of reference cover issues of great importance. However, the Committee considers that it will be most effective if it reports on this inquiry by providing its evidence to the House and informing it of its progress and direction in relation to its broader inquiry into community based sentencing options. It is the Committee's intention that the broader policy review being undertaken through its inquiry into community based sentencing options will contain specific recommendations and conclusions on back-end home detention in its report to the House.

The Committee thanks all those who participated in this inquiry by providing submissions and giving evidence at its public hearings. The information provided to the Committee will be valuable for its inquiry into community based sentencing options, and the Committee will inform them of the outcomes of that inquiry.



Hon Christine Robertson MLC
Committee Chair

Chapter 1 Report

Terms of reference

1.1 On 2 June 2004 the Legislative Council referred the following terms of reference to the Committee for inquiry:²

- a) *That the Standing Committee on Law and Justice inquire into and report on whether it is appropriate and in the public interest to introduce a 'back-end' home detention scheme in New South Wales, including:*
 - i) *The perceived benefits and disadvantages of back-end home detention.*
 - ii) *The relationship between back-end home detention and existing external leave programs.*
 - iii) *The impact of back-end home detention on the principle of truth-in-sentencing.*
 - iv) *The appropriate authority to determine whether an offender may proceed to back-end home detention.*
 - v) *The criteria for eligibility for back-end home detention.*
 - vi) *The experience of other jurisdictions in implementing back-end home detention schemes.*
 - vii) *Any other related matter.*
- b) *That the Committee report by 7 December 2004.*³

Conduct of the inquiry

1.2 The Committee placed advertisements calling for submissions in newspapers and legal journals in February 2004. The Committee Chair also wrote to individuals and organisations advising them of the inquiry and inviting them to make submissions.

1.3 The Committee received 21 submissions. Public submissions are available through the Committee's homepage on the NSW Parliament website at www.parliament.nsw.gov.au/lawandjustice. A list of submission makers is set out as Appendix 1.

1.4 The Committee held public hearings on 17 and 18 March 2005, at which 14 witnesses representing government agencies as well as non-government organisations gave evidence. To

² The Hon Greg Pearce MLC moved the motion to refer the matter to the Committee, Legislative Council Minutes of Proceedings No 58, p 827.

³ On 17 November 2004 the Legislative Council resolved to extend the reporting date for the inquiry to 7 April 2005, Legislative Council Minutes of Proceedings No 84, 17 November 2004, p 1141. The reporting date was extended further to 26 May 2005, Legislative Council Minutes of Proceedings No 96, 23 March 2005, p 1291 and again on 26 May 2005 to 15 July 2005, Legislative Council Minutes of Proceedings No 105, 25 May 2005, p 1396.

assist the Committee, witnesses from the corrective services departments in Victoria and Queensland attended the hearing on 18 March and presented very valuable evidence.

- 1.5 A list of witnesses is set out as Appendix 2. Transcripts from the hearings form part of this report and are reproduced at Appendix 3. A list of documents tabled during the hearings is included as Appendix 4.
- 1.6 On 17 March the Committee heard evidence from Mr Andrew Jaffrey, an offender who was at the time serving his sentence under a home detention order. Special arrangements were made with the Department of Corrective Services to facilitate the witness's appearance, including varying the conditions of his home detention order. Mr Jaffrey's evidence was heard *in camera*, although immediately following the hearing the Committee resolved, with Mr Jaffrey's agreement, to publish the transcript of Mr Jaffrey's evidence.

The Committee's inquiry into community based sentencing options

- 1.7 On 2 April 2004 terms of reference for an inquiry into community sentencing options was given to the Committee by the Attorney General, the Hon Bob Debus MP. These terms of reference are attached as Appendix 5. The Committee has received over 40 submissions to this inquiry and, at the time of reporting, has conducted a public hearing in Sydney and a three-day site visit to Inverell, Bourke and Brewarrina.
- 1.8 In conducting the inquiries into back-end home detention and community based sentencing options concurrently, the Committee found that the core principles in relation to both terms of reference are inextricably linked. The progress to date of the Committee's inquiry into community based sentencing options has proven to be beneficial in highlighting the similar issues that face back-end home detention and other community based sentencing options.
- 1.9 The Committee believes that the back-end home detention inquiry terms of reference cover issues of great importance. However, the Committee considers that it will be most effective if it reports on this inquiry by providing its evidence to the House and informing it of its progress and direction in relation to its broader inquiry into community based sentencing options. It is the Committee's intention that the broader policy review being undertaken through its inquiry into community based sentencing options will contain specific recommendations and conclusions on back-end home detention in its report to the House.
- 1.10 The Committee thanks all those who participated in this inquiry by providing submissions and giving evidence at its public hearings, and will inform them of the outcomes of its inquiry into community based sentencing options.
- 1.11 The Committee adopted this report at a meeting on 22 June 2005. The minutes of this and other meetings held during the inquiry are presented in Appendix 6.

Appendix 1 Submissions

No	Author
1	McMANUS, Ms K
2	WAGSTAFF, Mrs Patricia
3	SALIER, Mr Gordon, Law Society of NSW
4	GALLAGHER MP, Mr Martin, New Zealand Select Committee on Law and Order
5	PARKES, Mr Damien, Metropolitan Medical Transient Centre
6	COWDERY AM QC, Mr N R, NSW Department of Public Prosecutions
7	SMITH, Ms Nikki
8	AIKEN, Ms Kathryn
9	FROOME, Mrs Katrina
10	COLLINS, Mr Brett, Justice Action
11	BROOKER, Ms Lyndsay, Legal Aid NSW
12	BABB, Mr Lloyd, NSW Attorney General's Department
13	WINCH, Mr Paul, NSW Public Defenders Office
14	BROWN, Mr Doug, NSW Department of Corrective Services
15	DALEY, Mr David, Corrections Victoria
16	SIMPSON, Mr Jim, NSW Council for Intellectual Disability
17	HARRIS RSJ, Sr Myree, Coalition for Appropriate Supported Accommodation for People with Disabilities
18	ANONYMOUS
19	MULLEN, Mr Jared, New Zealand Department of Corrections
20	HOLMAN, Ms Kate, Queensland Department of Corrective Services
21	JACKSON, Mr Ray, Indigenous Social Justice Association Inc.

All public submissions are available on the Committee's homepage at the Parliament's website, www.parliament.nsw.gov.au/lawandjustice

Appendix 2 Witnesses

Date	Name	Position and Organisation	
17 March 2005	Cowdery AM QC, Mr NR	NSW Department of Public Prosecutions	
	Fear, Mr Graeme	St Vincent de Paul Society	
	Harris RSJ, Sr Myree	Coalition for Appropriate Supported Accommodation for People with Disabilities	
	Jaffrey, Mr Andrew		
	Jousif, Ms Joanne	NSW Department of Corrective Services	
	McComish, Ms Catriona	NSW Department of Corrective Services	
	Sandland, Mr Brian	NSW Legal Aid Commission	
	Simpson, Mr Jim	NSW Council for Intellectual Disability	
	18 March 2005	Collins, Mr Brett	Justice Action
		Daley, Mr David	Corrections Victoria
Holman, Ms Kate		Qld Department of Corrective Services	
Strutt, Mr Michael		Justice Action	
Winch, Mr Paul		NSW Public Defenders Office	
Wright, Ms Pauline		NSW Law Society	

Appendix 3 Transcripts of hearings

Transcripts of hearings and public submissions are available on the Committee's website via the Parliament's home page, www.parliament.nsw.gov.au/lawandjustice

REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO BACK-END HOME DETENTION

—

At Sydney on Thursday 17 March 2005

—

The Committee met at 9.30 a.m.

—

PRESENT

The Hon. C. M. Robertson (Chair)

The Hon. D. Clarke

The Hon. G. S. Pearce

Ms L. Rhiannon

The Hon. E. M. Roozendaal

CHAIR: Welcome to the first public hearing of the Standing Committee on Law and Justice's inquiry into back-end home detention. Before we commence, I would like to make some comments about aspects of the hearing. The Committee resolved previously to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of guidelines governing broadcast of the proceedings are available from the table by the door. In accordance with Legislative Council guidelines for the broadcast of proceedings, a member of the Committee and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee, the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee.

Witnesses, members and their staff are advised that any messages should be delivered through the attendants or the Committee clerks. I also advise that, under the Standing Orders of the Legislative Council, any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or by any other person. The Committee prefers to conduct its hearings in public. However, the Committee may decide to hear certain evidence in private, if there is a need to do so. There such a case arises, I will ask the public and the media to leave the room for a short period. If a witness does give evidence in camera following a resolution of the Committee, however, they may need to be aware that, following the giving of evidence, the Committee may decide to publish some or all of the in camera evidence. Likewise, the House may, at a future date, decide to publish part or all of the evidence, even if the Committee has not done so.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings, and I therefore request that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference. Finally, could everyone please turn off their mobile phones for the duration of the hearing. They actually interfere with the electronics in the room. I now welcome our first witnesses and thank them very much for coming along to this very exciting hearing that we are all looking forward to.

CATRIONA McCOMISH, Senior Assistant Commissioner—Community Offender Services, Department of Corrective Services, GPO Box 31, Sydney, and

JOANNE JOUSIF, Acting Director—Intensive Supervision Programs, Community Offender Services, Department of Corrective Services, GPO Box 31, Sydney, affirmed and examined:

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Ms McCOMISH: As a representative of an organisation.

Ms JOUSIF: As a representative of an organisation.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Ms McCOMISH: Yes, I am.

Ms JOUSIF: Yes, I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. Would either of you like to start by making an opening statement?

Ms McCOMISH: Yes, I would like to do that. The department received an indication of the questions which the Committee would like to put to myself and to Joanne. We have prepared responses to those questions and I had hoped to have with me today a written document and to be able to table that because there are a lot of questions and I assumed that we probably would not get to them all in this hour. Due to an impasse with technology, that will be available later today and so I would like to be able to send it down to the Committee and tender it at that point. What we would then like to do is to respond to what are seen as the critical questions for the Committee to discuss this morning, taking into account that there will be answers provided to all of the questions that were indicated.

In regard to an opening statement, the department, as you are aware, has put in a submission not supporting the concept of back-end home detention strictly applied according to the current understanding of home detention, but rather that we can develop and extend the existing external leave programs that are applied as part of a continuum of preparing people for release to the community. There are a number of reasons that the department has raised in its submission in regard to why we would prefer and would support an option such as that, compared to a traditional model of back-end home detention. Some of the issues pertain to the particular place of back-end home detention within the state of New South Wales in regard to implementation of truth in sentencing, and it is critical that there not be any watering down of these sentences handed down by the court. That is implicit in the concept of truth in sentencing.

Therefore, what we seek to do is to extend what is an existing and tried approach to both assessing the suitability and managing the risk of people being released to the community. We believe that we could do that in a way that would increase the availability of that option for people by applying some of the methodology that is attached, usually to programs such as home detention. That methodology includes electronic monitoring. It may even include in more remote areas and in other jurisdictions things like satellite tracking, if there is the requirement for that level of surveillance. It includes intensive case management with very intensive contact by our staff and it includes also the provision of programs, including of course training and work where that is appropriate. That is really a very brief overview of the rationale for the department's position, which is presented in the submission that the department provided.

CHAIR: Do you wish to make an opening statement?

Ms JOUSIF: No.

CHAIR: We will start our questioning. I will utilise the questions that you are going to give us responses to later on paper because we would like to get us as much information as possible for *Hansard*.

Ms McCOMISH: Yes.

CHAIR: So, first of all, could you please provide the Committee with current information on recidivism rates for offenders who have completed a sentence of home detention and offenders who have completed external leave programs? Do you have those comparative figures?

Ms McCOMISH: No, we do not. We are currently conducting a second review and research project on the home detention program. But, unfortunately, in this State we have not had access to figures in regard to recidivism, recidivism usually being measured by return to prison within two years of release. There are projects in place. The best we can do is report what is reported in international indicators, which show that, generally, community-based options, such as home detention, have a much better success rate in terms of the retention of people in the community without reoffending. Across States, something over 50 per cent of prisoners return to custody within two years of release. For those that have had supervision in the community, including home detention orders and community-based orders, the return rate is something more like 26 per cent. So it is a significantly improved rate. It is unfortunate that at this stage we are not able to break it down into particular programs.

Ms LEE RHIANNON: Is the figure of 26 per cent over the same period?

Ms McCOMISH: Yes. They use the same measure.

The Hon. GREG PEARCE: Are you telling the Committee that you do not have statistics that will tell us how many people who have been on home detention have reoffended and gone back into the prison system within a couple of years?

Ms McCOMISH: We do have statistics on those who reoffend while they are on an order, and I think you come to this later in your questions. You are asking about statistics that involve the collection of data from both police and courts. Unfortunately, in New South Wales, we have not had a whole-of-justice database. The Bureau of Crime Statistics and Research—I know the Committee will hear later from Don Weatherburn—now has a reoffenders database, but we are in the early stages of being able to break that down into particular programs.

The Hon. GREG PEARCE: You must have the figures for those who go into corrective services.

Ms McCOMISH: Who come back into prison?

The Hon. GREG PEARCE: Yes.

Ms McCOMISH: People who have been on home detention?

The Hon. GREG PEARCE: Yes.

Ms McCOMISH: Of course, we have a database in terms of—

The Hon. GREG PEARCE: Perhaps you could give the Committee those figures for the last three years.

Ms McCOMISH: I do not think that is possible at the moment.

The Hon. GREG PEARCE: Why is it not possible?

Ms McCOMISH: Because I think the fact is that the database we have had has not recorded information regarding specific programs. You are asking for both home detention and external leave.

The Hon. GREG PEARCE: No. I am asking about home detention.

Ms McCOMISH: Sorry. I thought you were talking about this particular question.

The Hon. GREG PEARCE: No. I am asking you about home detention. Do you have the figures for home detention or not?

Ms McCOMISH: No.

The Hon. GREG PEARCE: Can you get the figures for home detention?

Ms McCOMISH: We hope to be able to get the figures, and I have actually asked that they be provided. I was not able to get them in time for this meeting.

The Hon. GREG PEARCE: So you will give us the figures?

Ms McCOMISH: I hope to be able to give you the figures shortly.

The Hon. GREG PEARCE: Why would you not be able to give us the figures?

Ms McCOMISH: Because they have not been routinely collected. We have not collected in the department the figures in terms of return from specific community-based programs. We have got the figures on return from release from prison.

Ms JOUSIF: One of the difficulties has been ensuring the cleanliness of the data. Our department's Corporate Research, Evaluation and Statistics Unit is currently in the process of separating fresh offences committed during those two years from old but existing warrants that have recently been executed, to ensure that the recidivism rate is as clean as possible. People can have old warrants that come home to roost sometime later, and we want to ensure that they are not old warrants that they are being arrested on during those two years after they have completed the program and they are in fact fresh offences. It is really to ensure the purity of the data, and they are currently in the process of separating those.

The Hon. GREG PEARCE: My experience is that the data collecting by your department is bigger than Ben Hur. I find it astonishing that you are telling us that you cannot give us some clear figures on reoffenders who have been involved in home detention. That just does not compute. I do not believe you. I would like to see the figures.

Ms McCOMISH: If the figures were available, they would have been reported in our annual report, and they are not available.

The Hon. GREG PEARCE: I do not accept that at all.

Ms McCOMISH: The reason, which Joanne has just referred to, is a very important reason: that you could get a very false idea if you had data that confused two factors, so there may not be any new reoffence but someone may well have turned up on our books again at the prison.

The Hon. GREG PEARCE: What is the current population of the prison? It is 8,717 inmates, according to your submission. But you are telling me that you cannot record the difference between those two situations?

Ms McCOMISH: That is not solely with us. That is also to do with arrest data.

The Hon. GREG PEARCE: I am talking about the people with you. I am not asking you about arrest data. I am talking about people in corrective services, in prison.

Ms McCOMISH: When people return to prison, that could be because of an old warrant, as Ms Jousif has just explained.

The Hon. GREG PEARCE: That is exactly right. And you are telling me that you do not know whether it is an old warrant or not, that you cannot record that?

Ms McCOMISH: We record on reception.

The Hon. GREG PEARCE: So you do record it.

Ms McCOMISH: We record on reception the reason for return to prison.

The Hon. GREG PEARCE: So you record it.

Ms McCOMISH: We do record on reception.

The Hon. GREG PEARCE: Then you should be able to give us the figures.

Ms McCOMISH: Some may well be returned and be on remand and then be before the court. So their status remains unclear. Yes, we can get the figures, as I have said, but we have not got them today.

The Hon. ERIC ROOZENDAAL: You could take that on notice.

The Hon. GREG PEARCE: Yes, give us the figures.

Ms McCOMISH: I am happy to take that on notice.

The Hon. GREG PEARCE: We might have to get you back, once we have the figures, to go through them.

Ms McCOMISH: I am very happy to come back and talk to the figures once I can produce them for you.

The Hon. GREG PEARCE: When will those figures be available?

Ms McCOMISH: At this stage, I do not have a date.

The Hon. GREG PEARCE: What is involved in getting a date?

The Hon. ERIC ROOZENDAAL: The witness is taking the question on notice.

The Hon. GREG PEARCE: I want to know when the figures will be available.

Ms McCOMISH: I am afraid that the negotiation is with our Corporate Research, Evaluation and Statistics Unit. They are working on it now.

The Hon. DAVID CLARKE: Do you have an approximate date?

Ms McCOMISH: I would be hesitant to give a date, because I do not have advice from them about how long this might take.

The Hon. DAVID CLARKE: Three months, six months, two years?

Ms JOUSIF: I am happy to make the phone call to ask them today, if you would like me to ask how long it would take.

The Hon. GREG PEARCE: We can organise another inquiry date, and we will get your corporate along then and perhaps they can answer themselves, if you cannot give us an answer.

Ms McCOMISH: You can do it that way. Or, if you prefer, we could do what Ms Jousif just said, which is ring and ask for an estimate.

The Hon. GREG PEARCE: I think you can take on board that we are not really too impressed.

The Hon. ERIC ROOZENDAAL: Will you let the witness answer, rather than argue?

CHAIR: If I could interrupt and ask you to turn off your microphone, because this system operates so that only three microphones are active at any one time. I would be grateful if you would turn it on again only when you are answering. I am sorry to interrupt on a technical matter. I gather that question has been taken on notice.

Ms McCOMISH: It has been taken on notice.

CHAIR: The Committee will be expecting a reply to the question. The next question is: What percentage of breaches of home detention orders result from the committing of an offence while on an order, compared to breaching a condition of the order? So, one is about a criminal offence, and one is about something like drinking alcohol.

Ms JOUSIF: The department's Corporate Research, Evaluation and Statistics Unit is currently conducting a monitoring study in order to provide feedback to staff and management about the operation of the New South Wales home detention program. These are preliminary studies, and they would indicate that in the 18-month period between 1 January 2001 and 30 June 2002, of the 580 offenders granted a home detention order, 472, which is approximately 81 per cent, completed their home detention order, and 108, or 19 per cent, were revoked. Of the 108 revoked, 7 were revoked due to fresh offences committed during the order. Two hundred and sixty five, or 45.8 per cent, home detainees breached at least one of the home detention conditions during the completion of the order.

The most commonly breached condition during the study period was positive urinalysis. Curfew breaches were also common, with 116 home detainees breaching curfew during the completion of the order. The relatively high number of breaches is indicative of the intensity of intervention and supervision by the intensive supervision officers. Of the 265 home detainees issued with official sanctions, which include formal warnings from the officer or the Parole Board, an increase in the intensity of supervision, or an instruction to address drug and alcohol issues through programs, or removal of privileges, et cetera, 109 went on to have the home detention order officially revoked by the Parole Board.

Of the remaining 156 offenders, 141 improved their behaviour and went on to complete the home detention order without recommendation for revocation. This can be attributed, again, to intensive contact, intervention and case management by specially trained probation and parole officers, who are referred to as intensive supervision officers. Twelve of the 156 home detainees who were recommended for revocation actually went on to successfully complete the order, and 3 had the home detention order revoked after the home detention order had expired.

CHAIR: On average, how many times would a supervisor visit a home detainee each week or each month?

Ms JOUSIF: This is a fairly long answer. Would you like me to read the notes I have made? It goes into some detail of the level of intervention, supervision and face-to-face contact.

CHAIR: Yes, thank you.

Ms JOUSIF: Progress through the stages is subject to performance, and officers can delay transition from one stage to another, because supervision on the home detention program is generally divided into four, roughly equal, stages of decreasing intensity. As an adjunct to the decrease in the mandatory controls applied at each stage, officers build into their supervision a diminution of intensity so as to both reward participants for exemplary performance and to increasingly place reliance on the participant to accept responsibility for their compliance with the control regimen that has been established. So participants may return to an earlier stage as a sanction for infringement of program conditions, or they can progress to the next stage where there is satisfactory behaviour. In any event, the mandatory controls are seen as a minimum only and do not inhibit an officer from increasing the intensity of the level of supervision.

Home detainees also are subject to electronic monitoring unless they are in a residential rehabilitation program. The officers are available on a 24-hour basis through a paging service to respond to electronic monitoring alarms or offender-in-crisis situations. The immediate mode of response is usually by phone, but if the matter cannot be resolved electronically within a reasonable time, a contact home visit is made. When an offender is released to home detention, electronic monitoring equipment is usually installed on the day of release.

Minimum contact levels are set for each stage of the program, but higher levels of contact may be imposed at the initial point, depending on the appropriateness for guiding that particular person.

In stage 1, the minimum contact is at a rate of 20 per month, based on an expected average of 5 per week. Of those 20 contacts, 10 are face to face, and the remaining 10 may be by telephone or with employers, family or significant social contacts, therapists or counsellors. Of the face-to-face contacts, at least 8 are at home, 2 are on a weekend and 2 are between the hours of 7.00 p.m. and 7.00 a.m. In stage 2, minimum contacts remain at 20, but face-to-face contacts are reduced to 8. The remaining 12 contacts may be made up as in stage 1, and the same specification applies to numbers of home weekend visits and overnight visits.

In stage 3, contacts are reduced to 16 per month, with a minimum of 6 face-to-face, and the remainder are as in previous stages. Of the face-to-face contacts, at least 4 are at home, 1 of a weekend and 1 between 7.00 p.m. and 7.00 a.m. In stage 4, contacts are further reduced to 12 per month, with 4 of those face-to-face, and the remainder are as previously prescribed. Of the face-to-face contacts, at least two are at home, one at a weekend and one overnight. Officers contact employers at least monthly and routinely inspect payslips at normal pay intervals. Officers are also expected to verify attendance at any vocational training, counselling or any other prescribed activity, and they endeavour to make every effort to obtain employment and verify attendance at job interviews arranged for those participants who are unemployed.

The Hon. GREG PEARCE: I refer to your department's submission and to your opening statement in which you basically supported the principle of truth in sentencing as one of the reasons for the department's views on back-end home detention. For the record, could you tell us again why the department recommended against back-end home detention?

Ms McCOMISH: Current legislation for home detention is extremely restrictive in its eligibility criteria. It means that many offenders who would be most suitable for the type of transitional support programs that you want at the back end would not be eligible to be part of the home detention program. It may well be that what is considered is new legislation looking at back-end home detention. That, in itself, is a difficult and lengthy process, as you are well aware. It also raises a lot of contention in regard to the value of the program.

Previously in this State efforts have been made to introduce discussion about back-end options, including home detention. There has always been a concern that it is seen as a watering down of the sentence that has been provided by the court. The department believes that a far better and easier way is to develop and extend programs currently in existence so that we can both ensure that they are accessed by the population that most needs it and also that there are sufficient controls and sufficient ability to act swiftly if need be to return people to custody who are too risky in the community.

The Hon. GREG PEARCE: In the first part of your submission you were talking about eligibility criteria?

Ms McCOMISH: Yes.

The Hon. GREG PEARCE: I assume you were talking about the sorts of offences that have been the reason the inmates are in gaol in the first place?

Ms McCOMISH: That is right.

The Hon. GREG PEARCE: At the moment what sorts of offences are eligible for home detention and what sorts are not? What do you think ought to be changed in relation to that?

Ms McCOMISH: I will start the answer to the question and I may well hand over to Ms Jousif to complete it. Essentially, I will talk about the offences that are not and the offence history that means that someone is not eligible for home detention. In any offence involving violence, aggravated violence, use of a weapon including armed robbery, sexual offences and capital offences such as murder, those people are

prohibited. If there is a domestic violence offence or an apprehended violence order that involves a person who may be part of the accommodation support for the offender and any serious drug offence. That population, by and large, is what we consider to be at highest risk and they are the ones to whom we would most want to provide intensive support, supervision and programs in their transition back to the community.

Ms JOUSIF: Would you repeat the second part of your question?

The Hon. GREG PEARCE: I think it has already been answered. What sorts of offences do you think ought to be eligible? I assume you said that some of those offenders ought to be eligible. Is that correct?

Ms JOUSIF: Current legislation restricts people coming onto the program who have attracted an imprisonment sentence of up to 18 months. As Ms McComish indicated, all those sorts of offences usually attract a prison sentence of higher than 18 months.

The Hon. GREG PEARCE: Is the department advocating that home release should be extended to people who have committed those offences?

Ms McCOMISH: At the front end?

The Hon. GREG PEARCE: No, at the back end.

Ms McCOMISH: At the back end we have, through the case management and classification process, a continuum that involves assessment of each stage of the person's risk of reoffending and also what kinds of programs and services they need to participate in, in order to reduce that risk. By the time they are being considered currently for external leave programs it means they have worked their way down to the minimum-security categories—C3 for men or Cat 1 for women. They can have a history of serious offences but they have already served a custodial term. There has already been an element of punishment and the potential for rehabilitation. We can then continue that process through the staged process to leave. By the time they got to stage three where you would have conditions equivalent to intensive supervision or home detention, they are well along the path to rehabilitation. We believe we can take care of the risk that you might consider is attached to people with those more serious and more high profile offences.

The Hon. GREG PEARCE: I am sure your Minister would be interested to hear that. I noticed also in your submission that you raised the spectre of that wonderful Labor Minister, Rex Jackson, and his corrupt practices in the 1980s. What would you do to ensure that the department was not subject to corruption along the same lines as Rex Jackson, if you had the power to give home detention to convicted murderers and people convicted of sexual assault, which is what you are suggesting?

Ms McCOMISH: Well, remissions. Home detention did not exist at that time.

The Hon. GREG PEARCE: Effectively it is the same thing, is it not?

Ms McCOMISH: No.

The Hon. GREG PEARCE: You are suggesting letting people convicted of murder and sexual assault out early.

Ms McCOMISH: No.

The Hon. GREG PEARCE: You are suggesting that it be done on the basis that the commissioner decides?

Ms McCOMISH: No.

The Hon. GREG PEARCE: You raised it in your submission. Rex Jackson, that wonderful Labor Minister, happily accepted bribes to let people out early. You are now suggesting that the commissioner should have the power to do the same. What would you put in place to ensure that it was not subject to that sort of corruption?

Ms McCOMISH: If I can clarify, the department's submission is very clear. What we are proposing is an extension of an existing program. The process that is attached to it—

The Hon. GREG PEARCE: It is not an existing program. You are calling it a proposed stage three. It does not exist now.

Ms McCOMISH: An existing program envisages adding an additional stage.

The Hon. GREG PEARCE: So it does not exist at the moment?

Ms McCOMISH: We have an external leave program and we are adding a third stage. There is a process—

The Hon. GREG PEARCE: So you have already decided to do that? You have already put that in place.

Ms McCOMISH: I am seeking to answer the first part of your question about the process that is in place.

The Hon. GREG PEARCE: I just want to clarify what you are saying.

CHAIR: Let the witness answer the question.

The Hon. GREG PEARCE: Let us just be clear. You are saying that you adding an extra stage to an existing program. Has the extra stage been approved or not?

Ms McCOMISH: The third stage is proposed as an alternative to the introduction of home detention.

The Hon. GREG PEARCE: So it does not exist.

The Hon. ERIC ROOZENDAAL: Can you let the witness answer? I would like to hear her answer the question without continual interruption.

The Hon. GREG PEARCE: I want to be clear. Does it exist or does it not?

The Hon. DAVID CLARKE: It would be clear without your interruption.

CHAIR: Order! I will control who asks questions and when, and who answers. At the moment the witness is being somewhat harassed. I would appreciate it if she was allowed to give the proper answer.

Ms McCOMISH: The beginning of your question is an important one, that is: What are the controls in order to ensure that there is an objective process in assessing people for transitional programs to release? In this case the controls that we have in place are as follows. We have the Serious Offenders Review Council, which is headed by a retired judge. The kinds of offenders that we were just discussing are all case managed by the Serious Offenders Review Council through the last years of their sentence. That council provides advice to the commissioner at every stage of the classification process leading to external leave programs. That advice must be taken into consideration by the commissioner.

The council includes members of victim support groups and community members on its committee. The commissioner has significant power under section 26 of the legislation sometimes to provide short leave for particular reasons and also for people to have leave in the community under supervision for work, for study, to attend training programs and even for family and social purposes, day leave and weekend leave. It is a very transparent process and there are significant responsibilities attached to the decision. The person who is on an external leave program remains an inmate or a prisoner and the responsibility of the governor of the institution from which they come.

The sort of monitoring that we are talking about putting in place with stage three is an extension of what exists now. When people go out they are on a work-release program, they have an electronic bracelet, they are monitored, they have random visits, much as Ms Jousif has described for the process in home detention. What we are proposing is that we add to that intensive case management as well at this third stage, acknowledging that there can be any many issues for people and their family and friends when they come home to live full-time.

The Hon. GREG PEARCE: I want to be clear that you are telling us the department is proposing to implement an early release program that will extend to convicted murderers and people convicted of sexual assault. I want to know where you are up to. When you say that it is proposed, what does that mean? Has the department made the decision to implement it? Has it been implemented? What stage is it up to?

Ms McCOMISH: I will again take that question in two parts. Currently the department has an external leave program where convicted murderers and serious offenders who have progressed to the minimum-security category can participate in external leave programs. The department has that program in place. What the department is proposing—and this has not been implemented—is that consideration could be given to extending that existing external leave program, including for serious offenders who have participated in programs and reduced their risk while in gaol and who are in the last two years of their gaol sentence. They could participate through stage one, through stage two and then eventually, if assessed as suitable, to a proposed new stage—stage three—where instead of being in the community part of the time they would be in the community full-time.

The Hon. GREG PEARCE: When will a decision be made on that?

Ms McCOMISH: The proposal is to this inquiry. The department awaits the findings of the inquiry.

Ms LEE RHIANNON: What is the mechanism for families of sponsors who change their minds about sponsoring an offender on home detention?

Ms JOUSIF: The family sponsor has to advise the officer, either verbally or in writing, and then every effort is made to reaccommodate the participant.

Ms LEE RHIANNON: Is there any evidence of home detention orders being cancelled because the offender or his or her family or sponsor found it too difficult?

Ms JOUSIF: Yes, there is. The study I alluded to earlier, which is currently being conducted by corporate research, for that same period between 1 January 2001 and 30 June 2002 there were five occasions on which consent was withdrawn by a family—five out of 580.

Ms LEE RHIANNON: Did they proceed in some other way? Was any other sponsor found, or was it just all over?

Ms JOUSIF: I could not give you that detail but in personal experience that is usually the case. It is very rare that someone will be returned; usually alternative accommodation is found.

Ms LEE RHIANNON: So it proceeds in some other way.

Ms JOUSIF: That is right, yes.

Ms LEE RHIANNON: Do home detainees or their families or sponsors receive any financial assistance from the department to offset the costs incurred while on home detention?

Ms JOUSIF: No, they do not. There are not any real costs incurred by the family other than the cost of the electronic monitoring, which on average costs about \$1 a day.

Ms LEE RHIANNON: So the family picks up the costs of the monitoring?

Ms JOUSIF: The offender does.

Ms LEE RHIANNON: What is the \$1 for? What is that cost?

Ms JOUSIF: With electronic monitoring, every time the person leaves the house or the accommodation a call is made to the computer to the officer supervising the detainee to say that the person has left the house, and when they return the same thing happens again. They are wearing a transmitter, and a receiver unit is attached to the phone, so whenever that transmitter leaves the parameters of that receiver unit a signal is sent to the computer, which sends it on to the officer.

Ms LEE RHIANNON: Where is there a cost there?

Ms JOUSIF: It takes a phone call. It secures a phone line in order to send that message.

Ms LEE RHIANNON: Has that always been the case?

Ms JOUSIF: It forms part of their phone bill, that is right. That is clearly explained to them in great detail during the assessment period that there would be this average cost.

Ms LEE RHIANNON: I must admit that I was not aware of that. When the scheme was set up why was it determined that that cost should be carried by the family or the sponsor, rather than the department?

Ms JOUSIF: I could not tell you the history on that but we actually carry most of the costs in that the cost of the electronic monitoring equipment and its maintenance is usually \$5,000 to \$6,000 per detainee. That is carried by the department. It is simply a matter of the phone call that is required once the person leaves that house, so it is the minimum cost.

Ms LEE RHIANNON: It is not a huge amount for the department but it seriously could be for the family. Was it brought in perhaps as a disincentive for them going out so much, or was there any reason? It simply seems a strange way to proceed.

Ms JOUSIF: Certainly not. It was not a disincentive. In fact, we encourage the person to undertake rehabilitation programs or work or seek counselling so it is not that. I could not tell you the history. If I were to give it some rational thought, it would just be commonsense that the phone is attached to that person's name. The phone is attached to the household. Every time the person leaves a phone call is made. It is just the simplicity of it.

Ms LEE RHIANNON: Are home detainees currently eligible to claim unemployment benefits?

Ms JOUSIF: Yes they are.

Ms LEE RHIANNON: Is there any special training for community corrections staff in how to respond to domestic or family violence issues?

Ms JOUSIF: Yes there is. Community offender services has developed a domestic violence training module and that is available to all probation and parole officers in community offender services. In fact, that will be incorporated into the intensive supervision formal training module that we are currently developing. In terms of supervision, officers are specially trained for home detention and we are particularly interested in the issue of domestic violence in that training.

Ms LEE RHIANNON: So if that has been developed, was that responding to the fact that there are considerable incidents of domestic violence in home detainee households?

Ms JOUSIF: Not because there are incidents of domestic violence in home detainee households. It is predominantly because it is a core feature of our case management across all community offender services work but I guess particularly with home detainees. Interestingly, with home detainees there is no hard evidence to say that there has been an increase in domestic violence. If anything, it is usually low-grade arguments and that is due to pre-existing issues of relationship conflict or financial problems or related to drug and alcohol issues. Often, home detention works in a positive way in that the level of intensity of contact and intervention by the officer with that family—you feel like you are living with the person because you see them so often that they can engage in a domestic argument in front of you and air their laundry. It gives you the opportunity to nip in the bud whatever is brewing at that time and provide counselling or refer them to specialist counselling so they are not left to their own devices to have the matter deteriorate to the extent where it would turn into a domestic violence incident.

Interestingly, there was a review conducted by the same corporate research unit back in May 1999 by Kylie Heggie—it was published. From memory, there were five who reported an incident of domestic violence—and again I rely on my memory—four were interviewed, and three of the four indicated that they, the actual detainees, were the victims of domestic violence in that it was due to arguments to do again with finances or the fact that they could not go out or the fact that they were not doing their laundry, they were not helping with household duties. Believe it or not, these people that we work with are often out of the household maybe in gaol or on streets selling drugs. They have not been part of the rearing of children in the household. They have not been there to pay bills and they have not been there to do simple laundry or assist with cooking and those sorts of home duties. Suddenly they are there and often the partner, who is not on home detention, will talk to us about helping the detainee to be trained in time management, accepting responsibility. So those sorts of issues are simple for people who are not involved in drug and alcohol type problems but it is a whole learning curve for people who have not learnt those sorts of simple tasks. Those are the sorts of low-grade arguments that one would have because they have seen them far more than they would normally see them.

The Hon. DAVID CLARKE: I want to clarify one thing. Did you say earlier that 46 per cent of those on home detention orders are found to be in breach of those orders?

Ms JOUSIF: We are saying that 46 per cent breach at least one of the conditions during the order.

The Hon. DAVID CLARKE: So we have 46 per cent who breach of these orders. Do you not think—

Ms JOUSIF: These are the actual conditions of the order. That does not necessarily mean that the actual home detention order has been revoked. Often when someone breaches a condition, it could be a very minor transgression. It could be someone who has just arrived a bit later than usual. Often it is simply a matter of some intervention on our part which resolves the issue. It does not necessarily mean it will proceed to a revocation.

The Hon. DAVID CLARKE: I understand that; I am just talking about the breaches. Do you have any statistics on what percentage are minor breaches or major breaches?

Ms JOUSIF: No because there is such a large number and diversity of the types of incidents that could lead to a breach of a condition. There are specific conditions on a home detention order but there is such a large variety of incidence that could belong to the one particular condition.

The Hon. DAVID CLARKE: So most of them could be major breaches or they could be minor breaches. We do not have figures one way or the other.

Ms JOUSIF: If they were major breaches they would form part of the statistics that revoke the order. When I said 46 actually breached at least one, they were mostly due to urinalysis. In a way that assists us in identifying what is going on at that time. If someone returned a positive urinalysis we offer our own counselling or we refer them to specialist counselling or we involve them in programs that address the issues leading to that drug usage, or they may go into detoxification or some kind of residential rehabilitation. That may be quite a minor breach. When I say urinalysis it might be quite a minor usage because our urinalysis testing is very acute in that it picks up all sorts of medication.

The Hon. DAVID CLARKE: Would you agree that 46 per cent is a very high breach rate?

Ms JOUSIF: The way I look at it, it indicates the intense level of case management on our part. If we did not have any breaches at all we would be worried because we are dealing with a diversity of offenders with a diversity of problems, and a large number of them would be drug and alcohol related problems. If we are not finding anybody breaching any of those conditions, it would mean that we are not doing our job properly. But the fact that we are there, we are very conscious, very sensitive to the signs and symptoms and we are able to address those very early on before they progress to major issues where that person is reoffending or what have you or breaching very serious conditions when they have to be returned to gaol.

The Hon. DAVID CLARKE: You would not be suggesting, from the comments you just made, that the high breach rate of home detention is in some way an indication of how successful the program is being monitored and carried out, are you?

Ms JOUSIF: It depends how that was to be used. If you are talking about the success of case management, I think it is indicative of the success of case management because case management is directly attributed to the fact of first identifying somebody's issues and dealing with that risk by addressing it with the proper programs appropriate to addressing that risk and minimising the risk of reoffending or recidivism. So that in fact helps us to get that person to progress with the order and therefore complete that order and hopefully not return to the courts with fresh offences.

The Hon. DAVID CLARKE: Could there be another reason to explain the high breach rate, apart from the fact that the department is enforcing and monitoring? Could we have this high breach rate because people on home detention orders are not taking those orders seriously?

Ms JOUSIF: Not at all when you consider the high percentage—I think about 80 per cent—who actually complete orders. There is a very high success rate of people adhering to the conditions. They may have stumbled once or twice along that order but that does not necessarily mean that they do not have the best of intentions to complete the order.

The Hon. DAVID CLARKE: When you say they have "stumbled" what you mean is that they have breached the conditions of the order.

Ms JOUSIF: It could be a minor breach of a condition.

The Hon. DAVID CLARKE: And it could not be a minor breach; it might be a major breach.

Ms JOUSIF: If it is a major breach and there is a risk to the community that person would not be able to progress through that order to complete it. There would be a report to the parole board to remove that person. The people we are dealing with are not exactly public enemy number one when you consider the legislation of the types of offences precluded from inclusion for assessment for home detention. We are dealing with people who are higher at recidivism than most. If we did not deal with those sorts of people and address

those needs they would just be returned to gaol constantly, and if we remove those sorts of people you would be only having people with white collar crime on your books on home detention. They would just breeze through the program and are less likely to go back to gaol, whereas we are interested in people who are continually going back and providing them with properly identified and appropriate programs to address those issues.

The Hon. DAVID CLARKE: Ms McComish, I think you indicated earlier, unless I am wrong, that convicted murderers can take part in extended leave programs, is that right?

Ms McCOMISH: What I said was that serious offenders who have moved through the classification process and are in the last, at this stage, 18 months of their sentence can be assessed for external leave programs.

The Hon. DAVID CLARKE: And that includes, I think you mentioned, convicted murderers.

Ms McCOMISH: It was put to me, "could there be a convicted murderer?" I said yes.

The Hon. DAVID CLARKE: Do we have any convicted murderers out there in the community at the moment who are on these extended leave programs?

Ms McCOMISH: "External leave" is the term, not extended.

The Hon. DAVID CLARKE: I am sorry, external.

Ms McCOMISH: I am unable to answer that.

The Hon. DAVID CLARKE: Do the figures exist to establish that fact?

Ms McCOMISH: I can tell you and the department's submission reports the numbers who are on different types of external leave programs, and it would be a matter of individual case records as to just what their offences were. I do not have that on record at the moment.

The Hon. DAVID CLARKE: Could you take that on notice?

Ms McCOMISH: I could take that on notice.

The Hon. DAVID CLARKE: Specifically how many convicted murderers are out there on external leave programs at the moment or in the past 12 months.

The Hon. ERIC ROOZENDAAL: Can you run through how someone progresses through the levels for the external leave program, what the requirements up for each of those levels and how they do that and the time frame?

Ms McCOMISH: Yes. The process of classification is the one that was established by the Nagle Royal Commission in 1978 and was reinforced by a subsequent review of classifications by Judge Martin in 1986. It is basically a staging-down concept that inmates should be placed progressively in less restricted environments as they approach parole. There is a great deal of evidence to show that this kind of structured approach to community reintegration is intended to decrease the likelihood of reoffending by re-establishing relationships with the family and the community, and providing linkages to employment and, if required, ongoing community programs.

Once serious offenders are in the last 18 months of a sentence, if they have indeed progress through the stages of classification—there are different classification systems for men and for women—if men, they moved into category C, which is minimum security. There are a number of stages in categories A, B and C. At every stage of reduction of classification a Classification Committee meets and a recommendation is made as to the reduction in classification. Once they get to category C—if indeed they do get to it. Many do not, because they

have not participated in programs in the gaol and their progress is not satisfactory—category C has levels 1, 2 and 3. At level 2 they are still required to be supervised, either held behind a wall and within a prison or, if out working external to the prison, in the grounds of the complex but external to the wall under supervision.

They are then subject to an assessment by the Serious Offenders Review Council. There is a specific Pre-release Leave Committee that takes into account anyone who has committed a serious offence or indeed of public interest because they are considered to be of risk in the community, and they make recommendations to the Commissioner for reduction in classification to C3. It is only once someone is classified to C3 level, if it is a man—or category 1 for women, and for women the same time intervals do not apply—if the Commissioner approves the C3 classification, then they are eligible to take part in external leave programs. That means that they will be supervised in the community but they do not have to be continuously supervised by an officer. They can work with an electronic monitoring bracelet and equipment at the workplace, or they can go on day leave to their homes or on weekend leave.

On each return from leave they are subject to conditions similar to those that apply when anyone is returning to a correctional centre—they have urinalysis and are breathalysed. If there is any concern or any breach at all of their agreement while they are on external leave, then those provisions are cancelled and there is always the potential to reduce them back through the stages of classification. At times people are moved from a C3 or indeed a C2 classification. Their classification level is reduced because they have not behaved appropriately or because there is concern, or, in some cases, because there is information that leads to a reassessment of their risk.

The Hon. ERIC ROOZENDAAL: Is the department considering extending the home detention scheme to regional New South Wales?

Ms McCOMISH: Yes. At this stage the current home detention scheme operates in the Sydney metropolitan area, in the Illawarra and in the Hunter. There has been a proposal to extend to further regional New South Wales. There have been some barriers to that. One of them is in terms of the way in which home detention is conducted and ensuring that you have a sufficient number of offenders to employ the specialised intensive supervision program team. What the Department is considering, and we hope to implement in the new financial year, is an extension of this option for the courts, based at Kempsey. The proposal is that we use the existing probation and parole office staff attached to the Kempsey district office with some additional resources where they would carry part of a caseload, the usual caseload in the community, and then people would be trained appropriately, with specialised training, and rostered through to cover a small intensive supervision caseload on home detention.

The Hon. ERIC ROOZENDAAL: Thank you for that. Ms Jousif, there was discussion earlier about breaches of conditions and you mentioned a positive urine sample. What are some of the other minor breaches that occur? What would the department consider a major breach to be?

Ms JOUSIF: It could be that somebody has consumed alcohol, because we breath test people randomly as well. It could be that someone has arrived home late from work or from a vocational course, or whatever the agreed absence has been for. It could be drug use, as has been mentioned. It could be tampering with electronic monitoring equipment. It could be for those sorts of reasons. Obviously, reoffending is a major breach. Other major breaches would be continual drug use or continual alcohol consumption after we have sought means to address it in the early stages.

The Hon. ERIC ROOZENDAAL: Would you run me through the procedure that is followed when one of your officers makes contact and discovers a minor breach? Is there a counselling process?

Ms JOUSIF: It depends on the reasons for the breach. For instance, there was a fellow who was washing up dishes after his wife and he had had a dinner party. He had not consumed alcohol, but there was a small amount of wine left in his wife's glass, which he was about to put into the sink full of suds and he drank it. Unfortunately for him, one of the officers just happened to visit him at that time. The officer breath tested him

and the sample was found to be positive. His offence did not relate to an alcohol problem so he would have been given a talking to and told, "Look, you cannot do this sort of thing," and given a slap to the wrist. That would be a minor breach. But if someone was continually using alcohol and we had that person on the books for drink driving or alcohol-related offences, we would certainly counsel him. If it continued we would ask him to attend specialist therapeutic care.

The Hon. ERIC ROOZENDAAL: You can earlier that your officers are on a pager system for crises.

Ms JOUSIF: Yes.

The Hon. ERIC ROOZENDAAL: For what sorts of crises would they be called in?

Ms JOUSIF: "Crises" can be defined in all sorts of ways. To some people a crisis is when they are just having a verbal argument over who is going to the laundry and they will call you to settle that. Another crisis could be the fact that a mother and her child have had an argument and the child has run out, knowing that the mother cannot come out of the house because of the electronic monitoring gear. I had an instance when the officer called me to grant permission to a father whose child was gravely ill and had to be flown to Westmead Hospital. I was asked if the father could fly in the helicopter with the child, and I said "yes". Those are the sorts of crises. It depends on human behaviour and what someone perceives to be a crisis.

The Hon. GREG PEARCE: My question is related to cost and picks up on Ms Rhiannon's questions. Your submission sets out the cost for 2002-03 of keeping an inmate in maximum security at \$219 and \$173 for minimum security. Do you have those figures for 2004? Could you obtain them if you do not have them with you?

Ms McCOMISH: I do not have them in front of me. Yes, certainly I could get them for you.

The Hon. GREG PEARCE: Thank you. You state that home detention costs the department only \$62, compared with \$173 for minimum security.

Ms McCOMISH: Yes.

The Hon. GREG PEARCE: Is that after you take off the \$38.50 per week fees that they have to pay?

Ms JOUSIF: What is that fee?

Ms McCOMISH: There is no fee.

The Hon. GREG PEARCE: At page 10 of your submission you refer to the imposition of a fee to defray the cost of electronic monitoring.

Ms McCOMISH: That is for the external leave program. They do charge. If people are working, they have to contribute from their salaries for a number of things including that fee. We do not charge in respect of home detention. The only cost is the one that Ms Jousif spoke about, which is an average of \$1 per day on phone calls.

The Hon. GREG PEARCE: It is clear from that that there is a major financial incentive for the department to get people out on home detention or on work release programs, is there not?

Ms McCOMISH: On external leave I think there is a major economic benefit to the community, if indeed it is an effective option, in terms of reducing recidivism as well.

The Hon. GREG PEARCE: But it is a big saving for the department to get them out of gaol and into one of these other schemes.

Ms McCOMISH: Theoretically, yes, as I said. However, unfortunately—

The Hon. GREG PEARCE: Not "theoretically" because the numbers are quite clear—\$173 for minimum security as against \$61 and \$62.

Ms McCOMISH: That is right. I said "theoretically" because, unless we can actually shut down a unit—these people are only out part-time, two days per week. Those who are on full-time work release are out for five days but, on those figures, I think there are only 25 of those. They are in every night so their cell has to be retained and we have to continue to employ the staff. That is why I say "theoretically".

The Hon. GREG PEARCE: But that costs you only \$62, according to these figures. Your own submission says that costs you only \$62 per day.

Ms JOUSIF: That is home detention.

The Hon. GREG PEARCE: That is what your submission says.

Ms McCOMISH: Yes, I'm sorry. There are two quite separate schemes, one is the external leave program and the financial cost of that—

The Hon. GREG PEARCE: On the external leave program they actually pay you money.

Ms McCOMISH: They pay money to offset the costs of their monitoring.

The Hon. GREG PEARCE: Yes, they pay money to the department. In respect of home detention instead of costing the department \$173 per day for minimum security it costs the department only \$62 per day.

Ms McCOMISH: That is right.

The Hon. GREG PEARCE: Right. So, in both cases, there is a major financial incentive to the department to get people into the schemes.

Ms McCOMISH: It is the court that order's home detention, not the department.

The Hon. GREG PEARCE: There is a major financial incentive. All right. Thank you, we have the evidence.

Ms McCOMISH: I think they are quite different. The department's responsibility is quite different.

CHAIR: I have one question before we wind up, and it is a bit out of the blue. The way that your proposal is set up relies very much on the committees at the gaol sites, the rehabilitation committees that actually do the planning for the person's future—

Ms McCOMISH: Case management teams.

CHAIR: —the case management teams for the assessments and future planning for individual prisoners. Many prisoners are moved quite often from gaol to gaol throughout New South Wales. How does your proposal ensure some sort of consistency in planning and classification of these specific prisoners?

Ms McCOMISH: The department has implemented an offender information management system, basically an electronic case management system and database, which means that at least we have consistency in terms of the review of case plans. It is not a matter of files having to be transferred and being lost. It is the fact that many prisoners, particularly those serving long sentences, may well move through a number of prisons and

is very important that we have that kind of access to information. You may well have a case management team that initially works with and develops the case plans for an offender, but when he moves to another correctional centre that case management team will have immediate access to that information. They will then meet with the offender to ensure that the offender participates in the program.

If offenders have done part of a program, the proposal is that we actually have consistent programming around the State so that they can then pick up and continue. Once people have got down to a minimum security category and are being considered for external leave every effort is made to maintain them at a site because they have home and work commitments and so on. If you move them you disrupt the whole process.

CHAIR: I thank you both for coming here today and providing information to the Committee. I believe you have taken two questions on notice and the secretariat will go through the transcript and supply you with those specific questions very shortly.

(The witnesses withdrew)

JAMES CHRISTOPHER HEATON SIMPSON, Lawyer and Senior Advocate, New South Wales Council for Intellectual Disability, affirmed and examined:

CHAIR: Are you conversant with the terms of reference of this inquiry?

Mr SIMPSON: Yes.

CHAIR: If you should consider at any stage certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. Would you like to start by making a short statement?

Mr SIMPSON: Thank you. For 20 years the Council for Intellectual Disability has been very aware of people with intellectual disabilities going to gaol, not because the court thinks that is appropriate but because the court does not feel any option is available that will meet the persons' needs and therefore reduce the likelihood of recidivism. Similarly with the Parole Board, the Parole Board being enthusiastic to grant parole but the supports the person needs not being there, so the person stays in prison through their parole period.

That is anecdotal, however research on this issue is extremely clear. The research comes from bipartisan political sources: a Law Reform Commission inquiry that was initiated by Peter Collins as Attorney General; other reports initiated by Labor governments and a Law Reform Commission report in 1996, "People with Intellectual Disability and the Criminal Justice System". My own organisation's contribution to the research is "The Framework Report", of which I was one of the authors. That was produced in 2001. What we sought to do there was identify in great detail the shortages in that system of community supports and what needed to happen so those community supports were there—not to keep all people with intellectual disabilities out of gaol but to give people with intellectual disabilities a fair chance of keeping out of gaol and a fair chance of avoiding recidivism when they left gaol.

The disturbing irony of the lack of those options to gaol is, as the Sentencing Council has recently affirmed, that prison has particular negative effects on people with intellectual disabilities, people being particularly impressionable to negative role models in prison, people being vulnerable to physical and sexual abuse, people finding it very hard to readjust, having been in a highly structured environment in prison and then all of a sudden being in an environment with very little structure at all. I know that readjustment can be difficult for all prisoners, but for people with intellectual disabilities it is particularly difficult because an intellectual disability inherently involves a difficulty with adjustment to different life circumstances. So, people with intellectual disabilities are likely to emerge from prison more likely to re-offend than other prisoners.

The recidivism figures, and these are Department of Corrective Services figures, for people who have been in special units for people with intellectual disabilities in gaol, are 139 per cent higher for people who have been in on their first sentence as compared with other prisoners on their first sentence. That is illustrating what I was saying about the increased likelihood to re-offend. I think it is a 78 per cent higher likelihood of a return to gaol for someone in one of those special units for whom it is not their first imprisonment.

So, those community supports need to be developed. Some progress has been made and there has been bipartisan support for this in recent years. The striking deficiency, and this very much relates to the issue of home detention, is in relation to the more expensive part, the development of supported accommodation and intensive support for people in their own homes, which for many people is a fundamental if you are going to help them avoid trouble with the law, help them to avoid recidivism in a way that is taking account of their disability and the effects of the disability on the difficulty the person has in avoiding criminality.

Home detention, it would seem to me, in particular backend home detention, would have great potential to allow for a graduated transition from prison for a person with an intellectual disability, getting the person used to a more stable life in the community and helping the person readjust to that life in the community, while still having some control of the person, and the person being aware that if I do not comply with the rules then I may be sent back to prison. If those controls are not there, we all too often see people, even if support is offered, taking off because they are finding it really hard to adjust to this idea of a more stable lifestyle compared to what they had before they went gaol.

So, the combination of control that would be inherent in backend home detention, and control that is not being applied in a discriminatory way—we would be very disturbed about the notion, for example, of someone who has finished their sentence completely then being subjected to controls for community protection purposes simply because they had an intellectual disability. What attracts us about what has been proposed here is that it would be a normal option. There would be controls there but they would be controls just like for any other person still serving their sentence but doing it by way of home detention.

The support the person with an intellectual disability would need for home detention to work would vary. For some it might be a matter of living in their own Department of Housing flat with drop-in support. That drop-in support might be a few hours a day for the first period and gradually tailoring off as the person becomes adjusted to their new situation. That support could be partly about reminding a person of their obligations and the consequences of breaching their obligations, because an intellectual disability can interfere with that. The person might not remember these are the rules and this is what happens if I breach the rules. The person might not be able to tell the time very well, so the support may be about ensuring the person allows enough time to get back from their work programs to not breach the rules, and so on. The support can be about introducing the person to positive programs in the community which can be tailored to part of the conditions of the home detention.

That is one example. At the other extreme some people would, at least initially, need 24-hour supervised accommodation. It may be in a place like the group home. For some that may be the kind of supported accommodation that they would need for the indefinite future. For others, they may be able to gradually move into more independent living as programs can assist them towards that.

That is the kind of support that is needed. At present, a small proportion of offenders with intellectual disability do have access to those sorts of programs. A high proportion do not have access to those sorts of programs. So for the kind of home detention that is being talked about here to become an option that is available in a non-discriminatory way, that is, equally available to people with intellectual disability as it is to other people, the steps that have been taken in recent years towards developing that service system, the small steps that have occurred, need to include some much bigger steps, especially on that supported accommodation and intensive support aspect.

To do that would be very much a cross-agency issue. The Department of Ageing, Disability and Home Care would be a key player, the Department of Housing would be a key player, and the

Department of Corrective Services obviously, and other agencies as well for some people. There are a lot of people who have dual diagnoses of drug and alcohol problems and mental health problems as well which would require support from those agencies too. I suppose basically we see it as one of the ways in which people with intellectual disability can be given a much fairer chance to avoid ongoing imprisonment.

CHAIR: Are you aware of any person with an intellectual disability who is currently serving a sentence of home detention? If so, what are the particular challenges facing that person and how are they being met?

Mr SIMPSON: I am not aware of any. I think what I have said perhaps in general terms answers the issues you are raising. I am happy to say more if you would like me to, but I am not aware of any.

The Hon. GREG PEARCE: From what you are saying, the key issue is that these people have a home to go to?

Mr SIMPSON: Yes.

The Hon. GREG PEARCE: What percentage of people affected will be in a position to have a home to go to? What is your experience in that regard?

Mr SIMPSON: It varies a lot obviously. Some people have family homes to which they can go. Most people of this group who are in trouble with the law do not have family homes or, at least, do not have stable family homes. What I can say is that the minority certainly, have access to appropriate homes at this stage. We did a survey two years ago where we asked advocacy groups and lawyers, whom we knew to be working with trying to get decent services for people with intellectual disability in trouble with the law, about the extent to which people were receiving appropriate services. What we found from the group was that a clear majority did not have access to appropriate supported accommodation. I would suspect overall it would be a greater majority than that because the people we were asking were in there fighting to get something for people. A lot of people do not have someone in there fighting to get something for them.

The Hon. GREG PEARCE: You referred to some statistics. I think you said that people with disabilities were 139 per cent more likely to be recidivists. What is the basis of those figures?

Mr SIMPSON: That comes from "Recidivism and Other Statistics on a Population of Inmates with Intellectual Disabilities in New South Wales Correctional Centres 1990-98". That comes from that publication. Do you want the exact figures?

The Hon. GREG PEARCE: Are they Corrective Services figures?

Mr SIMPSON: Yes.

The Hon. GREG PEARCE: Are you aware of any more recent figures from the department?

Mr SIMPSON: No, I am not. I am not aware whether more recent figures have been done.

CHAIR: Do you intend to table that booklet or are you able to tell us where we can obtain a copy?

Mr SIMPSON: It is out of print, and this is my copy. I can give you a web site address where it is published: www.idrs.org.au.

The Hon. DAVID CLARKE: Mr Simpson, you said there were cases of intellectually disabled being subject to physical abuse in our prisons at the present time, is that right?

Mr SIMPSON: Yes.

The Hon. DAVID CLARKE: How prevalent is that?

Mr SIMPSON: It is very hard for us to know. The nature of intellectual disability leads to difficulties in reporting. It is not something about which, as I understand it, figures are kept in a methodical way or publicised by the Department of Corrective Services. I am only aware of specific anecdotes, some of which I feel very confident are reliable anecdotes, but that is what I am aware of.

The Hon. DAVID CLARKE: Incidents show it is at a level that is quite unsatisfactory, in your viewpoint?

Mr SIMPSON: Certainly in my viewpoint. Perhaps I should qualify what I just said. I do not know if I have got specific recent examples. I am aware of a lot of detail of one specific example from a few years ago of a young man being brutally raped and the psychiatric reports about the ongoing trauma that was affecting him from that. Certainly, the research over and over again confirms this is a problem in relation to prisoners with intellectual disabilities.

The Hon. DAVID CLARKE: Clearly, you would agree, it is an issue that needs to be urgently rectified?

Mr SIMPSON: Yes. It is very difficult in the prison environment, but yes.

The Hon. DAVID CLARKE: You said that courts are sympathetic to the intellectually disabled?

Mr SIMPSON: Yes.

The Hon. DAVID CLARKE: The Parole Board is sympathetic?

Mr SIMPSON: Yes.

The Hon. DAVID CLARKE: But they both say they really do not have other alternatives, they do not have other options available to them? Is that a general summary of the way you would see the situation?

Mr SIMPSON: It is a common theme. Obviously the judiciary is an empire of individualists, I think as Justice Michael Kirby describes them. It is certainly a common theme of judiciary to make those sorts of statements: "I really don't want to send this person to present but the supports just aren't there to allow me to go some other way."

The Hon. DAVID CLARKE: That being the case, would you say that our system is letting down the intellectually disabled who are put in this position?

Mr SIMPSON: Most certainly.

The Hon. DAVID CLARKE: And that needs to be urgently rectified?

Mr SIMPSON: Most certainly.

The Hon. DAVID CLARKE: You referred to a report called "The Framework Report 2001" which deals with some of these issues. Did you make any specific recommendations in that report?

Mr SIMPSON: Highly detailed recommendations.

The Hon. DAVID CLARKE: How many recommendations, can you recall, did you make?

Mr SIMPSON: Somewhere in the order of 100.

The Hon. DAVID CLARKE: How many of those recommendations have been acted upon by the authorities?

Mr SIMPSON: I could not answer that in any specific way. I can say that the Department of Ageing, Disability and Home Care has certainly moved from a situation where it tended not to see this group as its client group or its priority to one where it squarely acknowledges that they are. It is one of their main priorities and gradually, slowly but gradually that idea now seems to be permeating the culture and practice of the department. To varying degrees similar things have happened in some other agencies. As a summary, I would say that there has been significant progress but we are only 10 per cent down the path.

A particular concern was a senior officers group that was established to co-ordinate cross-agency action, which did not work very well. There was an Ombudsman's report into its failings, in particular, the leadership of the Department of Ageing, Disability and Home Care. The Ombudsman released that report publicly; it is on their web site. There appears to be action now being taken to reconstitute that senior officers group and get it back on track. I have been in this work for long enough to want to see clear results before being too optimistic. There is certainly some hope there that that is getting back on track.

The Hon. DAVID CLARKE: I take it from what you say you believe these problems have been rectified to the extent of about 10 per cent?

Mr SIMPSON: That would be a ballpark summary, yes.

The Hon. DAVID CLARKE: Would it also follow that about 10 per cent of the recommendations put forward in the report of 2001 have been effectively acted upon, more or less?

Mr SIMPSON: It is probably difficult for me to answer that in that direct way because I think there would probably be a lot of recommendations that have been acted on to a degree. So probably more than 10 per cent. Certainly more than 10 per cent would have been acted on to a degree. But just as a global statement of the degree to which the report has been implemented, I suppose I would say 10 per cent at this stage.

The Hon. DAVID CLARKE: To sum up, you were the chairman of the council?

Mr SIMPSON: No, senior advocate is my position.

The Hon. DAVID CLARKE: You would say that we are in a situation where there is a lot left to be desired in respect to dealing with the intellectually disabled in our prisons system?

Mr SIMPSON: Most certainly.

CHAIR: I would just like to ask: Do you believe that your recommendations in your framework will enhance the work of this Committee?

Mr SIMPSON: Yes, most certainly. They would provide the service system which would then complement the idea of back-end home detention for this group.

Ms LEE RHIANNON: If you had a meeting with the Premier and he was co-operative on this issue, how would you prioritise the issues in terms of what the Ministers need to do? Is it an issue of resources? Is it an issue of just finding the homes? If you could give me the three top priorities to get things moving?

Mr SIMPSON: Yes. The absolute top priority would be putting the money into developing the supported accommodation system and intensive support for people in their own homes. That is the part that undoubtedly requires more money. At the same time, through better linkages between departments—things like community housing and the Department of Housing—may be able to reduce the amount of actual new investment that is required. That is No. 1. No. 2 is agencies getting their act together, and some steps have been made towards that. But all too often a person may need support from disability services, drug and alcohol services, mental health services and the Department of Housing linked in with Probation and Parole, and their skills and the co-operation just are not there to make that happen in a way that works for the person. Money sometimes —

Ms LEE RHIANNON: Is that skills and co-operation among the staff?

Mr SIMPSON: Yes, and assistance to enable the staff to do that.

Ms LEE RHIANNON: Just going back to your first priority, can you put a dollar amount on that?

Mr SIMPSON: I cannot, offhand. I think it would be silly for me to do that at this minute. What I could do is provide to the Committee a recommended budget bid that we have developed and that the New South Wales Council of Social Services adopted in their pre-budget submission, which would be a valuable start towards the kind of service system that is needed. Obviously, we are in there to see the world changed tomorrow, but we recognise that that does not happen. We recognise that this would be an incremental process.

Ms LEE RHIANNON: Could I ask you to provide that?

Mr SIMPSON: Most certainly.

The Hon. ERIC ROOZENDAAL: From what you have been saying, would I be right in assuming that the implications are that the home detention program as it stands is really not suitable for intellectually disabled people, if they do not have already a home structure to go into? Would I be right in that?

Mr SIMPSON: Yes.

The Hon. ERIC ROOZENDAAL: Can I assume from that that it is very difficult to find sponsors outside the immediate family of these people whereas in the submission from Corrective Services, I was reading where they talk about sponsors assisting. Is that part of the problem?

Mr SIMPSON: Most certainly.

The Hon. ERIC ROOZENDAAL: Is the solution then for a sort of separate structure under home detention, or something like that, specifically for intellectually disabled people, particularly in the prisons system?

Mr SIMPSON: I do not know whether it is a separate structure or whether it is more the one structure which takes account of different needs being linked to other agencies—like the Department of Ageing, Disability and Home Care and the Department of Housing being developed to complement that structure.

CHAIR: The Northern Territory has apparently developed a program specifically for Aboriginal persons whose home structures — it is a support accommodation program.

Mr SIMPSON: Right.

CHAIR: This is what I have read in their submissions.

Mr SIMPSON: Right.

CHAIR: In a place like New South Wales where the prison population is very complex and includes, as you say, people with dual diagnoses and mental health issues and a lot of Aboriginal persons, and people with intellectual disability as well as the general prison population, do you think it would be possible to have support accommodation that would be adaptable to all of these groups?

Mr SIMPSON: Yes. It calls for greater flexibility. I have in fact recently done some work with a colleague funded by the Commonwealth—it was the Aboriginal and Torres Strait Islander Commission [ATSIS] and it is now the Commonwealth Attorney General's Department—to look specifically at its use for indigenous people with cognitive disabilities and the criminal justice system. As part of that, we looked at the particular challenges which all too seldom are met in the disability service system in making itself more flexible and adapted to the needs of people in indigenous communities. What that might, for example, call for in this sort of context is looking in a very individual way at whether there is support that can be provided to the person's own community to make home detention viable for a particular indigenous person with an intellectual disability.

CHAIR: So you do not think that people in this environment would be at the same risks as they are in prison?

Mr SIMPSON: No. Well, if the supports are there, no. If the supports are not there, it is a difficult question to answer.

CHAIR: Thank you very much for coming and for your submission. I would very much value your recommendations from your study.

(The witness withdrew)

NICHOLAS RICHARD COWDERY, Director of Public Prosecutions, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South, affirmed and examined:

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr COWDERY: As the Director of Public Prosecutions, representing my office.

CHAIR: Are you conversant with the terms of reference that this inquiry?

Mr COWDERY: Yes, I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard and seen only by the Committee, please indicate that fact and the Committee will consider your request. Would you like to start by making a statement?

Mr COWDERY: My office has made a submission to the Committee on these terms of reference and I support that submission. It has been prepared by some of my senior officers but nevertheless it accords with my view of the events. At this stage of the proceedings there is nothing really to add to those written submissions that have been made.

CHAIR: Your submission was fairly extensive and gave us excellent references to other States' work, which was very useful. Your submission actually mentions that front-end home detention is currently underutilised. Why do you think that that is the case?

Mr COWDERY: I think that because of the parts of the State in which home detention as it presently exists is available. When I look at these issues, I look at them from a statewide point of view because we are responsible for prosecuting throughout the State. Beyond the Sydney metropolitan, the Illawarra and the Hunter regions, there is no availability of what might be called front-end home detention, or home detention as it is presently administered. It is not available in the following court locations, based on the way in which these things are classified: the Richmond-Tweed, Northern, North Western, the Central West, South Eastern, Murrumbidgee, Murray and the Far West of New South Wales. It is also not presently available in the mid North Coast region, although I understand that a pilot has been proposed for that area. So this disadvantages a lot of people who might otherwise be appropriate for home detention and particularly in the more remote country areas. It significantly disadvantages the Aboriginal population who form a high proportion of those who would otherwise be able to be considered.

CHAIR: Have you got any ideas on how the program could be extended more to the country areas, particularly considering issues in relation to small populations in some of those towns?

Mr COWDERY: Well, I think in the smaller and more remote communities, it would be extremely difficult to administer and there may be practical reasons why it could not be extended absolutely statewide. But in those regions to which I have referred, there are a lot of large and medium-sized centres of population and I suppose—perhaps it comes down to money, that the Department of Corrective Services would require more funding to implement the program more widely in those areas. But, yes, I accept that in the very small and in the remote areas, it is a difficult program to administer in a satisfactory way.

The Hon. GREG PEARCE: I noticed in the submission under the heading of the Impact of Back-end Home Detention on the Principle of Truth in Sentencing, your office began by saying that, self-evidently, home detention is inconsistent with the concept of truth in sentencing. It then very neatly says that the Crimes (Sentencing Procedure) Act designates periodic detention as an alternative means of sentence. What is your own view on whether periodic detention is in fact consistent with truth in sentencing?

Mr COWDERY: Periodic detention is ordered at the time of sentence—that a term of imprisonment is to be served by way of periodic detention—so it is open, transparent, obvious, from the outset that this is the way in which this particular penalty is to be served. The issue about back-end home detention is that there is not that same transparency and certainty from the outset, from the time of sentencing. It is something that is being contemplated administratively and subject to the establishment of conditions during the term of the sentence of imprisonment, so it is not transparent and open from the start.

The Hon. GREG PEARCE: I suppose the majority of people would expect that if you are given a parole period, that is when the issue of some sort of release should appropriately be commenced.

Mr COWDERY: Yes. That is the scheme obviously envisaged by the Sentencing Act 1989, what the media and some others call truth in sentencing, to have certainty and predictability about how the penalty is to be served out.

The Hon. GREG PEARCE: You probably have not seen it, but the Department of Corrective Services has given the Committee a submission, in which it proposes that the commissioner should decide whether an inmate is eligible for back-end home detention. What would you say about that proposal?

Mr COWDERY: One way of administering such a system is administratively, so that the commissioner or his delegate, once satisfied of the appropriateness of making such an order from the behaviour of the inmate in prison, from the social circumstances of that person, and so on and so on, should have the power to make the order. It really is a value judgement as to how much transparency there should be in the process, and to what extent it should be removed into a neutral path, for example, back before a judge, or a magistrate, or something of that kind. So it is really a question of how much transparency you think there should be, and how much confidence can be placed in the commissioner.

The Hon. GREG PEARCE: The department's submission also, helpfully, reminded us of Rex Jackson's tenure and accepting bribes to let people out. In terms of transparency, that would seem to militate against the concept of having an official determining the matter.

Mr COWDERY: Well, there is always a risk, I suppose. But, at the same time, it may well be possible to build in enough checks and balances to ensure that the process is kept accountable in some way. It just would not enjoy that transparency that bringing a matter back before a court does.

The Hon. GREG PEARCE: Which, I assume from what you are saying, would be your preference or recommendation.

Mr COWDERY: From memory, it is one of our suggestions.

The Hon. GREG PEARCE: Yes, it is. You also say in the submission that it is essential that any back-end home detention program deal promptly and consistently with any offender who breaches the program. Would you say that the pattern of 46 per cent of those on home detention breaching conditions would be satisfactory?

Mr COWDERY: It does seem rather high.

The Hon. GREG PEARCE: That is the evidence that the department gave the Committee this morning in relation to the current home detention scheme, that there is a 46 per cent incident of breach of conditions, some of them minor but nonetheless breaches.

Mr COWDERY: That is something that I would want to examine if I were in the position of administering the scheme. Of course, a prisoner, having served at least part of the sentence in full-time custody, may have a different attitude to those sorts of lesser restrictions than somebody starting off that way. So there may be psychological protections in the back-end scheme that are not present in the front-end system.

The Hon. GREG PEARCE: Are you saying you think it might be less likely there would be breaches of the back-end scheme?

Mr COWDERY: I am speculating a bit here, but, yes. I would hope that a person who has served some time and come to understand the regime and requirements, and has met whatever conditions have been set for release on back-end home detention, would have a different attitude to the extent of liberty being provided than somebody who just begins with that.

The Hon. GREG PEARCE: Lastly, you mentioned the potential cost of extending the current home detention scheme. Interestingly, the department seems to be of the view that there is a financial incentive in getting people out and on these schemes. The department told the Committee that it costs roughly \$62 a day for someone on home detention, as against I think \$173 for someone in minimum security. What is your view on that sort of policy approach by the department of "get them out there to save money"?

Mr COWDERY: All of us in public agencies are looking for ways to save money, while still doing our job properly.

CHAIR: I do not think they actually said that.

The Hon. GREG PEARCE: I think they did.

Mr COWDERY: I certainly would not criticise them for identifying the issue. The efficiency with which we can all render our public service is a very real issue, and it is something that we are bound to take into account.

Ms LEE RHIANNON: Under an original Western Australian home detention scheme, home detention could be imposed as a condition of bail for a defendant who otherwise would be remanded in custody. Is this currently an option in New South Wales?

Mr COWDERY: No, it is not. But an interesting case has been reported recently of a gentleman in Newcastle who is on bail, and conditions have been attached to his bail whereby he has a privately employed security guard keeping watch over him.

Ms LEE RHIANNON: Who pays for the guard?

Mr COWDERY: He does. It is a rather interesting development. We were a little concerned about this, and took the matter to the Supreme Court for a review of bail. But the bail has been reaffirmed, and he has been released on the same terms.

Ms LEE RHIANNON: So that was a condition that the judge agreed to?

Mr COWDERY: Yes.

Ms LEE RHIANNON: What, put by his side, and the judge agreed to it?

Mr COWDERY: Yes. That is the only case that I am aware of that has had that sort of provision made. I do not know whether it will set a trend or not. I am not quite sure how I view it at the moment.

The Hon. GREG PEARCE: Is the security guard a relative?

Mr COWDERY: If I remember correctly, when we brought the review in the Supreme Court there was some issue of the security guard perhaps having fallen down on the job at one point. But that seems not to have been so serious.

Ms LEE RHIANNON: Do you think home detention could be modified to apply to prisoners on remand who have served a period in custody, and, if so, what special features would need to be included in the scheme?

Mr COWDERY: We at present have attached to bail conditions whereby people are to reside at a particular address, and indeed sometimes we do have conditions which I suppose might be getting somewhat closer to home detention in that the persons are only permitted to go out of the house between certain hours or for certain purposes. Those sorts of conditions that are attached to bail are conditions that are accepted by the accused person, so they are voluntarily entered into in that sense as a price of getting liberty. So we have in place the mechanism whereby a very high degree of control over the person, using the person's home as part of that control, can be exercised. It is not formal home detention, but it is conditional liberty, the conditions including residence at a certain place and leaving the residence at only certain times.

Ms LEE RHIANNON: It has been suggested that home detention generally, including back-end home detention, would have a net-widening effect whereby the total number of people serving a sentence of imprisonment of one kind or another would increase. Could you comment on this?

Mr COWDERY: I do not think that would be a major problem.

Ms LEE RHIANNON: When you say that, do you think it does not occur, or do you think it does not matter that it occurs?

Mr COWDERY: If you would pardon me a moment. I have made a note on that issue, and I want to refresh my memory from it. We are not aware of any suggestion that front-end home detention, as it presently

exists, has had a net-widening effect. So I think it would only be speculation on my part about back-end home detention. Could I add there is some discussion of net-widening effects in the Sentencing Council's report on the abolition of sentences of six months and less, and that is a public document. So there is some discussion in there.

The Hon. DAVID CLARKE: Mr Cowdery, I want to clarify the extent of utilisation of front-end home detention in New South Wales. Did you say it is the case that it is available in the Illawarra, Newcastle and Sydney but not elsewhere in the State?

Mr COWDERY: That is correct.

The Hon. DAVID CLARKE: How long have we had front-end home detention in New South Wales, approximately?

Mr COWDERY: I really do not know. A check of the legislation would give you the date of commencement.

The Hon. DAVID CLARKE: Is it some years?

Mr COWDERY: It would be some years now.

The Hon. DAVID CLARKE: So we have had a situation in New South Wales where a significant section of the population of this State have not had front-end home detention available to it.

Mr COWDERY: That is correct. And they do not have periodic detention in a lot of those areas, and they do not have community service available in a lot of those areas.

The Hon. DAVID CLARKE: So, significant sections of the community—including those in rural areas, and a significant section of the Aboriginal community—at present are being disadvantaged under our legal system because this option is not open to them when it is open to others in the State?

Mr COWDERY: That is correct, and the Sentencing Council has drawn attention to that in the report that I have mentioned.

The Hon. DAVID CLARKE: Taking it a step further: Would it be true to say that in effect the system works to actually discriminate against them?

Mr COWDERY: In that sense, yes, it does, as do things like the trial drug court at Parramatta, and other trials that are evaluated but still not extended beyond their original trial area.

The Hon. DAVID CLARKE: Do you believe it should be a major priority to remedy this situation?

Mr COWDERY: I think that all the citizens of New South Wales should have equal access to equal justice, and in my office we work very hard to try to ensure that happens. But in some other programs it is just not possible.

The Hon. DAVID CLARKE: So the situation is that the failure to provide adequate resources to do that is at the expense of one section of the community being in effect discriminated against.

CHAIR: I would remind the honourable member that the Government has given this Committee terms of reference to investigate that exact question, and that investigation will be undertaken shortly.

The Hon. DAVID CLARKE: Thank you.

Mr COWDERY: You are assuming, of course, that the reason for it is non-allocation of resources. I do not know whether there are other reasons that apply too.

The Hon. DAVID CLARKE: What if that were the reason?

Mr COWDERY: That would be the effect, yes.

The Hon. DAVID CLARKE: The Committee earlier today heard evidence from the advocate for the New South Wales Council for Intellectual Disability that he is concerned about those who are intellectually disabled being subject to physical abuse in our prisons. Is that something that you also have a concern about?

Mr COWDERY: I do not have information about that.

The Hon. DAVID CLARKE: If there were a significant number of cases where that was happening—and, according to the advocate for the council, it is—it would be a matter of deep concern.

Mr COWDERY: Of course.

The Hon. ERIC ROOZENDAAL: It has been suggested in some submissions that the availability of back-end home detention would have an impact on the number of guilty pleas. What is your view on the impact that availability of back-end home detention, as an option for the original sentencing court, on plea bargaining and the number of accused who may plead guilty?

Mr COWDERY: I think there are practical problems with making it the responsibility of the original sentencing court at the time of sentencing, because, as I understand it, it would have to depend to a large extent on the conduct, rehabilitation and so on of the prisoner during the time of serving the sentence. Those sorts of things are virtually impossible to predict at the time of sentencing, so I cannot see that that would be an option. So far as what you call plea bargaining, what we call charge negotiation, is concerned—

The Hon. ERIC ROOZENDAAL: It depends, really, on whether you watch CSI!

Mr COWDERY: On CSI they can do a DNA test in ten minutes!

The Hon. ERIC ROOZENDAAL: Well, the show goes for only an hour. What do you expect?

Mr COWDERY: In New South Wales, the absolute minimum, when all stops are pulled out, is ten days. So far as charge negotiation is concerned, we take into account the kind of penalty that may be attached to a plea to a particular charge, but we do not get into the detail of the length of penalty or issues of that kind. That really is a matter for the judge, and we cannot make predictions about that sort of thing.

The Hon. ERIC ROOZENDAAL: Do you see a role for victims in assessing an offender's eligibility for back-end home detention?

Mr COWDERY: I see a role for victims in the administration of sentences generally. It is something that was overlooked for a very long time. But in the last 10 to 15 years victims have been brought into the processes very much more. I think that is a good thing. Presently, victims may make submissions about sentence determination applications for the lifers, for the release of serious offenders through the board, and that sort of thing. I see no reason why a victim should not be allowed at least to make a submission to the decision maker who is looking at the question of release on back-end home detention.

The Hon. ERIC ROOZENDAAL: What is your feeling on the availability of back-end home detention for serious offenders who have served part of their sentence? How would you see the role of the Serious Offenders Review Council in dealing with that issue?

Mr COWDERY: I did make some notes about that somewhere. It is a matter of balance. My view would be that if by "serious offender" you mean an offender referred to in section 3 of the Crimes (Administration of Sentences) Act, I would tend to think that it should not be available for such persons. But I acknowledge that there is a contrary argument that even offenders in that category might deserve the opportunity for reintegration into the community through back-end home detention. It may be that a serious offender could be assessed as being suitable and, if so, I suppose that there is a strong argument that the person should benefit in that way.

The Hon. ERIC ROOZENDAAL: How do you see the role of the Serious Offenders Review Council in that process?

Mr COWDERY: In my view, it should assess the suitability of the person for release, if that option is going to be available for people in that category.

CHAIR: We are a little confused about who you perceive to be the people who should make a decision about whether or not offenders should be able to access back-end home detention.

Mr COWDERY: I think there are probably two main possibilities. The first is administratively through the department, with the commissioner or his delegate having responsibility. The second is for the matter to come back before the court by which the person was sentenced—not necessarily the same judge but the same court—for assessment of the reports on how the prisoner has fared, the facilities that are available, and so on. Those are the sorts of matters that would be considered. It does give an added element of transparency to the process to bring it back before the court. But, on other side, there must be appropriate checks and balances that could be built into the administrative route.

CHAIR: Thank you for being of assistance to this Committee yet again.

(The witness withdrew)

MYREE ANNE HARRIS, St Vincent de Paul Society, PO Box 5, Petersham, and

GRAEME JOHN FEAR, St Vincent de Paul Society, PO Box 5, Petersham, sworn and examined:

CHAIR: What is your occupation?

Sister HARRIS: I am a sister of St Joseph and I look after a community house for people with mental illness.

Mr FEAR: I am the co-ordinator for mental health services in New South Wales for the St Vincent de Paul Society.

CHAIR: In what capacity are you appearing before the Committee, that is, are you appearing as an individual or a representative of an organisation?

Sister HARRIS: I am representing the St Vincent de Paul Society. I am the President of the State Advisory Committee for the Care of People with Mental Illness, and I am representing CASA, of which I am the convener. CASA is the Coalition for Appropriate Supported Accommodation for people with disabilities.

Mr FEAR: I am representing the St Vincent de Paul Society in New South Wales.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Sister HARRIS: I am not sure I am conversant with all of them. I have read them but I am sure you could remind me if I stray.

Mr FEAR: I must give the same answer. I have glanced over them but maybe you could point out any issues to us.

CHAIR: The terms of reference are:

That the Standing Committee on Law and Justice inquire into and report on whether it is appropriate and in the public interest to introduce "back-end" home detention scheme in New South Wales, including:

- (a) the perceived benefits and disadvantages of back-end home detention,
- (b) the relationship between back-end home detention and existing external leave programs,
- (c) the impact of back-end home detention on the principle of truth-in-sentencing,
- (d) the appropriate authority to determine whether an offender may proceed to back-end home detention,
- (e) the criteria for eligibility for back-end home detention,
- (f) the experience of other jurisdictions in implementing back-end home detention schemes,
- (g) any other related matter.

Would you like to make an opening statement?

Sister HARRIS: Yes I would. I would like to tender the papers that have been passed around. I would like to go through this as my opening statement and not take too long about it but then be open to questions about this or about any other issues that you would like to raise. Is that okay?

CHAIR: That is fine.

Sister HARRIS: For back-end home detention to be appropriate, it would seem necessary for people to have a home. This is taken for granted, I guess, but I would maintain it is not necessarily the case as regards many people with mental illness. First, I would like to look at the incidents as I understand it—and I am not all that knowledgeable—but in a submission to the parliamentary inquiry report published in 2002 the corrections health service reported a high incidence of inmates with mental illness, along with many drug and alcohol dependent patients. We read recently in a report from the Mental Health Co-ordinating Council that 40 per cent of inmates have experienced a psychotic episode within the past 12 months. It can be surmised that the incidence of dual diagnosis of mental illness and substance abuse would be significant also.

In the parliamentary inquiry the Institute of Psychiatry reported that mental health and psychiatric services within corrections centres are characterised by a fragmented approach to the planning and delivery of services. That was a bit alarming in that it has implications for any attempt to apply back-end home detention to the population because the assessment of the illness and the needs of the people being considered for back-end home detention would have to be accurate in determining the levels of support they need and the appropriateness of it for them. So the requirements for back-end home detention to be appropriate for people with mental illness, thinking that through, I considered that would require stable accommodation in an area spacious enough to avoid claustrophobia, ideally with a back yard or somewhere to walk around, and appropriate levels of support, depending on the degree of living skills possessed by the client and also the requirements of the detention order.

For instance, if someone is not allowed to go to shops, then how would they be expected to do shopping if they have no-one to care for them? So you need to have support systems in place to deal with that kind of thing. In terms of the current housing situations of people with serious mental illness, a minority live at home with their family or in their own house or apartment and with greater or lesser degrees of success in all those cases. Many live in rented rooms, others live in licensed or unlicensed boarding houses, in homeless

refuges, on the streets and some are itinerant. There are special needs of people with a mental illness who are homeless or in insecure housing, give that their current situation is inappropriate for back-end home detention. They need secure, spacious housing. They need assistance with living skills, such as hygiene, cleaning, budgeting, shopping, cooking and monitoring of medication. There may be other things. They need social interaction and assistance with leisure skills.

In terms of types of appropriate housing, if you were to apply back-end home detention to people who have mental illness and they currently did not have a place that is appropriate to live in, then it would seem that there are two ways you could provide that. One could be by a specifically established small group home which provides independent, separate living rooms for people to live in, group areas and outside places where they can walk around so it is not a totally claustrophobic small enclosed area. You could have that or one-bedroom or two-bedroom apartments, perhaps in a cluster around a communal area. However, they would require support. You could provide housing but then you need your support. They would not all need 24-hour support but some would. It depends on the level of need, the severity of the mental illness and the level of their social need.

So some may require 24-hour support staff. Some may only need one shift—say, an eight-hour staffing focused on medication and meal times with emergency response call out. Then there is another model which is quite effectively being used overseas, the assertive community treatment team model. In this model that I saw being used in America—it is discussed a lot in the literature there and has been adapted in England as well—you have a multidisciplinary team with a capped case load. The example they were talking about was having 10 clients each so the members of the team can visit clients three or more times a day depending on the level of need on that particular day. Some days the person may only need them once; some days they may need them many times. But they also provide for all areas of life; they are not just monitoring medication.

They are helping them in hygiene, cleaning the place, shopping, budgeting, cooking, the works. In that way you can develop people's living skills and then you could help people, once the home detention was finished, you could have a situation where these people would be able to move into the community and live effectively with lesser levels of support. I saw this model used in Harlem, where Sam Tsemberis has an organisation called Pathways to Housing. They have taken people straight off the streets and put them in apartments located around the assertive community treatment teams which provide the levels of support. It has been working and has been found to break the cycle of homelessness. A mobile assertive treatment [MAT] team operating out of Camperdown in Sydney is doing a similar thing for a group of seriously mentally ill people with high-level needs. They also seem effective except they do not help in all areas of life. It does not seem quite as extensive as the other one.

You could justify the funding. These are expensive. If you are going to set up a supported housing group home with 24-hour care or eight-hour care or less, or if you are going to support it by means of an assertive community treatment team, it will be expensive. However, it will be a lot less expensive than keeping them in gaol. And if you were to release people into back-end home detention when they were not ready for it and with inadequate support they would either land back in gaol or back in the psychiatric hospitals, which again are much more expensive than putting these models in place. There is also the special situation of people with a dual diagnosis of mental illness and substance abuse, which is an increasing situation. In America and in London they are saying that you are looking at 35 per cent upwards, up towards 50 per cent and even higher, of people's case loads. Robert Drake in New Hampshire, who is the expert in this field for the last 20 years, says that it changes the way you deal with people with mental illness because you have to expect at least half the population to have dual diagnosis. In this situation people have even more problems than when you just have mental illness.

In the general population these people are falling between the cracks. They are shuttled between mental health services and drug and alcohol services, which require them to have cleaned up in one area before they are treated in the one that they specialise in. They frequently die on the streets, still. The overseas experience indicates that integrated treatment is more effective and so there is a need for teams of dual diagnosis specialists. In respect of people coming out of the prison population, especially those who are homeless, a lack of living skills compounds this disorder. There is a real need for treatment facilities, again leading to exit housing and ongoing support for this population. There are two models in use overseas of this. In Chicago there are

residential treatment facilities where people have their own room and, in the course of a two-year usual treatment program, are helped to learn living skills, are introduced back into the education system and vocational system, and are helped to exit housing to survive in the community.

The assertive community treatment team model can also be appropriate with this population and has been used overseas as well. We have been talking over the past few years to government about this and in the process of talking about in the Attorney General's Department seemed quite interested in this kind of facility for helping people with dual diagnosis. If you had a residential treatment facility or an intensively supported outreach facility that could be considered as a substitute for custodial sentence, perhaps, in the case of people where the main problem is the dual diagnosis, which has led them to the situation where they have fallen into the hands of the corrections system. I think that is about it. If you would like to ask questions I will follow up in relation to different areas.

CHAIR: Mr Fear, do you wish to make a brief opening statement?

Mr FEAR: No, I do not.

CHAIR: I will ask a question of either of you. Are you aware of a person with a mental health disability currently serving a sentence of home detention?

Sister HARRIS: No, I am not.

CHAIR: Can you imagine the particular challenges facing those people if this should become available?

Mr FEAR: I think many of the things I have outlined will come into play. It is unlikely that people would be in the perfect situation. Many people with mental illness have caused a lot of difficulty in their families and families have become fairly intolerant of dealing with them long before they have been landed with a prison sentence. To try to establish them back into their homes and expect the family to support them I think would be a fairly remote expectation. You might find families willing to do it, but otherwise the people are going to be in one of the situations of insecure housing and that we have been talking about.

The Hon. GREG PEARCE: Sister, congratulations on the work you are doing. It is very important. I occasionally am very difficult with witnesses, but in your case I cannot possibly be difficult as most of my primary school years were spent under the care of the Sisters of St Joseph. I am interested to learn about the facility you have been working in. Is it a boarding house facility? What sort of experience do you have?

Sister HARRIS: I have a range of experience, I suppose, because I live in a small community house with five people who have schizophrenia, one of whom came straight from the streets yesterday. He had slept rough the night before, due to difficulties with the family, extreme things that have built up for a long period. I have that situation and, of the people I am living with, two had been homeless and had been itinerant throughout Australia. One had been trying to survive in a flat where the MHAT team have had to break down the door in order to get in to dispense medication because she had become so delusional.

She is now very stable. In that kind of small supportive environment people become stabilised. They can be put on good medication and become very well when they have not been well in the past. I also visit a lot of licensed boarding houses. I was appointed by the previous Minister, Carmel Tebbutt, to the expert advisory group on licensed boarding houses, which eventuated out of the reform program funding in 1998. I also live near boarding houses. There are nine within the inner west, including one at Arncliffe, and I visit them frequently, so I am extremely familiar with the conditions in licensed boarding houses. I have also been into some unlicensed boarding houses. I know the conditions under which people live.

The Hon. GREG PEARCE: Your central point about a place for people to go if they were given back-end detention is quite clear. You are suggesting that it were to be implemented the funding has to be available to provide that sort of housing. I suppose one of the issues is that if someone suffering from mental illness is

released into back-end detention they remain in a custodial situation as distinct from voluntarily moving into that housing. What you think flows from that? Is it good or bad?

Sister HARRIS: Are you asking what would happen if they were to go back to a boarding house, for instance?

The Hon. GREG PEARCE: Yes, if they come from a prison to a custodial situation into a boarding house or a new place of some sort? The major difference would be that because they would no longer be subject to abuse in the prison system, their regime would change and the sorts of things they are doing would change.

Sister HARRIS: If you were to put them into one of those specially designed supported programs you would give them a chance to learn some living skills, for a start. You would give them a chance to start to move toward a new life. For instance, they get to have a room of their own that they can start to look after. They can learn living skills. They can be prepared to move back into general population with more possibility of successful integration and would have been the case.

The Hon. GREG PEARCE: Do you think they would stay, though? One problem with back-end detention is what happens if they breach the conditions of that detention. The sorts of people we are talking about, by their nature, are likely to get up and wander off or want to wander off. How would you work that out?

Sister HARRIS: I think that is a distinct possibility. If you know someone is extremely itinerant and likely to wander off, you may be looking at the 24-hour supported housing model—a group home where you have staff. That has been used when moving people out of licensed boarding houses during the reform program. That was costed at \$70,000 a year per person. That was the package. It is a lot of money, it would seem, but if you compare that with how much it costs to keep people in a custodial environment, it is a good deal less. It is certainly a lot less than it is in a psychiatric hospital, as well. An estimate given by a psychiatrist from Perth recently was \$240,000 a year per person in a psychiatric hospital.

The Hon. DAVID CLARKE: Sister Harris, this morning the Committee heard evidence from Mr Simpson, representing the New South Wales Council for intellectual disability. He expressed concern about cases of intellectually disabled people being subjected to physical abuse in our prisons. Do you have a view on that issue?

Sister HARRIS: I would believe that people with both intellectual disability and mental illness would be extremely vulnerable within the prison population. Contrary to a lot of popular stereotypes, people with mental illness and people with intellectual disability are often very shy, timid and withdrawn, and in the case of serious mental illness inwardly focused, and are not good at defending themselves at all. They could well be the butt of torment and bullying. They are perfect candidates, in fact. I think the possibility of abuse would be extremely high, yes.

The Hon. DAVID CLARKE: You believe it would be a fairly high incidence of abuse?

Sister HARRIS: I would believe that is the case. It certainly happens in the homeless shelters. There is a real problem now, because a younger clientele is coming through, many of whom have dual diagnosis of mental illness and drug use or alcohol and drug use, and are developing what some of the psychiatrists are calling toxic psychosis. These people are younger, physically stronger, and aggressive, and the drug use is often fuelling the aggression. They often attack the older alcoholic men, who are the main candidates in previous years for homeless shelters. They are also the ones who tend to be bashed up and killed on the streets and in parks. The murders you hear about are usually of older people and in many cases they have been attacked by these younger men.

The Hon. DAVID CLARKE: So you believe it is a problem not only in our prisons but it also extends to homeless shelters as well?

Sister HARRIS: It does, and on the streets.

The Hon. DAVID CLARKE: And the alternatives?

Sister HARRIS: The alternatives are to provide adequate supported housing for people with disabilities, including people with serious mental illness and intellectual disabilities. The Richmond report was supposed to do that. The idea was that people who came from the psychiatric hospitals were to be integrated into the community and given the chance to participate, to be full members of our society, and that never happened. It did not happen because the funding did not follow the people into the community. It often stayed locked up in the institutions because the unions, for instance, did not want to lose jobs and funding. That was the start, and then it just got lost. As the land was sold, the money did not go to this population.

Even the recent announcement of funding is only making up a part of a big backlog, and most of that is going to acute care services and to some supported housing, which is a good move, but we are not sure how much of it is going to support services. The support dollar is often the one that is not adequately funded or adequately thought through. There are models by which people can be integrated into the community but people need a range of options and need to be assessed as to their level of need and to what kind of option they need to access. We have never given them the chance, so they land in the homeless shelters and they land in the prisons.

The Hon. DAVID CLARKE: What percentage of our prison population—if you have the figures—would be intellectually or mentally disabled?

Sister HARRIS: We have a figure that was mentioned by the Mental Health Co-ordinating Council recently that 40 per cent of people at the moment in New South Wales prisons have experienced a psychotic episode within the past 12 months. We know, for instance, that of the homeless population, 75 per cent have a mental illness. That comes from a 1998 study called "Down and Out in Sydney". In that report, which was a very rigorously conducted scientific report, it was found that in the homeless population 23 per cent of homeless men and 46 per cent of homeless women have schizophrenia. That is extraordinary, given that only 1 per cent of the general population has schizophrenia.

I remember in the inquiry into mental health services evidence being given of situations where someone was scheduled, was found to be ill enough to be taken to a psychiatric hospital and involuntarily admitted, was taken to hospital, where no bed was found, was taken to another hospital where no bed was found, and when all the options were exhausted was taken back to the court and sent to gaol. That evidence was tendered in the parliamentary inquiry into mental health services. That has happened and has happened frequently in New South Wales. Our prisons are becoming de facto psychiatric institutions.

The Hon. DAVID CLARKE: You mentioned that 40 per cent of the prison population has had at least one psychotic incident. What percentage would you estimate suffer from significant intellectual or mental disability?

Sister HARRIS: I do not have the figures, I am sorry, but I am sure they are available.

CHAIR: This question is specifically in relation to back-end home detention. From the literature, several communities require some supported accommodation structures in order to participate in the home detention program—people from poor dysfunctional families, for example, not necessarily with any mental illness or intellectual disability. To think practically about the implementation of such a program so that everybody can have access to it, would it be a good thing to have a supported accommodation structure that muddled up all those that were not coping, people from dysfunctional families and those with a mental illness and intellectual disability? How would that work?

Sister HARRIS: I am not sure how well it would work. One of the factors would be the factor I commented on a minute ago, the withdrawnness and timidity that can characterise people with a serious mental illness, and sometimes people with an intellectual disability. In a mixed population they could be more vulnerable

to more aggressive, active people. The kind of bullying we talked about could happen in prison could happen there as well. I would be more inclined to separate populations. That is just a personal opinion. I do not know where the mixture has been tried.

CHAIR: So, if there were major changes to policy and funding, and supported accommodation for people with mental illness became the norm across the State in a lot of places, how comfortable would the people there be and how would it function if home detention was a component? Home detention, of course, is prison, is it not? Would it work?

Sister HARRIS: I do not know if it would work in the mixed thing. If you had a small supported group home which had a high level of support and only some members of that group were in back-end home detention, I am not sure how well that would work because of the difficulty of different members accepting the various levels of freedom each other has. I think it might be more appropriate to have a group of people who are all on back-end home detention together with the level of support they need, but looking forward to a rehabilitation process. While this is still back-end home detention, the support process enables them to learn living skills and become better equipped to be able to move out into the community when the sentence is finished.

The Hon. GREG PEARCE: Can I ask Mr Fear if he can give us his views on the whole proposal?

Mr FEAR: In my opinion the major issue is that most people with a mental health problem do not have that safe, secure home environment anyway. That has been our experience. We run a number of friendship programs. We run a number of social and recreation programs and we are very familiar with the home situations of many people with a mental health problem. We accommodate up to 1,000 people a night in homeless shelters in New South Wales. We have something like 660 conferences visiting people in their homes. The latest figures through to me are that approximately three out of five of those people, if they do not have a clinically diagnosed mental health problem will certainly have challenging behaviour.

In my opinion we are seeing the result of the total lack of government—since the Richmond report—to address the real issue of providing a lot more community support, community mental health services and supported accommodation. For any person with a mental health problem the two issues that need to be addressed, apart from the homeless situation or the fact that they are in threat of being homeless, are appropriate medication and nutrition. In those circumstances it is very difficult to guarantee that.

I would suggest also, as far as situations like boarding houses, which is where a lot of people end up—those who have a mental health issue—we have circumstances and accommodation that I do not think anyone in this room would be happy with. Most of them share accommodation with two or three or four other people. There is only a number— isn't there, Myree, that you know of—who have single room accommodation, and that is minor. I can see the social isolation that would come if they were put back into those sorts of communities and not allowed the freedom to go out, because they could not attend any of the sorts of social recreation programs, and sometimes pre-employment programs. I see there being a threat to them from other residents of the boarding houses if they were to go back into that sort of environment.

My real problem is that I do not see anywhere else for them to go. Where else are they going to go? We do not have the appropriate services. We do not have the accommodation that focuses on that client group in the community—it is just not there. To me, the people who are dealing with mental health issues—that is the Department of Health—are pulling away from all the social and recreation issues, and they openly state that, that they are only interested in clinical issues, but there are not enough resources in the community to attend to those clinical issues anyway. So we end up back in this syndrome of acute care. We can give you many cases of people who just could not get attention in the community. We had one issue that Myree and I looked at about six months ago, trying to locate in Sydney which was the appropriate mental health team to get crisis services to a client. It took six phone calls. The whole accommodation issue is a major problem.

The Hon. GREG PEARCE: I suppose the other end of it is the sort of scheme that has been talked about and operates in other jurisdictions obviously only applies to someone who has a reasonably substantial prison term anyway, because it is only at the end of some sort of period in gaol, and is dependent on the person showing that they are rehabilitated, contrite and behaved. I wonder whether, one, you have any feel that mentally ill people are in gaol for long periods or whether they are more or less transient, six or eight months or so, and, secondly, whether you think they can comply with the condition that they show they have been rehabilitated and behaved in their term? I wonder whether they will be excluded anyway because they will never be able to satisfy the requirements?

Mr FEAR: I do not think they will be. Their attention span and their ability to focus on detail are not what may be required under that type of system. They do need a lot of support. My other issue in all of this is how would they be assessed in the first place in light of the need for those mental health services as well as all the other issues that would have to be assessed and monitored in the long term when someone goes into home detention. Would you agree with that, Myree?

Sister HARRIS: Yes, I think you have the whole range. You have two different clientele, probably. You have the younger people who have never been institutionalised who may have had this toxic psychosis and may have committed violent crimes, including murder. There have been a number of cases, and attacks on family members by younger people with schizophrenia and who are off medication and have become violent. That is less likely to happen with the older population, who have been institutionalised, who have often been under medication regimes for a long time. You are probably dealing with two different groups of people. As with any person who is in the corrections system, individuals will differ. You have to assess each person separately.

The issue of accurate assessment is going to be very important. I thought the comment by the College of Psychiatrists about the mental health services in the corrections system being fragmented is a worry. We have had the terrible incident in a detention centre, the Cornelia Rau situation, where people did not recognise a raging psychosis. I am not sure how good our services are in the corrections system to be able to accurately assess each individual, because you are going to have to do that and then tailor the question of back-end home detention to the capacity and the readiness of that person. It is going to be very individual.

The two older men I live with at the moment who have schizophrenia would probably be very good candidates if they had been in that situation. But I have had younger men at our place, who would be much more impulsive, who would have been totally inappropriate. Then also there are people with mental illness who just are itinerant, who would just start wondering. They probably have a history of running off. So it is going to be a matter of looking at the background, looking at the history, looking at the diagnosis of the illness, looking at the personality of the person and all the conditions. It is not going to be an easy decision to make.

Mr FEAR: May I make a further comment? Myree has brought up a very interesting point about the two groups of people. I will give you a very good case example. We run an aged care hostel in Waterloo that caters for frail aged older man with a mental health issue—people who have been through areas like our Matthew Talbot home and are just old and frail. Because of the lack of services generally in this area we found that a number of people were being referred by the aged care assessment teams to that facility even though they were younger because there was nowhere-else for them to go.

We found that we ended up with two different groups of people. We ended up with our 60 per cent or 70 per cent of the people who were older and were very compliant because they had been institutionalised in the past and would fit into that sort of regime. But the younger group were very aggressive and violent. At the end of the day we had to turn around and change our entry and exit criteria accordingly because the two just would not mix. So it is a very individual thing. That age factor and background are also extremely important. Assessment and monitoring in the long term is going to be vital to the success of it. May I also ask: Back-end home detention is operating in other States, is it not?

CHAIR: Yes.

Mr FEAR: Have you had any comment from the other States as to what the issues are with regard to people with a mental health problem going back into the community?

CHAIR: There is nothing specific in relation to mental health or intellectual disability other than that for many of them the fairly stringent criteria for entry into the program would possibly exclude people, but it is not stated specifically.

The Hon. GREG PEARCE: I take it from what you say that the 40 per cent of the prison population who have mental health problems will be reliant on proper assessment and medication and detention while they are in prison to have any prospect at all of meeting the criteria at the end. So it is a vicious cycle. If they are not assessed properly at the beginning and treated in prison they will probably not have any hope.

Mr FEAR: Yes.

Sister HARRIS: The interesting thing is I have heard the comment a number of times that sometimes people are lucky if they land in gaol because Long Bay has quite a good hospital system and they get treatment they have not got prior to being incarcerated.

Mr FEAR: And their own room. That raises another issue too. If this system were to go ahead in New South Wales there would have to be very much a very well-planned pre-discharge program for those people with a mental health problem to go back out into any sort of home detention. So it is not simply a matter, I think, of just assessing things on the surface. It really would need to be very well planned. In view of Myree's comments earlier about the system in relation to those with a mental health issue, one would wonder whether—I do not know necessarily that they would not have the ability but whether they have got the resources to do it and apply those resources to the situation.

The worst case scenario is always the one you have got to look at, that is, that people go out, it fails, they end up wandering away, they end up under the park bench, they end up in a homeless shelter, they end up in acute care services at \$600 a bed a day, and the whole process just rolls over, or they will get out again, they will offend again and they are back in the system and in the cycle. We would very much like to be more involved in this situation with accommodation, appropriate accommodation. But, of course, there are just no resources to put it together. It is a capital issue. We are very experienced in accommodating people. We are not clinicians ourselves, but providing we get the backup from the appropriate services we are very experienced in accommodating and looking after people and making sure they get the service that they need to go forward.

CHAIR: Thank you for coming and sharing your knowledge with us. I am sure it will help us in our deliberations to work through the massive issues that this inquiry has put forward. Thank you very much for your attendance.

(The witnesses withdrew)

BRIAN JOHN SANDLAND, Director, Criminal Law Division, Legal Aid Commission, 323 Castlereagh Street, Sydney, affirmed and examined:

CHAIR: Thank you for appearing before the Committee today. In what capacity are you appearing before the Committee? Are you appearing as an individual or as a representative of an organisation?

Mr SANDLAND: As a representative of the Legal Aid Commission.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Mr SANDLAND: Yes.

CHAIR: If you should consider at any stage that certain evidence you may wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request.

Mr SANDLAND: Thank you.

CHAIR: Your submission states that front-end home detention is currently underutilised, particularly in rural and remote areas of New South Wales. Why do you think that has happened?

Mr SANDLAND: The raw data, in a way, speaks for itself. As at December 2004 I have figures from the Department of Corrective Services about people in custody and people under various forms of supervision. Whilst there were 8,983 people in custody at that month last year, there were 146 males and 32 females undertaking home detention. Compare that with the 3,870 males and 670 females undertaking community service, you see a significant disparity. The information that I obtained from my involvement with the inquiry into whether sentences of six months or less should be abolished indicated that there are simply huge areas of the State where home detention is not available. So that has to be one primary reason for home detention being underutilised. It is available in the larger residential areas, such as the Sydney metropolitan area, the Hunter area and the Illawarra area, but really, as I understand it, it is not available outside those areas.

The second reason for it being underutilised is that it is an intensive form of supervision which, although cheaper than full-time custody does require resources from the Probation and Parole Service of the kind that require an almost daily contact or contact every two days. It requires probation officers who are basically on 24-hours call. Perhaps there has not been a commitment to throw extra resources into that end of the scheme that is required to support it. However, you also have to have the people coming through being subject to home detention orders. Maybe there is an issue for educating both practitioners and judicial officers about its availability and its advantages. So those points that I have made, I think, touch on some of the reasons behind why it is underutilised.

It may be treated with some degree of suspicion as a softer option by the judiciary. Yet everything you read about it is that there is a degree of self-discipline involved in being your own gaoler in your own home that makes it onerous in itself, significantly onerous, with the advantage that you are able to maintain links with your family and hopefully maintain links with the community and employment. I think unless there is anything further you want to ask me about that, that would be my answer.

CHAIR: Have you any ideas on how the take-up of home detention could be improved?

Mr SANDLAND: I guess I have touched on that: more resources, a greater commitment to education and training. It came in after a pilot and then the Act came into force. But I myself found it surprising to see that there were so few people undertaking home detention orders. I have made a few notes, and I will just see if there is anything I left out. I do not know whether there has been a degree of research into, firstly, the extent to which it is found to be an onerous option and the extent to which recidivism is reduced for people who undertake home detention to perhaps convince the judiciary that it is an option which should be considered short of a full-time custodial penalty. It is a difficult call. As the judge or the magistrate make their way through the various sentencing options, they have to be convinced that a gaol penalty is appropriate before they can consider home detention. Yet if they are dealing with an offence that definitely carries a gaol penalty, then it is a difficult call to know when to order home detention and when not to without that greater degree of promotion of it as a penalty option backed by hard evidence.

One of the things that also may be relevant in relation to its being underutilised is that it does have strict eligibility criteria. Perhaps it might be appropriate to consider whether or not the eligibility criteria could be relaxed in relation to the class of offence that is applicable for home detention. I know that there will always be concerns from the community, and in particular from the Probation and Parole Service, that the community not be placed at threat by people who have committed offences, and who have been found guilty of that and who are considered as eligible for a period of imprisonment, to serve that sentence in the community. On the other

hand, they are going to be released from imprisonment at some stage, and it seems as though this may be a more humane and appropriate way of dealing with a larger proportion than those that get the benefit of it at this stage.

The Hon. ERIC ROOZENDAAL: I noticed your comments about the underutilisation and I am particularly interested in that. You are aware that the department proposes a pilot in a rural-based area; that it has a rural-based home detention program in the Mid North Coast region for 2005-06? You are aware of that?

Mr SANDLAND: No, I was not aware that the Department of Corrective Services had that in mind.

The Hon. ERIC ROOZENDAAL: I understand that there is a pilot and that part of that pilot will include programs for indigenous offenders. I am just wondering whether you have any comments on how you think our home detention program could work for indigenous offenders.

Mr SANDLAND: Are we talking about front-end home detention or back-end home detention?

The Hon. ERIC ROOZENDAAL: I would like to hear your comments on both.

Mr SANDLAND: The difficulty that has been put forward in relation to the applicability of home detention, either front end or back end, to indigenous persons is whether or not they will meet the strict eligibility criteria. I heard what the previous witnesses were saying about people who suffer from mental illness. There are eligibility criteria that fall within the discretion of both the court and the Probation and Parole Service with them as to whether or not ultimately they will be suitable for the program. I do not think that you could say that indigenous people could not be regarded as suitable for the program, but if they have a lack of stability in their home, a lack of resources within that home—in other words, access to a telephone so that monitoring can take place—and if there has been a history of domestic violence, they are not going to get to first base. And that, as I understand it, is going to be a difficulty in some indigenous communities for both front end and back end home detention.

The Hon. GREG PEARCE: In terms of back-end home detention, how do you think it would work? The first issue I suppose is getting over the threshold question of the truth in sentencing issue.

Mr SANDLAND: Yes.

The Hon. GREG PEARCE: If you are given a sentence, you should serve it until the parole period and then you get parole. Why should they be given an early or an extra period?

Mr SANDLAND: If I can answer that question by putting the current arrangements in context, people who are sentenced to a term of imprisonment now may become eligible for study leave, work-related leave, and other forms of leave, depending on their security classification to prepare them for re-entry back into the community. That is not regarded as offending the truth in sentencing concept so to that extent, home detention, back-end home detention also, if it was introduced for those purposes—namely, facilitating a staged re-entry into the community—could be seen as being beneficial, not only for the offender but for the community itself.

The Hon. GREG PEARCE: So you would need to have an educational program or a work program or something like that which would be part of the home detention conditions.

Mr SANDLAND: Conditions are, as I understand it, imposed in relation to front-end home detention almost without fail. I would not have thought that that philosophy would change in relation to back-end home detention. It is still regarded as a penalty. It is still regarded as a form of incarceration. I think what needs to be overcome is a community perception that people have been sentenced to a term of imprisonment and are sitting around at home watching TV, doing it easy. In fact, they would be closely monitored. They would be subject, as I understand it, to the possibility of drug testing, alcohol testing, and they may well have electronic monitoring. They would be given the benefit of programs to try to get them into the work force. So their incarceration would be within those limits. It is taking it beyond work release.

The Hon. GREG PEARCE: Work release or study release are only a couple of days a week.

Mr SANDLAND: Yes, that is right.

The Hon. GREG PEARCE: And they go back to the prison.

Mr SANDLAND: That is what I mean: it is taking it beyond that. But if you accept that it is still a form of incarceration, which the research, from what I have read, tells me—it is onerous because there is self-discipline involved and it is subject to breach action, of course—then in those circumstances, I do not see that it necessarily offends the truth in sentencing principle. However, to ensure that the truth in sentencing principle remained intact to the extent that it could if you introduced it, I would have thought that perhaps the original sentencing court could give an indication as to whether or not, if this scheme were introduced, it thought that this particular offender for this offence should be considered for back-end home detention. In that way it would be in the contemplation of the court when handing down the original sentence.

I do not think the court that imposes the sentence, however, will be necessarily able to predict whether the circumstances relating to this offender are appropriate to consider back-end home detention several months or years down the track. So there are ways around that. You either bring the person back to the same court to consider whether or not he or she should be eligible for back-end home detention, or you get some indication from the court at the time that sentence occurs and that person is then perhaps considered by the Parole Board as to their eligibility for back-end home detention. There are a number of ways that you could work the introduction of the scheme that I think would preserve the concept of truth in sentencing.

The Hon. GREG PEARCE: Just from your answer then, you sort of contemplate either the original court or the Parole Board as being the authorities to decide whether the inmate is given back-end detention.

Mr SANDLAND: Yes.

The Hon. GREG PEARCE: Would you consider it as a viable option to make that a purely administrative decision with, say, for example the Commissioner for Corrective Services making the decision?

Mr SANDLAND: You see, I am not in favour of that. I would be concerned about the prisoner being adequately represented or at least adequately putting forward his or her position in relation to an administrative determination. I would be concerned about the extent to which the administrative decision and the guidelines by which that decision was reached were subject to the kind of public focus that is brought to bear when these decisions are made in open court or before a Parole Board where you have a right of appearance and a right of representation. I would be concerned about whether or not there would be an appeal right from an administrative decision and I am not sure who that appeal would be to and how, if it was not properly documented, grounds of appeal would be made out. So I have those kinds of concerns about it being a purely administrative approach.

The Hon. GREG PEARCE: What do you see as the primary reason for introducing such a scheme? Is it rehabilitation? Is it savings of the prison system? What would you see as the primary reasons to do it?

Mr SANDLAND: It has got to be a bit of both, has it not, in that firstly judges who impose sentences are guided by sentencing principles, some of which relate to deterrence, some of which relate to pure punishment, some of which relate to rehabilitation, and there is a blend of those principles in the sentences that judges impose. The Department of Corrective Services, in dealing with the people moving through its system, have in mind that you do not just lock people up and then expect them, at the end of their sentence, to walk straight back out into the community and adjust. So they have evolved a principle of through care to provide a soft landing for people upon their release. Of course, the Government has to deal with the fact that full-time incarceration of offenders is the most costly option. If you can construct alternatives that provide benefits as a whole to the community by reducing recidivism rates, by providing a more humane form of punishments that

are less costly than full-time imprisonment, then I guess you are trying to find the balance between all those competing aims of our criminal justice system. That is a pretty general answer but—

The Hon. GREG PEARCE: No, that is okay.

The Hon. DAVID CLARKE: Mr Sandland, the position is this: apart from Sydney, Newcastle and the Illawarra, the rest of the New South Wales population does not have the option of front-end home detention available to them.

Mr SANDLAND: Yes.

The Hon. DAVID CLARKE: That is a very significant section of the population—of the rural community, and a significant section of the Aboriginal community.

Mr SANDLAND: Yes.

The Hon. DAVID CLARKE: How long has front-end home detention been available in New South Wales, approximately?

Mr SANDLAND: I think there was a pilot running since 1992 and the legislation came in around 1996-97.

The Hon. DAVID CLARKE: In 1996-97?

Mr SANDLAND: That is my understanding. I could clarify that.

The Hon. GREG PEARCE: You get a pass.

Mr SANDLAND: Thank you.

The Hon. DAVID CLARKE: That means that for eight years, we have had a situation where a significant proportion of the New South Wales population have been disadvantaged, or in fact discriminated against under the law, because they do not have this option available to them.

Mr SANDLAND: Certainly they have been disadvantaged, yes.

The Hon. DAVID CLARKE: The law is treating people differently, depending on where they live in this State in regard to this area. That is the situation, is it not?

Mr SANDLAND: The availability of sentencing options works in that way in that they are not uniformly available.

The Hon. DAVID CLARKE: You believe that a major reason for this state of affairs is that sufficient resources have not been made available to allow front-end home detention to be available right throughout the State.

Mr SANDLAND: It is definitely a resourcing issue but there are those other aspects to it—the tight eligibility criteria—but I am not saying that people in the country would not fit those criteria just as readily as people in the city, but there are tight eligibility criteria; there is the fact that the population is so sparse, and that means, I would think, that a larger number of probation officers would be required to cover the area than you can get in areas of denser population. Maybe that has been a disincentive. I cannot really say why we have not extended it to the extent that those who would like to see equality in sentencing across the State, because of the equality in availability of sentences, have it available generally.

The Hon. DAVID CLARKE: So for eight years, it has basically boiled down to being a resourcing issue?

Mr SANDLAND: I would think that there is a significant degree of truth in that statement—that resources need to be provided west of the Divide and along the Far North Coast and the South Coast.

The Hon. DAVID CLARKE: To make the law equally available to everybody in the State, or options?

Mr SANDLAND: To make sentencing options equally available.

Ms LEE RHIANNON: In reply to that and an earlier question, you spoke about resources. Are you identifying the need for more money overall, or a reallocation of the current existing budget and how resources are used currently?

Mr SANDLAND: Look, that may well be a matter for the relevant department, the Department of Corrective Services. Given that home detention is a less costly form of incarceration, one could imagine that savings eventually would be made by making it available on a more widespread basis. The resources have to be found upfront in order to do that, and there has to be some degree of infrastructure, which may or may not be available in those more remote areas. I would imagine the further west in the State you go, the fewer probation and parole officers there will be. Those that were originally responsible for placing those resources would have been responding to population demands at the time.

However, I think technology may be such now that we may be able to pick major population centres, say like Dubbo in the Central West, to cover a relatively large area. But, then, if you were talking about visits by parole officers who were supervising people on home detention or back-end home detention every two days, the notion of having someone driving from Dubbo out to Ivanhoe, which is probably a two-day round trip, becomes a difficult logistical exercise. If you had only three people on back-end home detention between Dubbo and Wilcannia, what do you do in terms of placing resources? That is the practical problem that probably relates to my earlier answer in relation to resourcing, and is it solely a resourcing issue. It is a demographic issue as well.

Ms LEE RHIANNON: It has been suggested in submissions that the availability of back-end home detention could have an impact on the number of guilty pleas. What is your view of the impact of the availability of back-end home detention, as an option for the original sentencing court, on plea bargaining and the number of accused who may plead guilty?

Mr SANDLAND: I had some difficulty with that question when I was looking at it recently. I think it would be very difficult to gauge. Sentencing is always an uncertain exercise. There are no guarantees. Defence lawyers should advise their clients on the basis of the strength of the evidence and on the basis of the instructions they have. Ultimately, you get down to a situation where, because it is not an exact science, you make a call about whether, if you entered a plea of guilty in certain circumstances, you may be likely to receive the following penalty. But you can really only talk about bargaining around what charges you would plead to, not what penalty you are going to get at the end of the day. That is still the function of the presiding magistrate or judge.

So the availability of back-end home detention as a potential part of a sentence that may be imposed for a charge that you are considering pleading guilty to may operate as an incentive. I do not really know. I do not think there has been any research into it. It would be inappropriate to use it as an incentive to obtain a plea of convenience. You would simply be guided by your instructions and by the strength of the prosecution case, and at the end of the day you would give your clients realistic advice about their chances if they pleaded not guilty, and went ahead with a defended hearing, as to what their chances of success were and what penalty they would receive.

There are recognised sentencing principles that indicate that if you plead guilty you are entitled to a certain discount for saving the State the expense of putting into place all the apparatus to conduct a trial. There is

a certain discount that you might get for entering a plea of guilty shown by your remorse or contrition. There is a discount that you might get for having provided assistance to the authorities. But all of that is part of that general matrix that goes into advising a client about their chances, the appropriate charges, and what you think the pleas should be in relation to those charges. I cannot really answer whether or not the availability of back-end home detention would entice more people to plead guilty.

CHAIR: Mr Sandland, I thank you very much for coming today and giving this inquiry the benefit of your wisdom and knowledge.

CHAIR: Welcome, and thank you very much for coming to speak with us today. Before we commence our in camera hearing, I would like to repeat some comments that I made at the beginning of today's hearing. The Committee has previously resolved to hear your evidence in camera. However, you need to be aware that following the giving of evidence the Committee may decide to publish some or all of your in camera evidence. Only evidence that has been published by the Committee can be used in the Committee's final report. Likewise, the House may, at a future date, decide to publish part or all of the evidence, even if the Committee has not done so. Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings, and I therefore request that you avoid the mention of other individuals unless it is absolutely essential to address the terms of reference.

Evidence in camera by ANDREW THOMAS JAFFREY⁴:

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as the representative of an organisation?

Mr JAFFREY: As a private citizen.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Mr JAFFREY: Yes, I am.

CHAIR: Would you like to make an opening statement?

Mr JAFFREY: Firstly, I would like to express my appreciation to the Department of Corrective Services, primarily the intensive supervision unit at Parramatta, for allowing me to attend here today. I understand that such a request has not been made by a home detainee before, and I appreciate that a lot of extra work must have been entailed on behalf of my supervising officer. In writing my submission for this inquiry, I found it very difficult to remain focussed on the terms of reference and withhold from straying into areas where I accept the Committee has not extended its terms of reference.

Having had the opportunity to read many documents and reports, especially Committee reports, going back over the last few years concerning things such as prisoner population and children of prisoners, I have found it somewhat disheartening that so many good recommendations which have come out of these committees have not been taken up by the Government. I do hope that this inquiry may be able to carry sufficient persuasion to enable a better understanding of the home detention system and the benefits a back-end home detention system would have, not just to inmates but to the wider community.

If my submission and my evidence here today achieves nothing else, I hope that I may be able to convey to the Committee that home detention, as it currently operates in this State, is a punitive punishment. It is classified as a term of imprisonment and, whilst I accept that the aesthetic conditions are nothing like those in a

⁴ Immediately following the hearing the Committee resolved, with Mr Jaffrey's agreement, to publish the transcript of this evidence.

minimum security prison in New South Wales, I feel that it is extremely important that the community realise that the conditions and requirements placed on a home detainee are far greater than those of an inmate in prison.

The opinions expressed in two of the submissions that the Committee has published are very misinformed, so much so that they border on being offensive to a person in my situation. The very nature of home detention exposes the detainee to programs and assistance that he or she would never receive proper access to in prison. However, it is worth noting that, at the same time, there is an added burden on detainees of having to identify themselves as a prisoner wherever they go in the community. This is not something that a prisoner has to cope with whilst in custody. This can be very embarrassing. In my own case, for example, I have to take my three-year-old daughter to preschool twice a week. As part of doing that, I am required to have a form verified to say that I have dropped her off and picked her up. That, obviously, is displayed to people around the child-care centre, which means her teacher and some of the other parents are obviously becoming aware that I am on home detention.

Nevertheless, I accept that I have been given a great privilege and a responsibility in being admitted to this program. It does have its faults, but I only need remind myself of the distress and overwhelming grief and despair that I experienced when separated from my wife, and especially my three-year-old daughter, to know that this program has great benefits for anyone willing to give it a go. It is my strong belief that home detention per se should be made available to the great majority of offenders who will, as we are aware, one day be released to parole.

The rigours of the parole supervision process are not anywhere near as intensive as the rigours of home detention, and it would appear to me to be a logical progress from sentence in gaol, to release to home detention, to then be released to parole. Such a scheme can, with appropriate funding and resources, be made available to medium- and long-term offenders and those especially in the juvenile justice system, particularly those at Kariong, which is now under the control of the Department of Corrective Services. Finally, I would like to express my thanks to the members of the Committee for inviting me to attend here today, and to the Committee staff, who have been very welcoming and helpful since I made contact with them some weeks ago.

CHAIR: I would like to hear about some of the conditions that are attached to your home detention order and the process that has to be followed if you want them changed.

Mr JAFFREY: There are a number of standard conditions that are part of the legislation. I think there are about 28 standard conditions that range obviously from not to commit any new offences, not to consume alcohol, not to take drugs and to advise immediately of any change in circumstances to the supervising people. I am under all of the standard conditions of the order. I am also under a condition that restricts alcohol being in our house, which means that people coming to the house cannot consume alcohol while they are in the house. My wife cannot drink alcohol whilst she is at home. They are pretty much the only conditions that I am under, apart from the normal conditions that I cannot just go where I please and do what I want.

The Hon. GREG PEARCE: You mentioned earlier that you drop your daughter off at primary school?

Mr JAFFREY: Preschool.

The Hon. GREG PEARCE: What sorts of restrictions are there? How does the travel aspect work? Do you drive your own car?

Mr JAFFREY: No. I am not allowed to drive. Her preschool is about a three-minute walk from our house. I have pre-approved absences, so on Monday I am approved to be out of the house between 9.00 a.m. and 9.30 a.m., which is when I take her, and again at 4.00 p.m. and 4.30 p.m., which is when I pick her up. Any deviation outside that time period is not allowed without permission. That is something that I would like to address. In evidence given today by some of the other witnesses, in particular, Corrective Services, they

mentioned that 43 per cent of people on this program have breached. That gives the impression perhaps that half the people doing home detention are out robbing banks, or driving recklessly, or whatever.

A breach, as it is defined, is a very wide-ranging aspect. For example, today I have to be home by 4.30 p.m. If my taxi breaks down on the way home, I have no control over that. However, if I am home at 4.31 p.m., I have breached and that breach is recorded. Whether or not my supervisor decides to take that breach to a further step is up to her and to the intensive supervision team. I think it is important just to take that in the context that it is—a breach does not necessarily mean that someone is not taking the program seriously, although I am sure that some of those breaches are not. But it is probably not as dramatic as some people would think it would be when they hear that nearly half of the people have breached.

The Hon. GREG PEARCE: Just to pursue that example of a late taxi, you said it is reported if it is late. How is it reported?

Mr JAFFREY: If I am to be home by 4.30 p.m. my supervising officer will receive a page on her mobile phone when I enter the house to say that I have returned. If it is after 4.30 p.m., that is a breach.

The Hon. GREG PEARCE: You are expected to leave here at 3.00 p.m.

Mr JAFFREY: Yes.

The Hon. GREG PEARCE: What is to stop you whipping off to the pub between 3.00 p.m. and 4.30 p.m.?

Mr JAFFREY: There are a number of surveillance programs in place that I am aware of. My supervisor may very well be waiting outside those doors; I do not know. She may be out the front of the building. There have been instances when I have been at approved programs. I know that I have been verified when I have been at those programs. It is a trust. If I were that sort of person there is nothing to stop me getting up, throwing my hands up and walking out the door. I have not committed an offence until the board has revoked my order. It is a trust. It is taking responsibility for your own actions to avoid you going back into a prison environment.

The Hon. GREG PEARCE: If your order was revoked is there an additional penalty?

Mr JAFFREY: Not that I am aware of, apart from the obvious penalty. I think that is probably enough to be going on with. I am not aware of any extended term. I guess that would be up to the board at the time.

The Hon. GREG PEARCE: I am trying to get a feel for how it works. If you have a bad back, you want to go and see a chiropractor and you know one that you usually go to 20 minutes away, what do you do in those circumstances?

Mr JAFFREY: I would contact my supervisor and advise her that I have made an appointment to see a practitioner and that would be approved. I would go to the practitioner. Obviously it has to be approved. Wherever I go I take a form with me that requires the person that I see to verify that I have arrived at a certain time and that I left at a certain time. For example, when I leave here today Rachel will sign my forms to say that I left at 3.00 p.m. If I am not home by a certain time my supervisor will say, "Okay, you left the city at 3.00 p.m. You got home at 4.10 p.m. That is fine". But 4.45 p.m., that is a bit too late. Where were you?" They do not really do anything about that until you start to have repeat incidents. Again, they know the people who are trying to do the right thing and they know the people who are not. So there is that latitude there.

The Hon. GREG PEARCE: Are you doing any study other than preparing for this, or what are you doing with your time? Is that a condition of your order?

Mr JAFFREY: I have full-time child care responsibilities. My wife is working so I look after my little girl on the days that my wife is at work. The days that she is at preschool, two days a week, are generally the days

that I have to myself to read, to do the housework and various other things. I am not working at the moment because of those child care responsibilities. I have the option of studying but at this stage I am just doing what I am doing, that is, looking after my little girl.

The Hon. ERIC ROOZENDAAL: How often are you visited by your supervisor? Do you get a warning of when she is coming? What is it like having someone come into your house to check on you like that? What impact does that have on your family? How do they live through this process?

Mr JAFFREY: I refer to the first part of your question, which was touched on this morning by Corrective Services. The amount of visits I receive is starting to scale down as I am getting closer to the end of the sentence. I have another 3½ months to go and then I am finished. When I started the visits were very intensive, very often and very frequent.

The Hon. ERIC ROOZENDAAL: How long ago did you start?

Mr JAFFREY: In September. I get contacted quite a bit by telephone. I am also very active in making contact to ensure that everybody is very clear what I am doing and where I am going because I do not want any confusion or problems. I have probably been in very lucky position in that my supervisor has taken into account the fact that we have a small child. Visits in the middle of night would be disruptive to my daughter. I have demonstrated a certain amount of trust therefore they have given me a certain amount of trust back. So I do not get visited overnight. I would see my supervisor probably once or twice a week and I speak to her on the phone probably every other day.

In relation to getting advance notice that they are coming, no, I do not. The reason that you do not get advance notice is that urinalysis and breath testing are fairly frequent occurrences. I have been breath tested about 65 or 70 times and I have had urinalysis tests about six or seven times. You do not get advance warning. Sometimes you can work out that they are on their way to come and see you because they are going to be doing something or whatever, but you do not get advance warning. Your third question was how it affects the family.

The Hon. ERIC ROOZENDAAL: Yes.

Mr JAFFREY: I was probably a bit hostile towards this when I first started. I guess that I like a lot of people in my situation who have been released from full-time custody had a fair bit of anger and resentment going on. I was not particularly open to my supervisor at first. I objected to having a stranger in my house telling me what I was going to do. It took me a couple of weeks to get used to that. My wife has been extremely supportive. I would not be doing this if she had not consented to me doing it. It has impacts on my family because my little girl often asks me to take her to the park, to the beach or to the swimming pool. I cannot do that. Sometimes my wife feels like a glass of wine but she cannot do that. So there are implications on the family, but I think as I mentioned in my submission, in contrast to having me not at home and having to come and visit me on the weekends, it is fairly insignificant.

The Hon. ERIC ROOZENDAAL: Would you feel comfortable in showing us the anklet?

Mr JAFFREY: Yes, sure. I am not going to take my pants off.

CHAIR: We do not want you to take your pants off.

Mr JAFFREY: It is fairly cumbersome. It does not look very big, but that is it there. It tends to rub against your skin, which can hurt.

The Hon. ERIC ROOZENDAAL: And you cannot remove that?

Mr JAFFREY: Well I can, but it will know. It registers off body heat. It has some sensors on the back of it, which has caused me a few problems. With the hot weather I tend to sleep over the sheets. At about 3

o'clock in the morning your body temperature starts to drop and it sends an alarm off to say that I have taken off, which caused my supervisor some concern initially but now she just accepts it. I obviously had my feet hanging out of the bed. These are all small inconveniences really at the end of the day.

The Hon. ERIC ROOZENDAAL: I recall from your submission that you said if you were offered this again you would think seriously about whether or not to accept it. I am not suggesting that you are going to reoffend; I am referring to the same sorts of circumstances. Is that the case?

Mr JAFFREY: Yes. I went into this not knowing anything about it, except that it was an alternative to being in gaol. Like most people the carrot was dangled in front of me and I took it. It is harder than being in gaol in many respects. If I were a single person with no family I think I would have preferred to stay where I was, which was up in Cessnock. For the reasons that I stated in my opening statement, it is very awkward and very embarrassing to have to identify yourself as a person who essentially is a prisoner. When I came here today I was not able to leave this room without being escorted by someone.

I am 33 years old. I am not a child but I have to accept that that is part of the conditions. It is very difficult. Sometimes you can forget when you are at home. There have been a couple of occasions when I have been out the front mowing the lawn. I walked over to say "G'day" to the neighbours and I realised that I had just walked out of the boundary of the house and I had to take three steps back. It is little things like that that are difficult to cope with. People ring up and want to take you out for dinner. They cannot. That happens particularly over the Christmas and the new year period. Neighbours put their hands over the fence and say: "Here, have a beer." It is very hard.

CHAIR: You are a highly articulate person and you obviously have a fairly high mental capacity. A lot of people in prison do not. How do you think the majority of people would cope with a less controlled environment, or an environment in which you have to control yourself?

Mr JAFFREY: Let me just say something about that question. This is something that people have said to me quite a bit. People say, "You are not the typical prisoner." From my experience of the people that I have met in three different facilities, albeit over a short period of time, our gaols are getting fuller of people who are intelligent, well-spoken and well-educated who, for one reason or another, have strayed. Essentially, you are asking me how people who are less intelligent would cope. Is that what you are asking?

CHAIR: I am referring to people with fewer social skills and skills to think and do things in the house themselves. The majority of people would just do their housework and watch television, with little else to do.

Mr JAFFREY: I think it would depend on their motivation to do this. The responsibility and the ball are very much placed in your court. A lot of people in gaol believe that they should not be there, that the system is out to get them and that it is not fair this has happened or that has happened. One of the things about home detention is that it takes you out of prison and you have the opportunity never to go back. The responsibility is yours. So if you are motivated to stay out and do something with yourself then it is a good program. If you are not, you are going to breach and you will go back.

Ms LEE RHIANNON: You have spoken a couple of times about how it is much harder than you thought it would be. I am assuming that is because of all the reasons you have just outlined—you were not prepared in terms of being a prisoner in your own home. Are there any other aspects to it?

Mr JAFFREY: It was not the prisoner in my own home so much. The thing I have the most trouble with is having to identify my situation to people in the community. You see it in people's faces. Even some of the people who were here today that I spoke to were very friendly and very nice and the conversation got around to what I was doing here. When I explained to them what I was doing here and why, it changed their outlooks straight away. That is something I have had to get used to. I am not trying to run away from the fact that this is something that I have done and this is the situation I have put myself in. My intention is to spend the rest of my working life involved in social issues and social justice. I will not be one of those people who will run away from

it. I am quite open to say to people, "Yes, I have been in gaol." I am not ashamed of that. What I am troubled by, and it goes to a lot of my submission, is the opinion that people have of prisoners, the opinion of punishment systems that are in place. It is based on such appalling ignorance that it is frightening.

Ms LEE RHIANNON: Were you prepared in any way before you were released? If the point comes and you leave gaol and go into home detention, in discussing conditions for that were there any comments on the sorts of things that you will come up against and the difficulties you might go through?

Mr JAFFREY: No. I did not actually speak to anyone before I was released to home detention. I applied for it through the parole board and was granted it. They went and saw my wife, assessed the house, made sure we had a phone on, and I was pretty much released the next week. So I did not speak to anybody until I was back home.

Ms LEE RHIANNON: So they literally put something around your leg, tell you the conditions and that is it.

Mr JAFFREY: It is a funny situation, the way it works at the moment. You are released temporarily pending a full assessment. So the parole board issues a temporary release order and for five weeks you are free to do what you like—you can go where you want, do what you want.

Ms LEE RHIANNON: Really?

Mr JAFFREY: Yes.

Ms LEE RHIANNON: For five weeks?

Mr JAFFREY: For five weeks while probation and parole then do a full assessment. You are initially assessed as—

Ms LEE RHIANNON: So you do not immediately go on to the home detention scheme.

Mr JAFFREY: Not at all. You are initially assessed as being potentially suitable. The board releases you while the rest of that assessment is completed and in the period in between you can do what you like. There is nothing to stop you taking drugs or drinking because in that pre-release period they will ring and say, "Is it convenient for us to come around and see you? We want to do a breath test." I think that perhaps that goes against the spirit of the idea but for that five-week period you are free to do what you like. That is what I found the hardest because I was released from gaol, free as a bird for five weeks and then bang, it was like going back so in that respect it is a bit odd.

Ms LEE RHIANNON: I note that you said that you are not sure whether you would go into home detention again. But considering the scheme exists, what suggestions would you make on how it could be improved for prisoners who are in that transition?

Mr JAFFREY: How it could be improved in the assessment period?

Ms LEE RHIANNON: Improved for prisoners who choose to do home detention so they are more prepared, so they are able to handle it in a way that they do not reoffend, do not break the conditions.

Mr JAFFREY: Like some of the other people have said, this concept of through care that the department relies on at the moment, because there are no structured programs in place to pre-release someone, whether it be to home detention or anything else, you sort of get lost a little bit in the transition period. It would be good to have some sort of documentation saying, "This is how home detention works. This is what you will be subjected to." As I said, it is very tempting and very easy to snatch a back carrot when it is offered to you without knowing the full story. I was prepared to live in a shoe box for eight months if it meant getting out of

where I was. But it would be good to know in advance that you are up for that. I am lucky. I have that family support, I have my little girl. People who maybe do not have that strong tie back to their social roots, the temptation I think in some people would be go "get stuffed, I will do what I want". Maybe that is an issue because any thing that impacts back on the program will adversely affect everyone who is on it. So it would be good to get that right before we even start.

The Hon. GREG PEARCE: Were you sentenced to home detention?

Mr JAFFREY: No, I was sentenced to periodic detention, which I breached for various reasons which probably are not relevant three years ago. Essentially, my wife became ill. I had been sentenced to periodic detention. I applied at that time for home detention; it was declined. So knowing that a warrant had been issued for me, I spent two years living basically day to day until I was satisfied that my wife's medical condition was stabilised sufficiently and then I handed myself in. I was in custody for nine weeks and then released to home detention.

The Hon. GREG PEARCE: Do you know what program that home detention is under or on what basis you were given home detention? Our understanding is that the home detention scheme is a sentencing option at the time of the trial.

Mr JAFFREY: I have come into it sort of front end but back end as well. The front end in that the parole board has the prerogative, when they revoke your periodic detention order, to order that the sentence be served by home detention. So you have to spend a certain period of time in custody and then you are released if you are suitable to home detention.

The Hon. DAVID CLARKE: You made reference to the small or technical breaches. You also mentioned that the supervisor has a discretion in how they are treated. Have you ever been unfairly treated because of a small or technical breach?

Mr JAFFREY: No.

The Hon. DAVID CLARKE: So you have no complaint about these small or technical breaches. You have never been unfairly treated?

Mr JAFFREY: No. I have always approached it as if it is something within my control then it is up to me to make sure that I do it properly; if it is something outside my control I will notify her as early as I possibly can that this has happened and in that respect it is usually okay.

The Hon. DAVID CLARKE: So the small or technical breaches have not been a major problem to the operation of this scheme at all because in your case you have been quite fairly treated.

Mr JAFFREY: No, I think the only breaches that are a problem are breaches that result in the parole board revoking the order.

The Hon. DAVID CLARKE: You talk about the choice of prison or home detention with restrictions. I think you said that knowing what you do, if you were single you think you would go for imprisonment. The fact is that you are not single; you have a family. So having a choice between prison or home detention, with your family, which choice would you take?

Mr JAFFREY: Obviously being at home with my family. But I will clarify that in saying that when you see some of the frustrations that it puts on your family you know that you have caused that. The fact that my wife is restricted in some of the things she might like to do, or my little girl wants to go to the swimming pool and I cannot take her, is a constant reminder that I have caused this but it is a difficulty that you have to deal with.

The Hon. DAVID CLARKE: I guess one would have to weigh on a pair of scales the restrictions that you incur as a result of home detention as a result of the restrictions that would be there if you were in prison.

Mr JAFFREY: There are the restrictions and also the compulsions. You are required on home detention to undertake certain courses, counselling and so forth. That is not something you are required to do in prison. In fact, to be quite honest, it is something that even if you wanted to do most people have trouble getting access to in the first place in prison.

The Hon. DAVID CLARKE: I may have missed something in your statement, and forgive me if I did, but I do not think you made any specific suggestions as to changes. What specific suggestions or changes do you have in mind to the scheme?

Mr JAFFREY: For the system of back-end home detention or the existing system of front end or both?

The Hon. DAVID CLARKE: Both.

Mr JAFFREY: It is my personal belief that any community corrections program should not be administered by Corrective Services. My personal opinion—I do not base this on any evidence apart from just what I have read and forming an opinion—is that Corrective Services has at the end of the day a vested interest in maintaining a significant number of offenders to enable them to keep operating, to enable them to keep getting their budget allocation each year. That may be seen as cynical; that is just my opinion. My belief is that any community-based sentencing option—and it is not just home detention but anything that puts offenders in the community—should be a multiagency approach: health department, community services, housing and police.

Probation and parole used to be an arm of the Attorney General's Department, and has since gone back to Corrective Services. But I think that taking it away from Corrective Services takes away the perception that it is punishment only. That is something the community has in its mind. If it is associated with Corrective Services it is punishment. But it has to be more than punishment because you cannot just keep punishing people because they will all come back out. You have to address issues of recidivism. If the prison population keeps going up as it is, by the time I am 50 there will be 25,000 people in gaol. A significant number of them have offended before. There is no motivation for them to stop offending. You can take the point of view of "stuff them. If they are not going to behave then they deserve everything they get".

A lot of the time we are not talking about serious offenders; we are talking about people stealing in order to feed themselves. That is the reality. There are people in gaol who have been sent to gaol because the courts have no other alternative because they have done the fine, they have done the community service, they have done the periodic detention but they are still doing it so they go into gaol. That is not everyone but that is an example. Putting people in the community is giving them an opportunity to address recidivism. Home detention in every jurisdiction that it is operating in has shown that not only do you have a large compliance amount—I think most of the jurisdictions are about 80 per cent to 85 per cent—but you have reduced recidivism in those people in terms of not offending within two years of completing the order. I know that this morning there was some issue with those figures not being readily available from Corrective Services, which I find staggering. But at the end of the day the anecdotal evidence is there for people to see, and most of the submissions that you received are supportive of this.

The Hon. DAVID CLARKE: You seem to be, in effect, supporting the system too.

Mr JAFFREY: I am supporting the principle of the penalty. I am not necessarily supporting how it is run or who should run it. I am advocating perhaps a multiagency approach to all community-based sentences, not just home detention but anything that puts offenders back in the community.

The Hon. DAVID CLARKE: But you have not been unfairly or wrongly treated under that system of home detention.

Mr JAFFREY: I have been reasonably treated.

The Hon. DAVID CLARKE: You said you will devote your life to social justice issues. Do you believe that you have been hard done by by the legal system in New South Wales?

Mr JAFFREY: I would say that would be a gross overstatement to have been hard done by. If anything, it is the reverse. I have been given many opportunities before I got to this stage but let me say that going to gaol was the best thing that could have happened to me. It has given me a lot of impetus to do something with myself. I am at a crossroads, essentially; I can go one way or I can go the other. I was given that opportunity. Some of it was my own intelligence but a lot of it was people giving me the opportunity. I think there is probably something to be said about harsher penalties in the earlier stages, rather than waiting maybe 10 or 11 years before someone gets to a point where they are looking at a correctional sentence. Being fined or being given community service orders meant nothing to someone in my position. To answer your question, I do not believe I have been hardly done by, no.

The Hon. DAVID CLARKE: In fact you are saying that harsher penalties in the initial stages would not be going astray?

Mr JAFFREY: I sometimes wonder if I had been in this position seven or eight years ago how much further ahead I would be now. But at the time I did not have a child and I was not married. There is a lot more incentive now than there was then. I regret that my desire to do these things has come at a time when my history is going to preclude me from doing a lot of things. I would very much like to be involved in politics. I would very much like to be involved in social reform activity. I realise that there will be opportunities that I would probably be very good at doing. A lot of the research shows that if you get ex-prisoners involved in rehab models and in education programs, it is good for everyone involved. I am not going to be able to do that, but I have lots of opportunities.

The Hon. DAVID CLARKE: Would you agree that home detention is a far more generous alternative than imprisonment?

Mr JAFFREY: You are asking me to generalise.

The Hon. DAVID CLARKE: In your case?

Mr JAFFREY: I can answer that in my case; I cannot answer that for everybody.

The Hon. DAVID CLARKE: In your case?

Mr JAFFREY: In my case I believe it has given me a great opportunity and I consider it a privilege.

CHAIR: Thank you very much indeed for coming to see us today and for committing your time. I appreciated the issues in relation to the negotiations for you to come, but I think it has been very well worth it, so far as the Committee is concerned. I also have to tell you that the Committee may decide to publish some or all of your in camera evidence. Do you have any objection to any part of the evidence you have given this afternoon being published by the Committee? Before you answer the Committee will have brief and informal deliberations.

I believe that the evidence about why the witness is presently on home detention is reasonable. Would members of the Committee be uncomfortable if we remove personal references in a small personal section of his evidence? I will note that members of the Committee agree. If it is all right with you the Committee will be happy for that to happen. Do we have your permission to release the remainder of your evidence?

Mr JAFFREY: Yes. I have no problem with that at all.

REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO BACK-END HOME DETENTION

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At Sydney on Friday 18 March 2005

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The Committee met at 9.15 a.m.

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PRESENT

The Hon. C. M. Robertson (Chair)

The Hon. D. Clarke

The Hon. A. R. Fazio

The Hon. G. S. Pearce

Ms L. Rhiannon

The Hon. E. M. Roozendaal

CHAIR: Welcome to the second public hearing of the Standing Committee on Law and Justice's inquiry into back-end home detention. Today, we especially welcome witnesses who have travelled from Victoria and Queensland to present evidence to the Committee. Before we commence, I would like to make some comments about aspects of the hearing. The Committee resolved previously to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of guidelines governing broadcast of the proceedings are available from the table by the door. In accordance with Legislative Council guidelines for the broadcast of proceedings, members of the Committee and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee, the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee.

Witnesses, members and their staff are advised that any messages should be delivered through the attendants or the Committee clerks. I also advise that, under the standing orders of the Legislative Council, any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or by any other person. The Committee prefers to conduct its hearings in public. However, the Committee may decide to hear certain evidence in private, if there is a need to do so. If such a case arises, I will ask the public and the media to leave the room for a short period. A witness who does give evidence in camera following a resolution of the Committee needs to be aware that, following the giving of evidence, the Committee may decide to publish some or all of the in camera evidence. Likewise, the House may, at a future date, decide to publish part or all of the evidence, even if the Committee has not done so.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings, and I therefore request that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference. Finally, could everyone please turn off their mobile phones for the duration of the hearing. They actually interfere with the electronics in the room. I now welcome our first witnesses, Mr Brett Collins and Mr Michael Strutt.

BRETT ANTHONY COLLINS, Justice Action, 65 Bellevue Street, Glebe, New South Wales, and

MICHAEL JAMES STRUTT, Justice Action, affirmed and examined:

CHAIR: Mr Collins, what is your occupation?

Mr COLLINS: I am the managing director of a printing and design company, but I am also a worker with Justice Action.

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as the representative of an organisation?

Mr COLLINS: As a representative of the organisation Justice Action.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Mr COLLINS: Yes, I am.

CHAIR: Mr Strutt, what is your occupation?

Mr STRUTT: I am a volunteer with Justice Action, and a student.

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as the representative of an organisation?

Mr STRUTT: As a representative of Justice Action.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Mr STRUTT: Yes, I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be seen or heard only by the Committee, please indicate that fact and the Committee will consider your request. Would you like to start by making a short statement?

Mr COLLINS: Yes. We have a document, which at the moment is being copied and will be in here shortly, that we would like to distribute to the Committee. We have some other material about Justice Action that I will distribute to Committee members. There is a card about Justice Action itself, who we are, and the sort of work we are doing at the moment. There is also a booklet called the "Mentor's Handbook", which creates the thrust of our response to punitive regimes, such as is being proposed with home detention. There is also a brochure, from the design and printing company that maintains Justice Action, which is an expression of community support. That gives a little background material about what Justice Action is doing. We had intended to read from the document that is being photocopied. I do not know whether we should wait for that.

Mr STRUTT: I am happy to make an address while waiting for that. I would like to address a few issues first, because some of the questions we have been asked to address seem to be wrong-headed about the way that the inquiry seems to be headed. First of all is the notion that you can quantify the harshness of home detention according to the way the regime is set up, or the perception that it can be compared with other penal options. It seems to me that the harshness will be very much a matter of the subjective experiences of the prisoners themselves and their families, whatever may have been the intentions of the people imposing it. What really will determine the subjective experience, more so than how it is set up, is how the system is administered.

I notice that some of the material that the Committee has had before it deals with the back-end system in Western Australia, and I have heard reports that the Western Australian system is considered quite hard and quite strict. But, on the face of how it is meant to be run, it does not seem to me that it should necessarily be that way or very different from the current non-back-end home detention system that we have in New South Wales. What I have noticed, from speaking to people who have been subjected to home detention in New South Wales, is that the Corrective Services staff who administer the system are very progressive, helpful and flexible with regard to some of the problems that people experience in home detention, compared with some other people in Corrective Services.

That has acted to reduce the harshness, regardless of the intentions of the court or the administration. On the other hand, obviously there are certain branches of Corrective Services which, if they were put in charge of the administration of back-end home detention, would make back-end home detention harsh, and that probably would result in a large number of breaches and a large number of people being back in prison, serving out the rest of their sentences. That is the first point I would like to make. But, whatever way the system is formulated in this forum will not have a determining effect on its harshness and effectiveness, or on its perceptions by the prisoners, the public and the judiciary. Basically, how it is administered will be the key, as will be the staff who are put in those positions. So that is one point that I would like to make.

Another point that seems to come up frequently, and seems to be begged in some of the questions that were asked, is the idea that there are benefits from home detention. That is the most ridiculous thing I have ever heard—benefits from locking somebody in their home, with their family, for however long! Prisoners, in general, tend to be pretty vulnerable to things like depression, drug addiction and a lot of other things already, and keeping somebody restricted, through the way home detention works, obviously is not going to help with any of that.

The only way that home detention could possibly be seen as beneficial is by comparing it with the full-time prison regime. Yes, it comes up very well compared with the full-time prison regime. It is nowhere near as criminogenic as prison. People keep their contacts with their family and society. They have more stake, if you like, in remaining clean and part of the community. So, yes, the subjective experience for the individual is likely to be a lot better than the prison system. That does not mean to say it is going to be beneficial.

I have heard some prisoners express the view that the self-discipline that is imposed by the home detention regime has been helpful to them in organising their own lives later. But, when you listen to them, you really have to wonder. Typically, this is somebody speaking just at the end of a home detention regime. You have to wonder about the discipline that has been imposed. It is like a very strange microcosm of what the community is about. It is pretty easy, for instance, to not drink if you never go out. It is fairly easy not to associate with people who might get you into trouble if you know that such an association can result in problems with home detention and stress within your family. It is easy to impose various kinds of strictures on yourself in a regime that is half prison, half community. But whether that self-discipline is going to hold up over time is another question, and I do not pretend to be able to answer it.

However, it seems to me that there might be methods of delivering those sorts of life skills—if indeed they are true life skills, and not something artificial that only applies within the home detention regime. There have got to be better ways of delivering those life skills than, essentially, locking somebody in their own house and sending prison officers around to visit them on occasions. If people really want to develop those sorts of life skills, maybe the Government should be looking to tendering it out to community groups, in the same way as a lot of the services concerned with unemployment and so on have been tendered out to community and church groups. They are the people who in reality probably have the ability to do the job in the most cost effective manner, as opposed to the prison system. If there is a benefit of home detention, it is in those life skills, apart from the obvious one of avoiding prison.

On an individual level, home detention can, depending on how it is administered, allow people to avoid prison sentences. On an individual level, spending less time in prison is a very good outcome for the person and for the community that they have to be rehabilitated into. But I would suggest that the overall system has a negative outcome. The number of people that we imprison in New South Wales obviously—as I am sure everyone in this room knows—has no bearing whatsoever on the rate of crime in the State.

The rate of the crime in this State now is about the same as it was in 1970s and we have more than twice as many people in prison. People in New South Wales are no more criminal than people in Victoria, but New South Wales locks up its citizens at twice the rate that Victorians do. As you have probably seen with government policies over the last few years, anything that results in bringing some sections of the prison population down only seems to encourage, dare I say, governments to find a way of putting other people in prison. What we have seen is a real shift in remand population levels over the last few years.

The full-time prisoner rate has been growing, not as quickly as the Government has been building new prisons. But what has really been significantly growing, apart from women and Aboriginal prisoners, which were always significantly growing, is remandees. I would suggest that by moving people out of prison into home detention you are not reducing prison numbers. What you are doing is freeing up a bed so that somebody else who may not have been remanded in custody or who may not have got a full-time sentence will end up with a full-time sentence. What you consistently see if you look at the figures—and I have looked back as far as the late 1970s—is an occupancy rate in New South Wales prisons that consistently hovers between 95 and 105 per cent.

Sometimes it is slightly over the theoretical maximum occupancy rate. Typically, it is just slightly below it. That is regardless of how many beds are available. You build a new prison, it fills up; you close a prison and there are fewer prisoners. You reopen the prison and it fills up. Basically, the number of people in New South Wales prisons—and I do not pretend to know how the mechanism works—seems to be closely linked to the number of beds. So by sending somebody on home detention and freeing up a bed in prison you are not reducing the prison population. You certainly are improving the outcomes of that person. But to imagine that

you are reducing the overhaul harm done by the prison system I would suggest is fallacious. Those are the main points that I would like to make.

The Hon. GREG PEARCE: Can you produce those statistics in any form?

Mr STRUTT: I got very short notice about this inquiry or I would have brought them along. I can produce them later if the Committee would like that.

The Hon. GREG PEARCE: Could you provide statistics relating to that trend since the 1970s and also statistics that support what you said about remand?

Mr STRUTT: I thought it was fairly common knowledge now that the New South Wales remand population is up to about 30 per cent and still rising.

CHAIR: It just helps us to have the statistics.

Mr STRUTT: Sure.

Mr COLLINS: A number of the questions that have been presented have to be responded to in the document that is now before you—our written responses. There are a couple of aspects that I would like to add to what Michael has said. There is a sort of naivety and a danger in the way in which home detention is proposed. It is almost as though it is to cover what people who have been around the system of correctional services know as a fact. To suggest that net widening will not be a response to home detention is quite wrong. Michael presented the argument in relation to that issue. But there is a history to this.

Truth in sentencing was introduced in 1989. At that time it was stated very clearly that magistrates and judges would reduce sentences. Everyone said at that time—we have documents to show this—that that was just not true. That will not be the effect. People will actually stay in gaol longer. The truth in sentencing regime meant that people were in gaol longer and their sentences became longer. That has been continuing. We are saying once again, very clearly, that we are ringing the bell on behalf of the prisoner community and the general community, including the victims that we represent. We are concerned about this as a policy. We put it to this Committee that it has a responsibility to make a stand.

We are putting it to you clearly that this is a stand that breaches the entitlement of the community to have homes that are free from invasion by the State. That is sacrosanct and it should not be invaded. That sort of invasion is at the cost of families who should be there in support. When you invade that family you are invading the basis of our community. If you permit this and you do not make a stand this will be regarded as being a negation of a fundamental entitlement of the Australian community. This was not done from the time of the initiation of the penal colony. The family has always been sacrosanct. For us to now accept home detention under the guise of it being a benefit to prisoners and to the community is wrong.

We put it to you that you have a responsibility to make a stand on this issue. It is quite clear that this can only be damaging to us as a community and to those people who are most vulnerable—prisoners and their families who need to be there in support. It will mean that children will then have Corrective Services people knocking on their front doors—people that they cannot reject. They have to defend family members and the sanctity of their homes against these Corrective Services people knocking on their doors.

The Hon. AMANDA FAZIO: What do you think is better for a young child—to have somebody from Corrective Services knocking on their parent's front door to see whether they are complying with their home detention regime, or for that child to have to go to the visiting complex at Long Bay gaol to see them there?

Mr STRUTT: The Hon. Amanda Fazio made a very good point. The regime for families visiting New South Wales prisons is absolutely appalling. The abuses to both prisoners and their families are terrible and it is totally unaccountable. People are abused and denied access to their imprisoned families and they are not given

any recourse. This situation has happened again and again. Somebody goes to visit their relatives and they are strip-searched on the way in. The prisoner is strip-searched during the visit. They are monitored for the whole time during the visit.

A prison officer says, "I think that she smuggled drugs." They are both strip-searched again and no drugs are found. But a prison officer said that you smuggled drugs, so you are a drug smuggler and you are banned. This happens all the time. You are absolutely right. As far as contact with your family member goes, that is to be preferred. I reiterate what I said earlier. If you compare the experience of the home detention system with full-time imprisonment, home detention will win hands down all the time. Justice Action will not attempt to argue anything different. If home detention could sincerely reduce the negative impacts of the prison system we would be behind it 100 per cent, but we do not happen to believe that it will.

That is really the issue that we are bringing forward today. Home detention has negative impacts on the family, but nowhere near as negative as the regular prison system does. Apart from the fact that families are placed in the invidious position of effectively, in some ways, becoming gaolers, they and their loved ones will get into trouble if there is any breach, so effectively they become oversight persons of their loved ones. The big problem that I have struck though and the one thing that people consistently complain about is that because they are restricted to their houses, essentially 24-hours a day, although there are exceptions, it results in the family members who want to be with them often being restricted as well.

One prisoner that I am aware of, who I mentioned in my report, said that he had no idea of the negative impact that home detention would have on his daughters until he underwent home detention. He complained that because his daughters wanted to stay with him and be with him they ended up like couch potatoes with pale complexions and that they became depressed and overweight. Eventually it caused a lot of stress between him and his eldest daughter, which he thinks would not have happened if he had served full-time imprisonment. He is not saying that home detention is worse than the full-time imprisonment, but he certainly made very clear the negative impact that it had on both him and his family. To pretend that that does not exist is mythological, but to say that it is not as bad as you would expect with full-time imprisonment is absolutely correct.

The Hon. DAVID CLARKE: When most relatives attend a prison they are not strip-searched. Only a very few are strip-searched. That is not the general practice; it is the rare exception.

Mr STRUTT: I would suggest that certain people are overly victimised for no good reason and they are consistently strip-searched.

The Hon. DAVID CLARKE: There is always the exception.

Mr COLLINS: A few months ago I was present when visitors were going into the Metropolitan Remand and Reception Centre. They were compelled to stand on a line in the car park outside. The visitors included one grandmother and a girl who would have been not older than six or seven. There were 15 or 16 people out the front watching that occur. They were compelled to stand on a well-worn line in the middle of the car park so that the dog could sniff them. They were compelled to put their hands over their crotches in order that the dog would not sniff them in the crotch. It is wrong to suggest that the stripping of dignity does not happen on a daily basis. It happens all the time; it is part of the structure.

The point that is missing is that the family has not been convicted of any crime. The family is there in support. Corrective Services says that there are two issues that prevent prisoners going back to gaol. Two issues maintain us as a safer community. The first is having a job to go to and the other is having a family to go to. When you have the family so degraded by having contact with a prisoner that they want to run away, they do not maintain the contact, or there no encouragement at all for that family to come in—

Mr STRUTT: Or the prisoner does not want them to be subjected to it any more.

Mr COLLINS: That often happens. The prisoner says, "I do not want to see you any more. I will not have you subjected to this behaviour." They reject their families in order to protect them from the sort of behaviour that they are subjected to.

The Hon. DAVID CLARKE: If families were given the choice they would want their relatives—their fathers or their husbands—to be with them in the home rather than to be in prison.

Mr STRUTT: Nine times out of 10, yes.

The Hon. DAVID CLARKE: Is my statement correct?

Mr STRUTT: Except in domestic violence cases, yes.

The Hon. DAVID CLARKE: So the overwhelming majority of families would favour home detention over a relative or member of the family going to prison?

Mr STRUTT: Absolutely.

The Hon. ERIC ROOZENDAAL: You stated in your submission that there are no benefits at all from home detention?

Mr STRUTT: That is right, as I conceded before.

The Hon. ERIC ROOZENDAAL: I am extremely surprised by that statement, particularly in light of your previous comments about the difficulties that both prisoner and families experience interacting in a prison system. Do you support any detention for prisoners?

Mr STRUTT: No. I do not support the prison system. There may be a very small number of people who benefit from the prison system, but it is massively inappropriately overused. That is my personal view. But that has nothing to do with what I am saying here. When I say that there is no benefit to home detention I am not talking about its effect on an individual. Compared to prison, as opposed to compared to nothing, it may be beneficial. I think I mentioned also in the paper that if I gave you the choice of hitting you in the face or beating you up with a cricket bat you could argue that hitting you in the face was beneficial.

The Hon. ERIC ROOZENDAAL: Are you aware that the recidivism rates of people on home detention are much lower than those who finish their full sentence in prison?

Mr STRUTT: My understanding of the figures so far suggests that that is true in New South Wales.

The Hon. ERIC ROOZENDAAL: Do you not think that is beneficial to both society and to the individuals who participate in the home detention system?

Mr STRUTT: Compared to prison, yes. I am fairly confident that if you just let them go you would get lower recidivism rates. Prison is it criminogenic. It causes people to be criminals; it does not cure them.

The Hon. DAVID CLARKE: So we should not send them to prison. No home detention and no prison?

Mr STRUTT: That would certainly be my option, but I understand that that is not one of the options being offered by this Committee.

The Hon. DAVID CLARKE: That is your preferred option—that there be no prison and no home detention?

Mr COLLINS: We have handed around a book entitled "Mentoring handbook."

Mr STRUTT: It will benefit them and us more.

Mr COLLINS: This was presented as a community based option—removing people from the community and expecting at the end of it when you return them that they are not too damaged. We keep talking to victims groups—people who are directly affected by crime. They agree that prisons are doing more damage. They are actually causing more victims. So we have a criminogenic regime, which is the alternative to home detention, which we say is really damaging to the family anyway. We offer simple alternatives. For the last 20 years we have been involved in community service orders. I am a community service order supervisor and I have been the person in charge over that period. We have had thousands of people passing through the system which we have been administering involving mentoring, listening to them, talking with them and ensuring that when detentions occur we hear about them.

The Hon. DAVID CLARKE: Convicted murderers?

CHAIR: Order! The Hon. David Clarke will not ask any more questions.

Mr COLLINS: We had a man who was regarded as being so dangerous that the New South Wales Government brought down a law against him.

Mr STRUTT: Personally.

Mr COLLINS: It was struck down in the High Court. I am referring to the Kable case. We have that man at the moment as one of our staff working on cases for people who are currently in gaol, and working with families. He happens to be our receptionist. He works with us and he is regarded very highly by people directly affected by charges and who listen to his advice. They trust him and use his experience. He is one of the mentors, of whom we are very proud. Also, we have a man called Christopher Binns, who was released only a few weeks ago from a New South Wales gaol. He was regarded as being too dangerous to receive parole. You may have seen this article in the Herald dated 10 February, when he was released from Goulburn gaol. He was regarded as being too dangerous to be released on parole. Yet this man now has the benefit of the mentoring that we are offering to him.

He has nothing at all from the prison system. He was thrown out the front door. He was regarded as being the most dangerous prisoner in New South Wales. He was the only man who was leg shackled in his cell for 23 hours a day. Yet he was thrown out the front door and he was regarded as being too dangerous. He got no support at all. He had half a dole cheque, no place to go, no job. He was thrown back into the community. If you are seriously talking about having a safer community instead of having a dangerous community, then you would be concerned about ensuring that people like that have support. We offer that support, and that is why we have the status to say what we are saying.

The Hon. AMANDA FAZIO: But the case you have just used is a prime example of somebody who, for whatever reasons, could not be paroled. So he served his full sentence and he is a free person. If people who served their full sentences and were released were then subjected to oversight or supervision by the Department of Corrective Services, probation and parole or whatever else, you would then come here and complain to us that they have done their time—

Mr COLLINS: But he got no support. No-one cared. There was no concern at all for him.

The Hon. AMANDA FAZIO: It is a two-way argument.

Mr COLLINS: No there is not. No-one ever asked him, "Can we give you a hand?" "Can we assist you?" "Can we arrange accommodation for you?" They have spent \$1 million on him and they regard him as extremely dangerous. If we can give you a hand, that would be good for the community. They were happy to

spend \$1 million against him but they were not prepared to spend even enough money for a train fare. We had to go down and pick him up and then we had to look after him on behalf of the New South Wales community. That is the work we are doing, and that is why we are standing here with authority and saying to you, "We can do better than home detention and we are prepared to do that work." We do the work. We have the Greg Kables and the Chris Binns's with us, and we are also prepared to give assistance to people like Ivan Milat because nobody else is doing it. It is very easy to lock them up and spend a lot of money on them, but no-one is ever thinking about the Ivan Milats that are still to come, and we are prepared to work with them. That is the offer we make.

The Hon. GREG PEARCE: I think you are doing some very good work but if you want to improve your credibility you will remove Michael Costa as one of your referees.

Mr STRUTT: I agree with you on that.

Ms LEE RHIANNON: We heard from a person who is in home detention. He spoke to some extent along similar lines to yourself about the problems with it. But because of his wife being very sick and having a young daughter he said that to him there were benefits and he needed to be with them. That is one example. Do you see that there can be those exceptions, particularly from your point of view, if you are saying that there are all these problems with gaol? Okay, home detention is not perfect, but is it worth having it alongside what you are calling an imperfect system?

Mr STRUTT: I think there is a little bit of a fallacy involved in that assumption. It is not something that I specifically address in the questions, and that is the idea that because home detention is definitely a better experience for an individual than prison, a prison system that includes home detention must be a better system. I think that would only follow if you could show that home detention reduces the number of people who go to full-time prison. Considering the steady increase in prison numbers and home detention numbers since it was introduced in this State, I do not think there is any evidence to show that. As a matter of fact, I think there is evidence that suggests the opposite, and that is why I would say again that home detention is very beneficial to individuals but if giving one individual home detention to avoid full-time prison just so you can give somebody else full-time prison, I suggest that the overall equation in the system is negative, not positive.

Mr COLLINS: Michael's statement should not be taken to suggest that that we support home detention at all. We do not. What we are saying is that if you are going to hurt them, that hurts them less but it also damages the community more. We would say there is even an opportunity for a person who would go to gaol—at least the person who goes to gaol has the support of the services inside gaol. They have the education, the health. There is a combination of a whole range of things there for the individual that are not available to the person on home detention. So there is even an argument that full-time gaol may well be, from the community's point of view, to the benefit of the individual but we are adamantly against home detention as an alternative to imprisonment entirely.

(The witnesses withdrew)

PAUL MARSHALL WINCH, Public Defenders Office, 13/175 Liverpool Street, Sydney, sworn and examined:

CHAIR: What is your occupation?

Mr WINCH: I am a barrister but I am employed as a public defender for the Public Defenders Office of New South Wales.

CHAIR: In what capacity are you appearing before the Committee? Are you appearing as an individual or as a representative of an organisation?

Mr WINCH: I am a representative of the Public Defenders Office.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Mr WINCH: I believe I am, yes.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. Would you like to make a statement?

Mr WINCH: Not really. I have provided a very brief set of submissions to the Committee that no doubt you have. You can see that the starting point from my submissions is my belief that the more alternatives there are to full-time imprisonment available within the system, and at various places and points along that system, the more flexibility there is in the system and the better the system is for that flexibility. I do not speak from any particular personal knowledge of people who are involved in home detention but rather as someone who is a practitioner within the criminal justice system and has been for rather longer than I like to think about.

CHAIR: That is important, thank you.

Mr WINCH: I should perhaps say, if it is of any interest, that as well as now being a public defender, I was a Crown prosecutor for 10 years, and I was also a probation and parole officer. I also worked at the Australian Institute of Criminology in Canberra for some time. So the end result of all that is that for most of my working life I have been, since the mid-1970s, involved in a professional capacity within the criminal justice system.

CHAIR: Many submissions have mentioned that front-end home detention is currently underutilised, particularly in rural and remote areas of New South Wales. Why do you think this is the case, and how do you think the take-up of home detention could be improved?

Mr WINCH: It is the case, I think—and I am not sure what the answer is, but it seems to be the case and it might be resources—that the take-up of all sorts of alternatives to full-time prison and the availability of all sorts of alternatives to full-time imprisonment are less in country areas. I suspect that is to do with personnel, with staffing. I certainly know that there are geographic problems with periodic detention and the like but I do not specifically have an answer for the Committee about why that is so in relation to home detention.

The Hon. GREG PEARCE: Assuming there is a back-end detention possibility, what is your view in terms of who should administer that? In particular, is it something that you would see as being appropriate to be administered by the Commissioner of Corrective Services or do you think it should be somebody independent of the original judge or the parole board?

Mr WINCH: I think there are difficulties with back-end home detention in involving the original judge and making it part of the sentence. My perspective in my submissions to the Committee has been that it fits most nicely, as I see it, alongside and akin to things like weekend leave, work release, that style of diminution of the effect of full-time imprisonment on a prisoner, he or she having served a period of full-time imprisonment. So my thoughts about it are that it would be conveniently and easily administered perhaps by the commissioner or a delegate in the same way that leave presently is and/or a committee within the department. For more serious offenders, it is my belief that the serious offenders review committee could have some impact on decisions such as this for offenders of that kind.

The Hon. GREG PEARCE: You do not see difficulties with transparency?

Mr WINCH: Not especially because there is no difficulty at the moment with things like weekend leave. There is no difficulty, as I see it, with the fact that periodic detention is divided into a series of three stages of style of detention. That does not seem to be causing any aggravation or difficulty. It is akin to work release or those kinds of decisions.

The Hon. GREG PEARCE: Except that work release and study are only for a couple of days and then you are back in gaol. Home detention is 24 hours, seven days with lots of other restrictions that do not necessarily apply to the other sorts of releases.

Mr WINCH: That is so but it seems, in my submission, to fall within almost the present availability. Section 26 of the Crimes (Administration of Sentences) Act seems to allow discretion that would on one reading of it at least allow just what the Committee seems to be proposing right now.

The Hon. GREG PEARCE: An earlier witness suggested that numbers of remand prisoners have increased remarkably. Are you familiar with that?

Mr WINCH: I think that is so, but my experience about that is just observation. I think it has to do with the changes to the Bail Act that are beginning to bite. That is my understanding of why that has happened. It has taken some time for that to happen but it is beginning to happen now.

The Hon. AMANDA FAZIO: Given that you have worked as both a public defender and a Crown prosecutor, do you think that the alternatives to custodial sentences that we have, the range of them that we have in front of us at the moment, are adequate? We are looking specifically at back-end home detention. Do you have any other suggestions about non-custodial sentences?

Mr WINCH: I did not really put my mind to that before I came, but my position is that the more options there are available either to a sentencing court or to the system as a prisoner progresses through it, the better that is. We have periodic detention, home detention, full-time imprisonment and community service orders. I do not have a useful answer to you about whether and what other options I would consider. I am sorry but I did not give that much thought before I came.

The Hon. AMANDA FAZIO: Just about everything else in the Corrective Services system has an avenue for appeals. For example, if you are not happy with what happens in terms of classification, you can appeal your conviction. Do you think there are appropriate appeals mechanisms in place for back-end home detention decisions?

Mr WINCH: I think there would need to be. My understanding is that one can appeal—in fact, I am sure that one can appeal—a classification decision. If back-end home detention were to become part of that administrative regime—and perhaps it would and perhaps it would not—there would still be available to the prisoner an appeal as if it were a classification decision. I think it is important that there is such an appeal against decisions made by various committees of that kind. But I do not have any experience and I have not spoken to any prisoners who have expressed to me any difficulties with how that system works. Of course, people are unhappy from time to time but there seems to be a system in place for that.

The Hon. AMANDA FAZIO: Do you think there is enough flexibility in the back-end home detention system to take account of the changing circumstances of the prisoners' families and their home situations?

Mr WINCH: I would have thought that if it were part of the administrative system, as I was envisaging, it would enable that kind of flexibility to be carried through. The contrast of course is with the decision made by a sentencing judge perhaps a year and a half before, which would not then allow any flexibility. I think that would be one of the potential disadvantages of making it part of the original sentence—a person's family and circumstances could change dramatically over the nine to 12 or whatever months of full-time custody. It might make what seemed like an attractive or good and worthwhile proposition less good and worthwhile. The family could disintegrate or there could be deaths—all sorts of things could happen that would make it entirely inappropriate for the prisoner. There could be no home to be detained in. That is what I am really thinking.

The Hon. AMANDA FAZIO: Without that flexibility you would have the potential for prisoners to be either forced into the position of breaching their conditions or perhaps even being deemed to have breached their conditions.

Mr WINCH: Yes, or they could be so dramatically inappropriate 10 months on that the prisoner would presumably then have to almost abandon it himself or herself and take full-time custody.

The Hon. DAVID CLARKE: Would it be your view that a significant section of the New South Wales population is substantially disadvantaged under the law because front-end home detention is not available to them? I am referring to those people who live outside the Sydney, Newcastle and Illawarra areas. That would include a significant section of the Aboriginal population of New South Wales.

Mr WINCH: I think that has to be so.

The Hon. DAVID CLARKE: How do we rectify this inequality? Let us assume that the resources and personnel are not available to fill that void. What other avenues are open to us so that we give equality of legal rights under the law and those people do not continue to be disadvantaged, assuming that we do not have the resources or personnel available to have the front-end home detention system operating in these rural areas?

Mr WINCH: As far as front-end home detention goes, I think that without resources and without any way of implementing it that remains an inequality and a disadvantage that cannot really be addressed. It is not an answer to your question exactly, but it is my submission that back-end home detention in a sense is more likely to be available to people from a whole variety of areas, I would have thought. Perhaps I am wrong about that; I am not sure.

The Hon. DAVID CLARKE: Can I take it that in your view there is no other solution or way of extending similar rights to them without pumping in the resources?

Mr WINCH: There has to be sufficient resources—whether they are employed or volunteers. Some money has to be spent to either pay, assemble or martial people who can supervise and do the mechanical parts of the system that are required to be done. I do not know that it can be done electronically; I do not think it can. I still think it will need some resources—perhaps volunteers or perhaps, as Mr Collins said, some community organisations, churches or others might be enlisted. But, as I see it, it cannot happen by itself.

The Hon. DAVID CLARKE: Thank you.

Ms LEE RHIANNON: Could the Serious Offenders Review Council play a role in back-end detention and, if so, what do you think it should be?

Mr WINCH: I think they could. One of the points I endeavoured to make in my submissions to the Committee was about an extension of the criteria for back-end home detention to include people who have been charged with much more serious offences and who have done much longer in gaol than is presently available to people for front end would or could. It could be an individual decision, I suppose, that a prisoner might make to apply for that kind of detention at a particular stage towards the end of their non-parole period. The Serious Offenders Review Council could and would perhaps most likely be the appropriate organisation to involve themselves in a decision about whether that would be offered or allowed to that prisoner. I believe if the prisoner, after a lengthy sentence, is fortunate enough to still have a family and a home to be detained in and so on, it could be yet another useful way of easing their transition from full-time custody to the community. It could be used in association with the other kinds of education leave, works release and so on as a way of endeavouring to assist their passage.

Ms LEE RHIANNON: Turning to the issue of public perception of home detention at the end of a sentence, there is a lot of misunderstanding in the community and fear that dangerous criminals are being

allowed out into the community. It raises issues of public safety and leniency. How do you think that could be best managed?

Mr WINCH: In my experience, Corrective Services and people involved in the assessment of future dangers—psychiatrists, psychologists and others—err inevitably and rightly on the conservative side in the sense that no-one really wishes to be the person who signs the warrant that allows someone to be released when they are unsure about the likelihood of that person remaining law abiding. In my experience, there is an inherent conservatism in the system, which is the first part of it. The second part is that, with very few exceptions, people are sent to prison for a finite period and with very few exceptions people are sent to prison with a non-parole period.

The expectation is that they will be released at the end of the non-parole period absent bad behaviour and the like. My submission about back-end home detention is that the person remains in custody and incarcerated even though it is a house or dwelling rather than a prison. So the management of the perception would involve that notion, I would have thought. The management of the perception would also involve the notion that this is not letting people out to go to the racetrack, the casino or to go about their daily business as they would wish—which is what happens when they are released on parole, of course. As I see it, it is like a series of graduating steps to full liberty.

Ms LEE RHIANNON: Thank you.

The Hon. GREG PEARCE: A number of submissions to the Committee have suggested that if there were a back-end home detention scheme it would have the effect of more prisoners pleading guilty and there would be more incarceration judgments and penalties. Do you have a view about that?

Mr WINCH: There was a real concern about the creep and reach of prison—the judicial officer might impose a custodial sentence in circumstances, including home detention, where if that method of disposition were not available a bond or some non-custodial option would have been imposed. That is always a really grave concern because my understanding is that there is some evidence to support the fact that that happens. What was the second part of your question?

The Hon. GREG PEARCE: What is your view from your experience? Have you seen that happen? You say there is some evidence. What is that evidence?

Mr WINCH: The evidence I have is only anecdotal. I do not have anything to point to beyond my understanding from the literature that that is a persistent concern with the introduction of yet another custodial option—which this has to be. I am unsure of the impact that back-end detention would have on pleas of guilty and so on. I am not certain that I see quite the link that you are referring to. As I understand what is being talked about, we are still talking about someone actually going to gaol for some time before being released at the back end.

The Hon. GREG PEARCE: And they have to qualify for back-end release.

Mr WINCH: Yes.

The Hon. GREG PEARCE: So they cannot be sure that they will get it.

Mr WINCH: No, and there is a time lag and, presumably, the fact that someone may qualify on 18 March 2005 for release to home detention and then might not this time next year.

The Hon. GREG PEARCE: So it does not sound like it is much of a risk.

Mr WINCH: I would have thought there would be little, if any, impact on the rate of guilty pleas.

CHAIR: Thank you very much for your information today. You have given us quite a few very important pointers as to the direction we should take.

(The witness withdrew)

PAULINE JENNIFER WRIGHT, Solicitor, 170 Phillip Street Sydney, sworn and examined:

CHAIR: In what capacity are you appearing before the Committee? Are you appearing as an individual or a representative of an organisation?

Ms WRIGHT: I am a representative of an organisation.

CHAIR: Which one?

Ms WRIGHT: I am a Councillor of the Law Society of New South Wales and I am the Chair of their Criminal Law Committee.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Ms WRIGHT: I am.

CHAIR: Your submission argues strongly that back-end detention should not be considered until front-end home detention is more readily available in rural and remote areas of New South Wales. What are the impediments to home detention being more widely available in rural and remote New South Wales? Are you aware of any programs to increase the availability of home detention in rural and remote New South Wales?

Ms WRIGHT: As far as I can see the only impediment to it in rural and remote New South Wales are resources and funding. As I understand it, the Minister for Justice was looking at implementing pilot programs in other rural areas in 2004-05 where it presently is not available, and the Law Society would encourage that to be expanded as soon as possible to make it available to everybody in New South Wales, not just to people in Sydney and large regional centres because, as we see it, it is an important sentencing tool, particularly in terms of rehabilitation.

CHAIR: The Committee has been fortunate enough to receive another inquiry, which relates to access to community-based sentencing for rural and remote, and disadvantaged people. Registering that we have this inquiry and we will work very hard to find solutions, together with the work that has been done by the Sentencing Council, would you still say that people should not look at back-end home detention until the other ones are resolved?

Ms WRIGHT: I do not think we are really saying do not look at it, but what we are saying is that we would not like to see resources pulled away from front-end home detention and put towards back-end home detention. If there were separate resources funding it we would encourage back-end home detention right now, as long as resources were not pulled from front-end home detention. Possibly that was not made clear in our submission, but that is our position.

The Hon. GREG PEARCE: The Law Society does a lot of very useful work. The way the evidence is going is that back-end home detention seems to be looked on more as a reward in a custodial sentence similar to work leave and study leave at the end of a custodial term, whereas front-end home detention is a clear alternative sentence. Is that the way you would see the scheme operating?

Ms WRIGHT: I think it would operate that way, which I think is good because it helps with prisoner rehabilitation in a very clear way if a prisoner thinks that that is a possibility in that sense of a reward. Sometimes life inside a prison is very difficult, particularly for some types of prisoners, and the possibility of serving the rest

of your sentence in a less threatening environment could be a real initiative to those prisoners to rehabilitate, and that can work very well.

The Hon. GREG PEARCE: Do you see any conflict between that sort of scheme and truth in sentencing? Some people have put the proposition that if you are given a sentence and a parole period then interfere with that by giving another period of freedom before you get to parole is not giving effect to the sentence that was imposed originally.

Ms WRIGHT: As a matter of principle I cannot accept that argument because home detention is not freedom. Home detention is custody. To say that back-end home detention offends against the principle of truth in sentencing does not make sense. If you see it correctly, as it ought to be seen, as a form of custody you are not shortening a sentence at all by requiring that part of it be served at home. Make no mistake about it, the strictures on a prisoner serving detention at home are quite monitored and quite strict.

The Hon. GREG PEARCE: There are a number of options for administering the scheme. One of them is that it be administered purely by the Corrective Services Commissioner or someone within the gaol system. Another option is the original judge or the Parole Board, or some other independent option. What do you see are the disadvantages and advantages of it? Which way would you go?

Ms WRIGHT: From our perspective, as a matter of principle we like leaving sentencing decisions to judges. As a matter of principle the sentencing court would be the best person to determine that. The difficulty, of course, with that is that at the time of sentencing the judge cannot know what kind of progress the prisoner will make while he is in gaol serving his sentence. Although in some cases the judge might be able to make a decision at the time of sentencing and say, "In this case I can see that this prisoner has the potential to rehabilitate and I order that the last 12 months of the sentence be carried out by way of home detention." I can see that that could happen in some cases. I could see that in other cases a judge might say, "The nature of this particular crime and the nature of the lack of remorse of this prisoner would indicate that he should never be allowed to serve any part of his sentence by way of home detention."

You could find judges making those sorts of decisions at the time of sentencing. But if you are going to take full advantage of the opportunity to rehabilitate prisoners, which is one of the important principles of sentencing and punishment of offenders—ensuring that they are rehabilitated and they come out at the end of the process as useful human beings—then that process should occur or there should be an opportunity for that process to occur down the track after the prisoner has served some of his time and it is closer to the time of proposing to allow the prisoner into home detention.

The Hon. GREG PEARCE: During back-end home detention and rehabilitation do you think there should be some sort of compulsory work or study element or should the prisoner simply be allowed to squat in front of the TV, or whatever they do?

Ms WRIGHT: That would have to be determined in each instance. You could not require every prisoner to work. Every prisoner will have different abilities, possibly disabilities, learning disabilities and all sorts of things, such as mental problems. You cannot put a blanket rule that all prisoners serving home detention must do it this way or that way. That has to be determined at the time. Getting back to your earlier question, if the decision is to be made closer to when the person is proposing to be allowed into back-end home detention, if it were to occur then I can see practical difficulties in its being the court that takes that role. One would anticipate a large number of applications coming towards the end of peoples' sentences. Many prisoners will not make that application, but many prisoners would, so there could be a large number of applications of that type made before a court, which could flood the court with lots of applications and present practical difficulties. If those applications were made towards the end of the sentence, one can see the practical advantages of its being the Parole Board to make that decision.

The Hon. ERIC ROOZENDAAL: It has been suggested that if back-end home detention were available it could impact on encouraging guilty pleas. What is your view?

Ms WRIGHT: Obviously, some prisoners would find the prospect of going to gaol, to a standard prison, so thoroughly frightening that they would not contemplate entering a guilty plea because they might wish, rather, to exercise their right to have the prosecution prove their case and to take a chance, however slim that might be. If you take that into account there may be more pleas because for some people the prospect of serving time in an institution would be so horrifying to them, whether for cultural reasons or because of their age, their mental state or some other reason, that one could see that more pleas of guilty could come about if the person thought that home detention were a real option.

The Hon. ERIC ROOZENDAAL: Do you see a role for victims being involved in assessing an offender's eligibility for back-end home detention?

Ms WRIGHT: No, I do not. As a matter of principle the victims are well served by the fact that the police have investigated a crime, the courts have found the offender guilty and that have to administer a punishment. The correct person to determine that punishment, in the first instance, has to be the judge because only the judge has the necessary knowledge, experience and knowledge of sentencing principles to determine what is a fair sentence for each individual. If you allow victims to have an input into that part of the process as opposed to all the rest of the process that has happened to help them and to stop further crimes occurring in the whole investigation and prosecution process, it is just not really their role. For understandable reasons, particularly in horrific instances of crime, victims and their families are in a very emotional state and they are not really in the best position to make an impartial judgment.

The Hon. AMANDA FAZIO: I wanted to follow up on judges being the right people to determine sentences. You said that the problem of allowing people to apply for a redefinition of their sentence part way through to include the option of back-end home detention could end up with the court system being clogged up with these applications. Do you think it would be possible to overcome that problem by, at a time of the original sentence being determined, the judge having a standard inclusion of providing the option of back-end home detention to be determined by either the Parole Board of the Commission of Corrective Services or to exclude the possibility if the judge felt the crime was particularly serious or vicious and the judge thought that person should not have that option? Do you think that that would be a way of overcoming it, by just having them make that statement at the time of sentencing? Say, for example, someone is getting eight years with five years non-parole and no option for back-end home detention: Would that be a way of overcoming the problem?

Ms WRIGHT: I think that rather than fettering the judge's discretion in that way, the judges should be encouraged to make an indication of whether they believe an offender is suitable for home detention or not. I think that that would serve the same purpose. But if a judge fails to make a comment either way, then that prisoner would be eligible to apply, I would think. It would probably be in the more extreme cases where a judge would indicate that the offender never be allowed to take advantage of an option for home detention that I think judges would not be reluctant to make those sorts of comments in the very worst types of cases.

But if you fetter the judges and require them to make that determination at that time, I think it would be difficult for them because there could be those grey areas cases where it is not certain that this person is not going to be able to rehabilitate themselves while in gaol. So then the judge is being called on to predict some behaviour that might change quite dramatically while the person is in gaol. Someone at the time of committing an offence might be in a very, very different mental state to the way they are in six or eight years down the track, after they have been in gaol. They may not be suitable at the time but become suitable later, so to ask a judge to make a call at the beginning as a requirement I think is too onerous on the judge, and I do not think it would be effective.

The Hon. AMANDA FAZIO: The other issue that I am interested in is your comment about changing circumstances. The issue of changing circumstances once the prisoner is actually involved in back-end home detention could be significant depending on what happens in their home. They could either be put in a situation of breaching their conditions of home detention or perhaps of being deemed to breach it. What you think would be the best way to ensure that those people participating in back-end home detention have the capacity to seek

advice on the their circumstances without actually having to out themselves to Corrective Services or Probation and Parole as having breached their conditions?

Ms WRIGHT: I see—some form of confidential counselling—that sort of thing?

The Hon. AMANDA FAZIO: Yes, because I am just thinking that if the conditions for back-end home detention cannot be complied with because there has been a change in the home circumstances—

Ms WRIGHT: I see, yes.

The Hon. AMANDA FAZIO: What options should be available for that person to get assistance?

Ms WRIGHT: I think that unwitting breeches, if there is a change in family circumstances—for instance, if one of the conditions is that you have a landline telephone available at all times and Telstra cuts off your phone because he did not pay the bill, that would be an unwitting breach because that would be strictly a breach. In those instances you should be allowed to notify the Probation and Parole or whoever is administering it and notify them of that problem and remedy it straightaway.

I think each case has to be determined on its merits to see whether that person has breached it or not, but if there is a more grey or fuzzy type of area where a person is not sure if they have breached it and want to discuss it, I suppose—I really have not considered that question. I do not know how to answer that. Counsellors should be available—people with appropriate qualifications should be available to discuss, to go out and see people in home detention. They do go out and do spot checks on alcohol and drug testing and that sort of thing. Those people perhaps could have some discussions and just make sure that the person's progress is being monitored and make sure that they do not get into those difficulties, I suppose.

The Hon. AMANDA FAZIO: I was just thinking that if you have a custodial sentence and those sorts of issues come up, you can always go to a prison Chaplain or somebody like that who was not formally part of the system but is somebody who can give some counselling or advice or might be able to intercede in family issues for you, yet there would not be that sort of service available as a fall back if somebody was in back-end home detention.

Ms WRIGHT: If back-end home detention took into account that issue—and it can be a real one—maybe there should be the availability of a chaplain or someone like that, or someone equivalent to that, who is visiting people on home detention on a regular basis to ensure that those sorts of needs are met because they can be very important. Home custody should really have the same sorts of services available as prison custody.

The Hon. DAVID CLARKE: Ms Wright, you referred to technical breaches of home detention and you gave the example of the phone being cut off. I think you indicated that these sorts of circumstances should be regarded sympathetically. Is that not the situation now—that the supervisor in that particular case has a discretion to sympathetically look at those circumstances?

Ms WRIGHT: That is right, and I would imagine that the same would apply to back-end home detention. I would encourage that to be the case because obviously there are minor breaches or unwitting breeches for which you would not want to see someone's home detention terminated and then go back to the institution just because of an unwitting or minor breach. There needs to be a discretion.

The Hon. DAVID CLARKE: How do we rectify the inequality of people under the law outside Sydney, Newcastle and Illawarra who do not have the option of front-end home detention if the personnel and resources are just not available to extend the scheme? What other options are available to redress the imbalance between city and country, apart from extending the scheme if the resources are just not there?

Ms WRIGHT: I do not think there are any. I think that resources just have to be found to do it. I do not think there is any answer to that other than to say that the resources just must be found for it because the

prison population is growing exponentially in New South Wales. It is really growing quite quickly and the cost of that to the community is enormous. I think if some of those costs started to be transferred—because I think that the cost of home detention is significantly less to the State than the cost of having someone in gaol full time—so once you start extending the availability of home detention, then I think that there can be an offset of costs and those savings can be directed towards extending the scheme into regional and remote New South Wales.

The Hon. DAVID CLARKE: So you are very clear that there is no other option available. We just have to make the resources available to give that equality?

Ms WRIGHT: Yes, I cannot see any other option.

CHAIR: I would very much like to thank you for coming to today's hearing and for putting in your submission. As the Hon. Greg Pearce said, it is very valuable information, so thank you very much indeed. We will certainly be using it.

Ms WRIGHT: Thank you for the opportunity.

(The witness withdrew)

DAVID ROBERT DALEY, Director, Community Correctional Services, Corrections Victoria, 4/52 Flinders Street, Melbourne, sworn and examined:

CHAIR: I would very much like to welcome you and I would like to thank you very much for the work you have put into this submission. It is incredibly useful and very good, so thank you very much indeed. In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr DALEY: I am appearing as an individual, but with the support and encouragement of the organisation.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Mr DALEY: Yes, I am.

CHAIR: If you consider at any stage certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. Would you like to start by making a statement?

Mr DALEY: My opening statement is really only three points, and one of them, frankly, has just been covered. I have been encouraged by Corrections Victoria in my wish and desire to make a representation here and the WA Government Department of Justice has in fact read and approved the submission in that it accurately reflects the situation as described in WA. It is not my purpose coming here to presume to know what is best for the State of New South Wales, but my intent really was to share my perspective and experience as an administrator who set up one of the systems and has managed the second since its inception. The third point is that my evidence here is based on my career as a public service administrator and I am not legally qualified, although I am capable of referring in general terms to matters of legislation relevant to home detention.

CHAIR: We have a series of questions to ask you, as you can imagine. The first one is, when establishing the home detention scheme in Western Australia and Victoria, what practical difficulties did you encounter that may be relevant to the Committee's inquiry?

Mr DALEY: Western Australia was the second jurisdiction, I think, in the country to establish home detention. The difficulties there, I think, were around the fact that the draft of the legislation was prepared by

legal policy experts without reference to the people who are going to have to make the legislation work. Consequently, legislation that was inherited turned out reasonably quickly to have some practical weaknesses, but, by and large, it went remarkably smoothly. The difficulties I would say in Western Australia almost entirely related to the specific variant of home detention that they had in place over there, which was home detention as a condition of bail.

My own perspective is that home detention as a condition of bail never worked and in the 11 years I was there after it came into operation it consistently failed to achieve success rates higher than 55 per cent, and often struggled to make 50 per cent. The legislation governing home detention as a condition for back-end release worked amazingly well in most cases. My written evidence makes some references to the exceptions, and no doubt we will walk through that, but in the setting up of it, it turned out to be relatively simple. It is not a complex scheme conceptually to set up, and even though WA is very large, and I heard the previous witness talk about some of the issues in country New South Wales, it even turned out not to be especially difficult when we rolled it out into the country.

In Victoria the legislation for home detention had been drafted a year or two before my arrival. It had been sitting on the shelf because the government in Victoria at the time of its introduction did not have command of both the Houses and there was not bi-party support for the legislation. So the legislation was dormant until such time as the most recent State election in Victoria when it proceeded. There are some elements of the legislation—and we will come to those as well—primarily in relation to front-end home detention, which I think in practice do not work and are unlikely to work. If I can be specific now about that if you wish.

The Victorian legislation, I think, is not dissimilar at the front-end to New South Wales. The requirement there in the front-end is that a sentencing court considering the imposition of a home detention order must impose a prison sentence and thereupon stay the execution of the sentence pending an assessment of suitability for home detention. The difficulty is that if the assessment comes back unsuitable the court has no option but to invoke the sentence which was previously imposed without benefit of any advice. And, of course, courts have picked up on that very quickly and said, that this puts them in a very difficult position because the whole purpose of seeking the advice is to help clarify what the sentencing ought to be, but in fact if they have to impose the sentence the court does not have the discretion either to override the recommendation that a person is unsuitable. So in many jurisdictions the court must take in mind the recommendations of an assessment report but is not necessarily bound by them. In Victoria they are for this purpose. So the courts, by and large, have rejected its use.

The second thing that concerned them down there was the fact that having imposed the sentence they then lost control of the management of the post-sentence part of the order. In other words, if an offender breached, the breach is dealt with through the Adult Parole Board and not back through the courts. While I think there are probably some very good practical reasons for that, it has had the effect that the courts, as yet, have not embraced front-end home detention, and 90 per cent of home detention in Victoria, to date, has been back-end. The numbers might be starting to change as we manage to speak to more and more magistrates and encourage them to rethink its use, but I think there are some difficulties.

The Hon. GREG PEARCE: Could you just address the issue of the appropriate authority to make a determination as to whether an inmate is given back-end detention, and the alternatives?

Mr DALEY: I have had the benefit now of being in two States where the solution was quite different. In Western Australia it was the CEO of the organisation who had authority under the Act, but in practice that was delegated to a community correctional manager. So what would happen was when an offender arrived in prison they were obliged to be given information pertaining to home detention eligibility; they were also told about their likely eligibility against certain fundamental criteria; and advised of how they might apply. The situation was that if the review committee, whatever it was called, considered the case, and if it looked as though it met all the eligibility criteria when the date of eligibility came around, they would refer it to the nearest community correctional centre to examine the home circumstances and various other factors. If the community

correctional centre considered that the matter was suitable for home detention, it was referred up to the manager of that centre, who signed an order.

In the event that the offender breached the order, the view in WA at that time was that there had to be a prompt capacity to respond because they believed the community would not be tolerant of the fact that if an order was breached, weeks or months might go by before it came back before a court or another authority. So in WA, under delegated authority, the manager of the centre could also issue a warrant and hand it to police for execution. That did not always work, of course, because frequently the breach was because of the fact that the person had absconded and the police would take a look at the warrant and say, "Well, what exactly would you like me to do with it?" So it did not always work but, by and large, it worked pretty well.

The other reason why it worked reasonably well as an administrative option in WA was that by application of the law, home detention was only available to people with a head sentence of less than one year, which meant it could not be used as a prelude to either work release or parole, and the maximum period of home detention was only four months and we were talking about people who, as I said, had committed, generally, minor offences. So because there was no other order involved it was not a prelude to another order, and it was practically sensible to have an administrative capacity to do it. In Victoria, home detention may be a prelude to parole and in fact the Adult Parole Board determines eligibility; it is the Parole Board that issues the order.

What happens if an offender applies for a home detention at the back-end in Victoria? The application first goes to the parole board; administrative staff of the parole board give it a first order screening; if it passes the test they then refer it to community corrections to do all of the other checks; and then it goes back to the board that makes the order. The other thing is, in WA it was much more difficult to get a parole board together at short notice, or a quorum for a parole board, whereas in Victoria it is always possible any hour of the day or night to get a quorum if you need one by calling a couple of board members. So in the event that a breach needed to be dealt with at midnight, there is no real difficulty in doing that.

My view is, having seen both, that in terms of public accountability and transparency, there are some advantages to the Parole Board doing that, partly because the parole board has independent executive powers, but also the parole board is presided over by a judge of the Supreme Court, and I think it is able to bring together an appropriate balance between the judicial and the administrative functions in considering home detention and all its aspects.

The Hon. GREG PEARCE: What are the most important reasons why you would support a back-end detention scheme? What are the objectives for them?

Mr DALEY: WA is probably not an especially good case because, I think quite honestly, going back to the late eighties, it was predicated on the need to try and move minimum security people out of prison in the belief that we cannot continue to build prisons and we should have people in prison for the right reasons: that they are a threat to the community. But the price of having minimum-security people removed from prison back into the community is that the community has to have confidence that they will be tightly managed. So partly it was a management and public visibility thing, but I think the real benefit of home detention, particularly in Victoria where it can segue into parole, is that it is part of the whole transitional management process. I think there is abundant international evidence now which says that graduated release into the community by and large works better than simple release cold at the end of sentence.

There is some evidence in WA from the University of Western Australia and a guy called Dr Rod Broadhurst, and it goes back to the early nineties. It is not about home detention per se, but it is about parole and about work release, which initially in WA was prison-based, but later became home-based. The evidence said that persons released on parole by and large fared better than those who were not, and the evidence said that where work release preceded parole so there was a continuously graduated process, that seemed to work better still. So in terms of transition and support, and I think the other thing which home detention has some strengths at, is that given the intensity of the supervision and the engagement with the offender and with the family at the

early stage immediately after sentencing, there are very strong opportunities to really manage that transition process well rather than, for example, through parole where a person might report a couple of times a week and there might be a home visit once a week. In those first few months when there is a lot of testing out and there are people re-familiarising with each other and trying to come to terms with the intensity of the regime, that level of support does seem to be beneficial.

The Hon. GREG PEARCE: From what you are saying, I take it you would support a broader range of offences being eligible for back-end detention.

Mr DALEY: Everywhere that I am aware of tends to start out reasonably conservatively, because people are reluctant to run ahead of public opinion, which is understandable. What ultimately happens in Victoria, of course, is not for me to say. It is currently under pilot only, and the pilot is due for review in the latter part of next year. I think one of the things that will then be considered is whether the system has been too conservatively applied, and whether there is room to open it out. I cannot speak for policy or government, but I am aware, from talking to some officers of the parole board, that they see an opportunity, once we learn to walk, to then walk at a steady pace and be a bit more relaxed and more adventurous with home detention.

In fact, in the United States of America, there is one form of home detention which is for high-risk offenders, and that seems to work remarkably well. That evidence I have only seen reported in the American probation and parole journal, I think in February 2001 or thereabouts. It was about home detention for serious offenders who were on parole and had failed on parole, but where the courts or the system was reluctant to throw them back in prison and decided to give them a last-gasp chance on home detention. In fact, more than 80 per cent of those people, in a sample size of about 480, completed home detention successfully. That is counter-intuitive, because you would think, "If they can't cope with ordinary parole, how the heck are they going to manage with intense supervision?" But it did work very well. So I think there is some indicative evidence that systems can be more adventurous than they tend to be.

The Hon. GREG PEARCE: There is a pattern emerging that, whilst there are some benefits for home detainees in terms of reuniting with family and so on, one of the disadvantages is becoming isolated in the house, without work or study necessarily accompanying that, and without the support systems that might be available in prisons, such as consultation, talking to other people, and so on. What is the experience in Victoria with what actually happens to people on home detention?

Mr DALEY: Victoria has a good, and quite broad, network supporting offenders. But it must be said that at this stage it is a pilot system in Victoria, and its application is still in the Melbourne metropolitan area. Melbourne, being a large city, has a variety of support networks for offenders. A variety of referral agencies are used, so that counselling, support, education and all of those things can be addressed. The legislation not only permits, but even encourages, offenders, subject to authorisation, to engage in certain programs. It says the offender must engage in personal development, or in counselling or treatment programs as directed by the secretary.

They are encouraged to accept any reasonable direction from the secretary in relation to the maintenance or obtaining of employment. So they are not shut off from those things. And, if they are not employed, they are required to do community work. So they are out of the house at certain times, and they are mixing with people in the community who are stable and responsible adults. I think 24 hours a day in a house is a prescription for a disaster. Home detention means, in my view, that you are under curfew unless you have an authorised reason to be absent for an approved purpose, and that purpose can be adequately monitored. It should not be taken to mean 24-hour in-house imprisonment, because then it does not serve a purpose at all.

The Hon. DAVID CLARKE: Mr Daley, would you think it acceptable that a prison inmate awaiting processing of an application for home detention be allowed out, unhindered, whilst the application is being processed?

Mr DALEY: My personal reaction to that is: Probably not. There is enormous pressure and anxiety on offenders during that assessment period. I think that was a key reason why, for example, home detention as a condition of bail had such low rates of success in Western Australia, because offenders were facing an outcome that was unknown, and in a situation where their apprehension was that they might end up doing time, or doing longer time, for example, if they were already in prison and they were unsuccessful. I think there is a fair amount of emotional pressure, and some offenders do not cope with that. Even if it is only a small number, the danger is that if some succumb to the pressure and run away, abscond or do something else that is foolish or unacceptable, public confidence erodes very quickly and then it is very difficult to recover it. So I think I would be very cautious about that.

The Hon. DAVID CLARKE: So you would be opposed to the practice?

Mr DALEY: By and large, I would say yes. It is not a subject that I have really thought about a lot, but, by and large, I would, yes.

The Hon. DAVID CLARKE: Is it a practice that Victoria has?

Mr DALEY: Only in the respect that, in relation to front-end home detention, the court more often than not will remand on bail, pending the assessment. In respect of back-end home detention, the offenders remain in prison until such time as a decision is made.

The Hon. DAVID CLARKE: I am only talking about those who are prison inmates at the time.

Mr DALEY: There is no provision for their release pending assessment.

The Hon. DAVID CLARKE: Is that the case in any other jurisdiction in Australia, as far as you are aware?

Mr DALEY: Not that I am aware of. It is some time since I had close relationships with the program in South Australia. The Western Australia back-end home detention program no longer exists in its original form. I have mentioned in my submission that they embodied elements of home detention and curfew in other early release options, but home detention per se does not exist there any more. I am not aware of any other jurisdiction in Australia where there is release pending assessment.

The Hon. DAVID CLARKE: Would it come as a surprise to you if it were occurring in another jurisdiction?

Mr DALEY: I have been in the business a long time. Nothing really would come as a surprise.

The Hon. DAVID CLARKE: Would it concern you if it were occurring in another jurisdiction?

Mr DALEY: I would need to understand the context and manner in which it was being managed. But, as a general observation, it would.

The Hon. DAVID CLARKE: How long has front-end home detention been in operation in Victoria?

Mr DALEY: It has only been in operation in Victoria for 15 months.

The Hon. DAVID CLARKE: Does it extend right throughout the State?

Mr DALEY: No, it does not. It is Melbourne metropolitan based, because it is a three-year pilot program. It will not be expanded until the pilot is evaluated.

The Hon. DAVID CLARKE: When that pilot is evaluated, if the decision is taken to continue with the scheme, will it be extended, or has that decision not yet been made?

Mr DALEY: That decision has not yet been made. I expect I may have some chance to influence that decision, but it will not be my decision. It would be my expectation that, subject to satisfactory evaluation, it would be expanded. In terms of some of the issues that affect every State, equality of access to regional services and the like, I think it should be expanded.

The Hon. DAVID CLARKE: How long has the scheme been in operation in Western Australia?

Mr DALEY: The Western Australian scheme commenced in April 1991. So, up to the time I left that State, it had been operating for about 10½ years.

The Hon. DAVID CLARKE: Did it operate right throughout the State?

Mr DALEY: Yes, it did.

The Hon. DAVID CLARKE: And quite successfully?

Mr DALEY: Yes. That may seem strange, given the size of the State, and the small population and its dispersal. It operated in some very far-flung places, so that even in remote indigenous communities in the Kimberley region home detention was not excluded.

The Hon. DAVID CLARKE: That was not found prohibitive from the point of view of resources?

Mr DALEY: Not especially. Electronic monitoring needs only one base. If you wanted to, you could monitor everyone in Australia from a fixed point, wherever you chose to put it. The electronic monitoring part of it technically is not complicated. It is not a limitation at all. What may be a limitation is, if the alarm goes off 500 kilometres from the nearest township, it may take you some time to get out there and it may be a bit late by the time you do. For example, in some remote, Aboriginal townships an agreement was signed with elders or the council of the community. We redefined home detention in a way that the home basically was defined to be the boundaries of the community, to enable offenders to hunt, mend fences or do something else constructive, because the community generally could not afford to carry people who are idle. So these people had to be mobile within the bounds of the community.

It was an honour system that basically said that the council of the community would acknowledge that should somebody leave the boundary or fail to observe obligations, it would so notify. A fee was paid to the council of the community, or there was some other negotiated arrangement. We had what I think was called an Aboriginal community supervision agreement. It was a legal, but informal, document of only two or three pages, written in very simple English, basically saying that the council would agree to take these people and in return would receive a negotiated range of payments. Those might be recovery of costs of food and clothing for the offender, or something else, within certain limits. It worked in those remote places.

In other country towns the size of Kalgoorlie or Bunbury there would be two or three security companies, and those security people could be given specific, limited powers. So that if, for example, in the middle of the night an alarm went off, that would divert to security. Security firms in Western Australia were an intrinsic part of the system. They are not in Victoria, and there is clear opposition in that State to that happening. In Western Australia, the security firms would augment home visiting. Once a day, or more than once a day, or if an alarm went off out of normal public service hours, a person from the security company would attend at the place. That security person had limited powers. The powers were to require the home detention person named on the home detention order to present himself or herself. The security company carried a photograph of the offender, so that the security person could require offenders to attend at the front door and identify themselves. The security person had power to examine the electronic wristlet, which was issued in Western Australia, for evidence of tamper. In the event that the offender was not there, or something else was amiss, the security

person would forthwith write a report and fax it to the home detention operational centre. By and large, that seemed to work amazingly well.

The Hon. DAVID CLARKE: As it worked so successfully throughout all of Western Australia, including in remote areas, can you see no reason why it should not work successfully in other States of the Commonwealth?

Mr DALEY: None intrinsically. Western Australia is a very large place. I am sure you would find people in Western Australia who would say it did not work, for whatever reason. But, if you look at the completion rates for home detention in that State, they were extraordinarily high. On average, there were about 85 per cent successful completions, and about 70 per cent of non-completions were simply delays in returning from curfew. Compared to any other form of supervision, those rates, by and large, were better than those other forms of supervision, and that was a pretty gratifying result.

Ms LEE RHIANNON: Earlier you spoke about the pressure that people can be under if they are restricted to a house for most of the hours of the day. Have there been any studies of the incidence of domestic violence and how to respond to that?

Mr DALEY: In fact, Victoria has spent a lot more time and effort considering domestic violence as a factor than did Western Australia. I think that is largely a product of the fact that the origins of home detention in Victoria were 10 years newer, and family and domestic violence are far more in the spotlight than they were say 15 years ago. I have some information about exactly what is happening with family and domestic violence in Victoria, if I can put my finger on it. But, if not, there is a Committee Against Family and Domestic Violence—which may not be its exact name—which was involved in the early consultations stages of the program parameters being set up. There are three different domestic and domestic violence groups that were involved in the training of staff in family and domestic violence issues.

Ms LEE RHIANNON: Training the staff who look after the offenders?

Mr DALEY: Training the staff. There would be capacity to make referrals to other organisations if there were seen to be stress signs. I am familiar with the Western Australian and Victorian systems, and I am reasonably well versed with the New Zealand system. Somebody might care to check, but I think the most credible evaluator of home detention in Australasia is Dr Anita Gibbs of the University of Otago. She has written a lot about the home detention program in New Zealand. I have read some of her material and I have referred to it in my submission as an attachment. Some of it is quite early. I have one here which I think is from 2001. She cites other studies, one I think in the United Kingdom and one in western Canada, that looked at those issues and interviewed fairly small samples—about 20 or 30 families, spouses and partners of home detainees. The pressures that they have mostly referred to have been the pressures of constantly being under each other's feet and the wives and partners sometimes feel as though they are incarcerated as well.

In Victoria there was a strong submission to the effect that the risk of domestic and family violence is great, partly because of the assumed fear of members of the family if they would not consent to the offender returning to the place of residence or being their sponsor. I see no reason why that is truer for home detention than it is for parole, work release or any other form of early release because exactly those same pressures are applied. I am rather puzzled as to why people would assume it is a difficulty for home detention and not assume it is a difficulty for some of those other forms of supervised order.

Ms LEE RHIANNON: In the case of home detention do the families or support people change their minds? Do you know of cases, and is this prevalent, where people have changed their minds?

The Hon. ERIC ROOZENDAAL: And what happened.

Mr DALEY: It has happened twice in Victoria.

Ms LEE RHIANNON: Twice in the whole scheme?

Mr DALEY: Yes. The scheme is quite small. If the scheme were a bit bigger and it had been running for a bit longer you would get a better sampling of this. In one case the family changed its mind and alternative accommodation was successfully located. In the other case alternative accommodation was not successfully located and the offender returned to prison, not on a breach but simply on withdrawal of consent. The family had withdrawn consent. There are some suspicions that perhaps the offender during authorised absences may have strayed from where he was supposed to be. We do not have sufficient evidence to demonstrate that. The mother of the offender said, "It is just causing me too much anxiety and too much stress. I withdraw my consent." That offender was returned to prison. So it will happen occasionally; it is a by-product. Ultimately you have to have that fallback position.

Ms LEE RHIANNON: Could you refer to costs? Under your system what costs are there to the family or to the support people?

Mr DALEY: There is no direct cost to them. One of the issues that comes up is that an offender is in the house and he is consuming food, power, water and electricity. He just sits there and that is a burden on others. That can be true. I rechecked yesterday with the manager of the home detention unit. She confirmed to me that home detainees in Victoria are receiving unemployment benefits when they are not working. She said that the Centrelink legislation raised some questions about that. Centrelink said that detainees had to meet the work test, attend for interview, attend at the job centre and be available to take up approved employment. So whether that is an adventurous interpretation in Victoria I cannot be sure, as I am not familiar with the legislation. It does not appear to be an issue, or it has not been an issue. In Victoria what we are getting mostly is white collar offenders anyway—driving, frauds and gambling-related events. Many of those people are well educated and employed.

Ms LEE RHIANNON: We were told that when offenders in New South Wales slot in their anklets it costs \$1 for each phone call.

Mr DALEY: The offenders do not bear those costs.

The Hon. ERIC ROOZENDAAL: It was \$1 a day.

Mr DALEY: There is no cost to the offender.

Ms LEE RHIANNON: So you pick up all those costs?

Mr DALEY: That is not something that I verified yesterday before I came up here. In Western Australia I can speak from certainty because I set up the program there. If an offender could not afford a fixed-line phone the department installed the phone. It was set up in such a way that he could not make outgoing calls, although we were not very clever in the early days. A couple of people found on the back of the phone what the number was so they rang their friends in Turkey and Townsville and said, "You can reach me on reverse charge calls."

The Hon. GREG PEARCE: Was that considered a breach?

Mr DALEY: I think we could well have done. I think we considered the first one a learning experience but we were too embarrassed to own up to it. That was 10 years ago. If there needed to be a line the cost of that line was met.

Ms LEE RHIANNON: So in Western Australia correctional services carried the cost, but in Victoria you are not sure?

Mr DALEY: I am not 100 per cent sure in Victoria. I believe it to be true but in Western Australia I am certain that that is so.

Ms LEE RHIANNON: It was put to us by one of the witnesses that having people on home detention could inflate the number of people under detention. All the beds in New South Wales are virtually fully occupied. It is just a way of relieving that pressure when more prisoners come into the system. Do you think there is anything in that?

Mr DALEY: I honestly do not know but I could venture a suggestion. In Western Australia it was not so, but by the same token it did not really appear that home detention made much of a dent in the prison population either. Basically, the numbers neither rose nor fell. When I was there home detention stabilised at around 80 participants at any given time, so it was a relatively small program.

The Hon. ERIC ROOZENDAAL: What was the total prison population?

Mr DALEY: When the scheme started it was somewhere round about 2,000. Currently, it is running at around 3,500 in Western Australia. I do not know how many people are under curfew arrangements. In Victoria we are now starting to find empty beds in prison anyway. The prison population has been reducing over the past two years and it is now down to about 3,600. So there is an interesting contrast in the views about correctional sentencing policy. It is not my right to make a judgment about that but it is interesting that in Victoria it does not seem to be a pressure.

The Hon. AMANDA FAZIO: I refer to women prisoners participating in home detention. Do you have any experience of that either in Western Australia or in Victoria?

Mr DALEY: Yes, but it is very limited evidence. In Victoria I cannot give you the exact number of women in home detention, but I believe it is exactly proportionate to the number of female prisoners to male prisoners in the State. That still means it is only 7 per cent or 8 per cent. On the numbers we have it usually only means about half a dozen people. There are some issues for women. That is the early feeling we have in Victoria. The feeling in Victoria is that women prisoners have, as everyone knows, quite a lot of specific disabilities that relate to a whole lot of stuff. They are much more likely than men to be child care givers. In many cases they have had a lifetime of serial abuse or misuse by partners or other people.

It is often quite difficult for women who are socially isolated and who do not have many resources to find suitable accommodation. I can refer to the advice I have been given. This is not my own observation. The manager of the home detention program told me that they found in the early days that location of suitable accommodation for women had been more of a problem than it had been for men. I am unaware of any differences in the completion rates for men versus women, but at the exit point there have been some difficulties.

The Hon. AMANDA FAZIO: Are you aware of research in any other jurisdictions on potential greater benefits to women being able to resume their family role through being able to use home detention?

Mr DALEY: No, I am not. One of the difficulties about correctional theory, literature and research generally is that until about the mid-1990s everyone knew that there were women's prisons, but if you were looking for serious research into women's issues in the correctional system, it was non-existent. It was just like women were not there, which is quite surprising. It was really only in the mid-1990s that I became aware of it. Initially in eastern Canada a few women started to look at practical issues affecting women in prison and they tried to construct theoretical views around what it means for women in the system. I do not know of any specific search about home detention and women at all.

The Hon. ERIC ROOZENDAAL: I am particularly interested in the Western Australian experience and the use by indigenous people of home detention. However, your explanation needs clarification. Basically, the elders of the community become the sponsors. Is that right?

Mr DALEY: That is a good enough way to describe it, yes.

The Hon. ERIC ROOZENDAAL: Do they still have to wear anklets in that situation?

Mr DALEY: In many cases they do. In all cases in Victoria they currently wear anklets. One of the matters that I would like to clarify is that home detention has to be an offender management system rather than an electronic management system. There are difficulties about always imagining that electronics will apply. In most cases they do. It was no real difficulty managing it with electronics in remote areas, but sometimes we took the view that if it was in a really remote place and we worked with council, had an agreement with council, had a good working relationship with council and that there was trust, we could rely on them to advise us. I was never made aware of the fact that that failed or that anyone abused the trust on either side.

The Hon. ERIC ROOZENDAAL: Yesterday someone who was on home detention gave evidence to the Committee. He said that for the first couple of months there was quite an intense surveillance program. He was visited up to five times a week and there was also breath testing and urinalysis for drugs. How does that fit in with making home detention available in remote areas?

Mr DALEY: In Western Australia there was no mandatory provision for alcohol testing. However, it could be applied. It is a controversial issue because in Victoria all offenders are randomly tested for drugs and alcohol. I have some personal views. As I am here representing myself rather than the organisation I am reasonably comfortable about expressing those views. Clearly, the Victorian policy position is that offenders should and must be tested because it is part of the public confidence in the program. My view relates in particular to Western Australia where detention was at the back end for short periods of time and it was not a lead into parole. Half of the purpose of home detention is to try to normalise people's capacity to resume, or if not to resume to adopt, a stable lifestyle.

The difficulty always seemed to me that if you had somebody in their own home and they were not able to leave it freely people would then come around and socialise at their house. If they were to have a can of beer or a glass of beer one of the difficulties would then be that if that were picked up, as it was likely to be, a judgment had to be made. If they are settled, their family relationships are positive, they are working and they are abiding by curfew, are we going to pull the home detention for the sake of that slip? If the answer is yes, are we returning people to prison because they need to be there, or is it simply to mark the fact that we do not allow departures from the rules? If the answer is no then pretty shortly, if we make a judgment that we will just counsel the offender and not do anything about it, the risk always is that you undermine the offender's confidence in the program. So it is a juggling act.

The other thing is that you can always have a graduated program that allows for more family time out. In Western Australia I think they used to call it recreational leave time but in Victoria it has a different name. You can graduate the amount of time that people can be authorised to be out of the house. In the same way you can graduate the testing program. In fact, I think it is possible to phase it down. Does that answer your question?

The Hon. ERIC ROOZENDAAL: There has been a fair bit of discussion about truth in sentencing and how the notion of back-end home detention in particular impacts on truth in sentencing. I think the Law Society previously argued that in fact it falls well within the gambit because it is incarceration but just in one's home. What are your views on that?

Mr DALEY: Once again I preface that by saying that a lot of the arguments about truth in sentencing are best held by lawyers. I do not see that truth in sentencing principles are compromised or undermined. The levels of monitoring and the intensity of the regime in many cases are far more demanding on prisoners than they are on prison farms or low-security prison institutions.

The Hon. ERIC ROOZENDAAL: I noticed that in your submission you actually mentioned that in some cases prisoners prefer minimum security.

Mr DALEY: And in Western Australia that was the clear evidence. I remember on one occasion my direct superior said to me that an offender at a minimum security prison who was eligible for home detention had refused to apply on the grounds that he was more comfortable where he was. I think she said we should not tolerate this because if these people are eligible we should be transitioning them, and if they refuse to apply or go out we should transfer them to remote country places. I said that would be interesting. An offender who is just doing his time quietly writes to the Ombudsman or the Minister and says, "I was just trying to do the sentence the court imposed and I got a double punishment because I refused to be exited from the prison." If the public thought about it, it is a very intense and demanding regime, although people might think it is an easy get out of gaol card. In Western Australia in 2001, the last year I was there, the evidence was that about 40 per cent to 45 per cent of eligible prisoners declined to apply for home detention because they thought the regime would be too demanding.

The Hon. ERIC ROOZENDAAL: Is that because they must take on too much responsibility themselves, whereas if they are in an institution that is all done for them, they just have to follow the rules?

Mr DALEY: I think that was certainly part of it. I never actually supervised offenders on home detention. I was the manager and the person who set up the system. I used to occasionally meet with those offenders. The subjective stuff I got back was partly it was about it being easier here because it is the question of jump, how high, how often and when can I stop versus being at home when it is either, "I have to take responsibility for myself. I have to start to take responsibility for my family relationships" or "I am fearful that I will not be able to meet the curfew demands."

The Hon. AMANDA FAZIO: I want to ask you about prisoners with special needs because we know that there is usually an overrepresentation of people with special needs and the prison system. How many offenders with special needs participate in home detention in Victoria, and what special assistance is offered to help facilitate their participation?

Mr DALEY: There are none presently but I am advised that there have been no applicants with special needs. That is new information to me so I have not had the time since I received it to do further follow up and see whether there are people with special needs who have been discouraged from applying or whether because the system is still relatively new in Victoria and people must be within six months of their eligibility date for outright discharge for parole to apply. It might just simply mean on the basis of the number of eligible people in the pool either none has come through or none has applied. Whether that is a matter of choice on their part or an assessment that they could not get the support, the system is intended that they should have equal access. If the Committee wants to follow up on what information we can supply about reasons that we have not seen applications, it would be quite easy to look into that for you.

The Hon. AMANDA FAZIO: What about your Western Australian experience?

Mr DALEY: In Western Australia it is fair to consider indigenous offenders as special needs groups. Outside that, by and large, there were very small numbers of people with special needs. In fact, I am not aware of any who had severe physical or mobility difficulties. I think that the most likely case there was learning difficulties or learning disabilities and we did have a number on the system but I cannot put statistics around it. Provided there were good family support networks and staff are willing to be a bit more flexible around how one interpreted the rigidity of the law and the requirements, I was never made aware that it was a real problem. But I suspect most of the answer comes back to the fact that the numbers are relatively low.

Ms LEE RHIANNON: Yesterday we heard from a young man who is in home detention. He described how during the first five weeks after he left prison he could come and go as he pleased; there was no regime in place. I was surprised that that. I am just wondering how the system works in Western Australia and Victoria. Do they immediately go into a home detention functioning system?

Mr DALEY: Yes. They are not released until all the arrangements are made for home detention to be operational. For example, when I was in Western Australia, if it took a few days to install a phone, by and large the release date would be fixed to coincide with when the phone was installed. I think in a couple of cases for technical reasons a phone arrived half a day later but that was a fairly rare event and I had seen something like maybe 4,500 people in the system. It was very much a strongly graduated program. From day one it was full on. "Full on" meant that it was a much tougher regime than perhaps it is now because it was a phone-in electronic system. Randomly computer-generated and driven telephone calls would arrive at your house at all hours of the day and night, driving everyone nuts. That was full on and those random calls could vary in number between eight and 30 a day. There was at least one home visit a day by security. There were likely to be other random home visits by community corrections officers, just checking on welfare and stuff.

In the first two weeks post release, as I remember it, offenders were not entitled to apply for what we called an approved recreational leave, and then after two weeks I think they were allowed to ask for four hours a fortnight provided they could say who they would be with, where they were going and it was an approved place. And then I think four weeks later it became eight hours a fortnight and then in the last month it might be eight hours a week. So it was a graduated thing. But at the beginning people by and large got pretty much nothing, and that is close to the way it would be in Victoria.

The Hon. GREG PEARCE: You said you are familiar with the New Zealand scheme. Is there anything in particular that we should be aware of or anything unique about that? Is there any comment you want to make about New Zealand?

Mr DALEY: It is interesting. For my sins, I am a New Zealander but that is a long time ago. I worked in foreign affairs there rather than corrections but I do have quite strong connections with people over there in the system. I am aware that critics of the system in New Zealand have argued that the failure rates and breach rates show that the system is patently not working. In my submission I think I referred to a report carried in the Wellington *Dominion Post* in the middle of last year saying that the department was unable to provide statistics even showing who was successful and who was not successful. A lot of newspapers and media seem to have picked that up in the past three or four months. They seem to have been having quite a belting over there. After 12 months the statistics on New Zealand's success rates and failure rates are freely available as part of their annual reports.

It was interesting to note that the failure rates for people on home detention up to 12 months after sentence had finished were lower than they were for most other forms of release. And although a year later they had gone up, so had the breach rates for all other forms of order. So we must bear that in mind. It is a question that cannot be taken alone. If home detention cannot simply be evaluated according to whether some people succeeded and some people failed, it must be looked at, I guess, in the broader context: What are the other options we have? What are the impacts of the other options? What are the successes and failures of those other programs? Generally throughout the world I think home detention has stood up pretty well.

The Hon. GREG PEARCE: What are the factors driving the reduction in prison numbers in Victoria?

Mr DALEY: In 2001 the Government funded what was called a corrections long-term management strategy, which said that left unchecked—and as I have indicated, Victorian prison rates have historically been very low compared to other parts of the country, and the reason for that is open to experts to speculate but the prison population, as everywhere else, was growing very rapidly in the mid to late 1990s. By 2000-01 the Government had made a decision that, left unchecked, the prison population would reach 4,600 by June of this year or perhaps next year—I am not exactly sure. What they wanted to achieve by funding the corrections long-term management strategy was reductions in rate of reoffending and to in fact achieve a reduction of 600 in the prison population in comparison to where the projections said that the prison population would otherwise have been.

I went to Victoria because the Government decided that it needed to reinvigorate community corrections and put money into that, and also provide more effective programs, more effective interventions,

provide a raft of psychiatric services, education, employment, housing support services for prisoners. In fact, in the past three years the number of people on community corrections has gone up by about 2,000. It is quite hard to know how many of those have been diverted from prison but under the formula adopted by government it is assessed that the impact of community corrections reinvigoration has saved, as of November, 437 prison beds. Home detention was intended to save another 80 prison beds. It was rather late starting and it has not achieved that yet, but overall I think that program is ahead of its targets. There is a range of prison programs to be set up as well, services for indigenous offenders, a whole range of stuff. Essentially, the prison population peaked at about 3,850 a couple of years ago. It is now tracking between 3,500 and 3,600, and it seems to be reasonably stable. The only worrying event in that I guess is that it is the women in prison where the numbers seem to have continued to grow.

(The witness withdrew)

KATHRYN MARGARET HOLMAN, Acting Assistant Director, Community Corrections, Department of Corrective Services, PO Box 1054, Queensland, sworn and examined:

CHAIR: What is your occupation?

Ms HOLMAN: I am currently the Executive Adviser, Correctional Operations, in the Office of the Deputy Director General, Queensland.

CHAIR: In what capacity are you appearing before the Committee? Are you appearing as an individual or as a representative of an organisation?

Ms HOLMAN: As a representative of the Department of Corrective Services, Queensland.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Ms HOLMAN: Yes, I am.

CHAIR: Can you explain how the graduated release program works in Queensland?

Ms HOLMAN: The graduated release program starts with a series of programs that are available to prisoners who are in custody. We have a classification system in Queensland that has prisoners classified as high, medium, low and open. When prisoners reach a low and open classification they are generally located at one of the open custody centres, that being a farm or a community custody centre. They are then able to apply to a serious offenders committee or to the sentence management in the centre to have resettlement leaves of absence. That can be in the form of a community service resettlement leave of absence or going to an approved sponsor. In general, the department favours the community service leave of absence program, whereby a prisoner can leave the centre—that being a farm—to go out into the community to perform community service work under some limited supervision. Prisoners who are successful in that type of program may then go on to apply for a resettlement leave of absence program to an approved sponsor for very limited time periods and definitely not overnight. That is the first foray that a prisoner in custody may have in going back out into the community.

Following that, prisoners can then apply for a post-prison community-based release option. In Queensland that currently consists of three order types. One is what we call a release to work order. That is where a community corrections board—an independent statutory board—approves an application for a prisoner to go and reside at a release to work centre, or something akin to a halfway house. They are then able to be given passes to leave the centre during the day to seek work or to attend work. They then come back to the centre in the evening and they are effectively supervised by correctional staff. In general, the department views that release to work order as being for prisoners with longer rather than shorter sentences, although the independent boards are getting into the habit of even having short-sentence prisoners go to release to work before they go on to home detention. The department is of the view that that is not particularly helpful to prisoners.

The boards may release to release to work and then to home detention or they may release to home detention and then parole or directly to parole. Home detention in Queensland involves a very small number of prisoners. However, it is seen as a very effective program. In 2003-04 we had a successful completion rate in the vicinity of 88 per cent. A home detention order is quite a stringent order that has conditions on it that the board considers necessary in order to protect the community and to ensure that the prisoner does not reoffend. Essentially, the person is released to home detention to an approved address and they are then subject to random and routine surveillance at that address. They can apply to a community corrections officer to leave that address for specific purposes, whether that is for essential purposes such as attending work, going to Centrelink or to the doctor. In addition, they can apply for a recreational leave pass, if you like, and for up to eight hours a week they can go to some kind of function but not to any licensed premises. Where they go is specified in a pass and they must rigidly apply the pass, which is subject to time limitations.

As I said, the community corrections boards can release to any one of those three order types and then consecutively to those order types, or they may release just to one. In some circumstances the boards will release directly to parole because of the individual's personal circumstances. I will give an indication of that. For example, we are of the belief that home detention does not work well in remote Aboriginal communities where a person is more likely to move around within their community. So having an order type such as a home detention order that does not allow the person to move within the community is seen as unrealistic. In those cases, it is more than likely that a person of Aboriginal or Islander descent who moves back to a remote community would be released by a community corrections board to parole. The parole order can contain any condition that the community corrections board deems necessary to protect the community or to ensure that the offender does not reoffend.

Having talked about the boards and their independence, I must say that the Queensland Community Corrections Board—which is our board that considers the release applications of prisoners who are sentenced to up to eight years or more—are given guidelines by a Minister in relation to the issues that they should consider when considering release to any type of post-prison order. The Queensland board, in turn, under legislation can give instruction or guidelines to the other regional community corrections boards of a similar nature. I think the boards tend to be rather risk adverse and we have seen a decline in the number of prisoners being released on post-prison community-based release orders.

CHAIR: Thank you. I have one other question in relation to the functioning of the boards and information about individual prisoners. Are prisoners in Queensland moved frequently between gaols?

Ms HOLMAN: Depending on their classification system they can be moved through gaols. We have prisons that are maximum security and then there are open prisons, which are more like farms. Ideally, you would want a prisoner to move from a high-security prison to an open-security prison. I think in general that occurs. However, there will always be some prisoners who do not move easily through the system.

CHAIR: My question is more about the community corrections boards. Does the same regional board deal consistently with the same prisoner or would prisoners be dealt with by a scattering of boards across the State?

Ms HOLMAN: In general, the one board would deal with one particular prisoner. Under legislation, the boards have a geographical area that they are responsible for. We have a number of prisons in the south-east corner of the State and there is potential for a person to move from one board's jurisdiction to another. But it is not a frequent occurrence, particularly not in the northern centres, where a person is more likely to spend their sentence in a particular prison. However, I can think of several circumstances recently where, for security reasons, a person who was housed in one of our most northern centres was moved to another centre. That would then change the jurisdiction of the board.

CHAIR: Thank you.

The Hon. GREG PEARCE: Do the independent boards make decisions about the release schemes, not the original judges or departmental officers?

Ms HOLMAN: At the time of sentencing a judge may make a parole recommendation, and it is just that: a recommendation for parole. A person may be given quite a large sentence with a low bottom for parole. In the legislation the boards are not bound by that recommendation. If a board believes that it has information that was not put before the judge at the time of sentencing that would materially alter the recommendation it is not bound by that recommendation. In Queensland a sentenced prisoner can apply for a post-prison community-based release order at 50 per cent of their sentence time, unless of course they are a serious violent offender and then they must serve 80 per cent of their sentence until they are eligible to apply for a post-prison order from a board.

The prisoners who are exempt from any post-prison order are those people who are serving sentences of less than two years. Those prisoners are able to apply for conditional release at two-thirds of their sentenced time. That determination is made by the general manager of the prison where the prisoner is housed. In making the decision whether or not they will allow the person to be released on conditional release, they look at their institutional conduct and of course the risk to the community. If people are released on conditional release orders, essentially, they are living in the community with the condition hanging over their heads that if they commit an offence during the period of the conditional release order they can be returned to prison and the order can be cancelled. So for prisoners sentenced to under two years it is not determined by board.

The Hon. GREG PEARCE: Who looks at breaches and decides what happens following breaches?

Ms HOLMAN: The Corrective Services Act allows departmental officers to suspend a post-prison community-based release order under section 149 for a period of up to 28 days. If a departmental officer does that the report is then sent to the board and the board must consider the circumstances of that decision. The board can then decide to suspend the order—agree with the suspension of the order and suspend it indefinitely. They can determine to re-release the offender if they do not agree with the suspension or they can cancel the order totally, which then means that the prisoner must go through the process of reapplying for a post-prison order. So both departmental officers and the boards have a role.

The Hon. GREG PEARCE: If there is the suspension does the inmate go back to gaol while it is sorted out?

Ms HOLMAN: That is true, yes.

The Hon. GREG PEARCE: So one would imagine that that would normally occur only in cases of reasonably significant breaches.

Ms HOLMAN: The legislation in Queensland allows departmental officers and the boards to have a person return to custody on suspicion. Whether or not we believe that a person has an intention to breach an order, we are able to send that person back into custody.

The Hon. GREG PEARCE: Do you have any statistics about the number of suspensions and the reasons for them?

Ms HOLMAN: No, I do not. I would say, particularly with home detention where we do not have a lot of tolerance for breaching of conditions, there are drug- and alcohol-related breaches. They are viewed very much in light of the safety of officers who attend the home to undertake surveillance. It is not seen as a particularly safe environment if a person on home detention is using drugs or alcohol. I do not have statistics on the suspensions but we have a low tolerance.

The Hon. AMANDA FAZIO: You said that you were quite strict on breaches to do with drug and alcohol issues. You said earlier that people on home detention are subject to random and routine surveillance. Does that include random and routine drug and alcohol testing?

Ms HOLMAN: Yes, it does. It is a condition of a home detention order that the person abstain totally from the consumption of alcohol and they are obviously not to use drugs. If they are taking particular medication a community corrections officer would follow that through with a treating medical officer to determine the nature of the medication that the person is taking. We have quite an elaborate drug screening process in Queensland and we do what we call an instant check test to determine whether or not drugs are present through urine testing. We further follow that up with confirmatory testing through the government laboratories.

The Hon. AMANDA FAZIO: What is the Queensland experience with women prisoners on home detention? Do you have many women prisoners on home detention and, if so, do they cause any particular challenges?

Ms HOLMAN: I do not have the statistics for you. Home detention has been operating in place and for some time. I do not think there would be a disproportionate number of women on home detention. I would think that the number of women on home detention order would mimic the percentage of women in the prison population. In terms of the range of offences for which women are imprisoned, I can, perhaps, consider my observations that women are in prisons for more drug-related offences these days than has been previously the case.

The Hon. AMANDA FAZIO: How is the graduated release program tailored for offenders with special needs, particularly prisoners with intellectual disabilities and learning disabilities? I do not know about Queensland, but the corrections system in New South Wales certainly has a high proportion of people with mental health problems.

Ms HOLMAN: I think that is probably mimicked across all the States. It is interesting that we are trying to gather some statistics about a mental illness in correctional centres in Queensland ourselves, and we consider that a major issue for us. We do not gather statistics currently about the number of offenders with special needs moving on to post-prison orders. Again, my observation is that we certainly do have a high proportion of people with mental illness and intellectual disability within the correctional system. I would have to say that home detention is not an easy order. It requires a fair degree of self-control and self-awareness on behalf of the offender on that order because they are subject to pass provisions, curfews and rules. A person who has a mental illness or intellectual disability and who does not have the good support of a family or relative may find it a challenging order. However, one would have to say that in most circumstances a person going on a home detention order would be going to an address that has a supportive environment, otherwise we would not assess it as being a suitable address.

The Hon. DAVID CLARKE: How long have you had home detention in Queensland?

Ms HOLMAN: I am going to have to do an approximation here. I think it was probably with the last Act in 1988. I could confirm that later for you.

The Hon. DAVID CLARKE: Does home detention extend right throughout the State?

Ms HOLMAN: Yes, it does. There are some challenges in Queensland because of the geographical distances between regional centres. We have only 33 area officers at present in Queensland. However, by using members of the community in more isolated areas who are effectively sworn in, if you like, as officers of the department we can extend our range of supervision to those individuals. However, it becomes more of a surveillance exercise rather than an intervention exercise, but it can be done.

The Hon. DAVID CLARKE: And it operates quite effectively in those areas?

Ms HOLMAN: There is a lot of work that the individual area officer staff have to do with a person who they are having remotely supervise the individual. It is the quality of those relationships and the monitoring of the surveillance activities that would determine the quality.

The Hon. DAVID CLARKE: Has it operated right throughout the State from the very beginning of the scheme?

Ms HOLMAN: That is my understanding. In Queensland you may have seen from my submission that we did a trial of home detention with electronic monitoring in 2001. It did not operate throughout the State, it operated in the south-east corner of Queensland. However, home detention without electronic monitoring is able to be operated throughout the State. Having said that a board, in considering a person's application for a post-prison order, depending on the person's circumstances that they may view the effectiveness of a home detention order where the person is not being supervised by a departmental officer as not being as rigorous, perhaps, as that when they were being supervised by a departmental officer. But there is the potential to run it across the State.

Ms LEE RHIANNON: You may have been here when I asked a couple of these questions earlier, and I would be interested in the Queensland experience. Do the people in home detention or their families carry any of the cost?

Ms HOLMAN: The costs associated with home detention would be in the Government's favour, I would have thought. We do not have a cost attached to supervision practices in home detention. By virtue of the fact that the prisoner is released from prison there are some savings made in terms of not having to continue to build infrastructure. If the person is working in the community they are actually supporting their family in a very positive way and may, in fact, reduce costs to Government by virtue of the fact that they are the breadwinner.

Ms LEE RHIANNON: Who pays the cost of calls that have to be made?

Ms HOLMAN: The department carries that. A surveillance of people on home detention is both random and routine. The person subject to past provisions can come into an office and have some interventions with a Community Corrections Officer, but we also have officers who go out to the person's home randomly to determine that they are where they are needed to be. Those costs are borne by the department.

Ms LEE RHIANNON: When people come out of gaol to go into home detention is the system up and running or do they have to wait, and in that time can they do whatever they want to do?

Ms HOLMAN: A person who is released by the Community Corrections Board to home detention can be released as soon as the board makes the order because the address to which they are being released has been assessed already as being suitable. If there were not a suitable address and a Community Corrections Board made the decision that they wanted to release the person to home detention they would not be released until a suitable address could be determined.

Ms LEE RHIANNON: If the phone were not connected you would not release them until the phone was connected?

Ms HOLMAN: In the reports that are provided to the Community Corrections Board we would identify whether or not there was a telephone. It is a requirement of home detention that a landline is installed in the home. If there was not a landline and there was no intention of the house occupant to install one, the address would not be considered suitable.

The Hon. ERIC ROOZENDAAL: Are you aware of any offenders who have collected enough to undertake home detention because they believe that it is more onerous as full-time custody?

Ms HOLMAN: No, I am not aware of that. It is an onerous order, there is no doubt about that. For a prisoner who has not been released to a release to work order but is in custody and looking at whether they can be released to the community, I would be of the belief that they would consider a release to a home detention order as being more favourable than being in custody.

The Hon. GREG PEARCE: Are you aware of any of the inmates on home detention being paid unemployment benefits? Do they claim unemployment benefits?

Ms HOLMAN: They are eligible to apply to Centrelink for unemployment benefits. They are encouraged to strongly seek employment and gain employment. It is the same as a milestone for an offender that they are actively engaged in employment, and we would encourage that. But they are eligible to apply for Centrelink benefits, should they not be successful in gaining employment.

The Hon. GREG PEARCE: Do you have any figures on the breach rate?

Ms HOLMAN: On home detention?

The Hon. GREG PEARCE: Yes.

Ms HOLMAN: As I said, we have zero tolerance. Departmental officers have zero tolerance. I could not give you the statistics about the number of suspensions. However, the boards are able to overturn a suspension and re-release an offender. They have to review the suspension of the departmental officer and make a determination themselves whether or not they want the person re-released. The paramount importance, of course, is protection of the community. If they are of the belief that the suspension by the departmental officer adds nothing to or detracts from the protection of the community then they would re-release the person.

The Hon. GREG PEARCE: Could you take on notice the numbers of suspensions?

Ms HOLMAN: By departmental officers and boards?

The Hon. GREG PEARCE: Yes.

Ms HOLMAN: Yes.

The Hon. GREG PEARCE: When you say "zero tolerance", yesterday we were told that the New South Wales home detention record is that 46 per cent have breaches. Hansard can record that the witness's eyes shot up in amazement.

CHAIR: It is the definition of "breach" that was the issue.

The Hon. ERIC ROOZENDAAL: Some are very minor, such as being late for curfew.

Ms HOLMAN: Some of them can be very minor. The significant factor here is what is counted as a successful completion on a home detention order. As I said, we have a current 2003-04 successful completion rate of around about 88 per cent. Although the person can be returned to custody for a rather minor violation on an order, if the board re-releases that person on the home detention order and they ultimately successfully complete that order we view that as a successful completion. There are issues about policing and order and maintaining its integrity. Our view is that it is quite good to have a policing capacity in terms of monitoring the compliance and the conditions of the order. But ultimately if the person is returned to that order by a Community Corrections Board and they successfully complete, we would view that as a successful completion.

The Hon. GREG PEARCE: When you get figures on suspensions, could you put those in the context of the total numbers of prisoners in Queensland and the total numbers that go on home detention and so that we can make that comparison?

Ms HOLMAN: Yes.

The Hon. GREG PEARCE: Do I take it from what you said that you do not have an electronic bracelet or anklet on inmates?

Ms HOLMAN: No, we do not. In 2001 we did a trial and they were very small numbers. My submission details about 74 offenders. The reasons for that were that bracelets did not seem to add any statistical significance to the successful completion of the orders. I think it is more likely that there is a degree of community acceptance of electronic monitoring. However, very clearly we are of the view that electronic monitoring on its own does nothing to assist the offender to integrate into the community or to be successfully under surveillance. The technology used in Queensland was not GPS. At the time it was considered unreliable technology, so we used a different mechanism whereby we really just could detect when an offender was moving out of the geographical range that had been set for them using their bracelet. We did not see any great advantage to the use of electronic monitoring and it was quite an expensive technology.

The Hon. AMANDA FAZIO: In relation to prisoners who have their orders suspended, could you outline what their appeals mechanisms are if that were to occur?

Ms HOLMAN: Essentially there is not an appeals mechanism for a suspension of an order of a departmental officer. However, given that the departmental officer can only suspend the order for 28 days the matter has to go before an independent Community Corrections Board. The prisoner, having been returned to custody, is then able to make submissions to the Community Corrections Board in regard to whether they should or should not have been suspended. Having made certain submissions I guess that is a form of appeal, although there is no effective appeal mechanism.⁵

The Hon. AMANDA FAZIO: The other issue I want to ask about is that you said the community corrections officers come in and do this random routine surveillance on people. But is there any other formal sort of support system in place so that if the person feels that that they are getting to the point where they might end up breaching the order, rather than having to go to the person who has the role of policing the order, there is somebody else like the equivalent of a prison chaplain or someone with whom they can talk through the issue to try to keep on the straight and narrow?

Ms HOLMAN: The person who would be undertaking the surveillance of the offender is not the person whom they have as their case officer. It is a different person. There is some compromising if on the one hand you are trying to police an order and on the other hand support an offender in their reintegration, so in general the person who is undertaking the surveillance of the individual is not the case officer.

The Hon. AMANDA FAZIO: So does the opportunity exist within the system if, for example, there has been a bereavement in the offender's family for the person who is providing the support to let the other corrective officer who has the policing role know that there is a difficulty in the family and that the offender's behaviour might be a bit more erratic than usual, or that they might have had a shot of brandy, or whatever? Or would they never tell him that?

Ms HOLMAN: The quality of communication is what makes programs like this successful. You have got to have an integrated approach towards the management of an offender. It cannot be piecemeal so, yes, that information can be relayed to the person who is doing the surveillance activities. However, Queensland would not view having a shot of alcohol as being acceptable.

⁵ Ms Holman provided further information in regards to her evidence given at the hearing.: In Queensland prisoners and offenders have the right to apply for a review of an administrative decision via the Judicial Review Act. In these circumstances a prisoner can ask the Supreme Court to determine if a decision was made according to law.

The Hon. AMANDA FAZIO: But they would handle other circumstances with a bit more sensitivity, depending on the family circumstances?

Ms HOLMAN: Absolutely. While I am stressing the point that home detention has a surveillance component to it, that of itself will not assist an offender to reintegrate into the community. There are all sorts of reasons why an offender needs support and perhaps criminogenic programs to assist them to address their offending behaviour, not the least of which is the amount of time that the person may have been in custody or the antecedents to their incarceration where people do not go into custody unless they have significant issues in their lives. Returning a person to a similar environment in those similar circumstances without there being support and interventions for that individual will not be successful, so there has to be that level of support and intervention.

The Hon. ERIC ROOZENDAAL: I just wanted to clarify that there is no electronic monitoring used, so the only form of supervision is by random checks. Is that right?

Ms HOLMAN: That is right, and they are done in two ways: one is a physical check by departmental officers and the other one is a telephone check. As I said, the telephone has to be a landline. You cannot do it on a mobile phone.

CHAIR: We just heard from the last witness that Western Australia actually uses security firms in some cases in the country as their surveillance people. Do you have any systems like that at all?

Ms HOLMAN: No, we do not, and there has often been some debate about that—whether it should be security firms or whether it should be departmental officers. My personal opinion is that it should not be security officers for the very point that we just spoke about before which is the level of communication that is required and perhaps the level of support. There might be an economic argument in some isolated communities for security firms to do that type of surveillance, but I am of the view that it will not actually enhance the supervision of the offender.

CHAIR: Yes, I understand that, but there is the logistics of actually providing departmental officers in a lot of these far-flung places to consider. Is there a chance then that a home detention orders are not delivered in those places?

Ms HOLMAN: As I said previously, if a person is on home detention outside of the immediate geographical area of an area office, departmental officers may employ casual home detention or leave of absence supervisors in the local community.

CHAIR: Yes, I heard that.

Ms HOLMAN: Those people go through a screening process, of course. They have to be security checked and there are essentially lines of communications set up between the area office and that person who is providing that remote supervision. I think the boards—as I said before, if they had some concerns about a person being located so far away from an area office and understood that the person who would provide that surveillance activity is not a departmental officer per se and may decide not to release a person to home detention, they might rather release the person to parole because they have the capacity to release to any of those orders.

The Hon. AMANDA FAZIO: I think you said earlier that you have 33 area offices. Do you have a pretty good geographical spread of those across rural areas in Queensland?

Ms HOLMAN: No. In my submission I identified that the department is developing a rural and remote strategy; that we have seen that our services to the Cape and the Gulf communities do not provide equity of service to our products in Queensland. Currently we are looking at the feasibility of additional area offices

located in what we are calling service hubs in the Cape and the Gulf communities to ensure that we can provide a more effective service. At present in the dry season it is a long road trip. In the wet season it is a fly in, fly out service that provides minimal supervision.

CHAIR: I thank you very much for coming and giving us your information. It has been very good.

Ms HOLMAN: Thank you.

Appendix 4 Tabled documents

Date tabled	Tabled by	Document title	Author
18 March 2005	Mr David Daley, Director, Community Correctional Service, Corrections Victoria	<i>The Electronic Ball and Chain? The Operation and Impact of Home Detention with Electronic monitoring in New Zealand</i>	Anita Gibbs and Denise King, University of Otago
18 March 2005	Mr David Daley, Director, Community Correctional Service, Corrections Victoria	Email to Mr Daley regarding Home Detention family violence training dated 26 August 2004	Andrea Skinner, Corrections Victoria
18 March 2005	Mr Michael Strutt, Volunteer, Justice Action	<i>Mentor's handbook</i>	Justice Action
18 March 2005	Mr Michael Strutt, Volunteer, Justice Action	<i>Breakout Design + Print</i>	Breakout
18 March 2005	Mr Michael Strutt, Volunteer, Justice Action	Answers to questions on notice	Justice Action
18 March 2005	Mr Michael Strutt, Volunteer, Justice Action	Justice Action Brochure	Justice Action

Appendix 5 Terms of reference for the inquiry into community based sentencing options for rural and remote areas and special need/disadvantaged populations

- 1) That the Standing Committee on Law and Justice inquire into and report on whether it is appropriate and in the public interest to tailor community based sentencing options for rural remote areas in NSW and for special need/disadvantaged populations, including:
 - (a) The perceived benefits and disadvantages of community based sentencing options including Periodic Detention, Intensive Supervision Programs (Home Detention e.g. Drug Court), Community Supervision Orders.
 - (b) The relationship between different Intensive Supervision Programs – Home Detention and Periodic Detention (Stage 1 and 2).
 - (c) The impact of the availability of Intensive Supervision Programs upon rural and remote communities.
 - (d) The place of Periodic Detention within a spectrum of community based sentencing options utilising intensive supervision.
 - (e) The criteria for eligibility for community based sentencing options.
 - (f) The experience of other jurisdictions in implementing community based sentencing options.
- 2) Any other related matter.

The Committee to report by July 2005.

Terms of references referred by the Attorney General, the Hon Bob Debus MLC, 2 April 2004.

Appendix 6 Minutes

Minutes No 10

10.45am Monday 7 June 2004

Room 814/815 Parliament House, Macquarie St, Sydney

1. Present

Ms Robertson (in the Chair)

Mr Clarke

Ms Fazio

Mr Pearce

Ms Rhiannon

2. Apologies

Mr Burke

3. Minutes

Resolved, on the motion of Ms Rhiannon, that the Minutes of Meeting No 9 be adopted.

4. Correspondence

5. Inquiry into back-end home detention

The Committee considered the terms of reference for an inquiry into back-end home detention referred by the House on 2 June 2004.

Resolved, on the motion of Ms Fazio:

(a) *Closing date for submissions*

- i. That the closing date for submission be Friday 30 July 2004.

(b) *Advertising*

- i. That advertisements calling for submissions be placed in the following publications:
 - *Sydney Morning Herald* on Saturday 19 June 2004
 - *The Weekend Australian* on Saturday 19 June 2004
 - *The Daily Telegraph* on Wednesday 23 June 2004
 - *The Law Society Journal* in the July edition (published 1 July 2004)

(c) *Press release*

- i. That a press release from the Chair announcing the inquiry be distributed to the Parliamentary Press Gallery and Media Monitors prior to advertisement.

(d) *Call for submissions*

- i. That the Chair writes to interested parties inviting submissions, with Committee members invited to submit names to the secretariat by 5.00pm Friday 15 June 2004.

- (e) The secretariat will distribute a background paper on home detention by Friday 15 June 2004. Ms Fazio requested that relevant interstate and international websites be included, to assist Committee members do follow-up research.

6. ...

7. Next meeting

The Committee resolved, on the motion of Ms Fazio, to meet in the last week of July on a day and at a time determined by the Secretariat in consultation with the Committee.

The Committee adjourned at 5:15 *sine die*.

Rachel Simpson
Senior Project Officer

Minutes No 11

1:00pm Tuesday 16 November 2004
Room 1153 Parliament House, Macquarie St, Sydney

1. Present

Ms Robertson (in the Chair)
Ms Fazio
Mr Pearce

2. Apologies

Mr Clarke
Ms Rhiannon
Mr Roozendaal

3. ...

4. Inquiry into back-end home detention

5. Resolved, on the motion of Ms Fazio, that the Chair seek leave of the House to extend the reporting date for the inquiry to Thursday 7 April 2005.

6. Next meeting

The Chair advised of her intention to call the 12th deliberative meeting in the first sitting week of December at a time and date to be determined by the Secretariat in consultation with the Committee.

The Committee adjourned at 1:10pm *sine die*.

Rachel Callinan
Director

Minutes No 12

12:30pm Tuesday 7 December 2004

Room 1153, Parliament House, Macquarie St, Sydney

1. Present

Ms Robertson (in the Chair)

Mr Clarke

Ms Fazio

Mr Pearce

Ms Rhiannon

Mr Roozendaal

2. Minutes

Resolved, on the motion of Ms Fazio, that Minutes of Meeting Nos 10 and 11 be adopted.

3. ...

4. ...

5. ...

6. Inquiry into back-end home detention

Submissions

Resolved, on the motion of Ms Fazio, that Submissions 1-4 and 6-17 be published and that Submission 5 be published with name suppressed at author's request.

Hearings

Resolved, on the motion of Mr Roozendaal, that the Committee hold two days of public hearings in March 2005, on a date to be confirmed by the Secretariat in consultation with the Chair, subject to Members' availability.

Resolved, on the motion of Ms Fazio, that the Committee endorse the witness list distributed by the Secretariat, with Committee Members invited to submit names of further witnesses to the Secretariat by 17 December 2004.

Resolved, on the motion of Ms Fazio, that the Committee cover the travel costs of witnesses to be invited from New Zealand.

7. ...

8. ...

9. ...

10. Next meeting

The Committee adjourned at 1.20pm *sine die*.

Rachel Callinan

Director

Minutes No 13

1:00 pm Thursday 3 March 2005

Room 1153, Parliament House, Macquarie St, Sydney

2. Present

Ms Robertson (Chair)

Mr Clarke

Ms Fazio

Mr Pearce

Ms Rhiannon

Mr Roozendaal

3. Minutes

Resolved, on the motion of Ms Fazio, that the Minutes of Meeting No 12 be adopted.

4....**5. Inquiry into back-end home detention*****Correspondence***

The Chair tabled the following items of correspondence:

8 February 2005 – to Committee from Mr Jared Mullen, General Manager Policy Development, Department of Corrections NZ declining the Committee's invitation to appear at a public hearing on 17 March 2005.

Submissions

The Chair tabled the following submissions received

Submission No 18 – (partial confidentiality requested).

Submission No 19 – NZ Department of Corrections.

Submission No 20 – Qld Department of Corrective Services.

The Principal Council Officer advised the Committee in relation to submission No 18.

The Committee deliberated.

Resolved, on the motion of Mr Roozendaal, that Submissions No 18-20 to the Inquiry into back-end home detention be published, with the name and address of the author of Submission No 18 suppressed.

Public hearings 17 and 18 March 2005

Resolved, on the motion of Mr Clarke, that the Committee invite the author of Submission No 18, a home detainee, to give evidence to the Committee as part of the Inquiry into back-end home detention.

Resolved, on the motion of Mr Clarke, that the evidence given by the author of Submission No 18 be heard in camera, with an expectation that upon reviewing the evidence the Committee will resolve that the transcript be published, unless it is not in the public interest to do so.

Resolved, on the motion of Mr Clarke, that the Chair write to the Commissioner for Corrective Services informing him of the Committee's intention to hear evidence from a home detainee, and asking the Commissioner to advise how the Department can best facilitate the detainee's appearance before the Committee.

6....

7....

8....

9. Next meeting

The Committee adjourned at 1:30 pm to reconvene at 8:45 am on Tuesday 15 March 2005.

Rachel Callinan
Director

Minutes No 15

9:30am Thursday 17 March 2005

Room 814-815, Parliament House, Macquarie St, Sydney

1. Present

Ms Robertson (Chair)

Mr Clarke

Mr Pearce

Ms Rhiannon

Mr Roozendaal

2. Apologies

Ms Fazio

3. Public hearing – Inquiry into back-end home detention

Witnesses, media and public were admitted.

The Chair read an opening statement to the witnesses, media and public.

Ms Catriona McComish, Senior Assistant Commissioner, Community Offender Services and Ms Joanne Joseph, Acting Director, Intensive Supervision Program, both of the NSW Department of Corrective Services, were sworn in and examined.

Witnesses took a number of questions on notice during the hearing and agreed to accept additional questions from the Committee arising out of the hearing. The Chair requested that answers be returned to the Committee Secretariat.

Evidence concluded and witnesses withdrew.

Mr Jim Simpson, Director, NSW Council for Intellectual Disability, was sworn in and examined.

Evidence concluded and the witness withdrew.

Mr Nicholas Cowdery AM QC, Director of Public Prosecutions, NSW Department of Public Prosecutions was sworn in and examined.

Evidence concluded and the witness withdrew.

Sr Myree Harris RSJ, President, Advisory Committee for the Care of People with Mental Illness, Coalition for Appropriate Supported Accommodation for People with Disabilities and Mr Graeme Fear, Coordinator, Mental Health Issues, NSW State Council, St Vincent de Paul Society, were sworn in and examined.

Sr Harris tabled a supplementary submission.

Evidence concluded and the witnesses withdrew.

Mr Brian Sandland, Director Criminal Law, NSW Legal Aid Commission, was sworn in and examined.

Evidence concluded and the witness withdrew.

The media and the public withdrew.

An in camera witness was sworn and examined.

Evidence concluded and the witness withdrew.

4. Deliberative meeting

Resolved, on the motion of Mr Pearce, that the transcript of the public hearing for the Inquiry into back-end home detention held on 17 March 2005 be published.

Resolved, on the motion of Ms Rhiannon the transcript of the in camera evidence for the Inquiry into back-end home detention held on 17 March 2005 be published, provided that personal references in a small personal section of the in camera evidence be removed prior to publishing the in camera evidence.

Resolved, on the motion of Ms Rhiannon, that the Chair seek leave of the House to extend the reporting date for the Inquiry into back-end home detention until 26 May 2005.

5. Adjournment

The Committee adjourned at 3:00 pm until 9:00 am on Friday 18 March 2005 (public hearing for back-end home detention Inquiry).

Rachel Simpson
A/Director

Minutes No 16

9:00 am Friday 18 March 2005

Room 814-815, Parliament House, Macquarie St, Sydney

1. Present

Ms Robertson (Chair)

Mr Clarke

Ms Fazio

Mr Pearce

Ms Rhiannon

Mr Roozendaal

2. Public hearing – Inquiry into back-end home detention

Witnesses, media and public were admitted.

Mr Brett Collins, Manager and Mr Michael Strutt, Volunteer, Coordinator, Justice Action, were sworn in and examined.

Evidence concluded and witnesses withdrew.

Mr Paul Winch, Public Defender, NSW Public Defenders Office, was sworn in and examined.

Evidence concluded and the witness withdrew.

Ms Pauline Wright, Chair, Criminal Law Committee, Law Society of NSW, was sworn in and examined.

Evidence concluded and the witness withdrew.

Mr David Daley, Director, Community Correctional Services, Corrections Victoria, was sworn and examined.

Evidence concluded and the witness withdrew.

Ms Kate Holman, Acting Executive Director, Community Corrections, Queensland Department of Corrective Services, was sworn in and examined.

Evidence concluded and the witness withdrew.

3. Deliberative meeting***Confirmation of Minutes***

Resolved, on the motion of Ms Fazio, that Minutes No 14 be confirmed.

Transcript and tabled documents

Resolved, on the motion of Ms Fazio, that the documents tendered by witnesses at the public hearings on 17 and 18 March 2005, be accepted and published.

Resolved, on the motion of Ms Fazio, that the transcript of the public hearing on 18 March, be published.

4. Adjournment

The Committee adjourned at 12:45 pm *sine die*.

Rachel Simpson
Director

Minutes No 17

1:00pm Wednesday 6 April 2005

Room 1153, Parliament House, Macquarie St, Sydney

1. Present

Ms Robertson (Chair)
 Mr Clarke
 Ms Fazio
 Mr Pearce
 Ms Rhiannon
 Mr Roozendaal

2. Confirmation of minutes

Resolved, on the motion of Ms Rhiannon, that Minutes No 15 and 16 be confirmed.

3. Correspondence

Chair tabled correspondence:

4. Correspondence received:**Back-end home detention Inquiry**

- 15 March 2005, from Commissioner of Corrective Services, confirming Mr Jaffrey's attendance at the hearing on 17 March 2005
- 16 March 2005, from Sarah Brennan, A/Manager, Resources and Executive Support, DCS, enclosing Mr Jaffrey's conditions for attending the hearing on 17 March 2005
- 18 March 2005, from Mr David Daley, Director, Community Correctional Services, Victoria, containing additional information in regard to family violence training for home detention supervisors
- 21 March 2005, Email from Mr David Daley, Director, Community Correctional Services, Victoria, to A/Director, providing additional information in response to a question during the hearing on 18 March 2005
- 22 March 2005, from Ms Catriona McComish, Department of Corrective Services, providing written answers to questions on notice
- 29 March 2005, from Office of the Minister for Justice, forwarding letters from Mr Andrew Jaffrey to the Minister and to the Shadow Minister relating to his appearance before the Committee on 17 March 2005
- 5 April 2005, from Ms Alison Hunter, Queensland Department of Corrective Services, providing answers to questions taken on notice at hearing on 18 March 2005
- Supplementary submission No 17a, Sr Marie Harris (tendered at public hearing on 17 March 2005)
- Submission No 21, Indigenous Social Justice Association Inc

Resolved, on the motion of Mr Pearce, that the Committee defer discussion of correspondence received regarding Mr Jaffrey's appearance before the Committee on 17 March 2005 until the next meeting.

Resolved, on the motion of Mr Pearce, that the written answers to Committee questions to the Department of Corrective Services as part of the Committee's inquiry into back-end home detention, be published.

Resolved, on the motion of Mr Pearce, that submission number 21 and supplementary submission no 17a to the Inquiry into back-end home detention be published.

5. ...

6. Adjournment

The Committee adjourned at 1:30pm *sine die*.

Rachel Simpson
A/Director

Minutes No 18

10:00 am Friday 13 May 2005

Room 1153, Parliament House, Macquarie St, Sydney

1. Present

Ms Robertson (Chair)
 Ms Fazio
 Mr Pearce
 Ms Rhiannon
 Mr Roozendaal (from 12 noon)

2. Apologies

Mr Roozendaal (until 12 noon)

3. ...**4. Confirmation of minutes**

Resolved, on the motion of Mr Pearce, that Minutes No 17 be confirmed.

5. Correspondence

The Chair tabled correspondence received:

Back-end home detention Inquiry

- 1 April 2005, from Mr Jim Simpson, NSW Council for Intellectual Disability providing additional information in response to a question during the hearing
- 7 April 2005, email from Mr Michael Strutt of Justice Action, retracting a claim made during evidence and responding to Question on Notice from hearing on 18 March 2005
- Supplementary Submission No 10a – Justice Action

Resolved, on the motion of Mr Pearce, that the correspondence from Mr Strutt retracting a claim made in evidence during the public hearing on 18 March 2005 be published with the transcript.

Resolved, on the motion of Ms Fazio, that Supplementary Submission No 10a be published.

6. Inquiry into back-end home detention***Correspondence received regarding Mr Jaffrey's appearance during the back-end home detention Inquiry***

The Committee noted the correspondence tabled during the Committee's meeting on 6 April 2005 from Mr Andrew Jaffrey to the Shadow Minister for Justice relating to a press release dated 18 March 2005 concerning Mr Jaffrey's evidence to the Committee on 17 March 2005.

The Committee expressed concern about interference with the operations of the Committee and its consideration of issues while it is hearing evidence, and the impact on the effective functioning of the Committee of possible intimidation of a witness after having given evidence.

Extension of reporting date

Resolved, on the motion of Ms Fazio, that the Chair seek leave from the House to extend the reporting date to Friday 15 July 2005.

7. ...**8. ...**

9. ...

10. Adjournment

The Committee adjourned at 11:25pm until 9.30am on Monday 6 June 2005 (community based sentencing inquiry public hearing).

Rachel Simpson
A/Director

Minutes No 24 (draft)

Wednesday 22 June 2005

Members' Lounge, Parliament House at 7.45pm

1. Members present

Ms Christine Robertson (Chair)

Mr Greg Pearce (Deputy Chair)

Mr David Clarke

Ms Amanda Fazio

Ms Lee Rhiannon

Mr Eric Roozendaal

2. Back-end home detention***Chair's draft report***

The Chair tabled her draft report, which was taken as read.

The Committee considered the draft report.

Resolved, on the motion of Mr Roozendaal, that the Secretariat be permitted to correct typographical and grammatical errors in the report prior to tabling.

Resolved, on the motion of Mr Roozendaal, that the report be adopted.

Resolved, on the motion of Mr Roozendaal, that the report be signed by the Chair and presented to the House in accordance with Standing Orders 227(3) and 230(5).

Resolved, on the motion of Mr Roozendaal, that pursuant to the provisions of section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of Standing Order 223, the Committee authorises the Clerk of the Committee to publish the report, correspondence, submissions (excluding confidential submissions) and documents tabled during hearings.

3. Adjournment

The Committee adjourned at 7.55pm, until 10.15am Monday 27 June 2005 in Griffith (Community based sentencing inquiry site visit and public hearing)

Rachel Simpson

A/Director

