

INQUIRY INTO BACK END HOME DETENTION

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Theme: This submission does not recommend the introduction of back-end home detention

Summary: This submission recommends that the Legislative Council Standing Committee on Law and Justice endorse a proposal to *extend* the Department of Corrective Services' *existing external leave programs* to enable eligible and suitable minimum security inmates nearing the end of their non-parole periods to live and work, or live and study, in the community on a 24-hour per day, 7-day per week basis, under strict monitoring.



Department of Corrective Services



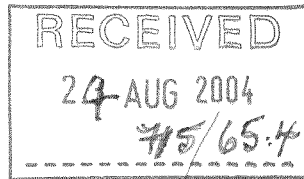
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Dear Sir/Madam

I refer to letters dated 25 June 2004 from the Chair of the Legislative Council Standing Committee on Law and Justice sent to a number of officers of the Department of Corrective Services seeking submissions to the Committee's inquiry into back-end home detention.

Enclosed is a Departmental submission which recommends against back-end home detention but recommends in favour of extending the Department's existing external leave programs so that eligible and suitable minimum security inmates nearing the end of their non-parole periods may live and work, or live and study, in the community on a 24-hour per day, 7-day per week basis under strict monitoring.

In the Department's view, this proposal has all the benefits of back-end home detention but, unlike back-end home detention, can be implemented without legislative change.

I would ask that, in future, if the Committee wishes to seek a submission on any subject from the Department, the Committee approach me only rather than approach any of my officers directly.

Yours sincerely


RON WOODHAM
Commissioner

23/ August, 2004

DEPARTMENT OF CORRECTIVE SERVICES

**SUBMISSION TO THE
LEGISLATIVE COUNCIL
STANDING
COMMITTEE ON LAW AND
JUSTICE**

**INQUIRY INTO BACK-END HOME
DETENTION**

Contact Officer: Doug Brown
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CONTENTS

	page
Executive summary	3
What is home detention?	5
The context	6
External leave programs	7
Types of external leave programs	7
Work release Stage 1	8
Work release Stage 2	10
Education leave Stage 1, vocational training, life skills, work experience and community-based projects leave	11
Education leave Stage 2	11
Day leave	11
Weekend leave	12
Role of the Serious Offenders Review Council	13
Relationship between external leave programs and an inmate's case plan	14
Legislative base for external leave programs	15
How many inmates participate in external leave programs?	17
Bill's story	18
Proposed Stage 3 external leave	20
Outline of proposed Stage 3	20
Supervision of inmates on proposed Stage 3	21
Comparison between eligibility for front-end home detention and eligibility for proposed Stage 3	21
Comments on the terms of reference	23
Appendices	28

Executive summary

This submission does not recommend the introduction of back-end home detention.

Instead, this submission recommends:

That the Legislative Council Standing Committee on Law and Justice endorse a proposal to extend the Department of Corrective Services' existing external leave programs to enable eligible and suitable minimum security inmates nearing the end of their non-parole periods to live and work, or live and study, in the community on a 24-hour per day, 7-day per week basis under strict monitoring.

The proposed extension of existing external leave programs has two significant advantages over the possible introduction of back-end home detention:

- 1. No new legislation is required; accordingly, subject to funding, the proposed extension can commence almost immediately.**
- 2. The proposal builds on a proven formula using procedures which staff, inmates and relevant members of the community understand.**

In order for an inmate to have sufficient time to participate in the proposed extension of existing external leave programs, the Department will have to change current eligibility criteria so that, instead of a male inmate having to wait until he is within 18 months of his earliest possible release date in order to apply to participate in external leave programs, a male inmate will (subject to other strict eligibility criteria) be eligible for external leave programs when he is within 2 years of his earlier possible release date.

Eligibility criteria for female inmates will not need to be changed as female inmates are not subject to the 18-month rule.

External leave programs are extremely beneficial for those inmates who are able to participate in them. An inmate who has participated, for example, in day leave or weekend leave is much better prepared

for re-entry into the community than an inmate who goes straight from prison to parole, or straight from prison to full freedom.

External leave programs are also extremely beneficial for an inmate's immediate family.

The wider community also benefits from external leave programs. Research has shown that an inmate who has participated in work release – the most common form of external leave, apart from day leave and weekend leave – is far less likely to re-offend than an inmate who has not participated in work release¹.

¹ Judy McHutchison, *Working Towards a Better Future: A study into Inmate Employment in the NSW Correctional System*, Research Publication No. 34, NSW Department of Corrective Services, November 1995 [ISSN 0813 5800] The study concluded: "Parolees who had participated in a Community Employment Program were far less likely to recidivate over a period of 18 months than parolees who had not participated in a work release program" (page iv).

What is home detention?

The *Home Detention Act 1996* commenced on 21 February 1997. This Act enabled courts, in certain circumstances, to make a home detention order so that an eligible and suitable offender could serve a prison sentence of up to 18 months at home under close supervision by Community Offender Services (a division of the Department of Corrective Services).

The *Home Detention Act 1996* was repealed on 3 April 2000 when the *Crimes (Administration of Sentences) Act 1999* commenced. The provisions of the *Home Detention Act 1996* were incorporated into the *Crimes (Administration of Sentences) Act 1999*.

Home detention, as currently operated in New South Wales, is *front-end* home detention – ie, the scheme operates from the time of sentencing.

In contrast, *back-end* home detention operates in the period leading up to the expiry of an inmate's non-parole period or, if the inmate is serving a sentence with no non-parole period, in the period leading up to the expiry of the sentence.

Home detention, as currently operated in New South Wales, is a great success. In 2002-2003, 508 offenders commenced home detention, 817 offenders successfully completed home detention and 147 offenders had their home detention orders revoked by the Parole Board². These figures show that many offenders are able to serve their sentences in their own homes rather than in a correctional centre, thereby avoiding the negative consequences that often flow from incarceration (eg loss of job; separation from family; depression) and saving the community the cost of incarceration. These figures also show that home detention is strictly administered: if a home detainee fails (other than for a very minor matter) to comply with the requirements of his or her home detention order, Community Offender Services takes action to have the Parole Board revoke the home detention order. Revocation means that the detainee is sent to prison.

Home detention is one form of intensive community supervision. Community Offender Services also provides intensive community supervision to selected parolees and to offenders participating in the Drug Court program. Community Offender Services will, when the new Compulsory Drug Treatment Correctional Centre opens [planned for December 2005], provide intensive community supervision to inmates with compulsory drug treatment orders who progress to Stages 2 and 3 of the compulsory drug treatment program.

² Department of Corrective Services, *Annual Report 2002/2003*, page 40; 2003-2004 statistics not yet available.

An offender who is subject to intensive community supervision is electronically monitored, subject to random home visits, random breath tests and random urinalysis, and is also required to keep to a daily schedule. In other words, an offender who is subject to intensive community supervision is much more closely “case-managed” than would otherwise occur.

The context

This submission should be read with the following facts in mind:

- On 1 August 2004 there were 8,717 inmates in NSW correctional centres.³
- In 2002-2003 the cost of keeping an inmate in maximum security accommodation was \$218.71 per day; the cost of keeping an inmate in medium security accommodation was \$169.35 per day; and the cost of keeping an inmate in minimum security accommodation was \$172.77 per day.⁴
- On 30 June 2004 the cost of supervising an offender on home detention was \$61.83 per day.
- A home detainee, a periodic detainee and a parolee – in other words, an offender serving all or part of a sentence of imprisonment in the community – is one less offender whom the Department of Corrective Services would otherwise have to accommodate at considerable cost in the full-time correctional system. Moreover, an offender serving all or part of a sentence of imprisonment in the community is not subject to the negative consequences that often flow from incarceration (eg loss of job; separation from family; depression).

An inmate who participates in one or more of the Department’s existing external leave programs [described below] derives many of the benefits available to a home detainee, periodic detainee or parolee. This submission argues that the Legislative Council Standing Committee on Law and Justice should endorse a proposal to extend existing external leave programs to enable eligible and suitable minimum security inmates nearing the end of their non-parole periods to live and work, or live and study, in the community on a 24-hour per day, 7-day per week basis under strict monitoring. An inmate

³ Department of Corrective Services, *Offender Population Report*, 1 August 2004

⁴ Department of Corrective Services, *Annual Report 2002/2003*, page 142; 2003-2004 statistics not yet available.

participating in extended external leave would, like a home detainee, periodic detainee or parolee, be one less offender whom the Department would otherwise have to accommodate in full-time imprisonment.

It must not be assumed that the benefits of home detention, periodic detention, parole or the proposed extension of existing external leave programs flow only to the offenders concerned and the Department of Corrective Services [in money saved]. The benefits of these schemes flow also to the wider community. In 1995 the Department's Research & Statistics Unit undertook a detailed study into inmate employment in NSW correctional centres. The study reviewed literature from other jurisdictions, conducted interviews with inmates working in NSW correctional centres, and investigated post-release employment experience and the recidivism rate of a large sample of parolees. The study concluded:

Parolees who had participated in a Community Employment Program were far less likely to recidivate over a period of 18 months than parolees who had not participated in a work release program.⁵

In 2003 the Australian Institute of Criminology published a paper *Promoting Integration: The Provision of Prisoner Post-release Services*. The paper concluded:

Prisoners exiting custody and returning to mainstream society are confronted with a range of personal, economic and social challenges. These challenges can minimise the likelihood of a successful and crime-free integration with the broader community. Practitioners and researchers have recognised that rehabilitative services and support provided both before and after release can improve a prisoner's chance of successful integration into the community.⁶

In short, the wider community benefits when suitable and eligible offenders are diverted from full-time imprisonment.

External leave programs

Types of external leave programs

The Department of Corrective Services runs the following external leave programs:

⁵ Judy McHutchison, *Working Towards a Better Future: A study into Inmate Employment in the NSW Correctional System*, Research Publication No. 34, NSW Department of Corrective Services, November 1995 [ISSN 0813 5800], page iv

⁶ Maria Borzycki and Eileen Baldry, *Promoting Integration: The Provision of Prisoner Post-release Services*, Australian Institute of Criminology, July 2003 [ISSN 0817-8542], page 6

- Work release Stage 1
- Work release Stage 2
- Education leave Stage 1
- Education leave Stage 2
- Vocational training
- Life skills
- Work experience
- Community-based projects
- Day leave
- Weekend leave.

Eligibility criteria and the rules applicable to each program have evolved over time to meet the diversity of situations which may arise. The Department has produced a 43-page booklet, *External Leave Programs*, which sets out in considerable detail the various criteria and rules which apply to each type of external leave program. The latest edition of the booklet was produced in January 2004. A copy of the booklet is attached to this submission as Appendix 1. The booklet also forms Section 18 of the Department's *Operations Procedures Manual*.

The following descriptions of the various types of external leave programs are brief overviews only. For full descriptions of how each program operates it is necessary to refer to the booklet *External Leave Programs*.

Work release Stage 1

If a male inmate serving a sentence of at least 12 months⁷, who is within 18 months⁸ of his earliest possible release date, achieves the lowest possible male security classification (Category C3) and has not tested positive for drugs in the previous 6 months, he may apply for jobs in the community. Correctional staff and, in some cases, Centrelink staff, assist the inmate in his search for a job.

If a female inmate serving a sentence of any length, and regardless of the period of time left to serve before the inmate reaches her earliest possible release date, achieves the lowest possible female security classification (Category 1), she may apply for jobs in the community. Correctional staff and, in some cases, Centrelink staff, assist the inmate in her search for a job.

The Department does not require a female inmate to be serving a sentence of at least 12 months, or to be within 18 months of a her earliest possible release date, in order to be eligible for work release. The only determinant is whether

⁷ 6 months if the inmate is deemed to be in a special needs group (eg Aboriginal inmates)

⁸ 12 months in the case of a serious offender.

or not the inmate has achieved Category 1 status. The Department adopts this approach with female inmates as sentences imposed on females are often quite short and, so far as most female inmates are concerned, significant violence is not a factor in their offences.

Both male Category C3 and female Category 1 are the same:

The category of inmates who, in the opinion of the Commissioner, need not be confined by a physical barrier at all times and who need not be supervised⁹.

If an inmate is able to obtain an offer of employment the Department checks the background of the potential employer (with the permission of the employer). This process includes a police check. If there is nothing in the background of the potential employer to give cause for concern, and the employer has signed a document [see Appendix 2] acknowledging his or her responsibilities and obligations, the Commissioner or his delegate issues a local leave permit¹⁰ to the inmate to commence his job. Attached to the permit is a document entitled *Work Release Program Standards of Conduct* [see Appendix 3]. The standards which the Department requires a work release inmate to meet are strict.

On the morning of a typical work day, a typical work release inmate will get himself¹¹ ready for work and report to a designated correctional officer who notes in the Department's Offender Information Management System (OIMS) that the inmate is about to go on work release. The correctional officer then unlocks whatever doors and gates need to be unlocked and allows the inmate to walk out of the correctional centre. The inmate takes public transport [work release inmates are allowed to keep sufficient money for bus tickets and the like] to his place of work, works a normal working day, and takes public transport back to the correctional centre. He reports to a designated correctional officer who notes in OIMS that the inmate has returned. The inmate will then be required to submit to a breath test and may, on a random basis, also be required to submit to urinalysis.

While on work release an inmate wears an electronic anklet¹². By prior arrangement between the Department and employer, the Department connects a device called a "home recording monitoring unit" to a phone line at the work site. The unit is able to pick up signals emitted by the anklet and relay those signals via the phone line to the Department's Pre-Release Programs Unit

⁹ Clauses 22 and 23 of the *Crimes (Administration of Sentences) Regulation 2001*

¹⁰ Under section 26(1) of the *Crimes (Administration of Sentences) Act 1999*

¹¹ Both male and female inmates are able to participate in the work release program. As most inmates are male, this hypothetical example refers to a male inmate.

¹² In small rural locations an inmate may not be required to wear an electronic anklet.

(PRPU) at John Morony Correctional Centre at South Windsor. By this means, the PRPU is able to monitor where a work release inmate is.

The PRPU also uses actual physical checks and telephone calls to monitor where a work release inmate is.

Each week every work release inmate pays the Department a fee to defray part of the cost of electronic monitoring. Currently the fee is \$38.50. Each week the inmate also pays the Department a contribution to defray part of the cost of running the work release program. For an inmate earning \$300 net per week or less, the current contribution is \$50 per week, rising to a contribution of \$104 per week for an inmate earning \$451 net per week or more. The inmate also pays, according to the individual circumstances of his sentence, victims compensation levies. If the inmate has dependants, the Department encourages the inmate to set aside a substantial part of his wage to be paid to those dependants on a regular basis.

An employer may pay a work release inmate in cash or electronically. If an employer pays a work release inmate in cash, the inmate is required to hand the money and his pay slip to accounts staff upon his return that day to the correctional centre. The accounts staff then credit the money to the inmate's personal account held by the centre. If an employer pays a work release inmate electronically, the money is initially credited to the correctional centre's bank account. Accounts staff then credit the inmate's personal account. In respect of both cash-paid inmates and electronically-paid inmates, accounts staff deduct fees, victims compensation levies and contributions to dependants from the inmate's personal account.

Work release Stage 2

An inmate on work release Stage 1 is able to go on weekend leave occasionally.

Work release Stage 2 is work release Stage 1 combined with *weekly* weekend leave.

If an inmate on work release Stage 1 is within 6 months of his or her earliest possible release date, and has shown that he or she can comply with the conditions of work release Stage 1, the inmate may apply for work release Stage 2. When on work release Stage 2 an inmate working a normal Monday-to-Friday job will, on Friday evening, instead of returning to the correctional centre, go to his or her home. On Monday morning the inmate will leave his or her home and go to work. On Monday evening the inmate will return again to the correctional centre.

In other words, an inmate on work release Stage 2 is only at the correctional centre on Monday, Tuesday, Wednesday and Thursday nights.

Education leave Stage 1, and vocational training, life skills, work experience and community-based projects leave

Education leave Stage 1 is run in the same way as work release Stage 1 except that, instead of going to a place of employment, the inmate goes to a place of education. During term holidays, the inmate stays in the correctional centre.

Life skills leave is also run in the same way as work release Stage 1 except that, instead of going to a place of employment, the inmate goes to a community-based life skills program. Such programs teach participants how to re-adjust to normal community life: how to prepare simple meals; how to wash clothing; how to budget; how to open a bank account; how to use an automatic teller machine; how to deal with government agencies; and so on.

Vocational training leave, work experience leave and community-based projects leave are also run in the same way as work release Stage 1 except that the inmate does not get a wage for the work that he or she does.

Education leave Stage 2

Education leave Stage 2 is the same as work release Stage 2 except that, instead of going to a place of employment, the inmate goes to a place of education.

An inmate on education leave Stage 2 is only at the correctional centre on Monday, Tuesday, Wednesday and Thursday nights.

The Department has not, to date, allowed any inmate on vocational training, life skills, work experience or community-based projects leave to advance to Stage 2. The Department must be ever-mindful of the potential for public commentators to deride external leave programs.

Day leave

A male inmate who has achieved Category C3 status, or a female inmate who has achieved Category 1 status, may apply for day leave. Day leave is

designed to prepare an inmate, and the inmate's family, for the inmate's release from prison.

The Department does not grant day leave more frequently than once every 28 days, or once every 14 days if the inmate is: located in an isolated correctional centre; participating in the Department's Young Adult Offender Program (run at Oberon Correctional Centre and John Morony Correctional Centre); or deemed by the governor of Oberon Correctional Centre or John Morony Correctional Centre (as the case may be) to be an adult "nucleus" inmate who has significantly contributed to the Young Adult Offender Program.

An inmate participating in day leave must be collected from and returned to the correctional centre by his or her sponsor on the same day. Collection usually occurs from 8:00 am, with return to the correctional centre occurring by 8:00 pm.

An inmate participating in day leave must be in the company of the sponsor at all times.

The Department conducts background checks on any potential sponsor. These checks are the same as checks made in respect of a potential employer of an inmate on work release, except that no company name check is made. If a potential sponsor has a criminal history, this fact does not necessarily debar the person from becoming a sponsor as spouses of some inmates have criminal histories. The Department treats each case on its merits.

Day leave usually occurs on a Saturday, a Sunday or a Public Holiday.

The Department usually requires an inmate on day leave to wear an electronic anklet.

Weekend leave

An inmate who has successfully completed three day-leaves may apply for weekend leave. Weekend leave, like day leave, is designed to prepare an inmate, and the inmate's family, for the inmate's release from prison.

The Department does not grant weekend leave more frequently than once every 56 days (ie, once every two months), or once every 14 days (ie, twice per month) if the inmate is on the Department's Young Adult Offender Program.

An inmate participating in weekend leave must be in the company of the sponsor at all times.

Weekend leave usually runs from 4:00 pm on a Friday to 8:00 pm on a Sunday.

The Department usually requires an inmate on weekend leave to wear an electronic anklet.

Role of the Serious Offenders Review Council

“Serious offender” is defined in section 3 of the *Crimes (Administration of Sentences) Act 1999*. Essentially, a serious offender is an offender who is serving a life sentence, or whose sentence is such that the offender will not become eligible for release until the offender has spent 12 years in custody, or whose offence was murder, or who has been required by the Commissioner of Corrective Services to be managed as a serious offender. On 30 June 2004 there were 597 serious offenders in NSW correctional centres.

The Serious Offenders Reviews Council (SORC) is an independent statutory body chaired by a retired judge. SORC provides advice and recommendations to the Commissioner of Corrective Services on the management of serious offenders. SORC also provides reports and advice to the Parole Board concerning the release on parole of serious offenders. SORC also has other statutory responsibilities.

When a male serious offender who is Category C2, or when a female serious offender who is Category 2, wishes to participate in an external leave program, SORC assesses the inmate and makes a recommendation to the Commissioner. The Commissioner then assesses the inmate, in light of SORC’s recommendation, and decides whether or not to re-classify the inmate as Category C3 (if male) or Category 1 (if female). If the Commissioner re-classifies the inmate the Commissioner or his delegate will subsequently, when the inmate meets relevant criteria (eg obtains a job), issue a local leave permit to the inmate.

If an offender is deemed by the Department to be a “public interest inmate” the Commissioner takes into account advice and recommendations from SORC’s Pre-Release Leave Committee before re-classifying the inmate and issuing a local leave permit.

“Public interest inmate” is defined on pages 11 and 12 of the booklet *External Leave Programs*. Essentially, a public interest inmate is an inmate whose offence and/or notoriety is such that the Department wishes to give particular scrutiny to the inmate’s progress in the correctional system before granting local leave.

Relationship between external leave and an inmate's case plan

For some years the Department of Corrective Services has been “case-managing” inmates. Soon after reception into prison, an inmate meets with a case management committee. The committee develops, in consultation with the inmate, a case plan for the inmate. A case plan indicates the inmate's classification for the time being, the correctional centre at which the inmate is to be held for the time being, and the services and programs in which an inmate should be encouraged to participate¹³. A case plan may deal with any matter relating to the management of the inmate concerned, including “the provision of pre-release and post-release assistance to the inmate (such as advice on the availability within the community of financial, accommodation and employment assistance and of medical and counselling services and alcohol and other drug treatment programs)”¹⁴.

An inmate is involved in the case management process but it is the committee, not the inmate, who makes final decisions on the content of a case plan. The committee reviews each case plan at least once every six months¹⁵. The inmate is involved in the review process.

The Department is continually refining its case management procedures and has established the position of Project Director, Throughcare. The Department defines Throughcare as “the co-ordinated and integrated approach to reducing re-offending of people who are the responsibility of Corrective Services from their first point of contact to the completion of their legal orders and their transition to law abiding community living”. Thus, for example, under Throughcare a case management team preparing a case plan for an inmate will have before it full details of the inmate's involvement, if any, with Community Offender Services prior to imprisonment (eg as an offender serving a community service order). Similarly, under Throughcare, a probation and parole officer supervising a parolee will be fully aware of an inmate's performance while in full-time imprisonment.

A part of its continual refinement of case management procedures, the Department has, in some correctional centres, commenced using the Level of Service Inventory - Revised (LSI-R) to assess the level of risk that an offender may re-offend. The LSI-R is a quantitative survey of the attributes of an offender and the offender's situation. The instrument is composed of 54 separate items covering the following topics: criminal history;

¹³ Clause 13(1) of the *Crimes (Administration of Sentences) Regulation 2001*

¹⁴ Clause 13(2) of the *Crimes (Administration of Sentences) Regulation 2001*

¹⁵ Clause 12(3)(a) of the *Crimes (Administration of Sentences) Regulation 2001*

education/employment; financial circumstances; family/marital circumstances; accommodation; leisure/recreation; companions; alcohol/drug problems; emotional/personal circumstances; and attitudes/orientation.

The LSI-R instrument is able to predict the chance that a particular offender may re-offend, on a scale from 0 to 100.

Whenever a case management team has available to it an LSI-R report on an inmate, the case management team uses the LSI-R report in preparing and reviewing an inmate's case plan.

In line with the case management process and the Throughcare strategy, a case management team should discuss with an inmate, early in the inmate's sentence, the possibility of the inmate being able to participate in external leave programs. A case management team should explain clearly to an inmate what he or she must do in order, later on, to be eligible to participate in one or more external leave programs.

Legislative base for external leave programs

Section 26(1) of the *Crimes (Administration of Sentences) Act 1999* provides that the Commissioner of Corrective Services may issue a local leave permit allowing an inmate to be absent from a correctional centre on such conditions and for such period as may be specified in the permit and for such purpose as the Commissioner considers appropriate¹⁶.

It can readily be seen that section 26(1) gives the Commissioner considerable power. The Commissioner needs this power in order to deal with unusual situations which arise from time to time from the multiplicity of backgrounds of the 8,600 inmates in the NSW correctional system. The Commissioner uses his power in section 26(1) sparingly. To do otherwise would undermine the principle of truth in sentencing.

Clause 124 of the *Crimes (Administration of Sentences) Regulation 2001* provides that an inmate subject to a local leave permit must not contravene any conditions to which the permit is subject. Failure by the inmate to comply with the conditions of a permit is a correctional centre offence for which the inmate

¹⁶ Section 26(1) of the *Crimes (Administration of Sentences) Act 1999* is as follows:

The Commissioner may issue a permit (a *local leave permit*) allowing an inmate to be absent from a correctional centre:

- (a) on such conditions and for such period as may be specified in the permit, and
- (b) for such purpose as the Commissioner considers appropriate.

may be disciplined. The Department may also revoke the inmate's local leave permit. Any breach of a permit which amounts to escape is treated as escape. The maximum penalty for escape is imprisonment for 10 years¹⁷.

The Department's principal external leave program – work release – is, in a technical sense, mis-named. An inmate participating in the work release program has not been *released*. Such an inmate remains in the custody of the governor of the correctional centre from which the inmate was granted local leave¹⁸. An inmate is only released when the inmate reaches the end of his or her non-parole period and the Parole Board makes a parole order, or when the inmate goes to “automatic” parole by virtue of an order made by the sentencing court at the time of sentencing, or when, in the case of an inmate whose sentence does not include a non-parole period, the inmate reaches the end of the sentence. Although the term “work release” is, technically, a misnomer, the Department has not changed the term as it is readily understood by staff, inmates and other relevant persons.

Section 26(1) not only underpins the Department's external leave programs but also enables the Commissioner to grant local leave to suitable inmates for special purposes – eg, to attend the funeral of a near relative. Each case is treated on its merits. An inmate who is granted local leave for a particular purpose is not participating in an external leave *program* even though the inmate is, for that one period, on external leave. It is rare for the Commissioner to grant local leave to a maximum or medium security inmate for any purpose but the Commissioner often grants local leave to suitable minimum security C1 (Category 3, if female) inmates, or C2 (Category 2, if female) inmates, for purposes such as working on Corrective Services' property outside the wall of a correctional centre or working on a community-based project. Any inmate granted local leave, unless a Category C3 (Category 1, if female) inmate, is escorted by correctional officers at all times.

An advantage of a local leave permit is that the Commissioner or his delegate is able, under section 26(4) of the Act, to revoke a local leave permit immediately. Thus any inmate who infringes a permit, or any inmate whom the Department considers may be about to infringe a permit, is immediately brought back to prison. No warrant has to be issued for the arrest and return of the inmate. The speed with which the Commissioner or his delegate may revoke a local leave permit stands in contrast to the time which must necessarily elapse before the Parole Board is able to revoke a home detention order, periodic detention order or parole order.

¹⁷ Section 310D of the *Crimes Act 1900*

¹⁸ Section 38 of the *Crimes (Administration of Sentences) Act 1999* provides, among other things, that an inmate absent from a correctional centre in accordance with a local leave permit is taken to be in the custody of the governor of the correctional centre from which he or she is absent.

How many inmates participate in external leave programs?

Given the security classifications of their respective inmate populations it is possible for the following correctional centres to offer external leave programs to eligible and suitable minimum security inmates:

- Bathurst Correctional Centre
- Berrima Correctional Centre
- Brewarrina (Yetta Dhinnakkal) Centre
- Broken Hill Correctional Centre
- Cessnock Correctional Centre
- Cooma Correctional Centre
- Dillwynia Correctional Centre
- Emu Plains Correctional Centre
- Glen Innes Correctional Centre
- Goulburn Correctional Centre
- Grafton Correctional Centre
- Ivanhoe (Warakirri) Centre
- John Morony Correctional Centre, South Windsor
- Junee Correctional Centre
- Kirkconnell Correctional Centre
- Mannus Correctional Centre, Tumbarumba
- Mid-North Coast Correctional Centre, Kempsey
- Metropolitan Special Programs Centre, Long Bay
- Mulawa Correctional Centre
- Oberon Correctional Centre
- Parklea Correctional Centre
- Silverwater Correctional Centre
- St Heliers Correctional Centre, Muswellbrook
- Tamworth Correctional Centre

The Department's two transitional centres are also able to offer external leave programs to eligible and suitable minimum security inmates. Parramatta Transitional Centre is located in premises owned by the Department opposite Parramatta Correctional Centre; Bolwara House (the second transitional centre) is located within the grounds of Emu Plains Correctional Complex.

It is relatively unusual for inmates in country correctional centres to participate in external leave programs other than day leave or weekend leave. It is difficult enough for an inmate to obtain employment in Sydney; it is even more

difficult for an inmate in a country location to obtain employment. So far as other types of external leave are concerned, there are fewer educational establishments and community-based organisations in country locations which are able to provide services to inmates than there are in Sydney.

Most inmates participating in external leave programs, other than day leave or weekend leave, are held at Emu Plains Correctional Centre [a female correctional centre], John Morony Correctional Centre, Parklea Correctional Centre and Silverwater Correctional Centre.

On 30 June 2004 there were 342 inmates recorded by the PRPU as being on external leave programs: 76 on work release Stage 1; 25 on work release Stage 2; 230 on either day leave or weekend leave; and 11 on education leave (Stage 1 and Stage 2). The PRPU does not collate state-wide figures for other types of external leave. Not all of the 342 inmates recorded as being on external leave programs on 30 June 2004 were actually absent from their correctional centres on that day. That day was a Wednesday; thus, for example, those inmates on weekend leave were not absent on that day. Some inmates on work release Stage 1 would have been seeking work so would only have been absent if they were attending interviews.

During 2003-2004 the Department revoked the local leave permits of 48 inmates on external leave programs.

Bill's story*

Bill was a pretty tough "crim". Convictions for stealing, break-and-enters, goods in custody, conspiring to import prohibited drugs – he had done them all and had served time for them all.

Bill could not get his life in order. Gambling was his big problem. He committed a series of armed robberies, was arrested and remanded in custody pending trial.

While on remand Bill, who had been a poor student at school, completed several basic education courses.

His trial came up about two years later. The judge noted that no-one was injured during the robberies, but that the offences were nonetheless serious. He gave Bill 11 years, with a non-parole period of 6 years 6 months.

Shortly after Bill's conviction and sentencing, the "classo committee" reduced his security classification from maximum to medium, and transferred him to

Lithgow. Bill had performed well while on remand and was not a security threat.

At Lithgow Bill got a job as clinic sweeper. He completed a harm minimisation course. About a year later the classo committee reduced Bill to minimum security C1 and transferred him to Silverwater.

At Silverwater Bill focused on progressing to C3 status. He completed some subjects of a horticulture certificate, as well as courses in job-seeking and basic cookery. He completed the Problem Gambling Group Treatment Program. He attended a Life Skills Group and a Gamblers Support Group. Staff encouraged Bill, an Aboriginal person, to become a mentor to other Aboriginal inmates. He performed the mentor role extremely well, assisting restless inmates to settle in to prison life. The classo committee reduced Bill to C2.

As a C2 inmate, Bill was able to work on community projects outside the centre under close supervision by correctional officers. Bill did well, becoming a team leader. He also completed a one-day TAFE course, conducted at the correctional centre, in building construction occupational health and safety requirements. By completing the course Bill gained a "green card", a prerequisite for obtaining work on building sites. When Bill had served five years of his sentence the Serious Offenders Review Council's Pre-Release Leave Committee reviewed his progress and recommended C3 status. The classo committee then gave him the coveted C3.

In April 2003, Bill went out on this first day-leave under electronic monitoring. His sponsor was his daughter. She was a great support to her father throughout his time in prison. Bill followed the rules and returned on time. He completed further day-leaves in May, July, August and September. He did a weekend leave in October. On three occasions Bill underwent urinalysis. All three tests were negative.

Meanwhile Bill was applying for jobs. In November 2003, a construction company at Lakemba** offered to take him on as a labourer at \$750 per week. His hours of work would be 7:00 am to 3:00 pm. Corrective Services checked out the employer, who was happy to co-operate with the strict procedures.

Early on the morning of his first working day Bill reported to Silverwater work release office - located just inside the correctional centre, near the gate - strapped on an electronic anklet, and walked through the gate. As he had been instructed to do Bill caught the bus and train to Lakemba and arrived at work on time. The work was hard physically, but Bill was prepared for that. In the afternoon, again as he had been instructed, he caught the train and bus back to Silverwater.

From his first pay-packet Corrective Services deducted a fee of \$38.50 to help defray the cost of the anklet, and also deducted \$104 to help defray the cost of

the work release program. As requested by Bill, Corrective Services also deducted money from his earnings for members of his family. Corrective Services allowed Bill to keep some of the money for fares, lunches and incidental expenses, and recorded the remainder of the money against Bill's personal account held by the Department. Bill knew that these arrangements would continue each week.

Bill was reasonably happy at the Lakemba construction company but, in January 2004, when a relative offered him a similar job at higher pay (up to \$1050 per week) in his own company, Bill seized it.

Bill was still working at the company when, in March 2004, the Parole Board granted him parole and released him into the community. He was still working there in August.

Nothing in life is certain, but Bill knows that he is much more likely this time to stay on the right side of the law.

* Not his real name. The content of this story is factually accurate.

** Not the real suburb.

Proposed Stage 3 external leave

Outline of proposed Stage 3

This submission proposes that the Department of Corrective Services create a third stage to its existing external leave programs (other than day leave or weekend leave), to be called Stage 3 external leave, so that an inmate who has shown that he or she can comply with work release Stage 2 or education leave Stage 2 is allowed to go home not only every weekend but also on Monday, Tuesday, Wednesday and Thursday nights.

Such an inmate would remain subject to electronic monitoring, random physical checks and random telephone checks. Such an inmate would also remain subject to random alcohol tests and random urinalysis.

Proposed Stage 3 can be introduced without the need for any legislative amendment. The Commissioner's power in section 26(1) is sufficient to enable Stage 3 to be introduced.

Proposed Stage 3 is simply an extension of long-standing and proven external leave programs.

Proposed Stage 3 would apply only to inmates on work release Stage 2 or education leave Stage 2 who demonstrate compliance at that level. If in the future the Department extends Stage 2 to other types of external leave, the Department will also then consider extending Stage 3 to those types of leave.

As noted earlier in this submission, in order for a male inmate to be eligible for external leave programs, the inmate must, among other things, be within 18 months of his earliest possible release date. The Department recognises that, in order to create Stage 3 external leave, in most cases there would have to be more time between the date when an inmate commences external leave and the inmate's earliest possible release date than the current period of 18 months. Accordingly, if the Department creates Stage 3 external leave, the Department will change the current eligibility requirements for external leave generally so that an inmate may become eligible for external leave within 2 years of his earliest possible release date.

Supervision of inmates on proposed Stage 3

As stated above, an inmate on proposed Stage 3 external leave would be subject to electronic monitoring and random alcohol tests and urinalysis.

Moreover, under the Department's case management system and Throughcare strategy, an inmate on proposed Stage 3 external leave would continue to be "case-managed" while on Stage 3 and, indeed, would continue to be "case-managed" when later granted parole. The intensity of case management would depend on the individual circumstances of each inmate and, in particular, if an LSI-R report has been completed, on the content of the LSI-R report.

There is scope also for an inmate on proposed Stage 3 external leave to be subject to intensive community supervision as currently provided by Community Offender Services to home detainees, Drug Court participants, selected parolees and [shortly] participants in the compulsory drug treatment program.

Comparison between eligibility for front-end home detention and eligibility for proposed Stage 3

The initial threshold for front-end home detention is a sentence of imprisonment of no more than 18 months. In addition to this threshold, sections 76 and 77 of the *Crimes (Sentencing Procedure) Act 1999* provide for strict eligibility requirements for front-end home detention.

Section 76 provides that a home detention order may not be made in respect of a sentence for: murder, attempted murder or manslaughter; sexual assault of

adults or children or sexual offences involving children; armed robbery; any offence involving the use of a firearm; assault occasioning actual bodily harm, or any more serious assault; stalking or intimidation with the intention of causing the person to fear personal injury; domestic violence against any person with whom it is likely that the offender will reside or continue or resume a relationship if a home detention order were made; and serious drug offences.

Section 77 provides that a home detention order may not be made in respect of an offender who has at any time been convicted of murder, attempted murder or manslaughter, or sexual assault of adults or children or sexual offences involving children. Section 77 also provides that a home detention order may not be made in respect of an offender who has at any time in the last 5 years been convicted of a domestic violence offence against any person with whom it is likely that the offender will reside or continue or resume a relationship if a home detention order were made. Section 77 also provides that a home detention order may not be made in respect of an offender who is (or has at any time within the last 5 years been) subject to an apprehended violence order made for the protection of a person with whom it is likely that the offender will reside or continue or resume a relationship if a home detention order were made.

“Bill’s story”, told earlier in this submission, shows that eligibility requirements for work release are less strict than eligibility requirements for front-end home detention. Bill was an armed robber. On this ground alone he would have been ineligible for front-end home detention. But Bill was eligible for work release, and successfully participated in work release.

The Department is strongly of the view that eligibility requirements for external leave programs need not be as strict as eligibility requirements for front-end home detention. An inmate who is in a position to apply for external leave programs is an inmate who is nearing the end of his or her non-parole period, has successfully participated in programs offered within the correctional system to address his or her offending behaviour, and meets other eligibility requirements (eg has not tested positive for drugs in the previous 6 months).

The big difference between a front-end home detainee and an inmate on an external leave program is that, whereas a front-end home detainee is *commencing* his or her period of imprisonment, an inmate on an external leave program is *successfully completing* his or her period of imprisonment and is approaching parole or full freedom (if the court did not set a parole period).

Comments on the terms of reference

This submission makes the following specific comments in response to the Inquiry's terms of reference:

Term of reference (a): *The perceived benefits and disadvantages of back-end home detention*

Comment: The great benefit of back-end home detention is that an inmate on back-end home detention is better prepared for release than is an inmate who has not had the opportunity to live at home full-time prior to release. The better an inmate is prepared for release, the more likely is the inmate to lead a lawful existence and not re-offend.

This benefit of back-end home detention applies equally to proposed Stage 3 external leave.

The great disadvantage of back-end home detention, as opposed to proposed Stage 3 external leave, is that, in order to introduce back-end home detention, legislative change must occur. Legislative change necessarily takes time and, in an area as sensitive as the preparation of inmates for release, the making of legislative changes may provoke ill-informed comment from some people and confusion in the minds of others.

Term of reference (b): *The relationship between back-end home detention and existing external leave programs*

Comment: Whereas under back-end home detention an inmate would be in the community 24 hours per day 7 days per week, under *existing* external leave programs, an inmate can only achieve a maximum time in the community of 24 hours on Sundays, Fridays and Saturdays and about 12 hours on Mondays, Tuesdays, Wednesdays and Thursdays. As explained earlier in this submission, an inmate on work release Stage 2 or education leave Stage 2 must return to a correctional centre on Mondays, Tuesdays, Wednesdays and Thursdays.

Under proposed Stage 3 external leave, an inmate would be in the same position as an inmate on back-end home detention so far as time in the community is concerned.

As stated earlier in this submission, a significant difference between existing external leave programs and home detention is that, whereas the Commissioner or his delegate is able to revoke a local leave permit immediately (and thus bring the inmate back to prison immediately), the Parole Board necessarily takes some time to revoke a home detention order. Speed of revocation is another distinct advantage which external leave programs have over back-end home detention.

Term of reference (c): *The impact of back-end home detention on the principle of truth-in-sentencing*

Comment: Put simply, the principle of truth-in-sentencing means that a sentence imposed by a court is the sentence actually served by an offender.

Prior to the commencement of the *Sentencing Act 1989*, inmates in New South Wales received automatic remissions which effectively reduced both their head sentences and their non-parole periods by about one third each. Moreover, prior to 1989, courts often combined long head sentences with short non-parole periods.

The *Sentencing Act 1989* abolished remissions and put a curb on the imposition of long head sentences with short non-parole periods.

The passing of the *Sentencing Act 1989* was also influenced by the "Rex Jackson Affair". In 1983 the then Minister for Corrective Services, Rex Jackson, accepted bribes in order to recommend to the Governor of New South Wales early release of inmates under section 463 of the *Crimes Act 1900* [Governor Macquarie's ticket-of-leave system]. This corrupt practice brought the administration of sentences into disrepute.

The *Prisons (Serious Offenders Review Board) Amendment Act 1989* repealed section 463.

It is important to note that the *Sentencing Act 1989* did not remove the power of the Commissioner of Corrective Services to grant local leave to an inmate. In 1989 that power was contained in section 29(1) of the *Prisons Act 1952*. The *Prisons Act 1952* was re-named the *Correctional Centres Act 1952* in 1996 and was repealed on 3 April 2000. The Commissioner's power in section 29(1) was carried across to section 26(1) of the *Crimes (Administration of Sentences) Act 1999*.

The Department is strongly of the view that the introduction of Stage 3 external leave would not undermine the principle of truth-in-sentencing. The Commissioner uses his power to grant local leave sparingly. The standards required of an inmate participating in an external leave program are high. The level of monitoring imposed on an inmate participating in an external leave program is also high and includes electronic monitoring. The Department can revoke the local leave permit of any inmate who does not meet these high standards and return the inmate to a correctional centre immediately.

The principle of truth-in-sentencing does not stand alone. The principle stands beside another equally important principle: rehabilitation. It is in the public interest for an inmate to be as fully prepared for release as is practicable. The better prepared an inmate is for release, the less likely it is that the inmate will re-offend.

Term of reference (d): *The appropriate authority to determine whether an offender may proceed to back-end home detention*

Comment: If Stage 3 external leave is introduced, the Commissioner will determine whether or not an inmate has earned the privilege of proceeding to Stage 3.

If back-end home detention were introduced, legislation would have to provide for a body to make

back-end home detention orders. The most likely body for such a task would be the original sentencing court.

Proposed Stage 3 external leave achieves all of the benefits of back-end home detention without requiring lengthy and expensive hearings before a tribunal.

Term of reference (e): *The criteria for eligibility for back-end home detention*

Comment: If Stage 3 external leave is introduced, eligibility for participation in Stage 3 will depend on proven performance on Stage 2.

As stated earlier in this submission, if the Department creates Stage 3 external leave, the Department will change the current eligibility requirements for external leave generally so that an inmate may become eligible for external leave within 2 years of his earliest possible release date.

As stated earlier in this submission, the Department is strongly of the view that eligibility requirements for external leave programs need not be as strict as eligibility requirements for front-end home detention.

Term of reference (f): *The experience of other jurisdictions in implementing back-end home detention schemes*

Comment: When, in the early 1990s, the Probation and Parole Service (which was then part of Attorney General's Department) investigated the feasibility of home detention generally, the Service looked at what other states did in this area. In light of the commitment of the NSW Government to the principle of truth-in-sentencing the Service limited its proposed home detention scheme to a front-end scheme. The Service took the view that back-end home detention should only be introduced if front-end home detention proved successful.

It is interesting to note that, during the debate on the *Home Detention Bill 1996* on 18 September 1996, the then Shadow Minister for Corrective Services, Kerry Chikarovski, MP, said: "I have investigated amending the legislation to make home detention a back-end scheme but Parliamentary Counsel assures me that would be outside the leave of the bill. I urge the Minister to consider using home detention as a pre-release scheme rather than as a sentencing option. I can see merit in that."

The Department has not investigated other jurisdictions in preparing this submission.

Term of reference (g): *Any other related matter*

Comment: As stated earlier in this submission, full-time imprisonment is expensive and can have negative consequences.

As also stated earlier in this submission, on 30 June 2004 there were 76 inmates on work release Stage 1 and 25 inmates on work release Stage 2. There were also 11 inmates on education leave (Stage 1 and Stage 2). If the Department changed eligibility requirements for external leave so that a male inmate could become eligible for external leave within 2 years from his earliest possible release date, and if the Department introduced Stage 3 external leave, it may well be possible that some 100 inmates could at any one time be living and working, or living and studying, in the community. Savings would be significant.

But the benefits of such changes would not be merely a matter of dollars. Participating inmates would benefit by being better prepared for release. The families of participating inmates would benefit by being better prepared for the inmate's release. And the community would benefit by a lower rate of re-offending.

List of appendices

- Appendix 1 *External Leave Programs*
Appendix 2 *Employer Responsibilities and Obligations*
Appendix 3 *Work Release Program Standards of Conduct*