REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 3

INQUIRY INTO THE OPERATIONS AND MANAGEMENT OF THE DEPARTMENT OF CORRECTIVE SERVICES

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At Sydney on Monday 27 March 2006

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The Committee met at 9.30 a.m.

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PRESENT

The Hon. A. R. Fazio (Chair)

The Hon. P. J. Breen
The Hon A. Catanzariti
The Hon. C. J. S. Lynn
The Hon. G. S. Pearce
Ms L. Rhiannon
The Hon. I. W. West

CHAIR: Welcome to the second public hearing of General Purpose Standing Committee No. 3, which is inquiring into issues relating to the operations and management of the Department of Corrective Services. The committee will also be holding a third public hearing on Monday 3 April. The committee previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. In reporting committee proceedings the media must take responsibility for what they publish, including any interpretation placed on evidence before the committee. In accordance with these guidelines, while a member of the committee or witnesses may be filmed or recorded, people in the public gallery should not be the primary focus of footage or photographs. Under the standing orders of the Legislative Council evidence and documents presented to the committee that have not been tabled in Parliament may not, except with the permission of the committee, be disclosed or published by a committee member or any other person.

The protection afforded to committee witnesses under parliamentary privilege should not be abused during these hearings. I remind witnesses to ensure that matters raised are directly relevant to the terms of reference. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside the committee hearing. Therefore I urge witnesses to be cautious about their comments to the media and others after they complete their evidence, even if it is said within the confines of this building. Such comments may not be protected if, for example, another person decided to take action for defamation. Witnesses, members and their staff are advised that any message should be delivered through the attendant on duty or through the clerks.

GREGORY JOHN HOGAN, Manager, World of Curtains Manufacturing Pty Ltd, corner of Fifth and Ellis Streets, Weston, sworn and examined:

CHAIR: Are you appearing before the committee as an individual or as a representative of an organisation?

Mr HOGAN: Both.

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

Mr HOGAN: Yes.

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

Mr HOGAN: Yes. The business World of Curtains Manufacturing Pty Ltd was set up approximately 15 years eight months ago, in July 1990. Since that date we have been manufacturing ready-made curtains, which is 99 per cent of our work. We come under the Textile, Clothing and Footwear Union of Australia and the Clothing Trades award. The business activity is spreading, cutting, sewing and machining of curtains, and packing and dispatch. The basic characteristics of the business are that it is a high volume business with very low margins and an extremely low customer base, which is very unusual. I have had only about two or three customers at any one time over that 15-year period, so it is very small. At the moment we have two indirect and four part-time personnel. That has been drastically reduced over the last three years. I will get to that in a minute.

The ready-made manufacturing business in Australia was very healthy over the last 15 years until the end of 2002. I would like to go over that. I have a transcript I was going to refer to. I do not know whether I should submit now a copy of the transcript of events over the last two years and my financials.

CHAIR: You can submit that now, but if there are financials in the document do you want it to be made public or is it just for the use of the committee?

Mr HOGAN: At this stage it is for the use of the committee.

CHAIR: We will deal with it formally later.

Mr HOGAN: My opening statement is in response to reference 1(b), management practices at the Department of Corrective Services. Over the last three years the Department of Corrective Services has absolutely destroyed my business. It has taken three years and every opportunity has been given to the department to review what it is doing. We have absolutely exhausted ourselves, which you will see from the transcripts over the last three years, to a point where the business has had it financially, it is in debt, and it is all because of Corrective Services.

The Hon. GREG PEARCE: What has Corrective Services done?

Mr HOGAN: Basically we are in the business of ready-made curtains. In March 2003, an application was made by one of my main customers, Wilson Fabrics, a division of Bruck Textiles, to manufacture ready-made curtains inside the prison system. Wilson's represent 85-95 per cent of my work; it varies a little. You will see from the financials, on page 4, we were deriving about $40,000 a month from Wilson's, which represented about $500,000 a year in income from Wilson's alone. The other customers represent only 5-10 per cent of my business. As I said before, we have a very small customer base. The application was given to the Corrective Services Industry Consultative Committee.

At that stage we raised big concerns about the application. The Secretary of the Textile, Clothing and Footwear Union of Australia, Barry Tubner rang me and said, "Is Wilson Fabrics your main customer?" I said, "Yes." He said, "What if I tell you they have made application to manufacture ready-made curtains inside the prison system?" I was absolutely devastated at the time. I said to him, "Head it off. Do something about it." He contacted Wayne Ruckley, the Chief Executive Officer of Corrective Services Industries at the time, and spoke to him and said if the application was to proceed and Corrective Services Industries started making ready-made curtains, businesses such as World of Curtains, at Weston, and Gummerson Fabrics, who were already manufacturing ready-made curtains, would be severely handicapped and affected.

The application was accepted by the CICC. I spoke to Wayne the same day. He rang me at Barry's request. He asked me what my concern was. I said to him that I was very concerned that if Corrective Services gets into ready-made curtains that my business would be affected in the future. He must have rung Wilson's Fabrics, the customer, and expressed my concern.

The following day I had a phone call from John Torrens, the general manager of the customer, Wilsons, and he gave his pledge to me. He said, "I have always been upfront with you. What I am saying to you now is we are going to weave a couple of cheap lines because Wilson's Fabrics and Bruck are unique in that they still manufacture product in Australia." They have textile weaving mills in Wangaratta Victoria. They are the only ones left. So, the product is Australian made. He said to me, "I have always been upfront with you. We are going to weave a couple of basic lines and manufacture inside Corrective Services to compete against what other wholesalers are doing." I listened. I rang Barry back and said, "When this application goes to the CICC, if it does for some reason get accepted, please build in a clause that states that if they venture away from that and take in product which is being made by us or Gummersons or any other Australian manufacturers the contract is made void." I do not know if that happened but that was my request at the time. We struggled through 2003. The application was made. Corrective Services started making ready-made curtains.

The Hon. GREG PEARCE: When did they start?

Mr HOGAN: After the application in March 2003. They started negotiations. There was a meeting towards the end of 2002, just before Christmas, when Corrective Services had meetings with Wilsons and Bruck. I had a phone call from inside Wilsons, because I have a daily relationship with the production planning people. That is why I do not want some of this information to be known. I know I am immune from legal action at the moment but up till now I have not been able to play all my cards because there are people inside Wilsons who could be affected by this. Those planners would ring me during the day and sometimes of a night time to tell me you what is going on. So, I had some inside information.

The Hon. PETER BREEN: Gummersons and Brucks, they are other companies like Wilsons, are they?

Mr HOGAN: Wilsons Fabrics is the customer. We manufacture for them ready-made curtains. We also do manufacturing for AAA Fabrics, which is another wholesaler, and Filigree Textiles. They are fabric wholesalers who also make curtains.

The Hon. PETER BREEN: So Wilsons is not the only manufacturer in Australia?

Mr HOGAN: No, there are others. Of all the wholesalers, they are all peddling fabric. Some of them decide to manufacture ready-made curtains as a form of getting rid of more fabric.

The Hon. PETER BREEN: You are not suggesting to the Committee that Wilsons is the only manufacturer?

Mr HOGAN: No, there are other manufacturers.

The Hon. PETER BREEN: How many would there be?

Mr HOGAN: I would say about, main players four or five; small players two or three that I know of. We were talking about the investigation. I have lost my plot, sorry.

CHAIR: You were saying you were getting some information?

Mr HOGAN: From inside Wilsons, yes. Negotiations started towards the end of 2002 with Corrective Services and my customer Wilsons**,** representing 85 per cent, 90 per cent of my business. I had a phone call. That was the first indication that something was going wrong. You will see from the financials that in 2002 I was averaging $40,000 per month with Wilsons Fabrics and had about 15 operators to manufacture that product for them—very heavy commitments in terms of my production. In 2003, you will see, that income is still sitting up there, averaging $40,000-odd, but towards the middle of 2003, after Corrective Services started manufacturing, the mix started to change. By 2004 my income was less than half and by 2005 I was wiped out.

The Hon. GREG PEARCE: I take it your understanding is that Corrective Services was not supposed to undertake any commercial activity that would be in competition with a local firm such as yours?

Mr HOGAN: Right from the very start I spoke to Barry and Tubner from the union. Barry also sits on the board of the Correctional Industries Consultative Council, and he informed they that the application was made. He said he knew it was going to be affecting my business in the future because if Corrective Services started manufacturing ready-made curtains and undercut my manufacturing prices, there is nothing to stop them from carrying on and doing more and taking more work in. While I refer to myself as a manufacturer, there is another company called Gummerson Fabrics in Castle Hill who was also contracted to manufacture ready-made curtains. We were the main manufacturers for Wilson Fabrics, and Gummerson Fabrics were secondary, but they were also involved.

The Hon. GREG PEARCE: Did Corrective Services know that they were going to be in direct competition with you, to your knowledge?

Mr HOGAN: As I said, right from the beginning, when I spoke to Barry on 4 March 2003. That same day I spoke to Wayne Ruckley, CEO I think he was at that time, of the Corrective Services Industries, and I told him that I had a problem. I spoke to John Torrens the very next day and expressed my concern. He promised me that whatever work was done inside Corrective Services was only to target imports and he was going to weave a cheap line, getting manufacture cheaply to target imports. In the end of that did not happen. All the work went inside Corrective Services. All the work we were manufacturing on the outside, all the work that Gummersons were manufacturing, all went inside Corrective Services.

The Hon. GREG PEARCE: We had the Corrective Services people along and they showed us some examples of what they claimed they were making. It seemed to be of not very high quality. Have you seen the material they were producing and how does it compare to what you were producing?

Mr HOGAN: Identical. To answer your first question, I understand there is a code of practice that they have to follow. I understand they have a charter which states that they cannot have any significant impact on Australian workers' jobs, and that has all gone out the window. They have deliberately and blatantly gone straight ahead and taken all that work inside. First of all, they were claiming all they were doing was import replacement in that very early in the piece the Minister for Justice, Mr John Hatzistergos, stated that what they were doing inside Corrective Services was 100 per cent Pakistan. It cannot be import replacement. Whilst there is Australian manufacturing on the outside, such as World of Curtains, Wilsons Fabrics and other wholesalers, such as AAA and Filigree, as I mentioned before, while Gummersons are manufacturing product in Australia by Australian workers, it cannot be 100 per cent Pakistan. That does not exist.

I honed in on a couple of products I was able to find. They started on import replacement. Along the way we had a first review by the Corrective Services, by Mr Rob Steer, business development manager from CSI, and up till then Mr Hatzistergos and everybody else was claiming it was import replacement. At that stage I indicated I could prove there was product they made inside Corrective Services which we had previously manufactured. I indicated that to them at that stage.

I have product here at the moment which is made by us, and I refer to two products which have been clearly identified such as Ishtah—that is a product name—and also Trieste. I honed in on these products because they intercepted some transfer documents from inside Corrective Services to Silverwater, and I honed in on these products. One of these products is manufactured by Corrective Services. One of these products is manufactured by World of Curtains.

The Hon. CHARLIE LYNN: What is their response when you present these facts to them?

Mr HOGAN: At the first review I had with—

The Hon. GREG PEARCE: Perhaps we could just record that you have shown us two sets of curtains, identical—

CHAIR: No, they are a different colour green.

The Hon. PETER BREEN: Do they have different labels on them to suggest they are manufactured in different places?

Mr HOGAN: No.

The Hon. CHARLIE LYNN: What is the difference in the packaging?

The Hon. GREG PEARCE: If you could just tell us what they are, and the price?

Mr HOGAN: One of them is coming out of Corrective Services. One has been manufactured by World of Curtains Manufacturing in Weston.

The Hon. GREG PEARCE: Just read what they are.

Ms LEE RHIANNON: They are green curtains?

Mr HOGAN: Yes. They are both green curtains.

The Hon. PETER BREEN: And they are both packaged identically?

Mr HOGAN: This one is called Ishtah. This one is polyester viscous. There is a slight variation in colour, but 99 per cent of people would not tell the difference.

The Hon. GREG PEARCE: They are both at the same price as well?

Mr HOGAN: They are both the same price.

The Hon. CHARLIE LYNN: How do the people you spoke to justify the fact that they are not in competition with you when you present them with evidence like that?

Mr HOGAN: I have not physically up to this stage. To Mr Hatzistergos this is the curtain that is coming from Pakistan, because it does not exist. There is no import replacement product.

CHAIR: Which one of those that you are showing us is produced by World of Curtains?

Mr HOGAN: It is hard to tell.

The Hon. PETER BREEN: You must know which one it is?

Mr HOGAN: I do know. Only in terms of colour. It is very difficult. First of all they were saying import replacement, Corrective Services, right through from the Minister for Justice, Mr John Hatzistergos, through to when I looked at the transcript from the first Committee hearing in December last year. I think it was Mr Woodham I refer to.

The Hon. PETER BREEN: What does World of Curtains think about the Department of Corrective Services misrepresenting their product?

Mr HOGAN: In terms of employees?

The Hon. PETER BREEN: If I were to manufacture wiggles and DCS were to manufacture them and they were to then package them and sell them using my product packaging, I would have an action, some kind of passing off action, surely, on the basis that they are representing themselves as having a product which is my product. What does World of Curtains say about that?

Mr HOGAN: We are absolutely flabbergasted. From the first review I had with the CICC, Mr Rob Steer, I showed him the product that we made and I still have that product into my factory. I knew the product was being made inside Corrective Services. Up to then everybody was telling me, all Corrective Services, what they are doing was import replacement, right from John Hatzistergos. All the way through everybody from Corrective Services was saying import replacement. I said, "Sorry, wait a minute. I have made this product before." Gummersons also manufactured that product before. It has been manufactured in Australia by Australian workers. Now we have a situation where Corrective Services is manufacturing it. How can it be import replacement?

CHAIR: Can I ask you about the two samples that you gave us, and you stated earlier in your evidence that when this proposal was first put forward that CSI get involved in curtain manufacture, they said it was going to be a cheaper line of fabric to complete with cheap imports. How does that tie in with the two samples you have shown us today?

Mr HOGAN: It does not.

CHAIR: Are the fabrics in those two samples, apart from the colour variations, the same? They are the same quality?

Mr HOGAN: Yes. Everything is the same. Originally they started off saying that it was import replacement, but that is not the case. This is the 100 per cent Pakistan import. It does not exist. It is a snow screen that they first put up.

The Hon. PETER BREEN: Where did the Department of Corrective Services get the material from?

Mr HOGAN: They get it from Wilsons fabrics. It is being delivered to them.

The Hon. PETER BREEN: Where do Wilsons fabrics get it from?

Mr HOGAN: They manufacture it themselves.

The Hon. CHARLIE LYNN: Where did they get it from?

CHAIR: They make it themselves.

Mr HOGAN: They either import or manufacture it themselves.

The Hon. CHARLIE LYNN: Is there anything on the packages from CSI, even in the finest or smallest print, that indicates it is produced by the Department of Corrective Services?

Mr HOGAN: The only indication on the product is some small numbers. There is a number attached with the label inside the side hem. That number indicates some sort of quality control that they have at Corrective Services.

The Hon. CHARLIE LYNN: But to the layman there is no indication that that is produced by the Department of Corrective Services?

Mr HOGAN: No other indication whatsoever. A small number for quality control purposes.

The Hon. PETER BREEN: A moment ago you said that Wilsons either manufacture it themselves or they import it.

Mr HOGAN: They can, yes.

The Hon. PETER BREEN: It could be that the material in both of those packages is imported?

Mr HOGAN: It could be, or it could be that they are both manufactured in Australia.

The Hon. PETER BREEN: But if they are both imported is the department not correct in saying that it is replacing one product with an imported product?

The Hon. GREG PEARCE: No, it is the value added and making them up.

Mr HOGAN: No. It does not matter where the fabric comes from.

The Hon. GREG PEARCE: That is what the work is.

CHAIR: You do not answer the question. The witness answers the question.

Mr HOGAN: With Wilsons fabric originally, if you want to talk about this particular product, I picked up two—Ishtar and Trieste—because I can prove that these products were being made inside Corrective Services. Nobody would tell me this. It was all kept hush-hush. An application was made in March 2003, and you can see from my financials that we were kept going in 2003 and promised that it would have no effect on us. We kept on going with half in 2004. Still promises from Wilsons. Corrective Services put up their hand and said, "We are not doing anything. We are doing import replacement." They would not comment on what they were making. I had to find out myself by research. The product at the moment was manufactured in Australia before Ishtar by ourselves and Gummersons. It is still manufactured in Australia in Wangaratta. I have other makers and manufacturers where the fabric will come in from China and we will put the label, "Imported into Australia". We will manufacture it into ready-made curtains. It does not matter where it is coming from, it is the labour input that is keeping Australian workers in jobs.

Ms LEE RHIANNON: I wanted to ask you about the impact on your business and your employees. How many employees did you used to employ and how many do employ now?

Mr HOGAN: At the end of 2002 I had 15 full-time employees because I had the income. You will see from 2002-03 I had $40,000 per month. I had to have 15 employees full time to manufacture 4,000 drops per week. I had to have that. We kept on dropping down. I looked at 15 employees. After the first review meeting I had with the CICC—they arranged a meeting with Wilsons on 22 March 2003. I went there with Corrective Services and I said, "Forget Corrective Services. Forget the imports. Where does World of Curtains stand?" They said, "You're finished. We

have no more work for you. All the work that you were manufacturing for us"—we are talking about $500,000 per annum, $40,000 per month—"is going inside Corrective Services." I said to John Torrence, "What about all the promises you made to me that Corrective Services would have no effect on my business." He said, "Things change." I looked at that scenario, and 15 people at five weeks that is eight weeks severance pay, long service leave after 15 years, long service payouts, and the figure was in excess of $200,000. I looked at my overdraft, and I could not do that. I was not in a position where I could never look at it. I just kept manufacturing in 2003. If doors closed I was hoping that some doors would open. At this stage they have not.

Ms LEE RHIANNON: How many employees do you have?

Mr HOGAN: We are down to myself and my wife, two indirect and I have four part time people. This year, 2006, I have three people working an average of three days a week. They are not getting any full-time work. I have three people doing part-time work.

Ms LEE RHIANNON: It has gone from 15 full-time in 2003 to three part time in 2006?

Mr HOGAN: Yes, and the doors are just barely open. In turn, if I can give two of those people only two days a week they get Centrelink and get makeup pay. If their two days make them fall under the basic wage they go to Centrelink and get makeup pay. I have two people doing that currently. We have prison industries, which is subsidised by taxpayers to the tune of $63,000 per prisoner per year. They pay them peanuts in terms of $27 .90 per week for prisoners, which equates to 86¢ an hour. I am paying award wages, which is $15 an hour. I cannot compete with that. In turn they undercut my manufacturing prices by up to 40 per cent. It ranges between 30 and 40 per cent that my manufacturing prices have been undercut by Corrective Services.

The Hon. CHARLIE LYNN: Could you tell the Committee how you think Corrective Services markets the product? It is one thing making it in the prison, but out in the marketplace what is their marketing strategy? Are they in direct competition with you in the marketplace?

Mr HOGAN: No, they are only manufacturing the same as ourselves. But they claim that they take in a wide diversity of industries so that they reduce the impact. They are only looking for work to occupy the prisoners because occupied prisoners are trouble-free prisoners, but at the expense of Australian workers. It is unbelievable! They have wiped out about 10 full-time jobs. They have wiped out my business. My business is in debt to about $500,000 at the moment and I have lost income of approximately $500,000 per annum.

The Hon. CHARLIE LYNN: The prospect of full-time jobs for your employees would be better if they went to prison?

Mr HOGAN: They made that claim originally in a press release. Thankfully, through Andrew Humpherson and Roger White they did the press release from Weston in early 2005 and one of the girls made the comment "What do we have to do, rob a bank, go to gaol and make curtains?" All the curtains were taken away from them. But they are only manufacturing the same as ourselves. It is not their fault. It is Corrective Services management. Very early in the peace they had the opportunity to look at my situation, right back to Wayne Ruckley. They have had two reviews. They just want to go in a straight line. They are so arrogant about it. They are determined. Once they get something they want to take it inside. They have been fed some incorrect and untrue information from Wilsons fabrics, from our customer, and they go along with it. They will go along with imports, which is incorrect. Now, the latest one is that they are trying to say that the fabrics are different. The fabrics are not different. There is no difference between the two. They are trying that one. I think they are clutching at straws.

I know that the prisoners need to be occupied, but they should be self sufficient in terms of food, clothing and shelter, not taking jobs away from the outside community. They should not do anything that is replicated on the outside. Corrective Services were warned. This is going back three years through reviews with Corrective Services and they are still arrogant about it. I remember with the first review in early 2005 I spoke to Rob Steer and I said to him, "What do you think of my situation? My factory is not operational at the moment. We do not have any work. All the work has gone inside the prison. You have undercut my manufacturing prices by up to 40 per cent. You have

made it very attractive for our customer, Wilsons, to take everything inside. The manufacturing that Gummersons was doing was closed down. The plant was closed. The people were put off work. We have lost employees. We have downsized. I have sold off plant and equipment." He said to me, "How old did you say your business was?" I said, "Rob, 15 years." He said, "Well, ours is 200."

CHAIR: Thank you for your appearance today. One of the Committee staff will talk to you about the information you have tabled to determine the best way in which we can handle that. I remind the media about the broadcast guidelines that were mentioned earlier. If you have any questions about recording any matters, please see the Committee staff.

(The witness withdrew.)

BARRY JAMES TUBNER, Secretary, Textile Clothing and Footwear Union of Australia and Representative of Unions New South Wales, sworn and examined, and

CHRIS CHRISTODOULOU, Deputy Assistant Secretary, Unions New South Wales, 377 Sussex Street, Sydney, affirmed and examined:

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

Mr TUBNER: As a representative of the CICC.

Mr CHRISTODOULOU: As a representative of Unions New South Wales.

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

Mr TUBNER: Yes.

Mr CHRISTODOULOU: Yes, I am.

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

Mr CHRISTODOULOU: Yes, I have two documents I would like to table before the Committee for your information. One is a policy document that the Labor Council developed approximately 18 months ago with respect to prison labour and the other is a speech that I delivered before the Australasian Corrective Services Industry conference late last year with respect to prison industries. I would like to make a very brief submission prior to questions. Unions New South Wales supports work in prisons for a number of reasons. First, we believe that prisoners need to be given something to do in prisons and, to some extent, I agree with the previous witness who said that prisoners who are occupied are trouble free in many instances.

Secondly, we certainly support prisoners doing the work which helps to lower the overall cost burden to the community with respect to running the prison system. So self-sufficient industries are a big contributor to helping to contain prison costs. So where prisoners clean their own cells, maintain grounds and buildings, provide and launder their own clothes, provide for their own meals, manufacture their own furniture and infrastructure, we certainly support those industries. We also say that industries also provide inmates with work that can in fact enhance their skills and education both in a generic sense and specific skills sense. We certainly believe that there is information to show that prisoners who are released from prison who have actually had work experience where they have been up-skilled potentially have less chance of reoffending than those who do not.

In terms of Unions NSW, our policy position clearly is that we do not support Corrective Services Industries [CSI] taking on work with the private sector which would have an adverse affect on employment outside the prison system. To that extent I can say as a representative on the Corrective Services Industries Consultative Council [CICC] that we have vigorous debates on a regular basis within that committee about industries that CSI want to take on but, as a representative on that committee, we make decisions and we often have debates about why they should not take those industries on where we feel that taking on those industries will have an adverse affect on a business or employees in the sector.

Having said, that I think I want to dispel one thing. I think it is a bit of a myth to say that the only work CSI does is import replacement. Clearly if you look through the work that they do, there is a range of services that they provide and businesses that they operate for the private sector that are not strictly import replacement but some of those business activities actually are in areas that can enhance the prisoners' skill, training and education. To that extent there needs to be a balance in term of whether you take on those businesses to provide the prisoners with the extra skill and education. We always do that having regard to the impact that that might have on outside employment.

The last thing I would like to say in terms of Unions New South Wales's position, and this has not been adopted by CSI but we have been pushing vigorously for CSI to adopt this position, our view is when we do take on work from the private sector it is our view that those private sector employers should actually guarantee inmates some post-release employment once those inmates come out. In other words if you have a sizeable firm that utilises CSI for part of its business, then in our view there is no reason why that firm could not employ some of the inmates upon release so that those inmates can use the skills that they have developed in the prisons system to work outside in the community once they are released. They are just a few points I wanted to make. I am sure that there is a range of questions that the Committee members will want to ask of myself and Barry Tubner.

CHAIR: Mr Tubner, did you want to make any opening statements?

Mr TUBNER: Yes, please. I am a proud member of the CICC but I am not a great supporter of CSI. My first contact with CSI was in 1998 when I got a phone call from one of my shop stewards at a company called June-Ann saying that herself and all of her fellow workers were being sacked because of prisons industry.

The Hon. GREG PEARCE: What was that company, I am sorry?

Mr TUBNER: The company was June-Ann. It was on Alan Jones and everybody else at that time. It was quite a big splash in 1998. There was also a T-shirt company that applied to have T-shirts made in the prisons. I was asked by the secretary of the union to go out and visit that T-shirt company. The company had gone into administration, did not have enough money to pay its employees, but had tendered to try and get T-shirts made in the prisons industry. That was my first contact with CSI. I have been on the committee for six years now. I believe that CICC plays an important role and I believe that if CICC was not there, then CSI would go completely out of control. They would definitely be a force against manufacturing industry and I believe that the role that we play is an important role because there is so much pressure on the people in correctional industries to satisfy the taxpayer to try to get work within the prisons system to take the burden off the taxpayer that it actually creates the situation that Mr Hogan was just talking about.

CHAIR: We will now go to questions. We started a little late so I propose that we will cut back on our tea break a bit and so we will give five minutes to each group—Five minutes to the Opposition, five minutes to Government members and five minutes for the Independents.

The Hon. CHARLIE LYNN: In your speech you said that where private for profit organisations are involved and that you require such organisations to submit an industry impact statement. Could you tell us whether an industry impact statement was prepared with regard to the issue before us with curtain manufacturing?

Mr CHRISTODOULOU: Yes there was but I think Barry could answer that in more detail because he was intricately involved in that particular matter.

Mr TUBNER: There were actually two impact statements that were put in place. The original impact statement is dated—I am relying on information out of the minutes of the CICC meetings. To my knowledge these are confidential but I will go through it anyway. The first business development impact statement was dated 19 February 2003. This impact statement did not mention the fact that they were actually using Cut, Make and Trim, that is World of Curtains and Gummerson. It also mentions that there were several inaccuracies within this first impact statement and as the person on the CICC I vigorously opposed the impact statement. A second impact statement was produced and there was also a meeting between myself, Joseph Brender, and Brucks, Alan Williamson, and Wayne Ruckley, where there were personal guarantees given along with the second impact statement that there would be no adverse effect on either Gummerson's or the World of Curtains. There was actually a personal guarantee by the two heads of that company that there would be no impact. It was on the basis of that personal commitment that the CICC and the second impact statement, which was accurate, that we would go ahead with the trial.

The Hon. CHARLIE LYNN: The previous witness tabled before the Committee two sets of curtains, one made by his company and one made by CSI. Have you had a look at these?

Mr CHRISTODOULOU: No, I have not.

Mr TUBNER: We have never seen those.

The Hon. CHARLIE LYNN: Can you see any difference? Would you agree that this is direct competition in the marketplace to a private company?

Mr TUBNER: I can go on what the Committee has to deal with and what we have to deal with at the moment which is that the curtains that are made in the prisons are supposed to be import replacement, right? The company that applied to have the garments made did so on the basis that they would not be in direct competition with World of Curtains. They have said that even though the names, trieste and ishtar, are the same as the names that Greg is familiar with, the actual material has changed. That is the evidence that has been given by CSI to Chris and me, right? You are showing us two curtains. Greg has made the statement that those materials are identical. That should not happen.

Mr CHRISTODOULOU: I might say that, just having looked—can you just hold them up again, please? Just having looked at that, if the materials were different, I am surprised that the price is the same. So, on observation, I think there is a problem.

The Hon. GREG PEARCE: But this is not about the materials. It is about the labour, the actual making of the curtains.

Mr TUBNER: Absolutely.

Mr CHRISTODOULOU: We agree.

The Hon. GREG PEARCE: It is a question of whether the labour is Australian labour or overseas labour.

Mr CHRISTODOULOU: Yes.

The Hon. GREG PEARCE: And on both these curtains, it very prominently says, "Made in Australia".

Mr TUBNER: I agree.

The Hon. GREG PEARCE: So it is quite clear that they are not replacing "Made in Indonesia" or "Made in China". They are replacing "Made in Australia".

Mr CHRISTODOULOU: I think we have to clarify this. I think the issue at the time, if my memory serves me correctly—and I was actually then off sick while this whole issue was going on—but the proposal from Wilson's was that they would actually go offshore to produce these curtains, had they been unable to do them in the prisons industry. Barry might correct me if I am wrong about that.

Mr TUBNER: Yes. We have actually got two companies, one called Bruck, which employs about 500 workers, and another company called World of Curtains, which, at its peak, employed 15. The statement Bruck made was that they cannot compete against the imported product so they will have to sack people in Wangaratta who are members who work in the Bruck plant. They believe that by utilising the labour within the prison system they could continue to use the workers that they had in Bruck in Victoria. That was their original position and that is the original statement that they took forward but they forgot to mention that they had two subcontractors, Cut, Make and Trim, and we asked them to give personal guarantees.

It appears from the two reports that were handed down, one by a CSI employee, Rob Steers, and another one by a CICC member, Pat Donovan, the two issues that seemed to come out in both were that if the product was not made in the prisons in New South Wales then it would not go to World of Curtains, it would go offshore because, regardless of what CSI says, it is cheaper to make it in the prisons than it is to make it outside. So on that basis they are saying to us that if prisons lost the work, it would not go to World of Curtains, it would go to purely imported. Therefore not only would

the people at World of Curtains lose their job, but so would the people down in Victoria lose their job also.

CHAIR: Okay. We have time now for some Government members' questions.

The Hon. IAN WEST: I am mindful of the good work that the Corrective Industries Consultative Council does. I am wanting to get some more information from either Barry or Chris as to their definition of import replacement, as to what it means in terms of value added and in terms of the impact study that was done in relation World of Curtains. You indicated that there was a trial period. Could you explain that a bit more?

Mr TUBNER: Yes. There is always a trial period to see whether the work can be done within the prisons and the big issue really is checking to see whether the quality is going to be up to scratch. That is really the most important thing. I think that the garment that they are making, these curtains, are complex. There is a lot of skill needed and the prisoners are able to make the product to standards that are international quality, so there was a trial period. That trial period went through. I think the original position was that there would be something like 45 prisoners would be used to make the products and it appears that the commitment that Alan Williamson and Joseph Brender gave to World of Curtains either could not be kept because time had changed or it was never going to be kept. I cannot get inside their head.

The Hon. IAN WEST: So that trial period has now finished?

Mr TUBNER: Their production now, yes. It has been for a number of years.

The Hon. IAN WEST: In terms of import replacement, can you give me some more detailed definition as to what that actually means.

Mr TUBNER: For us, and this is always our biggest sticking point on the committee, if you close down a factory in Australia and start making the product in Fiji, and two weeks later close down the Fiji factory and come back to Australia to make the same produce in the prisons, it is import replacement. There is nothing Barry or Chris can do about it. There should be more than that, but as far as the term "import replacement" is concerned, Chris and I like the self-sufficiency angle. We are really keen on the prisons being able to make a product they can use within the prison rather than directly going out and competing against what is left of the manufacturing industry. The largest single employer in New South Wales in the clothing industry is New South Wales prisons—they are the largest employer in New South Wales.

CHAIR: How many complaints of competitive advantage has the CICC received?

Mr CHRISTODOULOU: We do not have a lot, but we deal with issues before they become problematic. Myself and Barry in particular will knock back a lot of proposals, hence no-one gets to complain that they have industries competing against them. For example, in the latest papers there is a proposal for CSI to take over the laundry work of Calvary Health in Newcastle. When I saw that proposal, the first thing I would have done was contact the union associated with that, which is Health Services Union, which is a bit unaware that the Department of Health was going to contract out that work and give it to CSI. That effectively would have meant a number of employees at Calvary Health would lose their job as a consequence. We will oppose that at the next committee meeting. A number of issues come up that we proactively oppose at the beginning. Barry has some incidents that he can refer to.

Mr TUBNER: I disagree with parts of the CSI submission to this Committee. One thing I disagree with is what the Chair just asked: how many people have complained? They mentioned four here. Going through my minutes without burying myself in it, I know that there is actually a fifth, because it just happens to be in the minutes of one of the days I was going through. That company wanted to take over three hospital laundry services, they wanted to make the material and they also wanted to do the laundry internally in partnership with another business. We were against that because it was in direct competition against a company called Spotlight and also a company called Bruck. Bruck makes the material for the sheeting that is used by Spotlight. We have representation from

Bruck, the one that Mr Hogan is having trouble with at the moment, and also with Spotlight saying that it believes that up to 100 workers would have lost their jobs if that had gone through.

We were successful in stopping that, along with others. This one has been very difficult because you have two Australian companies that employ workers. If the material had purely gone to import, it would have cost 500 jobs, rather than 15 jobs. As a union official I will fight just as hard for the 15 as I would for the 500.

The Hon. PETER BREEN: You said that Bruck employed 500 people. The 15 jobs that World of Curtains lost is really the cost of maintaining those 500 jobs at Bruck, is it not?

Mr TUBNER: It appears so. Although I disagree with the first report conducted by Rob Steer, I support the second one by Pat Donovan, but both reports come back with the bottom line for us; that is, the issue that if they took the work out of the prisons, would it go to World of Curtains? The answer is no. It would not go there, it would go to imports because the cost of making them in prisons, regardless of what the prison industry says, is cheaper than what it cost Greg Hogan to make.

The Hon. PETER BREEN: I think you said it was 40 per cent cheaper?

Mr TUBNER: That is what he said.

The Hon. PETER BREEN: It could be 50 per cent cheaper if they go offshore, could it not?

Mr TUBNER: Most definitely.

The Hon. PETER BREEN: After this all settles down what is to stop the company Wilsons going offshore and Bruck being in the same position that World of Curtains is now in?

Mr TUBNER: Bruck is not going to go offshore, because they employ 500 workers. Whether the company that actually sells the curtains, in this case Spotlight, want to continue them being made in prisons with the bad publicity they got—actually the beauty of having something made in prisons is that you can put "Australian made" on it, but pay a Third World wage.

CHAIR: That is the essence.

Mr TUBNER: Right. If you are going to cop bad publicity you might as well have "Made in China".

The Hon. PETER BREEN: You indicated that the largest single employer in New South Wales in the clothing industry is CSI, is that correct?

Mr TUBNER: Yes, the prison industries calls it a textile industry, but no textiles are made. It is a clothing industry, covered by the clothing award.

The Hon. PETER BREEN: Does it include the curtains?

Mr TUBNER: Yes.

The Hon. PETER BREEN: When you say it is a clothing industry, you actually mean a textile industry?

Mr TUBNER: No, I do not. I make that quite clear, excuse me. For your benefit, the textile demarcation line, which unions are familiar with, is that textile is when you make material and clothing side is when you put the garments together. If material was made in prisons it would be textiles. It is actually clothing and it does not make any difference whether they are curtains or prison uniforms.

Mr CHRISTODOULOU: On that point, we have to be very clear that the bulk of the clothing work in prison industries are the self-sufficiency, which is the sewing up of their own prison uniforms as distinct from curtains. I think they make all the flags for the State, et cetera, and they

make their own prison uniforms. There is a range of other smaller private-sector operations, but the bulk is self-sufficiency.

Mr TUBNER: We try to keep CSI to its traditional area because there is no doubt they have the quality and the ability to make police uniforms, nurses uniforms, any uniforms, and directly compete against Australian manufacturers. We try to keep them in that little box that they have traditionally been in, and they have been making bed linen since the First Settlement.

Ms LEE RHIANNON: What is your union's attitude towards wages for prisoners?

Mr CHRISTODOULOU: In our policy document we have said that we think there should be some better review of the wages in the prison system. I accept there would be community outrage if prisoners were to get full award wages in the prison system. We are not that naive to think that would not be the case. I think $27 for working 35 hours a week is, at the other end, quite a low wage. Therefore, we think probably there needs to be some other mechanism of reviewing that remuneration. The CICC certainly does not have the power to do that. Maybe there could be further review for further incentives for remuneration, and that is something that should be looked at.

Mr TUBNER: I completely disagree with Chris on this, as I do on a lot of other things. I believe prisoners should be paid an award wage. I believe also that they should not get much more than they currently get, but the money should go into a bank account for them so that when they leave the prisons they will have an amount, that there will be a stake there for them. That system operates in America. But the problem with these prisoners is that it is a revolving door: They go into prison with nothing, they come out of prison with nothing, and they end up back in prison. There should be some halfway point. I would hate them to get award wages and spend it on chocolates and cigarettes. On the other side I would like to see that when they come out that have a stake and they have the ability to stop that revolving door.

Mr CHRISTODOULOU: One of the most important things in prison work, obviously apart from wages, is that we need to get CSI more focused on skill development and education. It is clear that the first time a lot of prisoners enter the prison system they get skills enhancement, in the prison industries. But probably there is not enough case management of that. They should not just be focused on looking at the monetary bottom line, but also what they can do for prisoners. I agree we have to have a situation of when they leave the prison system that they have a much greater opportunity to participate in the community.

Ms LEE RHIANNON: Chris, you spoke about CICC and the possible loss of laundry services. If you did not see that in the documents and informed those people, when would they find out? Would they lose their jobs?

Mr CHRISTODOULOU: Yes, possibly. They may not find out to whom they lose them to. It is a bit of a problem, and I was speaking to Barry about this the other day. We have a limited constituency in terms of who we can interact with when these things come forward. We hope that the two employer representatives on the committee are doing their job as diligently as us; that is going back to their constituents. I cannot talk for them. We know we do our job well, but how much more information gets out to the broader business community we are not sure.

Mr TUBNER: From Mr Hogan's statement you could hear that I was in contact with him because I am concerned. It is part of our charter to make sure that people are not adversely affected. We take it seriously. Yes, Barry was in contact with Greg, and will continue to be in contact with people when something is sensitive. This one always looked like it could blow up, from day one. When I saw the first impact statement I had to hold my breath because I knew it could led somewhere, and, unfortunately, it has.

(The witnesses withdrew)

(Short adjournment)

WILLIAM GRAHAM HUTCHINS, Solicitor, Prisoners Legal Service, Legal Aid Commission, Level 2, 323 Castlereagh Street, Sydney, and

BRIAN JOHN SANDLAND, Director, Criminal Law Division, Legal Aid Commission, Level 1, 323 Castlereagh Street, Sydney, affirmed and examined:

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

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

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

Mr HUTCHINS: 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. Mr Sandland, in what capacity are you appearing before the Committee—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, I am.

CHAIR: Would either or both of you like to make a short opening statement?

Mr SANDLAND: I do not choose to do so.

Mr HUTCHINS: No, I do not either.

CHAIR: We will now have questions from Committee members.

The Hon. PETER BREEN: Mr Sandland, I refer to item 2 of the terms of reference which relates to the management of high-risk prisoners. Do you have a view about the new AA category of prisoners and the arrangements in place at Corrective Services for keeping those prisoners in the High Risk Management Unit [HRMU]?

Mr SANDLAND: As I understand it, the new AA classification relates to the classification of high-risk prisoners who are alleged to constitute a threat to national security. That decision is one that is made by the commissioner. However, the first area of concern is that it appears to relate more to the charge that a person is facing, although it may well be that the commissioner is briefed with other material to which we perhaps would not be privy if we were representing an individual charged with a terrorism offence. The fact that someone who is on remand and who still has the presumption of innocence would be held outside the normal remand population may be an area of concern if the conditions in which they were held were significantly more onerous than that relating to the general remand population.

As I understand it, it is also a decision that is not subject to any form of judicial review; it is a determination made by the commissioner. To that extent, and Mr Hutchins may correct me if I am wrong, I do not think the commission has been confronted with an application on behalf of any current prisoner subject to the AA classification who has raised these specific concerns. I am simply putting forward areas of general concern.

The Hon. PETER BREEN: Is there a problem with regard to prisoners other than AA classification prisoners and the conditions in which they are held, even though they are remand prisoners? For example, a prisoner by the name of Darwiche, who was acquitted of a murder charge just last week or the week before, had been held in custody for 2½ years. Of that period he spent 18

months in segregation under strict protection. Have any issues such as that come up for the Legal Aid Commission to consider?

Mr SANDLAND: I might hand over to Mr Hutchins in case he is aware of specific matters—without referring to the names of clients, obviously—where complaints relating to the conditions of custody have been raised.

Mr HUTCHINS: I might add one comment to what Mr Sandland was saying about the AA category. I have not had any direct involvement with any inmates who are in that category, but just as a general concern it worries me that there does not appear to be any review mechanism available of that classification. I have a copy of a page from a Corrective Services bulletin that was published in December 2004 that mentions the introduction of this new classification system. One part in it that concerns me states:

> The amending regulation also excludes official visitors from dealing with a complaint from a category AA or category 5 inmate.

So it certainly appears that they are given this classification and then they are incarcerated in conditions that make it extremely difficult for them to voice any type of complaint about it. In relation to segregation of inmates, we have a fair bit to do with that. It is part of legal aid policy that the Prisoners Legal Service can make representation available for inmates who wish to appeal against a segregation order. To a person who is outside the gaol system, and even me who has a lot to do with it, this whole area of segregation and high-risk and protection is an extremely confusing area and a lot of terms cross over. Sometimes it is very difficult to understand exactly what is meant—whether it is this Committee talking about high risk, or whether it is Corrective Services talking about high risk.

To me, high risk is a special category that is applied by Corrective Services to any category of offender—it does not necessarily have to be a serious offender—whom they regard as being at high risk of escaping or causing extreme disturbance within the gaol system. They are given a category either of extreme high-risk security, or of high security. That is very different for people who are on protection, which sometimes might be called high-risk protection and it is very different for inmates who are on segregation. So it is very hard to fully appreciate what is meant by those terms. It might be that the Committee will have to try to clarify exactly what is meant by the term "high risk". I think it has an extremely particular meaning to Corrective Services.

But in relation to inmates who are on segregation, at least they have a legislative basis to seek a review of the circumstances in which they are placed, that is, under the Crimes (Administration of Sentences) Act. If that segregation is extended beyond 14 days into a three-month block they have a right to have a hearing—so at least there is transparency in relation to that type of category—and that hearing is conducted by a special committee of the Serious Offenders Review Council. But in relation to all the other categories—whether you call them high risk, high protection, or strict protection—there is no mechanism of review. The only way of reviewing it is an internal application within the gaol system, which at the end of the day is really a written submission to Mr Wood and to the Commissioner of Corrective Services.

If he decides no, basically that is the end of the story. So, putting the segregation ones aside, they do have a legal right of review. The others do not, and that makes it extremely difficult. Sometimes I get the feeling that people who should be placed on segregation and be allowed this right of review are actually classified as extreme high-risk security and, by being given that classification, are being denied the right of having a judicial review. It can be used as a means of incarcerating an inmate in extreme conditions but forfeiting their right to a review by classifying them as something that is not officially segregation.

The Hon. PETER BREEN: I want to ask about segregation. Many prisoners complain about the fact that segregation means that they are in confinement to their cell for sometimes 23 hours a day. They only get out for phone calls or for visits—whether they are legal visits or family visits. That kind of isolation over an extended period can have a very damaging effect on them. Is that something that the Prisoners Legal Service is involved with?

Mr HUTCHINS: We are involved in the sense that we will appear at the review of the segregation order. Otherwise we do not really have an involvement in it. We only find out that they

are on segregation usually because they lodge their documentation for a review and they tick the box that they require legal aid. The numbers that we appear in are not all that high. I do not have any statistics on it but, at a rough guess, I would say that we probably appear in maybe six a year. How many there are in the system, I have no idea—there may not be many more than that. I am aware that sometimes they lodge an application, it is reviewed and the segregation order is lifted before the hearing.

But certainly with the hearings that we have run there is usually some successful resolution: either the order is revoked by the hearing committee or at least they will make suggestions about the progression of that inmate so that the order can be revoked in, say, another month or two months. But in some cases an order is confirmed. I have been highly involved with an inmate who is now at Mulawa Correctional Centre whose segregation order was confirmed two or three times and she was on segregation for well over six months. Then it was lifted on a very limited basis, giving her access to some work. But she still remained in the same confined area. I certainly agree with what you said: The people that I have spoken to who have been on segregation are certainly housed in a cell for something in the order of 23 hours a day. I remember one inmate describing to me that he could touch the walls on either side of the cell when he was standing in it. The cells are probably about three metres long. Some of them have a cage at the end to allow them some small access to natural light, and that cage is probably only about one or two metres deep, at that. They are in there for 23 hours a day.

I personally think they are horrendous conditions. One inmate who I did a review for at the MRRC had been in segregation for three months for breaking up a fight. He was an Asian inmate and they decided to place him in segregation because they heard that there was a threat against his life as a result of breaking up the fight. He maintained at all times, "I'm not scared of going back to the main gaol; please let me back to the main gaol". They did not do that and kept him in segregation for 23 hours a day. When we had a review hearing fortunately the SORC thought it was ridiculous that the order be continued because there was no further evidence from the initial incident to suggest that this inmate was at risk. Yet he was kept in those conditions for three months—he spoke very limited English—and then was released back into the main gaol.

The Hon. PETER BREEN: Segregation is a very harsh punishment.

Mr HUTCHINS: It is extremely harsh. Once upon a time—back in what I call the "old days"—I think you would get some remission for being on segregation. That is not the case today. If you spent three months in segregation, for example—I cannot remember what the formula was—it used to be something in the order of one day in segregation might give you three days off your sentence. That is certainly not the case today. Of course, while you are in segregation you have much less access to your lawyer and, more significantly, you have no access to programs. You are just hibernating in there for the length of time you are there. It is incredibly emotionally destructive.

The Hon. IAN WEST: Are you suggesting that segregation at the MRRC—you referred to the case of an inmate there—would be more horrendous than conditions in the high-management unit at Goulburn?

Mr HUTCHINS: I would only be guessing because I have never been into the high-risk management unit at Goulburn. I have only heard generally about the conditions there. But my guess would be that being kept in segregation would be worse. We commonly refer to them as dog boxes, and that is what they are. The conditions are similar to going out to the RSPCA and collecting a stray dog.

The Hon. PETER BREEN: They are the modern equivalent of solitary confinement, are they not?

Mr HUTCHINS: Yes.

CHAIR: Do you have any comments about the objectivity of the prisoner classification system?

Mr SANDLAND: Perhaps I could start off and then Mr Hutchins might add to my answer. As I understand it, there are different levels in relation to how a person is classified. Firstly, there is the possibility that they are a threat to national security, and that decision is made by the commissioner. Secondly, there are serious offenders who, again, fall into a category determined by the commissioner. For instance, a person serving a life sentence will attract a higher security classification. For all other offenders, when they come into the system and during the course of their sentence, they are subjected to a classification instrument, which, as I understand it, is a means of awarding points according to various aspects of their background, the offence and their conduct whilst in custody. Some of those criteria are objective. There is no doubt about that.

Some of those criteria, however, in relation to their conduct whilst in custody or alleged misconduct, for instance, or, alternatively, their compliance with programs can have a subjective element to them. So at the end of the day both in relation to initial classification and classification as they move through their sentence, there is a combination of both objective and subjective elements in this instrument that they apply in order to award points to a prisoner. Mr Hutchins might have more practical examples of how that can work and what you can do about it if you disagree with the classification that you are given. I might hand over to Mr Hutchins to respond to that.

Mr HUTCHINS: I will add to that. Firstly, there is again a problem with terminology. You must distinguish classification from the other topics that we have mentioned, such as serious offenders and high-risk and protection. They are not actually classifications, although it is commonly said that someone might be classified as a high-risk security inmate. But that is really just a tag or a label. The classifications relate to an inmate in the male category being an A for maximum security, a B for medium security or a C for minimum. There is a similar system for females but for some reason Corrective Services call it categories 1, 2, 3 and 4—just to add a bit of confusion to the system.

An inmate who, for example, might be maximum security A could clearly possibly fall into the category of being a high-risk security inmate. They could go hand in hand. But you have to understand that it is a separate classification system of A, B and C. Someone being a serious offender is also separate. A serious offender will have one of these classifications. A serious offender will ultimately work their way down to the minimum security of a C classification. Generally, an inmate will have to work their way through the A, B or C classification before they become eligible for parole. We have a fair bit to do in trying to assist inmates to move through the classification system. Inmates who are serving a long-term sentence—particularly those who are within the category of a serious offender—need to achieve a minimum security C classification. That, itself, is broken into three categories of C1, C2 and C3, with C3 being the lowest classification, which allows an inmate to have unescorted leave from gaol and to have access to day leave, weekend leave and works release.

So certainly with Parole Board matters we are quite often making submissions for an inmate's classification to be lowered because we know that when they appear at the Parole Board—or now the Parole Authority—if they have not achieved the C3 classification and had approximately six months of unescorted leave from gaol their chances of obtaining parole are virtually nil. Unfortunately, that progression through the classification system is at the whim of the commissioner. Recommendations are made by the classification section or by the Serious Offenders Review Council but at the end of the day it is the commissioner who has the ultimate say as to whether progression to minimum security classification will be allowed.

In response to the question "How objective is it?" it is hard for someone on the outside to actually answer that. I think I would have to say it does not appear to be very objective because we do not see the documents that go before the classification committees. We certainly can FOI them, which we do from time to time, but we do not have ready access to them. The inmate only has a very vague knowledge of what material is being considered by the classification committee. I have no idea what the commissioner considers. I have certainly seen copies of recommendations that have gone to him from the Serious Offenders Review Council and all he does—there is a printed thing on the bottom of the page “approved” or “not approved”—and the commissioner just circles which ones he wants and signs it.

Sometimes he may put a few words as a reason but more often than not there is no reason there at all. He will just say "not approved". If that is a serious offender, and that is when this usually becomes an issue because I think the commissioner has a reluctance to allow some of the serious

offenders to have unescorted leave from gaol, it becomes a big issue for parole. So these types of offenders who may otherwise have very good gaol record, if they are not progressed down to the minimum security and allowed to have their leave from gaol, they are not getting parole.

The Hon. CHARLIE LYNN: In your submission you state that offenders convicted of sexual or violent offences, who do not admit guilt for the crime for which they are sentenced, are effectively precluded from obtaining work release and parole on the basis that they have failed to address their offending behaviour. Would you care to expand on those comments?

Mr HUTCHINS: Sex offenders present to us in our work at the Parole Authority as a difficult group of offenders. It appears they also present as a group of difficult offenders to management in Corrective Services. But there is this policy—I am not quite sure if it is written down as a policy—but certainly under the Crimes (Administration of Sentences) Act when people come up for parole, the Parole Authority can only grant parole if it is satisfied, the main criteria is it is in the public interest to grant parole and part of the consideration for that is whether the person will adapt to what is called normal lawful community life.

The way that is used to test that with sex offenders is whether they have done a course to objectively assist in their rehabilitation. If they have not done a course the recommendations that go to the board by probation parole and that the authority adopt is that they are at high risk of reoffending if they have not done a course. One of the main criteria for doing the courses that are currently available in the New South Wales system is you have to admit your guilt to be eligible for the course. The mere fact that you are convicted of a sex offence does not make you eligible to participate in the course. You can apply, but unless you have admitted, on my understanding, you are considered a person who then cannot be worked with from a psychotherapy point of view because you have not admitted your wrongdoing and therefore you cannot get into the course.

The result of that is when they come up to the Parole Board and when they make applications for leave they are rejected on the basis that their risk of reoffending is high because they have not done the course. Yet, I would have to say there is a lack of proof that the course actually works. There is a lack of proof as to the efficacy of the course that is actually run by Corrective Services, and it is not actually available to all that many inmates. It is a course with a limited number of inmates that it can take each year. I am not sure what is the figure they do a year but on my understanding when a sex offender program course starts—it is called a custody based intensive treatment [CUBIT] course—at Long Bay which runs for the best part of 12 months, it only takes about 15 inmates at an intake. It also has a very high attrition rate as well. I remember on one course 12 started and only three finished. Only a very small percentage of sex offenders are able to eventually come along to the Parole Board and say "I have done the course. There is some proof of my rehabilitation. Give me parole." The other ones will be refused parole and probably put off for a year.

The Hon. CHARLIE LYNN: Do you accept that victims of sexual violent offences and the public in general expect an admission of guilt to be a fundamental first step in the process?

Mr HUTCHINS: I would. These programs are based on programs that are done by Canada Corrections and I understand that part of its program includes people who are in denial of the offence. It seems unfair to me that deniers, as we call them, cannot have a program as well. I can certainly understand the problems that they cause but I would have to say from time to time I see cases—and I would have to say this is rare—where you do feel a strong view that they are not guilty and they are punished for maintaining their stand of "not guilty" of not being considered as eligible for parole at the earliest opportunity and not being considered for minimum security classification. I just feel in that sense it can work a bit of an unfairness because that does not apply to any other inmates in the systems.

If you are an armed bank robber you can still get parole at the earliest eligible date, even though you might say "I never did that armed robbery. It wasn't me. It was somebody else." But that does not affect their chance of getting parole or lowering their classification but it works that way with sex offenders and with violent offenders who are also in this category of having to do a program. On paper it sounds a good thing but it should be a situation where the programs are universally available and available to all inmates who are within that category; not just available to a small number of them.

The Hon. GREG PEARCE: Do prisoners get their classifications watered down to allow movement of prisoners between gaols or the clearing of old gaols, or wings of old gaols?

Mr HUTCHINS: Not to my knowledge.

The Hon. GREG PEARCE: Why are prisoners with serious charges levelled against them being shuffled between Sydney court cells instead of being kept on remand in gaols?

Mr HUTCHINS: I feel it is just due to crowding of the gaols. The other day to my surprise I heard that there are presently some male remand inmates in Mulawa female Correctional Centre, the lowest area of Mulawa and that, I assume, can only be due to overcrowding in the MRRC.

The Hon. GREG PEARCE: How many prisoners are you talking about there?

Mr HUTCHINS: I do not know. It is just that we had an inquiry about one inmate who has a male name and it came up that he was detained at Mulawa. We double checked on that and were told there is a group of males there. They are not transgender people: they are just male inmates who are being kept in an area at Mulawa Correctional Centre.

The Hon. GREG PEARCE: What sort of charges are they on?

Mr HUTCHINS: I have no idea, but they often shunt around remand inmates. They used to hold some of them out at Long Bay when they were not meant to because it is not a remand gaol but they will just put them wherever they can fit them. The population is now about 9,200 in New South Wales. I do not think there are many spare beds.

The Hon. GREG PEARCE: Are you aware of prisoners being kept at court cells?

Mr HUTCHINS: Yes.

The Hon. GREG PEARCE: Which courts?

Mr HUTCHINS: I cannot say I am aware of any at this point of time. By that I am not meaning there are not any but I am just not aware of any at the moment. It is a thing that is constantly coming up as a problem; that inmates are kept in police cells for like a week on end, if not longer.

(The witnesses withdrew)

PAULINE JENNIFER WRIGHT, Solicitor, Vice President, New South Wales Council for Civil Liberties, 149 St Johns Road, Glebe sworn and examined:

MICHAEL ROBERT WALTON, Solicitor, Director, New South Wales Council for Civil Liberties, 149 St Johns Road, Glebe, affirmed and examined:

CHAIR: In what capacity do you appear before the committee?

Ms WRIGHT: As Vice President of the New South Wales Council for Civil Liberties.

Mr WALTON: As a convenor of the Criminal Justice Sub-committee of the New South Wales Council for Civil Liberties.

CHAIR: Are you conversant with the terms of reference?

Ms WRIGHT: Yes, I am.

Mr WALTON: 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.

Ms WRIGHT: Thank you.

Mr WALTON: Yes.

CHAIR: Would you like to make an opening statement?

Ms WRIGHT: Yes, I will make a brief opening statement and then pass you to Mr Walton to speak about the HRMU, and those issues, and then I will address on the interstate transfer of prisoners if that suits the committee. I suppose the approach that we take, from the Council for Civil Liberties, is that there is no justification for treating prisoners differently based on their category of offence alone, whether that be because they are accused of a terrorism offence or they are a child sex offender or whatever that might be. Their classification or treatment should be based on an assessment of them individually and objectively and consideration of factors, whether they actually pose a risk to the community or to security and what the degree of that risk might be.

It is, of course, easy in the face of community fear or abhorrence of certain types of offences to say to the community, "Look we are going to treat these people differently because we don't tolerate that kind of behaviour". But it has got to be remembered that there are degrees of seriousness of all crimes and that while on remand awaiting trial an accused person has to be presumed innocent. Accordingly, blank provisions are unacceptable that cover all people in certain categories. Automatic treatment of terrorist suspects as high-risk ought not occur, for the same reasons, nor they should be segregated or dressed any differently to other accused people while on remand or, indeed, after they are convicted. Only prisoners who are of high-risk ought to be treated as such, so that each individual person should be assessed individually on an objective basis.

In relation to the interstate transfer of parolees the rules there ought not apply any differently again depending on the type of crime for which the person has been convicted. If there are good reasons to transfer a prisoner interstate that process ought not be blocked just because of the nature of their offence. Each case, as I say, should be assessed individually. And any process that has the result of requiring people to be held in prison for longer than has been decided ought to be looked at very carefully because that, of course, results in people staying in gaol longer which in turn means more people in gaol at any given point of time. Our concern is that that will have a disproportionate effect on indigenous prisoners because of their higher representation in the prison population. Those are the general points we would like to make.

Mr WALTON: I would like to address the committee on three major topics: conditions at the HRMU itself; category AA and category 5 classifications of inmates relating to terrorist suspects and those convicted of terrorist offences; and the public availability of the Corrective Services operations manual and ways of making those procedures more easily accessible to the community generally. I will speak to our submission. As they stand, the conditions of the HRMU concern the Council for Civil Liberties. We are in possession of copies of complaints from inmates that have been forwarded to us from Justice Action, a non-government organisation. I believe representatives of that organisation will be addressing you this afternoon, so it is probably not appropriate for us to table those complaints. They should come from the organisation that can give you the provenance of the complaints.

We have forwarded some of those complaints to both the Ombudsman and the Human Rights and Equal Opportunity Commission. Unfortunately we have received responses from those organisations stating that they do not accept complaints from third parties such as the New South Wales Council for Civil Liberties. They will accept complaints only from the individual complainants themselves or they can investigate these complaints of their own motion under their legislation. The council is a little concerned by the responses we have received because essentially it meant the complaints were not being investigated. It should not be assumed necessarily that inmates have direct access to the Human Rights and Equal Opportunity Commission or to complaints procedures of the Ombudsman. The New South Wales Ombudsman, of course, sends people to visit the inmates but the council cannot comment on whether that procedure has been working or not. The fact that the complaints persist and they are being sent suggests either the Ombudsman does not have the necessary powers, and that is something that needs to be addressed by the Ombudsman, I assume, or alternatively it means the Ombudsman legislation needs to be changed so that complaints from third parties can be accepted. That would be useful from the point of view that it would allow interested non-government organisations such as the council to pass on complaints to the organisation for investigation. The council understands the Human Rights and Equal Opportunity Commission is a Federal authority, but the New South Wales Ombudsman could certainly be given those kinds of powers.

The complaints we have seen, and there is a summary in our submission to the committee, include: no access to fresh air or direct sunlight; the fact that inmates are being racially segregated; lack of control over heating in cells; no regular access to education or teachers; and limited access to communication facilities to stay in touch with families and lawyers. That is a very important point when you consider remand prisoners are being housed at the HRMU itself. Many of their lawyers will obviously be in Sydney, so they are physically and geographically separated from them, and also geographically separated from their families, which is of concern. There have also been complaints about the lack of adequate facilities for indigenous inmates.

The council is also concerned that the conditions complained of in the HRMU do not accord with Australia's human rights obligations under the International Covenant on Civil and Political Rights (ICCPR). To give you an overview of how to measure those international standards, the United Nations has a set of standard minimum rules for the treatment of prisoners. These rules do not have a binding legal status but they have been recognised by the United Nations Economic and Social Council (ECOSOC) and by the United Nations Human Rights Committee as a guide to interpreting Article 10 of the ICCPR, which deals with the humane treatment of inmates, whether they be on remand or convicted prisoners.

In particular the council is concerned that the Australian Corrective Services Ministers have adapted the standard minimum rules in such a way that they have taken out some of the international standard minimum rules. I am not sure whether members of the committee have a copy of the submission in front of them but for the record in paragraph 13 the council refers to Article 11 of the standard minimum rules, which states that in all places where prisoners are required to live or work the windows should be large enough to enable the prisoners to read or work by natural light and should be so constructed that they allow the entrance of fresh air whether or not there is artificial ventilation. When the Corrective Services Minister got together and created the standard guidelines for corrections in Australia, which are based on these minimum rules, they chose to take out that final guarantee and to state that the windows should be large enough to enable the prisoners to read or work by natural light and should be constructed in such a way that they allow entrance of fresh air, except where there is artificial ventilation. The international regulations state that there should be access to

fresh air whether or not there is artificial ventilation but the Australian adoption of these minimum rules takes out that guarantee and says artificial ventilation is sufficient. I understand the Corrective Services Commissioner has given evidence before this committee and stated that the conditions in the HRMU meet these United Nations standard minimum rules on artificial ventilation. The very fact that prisoners do not have access to windows with entrance of fresh air—all they have is what the Commissioner called access to forced air, which is pumped into their cells—leads the council to state that this is an example of how conditions at the HRMU do not satisfy United Nations standard minimum rules.

The Hon. PETER BREEN: The cells at the HRMU have a yard at the back, so if the door is open between the cell and the yard they have access to fresh air. The problem is the door is not open very often. Is that right?

Mr WALTON: I am not familiar with the procedures for when those doors are opened. My understanding is people are kept in their cells for up to 23 hours a day—24 hours a day if there is a lockdown—but I cannot give evidence to the committee as to the conditions under which the door is open.

The Hon. PETER BREEN: They cannot open the door during a lockdown or when they are in segregation. I think that is the problem, isn't it?

Mr WALTON: Yes, and there is no access to fresh air.

The Hon. CHARLIE LYNN: Ms Wright said that blanket provisions are unacceptable, for categories of prisoners I assume. She also said certain categories do not pose a risk to the community. Do you believe terrorist suspects classified as AA present a risk to the community?

Ms WRIGHT: That would depend on how their AA classification came about. As you would be aware, there are different levels of seriousness of terrorism offences. Some of them, of course, are extremely serious and others are very much less so. It may be that a person is charged with having indirectly financed a terrorist organisation by having been reckless as to where their money went. That would be far less serious than being involved in a plot to blow up a train in Sydney. There are degrees of difference in terrorist offences. In that sense there should not be a blanket AA categorisation of all terrorist suspects. We have concerns that once blanket categorisations occur inequities apply to individuals being charged.

The Hon. CHARLIE LYNN: Should we not focus on the outcome of terrorism—the mass destruction of human life? Whether you are indirectly financing that or blowing yourself up, the outcome is likely to cause national fear in every household in the country and possible massive loss of life. No matter what your involvement, you are either a terrorist or you are not a terrorist.

Ms WRIGHT: Of course there is concern that terrorist activities can cause mass destruction, and they do cause fear. All crimes have degrees of seriousness. It is like a sexual assault. There can be the worst case of sexual assault and the very least case of sexual assault. The very least case might be an inappropriate touching of someone on the buttocks and the very worst case would be a violent assault which causes someone grievous bodily harm. Two people who committed those crimes would get a very different sentencing outcome. That is appropriate. The same could be said for terrorism offences. There are terrorism offences at the low end of the scale and terrorism offences at the very high end of the scale. The two types of offences should be treated accordingly. That is the only point we seek to make.

The Hon. GREG PEARCE: Do I take it from what you are saying that you do not believe the prisoner classification system is very objective?

Ms WRIGHT: If it is objective, there is no real way of knowing that that is the case. I think you heard from a witness earlier that in reviewing a classification one does not know all the evidence on which it was based. There is no transparency in that process and that is something that concerns us. If one wanted to challenge a classification, one would not have the ability to do so on any proper ground. Indeed, there is no real review process in place as far as I am aware.

The Hon. GREG PEARCE: You talked about the possibility of blanket classifications. Do you have any evidence of that happening?

Mr WALTON: Before I address that question, perhaps I could deal with category AA inmates. Perhaps one of the council's gravest concerns is that remand inmates are being given this category. Under any fair system remand inmates ought to be presumed innocent. The idea of dressing them differently from other inmates is a concern to the council. The fact that particularly category AA inmates on remand are being sent to the HRMU without necessarily being the worst of the worst or a physical threat to the prison population itself or to Corrective Services staff is of concern as well.

Another concern about category AA inmates is they are being categorised by their offence rather than by the objective standard of whether they are a danger to the general population of the prison or to Corrective Services staff. So, as to evidence of people being categorised AA, we have not had at the council any particular complaints from category AA inmates, but I am sure most of the people here on the Committee will be aware, particularly from television footage and media footage, of people dressed in orange overalls on remand going to the Local Court for their bail applications or their committal proceedings. So, it is certainly happening, people are being categorised this way prior to conviction.

The Hon. CHARLIE LYNN: We accept that AA classification terrorists, for example, are being held at the HRMU. If they were in the general prison population the threat, if you like, of them converting other prisoners to their radical beliefs would represent a threat?

Ms WRIGHT: That may be the case for individuals, which is why one has to look at individual classifications of individual inmates. If the person has the capacity, it may be appropriate to keep them in AA classification, but if that person is being classified as AA simply because they are charged with a terrorist offence, that concerns us, whether or not they pose a risk of the type you have identified.

The Hon. PETER BREEN: On the question of AA classification of prisoners at Goulburn, the Committee attended the HRMU last week and carried out an inspection. There is a unit there called unit 7, and the prisoners you refer to who are remand prisoners have been in unit 7 now for, I think, about five months. In the normal course, if the HRMU did not exist, they would be in the main section of Goulburn gaol in a wing with other Muslim prisoners, because that is the segregation that applies in the ordinary prison at Goulburn.

The question in my mind is do you think this segregation of prisoners in the HRMU service any purpose in terms of the security of the present system or the community? Do you think the breaches of human rights involved in isolating these prisoners for five months outweighs the risks to the community or the gaol system of putting them into the mainstream prison?

Mr WALTON: To reiterate what we have said before, it is simply a matter of having to deal with issues on a case-by-case basis. It may be there are individual prisoners or individual remand inmates who do pose some kind of risk to the general prison population or the staff of Corrective Services, but our concern is generally there appears to be a view abroad in the Department of Corrective Services that anyone who is charged with a terrorist type of offence automatically becomes an AA prisoner. It is within the discretion of the commissioner not to do that but it is our impression that that is what is happening and it may be worth the Committee asking the commissioner how many people who are charged with terrorist offences have been categorised AA and how many have not. With reference to the HRMU and segregation, as far as human rights go, international human rights standards for criminal justice state—and it is part of our common law tradition anyway—that someone who has not yet been convicted has to be presumed innocent, and certainly segregating people in the supermax prison does not make any sense.

The Hon. PETER BREEN: The rules you mentioned, the standard minimum rules for treatment of prisoners, contain a number of provisions that relate to remand prisoners or untried prisoners, as they are called, such as being able to wear their own clothes, such as services that they are entitled to access, certain types of food they are entitled to access at their own expense, and so forth. None of those provisions appear to have been complied with in respect of those prisoners at the

supermax. Has the Council for Civil Liberties taken any steps to intervene on behalf of prisoners or have you received any complaints?

Ms WRIGHT: Yes. We have received complaints through the Justice Action group, whom you will be hearing from. We have had a lot of concern about that. Segregation, of course, is a very harsh form of incarceration. As we said, 23 hours a day in your cell alone in a very small space without contact with your family, limited contact with your lawyers to give them proper instruction to conduct your trial—those sorts of things are of great concern to us, and we are pleased that this Committee is looking at those things. I share Michael Walton's view that it would be of some comfort to us to find out exactly what the figures are as to who is being classified AA straightaway and who is not, who have been charged with terrorist offences. We would like to know those figures. At this stage we do not know them.

The Hon. PETER BREEN: If it is any assistance, the joint operation between Victoria and New South Wales which resulted in the arrest of 20 people on alleged terrorist charges, nine of those were from New South Wales and five have been classified AA, and they are in the HRMU.

Mr WALTON: Perhaps also just to expand on that point of clothing, the standard minimum rules also state that clothing should in no manner be degrading or humiliating, and the council is concerned that category AA prisoners are being set apart by their clothing itself. They are being given the orange jumpsuits, which set them apart. It puts them up as targets for discrimination amongst the general population of the prison anyway. It also falls outside the Australian tradition when it comes to clothing of inmates. To the best of my knowledge no other category of inmates is asked to dress this way. Quite frankly, when an Australian sees someone dressed in an orange jumpsuit they immediately think terrorist, they immediately think Guantanamo Bay, and it really falls into that category of degrading or humiliating clothing. So, the council would be asking the Committee to look into that.

The Hon. PETER BREEN: On the issue of clothing, I think you are referring to the orange jumpsuits?

Mr WALTON: Yes.

The Hon. PETER BREEN: All extreme high-risk prisoners wear orange jumpsuits when they are moved about in the prison system. So, they might look like terrorists but they may well be murderers.

Ms LEE RHIANNON: At the end of 2004 the Greens moved to disallow the category AA regulation. At that time I received legal advice from a Sydney barrister that this regulation may well be ultra vires and therefore open to court challenge. One of the key angles of that advice was that the regulation described male inmates classified as category AA as serious offenders, yet an offender is defined in the principal Act as someone who has been sentenced. Considering that terrorist suspects now in New South Wales gaols are on remand and have not been convicted of any offence, what is your response to what seems to be a real problem with this regulation?

Ms WRIGHT: I am sorry, I have not read the regulation, but if that is what the regulation says, it sounds like your advice is correct. I would like to take that on notice and have a look at the regulation before responding.

Ms LEE RHIANNON: It is the regulation compared to the Act. Under the Act you have to be an offender but under the regulation—

Ms WRIGHT: That would be right. A remand prisoner is not an offender because they are presumed innocent until they are tried and convicted.

Ms LEE RHIANNON: Just staying with the AA category, another one of our concerns is that the Government has effectively given to the Commissioner of Corrective Services the authority to determine the type of detention to which that person accused of terrorist-related offences is subject, and not the court. I am interested in your view on this shifting of responsibility. Has it happened before and is it appropriate?

Mr WALTON: I am not quite sure how to respond to that, to be honest. Traditionally in New South Wales it has not been the role of the courts to determine the category or classification of prisoners. I guess the council's concern more generally in relation to classification of inmates is that there appears to be no effective means of review. For example, someone classified AA does not necessarily have any recourse either to the New South Wales Ombudsman for review, to the best of my understanding, or to a magistrate or the courts generally. Certainly that is something that perhaps the Committee might want to investigate as well.

Ms LEE RHIANNON: So, you do not see the problem so much that the commissioner has this power but that there is no review mechanism?

Ms WRIGHT: If the commissioner is to be given this sort of power—and one can see that that may be appropriate—the capacity to make that decision should be subject to a review, and the commissioner's exercise of that power ought to be transparent and subject to review.

The Hon. GREG PEARCE: Ms Wright said she wanted to say something about interstate transfers?

Ms WRIGHT: Yes. I note that our time is running out. The major points I wanted to make can be found in our papers on pages 6 through to 9. They can be summarised by saying that up to the present time parolees could be transferred interstate prior to the Minister formally signing off. Under the new regime that is proposed, there will be a delay in a parolee being transferred interstate because it will take some time for that to occur, even though the transferring jurisdiction within the prison has agreed they are eligible for parole, they are suitable for parole, and the receiving prison and parole service has agreed that things are in place at that end to receive them. Everything is agreed that that person ought to be allowed to transfer immediately, otherwise it means prisoners who have been found suitable for release are being held longer than is required.

There is also a proposal to prevent at all the interstate transfer of certain prisoners—child sex offenders. That will cause difficulties. For instance, if there is a child sex offender in Queensland whose family and all their social support networks are in New South Wales, that prisoner would not be allowed to be transferred to New South Wales on parole. That is problematic. If they are released in Queensland on parole, their risk of reoffending is higher because of the lack of social networks within Queensland, whereas if they are transferred to New South Wales they would have all those supports in place so their risk of reoffending would be low.

It may mean that in the assessment of that person for parole at all they would be found not to be suitable because they cannot go back home where their networks are and therefore they cannot be released on parole at all, so they are kept in gaol for the whole term of their sentence instead of being allowed out on parole where they can have community networks, rehabilitation programs, all those sorts of things that can occur on the outside. Our concern is that these new processes will have an adverse impact on the Aboriginal people, partly because they are just more highly represented in prisons in general. So, if prisoners are being held longer, it means more Aboriginal people will be held for longer.

One thing that is being introduced is the abolition of temporary transfers for any people, which will have an impact particularly on indigenous prisoners because their lifestyles are, in a sense, nomadic. Their families may not respect State boundaries. They might live on the border between New South Wales and Queensland, for instance. Their families may be travelling between those two areas. That means that the Aboriginal parolee cannot travel with their family, with their community networks. Again, it may be a de facto refusal for parole of those prisoners or a de facto refusal to allow those prisoners to be with their families therefore putting them at risk of reoffending or breaching their parole because they do not have their family support with them. That is in summary.

CHAIR: The Committee staff will contact you about questions on notice because you have taken at least one question on notice. Thank you for your appearance before the Committee and for your submission to the inquiry.

(The witnesses withdrew.)

STEPAN KERKYASHARIAN, Chair, Community Relations Commission of New South Wales, 175 Market Street Sydney, sworn and examined:

CHAIR: Are you appearing before the Committee as a representative of the Community Relations Commission?

Mr KERKYASHARIAN: I am appearing as a representative of the Community Relations Commission and in my capacity as Chair of that organisation.

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

Mr KERKYASHARIAN: 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 you like to start by making a short opening statement?

Mr KERKYASHARIAN: No, thank you. We have provided a very brief submission, and I would like that to be the opening statement.

The Hon. PETER BREEN: What proportion of the New South Wales prison population is from a culturally and linguistically diverse background?

Mr KERKYASHARIAN: We rely on the information and statistics provided by the Department of Corrective Services. I understand that they are accessible to the general public as well. We look at those statistics with interest from the commission's point of view. In the year 2004, 2,076 inmates in New South Wales gazetted correctional centres and periodic detention centres were born overseas, that is 22.5 per cent. The main countries of those outside Australia included Vietnam, 297 or 3.2 per cent; New Zealand, 263 or 2.8 per cent; the United Kingdom, 180 or 1.9 per cent; Lebanon, 138 or 1.5 per cent; and China, excluding Taiwan, 99 or 1.1 per cent. According to the fifth edition of statistics in August 2005, there were 1,565 people, or 16.9 per cent, from non-English speaking countries.

Significant populations of inmates within New South Wales prisons were born in non-English speaking countries from the Pacific Islands, Vietnam and Lebanon. It should be noted that both the figures I gave have increased from the previous year. In 2003 there were 1,061 people born in overseas countries and 1,390 of them were from non-English speaking countries. There has been an increase between 2004 and 2005. But I have to point out that the potential for making a detailed analysis of cultural adversity as against country of birth, because many people Australian born would belong to different cultural and ethnic backgrounds, is limited by the adequacy of the data collection process that exists at present.

The Hon. CHARLIE LYNN: What did you say the prison population from the Pacific Islands was?

Mr KERKYASHARIAN: I do not have the exact figures for the Pacific Islands, but the highest number of representations when you look at inmates who were born overseas then the significant countries are the Pacific Islands, Vietnam and Lebanon, but I do not have the exact figures here.

The Hon. CHARLIE LYNN: What do you classify as the Pacific Islands?

Mr KERKYASHARIAN: That would include New Zealand, Tonga, Fiji and the Cook Islands.

The Hon. CHARLIE LYNN: Polynesia and Melanesia?

Mr KERKYASHARIAN: Yes.

The Hon. PETER BREEN: Would the Pacific Islanders be included in the New Zealand figures of 2.8 per cent?

Mr KERKYASHARIAN: It is possible, but not necessarily so.

The Hon. PETER BREEN: Are you familiar with the segregation that operates at Goulburn correctional complex?

Mr KERKYASHARIAN: I am aware, but I am not familiar with the details of it. I am aware that for some years now there has been a policy of segregating inmates on the grounds of ethnicity.

The Hon. PETER BREEN: Yes. There are four units at Goulburn correctional centre. One is designated for whites, I think it is called, and Pacific Islanders, one is designated for Lebanese and one is designated for Aboriginal people. Do you see any merit in segregating prisoners in that way?

Mr KERKYASHARIAN: I became aware of this sometime ago, I think in 2001, when this matter was being looked at by the Department of Corrective Services. I met with two people at the time who were looking into this independently. One of them was Mr Lawrence Goodstone who did a report in 2001 called "Gangs in the New South Wales correctional system". I have a quotation from the report, which said, "The lack of productive activity exasperated the polarisation of inmates groups along ethnic lines. With little to do, tensions increased with a concomitant requirement to seek safety in groups. These groups of inmates with the same or similar background associate for much the same reasons as many young men associate in the wider community. They associate to be safe." If this is the case it could lead to the ghettoising of conditions where tensions are created along ethnic groupings. It is not my area of expertise.

In a prison environment or a correctional facility, I guess the safety of the inmates is paramount. I am sure that management and the department is motivated by safety. But I have this nagging concern in the back of my mind about inmates who, particularly, would not necessarily want to be associated with a particular ethnic group, but they are put in an environment where really they have no choice for their own safety but to be in a particular grouping. As to whether that then creates another kind of bonding, which may then be carried beyond their life in a correctional facility, is something that needs to be studied. In other words, individuals who may go into correction facilities who are not associated with any particular gang, do they then bond with other people and therefore that kind of bonding lives beyond their time within a correctional facility and creates a gang outside. That would be one of my concerns that needs to be looked at what carefully.

The Hon. GREG PEARCE: Does your commission run any programs of any description with ethnic prisoners?

Mr KERKYASHARIAN: No, we do not.

The Hon. GREG PEARCE: Do you run any programs with former prisoners?

Mr KERKYASHARIAN: No. It is not part of our immediate service delivery charter.

The Hon. GREG PEARCE: To what extent does your service delivery charter involve you in Corrective Services issues?

Mr KERKYASHARIAN: Under the Community Relations Commission Act every government agency and every chief executive has to demonstrate commitment to the principles of multiculturalism. Every government agency also has to produce an ethnic affairs priority statement, which is, in effect, a policy as to how they deal with clients, for want of a better word, of non-English speaking background. The Community Relations Commission, under its legislation, has a responsibility to assist and monitor, effectively, and report on the performance of all agencies. This is part of our functions under section 13 of the Community Relations Commissions Act. We do this by identifying some agencies as key agencies. All other agencies have to have a brief report in their annual report to Parliament.

I guess we have a two-system approach to this. We go through every single annual report that is produced and tabled in Parliament and we see whether agencies have reported. We have to report independently to Parliament at the end of March every year. We publish a compliance listing in that report. Our current report is due to be tabled any day. We then identify some other agencies as key agencies, and Corrective Services is one of them, who have to provide us with a detailed plan of how they intend to service and meet the needs of their clients of non-English speaking background. We take those reports, those plans and analyse them, and in consultation with the department we rate them. We have a rating system, a grading system of one to five. We look at those plans and report on how they are performing.

We have been given the Plan for Cultural Inclusion from the New South Wales Department of Corrective Services. I have a photocopy of it, and I am quite happy to table that for your information. That looks through the five areas of how they are going to meet the needs of their particular clients of non-English speaking background. I think one of the areas that we have identified is to provide cross-cultural training to their staff. Another factor that the department needs to consider is that inmates and their families may not be literate, or literature in the Roman script. Therefore consideration has to be given in this day and age to providing more spoken information through taped, CD or DVD media. In other words, to tell them, particularly families, how they can access their requirements when visiting, et cetera.

The Hon. GREG PEARCE: So that is your rating, is it, or your response to the report or the plan?

Mr KERKYASHARIAN: That is one of the recommendations I am making to this Committee for consideration, and it is something that we would independently take up with the department as well. One of the other things which we are currently negotiating with the department in the context of their report is the department's guidelines for staff on the use of the community language allowance and on the use of telephone interpreter services alongside interpreters because communication is very important. It is important for the efficient administration of any agency, let alone corrective services where there is need for communication. We would like to see to what extent interpreters are used and to what extent the linguistic ability of existing staff are utilised and evaluated because the mechanisms exist within the public service award to remunerate for that, if those skills exist.

CHAIR: Could I ask you what particular problems have been associated with the security screening of persons wearing turbans and hijabs? Do you have any suggestions as to how these problems could be avoided?

Mr KERKYASHARIAN: Well, we are aware that formal complaints have been made by security screening persons about the wearing of turbans and hijabs. In fact there is a current issue regarding the wearing of the kirpan, the sword or dagger, by baptised Sikhs. For the last month I have been having negotiations and mediation sessions between the department and staff representatives. That is ongoing and I have to say it has been in a very positive environment. The commission believes that there is a need to be culturally sensitive to the religious background of visitors.

But I guess I am cognisant of the fact that it is not for the Community Relations Commission to decide on security procedures. At international airports, for example, security screening procedures include metal detectors, randomly searching for explosives, including sniffer dogs. Perhaps such systems should also be used by the corrective services. I am aware I think that in one of the high security centres they are introducing some new screening machinery which operates independently of a human being.

CHAIR: Yes, but it would not let me in at Goulburn—because I had too many rings on, I think.

The Hon. CHARLIE LYNN: But they let you out, though, and that was good.

Mr KERKYASHARIAN: I would hope they would let you out. But I guess it does pose a problem, particularly for security guards who are baptised Sikhs. I understand that there are not more

than about seven such people involved and it is unlikely that all of those seven are working in the Goulburn correctional service. Obviously there are other facilities for entry, for example, for trucks and delivery vehicles, et cetera, which do not have to go through that non-human system. I think allowance can be made, particularly if it relates to an officer of the department who is known and who has been trusted.

It is interesting to note that of these particular officers or baptised Sikhs of the correctional service who are officers within the correctional system, some of them have been wearing the kirpan for 18 years, not a single incident has been recorded. I think it is important to bear in mind that they wear it almost attached to their own skin. It is very safely put away. We are talking about something which is about seven or eight centimetres long. It really takes a good five minutes, from what I am told, to actually get one of these things off someone. So it is important to bear these things in mind and not just get carried away in an environment where I think anything that is ethnic appears to be open slather. So I think there should be a measure of reasonableness in all these things. I am quite happy to report that I have found the attitude of the senior people in the department very positive, given also that the Summary Offences Act, which bans the carrying of knives, specifically makes allowances and excludes people who are carrying things like the kirpan for religious reasons.

CHAIR: Did anyone else have any questions? If not, I thank you for your attendance here today, for the evidence that you have given and for your submission.

(The witness withdrew)

PETER BUGDEN, Solicitor, Coalition of Aboriginal Legal Services, 619 Elizabeth Street, Redfern, sworn 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 BUGDEN: I appear as a representative of the Coalition of Aboriginal Legal Services Organisation. There are six separate Aboriginal legal services in New South Wales. At the current time, I am the solicitor for the six services. The organisation is about to develop into another organisation on 1 July, but at the present time and for the purpose of this Committee, I represent that committee. I tell the Committee that I have spoken to a number of people in preparation for coming here today.

CHAIR: Thank you. And you are conversant with the terms of reference?

Mr BUGDEN: I am conversant with the terms of reference.

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

Mr BUGDEN: Yes. I guess I should tell the Committee that from the Aboriginal Legal Service, we have a number of field officers who actually go into the gaols on a regular basis, sometimes with the solicitors, sometimes in the absence of the solicitors. Those field officers have access to the Aboriginal clients that we have in gaol. That is a higher level than most people can get. That has been in operation for quite some time and it is quite a successful system. For example, a number of the field officers have been instrumental in preventing riots and in preventing people from being stabbed in gaol, if it was an element of whether a particular person should move to a gaol. So I have spoken to those field officers and a number of the solicitors before I came here today about the terms of reference and there are a number of matters that I would speak to that do not strictly come within the terms of reference.

From the different services, there are different field officers who perform different functions, but from Sydney we visit nearly every gaol. Until recently we were able to attend the children's detention centres on a weekly basis. There are a significant number of them. I presume that the Committee is already aware that something like 20 per cent of the gaol population at any one time is Aboriginal. That actually goes up and down. Sometimes it is higher for women. But in the children's detention centres, sometimes in some of the centres, it is up to 80 per cent of the children who are in fact Aboriginal children. That goes straight to the question of how we determine Aboriginality. Currently Aboriginality is determined by the community. If you elect to be part of the community and are accepted as part of the community, that is the test. Its not a percentage test or anything like that, and what we do on a practical basis is speak to the field officers, who interview whoever we are about to represent, to determine the Aboriginality. We get tricked on occasions.

The Hon. PETER BREEN: Could I ask you a question about statistics? What proportion of the deaths in custody are Aboriginal, what percentage?

Mr BUGDEN: I do not know the number, a significant number though, because we are often involved in the coronial proceedings. I have been told that it is about the same number as before the royal commission, that the numbers have not changed for the number of people dying in custody, and it is a concern.

The Hon. PETER BREEN: Do you know what the percentage was before the royal commission?

Mr BUGDEN: Look, no, I cannot answer that.

The Hon. PETER BREEN: But it is a figure that is available, presumably.

Mr BUGDEN: Yes. I presume it is available.

The Hon. GREG PEARCE: Can you make any comment on the practice of ethnic clustering in the gaols, and any particular, or what, impact that might have on Aboriginal inmates?

Mr BUGDEN: Yes. The corrective services—I will talk about the metropolitan remand centre because that is where we have a greater concern for prisoners who are on remand who have not been sentenced yet. So we interview those and so we have a higher emphasis on visiting the gaols where those clients are in custody. At the metropolitan remand centre there are in effect two of the 19 pods that are exclusively Aboriginal and that in fact works a benefit to the boys who are there because one of the issues—and I guess it has probably already been covered—is that young Aboriginal men who go into custody with no support from anyone else are in a particularly vulnerable position because they are often shy, because they have no backup, because they have suddenly lost their family. And of course it is notorious that the heavies in the gaol system would heavy them for their sandshoes and for other things, and to steal whatever they take on buy-up day.

By having them in those clusters they have at least that backup, that support, and there is often a senior person who gets paid a small allowance, a delegate we refer to them as, and they actually assist us when we go to the gaols to bring the men to interview on the particular day that we go to the metropolitan remand centre. By virtue of the backup from the other groups, the other people in the pods, the cultural aspects are given credence. There are certain days in the year when people both inside the gaol system and outside the gaol system in effect celebrate Aboriginality and that means that at least those, most especially the newcomers to the gaol system, are able to survive. Quite a lot of our clients come in the gaol system at a very young age, most unfortunately, often because by the time they turn 18 they have a number of convictions on their records and they end up getting a gaol sentence in their teenage years—18, 19, 20. So that is a disastrous time to go in the gaol system and also points to the need for the backup for the cultural aspects of their Aboriginality to be at least looked at.

The Hon. GREG PEARCE: What is your experience of the classification system, the inmates classification system?

Mr BUGDEN: Can I say that we receive quite a lot of complaints from the clients about the classification system. The classification system happens on a regular and often basis and classifications can be worked through. You can increase your classification. I presume the Committee has already been told that. I point to this though: the commissioner has a right to veto any improvement in the classification that someone has, and does use it on a regular basis.

I understand that, in effect, there is no appeal against that. The Aboriginal Legal Services does not have the resources to act in those matters in any case. However, that veto is used and it is a source of great complaint to the Aboriginal Legal Services that it takes place.

The Hon. PETER BREEN: Are you suggesting that a prisoner is classified in a certain way and then progresses to a better classification and the commissioner intervenes to veto it?

Mr BUGDEN: Yes, I understand that about every six months the classification is examined and anything up to four bodies have input into that, including the Probation and Parole Service and the groups that run the courses in the gaols. There are others, but I cannot remember them now. They can recommend that a classification be increased or improved. The commissioner then has a right to veto that, and he uses it. That veto is the cause of a number of complaints to the Aboriginal Legal Services.

The Hon. PETER BREEN: You answered the question about clusters or segregated prisoners in relation to the MRRC. Do you have a view about the segregation of Aboriginal prisoners at Goulburn? I think it is the only prison with such a policy.

Mr BUGDEN: I cannot speak to that. I know that Goulburn has a number of Aboriginal inmates, but we do not visit there regularly enough to get a feeling such that I could give any meaningful information to the Committee.

The Hon. PETER BREEN: Would there be any other legal services that visit the Aboriginal prisoners at Goulburn?

Mr BUGDEN: There are field officers who visit.

The Hon. PETER BREEN: There is a large number of Aboriginal prisoners at Goulburn.

Mr BUGDEN: Yes, that is why I hope as part of the new Aboriginal Legal Services we have offices near Goulburn and Lithgow. There is a gaol at Lithgow, too. There are three gaols and we have no-one in the area. The resources are even more stretched in the western areas of Sydney. We have a solicitor who goes to Lithgow from Wollongong on an irregular basis. We have an office at Cowra and the officers try to get there, but they make it infrequently. We go there to visit particular clients about particular matters. On the other hand, we go to all the gaols in Sydney and talk to anyone who has a problem or an issue, whether or not they are coming before the court. It has been difficult, but God willing that will happen in the future.

The Hon. PETER BREEN: There is no segregation of Aboriginals at Lithgow or Cowra, only at Goulburn. Is that your understanding?

Mr BUGDEN: I cannot even speak to the segregation at Goulburn. There is no gaol at Cowra.

The Hon. PETER BREEN: I understand that the only gaol in New South Wales where Aboriginals are segregated in one wing, with the exception of the two pods you mentioned at the MRRC, is at Goulburn, and they are fenced off from all the other prisoners.

Mr BUGDEN: I have heard that, but, as I said, I cannot speak to that.

The Hon. PETER BREEN: Do you have a view about whether it is good or bad for the Aboriginal community to be segregated like that? You suggested that it was good for the young prisoners at the MRRC. I wonder if institutional segregation such as that at Goulburn is good for the Aboriginal community given that the Aboriginal wing at Goulburn is generally regarded as the most dangerous wing.

Mr BUGDEN: I think I have said as much as I can say about that. Institutionalisation is a problem with many of our clients. I am sure the Committee is aware of that. That relates not only to Aboriginal clients, but it is a particular difficulty for Aboriginal men and women in gaol.

Ms LEE RHIANNON: Does the Aboriginal Legal Services represent prisoners who make internal complaints about classification?

Mr BUGDEN: No, we get complaints—

Ms LEE RHIANNON: But you cannot represent them.

Mr BUGDEN: We do not have the resources to do that.

Ms LEE RHIANNON: How many complaints do you receive?

Mr BUGDEN: Because I am the principal solicitor I get a complaint once a month, or perhaps once every two months. I get a verbal complaint from a field officer who has been to a particular gaol and sometimes from solicitors. Much of the time I am in court and we do the best we can. We often write letters to the gaol about particular aspects of a complaint or an allegation of assault by prison officers. That is about the limit of our ability.

Ms LEE RHIANNON: Can you comment on how well you think the department responds to such complaints?

Mr BUGDEN: I have never written a letter to the Department of Corrective Services that has not been answered and they have investigated the matters that I have written about. The complaints do

not stop. I receive complaints about a number of issues. It is probably in the department's mandate to answer the letters that I send. There are six principal solicitors around the State, and I presume they also write to the department.

Ms LEE RHIANNON: What is the range of complaints you receive, what are the problems?

Mr BUGDEN: We get a number of complaints about bad treatment from departmental staff, from assaults through to people being involved in lock downs needlessly. Of course, many people in the Aboriginal community are in very difficult financial circumstances. Therefore, being able to phone their family is a vital aspect of their lives. The Royal Commission into Aboriginal Deaths in Custody's recommendation No. 168 indicated that Aboriginal inmates should be kept as close to their families as possible. Certain gaols have certain classifications which means that is often impossible and they are kept away from their families. Often the families do not own a car and they cannot drive to the gaol, so the phone is a vital aspect. We get a number of complaints—

Ms LEE RHIANNON: That they are denied use of the phone?

Mr BUGDEN: Yes. The reality is that they have to have the money in their account to use the phone. Some of the men do not have the money and they are not in a position to ring their families.

Ms LEE RHIANNON: Are there any complaints of racism or racial remarks?

Mr BUGDEN: Yes, there are complaints.

Ms LEE RHIANNON: Do you have quantities of the complaints, or are you so overworked that you say that that is just another letter and move on? Do you put it into your report that you have received so many complaints on these issues?

Mr BUGDEN: Unfortunately, we do the letters and we must move on.

Ms LEE RHIANNON: I understand. To what degree have the recommendations from the Royal Commission into Aboriginal Deaths in Custody been implemented?

Mr BUGDEN: There is a perception in the Aboriginal community that not one recommendation has been implemented. In fact, there have been changes. I always point to the installation of clear glass doors, which was one recommendation. Other matters have also been implemented. We are looking at that issue. We have a research solicitor and that is on the table as we speak.

CHAIR: What is your view regarding the recent changes to the interstate transfer of parolees?

Mr BUGDEN: The interstate transfer is probably the main reason that I have come to speak to the Committee. For many years it seems to have been a dead letter office. When my clients go into custody and they have outstanding matters in other courts, either in Sydney or elsewhere in New South Wales, we make a great effort to get all of those matters dealt with by whatever means as quickly as possible. Our clients want us to do that, the courts want us to do it and the more quickly matters are addressed the better it is for the whole community. That works very successfully. We are able to get rid of those other matters by one means or another. Of course, one of the means is that the sentencing court can take outstanding matters into account. If matters are defended they get an expedited hearing because the person is now in custody and they are dealt with.

With our clients in New South Wales who have matters interstate, we do whatever we can to get those matters dealt with. However, for many years I know that they have finished a whole sentence in New South Wales and they are then taken to another State to face the local, district or supreme courts because those matters are outstanding. It has been a very difficult process to get the interstate matters on for many years. There was a change in the legislation only last year, but I cannot speak to how effective it is because it has not come across my desk. We have written many letters over the years to improve the situation. I am not an expert, but I understand that it requires two

Attorneys General to agree to the transfer. There seems to be an inordinate delay in that taking place. It seems to be quicker when people are extradited to other countries rather than within Australia.

CHAIR: I am not sure whether you were here earlier when the people from the Council for Civil Liberties spoke. However, they expressed a concern about the impact on Aboriginal prisoners of the new ban on the parole transfer of child sex offenders. Do you have any views on that issue?

Mr BUGDEN: I was listening to Pauline Wright and I agree with her comments in that regard.

CHAIR: I refer back to the high-risk management unit at Goulburn. Have you received any reports on the conditions within that unit?

Mr BUGDEN: To this extent I have, and it is not only that unit. However, the high-risk unit is for people who have serious issues. They are generally serving longer sentences than those in other places. I understand that they are the very people who need to do the courses provided by the Department of Corrective Services more than anyone else, for example the anger management and think again courses. As happens with other gaols, very often when there are staff shortages they are the very first things that get the chop. That impacts on the people at Goulburn to the extent that when they come up for parole, although they have volunteered to do courses they have not completed them, and that has an effect on whether they get parole. That occurs in other gaols that have courses. Often they are the first thing that is given the chop when funding becomes scarce, or more scarce.

The Hon. PETER BREEN: Do you get complaints from Aboriginal prisoners about segregation, about being placed in segregation or isolation?

Mr BUGDEN: I have never received a complaint, but I have heard about it. Sydney is the biggest service in Australia and I have never received a complaint. I did not discuss the issue with the other five principal solicitors in preparation for appearing before the Committee today, but I have not received a complaint. I am in a position in which I very likely would have received one had that been an issue. I have been the principal solicitor in Sydney for six years and I have not received a complaint in that regard. That is not to say that it has not happened. A complaint may have gone to an Aboriginal field officer who may not have relayed it to me.

The Hon. PETER BREEN: Is it possible that a complaint about segregation would have gone to the Prisoners Legal Service on the basis that its officers go to court and represent people who are unhappy with their segregation?

Mr BUGDEN: That is possible. The Prisoners Legal Service in the Legal Aid Commission represents people in the Parole Board. We also have a solicitor who represents clients in the Parole Board, and there is quite a bit of interaction between the two bodies.

The Hon. PETER BREEN: So there might be Aboriginal prisoners represented by the Prisoners Legal Service and not by the Aboriginal Legal Services?

Mr BUGDEN: That is correct, as the Legal Aid Commission of New south Wales also represents a number of Aboriginal clients. We swap, particularly when there are legal conflicts for example. Some clients elect to choose the Legal Aid Commission for whatever reason. We represent the vast majority and a number still go to the Legal Aid Commission.

The Hon. PETER BREEN: You spoke earlier about delays in having prisoners' offences dealt with?

Mr BUGDEN: Interstate ones, yes.

The Hon. PETER BREEN: The Committee is looking at the interstate transfer of parolees; that has certainly been the focus of our undertakings so far. The question of offenders being extradited is one that I had not thought about until you raised it. If it is a significant problem for Aboriginal people in custody, it is something that the Committee ought to look at. Can you give the Committee

any further information about the number of Aboriginal prisoners who might be in custody and might be the subject of extradition proceedings after their sentence has been served?

Mr BUGDEN: The only evidence I can give you is that it regularly happens. I regularly find out about it. Once again, we do not have the resources to attack that problem on a better basis. I hear of a number of cases on a regular basis. All the solicitors for the Aboriginal Legal Service go to multiple courts every day. I simply do not have the figures available. We know it is an issue, because we visit gaols, but I cannot point to the numbers.

The Hon. PETER BREEN: A prisoner might be sentenced to 12 months gaol for car stealing. He might also be subject of a car stealing charge in another State. When he has served his New South Wales sentence I think you are saying that he is extradited to the other State to face the charge in the other State.

Mr BUGDEN: Yes, exactly.

The Hon. PETER BREEN: Whereas, if the person had the two charges dealt with together he would serve concurrent sentences.

Mr BUGDEN: Exactly right. It works a particular difficulty for example in the Australian Capital Territory, because of the nearby Queanbeyan court, which is in New South Wales. Often clients move around a bit and they often have matters in both jurisdictions. Of course they are different jurisdictions and so it works a particular problem there as it does with the clients in the Australian Capital Territory on the coast. A number of clients have committed offences there and with all of the New South Wales matters the solicitors who represent them there have the outstanding matters dealt with.

They may receive a 12 months gaol sentence for stealing a car in New South Wales and if they can get all the other matters dealt with at the same time it would be to the community's benefit. It would be a benefit to the community to have the matters dealt with at a rapid rate. From the perspective of the clients and the family, they want to make a fresh start. It is quite difficult with those matters.

CHAIR: You said that you had difficulties in servicing your clients' needs if they are based in the non-metropolitan gaols. Do you think that legal representatives currently have adequate access to the high-risk prisoners in New South Wales? Generally high-risk prisoners are those in the special unit at Goulburn.

Mr BUGDEN: And other areas. There are high-risk clients dealt with on temporary bases before they move there. I do not think women go to Goulburn. I know that at least one of my clients has been dealt with as a high-risk prisoner for a short period at Emu Plains. I cannot give any meaningful evidence to the Committee on the issue you have asked.

CHAIR: Thank you for your submission and for taking time out from your very busy work. The Committee will provide you with its final report when the deliberations are concluded. I do not know how we will address the issue you have raised in answer to questions asked by the Hon. Peter Breen, because it is not within the Committee's terms of reference. It is an important issue that the Committee may elect to take up.

Mr BUGDEN: If the Committee wants anything further from me I am happy to assist.

(The witness withdrew)

(Luncheon adjournment)

MOIRA ELIZABETH MAGRATH, Area Manager, Department of Corrective Services Community Offender Services, Level 1, 1 Fitzwilliam Street, Parramatta, and

KENNETH JOHN STUDERUS, President, Probation and Parole Officers Association of NSW, P. O. Box 1327, Parramatta, sworn and examined:

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

Ms MAGRATH: I just wanted to state briefly that the fundamental basis for the philosophy of the Probation and Parole Officers Association in talking about resettlement and reintegration is not the views of a handful, it is based on international research and we will be talking a bit about resettlement during the hearing. I mention a couple of those more recent investigations and reports, in particular one called *Incorrections* by Tamara Walsh in November 2004, which is a Queensland paper which refers to the majority of prisoners coming from extremely disadvantaged backgrounds, often poor, homeless, undereducated or uneducated, underemployed or unemployed, with health and alcohol and other drug issues. In that report she notes therefore that it is of prime importance that prisoners receive treatment, care and support upon their release.

I would also like to mention Lord Woolf in his statements in the UK as part of the Esmée Fairbairn Foundation and the report on rethinking crime and punishment. He says that if an offender is returned to society with skills, a job to go to and accommodation, the risk of reoffending is reduced. I also refer to the work of Eileen Baldry and others, as referred to in our submission, and also to the work of Don Weatherburn from the Bureau of Crime Statistics and Research.

The Hon. PETER BREEN: Can you explain briefly the role of your association?

Mr STUDERUS: The Probation and Parole Officers Association is a professional association of practitioners in community corrections. Our interest is in the proper practice of community supervision of offenders. We have an overall aim of promoting reintegration and resettlement of offenders back into the community while maintaining community safety. We are not an industrial body; we are not interested in hours and wages, except as our pocket-book is affected, but we do not engage in industrial disputation; we are interested in a professional practice and we are affiliated to that end with the national association, the Probation and Community Corrections Officers Association of Australia, which is also affiliated with international bodies such as the American Probation and Parole Association and the European Conference on Probation and the New Zealand Probation and Parole Officers Association.

The Hon. PETER BREEN: Perhaps to demonstrate your role to the Committee, could you explain your involvement in the transfer of the prisoner Otto Darcy-Searle and how that affected the probation services at Murwillumbah?

Mr STUDERUS: As our officers—

The Hon. PETER BREEN: How were you involved and what role did you play?

Mr STUDERUS: The transfer of a prisoner is an aspect of case management and throughout the management of an offender in a community the aim is to have the offender placed in a situation where they are best supported in order to resettle into the community. We start out with the premise that almost all inmates, and particularly those who are being considered for an interstate transfer, are people who are going to be at some point in time released to the community. There is strong evidence that a period of release to supervision by a probation and parole officer or community corrections officers in a supportive situation where there are family supports, where there are community supports, where there are opportunities to find employment, reduce the risk of reoffending. Is your question directed to the specific practice?

The Hon. PETER BREEN: I am just interested to know. The story is there were a couple of parole officers involved with the transfer of that prisoner who it is generally felt were treated quite harshly by the department and after being removed from the workplace they were subsequently brought back because of the public pressure on what appeared to be a significant injustice. Did you have any role to play in that situation?

Mr STUDERUS: Our association?

The Hon. PETER BREEN: Yes.

Mr STUDERUS: I would say no.

Ms MAGRATH: No, we did not have a role directly in that particular case in terms of what happened with the officers concerned. That, I would say, would be more of an industrial issue and, as Ken explained, that is not our province. But from a philosophical standpoint we would certainly have had a view in terms of what Ken has just explained about the transfer of a parolee interstate.

The Hon. PETER BREEN: So if I were an officer working in corrective services and I was subjected to what I thought was an unjust situation, I would not take it to your association?

Ms MAGRATH: Not as an industrial issue certainly. In terms of how it affected casework practice, it might be raised with our association looking for an advocate to vary the practice in the interests of community safety overall.

The Hon. PETER BREEN: I am trying to understand what you do. The Police Officers Association, for example, comes to mind. Are you like the Police Officers Association in relation to corrective services?

Mr STUDERUS: Not really because they have an industrial role as well as a professional role.

Ms MAGRATH: If I could draw a parallel: we would be more like the body that represents the professional interests of psychologists, which is not about industrial issues so much as the practice of being a probation and parole officer and gathering information and disseminating information to our members about seminars and best practice and what research is currently saying, and advancing the quality of justice through our membership.

The Hon. PETER BREEN: So you did not have any direct role in the Otto Darcy-Searle matter?

Mr STUDERUS: What our interest would be if there is fallout in terms of practice and procedure and policy affecting interstate transfer, we are looking at that from a professional viewpoint: Is the policy appropriate? Is the practice appropriate? Are there changes needed in the procedures? Is there change needed in the legislation? The Murwillumbah situation has generated an internal review of practice and it has also, quite obviously, become part of your terms of reference.

The Hon. PETER BREEN: Well, it is not directly. I was just using it as an example to demonstrate your operation and how you work and the role you play. Are you satisfied with the new arrangements the commissioner has made for the transfer of interstate prisoners?

Mr STUDERUS: We have some reservations. Moira will talk a little bit about the specific impact it is having. I think the thrust of the new arrangements is—if I may start with the old arrangements. There has been a longstanding practice for formal interstate transfer of parole orders. That has a fairly elaborate administrative component and a relatively high sign-off level on the formal transfer. The administrative procedures, as I understand it, within DCS on the formal side have been amended in some ways to tighten them up, but more particularly, the informal parallel practice, which expedited the releases and transfers, was kicked off with the inception of the formal process, but while the paperwork was spooling through, practitioner to practitioner contact on an interstate basis allowed the people that would be charged with supervision of the individual to directly talk to the people who

were managing the offender in the other State and find out some of the key features and then also look at the community situation to which the transfer was proposed.

The Hon. PETER BREEN: The outcome of all that is that prisoners now spend more time in gaol while they wait for the paperwork to go through. That is correct, is it not?

Mr STUDERUS: In effect, yes.

The Hon. PETER BREEN: What do you think of that? Is that a good arrangement?

Ms MAGRATH: It is not a good arrangement when a person spends more time in gaol than the sentencer intended that he or she spend in gaol. However, that is recognising that not all inmates will be released at the expiry of the non-parole period that is set; that the period of parole will be predicated on suitable case management; that the intervention strategies proposed are appropriate to the case; that they live in accommodation that is considered suitable; and that they have adequate community support.

I think we are noticing now that, for instance, in the case you mentioned earlier—unless I missed the news somewhere along the line—I understand that person remains in custody. If he has not been released in the other State it would be because of the absence of those community supports that are so vital to resettlement and reintegration into the community. In effect, we say it would be appropriate for the offender to stay in custody until suitable arrangements could be made at the expiry of the non-parole period. With the facility for transfer of parole orders across jurisdictions people could be released more expeditiously.

The Hon. PETER BREEN: So in that case the prisoner is still in custody?

Mr STUDERUS: I am assuming so.

The Hon. PETER BREEN: He is, in fact. The arrangements in New South Wales where his support base exists need to be in place before he can be transferred. That is the difference, is it not?

Ms MAGRATH: Unless the other State found suitable arrangements and he would be released there.

The Hon. PETER BREEN: But there is an anomaly, is there not, that the prisoner support base—their family, their prospects of employment, their recognition in the community, which is important in those kinds of cases—exists in New South Wales. In the meantime the prisoner I referred to is languishing in another State, still in prison, and, in my understanding of it, his prospects of getting out before his parole has expired are now fairly slim.

Ms MAGRATH: That certainly is an issue we would be concerned about. The same would be true for some people who are being held in custody in New South Wales but who are unable to be released interstate at this stage. I think it would be fair to say that all the States are fairly nervous about accepting inter-jurisdictional transfers.

The Hon. PETER BREEN: They are now, but they were not before. There is a new nervousness, if you like.

Ms MAGRATH: I think that is true. For some of those who are being released to New South Wales, or for whom release is proposed within New South Wales, the community ties and supports are not as strong as they would be if they were to return to their State of origin, for want of a better description. The sad fact is that in Australia offenders do not necessarily confine themselves to offending in their State of origin. They might be transferred whilst they are in custody as an inmate, but they might be better off being transferred as an inmate to the other State and then being released within that State. That seems to me to be quite a good way round the situation, if one were an inmate.

The Hon. PETER BREEN: How would you advocate that proposal in your role though? You represent the association of officers.

Ms MAGRATH: What we feel is lacking in the current situation are the previously existing informal arrangements. As Ken was explaining, that allowed the people who were dealing directly with offenders, who were going to be supervising offenders and who were looking at the local situation, to engage in discussions about casework interventions and the appropriateness and suitability of certain accommodation and what have you. In the absence of the informal transfer and the stricter environment, casework strategies are difficult to establish at the time that the person is going to be released.

You cannot be looking too far back into the sentence to start the release arrangements, which might be meaningless 12 months down the track because various things have changed. So there is an absence of informal arrangements, which also could certainly withstand some more stringent protocols. I think that case highlighted that. We would advocate for the establishment of the protocols for those informal transfers that might take place for reasons of work, gaining employment in another State on a temporary contract basis, or moving interstate to establish family relationships—moving away from the community in which one has been offending so as to reintegrate without the disadvantages of one's previous community supports.

CHAIR: Are there significant differences in the level of support for parolees, such as treatment and rehabilitation programs, that are available in different States of Australia? If so, does the parole transfer system take account of those differences?

Ms MAGRATH: It is probably fair to say that the case management that underpins all our interactions with offenders takes care of those differences, even within the State. For instance, if there were a proposal to release an inmate on parole to live in a rural area where there are few services and limited potential for the level of supervision and intervention that we deem necessary for that individual, those arrangements would not be considered suitable and the person would not be released on parole, with those arrangements. The same applies for inter-jurisdictional transfers. In my current role at Parramatta if I received a request for a person to reside in the Parramatta area, a person who was in need of certain programs that were not available in the Parramatta area, my answer would be, "It is not appropriate. It is not suitable", and we would need to look for alternatives.

So, increasingly, programs are available and additional levels of surveillance are available which cater for that. Certainly in New South Wales, with the introduction of electronic monitoring and some of those other technologies that we are advancing towards, we would be able to provide those things. If we were looking to transfer somebody out of New South Wales and into another State and the case management was not possible, the other State would indicate that and not accept the transfer.

Mr STUDERUS: Ultimately, it is the match between this discrete offender with a package of needs, or supports, or monitoring, and the community to which it is proposed that he or she will be released. Those two poles are really much more important than whether it is in New South Wales, Victoria or Queensland. Unless we want to say, "We are going to avoid risk in New South Wales so the risk falls elsewhere in another State", I think we can only look at it in that very particularised way.

We need to have the procedures to ensure that the formal jurisdictional transfer—which is the end of the formal interstate parole act—comes across. But that is really a matter of convenience in the long run. It is much easier for us to have jurisdiction of the order than to try to enforce the order of another State, so that is why we have this process. But the individual offender, or parolee, and the individual community that are touched on have to get fed into that process.

CHAIR: Do you think there is a role for the New South Wales parole authority to play in assessing applications for parole transferred in New South Wales, given that we know what local programs are available for people?

Mr STUDERUS: I think that could be a possibility. If you look at the structure I think the current sign off is on the executive side. The parole authority has the advantage of being a quasi-judicial body and the final sign off on whether or not a transfer should go ahead would be closely parallel to the kinds of decisions that the Parole Board or the parole authority makes. They are the releasing authority for offenders being paroled from prisons in New South Wales. It would not be a big jump to say, "Well, they could be the authority for approval of a transfer of a parolee interstate"

and the idea that that would be a substitute of a semi-independent authority for the executive authority.

Ms MAGRATH: I guess the rider to that is that it should not be added as another level to further clog up the process, where it would add no value. It is important also for us to say that transfers of parole orders are not a whimsical notion and that offenders decide they would really like to live on the Gold Coast or in some other attractive location. In considering supporting the transfer of parole across the borders, it is within a case management framework and it is predicated on the transfer affording an enhanced opportunity to reduce re-offending. It is not about divesting ourselves of problem offenders or difficult-to-manage people; in fact, it is quite the opposite, and looking for where the greatest likelihood of reducing re-offending is, which obviously equates with the greatest community protection.

CHAIR: You raised the issue of the Gold Coast. One of the questions that we had prepared was: How should the parole orders of persons resident in border towns such as Coolangatta and Tweed Heads be administered? Before lunch we heard evidence that that could have an impact, in particular, on Aboriginal people because their family groups tend to move from one area to another, not taking into account the artificially drawn borders we have in Australia. Do you have any comments on that?

Ms MAGRATH: Absolutely. Commonsense should prevail. People's lives are not demarcated in the way that State borders are. We often find that we have people living in Queanbeyan and working in Canberra, and even in those towns that do not appear to be border towns, such as the Moree area, where there is a large Aboriginal community at Toomelah, north of Moree. A lot of their links are in south-eastern Queensland. It is not as straightforward as saying, "You will just have to meet at the border and talk to your family there", as it just does not work that way. Underpinning everything has to be community protection and the case management framework that recognise the importance of those community supports—the accommodation, the employment, and so forth. In effect, I would say that those issues have been managed, largely with commonsense, for many years.

CHAIR: In your submission you refer to "The development of protocols through an informal arrangement is a necessity." Are these the types of informal arrangements that you are referring to there? Would you like to expand on that a little more?

Ms MAGRATH: Pointing to the latter part of the submission, I suppose we have talked about the sorts of things that need to be included in those protocols. We are advocating for the return of the informal transfer as it previously existed, but with tighter controls so that there is consistency across the States and everybody is on the same page. That includes the quantum and nature of information change, the exchange of criminal histories, intelligence available regarding particular offenders.

Also, for those border towns one of the issues is that the support services might be in Albury when the person lives in Wodonga. Those issues need to be recognised as well, even the Centre Link office could be just across the way. We would not presume at this juncture to state what those protocols should be; rather, we have taken a broader view of the sorts of things that ought to be included and, of course, would be more than happy to participate, probably through our affiliated national organisation, in the development of those protocols.

The Hon. PETER BREEN: Might I clarify the situation with regard to industrial problems and probation and parole officers? We talked about the situation at Murwillumbah, for example. You said that the officers concerned about their treatment would not go to you. Will you tell the Committee where they would go for advice?

Ms MAGRATH: They would go to the Public Service Association, which is the union that represents administrative and clerical staff.

The Hon. PETER BREEN: Do you know is that issue has been resolved at the Murwillumbah office?

Ms MAGRATH: My understanding is that it has.

The Hon. PETER BREEN: Do you know whether any of the protocols that were developed during that incident have been the basis for the protocols that we are now looking at for interstate transfer of prisoners?

Ms MAGRATH: The issues around Murwillumbah and what happened there in terms of the intricacy of the interaction, the transaction, I am not sufficiently familiar with to know—other than that that was a situation in which it was an informal transfer and which I suppose prompts us to advocate for greater consistency across the jurisdictions in terms of those protocols.

The Hon. PETER BREEN: It seems to me that this new protocol has been developed to target sex offenders and that if we took sex offenders out of the equation we could actually returned to the informal process that operated before. Would you agree with that?

Ms MAGRATH: Certainly the events that seem to have precipitated the action related to a child sex offender. I suppose it could easily have been some other nature of offence that precipitated such a furore, and the tightening up and looking at new protocols.

The Hon. PETER BREEN: I am concerned that there may only be a very small number of sex offenders who are affected by interstate transfers, whereas there may be a large number of other offenders—for armed robbery or car stealing or any number of other offences—and that the solution that has been set upon by the Commissioner seems to me to be an overkill in a way; that if the problem of sex offenders, if it is a small problem, could have somehow been isolated without interfering with the procedures and protocols that were already in place.

Mr STUDERUS: I would submit the nature of the offence is a factor to consider in interstate transfers. From a public-relations standpoint, it may be easier to make an exclusionary rule for all sex offenders. I would agree with you that if we take the worst case and build our policy on that it may be overkill for the majority. I would be a little reluctant to advocate that we simply take a category, a broad category. It may be limited but within the category of sex offenders it is a fairly broad spread of offending types. The circumstances of those individuals may vary widely. Simply excluding them from the process and making them ineligible for transfer, or having some other harsh procedural remedy, could well be overkill for some people within those bounds. I think our approach would be rather to get down to the individual case and work to policies that will allow each case to be considered individually on its merits and with the most appropriate manager for each individual offender, whatever the category.

The Hon. CHARLIE LYNN: The Committee heard this morning that the prison system is overcrowded and prisoners are being shuffled between court and police cells. In view of that, is your organisation under increased pressure to accept offenders on parole or probation that you do not believe should have been released? Do have concerns that the present classifications are being watered down to expedite reintegration of offenders?

Ms MAGRATH: Our expertise is not really in the area of classification. Our workload, I suppose, comes not only directly from the gaol; in fact, the greater majority of offenders are on community-based orders or subject to good behaviour bonds and community service orders or in fact on home detention or drug court orders. The release of an inmate at the conclusion of his or her non-parole period is probably more the general expectation. With very few exceptions, those who potentially will never be released, we would expect that the majority of inmates would be released at the expiry of their non-parole period unless there are very good reasons not to release them. We would hope that in fact they have a significant time of release under the supervision of the Probation and Parole Service during which we can start to set case management strategies that are sustainable long after the supervision has expired, rather than have been released at the conclusion of a sentence without any of the supports, guidance or, in fact, surveillance that we would introduce.

Mr STUDERUS: To go back to the first part of your question, I am not aware of any sense of additional pressure for us to approve or recommend releases. I do not sense that there has been any great push to slash our benchmarks for when good case management would suggest release. I think probably, given the hue and cry in the press and on talk-back radio, our officers are probably more sensitive than we have ever been to issues surrounding release from custody. We are conscious of the

increase in numbers in gaol, and we may not fully understand the reasons why those numbers are going up, but there is only a small part of those people in gaol that we are actually part of the process of releasing them. Most of them come out automatically. It has not been, in my sense, any great pressure on us to open the gates.

(The witnesses withdrew.)

BRETT ANTHONY COLLINS, Managing Director and Spokesperson, Justice Action, PO Box 386, Broadway, Sydney, and

MICHAEL STRUTT, Researcher and community Activist, Justice Action, PO Box 582, Ashfield, 2131, affirmed and examined:

CHAIR: Mr Collins, in what capacity do you appear before the Committee, that is, as an individual or representative of an organisation.

Mr COLLINS: As a representative of an organisation.

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

Mr COLLINS: Yes. I am.

CHAIR: Mr Strutt, in what capacity do you appear before the Committee, that is, as an individual or representative of an organisation.

Mr STRUTT: As spokesperson for Justice Action.

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

Mr STRUTT: Yes.

CHAIR: If either of 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.

Mr COLLINS: We have documents here we would like pass up.

Documents tendered.

CHAIR: Would either of you—or both of your—like to make a brief opening statement?

Mr COLLINS: Yes, Thank you for the opportunity to address the Committee. We would like to make the personal observation that the structure of the Committee and the hearing is quite wrong. Although we are a prisoners support organisation and have recently represented Australian prisoners before this hearing from the point of view of a prisoner's right to vote, we have decades of history of working in that area. Some of the material we have just passed includes the carriage of the International conference on Penal Abolition, which we hosted in Tasmania. We have statements on support for our work from community organisations such as Oxfam, NCOSS and the New South Wales Labour Council, as it was, which I intended to table and can still do so. We have also been managing community service orders for the last 21 years as an agency, with me personally as a supervisor. We are regarded by the Probation and Parole Board as one of the leading agencies. We have also been working in the groundbreaking mentoring area, which is regarded as extremely important as an alternative to imprisonment. We are on the Justice Health Consumer Council since it began and we were at the formation of the Prisoner's Legal Service. We also have the only person on the women's advisory committee for Corrective Services. So we have a long history of involvement in the area.

We find again and again in these situations that we are forced to defend ourselves and to explain what we have to offer, despite a long period of involvement and recognised strength in the area. For example, at the time of the inspection of the units we clearly had a very important function. We have a long history of examining the HRMU and we had been invited by the commissioner at the time of the preparation of the HRMU to be involved in its planning. So our involvement started at the beginning. Not to be part of the inspection was a mistake; we have as much expert knowledge in the area as anyone. We have been receiving information such as the statement from the prisoners of the HRMU, which we took up. It formed the basis of a document that I will pass to Committee members,

which is the "Offer of Hope" from the men of the HRMU. I would like to read that to you as a statement from the prisoners inside those cells.

We were most disappointed that when the Committee went down to Goulburn it did not see the most important part of the gaol and hear from the most important people who were involved in assessing the issues that are before the Committee—that is, the effectiveness of the HRMU and the objectivity of the prisoner classification committee and access by other people to them. The people who were best able to talk to Committee members and give them the greatest information were the prisoners themselves. To be locked away from them and not to ensure that you had access to the voters, who have a constitutional entitlement to address you, was wrong. They are entitled, first of all, to speak to you as their representatives. Many of the prisoners in the HRMU have not been convicted. They are innocent before proven guilty and they are entitled to talk to their representatives. Not to do so was a mistake. We put it to you that they need to be not just listened to, but heard. You need an opportunity to talk to them. Not to do that was to miss the point: It accepts that the HRMU prisoners are not human beings and are not entitled to access their constitutional rights. There was a structural mistake in that sort of approach.

Addressing myself to the "Offer of Hope", it was based on the statement that came from the prisoners of the HRMU. The statement is dated three years ago and formed the basis of the "Offer of Hope", which states:

> Offer of Hope
>
> *"Freedom with responsibility: responsibility to self and community."*

This is the statement from the Special Care Unit at Long Bay, which is regarded as being another way of handling prisoners instead of the interactable unit. The statement continues:

> We, prisoners of Australia, call upon governments to acknowledge that having lost our freedom of movement we are still entitled to all other rights and safeguards provided to those outside prison.
>
> We believe in the real meaning of the term "corrective services". Instead of wasting government money, causing fear in the community and allowing our lives to slip away in despair, we believe that with help, trust, and encouragement we can return to our communities, families and friends and make a positive contribution to society.

That is a statement from the men of the HRMU. It goes on:

> We ask for your help
> - with education
> - with medical care
> - with contact with families and the community
>
> We ask for your trust
> - with freedom of association
> - with freedom of speech
>
> We ask for you to believe
> - that we are humans with rights and entitlements
> - that we can change
> - that our lives are just as important as any
>
> In exchange, we offer peace, a commitment to non-violence, to listen as we are also heard in the spirit of the motto from the Special Care Unit at Long Bay, Sydney: *"Freedom with responsibility: responsibility to self and community."*

It is dated 30 November 2005. That statement is one of the statements that was intended to be given by the men of the HRMU through that double-glass door that prevented them from talking to you when you did that inspection. In support of that offer, I ask from our allocated 15 minutes this afternoon for one minute's silence in order that that issue be respected.

[*One minute's silence was observed.*]

Thank you. Please be assured that we want to work with the Government. We have a long period of service in the area and we ask to be taken on as serious partners in the area. We feel that we are being excluded—we are being excluded—and that is wrong. We have community support to do what we are doing, and we ask that you assist us.

CHAIR: Before you go any further I must outline that the Committee did receive the offer to accompany us on the visit to the high-risk management unit at Goulburn gaol. But the arrangements we had made with the Department of Corrective Services were for Committee members only and the Committee secretariat—the staff—to go on that inspection. That was the basis of the arrangement and the negotiations that we had to gain access to the HRMU and to do the inspection. There was not the capacity to build other people into that inspection.

Mr COLLINS: But not to talk to the prisoners is a really basic issue; to actually ask them—

CHAIR: That was a different matter again. I think we could spend a lot of time discussing that here but it is probably better if you talk to your submission and explain to us what your main problems are with the HRMU and where you think it does not comply with international guidelines and so on. That might be a more productive way to spend time.

Mr COLLINS: In our initial submission we made a clear statement—in fact, I think in order to save time it is important to recognise this as part of our submission—to the Minister. Part of our submission is the United Nations guidelines and the letter dated 9 December, where it is laid out very carefully. If you had entered a cell where a prisoner was and the door was locked you would have seen that there is no access to natural light and natural air. According to the United Nations standards and guidelines, that is a breach.

Mr STRUTT: I will start by addressing your first question, which was that the HRMU does not meet international guidelines. Where do you start with that one? I will restrict myself just to the UN material as opposed to all the other international guidelines that the HRMU breaches. Starting with the UN standard minimum rules for the treatment of prisoners 1977, parts 10, 11, 21 and 31, part 10, in particular, says that all accommodation provided for the use of prisoners, in particular all sleeping accommodation, shall meet all requirements of health, due regard being paid to climatic conditions, in particular, to cubic content of air, minimum floor space, lighting, heating and ventilation. Ventilation is one of the very consistent complaints we get from HRMU prisoners.

As to the places where prisoners are required to live or work, it is interesting. It says in the standard minimum rules that windows shall be large enough to enable the prisoners to read or work by natural light and shall be so constructed so that they can allow the entrance of fresh air "whether or not" there is artificial ventilation. The national committee of correctional officers supposedly adopted this standard as their own standard for prisoners in Australia. But, strangely enough, although the UN standards say "whether or not" there is artificial ventilation, the New South Wales copy of the standards now say "unless" there is artificial ventilation. So basically they have changed the UN standards to fit their own inadequacies with that particular rule.

As well as the minimum rules for the treatment of prisoners, there are the UN basic principles for the treatment of prisoners 1990. The HRMU breaches that just about in its entirety—every point, 1 to 11. I will not bother reading them all for you. As to the UN body of principles for the protection of all persons under any form of detention or imprisonment, it breaches principles 6, 24, 25, 26, 28, 29 in particular, principles 30 and 33. Also it breaches principles 1, 8, 9, 11, 20 and 22 of the UN principles for the protection of persons with a mental illness or an improvement in mental health care. I think the fact that the HRMU does not meet the minimum UN principles for the protection of persons with a mental illness is particularly relevant in the context of the current Scott Simpson inquest. Basically, that is the short list of the international protocols and guidelines for the treatment of prisoners that are breached by the HRMU.

The Hon. PETER BREEN: Are the guidelines that you were just reading from the same guidelines that are on your website: the standard minimum rules for the treatment of prisoners?

Mr STRUTT: I believe some of them are on the web site. I could not say for sure. The JA web site is a bit chaotic so I could not say for sure what is on every section of it.

The Hon. PETER BREEN: I was not able to relate the numbers that you were reading out to the document that I have. Maybe you could table your document.

Mr STRUTT: It is probably best if I email it because I have a lot of scratchy notes on this copy.

The Hon. PETER BREEN: That would help.

Mr COLLINS: The United Nations standard guidelines have significant differences from the Australian ones so I think that might be helpful.

Mr STRUTT: The specific ones that I was reading from were the standard minimum rules for the treatment of prisoners 1977, the basic principles for the treatment of prisoners 1990, the body of principles for the protection of all persons under any form of detention or imprisonment 1988, and the principles for the protection of persons with mental illness and improvement of mental health care 1991.

The Hon. PETER BREEN: The only document I have from that list is the 1977 guidelines. If we could have that emailed it would be very helpful.

Mr STRUTT: Sure.

The Hon. PETER BREEN: As a matter of practice, how does the department decide which principles in the 1977 standard minimum rules—which are worldwide rules, as I understand it—go into their guidelines and which ones do not?

Mr STRUTT: That is a little bit hard to get to the bottom of. The committee of managers of correctional centres in Australia or something—I probably got the name wrong; committee names go straight out of my head—claims to have adopted the standard minimum rules as their guidelines pretty much in toto. But, as I pointed out, at least one of them has been changed in a way that seems quite pernicious to me.

The Hon. PETER BREEN: Do they change in each State or is there an Australia-wide form of rules?

Mr STRUTT: The body is the corrections Ministers, who meet as the national standards body to endorse the standard guidelines for corrections in Australia, which are based upon the UN standard minimum rules for the treatment of offenders. Reading them, they do look very similar—except for those key word changes from place to place. As you would probably know better than me with regard to international treaties, I think the Teoh case is the one that set the standard on that. Basically, it is considered to be appropriate for helping judges to decide whether departmental policy is appropriate. But legislatively it is not enforceable in Australia, as I am sure you would be aware.

The Hon. PETER BREEN: There is another document called an "operations manual". Can you explain what that is?

Mr COLLINS: The operations manual is really a document for internal use in Corrective Services. It is based on regulations and the legislation. It was not seen until a short while ago—in fact, it was almost unavailable to anyone. Certain sections are still not available to us, depending on what their function is. But I think it is an internal document for Corrective Services itself.

Mr STRUTT: One thing that used to be commented on was the fact that there seemed to be multiple versions of that and revisions of it from different decades that different people were working on in different centres.

The Hon. PETER BREEN: When Commissioner Woodham appeared before the Committee in December he said that they used guidelines in determining the criteria for having prisoners in the super max. When we asked what those guidelines were, it was not all that clear whether he was using the operations manual or some other document.

Mr STRUTT: I think that was made pretty clear in the part of our submission that was prepared by Neil Funnell, who is a legal aid lawyer. He actually looked into cases where those guidelines were applied or exactly what power was used for declaring prisoners to be maximum

security or extreme high risk and high risk. Basically, it is all up to the commissioner's discretion. There is a form with a whole bunch of tick boxes, which are all very much value judgment type tick boxes. They involve questions such as, "Has this person every been suspected of this?" So essentially there are guidelines but the guidelines are so weak as to be basically pretty much however the commissioner feels they should be applied on the day.

The Hon. PETER BREEN: This category of extreme high risk has caused a lot of confusion particularly amongst people giving evidence to the committee. Do you say that the category of extreme high risk is determined solely by the commissioner?

Mr STRUTT: Yes, as far as I can tell and certainly going back to what I have heard.

The Hon. PETER BREEN: Many prisoners labelled "extreme high risk" are not in the Supermax.

Mr STRUTT: Yes, it is in this part of our submission "When the norm is not the norm: Goulburn Correctional Centre and the Harm-You" by Neil Fennell. He cross-references it. There are a list of cases where that has been queried. So basically they are the legal reasons given for determining someone who might be extreme high risk. Essentially it boils down to the commissioner's discretion. They go through a form but it does not seem to be determined on the outcome.

The Hon. CHARLIE LYNN: This morning the committee heard that male prisoners are being held in a woman's prison. Are you aware of that?

Mr COLLINS: I personally have not heard that no.

Mr STRUTT: I have not heard that that is the case right now but certainly for various reasons, including overcrowding and occasionally for what seems to be disciplinary purposes more often the other way, women to male prisons.

The Hon. CHARLIE LYNN: Why would a male be placed in a women's prison for disciplinary reasons?

Mr STRUTT: I was about to say more often the other way. I was talking in general about swapping genders and also swapping juveniles to adult prisons and things like that. That does happen. It is usually due to overcrowding and sometimes it is due to disciplinary reasons, but we do not keep track of every time it happens, no, but it does happen.

The Hon. CHARLIE LYNN: The committee heard previously that the Minister claimed a couple of hundred spare beds are available in the prison system. Do you say there are no spare beds and that the prison system is overcrowded?

Mr STRUTT: I am sure the commissioner is in a better position than me to be able to state what the effective vacancy level is needed in our prison system to enable to cope with transfers with prisoners needing to be at a particular court case at a particular time. You can have a few hundred spare beds in minimum security but if you have got a few hundred extra maximum security prisoners then again it can requite a bit of creative bed shuffling. I think just having a couple of hundred spare beds in a system of 9,000 prisoners necessarily indicates that all is well with regards to vacancies.

The Hon. CHARLIE LYNN: Is overcrowding an issue in the prison system?

Mr COLLINS: There is no question about it. When you consider the increase over the past decade of the use of imprisonment there is no question that imprisonment is over-used. Also the fact that the recidivism rate is at 45 per cent and increasing shows how much of a failed public policy it is.

Mr STRUTT: And the increase in prison violence rate over the past 10 years has shown that however many beds they have got staff increases certainly have not kept pace with the increase in prisoner numbers.

The Hon. CHARLIE LYNN: Is the issue of spare beds really a furphy?

Mr STRUTT: I think so.

Mr COLLINS: Absolutely so and the other thing is that our experience, and there has been some discussion recently about the use of imprisonment as one way to lessen crime rates, is that people go to gaol for lesser offences and then after being in gaol are then so alienated from the community they are then involved in violent offences and are much more of a danger to the community. So, in fact, what you have instead of prisons lessening crime in the community it is actually causing crime and it is expressed in that 45 per cent recidivist rate after two years.

The Hon. CHARLIE LYNN: Have you made representations to the Government regarding your concerns about overcrowding?

Mr STRUTT: Oh yes.

Mr COLLINS: The issue of overcrowding is not as simple as that. Our experience is really clear. At the moment we are involved in the issue of the ACT prison where they are talking about having a new prison for 300 prisoners. Although at the moment there is less than 200 prisoners based in the ACT. One might say there is no problem at all with overcrowding but experience is clear, overseas and everywhere, that if you build a prison you fill it.

Mr STRUTT: You will find that Justice Action has taken a consistent line with, for instance, the Select Committee on the Increase in Prisoner Population and various other prison-related inquiries held by the Legislative Council that the prisons are massively overcrowded. There are all sorts of infrastructure, staffing and health and safety issues that have not been keeping up with the rate of increase of the prison population in New South Wales. Our standing proposal for a very long time is to actually put a cap on prisoner numbers in New South Wales at least until the staffing, the infrastructure and all the rest of its catches up with the huge boom in prison numbers that has happened under this and the previous government.

Mr COLLINS: There are two very effectives ways to deal with crime that are not properly used at all. One of them is restorative justice which has worked quite well with kids and clearly should be expanded into the adult area. It satisfies victims. It solves all the issues that the Government has to deal with. The other is mentoring which is now being adopted by the Attorney-General's Department where people from the community give support. You actually involve them rather than exclude them as happens with imprisonment. Instead of people being taken away from their families and excluded from their jobs and whole base they retain those things. They also have some additional support and mentoring ensures that they are doing what they should be doing and area stable. There is the answer to overuse of imprisonment.

The Hon. CHARLIE LYNN: What is your view on bush-camp type secure environments that are built around personal development?

Mr COLLINS: They have been developed over the years and, as happens in New South Wales, they tend to have Aboriginal people go back into their community. It has that benefit of being at least part of the Aboriginal culture. But once again the problem it becomes a very coercive one where you actually take the person away from their family whereas you cannot really deal with community problems without actually dealing with them in the community with the support they need. Quite often it requires, as has been said, early intervention where the family itself gets support as a whole. Rather than actually taking them at the age of 15 and putting them into a youth institution you deal with the family and ensures it gets the support it needs.

Mr STRUTT: I think in general a lot of the measures that could be seen as perhaps showing a bit more cultural sensitivity and concern for rehabilitation of prisoners, if they were being carried out in an environment where the culture of the administration, and the people carrying it out, actually did promote those goals then they would work. But I think really there is a very punitive culture. The former Inspector General of Prisons said that there is a culture of zero. There is an idea amongst prison officers that whatever the prisoners gain the prison offices must lose. For instance, bush camps if they are made culturally appropriate for rural Aboriginal prisoners they could be a real advantage

for them. But in the New South Wales Corrections systems it is just as likely to be used as punishment for urban prisoners who would not know a bull ant until their foot swells up.

The Hon. CHARLIE LYNN: Is the shuffling of people on remand between court and police cells an outcome of an overcrowded system?

Mr STRUTT: That and the court queues. I have recently moved to Newcastle and what I have noticed there is something that I know from the New South Wales prison system happens quite a bit when there are problems with court queues and overcrowding, that is, the prison van just drives round and round the suburbs with a van full of prisoners waiting for basically court cells to be free for them to be able to appear. Sometimes you see them parked in a car park down on the beach. Of course, all the prisoners are locked in the back.

The Hon. CHARLIE LYNN: They are held in prison vans and driven around?

Mr STRUTT: Yes.

The Hon. PETER BREEN: I was in George Street on Saturday night and a prison van came up Goulburn Street full of prisoners at 9.00 o'clock at night. Where would they be going at 9.00 o'clock at night?

Mr STRUTT: I have certainly spoken to prisoners who say it is basically because the court has not been ready to receive them. They are taken as a job lot. If five of them have got to appear in court on a day, they are all loaded in the back of a van, driven to the court, the courts are not ready, the cells are full, go for a bit of a cruise. It has been happening for years but I have noticed a lot of it in Newcastle.

CHAIR: In your submission you stated that the Barlinnie special unit in Scotland is a better model for housing high-risk prisoners than the HRMU. Will you expand and tell the committee what you think the real differences are and why the Scottish model is better?

Mr COLLINS: It was actually the basis for the special care unit as well. They had what they called the M&S cages where they put the people who are the most troublesome—the people who are now in the HRMU—in these cages. There were grills on the front of the cages and food would be thrown underneath the door. The prison officers would not enter the area at all. In order to wash the areas they just hit it with a hose and so the prisoners were really harshly treated and it was a very aggressive area where the prison officers themselves felt endangered. In fact, one of them was attacked with a piece of a shoe which was not regarded as being any possibility of a danger, but the guy attacked the prison officers.

So the prison officers decided themselves they wanted something that was not likely to put them in such danger and they then set up this new Barlinnie special unit which sat inside the gaol. The prisoners who were previously in the M&S cages were put inside this unit and given access to knives and forks, had phones to talk to their families, and actually had family visits when people actually came in. They responded immediately and the people who had previously been dangerous were no longer. There is a man called Jimmy Boyle who actually talks about that further. The prison officers gave full support to it and it worked really well. At the end it was undermined by a whole range of different pressures on it, and apparently it no longer exists in its form.

The lesson is really clear that the treatment of people properly ensures they also respond properly to the community. So if you isolate them in the way they do at HRMU, and you remove them from their own community, then they learn no community skills and become more dangerous and when they return to the community they actually wreak punishment or damage in the community. That is where we point to the fact that the only obligation of Corrective Services is management to stop the people from escaping and the management of people until they get out the front door. There is no concern at all in ensuring that they are safe when they return to the community, that they are ready to fit into their family, they have access to the community and they are much more settled. The reality is last year we went and picked up from Goulburn gaol a man who was regarded as the most dangerous prisoner in New South Wales, a man called Chris Binse.

CHAIR: We read about him in the *Sydney Morning Herald*.

Mr COLLINS: They threw him out the front of the gaol. We went to pick him up and looked after him for a period. We introduced him to a range of people. People from Enough is Enough met up with him. A lot of victims' groups and community groups like NCOSS met up with him and recognised the fact that this was just an ordinary man and yet he was the most dangerous man in New South Wales inside the gaol system. All we had to do was to ensure that he was supported well and in a position to survive. But he did not get that support except from his own community, that is to say, I return to the original statement, it is essential we have access to these people. It is essential we can get into the HRMU. It is essential that their families have access to those areas otherwise we will return to situations similar to what we had in Grafton.

In Grafton there was an attempt by Corrective Services to brutalise the prisoners who were up there. It continued for 34 years much to the disgrace of everybody connected with the State and the end of it was it was uncovered. Worse than that, people who went there for relatively small offences returned to the community and wreaked havoc on the community. There are a whole series of murders, which have been very well documented, that were caused by the people who had been brutalised inside Grafton. Likewise you will find people who go to the HRMU, if they are treated in the way they are and they become so isolated from the community, they will also be dangerous, even though they were not when they first entered. Or in some case when they have problems if you do not deal with those problems in a community way inside the gaol system, which is the obligation of Corrective Services then it has failed its purpose.

It is essential we have a criteria in place which says "Let's ensure those people are better. Let's use those who have goodwill towards them to help as well." The best of all are families. Why should not families be allowed in, in the same way as in Third World countries? When I went into Third World countries I saw in places like the Philippines and Indonesia, families going in and living inside the gaols. There has never been any reason to prevent families going into the gaols and giving support to prisoners. If they will put their time and lives aside to do that who would prevent them? Why should they not be allowed in there in support? But you never see that in New South Wales but Third World countries ensure that happens.

You can guarantee when the prisoners come out they are much more likely to, first of all, have a family to go back to and to be actually not dangerous and to fit back in a much safer result. That is why we got a 45 per cent recidivist rate, and increasing.

The Hon. PETER BREEN: Is it true that the prison population in New South Wales is double the prison population in Victoria per head of population?

Mr STRUTT: That is right, the imprisonment rate per head of population is round about double, although I think the crime rates are pretty much equivalent.

The Hon. PETER BREEN: The crime rates are the same.

Mr STRUTT: So we must be really bad up here and we need more punishment!

Ms LEE RHIANNON: I was interested in your communications with the prisoners in the HRMU. You spoke a little bit about the offer of hope and in your submission you talk about the incidence of self-harm and how some prisoners are assigned to the HRMU for their own protection. What communications do you have with prisoners? Have you heard about this through letters, verbal communication or when prisoners come out of gaol? Can you explain how you have collected this information?

Mr COLLINS: There are a series of ways. Every now and then we get petitions; we get letters from a series of prisoners. The families of prisoners also pass information to us about what is happening inside, but it becomes very patchy and it depends very much on who is going in. It is not happening in a consistent sort of way and we also do not have the caseworkers to monitor what is occurring inside the unit.

Mr STRUTT: What I would have hoped to have seen, but it is not going to happen in this State by the looks of it, is if the Inspector General had completed his job of making Prison Visitors more co-ordinated under him, fixing up the bluey system, the complaints form system in the prisons and making them work for the first time in decades and also reporting to Parliament, which he had finally managed to achieve shortly before his position was abolished, rather than reporting to the Minister, then it would be possible for us to actually get a far better picture overall of the conditions in prisons—in the prison system in general not just the HRMU. But as it is, we get patches that often seem to relate to particular problems—sometimes it just seems to be pure luck that we get a whole run of information out of a particular part of the prison system at once and then nothing for quite a while.

But from the HRMU we have had pretty consistent complaints, both from individuals and groups, primarily on the living conditions and the fact that they all consider themselves to be kept in segregation, even though Corrective Services insists that they are not. There are consistent complaints about air quality, medical care and a lot of complaints about procedural justice, which is the lack of avenues to counter false allegations—often the false allegations that got them in the HRMU in the first place, like the Corrective Services fantasy about a W2 gang is one of the favourite false allegations that whammed people in the HRMU.

The Hon. PETER BREEN: An Asian man head of a white supremacist gang?

Mr STRUTT: Yes, apparently there is also a Lebanese head of the white supremacist gang lately as well, and there are identifying gang tattoos but they are all so clever that nobody has ever found one. But you do not have to worry about rationality or consistency; it just has to keep the narrative for the media stories and W2 gang does that. So basically they cannot counter the false allegations and also they cannot prepare appeals for their own cases or, in some cases, for the remandees to prepare their own cases. They are not given adequate contact with their lawyers or access to legal materials. We hear a lot of complaints about that too.

CHAIR: Thank you for coming in today and for your detailed submission to the inquiry.

Mr COLLINS: Can I just make one more point? One issue about the HRMU and one consistent trend in the Barlinnie unit as opposed to the segregation style is that if there is a social issue of some sort, it should be dealt with in the community, even if it be a prison community and that there is an opportunity for people to find their own affinity groups and actually give support to one another and do a bit of community building in the process. What has happened over the last decade or two has been segmenting of the prison community into different groups in a way that did not previously happen.

Now, they have created racial divisions that were not previously there and there has been no attempt at all to actually create bridges between them. It is almost as though there is an attempt to manage the prison by creating tension that allows people to be directed against one another and that is contrary to the interests of the outside community. For example, what happened down at Cronulla, that is actually the result of the tensions that are created inside the gaols and so instead of community building and building bridges, they deliberately cut them out.

Inside the gaols there are also the inmate development committees, which clearly are a basis for some sort of communication between those sectors in that there is no attempt to actually make them deal with each other and talk to each other. We would say: Let there be freedom of association inside the gaols so that people who want to be together and feel safe together can be so, and there is an opportunity for negotiation and discussion, which currently does not happen at all.

(The witnesses withdrew)

CHRISTOPHER PAUL LINTON, Clinical Director, High Risk Management Unit, Goulburn Correctional Centre, Maud Street, Goulburn, sworn and examined:

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

Mr LINTON: I am.

CHAIR: If at any stage you consider 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 start by making a short opening statement?

Mr LINTON: I would like to thank the Committee for the opportunity to come down here today and talk about the High Risk Management Unit [HRMU]. I hope that the visit the other day by Committee members served to allay some of the concerns that might have been put to the Committee by various submissions.

The Hon. PETER BREEN: You were here when Justice Action were talking about the High Risk Management Unit. They were some complaints about light, the free flow of air, access to visitors and various other things. Do you have any comments or observations to make about their complaints?

Mr LINTON: In terms of access to light, every cell has natural light in it. In terms of access to outside areas, inmates have access to outside areas, where they are open to the fresh air for approximately five hours a day.

The Hon. PETER BREEN: That little yard at the back is open five hours a day?

Mr LINTON: The back yard is not necessarily open five hours a day; the front yard is open first usually, and the rear yard is after that.

The Hon. PETER BREEN: But is it not the case that only some prisoners get access to the exercise yard and there is a door between the cell and the small yard at the back of each cell?

Mr LINTON: Yes, but that is open daily.

The Hon. PETER BREEN: But not all day?

Mr LINTON: For the period of time from approximately 9.00 to 2.00 or 2.30.

The Hon. PETER BREEN: What if there is a lockdown, for example?

Mr LINTON: If there is a lockdown, they are not.

The Hon. PETER BREEN: So when that door is closed between the cell and the small yard at the back of the cell, then there is no natural light or natural air, is there?

Mr LINTON: There is natural light and the air comes through a ventilation system.

The Hon. PETER BREEN: Where does the natural light come from?

Mr LINTON: The natural light comes through a window at the rear of the cell.

The Hon. PETER BREEN: That is a narrow window at the side of the door?

Mr LINTON: It is.

The Hon. PETER BREEN: I thought that was a light but it is actually a clear window, is it?

Mr LINTON: It is. Many inmates choose to cover it.

The Hon. PETER BREEN: So you are saying there is always access to natural light?

Mr LINTON: Yes.

The Hon. PETER BREEN: And there is always access to either air from the outside or air through the airconditioning unit?

Mr LINTON: Yes.

Ms LEE RHIANNON: Are you saying there is only access to fresh air if it is open, so when there is a lockdown, there is no access to natural ventilation, is that the case?

Mr LINTON: I do not feel qualified to comment on the technical aspects of the ventilation system but I know that it has been tested and that it complies with the requirements for ventilation.

The Hon. PETER BREEN: The position is that when the door is closed there is air but it is air through the airconditioning; it is not be coming from outside?

Mr LINTON: Yes.

The Hon. PETER BREEN: Your position is clinical director. Does that mean you are involved with medicine?

Mr LINTON: No, it does not.

The Hon. PETER BREEN: What does clinical director actually mean?

Mr LINTON: I can outline my responsibilities at the unit?

The Hon. PETER BREEN: Yes?

Mr LINTON: Basically, there are a number of key objectives of the position. They are to establish, direct and monitor all the clinical aspects of services and programs there; provide direction and supervision, guidance, advice and support to a team of offender services and program staff and to develop mechanisms for the evaluation of the programs and services for the unit.

In terms of responsibilities, there are a few different areas. One of them is professional leadership and supervision. That category includes things like planning, organising and controlling the clinical aspects of service delivery; providing direction and guidance in the provision of programs and services, monitoring referrals and co-ordinating assessments; also, looking at establishing and monitoring discharge criteria and discharge protocols in order to facilitate inmate movement into the mainstream population and to provide inmate progress information for case management purposes. It is also establishing and maintaining a regime of regular supervision of the offender services and program staff; providing advice and consultancy to senior management, research staff and key stakeholders; implementing, planning and developing training programs for staff, both custodial and non-custodial, and maintaining an effective and professional team; also contributing towards the professional development of the psychologists and other staff.

Under the program development delivery and evaluation responsibility, I would be looking at responsibility for planning, developing and delivering program components in accordance with the unit's objectives; establishing an appropriate program of activities for the HRMU and co-ordinating and leading regular team meetings attended by custodial and clinical staff, review referrals, discuss assessment findings, program placement and the programs and services in operation, as well as discharge planning.

In terms of management, I have a function of contributing to policy development and formulation regarding the role of the HRMU, maintaining and monitoring relevant file documentation to ensure its adequacy for effective ongoing inmate management, management reporting,

multidisciplinary communication and evaluation and research, and also managing the clinical resources of the unit through ongoing needs analysis and monitoring of what is required.

The Hon. PETER BREEN: Is your experience in Corrective Services? Have you been an employee of Corrective Services for a long time?

Mr LINTON: I have been an employee of Corrective Services for two years.

The Hon. PETER BREEN: Prior to that where were you employed?

Mr LINTON: Prior to that I was employed with the Department of Juvenile Justice.

The Hon. PETER BREEN: So you have been in the justice system or corrective services for how many years?

Mr LINTON: Since 2000.

The Hon. PETER BREEN: Have you had any experience managing inmates in other prisons or in other areas?

Mr LINTON: No. My experience within Corrective Services was limited to the HRMU.

The Hon. PETER BREEN: So before the HRMU and before 2000 you had not had any experience in Corrective Services?

Mr LINTON: Not in Corrective Services, no.

The Hon. PETER BREEN: Have you had any other management experience?

Mr LINTON: In my role in the Department of Juvenile Justice I was the specialist services co-ordinator for metropolitan Sydney for a number of years and I also acted in that role in the northern region of the State, around Gosford, Newcastle and so forth.

The Hon. PETER BREEN: When did you join Juvenile Justice?

Mr LINTON: In 2000.

The Hon. PETER BREEN: Do you have any benchmarks that you use in managing and assisting prisoners in the HRMU? For example, do you rely on advice from other people as to how they should be dealt with?

Mr LINTON: Absolutely.

The Hon. PETER BREEN: What sort of advice do you get and from whom do you get it?

Mr LINTON: Part of the objectives of the HRMU fit into the overall strategic framework for violence prevention within the correctional system. I am under the supervision of the statewide clinical co-ordinator for violence prevention programs and also the custodial director of therapeutic programs. They provide advice on management of the inmates and I implement their advice.

The Hon. PETER BREEN: If I could make an observation about our visit, it seems to me that the prisoners in unit 7, which is the unit where they are assessed, appear to be locked away. Certainly we were not able to see them. I assume they are in single cells and that they have similar rear yards to the other cells. If you compare their conditions with the conditions of prisoners in, I think, units 8 and 9, where they appear to have day rooms and to be able to share their day rooms with other prisoners, or at least one other prisoner, there seems to be a dramatic contrast. Some of the prisoners in unit 7 appear to have been there for quite some time.

Mr LINTON: There is a difference between unit 7 and units 8 and 9. Unit 7 gives the opportunity for a greater level of security for staff and for inmates within the unit. Units 8 and 9 are less restrictive in that sense.

The Hon. PETER BREEN: Approximately how many prisoners are there in unit 7?

Mr LINTON: I do not know the exact figure, but I would say it is probably around seven.

The Hon. PETER BREEN: Some of those have been there since that joint New South Wales-Victoria anti-terrorism raid, so that is at least five months. Are there any rules or benchmarks about how long prisoners remain in unit 7?

Mr LINTON: Typically the stay in unit 7 is based on a segregated custody direction. Initially those directions are usually for 14 days followed by three-month periods. After 14 days all inmates have the right to appeal the segregation order to the Serious Offenders Review Council. I think some of them have taken up that option; in fact I am sure some have. The council makes a determination as to whether the segregation orders stands or not.

The Hon. PETER BREEN: If the Serious Offenders Review Council supports the application, the prisoner is entitled through the prisoners' legal service to apply to a court to review the classification. Is that right?

Mr LINTON: I am not sure.

The Hon. PETER BREEN: Even as I say it I do not think that is right in the case of a prisoner classified under the AA system. I understand that if the prisoner is put into strict protection an appeal mechanism is available. Can you explain, or do you know, the difference between the appeal regimes that apply to prisoners in the HRMU?

Mr LINTON: No, I do not feel qualified to comment on that.

CHAIR: Can you outline who are the members of the clinical team at the HRMU?

Mr LINTON: There is myself as the clinical director, three counselling and support officers, a psychologist, a correctional education officer and a teacher of literacy and numeracy, who is shared with the main gaol. We have her for one day a week.

CHAIR: When you were recruited for this position what were the necessary professional qualifications?

Mr LINTON: I believe the requirement was a master's degree in clinical psychology.

CHAIR: Do you have one of those?

Mr LINTON: I do, yes.

CHAIR: When we went for the inspection we were told that depending on how the prisoners behaved they got privileges and sanctions. Can you explain how that system works?

Mr LINTON: I can. The hierarchy of privileges and sanctions is a behaviour management tool that actually assists inmates in the management of their own behaviour while they are in the unit. It is a system that is based on a well-established practice that external rewards can be pretty powerful motivators for behaviour change. Case plans are developed for each inmate and that is done with their involvement. That identifies goals to be achieved. They might be something simple such as the absence of intimidation and abuse towards staff for a period of time. An inmate's movement through the hierarchy is based on their participation in achieving the objectives that are specified in the case plan. At the HRMU we are very aware that inmates can perceive small changes in the level of privileges received as very significant and therefore progressions and regressions on the hierarchy are not undertaken lightly. The decisions are made by a case management team in the unit. Those decisions are considered and agreed to or vetoed by management. Changes in the level of privileges

and sanctions that an inmate receives are discussed with the inmate and the relevant case management staff. The inmate has an opportunity to put their concerns and views about the changes in the level of privileges. Regressions are usually in response to consistent poor behaviour over a period of time or they could occur in response to a critical incident such as an assault on staff or another inmate, or to serious threats made by an inmate.

The hierarchy has a number of stages comprising three levels. At each stage and level an inmate has access to greater levels of privileges in a number of areas. That includes, for example, associations with other inmates, food buy-ups, the number of books, articles, newspapers, magazines and tapes able to be kept in their cells, and access to departmental property such as radios, walkmans, jugs, fridges, microwaves and televisions. While some research suggests that behaviour of adults can be modified through the use of social reinforcers such as praise and encouragement, which we use at the HRMU, some inmates do not necessarily respond to that kind of reinforcement and are much more motivated by tangible rewards. The system is based around tangible rewards as well as those social reinforcers.

CHAIR: There are about 35 people in the HRMU at present. What is the distribution of prisoners across the different levels of the hierarchy of sanctions and privileges?

Mr LINTON: As of yesterday one inmate was on stage zero of the program, 12 on stage 1, six on stage 2, and 16 on stage 3 of the hierarchy. That is likely to over-represent the typical number of inmates on stage 1 of the program as there has been an unusually high number of recent receptions to the centre and they all start on stage 1 after they finish the assessment stage.

CHAIR: You said there were 16 on stage 3, so they are going along on an even keel. How often would the case management team meet with the prisoner in those circumstances where their behaviour has plateaued at the top end?

Mr LINTON: The requirement is that inmates are reviewed every six months. Case management team meetings with inmates occur more frequently than that and can occur at any time. They can occur in response to an event or if there is consideration for movement in their level of privileges. Inmates are generally considered for increases in their level of privileges about every three months. Sometimes the decision is in favour of increasing the level of privileges and sometimes it is not. In addition we have weekly case discussions about subgroups of inmates. One week we might discuss six inmates in depth at a clinical meeting with the offender services, program and custodial staff present but not the inmate. The cases are reviewed fairly regularly.

Ms LEE RHIANNON: Can you explain what you mean by privileges? Is it just cigarettes and sweets or is it something more?

Mr LINTON: No, privileges include the amount of money that an inmate can spend on their food buy-ups. We provide them with all the food they need but if they want extra food such as—

The Hon. PETER BREEN: Cigarettes and sweets.

Mr LINTON: —cigarettes, sweets, cans of tuna, rice or other foods that they choose. I do not have a list of the food buy-up in front of me. There is also an activities buy-up, which relates to underwear, socks and things like that. There are small increments in the amount of money available for the weekly buy-ups, but they do seem to make a difference.

The Hon. PETER BREEN: It also includes, I think, association with other prisoners.

Mr LINTON: It does. It includes the range of associations that are available to other inmates. An inmate on a higher level of the program can nominate whom he would like to associate with. That is subject to a security review. Not all inmates are able to associate with inmates that they nominate.

Ms LEE RHIANNON: Can you give us the range of minimum to maximum contact with prisoners?

Mr LINTON: The minimum is when inmates are on a segregated custody direction. They are not entitled to association at that point.

Ms LEE RHIANNON: They do not see anybody?

Mr LINTON: No, that is not true. All that requires is a physical separation between an inmate and other inmates. It does not stop inmates conversing relatively freely in their rear yards.

The Hon. PETER BREEN: They can talk with the prisoners on either side?

Mr LINTON: They can talk with the prisoner on either side, but also there are very high levels of contact with custodial and non-custodial staff. Even if an inmate is in unit 7 on a segregated custody order he is still seen regularly by offender services and program staff. By regularly I mean daily, not necessarily for a sit-down interview but certainly for a consideration of whether the inmate has any particular concerns at the time—does something need to be addressed, is there something urgent on the outside that needs attending to, those kinds of welfare-related issues.

The Hon. PETER BREEN: Do all those inmates in unit 7 have contact with the prisoner next door?

Mr LINTON: No.

The Hon. PETER BREEN: What happens? Do you lock the back yard? Is that how you stop it?

Mr LINTON: No, if one was positioned in a cell and there was an empty cell between them, they could still communicate between the rear yards.

The Hon. PETER BREEN: They just would not be together?

Mr LINTON: No, they would not be together.

Ms LEE RHIANNON: If there is a lockdown there is no contact.

Mr LINTON: Inmates are locked in their cells during a lockdown.

Ms LEE RHIANNON: Some lockdowns last for at least 24 hours, don't they?

Mr LINTON: Yes.

Ms LEE RHIANNON: Could you take that on notice and give us the dates of the lockdowns over the past year so we can get a feel for how often they are?

Mr LINTON: I could do that.

The Hon. PETER BREEN: Mark Wilson said when we were down there last week that lockdowns do not happen much any more.

Mr LINTON: They do not.

The Hon. PETER BREEN: I am surprised because they used to happen at least once a week.

Mr LINTON: They used to but they do not happen very often now.

The Hon. PETER BREEN: Six months ago they were happening at least once a week.

Mr LINTON: It is certainly nothing like that now.

CHAIR: Is someone on a segregation order entitled to see a prison chaplain?

Mr LINTON: If they requested to see a prison chaplain we could certainly evaluate their request.

CHAIR: There is no automatic exclusion?

Mr LINTON: I am not sure.

CHAIR: How often are prisoners in the HRMU placed on formal segregation orders?

Mr LINTON: I do not have figures as to how often they are placed on orders. Certainly they are placed on a segregated order when they come in for the assessment stage.

Ms LEE RHIANNON: Can you take that on notice?

Mr LINTON: Yes.

The Hon. PETER BREEN: A segregated order means they cannot go into their backyard, doesn't it?

Mr LINTON: No, they still access their rear yard.

CHAIR: You said they were on a segregation order while being assessed when they first come into unit 7. How long does it typically take to conduct the initial assessment on arrival?

Mr LINTON: That varies. It is generally conducted over a two-week period. Initially the inmate is placed in that highly structured environment in unit 7 on the segregation order. That period is to allow assessments to take place and to determine any risk the inmate might present to staff or other HRMU inmates and also to facilitate the adjustment process to the unit. The counsellors go there when the inmate arrives or soon after. Often the inmates have a lot of concerns about where they have been placed and a lot of questions about how they are going to be managed and what the HRMU is about. The counsellor's role is to facilitate their understanding of what to expect and to try to build some level of initial rapport with the inmate.

I should also say that inmates' movement from the segregation area of the unit would not be delayed routinely on the basis that not all assessments had been conducted. It is not essential, for example, that an inmate remain segregated for the purposes of conducting an assessment of their educational needs and achievements. They would be moved to another unit and that assessment could happen later.

The Hon. PETER BREEN: You suggested that it takes a couple of weeks to assess them in unit seven. Those five AA prisoners who are there have been there for five months.

Mr LINTON: They are no longer on the assessment phase though.

The Hon. PETER BREEN: What is the difference between the assessment phase and their condition now? Is it not the same?

Mr LINTON: No. They have more access to other privileges now that they are on stage one one.

CHAIR: What evidence is there to suggest that the HRMU has had positive impacts on the rehabilitation of offenders, and has the department conducted any research into this issue?

Mr LINTON: The answer to the second part of the question is no, the department has not conducted any formal research into the question. The primary goals of the HRMU are security related, and the unit achieves its security objectives very well. It should also be made clear that the unit is not primarily a therapeutic unit, although it does have therapeutic aspects. As I said before, it relates to one part of the statewide violence prevention framework that aims to reduce violence within the prison system. The HRMU can be viewed as part of a pathway for some violent offenders through the

system, linking them to later programs addressing their offending behaviour. It offers the opportunity for comprehensive assessment of inmates' risks and needs, assists them to manage their own behaviour while they are there and also assists in the planning process for long-term management of the inmate. Inmates are offered the opportunity to participate in a range of programs that might assist them in meeting their rehabilitative goals and assist in the preparation for participation in further intervention programs after they leave the HRMU.

CHAIR: One of the main issues we have come across when discussing prisons these days is prisoners with a mental illness. Can you outline the safeguards that are in place within the HRMU to identify and treat mental illness? Are there protocols in place to ensure that prisoners continue to receive appropriate treatment when they leave the HRMU?

Mr LINTON: The ability of the unit to identify and provide appropriate treatment for inmates with ongoing mental health concerns is of very high standard, and a consistently high standard. There are a number of factors that would go into that high standard of care. There is formal training for HRMU officers and non-custodial staff with a specific focus on mental health and the management of inmates with mental health problems. The backgrounds of the counselling support officers mean that they are able to screen for mental health concerns. That occurs at the initial assessment stage, and mental status observations are also made routinely throughout the inmate's stay in the unit. The high levels of contact with both custodial and non-custodial staff ensure that if an inmate was displaying symptoms of mental illness these would be identified and appropriate treatments or interventions would be accessed.

The psychologist is available for consultation and further assessment of inmates if there are mental health concerns, and also to provide specific clinical interventions, sometimes in conjunction with Justice Health. The department works in collaboration with Justice Health to ensure that inmates with mental health concerns are identified and treated appropriately. The level of co-operation between the two agencies is of an excellent standard. The HRMU shares services addressing these needs with the Justice Health clinic in the main gaol at Goulburn. Services provided by Justice Health to the HRMU include the fortnightly availability of a psychiatrist; every other week tele-psychiatry services are available; a mental health nurse is available daily; and a registered nurse visits daily to dispense medication as required.

In relation to the second part of the question, there are things in place. All case management information is forwarded to the receiving centre at the time of exit from the unit. Justice Health also sends a medical file with details of the inmate's mental health condition and current treatments to the receiving centre. HRMU staff liaise routinely with staff at receiving centres to ensure that relevant information is provided. In the case of inmates discharged to Long Bay hospital, periodic checks on the inmate's progress are made.

CHAIR: How many of the prisoners assigned to the HRMU are suffering from a mental illness?

Mr LINTON: I would say two or three.

CHAIR: How much time do prisoners spend out of their cells on a daily basis? Do all prisoners leave their cells every day?

Mr LINTON: The time out of cells is basically between nine and two, so they spend approximately five hours out of their cells on a daily basis. Some of that might be in the front day rooms, some of that might be in the rear yard. For those who have access to the running track, the ball courts or the exercise yards, it is still within that five hours but they are out of their cells.

The Hon. PETER BREEN: So there are 16 prisoners who would get access to the running track and the basketball courts, and all the others would be in their cells, would they not?

Mr LINTON: No. They would be either in their day rooms or in their rear yards generally.

The Hon. PETER BREEN: But it is only the 16 who are in that number three level who get access to the running track and the basketball courts.

Mr LINTON: It is not 16; it is less than that. Each stage has a number of levels within it, so inmates on stage three level three have access to the running track.

The Hon. PETER BREEN: So when you said there were 16, how many of those 16 would have access to the basketball courts and the running track?

Mr LINTON: Eleven.

The Hon. PETER BREEN: So it is only 11 prisoners out of 35 who can use the basketball courts and the running track?

Mr LINTON: I would have to check about the basketball courts. I will take that on notice. But the running track, yes, 11.

The Hon. PETER BREEN: And all the other prisoners would be in their cells, and if they are not in their cells they are in the back yard or the day room—

Mr LINTON: That is right.

The Hon. PETER BREEN: —and they would not be mixing with other prisoners in the day room.

Mr LINTON: They would be mixing with other prisoners, yes. Associations can occur in the library areas or in the computer area.

The Hon. PETER BREEN: But only with one other prisoner.

Mr LINTON: Only with one other inmate at a time, yes.

The Hon. PETER BREEN: So the five hours they spend out of their cells could include some time in the computer room.

Mr LINTON: It could.

The Hon. PETER BREEN: We did not see the computer room.

Mr LINTON: Or on the telephone.

The Hon. PETER BREEN: And the telephone is outside, obviously.

Mr LINTON: It is.

The Hon. PETER BREEN: So they do get time out of their cells in that five hours.

Mr LINTON: They do. All the time within the five hours they have available to be out of cell but that could be in the rear yard or the day room in front of the cell.

The Hon. PETER BREEN: That is five hours a day.

Mr LINTON: Yes.

Ms LEE RHIANNON: That is not the regime for the AA prisoners, is it?

Mr LINTON: In what way?

Ms LEE RHIANNON: Can you explain what the regime is for AA prisoners because I thought they were on their own?

Mr LINTON: I will take that question on notice, if I may.

Ms LEE RHIANNON: I thought that as clinical director you would know what the regime would be for AA prisoners.

Mr LINTON: I would prefer to take it on notice so that I can respond more fully.

The Hon. PETER BREEN: You indicated previously that the AA prisoners were on their own in their cells.

Mr LINTON: Yes.

The Hon. PETER BREEN: And there are no other associations for them. The point we are getting too—

Mr LINTON: Yes, they do have associations currently.

Ms LEE RHIANNON: So who do they have associations with—just with the prisoner on each side?

Mr LINTON: They have associations with identified inmates from unit seven.

Ms LEE RHIANNON: Again, on a one-to-one basis?

Mr LINTON: Yes.

Ms LEE RHIANNON: Is it just to each side when they are in their own unit, or can they physically be with one other person at some time during the day?

Mr LINTON: No, not physically be with them.

Ms LEE RHIANNON: Are they separated? Is it the contact when they are in their cell or is the contact somewhere else?

Mr LINTON: Can I take that on notice?

Ms LEE RHIANNON: Okay. Under the regulation about the AA category the Government has effectively given the Commissioner for Corrective Services the authority to determine the type of detention to which a person accused of terrorist-related offences is subject. Does the commissioner ask for your advice about that when he is making those determinations?

Mr LINTON: The commissioner has not specifically asked me for advice, no.

Ms LEE RHIANNON: Does he ask your colleagues for advice?

Mr LINTON: Yes.

Ms LEE RHIANNON: And who has he asked advice from?

Mr LINTON: My understanding is that a range of people met with the commissioner and out of that process—

Ms LEE RHIANNON: He determined them.

Mr LINTON: Yes.

Ms LEE RHIANNON: Are they people who are senior to you?

Mr LINTON: Yes, senior.

(The witness withdrew)

(The Committee adjourned at 3.40 p.m.)