REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO BACK-END HOME DETENTION

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At Sydney on Thursday 17 March 2005

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The Committee met at 9.30 a.m.

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PRESENT

The Hon. C. M. Robertson (Chair)

The Hon. D. Clarke
The Hon. G. S. Pearce
Ms L. Rhiannon
The Hon. E. M. Roozendaal

CORRECTED TRANSCRIPT

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

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

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

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

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

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

Ms McCOMISH: As a representative of an organisation.

Ms JOUSIF: As a representative of an organisation.

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

Ms McCOMISH: Yes, I am.

Ms JOUSIF: Yes, I am.

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

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

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

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

CHAIR: Do you wish to make an opening statement?

Ms JOUSIF: No.

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

Ms McCOMISH: Yes.

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

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

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

Ms McCOMISH: Yes. They use the same measure.

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

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

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

Ms McCOMISH: Who come back into prison?

The Hon. GREG PEARCE: Yes.

Ms McCOMISH: People who have been on home detention?

The Hon. GREG PEARCE: Yes.

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

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

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

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

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

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

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

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

Ms McCOMISH: No.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms McCOMISH: We record on reception.

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

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

The Hon. GREG PEARCE: So you record it.

Ms McCOMISH: We do record on reception.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms McCOMISH: It has been taken on notice.

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

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

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

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

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

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

CHAIR: Yes, thank you.

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

Home detainees also are subject to electronic monitoring unless they are in a residential rehabilitation program. The officers are available on a 24-hour basis through a paging service to respond to electronic monitoring alarms or offender-in-crisis situations. The immediate mode of response is usually by phone, but if the matter cannot be resolved electronically within a reasonable time, a contact home visit is made. When an offender is released to home detention, electronic monitoring equipment is usually installed on the day of release. Minimum contact levels are set for each stage of the program, but higher levels of contact may be imposed at the initial point, depending on the appropriateness for guiding that particular person.

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

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

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

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

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

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

Ms McCOMISH: Yes.

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

Ms McCOMISH: That is right.

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

Ms McCOMISH: I will start the answer to the question and I may well hand over to Ms Jousif to complete it. Essentially, I will talk about the offences that are not and the offence history that means that someone is not eligible for home detention. In any offence involving violence, aggravated violence, use of a weapon including armed robbery, sexual offences and capital offences such as murder, those people are prohibited. If there is a domestic violence offence or an apprehended violence order that involves a person who may be part of the accommodation support for the offender and any serious drug offence. That population, by and large, is what we consider to be at highest risk and they are the ones to whom we would most want to provide intensive support, supervision and programs in their transition back to the community.

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

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

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

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

Ms McCOMISH: At the front end?

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

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

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

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

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

Ms McCOMISH: No.

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

Ms McCOMISH: No.

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

Ms McCOMISH: No.

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

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

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

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

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

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

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

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

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

CHAIR: Let the witness answer the question.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms JOUSIF: That is right, yes.

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

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

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

Ms JOUSIF: The offender does.

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

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

Ms LEE RHIANNON: Where is there a cost there?

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

Ms LEE RHIANNON: Has that always been the case?

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

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

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

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

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

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

Ms JOUSIF: Yes they are.

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

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

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

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

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

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

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

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

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

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

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

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

Ms JOUSIF: If they were major breaches they would form part of the statistics that revoke the order. When I said 46 actually breached at least one, they were mostly due to urinalysis. In a way that assists us in identifying what is going on at that time. If someone returned a positive urinalysis we

offer our own counselling or we refer them to specialist counselling or we involve them in programs that address the issues leading to that drug usage, or they may go into detoxification or some kind of residential rehabilitation. That may be quite a minor breach. When I say urinalysis it might be quite a minor usage because our urinalysis testing is very acute in that it picks up all sorts of medication.

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

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

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

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

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

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

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

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

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

Ms JOUSIF: If it is a major breach and there is a risk to the community that person would not be able to progress through that order to complete it. There would be a report to the parole board to remove that person. The people we are dealing with are not exactly public enemy number one when you consider the legislation of the types of offences precluded from inclusion for assessment for home detention. We are dealing with people who are higher at recidivism than most. If we did not deal with those sorts of people and address those needs they would just be returned to gaol constantly, and if we remove those sorts of people you would be only having people with white collar crime on your books on home detention. They would just breeze through the program and are less likely to go back to gaol, whereas we are interested in people who are continually going back and providing them with properly identified and appropriate programs to address those issues.

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

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

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

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

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

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

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

Ms McCOMISH: I am unable to answer that.

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

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

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

Ms McCOMISH: I could take that on notice.

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

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

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

Once serious offenders are in the last 18 months of a sentence, if they have indeed progress through the stages of classification—there are different classification systems for men and for women—if men, they moved into category C, which is minimum security. There are a number of stages in categories A, B and C. At every stage of reduction of classification a Classification Committee meets and a recommendation is made as to the reduction in classification. Once they get to category C—if indeed they do get to it. Many do not, because they have not participated in programs in the gaol and their progress is not satisfactory—category C has levels 1, 2 and 3. At level 2 they are still required to be supervised, either held behind a wall and within a prison or, if out working external to the prison, in the grounds of the complex but external to the wall under supervision.

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

they do not have to be continuously supervised by an officer. They can work with an electronic monitoring bracelet and equipment at the workplace, or they can go on day leave to their homes or on weekend leave.

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

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

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

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

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

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

Ms JOUSIF: It depends on the reasons for the breach. For instance, there was a fellow who was washing up dishes after his wife and he had had a dinner party. He had not consumed alcohol, but there was a small amount of wine left in his wife's glass, which he was about to put into the sink full of suds and he drank it. Unfortunately for him, one of the officers just happened to visit him at that time. The officer breath tested him and the sample was found to be positive. His offence did not relate to an alcohol problem so he would have been given a talking to and told, "Look, you cannot do this sort of thing," and given a slap to the wrist. That would be a minor breach. But if someone was continually using alcohol and we had that person on the books for drink driving or alcohol-related offences, we would certainly counsel him. If it continued we would ask him to attend specialist therapeutic care.

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

Ms JOUSIF: Yes.

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

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

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

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

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

Ms McCOMISH: Yes.

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

Ms JOUSIF: What is that fee?

Ms McCOMISH: There is no fee.

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

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

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

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

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

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

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

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

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

Ms JOUSIF: That is home detention.

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

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

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

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

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

Ms McCOMISH: That is right.

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

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

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

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

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

Ms McCOMISH: Case management teams.

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

Ms McCOMISH: The department has implemented an offender information management system, basically an electronic case management system and database, which means that at least we have consistency in terms of the review of case plans. It is not a matter of files having to be transferred and being lost. It is the fact that many prisoners, particularly those serving long sentences, may well move through a number of prisons and is very important that we have that kind of access to information. You may well have a case management team that initially works with and develops the case plans for an offender, but when he moves to another correctional centre that case management team will have immediate access to that information. They will then meet with the offender to ensure that the offender participates in the program.

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

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

(**The witnesses withdrew**)

(**Short adjournment**)

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

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

Mr SIMPSON: Yes.

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

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

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

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

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

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

Home detention, it would seem to me, in particular backend home detention, would have great potential to allow for a gradated transition from prison for a person with an intellectual disability, getting the person used to a more stable life in the community and helping the person readjust to that life in the community, while still having some control of the person, and the person being aware that if I do not comply with the rules then I may be sent back to prison. If those controls

are not there, we all too often see people, even if support is offered, taking off because they are finding it really hard to adjust to this idea of a more stable lifestyle compared to what they had before they went gaol.

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

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

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

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

To do that would be very much a cross-agency issue. The Department of Ageing, Disability and Home Care would be a key player, the Department of Housing would be a key player, and the Department of Corrective Services obviously, and other agencies as well for some people. There are a lot of people who have dual diagnoses of drug and alcohol problems and mental health problems as well which would require support from those agencies too. I suppose basically we see it as one of the ways in which people with intellectual disability can be given a much fairer chance to avoid ongoing imprisonment.

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

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

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

Mr SIMPSON: Yes.

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

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

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

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

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

Mr SIMPSON: Yes.

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

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

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

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

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

Mr SIMPSON: Yes.

The Hon. DAVID CLARKE: How prevalent is that?

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

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

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

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

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

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

Mr SIMPSON: Yes.

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

Mr SIMPSON: Yes.

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

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

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

Mr SIMPSON: Most certainly.

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

Mr SIMPSON: Most certainly.

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

Mr SIMPSON: Highly detailed recommendations.

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

Mr SIMPSON: Somewhere in the order of 100.

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

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

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

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

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

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

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

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

Mr SIMPSON: No, senior advocate is my position.

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

Mr SIMPSON: Most certainly.

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

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

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

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

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

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

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

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

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

Mr SIMPSON: Most certainly.

The Hon. ERIC ROOZENDAAL: From what you have been saying, would I be right in assuming that the implications are that the home detention program as it stands is really not suitable

for intellectually disabled people, if they do not have already a home structure to go into? Would I be right in that?

Mr SIMPSON: Yes.

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

Mr SIMPSON: Most certainly.

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

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

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

Mr SIMPSON: Right.

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

Mr SIMPSON: Right.

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

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

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

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

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

(The witness withdrew)

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

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

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

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

Mr COWDERY: Yes, I am.

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

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

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

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

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

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

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

Mr COWDERY: Periodic detention is ordered at the time of sentence—that a term of imprisonment is to be served by way of periodic detention—so it is open, transparent, obvious, from

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

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

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

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

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

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

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

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

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

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

Mr COWDERY: It does seem rather high.

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

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

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

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

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

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

CHAIR: I do not think they actually said that.

The Hon. GREG PEARCE: I think they did.

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

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

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

Ms LEE RHIANNON: Who pays for the guard?

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

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

Mr COWDERY: Yes.

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

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

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

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

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

Mr COWDERY: We at present have attached to bail conditions whereby people are to reside at a particular address, and indeed sometimes we do have conditions which I suppose might be

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

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

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

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

Mr COWDERY: If you would pardon me a moment. I have made a note on that issue, and I want to refresh my memory from it. We are not aware of any suggestion that front-end home detention, as it presently exists, has had a net-widening effect. So I think it would only be speculation on my part about back-end home detention. Could I add there is some discussion of net-widening effects in the Sentencing Council's report on the abolition of sentences of six months and less, and that is a public document. So there is some discussion in there.

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

Mr COWDERY: That is correct.

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

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

The Hon. DAVID CLARKE: Is it some years?

Mr COWDERY: It would be some years now.

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

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

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

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

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

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

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

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

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

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

The Hon. DAVID CLARKE: Thank you.

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

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

Mr COWDERY: That would be the effect, yes.

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

Mr COWDERY: I do not have information about that.

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

Mr COWDERY: Of course.

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

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

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

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

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

Mr COWDERY: In New South Wales, the absolute minimum, when all stops are pulled out, is ten days. So far as charge negotiation is concerned, we take into account the kind of penalty that may be attached to a plea to a particular charge, but we do not get into the detail of the length of

penalty or issues of that kind. That really is a matter for the judge, and we cannot make predictions about that sort of thing.

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

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

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

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

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

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

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

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

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

(**The witness withdrew**)

(**Luncheon adjournment**)

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

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

CHAIR: What is your occupation?

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

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

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

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

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

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

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

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

CHAIR: The terms of reference are:

> That the Standing Committee on Law and Justice inquire into and report on whether it is appropriate and in the public interest to introduce "back-end" home detention scheme in New South Wales, including:
>
> (a) the perceived benefits and disadvantages of back-end home detention,
> (b) the relationship between back-end home detention and existing external leave programs,
> (c) the impact of back-end home detention on the principle of truth-in-sentencing,
> (d) the appropriate authority to determine whether an offender may proceed to back-end home detention,
> (e) the criteria for eligibility for back-end home detention,
> (f) the experience of other jurisdictions in implementing back-end home detention schemes,
> (g) any other related matter.

Would you like to make an opening statement?

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

CHAIR: That is fine.

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

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

For instance, if someone is not allowed to go to shops, then how would they be expected to do shopping if they have no-one to care for them? So you need to have support systems in place to deal with that kind of thing. In terms of the current housing situations of people with serious mental illness, a minority live at home with their family or in their own house or apartment and with greater or lesser degrees of success in all those cases. Many live in rented rooms, others live in licensed or unlicensed boarding houses, in homeless refuges, on the streets and some are itinerant. There are special needs of people with a mental illness who are homeless or in insecure housing, give that their current situation is inappropriate for back-end home detention. They need secure, spacious housing. They need assistance with living skills, such as hygiene, cleaning, budgeting, shopping, cooking and monitoring of medication. There may be other things. They need social interaction and assistance with leisure skills.

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

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

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

You could justify the funding. These are expensive. If you are going to set up a supported housing group home with 24-hour care or eight-hour care or less, or if you are going to support it by means of an assertive community treatment team, it will be expensive. However, it will be a lot less

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

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

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

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

Mr FEAR: No, I do not.

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

Sister HARRIS: No, I am not.

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

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

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

Sister HARRIS: I have a range of experience, I suppose, because I live in a small community house with five people who have schizophrenia, one of whom came straight from the

streets yesterday. He had slept rough the night before, due to difficulties with the family, extreme things that have built up for a long period. I have that situation and, of the people I am living with, two had been homeless and had been itinerant throughout Australia. One had been trying to survive in a flat where the MHAT team have had to break down the door in order to get in to dispense medication because she had become so delusional.

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

The Hon. GREG PEARCE: Your central point about a place for people to go if they were given back-end detention is quite clear. You are suggesting that it were to be implemented the funding has to be available to provide that sort of housing. I suppose one of the issues is that if someone suffering from mental illness is released into back-end detention they remain in a custodial situation as distinct from voluntarily moving into that housing. What you think flows from that? Is it good or bad?

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

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

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

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

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

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

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

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

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

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

Sister HARRIS: It does, and on the streets.

The Hon. DAVID CLARKE: And the alternatives?

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

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

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

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

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

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

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

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

Sister HARRIS: I am not sure how well it would work. One of the factors would be the factor I commented on a minute ago, the withdrawnness and timidity that can characterise people with a serious mental illness, and sometimes people with an intellectual disability. In a mixed population they could be more vulnerable to more aggressive, active people. The kind of bullying we talked about could happen in prison could happen there as well. I would be more inclined to separate populations. That is just a personal opinion. I do not know where the mixture has been tried.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIR: Yes.

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

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

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

Mr FEAR: Yes.

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

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

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

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

(The witnesses withdrew)

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

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

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

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

Mr SANDLAND: Yes.

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

Mr SANDLAND: Thank you.

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

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

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

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

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

Mr SANDLAND: I guess I have touched on that: more resources, a greater commitment to education and training. It came in after a pilot and then the Act came into force. But I myself found it surprising to see that there were so few people undertaking home detention orders. I have made a few notes, and I will just see if there is anything I left out. I do not know whether there has been a degree of research into, firstly, the extent to which it is found to be an onerous option and the extent to which recidivism is reduced for people who undertake home detention to perhaps convince the judiciary that it is an option which should be considered short of a full-time custodial penalty. It is a difficult call. As the judge or the magistrate make their way through the various sentencing options, they have to be

convinced that a gaol penalty is appropriate before they can consider home detention. Yet if they are dealing with an offence that definitely carries a gaol penalty, then it is a difficult call to know when to order home detention and when not to without that greater degree of promotion of it as a penalty option backed by hard evidence.

One of the things that also may be relevant in relation to its being underutilised is that it does have strict eligibility criteria. Perhaps it might be appropriate to consider whether or not the eligibility criteria could be relaxed in relation to the class of offence that is applicable for home detention. I know that there will always be concerns from the community, and in particular from the Probation and Parole Service, that the community not be placed at threat by people who have committed offences, and who have been found guilty of that and who are considered as eligible for a period of imprisonment, to serve that sentence in the community. On the other hand, they are going to be released from imprisonment at some stage, and it seems as though this may be a more humane and appropriate way of dealing with a larger proportion than those that get the benefit of it at this stage.

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

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

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

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

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

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

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

Mr SANDLAND: Yes.

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

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

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

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

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

Mr SANDLAND: Yes, that is right.

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

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

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

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

Mr SANDLAND: Yes.

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

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

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

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

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

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

Mr SANDLAND: Yes.

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

Mr SANDLAND: Yes.

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

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

The Hon. DAVID CLARKE: In 1996-97?

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

The Hon. GREG PEARCE: You get a pass.

Mr SANDLAND: Thank you.

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

Mr SANDLAND: Certainly they have been disadvantaged, yes.

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

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

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

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

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

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

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

Mr SANDLAND: To make sentencing options equally available.

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

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

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

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

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

So the availability of back-end home detention as a potential part of a sentence that may be imposed for a charge that you are considering pleading guilty to may operate as an incentive. I do not really know. I do not think there has been any research into it. It would be inappropriate to use it as an

incentive to obtain a plea of convenience. You would simply be guided by your instructions and by the strength of the prosecution case, and at the end of the day you would give your clients realistic advice about their chances if they pleaded not guilty, and went ahead with a defended hearing, as to what their chances of success were and what penalty they would receive.

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

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

(The witness withdrew.)

(Evidence continued, and concluded, in camera)