REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO BACK-END HOME DETENTION

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At Sydney on Friday 18 March 2005

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The Committee met at 9.15 a.m.

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PRESENT

The Hon. C. M. Robertson (Chair)

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

UNCORRECTED TRANSCRIPT

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

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

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

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

MICHAEL JAMES STRUTT, Justice Action, affirmed and examined:

CHAIR: Mr Collins, what is your occupation?

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

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

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

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

Mr COLLINS: Yes, I am.

CHAIR: Mr Strutt, what is your occupation?

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

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

Mr STRUTT: As a representative of Justice Action.

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

Mr STRUTT: Yes, I am.

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

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

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

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

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

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

The only way that home detention could possibly be seen as beneficial is by comparing it with the full-time prison regime. Yes, it comes up very well compared with the full-time prison regime. It is nowhere near as criminogenic as prison. People keep their contacts with their family and society. They have more stake, if you like, in remaining clean and part of the community. So, yes, the

subjective experience for the individual is likely to be a lot better than the prison system. That does not mean to say it is going to be beneficial.

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

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

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

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

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

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

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

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

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

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

CHAIR: It just helps us to have the statistics.

Mr STRUTT: Sure.

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

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

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

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

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

Mr STRUTT: The Hon. Amanda Fazio made a very good point. The regime for families visiting New South Wales prisons is absolutely appalling. The abuses to both prisoners and their families are terrible and it is totally unaccountable. People are abused and denied access to their imprisoned families and they are not given any recourse. This situation has happened again and again. Somebody goes to visit their relatives and they are strip-searched on the way in. The prisoner is strip-searched during the visit. They are monitored for the whole time during the visit.

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

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

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

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

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

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

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

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

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

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

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

Mr STRUTT: Nine times out of 10, yes.

The Hon. DAVID CLARKE: Is my statement correct?

Mr STRUTT: Except in domestic violence cases, yes.

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

Mr STRUTT: Absolutely.

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

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

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

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

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

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

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

Mr STRUTT: Compared to prison, yes. I am fairly confident that if you just let them go you would get lower recidivism rates. Prison is it criminogenic. It causes people to be criminals; it does note cure them.

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

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

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

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

Mr STRUTT: It will benefit them and us more.

Mr COLLINS: This was presented as a community based option—removing people from the community and expecting at the end of it when you return them that they are not too damaged. We keep talking to victims groups—people who are directly affected by crime. They agree that prisons are doing more damage. They are actually causing more victims. So we have a criminogenic regime, which is the alternative to home detention, which we say is really damaging to the family anyway. We

offer simple alternatives. For the last 20 years we have been involved in community service orders. I am a community service order supervisor and I have been the person in charge over that period. We have had thousands of people passing through the system which we have been administering involving mentoring, listening to them, talking with them and ensuring that when detentions occur we hear about them.

The Hon. DAVID CLARKE: Convicted murderers?

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

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

Mr STRUTT: Personally.

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

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

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

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

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

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

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

Mr STRUTT: I agree with you on that.

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

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

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

(The witnesses withdrew)

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

CHAIR: What is your occupation?

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

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

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

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

Mr WINCH: I believe I am, yes.

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

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

CHAIR: That is important, thank you.

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

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

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

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

Mr WINCH: I think there are difficulties with back-end home detention in involving the original judge and making it part of the sentence. My perspective in my submissions to the Committee has been that it fits most nicely, as I see it, alongside and akin to things like weekend leave, work release, that style of diminution of the effect of full-time imprisonment on a prisoner, he or she having served a period of full-time imprisonment. So my thoughts about it are that it would be conveniently and easily administered perhaps by the commissioner or a delegate in the same way that leave

presently is and/or a committee within the department. For more serious offenders, it is my belief that the serious offenders review committee could have some impact on decisions such as this for offenders of that kind.

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

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

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

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

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

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

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

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

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

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

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

Mr WINCH: I would have thought that if it were part of the administrative system, as I was envisaging, it would enable that kind of flexibility to be carried through. The contrast of course is with the decision made by a sentencing judge perhaps a year and a half before, which would not then allow any flexibility. I think that would be one of the potential disadvantages of making it part of the original sentence—a person's family and circumstances could change dramatically over the nine to 12

or whatever months of full-time custody. It might make what seemed like an attractive or good and worthwhile proposition less good and worthwhile. The family could disintegrate or there could be deaths—all sorts of things could happen that would make it entirely inappropriate for the prisoner. There could be no home to be detained in. That is what I am really thinking.

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

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

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

Mr WINCH: I think that has to be so.

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

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

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

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

The Hon. DAVID CLARKE: Thank you.

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

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

Ms LEE RHIANNON: Turning to the issue of public perception of home detention at the end of a sentence, there is a lot of misunderstanding in the community and fear that dangerous criminals are being allowed out into the community. It raises issues of public safety and leniency. How do you think that could be best managed?

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

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

Ms LEE RHIANNON: Thank you.

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

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

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

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

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

Mr WINCH: Yes.

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

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

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

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

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

(The witness withdrew)

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

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

Ms WRIGHT: I am a representative of an organisation.

CHAIR: Which one?

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

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

Ms WRIGHT: I am.

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

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

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

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

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

Ms WRIGHT: I think it would operate that way, which I think is good because it helps with prisoner rehabilitation in a very clear way if a prisoner thinks that that is a possibility in that sense of a reward. Sometimes life inside a prison is very difficult, particularly for some types of prisoners, and the possibility of serving the rest of your sentence in a less threatening environment could be a real initiative to those prisoners to rehabilitate, and that can work very well.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Hon. AMANDA FAZIO: The other issue that I am interested in is your comment about changing circumstances. The issue of changing circumstances once the prisoner is actually involved in back-end home detention could be significant depending on what happens in their home. They could either be put in a situation of breaching their conditions of home detention or perhaps of being deemed to breach it. What you think would be the best way to ensure that those people participating in back-end home detention have the capacity to seek advice on the their circumstances without actually having to out themselves to Corrective Services or Probation and Parole as having breached their conditions?

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

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

Ms WRIGHT: I see, yes.

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

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

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

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

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

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

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

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

Ms WRIGHT: I do not think there are any. I think that resources just have to be found to do it. I do not think there is any answer to that other than to say that the resources just must be found for it because the prison population is growing exponentially in New South Wales. It is really growing quite quickly and the cost of that to the community is enormous. I think if some of those costs started to be transferred—because I think that the cost of home detention is significantly less to the State than the cost of having someone in gaol full time—so once you start extending the availability of home detention, then I think that there can be an offset of costs and those savings can be directed towards extending the scheme into regional and remote New South Wales.

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

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

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

Ms WRIGHT: Thank you for the opportunity.

(The witness withdrew)

(Short adjournment)

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

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

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

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

Mr DALEY: Yes, I am.

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

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

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

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

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

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

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

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

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

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

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

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

What happens if an offender applies for a home detention at the back-end in Victoria? The application first goes to the parole board; administrative staff of the parole board give it a first order screening; if it passes the test they then refer it to community corrections to do all of the other checks; and then it goes back to the board that makes the order. The other thing is, in WA it was much more

difficult to get a parole board together at short notice, or a quorum for a parole board, whereas in Victoria it is always possible any hour of the day or night to get a quorum if you need one by calling a couple of board members. So in the event that a breach needed to be dealt with at midnight, there is no real difficulty in doing that.

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

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

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

There is some evidence in WA from the University of Western Australia and a guy called Dr Rod Broadhurst, and it goes back to the early nineties. It is not about home detention per se, but it is about parole and about work release, which initially in WA was prison-based, but later became home-based. The evidence said that persons released on parole by and large fared better than those who were not, and the evidence said that where work release preceded parole so there was a continuously graduated process, that seemed to work better still. So in terms of transition and support, and I think the other thing which home detention has some strengths at, is that given the intensity of the supervision and the engagement with the offender and with the family at the early stage immediately after sentencing, there are very strong opportunities to really manage that transition process well rather than, for example, through parole where a person might report a couple of times a week and there might be a home visit once a week. In those first few months when there is a lot of testing out and there are people re-familiarising with each other and trying to come to terms with the intensity of the regime, that level of support does seem to be beneficial.

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

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

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

supervision?" But it did work very well. So I think there is some indicative evidence that systems can be more adventurous than they tend to be.

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

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

They are encouraged to accept any reasonable direction from the secretary in relation to the maintenance or obtaining of employment. So they are not shut off from those things. And, if they are not employed, they are required to do community work. So they are out of the house at certain times, and they are mixing with people in the community who are stable and responsible adults. I think 24 hours a day in a house is a prescription for a disaster. Home detention means, in my view, that you are under curfew unless you have an authorised reason to be absent for an approved purpose, and that purpose can be adequately monitored. It should not be taken to mean 24-hour in-house imprisonment, because then it does not serve a purpose at all.

The Hon. DAVID CLARKE: Mr Daley, would you think it acceptable that a prison inmate awaiting processing of an application for home detention be allowed out, unhindered, whilst the application is being processed?

Mr DALEY: My personal reaction to that is: Probably not. There is enormous pressure and anxiety on offenders during that assessment period. I think that was a key reason why, for example, home detention as a condition of bail had such low rates of success in Western Australia, because offenders were facing an outcome that was unknown, and in a situation where their apprehension was that they might end up doing time, or doing longer time, for example, if they were already in prison and they were unsuccessful. I think there is a fair amount of emotional pressure, and some offenders do not cope with that. Even if it is only a small number, the danger is that if some succumb to the pressure and run away, abscond or do something else that is foolish or unacceptable, public confidence erodes very quickly and then it is very difficult to recover it. So I think I would be very cautious about that.

The Hon. DAVID CLARKE: So you would be opposed to the practice?

Mr DALEY: By and large, I would say yes. It is not a subject that I have really thought about a lot, but, by and large, I would, yes.

The Hon. DAVID CLARKE: Is it a practice that Victoria has?

Mr DALEY: Only in the respect that, in relation to front-end home detention, the court more often than not will remand on bail, pending the assessment. In respect of back-end home detention, the offenders remain in prison until such time as a decision is made.

The Hon. DAVID CLARKE: I am only talking about those who are prison inmates at the time.

Mr DALEY: There is no provision for their release pending assessment.

The Hon. DAVID CLARKE: Is that the case in any other jurisdiction in Australia, as far as you are aware?

Mr DALEY: Not that I am aware of. It is some time since I had close relationships with the program in South Australia. The Western Australia back-end home detention program no longer exists in its original form. I have mentioned in my submission that they embodied elements of home detention and curfew in other early release options, but home detention per se does not exist there any more. I am not aware of any other jurisdiction in Australia where there is release pending assessment.

The Hon. DAVID CLARKE: Would it come as a surprise to you if it were occurring in another jurisdiction?

Mr DALEY: I have been in the business a long time. Nothing really would come as a surprise.

The Hon. DAVID CLARKE: Would it concern you if it were occurring in another jurisdiction?

Mr DALEY: I would need to understand the context and manner in which it was being managed. But, as a general observation, it would.

The Hon. DAVID CLARKE: How long has front-end home detention been in operation in Victoria?

Mr DALEY: It has only been in operation in Victoria for 15 months.

The Hon. DAVID CLARKE: Does it extend right throughout the State?

Mr DALEY: No, it does not. It is Melbourne metropolitan based, because it is a three-year pilot program. It will not be expanded until the pilot is evaluated.

The Hon. DAVID CLARKE: When that pilot is evaluated, if the decision is taken to continue with the scheme, will it be extended, or has that decision not yet been made?

Mr DALEY: That decision has not yet been made. I expect I may have some chance to influence that decision, but it will not be my decision. It would be my expectation that, subject to satisfactory evaluation, it would be expanded. In terms of some of the issues that affect every State, equality of access to regional services and the like, I think it should be expanded.

The Hon. DAVID CLARKE: How long has the scheme been in operation in Western Australia?

Mr DALEY: The Western Australian scheme commenced in April 1991. So, up to the time I left that State, it had been operating for about 10½ years.

The Hon. DAVID CLARKE: Did it operate right throughout the State?

Mr DALEY: Yes, it did.

The Hon. DAVID CLARKE: And quite successfully?

Mr DALEY: Yes. That may seem strange, given the size of the State, and the small population and its dispersal. It operated in some very far-flung places, so that even in remote indigenous communities in the Kimberley region home detention was not excluded.

The Hon. DAVID CLARKE: That was not found prohibitive from the point of view of resources?

Mr DALEY: Not especially. Electronic monitoring needs only one base. If you wanted to, you could monitor everyone in Australia from a fixed point, wherever you chose to put it. The electronic monitoring part of it technically is not complicated. It is not a limitation at all. What may be a limitation is, if the alarm goes off 500 kilometres from the nearest township, it may take you some time to get out there and it may be a bit late by the time you do. For example, in some remote,

Aboriginal townships an agreement was signed with elders or the council of the community. We redefined home detention in a way that the home basically was defined to be the boundaries of the community, to enable offenders to hunt, mend fences or do something else constructive, because the community generally could not afford to carry people who are idle. So these people had to be mobile within the bounds of the community.

It was an honour system that basically said that the council of the community would acknowledge that should somebody leave the boundary or fail to observe obligations, it would so notify. A fee was paid to the council of the community, or there was some other negotiated arrangement. We had what I think was called an Aboriginal community supervision agreement. It was a legal, but informal, document of only two or three pages, written in very simple English, basically saying that the council would agree to take these people and in return would receive a negotiated range of payments. Those might be recovery of costs of food and clothing for the offender, or something else, within certain limits. It worked in those remote places.

In other country towns the size of Kalgoorlie or Bunbury there would be two or three security companies, and those security people would be given specific, limited powers. So that if, for example, in the middle of the night an alarm went off, that would divert to security. Security firms in Western Australia were an intrinsic part of the system. They are not in Victorian, and there is clear opposition in that State to that happening. In Western Australia, the security firms would augment home visiting. Once a day, or more than once a day, or if an alarm went off out of normal public service hours, a person from the security company would attend at the place. That security person had limited powers. The powers were to require the home detention person named on the home detention order to present himself or herself. The security company carried a photograph of the offender, so that the security person could require offenders to attend at the front door and identify themselves. The security person had power to examine the electronic wristlet, which was issued in Western Australia, for evidence of tamper. In the event that the offender was not there, or something else was amiss, the security person would forthwith write a report and fax it to the home detention operational centre. By and large, that seemed to work amazingly well.

The Hon. DAVID CLARKE: As it worked so successfully throughout all of Western Australia, including in remote areas, can you see no reason why it should not work successfully in other States of the Commonwealth?

Mr DALEY: None intrinsically. Western Australia is a very large place. I am sure you would find people in Western Australia who would say it did not work, for whatever reason. But, if you look at the completion rates for home detention in that State, they were extraordinarily high. On average, there were about 85 per cent successful completions, and about 70 per cent of non-completions were simply delays in returning from curfew. Compared to any other form of supervision, those rates, by and large, were better than those other forms of supervision, and that was a pretty gratifying result.

Ms LEE RHIANNON: Earlier you spoke about the pressure that people can be under if they are restricted to a house for most of the hours of the day. Have there been any studies of the incidence of domestic violence and how to respond to that?

Mr DALEY: In fact, Victoria has spent a lot more time and effort considering domestic violence as a factor than did Western Australia. I think that is largely a product of the fact that the origins of home detention in Victoria were 10 years newer, and family and domestic violence are far more in the spotlight than they were say 15 years ago. I have some information about exactly what is happening with family and domestic violence in Victoria, if I can put my finger on it. But, if not, there is a Committee Against Family and Domestic Violence—which may not be its exact name—which was involved in the early consultations stages of the program parameters being set up. There are three different domestic and domestic violence groups that were involved in the training of staff in family and domestic violence issues.

Ms LEE RHIANNON: Training the staff who look after the offenders?

Mr DALEY: Training the staff. There would be capacity to make referrals to other organisations if there were seen to be stress signs. I am familiar with the Western Australian and

Victorian systems, and I am reasonably well versed with the New Zealand system. Somebody might care to check, but I think the most credible evaluator of home detention in Australasia is Dr Anita Gibbs of the University of Otago. She has written a lot about the home detention program in New Zealand. I have read some of her material and I have referred to it in my submission as an attachment. Some of it is quite early. I have one here which I think is from 2001. She cites other studies, one I think in the United Kingdom and one in western Canada, that looked at those issues and interviewed fairly small samples—about 20 or 30 families, spouses and partners of home detainees. The pressures that they have mostly referred to have been the pressures of constantly being under each other's feet and the wives and partners sometimes feel as though they are incarcerated as well.

In Victoria there was a strong submission to the effect that the risk of domestic and family violence is great, partly because of the assumed fear of members of the family if they would not consent to the offender returning to the place of residence or being their sponsor. I see no reason why that is truer for home detention than it is for parole, work release or any other form of early release because exactly those same pressures are applied. I am rather puzzled as to why people would assume it is a difficulty for home detention and not assume it is a difficulty for some of those other forms of supervised order.

Ms LEE RHIANNON: In the case of home detention do the families or support people change their minds? Do you know of cases, and is this prevalent, where people have changed their minds?

The Hon. ERIC ROOZENDAAL: And what happened.

Mr DALEY: It has happened twice in Victoria.

Ms LEE RHIANNON: Twice in the whole scheme?

Mr DALEY: Yes. The scheme is quite small. If the scheme were a bit bigger and it had been running for a bit longer you would get a better sampling of this. In one case the family changed its mind and alternative accommodation was successfully located. In the other case alternative accommodation was not successfully located and the offender returned to prison, not on a breach but simply on withdrawal of consent. The family had withdrawn consent. There are some suspicions that perhaps the offender during authorised absences may have strayed from where he was supposed to be. We do not have sufficient evidence to demonstrate that. The mother of the offender said, "It is just causing me too much anxiety and too much stress. I withdraw my consent." That offender was returned to prison. So it will happen occasionally; it is a by-product. Ultimately you have to have that fallback position.

Ms LEE RHIANNON: Could you refer to costs? Under your system what costs are there to the family or to the support people?

Mr DALEY: There is no direct cost to them. One of the issues that comes up is that an offender is in the house and he is consuming food, power, water and electricity. He just sits there and that is a burden on others. That can be true. I rechecked yesterday with the manager of the home detention unit. She confirmed to me that home detainees in Victoria are receiving unemployment benefits when they are not working. She said that the Centrelink legislation raised some questions about that. Centrelink said that detainees had to meet the work test, attend for interview, attend at the job centre and be available to take up approved employment. So whether that is an adventurous interpretation in Victoria I cannot be sure, as I am not familiar with the legislation. It does not appear to be an issue, or it has not been an issue. In Victoria what we are getting mostly is white collar offenders anyway—driving frauds and gambling-related events. Many of those people are well educated and employed.

Ms LEE RHIANNON: We were told that when offenders in New South Wales slot in their anklets it costs $1 for each phone call.

Mr DALEY: The figures do not bear those costs.

The Hon. ERIC ROOZENDAAL: It was $1 a day.

Mr DALEY: There is no cost to the offender.

Ms LEE RHIANNON: So you pick up all those costs?

Mr DALEY: That is not something that I verified yesterday before I came up here. In Western Australia I can speak from certainty because I set up the program there. If an offender could not afford a fixed-line phone the department installed the phone. It was set up in such a way that he could not make outgoing calls, although we were not very clever in the early days. A couple of people found on the back of the phone what the number was so they rang their friends in Turkey and Townsville and said, "You can reach me on reverse charge calls."

The Hon. GREG PEARCE: Was that considered a breach?

Mr DALEY: I think we could well have done. I think we considered the first one a learning experience but we were too embarrassed to own up to it. That was 10 years ago. If there needed to be a line the cost of that line was met.

Ms LEE RHIANNON: So in Western Australia correctional services carried the cost, but in Victoria you are not sure?

Mr DALEY: I am not 100 per cent sure in Victoria. I believe it to be true but in Western Australia I am certain that that is so.

Ms LEE RHIANNON: It was put to us by one of the witnesses that having people on home detention could inflate the number of people under detention. All the beds in New South Wales are virtually fully occupied. It is just a way of relieving that pressure when more prisoners come into the system. Do you think there is anything in that?

Mr DALEY: I honestly do not know but I could venture a suggestion. In Western Australia it was not so, but by the same token it did not really appear that home detention made much of a dent in the prison population either. Basically, the numbers neither rose nor fell. When I was there home detention stabilised at around 80 participants at any given time, so it was a relatively small program.

The Hon. ERIC ROOZENDAAL: What was the total prison population?

Mr DALEY: When the scheme started it was somewhere round about 2,000. Currently, it is running at around 3,500 in Western Australia. I do not know how many people are under curfew arrangements. In Victoria we are now starting to find empty beds in prison anyway. The prison population has been reducing over the past two years and it is now down to about 3,600. So there is an interesting contrast in the views about correctional sentencing policy. It is not my right to make a judgment about that but it is interesting that in Victoria it does not seem to be a pressure.

The Hon. AMANDA FAZIO: I refer to women prisoners participating in home detention. Do you have any experience of that either in Western Australia or in Victoria?

Mr DALEY: Yes, but it is very limited evidence. In Victoria I cannot give you the exact number of women in home detention, but I believe it is exactly proportionate to the number of female prisoners to male prisoners in the State. That still means it is only 7 per cent or 8 per cent. On the numbers we have it usually only means about half a dozen people. There are some issues for women. That is the early feeling we have in Victoria. The feeling in Victoria is that women prisoners have, as everyone knows, quite a lot of specific disabilities that relate to a whole lot of stuff. They are much more likely than men to be child care givers. In many cases they have had a lifetime of serial abuse or misuse by partners or other people.

It is often quite difficult for women who are socially isolated and who do not have many resources to find suitable accommodation. I can refer to the advice I have been given. This is not my own observation. The manager of the home detention program told me that they found in the early days that location of suitable accommodation for women had been more of a problem than it had been

for men. I am unaware of any differences in the completion rates for men verses women, but at the exit point there have been some difficulties.

The Hon. AMANDA FAZIO: Are you aware of research in any other jurisdictions on potential greater benefits to women being able to resume their family role through being able to use home detention?

Mr DALEY: No, I am not. One of the difficulties about correctional theory, literature and research generally is that until about the mid-1990s everyone knew that there were women's prisons, but if you were looking for serious research into women's issues in the correctional system, it was non-existent. It was just like women were not there, which is quite surprising. It was really only in the mid-1990s that I became aware of it. Initially in eastern Canada a few women started to look at practical issues affecting women in prison and they tried to construct theoretical views around what it means for women in the system. I do not know of any specific search about home detention and women at all.

The Hon. ERIC ROOZENDAAL: I am particularly interested in the Western Australian experience and the use by indigenous people of home detention. However, your explanation needs clarification. Basically, the elders of the community become the sponsors. Is that right?

Mr DALEY: That is a good enough way to describe it, yes.

The Hon. ERIC ROOZENDAAL: Do they still have to wear anklets in that situation?

Mr DALEY: In many cases they do. In all cases in Victoria they currently wear anklets. One of the matters that I would like to clarify is that home detention has to be an offender management system rather than an electronic management system. There are difficulties about always imagining that electronics will apply. In most cases they do. It was no real difficulty managing it with electronics in remote areas, but sometimes we took the view that if it was in a really remote place and we worked with council, had an agreement with council, had a good working relationship with council and that there was trust, we could rely on them to advise us. I was never made aware of the fact that that failed or that anyone abused the trust on either side.

The Hon. ERIC ROOZENDAAL: Yesterday someone who was on home detention gave evidence to the Committee. He said that for the first couple of months there was quite an intense surveillance program. He was visited up to five times a week and there was also breath testing and urinalysis for drugs. How does that fit in with making home detention available in remote areas?

Mr DALEY: In Western Australia there was no mandatory provision for alcohol testing. However, it could be applied. It is a controversial issue because in Victoria all offenders are randomly tested for drugs and alcohol. I have some personal views. As I am here representing myself rather than the organisation I am reasonably comfortable about expressing those views. Clearly, the Victorian policy position is that offenders should and must be tested because it is part of the public confidence in the program. My view relates in particular to Western Australia where detention was at the back end for short periods of time and it was not a lead into parole. Half of the purpose of home detention is to try to normalise people's capacity to resume, or if not to resume to adopt, a stable lifestyle.

The difficulty always seemed to me that if you had somebody in their own home and they were not able to leave it freely people would then come around and socialise at their house. If they were to have a can of beer or a glass of beer one of the difficulties would then be that if that were picked up, as it was likely to be, a judgment had to be made. If they are settled, their family relationships are positive, they are working and they are abiding by curfew, are we going to pull the home detention for the sake of that slip? If the answer is yes, are we returning people to prison because they need to be there, or is it simply to mark the fact that we do not allow departures from the rules? If the answer is no then pretty shortly, if we make a judgment that we will just counsel the offender and not do anything about it, the risk always is that you undermine the offender's confidence in the program. So it is a juggling act.

The other thing is that you can always have a graduated program that allows for more family time out. In Western Australia I think they used to call it recreational leave time but in Victoria it has

a different name. You can graduate the amount of time that people can be authorised to be out of the house. In the same way you can graduate the testing program. In fact, I think it is possible to phase it down. Does that answer your question?

The Hon. ERIC ROOZENDAAL: There has been a fair bit of discussion about truth in sentencing and how the notion of back-end home detention in particular impacts on truth in sentencing. I think the Law Society previously argued that in fact it falls well within the gambit because it is incarceration but just in one's home. What are your views on that?

Mr DALEY: Once again I preface that by saying that a lot of the arguments about truth in sentencing are best held by lawyers. I do not see that truth in sentencing principles are compromised or undermined. The levels of monitoring and the intensity of the regime in many cases are far more demanding on prisoners than they are on prison farms or low-security prison institutions.

The Hon. ERIC ROOZENDAAL: I noticed that in your submission you actually mentioned that in some cases prisoners prefer minimum security.

Mr DALEY: And in Western Australia that was the clear evidence. I remember on one occasion my direct superior said to me that an offender at a minimum security prison who was eligible for home detention had refused to apply on the grounds that she was more comfortable where she was. I think she said we should not tolerate this because if these people are eligible we should be transitioning them, and if they refuse to apply or go out we should transfer them to remote country places. I said that would be interesting. An offender who is just doing his time quietly writes to the Ombudsman or the Minister and says, "I was just trying to do the sentence the court imposed and I got a double punishment because I refused to be exited from the prison." If the public thought about it, it is a very intense and demanding regime, although people might think it is an easy get out of gaol card. In Western Australia in 2001, the last year I was there, the evidence was that about 40 per cent to 45 per cent of eligible prisoners declined to apply for home detention because they thought the regime would be too demanding.

The Hon. ERIC ROOZENDAAL: Is that because they must take on too much responsibility themselves, whereas if they are in an institution that is all done for them, they just have to follow the rules?

Mr DALEY: I think that was certainly part of it. I never actually supervised offenders on home detention. I was the manager and the person who set up the system. I used to occasionally meet with those offenders. The subjective stuff I got back was partly it was about it being easier here because it is the question of jump, how high, how often and when can I stop versus being at home when it is either, "I have to take responsibility for myself. I have to start to take responsibility for my family relationships" or "I am fearful that I will not be able to meet the curfew demands."

The Hon. AMANDA FAZIO: I want to ask you about prisoners with special needs because we know that there is usually an overrepresentation of people with special needs and the prison system. Hour many offenders with special needs participate in home detention in Victoria, and what special assistance is offered to help facilitate their participation?

Mr DALEY: There are none presently but I am advised that there have been no applicants with special needs. That is new information to me so I have not had the time since I received it to do further follow up and see whether there are people with special needs who have been discouraged from applying or whether because the system is still relatively new in Victoria and people must be within six months of their eligibility date for outright discharge for parole to apply. It might just simply mean on the basis of the number of eligible people in the pool either none has come through or none has applied. Whether that is a matter of choice on their part or an assessment that they could not get the support, the system is intended that they should have equal access. If the Committee wants to follow up on what information we can supply about reasons that we have not seen applications, it would be quite easy to look into that for you.

The Hon. AMANDA FAZIO: What about your Western Australian experience?

Mr DALEY: In Western Australia it is fair to consider indigenous offenders as special needs groups. Outside that, by and large, there were very small numbers of people with special needs. In fact, I am not aware of any who had severe physical or mobility difficulties. I think that the most likely case there was learning difficulties or learning disabilities and we did have a number on the system but I cannot put statistics around it. Provided there were good family support networks and staff are willing to be a bit more flexible around how one interpreted the rigidity of the law and the requirements, I was never made aware that it was a real problem. But I suspect most of the answer comes back to the fact that the numbers are relatively low.

Ms LEE RHIANNON: Yesterday we heard from a young man who is in home detention. He described how during the first five weeks after he left prison he could come and go as he pleased; there was no regime in place. I was surprised that that. I am just wondering how the system works in Western Australia and Victoria. Do they immediately go into a home detention functioning system?

Mr DALEY: Yes. They are not released until all the arrangements are made for home detention to be operational. For example, when I was in Western Australia, if it took a few days to install a phone, by and large the release date would be fixed to coincide with when the phone was installed. I think in a couple of cases for technical reasons a phone arrived half a day later but that was a fairly rare event and I had seen something like maybe 4,500 people in the system. It was very much a strongly graduated program. From day one it was full on. "Full on" meant that it was a much tougher regime than perhaps it is now because it was a phone-in electronic system. Randomly computer-generated and driven telephone calls would arrive at your house at all hours of the day and night, driving everyone nuts. That was full on and those random calls could vary in number between eight and 30 a day. There was at least one home visit a day by security. There were likely to be other random home visits by community corrections officers, just checking on welfare and stuff.

In the first two weeks post release, as I remember it, offenders were not entitled to apply for what we called an approved recreational leave, and then after two weeks I think they were allowed to ask for four hours a fortnight provided they could say who they would be with, where they were going and it was an approved place. And then I think four weeks later it became eight hours a fortnight and then in the last month it might be eight hours a week. So it was a graduated thing. But at the beginning people by and large got pretty much nothing, and that is close to the way it would be in Victoria.

The Hon. GREG PEARCE: You said you are familiar with the New Zealand scheme. Is there anything in particular that we should be aware of or anything unique about that? Is there any comment you want to make about New Zealand?

Mr DALEY: It is interesting. For my sins, I am a New Zealander but that is a long time ago. I worked in foreign affairs there rather than corrections but I do have quite strong connections with people over there in the system. I am aware that critics of the system in New Zealand have argued that the failure rates and breach rates show that the system is patently not working. In my submission I think I referred to a report carried in the Wellington *Dominion Post* in the middle of last year saying that the department was unable to provide statistics even showing who was successful and who was not successful. A lot of newspapers and media seem to have picked that up in the past three or four months. They seem to have been having quite a belting over there. After 12 months the statistics on New Zealand's success rates and failure rates are freely available as part of their annual reports.

It was interesting to note that the failure rates for people on home detention up to 12 months after sentence had finished were lower than they were for most other forms of release. And although a year later they had gone up, so had the breach rates for all other forms of order. So we must bear that in mind. It is a question that cannot be taken alone. If home detention cannot simply be evaluated according to whether some people succeeded and some people failed, it must be looked at, I guess, in the broader context: What are the other options we have? What are the impacts of the other options? What are the successes and failures of those other programs? Generally throughout the world I think home detention has stood up pretty well.

The Hon. GREG PEARCE: What are the factors driving the reduction in prison numbers in Victoria?

Mr DALEY: In 2001 the Government funded what was called a corrections long-term management strategy, which said that left unchecked—and as I have indicated, Victorian prison rates have historically been very low compared to other parts of the country, and the reason for that is open to experts to speculate but the prison population, as everywhere else, was growing very rapidly in the mid to late 1990s. By 2000-01 the Government had made a decision that, left unchecked, the prison population would reach 4,600 by June of this year or perhaps next year—I am not exactly sure. What they wanted to achieve by funding the corrections long-term management strategy was reductions in rate of reoffending and to in fact achieve a reduction of 600 in the prison population in comparison to where the projections said that the prison population would otherwise have been.

I went to Victoria because the Government decided that it needed to reinvigorate community corrections and put money into that, and also provide more effective programs, more effective interventions, provide a raft of psychiatric services, education, employment, housing support services for prisoners. In fact, in the past three years the number of people on community corrections has gone up by about 2,000. It is quite hard to know how many of those have been diverted from prison but under the formula adopted by government it is assessed that the impact of community corrections reinvigoration has saved, as of November, 437 prison beds. Home detention was intended to save another 80 prison beds. It was rather late starting and it has not achieved that yet, but overall I think that program is ahead of its targets. There is a range of prison programs to be set up as well, services for indigenous offenders, a whole range of stuff. Essentially, the prison population peaked at about 3,850 a couple of years ago. It is now tracking between 3,500 and 3,600, and it seems to be reasonably stable. The only worrying event in that I guess is that it is the women in prison where the numbers seem to have continued to grow.

(The witness withdrew)

KATHRYN MARGARET HOLMAN, Acting Assistant Director, Community Corrections, Department of Corrective Services, PO Box 1054, Queensland, sworn and examined:

CHAIR: What is your occupation?

Ms HOLMAN: I am currently the Executive Adviser, Correctional Operations, in the Office of the Deputy Director General, Queensland.

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

Ms HOLMAN: As a representative of the Department of Corrective Services, Queensland.

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

Ms HOLMAN: Yes, I am.

CHAIR: Can you explain how the graduated release program works in Queensland?

Ms HOLMAN: The graduated release program starts with a series of programs that are available to prisoners who are in custody. We have a classification system in Queensland that has prisoners classified as high, medium, low and open. When prisoners reach a low and open classification they are generally located at one of the open custody centres, that being a farm or a community custody centre. They are then able to apply to a serious offenders committee or to the sentence management in the centre to have resettlement leaves of absence. That can be in the form of a community service resettlement leave of absence or going to an approved sponsor. In general, the department favours the community service leave of absence program, whereby a prisoner can leave the centre—that being a farm—to go out into the community to perform community service work under some limited supervision. Prisoners who are successful in that type of program may then go on to apply for a resettlement leave of absence program to an approved sponsor for very limited time periods and definitely not overnight. That is the first foray that a prisoner in custody may have in going back out into the community.

Following that, prisoners can then apply for a post-prison community-based release option. In Queensland that currently consists of three order types. One is what we call a release to work order. That is where a community corrections board—an independent statutory board—approves an application for a prisoner to go and reside at a release to work centre, or something akin to a halfway house. They are then able to be given passes to leave the centre during the day to seek work or to attend work. They then come back to the centre in the evening and they are effectively supervised by correctional staff. In general, the department views that release to work order as being for prisoners with longer rather than shorter sentences, although the independent boards are getting into the habit of even having short-sentence prisoners go to release to work before they go on to home detention. The department is of the view that that is not particularly helpful to prisoners.

The boards may release to release to work and then to home detention or they may release to home detention and then parole or directly to parole. Home detention in Queensland involves a very small number of prisoners. However, it is seen as a very effective program. In 2003-04 we had a successful completion rate in the vicinity of 88 per cent. A home detention order is quite a stringent order that has conditions on it that the board considers necessary in order to protect the community and to ensure that the prisoner does not reoffend. Essentially, the person is released to home detention to an approved address and they are then subject to random and routine surveillance at that address. They can apply to a community corrections officer to leave that address for specific purposes, whether that is for essential purposes such as attending work, going to Centrelink or to the doctor. In addition, they can apply for a recreational leave pass, if you like, and for up to eight hours a week they can go to some kind of function but not to any licensed premises. Where they go is specified in a pass and they must rigidly apply the pass, which is subject to time limitations.

As I said, the community corrections boards can release to any one of those three order types and then consecutively to those order types, or they may release just to one. In some circumstances the

boards will release directly to parole because of the individual's personal circumstances. I will give an indication of that. For example, we are of the belief that home detention does not work well in remote Aboriginal communities where a person is more likely to move around within their community. So having an order type such as a home detention order that does not allow the person to move within the community is seen as unrealistic. In those cases, it is more than likely that a person of Aboriginal or Islander descent who moves back to a remote community would be released by a community corrections board to parole. The parole order can contain any condition that the community corrections board deems necessary to protect the community or to ensure that the offender does not reoffend.

Having talked about the boards and their independence, I must say that the Queensland Community Corrections Board—which is our board that considers the release applications of prisoners who are sentenced to up to eight years or more—are given guidelines by a Minister in relation to the issues that they should consider when considering release to any type of post-prison order. The Queensland board, in turn, under legislation can give instruction or guidelines to the other regional community corrections boards of a similar nature. I think the boards tend to be rather risk adverse and we have seen a decline in the number of prisoners being released on post-prison community-based release orders.

CHAIR: Thank you. I have one other question in relation to the functioning of the boards and information about individual prisoners. Are prisoners in Queensland moved frequently between gaols?

Ms HOLMAN: Depending on their classification system they can be moved through gaols. We have prisons that are maximum security and then there are open prisons, which are more like farms. Ideally, you would want a prisoner to move from a high-security prison to an open-security prison. I think in general that occurs. However, there will always be some prisoners who do not move easily through the system.

CHAIR: My question is more about the community corrections boards. Does the same regional board deal consistently with the same prisoner or would prisoners be dealt with by a scattering of boards across the State?

Ms HOLMAN: In general, the one board would deal with one particular prisoner. Under legislation, the boards have a geographical area that they are responsible for. We have a number of prisons in the south-east corner of the State and there is potential for a person to move from one board's jurisdiction to another. But it is not a frequent occurrence, particularly not in the northern centres, where a person is more likely to spend their sentence in a particular prison. However, I can think of several circumstances recently where, for security reasons, a person who was housed in one of our most northern centres was moved to another centre. That would then change the jurisdiction of the board.

CHAIR: Thank you.

The Hon. GREG PEARCE: Do the independent boards make decisions about the release schemes, not the original judges or departmental officers?

Ms HOLMAN: At the time of sentencing a judge may make a parole recommendation, and it is just that: a recommendation for parole. A person may be given quite a large sentence with a low bottom for parole. In the legislation the boards are not bound by that recommendation. If a board believes that it has information that was not put before the judge at the time of sentencing that would materially alter the recommendation it is not bound by that recommendation. In Queensland a sentenced prisoner can apply for a post-prison community-based release order at 50 per cent of their sentence time, unless of course they are a serious violent offender and then they must serve 80 per cent of their sentence until they are eligible to apply for a post-prison order from a board.

The prisoners who are exempt from any post-prison order are those people who are serving sentences of less than two years. Those prisoners are able to apply for conditional release at two-thirds of their sentenced time. That determination is made by the general manager of the prison where the prisoner is housed. In making the decision whether or not they will allow the person to be released on

conditional release, they look at their institutional conduct and of course the risk to the community. If people are released on conditional release orders, essentially, they are living in the community with the condition hanging over their heads that if they commit an offence during the period of the conditional release order they can be returned to prison and the order can be cancelled. So for prisoners sentenced to under two years it is not determined by board.

The Hon. GREG PEARCE: Who looks at breaches and decides what happens following breaches?

Ms HOLMAN: The Corrective Services Act allows departmental officers to suspend a post-prison community-based release order under section 149 for a period of up to 28 days. If a departmental officer does that the report is then sent to the board and the board must consider the circumstances of that decision. The board can then decide to suspend the order—agree with the suspension of the order and suspend it indefinitely. They can determine to re-release the offender if they do not agree with the suspension or they can cancel the order totally, which then means that the prisoner must go through the process of reapplying for a post-prison order. So both departmental officers and the boards have a role.

The Hon. GREG PEARCE: If there is the suspension does the inmate go back to gaol while it is sorted out?

Ms HOLMAN: That is true, yes.

The Hon. GREG PEARCE: So one would imagine that that would normally occur only in cases of reasonably significant breaches.

Ms HOLMAN: The legislation in Queensland allows departmental officers and the boards to have a person return to custody on suspicion. Whether or not we believe that a person has an intention to breach an order, we are able to send that person back into custody.

The Hon. GREG PEARCE: Do you have any statistics about the number of suspensions and the reasons for them?

Ms HOLMAN: No, I do not. I would say, particularly with home detention where we do not have a lot of tolerance for breaching of conditions, there are drug- and alcohol-related breaches. They are viewed very much in light of the safety of officers who attend the home to undertake surveillance. It is not seen as a particularly safe environment if a person on home detention is using drugs or alcohol. I do not have statistics on the suspensions but we have a low tolerance.

The Hon. AMANDA FAZIO: You said that you were quite strict on breaches to do with drug and alcohol issues. You said earlier that people on home detention are subject to random and routine surveillance. Does that include random and routine drug and alcohol testing?

Ms HOLMAN: Yes, it does. It is a condition of a home detention order that the person abstain totally from the consumption of alcohol and they are obviously not to use drugs. If they are taking particular medication a community corrections officer would follow that through with a treating medical officer to determine the nature of the medication that the person is taking. We have quite an elaborate drug screening process in Queensland and we do what we call an instant check test to determine whether or not drugs are present through urine testing. We further follow that up with confirmatory testing through the government laboratories.

The Hon. AMANDA FAZIO: What is the Queensland experience with women prisoners on home detention? Do you have many women prisoners on home detention and, if so, do they cause any particular challenges?

Ms HOLMAN: I do not have the statistics for you. Home detention has been operating in place and for some time. I do not think there would be a disproportionate number of women on home detention. I would think that the number of women on home detention order would mimic the percentage of women in the prison population. In terms of the range of offences for which women are

imprisoned, I can, perhaps, consider my observations that women are in prisons for more drug-related offences these days than has been previously the case.

The Hon. AMANDA FAZIO: How is the graduated release program tailored for offenders with special needs, particularly prisoners with intellectual disabilities and learning disabilities? I do not know about Queensland, but the corrections system in New South Wales certainly has a high proportion of people with mental health problems.

Ms HOLMAN: I think that is probably mimicked across all the States. It is interesting that we are trying to gather some statistics about a mental illness in correctional centres in Queensland ourselves, and we consider that a major issue for us. We do not gather statistics currently about the number of offenders with special needs moving on to post-prison orders. Again, my observation is that we certainly do have a high proportion of people with mental illness and intellectual disability within the correctional system. I would have to say that home detention is not an easy order. It requires a fair degree of self-control and self-awareness on behalf of the offender on that order because they are subject to pass provisions, curfews and rules. A person who has a mental illness or intellectual disability and who does not have the good support of a family or relative may find it a challenging order. However, one would have to say that in most circumstances a person going on a home detention order would be going to an address that has a supportive environment, otherwise we would not assess it as being a suitable address.

The Hon. DAVID CLARKE: How long have you had home detention in Queensland?

Ms HOLMAN: I am going to have to do an approximation here. I think it was probably with the last Act in 1988. I could confirm that later for you.

The Hon. DAVID CLARKE: Does home detention extend right throughout the State?

Ms HOLMAN: Yes, it does. There are some challenges in Queensland because of the geographical distances between regional centres. We have only 33 area officers at present in Queensland. However, by using members of the community in more isolated areas who are effectively sworn in, if you like, as officers of the department we can extend our range of supervision to those individuals. However, it becomes more of a surveillance exercise rather than an intervention exercise, but it can be done.

The Hon. DAVID CLARKE: And it operates quite effectively in those areas?

Ms HOLMAN: There is a lot of work that the individual area officer staff have to do with a person who they are having remotely supervise the individual. It is the quality of those relationships and the monitoring of the surveillance activities that would determine the quality.

The Hon. DAVID CLARKE: Has it operated right throughout the State from the very beginning of the scheme?

Ms HOLMAN: That is my understanding. In Queensland you may have seen from my submission that we did a trial of home detention with electronic monitoring in 2001. It did not operated throughout the State, it operated in the south-east corner of Queensland. However, home detention without electronic monitoring is able to be operated throughout the State. Having said that a board, in considering a person's application for a post-prison order, depending on the person's circumstances that they may view the effectiveness of a home detention order where the person is not being supervised by a departmental officer as not being as rigorous, perhaps, as that when they were being supervised by a departmental officer. But there is the potential to run it across the State.

Ms LEE RHIANNON: You may have been here when I asked a couple of these questions earlier, and I would be interested in the Queensland experience. Do the people in home detention or their families carry any of the cost?

Ms HOLMAN: The costs associated with home detention would be in the Government's favour, I would have thought. We do not have a cost attached to supervision practices in home detention. By virtue of the fact that the prisoner is released from prison there are some savings made

in terms of not having to continue to build infrastructure. If the person is working in the community they are actually supporting their family in a very positive way and may, in fact, reduce costs to Government by virtue of the fact that they are the breadwinner.

Ms LEE RHIANNON: Who pays the cost of calls that have to be made?

Ms HOLMAN: The department carries that. A surveillance of people on home detention is both random and routine. The person subject to past provisions can come into an office and have some interventions with a Community Corrections Officer, but we also have officers who go out to the person's home randomly to determine that they are where they are needed to be. Those costs are borne by the department.

Ms LEE RHIANNON: When people come out of gaol to go into home detention is the system up and running or do they have to wait, and in that time can they do whatever they want to do?

Ms HOLMAN: A person who is released by the Community Corrections Board to home detention can be released as soon as the board makes the order because the address to which they are being released has been assessed already as being suitable. If there were not a suitable address and a Community Corrections Board made the decision that they wanted to release the person to home detention they would not be released until a suitable address could be determined.

Ms LEE RHIANNON: If the phone were not connected you would not release them until the phone was connected?

Ms HOLMAN: In the reports that are provided to the Community Corrections Board we would identify whether or not there was a telephone. It is a requirement of home detention that a landline is installed in the home. If there was not a landline and there was no intention of the house occupant to install one, the address would not be considered suitable.

The Hon. ERIC ROOZENDAAL: Are you aware of any offenders who have collected enough to undertake home detention because they believe that it is more onerous as full-time custody?

Ms HOLMAN: No, I am not aware of that. It is an onerous order, there is no doubt about that. For a prisoner who has not been released to a release to work order but is in custody and looking at whether they can be released to the community, I would be of the belief that they would consider a release to a home detention order as being more favourable than being in custody.

The Hon. GREG PEARCE: Are you aware of any of the inmates on home detention being paid unemployment benefits? Do they claim unemployment benefits?

Ms HOLMAN: They are eligible to apply to Centrelink for unemployment benefits. They are encouraged to strongly seek employment and gain employment. It is the same as a milestone for an offender that they are actively engaged in employment, and we would encourage that. But they are eligible to apply for Centrelink benefits, should they not be successful in gaining employment.

The Hon. GREG PEARCE: Do you have any figures on the breach rate?

Ms HOLMAN: On home detention?

The Hon. GREG PEARCE: Yes.

Ms HOLMAN: As I said, we have zero tolerance. Departmental officers have zero tolerance. I could not give you the statistics about the number of suspensions. However, the boards are able to overturn a suspension and re-release an offender. They have to review the suspension of the departmental officer and make a determination themselves whether or not they want the person re-released. The paramount importance, of course, is protection of the community. If they are of the belief that the suspension by the departmental officer adds nothing to or detracts from the protection of the community then they would re-release the person.

The Hon. GREG PEARCE: Could you take on notice the numbers of suspensions?

Ms HOLMAN: By departmental officers and boards?

The Hon. GREG PEARCE: Yes.

Ms HOLMAN: Yes.

The Hon. GREG PEARCE: When you say "zero tolerance", yesterday we were told that the New South Wales home detention record is that 46 per cent have breaches. Hansard can record that the witness's eyes shot up in amazement.

CHAIR: It is the definition of "breach" that was the issue.

The Hon. ERIC ROOZENDAAL: Some are very minor, such as being late for curfew.

Ms HOLMAN: Some of them can be very minor. The significant factor here is what is counted as a successful completion on a home detention order. As I said, we have a current 2003-04 successful completion rate of around about 88 per cent. Although the person can be returned to custody for a rather minor violation on an order, if the board re-releases that person on the home detention order and they ultimately successfully complete that order we view that as a successful completion. There are issues about policing and order and maintaining its integrity. Our view is that it is quite good to have a policing capacity in terms of monitoring the compliance and the conditions of the order. But ultimately if the person is returned to that order by a Community Corrections Board and they successfully complete, we would view that as a successful completion.

The Hon. GREG PEARCE: When you get figures on suspensions, could you put those in the context of the total numbers of prisoners in Queensland and the total numbers that go on home detention and so that we can make that comparison?

Ms HOLMAN: Yes.

The Hon. GREG PEARCE: Do I take it from what you said that you do not have an electronic bracelet or anklet on inmates?

Ms HOLMAN: No, we do not. In 2001 we did a trial and they were very small numbers. My submission details about 74 offenders. The reasons for that were that bracelets did not seem to add any statistical significance to the successful completion of the orders. I think it is more likely that there is a degree of community acceptance of electronic monitoring. However, very clearly we are of the view that electronic monitoring on its own does nothing to assist the offender to integrate into the community or to be successfully under surveillance. The technology used in Queensland was not GPS. At the time it was considered unreliable technology, so we used a different mechanism whereby we really just could detect when an offender was moving out of the geographical range that had been set for them using their bracelet. We did not see any great advantage to the use of electronic monitoring and it was quite an expensive technology.

The Hon. AMANDA FAZIO: In relation to prisoners who have their orders suspended, could you outline what their appeals mechanisms are if that were to occur?

Ms HOLMAN: Essentially there is not an appeals mechanism for a suspension of an order of a departmental officer. However, given that the departmental officer can only suspend the order for 28 days the matter has to go before an independent Community Corrections Board. The prisoner, having been returned to custody, is then able to make submissions to the Community Corrections Board in regard to whether they should or should not have been suspended. Having made certain submissions I guess that is a form of appeal, although there is no effective appeal mechanism.

The Hon. AMANDA FAZIO: The other issue I want to ask about is that you said the community corrections officers come in and do this random routine surveillance on people. But is there any other formal sort of support system in place so that if the person feels that that they are getting to the point where they might end up breaching the order, rather than having to go to the person who has the role of policing the order, there is somebody else like the equivalent of a prison

chaplain or someone with whom they can talk through the issue to try to keep on the straight and narrow?

Ms HOLMAN: The person who would be undertaking the surveillance of the offender is not the person whom they have as their case officer. It is a different person. There is some compromising if on the one hand you are trying to police an order and on the other hand support an offender in their reintegration, so in general the person who is undertaking the surveillance of the individual is not the case officer.

The Hon. AMANDA FAZIO: So does the opportunity exist within the system if, for example, there has been a bereavement in the offender's family for the person who is providing the support to let the other corrective officer who has the policing role know that there is a difficulty in the family and that the offender's behaviour might be a bit more erratic than usual, or that they might have had a shot of brandy, or whatever? Or would they never tell him that?

Ms HOLMAN: The quality of communication is what makes programs like this successful. You have got to have an integrated approach towards the management of an offender. It cannot be piecemeal so, yes, that information can be relayed to the person who is doing the surveillance activities. However, Queensland would not view having a shot of alcohol as being acceptable.

The Hon. AMANDA FAZIO: But they would handle other circumstances with a bit more sensitivity, depending on the family circumstances?

Ms HOLMAN: Absolutely. While I am stressing the point that home detention has a surveillance component to it, that of itself will not assist an offender to reintegrate into the community. There are all sorts of reasons why an offender needs support and perhaps criminogenic programs to assist them to address their offending behaviour, not the least of which is the amount of time that the person may have been in custody or the antecedents to their incarceration where people do not go into custody unless they have significant issues in their lives. Returning a person to a similar environment in those similar circumstances without there being support and interventions for that individual will not be successful, so there has to be that level of support and intervention.

The Hon. ERIC ROOZENDAAL: I just wanted to clarify that there is no electronic monitoring used, so the only form of supervision is by random checks. Is that right?

Ms HOLMAN: That is right, and they are done in two ways: one is a physical check by departmental officers and the other one is a telephone check. As I said, the telephone has to be a landline. You cannot do it on a mobile phone.

CHAIR: We just heard from the last witness that Western Australia actually uses security firms in some cases in the country as their surveillance people. Do you have any systems like that at all?

Ms HOLMAN: No, we do not, and there has often been some debate about that—whether it should be security firms or whether it should be departmental officers. My personal opinion is that it should not be security officers for the very point that we just spoke about before which is the level of communication that is required and perhaps the level of support. There might be an economic argument in some isolated communities for security firms to do that type of surveillance, but I am of the view that it will not actually enhance the supervision of the offender.

CHAIR: Yes, I understand that, but there is the logistics of actually providing departmental officers in a lot of these far-flung places to consider. Is there a chance then that a home detention orders are not delivered in those places?

Ms HOLMAN: As I said previously, if a person is on home detention outside of the immediate geographical area of an area office, departmental officers may employee casual home detention or leave of absence supervisors in the local community.

CHAIR: Yes, I heard that.

Ms HOLMAN: Those people go through a screening process, of course. They have to be security checked and there are essentially lines of communications set up between the area office and that person who is providing that remote supervision. I think the boards—as I said before, if they had some concerns about a person being located so far away from an area office and understood that the person who would provide that surveillance activity is not a departmental officer per se and may decide not to release a person to home detention, they might rather release the person to parole because they have the capacity to release to any of those orders.

The Hon. AMANDA FAZIO: I think you said earlier that you have 33 area offices. Do you have a pretty good geographical spread of those across rural areas in Queensland?

Ms HOLMAN: No. In my submission I identified that the department is developing a rural and remote strategy; that we have seen that our services to the Cape and the Gulf communities do not provide equity of service to our products in Queensland. Currently we are looking at the feasibility of additional area offices located in what we are calling service hubs in the Cape and the Gulf communities to ensure that we can provide a more effective service. At present in the dry season it is a long road trip. In the wet season it is a fly in, fly out service that provides minimal supervision.

CHAIR: I thank you very much for coming and giving us your information. It has been very good.

Ms HOLMAN: Thank you.

(The witness withdrew)

The Committee adjourned at 12.36 p.m.