

REPORT OF PROCEEDINGS BEFORE

SELECT COMMITTEE ON JUVENILE OFFENDERS

At Sydney on Tuesday 12 April 2005

The Committee met at 10.00 a.m.

PRESENT

Reverend the Hon. Dr G. K. M. Moyes (Chair)

The Hon. C. E. Cusack
The Hon. A. R. Fazio
The Hon. C. J. S. Lynn
The Hon. E. M. Roozendaal
The Hon. Dr P. Wong

ROBERT DOUGLAS WHITE, Professor and Head of the School of Sociology and Social Work, Private Bag 17, Hobart, Tasmania, affirmed and examined:

CHAIR: I declare open the meeting of the Select Committee on Juvenile Offenders and welcome Professor Bob White. In what capacity are you appearing—on behalf of the university, or as a private citizen?

Professor WHITE: On behalf of the university.

CHAIR: Do you wish to make a brief opening statement before we ask you questions?

Professor WHITE: Yes, I do. After reading the background materials for this hearing I thought that before we get into the details of things it would be useful to go through some philosophical types of questions. It has been my experience that when we talk about institutional reform or institutional change that that has to be driven philosophically and that good reform and good institutional change are based upon principles that are identified and clarified at the beginning of the process. From reading the background material my impression has been that there has been lack of clarity as to purpose. So I just wanted to say a couple of things.

The first thing I want to observe is that we have to live with those we punish. Their punishment is not about the present; it is also about the past and it is about the future. If we are to deal adequately with the situation in the present we have to go back into the past of the young offender and we have to project into the future. I have submitted for members of the panel a diagram entitled, "Integrated Offender Management"—which shows that if we are to understand our young offenders we have to look at the pre-prison experience. Regardless of whether we think these young people are good or bad people, thugs, or whatever, the fact is that most of the young offenders we are talking about have had very difficult backgrounds. We have to understand and acknowledge that.

Once we get into a prison or a detention situation we have to talk about the assessments of risk and need but also of responsivity, that is, how we can tailor a program to suit each offender. A really important point is the notion of responsivity. Within a prison system, integrated offender management also means that we have to talk about good planning and programming, and again we must look to the future, which means that we have to combine inside workers with outside workers in the process.

CHAIR: Are you saying, in effect, that each individual must be case managed?

Professor WHITE: Yes, in such a way though that it covers the present and then moves into the future, but it must also cover inside workers and outside workers. When I say "outside workers" I do not only mean drug and alcohol service providers or whatever; I mean people who work with young offenders after they have been in detention or imprisoned. Post-release transition is a huge issue for adult offenders as well as for juvenile offenders. The simple first point that I want to make—I have three quick points—is that we have to live with those we punish. At some stage these young people will come back into our communities. So what we do now has to reflect issues of their past, issues of the present, and we have to project into the future.

The second point I want to make is to ask the question: "What do we mean by justice?" I find it very useful to see justice as a social process that typically can go three different ways. Sometimes these are overlapped. Justice can be something done to you, which is basically a punishment, a punitive type of regime, and it is about containment. Basically, in essence, it is about retribution or vengeance for the act that the person has done. But that treats the young offender as passive. Punishment or justice as something done to you treats the offender as passive. Justice can be something done for you. Again, in this case, the offender is treated relatively passively. "We have a drug and alcohol program. We will provide you with therapy", or, "We will provide you with remedial education." But again the point is that it still treats the young offender, in particular, as passive.

The third approach to justice is that justice should be something done by you. That implies that young offenders need to be participants in the justice process directly and that they have obligations that they have to carry through as part of the doing of justice. This is very much about

reparation. It fits within a broader restorative justice framework and so on, but I think particularly in the case of young people—and I would certainly argue that we need also to be thinking of adults—we need to make people active in the process of repairing the harm that they have caused.

The third point I want to make has to do not so much with the offender as such in terms of justice but the offender in terms of victims. Just reading again through some of the background materials it seems to me that there is no sense of the victim in the process. Even in cases of detention we have to think creatively of how we involve what we call a victim consciousness amongst our young offenders. Recent studies have shown that when they have talked to adult offenders those adult offenders did not really know the harm that they had caused. The classic case is the bank robber who goes into a bank with a plastic gun and he holds the gun across the counter. To that offender he thinks he is scaring only the person across the counter, but that person has been traumatised and he or she may be off work for months and have recurring nightmares and that kind of thing.

Bank robbers often have no sense of the harm that they have caused. Overseas in particular—but I would like to see more of it here—I would like to see some sort of victim input into the detention or imprisonment process so that offenders get to realise the kind of harm that they have done. I would not put a direct offender and a direct victim together, even though I know that that is what they do in juvenile conferencing. My preference for a detention situation is to have a panel of different kinds of victims—victims of robbery, rape or whatever—coming in to talk to a group of young people about the harm that they have suffered. But the point is that if we are to go beyond containment of the young people—if we are to go towards a change in the lives of these young people—we need to change their environments but we must also give those young people a sense of redemption.

Redemption does not come from a brutalising institution; redemption comes from the realisation that what they have done has hurt and harmed somebody else. Basically, those are my opening remarks. We have to live with those we punish. We have to understand that justice is a social process and somehow, in some way, we have to open the door for redemption through an understanding of the harm that we cause.

CHAIR: Let us look specifically at some of the problems we have had at Kariong. I recognise that you are not involved in that in any way, but having read some of those background papers do you have any comments to make about specific oversight changes from what primarily has been a social welfare approach for young people in detention to a custodial approach under the Department of Corrective Services?

Professor WHITE: Reading between the lines I am not convinced that it ever was social welfare. I am not convinced that there was a real understanding of the principles and philosophy that were trying to drive what was happening inside.

CHAIR: Despite the fact that many of those who were employed had qualifications in that field of social welfare?

Professor WHITE: That is right. As we know, within any institutional sphere people pick up the language of the day without necessarily realising or going through the true implications of the language. For example, the language in juvenile justice is restorative justice, but if we scratch the surface we have to look at the system as a whole and say, "Are we moving towards a restorative justice system?" It is questionable whether that is the case. In the case of institutions the point is that the stories and the incidents described do not lend themselves to me interpreting those places as having a social welfare approach. They perhaps had a veneer or it was the impression on the part of some people that that is what they were supposed to be doing. But when they talk about the disappointment of not locking up a young person for 12 hours because he or she had done something wrong, that certainly is not a social welfare approach. It seemed to me that there were major management problems within the institution, just on a reading of the materials to which I have had access.

CHAIR: If there are major management problems does that increase the likelihood of a juvenile offender reoffending and becoming a recidivist in the adult system?

Professor WHITE: If you put young people into the adult system they are much more likely to be recidivists. We overuse our prisons in the adult sphere much less than in the juvenile sphere. Let us think of it logically. If you put the toughest, naughtiest and most intransigent people all together in one place, it is no wonder that we have problems in those kinds of institutions. We know that super max did not work. For similar reasons, this kind of institution will not work. You are combining all the people who are stigmatised and who are seen to be the worst of the worst. That raises the issue of classification as to how they get there anyway.

Nevertheless, that sets up an institutional dynamic that we are dealing with the worst of the worst and we have young people acting up and playing up to that kind of behaviour and those expectations. We also have the sense that there are a whole bunch of survival skills in that more brutal and containing environment. That is why I have suggested, for example, that we bring victims somehow into the process because it relieves some of the tensions in the institution. We have to ask ourselves, "What are we here for?"

The Hon. CHARLIE LYNN: If that environment does not work what environment will work?

Professor WHITE: To be honest, prisons do not. Perennially, prisons fail. If you look at prisons around the country you see that of the order of 60 per cent of the people who are in our prisons have been there before. So obviously they do not work. Further, they diminish the chances of young or older people finding jobs once they go out. Who wants to hire an ex-prisoner? So a whole range of dynamics is set in place. I will restrict my comments to the juvenile area. In 1987 in Finland, which has a population of five million people, they basically had 10 people in detention. There was a population of 5 million and they had 10 people in detention because the Finnish government took the view that our young people are better placed in the community with social connections, with family, with friends and so on, with potential employers and with educational institutions. So community-based corrections tends to be much better.

Another case was in one of the American states—it might have been Minnesota or something like that. In 1969 the Governor of the State or of the juvenile institutions got rid of all the young people out of secure detention. They did a five-year study and they discovered later that lo and behold none of those young people ended up in the adult system, which means that the juvenile detention centres were being a feeder into adult prisons. So the short answer is that we need community-based alternatives to detention. Having said that, we are obviously dealing here with some people that you cannot simply say that is somebody who has been involved in a rape or a murder and we are going to simply put them into a community-based program; then we really do have to talk about institutional settings and reform.

But let me give you an example of the kind of approach that we conduct there. If somebody acts out—because these are pressurised environments, this is their home, we have to remember that all the time, and in that we all act up in our own homes—and we banish them, we isolate them to their own cell with no contact, when in fact the strategy should be the laying of more intensive intervention and companionship with that person to try and understand why they are acting out the way they act out.

The other thing that is clear from some of the materials I have read is that there are general feelings of disrespect on both sides and that is apparently because of the nature of the institution. But, nevertheless, those secure institutions which have tended to work the best have been those which have given young people the most amount of personal responsibility and where they have received—the analogy is with young people and the police. Even if a young person breaks the law they will accept that if the police officer treats them nicely or fairly. Custodial staff—again, this is their workplace and sometimes they get it wrong, as we all do in our workplaces. But the implication here is that it can escalate the feelings of disrespect and I think that what we need to instil within our correctional culture is the notion that you must treat everybody with dignity and respect. We do rhetorically because we have got the Convention on the Rights of the Child and so on. If you go through the conventions, the Beijing rules and a whole bunch of other things, it is all about dignity and respect. But it is clear from this particular institution that that is not happening.

The Hon. CHARLIE LYNN: What sort of institution do you think would work best? Something like a farm with a lot of discipline where they are actually working, achieving with hard work and learning, is that something that has been looked at from your perspective?

Professor WHITE: I will go back to my opening remarks. Justice needs to be something done by the young people. I feel that if you look at the background of these young people often they have been subjected to abuse, drug and alcohol problems, family violence or racist violence of some kind. We cannot condone their actions whatsoever in terms of the offences for which they are in detention or in prison, but often they have never had a chance to contribute to their society and I think that one of the things that makes people feel good about themselves is doing something for somebody else. So if we are going to structure a program—and this is why we cannot only look at therapeutic terms—let us skill this young person up. What we need to do is look at what can young people do, not what they ought to do.

If you devise an assessment process where you look at each young person and you say, "Well, you are very good with your hands; you are very good on computers; you are very good at this or that art", whatever, build a program on what they can already do, not what they ought to do. But also build into that some kind of contribution back into the community. Again, the quick and nasty story on that one would be: we had floods in Queensland a few years back and they basically took all the inmates from one of the prisons and sent them to a small town to help the town deal with the floods. The townsfolk at the end of that week contacted the correctional services in Queensland and said, "We want these guys to stay in our community". What happened was that these guys were just pleased to be helping and mingling with the townsfolk, but contributing to the community. I think that is one of the things that we have to think seriously of doing. That contribution now has to be done in such a way that it is not seen as coercive on the part of the young people.

The Hon. CHARLIE LYNN: I agree with your remarks on the victims. However, when a victim has been impacted there are things that last for life. It may seem to them to be minor, like a house break or an assault or whatever, but it is a lifelong sentence for the victim. So the perpetrators need to know that these victims have worked hard, they have done the right thing and all of a sudden somebody has come and invaded that; that the victim has got a life sentence for it and they want to see a punishment for that offence. But I would think that most of the victims would also like to see at the end of that punishment a process where that particular person comes out a better person. So where do you draw the line on that?

Professor WHITE: I do not, in a sense. I have often thought that juvenile conferencing should be not at the front-end of our justice system but at the hard end; that you bring juvenile offenders who have committed serious crimes into that kind of process. Certain types of crimes I would not necessarily get the direct victim but the offender has to be in touch with victims of those kinds of offences so they can understand. The point is that in the end, regardless of what we may think or whether or not the offender changes or whether their environments change, invariably most young offenders will end up back in the community. So unless they appreciate the nature of the wrong and the harms that they have perpetrated then they are just going to go back, in some cases, as cocky as ever; they have served their time, they have got street cred all of a sudden and so on. So that is a problem.

The Hon. AMANDA FAZIO: We have received some evidence already that initiatives in New South Wales such as the circle sentencing and youth justice conferencing is working in diverging some young offenders from having to have custodial sentences, but the downside of that is that the people who actually end up in centres like Kariong are much more hardened. If you say that you think it is better to have that sort of contact upfront with young offenders how do you manage that with somebody who has been charged with murder or manslaughter or whatever? They have committed one very serious offence, often they have got a reasonably long sentence, what can we do to try to make sure that those serious young offenders come out of the system likely just to be one-time offenders?

Professor WHITE: Firstly, motive is typically a one-time offence anyway and we have to look at the unique circumstances of each homicide, because homicide by and large if it is women committing homicide it is often related to abuse, an abusive partner; if it is young men it is often associated with, say, a David Hookes kind of incident—outside a pub or a brawl or a street thing

related to alcohol use and so on—or we have a lot of domestic homicides relating to family violence, the so-called crimes of passion, and often they are one-off intrinsically because of the nature of the event. In those cases I think that we have to think seriously of how we stigmatise and deal with people who are convicted of homicide, because basically they are good people who have done a bad thing.

To answer your question, one of the things that we need to be able to offer our offenders is an understanding of the harm that they have done because often they do not understand—I think that is for young offenders as well; they just do not understand. You can talk about media images and the culture of violence that we have in the wider society and so on but the fact is a lot of the time we just do not understand what we do to others. So I think that we need to build into our prison systems for the more serious offenders some means whereby they can understand that, "I have hurt my mother, my sister, my brother, my father", because they are not necessarily seeing the victim as their people. That is what we have to convey. I think that that would be a really innovative thing that we could do in jurisdictions like New South Wales, without necessarily going to a conferencing mode.

The Hon. AMANDA FAZIO: I understand that in some American states they actually do that sort of family and victim conferencing with very serious offenders—not immediately after the crime and the person has been sentenced, but a few years after to try and get some resolution to the issues that are left hanging. Do you think that that would be an appropriate thing to do with these sorts of serious juvenile offenders?

Professor WHITE: No, and the reason why is that I am very wary of having a direct offender and direct victim coming together. I think for a whole range of reasons it can re-traumatise and it can actually create a very, very difficult emotional situation. What we want to achieve is understanding and redemption, and that may not necessarily involve the direct victim and the direct offender. However, if I am a victim of a crime, say a burglary, and for those of us who have been burgled, you feel violated and you feel really afraid, but to have somebody like me as a victim of burglary to go in and testify in front of young offenders that, "Look, this really affected me. Somebody took my daughter's pendant which had been handed down for generations in our family and can you imagine the impact it had?"

So if you tell those kinds of stories you still get across the point that you are hurting real people. But also I think that we need victims to understand who they are dealing with. Some victims, for good or for bad, will not and cannot accept an offender who has perpetrated a serious crime, for example, murder. They cannot accept that their father, their mother, their daughter, whatever, has been killed by this person, and it is entirely vengeful and punitive. That, in my book, is self-destructive for all concerned. The victim there is not in need of confrontation with the offender, the victim is in need of support and counselling in their own right.

The Hon. ERIC ROOZENDAAL: I am left with the distinct impression that you find the notion of Kariong and concentrating serious offenders into one place as not a very good idea, would that be right?

Professor WHITE: It is just one of those ironies and paradoxes that to deal with the most difficult we combine them together and the net result is that we have a very unhealthy situation.

The Hon. ERIC ROOZENDAAL: I want to explore that with you. My impression, from going through Kariong, was that there was a distinct change in management—the reason, as you would be aware, for this inquiry. Now within the complex is a school that is 100 per cent full. Now, they do a lot of duties that used to be done by paid workers, such as gardening, cooking and things like that. In addition, there is a big art program. In fact, we met a quite impressive young Aboriginal artist, who was there for a quite serious offence. If there are good programs in place, like a school and TAFE correspondence courses, do you think that helps?

Professor WHITE: Without a doubt. One of the biggest problems we have had is that, whilst at the top level we have talked about programs and the need for young people to have programs, at the practical level we have often been found wanting. It goes back to the idea that justice needs to be something done by the young people, and how they can better contribute to society but also to their own lives. One of the big difficulties we have had with detention centres and adult corrections is that the whole system is based on taking away individual responsibility. They tell you

when to get up of a morning, when to eat, when to go to the yards, when to exercise, and so on. Perhaps we could design a system—and it might be a graduated system, which is logically the case in other places—where the young people take on greater and greater responsibility.

For example, New South Wales has one of the best women's prisons—by Tasmanian standards, anyway—because it is an open, sort of campus system, which is based upon individual women combining with other groups of female prisoners to take care of their own lives; that is, they do the cleaning, the cooking and all that kind of thing. Having that responsibility forces them to cooperate with others. As well, skills are being transferred because they are working with other people. So the more we can get people to do for themselves, even within a secure context, the better.

The Hon. ERIC ROOZENDAAL: The system now introduced through Corrective Services is basically one of penalties and privileges: if you are well-behaved and do certain things, you gain certain privileges; on the contrary, if you breach the rules, you lose certain privileges, such as lockdown time. What is your view of how that system impacts on juveniles?

Professor WHITE: My view is the same as that of the New South Wales Ombudsman expressed in the report on the inquiry into detention centres. Basically, it has been misconstrued as a disciplinary system. The origins of the system introduced some 10 years ago in New South Wales, were incentives towards positive behaviour. In fact, it has been used as a disciplinary system, that is, it is, all but, negative behaviour being punished. So it is a disciplinary system rather than an incentive system.

The Hon. ERIC ROOZENDAAL: I am not quite sure I understand the distinction. If they are well-behaved, they get certain privileges, but if they breach the rules they lose privileges.

Professor WHITE: The 1994 Ombudsman's report points out that the system had, in practice, been construed basically as a disciplinary system. So it was used negatively as a disciplinary system, rather than positively as an incentive system under which the young people could move forward and learn new skills. That is one side of it, and it has a philosophical orientation. How is the program being perceived by the people carrying it out? The second part of that is: How do the young people view the system, whether as disciplinary or incentive based? The third part, as we have seen in some of the background materials, is whether the system is abused by the staff. If it is being abused, what kind of oversight is there of the staff in the place to make sure they do not abuse the discipline, if it is being used as a disciplinary system.

The Hon. Dr PETER WONG: Earlier you spoke about a graduated system involving greater and greater responsibility. We were looking at Kariong as having an incentive system or disciplinary system. How do you transform that to a graduated system of greater and greater responsibility?

Professor WHITE: Usually, to institutionalise a graduated system sometimes means that either within the institution or within a larger correctional system you have different kinds of units. You would have a unit in which the prisoners have less freedom, and thereby less responsibility. But, over time, if they can demonstrate a semblance of responsibility or whatever, they will move into a different kind of unit. So, if it is within one institution, sometimes it will have different yards or different units. They are described in different ways in different institutions. The offender coming into the institution has to know that it has a graduated system, so that there will be incentive to move to the yard over there. The analogy would be that Tasmania has a maximum security prison, but prisoners who demonstrate responsibility can end up at a prison farm. It is a graduated system, and everybody knows that.

The Hon. Dr PETER WONG: Could it not be argued that it is not necessarily a system involving greater responsibility, but more of a regime under which those who obey the system get more incentives or privileges? I still do not understand how to transform the system of punishment and discipline, or incentives, into a system of pro-active empowerment and responsibility.

Professor WHITE: It is difficult, because ultimately, I would suggest, unless you have some kind of community link it is very difficult to get genuine responsibility and genuine incentive.

The Hon. Dr PETER WONG: Earlier you gave an example of successes overseas and the one-off incident in Queensland. What community projects and programs in Australia do you regard as having been successfully implemented, leading to better outcomes for both victims and offenders?

Professor WHITE: There is a lot of work needed around the country in the area of responding to juvenile offenders. A better example is probably found in New Zealand. When it went to juvenile cautioning, New Zealand kept police cautioning and used conferencing for medium to serious offences, so that very few young people went to a juvenile court. What are the best systems we have seen here? Probably we would go to Victoria for an example. Traditionally, Victorian has incarcerated very few young people. Most young people have been dealt with through community-based programs. The advantage of those programs is that they keep the young people connected to members of their community and to their families.

But community programs cannot be used simply as cost saving measures or as programs somehow not requiring a major commitment on the part of correctional authorities. For example, a few years ago Adelaide introduced home detention for young offenders, but the whole program was supported by an infrastructure relating to employment, training and educational opportunities. It was not simply a matter of telling the young person, "You have got to stay at home, and here is an electronic bracelet," or whatever. If young people are to be in home detention programs, there needs to be appropriate infrastructure. Basically, they have to be part of the drug and alcohol program, or an education or training program, or be working part-time, and so on. In a sense, the incentive for young people is to be out there and working productively and making a contribution. It is often said the best way to deal with crime, full stop, is jobs. A lot of these young people do silly stuff. Sometimes young people do really silly stuff. We have to get them out of the silly stuff and into constructive stuff.

The Hon. Dr PETER WONG: Earlier you spoke about pre-prison, prison and post-prison management. What is the role of a mentor pre-prison, prison or post-prison, or is there no role at all?

Professor WHITE: It is crucial. In fact, in one word, you have probably said one of the most important things about getting young people to be contributing and productive members of society. Often, a mentor of some kind is the most important thing. This is somebody they can speak with, somebody they can learn from, and somebody they can respect. I am very much in favour of various types of mentoring programs. If we are talking about incentives, one of the ways to build that into the system is to have a process whereby people can go into the prison and mentor and guide young people whilst they are incarcerated. The young people will know that person is going to be outside waiting for them, as well as coming into the institution to be with them. That is big.

CHAIR: I might interpose that when I was doing some preparation and looking at different systems around the world I stumbled upon one that absolutely amazed me. It amazed me because of who was involved and where it was. It is in Texas. Of course, under Governor George W. Bush, Texas had the highest rate of hangings of any State in the United States of America. You would not expect the same administration also to have one of the most innovative programs for juvenile offenders, including mentoring programs, both inside and subsequently outside the prisons, and so on. It is worthwhile looking at that program on the Internet. Chuck Coulson, who was formerly in the White House, was responsible for introducing that particular program. I mention that for your own information, because that is where you would not expect such a system to occur.

I want to ask you a very simple question. In the halls of academia, working with bright young students, sometimes you come across very innovative ideas. If you were running the world in this field—as we have some responsibilities to do – what innovative ideas do you feel ought to be trialled in this field?

Professor WHITE: I keep coming back to first principles. One of the first principles, for me, is to talk to the young people themselves. When talking about adult corrections I often say, "If you want to talk seriously about institutional reform, you must talk to the prisoners, whether it be about prison architecture, program design or whatever." Likewise, with a lot of these young people, we have to listen to them, evaluate what they tell us, and take them seriously. In do not accept everything they say. There is a big difference between listening and accepting everything that somebody tells you. Often, it is very handy to have some kind of mechanism for dialogue between young people and authority figures. That dialogue may be direct in some places where the authorities figure that these

young people can connect quite well. But, transitionally, where there is friction and conflict, often it is useful to have youth and community workers from outside, or an advocacy organisation of some kind, to come in and play a mediating role. That is because young people often have quite genuine concerns that they are venting. They do stuff that is wrong, but authority figures do stuff that is wrong too. That, to me, is not innovate, except in the doing of it.

CHAIR: It is the principle of the seeds of the answer to a problem often being in the problem itself?

Professor WHITE: Yes.

The Hon. CHARLIE LYNN: Professor, many young offenders have come from difficult backgrounds, but very few people who have difficult backgrounds become offenders. Why do some offend when most do not? And what implications does this have for policy?

Professor WHITE: If we knew the answer to that! Firstly, I want to make the point that a very large number of rich people also offend. We could ask a similar question: Why is it that people from privileged backgrounds engage in white-collar crime or corporate crime? The answer I will give will be very similar. It is that you have a groundwork that affects many different people. Economic and family adversity can affect a whole range of different people. But then you have situational factors that will tip it one way or the other. One way to explain it was Matza's notion of delinquency and drift where most young people grow up swinging between the conventional and the non-conventional. If you happen to get somebody or intervene when somebody is in that period when they are unconventional then you might lock them into a delinquent career and so on. But basically it is very much a situational. Also, how we criminalise young people has an impact on who ends up being a delinquent into the future.

The Hon. CHARLIE LYNN: I have visited families in so-called housing commission areas in which there are de facto relationships with lots of young kids from her and from him and no income on either side. These kids are growing up with cigarettes and welfare, and peer pressure. Then you talk about connection of families. But when there are hugely dysfunctional families, and there seems to be a lot of them, I would have thought it would be best to break that cycle until they are ready to come back and search or connect later.

Professor WHITE: Let us go back to this notion of mentor. When you have intergenerational reproduction of disadvantage, alienation, family violence, drug use and so on, what is most likely to break that for individuals will be a mentor, somebody on the outside. It might be a youth and community worker, a sporting team, the chess club or whatever, depending on the culture of young people and so on. That is how you can break it at one level. But we should not overstate the extent of those truly dysfunctional, disadvantaged families because if you start tracking through the networks in almost any kind of family you will have those who have got it together and who will try to assist other members of the family.

The Hon. CHARLIE LYNN: Lots of small organisations out there are doing wonderful things, almost acting in the mentor role, organisations like Youth Insearch, Father Chris Riley, Just Enough Faith and so forth. If those agencies get government funding they have to abide by government regulations and if Youth Insearch, for example, are told of abuse then they have to report that abuse. But if they report it the kid is not going to tell them and they cannot get government funding as a result and they do not want it because the whole system is based on the fact that the kid unloads and then, once the kid has unloaded, they work through the guidance, the mentoring, the development, et cetera.

Professor WHITE: I agree. I do some stuff with youth gangs, and we have similar difficulties. You want to maintain the confidentiality of your sources and information, but on the other hand it is sometimes very useful to have cross-fertilisation about this particular individual or group for the best interests of that person, but it raises confidentiality, reporting and all that sort of stuff. Some of the stuff we just have to accept. I am trying to say—

CHAIR: Things happen.

Professor WHITE: Things happen, that is right. You cannot come up with an airtight theoretical explanation. You cannot necessarily come up with the solution, but we have to accept that things happen. About five years ago the son of a friend of mine died in Risdon Prison. She is very much a middle-class woman. He was provided with all the advantages in life and so on, but he got into drugs, he ended up with a psychiatric problem and he ended up dying in prison as a 17, 18-year-old. He was so-called uncontrollable and he ended up in Risdon, in an adult prison. But we have talked about this and nothing could have been done. It was just something that happened and you could not foresee it and you could not contain it when it was happening.

The Hon. CHARLIE LYNN: One of the things we found out in our early discussions is that Kariong had lots of casual staff. It would seem to me, particularly in regard to what you are saying, that the people running Kariong need to be highly trained with good leadership skills, be a disciplinarian on the one hand and a mentor on the other. Would that training be important in that type of institution?

Professor WHITE: Fundamental. But the training has to be in first principles as much as anything else, but not airy fairy. If we are going to talk about restorative justice, let us hammer out what we mean by restorative justice in practice. Or, if we are going to talk about systems of respect, can we set it down in a way that is understood by all concerned, that is young people and adults? Some of the best combinations of discipline I have seen have been through alternative schools. A few years back a school in Geelong had four principles of operation by which everybody was bound. The teaching staff were bound in the same way as the young people were bound. That was it: They had four rules along the lines of treat each person with respect and keep it safe and legal. There were two others, which I cannot recall at the moment. But the point is that anybody in that place had to know only four things. If you transgressed that everybody was a participant in chastising you because you were breaking our rules. Both the young people and the adults were the gatekeepers in that situation. When young people and adults have some ownership of the processes together it works really well.

I will give you another quicker story. In Cairns in Queensland young people were running amok in a shopping centre and a lot of older people were very afraid to go into the shopping centre. Two things happened. They had a short sharp period in which they basically came down heavily on a handful of young people, particularly those who were driving it. Then they opened up an alternative school in a shopping centre for the kids who were deemed to be too troublesome for the local school. When they opened this alternative school in the shopping centre graffiti and vandalism disappeared. It was a different kind of alternative school. These kids felt more comfortable and it was a very respectful kind of thing. They got to know the shopping centre staff—the security guards, the shopping centre proprietor and all that kind of stuff. The result was that when kids vandalised the back fence they knew who the kids were and they blew the whistle to the elders of the community. Nobody was charged—it did not go to the police or anything—but that fence was cleaned informally through these kids going to the elders. Remember, these kids were deemed to be the most troublesome people in the whole community. It is that sense of ownership.

The Hon. CATHERINE CUSACK: Some 44 per cent of detainees in New South Wales are Aboriginal, many of whom will be in a detention centre in, say, Grafton and then return to their community in a town like Brewarrina, which is a long way away. Is there any evidence that mentoring works, given that the environment in a detention centre is a totally different environment to what they experience in their own community? The reason for the question is that Aboriginal elders in Brewarrina tell me that for about two days the kids are great, but then they are back in their environment and their behaviour reverts.

Professor WHITE: I was going to say that part of the principle of self-determination is that each community has to work out what is best for them. In some communities, I do not know about New South Wales but certainly in the Northern Territory, the elders have taken charge. They have taken control and that hand out justice and punishment according to the way that they, as a community, decide. Mind you, these are predominantly indigenous communities rather than heterogeneous communities. In other communities, for example in Western Australia, petrol sniffing was rife and the elders wanted those kids out because they were uncontrollable because of the nature of petrol sniffing, its impact on the brain and so on.

The Hon. CATHERINE CUSACK: Where did the kids they wanted out go?

Professor WHITE: It was terrible. They were flown 1,000 kilometres south to Perth and were put in detention centres in Perth. It gave the community a break, but it did not solve the issue. The real difficulty is how to tackle the end-of-line problem. In the case of indigenous country kids it is so intertwined with central policy, and economic policy, redevelopment and self-determination.

The Hon. CATHERINE CUSACK: But can you see how difficult that is for the justice system, which has to deal with a crime that has been committed, victims and a court case? It is an event that needs to be processed. Juvenile justice is part of the justice system.

Professor WHITE: Yes. I am trying to answer your very difficult question. We cannot assume that things are going to work immediately or that they will work every time. Some indigenous community mentoring programs around the country, for example in Victoria, seem to have some success with some young people who work through it and probably would reduce the overarching rate of recidivism among indigenous people because it works with some people. But we ask too much of this system, especially in the case of indigenous young people, to expect that it will work with all the young people. For a whole variety of reasons we have young people who, for example in Tasmania when they go into Clark Island and programs, will have very high recidivism rates. Part of the reason we have a high recidivism rate, and this has been demonstrated absolutely by Richard Harding and people in Western Australia who did statistical analysis, is that such a high proportion of indigenous young people are brought into the criminal justice system at a young age. The younger you are brought in the more likely you are going to stay in for a very long time. If we could get rid of the 10, 11, 12 and 13-year-olds who are being brought into the juvenile system then we could probably get rid of a lot of the problems down the track. However, to do that we have to have community-based alternatives to the offending.

The Hon. CATHERINE CUSACK: My understanding is that if you are an indigenous person and you have been subject to a care notification it is almost 100 per cent certain that you will go through the juvenile system and progress into the adult system, which is terrifying. It seems as if there is no escape.

Professor WHITE: Part of the escape is that we have to cut off that front end because age matters.

The Hon. CATHERINE CUSACK: Kariong offenders are people who have been through numerous programs. Anybody who is in Kariong has been in the system for a very long time or is at a very serious level. What do we do beyond mentoring? Is there a point at which we accept that a 17 or 18-year-old has gone beyond those programs and something else is required? I am sure you would agree mentoring is not successful for sex offenders.

Professor WHITE: No, you have to spend the money on the sex offender program. We know from various research that if you spend the money you save the money down the track, but you have to spend the money. A good sex offender program is very expensive. You have to work with the juvenile. But also we have to distinguish between sex offences and sex offenders because that is often confused in the public's mind: Everyone who has committed a sex offence is a sex offender. That is not the case. But for the 10 per cent of adult prisoners who are sex offenders it is very expensive and for juveniles it is very expensive, but the money is worthwhile because you save so much time down the track. It is actually a cost saving, even though it is very expensive to run. But that is the kind of program that you must, must have for sure.

The Hon. Dr PETER WONG: I am interested in the plight of children in the care of the State who in New South Wales, despite making up only 0.135 per cent of the population, make up 30 per cent of children in detention. A story in the weekend paper referred to a young Aboriginal girl who was in custody simply because the child welfare department could not find a home for her. I understand her case is far from unusual. Would you care to comment on the drift of children from care to custody?

Professor WHITE: The only comment is what we would already know, that it is probably one of the most tragic things in our society, that we have people who have been put into the care of the State as children and a huge proportion of those young people just flip over into the juvenile justice

system at disproportionate rates. It really tells us several things about the appropriateness of that care that we, as a society through the State, are providing for those children whom we used to call State wards, and whether we are providing them with a family and adequate upbringing.

The second thing is that we have institutional silos that operate that actually place at risk many of the young people that we are talking about. You can have somebody in the welfare system or as a ward of the State. Once they go into the justice system, they work with a different worker and they will be case managed by different people within the justice system but then they come out of the justice system into here, if they are under 18, and they will be working with different sets of people and being case managed in a different way. The integrations between different departments and systems are perennially an issue as well. But all I can do is comment that child welfare is an area that we need always to do more work in.

The Hon. Dr PETER WONG: Does any other State have a successful story in being able to manage the children-in-care system so that they do not end up in custody?

Professor WHITE: I am not the person to ask, really. The young people who have been in care formed their own group. What is the name of the group?

The Hon. AMANDA FAZIO: Care Leavers?

Professor WHITE: No. It is care leavers who have formed a group, young people in particular, and they have gone national. It is called CREATE and they would be the people to talk to about those kinds of issues.

CHAIR: Given that you have mentioned a couple of times the importance of community-based groups interacting with the detainees and, in particular, listening to them, would you have any concerns that, in our system, advocates on behalf of the detainees are being denied access to those in custody?

Professor WHITE: That has opened up a whole range of different questions. I think access is terribly important for a whole range of people and we should be opening up prisons and detention centres to the community and we should view them as community institutions because if we can open them up to the community in a bigger way, we will have a lot more accountability built into the system. In fact, where you have stronger public advocacy and public accountability mechanisms, whether it is a pro-active ombudsman or a prison inspectorate, you find that it lifts the game of detention staff, correctional staff and so on because they realise that they are under scrutiny all the time, so the more that the community comes into the detention centre, the better.

CHAIR: Is there anything about which you were not questioned that you would like to pass on to the Committee?

Professor WHITE: Just a particular bugbear of mine actually. I was reading through some of the recommendations of what had happened previously in the institution and one of the proposals was to step up the number of strip searches. That is just horrific, when you think that this is their home and they will be subjected to strip searches to that extent. We know from both adult institutions and juvenile institutions that a large proportion of young men and young women have been abused and strip searches are very much experienced as abuse.

CHAIR: There is no sense of dignity in that—

Professor WHITE: It comes back to dignity.

CHAIR: —and everything that you were talking about earlier. Your principles were based upon helping people recover their sense of dignity?

Professor WHITE: That is right, and this is where people live; this is their home. Even if it is a temporary home, it is still their home and we have to acknowledge that at some stage.

CHAIR: Thank you for coming from Hobart to talk to us. We have found your comments most enlightening.

(The witness withdrew)

GARY MOORE, Chief Executive Officer, Council of Social Service of NSW, 66 Albion Street, Surry Hills, affirmed and examined:

CHAIR: What is your occupation, and in what role do you appear today?

Mr MOORE: I am a social worker and I appear before the Committee as the Chief Executive Officer of the Council of Social Service of New South Wales [NCOSS].

CHAIR: Thank you for your submission. Do you wish to make an opening statement before questions commence?

Mr MOORE: Yes. Thank you for the opportunity to appear. I inform the Committee that when this bill was introduced last year, NCOSS and many of its youth and community service organisation members opposed the passage of the bill at that time. Our concerns fall into five main areas: firstly, the perception that adult prison management running juvenile facilities offends a number of children's rights principles; secondly, that passing the management of Juvenile Justice facilities to adult prison management contravenes, in many of our sector's views, one of the key aims of the Juvenile Justice system, which is turning young offenders away from a life of crime; thirdly, transferring the management to adult corrections goes against the reform agenda that the Juvenile Justice system have been working on since the Ombudsman's inquiry into Juvenile Justice in 1996.

Our fourth concern relates to the lack of oversight of transfers between detention and juvenile correction centres, which many in our sector believe run counter to the effective oversight of the Juvenile Justice system by the Minister for Juvenile Justice; and, finally, that the Act was so hastily put through Parliament that there was a fear that it may well contain some unintended consequences. It is important for the Committee do know that there was no consultation by Government with community organisations and consumer groups involved with troubled and disadvantaged young people in the youth justice system.

Finally, we believe that at this time the Act is an inappropriate response to a management failure at Kariong, resulting in a knee-jerk handover to adult corrections, rather than the Government taking responsibility for effecting improved management systems in the Department of Juvenile Justice.

The Hon. CATHERINE CUSACK: In your submission you have highlighted the removal of ministerial oversight in relation to transfer of detainees between systems. Would NCOSS like to see any changes to the legislation? What role would you like the Minister to play in those transfers?

Mr MOORE: The view that has been put to us is that the Minister for Juvenile Justice should have a far greater role than given under the Act, or that that Act introduces. In our submission we pointed out some of the sections of the Act which we believe could be amended to effect that. I do not have word forms for those amendments with me today, but they would relate to changes in those sections of the Act that we identified.

The Hon. CATHERINE CUSACK: Why is it important for the Minister to have oversight?

Mr MOORE: In our view the question of young people entering the Juvenile Justice system and hopefully being rehabilitated and moving back into the community, is more of a totality of the response to working with troubled and disadvantaged young people. It should be seen as a systemic issue and we believe that is best located in one part of government, where the responsibility lies.

The Hon. CATHERINE CUSACK: The Committee has received evidence from the former Chief Children's Magistrate, Rod Blackmore, who argued fairly passionately for the United Nations standards of separating adults from children in detention. I understand that NCOSS takes a different view. To clarify that, he is talking about the large number of adults, those aged up to 20—although some are older at the moment, but eventually it will be up to 20—in the detention centre system. He believes that they should transfer from detention at the age of 18 in order to keep adults separate from younger ones in this system. Do you have a comment on that?

Mr MOORE: The view that has been put to us by many people is, once again, that this is a question of where you see the rehabilitation process starting or stopping, if indeed that is your main objective in the Juvenile Justice system. There is a variation of views in our sector about that point. Some say that it would be better, if indeed there is a sense about positive rehabilitation, to maintain someone older than 18 in the system, others say not. That is the best way I can respond.

The Hon. CATHERINE CUSACK: One issue raised by the Committee is whether there is a need to have a maximum security facility at all in the juvenile centre, or whether high-security, high-risk, detainees should be spread throughout the system. Do you have a view on that given the implications it would have for the various centres they would be spread into?

Mr MOORE: The dominant view expressed to us by our members is that Kariong was a response to issues 10 years ago, and that were raised in this system. There is a view that Kariong should be made to work, that there should be a single or a couple of residential institutional settings at the maximum end, but they should be made to work. Kids should not be at the top end of the system and spread throughout the whole system.

The Hon. CATHERINE CUSACK: Do you agree that some detainees at age 17 are very sophisticated and have committed serious crimes, and there are 18-year-old unsophisticated offenders? Do you agree that it is difficult to address the custody needs of those offenders based solely on age?

Mr MOORE: Yes, I would be the last person to defend something as straight as age being the only and sole criteria. However, you have to put some base lines somewhere. The question then involves the effectiveness of management in the system and the options for services, treatment and support.

The Hon. CATHERINE CUSACK: You have raised issues concerning the lack of accountability that the Government has with what is going on at the Kariong Correctional Centre. Can you recommend specific improvements to the legislation? Realistically, it is more likely that we would recommend amendments to the legislation rather than its repeal.

Mr MOORE: In essence, we would like the Ombudsman to look at this, to look at what is occurring formally. There is a difficulty with kids in the adult systems vis-a-vis the removal of the previous regulator from the adult prison system 18 months ago and the Commissioner for Children and Young People not having, as we understand it, a capacity within the adult prison system to exercise any oversight right. We may be wrong on that, but that is our reading of what currently happens. We would prefer the Ombudsman to go back and look at this.

The Hon. CHARLIE LYNN: You mentioned that there was a lack of consultation in the changeover of the system. If the Government had consulted you, what advice would you have given?

Mr MOORE: We would have said: make Kariong work, look at reforms and changes there, deal with the management and staffing issues, and look at systems across the department and the pathways for young offenders. We would not have agreed to moving to adult prison management, for a number of the reasons that are in our submission. Obviously you are hearing from others before this Committee, but I think that would have been very much a dominant view from the non-government community and youth services sector.

The Hon. CHARLIE LYNN: Are there any other alternatives to Kariong that you have canvassed and support?

Mr MOORE: We do concede there has to be an institutional facility at the maximum security end. We are not saying you should not have that sort of facility but do not put it right through the system. Once again, as with the adult system, we believe the principal objective should be rehabilitation, not simply punishment.

CHAIR: Would you like to elaborate? You said a couple of times "make Kariong work." What should Juvenile Justice have done to make that work?

Mr MOORE: I think in our submission we suggest there are issues about turnover of staff and the part-time nature of staff.

CHAIR: Casual staff?

Mr MOORE: Yes. In terms of the effective setting of objectives and realistic targets, effective management, from what we can see, has not occurred. It is also a question of dealing with kids in the system before they get to a stage of being potential candidates for Kariong in a much more effective way. So, I guess, over time it reduces numbers but also tries to deal more effectively with mental health services and drug and alcohol services and those types of things, and that raises the broader question about the juvenile justice system in general.

The Hon. ERIC ROOZENDAAL: Have you visited Kariong?

Mr MOORE: I have not in recent times. I did in the late 1990s.

The Hon. ERIC ROOZENDAAL: I am looking at your general comments in your submission. You make an assertion that having adult prison management contravenes one of the key aims of the juvenile justice system in turning offenders away from a life of crime. I want to talk about that for a moment. I am surprised you have that there. Are you aware of the programs that have been instigated in Kariong such as the school 100 percent attendance, the art courses, the work duties responsibility? Are you aware all those things have been implemented under Corrective Services?

Mr MOORE: Yes. Of course, they are all things that could be implemented under Juvenile Justice too. That is my comment more broadly about the juvenile justice system.

The Hon. ERIC ROOZENDAAL: Okay, but I want to specifically take up the comment that being under adult prison management is not working to the key aim of turning young offenders away from a life of crime. What is your evidence for that?

Mr MOORE: I suppose the evidence for that comment comes from looking more broadly at the adult prison system, at the appalling rate of recidivism, the appalling expenditure within prisons, rehabilitation programs, the appalling expenditure on post release services out of the adult prison system. I grant what you say, that in recent times there has been the implementation of those types of activity, but if you want to look more broadly at the New South Wales corrective services system and the adult prison system, you only have to quote the Productivity Commission report on government service provision, the number of people in our prisons and what happens to them, you would find it very difficult to suggest that the adult prison system as such was delivering very much on rehabilitation, diversion and reducing recidivism.

The Hon. ERIC ROOZENDAAL: I accept that observation, but we are talking specifically about Kariong and what has happened at Kariong. The anecdotal evidence is that the combination of encouragement to participate in the school curriculum or TAFE curriculum and the art curriculum and the other duties, there has been a good response from the detainees there, and that feeds into the system that has been implemented of privileges and sanctions, so if you participate in programs you get certain privileges on the way through. You do not see that as a positive?

Mr MOORE: Yes, I do see it as a positive, but it is something the juvenile justice system should be doing more broadly across the system itself. It is not something exclusively the domain of the small bit of the adult prison system. I can equally say to you why does the adult prison system not do it much more broadly across its own system?

The Hon. ERIC ROOZENDAAL: I do not want to get into a debate on the adult system, but on that issue a number of people have been critical of the welfare mentality previously at Kariong—not my words, their words—and across other juvenile justice centres. There is an argument from some that that is to the detriment of security. What is your view of the argument that the welfare mentality does compromise security?

Mr MOORE: The position I take is that if you have a focus upon rehabilitation and keeping those small numbers of kids who commit many more offences out of the system, you have to have an

appropriate mix of interest in security but also some positive focus around mutual responsibility, around jobs, around alternatives. I think it is probably fair comment to say that within the system as a whole there is not enough focus on outcomes for the kids in terms of hard programs that deliver results. That is the way I would answer what you are saying. I do not necessarily prescribe that that means a welfare mentality is getting in the way. I think it is something different we are talking about here.

The Hon. AMANDA FAZIO: I want to look at some of the issues regarding indigenous detainees, because I note in your submission you talk about the Indigenous Law Centre areas of concern. Another area of concern raised with us by other people is not having Aboriginal detainees in single cells. It is the whole issue that you mentioned earlier about having a Kariong-type centre where you concentrate people from across New South Wales which, particularly for Aboriginal offenders, breaks their family and community ties. Do you have any suggestions on what could be done to try to overcome that particular problem?

Mr MOORE: I think in part the emphasis goes back—I mentioned before repeat offenders who have not made Kariong but are well known in the system, and the issue about putting much more effort into trying to break that cycle at an appropriate time closer to community, closer to family. We have not been given any brief out of the indigenous organisations that we spoke to in preparing this. I simply say to you then needs to be a lot more emphasis on looking at kids most at risk who are repeat offenders but who have not made it to the pointy end of the system, if you like. We do not seem to have wise managed the resource or the effort in that way nearly as much as needed.

The Hon. AMANDA FAZIO: You said you have been to Kariong in the past, so you understand the physical layout of the centre?

Mr MOORE: Yes.

The Hon. AMANDA FAZIO: Do you think anything can be done within the existing infrastructure to stop any potential isolation of Aboriginal prisoners?

Mr MOORE: It is very hard in that facility as it stands. Once again, I think it is about times together, practices of putting people into doing things, taking people outside of the centre, and I understand that is a difficult issue security-wise. I am probably not the person to say in terms of the actual facility itself. All I know it is I would hate to be there and I think many people would hate to be there.

The Hon. AMANDA FAZIO: One other issue that has been raised with us by some other witnesses is, after Corrective Services took over Kariong they introduced a buy-up system that exists in the adult system and it was said that a lot of the kids did not need to have that system explained to them, that they were well aware of it because adult family members were frequent visitors to the adult correctional system. I know it is not strictly within the terms of reference, but when we talk about breaking down cycles and intervention, how do you do that when the family has a history of criminal involvement and there is no teaching of respect for other people's rights and property in the family setting?

Mr MOORE: As I understand it, there are some very interesting initiatives involving elders of both genders in the indigenous community at the moment that are focused around generational behavioural change, which I guess particularly come out of some of the crime prevention in the Attorney General's area of support. I think if Juvenile Justice and Corrective Services are not across those sorts of proposals, they should be much more across. NCOSS is a strong believer that supporting elements within the indigenous communities take ownership and responsibility for behavioural change alongside of social improvement and economic self-sufficiency, and there are numerous programs working with elders, both male and female elders, at the moment. They are the types of things you have to look at.

The Hon. Dr PETER WONG: A lot of young people in detention are also in the care of the State. NCOSS, of course, represents many of the services that work with these children under contract or funding from the Department of Community Services. What alternative to detention should be available to the children so they may not end up in institutional care?

Mr MOORE: One of the areas we still believe is a huge gap in the youth services system, if I can use that term, is the whole movement of kids in out-of-home care into schools and retention of schools support. We still do very poorly if you look at all the data available out of the Department of Community Services. You will remember a few years ago the former Community Services Commissioner, Robert Fitzgerald, did an inquiry into the relationship between the out-of-home care system and the juvenile justice system, or that was one part of it. It showed how something like 75 per cent of the kids in the juvenile justice system come through the out-of-home care system in one form or another, and one of the circuit breakers we do not think works well is attachment to education and support in that regard. Of course, there are something like 200 of what are generally determined as highly challenging kids in the out-of-home care system in New South Wales at the moment, some of whom are costing \$800,000 a year in individual provision.

The Department of Community Services is currently engaged with our sector in an approach to try to deliver better outcomes and also to reduce costs. It seems to us that that is where you have to look at it. So it is about educational attachment and support, which still do not work very well. It is about getting on top of the issues, in particular, for those 200 kids with most challenging behaviours who inevitably will be candidates for this system and who inevitably, under the new Act, will end up in the adult prison system.

The Hon. Dr PETER WONG: As you are aware, some people have said that Kariong is poorly designed, it is risky for detainees and staff, and it is too high for modern day needs. Does NCOSS have a definitive view on Kariong as a juvenile justice detention centre? Given the fact that more and more young people seem to be committing serious offences, if you are not talking about Kariong what other suitable places are there that are fitting detention centres for more serious juvenile justice offenders?

Mr MOORE: As I said before, we believe that there has to be an institutional facility of the scale and capacity of Kariong. We think that is a reality in our current society. We do not subscribe to spreading young offenders at Kariong across the system because of the impact that that would have on other facilities. However, we think there is a case for improving detention centres, particularly for the linkage with what I just mentioned to you—the out-of-home care facilities in New South Wales. We would then have much closer liaison with and a more integrated approach, in case management terms, when working with kids at risk of becoming incredibly serious offenders. So it is not just the responsibility of juvenile justice; it is also the responsibility of the Department of Community Services and our sector as substitute care providers.

The Hon. Dr PETER WONG: An earlier witness referred to community involvement in projects. It has been implied by you that that would get young offenders away from detention, or from the Kariong type of institution. Does NCOSS have similar programs for those types of youngsters, in particular, those who come under the Department of Community Services? If it does not have similar programs, what programs are available in New South Wales at the moment?

Mr MOORE: If you have not done so already, it would be well worth talking to agencies such as Bernardos, Burnside and Wesley, et cetera. There are a significant number of programs that could be seen as diversionary programs in relation to this system that have educational participation, family support and a range of other resources integrated into them. My first suggestion is that you talk in particular to Bernardos, Burnside and Wesley because they are three of the leading edge agencies in this area.

CHAIR: You said in your submission that you believed, along with the people that you represent, that many young people under the juvenile justice system in Kariong used to self-select out of Kariong in order to get into the adult system?

Mr MOORE: Yes.

CHAIR: Why do you suggest that?

Mr MOORE: The perceptions of privileges and opportunities within the adult prison system as opposed to the maximum-security arrangements at Kariong have been put to us. The Hon. Amanda

Fazio referred earlier to linkages, in particular in indigenous populations, with adult members being in adult prisons and kids of the same family being in juvenile justice centres.

CHAIR: It keeps the linkages?

Mr MOORE: It keeps the linkages.

CHAIR: What impact will the new legislation have on that trend as they are now under the Department of Corrective Services?

Mr MOORE: It is very hard to answer that question. I do not think I can answer that question.

CHAIR: What are the risks to those young people who manage to move into the adult system, keeping in mind the United Nations conventions and the Australasian standards?

Mr MOORE: The main risk that is always put to us is about being entrenched in an institutional life forever and learning newer and smarter ways to conduct crimes in that culture.

CHAIR: There are also the increased risks of personal assault?

Mr MOORE: All of those things.

CHAIR: Your executive should think up another term for "challenging behaviour", because that terminology defies the imagination.

Mr MOORE: You should also ask your parliamentary colleagues in Government to talk to the Department of Community Services and to others about those terms.

The Hon. AMANDA FAZIO: I want to follow up the issue on page 2 or 3 of your submission in which you state that you understand the Minister for Justice is required to liaise with the Commissioner for Children and Young People to appoint an official visitor at Kariong, that you had not been informed whether or not that had been done and, if so, who would be the official visitor. What were your concerns in relation to that issue?

Mr MOORE: First, an official visitor or visitors are established in the same way that official visitors are established through the Ombudsman. These days official visitors are in disability facilities, et cetera. Second, if it is going to occur what sorts of people are we looking at? What is their capacity and what are their abilities? We still do not know to this point—we have been out of the loop—whether that has occurred.

The Hon. Dr PETER WONG: As a social worker what is the role of a visitor as against the role of a mentor in the system at Kariong? What experience do you have of official visitors offering the best outcome?

Mr MOORE: Our experience of the official visitor system, in particular in the disability sector, has shown that there is a difference between a visitor and an advocate.

CHAIR: They are different roles altogether.

Mr MOORE: That is right. Access into any institutional facility, whether it is a mental health facility or an adult prison facility, should be guaranteed for advocates within whatever framework there is. Ostensibly, a visitor is not there to support the individual or to map out a pathway for a change of behaviour after being released from the system, et cetera.

The Hon. Dr PETER WONG: What about a mentor?

Mr MOORE: There are different elements for those roles as well. In a sense, an advocate is there expressly for the best interests of the client or the person concerned. These are the systemic issues that they face. The role of an advocate is not necessarily the same as the role of a mentor.

The Hon. Dr PETER WONG: Is that wrong?

Mr MOORE: We think there is a role for advocates and there is a role for mentors.

CHAIR: I refer to the Committee's first day of hearings and to a statement made by the Minister. He said that he preferred not to have the people inside Kariong within the Department of Community Services. What is your reflection on that? I cannot put my finger on the exact words of the Minister, but that is the emphasis that he put on it.

Mr MOORE: Our preference would be that we have, once again, advocates operating within a framework who have access to the facilities.

CHAIR: Thank you, Mr Moore. I think your paper was very straightforward and you made your point very clearly.

(The witness withdrew)

(Luncheon adjournment)

LENNIE ROWLEY FRAIL, Chairperson, Aboriginal Justice Advisory Council, Level 16, Goodsell Building, 8-12 Chifley Square, Sydney, and

LYDIA CAROLINE MILLER, Executive Officer, Aboriginal Justice Advisory Council, Level 16, Goodsell Building, 8-12 Chifley Square, Sydney, and

BOBBI JEAN CATTERMOLE, Chairperson, Aboriginal Youth Justice Advisory Network and Youth Specialist, Aboriginal Justice Advisory Council, Level 16, Goodsell Building, 8-12 Chifley Square, Sydney, sworn and examined:

CHAIR: Welcome to this inquiry. Do any of you wish to make a statement first?

Mr FRAIL: I will make a brief statement. The New South Wales Aboriginal Justice Advisory Council welcomes the opportunity to make a submission to the New South Wales Select Committee on Juvenile Offenders Inquiry into Juvenile Offenders. The Aboriginal Justice Advisory Council [AJAC] is greatly concerned about the impact of the Juvenile Offenders Legislation Amendment Act 2004 on Aboriginal children and young people, families and communities, and opposed its introduction in December 2004. These concerns are in line with the aims, objectives and principles that reflect the Aboriginal communities of New South Wales that we represent.

The New South Wales Aboriginal Justice Advisory Council is really concerned that the continuing gross overrepresentation of Aboriginal children and young people in the criminal justice system is compounded by this piece of legislation and moving young people further into a criminal justice system that does not appear to rehabilitate them. From my experience and observation, Aboriginal juveniles start coming into the system at age 10 or 11 and do not leave the system until they are 35 or 40 years of age. How do we stop this involvement in the criminal justice system? That the legislative amendment targets a highly vulnerable and powerless group, Aboriginal young people, is an indictment on the society that purports to uphold the rights of children as integral to the notion of civilised society.

The New South Wales Aboriginal Justice Advisory Council considers that the transfer of Kariong Juvenile Justice Centre detention from a juvenile justice system to an adult management system ignores recommendations from the Royal Commission into Aboriginal Deaths in Custody, especially recommendation 62; contravenes principles relating to the Convention on the Rights of the Child, highlights the lack of consultation with the New South Wales Aboriginal Justice Advisory Council and other Aboriginal representatives in the criminal justice system in assessing the impact of legislative proposals and reform; does not acknowledge the criminalisation of poverty and disadvantage that results in Aboriginal children and young people appearing in the criminal justice system; contributes to further entrenchment of Aboriginal children and young people in the criminal justice system; increases systems abuse of Aboriginal children and young people through institutionalisation; does not acknowledge the highly specialised discipline of child and adolescent development and the needs of specific age cohorts; highlights a lack of cognisance of rehabilitation theory and "what works" programming and limits the rehabilitation potential of youth; dismisses important work done by agencies in the area of crime prevention, diversionary and intervention initiatives, such as night patrols, circle sentencing, bail justice and the Aboriginal justice plan, et cetera; places a significant value on the offence committed by the youth and not the age, background, cultural needs and mental health of young people; does not guarantee that the child would not be placed in an adult gaol; and places Aboriginal youth in a high-risk situation, for example, isolation, self-harm and suicide.

CHAIR: That is a very strong statement. We will take it seriously. I will ask Dr Wong if he would like to commence questioning.

The Hon. Dr PETER WONG: Can I pass it on to Government members?

The Hon. AMANDA FAZIO: Mr Frail and other members representing AJAC, have you visited Kariong either before or after Corrective Services took over the centre?

Mr FRAIL: I haven't visited it after Corrective Services took over.

The Hon. AMANDA FAZIO: But have you been there before?

Mr FRAIL: I have been there before, but a fair while ago.

Ms CATTERMOLE: I have not had a chance to yet.

Ms MILLER: I went there before it was handed over to Corrective Services.

The Hon. AMANDA FAZIO: Because one of the things that I am interested in is whether you have a view on the impact on Aboriginal detainees of having a centre like Kariong where you are concentrating serious young offenders from across all of New South Wales into one location that, to me, does not seem to be particularly accessible to people who do not have cars or who have to come from country areas? Do you have a view on what impact that would have on Aboriginal inmates?

Mr FRAIL: For the adults correctional system one of the recommendations of the Royal Commission into Aboriginal Deaths in Custody was that the inmate is placed in a location that is readily accessible to his or her family. Just say, for instance, if a child from Bourke was placed at Kariong, what amount of difficulty would that family get to visit that inmate? So yes, I think it would have a major impact on it.

The Hon. AMANDA FAZIO: One of the things they are doing at Kariong is that they have got schools set up and all the spots at the school are full so I think they are trying to expand it a bit. Kids there are doing programs to help with basic stuff such as literacy and some kids are doing their school certificate and higher school certificate and some other kids are doing TAFE study. Do you think that by providing those sorts of programs that is helping to overcome some of the disadvantages that young Aboriginal offenders face to start off with because they often have very disruptive patterns of school attendance and literacy? Do you think those programs are helping?

Mr FRAIL: From my experiences, no. I will just give you an example. I was probation and parole officer out at Broken Hill and one of the locations they serviced was Wilcannia. The TAFE, in their wisdom, decided that they would do a computer course, which was pretty handy, I suppose, but there was only one computer in town at that point in time and Aboriginal people could not actually go to that place; they were not allowed to walk in the office. So I do not know what the logic was behind it—I suppose for TAFE to do something—but it was no benefit to the people. I think some of these programs that are done in institutions, both adult and juvenile, it might satisfy something, but not to the benefit of the inmate.

The Hon. AMANDA FAZIO: Another program they have is an arts program for inmates, and young Aboriginal people and Pacific Islands are doing those courses. That seems to be good for building self-esteem and cultural awareness. Do you think those programs have a practical role to play, or is it making people feel good about the kids being there?

Mr FRAIL: I think it is making the kids feel good about being there and also serves to help the kids fill in some time. Wherever you go and see art done, I would not mind betting it was done by someone from Long Bay or Kariong, or wherever. But when they come out of those institutions I do not think they carry on with it because there are other things they do.

Ms MILLER: I guess it is important in relation to upholding the rights of children to realise their cultural identity and to express their cultural identity. In terms of art being a transmission of cultural knowledge, the involvement of the community in the delivery of programs within juvenile justice centres is important. If we are going to talk about programs as part of the rehabilitation principle, if programs are able to tackle the criminogenic needs of young people, the multiple disadvantages within communities means we have fractured families, chaotic families, dysfunctional families, kids coming from a long involvement with the welfare system where the system has been a non-effective form of intervention. The moment that kids from naught to 9 years old come to the age of criminal responsibility, 10, they are picked up and immediately absorbed into the criminal justice system, and so begins the commencement of their institutionalisation and ongoing disadvantage.

I guess the system is saying that it can offer a range of programs, and that is admirable, important and necessary, but ultimately those children do not seek the same benefits from the appalling infrastructure that exists once they get outside the centre. If we are going to look at how to stop the involvement of children in the criminal justice system, how to stop Aboriginal people being institutionalised, it is about what is the most effective intervention, whether that is diversion, whether it is stopping the indigenous arrest rate, or whether it is preventative programming. But that needs to happen within the community. In essence, there are too many problems within the criminal justice system impacting upon an entire generation, on multiple generations actually. As a result, we lose a lot of people aged from 10 to 11 up to about 35 or 40 to the criminal justice system who could be contributors to their own community.

The Hon. AMANDA FAZIO: You have mentioned diversionary programs. We have heard a lot about youth justice conferencing, circle sentencing and things like that. Do you think they are being used to their full potential, or do you think there is more scope for such diversionary programs to stop young Aboriginal children being put into juvenile detention centres?

Mr FRAIL: We know that circle sentencing is operating to its full potential. It is very, very effective in the way it is set up. The other program you mentioned is youth justice conferencing. I was stationed at Bourke. It appeared that selected young offenders were put on that program. It appeared to me that the police or the courts were selecting who they thought would be—

The Hon. AMANDA FAZIO: Successful in it?

Mr FRAIL: Yes. It was selection more on the likely success rate, rather than trying to get these persons to stop committing further offences.

The Hon. AMANDA FAZIO: In your submission you talk about recommendations that came from the Royal Commission into Aboriginal Deaths in Custody. One of those is that Aboriginal offenders should not be kept in a single cell by themselves. You have seen the setup at Kariong. Do you think there is any easy way to overcome that problem, because there all of the accommodation is in single cells.

CHAIR: Basically, single cells.

The Hon. CATHERINE CUSACK: I am not sure that is right.

CHAIR: I said "basically". Taking the point raised by the Hon. Catherine Cusack, they are not exclusively single cells, but basically. I think there are two cells with two inmates in them, and all the rest are single. The question asked by the Hon. Amanda Fazio still stands. Do you want to comment on the question: What is the impact on indigenous young people when most of the cells are single-person cells?

The Hon. CATHERINE CUSACK: Can I first ask: How important is that recommendation?

CHAIR: Let us have an answer first.

Mr FRAIL: My solution to stopping Aboriginal deaths in custody is quite simple: Don't put Aboriginals in custody. In saying that, just recently there was an Aboriginal death in custody at Bathurst. I believe that person was placed in a cell with another inmate, in accordance with the recommendation of the royal commission. I really do not know how to answer the question. If it is a single cell, that is what it is. But I think there should be more assessment or more observation to find out whether or not that person is potentially at risk of committing suicide.

CHAIR: I think the finding of the royal commission was that every indigenous young person put into a single-person cell is at risk. It is not a question of some correctional personnel making a decision whether they are at risk or not. They are at risk, full stop.

The Hon. CATHERINE CUSACK: Would you continue to support all of the recommendations of the royal commission, or has the practicality of implementing those recommendations made some more important than others?

Mr FRAIL: I think it is very important that they be maintained. That is why AJAC was developed Australia-wide, because there were just too many Aboriginal people dying in custody.

Ms MILLER: In essence, they were not successfully implemented. I guess we now have a situation right across the country where lack of co-ordination and lack of effective implementation have meant Australia now has a criminal justice system that responds to the issue of Aboriginal over-representation in a very fragmented manner. We have no safety nets to ensure we have managed the gap to date. I guess the relevance is that they stand as a reminder to the criminal justice system of their import in addressing some of the very basic concerns. One of those was the single cell discussion, which was about the increasing isolation and alienation that people felt with dislocation from their kin and community, and that is what the juvenile justice environment represented. It was felt that was not an effective intervention, whether it was about psychological services, whether it was about case management, or whether it was about contact with other cultural groups within those institutions which in some way ameliorated that alienation and isolation that people felt, which resulted in either attempted suicide or suicide. That was the concern.

CHAIR: The recommendations were not meant as ideals. They were measures that were meant to be put into practice.

Ms MILLER: The recommendations were an indictment of the criminal justice system as it stood in a democracy.

The Hon. CATHERINE CUSACK: We did have a co-ordinating committee called the Royal Commission into Deaths in Custody Implementation Committee, which I understand was in the Attorney General's Department, which would annually review progress by all agencies and then report back to Parliament. I believe that committee was disbanded in around about 1997. Do you think that authority, which was monitoring the implementation of the recommendations, should have continued?

Ms MILLER: In part, I think the development of the New South Wales Aboriginal Justice Plan has taken up on the recommendations. In part, there are criminal justice agencies that have absorbed those. We know that the Department of Juvenile Justice has highlighted that it still observes the Aboriginal Deaths in Custody recommendations. In respect of Kariong, no doubt there is closed-circuit television, and there has been a reduction of hanging points in the cells, et cetera. But, to all intents and purposes, as to where we stand at this point in time in relation to the recommendations, the Aboriginal Justice Plan has absorbed a lot of those considerations to address within a decade the concerns that are outstanding within New South Wales.

The Hon. CATHERINE CUSACK: When you say the implementation of the recommendations is fragmented and disjointed, is that a responsibility for your organisation to be overseeing? I asked a question just to clarify who should be responsible for addressing that problem.

Ms MILLER: In essence, it is a service delivery issue, and it remains with government in terms of a whole lot of legislation and conventions on civil and political rights, and economic, social and cultural rights, as all governments are mandated to do. In essence, the Aboriginal Justice Advisory Council was set up with a particular role. The submission tended to the select committee identifies that role, which is: to provide advice to the New South Wales government on the operation of the criminal justice system; to commission research on priority issues affecting Aboriginal people's contact or experience with the criminal justice system; to evaluate criminal justice agency performance on key indicators of Aboriginal people's experience with the criminal justice system; to act centrally, and locally, to develop co-ordination and partnership between all parties pursuing the objectives of addressing the underlying causes of criminal and antisocial behaviour, and improving the operation of the criminal justice system; to communicate and promote the priorities, principles and best practice that should underpin all government programmes of assistance to Aboriginal people in preventing and reducing their contact with the criminal justice system.

In essence, those objectives, which are our agency objectives, are complementary of what should be best practice of government agencies in pursuing legislation for which they are responsible as well as upholding the rights of people within the criminal justice system. It is problematic when you talk about monitoring because that is such a huge role for an agency such as ours, and, for want of a better word, there will always be need for continuous improvement by service delivery agencies. They should be tackling that as core business.

The Hon. CATHERINE CUSACK: You spoke about criminalisation of poverty. I come from the Northern Rivers, which has two Aboriginal communities that are very similar in terms of demography and income. One is at Cabbage Tree Island and the other is at Tabulam. In Cabbage Tree Island we virtually never hear of a call-out of police, whereas the Tabulam community has a lot of law and order problems. On paper, the two are exactly the same, but one seems to have a lot of law and order problems and the other seems to have none whatsoever. Can you explain why it is that some communities seem to have more problems than others, even though the issues surrounding income and poverty are similar?

Mr FRAIL: Perhaps you could look at Cabramatta and Strathfield or Hornsby in the same light. Why do people commit offences? In regard to Cabbage Tree Island, I believe the youth still very much respect their elders, but I do not know so much about Tabulam so I really cannot comment on that, but I know quite a few of the elders from there and they are all good people.

The Hon. CATHERINE CUSACK: Can I say I did not mean to reflect in any way on individuals in those communities—

Mr FRAIL: I mean, you have a child and one is a good kid and one is a bad kid.

The Hon. CATHERINE CUSACK: Do you think the role of the elders is probably an outstanding feature in relation to Cabbage Tree Island?

Mr FRAIL: I think in the whole of the Northern Rivers area the Bundjalung elders are very active and very involved in their communities.

The Hon. CATHERINE CUSACK: Is the Aboriginal community across the State homogenous in the sense that you could have a policy that would serve the entire Aboriginal community across the State, or are there different needs for Aboriginals living in rural communities compared to those living in Sydney?

Mr FRAIL: Different needs from community to community. Absolutely, yes.

The Hon. CATHERINE CUSACK: How do we tackle that with policies that are relevant to the different needs? For example, in Bourke thousands have been displaced from their homeland versus Wilcannia where families are indigenous to the area. It seems like a different situation. How can we have policies that will be successful, but locally based as opposed to Redfern where, I would have thought, you would need a different policy altogether?

Ms MILLER: Policy is derived from wanting to effect change and in that sense it is fairly generic. Through implementation we are looking at developing models that recognise the needs of the community and the resources of the community because in a lot of cases we have no infrastructure. Infrastructure is a very big debate at the Commonwealth-State level at the moment, but it is more burningly so in Aboriginal communities. The assumptions that people make about how you effect change is predicated on whether those resources exist in the first place, and in some cases half the men of a population may be in gaol and people are below the poverty line. You are working with different factors that depend on whether it is going to be successful. Developing models is about recognising the community needs and community resources because one blanket does not fit all. But the generic policy statement is about achieving a particular kind of change, especially in relation to the current Aboriginal socio-economic position. In a lot of cases I would put on the table that service delivery by government departments means that they are gap managing, and we are not even getting to the point where we are talking about producing a strategic change.

The Hon. CATHERINE CUSACK: It seems that some communities are coping better than other communities.

Ms MILLER: Resilience is a factor born of having a very strong cultural identity and connections to land and its resources.

The Hon. CATHERINE CUSACK: Circle sentencing has been successful, whereas the Aboriginal youth seem to participate in lower numbers in our youth justice conferencing. In both instances you need to plead guilty to participate. Does circle sentencing offer more to Aboriginal people than youth justice conferencing?

Mr FRAIL: Circle sentencing is based on people above the age of 18. Youth justice conferencing was already set up for the youth, so we did not want to reinvent the wheel. Circle sentencing, as you said, is very successful.

The Hon. CATHERINE CUSACK: It is superior.

Mr FRAIL: Yes.

The Hon. CATHERINE CUSACK: It is more successful than youth justice conferencing.

Mr FRAIL: Yes. Absolutely.

The Hon. CATHERINE CUSACK: Can you tell me why that is?

Mr FRAIL: Because the offender is put before the elders. An Aboriginal person will not lie to an elder or a judge or a magistrate. It does not really matter. When you are lying before your own people, your own elders, they know it.

CHAIR: Under the Aboriginal Justice Plan you picked up many of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. One recommendation was that no issue involving indigenous people should be undertaken unless there was full consultation with indigenous people. We had a major change in the oversight of Kariiong from Juvenile Justice to Corrective Services. Was your council involved in any consultation?

Mr FRAIL: None whatsoever.

CHAIR: Are you aware of any other indigenous group that may have been consulted?

Mr FRAIL: Not off hand.

CHAIR: Despite the fact that it was a very important high-level recommendation, it was not followed through?

Mr FRAIL: That is right.

CHAIR: When the commissioner, Sir Ron Wilson, read the commission into Aboriginal Deaths in Custody he followed it up by saying that there should be a significant proportion of Aboriginal custodial people trained, there should be a significant proportion of Probation and Parole Officers, Department of Juvenile Justice members and so on trained for that role. I know that Juvenile Justice has added a significant percentage of trained people over the years. Is that happening? Is your council aware of the involvement and training of indigenous people particularly to care for indigenous people?

Mr FRAIL: Within the adult system the workers are not staying. They do the training and all that sort of stuff, but when it comes down to getting on with the job they do not want to do it. I do not think they like to lock up their people.

CHAIR: They do not want to be associated with that?

Mr FRAIL: Yes. That is probably the same with Juvenile Justice.

CHAIR: Perhaps it is not a statistical account, but when we were at Kariong I noticed a number of indigenous persons employed within the educational art divisions. But within the actual Corrective Services personnel there seemed to be more Polynesian and Maori people, or people from the Pacific Islands rather than what I would say were indigenous people. Do you know if that is the fact?

Ms MILLER: We sourced the statistics from Juvenile Justice and Corrective Services, and we understand that the employment rate for Aboriginal people within Juvenile Justice is 4 per cent and in that respect there is no doubt a strong attachment for older generations to younger generations. Obviously, recruitment and retention has to be managed by all departments and they are effectively doing that in Juvenile Justice through the pathway that they offer.

The Hon. Dr PETER WONG: I am interested in the number of children in the care of the State who are enter the Juvenile Justice system as criminals. Our research shows that around 30 per cent of inmates have been in the care of the State. We all know that indigenous children make up about one-third of all children in the care system. Is there anything you would like to say about this?

Ms MILLER: Yes, they do and it is an indictment considering that Aboriginal and Torres Strait Islander people constitute 2 per cent of the Australia population and constitute probably about—

The Hon. CATHERINE CUSACK: It is 44 per cent in Juvenile Justice.

Ms MILLER: But it constitutes 2 per cent of New South Wales population. In that sense 40 per cent of our population, which is 2 per cent of the population, is under 15 years of age. For all intents and purposes their introduction to the Juvenile Justice system occurs from about 10 to 11 years of age. There is a high presentation of 11-year-olds in the system. This statistic is not only particular to Australia but it is also evident in New Zealand, Canada and the United States of America, and it is of great concern. The underlying reason for why there is this presentation within the criminal justice system goes way beyond just a concern about wayward youth. This example is a profound insight into the policies of colonisation and the dispossession that has occurred generationally to Aboriginal communities. The entry of juveniles into the system occurs from minor offences and, obviously, escalates over a period of time. But that continuing contact ends up with children being labelled or stigmatised in particular rural and regional settings, and increases their contact with the criminal justice system.

The Hon. Dr PETER WONG: At a previous hearing I asked about the long history of the recent birth, deaths and marriages changes that were meant to stop children in care from entering the detention system without having committed a crime. The child welfare legislation 1930 and 1980 was designed to achieve this goal so that they would not enter the criminal system. I understand that many children are in a detention centre because DOCS cannot or will not find suitable housing for them. I have been told that DOCS officers will not turn up at court hearings. As we all know, last week the *Sun-Herald* reported this type of thing occurred to a homeless Aboriginal girl. Do think that keeping children in custody for welfare reasons rather than criminal reasons is acceptable? Do you think that the Department of Community Services is using loopholes and subterfuge to place children they have difficulty with in the juvenile system, thus ending their legal responsibility to such children? In other words they seem to have given up their legal duty and put them in the criminal system because they cannot find housing for them.

Mr FRAIL: If an indigenous child in Bourke were arrested for swearing, if that same child were from a non-indigenous background and living in Hornsby would that child be charged? I would say no. Looking for an easy solution seems to be the answer for some government departments: Let's get rid of this person, or where do we put this person? The answer is in custody. They claim that no-one else will take the child or that no one has any responsibility to look after him. I do not think they are looking very hard. A lot of our kids are in gaol because someone is not doing their job.

The Hon. Dr PETER WONG: I am sure you have asked DOCS this question many times. What was the answer?

Mr FRAIL: I think you will get the same answer if you ask them now or if you ask them 20 years from now. You will always get the same answer: What do we do? Where do we go? I do not think anybody looks very hard at indigenous problems and indigenous kids. What do we do with them? Where do we put them? Let's get them out of the road first, and then we might start looking at them. But in the meantime that kid is building up some sort of history or record and the next time he comes back to he has four or five convictions on his record. The other thing we are concerned about is that some children who are arrested by police do not escape, but walk away from the police station. They are not escaping intentionally. But they are then branded with being escapees. As soon as they get into the system they are classified as being escapees. They are then put in isolation.

The Hon. Dr PETER WONG: Looking at Kariong, following the problems under Juvenile Justice for people of Aboriginal background and from your feedback, even though you have not been there, ever since it was transferred from Juvenile Justice to Corrective Services what are the problems? What were the problems then and what are the problems now?

Ms MILLER: Do you might if I allude to last your question?

The Hon. Dr PETER WONG: Sure.

Ms MILLER: I want to put on the record that it is not acceptable for welfare to deprive the liberty of children. It is an abhorrence, obviously, and no civilised society would promote it. It is simply unacceptable for poor government services to be used as an excuse for the incarceration of children. In relation to DOCS as a service provider for community services—

CHAIR: It is done with State wards, regardless of their background.

Ms MILLER: I would suggest that there is a higher percentage of young Aboriginal children appearing in the system due to a lack of targeting.

CHAIR: Yes, I would agree with you. There is no question about that. The difficulty is getting foster parents for those wards of State.

Ms MILLER: There is the question of foster parents, but there is also the question of responsibility being put back into the hands of the community to place Aboriginal children.

CHAIR: To look after those children.

Ms MILLER: When the initial intervention is conducted by DOCS, that child may be placed not only with a foster care parent but they may be placed outside of that.

CHAIR: With a community responsibility.

Ms MILLER: The community should be able to determine where a child is placed in accordance with the kin, clan and cultural rights. The other question is why children end up on the streets and then become a social welfare issue. There is obviously infrastructure that is missing in terms of safe houses, if there is domestic violence, alcohol or general questions of abuse. There are no interim ports for children to go to in their own community that make them feel safe, and they are the issues we have to tackle. I do not know if DOCS is a proponent of safe houses but certainly the Aboriginal community is asking for safe houses in those areas which have dysfunctional community environments. That is a community service intervention which should be supported.

The Hon. CHARLIE LYNN: You were talking before about DOCS.

The Hon. CATHERINE CUSACK: She was just about to answer the second part of the question.

Ms MILLER: What was the problem for Aboriginal children in Kariong prior to the transfer? As always the problem for Aboriginal children is about dislocation from the communities. There was the principle that children should be housed as closely as possible to their communities. There are obviously various scenarios going on across the State where impossible bail conditions,

such as such police-approved bail conditions, with magistrates asked for children to reside 100 kilometres from their place of residence—they are impossible. So the next solution is that they are housed in juvenile justice. But that dislocation undermines a child's connection and we all know that connection and attachment are very important developmental milestones in the development of young people into adults. Also, lack of access by families and communities to the children presents a great range of problems as well.

The Hon. Dr PETER WONG: An earlier speaker did mention the need for community involvement as a way of keeping children out of the criminal or juvenile justice systems. Surely an Aboriginal community is an important link in this issue and does not DOCS keep in constant dialogue with you? Also, is it not important for community facilities to help to keep children out of the criminal system or juvenile justice?

Ms MILLER: Are DOCS participating?

The Hon. Dr PETER WONG: With communities to solve this problem?

Ms MILLER: The Aboriginal justice plan is, in essence, a social justice plan which crosses over the criminal justice sector into the human services sector, which would then encompass the Department of Community Services, Education and Health. There are responsibilities within the plan that target various age cohorts in line up with the Council of Australian Governments' framework to overcome indigenous disadvantage. In that sense government departments as well as Aboriginal non-government organisations would be partners in strategically addressing interventions that will alleviate that situation. So in reply to your question, through human services CEOs and the signing of the justice plan by the Premier, we would hope that DOCS would see themselves as an active, engaged and contributing partner.

The Hon. AMANDA FAZIO: My question relates to page 11 of your submission where you talk about our terms of reference and the alternatives to the establishment of a juvenile correctional centre. You have given us a pretty comprehensive list of initiatives that have been put in place, which are alternatives to kids being placed in detention. Do you have any other ideas of ways that we can stop young children from coming to the attention of the police and ending up before the Children's Court and in juvenile detention centres?

Mr FRAIL: There is a place down near Griffith or Narrandera where they have a program of some sort, I do not know the name of that.

CHAIR: Is it Cootamundra?

Mr FRAIL: No.

The Hon. CATHERINE CUSACK: Ross Hampton—

Mr FRAIL: Una Burra. That seems to be quite successful thus far, but I do not know anything more than that. I recall a few years ago down in a little place called Dareton on the Murray River kids were just knocking off cars and taking them for a joy-ride. A couple of the elders got a couple of old bombs, took them out to the sandhills and said, "Let's do them up". They got engines from here, wheels from there, something else from another place and made dune-buggy type things.

Car theft dropped overnight because these kids had something to do. They did not have to go to gaol to learn how to do all that; they were taught by the people. Those sorts of things have to happen. If you want to look seriously at trying to stop kids from going to gaol, give them something positive to do, not a computer course or artwork but something they can get their hands and teeth into. Everybody in that community could play an active role. This is why the sentencing circle is so successful; because there is involvement from the community. The elders are getting back their respect and people are sitting up and taking notice once again.

In Nowra, 112 people went through and two reoffended. So if that is not successful, I do not know what is. Come back to the community and talk to the community to see what they reckon. This is where the sentencing circle and the justice plan will work. We know it is working because we have

proven it is working, and it is not costing a great deal of money and that appears to be the Government's—where is the money going to?

The Hon. AMANDA FAZIO: Are you happy with the spread of those sorts of alternative diversionary programs across New South Wales or do you think there needs to be a better geographic spread of those sorts of programs?

Mr FRAIL: A better geographical spread and a lot more involvement from the communities where the areas are going to be targeted, not someone in the Sydney saying, "Let's work something out for Wilcannia." Go to Wilcannia and say, "Let's, as a community, work it out." That is what has been happening for the last—I have been working in probation and parole for 25 years—and that is what has been happening.

Ms MILLER: Local and regional planning and their priorities for communities are really important and I guess the great challenge now will be how do people effectively talk to communities in light of the Aboriginal and Torres Strait Islander Commission [ATSIC] going in June of this year? And how does that community representation ensure that it truly reflects a community's priorities as a whole-of-community approach, not a sectoral approach, taking into account children, young people, women, men, families, individuals, et cetera.

But, in essence, a community should be able to determine its priorities in accordance with what it believes its needs are and programs that roll out and roll over communities will have no success and it is proven that they have no success because it is not what the community needs at that given point in time. For communities to be successful, it is about creating platforms where people can be assured of getting through that really important 24 hours if they are a community in crisis. That may not be apparent to some programmers, but it is relevant in terms of being able to build upon the success of that safety net or platform to get to the next platform.

The Hon. CHARLIE LYNN: As an example, a few years ago when I was in the Army I was up in the Territory—we spent a lot of time up there—we went to a place called Borroloola; it was not pretty, it was a mess. We then went up to Roper River, which was a model community. The difference seemed to be that the local Aboriginal community elected their policeman, who worked with the Queensland police, but whenever there was a problem he went down as their representative, sat down and sorted it out. They had total ownership of everything.

The other thing was that there was no alcohol. The difference in the communities I visited seemed to be that the alcohol-free areas were successful and those that allowed alcohol were not. The two aspects were the influence of alcohol, drugs and so on, and Aboriginal community ownership, which I thought was very significant.

With respect to the Aboriginal youth leadership program, a couple of years ago I was asked to take a team from Youth Insearch to Papua New Guinea to walk across the Kokoda Track as part of the leadership development program. Two Aboriginals were selected by the Aboriginal community in Mount Isa to participate in the program. They were flown to Cairns where they were supposed to meet up with us. They were overruled by the white people in Mount Isa, who ordered the kids back to Mount Isa and said they were not to participate in this program. Nobody could work that decision out because it was something the Aboriginal people wanted for their leadership development because they were fine examples of Aboriginal role models that they could learn and take back to their communities, but white people from DOCS in Mt Isa prevented that. This is not a question but merely some comments and observations. However, I support totally what you say about your community ownership.

Ms MILLER: The principle of self-determination is an important principle. It is not only pertinent to Aboriginal people; it is an understanding that all individuals are afforded the principle of self-determination in determining and controlling their lives. It is one of the universal declarations of human rights and when it comes to a discussion about Aboriginal people being able to determine the direction of their development, there is a lot of impediment to that and there are lots of excuses used not to recognise that particular position. I think what you are highlighting—and we can use examples like circle sentencing—is that the involvement of community works in establishing social order through imposing community-based penalties. There is far more ownership of that process, and that is

an important lesson for all of us. Therefore, the delivery of programs to youth involving the community and the involvement of older generations who are imbued with authority must be recognised, encouraged and supported—and supported in the sense of monetary support.

The Hon. CATHERINE CUSACK: Could you outline your role in relation to juvenile justice.

Ms CATTERMOLÉ: The Youth Justice Advisory Network is run on ATSIC regions just like AJAC. We have one member per region. At the moment we are actually running low, but we come together probably four to six times a year. We report back what communities are doing in our regions and all we sit down and try to figure out different programs that could be either developed or existing ones that could be changed in some way.

The Hon. CATHERINE CUSACK: Do you report back to the Department of Juvenile Justice?

Ms CATTERMOLÉ: Everything we do goes through AJAC. We report to AJAC, to State council, and that gets taken up by them and goes from there.

The Hon. CATHERINE CUSACK: You do not interface directly with Juvenile Justice?

Ms CATTERMOLÉ: Not with Juvenile Justice. I do actually sit on the Juvenile Justice Advisory Committee as well, so we have a bit of a tie with those. The views of the Aboriginal young people go straight through to AJAC.

CHAIR: Thank you for your attendance. Your views have been expressed with emotion and passion and your evidence will greatly help the Committee. Our report will deal with indigenous youth issues and your evidence has helped greatly.

Mr FRAIL: Just before I go, I keep getting the feeling that Corrective Services moved into Kariang because of Aboriginal children.

CHAIR: No.

Mr FRAIL: That is not the case?

CHAIR: No. The Committee has raised a number of questions because of concern about the oversight of indigenous youth, but it had nothing to do with Corrective Services. Corrective Services came into Kariang with no contribution of any significance from indigenous youth.

(The witnesses withdrew)

TERESA O'SULLIVAN, Senior Solicitor, Children's Legal Service, Legal Aid Commission, 324 Castlereagh Street, Haymarket,

WILLIAM GRANT, Chief Executive Officer, Legal Aid Commission, 323 Castlereagh Street, Haymarket, and

JULIE ANNE MORGAN, Executive Officer to the Chief Executive Officer, Legal Aid Commission, 323 Castlereagh Street, Haymarket, sworn and examined:

CHAIR: Are you each here in an official capacity for your organisation?

Mr GRANT: Yes, we are.

CHAIR: Do you wish to give an opening statement before questions commence?

Mr GRANT: Yes, to assist the Committee members I would like to make a short opening statement outlining the role of the Legal Aid Commission in the justice system as the legal representatives of children in criminal proceedings. The commission is an independent statutory body established under the Legal Aid Commission Act 1979. The commission's primary purpose is to provide legal services to socially and economically disadvantaged people. The legal services that we provide include legal advice, representation and community education. Children fit squarely within the commission's core client group of socially and economically disadvantaged people. In all criminal matters in the Children's Court in which we act, we provide a legal representative who directly represents and acts on the instructions of the child.

In 2003-04 the commission represented or funded the representation of children in 9,258 duty matters and 5,511 case matters. Case matters are those that went on for a full hearing. There is no means or merit test for children appearing in the Children's Court on a criminal charge. The commission and the Aboriginal Legal Services fund or provide legal representation for the majority of children appearing in Children's Courts in New South Wales. We have an in-house Children's Legal Service that is a specialist criminal law unit. The Children's Legal Service employs 12 criminal law solicitors, three of whom are accredited specialists in children's law. Children's Legal Service solicitors provide advice and representation to children in criminal matters at Campbelltown Children's Court, Cobham Children's Court, Lidcombe Children's Court and Bidura Children's Court.

At the other five specialist Children's Courts in New South Wales private practitioners represent children. The majority of private practitioners appearing at the specialist Children's Courts are members of the commission's panel for children's criminal matters. Private practitioners make a significant contribution to the representation of children in New South Wales in partnership with the commission. The commission takes great pride in providing high quality legal services for children including services that are additional to legal representation in court proceedings. The Children's Legal Service operates the Legal Aid Hotline for under 18s, a telephone advice service that supports the diversionary options available under the Young Offenders Act 1997. Children in police custody can ring the hotline and get free legal advice from a children's criminal law solicitor on the spot. The hotline operates seven days a week: from 9.00 a.m. to midnight on weeknights and for 24 hours on weekends.

The hotline is available to all young people aged 10 to 18 throughout New South Wales. This includes young people in juvenile justice centres. The hotline has been an important to the success of the Young Offenders Act 1997. By ensuring that all children in New South Wales have access to high quality legal advice at an early stage in proceedings, NSW Police and the Department of Juvenile Justice have been able to divert many young people away from court to cautions and youth justice conferences. The Children's Legal Service provides also a visiting legal service for children in custody. A solicitor from the Children's Legal Service visits Baxter, Kariong, Keelong, Reiby, Cobham, Acmena and Riverina Juvenile Justice Centres one day per week. A solicitor visits Orana every second week.

The visiting legal service was a Children's Legal Service initiative and is staffed by the Children's Legal Service, but is funded by the Department of Juvenile Justice. The decision of

Juvenile Justice to fund this service shows Juvenile Justice's commitment to providing children in custody with access to appropriate legal advice. The purpose of the visiting legal service is to provide advice to children in custody on bail, appeals and their current matters. It is very important to remember that not all children appear before a specialist Children's Court. In regional, rural and remote New South Wales the Local Court is reconvened as the Children's Court when a child appears. The magistrate is not necessarily a specialist Children's Court magistrate and the penalties imposed may not be in line with the penalties that a specialist Children's Court would impose.

Private practitioners in regional, rural and remote New South Wales provide a high level of service to legally aided clients but if there is insufficient volume in Children's Court matters in their local areas not all practitioners will have the same level of skill and experience in acting for a child in a criminal matter. The Children's Court is a very specialised jurisdiction. The visiting legal service ensures that children who fall through the net, and who perhaps should not be in custody, have access to specialist legal advice and are assisted in lodging an application for bail or an appeal. The visiting legal service also provides assistance and advice for victim's compensation matters, custodial issues or by writing letters to courts and the State Debt Recovery Office to obtain extensions to pay fines. We hope that the visiting legal service will play an important role in providing legal advice to detainees about transfers from juvenile justice centres to juvenile correctional centres or adult correctional centres under the new legislation.

Because the visiting legal service is run in partnership with the Department of Juvenile Justice, our visiting legal service solicitors have extremely good access to juvenile justice centres. We have also built good relationships with the caseworkers at juvenile justice centres. These relationships ensure that children who may not know about the visiting legal service, but who need legal advice, are referred to our solicitors at the next visit. Importantly, the caseworkers at Juvenile Justice are aware of the need for confidentiality between detainees and the visiting legal service. We hope to build a similar relationship with Corrective Services in relation to Kariong. Eventually we hope that Corrective Services will give our visiting solicitors a similar level of access to that provided in Juvenile Justice centres. Our solicitors are currently permitted to visit only during the designated legal visit times at Kariong, which are from 9.00 a.m. to 11.30 a.m. and 1.00 p.m. to 3.30 p.m. on Monday, Wednesday, Thursday and Friday, and from 1.00 p.m. to 3.30 p.m. on Tuesday.

The difficulty for us in relation to Kariong is we have traditionally provided that service on Tuesday mornings, which is the time when there is a lockdown, as we understand it, because of staff training at Kariong. The reason we have to be little particular about those times is because our solicitors are normally engaged in list work at various courts. We have started negotiations, discussions, with Corrective Services and we are hopeful that we can resolve something that will meet the needs of our clients.

CHAIR: On your behalf, in a sense, the Committee raised some of those questions with other people on that issue. Thank you for clarifying that.

Mr GRANT: The same applies in relation to telephone advice. We would prefer to have freer access by the use of telephone with our clients when the need demands. At the moment there are some restrictions, and it is difficult for our solicitors to get access on occasions.

CHAIR: After your hotline comment, I had written a note "In Kariong are the hours of access by detainees limited?"

Mr GRANT: I have no firsthand information. My officers may be able to help you. I would think that once one is locked down, it is a lockdown, and we do not get any telephone calls outside lockdown times.

The Hon. CATHERINE CUSACK: What is the duration of the Tuesday lockdown?

Mr GRANT: From recollection they are locked down during staff training.

The Hon. CATHERINE CUSACK: Is it in the morning?

Mr GRANT: Yes, in the morning.

The Hon. CATHERINE CUSACK: For what hours?

Ms O'SULLIVAN: My understanding is that they are locked down in the morning and allowed out between 1.00 p.m. and 3.30 p.m. for lunch.

Mr GRANT: Presumably they are allowed out for breakfast and locked down again at 9.00 a.m. to 1.30 p.m. I do not know precisely if that is so, but that is what we are led to believe.

The Hon. CATHERINE CUSACK: Chair, I suggest the Committee seek further advice from the Department of Corrective Services on that matter.

CHAIR: Yes, the Committee will seek some advice. We may find that breakfast is served in the cells, with no telephone access.

The Hon. CATHERINE CUSACK: Is there a protocol between your organisation and the Department of Juvenile Justice that covers the visits to detention centres?

Mr GRANT: There is an agreement that covers visiting solicitor services. It is not a protocol as such, just a funding agreement.

The Hon. CATHERINE CUSACK: Is it a written agreement?

Mr GRANT: Yes, it is.

The Hon. CATHERINE CUSACK: Would it be possible for you to provide a copy of that?

Mr GRANT: Yes, I certainly will.

The Hon. CATHERINE CUSACK: The children's visiting legal service is a generic service that you provide to detainees, is that correct? It does not necessarily relate to their cases.

Mr GRANT: That is right, it does not necessarily relate to their cases.

The Hon. CATHERINE CUSACK: It relates to legal advice about what is happening inside the centre?

Mr GRANT: Yes, it does. It can also relate to their particular case, but it is just not limited by that.

The Hon. CATHERINE CUSACK: Generally detainees will have their own solicitor, quite separately?

Mr GRANT: They may well do, yes.

The Hon. CATHERINE CUSACK: But in some cases, the solicitor doing the visit will be their solicitor as well. Is that correct?

Mr GRANT: That is possible. For example, it may be that the solicitor for the commission or from the Children's Legal Service in the commission doing the visit, is not exactly their Children's Legal Service Commissioner.

Ms O'SULLIVAN: That is right. The visiting legal service solicitors do not know what the problem might be when we may see a young person. It could be any legal problem. They may not be the legal representative for that young person who may be on remand, they may be appearing in a court that we do not look after. Or it might happen to be a young person that we represent and the visiting solicitor might be their representative.

The Hon. CATHERINE CUSACK: Are they specialist children's legal officers or local solicitors?

Ms O'SULLIVAN: They are all specialists within the Children's Legal Service, apart from two of the centres. Orana is visited by a Legal Aid solicitor, who is a not specialist children's solicitor, not part of the Children's Legal Service. Acmena is visited by a private practitioner who we fund, through our funding agreement with the service.

The Hon. CATHERINE CUSACK: In most country communities Legal Aid would fund a private solicitor to represent the child in court?

Ms O'SULLIVAN: That is right.

The Hon. CATHERINE CUSACK: Is that a quality issue for your organisation, given how specialised children's law is?

Ms O'SULLIVAN: The commission tries to conduct training with the private profession. We hold conferences in regional areas as well as in the city for private practitioners is so that they are able to keep up to date with current issues in the Children's Court and the children's jurisdiction. We also have a Children's Legal Service bulletin that goes out to all practitioners who do children's work throughout New South Wales. Yes, we think it is important.

The Hon. CATHERINE CUSACK: I have received representations from people who say that they do not do very much children's work in a country town and the effort they take to keep abreast of that law means that remuneration for that small case load means it is better to not be involved in that at all. There is a concern that the old school who used to do children's law are retiring, and not enough people are coming along to take over. Would you like to comment on that?

Mr GRANT: I will deal with that. It is a concern for us, and it is a concern outside children's law areas as well. The baby boomers are leaving the profession in country New South Wales in particular. I am concerned that we will run short of solicitors generally to do what we call assigned work. I suspect for country members it would go beyond law into other professions. It is certainly something we have been talking to the Law Society about and bringing to the attention of the Government from time to time. It is a matter of great concern.

The Hon. CATHERINE CUSACK: Is in the case that a young offender who pleads not guilty to a charge and is then convicted of that charge, would be treated more harshly at the sentencing stage?

Ms O'SULLIVAN: Sentencing policy would mean that they do get a benefit from an early plea of guilty; there is case law that supports that. It is not something that has the same effect in the Children's Court as it would in the District Court or Supreme Court, or even the Local Court. Yes, it is a factor that is taken into account in sentencing.

The Hon. CATHERINE CUSACK: Is it your experience that Aboriginal children are less likely to plead guilty and perhaps be treated more harshly at the sentencing stage?

Ms O'SULLIVAN: I am not able to comment on that.

Mr GRANT: The Aboriginal Legal Service would deal with the vast majority of Aboriginal children. We deal with some but without a bit of a study it would be hard to draw that conclusion. Aboriginal children generally have longer the criminal records than non-indigenous children. That is a fact that has been reported on through various studies. In itself it would mean that they are more liable for a longer sentence.

The Hon. CATHERINE CUSACK: In relation to the Children's Visiting Legal Service, can you give some examples of the complaints or matters that have been raised with solicitors who visit the detention centres?

Ms O'SULLIVAN: Yes. Most commonly it would be seeking advice in relation to a bail application, or the prospects of appealing a sentence. They are the two most common inquiries. Other inquiries are advice on what is happening with their matter, when is it coming up, and some liaison

between the young person and their legal representative. Also, there are fines that they have been notified about and that worry them. And also victim's compensation. The two big areas are bail applications and appeals.

The Hon. CATHERINE CUSACK: When solicitors meet with their clients in detention centres and prepare briefs of evidence, is the brief of evidence the property of the detainee or the property of the solicitor? The reason I am raising this is we have had the question of evidence left in the control of a detainee and that was seen as inappropriate.

Mr GRANT: I would have thought on first principles it is the property of the detainee. The solicitor does not own the brief. When you look at the children's criminal proceedings legislation and the Crimes Act and other pieces of adult legislation that deal with that issue, it is the accused person who has the right to obtain the depositions or transcripts or the briefs.

Ms MORGAN: Under the Criminal Procedure Act it has to be served on the person who is the defendant. It is like an agency if it is served on the legal practitioner. I think on first principles it would be the defendant's property, something that belongs to them.

The Hon. CATHERINE CUSACK: The issue that was contentious related to post-mortem photographs of the victim of the alleged offences. Is that something you would understand is possible, that a detainee could have that type of evidence in his possession in the centre?

Mr GRANT: I certainly think it would be possible. I do not know the exact arrangements Juvenile Justice would have in place, how it allows access to briefs and exhibits, but you would have to say it is possible, yes.

CHAIR: It certainly is possible. The question is, is there a probative value? Should they have them?

Mr GRANT: I suppose it would come down to the circumstances, under what circumstances they are allowed access to it. Certainly they would have to be able to see it if it forms part of the brief of evidence against them. You could not deny them access to it. I would think there might be restrictions on how that access is allowed.

The Hon. CATHERINE CUSACK: It would be within the powers of Juvenile Justice to allow access?

Mr GRANT: I would have thought so, yes.

The Hon. CATHERINE CUSACK: Are there any other protocols between Legal Aid and Juvenile Justice in relation to those sorts of matters?

Mr GRANT: No, I do not believe there are any other protocols at the moment. We have been discussing certain matters with Juvenile Justice about access to materials and briefs but we do not have a final protocol yet that we have signed off on.

The Hon. ERIC ROOZENDAAL: You obviously have a fair bit of involvement with inmates at Kariong. Do you have any observations or comments about the types of systems that have been instituted there since Corrective Services has taken over and the effect these changes have had on the detainees?

Mr GRANT: It has not been all that long yet so we are still hearing things from our solicitors. Some of the things we heard about in the early months have been cured because Corrective Services have got to a point where they have some procedures and processes, but maybe I can go through a few points and see if that answers your question. Certainly the lockdown times are of concern to us. I think generally it is from about eight till four but I believe that mustering for lockdown can start as early as three o'clock in the afternoon. So we are concerned about the length of the lockdown times. I recall reading some evidence before this Committee that Corrective Services was looking to perhaps have a trial of extending lockdown times, and we would certainly support that. I suppose the lockdown time extension would relate to such things as what rehabilitation programs or

exercise programs were available for detainees. Obviously the longer the times perhaps more can be fitted in to the rehabilitation program and things of that nature.

Other concerns that our solicitors have expressed from time to time relate to visiting times and to telephone access. I have to say, some of those things have been changed a little bit since we first started going to Kariong under the new regime. We are in discussions now with Corrective Services to help with further changes in that regard. I do not know that there is much else I can say about that. We have heard about some inmates being held in solitary confinement for extended periods. That is a cause of some concern to us and we would like to discuss that with Corrective Services at some stage.

The Hon. ERIC ROOZENDAAL: Has there been much feedback from detainees about how they are reacting to the new regime under Corrective Services as opposed to what it was under Juvenile Justice?

Mr GRANT: I certainly have no first-hand information on that.

Ms O'SULLIVAN: I think the feedback is along the lines of the evidence that has just been given, lockdown times and access to legal advice and access to telephones as well.

The Hon. ERIC ROOZENDAAL: Do you have any views on adults and juveniles being detained in the same facility?

Mr GRANT: I suppose the first answer to your question is what is the definition of adults and juveniles? Obviously those up to 18 are considered to be children and there always has been in juvenile detention centres those under 18 and those over 18—perhaps they are sentenced as children. So, there has always been some keeping of those groups together. Certainly we support the United Nations conventions and various pieces of legislation that recognise that that has to be managed in a very sympathetic way and in a way that does not obviously throw children together with adults in not very defined circumstances. So, we certainly support the splitting of the two but realise there is a carryover from 17, 18 and 19 for those people who perhaps were sentenced as children and who will finish their sentences in a juvenile facility rather than in an adult prison.

The Hon. ERIC ROOZENDAAL: We have heard differing views on whether it is appropriate or inappropriate to concentrate the most serious offenders in the juvenile justice system into one institution. Some people believe it is appropriate that they be spread over the system and other people say they think it is better to have them out of the other institutions and in one place together. I am interested in your views on that?

Mr GRANT: I really do not have any views, to be honest with you. I think that is a matter for policy how that occurs. There is always going to be a need for high-security facilities because unfortunately we have some children who have pretty serious criminal matters either on remand or particularly after conviction. There will always be a need for that and we probably accept you cannot have those facilities everywhere where you have juvenile detention centres, but as to the actual mix and match, that is not something I am qualified to comment on.

The Hon. ERIC ROOZENDAAL: Do you think that with Corrective Services in charge of Kariong now that inmates who pass through Kariong are more likely to go on to the adult system afterwards, or less likely or no change?

Mr GRANT: I wish I had the wisdom to answer the question. I believe a study is being undertaken by the Bureau of Crime Statistics and Research that will have some information on recidivism and particularly, as I understand the study, going from juvenile conviction into a conviction in an adult court. I look forward to seeing that. I have not seen much definitive work on that but I think it will be a very worthwhile document to look at.

CHAIR: I understand it might be another year or so before we see that.

Mr GRANT: I know it has been going on for a while now but I suggest that will be very interesting.

The Hon. AMANDA FAZIO: You provide a statewide service. Have you noticed any difference in the charges brought against juvenile offenders from one region of the State to another? We have heard some evidence from previous witnesses who believe, for example, that a young Aboriginal person who is swearing and carrying on in Bourke is more likely to be charged than a non-Aboriginal person doing the same thing in Hornsby. From your understanding of the clients you deal with, do you think that is a fair sort of assertion for people to make?

Mr GRANT: I might go first, and the other two can jump in. It is a big question. Under the young offenders legislation it was certainly the case that there were different rates of take-up of the options of diverting someone to a conference. I know there was a lot of concern amongst those administering that legislation about the lack of indigenous Aboriginal kids being given access to conferencing. There was a reliance upon the courts on many occasions, which you can do under that legislation, to refer offenders back. So, is not just the police; the courts can do it. Certainly in some areas in New South Wales courts were seemingly doing that a lot more than the police were doing it. I think a lot of those issues were to do with training of police youth liaison officers and I think there was a gradual take-up of that more New South Wales wide. But there have always been stories of Aboriginal youths being treated harder by the police than non-Aboriginal youths. We spoke earlier about Aboriginal kids having longer records, having come into contact more often with the police. It is like the chicken and the egg, you are not quite sure what comes first. In my experience there have been those allegations for years, that police in certain parts of New South Wales might concentrate more on Aboriginal kids. A lot of it is anecdotal.

CHAIR: Ms O'Sullivan, would like to answer that?

Ms O'SULLIVAN: Yes. Going back a long way to the kids in justice report of 1990, where some research was done on the differential policing on that very issue, back then there were some forms of diversion and there was some evidence that the policing was differential between an Aboriginal and a non-Aboriginal young person. I am aware that some figures now show that Aboriginal young persons are more likely to be charged at 10 or 11 years old than non-Aboriginal young people. What the police have to consider when deciding whether they should go under the Young Offenders Act or be charged is the number of times the child has already been charged. So, if they have already been charged earlier, when they were 11 or 12, unfortunately the police, even when applying the discretion, applying the criteria, it leads them to charge them rather than warning, cautioning or conferencing. Obviously there are underlying reasons why kids that young are being charged and often those reasons are welfare reasons and some thought needs to be given to resources being put into those kids at an earlier stage so that that is not going to happen.

CHAIR: Ms Morgan?

Ms MORGAN: No, nothing to add.

The Hon. AMANDA FAZIO: We heard from earlier witnesses that they thought the low participation rate of Aboriginal young offenders in youth justice conferencing occurred because only potentially successful cases were referred to youth justice conferencing. So, there was a fair degree of selectivity in who was picked to participate, and they thought a lot of the Aboriginal kids were seen as being too hard, and that is why they were not referred to youth justice conferencing. Do you think that is a valid comment?

Ms O'SULLIVAN: I am not able really to comment on that. It is the police who do the referring in the first instance and it is something for the police and the Department of Juvenile Justice to comment on.

Mr GRANT: There have been suggestions over the years that the Aboriginal Legal Service was really recommending to its clients that they proceed to hearings. Not a lot of pleas came out of that. I think that certainly was the case. I am not sure that is the case any more but that might have been a contributing factor as well. To get to conferencing you must admit your guilt. I think that might be an element involved in the earlier figures. I have been out of touch with it for the past few years so I do not know how those figures have gone. There has always been a lot of emphasis on trying to get Aboriginal kids into conferencing.

CHAIR: Ms O'Sullivan, have you any evidence, even anecdotal evidence, that any of your solicitors have had successful contact with detainees in Kariong since the Department of Corrective Services narrowed the hours of access?

Ms O'SULLIVAN: The solicitor who visited Kariong has been able to visit on the Tuesday in the afternoon. However, there is concern that it is too restrictive to be able to have enough time with the juvenile inmates.

CHAIR: Do you know what the experience is for private practitioner solicitors?

Ms O'SULLIVAN: I do not know. I have heard just anecdotally that they have had difficulty in contacting their clients by telephone.

CHAIR: Yes, we have heard that too. That is why I am asking you

Ms O'SULLIVAN: I only know from talking with other practitioners. The general complaint is it is difficult to get through. The access is not as free as it was.

The Hon. CATHERINE CUSACK: I cannot quite recall the exact figures you gave in your submission about the number of cases you represented children in, but do you have an estimate as to what proportion of cases overall you represented them?

Mr GRANT: I think that we do the vast majority in the legal service. By that I mean assigned work as well as with private practitioners, but paid for by legal aid. If you added us with the Aboriginal Legal Service there would not be an awful lot left. I would expect it would be 90 per cent or more.

The Hon. CATHERINE CUSACK: Children facing charges are almost completely dependent on your service for legal representation?

Mr GRANT: Yes.

The Hon. CATHERINE CUSACK: And for arrangements with their legal representatives?

Mr GRANT: Yes.

The Hon. CATHERINE CUSACK: Would that contrast with the adult situation?

Mr GRANT: It would depend on which part of the adult system you were talking about. There are considerable numbers of matters in Local Courts for which we do not provide legal aid, for example, traffic matters. If there is no possibility of going to gaol, legal aid does not pick you up. If you are talking about indictable matters that end up in a District Court or the Supreme Court—the serious end—either through our in-house practice or our assigned practice, again I think it would be up around the 85 per cent or 90 per cent mark. We deal with the vast majority.

We also provide a duty service in the Local Court. We will pick anyone up on the first occasion and give that person some assistance to make a bail application or whatever it is that he or she has to do. That relates in particular to people in police cells who would have been picked up overnight and what have you. Our private practitioner colleagues do that in many locations throughout the State and so does our in-house practice. So we provide that service as well.

The Hon. CATHERINE CUSACK: I refer to mutual transfers from the juvenile justice system to the new Kariong correctional centre system and then into prison. It seems that there is a lot less ministerial oversight now between the systems, and also less judicial review of some of those decisions. Would you like to comment on those issues?

Mr GRANT: I do not generally agree with your statements. I think that is probably the case. My understanding of the provisions—Teresa and Julie can help me on this—is that there is little, if any, judicial oversight. I think the Serious Offenders Review Council has some responsibility in

relation to juveniles under the age of 18. Other than that, it is generally by administrative arrangement between Juvenile Justice and Corrective Services. So it is a cause for some concern that there is no appeal right or administrative review right.

The Hon. CATHERINE CUSACK: Do you think the Serious Offenders Review Council is adequate equipped to perform that role?

Mr GRANT: To be honest, I do not have any basis on which to answer that question. I do not know whether any of my colleagues do, but I certainly do not.

Ms O'SULLIVAN: The question of transfers from a juvenile correctional centre to an adult correctional centre now comes within the Crimes (Administration of Sentences) Act. For a juvenile inmate over 18 the commissioner recommends such a transfer to the Minister. For a juvenile inmate under 18, it is the review council. If the review council recommends to the Minister that those under the age of 18 be transferred, they will be transferred.

The Hon. CATHERINE CUSACK: Is it the Minister for Justice to whom you are referring?

Ms O'SULLIVAN: Yes.

The Hon. CATHERINE CUSACK: There is no oversight at all by juvenile justice.

Ms O'SULLIVAN: No, that is right. The juvenile inmate has to be notified that he or she can appear at the hearing of the review council and he or she is entitled to have a legal practitioner present at that hearing. It is such early days we have not had any notification. I am not sure whether we would be notified if such a hearing were to take place. There is provision for who should be co-opted onto the review council. It specifies, "For the purposes of an inquiry under this section it has to be a children's magistrate or a former children's magistrate" so it is not acting judicially, but that is the qualification of that member, "or a legal practitioner of at least seven years standing who has experience as an advocate on behalf of children". So there is provision there to get someone with expertise on that review council.

The Hon. CATHERINE CUSACK: Is that adequate?

Ms O'SULLIVAN: That remains to be seen.

Mr GRANT: It is early days yet.

The Hon. CATHERINE CUSACK: So at this stage you would not be suggesting any improvements to the legislation governing those transfers?

Ms O'SULLIVAN: There are two pieces of legislation. The Children (Detention Centres) Act covers transfers from a juvenile detention centre to a juvenile correctional centre. There is now less oversight by a court. There is no provision to be represented at such a hearing. Then there is the transfer from a juvenile correctional centre—Kariong—to a gaol. There is no judicial oversight of that move. For those over the age of 18 there is no representation or provision to be heard. There is provision for legal representation before the review council.

CHAIR: Does that apply also to juveniles on remand?

Ms O'SULLIVAN: Yes, it does.

Mr GRANT: We would certainly see it as our responsibility, if things were not working well under those provisions, to draw that to the Government's attention and to seek some appropriate change. It would be in the interests of our clients if we were to do that.

The Hon. CATHERINE CUSACK: Prior to Kariong transferring to the corrective services system, people charged with serious indictable offences that were committed when they were juveniles would automatically be classified to go into Kariong. Kariong was where they were held. Is

it your understanding that that is still happening—that people are being charged at court, admitted to the juvenile system and then automatically transferred to the corrective services system and taken to Kariong for that type of offence?

Mr GRANT: The short answer to your questions is sometimes. Depending upon the age of the person and the charge, he or she would automatically go to Kariong. On other occasions they might be classified by juvenile justice and some of them might end up in Kariong.

Ms O'SULLIVAN: There is a classification committee in juvenile justice that deals with a juvenile who has been charged. There are some charges where there is a mandatory override. Automatically they are classified as A1, which means Kariong. Those charges are murder, manslaughter and aggravated sexual assault. So if they are 16 and they are charged with one of those offences they are automatically housed at Kariong.

Mr GRANT: That would be things like murder, serious sexual assault and things of that nature.

Ms O'SULLIVAN: If they are under the age of 16 they would go to Reiby.

The Hon. CATHERINE CUSACK: There has not been any change to that policy so far as you understand?

Ms O'SULLIVAN: It is currently under review. I think it is still being developed. Obviously, with Kariong now there is a different classification system that is quite separate to the juvenile justice classification system.

The Hon. CATHERINE CUSACK: I am not so concerned at this stage about the system inside Kariong; I am more interested in how they get there, or the classification that sends them to Kariong. It is my understanding that the numbers at Kariong are down to around 20. I am wondering where all the detainees are going.

Ms O'SULLIVAN: I really am not sure. My understanding is that Kariong or Reiby were the places to which they would go for those types of offences.

The Hon. CATHERINE CUSACK: I refer next to diversion and to the effectiveness of cautions. Do you find that cautions are more effective in some cases than they are in others? Are there groups in our community where cautions are not effective in deterring bad behaviour? I am not suggesting that they should not have the opportunity for a caution. Are there sections in the community where they are more effective and other sections where they are not making any impact?

Ms O'SULLIVAN: I do not believe that there are. Research would indicate that for the vast majority of children intervention is the same as any other intervention. So the less restrictive form of sanction is preferable because they are not likely to offend again anyway. The danger in heading towards further entrenching them into the justice system is that they become contaminated and they are more likely to come back into the justice system. I am not aware of a group for which a caution would be more effective than it would be for any other group. However, I am aware of research that diversion as a scheme is effective.

The Hon. CATHERINE CUSACK: Do you have clients in John Moroney Correctional Centre? My understanding is that that facility is meant to be dealing with offenders under the age of 25.

Ms O'SULLIVAN: The Children's Legal Service does not.

The Hon. CATHERINE CUSACK: In your submission you make some fairly strong statements about what happens to young people in the prison system, especially if they are small in stature, young, or physically light. Could you put that into context in relation to John Moroney? Is that the case there as well, or is John Moroney successful in providing a safe place for young offenders?

Mr GRANT: Unfortunately, at the moment, you have the wrong three witnesses in front you. The Prisoners Legal Service would certainly have some views on that. We could submit that information to the Committee if that would be useful. We would certainly be able to give you some sort of reply to that question if you would like us to do so.

The Hon. CATHERINE CUSACK: Thank you.

CHAIR: In your submission you listed for this Committee a number of international obligations that we have. Have you noticed any change in our responsibilities under those obligations at Kariong since the Department of Corrective Services took over?

Mr GRANT: I cannot give you an answer. I do not know whether or not Teresa can. Our concern is in the general area. I suppose you would start first with the legislation. The Children (Criminal Proceedings) Act and the Children (Detention Centres) Act really have those United Nations conventions and other documents in mind. You can see that reflected in the principles of the legislation. Part of the concern we have, which we tried to get through in our submission, is that that does not necessarily apply to adult facilities. In fact, we had a look and could not find anything that legislatively underpins the sorts of things that are contained in those conventions and that are found in the juvenile justice area. So I think our concern is that the starting point is not necessarily the same when you are dealing with specific pieces of juvenile justice legislation. That was our first concern. Referring to our ongoing concerns, time will tell how the Department of Corrective Services adheres to the principles contained in those international instruments.

CHAIR: So you would have a watch in brief?

Mr GRANT: Yes, I think everyone has at the moment. We are concerned about issues such as rehabilitation and about the programs that are available. We just have to wait and see because it is too early for us to form any views.

The Hon. ERIC ROOZENDAAL: You said that you were waiting to see what would occur as a result of the rehabilitation programs. Are you aware of any differences in the work duties that are offered to detainees now?

Mr GRANT: Our understanding—and this is anecdotal because we have not yet discussed this issue with Corrective Services—is that the sorts of programs that were available in juvenile justice detention centres are not yet available in Kariong. We know that the Department of Corrective Services runs its own programs, particularly for young men in gaol. I do not know how they translate to juveniles under the age of 18. I think we need to see how that happens. We have heard that there is difficulty in a post-release program that is run through juvenile justice with Bernardos. It runs a post pre-release program through juvenile detention centres. We have heard that it has difficulty in accessing Kariong. That is third-hand. I cannot say whether or not that is true. That is what we have been told. That is a matter of some concern if that is the case, unless there is something else put in its place, and we cannot comment on that.

The Hon. CATHERINE CUSACK: I might take this opportunity to ask a slightly off-beam question that relates to young people and driving offences. Once they have been charged with driving whilst unlicensed, not even related to a motor vehicle theft, is there a slippery slope that young people get on with driving charges and their inability to legally obtain a driver's licence?

Mr GRANT: I think there certainly is, and from what we are seeing through things, through talking to magistrates at various things as well; the magistrates believe that that might well be the case. There are some people disqualified for 20-odd years. I cannot see how that is in the long-term interests of their rehabilitation nor in the interests of the community. They may have committed some serious offence and they should be dealt with appropriately for that but whether someone should be suspended for 20-odd years I think it is debatable whether that accurately reflects what should happen. In relation to juveniles, again things that I have read lead me to believe that a lot of juveniles are not applying for licences these days. They say if you do not have one you cannot lose it. That is why you get so many driving unlicensed, unregistered, uninsured.

The Hon. ERIC ROOZENDAAL: There is a certain logic there.

Mr GRANT: I am not sure it ends up in the right place but, you are right, there is a certain logic to it.

The Hon. CATHERINE CUSACK: Also, a lot of young people appear to be precluded from applying for drivers licences because they have got outstanding fines.

Mr GRANT: Yes, indeed.

The Hon. CATHERINE CUSACK: Would you say that a young person, especially in country New South Wales, is at greater risk of being caught up in committing offences when there is no hope of getting a driver's licence because they have been disqualified for 20 or 30 years?

Mr GRANT: The evidence seems to suggest that. I think the disqualification periods and the options available to magistrates are particularly onerous in some country locations. I think the magistrates themselves have been saying that for quite a while, that they would like more opportunity to mete out appropriate justice.

The Hon. CATHERINE CUSACK: One last question. What would you like this inquiry to do?

Mr GRANT: What I am inclined to say is meet again in 18 months and see how things are going.

CHAIR: We might just have to do that.

Mr GRANT: Far be it for me to suggest what you should do, but it is the first thing that comes to mind.

CHAIR: Thank you very much for your submissions and presentations.

(The witnesses withdrew)

(The Committee adjourned at 4.05 p.m.)