REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO COMMUNITY BASED SENTENCING OPTIONS

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At Sydney on Thursday 1 September 2005

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The Committee met at 10.00 a.m.

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PRESENT

The Hon. C. M. Robertson (Chair)

The Hon. D. Clarke
The Hon. G. J. Donnelly
The Hon. A. R. Fazio
The Hon. G. S. Pearce
Ms L. Rhiannon

Corrected

CHAIR: I welcome you to the eighth public hearing of the Standing Committee on Law and Justice inquiry into community-based sentencing options. When we received the terms of reference we perceived them to be somewhat straightforward, but as the inquiry has continued we have found them to be more and more complex. Therefore, we have put back the reporting date and taken more witnesses. I believe the Committee is getting a very good picture for our final report. Thank you very much for being part of that.

Before we commence I would like to make some comments about aspects of the hearing. The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines governing broadcast of the proceedings are available from the table by the door. In accordance with the Legislative Council guidelines for the broadcast of proceedings, only members of the Committee and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee.

Witnesses, members and their staff are advised that any messages should be delivered through the attendants or the Committee clerks. I also advise that under the standing orders of the Legislative Council any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Legislative Council, be disclosed or published by any member of such Committee or by any other person.

The Committee prefers to conduct its hearings in public. However, the Committee may decide to hear certain evidence in private if there is a need to do so. If such a case arises I will ask the public and the media to leave the room for a short period. If a witness does give evidence in camera following a resolution of the Committee, they need to be aware that following the giving of evidence, the Committee may decide to publish some or all of the in-camera evidence. Likewise, the House may at a future date decide to publish part or all of the evidence even if the Committee has not done so.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference.

HOWARD WILLIAM BROWN, Licensed Private Investigator and Deputy President and Legal Affairs Officer, Victims of Crime Assistance League [VOCAL], P.O. Box 3331, North Strathfield, sworn and examined:

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

Mr BROWN: I certainly am.

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

Mr BROWN: I have no need to tender any documents.

CHAIR: If you do take any questions on notice I would appreciate if the response to those questions could be forwarded to the secretariat by Tuesday 27 September.

Mr BROWN: That would not be a problem.

CHAIR: Would you like to start by making an opening statement?

Mr BROWN: I certainly would. In the first instance, my opening statement basically contains a disclaimer. When I read the terms of reference I noticed that there was a great deal of reference to a report of the New South Wales Sentencing Council in relation to the abolition of prison sentences of less than six months. I wish to declare that I am actually a member of the New South Wales Sentencing Council and I was not sure whether the Committee was aware of my involvement with the New South Wales Sentencing Council.

Secondly, although a member of the New South Wales Sentencing Council, the views that I express here today are purely the views of the organisation which I represent, VOCAL. As is the case with any organisation, be they parents and citizens associations, a political group or a group such as ours, there is a diversity of views. We have people within our organisation who have sought our assistance who are still in heavy stages of grieving and suffering trauma as a result of experiences they have had, so some of their views can be best described as somewhat to the right of Attila the Hun. Normally, with the care and attention provided by our organisation, we restore these people to some degree of normality and their views then start to reflect the views of our majority, and that is basically what I will be doing here today: reflecting the views of the majority of people.

It is very simple to identify failures within any particular system. I, myself, some 12 weeks ago was responsible for a story on national television which related to a community service order that was being conducted by a group of people behind the St George soccer stadium, where people who were completing community service were failing miserably in completing that duty. There was evidence that people were actually engaged in the smoking of marijuana whilst under supervision. Obviously, that was a failure.

The fact that these systems do have failures is not a reason, in my view, that they should be disbanded. Any system is going to have failures. We have to look at the probity of the overall system and even though we can find instances of failure, I believe there are more examples of success and, therefore, we have to be very careful that we do not throw the baby out with the bathwater. I predicate all my comments on that basis.

CHAIR: One of our terms of reference relates to community reaction to community-based sentencing. We have done of a lot of work out in the community to get feedback. We have several submissions that relate to people wanting more people in gaol and less people doing community-type sentences. We certainly know of angry little pockets but in all of our hearings people have been very responsive—including areas where we knew there was a problem in the past—in telling us that they understood this was the best way to go. We are getting some interesting cross-information that is causing some difficulty, so your information will be very important to us. Thank you very much. Can you briefly outline the services that the Victims of Crime Assistance League actually provides?

Mr BROWN: Certainly. Our organisation was formed some 17 years ago following the death of a young girl in Newcastle, a lass by the name of Tracy Gilbert. Her mother called a public meeting following the death of her daughter because she was of the view that insufficient assistance had been provided to her daughter. That public rally, which was held at Maitland, finished up with 1,000 people attending and it became quite obvious that there was a substantial need to assist victims of crime because, in essence, we were an unrecognised group within the community.

We formed the Victims of Crime Assistance League primarily as a support network. We have developed, though, over the last 17 years to the point where we now provide direct support to victims of crime; we demystify the legal process for them, we provide a court support program where we actually send our volunteers to court with victims, in some cases merely to hold their hands, in other cases, to provide more support by demystifying the process, explaining to them what is to be expected from them and basically to assist them to a point where they can fully understand the process.

As part of that process we assist victims these days in the preparation of victim impact statements. We will sit down with the victims, determine exactly what the impact of the crime is and then assist them in the preparation of it. If these people feel incapable of presenting that victim impact statement in verbal form themselves, we have people whom we have trained to deliver those victim impact statements on behalf of the victim and that process is recognised in all our courts, with the exception of the Children's Court.

We also provide advocacy. As you would obviously be aware, when a person is incarcerated, they are normally incarcerated to a term that is a fixed term plus a parole period. When that person becomes eligible for release to parole, victims have the right to make submissions to the New South Wales parole authority and we assist those victims in both the preparation of those submissions and also direct advocacy before the Parole Board. That is a function that I perform, where we actually speak on behalf of the victims directly to the Parole Board or parole authority so that they can have some concept as to what our fears and concerns are.

We provide a similar service in relation to the operation of the Mental Health Review Tribunal. People who are found not guilty of murder on the grounds of insanity are detained at the Governor's pleasure and it is a requirement currently of the Mental Health (Criminal Procedure) Act that these people be processed every six months and reviewed. At that point victims have the right to make submissions to the Mental Health Review Tribunal and again we provide that service as direct advocacy or, in some cases where the victim wants to make a direct submission themselves, we go there as support for them.

We also provide a service of which you would be aware of youth conferencing. We provide a service whereby we go with victims of crime who have been affected by young offenders and will sit in on the conferencing process. In a situation where a victim declines to be involved in that conferencing process, we will act as their representative and speak on their behalf in absence of the victim and we are about to engage that also with young offenders, those being offenders between the ages of 18 and 21; there is a pilot program about to start in relation to that.

Finally, I suppose our other principal function is the lobbying of people who are members of this House in order to seek changes to legislation to ensure that the rights of victims are heard. A typical example of that is the lobbying we undertook to ensure that victim impact statements were incorporated into the Criminal Procedure Act and also to further lobby to the point where we were actually able to have those victim impact statements presented orally. Lobbying is a substantial part of what we do. We obviously provide newsletters to our victims to keep them informed of changes as they occur and that is basically the function of the organisation.

The Hon. GREG DONNELLY: From a victim's perspective, from your experience what do you see as the advantages and disadvantages of community-based sentencing, particularly with respect to small and rural communities?

Mr BROWN: I notice in the terms of reference a great focus on rural and remote communities. One of the things I would like to make clear is that the definition of small and rural communities is, I believe, somewhat of a misnomer. If you take rural centres such as Wagga Wagga, Tamworth and Armidale, these are all cities and yet there is a great paucity of services available to victims of crime in those areas.

I believe we probably should look at the disadvantages first and then look at how the advantages need to be emphasised and greatly enhanced for this process. One of the disadvantages is that the majority of people have very little understanding of community-based orders, such as periodic detention, home detention, and even the use of section 9 and section 10 bonds, for example. As a result, a lot of people perceive the penalty that has been handed down to the offender as being one of insignificant nature, when in fact they do not really understand how it can have long-term benefits.

That is one of the reasons why we have advocated for the abolition of prison sentences of less than six months, as we do not believe they have great probative value. You need to bear in mind that with regard to people who are sent to prison, as opposed to being the subject of community-based orders, if they are sent to prison for a period of less than six months they have no entitlement whatsoever to access to programs, such as drug dependency programs, alcohol dependency programs and literacy programs.

We have a substantial population within our prison system who cannot read and write. By removing those people from the prison system and putting them into a community-based order, the first thing you achieve—and this is probably one of the great advantages—is that predominantly it allows those people to pursue and continue to pursue employment, so they no longer become a burden on the community.

You need to bear in mind that currently it costs us somewhere in the vicinity of $173 a day to keep a prisoner in gaol, whereas on community-based orders it costs a minimal amount; basically $10 a day can oversee a community service order. So that you do not have a situation where people who have come before the courts and are then sent to prison become particularly annoyed and aggrieved because they are literally bored within the prison system.

I believe that is one of the reasons why we have such a high recidivism rate. The disadvantage, of course, is that people perceive it as not being a form of punishment. As a result, they see the type of penalty that has been handed down by the court as light or insignificant. Clearly, that is not true, if you look at the operation of community-based orders, because they can be, and are, quite restrictive. It is perhaps of even greater frustration for a criminal to be within the confines of his own community, or even within the confines of his own home, and yet be unable to do some of the things that he would prefer to do, such as socialise with people.

With home detention orders, obviously under some circumstances they are permitted to go to work but within certain hours they must remain within the confines of their own. That can be particularly frustrating for them and quite onerous because a breach of that will find them back before the court. People do not understand the concept of loss of freedom. The average person does not understand that, and regrettably the media especially have no real concept of that idea; they do not see the onerous nature of completing a home-based order.

Where the advantage comes in, however, is that by incorporating a system such as that within small communities you give the community the opportunity to see the onerous nature and to see, and hopefully realise, that the chances of recidivism are greatly reduced by subjecting the person to a community-based order as opposed to incarceration.

I understand that one of the final questions the Committee is addressing is: What do victims really want? The principal thing is that you cannot undo the crime that has been done. But as victims one of the things we like to see, and we hope we can achieve, is that the person will take responsibility for what they have done and hopefully will not reoffend. If we can run a system within small communities which publicises to members of the public that these systems do work, they will then see that the recidivism rates are in fact starting to fall, that the person is not reoffending, and then they will see the probative value of having such a system. Obviously, the smaller the community, the greater the publicity in relation to how successful these programs can be. To me, that is the essence of it.

The Hon. GREG DONNELLY: With regard to communicating to the community, particularly small rural communities, an understanding of community-based orders, in your experience how is that best achieved so that the broader population gain an understanding of what such an order is and the elements of it?

Mr BROWN: Not wishing to be disrespectful to any of the members here, there is a perception within the community that politicians perhaps do not have a great understanding and that anything they publicise in relation to matters such as this is, in essence, spin. It falls to us, therefore, and organisations such as ours, to educate members of the public. This is one of the things we have achieved through juvenile conferencing. We go out to communities and explain to them. We go to Rotary Club meetings and Probus meetings and explain to people what is involved in community-based orders and educate those people, because it comes from the perspective of people who they expect to be highly aggrieved. When they hear people who are highly aggrieved speaking well of a system such as this, explaining that the advantages far outweigh any of the disadvantages, that is a way of getting that publicity out there.

The difficulty is—and I am loath to complain, as I tend to do when I am in the public arena—it is a very difficult process for organisations such as ours. For example, our organisation is funded through the Attorney General's Department, but it only funds our Newcastle operation and only funds for three people. I spend some 40 hours a week advocating and assisting victims of crime. That is all unpaid work.

I sold my house five years ago in order to keep doing what I am doing, because I see that there is an advantage in getting out to communities and explaining to them. We have assisted in forming community organisations in both Gunnedah and Tamworth, to assist those people and educate them so they understand what the system involves. Once they understand it, and the system is demystified for them, they are more open to variations in what they perceive as being right and wrong in relation to penalty.

Ms LEE RHIANNON: Are there any disadvantages, as you see it, for community-based sentencing?

Mr BROWN: There are certainly substantial disadvantages—not that I believe they cannot be overcome. Within our prison population we have a very high incidence of people who are either drug or alcohol dependent or who suffer from various forms of mental disability. By placing people under those circumstances into a community-based program, unless those people are completely and adequately supported you are dooming them to failure. By dooming them to failure, the community then looks at the system and says, "This has been a fat lot of use." They then say, "These programs do not work; they should be hijacked."

A classic example—it is something that, unfortunately, we have had great difficulty addressing within our indigenous communities—is that alcohol and petrol sniffing, for

example, are two major issues in relation to the commission of felonies. Often when you put those people back into a home environment, such as performing home detention, or even being subject to a good behaviour bond, it is very difficult for a person who has an alcohol dependency to move back into their home when other members within that home have similar dependencies. You are dooming these people to failure by saying to them, "We are going to subject you to urine analysis and send you back to your home," when everyone else in the home has exactly the same dependency.

So we need a far more lateral approach. Unfortunately Probation and Parole, when examining the suitability of a person who appears before the court for such programs, most of that suitability is directed towards the personality and character analysis of the offender, without doing a proper evaluation of the environment into which the offender will be placed, and that is a major concern for us. I know that at times it may impinge on the privacy considerations of other members of the family and other members of the community when we are talking about various dependencies and shortcomings, such as mental health issues. But in order for these programs to be successful, we need to provide the people who are going to be assisting the offender with a safe environment—not just for the offender but for the people who are working with the offender as well, in other words, members of the family. That is a classic example of the principal disadvantages at the moment.

Another disadvantage is that, regrettably, within New South Wales our Director of Public Prosecutions especially, and to a lesser extent our Police Service, has embarked upon a program of what is referred to as charge negotiation. A person may face a particularly serious charge, but because there is perhaps some failure in the chain of evidence or something of that nature, the matter is charge bargained down to a lesser charge. A person who under normal circumstances would face charges that would result in incarceration may have those charges charged bargained down to a lesser charge. Unfortunately, those persons can still sometimes be recommended for community-based orders.

I talk about domestic violence specifically. Obviously, by placing an offender back into a situation where domestic violence has been the norm, without providing sufficient support throughout the entire process, you are dooming that system to failure. Obviously, exposing a victim directly to the offender on a community-based order is not necessarily what one would recommend. The difficulty, of course, is the emotional connection within domestic violence. People fail to understand, and it would take too long to explain to the Committee the dynamics of a domestic violence situation. But regrettably, a number of people who are victims of domestic violence and are given the opportunity of bringing the offender back into the home on a community-based order feel that they have a responsibility to accept that. That is a major disadvantage, and it is obviously something that is exacerbated by geographical location.

For example, if you take someone in a rural community such as Brewarrina or Condobolin, where services are quite limited in relation to assistance both for the offender and for victims, you have the potential to create an even greater problem.

Ms LEE RHIANNON: Are there any other disadvantages for remote communities?

Mr BROWN: One of the other disadvantages—and, again, this is something that I have great difficulty with because I am a great advocate of the sex offenders register, and I am only using it as an example to talk about the dynamics of communities—we have seen just recently the location of a paedophile in a rural community on the far North Coast. I think we all saw how the community reacted to that.

Ms LEE RHIANNON: How the media reacted and then the community reacted.

Mr BROWN: Exactly. That is one of the problems that we are always going to be confronted with: There will always be the potential for media intervention and publication of failure. Then, of course, the community will become enraged and will not understand. Look at the most recent report of Corrective Services, which encompasses the period 2003-04. I know, for example, in the discussion paper most of the figures that the Committee relied on were from the report from the previous year—not from 2003-04 but from 2002-03. We have about a 74 per cent success rate with community-based orders through Corrective Services. That obviously infers that there was a 25 per cent or 26 per cent failure rate.

I have very good friends and family who live in rural communities but they do tend to be a little to the right. So when they see such a system failure you can have a situation where vigilantism will occur. I do not believe that is a reason not to go ahead with such a program—that is the last thing I would do. But one of the things I would say is that in cases where you do identify that type of attitude within the community you need people such as us to go to those communities and explain to them the benefits. Because people still do not grasp the concept of what a cost is to the overall community. We talk about $173 being the cost of keeping a prisoner in gaol on a daily basis. What we do not talk about and what we do not factor in is the cost to the community when that person is removed from the community.

Regrettably, there are going to be people who are going to have to be incarcerated. We have some people out there who are really bad people. But we also have a great number of people currently in our gaols who just purely and simply should not be there. The cost saving to governments by removing people from the prison system would be fantastic but what people do not factor in is what the cost savings would be to the community by having a situation where a person can remain employed within the community. For example, a person may work in Lake Cargelligo as the local ranger and, because of the geographical situation, is put on some degree of order and possibly incarcerated for driving whilst unlicensed. Perhaps he has not paid fines and so has had his licence suspended and then he is caught driving. To that community that person is a fantastic person because he is doing fantastic work in maintaining water resources and various other resources. If you lose that person from the community how do you place a cost on that? If you retain that person within the community so that they can continue to do the good work that they are doing and still punish them and bring them to account for what they have done, surely that is a far better way of approaching the situation than simply putting them in gaol, where they sit for three or four months and just get angry.

The Hon. AMANDA FAZIO: I think we met during the juvenile offenders inquiry.

Mr BROWN: We did.

The Hon. AMANDA FAZIO: You said that you work about 40 hours a week with VOCAL and that you do a lot of talking to communities about the benefits of non-custodial sentencing options. What other organisations are involved in that sort of information work? Do you really think that it is appropriate that the Government is not doing enough of that and is leaving it up to community-based organisations to do that work?

Mr BROWN: I guess one of my comments is that I am always very sceptical of having governments do that purely and simply because the public is generally sceptical of any sort of what they see as political bias in relation to selling the good news. I had a great deal of confidence in John Hatzistergos as Minister for Justice—in fact, I was quite disappointed to see him leave that portfolio and go to Health—purely and simply because he seemed to have a decent understanding of the process and obviously was heavily involved in changing the parole process. But when the public hears a Minister of the Crown speak, they say, "It's just spin". So it falls to people who are actually at the coalface to explain to people.

I know from speaking with a couple of Probus clubs and a couple of Rotary clubs who have had their local members speak to them that they think they are basically involved in delivering copious quantities of BS. It is a really difficult concept.

I do not actually have a problem with taking on that responsibility. It is one of the positives that I gain out of the negative that made me come into VOCAL in the first place—I became a member of VOCAL following the murder of one of my best mates. So I actually derive something positive out of my mate's death by being able to do it. The problem is that, apart from ourselves and Ken Marslew from Enough is Enough, there are very few other organisations who are actively out there. Regrettably, organisations such as the Prisoners Action Group, which does wonderful work for prisoners, are not well respected by the community because they see them as apologists for offenders.

I believe that we have a certain degree of probity purely and simply because we are people who have experienced the wrath or the effect of various criminals. So when we can turn around and say, "We recognise what the benefits are to the community" and explain to people the benefits of reducing recidivism—basically say to people, "If you want to feel safer within your environment one of the first things we need to do is reduce recidivism"—once people start to understand that concept it is amazing how people, when they first come to listen to me speak about such processes, you know that they are completely against it and they think we are ratbags. Then they listen to what we have to say and they say, "Gee, that actually makes sense". So when the meeting is over and we join them for coffee and biscuits they all say, "These are things that I've never thought of". It is clear that people do not understand the process.

The Hon. AMANDA FAZIO: I think, from my previous discussions with you, that you support the model of restorative justice.

Mr BROWN: Most certainly.

The Hon. AMANDA FAZIO: If it were possible for some minor offences to be dealt with by justice conferencing or a mediation-type process that involved the victim of the offence would the impact on the victim be beneficial? What other positives do you see coming out of that sort of process?

Mr BROWN: The greatest value which comes from the conferencing process is the transparency of the process. Regrettably, within our court system—I made reference to this earlier this morning when we talked about charge negotiations—even in the circumstances where there is no charge negotiation, in essence, what occurs within the court process is an agreed statement of facts is put forward. The average person certainly does not understand our criminal legal system. Note that I use the reference "criminal legal system" as opposed to "criminal justice system". The reason we say that is because organisations such as ours and Ken Marslew from Enough is Enough all agree that we do not actually have a justice system. We have a legal system; it is nothing about the pursuit of truth.

Within the conference program it is a pursuit of the truth. The offender has to take full responsibility for every action which has brought them to that confidence. The moment they start to mitigate their responsibility or try to dilute the seriousness of it, the conference fails. It stops and the offender is taken away and told, "Sorry, you're obviously not suitable for conferencing". So what actually happens for victims is that there is a full recognition of what actually occurred. In the criminal legal process that is often not the case. The person does not take full responsibility for what they have done. One of the greatest ways of measuring remorse is if a person is willing to put up their hand and say, "This is exactly what I did" and openly admit it. In those circumstances when those people become eligible for parole we, as advocates on behalf of the victim—provided the victim is so inclined—will

actually advocate for the person's release because we can see that they are truly contrite for what they have done.

It is very easy for someone to say, "I'm sorry". It is a lot more difficult for them to say, "Because this is what I did" and, step by step, go through the process. It is an acknowledgement of the harm that has been done to the victim. That is not provided, generally speaking, within the criminal legal system. So that is one of the great advantages for victims. But it is also a fantastic advantage for the perpetrator because before an offender can address their offending behaviour they have to understand what they have done. So many of the people that we come across—especially drug addicts who are engaged in constant break and enter—they go into a house and steal a plasma television and say, "These people can afford a plasma TV so they'll have insurance; they've obviously got plenty of money so it's not really a disadvantage to them". They have no concept that that plasma TV was won in a raffle and is the most expensive thing in the entire house. If you put all their other goods and property together the cost of those would not exceed the cost of the plasma TV. I have a classic example of a young offender who stole a Datsun 120Y—a car that has been the brunt of jokes throughout the motoring trade ever since it came to be.

CHAIR: I think we had one once.

Ms LEE RHIANNON: You will have to tell us why it is a joke.

Mr BROWN: Basically, it is a rubbish car. It was virtually Nissan's equivalent to the P76. A young man was involved in stealing one of these cars. As he said at the time of the conference, "It was only a 120Y", meaning it was a heap of rubbish. He had no concept of what he had done. What he had done was take away a lifeline for an unmarried mother who had three children under the age of five. That was her only lifeline outside her residence. He had no concept of that. Once he realised in the conferencing process that he had not only just taken a car but isolated this woman in her own home and denied her children access to medical facilities, he turned around and said, "Well, if I'd known that I wouldn't have stolen the car". We said to him, "If you hadn't stolen the car in the first place no-one would have been disadvantaged and you would not have to be here listening to this". He said, "How can I fix this problem?"

We put him through a program known as Handbrake Turn, which is an organisation out at Wentworthville. They grab what we generically refer to as "young toerags" and put them through a 12-week course, where they learn to panel-beat cars, spray paint cars and do auto electrical work. The NRMA give that organisation a car every three months. They work on that car, they restore it and then they give that car, no strings attached, to a victim of crime. So we put this young man into that program. He was involved in the restoration of the car and then he was the one who actually handed the keys over to the woman whose car he had stolen. That kid will never reoffend because he actually understands what he has done and what the cost is to the community. That is why it is such a successful program. We do not utilise it sufficiently because we place too many restrictions on the type of crime where conferencing can be used. But this is the fantastic thing about it—full transparency, taking full responsibility for what you have done and listening to the victim and understanding what the impact is.

When you say to someone, "You've stolen their TV" it means nothing to them because, to them, it is just a chattel. But when you find out, for example, in a rural community that that TV is an education lifeline for children, especially those on farms and so on who use ed TV as a way of enhancing their syllabus, taking their TV is denying those children an education. People do not understand that. That is never explained in court. When a person comes before the court for thieving a television they are not told that they have stolen more than a television, and the courts do not recognise it as anything more than a

television. But if you said to the court, "This person has taken a television and a full set of encyclopaedia" because they have denied a child access to a knowledge base, that is what the criminal system just does not do. But it is what the conferencing system does, and that is why it is such a wonderful system.

CHAIR: We have another question in relation to what you perceive victims of crime wanting to see from community-based sentencing.

Mr BROWN: Within any organisation you are always going to find people who work on the policy of an eye for an eye and a lower jaw for a tooth. We certainly come across people like that from time to time. These are normally people who are very angry and aggrieved.

We actually tell victims when they first come to us that to be a good victim is like being a comedian: it all comes down to timing. Getting the views of victims of crime immediately after an event is a substantially different procedure to getting the views of the same victims some two years later, after they have had access to counselling and access to support, have been through the criminal process and have a better understanding of what is going on.

Victims really tend to take ownership and possession of the crime. If we victims are treated correctly we realise that we cannot undo the harm that has been done to us. It is one of the reasons why a great number of our people want to go to court, listen to the court case proceed and see how the offender is dealt with. It is one of the reasons why we find people more amenable to the conferencing process, because they have greater contact with the offender and the offender has a far better view of what the processes about. What the victim really wants, though, is for offenders to recognise the harm that they have done and recognise what their offending behaviour is, in the hope that they will not do it to someone else.

If we as victims can look at offenders who have caused us to be in the situation we are in and see that those offenders have learned from their mistakes and therefore do not go out and injure someone else, we feel that something positive has come out of a particularly negative experience. That is what victims want. There is nothing worse—and I know this from having experienced it with some of our members—than seeing a person released from prison who then goes out and commits exactly the same offence. A new victim then comes to us and one of our former victims, now working in a support role, says, "I know that offender because that offender did exactly the same thing to me." When we see that we consider that we have failed.

Sometimes we see offenders go on to do something worthwhile. One young offender was recently signed up by Wests Tigers football club. When we first met this person in the conferencing process he looked lost forever. He had no family support and his whole filial arrangement was poor. He had two brothers who were basically starting on a career of crime. This kid had everything going against him. He went through the conferencing process and we were not particularly happy with the initial outcome of that conference, but the kid actually did take into consideration what he had been told during the course of that conferencing process. We said to him, "Why are you spending so much time and energy rolling elderly people when you are obviously so fit and talented as a rugby league player? Why aren't you putting that energy into your sport?" I am not sure whether that had the desired effect but I like to think that it did. He decided to concentrate his energy on rugby league. He was in the Illawarra and has now been signed by Wests Tigers, and I believe that that guy will go on to live a full and beneficial life and probably put something back into the community.

CHAIR: I want to thank you for coming today. Your evidence has been really useful and important.

Mr BROWN: Can I say again, as I said in the beginning, I believe one of the things we really need to do is advertise the benefits of this type of system. Yes, there will be failures, but we have failures within the current system. We incarcerate offenders and when they are released they reoffend. We need to have a look at more lateral approaches. There is a huge cost saving, both to government and to the community, and I believe we really need to encourage this. If we do, we can then achieve the net results of what was said in the New South Wales Sentencing Council and see the abolition of prison sentences of less than six months.

(The witness withdrew)

CHAIR: I will briefly restate my opening remarks, although not in their entirety. This is the eighth public hearing of the Standing Committee on Law and Justice inquiry into community based sentencing options. Broadcasting guidelines are in place but we have not had a problem with or interest from the media this week because they are busy elsewhere. Copies of the guidelines are available from the table by the door and the Committee secretariat will provide them to the media should they come to this hearing. Messages and documents tendered to the Committee should be handed to the secretariat.

The Committee prefers to conduct its hearings in public. However, we may decide to hear certain evidence in camera if there is a need to do so. It has to be recognised that the Committee may decide to publish that information or the Parliament may later decide to publish it. Committee hearings are not intended to provide for people to make adverse reflections upon others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference. I would ask that everyone turn off their mobile phones, including the silent phase, as it interferes with the recording device.

ROBERT VICTOR TUMETH, Principal Solicitor, Criminal Law Committee, Law Society of New South Wales, 170 Phillip Street, Sydney, and

MARCIA YVONNE PAYNE, Solicitor, Human Rights Committee, Law Society of New South Wales, 170 Phillip Street, Sydney, sworn and examined:

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

Mr TUMETH: As a representative of the Criminal Law Committee of the Law Society of New South Wales.

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

Mr TUMETH: Yes.

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

Ms PAYNE: As a representative.

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

Ms PAYNE: Yes, I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee please indicate that fact and the Committee will consider your request. If you take any questions on notice I would appreciate it if the response to those questions could be forwarded to the secretariat by Tuesday 27 September next. Would you like to begin by making a brief statement?

Mr TUMETH: Could I by way of preamble try to put a human face on some of the problems that are confronted by persons who come before the courts, in particular the issues relating to community-based sentencing options. I have two examples that have come from

actual cases. The first case, although I will not provide the name of the person concerned, relates to a woman of 40 years of age. She resided in Moree and had two teenage children attending school. She had moved from Queensland to Moree because of a very violent domestic relationship with her husband, which had resulted in her suffering from post-traumatic stress syndrome, which is a form of mental illness. There was no dispute about that.

When she moved to Moree she had no relatives and no close network of friends. She did not have a job or a driver's licence, and was reliant upon the supporting parent benefit for income. She did, however, also undertake casual cleaning work and, unfortunately for her, at times failed to disclose that to the Commonwealth department through Centrelink. Ultimately she was found out. She made admissions of defrauding the government by obtaining a benefit by deception—of the order of $40,000. She assisted the authorities and commenced to repay that some out of her supporting parent's benefit. However, in due course she was charged and came before the District Court.

The courts have long said in respect of offences of this nature that the most appropriate penalty is a custodial sentence. The reason for that, which has been stated many times, is because of the ease with which the crime can be committed and the need to send a clear message to the community. Against the backdrop the court had to juggle with the unfortunate personal circumstances of the woman. The court accepted that she had acted out of need rather than greed, that is, to support to children. It accepted also that she did have a mental illness, which affected her ability to think clearly. It accepted that she was truly remorseful and that she had no support for her children and did not know what was to become of them if she was incarcerated.

Unfortunately, as is the case in many regional areas in New South Wales, Moree does not have the home detention facility or reasonably available a periodic detention facility particularly for females. Against that backdrop she was received a custodial sentence 18 months with a non-parole period of nine months. That was unfortunate for the lady concerned but it is not an isolated example of how cases of this nature run, particularly in regional New South Wales. Similar cases, however, have highlighted that where home detention is available it is an option that the court will impose because home detention is regarded as a sentence of imprisonment. We do not know whether the court would have imposed a sentence on this lady to be served by way of home detention; what we do know, however, is that because that facility was not available the court was not able to consider that option. That is one example, which regrettably is often repeated.

The second example relates to people suffering from mental health issues and involves a young man of 19 years of age who resides in the township of Inverell. He was been diagnosed many years ago as a schizophrenic requiring medication. He is a big, strong man and had previously been convicted of a string of offences, generally minor malicious damage, minor stealing and things of that nature. In previous times it had been accepted by the court that he did have a mental illness and he was dealt with on occasions under what is called section 32 of the Mental Health (Criminal Proceedings) Act—the offence was proved, the matter was dismissed and he was dealt with by way of a case management plan.

Unfortunately, the young adult continued to offend from time to time, particularly when he did not take his medication and he did take alcohol and/or cannabis. This seemed to frequently occur when his mother, with whom he did not enjoy a good relationship, would come and visit and he would go off the rails. He did, by all accounts, have not a great deal of insight into his offending behaviour because of his mental issues. He was living in supported accommodation and on one occasion he did a considerable amount of damage to the property and also himself. He was nevertheless charged. He admitted his offence. Because of the previous number of offences that he had committed the court considered it was no longer

appropriate to deal with him under the provisions of section 32 of the legislation and that he would be dealt with at law.

The issue then became one of well, what do we do with this man? He was referred to the probation and parole service for an assessment as to community-based sentencing options. He was considered unsuitable for community-based sentencing options and one that people had been looking at was particularly a community service order. It was thought that he may have been suitable originally for that—I particularly myself thought he may—because he had been doing voluntary work in the town to keep himself occupied. Unfortunately, he was determined to be unsuitable, the reason being it was considered he may be a risk to the persons with whom he was working or to those who were supervising him.

That option having been taken away, the magistrate was left with, "Do I put the person on a bond, whether it be a section 9 bond or a suspended sentence bond? What do I do with him?" Unfortunately, because of his limited understanding through his mental illness, it was considered that putting him on a bond would be akin to putting a noose around his neck and it would only be a matter of time before the bond was broken, with more serious consequences for having breached a court order. So the magistrate duly sentenced him to a fixed term of imprisonment of four months and for the first time he had gone into full-time custody. He has since come out of custody.

The issue of mentally-ill people serving time in custody is something that has been considered by other committees. It is difficult enough for any young adult going into custody, but it is more difficult for a person suffering from a mental illness. The reality was the court felt there was simply no other way of dealing with this person other than to impose a custodial sentence. He has come out, of course, but what has he learnt as a result of it? The mental illness is still there and I know anecdotally that he is due to appear again shortly in a court once again for committing yet another what might be regarded as a relatively minor offence, but nevertheless.

Those are just two examples I would like to leave the Committee with when we are talking about community-based sentencing options and how it actually impacts on people themselves, particularly in rural and regional New South Wales. Those are the only comments I would like to make in relation to an opening.

CHAIR: I will extend a question from your comments. What sorts of things does your organisation think could be implemented in country towns, particularly for people with mental illness, which is a disadvantage in its own right in the justice system? And they are not just the big towns either, are they?

Ms PAYNE: One of the things that is working quite effectively in the Kempsey area is a court clinician. The situation with the court clinician and the Kempsey magistrate works quite well because of the person that was selected—the fact that that person does not see themselves as a lawyer but is there specifically for the mental health issues, and that seems to be working really well. The other thing that has been a pilot scheme in the Port Macquarie/Kempsey area is a pilot project that was completed on 31 August this year and that was between the police, the ambulance and the health. Again, it was addressing the issues of the inappropriateness sometimes that as lawyers you experience that person perhaps being picked up by police, taken to court because of some of the issues that Rob has referred to, and it is inappropriate for them to be there because it was actually a mental health issue to begin with.

What they found by having the three organisations working together is that the police have been able to ring the ambulance and say, "Can you assist? Can you come with

us?" They then assess the danger, I suppose, of the situation and then say, "This is more an issue for perhaps the ambulance or the health services. Can you take over?" And they sort of back off a bit. That then helps in several ways, one of those being that some people with a mental illness are inflamed by the sight sometimes of a police officer. So by health officials or ambulance officers attending rather than police the person does not sometimes get into the situation where they cause malicious damage or other incidences which require court intervention.

CHAIR: In country towns across New South Wales particularly there are persons who get into the revolving door situation and both health and the police shuffle backwards and forwards. Has the Kempsey trial resolved this?

Ms PAYNE: It has a lot because what is happening is because they are all working together it is preventing a lot of that "It's not a police issue", and then they will refer it on and then health get it and then the person is inflamed and then they refer it back. So that is the revolving door syndrome when that happens. By the three agencies working together it has enabled them to intervene before it actually gets into the process of going through the court system. The problem they have found with that at the moment is the educative process of those three departments. It is important especially that the police be retrained to (1) pick up the phone and ring those other services. So they are finding that it is simple little things like that. But if they can be addressed those programs should be very effective.

The other problem with that program is that in the police you have a situation where you have got something like 80 local area commands and they all deal individually so that when you are dealing with one local area command as you are in that area that does not necessarily mean that program is going to be brought somewhere else. And one of the things that we have discussed is that sometimes you need some sort of a co-ordinated approach which covers the whole of the State maybe, not just one area.

The Hon. DAVID CLARKE: From your opening comments I think it appears to be the case that great unintentional injustices are being perpetrated on many people in rural and regional areas simply because they do not have available to them options that people have in the metropolitan areas.

Mr TUMETH: Yes, I would agree with that.

The Hon. DAVID CLARKE: This arises largely because of distance and population restraints probably more than anything, would that be right?

Mr TUMETH: I would certainly agree they are two of the factors. The submissions that were made to the sentencing council—and no doubt you have all read the sentencing council's report—the Law Society's views have not changed; it is not a question of tailoring community-based sentencing options to rural or regional New South Wales, I think it is more a question of equality of persons in those areas being given access to the same type of facilities and resources that those persons in metropolitan Sydney, Newcastle or Wollongong receive. So it is not that they are asking for special treatment, they are simply asking for the same treatment.

The Hon. DAVID CLARKE: And we should be seeking to give that to them? They are not being denied deliberately, they are being denied simply because of other factors that the Government is seeking to overcome?

Mr TUMETH: I suppose it is probably putting it too simply but the two factors that I see, certainly the one that you have mentioned, is the distance, and we see that very much in relation to periodic detention facilities. Whilst there are few of them for men, if one looks

at the statistics or the availability for females, they are almost non-existent if not non-existent. The other principal factor, I feel, is the inability, for whatever reason, for the Government, through the corrective services department, to rollout facilities such as home detention, electronic monitoring and to further expand the use of the MERIT [Magistrates Early Referral Into Treatment] Program, which is an intervention program. Those things, of course, all require money.

I know that the home detention program, for example, has not extended since the submission that the society made to the council and that is that it is still stalled at Maitland, it has not gone any further north. That does not mean that it goes out to the western border; it does not go out any further than Maitland. The technology is there. I know that probation and parole service officers as far north as Coffs Harbour have been trained in its implementation, but it has not been rolled out.

The Hon. DAVID CLARKE: The Law Society advocates the development of guidelines to ensure the probation and parole service and other services such as hospital mental health units implement case management plans for individual offenders. Would you like to explain the rationale behind that suggestion?

Mr TUMETH: Marcie will probably be able to answer that better than I can.

Ms PAYNE: That was basically what I was talking about with that program with the police, the ambulance and the health area. What they are trying to do with those programs, and I believe what has happened in the city areas with that program, is that they have developed mental health little compounds in the metropolitan area. In a rural and remote area that is very difficult because there is not the community—

CHAIR: No mental health services?

Ms PAYNE: That is quite true, but there is also not an establishment. In a metropolitan area you have got the amount of people to warrant that. So does this mean we are yet again going to be subjected to the fact that we are not going to be able to access it because they will not put it there? As you were saying, there is none. And that is why I think rural and remote communities try different strategies. As I said, what they have done is involve those three organisations to work together to establish that. Although Rob is from the Criminal Law Committee I am actually from the Human Rights Committee of the Law Society, so we differ a little bit in the strategies and ways and means of obtaining some of the things, I suppose. One of the ways would be, as I said, to have maybe the three organisations working together still to establish a means where the people can obtain their rights

The Hon. DAVID CLARKE: Under present legislation certain classes of offenders are ineligible to receive a community sentence. For example, offenders who have previously served a full-time custodial sentence of six months or more cannot receive a sentence of periodic detention. Does the Law Society believe this or any other statutory eligibility or suitability restrictions should be removed?

Mr TUMETH: You are referring to section 65A and B, and the society is on record as recommending the abolition of those two parts to that section. I note that the sentencing council made a recommendation to the same effect. We have seen that come up in very practical terms where people have previously, many years ago sometimes, been sentenced to periods of detention of more than six months, which then renders them ineligible later on, no matter what they have achieved in the meantime with their lives, who then come back before the court. We had a case within the last two months where a magistrate did not have a complete criminal history of the offender and he referred the person to periodic detention,

only them to be found out by the Department of Corrections that that could not be done. He then had to search around and find something more appropriate in the legislation.

But it does happen. It certainly does fetter the discretion of the courts, which was one of the things the society was concerned about. Also, on a practical level, from an individual's point of view, they may change their life in many significant ways but not be free of the criminal system. Periodic detention is a custodial sentence and that is only imposed after a court has determined that a sentence ought be served. If you take away that option you are left with either full-time custody or a suspended sentence, and in my experience the court has already gone past the notion of a suspended sentence if they are looking at periodic detention.

Periodic detention interferes obviously with a person's ability to do certain things, but full-time custody is far more invasive and dislodges their home life, their work life and everything-else. I think for those reasons the Society and the Council have both recommended the abolition of these sections.

The Hon. DAVID CLARKE: When were these submissions made?

Mr TUMETH: The last submission was made on 25 June 2004.

CHAIR: Do you know where the pressure came from when the legislation on periodic detention was put together to include the rule about six months' imprisonment?

Mr TUMETH: I cannot answer because I do not know.

Ms PAYNE: I cannot help.

CHAIR: It would be interesting to know if we make a recommendation in that regard.

Ms LEE RHIANNON: Are you aware of any impressive or innovative initiatives to enhance access to non-custodial sentences in other jurisdictions, either within Australia or overseas, that may be relevant for our work?

Mr TUMETH: Most of the initiatives that have been tried in other places in some form or another have been looked at in New South Wales, or at least any paper that is available. Electronic monitoring is one, which is different to home detention. It enables people to move about, go to work and things of that nature. In the United Kingdom there is an example where although it does not stop people from going to detention, it permits their early release into what is called halfway houses. The only other thing I am aware of that has not been tried in New South Wales but has been tried in Western Australia is called an intensive supervision order, or ISO. It is as it sounds. Whilst the person is placed on a bond, they are subject during the currency of that bond, or part of it, to very intense supervision and support by the Department of Probation and Parole. One of the difficulties with the implementation of a program such as that is the resources of the department to carry out the supervising.

Ms LEE RHIANNON: Resources again.

Mr TUMETH: It keeps coming back to resources. In other areas, there needs to be education of both the courts and to some degree the correctional officers and probation and parole services themselves.

Ms LEE RHIANNON: We have heard differing opinions as to whether people should be put in gaol for sentences of six months or less. Why was the Society opposed to that?

Mr TUMETH: The Society once again went on record, because this was the issue the Council had to deal with, as opposing that. Its reasons are quite forthright. The principal reasons were that the Society looked at it coming from a different angle, that is, if you improve the availability of community-based sentencing options, then that will enable courts to impose penalties that are reflected in that area. By simply abolishing sentences of six months or less, once again you are imposing a fetter upon the discretion of the courts. Whilst they did that in Western Australia for sentences of less than three months, there were, unfortunately, no studies done. So it has not been possible to evaluate its success. The Society was also concerned with what is called sentence creep being brought into effect. You are probably aware of it: if you do away with sentences of six months and the court wants to sentence someone they will give them six months and one day or seven months. So they still get locked up but for a longer period of time.

Ms LEE RHIANNON: Have any studies been conducted in any jurisdiction where the limitation was imposed and it was found there was no creep?

Mr TUMETH: I think the evidence is coming out anecdotally. I am not aware of any studies. The Society, when they did their submission to the Sentencing Council, did not refer to any. The Council in its report did not refer to any studies. I am not sure whether any submissions to that effect were made. Interestingly, one of the recommendations related to another problem with the abolition of sentence. The issue was: Do you impose certain exceptions to the abolition? You end up with a very long list of categories where sentences ought to be imposed, for example, for certain types of physical violence crimes and for persons who will not comply with community service orders or bonds. The list was growing as to whether there should be exceptions or not. As I said, the Society took the view that rather than go down that path, simply improve the range or the armoury that the courts have by way of sentencing so that they can tailor an appropriate sentence to fit the crime.

Ms PAYNE: One of the things they have got in the Kempsey area again are very innovative programs that could be extended into community-based sentencing. I have provided a paper that perhaps you can look at later about some of the options that have been trialled in those areas. They do require resourcing to a certain degree, but in community areas, in rural and remote areas, it is different in the sense that you have got a different set of things that you need to look at. The working together of departments in partnership arrangements seems to be effective in rural areas. It helps to keep the costs down and assists the resource issues. Some of these things are already provided. The thing that we are finding though is that there is no co-ordination, so perhaps that needs to be looked at and addressed. When something is set up it is hard for the person, because if they go to a different geographical area there is not necessarily something set up in that area that they can go on to. There are those sorts of issues. In that paper you will see some of the other innovative ways that Rob is suggesting that maybe are a better way to go, because they give options to the magistrates.

CHAIR: Are you offering to table this paper?

Ms PAYNE: I have tabled it.

The Hon. GREG DONNELLY: One of the witnesses today when talking about community-based sentences or orders explained a potential problem or difficulty in communities, in particular, in isolated or small rural and regional communities, where the community does not understand that the actual order is producing a just outcome in terms of

the person, shall we say, paying the price for their criminal act. He went on to explain that it was vitally important for these options to be successful in the context of restorative justice that the community needed to understand that the person was not getting off lightly, that in fact a real penalty was being paid. He went on to say that at the extreme end you could have examples like vigilantism towards an individual in a local community if it were not properly explained and communicated to the community that the person was serving a penalty for a criminal act. Firstly, do you share that view and whether that view would apply equally in regard to not just an isolated community but a bigger population centre, like a big city? Secondly, in terms of communicating to the community the idea of a community-based order, how do you believe that might be best achieved to develop the understanding amongst the community that such an order is, in fact, a penalty?

Mr TUMETH: I would certainly agree with you. As to the first part of the question, there is a perception. Once again it was commented upon by the Sentencing Council in their report when they considered home detention. In some circles it was thought of as being a soft option. However, the anecdotal evidence coming back from the persons who have been subjected to those orders and those responsible for the supervision of those orders was that it certainly was not a soft option at all. So from the person who is actually serving that form of punishment it is not as easy. The next part of your question is how do you get that across to the community. That is far more difficult, particularly where you have commentators in newsprint and radio who express their views as to the appropriateness of certain types of punishment. Those commentators usually have not had any actual experience with it. How you go about implementing an education program to the broader community I am not quite sure. It is a very difficult question.

If I could go slightly tangentially, if you look at an intervention program such as circle sentencing—which has now been implemented in a couple of centres, Nowra and Dubbo, and has been rolled out in a number of others—from the communities I represent that is being seen as a positive step. That is by both blacks and whites. It is not being seen as necessarily a soft option. There does not appear to be, at least at this stage, any criticism of that form of intervention. Everybody is hoping, I think at this stage, that it will be a success. It has proven to be a success in reducing of recidivism certainly in the Nowra and Dubbo areas where it has been rolled out for some time. I think the community is sick and tired of people reoffending and they want to see other things work. The harm, I think, is done by people in local newspapers or the media who really are not informed. I think the education process can really only be done by people who are involved in the system.

Ms PAYNE: In society there are two approaches you can use: the big stick approach or an approach that is often seen as the soft option. They have tried the big stick approach. It does not seem to be working. Communities are aware of that, especially in rural areas. Sometimes when we try these other innovative things in the Kempsey area, for instance, or the circle sentencing, the communities are realising that these options are maybe not so much soft options, that there are other means of obtaining the same end result in a more positive way for the offender. Those programs usually go hand in hand with community service organisations continuing ongoing education of the community and getting feedback from the community. So they have to all go together. I suppose in rural areas it is a lot easier to do those things. But it would not mean it is impossible to do it in a metropolitan area.

The Hon. GREG DONNELLY: With respect to Nowra and Dubbo and the circle sentencing you have mentioned, are you aware that there was a deliberate community campaign undertaken to explain to the broader community about the actual program and the desired outcome of the program?

Mr TUMETH: From what I have been told, there was to the extent that it received widespread local publicity. We are seeing that the program is to be shortly rolled out in

Armidale and already we have seen a number of media releases in the local newspapers supported by the local member and also photographs in the presence of the police and various Aboriginal members. So they are trying to publicise and get out there. The other area which I think needs also to be understood is the judiciary also needs to be educated as to what is or is not a soft option. If I could harken back once again to home detention. The number of persons serving custodial sentences is continuing to increase. In about May this year the average population was 9,093. The number of persons as at May of this year serving sentences by way of home detention was only 236.

The Hon. GREG DONNELLY: What report was that from?

Mr TUMETH: That is from statistics published by the Department of Corrective Services, to which the Law Society has access.

CHAIR: Yes, we have those.

Mr TUMETH: What we are seeing is an increasing number of people being sentenced to full-time custody but we are not seeing an increase in the number of persons being sentenced to home detention. That is a worrying statistic in itself.

CHAIR: On the issue of home detention, the Aboriginal persons out west actually informed us quite firmly that they did not want to be locked into their houses. So the Committee has been looking at the possibility of some adaptation of home detention in order to deliver for these people in relation to the community.

Mr TUMETH: Home detention is not available to all classes of offenders, for a start. There are a number of restrictions as to the types of crime that they have committed which bring them before the court or they have committed in the past. Domestic violence is one of those restrictions. It is acknowledged that it does not suit every person. For example, it does not necessarily suit people who have jobs, and that is one of the reasons that electronic monitoring was considered perhaps still a good way of keeping tabs on people but not quite as restrictive. Most people, however, if they have no-one to care for children or they are infirmed or something of that nature, if they are given the option of home detention or going to gaol full time, most of them say they prefer home detention. As I say, because they want to does not mean that they will be assessed as suitable. At the moment they cannot be assessed as suitable, whether they want to or whether they do not, because the resource is not there—

CHAIR: To deliver it, that is right.

The Hon. GREG DONNELLY: The court clinician that you referred to in the Kempsey program, is that person a judicial officer or a—

Ms PAYNE: He is from health. He is a psychiatric nurse.

CHAIR: They are psychiatric nurses employed by the court system itself. They are not health employees.

Ms PAYNE: And they just provide information on health issues and what is available. It has been addressed in that paper I have given you.

CHAIR: Concerning the paper you have given us, one of the papers has a list of names on it so when we make it public we will remove that page. We need to talk a bit about section 12 bonds. We have had discussions with Mr Babb from the Attorney General's

Department in relation to this issue and the rigidity of section 12 bonds. Did you want to add something to that?

Mr TUMETH: Just briefly. It is a real difficulty. As you are probably aware, if a person is sentenced to a section 12 bond, which is a suspended sentence, if they breach the bond by committing a further offence during that period of time they are liable to serve the entire period of the sentence—in other words, if they get a sentence of 12 months which is suspended, if they get through 11 months of that bond and then breach it by committing an offence at that time, then the court will, unless there are exceptional circumstances or the offence which commits the offence which is trivial, they will then go into custody for the 12-month period. There is a concern that a person can, as it were, comply with the order almost through its entirety but then if there is a breach towards the end of it they have to go into custody for the full period of time.

Another concern is with the way in which a sentence is structured, where courts are fixing non-parole and then parole periods. If the bond is breached, when the court is dealing with the breach they do not have the discretion to interfere with the non-parole and parole periods. Their hands are tied. In my submission it would be better if the court, when imposing a suspended sentence, did not fix a non-parole and parole periods. That way they could at least leave that up to the judge at the time of dealing with the breach to deal with it. There is also a different way in which the Commonwealth deals with suspended sentence matters as well. For example, they may impose a good behaviour bond—for say 18 months—but they will make it a condition that if the person breaches that bond they will serve a sentence of a fixed term of three, four, five or six months or whatever it is. In other words, the period of incarceration will not necessarily match the period of the bond.

Finally, another concern with a suspended sentence—and this is a matter for the education of the judiciary—is that courts sometimes will impose a longer suspended sentence period than they would if they were sentencing the person to full-time custody in the first place. It is not meant to be like that. They are meant to first fix how long the person should be in custody and then say whether they will suspend it or not. But I have seen examples of people getting extremely lengthy suspended sentences whereas we believe that if it was to be served full time it would be much shorter.

CHAIR: So it is the magistrate's perception of the severity.

Mr TUMETH: Yes.

CHAIR: In relation to the cycle of traffic-related fines growing into, growing into, growing into disqualified driving growing into gaol, do you have any suggestions?

Mr TUMETH: I think the Government must decide what it wants to achieve. If its objective is that it will have everybody driving who has a license, the path it has gone down clearly does not work. That is starkly demonstrated in rural and regional New South Wales because of a lack of public transport and also, in many cases, people not having jobs. What happens is you will have a person who is capable physically of driving—and it is surprising the number of people who will come under notice not for the manner of their driving but they will be picked up for an RVT or something like that. Courts traditionally have been disqualifying people and fining them. That in itself is not stopping people from driving. They are still doing it either because, first, they have no means of transport or, second, they do not have the money to use transport such as taxis or things of that nature. So they will still drive.

What happens of course is that the more disqualifications they build up as they are repeatedly caught, it greatly increases the risk of persons going to gaol for driving offences, and there is no segregation in gaol between a person who is there because of their five or six

driving while disqualifieds and the person who has been charged with very serious assault matters. So they are going into the general prison population. Some magistrates have been keen to adjourn matters to allow persons to try to get their drivers licence. The two problems that people face are the lack of numeracy and literacy skills when they come to do the written tests and they do not know where to go. There is nothing at the court or no information readily available to say, "If you want to get a drivers licence this is how you go about doing it and this is where you go".

They are reliant upon the particular solicitors or organisations that are representing them. The other problem is that when people have accumulated a series of fines, quite often traffic fines for not having licences in the past, the State Debt Recovery Office blocks the RTA from giving them a licence. So you end up with a vicious cycle. The more times you go to court, the more times you get fined, the less likely you are to be able to persuade the State Debt Recovery Office to lift its embargo on you applying for a licence.

CHAIR: So you perceive that the answer is for the Government to relook at the policy in relation to the whole system.

Mr TUMETH: Yes.

Ms PAYNE: In Kempsey they are addressing that issue through the Top program and they are also extending that. The court liaison officer, because a lot of the issues affect the indigenous community, what they are doing is addressing that with younger offenders as well.

CHAIR: The program in Kempsey about the roads is quite an old program, is it not?

Mr TUMETH: Yes.

Ms PAYNE: I just mention the Aboriginal Justice Plan, which I am sure you are all familiar with. It is probably very informative for a lot of things.

CHAIR: Do you want to table that for us?

Ms PAYNE: Yes, I am happy to do that.

(The witnesses withdrew)

(Short adjournment)

CHAIR: I would very much like to welcome you to the eighth public hearing of the Standing Committee on Law and Justice's inquiry into community-based sentencing options. We have broadcasting guidelines but as I keep saying, the media are busy elsewhere. If they turn up, the information is there and the secretariat will look after them. If you want any messages or documents delivered to the Committee, the secretariat will do that for you.

The Committee prefers to conduct its hearings in public. However, if you decide you would like something not to be published, the Committee will consider that and could agree with you. However, the Parliament can overturn that at any time. Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference.

BERNARD ARMSTRONG McKINNON, Social Worker and Muralappi Co-ordinator, the Settlement Neighbourhood Centre, 17 Edward Street, Darlington, affirmed and examined:

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

Mr McKINNON: Reasonably.

CHAIR: If you consider at any stage that certain evidence you wish to give or documents you wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. I would request that the response to questions taken on notice be forwarded to the secretariat by 27 September 2005.

Mr McKINNON: Yes.

CHAIR: Would you like to start by making a statement?

Mr McKINNON: Yes, I would like to make a short statement. The main name by which I am known is Barney McKinnon. I am a Biripi man from the mid North Coast of New South Wales. I hold a diploma of youth work from New South Wales TAFE and I am also studying for a bachelor of social work at Deakin University through the Geelong campus in Victoria.

My interest is in diversionary programs based on personal experience. I was a member of the stolen generation. I spent several months in boy's homes and correctional institutions of the Child Welfare Department of the 1970s for the heinous crime of being an uncontrollable child. To this day I have yet to have had someone explain to me legally what being uncontrollable actually is. Amongst the indigenous peoples of Australia there is a feeling that it does not matter what we do, we are not going to get justice. Indigenous males are incarcerated at the rate of 3,479 men per 100,000 head of population. For non-indigenous males the rate is 285 for the same number. For indigenous females it is 294 per 100,000 and for non-indigenous females it is 20.

I think I am preaching to the choir a little bit here, but that rings alarm bells like you would not believe. When you talk about justice, most of my indigenous friends will laugh at you. I do not use the term "justice" to most of the men I work with because for us it does not exist. I would just like to say one thing before I finish up. When TJ Hickey died, I was working with in the region of between 15 to 20 young indigenous people on the Block. All of those young people were related, either by blood or by tribal connection, to TJ Hickey. All

of those children were involved in the riot. All of those children were subsequently identified and charged.

Now, the court system applied the ruling that all of these children had to not be seen in the area of Redfern at all until their court cases. That immediately removed all of their support systems. Their parents live on the Block, their friends live on the Block, the boys and girls that they call cousin live on the Block. I lost 12 clients, eight of whom have entered the justice system and are going to remain in the justice system for a minimum, I would imagine of between 10 and 20 years, because that is what happens. They go into the justice system and 20 years later they stumble out the other side, completely and utterly shattered people. This happened within the last 12 months. The thrust of my work is to try to keep people from entering the justice system at all. I was given eight questions.

CHAIR: Which we will now go through, unless you want to make a statement about them?

Mr McKINNON: No, there is only one but I will wait until question No. 3 comes up.

The Hon. GREG DONNELLY: Can I ask a question of clarification with regard to something that was just said?

CHAIR: Yes.

The Hon. GREG DONNELLY: You mentioned blood or tribal connection. Forgive me for my ignorance, but is there a difference between the two and, if so, could you explain it please?

Mr McKINNON: Very much so. In European terms I would say blood is within three steps, right?

The Hon. GREG DONNELLY: Yes.

Mr McKINNON: And then beyond that it has to go tribal because then the actual blood relation thins out, but you are still family.

The Hon. GREG DONNELLY: Thank you, I understand now.

Mr McKINNON: In actual fact, it is very difficult sometimes to translate what we see as being relationships into European standards because quite often they do not mix. They come from a totally different concept.

CHAIR: You are a Biripi person from the Taree area?

Mr McKINNON: Yes.

CHAIR: Can you please outline the work of the Settlement in relation to community-based sentencing? Our terms of reference are about trying to get equity in community-based sentencing.

Mr McKINNON: I have three different areas under which I work. The first is that the Attorney General's Department has just started Aboriginal community justice committees. I am a foundation member of the Redfern-Waterloo Community Justice Committee, which I have extremely high hopes for. I am very, very passionate about it. I am hoping beyond hope that the actual outlines will come to fruition. At the moment I am in the

throws of developing a program, which is early intervention and mentoring, because I am of the belief that early intervention and mentoring will be part of community-based sentencing and I am hoping it will also stop the need for any sentencing period.

I also have a program in partnership with Newtown Probation and Parole called "Walking Together", which is a post-prison diversion program based on lifestyle. When the men are released from prison, they are assessed. If they have any chance of being successful, they are put into the program. Using indigenous principles we go through things like health, sexual health, drug and alcohol health, domestic violence, anger management, aggression management and knowledge of the justice system. We tie them in with education and employment. We help them navigate the Centrelink system. The program runs for 10 weeks. After that we assist and monitor, as is necessary.

CHAIR: It is a lot of work, thank you. I think you have actually answered the next question in some part. It relates to quantifying how many of your clients have been in contact with the criminal justice system and how they would, or could, benefit from being able to undertake sentences in the community?

Mr McKINNON: To quantify it, 95 per cent, 98 per cent plus. I will not go to 100 per cent because I am not exactly sure, but I would say it is quite easily 95 per cent plus. Some of my younger clients may have only just brushed the legal system—had a caution or maybe a couple of youth conferences, that style of thing—and then on the other end of the scale, one of my clients has spent 19 of the last 20 years in gaol. The longest sentence he has ever been sentenced to is three years, so the system has failed him consistently. He comes into gaol, he goes out again; he comes in, he goes out.

Everybody knows what the lad's problem is. He has the problem of substance abuse but there is nothing there for him. He comes back to the Block. Of course, one of his mates will say to him, "Brother, have some of this. It's lovely", so he does. He has all the intentions in the world of never going back to prison again but somebody says, "Brother, have a shot of this", so he does. The following day he thinks, "Oh, I'm hanging out", so he goes and robs somebody. Of course, they know who this lad is, so they go and pick him up and throw him back in.

Would these people have benefited? Yes. Not only would these people have benefited, their families would have benefited. I do not know whether anybody has said it yet, but if you sentence a man to prison, you also sentence his family to prison because a woman loses her husband and children lose their fathers. And they are the innocent people. They did not do anything wrong.

CHAIR: I recognise the amount of support that you are providing for this. What sort of support do you think the people of Sydney need so that more Aboriginal people could access community-based sentences rather than simply being sent to gaol? What proportion of Aboriginal people do you think receive community-based sentences such as bonds and work orders?

Mr McKINNON: A high proportion; I would say more than 50 per cent. The problem is that you can put someone on a community order or some sort of control order, but that is where it finishes. For example, they put someone on a bond. The magistrate says, "I am giving you a 12 months bond." Everybody bows and walks out, and the bloke wanders off. When he signs his bond papers, he is told, "Appear at Newtown Probation and Parole next Tuesday afternoon at 2 o'clock." He says, "Yes, sir." So he appears there, and he is told, "In that room. Urine sample. Back here. Out the door." The statutory requirements of that bond have just been met. There is absolutely and utterly nothing like, "How is your wife?" or "How is your baby?"

Half the time the parole officers do not even know that this guy has a family or that this woman has a baby—and they do not care. They do not ask, "Do you need help to get onto a methadone program?" That is not done. The statutory requirements are covered by a faceless bureaucracy. This is how my clients tell it to me: it is a faceless bureaucracy. Otherwise, they are railing against these people: "So and so has breached me for such and such." The idea seems to be to put them on a bond and then start breaching them as heavily and often as you possibly can so that at the end of the day we can put them into prison.

The Hon. AMANDA FAZIO: Have any of your clients ever received a home visit from a probation and parole officer?

Mr McKINNON: There is supposed to be a system of home visits. I cannot give you a quantity on the number of people who actually get home visits, but I know that home visits can quite often turn into a lifestyle investigation in the form of, "The conditions under which you are living are not suitable". This comes from a white, middle-aged, middle-class Australian who has absolutely no idea what it is like to be a third-generation welfare recipient with an education of a 10-year-old and an understanding of government systems of a two-year-old.

I am one of the very, very lucky ones: I am educated, and was educated as a child. The whole thrust of my professional life is to try to educate my people so that at least they have a chance at the end of the day. I could ask each Committee member, "What part has education played in your life?" I know exactly the answer I will get: "A huge part." That is the reason why I am here today. I am studying a Bachelor of Social Work. I am one of the most incredibly lucky people in the world: I am getting an education at public expense.

If I can teach a 16-year-old indigenous youth to read and write, if I can get them beyond being able to write their own name, I am doing well. And there are plenty of them. They have a system of rolling suspensions in school. A kid goes on suspension, they come off suspension, they go back to school for two days, and then they are back on suspension—with no education.

The Hon. GREG DONNELLY: In your opinion what diversionary options are most effective in keeping young people out of gaol and giving them the opportunity to lead law-abiding lifestyles? How could these options be tailored for the 18 to 25-year-old age group?

Mr McKINNON: For starters, we can will bring the age group forward to 12. If you aim a program at an 18-year-old who is already in the justice system, you have lost them. You must wait until they are 30 or 35. By the time they are 18, their lifestyle is so heavily involved in the justice system that you have absolutely no chance.

I believe I have a fairly powerful personality, but even I cannot get through to them. I wear the badges of that tribe—in other words I have been to prison, and I have been to prison for a long, long time—but even I cannot get through to them. I believe we have to start this with 12 to 14-year-olds, not 18 to 25-year-olds. At 18 to 25 years of age they are long gone. I have aimed this early intervention program at 12 to 15-year-olds. The idea is to try to steer them away from appearing in the justice system, using education and a modified, outward-bound experience, which is the outdoor life, and using culturally appropriate programming as well—in other words, taking them back into their culture by taking them into the physical side of their culture, teaching them what it is like to be an indigenous man, giving them something to be proud of.

I am hoping that I can educate these children to year 10 level. But if we wait until they are 18, you have just made your problem and your effort 10 times as bad. The speed at which these people harden up is incredible. To start with, they lose the fear factor, and they lose any of respect for the system very, very quickly. This is before they learn that there is a reason for law and the legal system. Before that, it is just "The local copper is just someone who is going to pinch me. He doesn't represent safety; he doesn't represent law and order."

You have to remember that there is one set of rules for an indigenous man and another set of rules for a white man. I will give you just one example. It is ordinary for a white man to drink a dozen bottles of wine a week, which is a huge amount of alcohol. But if a black man drinks a case of beer a day, he is an unreconstructed alcoholic.

The Hon. GREG DONNELLY: In whose eyes?

Mr McKINNON: In the ordinary Australian's eyes. The only way I can gauge public opinion in Australia is by using the media. From my own experience in Redfern, you can walk down any street in Redfern on recycling day and all you have to do is notice what is in the recycling bins. You have recycling bins that are full with three or four cases, and they are all full of wine bottles. So it is considered ordinary for someone to drink wine, but if you sit outside and drink beer, which is the indigenous way, that is wrong, and for that you can be pinched. Drinking per se is not illegal, but they will soon find something that is, and they will walk up to you and start niggling at you until you hark up at them, and then they will say, "Beauty. We've got you."

The Hon. GREG DONNELLY: You explained that you thought the age bracket 18 to 25 was too high. You also said that from your experience 35 or over might be another opportunity to deal with people, that a window of opportunity opens at that age. Is that what you said?

Mr McKINNON: In my experience, the progression is that you have a young bloke who starts getting into a little bit of trouble; he is a niggly little sod. Let us be blunt: all kids can be. They come into the justice system and then they graduate. There is almost an informal series of graduations. You go to court and get a youth conference. You then go and say to your mates, "I went for a youth conference yesterday, brother." They say, "What happened?" You say, "Nothing. They're weak." These are too young indigenous fellows talking on a street corner in Redfern. A couple of months later he goes to court again. His mates ask, "What did you get?" He says, "I got a two-year bond." The next time he says, "I got six months. But don't worry, all my cousins are in gaol too; they'll look after me." So he has graduated to the pinnacle. This is what they look up to, what they have to look forward to. They have the golden pass.

They then go through their twenties reoffending. Normally they end up in a relationship and have children, responsibilities they cannot deal with. They get to 30, 31 or 32 and they start to look at their life and think, "Where am I at? Where am I going?" This is where the Walking Together program comes into it. I have blokes on the Walking Together program who want to go to university. They got out of gaol six months ago and are asking me, "Barney, can you get me into uni? You are going to uni. Can you get me in?" I look at these lads and I think, "Why not?" They are not stupid. It is just that their lives have been sidetracked.

It takes 10 years before they grow out of that period of their life, and it is normally between 30 and 35. I do not know why it is that particular age group, because they are well into their adulthood. You would think that the risk-taking behaviour had finished and that they had entered the next stage of their life, but it seems to be between 30 and 35. Maybe it

is because their children are then entering their adolescence so they start to think, "I need to be there." I think health problems come into it as well.

Ms LEE RHIANNON: Thank you very much for what you are sharing with us; it is huge. How can TAFE courses be made more culturally appropriate to encourage the attendance of Aboriginal people?

Mr McKINNON: We could have classes outside. I am not joking. Indigenous people do not have houses. There are certain schools that are a little better than others. In the Riverina they have school—this is a conversation I had on an airline flight—where one of the teachers has got a lot of the indigenous students back at school by having her lessons sitting in the dust, using the dirt as a blackboard. The kids are so blown away by this teacher, who is willing to squat in the dirt like an indigenous man, that they are coming to school. These are kids who have had 30 days of school in five years of schooling. They could use indigenous teachers. The average indigenous person does not see one of their own people as a teacher.

The set-out of classrooms is not really conducive to indigenous learning. Indigenous learning is done in a circle; most classrooms are set out in five columns of six tables. It totally disconnects the people because we are used to learning in a circle. The elder sits there and you all have equal input into the lesson. These are the sorts of things. The other thing is that they could teach indigenous subjects or subjects from an indigenous perspective. I am not a teacher by profession and sometimes I really do stumble thinking about that particular question.

Ms LEE RHIANNON: Thank you. The Committee has heard that a client's previous conviction for a drive while disqualified offence may preclude them from being deemed eligible and/or suitable for a community sentence. Should the eligibility criteria for community-based sentences be amended to allow offenders with a prior drive while disqualified conviction to serve community sentences? What can be done to break the cycle of multiple charges, fines and long disqualified periods for licensing offences? We have heard from a number of people about incidents where particularly young boys ride their bike and get fines. The fines build up so they never go for their licence but just drive and often end up in gaol because of the accumulation of charges. I am interested in your comments about that.

Mr McKINNON: I do not really understand the emphasis on driving offences per se. To me, in the pantheon of criminal offences drive while disqualified is right down the bottom. Yet I have lads on my Walking Together program who have $10,000 and $15,000 worth of fines and are being chased by the Debt Recovery Office. They will never ever be able to pay those fines. Fair dinkum, most of them have an average disposable income of $20 a week after expenses. We have tried for the last 12 months. I have thought about this and thought about this and thought about this because I am trying to come to some sort of arrangement where we can try to service this debt and get these people licences. I am an ex truck driver, by the way, and my friends in the trucking industry say to me, "Barney, these lads of yours, do they come to work every morning?" And I say, "Yeah". They say, "Beauty, bring them out here and I'll give them a job". Several men—we are talking about men who run million-dollar businesses—have said that to me. But I cannot do it because I cannot get them a licence. Why? It is because they have got this thing from the Debt Recovery Office that says, "If you owe us money you can't possibly get a licence". The system breaks down at that point because if they cannot get a job how can they pay their fines? Do you see what I mean?

Ms LEE RHIANNON: Yes, totally. It sounds simple, does it not?

Mr McKINNON: I am sorry; I am not trying to be nasty, pedantic, sarcastic or anything. But it is fairly simple: If you hit a bloke with $10,000 worth of fines and you can stand there and look at him and know for a fact that he is not going to pay the fines or does not have the ability to pay the fines, where is the logic in that? All it means is, bang, another door closes. Each time a door closes—you close a door, you close a door, you close a door—what are you doing? You are pushing this bloke to the edge—right to the limit—and, all of a sudden, he does something that is beyond the pale. What does the legal system do then? It hands him a 25-year sentence—and another life is gone. Where did it start? It started because somebody did not have a piece of paper to drive a motor vehicle 10 years before. You can see the actual progression from that. Hang on a second, I am a law-abiding person; I realise that, yes, we must be licensed. There must be some sort of control over traffic in New South Wales. But we have got to find a different way of handling breaches of that system.

Ms LEE RHIANNON: Thank you.

The Hon. AMANDA FAZIO: We have heard from a lot of people in evidence at hearings like this and during community meetings that offenders with a low level of literacy who are put on a bond or told the requirements of the community service order that they have been given at the courthouse by the magistrate, the judge or the court official when they sign up for it that people just do not understand the requirements that are placed on them. We also heard from some of the legal services that we have spoken to that solicitors try to explain it to them but none of this seems to work for a range of reasons—perhaps the person is happy they are not going to gaol, they think they have had a bit of a win and they are elated so they do not listen, they do not have the capacity to comprehend what is told to them or, in some cases, people with a low level of literacy or an intellectual disability say, "Okay, yeah, yeah" but it does not sink in. What do you think we can do to try to make sure that these people are sat down by somebody somewhere to have their requirements explained to them so that they are not set up to fail from the outset?

Mr McKINNON: The easiest way I can think of is to have somebody there whose job it is to explain in terms that people can understand, whether they have a low level of literacy, a mental health problem or, as you say, are just so emotionally charged that they will not take in any information anyway. Design a folder—a fairly simple folder—or maybe have a person sit there and have these people fill out a form that says, "Yes, I understand". Have you ever been in a Magistrate's Court?

The Hon. AMANDA FAZIO: Yes.

Mr McKINNON: The level is—this is the Children's Court at Bidura—"Yes, Your Honour, mumble, mumble, mumble. Yes, Your Honour". These are the solicitors. I listen because I am there as a support person. They talk to the microphones. They do not talk to the room; they talk only so what they say can be recorded. All of a sudden, the magistrate will bang the desk and the case will be over. Even I sit there thinking, "What just happened?" and I am an experienced, educated man. A young person aged 15, 16 or 17 years will be sitting there absolutely and utterly terrified. I mean it; it is white-knuckle business. The day that I was sentenced to 12 years penal servitude I had to wait two hours before I realised that my sentence was 12 years. I had to ask my father what my sentence was. I did not hear it; I was too terrified.

The legal system is totally and utterly adversarial. You cannot convince me of anything else; it is me against you. When you read your court papers they say, "Bernard Armstrong McKinnon v. the State of New South Wales"—in other words, me versus the State. These kids go into court; they have no education and no knowledge of the legal system. They have a Legal Aid lawyer who has 17 cases on that day and 30 cases on his books and who knows that tomorrow more will come in. I have had them say to me,

"Barney, can you explain what is going on? I'm out of here" and everybody disappears. I am left holding bail papers and saying, "Listen, young Tom, you're in real bad trouble, mate. You know that you've got to stay with your mum?" I read through it but somebody should be there—a support, court-appointed person—to say, "You've got to go and stay with your Aunt Mabel. You know that. You're not allowed out after 6 o'clock at night. You understand that". They should go through it point by point and make sure—again, I am not trying to be sarcastic—that the light of knowledge lights up in their eyes.

When you are talking to them a lot of them—especially young people—will go into submission pose. When their head goes down their brains switch off because they are ashamed—especially in front of a person like me. They do not want me ripping off their head because they have just got into trouble. Down goes their head because I am "Uncle". I have to try to explain it to them. But this is the problem. The court is not interested in whether or not they know. When the magistrate bangs the desk he is finished with them.

The Hon. AMANDA FAZIO: One of the other things we have heard repeatedly is that people go back to their local communities after they have been in gaol for a while and revert to the behaviour that led them to offend in the first place because the problems they faced in the local community have not been addressed. Are you aware of any particularly innovative community development work undertaken to help address the social causes of crime? Do you have any suggestions about what we might be able to do?

Mr McKINNON: This is what Walking Together tries to do: We try to give them options. We try to put them into education. We try to improve their health and social skills. We try to improve their family social conditions. You say "reverting to the behaviour that led them to offend previously". The Block is a huge example. I might a little bit sarcastic here. There are 14,000 police in New South Wales and you are trying to tell me that 14,000 men cannot clear the drug dealers off the Block? I am really, really upset about this. It was not all that long ago that I walked through the Block and saw someone lying there in public dead with a needle hanging out of their arm. In the last five years my good friend who is sitting in the public gallery personally knows of 46 deaths—preventable deaths. This is the sort of thing that we are talking about. Everybody uses that area and the people who live in it as a whipping boy. But where are the efforts to help those people? All we are asking for is that the drug dealing be cleaned up. If you can clean up the drug dealing we will take over; we will handle the rest of it. What we cannot handle is having to bury a couple of our people every year because it just fractures us and keeps us fractured forever.

The Hon. GREG DONNELLY: Just on that point, to help me understand this, if a serious police presence was assigned to the Block, either overt or covert, to try to tackle these drug dealers, would that not create a reaction against the police?

Mr McKINNON: Well, we should take away the combat patrols—and I am talking about the policemen who walk down the Block four abreast, wearing paratroopers' boots and combat trousers with 15 kg of combat equipment around their waists, verbally abusing everyone with a black face—and replace them with people who have a genuine desire to fix up the drug problem. I can tell you this much, the Aborigines do not produce the heroin, speed or cocaine that they use; it must come from somewhere else. It comes in huge gobs, day in and day out and I fail to understand why, with the huge police intelligence apparatus, they have not got on top of the problem. It is an area of 7 acres; it is not a very big area.

CHAIR: Thank you very much for coming to speak to us today. You have given us a lot of very important information.

Mr McKINNON: I appreciate the opportunity. I think it is an honour to appear before this Committee. Thank you.

(The witness withdrew)

CHAIR: I do not propose to restate my opening remarks in detail; I will abbreviate them considerably. We have no media present but media guidelines are available on the table by the door and the Committee secretariat will ensure that any members of the media who attend today's hearing are aware of them. The secretariat will also take charge of any messages or documents you may want to tender to the Committee. The Committee prefers to conduct its hearings in public but the Committee may decide to hear certain evidence in private. However, the Committee or Parliament may decide to publish that evidence at a later date. Committee hearings are not intended to provide a forum for people to make adverts reflections on others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore ask that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference. Mobile phones have to be turned off, including the silent phase, because they interfere with the recording mechanism.

ANNE THERESE MEAGHER, Regional Director, Northern Region, Department of Juvenile Justice, 4/124 Woodlark Street, Lismore, sworn and examined:

CHAIR: In what capacity due appear before the committee, that is, as an individual or as a representative of an organisation?

Ms MEAGHER: I am appearing as representative of the Department of Juvenile Justice.

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

Ms MEAGHER: I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents that you may wish to tender should be heard or seen only by the Committee please indicate that fact and the Committee will consider your request. If you take any questions on notice I would appreciate the answers by 27 September next. Would you like to begin by making a brief statement?

Ms MEAGHER: I will. Thank you for allowing the Department of Juvenile Justice an opportunity to clarify issues concerning the New England Bail Accommodation and Support Program. As regional director I have a comprehensive knowledge of the service. I was involved in comprehensive consultations that occurred prior to the service being established. I was involved during the establishment phase, and indeed up to its closure in May 2005. It is important to note that the service was viewed by the department as a pilot, as the first rural pilot in fact, and it was the intention of the department to evaluate the service. In fact, just prior to the closure in May this year we were planning a formal evaluation of the service at Tingha and the service in Sydney, called Ja-Biah.

New England was selected for the pilot and extensive consultation occurred with service providers and agencies in New England prior to its establishment. The Tingha service opened in October 2003 and closed in May 2005. The closure was due to advice from the contracted service provider that the program was unsustainable in its current configuration and could not continue to operate within the 2004-05 funding allocation.

Since the closure of the bail hostel, young people on bail in New England have been successfully placed in a range of supported accommodation, brokered primarily through the Armidale and Tamworth youth refuges. These young people have also benefited from complementary day programs that have been established, programs such as: Independent

living skills, budgeting, tenancy advice, general support—such as negotiating Centrelink entitlements—and so forth. The department is proposing to formalise these arrangements through a formal memorandum of understanding with the two refuges involved.

I would like to talk briefly about the 18 months of operation of the Tingha bail hostel. During that 18-month period we accommodated 33 young people in total. Of those young people, 26 or 77 per cent received a community-based order—that is, they were not incarcerated. Almost 30 per cent of clients did not enter custody at all. In fact, in the best case scenario the young person would have been in police custody, the Aboriginal Legal Service would have been involved, there would have been a referral to the bail hostel and that young person would not have spent any time incarcerated in a Juvenile Justice centre. Over 50 per cent of clients of the bail hostel had no prior involvement with the department. I think from those basic statistics that we can state quite confidently that the bail hostel was a success. That is my presentation.

CHAIR: As I mentioned I will not go on through all of these questions in detail. I will throw it open to questions, particularly from Ms Lee Rhiannon who was present when people from the hostel appeared before the Committee. There may be some specific issues she you would like to cover in relation to this matter.

Ms LEE RHIANNON: I feel we have the background for our terms of reference at this stage.

CHAIR: This is somewhat outside our terms of reference, but there was a considerable presentation about this to the Committee. I would just seek your comments. During our discussions with communities about their views relating to the Tingha bail hostel a gentleman informed us, quite angrily, that, "they knew nothing about Aboriginal people".

Ms MEAGHER: There were extensive consultations across the New England region with a diverse range of stakeholders—government and community—and it would be true to say that Aboriginal organisations were in fact well represented during those consultations. Agencies such as land councils, legal services, medical services, community development employment programs, housing officers etc were all represented during the consultations. Group information sessions were held in the major population centres at Armidale, Inverell and Tamworth. These were attended by 44 agencies. A discussion paper was developed and provided to participants. Feedback sheets were also provided to persons who attended those forums and those interviewed by Juvenile Justice staff.

In terms of the actual process of selection of the successful tenderer, one of four persons on a selection panel was an Aboriginal resident of the New England region. Also, the funding agreement that the department has with any of its agencies that receive community funding spells out our respective obligations. The particular funding agreement included a number of specific conditions. One was that 50 per cent of staff employed be indigenous. There was also a condition that an Aboriginal participation and outcome plan be developed. That included the establishment of an Aboriginal bail hostel advisory committee. That committee was required to meet at least quarterly and to provide support and consultation to the service, and to provide input into the programs that would occur at the bail hostel.

The manager of the service was also required to reply to requests from the department for information regarding the functions of the advisory committee, the number of Aboriginal clients, specific Aboriginal programs implemented and any external Aboriginal agencies involved. Also, at the same time that we established the bail hostel we employed and Aboriginal program support officer within Juvenile Justice and this person's primary role was to act as a conduit or liaison between the service and the department. This was an

Aboriginal person located at Glen Innes, approximately 50 minutes drive from Tingha. During the first three months of operation that person would have met with the agency at least weekly.

CHAIR: There is another issue directly related to the Committee's terms of reference, probably not a departmental issue but issue in relation to your experience. One of the problems related to ensuring that community-based sentencing is available for many other people in the community is that many are homeless or their home situations are not satisfactory. We have been toying with the idea of looking further into hostel-type situations for these persons. What is your view about that?

Ms MEAGHER: The New England service at Tingha was based on a hostel-type situation-.

CHAIR: This is totally personal, but a number of Committee members and agreed with this. We felt that there were an awful lot of guards for an individual. We believe, from one person's description, that it was a very restrictive environment rather than a home.

Ms MEAGHER: It was a home. It was a normal residential farmhouse set on an acreage. It was a very open-plan house with verandas all around so it felt good, it felt homey. In fact, the only institutional sort of nature of the setting was in fact that there was supervision 24 hours seven days a week, and that was certainly part of what was proposed in setting up the bail hostel, because there were clearly concerns that we had to address in terms of public safety and also in terms of trying to ensure that those young people meet their bail conditions, and some bail conditions were quite strict, which might have been to reside within the bail hostel.

CHAIR: Back to the question in relation to whether or not you think it would be feasible for us to think about these hostel sorts of situations for persons, perhaps even a system to deliver on their work orders?

Ms MEAGHER: I think there is considerable merit in looking at the hostel-type model. Initially, a house-parent model was implemented by the service provider in the case of the Tingha operation. That was abandoned quite early on. In fact, there was only one dwelling on site and it was a logistical problem because the house parents could not vacate to another dwelling, so you had tensions between the rostered youth officers and the house parents and the house parents never got to leave, which meant they were literally working 24 hours a day. So in fact it then moved from that model to a rostered shift arrangement and that proved quite satisfactory.

It is probably important to note that a family-type model may not always be conducive to a young person whose experience of family has not been a positive one, whose experience of family has in fact been one of dysfunction, abuse and neglect. So I think that is probably important to note. I think that the department is mindful that rarely is it a one-size-fits-all. So what we really need to look at is a degree of flexibility in brokering services so that we can provide for the particular needs of a young person and be more responsive to those needs. I think for some young people a hostel situation will be ideal. I think for very young people perhaps a family-orientated type arrangement would suit, but it will very much depend on the individual.

CHAIR: How are you people coping with the loss of this organisation?

Ms MEAGHER: We have put in place brokerage arrangements with the refuges at Armidale and Tamworth and that provides us with a little bit more flexibility than we had in

the bail hostel, and it also provides us with two locations or options as opposed to one regional facility.

CHAIR: We were told that the reason these people pulled out is because they did not have enough money to run it.

Ms MEAGHER: Yes. They indicated that it was not sustainable under the current model. The department's view was that in fact it was and that the department had been providing substantially more funding to the New England service than had been provided to Ja-Biah, which is the metropolitan-based service. I think it is important to note that whilst the Tingha service was based on the metropolitan model our earlier consultations in the region suggested that we would really have to adapt that metropolitan model, that it was not a question of transferring one model to a rural setting. In fact, we did a number of things to adapt the model. One of those was to actually look at the employment of a family worker.

So as a regional service we realised that we were potentially attracting young people from Moree, from Gunnedah, from Tamworth, from Tenterfield, et cetera, who would all be coming to Tingha to be accommodated in this bail hostel. The family worker's role was to create those links back in communities, so we had a transitional process where young people would spend some time with us in the bail hostel, but then there would be those connections back to community. We also provided additional funding to Tingha; we provided a one-off grant of $70,000 when they first established the service. In the two years that they did operate, to give you some comparison, in 2003-04 the annual funding was provided of $497,000 to Tingha, compared with Ja-Biah, which was $374,000. So well over $100,000 in excess of the metropolitan model.

Again, in the following year Tingha received $509,000—nearly $510,000; Ja-Biah received $384,000. So in fact the difference in terms of dollars between the two services over the two years was $230,000 almost.

CHAIR: I do not need a formal answer to this. It says "anecdotally" here, but it is not anecdotal, I happen to know that there was a huge fuss when you tried to put the hostel into Inverell. What sorts of strategies have you people developed to set up services like that in the future in that sort of town?

Ms MEAGHER: I think certainly we have learnt a lot from our experience in New England. I think it says a lot about community perceptions of youth crime and the community's willingness to be a part of the solution rather than the problem. They are really influential factors in whether a committee is going to be supportive of community-based sentencing options or bail options. I think community perceptions are frequently based on irrational fears, and certainly that is the comment I would make specifically in Inverell—poor information and education basically. I think timely information and education is really the key. Now that is very simple to say but I guess we used a number of strategies in setting up the bail hostel.

One of the influential factors was sending people who were rather cautious about this notion to visit the Ja-Biah hostel in Sydney. In fact, Inverell Shire Council sent a deputation and there was a dramatic change of heart and there was an in-principle decision following their visit to Ja-Biah to indeed support the New England program. Again, there was resistance from police and again police were invited to visit the Ja-Biah program and to learn firsthand. So if you have a model that is operating successfully elsewhere that is clearly going to assist you in presenting your case.

We had a public information evening. It was attended by over 70 people; it was sort of standing room only in the gallery at the council chambers, and there was a panel of

people, including myself and the manager of Ja-Biah, who attended. I think that was quite good. That was part of the initial development application processes within council and I think that was quite constructive; it kind of dispelled a lot of those rumours and fears. When we actually selected the Tingha property the good old door-to-door knocking worked, so we approached the neighbours and on a one-to-one basis just sat down with them and explained what was happening and invited their questions, et cetera.

Finally, when we did open it the Minister at that time, Diane Beamer, made a public invitation for people to attend; so we had open house and people did attend and we involved the Aboriginal community at that stage and the Community Development Employment Program did the catering on that day, et cetera. So utilising every opportunity you can to engage those local agencies, et cetera, I think is essential. But I think it is the timeliness of information and it is getting in quick and correcting those views that may not bear truth.

CHAIR: I believe the Committee feels that it has answers to that issue as much as you could give them from your perspective and you have assisted us with our terms of reference. I thank you very much for coming.

(The witness withdrew)

(Luncheon adjournment)

CHAIR: Welcome to the eighth public hearing of the Standing Committee on Law and Justice inquiry into community-based sentencing options. Before we commence, I would like to make some comments about aspects of the hearing. Although there are no media present, because they are too busy, information on our broadcasting guidelines is available at the table by the door. The secretariat will deliver any messages or documents that are to be tendered to the Committee. The Committee prefers to conduct its hearings in public. If a request is made to the Committee for in camera deliberations we will make a decision whether to do so. The Parliament can overturn our decision and make the evidence public. Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during its hearings. I therefore request that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference. I ask that everyone turn off their mobile phones, including the silencing device as it interferes with recording equipment.

GARY MICHAEL MOORE, Director, Council of Social Services of New South Wales, 66 Albion Street, Surry Hills, and

WARREN JOHN GARDINER, Senior Policy Officer, Council of Social Services of New South Wales, 66 Albion Street, Surry Hills, affirmed and examined:

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

Mr MOORE: As a representative of the organisation.

Mr GARDINER: As a representative of the organisation.

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

Mr MOORE: Yes.

Mr GARDINER: I am, yes.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice I would appreciate it if the response to those questions were forwarded to the secretariat by Tuesday 27 September 2005. The terms of reference were given to us some time ago. We have extended the reporting time, not because of any tardiness on our behalf but because the complexity of the terms of reference has become more apparent. The evidence you bring before us today will be very important to the outcome. Would you like to begin by making a short statement?

Mr MOORE: We may not to do that in terms of the time we have got and the opportunity to answer the long list of questions you have sent to us. You have our submission and the thrust is what is in there.

CHAIR: Would you outline the role of the Council of Social Services of New South Wales [NCOSS] in relation to community-based sentencing or how you would perceive it?

Mr MOORE: Firstly, the organisation is not a direct participant as such in the justice system. Our membership includes a broad range of organisations that are engaged in

the justice system, which includes community legal centres, providers of post-release services and services for disadvantaged groups such as people with disabilities, homeless people, indigenous people and people with drug and alcohol and mental health issues. NCOSS has had a long history of participation in community debates about law and justice in general.

CHAIR: What do you feel is the impact of social disadvantage on a person receiving a community-based sentence?

Mr MOORE: In trying to answer this question we were a bit unclear about what was coming first, given the fact that many people within the corrections system in New South Wales are significantly socially and economically disadvantaged in their own right. We were thinking about examples, particularly in rural and regional areas where there are very few periodic detention facilities, for example. There are really only a handful of them in non-metropolitan areas. Therefore, with the long distances that people have to travel we all know the access and cost issues involved with that, particularly once again if it tends to be a significant number of people on low incomes. Of course, in that circumstance it assumes that they will drive to the centres, which is not always the case. They risk imprisonment if they miss the attendance. That was one very obvious example to us as far as a rural and regional situation occurs.

CHAIR: When we have been travelling around doing the consultations, we have learnt that much of the criteria for magistrates—and generally the matters are dealt with in the local court—to make a decision are based on social stability. Do you have any ideas on processes that would increase social stability in the small towns?

Mr MOORE: At the broadest level one of the key issues is about trying to have enough employment opportunities. There are a range of things that go to the prevention of crime or the prevention of some of the things we are talking about: having available job opportunities, having the right mix and range of human services. Increasingly, perhaps not so much in small towns but in a number of regional cities in New South Wales, we are seeing a greater lack of affordable housing. Those types of things are part of what we would suggest go to make a more socially cohesive community. Certainly the levels of income support payable by the Commonwealth compared to the cost of living remain a significant mismatch. That, in our view, tends to be growing, particularly for those not so much on a pension but on other forms of benefits.

We would see, and a lot of our member agencies would see, the sorts of structural changes taking place in rural New South Wales, the demographic move of people to the coast, the loss of opportunities in some of the hinterland towns around the major centres. Those types of issues are significant if they are not properly addressed. They lead to unstable communities and dysfunctional families. In Indigenous communities, everyone here would know the relationship of poor health, poor employment, just about every indice that you can think of in a socioeconomic way, that Indigenous people figure much higher than the general average. In relation to that, the sorts of policies that various groups use under the two-hands-together approach in New South Wales, hopefully there may be some benefits in Indigenous communities out of that over a number of years.

To get back to your point, it is the mixture of economic and social factors that lead to social instability. So coming back the other way, besides having good-quality services and better post-release programs, particularly for people coming out of correctional facilities, the real issue is about getting those other ingredients to prevent social instability much better in place.

The Hon. GREG DONNELLY: Can you provide to us, from your experience and insights, some detail on the impact of social disadvantage on a person receiving a community-based sentence?

Mr MOORE: I guess a couple of our comments here would be that in relation to indigenous offenders there is some specific importance about cultural issues and the way in which people's lives are effected within family and clan by community sentencing options or by any sentencing options. That is one of the areas that needs to be critically looked at and in part is being critically looked at. In terms of people with intellectual disabilities, things such as natural understanding of rights and obligations in relation to sentencing and community sentencing options, those types of things have certainly been said to us by some of the disability advocacy groups, and I am sure you have probably heard from others before this inquiry in terms of some of the linkages between disability and imprisonment and some of the options that some of those groups are proposing.

The Hon. AMANDA FAZIO: Earlier in the inquiry we had a nice little presentation from Centrelink about what it does in terms of helping ex prisoners. They told us that people who go in for weekend detention get two days docked out of their benefits. I think that was the first we had heard of it. Do you have any background as to how that came about? At the time it happened was any rationale given for why this was a good idea?

Mr MOORE: Our answer is no, we cannot give you that detail. It sounds like a terribly misguided effort at going about failing a work test or unavailability for employment would be my guess as to part of the rationalisation.

The Hon. AMANDA FAZIO: I do not know whether they thought the State is looking after them for the weekend so the Commonwealth should not pay them.

Mr MOORE: It is the most interesting cost shift that one could possibly see. I can undertake to try, from NCOSS, to get you some information about that.

The Hon. AMANDA FAZIO: That would be very good because I do not think it is something we can ignore when we are looking at things that have been raised with us. Another issue raised with us, particularly in relation to Aboriginal communities in remote areas, is to do with housing. You said there is a lack of affordable housing but often within Aboriginal communities people do not have a regular place of abode. What impact does that have, from your understanding, on people who are either trying to get bail or who otherwise might be considered for a community service order or something like that if they do not have regular housing?

Mr GARDINER: Certainly in relation to bail, one of the explicit criteria that is supposed to be considered in a bail application is that the person has a stable place of residence, so homeless people are automatically off on the wrong foot about that. This is a matter that has been canvassed quite a long time. Certainly within our sector there are interesting concepts like bail houses to address the concept that people could be—remanded is not the right word but they could be given bail on the condition that they agree to reside at an approved bail house. This happens quite frequently in the United Kingdom; there is a whole network of bail houses. Without stating the bleeding obvious, some of the disadvantaged groups you are talking about in your terms of reference, the risk that those sort of people are exposed to by being placed in the adult prison system on remand is very well documented.

We are talking about the under 25s, people with intellectual disabilities and indigenous people who are at a very great risk of coming to harm within their period of being placed on remand in advance of being found guilty or otherwise of the offence. At the

moment we understand that it is a bit of a lottery to get some spots. Guthrie House for Women will take some people on bail but that is very difficult to access. We are only aware of one homeless service for men that will take people on bail, and again that is subject to its other capacity. So certainly this is a matter over some time that the sector has been trying to encourage the State Government perhaps to have a pilot, this sort of model, to see if that could reduce the incidence of people being placed on remand in avoidable circumstances. Obviously the other advantage about that in terms of some of the groups we are talking about is that people can also be engaging in treatment programs and so on about substance abuse or other issues that might be happening in their lives while they are in the bail house. The prospect of that happening in a positive way is far better than it would be in a remand prison.

Ms LEE RHIANNON: We know that women miss out quite often. With regard to services for them, what you think could be done to make periodic detention more accessible for women offenders?

Mr MOORE: We have looked at this issue, particularly when you look at rural and remote areas and lower income groups amongst women, we know we only have four or five SAAP facilities in western New South Wales so in terms of the capacity for people to travel and stay near the facility using some other community supports, they are just not available and what is there has extensive waiting lists, particularly for women fleeing from domestic violence, et cetera.

Ms LEE RHIANNON: Do you mean that travel is expensive?

Mr MOORE: And once they get there, there is no place necessarily for them to stay if they are on a lower income, et cetera. The existing supported housing system—and women's services in that regard, by and large, are totally focused around immediate issues, particularly women fleeing from domestic and family violence situations. So there is some argument about capacity within the existing SAAP system to assist women in that regard that we simply do not have. Whether or not the pittance of money that the Commonwealth is giving under SAAP 5 for innovation could find its way into this area is hard to know.

We have not got a lot of evidence about this, but given that we only spend $2.5 million on post-release programs out of Corrective Services, notwithstanding the probation parole budget, but anything else special, we would have thought that if community-based agencies were funded as brokers with a package of funds to assist, particularly in regional areas, you could actually do something about transport, accommodation and support vis-à-vis women getting to and from the periodic detention facility.

The other side of the question is that beyond periodic detention, what else could you do within where people live and what other form of community sentencing and community service orders should we be looking at? From our limited perspective on this, it just seems that we have a very narrow system that does not deal or offer support to that particular group in any meaningful sort of way.

Ms LEE RHIANNON: Have you a feel for which part of community sentencing might work most readily for women. Obviously, there is this question mark over home detention and there are difficulties with periodic detention particularly for people out of town. Is there anything that might work better than others?

Mr MOORE: Arguably things such as community service orders and bonds and for drugs and alcohol, the more intensive assistance programs that relate to the Drugs Court, but I do not think we have enough capacity and knowledge to suggest the magic bullets.

Ms LEE RHIANNON: It seems that not much work has been done in this area in terms of identifying the special difficulties women might face?

Mr MOORE: I think that is fair comment. Certainly, we are not aware, from our constituency, of a lot of work being done, no.

The Hon. AMANDA FAZIO: I have been told, perhaps it was in Armidale, and am not sure whether it is just for the Aboriginal community but they provide childcare for women who have to undertake compulsory treatment. They have been given a community service order and part of it is to obtain drugs and alcohol treatment. In those circumstances they provide childcare while they are attending those sessions. Yes. Do you think we ought to encourage more of those flexible arrangements to facilitate women being able to stay with their children while they are still being given "punishment" for whatever they have done?

Mr MOORE: That is very much an area that should be looked at. It relates to the notion of a brokerage arrangement of services, with pools of money for non-government agencies to get funding that particularly the post-release area could use much more flexibly. In that case you could "purchase" childcare places, if you like, specifically for that group. Often the problem with this is that the other non-specific correctional services part of the human services system gets us to do the work without the resources following and then you get into this competition between client groups because there has been no specific dedication of additional resources or thinking about the referral patterns—where the clients come from.

CHAIR: In relation to your suggestion about a brokerage proposal for support, as we travelled we found that there is nothing to broker for. Smaller towns in particular may only have resources for mental health or drug and alcohol matters visit town once a month. We did a lot of facilitation with community groups to try to work out, amongst themselves, what sorts of resources would best help them pull together, particularly out west. Many communities felt there was little or nothing that could come forward to assist them and the small group of people who were coping in this decreasing base felt put upon that we were suggesting they may need to cope with some more and that maybe it was easier to lock them up. I know is not a solution; it is a destructive thing.

Mr GARDINER: No doubt what you are saying about access to mental health services and substance abuse services is true in that they are very thin on the ground in rural areas. We were more thinking about areas where there is infrastructure, such as supported accommodation under SAAP services and things like that. The difficulty we hear a lot from the sector is that there are various cross-program agendas underway—Partnerships Against Homelessness and Joint Guarantee of Service, People with Mental Illness and things like that—that State agencies often get together and develop a protocol or undertaking about how people can get co-ordinated services but that is not accompanied by extra resources or ways of reconfiguring the system.

They then say to the refuges and supported accommodation services, "Well, we have made these undertakings on your behalf". We know there are not enough beds and we need more money under SAAP 5 from the Commonwealth; all those things are quite accepted. There is infrastructure there but those services are not in a position to undertake to provide ongoing support for people. In the Corrective Services portfolio, if post-release or alternatives-to-imprisonment sorts of services were boosted, there would be capacity to contract.

If a refuge or a SAAP service could agree to house someone and attend to that important part of their needs—and that can be on a medium-term basis—Corrective Services-funded non-government organisations could contribute by working with them about correctional-related issues that are happening in their life. What we worry about is just sort

of saying, "Okay, we will place someone in a SAAP service" and the SAAP service is expected to deal with the whole gamut of this person's problems and they just do not have the capacity to do that. Everyone agrees about a client centre, integrated services, case management and all these sorts of things but where you get the resources to actually put those things together is where a lot of things fall down.

We are aware that Corrective Services is part of the Partnership Against Homelessness, which is a very well-motivated thing, but from our sector's point of view it operates like a bit of a closed shop. The non-government system is not a formal part of the partnership. It is not involved in monitoring. We have been talking with our member agencies, which are involved in direct homelessness services, trying to get a foot in the door. It is good that the chief executives of the various agencies are getting together about that, but it will not work unless the dialogue is extended out to the non-government services.

Corrective Services directly provides probation and parole but with the rest, we are talking about things that non-government agencies are expected to do and we need some mechanism by which there is dialogue, talking about these sorts of things and how some of these things could be made to work. If you can help someone with their homelessness and housing-type needs, how do you work through other things? If they need access to treatment about substance abuse, mental health and other things in their lives, that cannot all be provided by the housing service.

CHAIR: This is only on the edge of our terms of reference but it is about some of the disadvantaged people getting extra access. Do you think it would be a good idea for you to have representation at the regional level?

Mr MOORE: The regional co-ordination management groups of a State agency?

CHAIR: Yes. Would your organisations at a regional level be able to put forward someone who was truly representative?

Mr GARDINER: Of course. I mentioned SAAP services but this is not the only thing.

CHAIR: Yes, I know. That is why I asked the question.

Mr GARDINER: They have networks that meet regularly. It is quite easy in those situations. Recently I was down in Wagga Wagga, to the Riverina network. All the SAAP services in the area meet every couple of months with the encouragement of DOCS, so it is quite easy in that situation for them to elect amongst themselves one person and get feedback. They have very good communication amongst themselves. The difficulty is not between them; it is connecting with the other parts of the system.

Mr MOORE: In the Northern Rivers and the Illawarra—it is only just happened in the past couple of months—there are now regional peak bodies, a bit like a mini-NCOSS but at the regional level. Finally, the State Government co-ordinating facility has a human services cluster, of which Corrective Services is part and finally those regional bodies in our sector have a seat sitting with the State government agencies. It will be interesting to see what difference that actually makes in a year or two, but at least they are sitting at the same table talking about better approaches to service alignment. But can I just come back to your other point about mental health. There is little doubt that the services, particularly west of the divide but also rural parts of the coast, on a per capita basis are not there.

It is important what the Government has been doing in terms of acute beds in public hospitals, but for this group of people we are talking about it throws up a lack of community-

based mental health services and the fact that we have so much deficit in that area. So it is both a quantum question generally within the State and a distribution question across the State. That must be one of the highest priorities. Along with the substance abuse and drug and alcohol services, mental health services simply must be there, but they are not. It points not to the acute beds in public hospitals but to the community-based teams available on the ground.

CHAIR: But the money is available for those services?

Mr MOORE: No. The money that the Government has been spending on growing the mental health system in the past three years has largely been about additional beds in hospitals; it has not been about community-based mental health services. Particularly for people coming in and out of the correctional system, they are the sorts of practitioners that are required on the ground to be able to fill in the supports, along with the other things we have been talking about.

The Hon. GREG DONNELLY: I understand that the Commonwealth Government is presently putting forward a large amount of funding to deal with mediation and conciliation with respect to people contemplating divorce. As we have heard over the last few days, there are many examples of young people suffering disadvantage as a result of that breakdown of the family. To your knowledge, has consideration been given to how that Government initiative will combine with the human services that are operated by the States?

Mr MOORE: I cannot give you an answer to that because I am not privy to those discussions. My suspicion is that there has probably been little discussion about that matter. There are 220 family support services in New South Wales which the New South Wales Government provides assistance to.

The Hon. GREG DONNELLY: They are State-funded services?

Mr MOORE: They are State-funded services run by not-for-profit organisations. In addition, currently there is also the roll-out of many other programs, including Families First and the DOCS Early Intervention Program. Without wanting to be too political about it, it is reasonably obvious with regard to value adding that you would want to have some alignment of these things. You would have to ask the Department of Community Services or the Attorney General's Department about whether there has been any officer-to-officer discussion.

That is not to say what the Federal Department of Family and Community Services funds, of course. There has also been limited discussion at the front end with its State counterpart in New South Wales to better align that activity. Because family support services, in particular, are in so many local communities, they do offer a basis of expansion and enhancement.

The Hon. GREG DONNELLY: Do you have any idea how many of these Commonwealth initiatives will be implemented in New South Wales?

CHAIR: Do we know anything about their value structures?

Mr MOORE: All we know is that there has been a bid and bodies like Relationships Australia and others have put up their hand. The tendering process has gone on.

The Hon. GREG DONNELLY: Are any of them operating at the moment?

Mr MOORE: No, not as yet.

The Hon. AMANDA FAZIO: Earlier this week a witness spoke about the way in which Probation and Parole looks at offenders and their families. He said that there would probably be a higher completion rate of community service orders and bonds if, rather than released offenders going into a Probation and Parole office and having their 5 or 10-minute interview and perhaps having a urine analysis tests, the caseworker dealing with them knew a little more about their family circumstances, so they could try to better assist them in not breaching the conditions on which they had been released. The witness seemed to think that this could be done without a huge amount of extra resources but, rather, by simply turning around the community service order works. Do you think such an approach would be of assistance to people in completing their bonds successfully?

Mr MOORE: I suspect that part of the issue there is about getting the practice and support arrangements between a number of people, in a case management way, working better, or at least that is the preferred approach. My understanding is that there is an 80 per cent successful completion rate of community service orders in New South Wales, and I think the Productivity Commission suggests that that is the third best across the country at the moment. We are only number six in terms of usage per capita but we are the third in terms of having successful completion. So obviously there is something to build on there. Often it is about achieving a better relationship between whoever is playing the lead agency and the others within the service network so they work more effectively together.

CHAIR: Do either of you wish to make further comments?

Mr MOORE: In conclusion, it costs $170 a day to keep a prisoner in gaol, whereas a community service order costs just under $10 a day. If we could do a lot more about beefing up the post-release services in the State, addressing the 45 per cent recidivism rate, and getting the balances right, we might be far better off.

The Hon. AMANDA FAZIO: Part of our terms of reference is to look at what other jurisdictions in Australia are doing. Do you have any suggestions about models used in other States that you think would be worthwhile having a look at?

Mr MOORE: Could we take that question on notice?

Mr GARDINER: The publication we referred to earlier, which is entitled *No Home. No Justice. The Legal Needs of Homeless People in New South Wales*, was published in July by the Law and Justice Foundation. Since your inquiry has been under way, it is the major piece of work that has been done on the subject of homeless people.

(The witnesses withdrew)

DEBORAH SHARP, Director, Community Justice Centres, Attorney General's Department, 8-12 Chifley Square, Sydney, and

GINA VIZZA, Manager, Policy and Projects, Community Justice Centres, Attorney General's Department, 8-12 Chifley Square, Sydney, affirmed and examined:

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

Ms SHARP: Yes.

Ms VIZZA: Yes.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take questions on notice, I would appreciate it if the response to those questions could be forwarded to the Secretariat by Tuesday 27 September 2005. Would you like to make an opening statement?

Ms SHARP: No.

CHAIR: Would you tell us about the role of Community Justice Centres and the sorts of matters that are commonly heard in those centres?

Ms SHARP: Community Justice Centres is part of the Attorney General's Department and we have been in operation for 25 years, providing a range of services that come under the umbrella term of "alternative dispute resolution, mediation and pre-mediation". So we provide those services across New South Wales to all people who need them. Some 50 per cent of our matters are neighbourhood disputes but we do family disputes, large community disputes and workplace disputes. They can be about fences, siblings, children, noise, dogs—you name it. We do not provide mediation around criminal matters or domestic violence—relationship issues. That is very briefly what we do.

CHAIR: These are the structures that are set up across the State.

Ms SHARP: There are 25 people employed by CJCs. We have some regional offices in Newcastle, Wollongong, Bankstown and Penrith. Then we have appointed by the Attorney mediators who mediate on a casual basis and they live across the State. They have other jobs. Local courts are main referrers—50 per cent of our matters come from local courts—but people can refer themselves, or solicitors or other government departments. We then manage the process and allocate mediators to those matters.

CHAIR: That is very good. Do you have anything to do with people who are convicted and perhaps have community-based sentences?

Ms SHARP: No.

CHAIR: So we are just getting an overview of what your process is.

Ms SHARP: Yes.

CHAIR: That is excellent.

The Hon. AMANDA FAZIO: What is the success rate for participants of mediation to reaching agreement at your centres? Do you have any comments to make about that rate?

Ms SHARP: Once people come to the table for mediation the rate of getting an agreement is between 80 per cent and 85 per cent over the years. It does not seem to vary much from that per cent each. The mediation process is quite solid. It is well researched and based, so the mediators move the parties through a sound process, where issues are thoroughly aired and people get an opportunity to discuss them and come to a solution themselves. Our mediators do not give any advice and they do not make judgments about the matters in front of them. So the solution to the problem is in the parties' own hands. People are there because they know they want to sort out the conflict—they know they want to keep living next to that neighbour or they want to still be in the family. Mediation works best where there is a longer-term relationship. Our biggest challenge is actually getting people to come to mediation. Once they are there I think that is why we get quite a high rate of agreement because that is what people are there to do.

The Hon. AMANDA FAZIO: If they reach an agreement at mediation and one of the people involved breaks their side of the agreement do your centres get involved in enforcing the agreement? What happens then?

Ms VIZZA: The short answer is no. The idea behind the agreements is that essentially they are not enforceable. They are not court orders. They are bona fide agreements that both parties come to and it is up to them to adhere to that. We do not take an enforcement approach. We would perhaps mediate again if requested to do so and if both parties agreed but we do not take an enforcement approach.

The Hon. AMANDA FAZIO: So what happens when the agreements break down? Do these people end up taking themselves to court for the cost of half a fence, for example?

Ms VIZZA: They could do, yes. A fence scenario is the most common scenario. If mediation works, the agreement that they reach or the basis of it would be used in court. If that fails, yes, they would pursue the recovery of the cost of the fence in court.

The Hon. AMANDA FAZIO: Thank you.

The Hon. DAVID CLARKE: Ms Sharp, can you give us an outline of how a mediation would go? Let us take the case of two neighbours who are in dispute over a divided fence. Does one of them contact you by phone? Can you explain the process from there?

Ms SHARP: The neighbours have obviously come to a realisation that they cannot deal with it themselves. They can certainly ring the nearest office. Our mediation advisers would go right through the process and check that if people need legal advice they are referred to the source of that advice. The mediation advisers establish that there is a conflict and that it is suitable for mediation. They get the details of the parties. We then write to what we call "party B"—the other side of the fence. We will do that three times. If that party then rings back and agrees to a mediation we will then set it up. We negotiate between the parties about where and when is suitable. If they need an interpreter or there are any special needs—disabled access or whatever—we will sort that out. Then we select mediators who are available. If there are any particular issues, expertise or experience, we match the mediators. Then if you and your neighbour are in Dubbo, Wilcannia or Lismore, we will find a venue—it may be in a Local Court, church hall or wherever we can find. The mediators get a form that gives your details and the type of matter—it will just say "fence"—whether there has been any court activity. If there is an AVO or anything they are advised of that.

Basically, they turn up and you and your neighbour turn up. They take you through a process, part of which is private sessions. Here you get to talk to the mediators yourself. We

use a co-mediation model, so there are always two mediators. Mediation takes, on average, three or four hours but if there are more complex issues it might take longer. So off you go through the process and at the end if there is an agreement you have the choice to write it up.

The Hon. DAVID CLARKE: Did I understand you correctly? Did you say that there are two mediators for each matter?

Ms SHARP: Yes.

The Hon. DAVID CLARKE: Do they sit together?

Ms SHARP: Yes, they sit together and even in private sessions they both leave with the parties. There are two roles in mediation and they support each other. So, for example, the first part of the session is writing up the issues and getting agreement, so someone is doing the writing and somebody else is taking notes. They partner each other. Part of it is to ensure that both parties feel they are being equitably dealt with. For some of our small claims in courts where there is no ongoing relationship or emotional issues we use one mediator. But on the whole we use two.

The Hon. DAVID CLARKE: I think you indicated that there is a success rate of 80 per cent to 85 per cent. How do you know that to be the case? How do you know whether people lapse back into the same dispute or go on to take legal proceedings?

Ms SHARP: That is right. We own account success in terms of getting an agreement at the time. This year for the first time we are doing some follow-up studies to find out what has happened, if there has been a relapse in the agreement and the neighbours are now fighting about something else or the fence has fallen down. But at the moment we cannot give you that information, unfortunately.

The Hon. DAVID CLARKE: Is there any initial idea or is the jury still out?

Ms SHARP: Whilst we do get some returns, we get very few. Unfortunately, even though the data collection with local courts would be the best thing to be able to see whether Mr and Mrs Smith have turned up again in Local Court, that is not possible at the moment.

The Hon. DAVID CLARKE: Do you have a process where, say, after six months you might write to the parties to see where they are?

Ms SHARP: No, we have not ever gone down that path.

The Hon. DAVID CLARKE: Thank you.

The Hon. GREG DONNELLY: Do you believe that the process of mediation as you described it this afternoon could be tailored and incorporated into a community-based sentence? In answering that question could you give some consideration to people in regional and remote areas? If the answer is yes perhaps you could give some reasons why and if the answer is no give the reasons for that.

Ms VIZZA: I think the difficulty we had when we were looking at this particular question is that we are not part of a sentencing option. Mediation is a voluntary system. People have to participate in it voluntarily. So there are difficulties in that set-up. There may be different responses, and undoubtedly there would be, from indigenous communities. I do not think either of us feel comfortable responding to that on that level. Certainly the co-ordinator of our Aboriginal program was not available to attend today. The only way we could see it really being incorporated is perhaps to some extent almost facilitating the

process rather than being a part of it. When there are tensions with families and so forth in terms of why a particular event has occurred we would perhaps see mediation being part of that process and relieving tensions when they arise in a community, particularly remote, rural communities. Perhaps it could facilitate prevention of breaches where there is scope to facilitate discussions between parties and so forth about understanding the process itself. But the basis of the mediation process is that it is voluntary so it would have to be quite clear that that was still intrinsic in that process.

The Hon. GREG DONNELLY: Thank you.

CHAIR: In relation to that, I guess from your extensive years of experience and your success rate, the processes of conferencing and circle sentencing apparently do not go ahead unless the person says he or she is guilty and joins voluntarily. Is there any crossover of your skills base for that purpose? It is not a trick question; I am simply interested.

Ms SHARP: We certainly have a relationship within the department with the circle sentencing initiative because we are both in the same department and I have been keen to have discussions with our Aboriginal program, which I omitted to tell you about at the beginning. We have recently finalised recruiting about 50 Aboriginal mediators to provide mediation services in particular for large community disputes. So there may be a role if, for example, there is a type of community conflict that might lead Aboriginal people to be referred to the courts. We could do some preventive work with our Aboriginal mediators. I think there will be times when our Aboriginal mediators will be the elders in circle sentencing. So in terms of that type of crossover I think that the elders that I have met who have been involved in circle sentencing are natural mediators and have a lot of skills around negotiating, understanding and doing a lot of the work that we would say is part of the stages of mediation. Whether or not our mediators who are more formally trained could provide some backup is something to be explored.

CHAIR: Do you do your training?

Ms SHARP: Yes, we train our staff.

CHAIR: I should inform you that there was a talkback program on the ABC in New England north-west the other day and some overseas mediator person who thought they were very posh was talking. A gentleman rang up and proudly boasted that he had been through the training in New South Wales and said that it was not new at all and it was wonderful.

Ms SHARP: Good. Thank you very much. I love a free plug.

CHAIR: Would you like to tell us anything else?

Ms SHARP: There was another question about resourcing and how we support people through a mediation process. We make sure by having two mediators and using neutral spaces in which to conduct the mediation. We do not mediate in people's homes. We have all of those safeguards in place.

The Hon. AMANDA FAZIO: You referred to recruiting Aboriginal mediators and that you put people through your own internal training courses. Generally, what type of people are mediators? What pre-existing qualifications do you require or desire for the to have?

Ms SHARP: We do not have any requirement for pre-existing qualifications. We have always recruited through either word of mouth or advertising in local communities and we look in the first instance for people who are involved in their local communities who are

non-judgmental, who can look at a situation from a different point of view. We do an assessment of ordinary people really, and we try to make up our panels so that they reflect the community in which they will be mediating.

The Hon. AMANDA FAZIO: You are looking for qualities?

Ms SHARP: That is right. Once we do that we then put them through quite an arduous 72-hour training program with a lot of role-playing and a lot of discussion around the courses. If they pass that they are accredited and they do mentored mediations. We partner them with someone more experienced. In particular with Aboriginal people, if we required qualifications we would not be able to recruit. In the previous session you were talking about the family relationship centres being set up under the changes to the Family Law Act. We have written to the Commonwealth about those because at the moment State-based mediation services are not funded under the Family Law Act to provide mediation.

I think they are proposing to broaden that a little and include not-for-profit agencies. However, that will still preclude community justice centres. There are CJCs in Victoria, Northern Territory, the Australian Capital Territory and Queensland. We do not mediate under the Family Law Act although we mediate family law matters. The other thing about the Family Law Act is that it requires qualifications for mediators. We feel that would inhibit Aboriginal people being recruited to mediate under that Act. Aboriginal communities are saying that they want their own mediators to work on family breakdown issues and big community disputes, which I think has a link to the alternative references into who has been part of that system and the different options about how they are looked after while they are being punished.

The Hon. DAVID CLARKE: How many mediations do you do each year?

Ms SHARP: About 3,000.

(The witnesses withdrew)

(Short adjournment)

STEPAN KERKYASHARIAN, Chairperson, Community Relations Commission for a Multicultural NSW, 175-183 Castlereagh Street, Sydney, sworn and examined:

PATRICIA GIANNOTTO, Public Sector Advisor for the Community Relations Commission for a Multicultural NSW, 175-183 Castlereagh Street, Sydney, affirmed and examined:

CHAIR: Welcome to the eighth public hearing of the Standing Committee on Law and Justice Inquiry into Community Based Sentencing Options. There are broadcasting guidelines but we do not have any media here. If they come the secretariat will instruct them with the guidelines. Any messages or documents you want to give to the Committee, the secretariat will look after delivering those for you. The Committee prefers to conduct its hearings in public but if you should so wish you can request us for privacy. The Committee can make a decision about whether or not it will make that information public and the Parliament can make another decision after that. So it is important you know that if you should request such a thing.

Community hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference.

Mr Kerkyasharian, in what capacity are you appearing before the Committee? Are you appearing as an individual or a representative of an organisation?

Mr KERKYASHARIAN: I am appearing in my capacity as Chairperson of the Community Relations Commission for a Multicultural NSW.

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

Mr KERKYASHARIAN: I am.

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

Ms GIANNOTTO: I am appearing as a representative of the Community Relations Commission.

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

Ms GIANNOTTO: Yes, I am.

CHAIR: If you should consider at any stage certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice we would appreciate it if the response to those questions could be forwarded to the secretariat by Tuesday 27 September 2005. Would you like to start by making a short statement?

Mr KERKYASHARIAN: This is an issue which is of some significance to the Community Relations Commission. We have, among others, the responsibility to assess the effectiveness of government agencies in meeting their responsibilities under the principles of multiculturalism enunciated in the Community Relations Commission and the principles of

the Multiculturalism Act and within that we consider the terms of reference of this inquiry to be very relevant to the people whom we are called upon to serve in that capacity through the Ethnic Affairs Priority Statements [EAPS] Program. I am aware of some of the specific issues which the Committee is aware of and, with your agreement, I will respond to those as they arise.

CHAIR: In your opinion are people from culturally and linguistically diverse backgrounds less likely to receive community-based sentences?

Mr KERKYASHARIAN: In preparation for today's presentation to this Committee we made some inquiries and we have been advised by the Department of Corrective Services that the number of offenders from non-English-speaking countries or community-based orders for the period of 1 September 2004 to 30 August 2005 was 8,303. Despite our inquiries the Department of Corrective Services was not able to advise us of the total number of offenders over that period. This, to me, highlights serious issues of concern in relation to the collection of data on offenders receiving community-based sentences, which makes it difficult to accurately assess the number of people from non-English-speaking backgrounds that are serving custodial or non-custodial sentences.

The Bureau of Crime Statistics and Research [BOCSAR] collects information on community-based sentences according to the calendar year and this information, you may be aware, is available on the BOCSAR web site under the heading of Penalty for Principal of Offenders. However, they have also advised that they do not collect ethnicity data. I understand that there are some significant problems when one endeavours to collect ethnicity data. For a start, if it is strictly about ethnicity as against, for example, fluency in the English language or country of birth, if it specifically relates to ethnicity then it has to be on the basis of self identification.

Some people may not wish to identify in a formal sense or there may be other situations where there may be children of mixed marriages. Therefore, any organisation that wants to collect such data on the basis of ethnicity will find difficulty and the information gathered may not be as reliable as one would want it to be. However, I would submit that data can be collected with a great degree of accuracy on the basis of level of fluency of English or language spoken at home or language spoken normally by the person in their everyday life and also on the basis of country of birth or country of birth of parent. But in the case of the latter two, in other words, country of birth, that should be a voluntary arrangement.

The Australian Bureau of Statistics [ABS] collates and produces annual Corrective Services statistics across Australia, which it publishes on the Internet, making it readily available to the public. However, again, the bureau has advised that in relation to community-based sentences it does not collect data by country of birth, language spoken or ancestry. The National Centre for Crime and Justice Statistics is currently developing a community-based corrections census. The commission is in discussion with the centre about having information about country of birth, language spoken and ancestry collected as part of the census.

The very short answer is that there is not sufficient data for us to make a definitive statement on the level of representation of the participation by Australians of non-English-speaking background in terms of community-based sentences. I would suggest that your Committee recommend the collection of such data, provided that it does not create stereotyping situations or unduly impinges on people's privacy.

CHAIR: With all the groups you represent, have you had any anecdotal information?

Ms GIANNOTTO: In terms of not just anecdotal information but in terms of other statistics related to crime and Corrective Services, in general people from non-English-speaking background representation, for example, within the prison system is the same as their representation in the general population. So they seem to be on a par. I have looked at that over a number of years and found it to be the case.

The Hon. AMANDA FAZIO: Do you have any information on whether people from culturally and linguistically diverse backgrounds on community-based sentences are able to access services, such as, drug and alcohol counselling? Do you think those services are easy for people to access and culturally relevant?

Mr KERKYASHARIAN: This is a very important area. It is significant to note that the issues in relation to drug and alcohol counselling for offenders from non English-speaking background do not pertain only to access to a service but also to the most effective models of service delivery for that client group. Accessing is one issue. But when you are dealing with cultural differences having access, having overcome that barrier of accessing it is also important that the service itself is an effective model and does interact culturally with the client group. There appear to be a few culturally specific drug and alcohol programs to specifically help people on community-based sentences from language backgrounds other than English.

However, the Pacific Islander program operating from the Mount Druitt Probation and Parole Service offers a drug and alcohol counselling service within a 16-week intensive intervention program. The program has been developed through community solutions. It has been funded through them and is specifically designed for community-based offenders from Pacific Islander backgrounds. To our knowledge this is the only program of its kind which exists in terms of an ethno-specific program. In other areas the Probation and Parole Service have advised that offenders from language backgrounds other than English are referred to programs run by local area health services or community organisations and on occasions have been provided with one-on-one counselling.

It can be difficult to find placements for people from language backgrounds other than English in drug and alcohol group counselling services. The commission is aware of some issues in relation to drug and alcohol programs for community-based offenders. I will give you three of those. The programs are designed for people with good English language proficiency. So this obviously presents problems to people from non English-speaking backgrounds, people who are not fluent in English. However, the Commission is aware that English speakers with low literacy levels also experience difficulties with the programs.

The second point, the programs are based on a group model. Many cultures do not have an understanding of group counselling models. In some cultures this type of group counselling creates strong feelings of fear and shame to the offender. That in turn diminishes the offender's receptiveness, diminishes the benefits which the counselling session is designed to give to the individual. The third point I want to make is that the drug and alcohol programs run through community organisations and local area health services generally do not address issues faced by the offender for his or her criminal behaviour, which can impact significantly on the drug and alcohol program. So there is that issue of tailoring it to the individual. In a group session those specific needs may be overlooked.

The Hon. DAVID CLARKE: Mr Kerkyasharian, can people from culturally and linguistically diverse backgrounds who are undertaking community-based sentences access on-site and telephone interpreters, if required? Are additional interpreters and other support required for people from culturally and linguistically diverse backgrounds while at court?

Mr KERKYASHARIAN: The commission provides on-site interpreters in more than 75 languages. Our interpreter service operates 24 hours a day, seven days a week. So they can ring up and we will send an interpreter no matter what day of the week is or what time of the day. Our interpreters are all qualified. Where accreditation is available through the National Accreditation Authority for Translators and Interpreters [NAATI], we only employ accredited interpreters. Where there is no accreditation, obviously we do our own testing. We have interpreters who are highly experienced with the highest-level qualification and they are available 24 hours a day, seven days a week.

We are also in the process of establishing a panel of language experts in languages and dialects where, as I said before, accreditation testing is not available. But these are languages that are now in demand given the changing demography and profile of immigration to Australia, especially under the refugee and humanitarian intake. These languages are Sudanese, Dinka, Swahili. In fact, this morning I just approved a whole list of new interpreters who will be coming on board in a couple of weeks' time to cater for those languages.

The services available are there for government agencies to use. There are also other providers. There is the Health Interpreter Network, which is operated by New South Wales Health. That is a fairly extensive network, again with highly qualified interpreters. Centrelink operates one. Macquarie University and the University of Western Sydney have also been able to recruit and are arranging training for interpreters. We also have video conferencing facilities which are tied into the New South Wales network of video conferencing facilities. That whole project comes under the auspices of the Attorney General's Department. So we have the capacity of providing interpreters by video conferencing to all parts of New South Wales where, say, Corrective Services or the Attorney General's Department or any other of the agencies have video conferencing facilities. We can have an interpreter appear on screen in those centres.

Just to give you an idea, we provide 13,000 interpreter assignments a year in the New South Wales courts just for matters that are under New South Wales jurisdiction. The Commonwealth government operates a Telephone Interpreting Service [TIS]. My understanding is that the Department Of Corrective Services has been gradually decreasing its use of on-site interpreters, face-to-face interpreters, and increasing its use of the Telephone Interpreting Service. Of course, from the commission's point of view, it is preferable to have an on-site interpreter because sometimes body language is also important. However, I cannot be unnecessarily or ideally critical of the Telephone Interpreting Service. It is good. It is better than saying better than nothing. It is a reasonably good service. That is my understanding of how it is provided for.

However, I would again suggest that the Committee considers recommending that some statistics be kept for a period of time just to gain a picture of the use of the interpreters because that would also give us some indication in relation to the first question that was raised, that is, the number of people who go through the system by identifying the language used and interpreter used. Perhaps a recommendation that for a period of time, maybe three months or six months, data is collected on the use of interpreters.

The Hon. GREG DONNELLY: With respect to the organisation's experience, are you able to comment on whether courts ensure that offenders with poor English skills understand their obligations when on bail by reading the requirements of the bond to the person in the presence of an interpreter?

Ms GIANNOTTO: Basically our interpreters have advised us when they are called to an assignment that they are asked to go down and interpret for the Clerk of the Court when he or she reads out the conditions of the bond. One issue that the CRC interpreters

have raised is that often on those occasions, in fact, about 95 per cent of the time, the solicitor does not stay with the client while this information is being transmitted. So there is actually no other support person for the client there while this is happening. That might be an issue that could be looked into. The other thing is there really is no translated information available for the clients or the offenders in regards to their bail or bond conditions. I am not sure how standardised they are and if, in fact, they were standardised and some translated material could be provided in some of the key bigger community languages, then that would be of great assistance.

Another thing is the more staff available at probation and parole who can cater to different language needs and different cultural groups, the easier it would be for a person from a culturally diverse background to perhaps sit down with someone and have that information transmitted in a way that is fully explained, fully communicated, that they can feel comfortable in asking questions, et cetera. Those are probably the three areas that you can look at in relation to bonds.

The Hon. GREG DONNELLY: Is there also the issue that perhaps post the whole event of after the person has left and thought about what they have been told they can then access the interpreter again to get something clarified? One might imagine that sometimes they hear what is said and they think they understand it and then after reflecting on it they have perhaps a follow-up question or comment to make.

Mr KERKYASHARIAN: This is perhaps one of the problems created with the issue of who actually is responsible for the provision of an interpreter. In a court situation the interpreter is provided by the commission in response to a request from the court through the clerk, effectively for the presiding officer to be able to conduct his or her court in a fair manner. That means that once the court proceedings are finished then that interpreter is not available to follow through. The responsibility would then fall either on Corrective Services or the parole service or whoever is then responsible for that individual meeting the bail conditions, and at that point in time they may not regard it as their responsibility to explain to the person any further than what has already been explained.

CHAIR: That is the fire alarm. Thank you for coming. Please take the rest of the questions on notice.

Mr KERKYASHARIAN: Can we send you some additional material?

CHAIR: Yes.

(The witnesses withdrew)

(Short adjournment)

CHAIR: I would like to welcome you to the eighth public hearing of the Standing Committee on Law and Justice inquiry into community-based sentencing options. I will abbreviate the formal matters. With respect to broadcasting guidelines, the media have not been present because they are busy elsewhere, but the guidelines are on the table by the door. The secretariat will deal with instructions if they do appear. Any messages or documents that you wish to tender to the Committee will also be dealt with by the secretariat.

The Committee prefers to conduct its hearings in public. However, you have the right to ask for any evidence to be given in private and the Committee will consider that request. The Committee may decide to hear the evidence in camera but the Parliament may overturn that decision at a later date. Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference.

ROGER DAVID PROWSE, Magistrate, Local Courts of New South Wales, P.O. Box 474, Goulburn, affirmed and examined:

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

Mr PROWSE: Probably as an individual, I would think.

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

Mr PROWSE: Yes.

CHAIR: If you consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and we will consider your request. If you do take any questions on notice, we would appreciate the response by 27 September 2005.

Mr PROWSE: Yes.

CHAIR: Would you like to start by making a statement?

Mr PROWSE: Only a brief one. I am grateful for the opportunity to appear before you and give you the benefit of my experience in fairly rural areas, being Moree, Mungindi, Boggabilla, Warialda, Inverell and now at Goulburn, Yass, Crookwell and Gundagai. It would seem to me that the Committee has a very good opportunity to make some worthwhile recommendations that, if taken up, could lead to the crime rate being cut dramatically and costs to the State being reduced markedly. It only requires a different way of thinking in relation to some things and those goals could easily be achieved.

CHAIR: Can you tell us what community-based sentences are available in the Goulburn court area?

Mr PROWSE: At Goulburn there is community service, supervision by probation and parole officers, fines, obviously community-based sentences but I do not have at Goulburn, which surprised me an enormously when I got there, access to periodic detention because, notwithstanding the enormous gaol that is down there, the closest periodic detention

centre is apparently at Campbelltown, some distance away. If you do not have access to transport, you do not have access to periodic detention. That really did surprise me. I did think when I got down there that Goulburn gaol, being the size that it is, would have such a facility.

The Hon. AMANDA FAZIO: Have you been given any reason for that? Is it because it is maximum security?

Mr PROWSE: I did ask, but nobody really seems to know. I think the structure of the Department of Corrective Services is that some places are designated periodic detention centres and others are not. Tamworth gaol, for example, is a gaol but also a periodic detention centre. Goulburn is not, for some reason. As I said, I was just staggered because of the size of the place.

The Hon. GREG PEARCE: What suggestions can you actually give us for recommendations? What would you like to see us recommend in order for us to deliver the outcomes that you said we had the opportunity to potentially deliver?

Mr PROWSE: It comes up in relation to the unlicensed question 7 and also periodic detention. It seems to me that you need to understand what periodic detention is. I know from your background that you will, and I assume most others will as well because of the general knowledge and what they have heard in this Committee. Periodic detention is a gaol sentence, consequent. It is served either mid-week under the Craig Coleman amendments or at the weekend.

But if you think about the mechanics of it, on the first occasion they turn up on the Saturday morning for their induction. They then sleep in gaol on Saturday night and then they go home on Sunday at four o'clock. On the next and subsequent events they turn up on Friday night, sleep in gaol for two nights and then go home on Sunday. It seems to me that the only benefit, if you can call it a benefit, and the restriction that it therefore has in being available everywhere is this desire to have people sleep in gaol for two nights.

You are probably aware that at the end of a long sentence of periodic detection, the second half or the second third—I do not do maths—is converted to a community service order [CSO]. For example, Moree does not have access to a periodic detention centre because Tamworth is too far for people who are poor or do not have access to transport; they cannot get there. The same with Inverell, Goulburn, Crookwell, Gundagai, Yass and so many other places around the State.

If I had my way I would change the nature of periodic detention to be a super-CSO. I do not know what the right title is, but you can imagine super-CSOs, where people report to the police station at 7.00 a.m. on Saturday morning and are breath tested—because obviously you are not allowed to go to gaol affected—and drug tested to start with but then on a random basis, and then allocated community service work in an area that is easy to supervise on a low-cost basis. They report back to the police station at six o'clock, four o'clock, or whatever time you want to pick, and then go home in the local community.

The Hon. GREG PEARCE: So it is sort of a modified CSO-home detention?

Mr PROWSE: Yes, they come back on Sunday morning.

CHAIR: But with extra supervision.

Mr PROWSE: Yes. They had the same idea years ago when they call them work gangs, basically. But they come back on Sunday morning at 7.00 a.m., they are breath tested, random drug tested, do the community work and go home on Sunday afternoon.

In that way, every major and non-major police station could run a periodic detention super CSO or community-based periodic detention program. That means that the sentencing option would be available right across State, and there would be cost benefits and benefits in having community work done that nobody else does.

Anyone who has driven along the road between Canberra and Goulburn, or between Moree and Inverell, or anywhere else, will see that a lot of Australians decide that the side of the road is the best rubbish bin they have ever found. No council cleans it up; indeed, no other organisation cleans it up, apart from the very good efforts on Clean up Australia Day. This could be a permanent Clean up Australia Program; it could be a permanent vegetation propagation program, or whatever. I cannot think of all alternatives, but that is one way of implementing a community-based sentence, which is a real form of punishment—in other words, a work gang style of thing.

It would be simple to implement. You could say to the person, "You are on periodic detention. You have the section between this marker and that marker. I will come back at 4 o'clock and I will see whether you have done anything. I do not have to be there watching you all the time, because if the rubbish is still there, or if there are not 25 trees planted, I know you have not done it."

The Hon. GREG PEARCE: You would regard that as a useful alternative to putting a person in gaol?

Mr PROWSE: Yes. I cannot think of a colleague of mine who would not think that would be a valuable option, especially in the country. It would probably work in the city as well, but there may be significant difficulties in implementing it.

The Hon. GREG PEARCE: Do you have any suggestions for improvements to the way suspended sentences work?

Mr PROWSE: Yes. In the case of Tolley, a decision of the Court of Criminal Appeal, in his decision Mr Justice Howie said that the legislation in relation to suspended sentences is a mishmash, that it is impenetrable. They may not be his words; this is my take on his words. He said that first the courts must determine whether the person should go to gaol. Second, it must be determined how the gaol sentence is to be served, whether it be by way of periodic detention, home detention, suspended sentence, or whatever. Once you have decided on a suspended sentence, the Act requires you to then set a non-parole period and a parole period with regard to the suspension.

In the past, before Tolley, we did not set it until there was a breach and the sentence had to be imposed. Then we set the non-parole period and the parole period, so we could take into account the person's circumstances at the time of the sentencing or the imposition of the sentence, that is, on the breach. That might be 11 months down the track, for example. As opposed to 11 months beforehand, we had to predict how long the non-parole period should be. When we came to impose it, if they breached it and they then got the punishment that was previously suspended, if the circumstances were not identical there was an injustice. In any event, they could then appeal to the District Court and have another go. But that does not mean that it could not be fixed up so that the non-parole period and parole period are only set if the bond is breached and the sentence, converted from suspended to actual, is imposed. That would be a reasonably simple amendment that would avoid an enormous amount of angst, an enormous amount of time wasted in the courts, and my suspending the

sentence but then having to impose a sentence with possibly inappropriate non-parole and parole periods.

They appeal to the District Court and go through the process again. If they get it wrong, there is all that public cost to address what was possibly an oversight or an unfortunate consequence of amendments to section 44 of the Crimes (Sentencing) Act. If you read Mr Justice Howie's comments in Tolley, you will see that he was flummoxed as to what to do.

The Hon. GREG PEARCE: With regard to driving without a licence and fine suspension offences—

Mr PROWSE: That was the other part of my initial comments, periodic detention and driving whilst unlicensed. It seems to me that crime rates in the bush could be cut by half if we changed the law and the way of thinking about how Murris and Kooris, but also non-Murri and non-Koori populations get their licences. Many unlicensed people have come before me. When I ask them, "Why haven't you got a licence?" they say, "I can't read." I say to them, "Go to a TAFE course and learn to read so you can then read the Roads and Traffic Authority manual so you can then do a literacy-based test to see whether you can drive a vehicle."

When the police chase them, they have no difficulty driving; in fact, they are very good drivers, and that is why it takes so long for the police to catch them. The criteria ought to be, "Do you have driving skills?" as opposed to "Can you read?" Is it really important to know that you are supposed to park 10 or 15 metres from a kerb? I agree that sometimes it is. But in country areas, if there were a practical skills-based test, and a skills-based test only, they would get their licences. Therefore they would not be unlicensed; they would have opportunities for jobs and you would not have the compounding effect of unlicensed drivers.

When you are at Mungindi and it is 120 kilometres to Moree and there is no other form of transport, apart from walking or horseback, what do you do? You drive. When you are in Boggabilla and you need to get to Goondiwindi, which is in Queensland, because that is where the only shops are, are you going to walk the 10 to 15 kilometres when it is 38 or 43 degrees, or 4 degrees in winter? No. The people drive. They drive because it is a necessity, and unfortunately they make the choice to drive whether they have a licence or not.

They are rarely picked up because of the poor quality of their driving; it is simply the absence of the document. How do you solve it? You get the person to go to the police station and say, "I am here for my driving test, boss." You get them into the police car or their own car and take them for a drive for two hours, around the town and on the highway. You can then have a licence that is restricted. You can drive around Boggabilla and go to Goondiwindi and the surrounds, until you get experience. In a year's time, just as you qualify for a licence to drive a geared car after 12 months of holding an automatic car licence, it becomes an unrestricted licence; you can drive anywhere.

The Hon. GREG PEARCE: Would you also lower the age from 18 for licences?

Mr PROWSE: You can get your P-plates at 17, so I would still pick 16 or 17. At 16 the learning process is fine in a lot of respects. But if they cannot read, they have difficulty with reading or they have difficulty paying the nonadjustable fees of the RTA—if you are on a social security income and have to pay $32 for a test and you fail the test it is $32 again next time and the next time. Thirty-two dollars out of an income of $150 is an enormous amount and it usually means that food or other expenditure cannot occur. Yet without a licence they cannot get a job to earn an income and become good and productive members of the community.

That is a practical way of doing it. It would enormously benefit places such as Wilcannia, where, as I understand from a colleague of mine—the magistrate who goes out there from Broken Hill—there are very few people left in the whole place with a licence. It would stop the compounding and tripling and the cycle and cycle and cycle of offences. The other problem is the way that the State Debt Recovery Office works. They take their licence or their registration first. I understand that the Government wants the money; I do not complain about that. But they ought to as a first port of call go to garnisheeing bank accounts or wages and only as a last port of call cancel their licences. They have got the wrong end on, basically. They will get their money by garnisheeing or by people being directed from my court to go to the counter and enter into a garnishee order with their bank account details, their wages or whatever rather than time to pay and all that sort of thing.

If they want to pay on the spot, that is fine, but they could set in place a payment just like when I donate to whatever charity I donate to and it comes off the MasterCard every month. The same sort of thinking could lead to the payment of fines. If the State Debt Recovery Office changed its focus from upfront cancellation to making cancellation an act of last resort, you would not have drive cancelled because of fine defaults or drive suspended because your licence has been suspended for not paying fines or not paying other court-imposed costs or government impositions.

The Hon. GREG DONNELLY: Taking further the thought about a town-type licence, would you use that model in a larger city? I am trying to work it through. You would have the question of when to draw the line in terms of the size of the town or village upon which you would make this a consideration.

Mr PROWSE: A practical-based license would work anywhere because if you are illiterate and you need to get around Sydney—all right, you have access to a fair bit of public transport that is not available in other places—if you are never going to qualify for a licence because you are illiterate but you can demonstrate that you have practical driving skills it would work here and with a limitation—think of a limitation, such as driving only during daylight hours or whatever. It would have some of those difficulties attached in a place like Sydney but think of Dubbo, for example. That has a very large Koori-based population but it is also a very large regional city that is a good size. It ought to work just as easily there and be available there because all the same problems that I have talked about are there as well—people who are unable to get licences but nevertheless need them to fully participate in the economic and social life of the town in a lawful fashion.

The Hon. GREG DONNELLY: But surely people need to be able to read a sign such as "No U Turn" and street signs? Those signs obviously appear in built-up areas.

Mr PROWSE: Most of the people I am aware of would not have a difficulty with those sorts of signs. You learn those things through experience in any event. The major signs could be part of an oral-based test or a talking test as they are driving around. The police officer or the tester could ask "What does that sign say?" as they are coming up to it. They would say, "I'm not allowed to turn left, boss" or "I've got to go straight through" or whatever. As I said, it is rarely the quality of their driving that brings them before the courts; it is the mere fact that they do not have a licence.

The Hon. AMANDA FAZIO: I do not think that would be a problem. I once knew a Sydney bus driver—not a State Government bus driver— who could not read or write. His wife used to take him for the first trip on a new bus route and tell him where to turn and to look for landmarks. These things happen. Do you have any comments about the following two issues that impact on people who get periodic detention? One is that people who get Centrelink payments and who go in for weekend or two-days-a-week periodic detention get

docked two days payment. Secondly, once in periodic detention, offenders do not get any rehabilitation or training; they just get to do work duties or whatever. Do you have any comments on those two issues and any suggestions about what could be done to overcome those problems?

Mr PROWSE: First, I did not know until I read the information from the Committee that they were docked. Unfortunately, it does not surprise me now that I do know it. I think that is appalling. That is a personal opinion. It is nearly as appalling as charging people the cost of their detention in our immigration detention centres when they have no capacity to pay. In other words, you are reducing the capacity of the person in periodic detention to effectively participate in society for the other five days of the week because of a reduced income. But none of their overhead costs are ameliorated because they are in periodic detention. I did not know about that. I do not know how you could address it apart from getting the Federal Government not to do it. Good luck.

The second issue could be part of my cunning plan in relation to CSOs. They do not necessarily have to go and pick up papers like I did at school. They could go to midweek drug and alcohol counselling, domestic violence counselling, TAFE or do literacy courses so that they could get a licence. That could be a part of the way they do their CSO, without this overpowering desire for them to sleep in a cell, with or without other cellmates, for two nights a week. That seems to be the overriding issue in relation to why periodic detention is not more available. But as I say—at the risk of repeating myself—that could be part of the way that they do their periodic detention and I would imagine it would be welcome, provided that there were the drug and alcohol counsellors, the domestic violence counsellors and the community health people available—and in the bush they are not available.

CHAIR: As a magistrate, would you like to have the right to direct that those people who are on periodic detention have access to drug and alcohol counselling and so on?

Mr PROWSE: Absolutely.

The Hon. AMANDA FAZIO: In relation to people who might come before you for domestic violence and who are put on a bond and then Probation and Parole poke them off to an anger management course, do you think those courses have any value in isolation or do you think the domestic violence problem needs to be treated in a broader way and that a broader range of services should be given to those people?

Mr PROWSE: My answer is yes to both suggestions because I have seen people over the years who have had anger management essentially in isolation because that has been the focus of their guidance and supervision from the Probation and Parole Service. But it also then leads to a reduction in the domestic violence, and therefore multiple benefits flow from that. It also ought not necessarily be in isolation, but that decision is best made by an expert in the field—a counsellor who knows what they are doing. That is why when I make somebody subject to supervision by the Probation and Parole Service it is to attend such course or counselling as directed by the Probation and Parole Service so that if they are told to go to alcohol counselling and alcohol counselling only—and that is where they are told to go by the people who have the qualifications to determine the nature and extent of their problems—that is the best way of addressing them.

Ms LEE RHIANNON: Thank you for your evidence; it is excellent for the direction in which the inquiry is going. I want to return to the issue of fines. You talked about the cycle of offences and we have heard many people speak about this. One of the things that comes through is that people—often young Aboriginal men—end up with enormous fines. Can you comment on how to handle that? How can we stop them getting to that point and break the cycle?

Mr PROWSE: The way that fines used to be collected is that you could cut them out by way of a community service order. That was changed because the Government obviously was not getting the money. Because they were unemployed people were electing to cut them out by doing community service orders. I think the rate was about $100 a day, but do not quote me on that. They worked their fines off. Then the Government changed it because the money was not coming into the Treasury and the first point of attack is now the cancellation of licences, registration or both, which leads to a vicious cycle.

The only suggestion I can come up with is to change the focus of attack to an irrevocable garnishee on their payments, bank accounts, wages or whatever source of income they have. It is like an automatic deduction: the money gets paid and the government revenue is protected, which is always an important thing. That would stop fines building up to such an appalling degree. I have had people appearing before me who have had to pay off tens of thousands of dollars in fines, much of which are add-on enforcement costs. They are not actually fines; they are add-on administrative costs that compound a compounding problem. If they did not have a choice—that is, they had to provide their account details, and everybody now has an account because social security payments are paid into bank accounts, not paid in cash—an irrevocable garnishee, made irrevocable by legislation, would address the problem.

Ms LEE RHIANNON: In your daily work as a magistrate do you feel that you are being given adequate advice about mental health services to sentence people with suspected mental health problems?

Mr PROWSE: No, because it is very difficult for people to see the appropriately qualified person to get a report that the court can use either in dealing with them according to law or under section 32 or section 33 of the Mental Health (Criminal Procedure) Act in accordance with the provisions of that Act. There are generally very scarce and sparse spaces for mental health patients across the State. I go to the Chisholm Ross Centre in Goulburn every Friday—except tomorrow because I am here—to make inquiries in relation to mental health patients. I was told on about the third week I was down there that there was not a bed anywhere in New South Wales when there is an obvious need for such facilities to be more widely available and for the provision of services to those people to divert them from correctional centres to a therapeutic-based diversionary program so that their illness is treated successfully. There would be a significant and substantial reduction in crime because of their better health.

Ms LEE RHIANNON: So as a magistrate you see a lack of support, in relation to the diagnosing of people when they first come to the court and then, once they are before you and you are starting to make an assessment, there is also a lack of services to which you can refer them.

Mr PROWSE: Yes. There is a very good program in place in some courts. At Tamworth, for example, there is a court-based mental health liaison officer. She is on the spot and can make assessments on spot—over a period of time, obviously. She can then have them verified by psychiatrists with Corrective Services health in Sydney and provide a report to the court almost on the spot. If one of those officers was at every major headquarters—Tamworth is the headquarters for the Tamworth area and mine is at Goulburn, and I used to be at Moree and Inverell—that would be a very effective way of addressing the issue of, "I cannot get into see anyone for three months. The psychiatrist only comes to Moree once every three months." So, we have to put the matter off for four months to enable the person to see a psychiatrist and obtain a report, to then say we might need and other report. Whereas, if the officer is there at the court where the person is appearing, it can be done on the spot—in the same way as the very hard-working Hansard reporters come in and out

because you have the resources here on spot. The woman at Tamworth does an extremely effective job in short-cutting all those things.

CHAIR: It does sound like an exciting program, having mental health people in the courts, but of course those psychiatric nurses have been taken out of the health system!

Mr PROWSE: That is true. We heard that from Dr Allnutt, who is the head of Corrective Services health about the way they were setting them up. So, yes, they did have some resources taken. I was supposed to get one at Moree but the Corrective Services nurse did not want to, or could not, do the training and become the dedicated person; she preferred to stay at Corrective Services facility.

CHAIR: I know we have not gone through all the issues with you that we should have but, as you will have seen, our afternoon has become rather interesting. If you have any additional issues to raise will you send them to us, so long as they get to us by 27th September. If we think of any additional questions we will arrange for the secretariat to send them to you. I am sorry to impose on your time in such a way when you have already made a commitment to appear before the Committee.

Mr PROWSE: No, that is fine.

CHAIR: You have provided the Committee with some very good ideas today, for which we thank you.

Mr PROWSE: It is my pleasure. Thank you for the opportunity.

(The witness withdrew)

(The Committee adjourned at 5.00 p.m.)