REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO COMMUNITY BASED SENTENCING OPTIONS

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At Sydney on Monday 6 June 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. A. R. Fazio
The Hon. G. S. Pearce
Ms L. Rhiannon
The Hon. E. M. Roozendaal

Corrected Transcript

PHILIP GEOFFREY RUSE, Executive Director North West, Community Offender Services, Department of Corrective Services, 4/44 Hunter Street, Newcastle, and

VALDA JUDITH RUSIS, Acting Senior Assistant Commissioner, Community Offender Services, Department of Corrective Services, Roden Cutler House, Campbell Street, Sydney, affirmed and examined:

CHAIR: Welcome to the first public hearing of the Standing Committee on Law and Justice inquiry into community-based sentencing options. The Committee considers this inquiry to be very important in terms of investigating whether it is appropriate and in the public interest to tailor community-based sentencing options for rural and remote areas and for special needs and disadvantaged groups in New South Wales. This hearing will help the Committee to further understand the fundamental issues that surround community-based sentencing and will enable the Committee to be well informed for its site visits later in June to Inverell, Burke, Brewarrina, Griffith and Bega.

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 guidelines governing the broadcast of proceedings are available from the table by the door. In accordance with Legislative Council guidelines for the broadcast of proceedings, a member of the Committee and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee.

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

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

Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings, and I therefore request that witnesses avoid mentioning other individuals unless it is absolutely essential to address the terms of reference. Finally, I ask everyone please to turn off their mobile telephones for the duration of the hearing.

I welcome our first witnesses, Mr Ruse and Ms Rusis. Mr Ruse, in what capacity are you appearing before the Committee? Are you appearing as an individual or as a representative of an organisation?

Mr RUSE: I am appearing as a representative of the Department of Corrective Services.

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

Ms RUSIS: I am here as a representative of the Department of Corrective Services.

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

Mr RUSE: Yes, I am.

Ms RUSIS: Yes, I am.

CHAIR: Thank you. If either of you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take questions on notice I would appreciate it if the responses to those questions could be forwarded to the secretariat by Friday 1 July. Would either of you like to start by making a short statement?

Ms RUSIS: I will start by making a short statement. As you are aware, I am Valda Rusis and I am currently acting in the position. Catriona McComish is on a short period of leave and she is the substantive holder of the position. With me is Phil Ruse, who is the Executive Director of the North West Region. My substantive position is Executive Director of the South West Region of Community Offender Services. So between us we cover all of regional and rural New South Wales for Community Offender Services. I understand that Ms McComish will be addressing the Committee at a later date but she requested that Mr Ruse and I appear before the Committee to provide information based on our regional experience, particularly in the area of indigenous offenders.

To begin, it might be helpful if I very briefly place Community Offender Services in its operating context. We are a division of Corrective Services. The department's mission is to reduce reoffending through the secure, safe and humane management of offenders. The department provides custodial and community-based correctional services. Community safety is paramount and the department's programs and services are directed at reducing reoffending as well as providing secure custodial facilities.

Community Offender Services—there is some confusion about what that means—is a relatively recent title that describes our division. The majority of the work of Community Offender Services is performed by Probation and Parole, and we constitute the largest area of Community Offender Services. Probation and Parole operates a statewide service. We have 64 locations in metropolitan and regional areas, with approximately 740 staff. The major work of Probation and Parole is court advice, supervision of offenders subject to probation and parole, community service orders and home detention. To give you a brief outline of our court advice, we currently prepare approximately 25,000 presentence reports annually for the information of the sentencing courts. Last year we prepared 25,600 and it is expected that a similar, if not larger, number will be prepared in the current financial year.

Our second major area is the supervision of offenders subject to probation or parole orders. On average, we have about 3,500 offenders at any one time subject to parole supervision—that is, they have been in custody—and approximately 10,500 offenders are subject to probation. This includes people who are on bonds, Drug Court and suspended sentences. What we do with these offenders, both probation and parolees, is we develop individual case plans, taking into account the type of offence they have committed, the level of risk they present to the community and the identified needs of the offender. The supervision is directed to ensure that they comply with the order and to assist the offender in developing positive behaviours and skills.

A third major area is the Community Service Order Scheme, which allows sentencers to order up to 500 hours of unpaid work to benefit the community. We had approximately 4,800 orders supervised in the last financial year. Our last major area is the Home Detention Program, which diverts suitable offenders from full-time custody to complete their sentences at home. They are rigorously monitored and whilst under community supervision they must abstain from alcohol and non-prescribed drugs, they are subject to random drug and alcohol testing, are required to wear monitoring devices—which are anklets—linked electronically to a central base, and they are subject to regular and random home visits.

This is available only to offenders who have been sentenced to imprisonment for 18 months or less and certain crimes make you ineligible. In the last financial year 426 offenders were admitted to the program. At this stage the program is only available in the Sydney metropolitan area, the Illawarra, the Central Coast and the Hunter region. There is a proposal to pilot a regional

application—which I am sure the Committee will be interested to hear about—in the Kempsey area. I noticed in the Committee's terms of reference that interest is expressed in the Periodic Detention Program. The operations of periodic detention do not fall under Community Offender Services. They are within the Department of Corrective Services but we are not directly responsible for them.

While Mr Ruse and I are very familiar with the operations and will be happy to answer any questions you have, I suggest that, if we cannot provide the level of detail you require about this program—seeing as it is not in our area of control—we can either arrange for the relevant director to address the Committee or take questions on notice and return with written answers. We are obviously aware of the program but we are better aware of the areas that we are responsible for, which is the Community Offender Services. We will endeavour to answer any questions you have but if our answers are not sufficiently detailed, please let us know.

To sum up, in regard to rural and remote areas and disadvantaged populations, one of the major challenges for Community Offender Services is to provide sentencing options that are flexible enough to meet the needs of local conditions but do not compromise the integrity and requirements of the programs. The community rightly expects that offenders are case managed in a way to reduce their risk of reoffending and a major goal of Probation and Parole is the safe and effective management of offenders through a transparent approach.

In rural and remote areas not all community based sentencing options are available. Community offender services have developed some innovative and creative programs in collaboration with local agencies and communities. Increasingly we are developing working relationships with other agencies, both government and non-government, to manage offenders in the community. It is clearly not possible for community offender services to be the lead agency in dealing with the variety of needs of disadvantaged groups and so we have found a collaborative approach to be an effective way. We are pleased to discuss any examples that the committee wants of the work we have done and to answer any questions about any areas the committee would like us to address.

CHAIR: Do you want to make an opening statement?

Ms RUSIS: No.

CHAIR: In relation to the way monitoring devices can only be utilised where they can be picked up, would the new satellite systems mean that most country areas could be covered by monitoring devices?

Ms RUSIS: In the past two weeks the Department of Corrective Services entered into a contract for satellite tracking we will be using to track high-risk sex offenders released from custody. In regards to whether it can be used statewide, this morning I spoke to the director in charge who said that the satellite system we have would cover the vast majority of the State. The system that we are using is currently being trialled in England which, of course, does not have the remote problems that we have, but he was confident that it would cover the majority of the State. As I said, it is a very recent initiative as yet. We are about to trial it on one person, but we feel there is certain potential for satellite tracking in rural and remote areas.

CHAIR: Why has Kempsey been chosen as a priority site for trial?

Ms RUSIS: When we did the statistics in the inmate census of the last post code prior to incarceration of indigenous offenders, the majority came from the greater Sydney metropolitan area, the Hunter and the Illawarra which is where our current ones are. The next biggest area where indigenous offenders have come, particularly, is the coastal and mid-coastal strip. We thought the population there warrants a pilot site there. We also have quite a good infrastructure there. We have a large number of probation and parole officers and personnel because of the new gaol at Kempsey. Logistically the population was there and we thought the facilities were there also.

CHAIR: Does that relate to the population basis for Aboriginal people? That is not where the majority of them live.

Ms RUSIS: Once you get out of the greater Sydney metropolitan area the next most populous areas are coastal strip or the Far West. As you would be aware with the Far West the population is very scattered and there are difficulties with monitoring them, but there is quite a concentration on the northern coastal strip.

CHAIR: On page 14, table RRA 1.4, persons by location and penalty received, metropolitan and country, is difficult to read because it does not relate to the rates of the population between metropolitan and country. For example, 6.7 for the country could well be a lot higher when it is done per 100,000 population?

Ms RUSIS: Yes, I agree.

The Hon. GREG PEARCE: What does the department believe are the advantages and disadvantages of community-based sentencing options?

Ms RUSIS: In the submission we say the advantages of community based are that it allows the appropriate offenders to remain in the community, so therefore, if they have employment, social networks and family it is far less disruptive to the community and to family life. Also we can deliver services, albeit it is challenging at times to deliver in rural and remote areas, in their own community. A significant amount of research shows that behaviour modification programs delivered in the community are more effective than being delivered in custody because the environment is there to test how they are going. When they are in gaol the programs are very important but they are not tested by the risks of being in the community. Community-based sentencing has much less dislocative effects on the family, particularly when children are involved. If they are working, it allows them to continue their work and we try to assist them to reconnect with the community. In the vast majority of cases most people who are imprisoned eventually are released to the community anyway. We are trying to make them a useful part of the community again with community-based programs.

The Hon. GREG PEARCE: Do you believe that option is a less severe punishment?

Ms RUSIS: As you would appreciate, sentencing decisions are not our domain. We receive what the courts decides. If the court decides a person is appropriate for imprisonment we work with that. If they look at the full circumstances of the case it believes it warrants a community-based intervention, we then try to be as effective as we can in initiating some good behavioural change so that the conditions do not deteriorate. Our work is dictated by the courts and by the Parole Board.

The Hon. GREG PEARCE: Except that the department administers home detentions?

Ms RUSIS: Yes, we can provide indications of whether somebody is suitable and eligible for a variety of sentencing options but ultimately the court decides.

The Hon. GREG PEARCE: A major issue that has arisen and is repeated is lack of availability. What is the department doing other than the pilot program in Kempsey to try to address that?

Ms RUSIS: Are you talking about the whole range of community-based services, particularly in remote areas?

The Hon. GREG PEARCE: Yes.

Ms RUSIS: Phil has got some information about the sorts of things that we are doing within the service and we will add to it you wish.

Mr RUSE: There have been a number of strategies, longer term and proposed. In terms of longer term strategies we have been running a couple of programs which have gained considerable credibility. One is at Lismore called "Rekindling the Spirit Program" which commenced in 1998 and is jointly conducted and funded by the department, together with the Department of Health and the Department of Community Services. An Aboriginal family worker is employed and that person works with the whole family addressing the multitude of issues that might eventuate. The reason that was necessary was because when quite a number of agencies were involved with the family they never

came together; there was no joint understanding of what the issues were. That project has recently been funded through the Drug Summit funding for the next four years and has been evaluated as being highly successful.

Similarly, an anti-violence project that has been running for about three years was introduced in the Dubbo area has also attracted funding through the Drug Summit funding for the next four years. Basically both of those programs rely on the involvement of the community with a steering committee oversighting what happens. More generally, in terms of improving service delivery to remote areas, we have been trialling link positions where we look at employing somebody from the community for a defined period and that person acts on our behalf in that community, not necessarily having the authoritarian role that we may have from time to time, but keeping us informed as to how the person is behaving, providing advice to that member of the community.

Similarly that person takes responsibility for finding Community Service Order programs in the community and finding sites where people might work, and then providing feedback to us. Another expansion in the quality of service in terms of the Community Service Order Program relates to employing group work facilitators who work with groups of offenders where the number are large enough and identifying activities in the community which are then well recognised and enhance the quality of the project. In addition to doing that this person is able to pass on work skills often to people who have never been employed and improve the prospects of employment.

Ms RUSIS: One of the big problems—I assume you have received it in your submissions—is the issue of transport in rural and remote areas. That is a real problem for our offenders who often do not have licences, they have either been disqualified or cancelled. We deliver a lot of group-based programs and in the Sydney metropolitan area that works well because people can catch a bus and attend once a week. We have had to tailor them for our rural areas in a few locations in both the north-west and south-west. We condense the program and instead of attending once a week for eight weeks, we do an intensive program over two days and we actually transport the people to a central area, for instance, Lake Cargelligo, or somewhere like that. We get all the neighbouring areas. We arrange transport in the morning and back of an evening. They do their programs in a condensed form in recognition that the retention rate would be, I think, compromised, by asking people to come every week.

The other thing that we do in the north-west and south-west is we use other agencies to perform supervision roles for us by proxy. For instance, the Griffith area, where I understand the committee will attend, of community offender services covers as far as Hillston, Hay and up to Ivanhoe; a huge area. So it is impractical and a waste of resources to send a probation and parole officer every week to each location to supervise a community service order. We normally use another government agency that acts as a proxy for us to ensure the person is there. Similarly we provide a service for that department too. The more examples that our department has established of working with other government agencies who are really covering the same area, the more effective it has become.

We do it with Health now, we do it with the Department of Community Services and NSW Police and it makes sense to all of the agencies, so that has increasingly been our focus in trying to get to all areas. Otherwise, realistically, I could have some of my staff on the road all day every day to get to one location to see one offender. So the collaborative approach is working quite well. That is not to say there is not room for improvement, but both Phil and I attend the Premier's regional co-ordination management groups in our areas, and a lot of whole-of-government collaboration goes on there too and we have tried to bring that down to our service delivery level.

The Hon. GREG PEARCE: Am I to take it from what you said there that effectively throughout the State you are able to administer community sentence orders?

Ms RUSIS: Yes.

The Hon. GREG PEARCE: So, in terms of your administration of the system, there is no reason not to have a full range of sentencing options right across the State?

Ms RUSIS: Home detention is isolated to a certain geographical area, and periodic detention is not provided statewide. But, in terms of community offender services, there is some confusion, because people sometimes say, "It is a shame you cannot have a community service order in a remote area." There is statewide coverage. People can be eligible. Sometimes there is a problem with suitability. That often makes it difficult for our staff to find an agency that will take a certain person. It does not mean that we have given up. Sometimes, particularly in small communities, which Phil and I have worked with, the agency has had a bad experience. We have given the agency a community service order person and it has not worked out terribly well and the agency has said, "I do not want the person back again."

We are constantly trying to regenerate the program and find new agencies. But also, in remote areas, we are trialling putting community service order people with either a mobile camp, which is run through the gaol, or on a work site supervised exclusively by us. Because it is supervised by us, we can assess them as suitable, and we take them in their entirety. That is a very good option for people who are difficult to place. Certainly, there is statewide coverage of community service orders; it is just that sometimes placement causes difficulties.

The Hon. GREG PEARCE: You both mentioned indigenous offenders specifically. Do you regard indigenous offenders as particularly suited to some of these options, or why did you refer to indigenous offenders particularly?

Mr RUSE: They are a significant part of the population that we deal with in the more remote areas, and they are a significant part of our case loads. In communities where there are so many social issues it takes quite a bit of the work of our officers to develop and sustained programs.

The Hon. GREG PEARCE: What is your experience with those programs?

Mr RUSE: The programs have been very positive when done in conjunction with other agencies. When agencies work together they seem to have better outcomes. In general, I think we are improving the quality of the service that we deliver. We offer services statewide. The question is providing the quality of service in remote areas, and I think we are becoming better at doing that.

The Hon. GREG PEARCE: Do we have statistics on the number of indigenous offenders?

Ms RUSIS: I have some that are subject to community programs. Have you been given the inmate census, which are the gaol statistics?

The Hon. ERIC ROOZENDAAL: I have not seen those.

Ms RUSIS: If you have not, I can easily provide those statistics. I have just rough notes, so I will not hand those up. Roughly, the indigenous statistics are that 18 per cent of male persons in custody are Aboriginal and Torres Strait Islander, and 28 per cent are women. In community-based options, at the lower end is home detention and at the higher end is suspended sentences, and they vary very between 5 per cent and 25 per cent. As a total percentage of community offenders, about 16 per cent are Aboriginal or Torres Strait Islander. If you look at the probation and parole office at Sutherland and the probation and parole officer at Bourke, of course you would have a different breakdown. But 15 per cent of the total population are identified as Aboriginal and Torres Strait Islander.

The Hon. DAVID CLARKE: Mr Ruse, you spoke about the program that has been running in Lismore since about 1999 called Rekindling the Spirit, and you said that has been a successful program. How do you assess the success of that program?

Mr RUSE: First of all, it was because of anecdotal evidence that we became involved in the program. That was anecdotal evidence of a successful way of working holistically with the family, rather than having half a dozen departments involved. These are high-risk families, and they have significant issues. The anecdotal evidence led to the trial. That trial was then evaluated independently, on a quality basis, by a member of the community in the Lismore area. Because of that evaluation and the continuing positive feedback from our staff who dealt with that agency the trial was promoted to the point that funding has been received for four years through Drug Summit funding.

The Hon. DAVID CLARKE: In what way is it a successful program?

Mr RUSE: It meets the needs of high-risk offenders from our perspective. It also addresses the issues within the family. So it addresses the offending behaviour in conjunction with the families. Generally, the families we are dealing with through Rekindling the Spirit have multiple problems. They would normally be dealing with the Department of Community Services, there would be child protection issues and issues of family violence, and those issues spread across to other members of the family, such as children at school. The person running that program is able to deal with all those issues because the person knows about all of those issues, rather than departments acting independently and not sharing information.

The Hon. DAVID CLARKE: Are there any statistics to show the success of that program over, for instance, other programs?

Mr RUSE: There is currently a second evaluation occurring. The first evaluation was qualitative and based on feedback from people involved with the program. The current evaluation is being formulated. That is part of the accountability process for the funding that has come through. The funding came through this financial year and will be operating for a further three years. As part of the accountability process, administration is now much tighter. So those figures will be available in the next evaluation, which is currently being organised.

The Hon. DAVID CLARKE: But, to the present time, there are no statistics?

Mr RUSE: Very broad statistics.

The Hon. DAVID CLARKE: What do those statistics show?

Mr RUSE: They indicate that there has been a positive result. We are not talking huge numbers. In the past four months we have referred around 70 people, but it is based on qualitative results and it is on anecdotal evidence largely.

The Hon. DAVID CLARKE: When we talk about positive results, are we talking about the rate of reoffending?

Mr RUSE: That information is part of the current evaluation. But, again, I refer to the fact that it is largely anecdotal evidence from our staff. We do not have particular statistics. I can provide the Committee with a copy of the last evaluation if that is required.

The Hon. DAVID CLARKE: It is a program that has been going for about six or seven years now?

Mr RUSE: Yes.

The Hon. DAVID CLARKE: You mentioned the steering committee that overseas this program. Who comprise that committee?

Mr RUSE: The manager of community offender services in the area, representatives from health services and the Department of Community Services, as the funding bodies, representatives from the Shared Vision organisation, which is in Lismore, an organisation set up through the Premiers regional co-ordination group to co-ordinate Aboriginal services and Aboriginal employees. I think there are about four or five representatives through various facets of the health department, mental health and Aboriginal services. The committee comprises I think eight representatives.

The Hon. DAVID CLARKE: Are some community-based sentencing options inappropriate for particular disadvantaged groups?

Ms RUSIS: Our department would be of the view that the most appropriate sentencing option for an offender is one which is consistent with court expectations, community expectations and the needs of the community, and balances all of those. Local variations can be good to meet the needs,

as long as they do not compromise the integrity or intention of the courts. That is why we have so much to do with the court system. Every time we introduce a new program or have new approaches, we advise the courts first through formal ways—the Senior Assistant Commissioner speaks at all of the major Straits conferences—and also informally through the networks. When we travel around in our remote areas particularly—and we do have the larger metropolitan area too—magistrates will say to us, "We want something that is effective and that can work in this community." So it is always a question of balancing all of the different players in the criminal justice system. We are very keen to ensure that what we provide protects community safety, is consistent with the aims of sentences and is also effective in changing behaviour.

The Hon. DAVID CLARKE: Are you aware of any particular disadvantaged groups for which these community-based sentences are inappropriate?

Ms RUSIS: In our submission we talk about some of the eligibility criteria for home detention reducing the number of indigenous offenders that would be suitable, because some indigenous offenders present with a longer history, or perhaps a history of violence. So there is always a question of eligibility and suitability. Obviously, it was not intentional that we would disadvantage any group. One question we are looking at in piloting regional home detention is: Do we need any adjustments of eligibility criteria to meet the need? There is no point having a program that would exclude many people. At the moment, the home detention program eligibility criteria have proved effective where that program is working at the moment, but part of the regional pilot at Kempsey is to see: Do we need to change that? We will find that out fairly quickly.

The Hon. ERIC ROOZENDAAL: Mr Ruse, is the Rekindling the Spirit program for inmates on parole or probation who go back to the family? To whom exactly does it apply?

Mr RUSE: It has an open-door policy. We make approximately 60 to 70 referrals each year for people who are on parole or probation. They provide counselling services. The range of services that they operate includes a men's group at Lismore. That has had a significant positive response in terms of men in the community. That is being expanded to the Tabulam area, which is outside Casino. It is an area that has been targeted through the Premier's disadvantaged communities programs. Others are alcoholics anonymous groups, one-to-one counselling, family counselling, gym projects, school programs, mentoring. That is the range of services.

The Hon. ERIC ROOZENDAAL: Am I to understand that the key to the success of the program is pretty much due to the worker working quite intensely with the individual family?

Mr RUSE: Yes. It is a whole-of-family approach, rather than an individual agency approach.

The Hon. ERIC ROOZENDAAL: You made a reference that it overcomes the problem with different government departments coming into contact with the family. Do you think there is a need for us to have a closer look at this problem of departments coming into contact with high-risk families?

Mr RUSE: Yes. I think there are certainly advantages in a joint case management approach. It is not always simple. It is not always as simple as doing that because there are issues of privacy. We are involved in a joint case management approach in Dubbo to some issues that have developed in part of the community there. Although all agencies come to the table, there are concerns from some agencies about disclosing information about particular people and families that would breach privacy legislation, and I understand that is being looked at at the moment.

Ms RUSIS: But it is important. It is what we are heading towards, a free exchange of information between agencies, but, obviously, on a need-to-know basis.

Mr RUSE: In more remote communities that will often happen. The various government and community agencies will work very closely together, but having a joint case management approach with somebody who knows all the issues seems to be a very positive way of working.

The Hon. ERIC ROOZENDAAL: Does it include the police?

Ms RUSIS: Yes.

The Hon. ERIC ROOZENDAAL: In terms of community-based sentencing options, could you say some have less or more recidivism rates than others? Is one more effective than the other?

Ms RUSIS: There are two things I would like to say about that. Currently the department is undertaking a recidivism study with the Bureau of Crime Statistics, Don Wedderburn's group. That is looking at parolees who were released from 2001-02 and is tracing them through. That would be interesting to see because it is a longitudinal study. We can give you statistics of successful completion orders, which is about 77 per cent for home detention. Successful completion is in the 70s to 80s for most of them. In terms of recidivism there has been some fairly good statistics collected in Queensland and Western Australia, which have very similar programs to us. They are quoting the proportion of community-based offenders returning to community corrections within two years of completing an order ranged between 11 per cent to 20 per cent. Again, it is an area that we have dedicated some more resources to tracing our own figures through. Those figures from other jurisdictions were pretty encouraging, given that we run similar programs.

The Hon. ERIC ROOZENDAAL: Are there any community-based sentencing options in other jurisdictions that we do not have in New South Wales that the Department of Corrective Services is thinking about or reviewing?

Mr RUSE: The department is not necessarily thinking about these, but I am aware of some differences, particularly in the Northern Territory, Western Australia and Canada, which is currently undertaking a comprehensive review of law and order, and justice services to Aboriginal communities there. Also, they have a similar proportion of Aboriginal people in custody, around 18 to 20 per cent. The population of what they call First Nation people is around 2.5 per cent, which is similar to our figures. They have programs the community contractors introduced and the community basically takes on the responsibility of providing supervision and organising community work themselves. They are contracted to that on a fee-for-service basis.

That runs in the Northern Territory in some communities and it was being trialled in Western Australia, and it operates in Canada. In some locations the Northern Territory has a safe house for women who are victims of domestic violence or family violence in some of these committees. They are taken away to the safe house and the men are allowed to visit outside of the fence and to talk. These people are kept in the safe house for a period, but bearing in mind their communities are more isolated and, perhaps, more structured than some of the communities in New South Wales. Victoria and Canada are trialling appointment of community development officers to work with the communities to increase their capacity to look to provide services within the communities.

Western Australia was using a mentor program for 16 to 21-year-olds, using elders in the community and respected names in the community. Canada also has day reporting centres where people are conditioned to report for one day of the week, each day. They run programs to address offending behaviour. But from what I have read, the strategic focus in Canada is on spirituality and reconnection with communities, and they are operating quite a number of what they call healing lodges across Canada. I do not have the details of those. It will be interesting to see that research and evaluation. That is all the information I have. I do not have that in detail.

Ms RUSIS: We have been watching what has been happening in the Home Office in England because they have undertaken a huge restructure of their approach to community-based sentencing. Their first achievement was to have all case management on computers to be electronically managed. We already have that, which is good. We have done that. The second stage they have been looking at is using accredited evaluated programs that address criminogenic needs. We are already down that path. Just to give you an example, last year we ran approximately 400 group-based offender programs covering areas like anger management, domestic violence and those sorts of things. What has been happening in the Home Office has been interesting.

The next stage is that they are going to have a lot of specific types of programs. At the moment we have a more generalist view in terms of a probation order. Normally the court says to accept reasonable directions. We then direct them to attend programs and all that sort of thing. We have taken a more generalist view, but we are watching with interest how that goes. We were

encouraged to see that a major milestone for them was to have electronic case notes. That is important because it means that the days of the file not only being huge but also accessible in only one location is over. It means that both Mr Ruse and I, central or anyone can access case notes on any offender that we have throughout the State, which is very good. It makes life a lot easier.

The Hon. AMANDA FAZIO: In paragraph 44 of your submission you note that for offenders who are convicted of domestic violence offences a non-custodial sentence is inappropriate. You said that you have people go through anger management courses and things like that. Are they not suitable alternatives to a custodial sentence?

Ms RUSIS: We have a lot of people on domestic violence offences who do not receive custodial sentences. In fact we are just about to undertake what is an example of a whole-of-government approach. Campbelltown and Wagga Wagga are our two sites. The Attorney General is the lead agency. It is a holistic approach to domestic violence offences. That means the court sentences the person to a non-custodial sentence. They come into our care. We deliver a program that is either 29 weeks once a week or you can halve it and do it twice a week. The police also are involved because there may be apprehended violence orders. It is based loosely on the DeLouth model that you may be familiar with, which is a model that operates in America. The Department of Health are involved because they provide victim support services.

We have a substantial number of offenders for domestic violence offences who do not receive a custodial sentence. I assume that the sentiment behind the submission is that domestic violence is serious and if it is serious a custodial sentence is indicated. But certainly in a community we have many people who do not receive a custodial sentence for domestic violence. We used to call them more generalised anger management programs, but we do not now. We actually target it towards domestic violence because we have found that domestic violence is different to anger management in that anger management is more generalised. They are angry about everything, whereas domestic violence is very tailored with lots of strategies and tactics that go with it. We have separate programs now.

The Hon. AMANDA FAZIO: What are the success rates of those programs?

Ms RUSIS: The model that is now being devolved is based on a model that was running at the Penrith office, again with Attorney Generals. Evaluation was done through the Attorney Generals about two or three years ago. The evaluation found that spouses reported a decline in violence. Interestingly enough, we thought we would find that the victims of domestic violence like the support services being offered through Health. But, in fact, many said they did not want the services. They could access them if they wanted to, but it is not just automatic that everybody wants to have the service, which we have taken on board. The retention rate was high in the programs. I am not sure it was qualitative or quantitative, but certainly it was sufficiently encouraging that it has prompted the Attorney General to take on board the findings and then to offer it regionally and in the metropolitan region. Wagga Wagga and Campbelltown are the two pilot sites at this stage.

The Hon. AMANDA FAZIO: Because those programs are set to run for 29 weeks does that mean there is little possibility that they could be run in more remote areas?

Ms RUSIS: Wagga Wagga is a classic example of how we are trying to change this to suit Wagga Wagga needs. In Wagga Wagga we are going to offer longer sessions, possibly two per week. Most of our major programs have been written by outside contractors. However, if that is a problem we have asked that they be tailored to be delivered on a one-to-one basis, which means that if you are reporting to the Deniliquin office and you live out in Deniliquin, rather than our saying you have to go to Wagga Wagga, which, logistically, would be impossible, the program is modified so that the probation parole officer can structure it on a one-to-one basis and go to the program, but not in a group, just as one-to-one. We are increasingly doing that with our programs because it answers the need of our staff in the country to run programs, but they do not have a sufficient number of people to do it.

The Hon. AMANDA FAZIO: I know that Corrective Services uses videoconferencing facilities at community technology centres to allow contact between prisoners and their families, if the

families are out in some remote area. Is there any consideration given to delivering these programs via that technology?

Ms RUSIS: Yes. The section of our department that is doing the videoconferencing is broadening it. As you say, at the moment it is used for visitors and, obviously, legal business and things like that. But because of the size of New South Wales we see it as the way forward. We are about to use it for corporate services, as in job interviews when somebody lives at Deniliquin and wants a job. We have changed it so that it is now open for those corporate services. Certainly, it could be delivered. I know that in Victoria they piloted sex offender counselling via video where the offender may be in northern Victoria and the actual counsellor is in Melbourne. They had mixed success, but they said it did work. We would look down that track, too. One of the things that both Mr Ruse and I find constantly is that it is very hard to attract suitably trained staff to work in very remote areas. It is a challenge. We have found it difficult, as does education, health and police. A lot of people do not want to live in very remote areas, so we are trying to find other ways of making it more attractive. But we are also using things like video links to make sure that our facilities can go remotely also.

CHAIR: It has been very difficult, and it is very difficult, for everybody from lower income backgrounds, particularly north-western New South Wales which has a lower income background generally, whether they be Aboriginal persons or white persons. Many of them actually are charged with assaults or violence and quite a lot of them, considering the population base, get six months gaol. What do you think the Committee should be recommending about this issue in relation to sentencing, particularly community based sentencing because it excludes them?

Ms RUSIS: The recent legislation changes require magistrates to give reasons, do they not, if they are going to imprison somebody for less than six months? If you are asking how can we encourage sentencers to not use short sentences—is that what you are meaning?

CHAIR: No, it is not just about that. Community based sentencing has not been able to occur in the past for people who have been in gaol for six months. Is this correct?

Ms RUSIS: No. You are meaning for periodic detention?

CHAIR: Yes.

Ms RUSIS: Okay. For periodic detention [PD], if a person has served a sentence—again, this is not my total area of expertise—I am aware that if a person has served a sentence of six months in the past, they are ineligible for further periodic detention. Yes, that is legislative; that is a legislative base and any change to that would have to come through legislation. It does not eliminate home detention, with the proviso that at the moment home detention only has limited coverage. Certainly a person's prior record does not exclude them from probation supervision or community service orders. Those are available. I am sure when you receive submissions and when you visit regional areas they will tell you that often our only options are a bond with supervision or community service orders. They are available statewide. Periodic detention would not be available for people you describe, unless there is a legislative change because that is the eligibility.

CHAIR: You have some very innovative-sounding Aboriginal programs operating, albeit not generally across the State and in fairly specific areas. For low socioeconomic white groups in country New South Wales, are there any specific programs? I know you would not be targeting it called that.

Ms RUSIS: No, but they are an emerging group. What we do, as we mentioned before, where transport is a major difficulty, we have a whole series of reporting centres. For instance, in an office like Griffith, there would be several reporting centres. They have one at Leeton and they have won at Hay, so that reduces any transport problems. The other thing we do for people who have got distance issues are field visits and home visits. We also have a lot of partnerships with non-government agencies such as Centacare and the Salvation Army. I think I saw that you have somebody from Centrelink speaking. We also have a memorandum of understanding with Centrelink that prior to release from custody, people are released with a social security number and all of that information because there used to be a lag before that. They would come out of custody and not have

anything, and would have no access to benefits, if they were going to go on benefits. So we have done those things.

To answer your question regarding disadvantaged communities in rural areas, non-indigenous—basically we try to make ourselves as accessible and as easy to get to as is possible, and we do have a lot of partnerships with places like Centacare, the Salvation Army and benevolent charities that work with us quite closely, particularly aimed at getting some vocational training. We have quite an emphasis on that. We have one program called the Pathways to Education and Employment Opportunities Program [PEEOP] which we run, in collaboration with TAFE staff, and that is run regionally. That is really meant to target people who do not have basic skills that present a barrier to employment.

The Hon. GREG PEARCE: Can you give us the costs on a daily basis for various programs?

Ms RUSIS: I noticed in our submission we state for 2003-04 that the costs of an offender in the community was $9.70 a day. That was based on a report on government services. As you would be aware, the cost varies. Did you want each individual program?

The Hon. GREG PEARCE: Yes.

Ms RUSIS: You see, they quote $15.70 a day, I notice, for community work. I would imagine that because we supervise on risk. If somebody is on probation or parole and they are presenting a higher risk to the community, we have more intensive supervision with them. We see them more regularly. We do more verification checks. So I think it would average out whereas with a person of lower risk, we do not see them as intensively. Similarly, a community service order would have a different cost. I cannot tell you the exact cost of what a high risk is as opposed to a low risk, but I note that they are quoting on this $9.70 a day, on average.

CHAIR: I have another question that I realise is outside your area because it relates to periodic detention. Do you think there is any way that a structure could be introduced for what I think is level one periodic detention so that some support processes are operational, as well as just turning up to gaol for a weekend?

Ms RUSIS: Again, with the proviso that it is not my total area, there are two things that are happening with periodic detention at the moment. In July, the second stage is going to come across to the community, Community Offender Services, because in the second stage they are working. In the first stage, some do work: They have to go and perform work at work sites. There has not been a provision of programs as such to the first stage because of the fact that they are not there full time and it has not been a path that has been gone down. However, to occupy time, they are required to perform some work in the community, normally under supervision, stage one, and all stage twos must work in the community. Some of what we are doing with our stage twos, which was quite interesting, is that our community service order offenders are also out in the community doing work and so are periodic detention offenders. So what we have started is joint work sites.

We have three major ones going at the moment. One is at Bathurst, which cleans up Hill End. We work for the National Parks and Wildlife Service there. The second major one is in Campbelltown where we work for the Campbelltown City Council. With any CSO or PD work, we have to make sure that we are not performing work which would ordinarily be done by somebody. It is work which would otherwise not be done because of union issues. We also have a combined site at Wollongong and we are going to continue those sites. That is the trend we are going towards. We do combined sites which are supervised by us. The equipment is provided by us generally doing environmental work and clean-ups. That means that stage ones can come to that also.

CHAIR: So stage ones may be participating in some community work?

Ms RUSIS: Yes.

CHAIR: Does this mean that stage one periodic detention, when it is just turning up and sitting in there for two days, is equivalent to the six months or less gaol terms, which means that the people do not join programs or get involved?

Ms RUSIS: From my understanding, and I am happy to provide you with more information, they had to stay in stage one for certain periods of time before they are eligible for consideration for stage two, and then while they are in stage one they are looked at for what their health is and what their presentation is, and if they are able to go out on supervised work, they do. I am happy to provide the Committee with some criteria or programs that are provided for periodic detention, if that would be of use.

CHAIR: Thank you very much.

Ms RUSIS: I will do that.

CHAIR: And we may well get you to take on notice the question from the Hon. Greg Pearce in relation to more detail on the costs of the individual programs.

Ms RUSIS: Within Community Offender Services, yes.

CHAIR: The return date is 1 July.

The Hon. GREG PEARCE: Could you give us the list of other agencies that you work with?

Ms RUSIS: The community service agencies, yes. That will be done by 1 July, so there are three things.

CHAIR: Actually, the secretariat will go through everything that we have said and see if there is anything else. We thank you both very much indeed for your information, which has been very useful.

(The witnesses withdrew)

(Short adjournment)

ROBERT WILLIAMS, Public Servant,

SARAH JANE GRASEVSKI, Public Servant, and

INGA KARI ANNA LIE, Manager, Prison Servicing Unit, Centrelink, Area West, sworn and examined:

CHAIR: I welcome you all to this inquiry, and I know you will add to the information we have received. Mr Williams what is your occupation?

Mr WILLIAMS: I work for the Federal Government.

CHAIR: In what capacity do you appear before this Committee, as an individual or as a representative of an organisation?

Mr WILLIAMS: As the Area Manager, Centrelink.

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

Mr WILLIAMS: I am.

CHAIR: Ms Grasevski, in what capacity do you appear before this Committee, as an individual or as a representative of an organisation?

Ms GRASEVSKI: As the Project Officer, National Prison Services Stakeholder Relationships Team, Centrelink.

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

Ms GRASEVSKI: I am.

CHAIR: Ms Lie, in what capacity do you appear before this Committee, as an individual or as a representative of an organisation?

Ms LIE: As a representative of an organisation.

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

Ms LIE: Yes, I am.

CHAIR: If any of you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take questions on notice, the Secretariat will send a copy of them to you and I request that you forward any responses to those questions to the Secretariat by Friday 1 July 2005. Would anyone like to make an opening statement?

Mr WILLIAMS: Yes. I thank the Committee for inviting us to appear today. I am sure we can add some value to your inquiry and at the outset I want to clearly set out Centrelink's role. Centrelink is a service delivery agency for the Commonwealth Government. We do not set policy but are required to deliver on the legislation and the Government's policy. However, the way we do our job is very important; it can make the policy really fly. It is with that in mind that we appear today. Questions of Federal Government policy cannot be answered by us, but we can provide information about the entitlements and rules we are expected to apply in our daily jobs. From experience we know that working in partnership with all levels of government and the non-government sector and with the people whom we serve makes a real difference. If we do not work in partnership we create spaces into which people fall.

Our experience in prison servicing is a very tight relationship with a number of providers including the Department of Corrective Services. It makes a real difference to the outcomes, and that is our purpose: ensuring a good outcome for people in the community. Working in close partnership at the outset of someone's commitment into a prison sets a whole range of processes in play which can have a positive or an adverse effect on their release, from our perspective. One issue that often causes problems is debt; it is broader than just an issue for people who are Centrelink customers. Certainly if we do not have an effective working relationship with prisoners to ensure that their payments are properly administered, and they are not able to pay, that leaves them with a debt when they come out of gaol. That can be a disadvantage to them as we try to help their return to the community. In that respect we do have a good relationship with the New South Wales Government authorities.

One thing that is important to us in setting people's obligations under the mutual obligation approach for working aged Australians is that we need to work across government and non-government organisations to make sure that we do not set expectations which are in conflict with each other. For example, parole provisions that make it difficult for someone to look for work, which is one of the requirements of receiving welfare payments. We need to work together on those sorts of issues. Also there are payment eligibility issues that are impacted by the Federal legislation into payment of pensions and benefits. We need to have those on the table in this sort of discussion to make sure that when we set up procedures such as home detention and periodic detention we take into account the full range of impacts on a person's life.

The information we can provide to this Committee is about the impact of certain circumstances on a person's payments. They can be fairly significant because while a person is in gaol he or she is not entitled to a payment. That can have an impact in a periodic detention environment, because the person is expected to largely live a normal life but, potentially, part of their payment is not payable each fortnight because of the entitlement legislation. The Government set a very clear expectation in the budget this year about the welfare-to-work agenda. It is pretty clear that the best form of income is from a job. Our role in Centrelink is to help people identify both the barriers to work and the right services for them to achieve some sort of employment. In the totality of government and organisations, assisting people who are coming out of prison to make that transition, we have to be mindful of some of those intersections between the different obligation requirements and the way people are to support themselves.

As the Committee would know, for most working-age people the social security law requires that they look for work. In the recent budget some changes were announced that extends some of those opportunities to look for work to other groups of people, including some parents and people with disabilities. So, once again, we need to be mindful of the impact on their lives as they try to make the transition back into the community. We need to work together to understand the family impact. Often when a person goes into gaol or when they come out, the people around them, including their children and partners, are affected by their commitment to gaol through the income support payments they receive. I think a family approach to understanding the impact on people coming out of gaol is very important.

Centrelink provides a range of services to people coming out of gaol, as part of the Federal Government's Australians Working Together initiative a number of years ago that Centrelink have personal advisers. Personal advisers now go into New South Wales prisons prior to the release of prisoners to do two things: first, to ensure that income support payments are immediately available on release, usually as they leave the prison—we have sorted that out—and, second, to make the connections to the services that are available in the community. We have a range of specialists who provide that sort of assessment and connection—social workers, psychologists, disability officers and personal advisers.

I was hoping to give you a sense of the sort of expertise that is available. Sarah represents the national policy position of Centrelink across the country in relation to prison servicing, and Inga provides management for the team that deals with 12 of our gaols in New South Wales. So it is a pretty significant operational requirement. Inga's team goes into the prisons pre-release. But it is a much wider engagement with people, especially around the families of prisoners and other community organisations in a broader perspective. To close my opening statement, our role is around the income support and the social connection, or the services connection that we can make to other government

organisations, but working together. We have seen some real impacts in helping people to make that transition. It is about the connection between the organisations and making sure that there are no gaps.

CHAIR: Our terms of reference refer to rural and remote persons and to possible disadvantage. What do you perceive will happen for people in country areas when work opportunities are limited—there has been a suggestion that people must go elsewhere for work—and parole officers say that that is where they have to stay?

Mr WILLIAMS: When we manage the mutual obligations for our customers we manage it with the labour market in mind. There is a legislative requirement to consider the impact on payments if a person moves to an area of lower employment. But that would not apply in the circumstances that you are talking about. If someone is released into the community we would manage their obligations against the local labour market and the sorts of opportunities that are available, and we would make sure that we were engaging them with services that will keep them skilled, such as Job Network, rehabilitation services and any of those sorts of services that create a capacity for employment.

CHAIR: Ms Lie, could you describe to the Committee what you perceive to be the role of the Prison Servicing Unit?

Ms LIE: We were set up about two years ago, in August 2003, to provide a pre-release service. That is our primary function. We have two teams within the unit consisting of a customer service officer whose main function is working with inmates on their claims for payment. We also have a personal adviser who sits with inmates and talks about barriers to employment and that sort of thing, making a connection into the community, and support services. We go in three weeks before inmates are released. We receive a fax from each of the correctional centres every week of inmates coming up to release. We receive them three weeks before they are released. We sit with them on an individual basis, complete their claims for payment and go through other issues with them. We do that on a weekly basis.

On a weekly basis we are going into nine adult prisons in western Sydney—from the Silverwater complex at Parramatta, Parklea, the three at John Moroney complex and Emu Plains. We also have some liaison with Brewarrina House and Emu Plains and the women's transitional centre at Parramatta. They tend to function well themselves and they are fairly independent. We return to the prison the following week to see the next group of inmates, at which point we bring back an information pack for the inmates that we have seen previously. They are individually tailored based on the discussions our personal advisers have had with them a week prior to that. In that there would be information about linking them to one of our specialists in Centrelink, such as social workers or psychology services.

The appointment is set for them back in their home location. So if they are leaving a Sydney gaol and they are going to Dubbo we will leave them with a social worker or psychologist in that office, set an appointment for them and that information is provided for them in that pack. We provide them with any other information that might have been discussed, or information that they need such as TAFE courses or whatever. We also provide them with a transport concession card on release. So they are pretty much set up and under way.

CHAIR: So what happens to prisoners who are released from other gaols?

Ms GRASEVSKI: There is a similar service for all prisoners in New South Wales. Because there are a number of prisons in area west, one unit comes together to service those prisons. But all prisons across the State have a pre-release service and that is provided by the local customer service centre. So it is a similar process to the one that Inga has described but it is just provided locally.

CHAIR: So the service occurs three weeks before release?

Ms GRASEVSKI: Yes; between one and three weeks.

CHAIR: Is there any contact with families and prisoners before that?

Ms GRASEVSKI: A model we are currently looking at is working in Victoria. When we stop people's payments when they first go into prison the family is contacted at that point and a range of issues are discussed. To minimise the loss of payment from the partner going in the remaining partner's payments increase. A range of issues are discussed, for example, reducing any outstanding debt recoveries to minimise the loss, referrals to social workers, ensuring that people are claiming rental assistance and everything that they can in order to meet the changes to their circumstances. That is being progressed nationally, but at this stage it is not occurring in New South Wales.

CHAIR: Does the organisation have anything to do consistently with people on community based sentences?

Ms GRASEVSKI: Yes. At the moment we are reviewing the New South Wales corrective service agreement that we have to cover community offender services. We have jointly run focus groups with corrections and probation and parole looking at those specific issues for people on home detention, periodic detention and community service orders. We are currently looking at including a range of strategies in a formal agreement. Those include pre-sentencing report assistance. For example, it may be important for community offender services to know what restrictions apply to people, for example, whether they are on a disability support pension and whether there are a certain number of hours that they should or should not be working. There are also issues about sharing medical assessments.

The other major focus of this agreement is joint planning. Robert mentioned that they have a range of Centrelink obligations. Inga talked about the participation plans that people complete when they are released from prison. We need to ensure that our plans do not compete with their parole orders and that sort of thing. We are also looking at providing a local information pack specifically for community offender services, which goes through all the impacts on the various payments and the considerations they need to take into account. That will include local contacts at their local office, streamlining liaison between the local office and parole, cutting down the duplication and overservicing that government may be experiencing at a State and Commonwealth level, and also basic things like assistance with proof of identity.

Proof of identity is a huge problem for this group. Probation and parole officers often have visited a person's home, have a range of information that is useful to Centrelink, and streamline the service for their customers to Centrelink. In the next couple of months we are also looking at finalising training for our customer service staff in the local Centrelink offices. That covers issues for prison release customers as well as community based offenders and their families. Basically, that is an awareness type session as well as procedural issues that can streamline the services for that group.

The Hon. GREG PEARCE: How do you handle people on periodic detention?

Ms GRASEVSKI: The main issue for that group is that their payment will be deducted for the days that they are in prison. If they are in for weekend detention they will probably be deducted for two days per fortnight. If they go in Friday night and come out Sunday it is considered one day's deduction because they are looking at midnight to midnight. We should be advised when they go into periodic detention and their payments should be reduced accordingly.

Mr WILLIAMS: That is a Federal legislative requirement. It is an exclusion from payment in the social security law while you are in gaol.

The Hon. GREG PEARCE: Does that apply for home detention?

Mr WILLIAMS: Home detention can be impacted for working-age people. The requirement is for people to be actively seeking and looking for work. If the conditions of their home detention are such that they cannot do that, it may cause some problems with the eligibility for payment. Generally speaking, we work around that. Unless the person is at home and cannot leave at all there are a lot of opportunities to be engaged in either employment programs or looking for work in a lot of circumstances. So it is case by case. One of the things that probably needs to be considered for these short periods of periodic detention or for home detention is how people are going to support themselves and how they are going to look for work. I think we would probably all agree that looking

for work and getting a job are probably the best ways of helping people to return to life in the community.

Ms GRASEVSKI: The other group is community service orders. For that group their community service order is accommodated within our activity test requirements. So it will not mean that they will lose a payment at all. If their community service order is in excess of 20 hours a week they are given an activity test exemption for 13 weeks, so they do not need to carry out any other looking for work activities. I guess our focus is very much on whatever their commitments are. with Community offender services who will work around them.

The Hon. GREG PEARCE: You have devoted quite a lot of resources to dealing prisoner problems. How many people are devoted specifically to prisoner programs?

Mr WILLIAMS: It is a bit hard to say nationally. I suppose it is part of the servicing of every one of our 350 or so officers. We do a lot of remote servicing. We have decided in the area that I work in, which is area west—west Sydney and west New South Wales—to congregate our resources around a unit because we have so many gaols in that area. In other areas the same sort of function will be carried out from the local customer service centre via one of our personal advisers or the other specialists. So we expect to provide the same level of service around the country, wherever that is possible.

The Hon. GREG PEARCE: In rural and regional areas, in particular, do you play a more active supervisory role with Corrective Services?

Mr WILLIAMS: It tends to be a more localised arrangement. For example, our Lithgow office has an arrangement with the local prison. It would be the same around the country: When we have not got a prison servicing unit nearby, the local manager and the local personal advisers will deal with the prison on the basis of local arrangements.

Ms GRASEVSKI: There is a set of minimum standards that each Customer Service Centre follows for their servicing. So everyone is basically getting pretty much the same deal. Was your question in relation to post release—probation and parole?

The Hon. GREG PEARCE: Yes.

Ms GRASEVSKI: Because that group of customers covers the whole State and is not necessarily around a prison, it becomes the responsibility of each customer service centre. These agreements are looking at streamlining those connections—providing a lot of information up front and facilitating meetings with Probation and Parole and the local customer service centre to ensure that the linkages are there in terms of joint planning, pre-sentence reporting and that that sort of thing occurs in the existing facilities.

The Hon. GREG PEARCE: Do you go as far as assisting Corrective Services by checking on someone in home detention and whether the conditions of home detention are being met?

Mr WILLIAMS: No, that is not our job at all and we would not be engaged in that. We try to make sure that we provide enough information about the circumstances of income support to the individuals. We make sure that we do not disadvantage them in that respect but we do not have any other role in managing that.

The Hon. GREG PEARCE: You seem to look after them very well.

Ms LEE RHIANNON: As you would be aware, the prison population in New South Wales is increasing and more prisons are being built. Are you looking to increase your staff who provide this specialised support?

Mr WILLIAMS: As I said, we provide support across the board. The basic driver of this is access to income support so we would provide that service to anyone coming to us. We provide specialist indigenous servicing as well. Those sorts of angles come into the main job of providing income support within a support framework. We would service all the people we needed to.

Ms LEE RHIANNON: You give specialist support to families of prisoners. Could those families miss out, because I imagine only specialised units provide that support?

Mr WILLIAMS: No, I think we were discussing that point before. The personal advisers and specialist officers are in every customer support centre around the country. While we are lucky to have a prison servicing unit here that has a heart of information, the same sort of service level is given to people wherever they come to our organisation. There is not a direct resource impact in terms of increasing or decreasing around the sort of issue you are raising. We will provide the same level of service with those sorts of angles covered.

Ms GRASEVSKI: Some centralised functions are occurring with debt prevention that we would be looking at linking family contact with when people go into custody, aside from the services that Robert is talking about.

Ms LEE RHIANNON: Can you go into a bit more detail about the support for families? I think I have got my head around the payment issues but I wonder how the support for families has developed?

Mr WILLIAMS: Inga, perhaps you could talk about the conference that was held recently.

Ms LIE: My role, apart from managing the unit, is to look at where there are other opportunities to work with Corrective Services and other community organisations. One of the things we have recently been involved in is working together on a families of prisoners forum that was run on 18 May in Bankstown. It was designed to provide information and better inform service providers who are working with the families of prisoners on the issues that they face in a way that would provide better support and better assistance. It is kind of doing that sort of thing as well. We had some contact with a couple of ex-prisoners and with a grandmother whose son is in custody and who has care of the children. She presented on the day too. It was really worthwhile. We are trying to do those sorts of things as well as raise awareness and provide day-to-day support in our CSCs to families of prisoners.

I should also mention in relation to debt prevention and families that one of the issues when people go into custody is the notification to Centrelink that they are in custody. That is absolutely critical and something that we have looked at as an issue. That could obviously have an impact when people are released. So what we are doing—particularly if they are looking at reconciling and returning to their families—is putting up posters around the visiting areas of some of the prisons that we work in, in conjunction with welfare staff. These posters are written in such a way that families are given information such as "Notify Centrelink if you have a partner or loved one in custody" so that their entitlements are adjusted quickly, and that sort of thing. We are encouraging people to do that as soon as possible so that they are looked after appropriately financially.

Ms LEE RHIANNON: It sounds like that would happen only in prisons where you have a presence, such as in Western Sydney. My guess is that prisons in other parts of New South Wales are probably not getting that material. Would that be the case?

Ms GRASEVSKI: That material is being fed into the national customer service training that will be focusing on prison release and the Community Offender Services issue.

Ms LEE RHIANNON: I think most members of Parliament receive letters from prisoners, talking about this, that and the other. Over the years I have received quite a few complaints about prisoners who have left prison with nothing and who do not know what is going on. Your service sounds quite comprehensive. Do you think you are meeting the needs of all prisoners?

Ms GRASEVSKI: There are boundaries to the people we can assess. One is court releases because we are not given any notice. They do not know whether they will be released until they are actually released—and a huge proportion are released from court. People are also released on parole on short notice. It is very hard for us to provide a pre-release service to that group so those people will always have to come to a customer service centre for payment.

Mr WILLIAMS: In the main, we are pretty pleased about the way we are able to work with Corrective Services to provide that pre-release. It is pretty impressive when the payment is set up and the entitlement is sorted as the person leaves. We believe it gives a greater sense—the person does not have to deal with Centrelink on the day they are released. It helps with their transition. They can sort out accommodation immediately rather than worrying about filling in forms and that sort of thing. We have also had quite a lot of success in terms of, as our personal advisers go in, they take with them a bunch of knowledge about the community services that are available and make the connections and the assessment about what the needs might be. The connections to those organisations are sometimes made before the person comes out so they have a sense of where to head, rather than walking out and not knowing. Our role is very much about assessing needs and identifying service providers. Our intervention is more limited to income support and immediate crises.

Ms GRASEVSKI: I should mention that the family and community services minimum standard for pre-release payments is for people released outside business hours. But in NSW most prisoners are assessed, whatever day they are released. There is only one prison at the moment that is just doing releases outside business hours, and that is looking at expanding the service shortly.

Ms LEE RHIANNON: From the way you present it, it sounds as though it is going very well. Do you feel there is room for improvement? Do you think the service is satisfactory, works for prisoners and helps people to integrate back into society? You are at the coalface; what do you think?

Ms GRASEVSKI: I guess it has helped us on a number of levels. As well as helping the customer, accommodation is the main issue. It is really good to provide that assistance pre-release. In some States prisons will assist with accommodation—if the money is there they can tee that up before the person leaves. From the perspective of leaving prison without an appointment, turning up at an office and us going through the confirmation of release, no identification—all that sort of thing—it can create problems for transition. They might also need to see their parole officer. They may need to access medication on the day of release. There is a whole range of things, including the impact that coming to a customer service centre can have on them. From our perspective, it cuts down on customer aggression. That is one of the main reasons why nearly all the CSCs are providing an expanded service. Plus it means that we are able to plan interviews rather than having people just turn up.

Ms LEE RHIANNON: How many prisoners have you spoken to who have the money in their account as they walk out the gate and how many walk out the prison gate and have to be proactive and come to you?

Ms GRASEVSKI: We are collating the statistics at the moment so perhaps I can send the information to you.

Ms LEE RHIANNON: Can you take that question on notice?

Ms GRASEVSKI: Yes.

Ms LIE: I can give you an indication of the numbers that our unit has seen in two years. I have the figures with me. We have done 3,000 claims so we have seen more than 3,000 inmates.

Ms LEE RHIANNON: Over how many years?

Ms LIE: Since August 2003.

Ms LEE RHIANNON: It would be interesting to know how many prisoners were discharged in that period.

Mr WILLIAMS: It would be largely the same figure. We are doing them when we know they are leaving—we are getting their payments ready. The number we have seen will be largely correlated to the number that has been released.

Ms GRASEVSKI: Other than the people who are released from court.

Mr WILLIAMS: Of the number we saw, those people would be pre-release.

Ms LEE RHIANNON: I might be misunderstanding something. I am thinking of country gaols. My guess is that people must leave those gaols without having seen anybody.

Ms GRASEVSKI: The country ones all have services. All of them have these sorts of services where they are assessed pre-release.

Ms LEE RHIANNON: Okay.

Mr WILLIAMS: As Sarah said, some will leave before we can get to them. But, on a whole, the policy nationally is to do this.

Ms GRASEVSKI: We are trying to tighten the period of what is considered to be too short notice by implementing electronic transfer and that sort of thing into prison trust accounts. We are looking at a range of things to tighten that process.

The Hon. ERIC ROOZENDAAL: In relation to those prisoners that get released from court or placed on short-notice parole, do you have any processes in place to make contact with them?

Ms LIE: From the unit's perspective, we are mobile. We are on the road all the time so we can get to any of the prisoners we cover at fairly short notice.

Ms GRASEVSKI: The court releases will never get notice—they leave court and that is when they know they have left court. The quickest way for them to get payment is to go to the local Centrelink office and claim straightaway. We have had pilots in the past in courts in other States but they have just not been effective because there is no way of judging whether one person will be released or 10 people will be released. It has not been effective to date. We are looking at trying to streamline the post-release process for those people. If they go to a parole officer first, the parole officer can take a series of steps to streamline the process with us and get it up and running so that people do not turn up cold at an office—we have already verified their identification, their discharge has been verified by the parole officer, who has told us that they are on their way. The processing can start before they get there if they are previous customers. The other thing we are looking at is agreements with courts to raise considerations that they may want to take into account in terms of the impact of the length of sentence, release times and a range of other things that I think forensics are also interested in.

Mr WILLIAMS: The important point is if a person is not someone who receives pre-release, and they turn up at our offices, we make the arrangements to ensure that they have their payments as quickly as possible and that they are seen. We have a standard way of servicing, which includes appointments today, tomorrow or whatever. But if someone is in a critical situation, like just released from gaol, we will see them that day and sort out what we need to do for them as quickly as possible. It is a pretty responsive service once they turn up because we know they are in need, and we understand the importance of getting them some money quickly.

The Hon. ERIC ROOZENDAAL: Over the past three or four years have your staffing levels gone up or down?

Mr WILLIAMS: It fluctuates, depending on the level of unemployment and all those sorts of things.

The Hon. ERIC ROOZENDAAL: What are your staffing levels at the moment?

Mr WILLIAMS: I have not got the figures here. In my area in west New South Wales it is approximately the high 700s—there are three areas in Sydney and two other areas in the south and the north. The overall Centrelink staffing—and I am merely just guessing a general figure—is approximately 20-24,000, something like that.

The Hon. ERIC ROOZENDAAL: When Ms Lee Rhiannon asked you a question about additional demand for an additional prison, I noticed you seemed confident you could handle any additional demand with your present staffing levels.

Mr WILLIAMS: Our funding is generally tied to the level of work we have to do, the number of claims that we are processing and that sort of thing. There is always and overhead built into the number of claims for, say, the New Start allowance which includes servicing people from non-English speaking backgrounds, indigenous people, prison release and those sorts of special needs cases. So there is an overhead built into that, so our funding tends to go with the work and there is always a component for servicing those special needs groups.

The Hon. ERIC ROOZENDAAL: Mention was made earlier about a typical participation plan discussion with prisoners for pre-release. What is a typical discussion plan?

Ms LIE: It is really just looking at, I suppose, some short terms goals. It might be just one or two goals to help give them some direction, and that is in discussion with the individual about where they want to go. That will lead to an appointment booked with them two weeks later and that will be followed through. So they will have the ongoing contact and support with the local CSC with the personal adviser and/or a specialist.

Mr WILLIAMS: It is generally in the framework of mutual obligations of having to look for work or do something in order to receive their payment.

The Hon. DAVID CLARKE: What significant family impacts, if any, have been observed with those on home detention.

Mr WILLIAMS: I think we would probably be talking about the potential impact on the family income. That is the main area that we would be advising in terms of entitlements and things like that.

CHAIR: This inquiry is in relation to community-based sentencing. Could there be potential for welfare payment laws and conditions to negatively impinge on possible community-based sentencing options? This is not a value laden question.

Mr WILLIAMS: No, I think the answer is that the role of Centrelink is to be able to advise on the impacts of certain courses of action so that it is upfront, and probably the issue is making sure that whatever we are doing across the range of obligations is connected and we have a view to the likely impacts on a number of aspects which includes their Centrelink payments.

CHAIR: The likelihood of losing two days payment—which would have been committed to their rent and whatever their family requires—if they are on periodic detention, could that impinge on their decision to take periodic detention?

Mr WILLIAMS: I would not like to comment on that. I can only really tell us what the impact of the social security law is, but I think it needs to be taken into account.

CHAIR: We can recommend negotiation, as this is not about conflict between the State and the Federal Government. Have you tried to set up a formalised structure with probation and parole to pick up some of these people?

Ms GRASEVSKI: Yes, that is part of the formal agreements that we are developing now. We will have a State-based agreement and then there will be local implementation packs for each customer service centre and each parole office.

(The witnesses withdrew)

EILEEN BALDRY, senior lecturer, Faculty of Arts and Social Science, University of New South Wales, Sydney, sworn and examined:

CHAIR: In what capacity do you appear before the committee? Do you appear as an individual or as a representative of an organisation?

Dr BALDRY: As an individual.

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

Dr BALDRY: 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 do take any questions on notice, I would appreciate it if the response to those questions could be forwarded to the secretariat by Friday 1 July 2005. If any questions are taken on notice the secretariat will actually send you a copy of them. Do you want to make a short statement?

Dr BALDRY: Yes. This is an excellent inquiry because community-based sentencing has not been well enough used, and I think it is increasingly not well enough used in New South Wales. I think it has the potential to reduce the prison population and levels of people's disadvantage in being caught up in the criminal justice system. I note that the terms of reference indicate that prison is clearly seen as the last resort, and should be seen that way, and that one of the reasons for looking at community sentencing is to try to hold that as a factor. I think that is a very important aspect of this approach. Given that over the past 10 to 15 years people caught up in the criminal justice system, particularly those ending up in prison, are increasingly the residualised disadvantaged multiple disadvantaged people in our community.

We also have to be very careful about the kinds of community sentencing that we might give people because the last thing that would be helpful to do would be to set up people to fail which I think is something that needs to be considered very carefully. In giving community sentences it is evident in, for example, probation and parole that the problem often faced is that people are not given the capacity and the support to do what they are supposed to do to meet the requirement. That is evident in the increased number of breaching which the committee may well be aware of, I am not sure. It is one of the areas that has risen significantly in terms of what it is that people are sentenced for, say murder and those sorts of things. Good order and breaching is one of the things in that category that has increased. Part of that is the problem that people are given requirements that almost sets them up to fail.

CHAIR: Can you provide any evidence of community-based sentencing options actually reducing recidivism?

Dr BALDRY: There are some examples in a couple of places, I think, in Europe. Certainly community-based sentencing in Nordic countries, such as Sweden, is beneficial from the point of view that there is a lower return rate for people who are given a community sentence instead of a prison sentence. But I think the caveat is that there is support provided to help them meet the requirements of community sentencing. For example, people with specific disadvantages, for example, those who have an intellectual disability, need particular support in being able to maintain a community order. When that is given the evidence appears to be that there is a reduced recidivism rate.

We have to look at, in some respects, Victoria. Victoria has half the prison rate. I do not know whether Victoria has been mentioned yet? Victoria has a greater use of community orders and its recidivism rate is lower than New South Wales on the whole. New South Wales has the second highest recidivism rate taken on a two-year measure. If it is taken on a whole-of-life measure, New South Wales may well have the highest recidivism rate. From an overall perspective, jurisdictions that really do attempt to use prison as a last resort and attempt to provide community support and community sentencing in a variety of manners, have better outcomes.

CHAIR: One of the other issues coming up in this inquiry relates to rural and regional people. Nordic countries tend to have larger populations in smaller centres. The varied and different kinds of supports to which you refer for people with different needs are often difficult to institute in places where smaller populations. What ideas do you have on that?

Dr BALDRY: We cannot compare ourselves with Sweden because of our population spread, but I think we could be a lot cleverer in the way in which we provide a whole range of human, social and community services, which could include a corrective service aspect. An example is the notion of the one-stop shop. I do not like the term, but I am referring to one place that people can come to to address a whole range of issues. That is a very cost effective and very beneficial way to provide services for people who are finding it very difficult to manage issues to do with reporting, mental health, housing and community service. It is also beneficial from the point of view of those providing the services because it is from one office with perhaps the number of people who might operate the office, but not all the time. On the whole, the way we do it is with a parole office and then the Centrelink and Department of Community Services office and so on. That may be something we could consider as part of the way to address these issues.

CHAIR: One of the big problems in smaller towns is that the one-stop shop often has to have a person who is in control of pulling together other agencies and therefore can become a gatekeeper by default.

Dr BALDRY: That is true. I guess one has to monitor that.

CHAIR: How do you monitor that?

Dr BALDRY: I think you monitor that by having someone at a central place regularly looking at who is getting in and who is not, and what the figures are that are coming out of that place. If, for example, there are lower numbers of Aboriginal people—

CHAIR: Or poor whites too.

Dr BALDRY: Poor whites or anyone are being seen there, then one might begin to wonder whether something is going on.

The Hon. AMANDA FAZIO: I am interested in your views on why accessibility to community-based sentencing options is a problem. How can we overcome the accessibility issue?

Dr BALDRY: I think there are a whole range of reasons. I would refer to my research, but I will leave with the Committee a more recent version, which is about to be published in the *ANZ Journal of Criminology*. There are some key issues. One is homelessness. By homelessness, I do not mean only being on the street; I mean also not having a reasonable or permanent address. Over the past couple of years—and since I finished my research I do not think things have changed particularly—the fact that someone does not have either a stable or reasonable or suitable address that can be used as a base for them to serve a community sentence or access a community sentence has been, in my view, one of the biggest issues.

Half of the people that we traced, followed and interviewed over a period of nine months after they came out of prison were homeless. Almost all of them were on very short sentences. So we are talking about people who were imprisoned for less than six months, many less than three months, and when they got out of prison had no sensible place to go. The really important thing about that is that a good number of those people, when they went into prison, already were homeless; they did not have a suitable address. That is one reason they may well have been in prison. That is one issue. Another really important issue is a matter of law or legislation. That is the tendency to give somebody who has had a previous prison sentence another prison sentence, and not a community order.

I think that should be inquired into significantly, because on the whole these are short-term prisoners. They are not long-term inmates who have committed armed robberies and so on. They are people who will cycle in and out of gaol time and time again. Clearly, sending them to gaol once has not helped, so sending them to gaol twice will not help. We probably have to think much more

carefully about whether it is reasonable to adopt as the main approach that, because some has served a prison sentence before, because they are recidivists, they should go back into gaol. That is a huge barrier to people accessing community sentencing, because it is deemed that they probably will not be worthy of it and will not live up to it.

The next issue is with people who have mental health problems, people who have cognitive disabilities, and people with dual diagnoses. It is extremely hard for those people to access community sentencing. Those are massive barriers, because often those very same people are homeless and cycling in and out of prison. I am sure the Committee is aware of the recent report on juvenile justice by the Bureau of Crime Statistics and Research. One indication in it is that this cycle starts very early for many people; so they are already on the treadmill. For young people who have one of those disabilities or disorders, by the time they reach 18, 19 or 20 years and are facing court, it is fairly unlikely that they will have access to a community sentence because everything is stacked against them in that respect, yet they are probably the ones who would benefit most from being given a supported community-based sentence, one which had built into it support for whatever their disorder or disability requires, such as supported accommodation.

I think those sorts of things are absolutely major. There are another couple of fairly major issues that are barriers. Clearly, the rural issue is a barrier. That is particularly so for Aboriginal people who come from small communities in rural areas. Why is that so? It is because it is very likely that the order would require them not to mix with known felons. Given that one in three young Aboriginal men between the ages of 20 and 24 years will have a prison record, that will be a hard criterion for the young Aboriginal men in many of those communities. That creates a barrier for those people.

The Hon. AMANDA FAZIO: The first barrier you mentioned was homelessness. We all know there is a lack of hostel accommodation and emergency accommodation for homeless people in metropolitan areas, but it is doubly so for those in country areas.

Dr BALDRY: It is.

The Hon. AMANDA FAZIO: Are you aware of any hostel set-ups in other jurisdictions that have been successful in providing an appropriate address that would allow community-based sentencing options to be considered, rather than just gaoling those people?

CHAIR: I am pretty certain Western Australia has been trialling some quite different approaches, particularly in communities that have a large number of Aboriginal people. I think some of that has been on the basis of actually changing the requirements, rather than setting up some housing. It is saying: The fact that this person lives in this community, and may be living in conditions that we may describe as overcrowded, and may be mixing with others who have records, perhaps should be looked at in terms of not being a barrier. That may be one way to deal with the issue. We might need to change our view of what is appropriate housing in a rural community or Aboriginal community. I am not saying that is necessarily so; I am just saying those are perhaps some inquiries that we could make.

The Hon. DAVID CLARKE: Dr Baldry, on the issue of recidivism, apart from a couple of studies in Nordic countries that you referred to, are you saying that there are no other studies comparing recidivism rates relating to community-based sentencing and those of prison inmates?

Dr BALDRY: No. That is not correct. The main studies that have been done have centred around probation and parole: people who have been on probation and on cautions, for example, compared to prisoners. Those are not exactly the discrete areas you are looking at. There certainly have been numerous studies in the United States of America, Canada and the United Kingdom which indicate that the results are much better if the support given is reasonable. That is why I commenced with my comment about not setting people up to fail. If the approach is a reasonable one, that is, clients or people on those orders are given requirements that it is possible for them to meet, then, certainly as far as probation is concerned, in most places in the world that has a lesser rate of recidivism than those in prison.

The Hon. DAVID CLARKE: So you are saying that apart from the Nordic studies there are other significant studies?

Dr BALDRY: Yes, there are.

The Hon. DAVID CLARKE: Do they show a distinct improvement, or is it a marginal improvement?

Dr BALDRY: That is very variable, because it depends very much on the jurisdiction and the approach taken. Some of the work now coming out of the United Kingdom is pretty recent. I do not know whether the Committee is aware that Australia of course tends to follow the United States and the United Kingdom, but New South Wales certainly has followed the United Kingdom in the past 10 or 15 years in picking up this thing called through care, which really is a whole-of-sentence or whole-of-criminal-justice approach to supporting someone and trying to ensure they have what they need to succeed.

There are some particular jurisdictions in the United Kingdom, particularly in the south east where the approach that has been taken over the last four to five years has greatly increased the level of supported accommodation and connection. I know the work that Centrelink is doing is excellent, but I have to say the example I am thinking of is much more in this sort of whole-of-government approach whereby there is a lead agency, which in that case is Probation and Parole to try to make sure that they do not go back to prison or they do not go to prison and that they do not breach, and sets up a whole range of checklists. Has this person got reasonable housing? Has this person got employment? Has this person got a disability of some sort? Does this person have child care responsibilities or aged care responsibilities? Does this person have mental health issues or any other issues that would impinge upon their being able to maintain this?

If you tick any of those boxes then there is a referral. There is someone who is supposed to be able to support that person. There is a roundtable meeting, virtual or both, of the lead agency and then police, housing, mental health, community services, human services and so on to try to ensure that the services are there to support those people. The results of that are only just now becoming available because it has not been running for that long, but the early indications are that it is very successful and significantly successful, not just a marginal success rate. The indications in Victoria are the same, though the success rates they are having are significant.

The Hon. DAVID CLARKE: Getting on to that survey in Victoria, which you quoted as an example of recidivism rates dropping in respect of those on community-based sentences, the fact is that that survey did not deal just with those on community-based services, it included also prison populations. There could be other reasons for the lower rate in Victoria, could there not, apart from the fact that there is a greater success rate from a high proportion in Victoria being on community-based sentencing?

Dr BALDRY: Yes, there could except that the return rate for prisoners is higher than the recidivism rate for those who did not go to prison. It is always very difficult to attribute a cause, of course, and I acknowledge that. But one would be pretty hard pressed to say that it was not a factor, that the people who did not go to prison are doing better than those who went to prison in terms of recidivism and part of that from other work in other places, particularly Europe and the United Kingdom, seems to be assisting someone to make their way in the community is a much better way to help them integrate than to put them in prison and then bring them out and expect them to integrate because of the many disconnections that happen once someone goes to prison, even for a short period of time.

The Hon. DAVID CLARKE: Another factor for the lower recidivism rates in Victoria could be that those groups with the community that have a high propensity to crime could be found in Victoria in much smaller numbers, could it not?

Dr BALDRY: It could be, if that were the case. The evidence does not appear to be that Victoria is significantly less criminal than New South Wales. Traditionally Victoria has had quite a different approach in its magistracy to the use of gaol, over many years. This is not party political, this is for 50 or 60 years, and it probably accounts for why Victoria has half the rate of imprisonment that

New South Wales has. It is much more a case of taking a different approach to dealing with particularly what one might call nuisance or street crime and, perhaps, also a way of dealing with people who have already a history in the criminal justice system. For years and years people have tried to work out whether there is a factor, and nobody has really come up with a factor. But those things are worth considering.

The Hon. DAVID CLARKE: In regard to the Victorian statistics would it be fair to say that the lower recidivism rate for those on community-based sentences could be a factor?

Dr BALDRY: Yes.

Ms LEE RHIANNON: We have had some different views put to the inquiry about home detention, so I would be interested in hearing your viewpoint on it if you believe it is something that has benefits and if you could comment on domestic violence. I do not think we have had any quantitative data, but certain there have been many anecdotal stories that it can exacerbate any problems or create them in the first place. Any comments you have to make would be interesting.

Dr BALDRY: My view of home detention is that it is a very limited form of sentencing. It is suitable for a very small proportion of those who go through the courts for many reasons. One is that it requires a very particular level of support from others in the family, and if I refer to my study, for example, more than half of the people in my study did not have a connection with a family and, certainly, probably the rest of the other half, half of them did not have good enough relations with their family to make something like home detention with a family a possibility. It also requires a particular disciplined way of behaving, and that is not necessarily going to be the way in which many people who end up in court are able, at that time, to manage.

Without question there are very serious issues for women in the use of home detention. Most women do not have partners who support them and by far the majority of women, probably 80 per cent, do not have the support of their family. There is much less support for women from families and, supposedly, partners than there is for males in the criminal justice system. Women are specifically disadvantaged in regard to home detention unless that home detention is served with particular support. The other issue for women is that if it is women who are being considered for home detention with a partner, which is unlikely any way, all the evidence from Rowena Laurie's study, which was into Aboriginal women, and from an unpublished study in Corrective Services some years ago is that the huge number of women who are in relationships who are in prison suffer domestic violence, both physical and sexual violence.

Home detention is unlikely to be an option with their partner. There are benefits to home detention for some people. Certainly for people who have work and where home detention allows them to attend their work that is presumably a benefit, but the care that has to be taken as to what extent the other members of the family become the gaolers—it is a very well-known issue—is of particular concern. To what extent other members of the family are then doubly burdened because the person who is on home detention has very strict things that that person can or cannot do.

I know of a couple of situations where men on home detention have put pressure on their partners to get them alcohol or to get them drugs. That is an invidious situation for the partner to be in because what does the partner then do? Does the partner report them? Does the partner get it? Those are very difficult situations that are not necessarily obvious to the services like Probation and Parole. It is quite clear that home detention is much more possible for the richer end, the professional end of those who are in the criminal justice system and certainly not, unless we dramatically change what we mean by home detention, for a majority of people.

The Hon. AMANDA FAZIO: Are you aware of other types of community-based sentences, apart from what we have available in New South Wales that might be particularly suitable for other people with special needs or people in rural areas?

Dr BALDRY: The suggestions that have been made by the Law Reform Commission and a variety of others concerning people with cognitive disabilities could apply to people with other disabilities and mental health issues as well, and that is that the sentence certainly could be given in the community that required someone to have regular support and work, and rehabilitation with a

particular agency. The CRC successfully runs supported housing. They have a variety of models, they do not have just the one model, where there is only supported group housing but there is supported individual housing and there is long-term housing and so on. A variety of those models could be viewed as a way of support for someone in the community on an order, if the major issue that they face is to do with their disability. I think there is growing evidence, internationally and here, that that is a far greater proportion of people who face the courts than we really have understood before. I think we can take examples of that.

CHAIR: I do not know if you are aware, but we have been doing an inquiry on home detention.

Dr BALDRY: Yes.

CHAIR: Would you be able to let us know if there is any literature available in relation to the appropriateness of home detention and who for?

Dr BALDRY: I think you probably have whatever is available. There is a very little done in New South Wales—well, in Australia, of course. You are probably aware of Anne Worrall's work in the United Kingdom?

CHAIR: No, I do not think we have access to that.

Dr BALDRY: No? Professor Anne Worrall at Keele University has produced a number of books on the criminal justice system and the community. She certainly raises qualms—and this may well go against some of the things that I have been saying, although I would not mean them in that way—about making the community more and more a part of the gaoling or the prisons system. I suppose that is why I prefaced what I was saying by pointing out that you must not set things up so that they actually fail, and things that are done in the community must not be set up so that they are the same as a gaol. They must be differentiated. But I can certainly pass on to the Committee Anne Worrall's work and there are quite a lot of references in Anne's work that might be of benefit.

CHAIR: Good.

Dr BALDRY: I have just noted a couple of things. You were asking if I could mention about the number of people released each year in New South Wales. You may have heard this already, but it is estimated that it is around 17,000 people.

CHAIR: Yes, I have heard this.

Dr BALDRY: Yes. Do not forget that a huge number of those are people who were on remand, people who were on very short sentences and people on appeal. So, as I mentioned, I have every respect and enormous support for the Centrelink work. I think they are doing an excellent job. I think one of the difficulties for anyone working in this area is the fact that there are so many churning through the system—so many. I have to say—I am not certain whether that 17,000 includes doubling up, but I do not think it does—but in any one year, an individual may go through two or three times, so that is the disruption that happens to them. Keeping those sorts of people out of the prisons system would be a huge benefit to the prisons system itself because what do you do with those people? What does the prison system do with those people? Even Ron Woodham despairs that this is something that the prisons system is berated for, but it is an extremely difficult issue for them.

I think that one of the answers that we have to be looking for is in a form along the lines of what I was saying about a one-stop shop. It is around integrated servicing because as long as there is not a good connection between the services, then all the work that Centrelink does may fall apart within 3, 4 or five weeks if there is not good enough support in the housing area, or in the mental health area, or in the disability area, and drug and alcohol. It just has to be a much better integrated form for it to work.

CHAIR: Thank you very much for coming to speak with us today. Your information certainly has been valuable. We look forward to the information that you have promised.

(The witness withdrew)

(Luncheon Adjournment)

DEREK MICHAEL PRICE, Judge and Chief Magistrate of New South Wales, Local Courts of New South Wales, Level 5, The Downing Centre, 143 Liverpool Street, Sydney, 2000, sworn and examined:

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

Judge PRICE: I am appearing as a representative of an organisation, namely the Local Courts of New South Wales.

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

Judge PRICE: I am, thank you.

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 responses to those questions could be forwarded to the secretariat by Friday 1 July. Would you like to begin by making a short statement?

Judge PRICE: No, thank you. I rely on the written submissions that I have made. However, I have prepared some supplementary material which may be of assistance to each of the members during the course of our discussions this afternoon. My associate will give that to each of the members.

Document tabled.

Judge PRICE: It is being provided as an aide-mémoire, in real terms. It may or may not be useful to you.

CHAIR: I am sure it will be useful. My question is not really a leading question but it is something that has concerned me quite considerably. Circle sentencing has been discussed from the very outset of this inquiry from outside.

Judge PRICE: Yes.

CHAIR: In the beginning of the process, I actually perceived that was not necessarily part of our terms of reference because it is a type of sentencing process, but I would be very interested to know if access to community based sentencing options influences the effectiveness or otherwise of the circle sentencing processes?

Judge PRICE: To a degree, it does, to this extent: It is a method of sentencing in relation to indigenous offenders. What you must be aware of, of course, is that the sentencing processes still remain in the control of the magistrate, and the sentence after the circle courts process is still that imposed as a magistrate would with respect to any other member of the community. In your folder you will find I have included behind tab 5 a review and evaluation of circle sentencing in New South Wales. You may or may not have seen that.

CHAIR: Excellent, thank you. A basic question I would like to ask is one on which we have sought an opinion from most people. Do you consider some or all community based sentencing options to be lighter forms of punishment than imprisonment?

Judge PRICE: As a matter of law they are lighter. I refer to tab 1 in the sentencing folder and refer you to the provisions of section 5 of the Crimes (Sentencing Procedure) Act. Section 5 (1) provides that a court must not sentence an offender to imprisonment unless it is satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate. In other words, imprisonment as a matter of law is a sentence of last resort. That is backed up by decisions of the Court of Criminal Appeal of New South Wales. I will deal firstly with home detention. In a decision of *Regina v Jurisic (1998) 45 NSWLR 209*, the Court of Criminal Appeal held that home

detention should not be equated with full-time incarceration. It was held by the Court of Criminal Appeal to be substantially less onerous than one of full-time custody.

Further, relevantly, periodic detention was also considered by the Court of Criminal Appeal in a decision in *Regina v Falzon and Pullen* of 20 February 1992. The court held that a sentence of periodic detention has a strong element of leniency built into it and should not be regarded in the same way as an equivalent period of full-time custody. That is because the punitive element has been reduced by administrative arrangements which permit the prisoner to serve two-thirds of the sentence by way of community service. The Court of Criminal Appeal held that a term of periodic detention cannot be mathematically equated with a period of full-time custody; it is significantly less onerous than one served in full-time custody.

In other words, it is a matter of law that community-based sentencing options are less onerous than full-time custodial terms of imprisonment. Home detention and periodic detention together with suspended sentences are terms of imprisonment. However, the court first determines whether it is appropriate to sentence the offender to a term of imprisonment and then determines whether it is appropriate to either suspend the sentence or have the sentence of imprisonment served by way of periodic detention, or, where appropriate, by home detention. It is a matter of law that it is less onerous.

The Hon. GREG PEARCE: Apologies for not being here earlier, a number of us have conflicts with Committees sitting today. Section 5 (1), which you quoted, refers to all possible alternatives. Can you give some guidance on what that includes and how you approach the question of possible alternatives?

Judge PRICE: The possible alternatives start with section 10 of the Crimes (Sentencing Procedure) Act, and that is even though you find the offence proved, not to record a conviction.

The Hon. GREG PEARCE: Like the old section 556A?

Judge PRICE: That is right, or not to record a conviction and to place someone on a recognisance, on a good behaviour bond. There are good behaviour bonds under section 9. In addition, there are suspended sentences, community service orders, periodic detention and home detention.

The Hon. GREG PEARCE: Obviously guidelines have been issued to magistrates to assist them in going through those alternatives?

Judge PRICE: No.

The Hon. GREG PEARCE: How do you administer that?

Judge PRICE: Guidelines are not provided by the Chief Magistrate; guidelines are provided by the judgments of the Court of Criminal Appeal of New South Wales. All magistrates would read the decisions of the Court of Criminal Appeal.

The Hon. GREG PEARCE: What process do you have for ensuring consistency? Is there any peer review or a review to determine what is happening with sentencing?

Judge PRICE: The principal method of review is by way of appeal. If someone is dissatisfied with either the leniency or severity of a sentence that person can appeal to the District Court of New South Wales.

The Hon. GREG PEARCE: You do not have built into the administration of the court a review process or tracking process of the sorts of penalties that magistrates are giving for similar offences?

Judge PRICE: No.

The Hon. GREG PEARCE: Is that something the Law Reform Commission would handle?

Judge PRICE: The Judicial Commission of New South Wales collects material on court sentencing, as does the Bureau of Crime Statistics and Research, which examines the sentencing of the courts. Of course, there is the Sentencing Council of New South Wales which, as you may be aware, has conducted a number of inquiries into the consistency of sentencing in the Local Courts of New South Wales. That was one inquiry. Another inquiry was conducted by the Sentencing Council of New South Wales in respect of terms of imprisonment of six months or less. I add that there is also judicial education. Each magistrate receives at least five days a year of judicial education. We have a very strong partnership with the Judicial Commission of New South Wales, with whom we conduct education programs. Quite a number of those programs are directed at sentencing.

The Hon. GREG PEARCE: In the folder you have provided, tab 2 gives a summary of the various available programs. Without going through them in detail obviously the programs are quite variable. What is the impact on the courts of that variability? I assume it is variable in part because of the lack of resources or the lack of the ability of the Department of Corrective Services to administer some sentences. Is that correct?

Judge PRICE: It is lack of available options in certain regional areas. That comes back to the question of resources. Of course, ideally, the aim would be to have all sentencing options available equally throughout New South Wales. The effect on sentencing is that you cannot have consistency in sentencing without equal consistency, equal availability, of sentencing options throughout the State.

The Hon. GREG PEARCE: What does a magistrate do in a community that does not have an available sentencing option if, having considered the law and the decisions of the Court of Criminal Appeal, the magistrate comes to the conclusion that the appropriate sentence is something that is not available?

Judge PRICE: If an option is not available the court has to sentence the person, the offender, having regard to the fact that it is not available. For example, if a court determines that a term of imprisonment is appropriate, having regard to the objectively serious factors and the subjective factors in favour of the defendant, and then obtained a presentence report from the Probation and Parole Service asking whether periodic detention or community service orders are available, and the report states that neither option is available, that person cannot be sentenced down. In that case if periodic detention is not available the offender would be sentenced to full-time custody.

The Hon. GREG PEARCE: Do you have any tracking, statistics or feel for the number of times that that might occur? Do you have any statistics on the geographic areas?

Judge PRICE: The overview provided by magistrates indicates quite a number of areas in which periodic detention is not available. However, I do not have statistics as to the number of times that people go into full-time custody because an alternative is not available.

The Hon. GREG PEARCE: Earlier today representatives from the Department of Corrective Services appeared before the Committee. They assured me that community service sentencing options were available throughout the State and that they could deliver throughout the State. Would you agree with that proposition?

Judge PRICE: That is most likely correct. However, there comes an issue from time to time when there is not community service work available in certain areas.

The Hon. GREG PEARCE: They made that point. They made the point also that there were partner agencies or others whom they needed to engage to assist in supervising a person and that on occasions those agencies refused, or were reluctant, to participate. Do you have any knowledge of that sort of use of other agencies?

Judge PRICE: I am aware that in some regional areas of New South Wales councils participate in making community service work available, in other areas councils do not participate.

The Hon. GREG PEARCE: What recommendations do you think the Committee should look at, having regard to its terms of reference and your experience?

Judge PRICE: The principal one is to provide equal access to justice to all. That is, as best as resources permit, to ensure that all the community based sentencing options are available equally across the State. But it is a question of resources.

CHAIR: Why is the Magistrates Early Referral into Treatment [MERIT] program available in some areas and not in others? Why is it not available in Armidale but it is available in Tamworth?

Judge PRICE: That is because of its gradual roll out. MERIT is relatively new. It is being progressively advanced across the State. I cannot answer specifically in relation to the two cities that you referred me to.

CHAIR: Does it mean that no drug and alcohol staff are there? Is there a reason?

Judge PRICE: No. In a regional centre where MERIT is not currently available there is probation and parole. Many programs that have been run by probation and parole involve drug and alcohol counselling and other programs.

The Hon. DAVID CLARKE: I refer to the present situation in New South Wales. Some offenders are being given community based sentences and other offenders, in rural areas for instance, are being sent to gaol in identical circumstances simply because that community sentencing option is not available. Is that the situation?

Judge PRICE: The situation would occur in similar types of offences. An offender in one area, where there is a community based option, is receiving a community based sentence and an offender in another area in similar circumstances, because the community based option was unavailable, would be sentenced to a term of full-time imprisonment. However, it is always very difficult to compare cases with cases. There are always different circumstances.

The Hon. DAVID CLARKE: There are different circumstances but there is also a pattern of circumstances. Clearly, it is still occurring. If that person were sentenced in the city the chances are that he would not be going to gaol.

Judge PRICE: That would certainly be the case in respect of certain areas where community based sentencing options were not available.

The Hon. DAVID CLARKE: At point 7 in your written submission you state:

> There is a possibility of disparity in sentencing outcomes.

It is not a possibility; it is a certainty. There is a disparity in sentencing outcomes, is there not?

Judge PRICE: I would refer to it as a possibility, not a certainty.

The Hon. DAVID CLARKE: Currently there are people in gaol who, if had they had had their cases dealt with in an area where community sentencing options were available, would not be in gaol.

Judge PRICE: One must remember that one is dealing with somebody who is sentenced to a term of imprisonment with the objective seriousness of the offence, which warrants a term of imprisonment. Those offenders would have been sentenced to a term of imprisonment, but it is the method how they serve that sentence that creates the difference. If periodic detention was not available, as I have said, an offender may then serve a sentence by way of full-time custody. If the periodic detention were available, if the person was assessed as appropriate and it was appropriate to sentence that offender to a term of imprisonment by way of periodic detention, he or she would be sentenced in that way.

The Hon. DAVID CLARKE: This is a blight on our legal system, is it not?

Judge PRICE: As I said in my submissions, ideally everybody should have equal access to justice. Until you have the same sentencing options throughout the State everybody does not have equal access to justice.

The Hon. DAVID CLARKE: So at present there is no equality of justice uniformly throughout the State?

Judge PRICE: You do not have equal access to justice until everybody throughout the whole of the State has the same sentencing options.

The Hon. AMANDA FAZIO: The same access to legal advice as well.

The Hon. DAVID CLARKE: What are the main reasons why a magistrate might decide not to give a community based sentence, even if an offender is assessed as eligible and suitable under the legislation?

Judge PRICE: You will find in your folder section 21A of the Crimes (Sentencing Procedure) Act, which sets out what Parliament prescribes as the factors that a court must take into account in sentencing an offender. Section 21A refers to the aggravating, mitigating factors and other factors in sentencing. The court assesses the aggravating and mitigating factors and it then considers what is the appropriate sentence. One must remember that the most important factor in sentencing is the objective seriousness of the offence.

It may well be that the objective seriousness of the offence is such that it is inappropriate to sentence a defendant to a community based sentencing option, for example, where somebody is a significant drug trafficker or supplier of drugs. It is usually considered inappropriate to sentence a major supplier of drugs to a community based sentencing option because of the objective seriousness of the offence and the need for general deterrence—that is a factor in sentencing—the need for specific deterrence, and also the major overriding factor remains protection of the community.

The Hon. DAVID CLARKE: Have you come to a view on recidivism rates pertaining to those who are on community based sentences and those who have received full-time custodial sentences?

Judge PRICE: I have not carried out any research or any analysis of it, but it would depend upon the nature of the offender. The two factors need to be considered, that is, specific deterrence and also general deterrence. However, the prospects of rehabilitation where somebody is assessed to be suitable for a community based sentencing option will be greater, in my view, if that person is sentenced to a community based sentencing option. But one must come back, of course, to the objective seriousness of the offence.

The Hon. DAVID CLARKE: Are the probation and parole service pre-sentence reports and assessment reports effective advice for magistrates, given that the probation and parole service may complete the assessment quickly or on short notice?

Judge PRICE: We find them very helpful. We have a good relationship with the probation and parole service. We have time standards agreements with the probation and parole service. For a short pre-sentence report, when you are looking only for periodic detention or community service options, they supply them within three weeks. When you are looking for a full background report they supply it within a period of six weeks, and they are very helpful.

The Hon. DAVID CLARKE: So you believe that the system works quite well in that area?

Judge PRICE: That is my view, yes.

The Hon. AMANDA FAZIO: In section 21A of the Crimes (Sentencing Procedure) Act 1999 the prior record of the offender must be taken into account when you are looking at community based sentencing.

Judge PRICE: That is for any sentences.

The Hon. AMANDA FAZIO: We heard evidence from an earlier witness who had a perception that an offender who had already served a full-time custodial sentence was less likely to be considered for community based sentencing. Do you think that is an accurate comment? Is it common for people who have already served a custodial sentence to be looked at for community based sentencing?

Judge PRICE: The Crimes (Sentencing Procedure) Act prohibits a person who has received a term of imprisonment of six months to be sentenced to periodic detention. There is a prohibition in the Act. I think that was passed two years ago. However, it is a factor that the court looks at. If somebody has committed previous offences that goes to the question of the prospects of rehabilitation, the question of specific deterrence and the need to protect society. It comes into various different factors. It is one of the many factors that are taken into account, but it does not necessarily mean that that person, with the exception to which I referred earlier, will not receive a community based sentence.

Only a week ago I had somebody who had only been released about 15 months ago from a full-time term of imprisonment of six months. He was back before me for social security fraud and the pre-sentence report was extremely positive about what effect that term of imprisonment had had on him. It was very positive about the prospects of rehabilitation. That offender received a community service order. So it does not disentitle. Every case depends on its own set of circumstances.

The Hon. AMANDA FAZIO: We are trying to work out how to facilitate better access for disadvantaged groups to community based sentencing. An earlier witness referred to a couple of instances that would preclude people being considered, for example, not having an appropriate address to which to be released while serving a community based sentence, or if they come from a particularly remote community how they could live there while doing a community based sentence and not mix with other convicted felons because there will be only a small number of people there. The suggestion was that we change the eligibility for community based sentencing rather than providing additional supports to those people to try to make them eligible. If we were more flexible in the eligibility criteria would that be the way to go?

Judge PRICE: That is probably a more appropriate question for probation and parole. I suppose what it would be concerned about, because probation and parole provides the assessment reports as to whether or not somebody is eligible for community service, periodic detention, or ultimately home detention, is looking at the question of whether or not people would adhere to that sentencing option. If they do not have an address it is particularly hard to ensure that they are likely to adhere to the community based sentencing option. It is very hard to monitor somebody who does not have an address.

The Hon. AMANDA FAZIO: Quite a number of people who appear before you would be without a regular address before they were arrested and put into custody. Do you ever have somebody that you think probably should not get a custodial sentence but it is impossible to look at other non-custodial options?

Judge PRICE: Let me just correct or clarify one factor, which may assist. If people were not assessed as being suitable for a community service order because they do not have a fixed address that would not mean that you would then sentence them to a term of imprisonment. You do not increase the sentence. A term of imprisonment can only be imposed when there is no other alternative. In that circumstance, if you consider the community service order was appropriate but not a term of imprisonment, you do not then sentence them to a term of imprisonment. What you would do in that instance, if it were appropriate having regard to all the sentencing factors, is place them on a good behaviour bond under section 9. I hope that is of some assistance to you.

CHAIR: This morning we heard some interesting information from Centrelink representatives about how they work to ensure that people leaving prison have access to welfare. From listening to their evidence it appears that there can be an impost on welfare payments to people as a result of community based sentencing, in particular in relation to periodic detention. For the two days that they are in periodic detention their welfare payments are withdrawn.

Judge PRICE: I have no knowledge of that, Madam Chair.

CHAIR: My question was about whether these sorts of things influence judicial decisions, but you do not have knowledge of them.

Judge PRICE: That is not brought to the attention of the court.

CHAIR: Do you think it is possible that a defendant might consider that issue when arguing about what was to happen to them?

Judge PRICE: I am not too sure of your question, Madam Chair. On a slightly broader issue, it is often a factor that the court takes into account as to the impact of a sentence on their livelihood and their family. They are all factors that the court must take into account. If there were some impact of a sentence by way of period of detention on that particular person, the court takes that into account in considering whether or not it is an appropriate sentence.

CHAIR: Thank you. I have another question in relation to periodic detention. We are led to believe that persons on periodic detention, much like people who are incarcerated for less than six months, do not necessarily go on to do any programs or have access to rehabilitation-type programs.

Judge PRICE: That is my understanding. Once they have completed their sentence they then do not go on to other programs unless they volunteer to do so and those programs are available.

CHAIR: This is people who are sentenced to periodic detention. They just turn up at the gaol, spend two days there and then return to wherever they came from—and that is it.

Judge PRICE: That is right. They are serving a sentence—a term of imprisonment to be imposed by way of periodic detention. There is a component of that, of course, which is a community service work-related part of it—to be more precise.

CHAIR: So they do not end up in the more supportive development-type programs that Probation and Parole would tend to run.

Judge PRICE: That is correct. However, if MERIT had been available they may have entered into the MERIT program prior to their being sentenced. MERIT is bail based not plea based and an appropriate defender—if I can put it that way—can enter into the MERIT program and have access to all the MERIT assistance if it is a drug-related matter.

CHAIR: What sort of support do the MERIT people get?

Judge PRICE: You will find in your file behind tab 3 an explanation of MERIT. It actually sets out the court's practice note. I have provided it because it assists in understanding MERIT and the particular assistance it offers. Tab 3 sets out the purpose of it but, more appropriate to your question, at 11.1 on page 3 it sets out what the programs are. Examples of the drug treatment programs available include medically supervised and home-based detoxification; methadone and the other pharmacotherapies such as naltrexone, as you can see; residential rehabilitation; and individual and group counselling and psychiatric treatment. It is a 12-week intensive program. But somebody does not have to be found guilty to go on the program or enter a plea of guilty; it is a bail-based, pre-plea scheme to encourage referral for assessment at an early stage of the court process. The advantage of MERIT is that it enables people who otherwise would not be associated with programs to get assistance.

CHAIR: Would the lack of possible rehabilitation-type processes make a difference to sentencing or is that not possible?

Judge PRICE: Are you speaking generally?

CHAIR: Yes. For example, we have seen lots of literature questioning whether sentences of less than six months are a good idea. Stage 1 of periodic detention has very few support processes.

Would that make a difference to the way that sentencing occurs in some magistrate's or judge's points of view?

Judge PRICE: I think from the point of view of assessing the appropriate sentence, it would. If you have received a pre-sentence report that indicates the lack of availability of certain programs, you do not have the flexibility that you otherwise might have in the sentencing process. For example, in respect of placing somebody on a good behaviour bond with a conviction, if programs are available you could make it a condition of the good behaviour bond. But if a program is not available you could not make it a condition of the good behaviour bond.

The Hon. AMANDA FAZIO: May I ask you a follow-up question on that point?

Judge PRICE: Certainly.

The Hon. AMANDA FAZIO: If access to sentencing options was not a problem but you, as the magistrate looking at the evidence, felt that the person appearing before you would benefit from completing some programs, would that influence your sentencing decision? For example, if Probation and Parole said that periodic detention was a possibility but you thought that perhaps referral to another community-based sentencing option would provide some program support for the person and stop them from hitting the system again, do you have the discretion to order that?

Judge PRICE: What I have got is a duty under the law to apply the law. I have got to consider all the factors in section 21A, and that continues to include the objective seriousness of the offence—what the person has actually done. The prospect of rehabilitation is only one of the many factors that the court takes into account, including a plea of guilty, the personal circumstances of the offender and the question of deterrence, general and specific. I might very much like personally to give somebody the most lenient sentence available but it may not be appropriate having regard to my duty as a judge to ensure that a defendant is sentenced appropriately for the offence that he or she has committed. In other words, the court must impose a sentence that is appropriate in all the circumstances, and that includes the objective factors and the subjective factors.

CHAIR: Some legislatures have removed the less than six months sentence and replaced it. Are you allowed to give us an opinion on that?

Judge PRICE: Yes. I expressed the opinion before the Sentencing Council that sentences of six months or less should be imposed infrequently, but I do not think they should be abolished. The reason is: What happens when I sentence somebody to a community service order and they do not turn up? What should happen is that they are brought back before the court and if they have no justification for failing to turn up and comply with the direction of the court you then have to do something with them, and that could involve a term of imprisonment. Also—I will go further—you cannot increase the term of imprisonment to more than six months if the original offence was not worthy of more than six months imprisonment. So what happens when somebody fails to undertake the community-based sentencing options?

In addition, you may have somebody who continually commits offences that may well be, in the big scale of things, regarded as minor. Take shoplifting for example. If somebody continues to shoplift and shoplift and shoplift and you have been through every community-based sentencing option and they have not deterred that person from continuing to steal, what do you ultimately do? An ultimate sanction may be a term of imprisonment, but that term of imprisonment should not be ratcheted up more than six months if the offence itself is not such that it would be appropriate to impose a term of imprisonment of more than six months. So there are circumstances when terms of imprisonment of six months or less may well be considered appropriate.

CHAIR: In current circumstances are sentences of imprisonment of six months and less being used in many more instances than you have mentioned?

Judge PRICE: Yes. People have been sentenced to terms of imprisonment for less than six months for offences that do not involve the circumstances to which I have referred. Provided the court gives reasons for doing so, it is within the law to impose terms of imprisonment of six months or less.

CHAIR: Thank you.

The Hon. GREG PEARCE: I would like to clarify one point. A number of people have mentioned that an advantage of community-based sentences is that the families of prisoners are not disrupted and communities are not disrupted. Is that a factor that you can take into account when sentencing?

Judge PRICE: Certainly. The impact of any sentence on a defendant's personal circumstances is a factor that the court must take into account.

The Hon. GREG PEARCE: Are you aware from your study or reading of any other jurisdictions with different community-based sentencing options that we should look at?

Judge PRICE: None that I can precisely put to the Committee. However, you should be aware of the additional initiatives that are being undertaken in this State, which include the young adult conferencing. Have you been advised of that? The trial is going to start in the near future at Tweed Heads and at Liverpool and, from recollection, the intensive care supervision court at Bourke. We also intend, with the Youth Drug and Alcohol Court, extending the Youth Drug and Alcohol Court hopefully to Port Kembla in the near future. We would also like to see it extend onto the Central Coast. We would also like to see circle sentencing extend to young Aboriginal offenders between the ages of 15 and 18. So there are quite a number of initiatives at the present time. We would like to see our own programs extend too. We would like to see MERIT become available to children—in other words, non-adult offenders aged from 15 to 18—as well.

The Hon. GREG PEARCE: Is the court in a position to extend those programs? I assume that funding is the issue.

Judge PRICE: Yes, funding is the issue. The court would like to extend all these programs. We would like to have MERIT across the State but the question is resources and the availability of resources.

The Hon. GREG PEARCE: I think you will enjoy this last question from our list. What are the major issues facing local magistrates in rural and regional areas? The question goes on to say, "in terms of using community-based sentencing options" but I thought I would give you free rein.

Judge PRICE: Thank you. I would have declined the opportunity. I think you can see from my submission and also the additional material that the major difficulties are the lack of community-based sentencing options of a certain type in certain areas and also the difficulties that people have in certain regional areas in accessing periodic detention—particular difficulties with public transport and being able to get to those areas, amongst other things. Even though people might be assessed as suitable it is a question of real availability, and that is not available because of a lack of means to get there. We deal, of course, with a lot of people who are disqualified from driving so, by the very offence itself, they may not be able to get to the particular location because they are being dealing with for a traffic offence.

The Hon. GREG PEARCE: What is your view of the severity of home detention and how it works as one of the options?

Judge PRICE: After the courts determine that it is appropriate to impose a term of imprisonment, they then assess suitability of particular offenders for home detention. This is provided they do not fall outside the type of offence that can be dealt with by way of home detention, for instance, the sentence must not be more than 18 months. Home detention can be appropriate, but there is considerable leniency in home detention. I referred to in the Court of Criminal Appeal reference that home detention cannot be equated to a full-time term of imprisonment.

The Hon. GREG PEARCE: Is home detention being used more now? What direction are the judiciary and magistracy taking?

Judge PRICE: I cannot answer specifically whether it is being used more or less, but there are certain restrictions on the use of home detention. It depends on the nature of the offence, and the term of imprisonment cannot be more than 18 months.

The Hon. AMANDA FAZIO: In your submission you talk about having mental health advisers in some courts who can pre-screen people who appear before you. You mentioned that an audiovisual link is to be set up in the Griffith courthouse.

Judge PRICE: Telehealth.

The Hon. AMANDA FAZIO: Is that a local court initiative, or are you looking to evaluate that after it has run for a while to determine whether it should be implemented elsewhere?

Judge PRICE: That was a proposal put to us by New South Wales Health and the courts working with New South Wales Health with respect to that. We would like to see that spread across the State. That is using audiovisual linking, as I understand it. AVLs are quite expensive. Each unit costs close to $100,000. It is my view that there are cheaper options available. Webcam could well be utilised. We have made recommendations that webcam can be used in various and different forms throughout the justice system in New South Wales. Webcam costs about $2,500 a unit. We have trialled webcam in a court that we have referred to as cybercourt.

It has been trialled only in civil proceedings at this stage. That enables the magistrate/judge to remain in chambers and participants to be elsewhere. You could understand how that could be used, with the webcam facility in a court complex using the audiovisual link centre Griffith and having it connected to an appropriate specialist in Sydney. So you could have access to mental health advice and assessment by using the webcam system throughout the State. You could have it for somebody at Walgett or Brewarrina, or anywhere, in my opinion, at a relatively cheap cost.

CHAIR: The health system has set up right across New South Wales a system of Telehealth, including in quite tiny places. Is there no way that the court system could effectively tap into that system?

Judge PRICE: The difficulty is that you may have somebody who is a violent offender whom you need assessed, and it may not be that where the AVL is located would be a secure enough complex. You need to have the web system or the AVL at a secure location because of the security issues involved.

The Hon. DAVID CLARKE: Judge, what is the most common reason for termination or withdrawal from the MERIT program?

Judge PRICE: I understand the most common reason is that people no longer wish to commit. In other words, they do not continue with the program themselves, or they breach bail conditions. That is another significant reason. Because of their failure to keep with their commitment, which MERIT involves, they then terminate it.

CHAIR: I thank you very much for coming here today. Your information is invaluable. Thank you very much for the extra reading as well.

Judge PRICE: Thank you for the opportunity to talk to you.

(The witness withdrew)

BRIAN JOHN SANDLAND, Director, Crime, Legal Aid Commission of New South Wales, 323 Castlereagh Street, Sydney, affirmed and examined:

CHAIR: Mr Sandland, what is your occupation?

Mr SANDLAND: Solicitor.

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

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

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

Mr SANDLAND: 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 if the responses to those questions could be forwarded to the secretariat by Friday 1 July 2005. Would you like to make an opening statement?

Mr SANDLAND: No. I would prefer to take questions.

CHAIR: Do you consider some or all community-based sentencing options to be lighter forms of punishment than imprisonment, and why or why not?

Mr SANDLAND: I think it is self-evident that there is an ascending scale in court sentencing options, with the ultimate penalty being one of imprisonment. Most clients I have had in the 20 years that I have been practising as a criminal lawyer would certainly regard full-time imprisonment, in whatever form, as the ultimate sanction. That is reflected in the fact that it is regarded as the sentence of last resort. However, the sentences that are imposed along the way are still regarded as forms of punishment, and they do require in some cases some curtailment of the subject's liberty, such as home detention and periodic detention, and they also involve some curtailment of the subject's ability to organise their own life without there being any intervention from an outside source.

So, for instance, a bond with supervision, which would be regarded as being at the lower end of the scale of severe penalties, nevertheless has with it an obligation to report to the probation and parole officer until that officer deems it unnecessary to continue that reporting relationship. There may be referrals to other agencies to address particular problems, whether they be anger management or a drug or alcohol problem, and there may be a requirement to undertake voluntary work in the community, such as is contemplated by a community service order. So those are measures that mete out some form of punishment by way of restrictions, but on an ascending scale.

Along the way, they may well be seen as constructive in addressing particular problems or, depending on how you look at sentencing and what your frame of reference is, some of those options may be seen as soft options. However, if an option that falls into that softer category is one that nevertheless addresses the reasons persons got themselves into trouble in the first place, then it may end up being a more constructive penalty to impose both for the individual and the community. So that is my way of entering the question. I think, however, it is fair to say that full-time imprisonment remains the ultimate sanction.

CHAIR: In your experience—and maybe this is a complex issue on which to ask the question—which of short-term imprisonment or community service options to you think offers the better chance of rehabilitation and a person not returning to gaol?

Mr SANDLAND: I guess it really depends where the person is at the time in their life when they are confronted with those penalty options. A person who has had long experience, either through the juvenile justice system and/or the adult correctional system, may well be hardened to, and not

adversely affected by, a short-term sentence of imprisonment. It may be regarded in some circumstances as an option that they can handle. However, a person who is younger and more vulnerable, mentally ill or in some way developmentally disabled, who has never faced a sentence of imprisonment before will certainly balk at a sentence of imprisonment being imposed upon them, as opposed the option of undertaking community service. Community service can have associated with it other programs that are aimed at addressing offending behaviour.

So it is not just going down to the Cooks River with a party of other people and cleaning the place up on a Saturday morning and all day Sunday, or whatever the regime is. But that in itself can be useful in some ways, in that it can open up other avenues. I think it is possible that undertaking community service may for some people lead to employment for which they are paid and which they may not have had an opportunity to engage in heavily previously in their lives. I go back to the original point. It depends where you are as to what impact that penalty will have. It may be a turn-the-corner sort of penalty for a young and vulnerable person; and that same person, confronted with full-time gaol, might spiral down as a result of the associates that they meet in gaol and the things that they are exposed to. You indicated it was a complex question. The more I thought, the more I realised there are complexities to the answer.

The Hon. AMANDA FAZIO: At page 3 of your submission you say that, for example, any new correctional facility, such as the prison being built at Wellington, should include periodic detention facilities for both men and women. Do you think there are less community-based sentencing options available for women than there are for men? If so, what do you think we ought to do about that?

Mr SANDLAND: I think that is true. This morning I telephoned as many of our country solicitors in charge as I could. They had all responded previously to questions we had sent them. For instance, the fellow at Lismore indicated that there is no periodic detention for women on the North Coast and there is no home detention for anyone on the North Coast. This committee, or an off-shoot of it, would be aware there is no home detention available outside of the Illawarra, the Hunter and the Sydney metropolitan area. But no periodic detention for women means you are dealing with a really substantial population that is denied the opportunity that people, for instance, who come into contact with the criminal justice system in those more heavily populated areas face, namely the option of periodic detention.

Periodic detention is an issue for both men and women outside of those areas which are within a reasonable radius of a gaol that has a periodic detention facility. So, no doubt, the committee has available to it where those facilities are located. I looked to the annexure to the report that was prepared by the Sentencing Council on the abolition of prison sentences of six months or less—obviously you would have that—that talks about the availability of periodic detention and, apart from the Sydney metropolitan area, it goes to the Hunter, the Illawarra and then the Richmond/Tweed, and it is blank there, as I indicated, the mid North Coast at least has a facility at Grafton, Northern Region and Tamworth and Grafton are covered. As you get to the south-eastern region there is nothing, but even if you went to a place like Broken Hill where it was available and query whether it is available for men and women at Broken Hill, if you are sentenced out at Wilcannia it is about 180 kilometres.

It is a resourcing issue. It is bound up with the infrastructure of our State and the fact that it is a very large State and we have big distances to cover. My answer to the second part of your question is that it would be very useful if we were able to inject more funds into the Department of Corrective Services and its wing, the Probation and Parole Service, to provide the sorts of sentencing options across the whole State that are available primarily to the highly populated areas along the coastal fringe. I do not think there is any other obvious answer to the question you have posed.

The Hon. GREG PEARCE: The committee has heard the various sentencing options are reasonably comprehensive, and the issue seems to be rolling more into the area of resources than having different sentencing options. You are in another part of the legal system which is resource poor. Where would you place priority if additional funds were available? Would you do it at the front end, your end, or in terms of some of these sentencing options? It is a leading question but I would like to hear you justify it.

Mr SANDLAND: There obviously has to be balance within the criminal justice system. On the one hand there are strong demands by the community for its citizens to feel safe so the Police Service is always going to attract substantial funding in order to achieve that degree of safety that the community demands. We like to think of ourselves as a civilised State in which we have a criminal justice system that operates with various protections built into it, including a right to appeal. Obviously through the Attorney General's Department the criminal justice system has to be set up in a way that can deliver an appropriate corruption free criminal justice system, again, that our community can feel that it depends upon.

Given that we have an adversarial system, and given that many of the people who appear before courts are in the lower socio-economic group and would not be able to afford their own legal representation, there has to be some balance in terms of their representation, and that is where the Legal Aid Commission comes in. On many occasions it is pitted against the resources of the State in prosecuting matters through the investigation stage with the police, then the prosecution stage with the Director of Public Prosecutions or the Police Service through its prosecutors. Although it feels as though it is a downstream agency, the Legal Aid Commission is quite often at the tail end of reforms that are brought in, for instance, tighten the Bail Act. What does that mean? It means that more of the clients that we service are in custody. What does that mean? It is more expensive for us to do that. Those things flow on to the Legal Aid Commission.

I want to think that as a community we have a commitment to providing representation to people who are often vulnerable and without the means to represent themselves, when the forces of the State are pitted against them. That is what underpins some confidence in the way our system operates. I suppose the ultimate downstream agency is the Department of Corrective Services and the Department of Juvenile Justice that have to look after, house, accommodate and provide programs for the people who work their way right through the system to be serving control orders or sentences of imprisonment. They obviously have to be provided for and, as I indicated in my previous answer, that requires, in order to have consistency of sentencing across the State, an injection of funds to enable sentencing options such as periodic detention to be available for women on the North Coast.

It is a big population centre up there and it is inappropriate that people, for instance, who live in Lismore—if they were a male I think they have got the option of getting down to Grafton but one of the offences that they may have been charged with is one which has taken their licence from them. So there are other ways of looking at how you might facilitate people having access to those other community-based sentencing options. You might be able to leave those big centres, gaols, periodic detention centres where they are but provide public transport from other centres to the gaols so that there is some evening out of sentencing options across the State.

The Hon. GREG PEARCE: Clearly there is the potential for an injustice if there is not the quality of sentencing options. Is it really rather a theoretical concern that we are looking at, or in practice do your solicitors find that they are seeing people given sentences that would not be the case if all of the options were there? I know you have got to be largely anecdotal but maybe it is not.

Mr SANDLAND: To have a sense of where our resources are located, apart from along the coastal fringe and through the Sydney metropolitan area, we have offices at Tamworth, Dubbo, Orange and Wagga Wagga. I posed the question to each of those country-based solicitors in charge "What difficulties does the absence of particular sentencing options pose for clients in your area?" The answer that I got from the solicitor in charge of our Dubbo office was "Grossly and unfairly limits the options available to a sentencing tribunal". I think he is speaking from harsh experience that in those areas west of the Great Dividing Range magistrates must feel similarly frustrated by the fact that you almost jump—apart from pilots that are being run here, there and everywhere—from the very bottom end of the sentencing range with a fine, a bond or an unsupervised bond up to a full-time sentence of imprisonment, if there is nothing that can be offered in between. That is unfair and that one line response I think illustrates that unfairness and that sense of frustration.

CHAIR: Speculatively, how often is a gaol sentence imposed instead of a community sentencing option?

Mr SANDLAND: I do not think I can answer that specifically. I think the task for practitioners in the bush representing people is perhaps more difficult if those sentencing options are

not available. They have got to be more creative. They have got to convince the courts that this person is deserving of a chance along whatever avenue is open to them. But those avenues are less than, for instance, those available in most Sydney suburban courts and those in the Illawarra and the Hunter. Having said that, I think things have improved to some extent with programs such as the MERIT program. I noticed in our submission we pulled together the fact that there is a variation on MERIT called Options that is available at Wellington Local Court, which particularly hones in on people with alcohol problems rather than just a drug problem.

There are other intervention programs that are being tried in other locations such as the domestic violence court intervention model that is going to be piloted at Wagga Wagga and Campbelltown. The young adult offenders intervention model is going to be piloted at the Tweed and Liverpool. There are traffic offenders programs. There are initiatives that arise out of magistrates seeing what is available within the community and using a bit of initiative. So there are things that are happening but when you look at some of the alternatives, for instance, such as circle sentencing and the Options scheme, they are not available across the board, and that is the tragedy of it. They are piloted and if they work one hopes that the money will be available to roll them out across the State, but then you just have the logistical problem of how much resources do you spend in a huge area of land with few people on it? I must say that probably problems out west may relate to alcohol, there may be domestic violence related problems and we have to target the particular issues that are thrown up in country and more remote locations rather than just trying to throw money at them without targeting what the specific problem is.

The Hon. GREG PEARCE: What is your view on consistency among magistrates in the way that they are applying the various sentencing options?

Mr SANDLAND: It is a difficult issue to answer. Obviously, we have a subjective system of sentencing. I would never recommend, either from a personal point of view or from the point of view of the Legal Aid Commission, that we move towards a kind of grid sentencing system whereby age, number of previous convictions, seriousness of offence, et cetera, you would hit a point on a matrix that determined what penalty you were going to get. That would guarantee consistency, but it would not deliver the sorts of outcomes that judicial officers with an appropriate discretion should exercise. Consistency can be improved by judicial training and by the appeal process. There is absolutely no doubt that magistrates and judges watch what happens to their sentences on appeal and they learn from that. Having said that, they are all individuals and some of them fit within the lower end of the sentencing scale, some of them are at the higher end of the sentencing scale and when they move outside acceptable bounds, hopefully, given that it is an adversarial system, either the defence of the prosecution is going to appeal and bring them back within those bounds.

The Hon. GREG PEARCE: Are you aware of any other community sentencing options that we should look at from other jurisdictions?

Mr SANDLAND: I made a bit of a list. There is the Magistrates Early Referral Into Treatment Program, which you know about; there is the Mental Health Court Liaison Service run by Corrections Health, and I think there is a variation at Newcastle and Wollongong, which is run by the Department of Health, there is the Drug Court and the proposed expansion to the Drug Court program later this year to include people who are already serving a sentence of imprisonment—that is one to watch out for because we do not know the full extent of that as yet—there is the Youth Drug and Alcohol Court; circle sentencing; the Young Adult Offenders Conferencing pilot that I heard Judge Price talk about while I was waiting, which is to be run in Tweed Shire and Liverpool; Domestic Court Violence Intervention pilot at Wagga Wagga and Campbelltown; and section 32 of the Mental Health (Criminal Procedure) Act, which diverts people who have a mental illness or are mentally disabled. That legislation is being looked at to try to widen the scope of developmental disability to include a broader range of people. For instance, someone may have contracted dementia who may not fit within the criteria at the moment, but, arguably, should be diverted from the criminal justice system.

For children there is the Young Offenders Act and, as I said earlier, the Youth Drug and Alcohol Court. There are traffic offenders programs; there is the Rural Alcohol Diversion Program, which is being run at Orange—I do not know if you are aware of that one—and the Options Program, which is run at Wellington, to target people with alcohol problems. That was the list that I came up

with this morning. Some of those are pilots, and that is why I said there is some degree of anxiety that those pilots will, eventually, translate into options that will be available across the State. Apart from offences that fall within particular bounds, the fact that the Drug Court is restricted to that south-western area of Sydney remains a matter of concern. If I can quote from our solicitor in charge at Dubbo, "Lack of Drug Court means rural dwellers are not being afforded the same expertise and processes that city dwellers receive. This difference could actually equate to life and death, custody and non-custody outcomes for some clients." Some of our people out there in the field actually see it in those stark terms. It is as important an issue as that.

The Hon. DAVID CLARKE: Amplifying your answer to one of the questions from the Hon. Greg Pearce, do you agree that, presently, we have a situation in New South Wales where some people are receiving community-based sentences and others in similar or identical circumstances are receiving full-time custodial sentences because they are in different localities?

Mr SANDLAND: I do not know if you could ever definitely answer that question because you posed a hypothetical and it may well be in our system, subjective as it is, that a magistrate at Broken Hill with poor options may come up with a more creative solution to a sentencing dilemma if, for instance, periodic detention were not available. Nevertheless, it is a risk where there is not uniformity in sentencing options across the State that some people are going to suffer and end up with harsher penalties. That certainly is the risk.

The Hon. DAVID CLARKE: And it is probable that there are magistrates out of the area who are not coming up with these creative solutions to give equality?

Mr SANDLAND: That is possible. However, I think every magistrate bears in mind the central tenet of sentencing, which is that imprisonment is a sentence of last resort and will look to whatever other options are available. However, they can work only with what they have. Certainly, west of the Divide they have less to work with.

The Hon. DAVID CLARKE: Would you agree with the comments made by the Legal Aid solicitor from Dubbo, to which you referred earlier, when he said that this unavailability of community sentencing options grossly and unfairly limits options available to a sentencing tribunal?

Mr SANDLAND: That perspective is quite an appropriate one when you are appearing for defendants in the criminal justice system that you have less to work with where those sentencing options are restricted, as they are in many regional areas.

The Hon. DAVID CLARKE: Is this the situation the Legal Aid submission is referring to on page 2 when it says, "In some cases legislative changes are required to ensure the eligibility of suitable offenders to certain sentencing options"?

Mr SANDLAND: What that sentence was referring to is that we may be able to increase the utilisation of sentencing options such as periodic detention, for instance, if you took at the fact that anyone who has served a sentence of six months or more previously is ineligible for periodic detention. The amendment of that provision, for instance, which is contained in 65A and 65B of the Crimes (Sentencing Procedure) Act would lead to greater availability and, perhaps, utilisation of the periodic detention. My recollection is that periodic detention has fallen as a sentencing option across the State and that what has increased is use of the suspended sentence option. The difficulty from the defence perspective that we have with suspended sentences is that perhaps they are being imposed in circumstances that are not justifiable.

It might be a tougher penalty option than would be adopted elsewhere if, for instance, community service were available and when you take into account that a person who, for instance, breaches a suspended sentence is liable to serve the full term of the sentence that was a suspended it becomes a particularly harsh sentence if their appeal rights have expired because more than three months have elapsed since the sentence was imposed. There are other amendments to legislation that could, perhaps, rectify some of the problems in relation to availability of sentencing options. The one I spoke about was the Drug Court. For instance, if you are able to say that there are some forms of offences of violence that could be covered by the Drug Court without jeopardising the Drug Court scheme then it would be available to a larger number of potential defendants. However, it would still

be available only in that geographical area that is represented by western and south-western Sydney. There are still other issues that require addressing.

The Hon. DAVID CLARKE: Would you agree that there should be an urgent priority to bring these sentencing options equally throughout the State to make them available to everybody?

Mr SANDLAND: Yes.

The Hon. DAVID CLARKE: As a matter of urgency?

Mr SANDLAND: That is an appropriate conclusion balanced by the fact that a limited number of the funds have to come in to prop up the whole criminal justice system. But if you were to look at where the funding should be made available and then adopt the system that relates to funding for the Probation and Parole Service, the Department of Juvenile Justice and the Department of Corrective Services, the Legal Aid Commission would like to see more funds being made available to ensure uniformity of sentencing options across the State. However, I would not like to say that it should be at the expense of funding other areas within the criminal justice system. Equilibrium in that regard needs to be maintained. However, that is a priority area.

(The witness withdrew)

BRENDAN THOMAS, Director—Crime Prevention Division, New South Wales Attorney General's Department, Level 19, Goodsell Building, 8-12 Chifley Square, Sydney, 2000, sworn and examined:

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

Mr THOMAS: As a representative of the Attorney General's Department.

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

Mr THOMAS: I am, yes.

Deputy CHAIR: If you should consider at any stage that evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, you should indicate that fact and the Committee will consider your request. If you take questions on notice, we would appreciate it if a response to those questions could be forwarded to the secretariat by Friday 1 July. Would you like to make a short opening statement?

Mr THOMAS: Only to say that I was due to appear here with Lloyd Babb, the Director of the Criminal Law Review Division. Unfortunately, Lloyd is unable to attend. I should say that as I am not a practising solicitor, I will need to take on notice any specifically legal or legislative questions.

Deputy CHAIR: Fair enough. Could you begin by outlining what programs the Attorney General's Department is running regionally and/or for Aboriginal communities?

Mr THOMAS: Sure. There are a number of programs that we run. I suppose some of the most significant ones we co-ordinate. Some of them we run directly and some of them we play more of a co-ordination role for a number of different government agencies. I suppose the most extensive one is the Magistrates Early Referral into Treatment [MERIT] Program. There is also the Drug Court, and the Youth Drug Court, and in particular for Aboriginal communities, my area manages the circle sentencing program. We are also managing the rollout of local Aboriginal community justice groups, so we administer a range of either alternative sentencing programs or diversionary programs, some of which are available in Sydney and a number of them are available regionally throughout the State.

Deputy CHAIR: Could you just put a little bit of flesh on that? Where are the programs?

Mr THOMAS: Sure. The MERIT Program is probably the most extensive one. It is available in 54 courthouses across the State which covers around about 75 per cent of Local Court matters in New South Wales. I have a list of the locations, if you would like me to leave that behind.

Deputy CHAIR: Yes, thank you.

Mr THOMAS: The Drug Court, as you are probably aware, is based in Western Sydney and has a catchment area for Western Sydney. The Youth Drug and Alcohol Court is also a Sydney-based court. It started off with a catchment area in Western Sydney based at Campbelltown, but since its evaluation, was expanded to the eastern part of Sydney as well. The circle sentencing program is an alternative sentencing court for adult Aboriginal offenders. It commenced in Nowra about three years ago and is now available in Nowra, Dubbo, Brewarrina and is about to commence in Walgett. Between now and the end of the year it will be expanded to another five locations which are Bourke, Lismore, Armidale, Kempsey and, from next year, Western Sydney.

Deputy CHAIR: What does it cost to expand circle sentencing to one of those courts?

Mr THOMAS: The average cost for a circle sentencing location is about $92,000 year. Basically that cost covers the employment of a local program co-ordinator, so that person is based at the local courthouse and they pretty much manage the program for each particular site. That person provides liaison between the magistrate and the person who is being sentenced. They actually co-ordinate each sentencing session so that a circle sentencing session involves the magistrate, the

defendant, the victim and a number of community members. That person is involved in organising that particular circle sentencing court.

The other costs associated with running the circle are direct financial costs. They include some basic administration costs. The court is held outside of a courthouse, so sometimes we may have to pay a slight fee for a venue hire and those types of things, and sometimes we might pay a slight fee to transport some people to attend the circle. But, as I mentioned, it is around about $92,000 a year and that is basically the operational costs—largely the salary of a co-ordinator and then some other operational costs. It is usually coming in at around about $88,000 or $89,000 a year. We budget for $92,000.

Deputy CHAIR: Do the elders who participate in the sentencing get paid?

Mr THOMAS: No, they do not. There is quite a discussion and debate going on at the moment.

Deputy CHAIR: Because jurors do, do they not?

Mr THOMAS: Jurors do, yes. The place where the circle court started, in Nowra, when we first held discussions down there with the local Aboriginal community, we discussed this particular issue about whether people would be paid or not paid. There was a very strong community view expressed in Nowra that people not be paid to attend the circle court. People were concerned that if you paid people to attend the circle court, then you only get people turning up to get the fee rather than people turning up because they are interested in the outcome of the case. Since the program has been expanded to some other areas—particularly it is about to start in Walgett—the elders group in Walgett has raised this issue again about the payment of members. They were of the view that they should get paid something.

Again there is the issue of, I suppose, motivation. If you offer a fee for someone to come to the circle court, whether they are attending because they are interested in the outcome or whether they are attending just to get a fee, that was an issue that the elders raised in Walgett. They were of the view that there should be some sort of remuneration to recognise this service and the expertise that they bring, but at the same time they were again a bit reluctant to accept a direct cash payment. So we have been discussing with those particular elders in Walgett are there other ways, more flexible ways, that we can recognise the involvement in the circle court without necessarily providing a direct cash payment. Some of the things we have discussed with them are around supporting the other work that the elders group does—they provide co-ordination for a number of other programs and a number of other things in that town—so we discussed supporting them by meeting some operational costs and providing some other assistance for the elders group to operate. But it is another issue that has come up in Dubbo again and again.

It is almost straight down the line in Dubbo. Some people are saying that if you pay us a fee, we will not participate in the circle any longer because we think it will undermine the integrity of it. But there are a number of other people saying, "You should recognise our expertise and the time we spend by paying a fee", and people have raised the juror's fee particularly in Dubbo. So it is a question that does not have a clear-cut answer. At the moment I have a couple of staff who are working on this and they are discussing it with a couple of the elders in Dubbo who say, "If we have a range of options, what can those options actually look like?" It is clear that we need to remunerate people in some way because people are spending a fair bit of time coming to these circle courts. In some places some of the elders are spending a fair bit of time coming to the circle courts.

People raise it not so much out of a wish to get some sort of financial remuneration but they feel like some sort of payment or remuneration in some way will recognise the expertise that they bring. What they say is that the other people in court get paid through recognition of their own role, their own expertise—whether it is the magistrate or the solicitors and so forth—and they sort of feel that they are not been recognised in that way, so it is an issue. Exactly what the answer is, I am not sure, though.

The Hon. AMANDA FAZIO: You said that they spend a fair bit of time, some of the elders. Can you quantify that a bit for us?

Mr THOMAS: Sure. An average circle court lasts between two and three hours, usually around about 2½ hours. Some of the elders do preparatory work before the circle and some of them also nominate to work with offenders after the circle has finished. It is not necessarily true that they all do that, but some of them certainly do. In some instances, for example in Nowra where it has been operating for a long time, some of the offenders are coming from particular parts of that community. When we convene a circle court, the community members, the elders and others that are selected are chosen based on their connection with the offender; that is, they know the person and they know about that person's circumstances and the situation. So there is some feeling that because some of the offenders are coming from particular parts of the community, there are some elders who are being drawn upon more often than others.

We did an evaluation of the first 12 months of the circle sentencing program in Nowra and there were a couple of elders there who said, "We will do two circles and that's it because it takes too much out of us." Strictly speaking, they spend about 2½ hours a fortnight involved in the circle. Some of them do preparation at work which might be one or two hours before the circle. Some of them do follow-up work where people nominate to support an offender through the sentence, so they might be spending one or two hours with the person each week until the sentence is completed. So it varies, depending on a particular elder. But given that some of the offenders—Dubbo is a classic example of this because the bulk of the offenders are coming from west Dubbo rather than from anywhere else in Dubbo and so there is a heavy drain on people in the west Dubbo to participate in this program. It is a very intensive process. It is a very emotionally draining process for a lot of people who are involved in it, so some of the old people say that they cannot do it too often. It takes too much out of them.

Deputy CHAIR: Can I ask you about the Youth Drug and Alcohol Court? I gather that there is a recommendation that it be expanded to other geographic areas. Can you bring us up to date as to what is happening there, what the problems are and why it is not being expanded?

Mr THOMAS: Sure. The recommendation that it be expanded was made in the evaluation of that particular program. It has been expanded since that recommendation was made to the eastern part of Sydney. The big difficulty in expanding it to outside of Sydney is the cost issue and an issue of the potential number of clients that will be accessing the particular program. So because it is a court, it is specifically based on a particular location. While at the moment it is only available to young people in Sydney, if we expand it to another place, it will simply again be available only to the people who live in that particular location. The challenge that we face is providing a judicial service that offers the same type of treatment and support that the Youth Drug and Alcohol Court does without essentially binding it in the bricks and mortar of a particular courthouse.

If we just keep expanding the court, we will not cover the whole State or the whole need group until we build Youth Drug and Alcohol courts in every particular town, and we do not think that in some of the areas demand would be great enough necessarily for a full-time Youth Drug and Alcohol Court. So we are looking at a number of other options to try to essentially provide the same benefit to people without providing it in such a formally structured infrastructure as the Youth Drug and Alcohol Court because it is just cost prohibitive to expand it in the same way to other places. So one of the things we are looking at now is expanding the MERIT Program to young people so that they can get the same type of access to services that adults get through the MERIT Program. We will probably have to change the nature of the program to cater to young people and the needs of young people. What we find is that a number of the young people who come to court with drug and alcohol problems, the drug and alcohol addiction is not necessarily as entrenched as it is for a lot of people who are going through, say, the MERIT Program or the adult drug court.

There was a program that we ran in the town of Wellington called Wellington Options, which was a drug and alcohol treatment diversion program based on the MERIT model and which did take young people. That seems to have worked very well so at the moment we are just exploring options about how we can expand the MERIT Program or at least formally trial the MERIT Program for young people. I suppose the one hurdle we need to get over is that the MERIT Program is funded by a joint arrangement between the State and Commonwealth governments, so we need to get the agreement of the Commonwealth Government before we can expand or trial MERIT for juveniles. But we have had discussions with the Commonwealth Government and they seem at least interested in trialling the idea of expanding the MERIT Program for juveniles. While it is difficult to expand the

Youth Drug Court beyond Sydney for cost reasons and for infrastructure reasons, we are looking at how we can provide the same type of service and the same type of intervention for young people in a much more flexible way.

The Hon. AMANDA FAZIO: Just going back to the Youth Drug and Alcohol Court, the success rate of that court was 39 per cent. The figures we have show that the success rate was 51 out of 130 people whose cases have been completed. Can you tell us what you think the factors are that impact on the completion rate?

Mr THOMAS: Yes, there are a number. Obviously, a lot of it depends on the quality of the program that is offered for people from the court, but there is also a strong factor concerning the capacity and environment that the young person comes from. We are finding that young people who come from a stable home environment where they have the support of their parents and other members of their parents tend to have a greater chance of success in going through the Youth Drug and Alcohol Court. Those young people who are able to remove themselves from some of their peers, at least while they are getting their treatment in going through the court program, tend to have a greater chance of success in completing the program requirements.

People who generally have a better support network around them, and informal support network such as family and other people, and a broader number of people to draw on to help meeting the requirements of the program, tend to have a greater chance of success than those who do not. While there is a number of issues that we need to look at in terms of the quality of the service that is offered to people, we are finding that an even stronger indication of the young person's ability to fulfil the program is the background that they come from and what is available for them in their home environment and their family life. They are the key factors to completion.

The Hon. DAVID CLARKE: Mr Thomas, can you give some insight into how the rural alcohol diversion program operates?

Mr THOMAS: Sure. It is similar to the Magistrates Early Referral Into Treatment [MERIT] Program. It operates out of Bathurst and Orange local courts. A person can be referred to the program from a number of points: from the point of police, from their solicitor, they can refer themselves or they can be referred by the court. If they are referred, they are assessed as to their suitability to access the program, whether they have a demonstrable alcohol problem and whether their offence meets the type of offences that can be dealt with through the rural alcohol diversion program. If they are assessed as satisfactory they are granted bail. The bail conditions are that they access to treatment programs that are managed by the Department of Health in Bathurst and Orange. It is a similar model to the MERIT Program and the way that that program operates.

It is a pre-court diversion. Before conviction, it can be done as a bail condition. People access treatment as part of their bail conditions so the court, or the police if they are referred by police, put their participation in the program is part of their bail conditions. They report back to the court on their progress. When they complete the program they come back and the matter is finalised in court and they are still given a sentence.

The Hon. DAVID CLARKE: How widespread is the program?

Mr THOMAS: At the moment it is a trial, it operates only in Orange and Bathurst local courts. It started in Orange in December last year and in Bathurst about a month and a half ago. It is relatively new, with only about 12 or 13 people currently on the program. The number of people going through the program is pretty much the same number that we predicted, based on the number of people who appear in those courts for those types of offences that, generally speaking, we thought would be referred to that particular trial. The nature of the problem is slightly different to drug-related offending. One key thing we need to look at in managing the program, particularly in managing its evaluation, is that it is specifically for alcohol, which is slightly different from the drug problem.

People who go before the courts on drug-related offences are almost invariably drug-dependent people; they have a drug addiction. People who go before the court for alcohol-related offences might have been drunk when they committed the offence but they might not necessarily be an alcoholic. One other big problem that we need to confront and be careful of when managing this

program is one we face in alcohol-related offences is the problem of binge drinking rather than straight out alcoholism. The treatment providers tell us had binge drinking is a different type of behavioural problem than full-blown alcohol addiction and it needs a different type of intervention. It needs a more behaviourally-based intervention. It is those issues that we need to be careful of. While we are still operating on the general structure of the MERIT Program, which is a drug-based diversion program, the nature of the program is slightly different. We are probably going to have to look at how we provide the services at how we manage people to cater for that difference.

The Hon. DAVID CLARKE: It is still early days. We do not know how successful or otherwise the program is?

Mr THOMAS: No, it is still too early. It has been operating in one location since December and the other for only a month and a half. Two or three people have completed their treatment programs.

The Hon. DAVID CLARKE: How does the Community Justice Group in Brewarrina operate?

Mr THOMAS: There is one group in Brewarrina and a number of community justice groups in other areas. I should put this into the context of what community justice groups are. In Queensland about 10 years ago a number of Aboriginal communities became, on the one hand, tired of seeing their people arrested and sent to prison and, on the other hand, tired of the high rates of offending. The small town of Kawyama, in North Queensland, with about 3,000 people, averaged between 75 and 100 arrests a month; a high rate of offending. The local elders and others became sick of that situation so they formed a local community justice group. That Kawyama group worked with the police so if a young person was arrested for a minor public order type of matter, instead of arresting the offender and taking him or her to court, the offender was referred to that community justice group comprising elders.

That group would deal with the young person. The group worked with the court by advising the court on the background of the offences and the circumstances of the offence as well as the potential type of sentence that the court could pass on the young person. The group worked also with the courts to manage community-based sentences, because there were no real community-based offences in Kawyama. People were getting either unsupervised bonds or time in prison, there was nothing in the middle essentially. That group was established in 1992 or 1993 and in its first 12 months of operation the community offending rate dropped from between 75 to 100 to between zero and five a month. That rate has been maintained ever since.

We did an assessment of the operation of the justice groups in Queensland and look at how they worked and why they worked and the types of things they worked on. A number of groups have now been established in New South Wales. The reasonably new Brewarrina group works with the Circle Court. Essentially, it oversees the running of the local circle sentencing program. Any local offenders who put up their hand to go through circle sentencing have to have the approval of that group of local elders. The group calls the defendant before them to talk about what they will experience, then makes an assessment as to whether that person will be a willing and active participant in the Circle Court process, and also whether the person is in fact and Aboriginal person from that place with some connection to the place.

A recommendation is then made to the court as to whether the person should be accepted or not; and it does not accept everyone, some are knocked back. The group is also involved in the intensive court supervision trial, which is a hybrid between circle sentencing and the Youth Drug and Alcohol Court being implemented in Brewarrina at the moment. Again that is very new, it has only two people going through it. They work with the court on managing young offenders that go through that program. The idea of the community justice groups, and the Brewarrina one is a good example, is to establish a local mechanism under which the local Aboriginal community can come together to take control and responsibility for crime and offending problems that affect the community.

There is agreement with the police so that the community justice groups can start issuing cautions for young people under the Young Offenders Act so that the court will have a bigger impact on people when they are being administered by their own local elders and so that the communities can

start to look at crime prevention issues. This was seen with the Nowra Community Justice Group. While working with the circle and other things they see people regularly going through the court system for particular matters on particular problems and they start to turn their focus on how they can put in place strategies and programs to try to prevent those offences from starting. In Nowra the community justice group noticed that a lot of young people were being kicked out of school and getting into trouble with police and ultimately with the juvenile justice system.

The Nowra group worked with the local school to establish a circle process to deal with discipline issues, so that kids could get a sanction when they were misbehaving and so that the community could take some responsibility for their behaviour while at the same time keeping them in school. The Brewarrina justice group and others around the country are focal points for the community, so that the community itself can start to take some responsibility for the problems while being in a position to make real decisions about what happens in the local community. They work in partnership with the justice agencies, courts, police and others to develop local options to address local crime and offending problems. They are very new in New South Wales but if the Queensland experience is anything to go by they will be quite successful.

The Hon. DAVID CLARKE: That drop of offending rate from 75 to 5 or less in Kawyama was very dramatic. Has that success been replicated in other areas where justice groups have been established?

Mr THOMAS: The Kawyama group was the first established in Queensland. Subsequently they have been established in a whole range of places. We have seen similar impacts in other areas. The Kawyama community started from a very high level of offending, so it had a bigger drop to make than other places, I suppose. We are seeing drops in other areas in Queensland where the groups have been established. The group established in New South Wales for the longest period is that in Nowra, which was established with the circle. Every month about 20 or 30 Aboriginal people appeared in court there, now it is about seven people, so there is a significant drop there. In this State and around the country we know that those initiatives that directly engage the local Aboriginal community in a real decision-making way around the justice system, with courts, policing, administering correctional matters, are the only ones that have any potential for long-term success.

It is not just where communities agree to take responsibility for these problems but structurally we give them the authority to start making some decisions to take responsibility for these problems and control over the processes and we see significant reductions in offending. The justice groups in Queensland are a case in point; Circle Courts in New South Wales are another good example. A program called Community Supervision Agreements in the north-west of Western Australia is another good example. Under that program, instead of having the traditional probation service people taking control of community-based sentences they are contracted out to local community councils. The community councils establish and manage their own community-based sentences, under strict supervision of the probation service. They have an 80 per cent compliance rate, which is about the highest in the State.

We are finding more and more in this country, particularly around Aboriginal justice, that we are prepared to build on the strengths that exist in local Aboriginal communities. We are prepared to explore options involving traditional Aboriginal values around how they essentially establish a mechanism of social control. We are looking at rather than replacing those programs to build on those programs and complementing them with the justice system. We are seeing reductions in offending, reductions in arrests, reductions in numbers of people going to prison.

The Hon. ERIC ROOZENDAAL: With community-based sentencing I assume you have discussed the whole gamut of options. Are some of them viewed as lighter forms of punishment than others in the Aboriginal community?

Mr THOMAS: Some certainly are. Some are intended to be lighter forms of punishment than others. I can give an anecdote of someone who went through a Circle Court in Nowra from the Aboriginal community point of view. That guy had 64 convictions as an adult, and he is 28 years old. He had been through the system a few times, been to gaol about six or seven times and had received pretty much every other community-based sentencing option until he went to the Circle Court. He said that he realised that the police and magistrate did not like him and did not like what he did, and

imposed sentences on him. It was not until he went to the Circle Court that he realised his own community did not appreciate his behaviour and was not prepared to put up with his behaviour.

From the Koori community point of view there is a level of severity between those types of penalties imposed by a traditional court and penalties imposed by a court in partnership with the local Aboriginal community when the local Aboriginal elders and others have a role in designing, developing and enforcing the penalties that has an incredibly strong impact on people, whereas some of the other penalties might not have as strong an impact on a lot of Koori people, necessarily.

The Hon. ERIC ROOZENDAAL: You have outlined various options. Is it easier to do community-based options in the more remote communities than in those closer to the regional areas or towns?

Mr THOMAS: I suppose it depends on the community based option. One of the difficulties we have, as you would be well aware, is that in remote areas a lot of those community based options simply are not available in their traditional form. With the more flexible approaches, when you are directly involved in local Aboriginal communities, you find that people start to develop their own community based options. People, particularly in the north-west and in other towns, are much more familiar with the resources that are available than, say, some of the courts and magistrates. They are more willing to become directly involved in supervising offenders.

One of the difficulties that you often get in the more regional and rural parts of the State is that there is not a lot of direct supervision. There is not necessarily the ability for someone to monitor an offender on a daily or regular basis. But when we are engaging with local Aboriginal communities and those communities start to manage and supervise offenders that, in its own right, increases our ability to develop and manage community based sentences.

The Western Australian example of community supervision agreements is a pertinent example for us in New South Wales as we have a similar problem. They had a problem in the north-west of that State as they did not have a strong infrastructure to manage community based sentences. We have similar problem here outside some of our rural areas where we do not have a strong infrastructure to manage community based sentences. Often there are places where organisations will not take offenders on community service orders.

The Hon. ERIC ROOZENDAAL: Is that because they have had bad experiences?

Mr THOMAS: It could well be. Often for a lot of Aboriginal community organisations it is because they do not necessarily want to be responsible for reporting breaches of those orders, which is something that people are often concerned about. In the Western Australian example, rather than replicate the administrative structures that they had in Sydney and in the bigger urban centres, they said, "What exists? What are the strengths that exist in these local Aboriginal communities? What are the local community structures? How can we build on them and incorporate our service provision into the structure that exists?"

One of the difficulties that we face in New South Wales is simply the recruitment and retention of people in regional parts of the State. We are establishing a circle court in Bourke, which is a good example. As I mentioned earlier, the project officer's job is a reasonably good and well-paid job for a town like Bourke where there is not a lot of work. We went to Bourke, promoted the job, met with most of the community organisations in Bourke, advertised the job as widely as we possibly could and we still got not one applicant for the job in Bourke. We had to go again. We subsequently advertised again, went to Bourke again and we got two applicants. There is always a challenge.

The Hon. ERIC ROOZENDAAL: Is that a critical part of the process? It has to be someone from the community in Bourke?

Mr THOMAS: For the circle sentencing program it has to be someone who has a strong knowledge of that area. It is not just a problem that is experienced by us; it is a problem that is experienced right across. The Government is recruiting and retaining people in very remote parts of the State, like the north-west and far western parts of the State. I think we have to be a bit more flexible in our recruitment and retention of people. We advertise a job and we expect people who

already have a certain level of skills and abilities, whereas often the case is that there are none. We should spend time developing and training people in these areas before we advertise the jobs so that there is a pool of people we can call upon. One of the other ways to look at it would be to look at what exists in that community, the local community structures that exist in that community, and build on them rather than necessarily imposing others on top of that.

CHAIR: We heard today about some exciting pilot projects and test programs. How are the places chosen for those pilot projects and programs?

Mr THOMAS: It depends on the program. With circle sentencing we go through a number of criteria. The first of those criteria is the number of Aboriginal adult defendants appearing before a court. We look at those places that have the largest number of people appearing before a court. There are a number of other things that we need to be sure of as well. The second most significant one is demonstrable local Aboriginal community support for the introduction of a circle court. If the community is not willing to participate in the process it is almost impossible to run. We need some level of local services that are able to be drawn upon to be engaged in that program. The MERIT program is similar. It looks at the types of cases that potentially could be accessed through the MERIT program, again looking at the numbers. While ideally we would like to have those options available in every place, in reality we get resources that allow us to put them in certain places. So we try to put them in those places where it will have the biggest impact.

CHAIR: From what we heard today and from what I have seen from the documents, the Aboriginal programs do not necessarily reflect Aboriginal populations. Are you saying that this reflects Aboriginal sentencing?

Mr THOMAS: Yes. One of the important points to bear in mind is that Aboriginal populations do not necessarily correlate with high crime figures. We have some places that have large Aboriginal populations but that do not have high rates of crime. Wagga Wagga is a classic example. If you compare Wagga Wagga to Dubbo, broadly speaking they have the same size Aboriginal population but they have an incredibly different rate of offending. A massive number of Aboriginal people go through the court in Dubbo.

Nowhere near that many are going through the court in Wagga. You get some other places, for example, Bourke, which is a very small town. There are as many people in Bourke as there are in some Sydney suburban blocks. But the number of people going through the court is enormous. The population and the number of offenders or the number of defendants going through the court is not necessarily the same. We look at the number of people going through the court rather than just at the number of people who happen to live there.

CHAIR: Have you tried to set up some of these programs, like circle sentencing and the justice program that you talked about earlier, in towns or localities where you have several families with different sets of elders who hate each other?

Mr THOMAS: Yes, we have.

CHAIR: What was the outcome?

Mr THOMAS: I suppose Dubbo is the best example of that. Dubbo is based on Wiradjuri country. The traditional people from that area, the Wirrimbah, are Wiradjuri people. They make up a small minority of the Aboriginal population at Dubbo. Most people in Dubbo are from the north-western part of the State.

CHAIR: Gamilaroi?

Mr THOMAS: Yes, there are a lot of Gamilaroi and Barkindji people. That is a challenge. With something like the circle court, for example, each circle court is potentially composed of different people. It is not just a panel of the same people who hear the court every time. When a defendant comes to a circle court we put a lot of time and effort into finding out about that person, finding out which part of the community that defendant comes from, which part of the community he has connections with and what people in that community he has connections with. So when we are

establishing a circle court it is usually between about four and six community elders on a particular circle.

We identify between 12 and 15 people who can participate in that circle court based on having some type of connection with the offender. We structure it in a certain way. A lot of communities are concerned that if one of their young people is convicted he will come before the circle, which is made up of elders from families that do not like him, and he will a get a heavier penalty. So we structure the circle so that it is very flexible. So that should not happen. It has not happened yet. Essentially we have in place a check through the process of selecting local community people and elders who participate in the circle by virtue of their being connected with the defendant. We talk to the defendant about who those people are to ensure that if there is any sort of family feuding or other types of community problems between people they do not end up coming into the circle and being reflected in the circle.

CHAIR: Has that made a difference to your chances of employing people to work in this process?

Mr THOMAS: It is an issue that we consider in recruitment when we recruit people to work as project officers in circle sentencing.

CHAIR: I asked that question recognising that it was impossible to get an answer.

Mr THOMAS: It is almost impossible. We discuss with them at their interview their knowledge of and involvement in the local community. We try, as best as we possibly can, to have local elders reflected on the selection panel. So if there are issues affecting that community we can at least try to identify them. We discuss local community matters with any potential applicants through the interview process and we try to work out how much they know about the local community, what they know about the local dynamics, what they know about the feuding and some of other things that might be happening in a particular community.

There is always a difficulty in recruiting Aboriginal people to work in any sort of criminal justice job, particularly if it involves sentencing or punishment of Aboriginal people. People are sometimes very reluctant to put themselves in those roles. They feel that they might get some sort of backlash from the local community. I think that is probably a greater factor than any sort of family feuding and recruitment.

CHAIR: Is it possible, particularly in relation to community sentencing options in the future, to deal with the problem that so many young Aboriginal people have been sentenced for violent crime? What will be their access to community sentencing in the future?

Mr THOMAS: That clearly is an issue. Aboriginal people are appearing in courts at a higher rate than other people for violent offences. People might be brought out of particular programs either because they have committed a violent offence or because they have a history of violent offending. We are finding through some of these programs, such as circle sentencing—and I do not mean to keep harping on the program, but it is a successful option and a good example of the things we should be looking at—that they deal with violent offences. They deal with assaults. They do not deal with indictable violent offences but they do deal with some violent offences.

Often they try to look at the causes of that violence. If we had a blanket rule that ruled people out if they had violent offences, we would rule out a significant number of Aboriginal people and a significant number of young Aboriginal people. If we look at the reality of why people are appearing in court, then part of the programs that we develop and the responses that we develop have to be able to be open to people who are charged with some types of violent offences—common assaults and those types of offences—otherwise we will not make the options available to those people who need them. We are finding through some of these options that we are able to get to the root causes of why some people behave in the way that they do.

I will briefly give you an example. One young guy who is aged 28 who appeared in a circle sentencing court. He had a long history of involvement in the justice system, always for violence. He would go out, get drunk and get into a fight with someone. It was the same pattern of behaviour all the

time. He had been to court about 50 odd times as an adult, which is quite a lot, pretty much for the same thing. But when he came to the circle the local elders were able to discuss with him the background to his behaviour and why he was behaving in a particular way. It came out that this guy had been the victim of an offence. He had suffered a fractured skull and he had suffered some brain damage.

As a result of that he had a metal plate placed in his head. He had suffered brain damage and he was taking two types of medication, one to deal with the brain injury and one to deal with the pain that he was suffering. He was not taking the pain medication but he was drinking alcohol to deal with the pain. The alcohol reacted with his other medication and made him violent. That had never come out in court before. The local community took him off to a medical practitioner and had him reassessed. His medication was changed and this guy has not been arrested since. He has been in a job ever since and he has got married and had a baby. He is a completely different sort of guy.

There was another situation in Dubbo where there was a young guy who went through the circle court who was 19 years old and was convicted for a common assault. Again, when he was in circle it came out that he and his wife had a six-month-old baby and they did not have anywhere to stay. They were living in his mother's house in West Dubbo, where they did not have any room. About seven or eight other people were living there—three of them were sleeping on the kitchen floor—and there were people drinking and doing other things in the house 24 hours a day. This guy simply was not sleeping and was completely stressed the whole time. The local community was able to identify the problem and get him another house. This guy has not been in trouble since then.

Sometimes I think from the front end we look at a violent offender and say, "Well, we should keep this person out of any type of community-based sentencing", but some of these broader, more flexible community approaches can sometimes—not always—get to the heart of people's behaviour and put in place mechanisms that can redress, or at least limit, it in some way.

CHAIR: That is an incredibly good description of the issue. What could this Committee do to advise a change to the legislation that might make that possible?

Mr THOMAS: I think by not ruling out violent offences; where we have criteria for community-based options or community programs, not making a specific and blanket exemption for violent offences. People often want to say if you put in place a community-based sentencing option not to make it available for violent offences. I think it would be very valuable in the process as a whole if the Committee could recognise that community-based sentencing options are as valuable for violent offences as for other types of offences. I think if we can get to the bottom of violent offences and redress people's violent behaviour there is a significant benefit to the community. Those programs are dealing with people like that young guy in Nowra and providing effective responses to him. That was two years ago. There is a whole heap of people who are not victims of violent offences and who otherwise might have been if he had not got that type of intervention.

CHAIR: Thank you very much indeed for your excellent evidence today. It is very useful.

The Hon. ERIC ROOZENDAAL: It was an excellent presentation.

Mr THOMAS: Thank you for this opportunity.

CHAIR: It is very important, especially considering our upcoming visits next week.

(The witness withdrew)

(The Committee adjourned at 4.32 p.m.)