

REPORT OF PROCEEDINGS BEFORE

**SELECT COMMITTEE ON THE
INCREASE IN PRISONER POPULATION**

INQUIRY INTO INCREASE IN PRISONER POPULATION

At Sydney on Monday, 14 February 2000

The Committee met at 10.00 a.m.

PRESENT

The Hon John Ryan (*Chair*)

Ms Lee Rhiannon (*Deputy Chair*)

The Hon Jan Burnswoods

The Hon Dr Chesterfield-Evans

The Hon Jenny Gardiner

The Hon Peter Primrose

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MARILYN ELIZABETH CHILVERS, Statistician and Manager, Statistical Unit, New South Wales Bureau of Crime Statistics and Research, Level 8, 111 Elizabeth Street, Sydney, sworn and examined:

CHAIR: Did you receive a summons issued under my hand in accordance with the Parliamentary Evidence Act 1901?

Ms CHILVERS: I did.

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

Ms CHILVERS: Yes, I am.

CHAIR: If you should consider at any stage during your evidence that, in the public interest, certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will usually accede to your request and resolve into private session. I would warn you, however, that Parliament has the power to override that decision at any time and make your evidence public. Has the bureau made a written submission?

Ms CHILVERS: There has been no formal submission, no.

CHAIR: Would you like to make a presentation to the Committee?

Ms CHILVERS: Yes. One of the first topics that I thought I would be asked to speak about is the general increase in the prison population. What I can do is take you through as we see the trends that have happened over the five-year period that you are interested in and perhaps break it down into some of the reasons behind the increases. So I would like to show some information on the overhead, if I could, please.

Just before I start, if I can tell you where the data is coming from, at the bureau we maintain the databases on the courts' information. So there will be more detail about court processes than about anything else. We also report on reported crime in the bureau and that is information we receive from the police. The other source is the data we get from Corrective Services. When I am showing you the trend data, it has actually come from the Department of Corrective Services to us and we publish it annually in a report called "Key Trends in Crime and Justice".

So I have got lots of numbers to show you but please stop me if they get too boring or if you want me to generalise.

Dr CHESTERFIELD-EVANS: Could I ask a couple of questions about the origin of the statistics?

Ms CHILVERS: Certainly.

Dr CHESTERFIELD-EVANS: Is there a cohort of criminals that come through in the sense that you follow the records of individuals who have come into the system and gone out of the system?

Ms CHILVERS: No we do not, unfortunately. Each of the three separate jurisdictions, the police, the courts and the corrections group have their own systems, so we do not have a cohort. That is only done if there is --

Dr CHESTERFIELD-EVANS: Do you get those by names? Can you link those together in any way?

Ms CHILVERS: It is difficult to link. We certainly do get names, but there is no general data base where a person can be followed through. What can be done is that when they arrive at corrections they can be traced backwards as to what has happened to them before if you can link up the names.

Dr CHESTERFIELD-EVANS: Does that happen as a routine?

CHAIR: Dr Chesterfield-Evans, it is normal to allow the witness to actually give some evidence first before we lambast them with questions.

Dr CHESTERFIELD-EVANS: I am not lambasting. It is not much good having all the figures if we do not have the figures in context.

CHAIR: That is true, but I usually take notes and ask questions at the end. This is going to be very technical and complex and it is necessary to give Ms Chilvers a chance to have a go. I should be grateful if members would seek the call before asking any questions.

Ms BURNSWOODS: Mr Chairman, I have a questions that is really relevant and that is am utterly unable to read that screen.

CHAIR: Yes, I have difficulty reading it also.

Ms BURNSWOODS: I do not know whether you have a paper copy or if we can come around there. You can assume that most of us have terrible eyesight.

Ms CHILVERS: Certainly. We are looking at the trend in the prison population overall so it makes more sense to actually break it down into two groups, and that is the remand population and the sentence prisoner population. I will also try to break it down for males and females wherever possible in my data. Sometimes with the police data I do not have that information.

Overall you can see this is a five-year trend and most of my data goes up to June 1999 which is actually when the increase slowed down a little. The average prison population over the first couple of years was about 6,300, and you will see that in early 1998 that is when the increase started. Over that 18-month period it steadily increased to average over 7,000 per month. This is

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monthly average numbers of inmates over the period. The top line is just the total population. The next line down is males and, clearly, males comprise most of the prison population. The bottom line is really difficult to see any trend. That is the female prison population, so I will show that to you separately.

You can see that in fact the female prison population did show a slight increase for most of that period whereas the male prison population was pretty steady until early 1998. The two populations, as I said, which comprise the total population, the remand and sentenced group, if we look at the remand population, you can see that there has been an increase in the average monthly number of persons on remand for most of the period, both in the males and the females. You can see the two top lines are starting to separate a little and that is because the increases on both of these graphs have actually been higher for females than for males. That is part of the reason for this Committee.

Similarly, the bottom line being the females, you cannot really see it, but the female remand population has increased over the whole period. The numbers are still quite small and females comprise a very small portion. In the overall prison population, at the beginning of that period women were about 5 per cent of the population. Even though their rate of increase has been higher, it has risen to about 6 per cent.

So now we can get to looking at some of the reasons for the increase in the remand population. There are two things we can look at there. The first is the number of people being arrested and the second one is the bail refusal rate. So if we look at total arrests by New South Wales Police, and this is just total numbers, that is over the same five-year period from July 1994 to June 1999, there has been a continual increase in the arrest rate and, in fact, the numbers have gone from - there was an average of about 9,000 people per month being arrested in the early months of that series and that rose to over 12,000 a month towards the end in the last six months or so.

The other factor is the bail refusal rate. I will separate that by Local Court and District Court. The rate of bail refusal in the Local Court has actually shown a significant increase over that period. It has gone from 3.7 per cent in 1994-95, that is a percentage of all cases that are finalised in the courts in that time period, up to 4.6 per cent in 1998-99, a 24 per cent increase. It does not sound like much, but there are over 100,000 cases being finalised each year in the Local Court, so even a small percentage increase gives you quite a large number of extra people coming through.

The bail refusal rate in the District Court has also increased and in fact it is much higher than in the Local Court, of course, and that has increased in the District Court from about 25 per cent of finalisations in 1994-95 up to 34 per cent in 1998-99, and that is a 32 per cent increase. Now while there is a much higher rate and there has been a larger increase, the District Court actually processes far fewer cases. So the impact of this change is actually less than the impact of the change in the Local Court of bail refusals.

So if I can just summarise that information in words and lots of numbers, there has been a statistically significant upward trend for both males and females in the remand population over the five-year period July 1994 to June 1999. The average monthly remand population for males increased by 62 per cent in that period. The average monthly remand population for females more than doubled in that period, though the numbers are quite small. As you can see, it has gone from 40 in 1994-95 up to 87 in 1998-99. These increases together resulted in an overall increase in the average monthly remand population of 65 per cent over that five-year period. So it has gone from 750 in 1994-95 to 1,237 in 1998-99.

In 1994-95 the remand population made up 12 per cent of the total prisoner population and that actually rose to 18 per cent of the total prisoner population. So there does seem to be quite an increase coming from the remand population. The reasons for that increase, the total number of persons arrested each year by New South Wales Police has increased by 37 per cent over that five-year period from 8,800 a month in 1994-95 to just over 12,000 a month in 1998-99.

There was a significant upward trend in the proportion of persons refused bail in cases finalised in the Local Courts, increasing from 3.7 per cent of persons in 1994-95 up to 4.6 per cent of persons in 1998-99. That is an increase of 24 per cent.

Finally, there was also a significant upward trend in persons refused bail in cases finalised in the District Court, increasing from 25.4 per cent of persons in 1994-95 up to 33.6 per cent in 1998-99, and that is an increase of 32 per cent. That is the remand population.

If you just give me a few minutes to say something about the sentenced prisoner population, similarly, we have got a graph which shows the overall sentenced prisoner population and male and female populations.

You can see that in the first three and a half years of that series the sentenced prisoner population actually shows a slight decrease, and it has been that latter period where the increase has been most marked. That is both males and females.

Again, it is a bit difficult to see the female population there, so I will just show it to you separately. You can see that there was not a decrease comparable to the males in those first few years; it was fairly steady, but, then, again, in the latter period there was quite an increase.

What I have done is gone back and looked at our finalisation data in the Local Courts and the District Court databases and tried to glean from that where some of these increases are coming, so if I can just run you through those. I will deal first with the women coming through the courts.

We have actually prepared a briefing paper, which I will leave with you, which looked at the increase in the female prisoner population, so there are more details in that, but, again, separately for the Local Courts and the higher courts.

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For women in the Local Courts there was a substantial increase in the number of women convicted over that time period from 13,077 in 1994 up to 16,145 in 1998. That is an increase of 23 per cent.

The number of women receiving a prison sentence also rose from 451 in 1994 to 630 in 1998, and that is an increase of 40 per cent.

Women are more often appearing in the Local Courts for offences that are likely to incur a prison penalty, and I will speak more later during questions about the types of offences that do attract a prison sentence. Two of them are listed there, that is, offences against the person, and there was a 52 per cent increase in the number of women convicted of those offences between 1994 and 1998, and for against justice procedures it was up by 61 per cent in that time.

In the higher courts the number of women convicted actually dropped, and that is because there has been a decrease in the number of finalisations overall in the District Court over that time but there has been an increase in the number of women sent to prison.

The number of women receiving a prison sentence rose from 87 in 1994 to 117 in 1998, and that is an increase of 34 per cent. The proportion of women receiving a prison sentence has almost doubled, from 25 per cent of convicted women in 1994 up to 48 per cent in 1998. Again, it may be due to an increase in the number of women appearing for a particular offence.

At this time in the higher courts it is robbery. That is an offence with a very high imprisonment rate, and there are more women coming through for robbery in those later couple of years. The numbers look small but percentage-wise it is quite a big increase, from 25 women in 1994 to 45 in 1998.

Also, besides an increased number of women coming through for robbery offences, they are actually more likely to attract a sentence of imprisonment in the latter part of the series. In fact, in 1998, 69 per cent of female robbery offenders were imprisoned compared with 52 per cent in 1994. That went from 13 women up to 32.

Now I will just run through similarly for the male prison population the sentenced prisoner population.

There was an overall increase in the number of matters finalised in the Local Courts. Because males comprise most of the finalisation matters in the court, that has had an impact in the numbers sent to prison.

There has been a 10 per cent increase in the number of men convicted. The number of men receiving a prison sentence rose, an increase of 28 per cent. The proportion of men receiving a prison sentence also rose in the Local Courts over that five-year period from 6.5 per cent to 7.6 per cent and, again, the percentages are fairly small but we are talking about very large volumes of people passing through the Local Courts.

So there has been an increase in both the number of men convicted and the proportion imprisoned for most of the major offence categories. The highest rate of imprisonment for males was for theft offences, and 20 per cent were imprisoned in 1998; for offences against justice procedures 15 per cent imprisoned; for offences against the person 10 per cent were imprisoned; and there were substantial increases in the number of people being convicted of these offences, with very high imprisonment rates.

For theft, it was up by 7 per cent, against justice procedures it was up 46 per cent and against the person up by 10 per cent.

Ms BURNSWOODS: What does "against justice procedures" comprise? It seems such a major increase. Being nasty to cops, is it?

Ms CHILVERS: No, not at all. That is actually assault.

Dr CHESTERFIELD-EVANS: Contempt of court?

Ms CHILVERS: No, it is offences in prison and absconding from bail and those sorts of things.

Ms BURNSWOODS: So it is to do with the prison system, not to do with police?

Ms CHILVERS: That is right, or with the court procedures. With the police, offences against police are more likely to be against the person, assaulting an officer. That is an assault category.

In the higher courts, the trends over the five years actually differ from the trends over the most recent two years, so you really need to think about them separately a little bit.

Over the five-year period, the number of males convicted and imprisoned in the higher courts actually has decreased, and that is because there is a decrease in the number of finalisations, which we will probably talk about later on. However, there has been an increase in the proportion of convicted males imprisoned, and that has risen from 55 per cent in 1994 up to 65 per cent in 1998.

Now, this increase was mainly due to an increase in the rate of imprisonment in the higher courts for most offence categories over this period, similar to the Local Courts, where the rates have increased.

The largest number of prison sentences for males in 1998 in the higher courts were for offences against the person, where there were 500 men imprisoned; robbery, 479; theft, 303; drug offences, 210; and the rate of imprisonment for each of those categories increased between 1994 and 1998.

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Between 1997 and 1998 now, just the last two years of the period, the number of males convicted and the number imprisoned increased, while the proportion imprisoned remained steady. There was a 6 per cent increase in the number of men convicted between 1997 and 1998, and there was a 7 per cent increase in the number of men receiving a prison sentence. The largest increases between 1997 and 1998 in the number of males convicted and imprisoned were for robbery offences and offences against the person.

So with all those figures, if I can just summarise - and there is not one number on this overhead, you will be pleased to see - when we look at the trends in the prison population in New South Wales we can see over the five-year period that both the remand and the sentenced prisoner populations have increased for both men and women.

Some of the contributions to the increase are the increase in the arrest rate, the increased rate of bail refusal in both the courts and an increase in the number of cases processed by the courts.

In the Local Courts there was certainly an increase. Because they comprised the largest portion, that is an overall increase. There were increased numbers of convictions for those particular offences with high rates of imprisonment over the whole time period.

Finally, there was an increase in the rate of imprisonment for most major offence categories over that time period. So I think that has sort of given you the picture. I have a few more overheads that will refer to other questions, if I must, but that summarises it as I see it.

CHAIR: Ms Chilvers, your evidence seems to give the impression that when we look further into the people who are in prison now we are likely to find more people in prison for summary offences rather than indictable offences. Is it the Local Courts working harder that has had a bigger impact?

Ms CHILVERS: Yes, there is certainly a larger population that comes from the Local Courts. When you look at the population as a static entity, because the sentences are much longer for indictable offences, that may not be so. The number coming in certainly are likely to come from the Local Courts for summary offences. Because they stay such a short time, I am not sure that that is true of the prison population itself, but I do not have any information on the make-up of the prison population.

CHAIR: Some research that has been presented before other committees or in submissions to this Committee has made a distinction between sentences given to males and sentences given to females, and I guess the line has largely gone that there are women in prison for offences that would not have attracted imprisonment had the same offence been committed by a male. In other words, the courts tend to treat women more harshly for some offences. Do you have any evidence that might justify that?

Ms CHILVERS: My evidence does not actually support that. It is very difficult, though, to look at discrepancy between sentences for any groups of people because, while there may be a

discrepancy, it may not be a disparity because when the sentencing occurs the only thing that I can find information on is the offence type. I do not know anything about the severity of the offence, the prior record of the people committing the offence, the availability of, say, community service work in the region where the person is appearing before the court and perhaps the impact on families of imprisonment. We can't take those factors into account just in the straight numbers, but I can show you the straight numbers and you can make what you want of them.

Dr CHESTERFIELD-EVANS: Would it be helpful if those statistics were more complete if one were trying to see if imprisonment worked? That seems to me the key question that the statistics are not giving a lead to.

Ms CHILVERS: My statistics are not, but I do not know whether Corrections may have some follow-up studies or prisoners or recidivism. Those sorts of statistics would. All I can present is what we collect.

Dr CHESTERFIELD-EVANS: So the key question is: does putting people in gaol actually lessen crime? It is not being addressed.

Ms BURNSWOODS: There are other key questions.

CHAIR: There are a few others. Perhaps we might deal with the raw data first before we get into the stickier questions. They are worth asking, but I think we are still at the data stage.

Ms CHILVERS: I think in the short term, if I can answer that a little bit, obviously if someone is not on the street committing crimes, then I guess it is going to reduce crime from those people for the time they are incarcerated.

Mr PRIMROSE: As I understand your summary, explanations for the increases in the various sections are an increasing arrest rate volume by police?

Ms CHILVERS: Certainly.

Mr PRIMROSE: We do not know whether that is simply contingent upon an increase in the police population or a reduction in the granting of bail, and we do not know why that is the case, whether it is a change in the law, a change in judicial attitudes or a change in the nature --

Ms CHILVERS: Or a change in the profile of offences, that is correct, yes.

Mr PRIMROSE: The other one is an increase in, if you like - and I use the dreaded term - efficiency in terms of the courts processing the case load. I am just interested in, firstly, is it possible to attribute a percentage or a weighting to each of those, particularly the latter one, because I would imagine that if that has a significant weighting in terms of efficiency, then, in fact, you may be able to project a reduction --

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Ms CHILVERS: If the courts slow down, they become less efficient.

Mr PRIMROSE: They become less efficient, or if their processing puts a large number through at any one point at the moment and then the backlog declines. What I am interested in is whether it is possible to put a weighting on any of those or is it not possible.

Ms CHILVERS: I cannot guess at it. I guess I could sit down with pen and paper and work out where the contributions are coming from and get back to you, if you like. I agree with you, certainly any change in the numbers of cases which proceed through the Local Court has an effect, but it is also the offence mix because if there are many more cases which are unlikely to attract a prison sentence coming through, then it is not going to have any impact at all. You need to look at the increase, perhaps, disaggregated by the types of offences that attract a prison sentence.

CHAIR: We were getting on to whether women were treated more harshly than men.

Ms CHILVERS: Yes. Do you want more numbers? Can you bear more numbers?

CHAIR: That is what we have to do.

Ms CHILVERS: I guess you do. Yes, that is what I am here for. You will not have many more statisticians, I am sure. I have graphs but I will not go through those. They are all in the package you have. Just look at these ones here. We already looked at numbers sentenced to prison, that sort of thing. If we look at the percentage numbers of persons sent to prison overall, over that period you can see that in the Local Court it is a little bit under 7 per cent for males and for females it is about half that. It is an overall trend and I will talk about that a little more in a minute.

In the District Court, overall it has gone from 57 per cent for males to 66 per cent and for females, 25 per cent up to 50 per cent, so it has doubled. The average prison sentence is the other thing we need to look at and this is, again, the overall trend, 4.5 months in the local courts for males up to almost five months, females, three and a half months to four, so clearly overall the women are less likely to be sentenced to prison and attract a lower prison sentence.

Your question referred particularly to certain offences, and what I have got is some information about those offences which attract the highest prison sentence which are the ones that are most likely to affect these numbers. This is in the Local Court. I have got 1994 and 1998 just to see whether there has actually been a change. If we look at the 1998 figures, we can see that for all offences we have discussed. For against the person offences, about 10 per cent of males who were convicted were imprisoned and three per cent of females were imprisoned. For theft offences, 20 per cent males, 8 per cent females. Against justice procedures, 15 per cent males, 10 per cent females were imprisoned, and in each of those cases, the overall prison sentence was shorter for females.

But there has been a change and where some of your previous evidence would have been coming from was that the difference is decreasing for some of those offences. For example, the against justice procedures it has actually dropped for males from 17 per cent to 15 per cent, but increased 9 per cent up to 10 per cent for females, that sort of thing. So there is certainly not overall an increase in sentences for females but over the time I think they are probably getting a bit closer together.

CHAIR: Your figures may not bear this out, but there has been some attempt to divert people from gaol, exercises such as no gaol for fine defaults and the use of the drug court system. Is there any indication that those will have an impact on the size of the prison population in the near future?

Ms CHILVERS: Early days for the drug court. We really do not know because we are still evaluating that and, certainly, if it is successful and if a lot of people who actually go on the drug court program remain on the drug court program, there could be an impact. I think small numbers at this stage, though, because if they fail to meet their requirements of the drug courts they actually end up serving their prison sentence, so it just delays it a little.

CHAIR: With regard to fine defaults, are you able to define how many of those people are in gaol now and when they will sort of disappear?

Ms CHILVERS: With the fine default prison population, there are not many there at all so far as I know. There is certainly none going in but I do not know --

CHAIR: Has there been a recent decrease in those or was it low to start with?

Ms CHILVERS: There was a really big drop. They stopped putting fine defaulters in prison in early 1998. If you think about the fine default population, they may be returning to prison for the reason of the licence disqualification and then being picked up for driving without a licence, so they are actually being imprisoned for driving offences rather than fine defaults. We do not actually see that group, so there may be some returning and also imprisonment was to be a last resort for those people. So far I guess we have not reached the last resort.

CHAIR: Is the increase in the size of the prisoner population somewhat larger than it appears given that that category of prisoners has been waning or declining whereas at the same time others have been increasing, so though we are talking about size in prisoner increase of 20 per cent for males and 40 per cent for women, that is worse than it looks because there is a category of prisoners who were a significant component of the prisoner population that has declined suddenly?

Ms CHILVERS: That population certainly has declined and had that remained stable, I guess the increase would have been higher. There has also an increase in the number of appellants, so that is something that has contributed, that is not just the sentenced prisoner population. They include people who appeal.

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CHAIR: They are people who are remanded on bail while they appeal, is that it?

Ms CHILVERS: Corrections can probably give you more information but they give us - no, they are actually not on remand, they are in prison, but they are appealing their sentence.

CHAIR: With regard to the refusal of bail, is there some legal change which may have contributed, legislative change which might have contributed to the decline of fail refusals?

Ms CHILVERS: I am not aware of those. It is probably likely but I am afraid I do not know.

CHAIR: A couple of the authorities who have given evidence to the Committee have said it is necessary to plan for this particular increase in prisoner population to continue over the immediate future, so it is necessary to plan to have, for example, larger gaols built for the purpose of accommodating a trend which is likely to continue in the future. Is there any justification for that sort of reasoning or is this a short burst or is it going to be a continuing trend?

Ms CHILVERS: I guess if it is a change in the legislation then it could be expected to continue. I think the biggest effect has been the arrest rate increasing. That really has - I think that lies behind it and I think if that does continue then it is possible that the remand population will increase.

CHAIR: I will be happy if you take this next question on notice. The Committee is interested by comparison of the impact of community based sentences and as to whether they have shown an increase or decrease over the same period of time and how that might have impacted on the prison population. Does the Bureau of Crime Statistics have that information?

Ms CHILVERS: I just happen to have an overhead on that. Again, the five-year period and the periodic detainee population has decreased for both males and females over the period. Community based correctional orders, community service orders, there was an increase for the first three and a half years or so but, similarly, over the period where the population in prison has increased, there has been a decrease in community based correctional orders. Around late 1997 it started to decrease and this is just a summary of what has actually happened.

For males, I have just highlighted the most relevant. This shows the percentage of persons imprisoned, the percentage who received home detention and periodic detention and a community service order from the courts in the finalised cases in 1994-98. In the higher courts, while there has been a move towards imprisonment, so we have gone from 55 per cent of males almost up to 65 per cent, there has been a decline in the use of periodic detention, from 10 per cent to 8 per cent and in the use of community service orders it has gone from 14.5 per cent down to 10 per cent.

For females, a similar pattern though more dramatic. We are dealing again with smaller numbers so the percentages always look so much bigger. In the higher courts the same thing.

The most salient point is that imprisonment has pretty much doubled over that time period but community service orders have halved, so from 26 per cent down to 13 per cent. So there does appear to be a shift.

Dr CHESTERFIELD-EVANS: Is it a problem of capacity in the community service orders? Have the numbers of people receiving community service orders remained a constant and the percentage fallen with the increased arrest numbers?

Ms CHILVERS: No, the numbers in absolute terms have decreased.

Dr CHESTERFIELD-EVANS: What percentage of remand prisoners are sentenced?

Ms CHILVERS: It differs in the local and higher courts. I can give you that number but I do not have it with me. Not surprisingly, very high in the District Court, not so high in the Local Court, but I can get back to you with that number. I am sorry, I do not have it with me.

CHAIR: That would be useful.

Dr CHESTERFIELD-EVANS: If they were on the waiting list and were then found innocent they have wasted a year or however long they have been sitting around for.

Ms CHILVERS: As you probably know, courts give preference to people who are in remand for their cases, so they actually jump the queue. Over the five-year period there has not been a change in court delay. Over the most recent two-year period in the Local Court the delay for trial processing has actually gone down a little. In the higher courts it has gone up a little but I cannot say for people who are on remand whether there has been any increase. I would be surprised if there was because they do try to keep those at the top of the queue.

CHAIR: The argument also runs, as I think was written in the 1985 report into women in prison said something to the effect that it was surprising the number of women who were remanded in custody did not receive a custodial sentence, the implication being that they should not have even been remanded because it would not have resulted in a prison sentence.

Ms CHILVERS: The only other thing to be careful of is that some people on remand are not actually bail refused but cannot meet the bail conditions. I am not sure whether that is changing over time, either.

CHAIR: Is that something you are able to distinguish in your statistics?

Ms CHILVERS: No. All I can find out for you is the proportion who were on remand at the time of finalisation actually but I will get those numbers for you.

Ms BURNSWOODS: I assume there is a proportion of sentences which have been served by the remand period being served. How do they show up in the statistics?

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Ms CHILVERS: In what way?

Ms BURNSWOODS: If you have statistics of people on remand and they do receive a custodial sentence, say, for 12 months but they have already been in gaol for 12 months, I assume they only show up as people on remand and not as sentenced prisoners?

Ms CHILVERS: They do show up as being sentenced because the remand figures are separate from the sentenced population. So what I am showing you is the court finalisations, the people who actually receive a prison sentence, whether or not they have served part of that time and the sentence that is imposed on them, not what is remaining. So they may, you know, leave the court and --

Ms BURNSWOODS: So for that reason there would be a difference sometimes between your statistics and the number of people actually in gaol because the sentence may, in effect, have been retrospective?

Ms CHILVERS: Absolutely. When we talk about these statistics you will probably find that because I am first on I am not contradicting anyone but when Corrections come in, the picture may be slightly different because Corrective Services look at it from a different perspective. They are actually counting bodies there.

When I talk about people being sentenced to a period of imprisonment I think it is about 85 per cent that actually show up at Corrections as new prisoners because some are already in there serving a prison sentence for something else, so it is not actually new bodies that we are talking about here.

Dr CHESTERFIELD-EVANS: So these figures that you have of total persons, they include remand prisoners?

Ms CHILVERS: The top graph, was it?

Dr CHESTERFIELD-EVANS: The first one. That includes both remand and sentence?

Ms CHILVERS: Yes, that is true.

Dr CHESTERFIELD-EVANS: Are the likely predisposing factors to crime recorded? I think you more or less said no in the sense that you said you cannot distinguish why sentences might be lesser or greater for the same offences?

Ms CHILVERS: Yes.

Dr CHESTERFIELD-EVANS: Obviously, if one were trying to do crime prevention, one would think that the circumstances of the crime within categories would be recorded so that you could see the correlations.

Ms CHILVERS: The police certainly record that but we do not aggregate it. If you went into the police statistics, they could certainly tell you the seriousness of the crime, but we do not report on it.

Dr CHESTERFIELD-EVANS: So there is not a correlation between that seriousness and the sentence correlated?

Ms CHILVERS: Seriousness within a particular category you mean? Well, if we talk about property offences, there is a very big difference between armed robbery and unarmed robbery and break and enter, so, certainly, that is not really what I meant. I meant the circumstances of the crime itself, so whether many people were affected by the crime or one person or no people. So, in that sense, that is the data that I do not have.

Dr CHESTERFIELD-EVANS: What about the data on the prisoners and their situation?

Ms CHILVERS: No, again, that is something Corrective Services, I imagine, could tell you more about.

Dr CHESTERFIELD-EVANS: For example, if one were to say that people in family situations or drug situations might be more or less likely to commit offences or if they had a gambling problem or something else which could be addressed to keep them out of gaol, which obviously is the purpose of this Committee, are those factors recorded?

Ms CHILVERS: They are not recorded by us. They are on the court files but they are not then put on to a computer program.

Dr CHESTERFIELD-EVANS: I know about files because they are the most inaccessible form of data.

Ms CHILVERS: That is true.

Dr CHESTERFIELD-EVANS: So this is not recorded in any sort of database that can be analysed?

Ms CHILVERS: No, it is not.

Dr CHESTERFIELD-EVANS: Not by anybody?

Ms CHILVERS: The case tracking system in the District Court has more information than I have and the COPS system, the computerised operational policing system, has more information than I am reporting to you, so I guess some of it is there but not recorded by us particularly.

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Dr CHESTERFIELD-EVANS: If the police, though, pick someone up for an armed robbery or a robbery, they would not record that the person had a gambling problem and a wife and kids at home, would they, or they may or may not?

Ms CHILVERS: No, I guess that is true. I guess that is more likely to come out in the court case and, again, that is on the file.

Dr CHESTERFIELD-EVANS: You said there were three databases?

Ms CHILVERS: Yes.

Dr CHESTERFIELD-EVANS: They are not routinely correlated by you. Is that right?

Ms CHILVERS: No, they are not, no. They are kept completely separate.

Dr CHESTERFIELD-EVANS: Is this for privacy considerations?

Ms CHILVERS: Not at all.

Dr CHESTERFIELD-EVANS: It is an administrative thing?

Ms CHILVERS: It is administrative. We have a dream that there is going to be something set up for New South Wales, an administration system that everybody can contribute to, but it is something that it is hoped for.

Dr CHESTERFIELD-EVANS: Is anybody working on it apart from your hopes?

Ms CHILVERS: The Attorney General's Department is looking at a system. That is for the courts, and that will draw together the police input to it.

Ms RHIANNON: Does the Minister use your research information on a regular basis?

Ms CHILVERS: Yes. We publish several annual reports, and my unit has an information service which is available to the public and to any government offices, but certainly we take information from our database on a regular basis.

Ms RHIANNON: Do you know how recently, like in the recent period, the Minister has accessed your information?

Ms CHILVERS: I guess it depends which information. The information officer could probably tell you that. You mean Mr Shaw, the Attorney General?

Ms RHIANNON: No, sorry, the Minister for Corrective Services, Mr Debus.

Ms CHILVERS: I think Corrective Services tends to use its own information, but certainly I speak to the statistical officers at Corrective Services regularly, and I last spoke to them on Friday, so we give them as much information as we can about what is happening in the courts, if that is what you mean.

Ms RHIANNON: I was obviously interested in whether the Minister is accessing the information on the rate of imprisonment and if he has interacted with your office about that.

Ms CHILVERS: It is in our published reports.

Ms RHIANNON: Considering there is only five minutes left, I would like to return to the question that Dr Chesterfield-Evans opened up. Do you have any evidence that prison acts as a deterrent? Is that information collected in any way?

Ms CHILVERS: I am not aware. I know there is research which goes both ways. But, no, I am afraid I do not know.

CHAIR: Has the Bureau of Crime Statistics and Research addressed that in any one of its published articles?

Ms CHILVERS: No, we have not because it is difficult to follow up on imprisoned persons who then return. We just do not have that information.

Dr CHESTERFIELD-EVANS: Is there any project, or mission, if you like, within the Bureau of Crime Statistics and Research which looks at ways of minimising crimes, whether gaol works as opposed to something else, not just as a deterrent but steps back to what is the best way to minimise crime in society? Is there any ongoing project that looks at evidence or methods of lessening crime in a neutral way, or a questing way?

Ms CHILVERS: We are part of the Attorney General's Department, and there is the Crime Prevention Division, which would probably be looking at those matters, but, no, not in the bureau itself.

Dr CHESTERFIELD-EVANS: Surely, though, they must work on collected data and, if the data is not collected, they would be reading literature and swapping anecdotes, would they not?

Ms CHILVERS: At Crime Prevention they certainly would, so I am sure they can speak to you about it.

Ms RHIANNON: What about comparisons with other States? What is happening in other States with the rate of imprisonment?

Ms CHILVERS: I am afraid I do not know.

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Ms RHIANNON: Is there anyone looking at that?

Ms CHILVERS: Again I guess it depends on the profile of the crime. The Australian Bureau of Statistics has a national centre in Melbourne that compiles statistics on the courts, the higher courts, and police activity in the States. I do not think it does much analysis of it, but there is data available from there.

Ms RHIANNON: And what about for Aboriginal women? Can we access any breakdown of what crimes they are being charged with and tracking them through?

Ms CHILVERS: Yes, for the Local Courts we began to collect data on Aboriginality about three or four years ago, I think, and we were asked to collect it, so it is a question that goes on to the Local Courts data collection form. In our 1998 Criminal Court Statistics Report we give a breakdown of Aboriginal persons versus other. We do not break down by gender, but I can certainly get that information.

Ms RHIANNON: That would be useful.

Ms CHILVERS: Okay. So what are you interested in exactly?

Ms RHIANNON: What Aboriginal women are being charged with and then what happens to them.

Ms CHILVERS: So the penalties?

Ms RHIANNON: Yes, the penalties.

Ms CHILVERS: Okay.

Ms RHIANNON: Just also about length of sentence, what is the usual length of sentence, particularly for women, because it seems as though I understood that it is often shorter, like, three months, six months, that they are just down at that end of the sentencing. I am just wondering what the trends are there.

Ms CHILVERS: The trends in sentence length?

Ms RHIANNON: Yes, the length.

Ms CHILVERS: Overall or for particular categories?

Ms RHIANNON: I was just interested in women at the moment.

CHAIR: I suppose, to be helpful, some of the submissions to the Committee have suggested that the bulk of women in prison are there for drug offences and reasonably minor

offences in the scale of things a great deal less serious than the offences with which men are charged and the average woman prisoner tends to be there for a very short period of time.

Ms CHILVERS: Yes, they are there for a short time. Around three to four months I think is the average sentence and I do not think it has changed all that much over time. That is certainly from the Local Courts, which is the bulk of them.

Ms RHIANNON: So do you have information on that?

Ms CHILVERS: I think the average prison sentence is on the overheads that I have given you. No, that is for males and females.

Ms RHIANNON: We could take that on notice if we could get it, please.

Ms CHILVERS: I think there is probably some breakdown here, but certainly I will expand it and give it to you.

Ms BURNSWOODS: My question was anticipated in part. I was going to ask about statistics on Aboriginal people in prison and, I guess, in a general way, whether the sort of information you have given us can be broken down for Aboriginal people in particular but also possibly for other groups, or are the numbers too small?

Ms CHILVERS: Only in the Local Courts. That is the only place that we would have any information about Aboriginal people. I know Corrective Services, again, can talk about its population but, as far as sentencing is concerned, it is only for Local Courts that I can give you information.

Ms BURNSWOODS: That is perhaps something to take on notice.

Ms CHILVERS: Certainly.

Ms BURNSWOODS: But where the numbers make it possible I would certainly be interested in getting some comparative figures.

Ms CHILVERS: Over the five-year period or just over one snapshot?

Ms BURNSWOODS: Over the five-year period. I realise that it is not always easy but where you think that the figures are meaningful over the five-year period, that would be more useful.

Mr PRIMROSE: I asked my question earlier. That is the only one that I was particularly interested in at this stage.

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Ms RHIANNON: I just wanted to ask about bail, the comparison between men and women in successfully accessing bail, and also if there is a breakdown for women and children, so, men, women and women and children. Do you have figures on that?

Ms CHILVERS: I do not have information here. I can certainly give you breakdown of males and females but not females with children. We just do not have any information on that.

CHAIR: Ms Rhiannon reminds me that our terms of reference are not actually limited to adults. It is actually relevant for us to have information relating to juvenile incarceration as well. I suppose you did not come prepared for that?

Ms CHILVERS: We do not report on juvenile court cases. That is the Department of Juvenile Justice. We incorporate some of its numbers into one of our reports but the source of data is actually the Department of Juvenile Justice for that, so I do not have any information.

CHAIR: Was that what you meant by children?

Ms RHIANNON: No, I meant women with dependent children.

Ms CHILVERS: No, we do not have access to that.

Ms RHIANNON: It has been suggested that the courts in rural areas do not utilise the option of community-based sentences as much as metropolitan courts because of limited services in regional areas. Are there any significant discrepancies between the sentences imposed by rural courts and those imposed by the metropolitan courts?

Ms CHILVERS: I do not have anything at hand about the use of community service orders in rural areas, but I do have - I had a quick look before I came at the differences in sentencing between Sydney courts and other courts in New South Wales, both local and higher courts. There is not a lot of difference. In the Local Courts overall for all offences there is a slightly lower proportion of people being imprisoned than in the rural courts. When you look at that by offence category for the three major offences that actually imprison people in the Local Courts it is a similar pattern, particularly for against the person offences. So that is the only real difference I could pick up in the Local Courts.

So fewer people are likely to be imprisoned for against the person offences when they appear in a Sydney court rather than a rural court. In the higher courts it is actually reversed. There is a higher proportion of people being imprisoned in Sydney than in rural areas. But, again, this is just raw numbers and we have to consider the types of offences that are being sent to those particular courts for hearing and the nature of the availability of community work, but again that is something if you want to look into that further I can get more data about that.

Ms RHIANNON: Could we have some more data on it, please?

Ms CHILVERS: Yes.

Ms BURNSWOODS: Particularly in light of what you said about arrest rates and the variations in sentencing and so on, does the bureau keep any record of, for instance, changes in legislation, changes in definition of offences or penalties for offences, et cetera, that throws light on those changes?

Ms CHILVERS: No, I am afraid we do not.

Ms BURNSWOODS: Basically you have no statistical knowledge of the reasons behind?

Ms CHILVERS: No. I guess the bureau is a reporting agency so we try as best we can to understand the statistics as they are coming through and try to explain the trends as best we can. We do not have a repository of legislation, but where it really does impact on the trends, obviously like the fine defaulter and those sorts of things, we do mention that in our reports.

(The witness withdrew)

(Short adjournment)

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IVAN LESLIE POTAS, Research Director, Judicial Commission of New South Wales, level 5, 301 George Street, Sydney, sworn and examined:

CHAIR: Could you briefly outline your qualifications and experience that are relevant to this inquiry?

Mr POTAS: I have a background in criminology. I have a BA, LL.B. and an LL.M. I have worked for the Judicial Commission for a number of years, particularly in the area of sentencing.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Mr POTAS: Yes, I did.

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

Mr POTAS: Yes, I am.

CHAIR: If you consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be seen or heard only by the Committee, the Committee will usually accede to your request and resolve into private session. I should warn you, however, that the Parliament has the power to override that decision at any time and make your evidence public. Does the Judicial Commission have a written submission for the Committee?

Mr POTAS: No, we do not have a written submission.

CHAIR: Would you like to make some remarks to the Committee in regard to our terms of reference?

Mr POTAS: I thought it might be useful if I explained what the commission does. It is a small statutory authority. The commission itself consists of 10 members, one of whom is the Chief Justice, and also heads of jurisdiction a number of other judges plus four lay persons or persons who are not judges. In addition, it has a small staff of 28 people. I am one of them.

My function is to oversight information relating to sentencing. We have at the Judicial Commission a sentencing information system. We call it JIRS and that is a computerised data base containing information which we provide to judicial officers to assist them with their sentencing decisions. I would like to suggest or invite the Committee to actually view the JIRS system if so inclined because it does provide information in relation to specific offences and you can see by looking at a screen what sorts of penalties have been imposed in past decisions.

In addition to statistical information, JIRS contains legal information. It contains statutory information, the latest or the current law in this state. It also has Commonwealth legislation in it and it also has case law and particular judgments of the Court of Criminal Appeal. Judges have access to this information, the object of it all being to promote consistency in sentencing, so that when they impose a sentence, they have access to the latest law and also to the patterns of sentencing for particular offences.

CHAIR: We would need to go to the office, I imagine, of the Judicial Commission to do that?

Mr POTAS: Yes, or else we could actually demonstrate it here, provided there is appropriate phone access because it is a matter of setting up a modem.

CHAIR: That is something we could usefully do. Do you wish to make any comments in regard to our terms of reference before we ask you questions?

Mr POTAS: I would just like to say that the commission's interest is in judicial decisions or judges. One of the functions of the commission is to provide educational venues for judges, and conferences, and we do not have a great deal to do with imprisonment as such. I mean, the courts impose the sanctions but they are not involved, obviously, in carrying out the sentences that are imposed.

So a great deal of your information, no doubt, will come from the Department of Corrective Services and also, of course, the police.

CHAIR: Have there been any changes to sentencing patterns among the local and higher courts that may have contributed to the increase in prisoner population since 1995?

Mr POTAS: There has been some changes in patterns. Firstly, if we have a look at increases in sentencing matters that courts have dealt with, there has been just under a 9 per cent increase in matters coming to the courts between the years 1995 to the end of 1998. A small fall occurred in 1997 but there have been noticeable increases in both 1996 and 1998.

Ms BURNSWOODS: When you say the courts, you are including all the courts?

Mr POTAS: In our statistics we divide the courts into local and higher courts. Higher courts includes Supreme Court and District Court.

Ms BURNSWOODS: So when you say 9 per cent, you mean local and higher?

Mr POTAS: Yes, but we have more detailed statistics to offer you. Over the period from 1995 to September 1999, 7.9 per cent of sentencing matters resulted in full-time imprisonment overall, but the Local Court's rate of use of imprisonment was 6.4 per cent and the higher court's rate was 60.3 per cent. What we have seen over the period is an increase in the rate of imprisonment in the higher courts. It has gone up almost 10 per cent over the period of

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interest to this Committee. It used to be around 50 per cent of people being sentenced to imprisonment.

If I might explain, there was a shift in the practice of the courts with the passing of the Criminal Procedure Act in September 1995. What happened was the Local Court's jurisdiction expanded. It began to deal with some cases that were formally dealt with by the higher courts, particularly the District Court. So the effect of that is that the District Court is actually dealing with more serious cases, hence one would expect that to be reflected in the sentencing patterns.

Now the Local Court also is dealing with more serious cases, but because of the volume of cases, it does not have the same kind of impact on the sentencing in the Local Court. The Local Court's share changed over the period from 96.5 per cent of all sentencing matters in 1995 to 98 per cent of matters in 1999. So you can see that most sentencing is done in the Local Courts by magistrates. I could keep going. I know there are some more questions --

CHAIR: No, this is obviously a question that requires some length.

Mr POTAS: I was going to go into discussing the proportion of males to females, if that is of interest.

CHAIR: Yes, it is of interest.

Mr POTAS: If you take the whole period and do an average, 16.2 per cent of offenders sentenced were female of all those being sentenced. However, the proportion of females to males has been increasing. If you go back to 1995, the proportion was 15.7 per cent and in 1998 it was 16.8 per cent. Now that sounds like a slight shift but it is quite a significant increase in women coming into the system or the proportion of women, I should say.

I did mention earlier that there has been a 9 per cent increase in the number of matters coming forward. There has also been a shift in the proportion of men to women, with women increasingly coming into the system.

CHAIR: Just as a procedural matter, you appear to be speaking from some notes. I do not know what the nature of the notes are but because numbers are capable of going in your head and straight out, is it possible for the Committee to have some access to those parts of your notes that include statistics, because it does help?

Mr POTAS: Yes.

CHAIR: If you could make them available to the staff they could very quickly copy them and circulate them to members.

Mr POTAS: Do we break, then, for five minutes?

CHAIR: We will not need five minutes. We could ask you another question to which you can talk while they do it.

Mr POTAS: All right.

CHAIR: It might be just helpful for members if we can take a break in the discussion of the statistics. I would be interested in finding out just a little more about the computer system to which judges have access that you were referring to in terms of what sort of information the Committee can get from that. Does the computer system have the capacity to distinguish between sentences? For example, does the computer system record bail refusals?

Mr POTAS: We do not have any information on bail because our task is to promote consistency in sentencing. Sentencing is at the end of the process, so we have no information on bail whatsoever.

CHAIR: Evidence to the Committee has indicated, and in fact other previous reports into women in prison, for example, have drawn attention to the fact that at various times women have been less likely to receive bail. Is that not something that the Judicial Commission would need to know in instructing magistrates about their use of bail?

Mr POTAS: I think the answer to that question is yes, but I must explain that the commission has very limited resources and there are so many things involved in educating judges. For example, we spend a great deal of time introducing them to new legislation and, as I pointed out, we have a very small staff and we simply cannot cover everything. That is not to say that it is not a very important issue, but the commission has not undertaken any research in that area.

CHAIR: I think of the order of about 13 per cent of people in prison generally are there as a result of being on remand. Various reports dating way back to 1985 I notice have made reference to the fact that numerous people have been remanded in custody on bail and yet have not received a sentence involving a custodial sentence afterwards, the inference being that if it was not worth sentencing a person over the matter, it was not worth keeping them on bail in the first place. Are you saying to me that there is no way of the judiciary being able to research and understand that phenomenon?

Mr POTAS: No, I am not saying there is no way. I am merely pointing out that it is an area which deserves research but up to now we have not undertaken research on that topic. The research projects that we do, we can cope with about two a year. At the moment we are looking at working with Corrective Services on a study of understanding the issue of suitability for periodic detention, and that virtually takes up all my researchers in terms of ability to do more.

CHAIR: When you do a study of that nature do they become public?

Mr POTAS: They do. In fact, I have brought along some samples of our work. One is this most recent study on sentencing drug offenders. We can provide each Committee member

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with a copy if you wish, but this particular publication will really give you an idea of how complex and difficult it is to sentence. It is quite a comprehensive statistical analysis of sentencing, both at State and Federal level.

I will just mention while we are discussing our publications that I have included a copy of the Judicial Commission's annual report. In the back of this report there is a list of publications, which will give you a very good overview of what we do and what studies we have undertaken, and we will be pleased to provide you with any of these.

I will just mention this other one, which is a study we did a couple of years ago on sentencing juvenile offenders. We actually looked at whether there was any disparity in the sentencing of male and female children and we did not find any disparity so far as the gender of the young person is concerned. They are the main publications.

We also publish sentencing trends, and this one is a fairly recent one, which would provide the Committee with information about the most common sentences in the higher courts. Also it shows you what the rate of imprisonment is. We find in this publication that imprisonment has been increasing for certain categories of offences. Rather than bore you with the details, I am happy to leave that with you and provide copies to members.

CHAIR: We may come back to that. I do not think it is a case of being bored with the details. It might, in fact, be to the point. I want to ask you another question about the computer. I take it that it is capable of distinguishing sentences given to males and females? Judging by the conversation we have had it is, is it?

Mr POTAS: No, it is not. I will explain that. What happened was that when we set up the sentencing information system some 10 years ago the judges were asked what factors they regarded as relevant in the sentencing of offenders. We got back a list of matters. The most important ones we included in our sentencing information system and the ones that were not so important, including the gender of the offender, were left out of the system. That is not to say that we do not have data.

As you can see, I have quoted some data on gender but that requires going to our database and extracting the information. The reason that the courts do not distinguish between males and females is that there should be no difference in the sentencing of people. It is a justice issue.

CHAIR: I think we would agree with that but from time to time people ask. Without that even necessarily being something that is in the mind of the judicial officer, it appears that from time to time there are differences and the community may need to know, as I would hope that the judiciary might need to know.

Additionally, with regard to other interesting characteristics of people who come before the courts, I take it the database that you have does not easily record details of people from non-English speaking backgrounds?

Mr POTAS: That is correct.

CHAIR: I take it this is a database which is available to a magistrate at his desk when he is making decisions in real time in the court, is it?

Mr POTAS: Generally, most magistrates would have access in their chambers rather than in court. There is nothing to stop them from using it in court if they have a telephone line available to them. Obviously, in their work sentencing is fairly repetitive, so they would not need to consult it every single time they impose a drink-driving penalty for example, because they would know what they did last time and so on, but it is there in unusual cases and it is there to assist them when they are unsure of what to do.

They can get a printout in a graphical form or as a bar chart showing what percentage of offenders went to gaol and what percentage got periodic detention or community service orders or bonds or 556As or whatever the case may be. They can see what the whole population of judges have been doing and they can view both higher courts and Local Courts separately, so that if they are magistrates they will be interested in what other magistrates do and they can get the statistical read-out.

CHAIR: I do not imagine that there is any capacity to audit the specific use by any particular judicial officer of this commuter system?

Mr POTAS: There is capacity but it is not something that we undertake for research purposes.

CHAIR: I am wondering whether it is used for management purposes.

Mr POTAS: It is not.

CHAIR: I imagine the senior judge or the senior magistrate might from time to time want to discuss with a magistrate whether or not they are making adequate use of that.

Mr POTAS: It is not used for that purpose.

Ms BURNSWOODS: I understand the system was originally set up under guidelines so that judges and magistrates had access, and I can see from what you have said that issues like gender were not included.

Mr POTAS: Yes.

Ms BURNSWOODS: But what is on-line for people? Has it details of most recent cases? What I am getting at is that even if some issues such as gender are not a consideration in terms of guidelines towards ideal sentences, information about most recent examples, for

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instance, might still include the type of information that is not technically in the guidelines, including, for instance, gender.

Mr POTAS: Well, what we do have are judgments of the Court of Criminal Appeal, which provide guidelines. In the judgments they have the principles of sentencing, and within those principles the courts are expected to follow them.

For example, you have social security fraud cases, and you will find in the judgments a guideline that says people who defraud the Government should go to gaol. That is a guideline and there is a case on it. So magistrates are intended to follow the principles unless there are exceptional circumstances, and this is how we get consistency of approach within the sentencing.

Ms BURNSWOODS: What sort of information about the offender would those details of the sample case include?

Mr POTAS: We summarise the judgments. They are real cases. We do not have model judgments. We actually use the actual case. We have a database which has summaries of all the offences and we summarise those in terms of the type of charge involved and the sentence imposed in the case, the circumstances of the offence in some detail, say, a paragraph about what actually happened.

Then we have subjective factors, which relate to things like whether a person has a prior record of offending and whether the person, for example, is mentally ill or is of Aboriginal descent or is the mother of three children or whatever. That goes into the subjective factors.

Then we have the outcome of the appeal, which either upholds the original sentence or changes the sentence. That information is available to sentencers and it is intended to guide them so that if they have a similar case they can follow that.

But as well as that instant or actual case or number of cases like that that they can flick through quickly, they can also go to the full text of the judgment and see all the reasons for the decision and then they can also look at the statistics for that particular offence so they can see the whole range of penalties imposed. Obviously, statistics are not necessarily as helpful as similar cases, so our system has both.

Ms BURNSWOODS: And the statistics on the range of penalties would simply be just that? There would be no indication of any subjective factors?

Mr POTAS: No, that is not quite right because it is a very sophisticated system. The user can actually specify particular variables. Remember, for example, I said that the sex of the offender was not one of these. However, they can specify age as a variable; they can specify whether the offender pleaded guilty or not guilty as a variable; they can specify whether there are multiple counts involved and about half a dozen other variables.

Ms BURNSWOODS: And these go back to what the judges told you originally were the things most important to them?

Mr POTAS: These go back to the file. The information we get comes from the New South Wales Bureau of Crime Statistics and Research, which, in turn, gathers the information from the courts, so a lot of this material is hard evidence about the person.

Ms BURNSWOODS: Who decides which variables to search for?

Mr POTAS: There is a form which is filled in and from that form we extract the variables.

Ms BURNSWOODS: Who decides what is on the form?

Mr POTAS: That is a good question. The form was actually designed by the Bureau of Crime Statistics and Research, and it has been in use for many, many years. From time to time there may be amendments made to it but generally what information is collected is very well established.

CHAIR: Who has management oversight over the database?

Mr POTAS: The New South Wales Bureau of Statistics provides us with statistics, so in the first instance we obtain information from them, but we have our own system. We massage the data so it is in a form --

CHAIR: I guess I am getting to another question. Is it a judge that controls the form that this computer system takes or is it a public servant operating within the Judicial Commission who makes the decision as to what form it takes?

Mr POTAS: The commission has judges to advise it. We have a user committee for the JIRS information system and when there are radical changes we convene that committee. The commission generally is judge run and we support the commissioners.

CHAIR: So the final decision to change the form of that computer system is taken by a judge or a group of judges?

Mr POTAS: Can I just say that the chief executive of the commission has quite a bit of authority to modify the system but if there is radical change it goes to the commission itself for approval and also we have judges, both for our education programs and for any radical developments of the system. But can I just repeat what I said, we actually get the information from the New South Wales Bureau of Crime Statistics initially, so it, in a sense, --

CHAIR: It would control the data.

Mr POTAS: It would control the data.

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Ms BURNSWOODS: The question we are getting at, say the Judicial Commission decides that you want in future data X. Do you tell the bureau to collect it or does the bureau collect 100 different things and you can choose among those 100 what you want? How does it work in terms of who designs the form, what data is collected in the first place?

Mr POTAS: The form was initially designed by the bureau because before the commission came into existence the bureau was collecting data. Then the commission got involved and we also had some input into what sort of information we desired. We do not use all the data. We use most of it. We do not use all of it. I think we could, if requested to do so, so include gender but that is a technical issue and it would depend on whether the courts themselves felt that it would be useful to have that information. As I say, when they were originally surveyed many years ago, before my time actually, they did not regard gender as a priority.

CHAIR: The data that is accessed by this system is largely information that is publicly available; is that correct?

Mr POTAS: I cannot answer that question. I do not know whether some of it is not available to the public. My feeling is that most of it comes from court records which are public. I would not like to - to my knowledge I cannot answer that question.

CHAIR: What access does the general public have to the JIRS system?

Mr POTAS: We have begun to market the system and it is available to anybody who is willing to pay for access. It is a matter of paying a licence fee. The reason for charging is so we can recoup some of the costs involved in administering it, but it is not a secret. It is not in any way secret information.

CHAIR: I could see how it might be commercially useful information from the point of view of solicitors, but that fee that you charge for access, how high is it? I think there might be some justification for looking at different sorts of charges depending on what sort of user you were. Someone to whom it is their bread and butter and their commercial interest might have a different reason for charging than perhaps, say, a community-based justice group.

Mr POTAS: We do provide some free access points, including the Law Society and the Bar Association and we have offered it to other places where the public can get access to it free of charge. But as I say, we also do - we do not actively go out to market, let me put it that way. It is designed for judges, to assist them with their sentencing, and our aim is to promote consistency. That is our goal.

CHAIR: Returning to the evidence that you had to divert from, you were explaining to us some of the changes in sentencing patterns since 1995. Would you care to go on with that?

Mr POTAS: Yes, the proportion of males to females, overall 16.2 per cent of offenders sentenced were female. However, over the period the proportion of females to males has been

increasing. It moves from 15.7 per cent in 1995 to 16.8 per cent in 1998. It seems to have stabilised now at about 16.7 per cent, although we have not got all the data for 1999 in our database as yet. Our data stops at September 1999 but not to the end of 1999.

I think unless I have already said this one of the most - and this is almost trivial and I am sure you will appreciate this - but the level of imprisonment is based on two factors, the number of cases coming into the system and the length of the terms. I have already suggested that there are more people coming into the system. There has been a 9 per cent increase in the number of sentencing matters over the period.

I also have some evidence to suggest that females in particular may be committing more serious crimes overall, particularly in some areas such as armed robbery. Also our statistics tend to show that there is an increase in breach proceedings. This is where a person is given some sort of non-custodial sanction and is brought back either before the courts or more recently before the Parole Board to be dealt with for breach and often these people are sentenced to imprisonment. So, as I say, both the numbers and the overall length of sentences have been increasing.

CHAIR: Could I ask you on notice to give us the specific figures that justify those conclusions if you could assist the Committee with that later. It would be helpful.

Mr POTAS: Okay.

Ms BURNSWOODS: While we are still on this section, do you have any information to suggest, as has been suggested, that some of these things are part of a nation wide trend or, indeed, an international trend?

Mr POTAS: I have not looked at that question.

Ms BURNSWOODS: So the Judicial Commission basically keeps to within New South Wales?

Mr POTAS: Our interest is in assisting our courts with the day-to-day task of sentencing and what happens elsewhere is not relevant.

Ms BURNSWOODS: You do not do any research on international or interstate trends on those matters?

Mr POTAS: We do not.

CHAIR: I was hoping you would move on to some of the changes in law, such as the Criminal Procedure Act. Would you like to go on with that?

Mr POTAS: The main point about that is the effect of that is the higher courts are dealing with more serious cases and they are sentencing but also it may explain an increase in the sentences in 1996, the year following the introduction of the Criminal Procedure Act because

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there would have been a backlog of cases and the magistrates courts obviously deal with cases more quickly. I would think that part of the increase during that year may be attributable to the fact that they are dealing with more cases more quickly.

CHAIR: While we are on that, does the Judicial Commission keep some track of what legislation might affect sentencing patterns and keep track as to how those changes in the law would have an impact on sentencing patterns?

Mr POTAS: It is a task that we attempt to do, yes.

CHAIR: Could you perhaps give us a more lengthy written answer along those lines which looks at the changes in the law that have occurred in the time frame since 1995 which might have had some impact on sentencing patterns?

Mr POTAS: Yes. I can mention two; the dangerous driving offences is a particularly good example. There was a guideline sentence case of Jurisic a couple of years, the first guideline sentence. Now what was happening there is the Crown was appealing against a large number of dangerous driving offence cases because offenders were not being sentenced to terms of imprisonment and, as a result of that, a guideline sentence was handed down. Following that, the sentences have almost invariably involved terms of imprisonment.

So initially there was the legislation in about 1994, I think, which amended or increased the penalties - it got rid of the offence of culpable driving and introduced dangerous driving occasioning death and aggravated dangerous driving offences. The courts did not appear in general to increase their sentences a great deal as a result of that. Then there was the guideline judgment where the court said there was inconsistency in the patterns being imposed by the courts and following that you have far more or greater use of imprisonment. So I think that is one example of a change which has contributed to greater use of imprisonment.

CHAIR: Were you going to give a second example?

Mr POTAS: It has slipped my mind.

CHAIR: Does Henry mean anything?

Mr POTAS: Henry is the armed robbery case. You see, the difficulty with providing information is that we need time before we can actually - a certain number of cases have to be handed down before we can do our analysis as to whether there has been a change and there is some delay between the time that an offence is committed, the case is dealt with and the commission obtains the data. Some time elapses, so it is difficult if you were wanting changes in the 1995 to 1999 time frame it is hard to point to radical changes. But the Criminal Procedure Act may be one reason and I think armed robbery is also up. There seem to be more of them.

So it is not just increasing penalties. I think it is also, like I said, a case of more people coming into the system.

CHAIR: Earlier this morning a representative of the Bureau of Crime Statistics made the observation that there appears to be some sort of shift in the use of custodial sentences from the community-based options. In fact, there appears to have been a marked decline in the use of community-based options for both males and females. Are you able to throw any light as to why that trend may have occurred or the extent to which that trend may have occurred?

Mr POTAS: No, I cannot throw any light on that.

CHAIR: Do you have any database that may be able to do so?

Mr POTAS: We can do some research to see whether that trend is correct. We do have some statistics that we have produced in the past, such as this "Sentencing Trends" publication where we look at the most serious offences. It may be that we can see a reciprocal trend between increasing use of imprisonment and reduced use of non-custodial options. We can look into that, yes.

CHAIR: I am just sort of wondering, speaking in my role as a representative of the community, when observations of that sort of nature are made one of the things that the community expects of us is to go and find out why it is happening and hold someone accountable. How are we able to do that?

If, for example, a trend shows that for some reason or other the judiciary is not making use of the sentencing options that the Parliament is providing which are specifically intended to divert people away from gaol, where do people like us go to other than the Judicial Commission to sort of ask why this is happening and how and get some explanation?

Mr POTAS: Well, our job is to report on what actually is happening and to provide judges with information to assist them make their decisions. We do not direct judges to do anything; we just provide information. Speaking personally, the real problem is that the Parliament seems to provide diametrically opposed messages. One is we must get tougher and the other is you must use alternatives more often. It is a very, very difficult job to do both at the same time.

Another offence that I meant to refer to earlier was the traffic offences. Now, they have been increased quite considerably and one would expect more people to go to gaol as a result. So, on the one hand, Parliament is saying we have got to be tougher; on the other hand the Parliament is saying, "Here are alternatives. Please use them."

The judge is in the middle. The judge does his or her best with the information on a case-by-case basis, and you would not expect the judge to do anything else. So it is very difficult for a judge.

CHAIR: Is there something which draws the judiciary's attention to the fact that community-based options appear to be being used less? Other than, say, convening a Committee

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like this every five years to examine it, is there anything else that might draw their attention to national trends of that nature?

Mr POTAS: We have a publication called the "Judicial Officers Bulletin" and we constantly have articles in that bulletin explaining the introduction of new sentencing options - home detention, periodic detention -from time to time. We say, "Here they are," but it is really up to them.

CHAIR: A lot of what you do is determined by the users of the system, the judges. I can understand why that is appropriate. Where do judges get a different perspective from in terms of making sure that the research you do is relevant? It is unlikely to come from themselves. They do not have quite the same reaction with the community that perhaps politicians do.

Where would you get those sort of cutting-edge questions being asked? The scheme that you cited looks relatively conservatively in that it is only going to answer the questions by the judges themselves. They are not going to get people who might have a view that is even critical of what they do coming forward to determine what might be useful research. How do they get access to that wider view?

Mr POTAS: I think it is a matter for the wider community because the commission is apolitical. It provides statistics; it provides information. A court can look up the pattern of sentences imposed for a particular offence and see that periodic detention is not being used very much and imprisonment is and vice versa. It is still up to the court to decide what to do in a particular case.

We are not there to tell the courts what to do, basically, so we can only provide information, and that is exactly what we do.

Universities, perhaps, could look at this issue and the media could draw attention to this. Usually the media, if you do not mind me saying so, tend to only draw attention to negative circumstances such as somebody breaching an order. Then there is a clamp-down by the administration and it is even harder to release people. I think the answer is to educate the community, not the judges.

CHAIR: I am just wondering where the independent judges get an independent view of their system. I am not sure that there is one, by the sound of things.

Mr POTAS: The system is only part. The material we give them is only information. Ultimately, it is for them to decide what to do. It may be that some judges do not use the system at all.

CHAIR: Some other research given to the Committee in other papers has suggested that there might be some relationship between the capacity of the corrective services system to accept inmates and the likelihood of people receiving sentences. The argument usually runs that if there is spare space in a gaol it will ultimately be filled up. Can you provide the Committee

with any insight or observation as to whether that might, in fact, operate or how that might operate? Do judges or magistrates have any knowledge at all or do they get any feedback from local corrective services agencies as to whether the local gaols are full or overfull?

Mr POTAS: I do not think I can answer that from my position. You must understand that I work in an office and I deal with statistics.

CHAIR: What I am asking is whether information about the capacity of the corrective services system is ever given to judges and magistrates in any form.

Mr POTAS: I think that they would get the information from Probation and Parole officers. When they are in court they would say whether there was space in a particular place. For example, I think one of the criteria for periodic detention is that there be a place to put the person, so, yes, they would get the information from the department's officers.

CHAIR: So there might, in fact, be a mechanism. From my perspective, there does not even appear to be a means whereby that mechanism could operate. However, a lot of academics have certainly said there is. But the pre-sentence reports given by Probation and Parole might, in fact, provide a means whereby within the system there becomes a relationship between the available space and custody and the options that might be exercised?

Mr POTAS: Again I have got to speak personally, but I do not see that a judge would be greatly influenced by the fact that there was space in a gaol.

CHAIR: What about the reverse? Would judges know that certain gaols were in fact overfull?

Mr POTAS: I do not know what judges know, I am sorry.

CHAIR: But no regular report is made to them?

Mr POTAS: Not to my knowledge, not a regular report, but, as I say, I do not know.

CHAIR: But there might be some feedback?

Mr POTAS: There may be.

Ms RHIANNON: I would like to move on to the drug-related courts. Has there been an evaluation of how the drug courts are going and particularly if they are having an impact on keeping people out of prison?

Mr POTAS: Again I must apologise but the commission does not have the resources to investigate everything. My understanding is that the New South Wales Bureau of Crime Statistics and Research is evaluating the drug courts. There is some evaluation going on. The commission has not been involved in that exercise, so I cannot answer the question, I am sorry.

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Dr CHESTERFIELD-EVANS: The Bureau of Crime Statistics and Research told us that there were three sources of statistics - police, courts and corrective services - that they work from. Is yours a subset of courts, more or less?

Mr POTAS: Yes. We use the court statistics. If I may explain, the statistics that I have been quoting are based on principal offence statistics, so if somebody has committed a number of offences, we would select the most serious offence and that would be the statistic we would use in our sentencing system, provided they are not consecutive sentences, in which case we actually pull them out of our database because that might confuse the sentencing judge as to what an appropriate sentence is for a particular offence.

Dr CHESTERFIELD-EVANS: But you are not really collecting the statistics. We were talking about the fact that the statistics collected were not collected very consistently and it would be better if they were. You are not actually collecting new statistics; you are kind of jockeyed on to the court statistics. Is that the bottom line to that?

Mr POTAS: That is the bottom line except that sometimes we actually go back to the courts because we find that we need more information than the courts give us, particularly when we do a study such as the Sentencing of Drug Offenders study. We had to go back to the courts to ensure that we had accurate data. Sometimes we collect additional data for specific topics. So, yes, we use court statistics, but we also gather some statistics for specific purposes.

Dr CHESTERFIELD-EVANS: You are on your own for your own research?

Mr POTAS: Exactly.

Dr CHESTERFIELD-EVANS: In the community alternatives to custodial sentences I had anecdotes that they were being so poorly resourced that they were a farce. Is it possible that that would be the reason that judges were using them less?

Mr POTAS: I cannot answer that question because we do not run those facilities. I can say this: that in country areas there are fewer available facilities than in metropolitan areas, so that may, and I stress "may", account for the reason that there may be greater use of imprisonment in some regions of New South Wales. It is simply that they do not have available to them the facilities.

Dr CHESTERFIELD-EVANS: It is a hypothetical.

Mr POTAS: I think that the department would be better able to answer that question.

Dr CHESTERFIELD-EVANS: The Department of Corrective Services?

Mr POTAS: Exactly.

Dr CHESTERFIELD-EVANS: Is it responsible for community programs?

Mr POTAS: It is responsible for the major programs, yes.

Dr CHESTERFIELD-EVANS: You are responsible for judge education?

Mr POTAS: The commission is.

Dr CHESTERFIELD-EVANS: There was a fuss about sexist language and there was a judge education program about rape some years ago, or some comment was made that seemed sexist.

Mr POTAS: Yes, a magistrate made a comment.

Dr CHESTERFIELD-EVANS: And that resulted in a judge education program, did it?

Mr POTAS: The education program partly was done by the media. I think the magistrates were very much aware of the inappropriateness of one or two statements in that report but, overall, I think, and, again, the media highlighted one statement, but I think it was a very useful report and it did lead to some amendments in legislation.

Dr CHESTERFIELD-EVANS: In that case there was feedback from an incident, but to sort of take up the Chairman's comment, is there feedback, for example, if the law change is such that dangerous driving offenders all get higher sentences? Does anyone look at the feedback to see if the road toll fell and say it worked or if the road toll did not fall say it did not work and feed it back into the judicial system?

Mr POTAS: There is not a great deal of research in the area of effectiveness of sanctions. There is just a paucity of information in relation to the impact of legislation.

Dr CHESTERFIELD-EVANS: Yes, that is right.

Mr POTAS: It has always been that way. I would like to see it change but it is a fact that although there are, from time to time, evaluation studies done, they tend not to be terribly well funded and are not taken terribly seriously. Also, there is a big problem about what you mean by "effectiveness".

Dr CHESTERFIELD-EVANS: Stopping the incidence of it in the community, presumably.

Mr POTAS: Well, it is not as simple as that. If you have got an armed robber who goes through some sort of program and then ends up becoming a thief, you might regard that as a success, you see, because he is not robbing banks any more. It is a very, very difficult concept as to what is and what is not a success. Just keeping people out of trouble for a period is often regarded as a success.

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Dr CHESTERFIELD-EVANS: That is what gaol is all about, is it?

Mr POTAS: The problem with gaol is that there are crimes committed while people are in gaol as well, so although you are certainly protecting the community for a period, you do not necessarily stop offenders offending.

Ms BURNSWOODS: I note that the piece of paper we received points out that of all sentencing matters now, 98 per cent are dealt with by the Local Court but I notice you personally usually use the word "judge". I wonder if that is an old habit or if the Judicial Commission deals perhaps disproportionately with judges?

Mr POTAS: No, I think it is a habit. In fact most judicial officers and most crimes are dealt with by magistrates. The problem is that one keeps thinking of the big cases like murder, the serious indictable offences.

Ms BURNSWOODS: That was the second part of my question. Earlier on at one point you referred to advice, guidelines and so on on more serious offences, and I am not sure whether that means a lot of the stuff dealt with by magistrates is not within the ambit of the Judicial Commission.

Mr POTAS: No, it certainly is, but obviously if the particular offence is an offence that the magistrate does not hear or attend to, then the guideline will not be appropriate, such as armed robbery.

Mr PRIMROSE: I would be interested in getting a copy of the reporting form that is used by the courts, if I can. I am interested in what the judiciary has identified as a matter of policy wherein they have some discretion and, clearly, there are other matters which most people looking at all sorts of various social psychological studies would regard as probably having an impact. I mean, clearly, that has not been identified as something they believe they do not take into account. I would be interested in having a look at the actual form, what they identify as variables that is considered in their discretion.

CHAIR: That is an excellent point and we are likely to take you up on your offer to have a further briefing on the computer system.

Mr POTAS: I think you will get a lot out of it. It is a bit hard to describe. There was just one other point that I wanted to make, and that is we did do a statistical analysis of the average length of time offenders stay in prison or the average length of a sentence. What we found was that for females the average prison term in the Local Courts was three months, and for males it was four months and in the higher courts it was the median - we are talking about the median, that is the mid point - for females it is 31 months but it rose to 36 months from 1998 in the higher courts and for males it was 36 months and it rose to 42 months in 1998.

The explanation for the difference between males and females, you see females are constantly getting lighter penalties, but when you look at the facts of the cases overall, it is understandable because, firstly, you find that females tend to commit less violent offences than

their male counterparts. They often commit offences as accessories rather than as principals in serious cases. They are more likely to be first offenders, and I have got some statistics there indicating that 54.6 per cent of women who are sentenced to imprisonment are first offenders compared with 35.7 per cent of males. So they do not have such a bad criminal record as men do and they are less likely to have served a previous term of imprisonment as well.

So when you work out the averages, obviously it makes sense to say that women should get a lighter penalty.

CHAIR: That does not appear a very light penalty given the mitigating circumstances you have indicated.

Mr POTAS: Well, I mean, if you kill somebody and you are a first offender, the fact that you are a first offender will not put you on a bond, you see. That is the point. Can I add one more difference, and that is that when we had a look at those who plead guilty and not guilty, 90 per cent of females pleaded guilty compared to 85.2 per cent of males. Pleading guilty is also a mitigating factor, so they have things operating in favour of women overall, and I am talking generally, which would account for the difference in the median sentence imposed. So they do get less severe penalties but they also seem to have a lot of these factors which would justify them getting a lighter penalty.

Ms BURNSWOODS: So your three and four months is median and not average?

Mr POTAS: Yes.

Ms RHIANNON: Just on your studies of the different courts, going back to the Local Courts, have you made any examination not just overall on what is happening with Local Courts but between Local Courts in different areas?

Mr POTAS: No, we have not done that for quite some time. I think the magistrates themselves run seminars in country - they have country magistrates and city magistrates and they often have these sentencing exercises. I cannot tell you what they are doing currently but I know that this was the case some time ago. It is sometimes found that country magistrates may seem to be more severe than some city magistrates, but I think it is time to revisit that whole subject.

Ms RHIANNON: At the moment it is not collected in any statistical way?

Mr POTAS: I am not sure whether or not we have that information. We may collect it.

Ms RHIANNON: Can you come back to us about that, please?

Mr POTAS: Yes. I think probably we do have information about location. The data may be there but we would need to actually do an exercise in analysing it.

Ms GARDINER: When would the last time have been that such an analysis was made?

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Mr POTAS: I do not recall that in my time.

CHAIR: We might ask you to take that on notice then. In closing, I note in the gallery the presence of two former members of the Legislative Council, Lis Kirkby and Ann Symonds. They are most welcome.

(The witness withdrew)

(Luncheon adjournment)

LEO KELIHER, Commissioner, Department of Corrective Services Wales, 24 Campbell Street, Sydney, affirmed and examined:

CHAIR: Could you briefly outline your qualifications and experience that are relevant to this inquiry?

Dr KELIHER: I have been working in the public sector for in excess of 30 years. I have been a chief executive of departments in both New South Wales and Queensland. I have a broad background in tertiary education in the field of public administration and a broad experience in the areas of information technology, public policy making and organisational review.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Dr KELIHER: I did.

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

Dr KELIHER: I am.

CHAIR: For the information of the media, the normal conditions applying to the recording, taping and photographing of the Committee's proceedings apply and the Committee has passed the relevant motion which allows you to carry out that function. Dr Keliher, you have a submission?

Dr KELIHER: I certainly do.

CHAIR: Would you like your submission to be considered as part of your evidence?

Dr KELIHER: I would.

CHAIR: Would you care to make any initial comments in relation to the Committee's terms of reference?

Dr KELIHER: I would. Thank you, Mr Chairman. We are here today essentially because of the number of people convicted by courts and coming to full-time gaol has increased over the past couple of years, but from the outset I think it is important that we get the figures right. In the media today, the figure of 8,000 inmates has been used quite widely.

The full-time inmate numbers in New South Wales have increased overall from 6,147 in January 1995 to 7,174 in January 2000. Male inmate numbers have increased from 5,856 to 6,762, while female numbers have increased from 291 to 412 and that is in the January 1995 to January

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2000 period. The number of people convicted by courts has increased from 87,165 to 97,712. So you can see that there has been a sharp increase in the number of convictions.

I thought it was important that we at least start on the basis of what numbers we are talking about. Diversionary programs are another important part of the terms of reference of the Committee. We have a much wider role than just managing full-time offenders. A total of 14,907 men and 2,768 women were being supervised by the Department of Corrective Services Probation and Parole Service in January 2000. There were 5,423 convicted offenders serving community service orders, comprising 4,573 men and 859 women. There were 121 men and 20 women serving home detention and 1,160 men and 116 women serving periodic detention.

The real question underlying the investigation of the Committee of inquiry is why are more people coming to gaol, and I am sure that Don Weatherburn from the Bureau of Crime Statistics has given the Committee detailed explanations about the number of people received into full-time custody. In the department's submission, especially pages 6 to 26, that outlines the increases and what the likely causes are of these increases.

But we must be very clear on this. The courts determine the numbers of people that go into custody. The Department of Corrective Services does not determine the number of prisoners received into the system. In any given week there may be over 300 people received into the Corrective Services system or around 17,000 people a year received into remand for sentence. Anyone who is in the prison system is there because they have been convicted by a court and sentenced by a judge or the court system has determined that they shall have to be remanded in custody or bail refused.

With respect to research reports, there have been some recent research activities undertaken by the New South Wales Bureau of Crime Statistics and those papers the Committee may find useful, especially a paper written by Jacqueline Fitzgerald in December 1999 which compares sentencing trends and types of crimes that female offenders commit. That covers the four-year period 1994 to 1999. I also refer the Committee to crime statistics recorded in the Legislative Council's Standing Committee on Law and Justice, its first report on crime prevention published in December 1999, especially pages 18 to 24. These two reports do indicate that levels of people incarcerated for violent crimes have increased.

The next point that needs to be made is with respect to drugs and crime. The vast majority of people in full-time custody or in custody at all are there for drug and alcohol-related crimes. In excess of 75 per cent of people who come to gaol are there for drug-related crimes.

This includes people who are facing charges or who have been convicted of serious assaults, armed robberies, home invasions, stealing, and so forth, all manner of crime related to the feeding of drug habits.

The types of programs offered to inmates are detailed in the department's submission. Obviously drug and alcohol programs are an essential part of any rehabilitation program, as is education and psychological counselling.

Education and work, too, are very important for some offenders just to give them the basic skills they need to survive once released from prison.

It is a very sad fact of life but the truth is that many young offenders learn to read and write in gaol, they hold down their first job while they are in gaol and undertake their first drug and alcohol counselling while in the care of the Department of Corrective Services.

All of the department's education work, welfare psychology and specialist programs are detailed in the submission which the department has made.

In closing, I want to say that the New South Wales prison system today is a vastly different system from the one that existed 20 or 30 years ago. The operations and management of offenders has undergone radical changes in that time.

Prison staff today do a lot more than just turn a key on a cell. They have an integral part to play in the rehabilitation process through programs, through work and through case management. In fact, I think what the Committee will find as it goes around the gaols and speaks to staff is that the staff wish they could do a lot more to help offenders while they are in the system.

I am enormously proud of the work done by the staff of the Department of Corrective Services in New South Wales, and the people of New South Wales can be assured that they have a world-class corrective system working for them.

CHAIR: Thanks, Dr Keliher, we appreciate that. You will be aware that Committee members only received the submission of the Department of Corrective Services last Friday afternoon and I only physically got it this morning, so our chances to read your submission in detail were limited. Nevertheless, I found your annual report very helpful. It may not be the prettiest document in the world, but I have to say that I found it to be one of the most informative, and I make that comment as a helpful one.

In any event, I would be grateful if you could give some information to the Committee as to the department's view of whether this increase in prisoner population is something that will continue and something that you would have to cater for into the future or do you see it as something that will happen for only a short period of time and possibly reverse?

Dr KELIHER: The view of the department is that there will continue to be a rise in inmate numbers. The department does work downstream from the police and court processes and, as I said, we have no control over the number of persons sentenced to imprisonment, but the factors that really affect the rate of imprisonment are the crime rates, police activities, court activities and breaches of orders. They are the four key issues.

The size of inmate population is determined by four main factors: unsentenced reception rates, time spent on remand, sentence reception rates and sentence length.

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Recent trends in inmate population, especially male and female, can be explained in terms of increases in the reception rate. The size of the increase for females is exacerbated by the lower starting point by comparison with that of males.

National and international trends indicate worldwide and in Australasia a rapid increase in both male and female inmate numbers, so the rate of growth in terms of inmate numbers is the issue we should look at.

The rate of growth in imprisonment in New South Wales has gone up from 133 per 100,000 adults to 152. That is a rise of 14.2 per cent. In Queensland at the same time the rate has gone up by 75 per cent. In Western Australia it has increased by 36 per cent. Even in Victoria, which has traditionally had a lower rate of imprisonment than New South Wales, the rate of increase is faster and higher than that of New South Wales - 19.6 per cent. As I said, New South Wales is 14.2 per cent.

So you look across the world. In the United Kingdom the rate of increase is 30 per cent. The female population, in fact, in the UK has increased by 51 per cent.

In the United States of America the increase is approximately 60 per cent. And the staggering statistic is that in the USA in the period 1990 to 1998 the number of female prisoners grew by 92 per cent compared with a growth rate of 62 per cent for males.

Even in The Netherlands, which has always been one of those centres where people look for innovation and set it as a role model of sorts, the imprisonment rate increased from 51 per 100,000 in 1993 to 85 per 100,000 in 1998. That is a 70 per cent increase, so the rate of increase worldwide is quite significant. New South Wales is not immune to that.

Based on best information, based on current activities of the New South Wales Police Service and on sentencing trends of the court, we believe that there will continue to be growth in inmate numbers, and for this reason we have implemented a strategically designed process to construct correctional centres to prudently deal with the increased numbers which we anticipate over the coming years.

CHAIR: Once the new prisons are built at South Windsor and Kempsey and inmates are received what is the full-time female prison population likely to be when they are at full capacity, taking into account that there will also be people at Mulawa, Emu Plains, Bathurst, Grafton, Broken Hill and the Parramatta Transitional Centre? Does the department have some view what it will be once all of that is up and running?

Dr KELIHER: It is anticipated that we will have at least a 10 per cent buffer between the number of beds available and the number of inmates. You must remember, Mr Chairman - and we will point this out tomorrow when we visit Mulawa - that one of the things that we intend to do is to demolish the Conlon Wing at Mulawa prison. This wing accommodates 80 inmates. It is a very average piece of building in terms of quality of building. It is dark, it is gloomy. It was criticised in the Ombudsman's report into Mulawa.

To take those 80 beds out of our system and at the same time construct a new 200-bed facility at South Windsor really gives us a net addition of 120 beds. We believe that that will be adequate to deal with category 4, 3 and 2 inmates. We have category 2 and 1 inmates at Emu Plains. They are the lowest minimum security inmates.

We intend to set up for the first time a clear pathway for women such that they can move from Mulawa to Windsor to Emu Plains, and I use those three gaols without in any way denying that we have significant numbers of women to be placed at Kempsey. We have a 50-bed unit there. We have a 20-bed unit currently operating in Grafton.

We have facilities for women not only in periodic detention centres but also in centres that you have named so we believe that we will have adequate bed space to accommodate for the foreseeable future all female inmates while leaving ourselves an adequate buffer to facilitate the transfer of inmates to be nearer to their families and so forth.

CHAIR: Some of the submissions to our Committee and, in fact, some of the earlier reports into women's prisons basically make the claim that there is some relationship between a prison's capacity and the people who are likely to find themselves imprisoned. Basically, the argument runs that many of the comments that you have made about the Conlon Wing were equally applicable to Parramatta and, yet, as a result of an increase in prisoner population, Parramatta was closed and is now operational.

What guarantee is there that you will actually demolish the Conlon Wing after you open the beds, that it will not simply become a facility that ultimately gets used to cope with an increasing prison population?

Dr KELIHER: Mr Chairman, I can only give you my assurance that as the inmates are transferred from Mulawa to Windsor there will be a demolition program put in place such that the speed with which that can be achieved and the speed with which the demolition can be achieved will be the answer to whether Conlon is reused again.

I have got to say that the increase in inmate numbers in New South Wales really was something that arose out of strategies implemented upstream from our department.

The New South Wales Police Service, and you may at some stage wish to discuss with it its strategies that it has employed, led to this rapid increase. The rate of increase has, in fact, plateaued.

I do not believe that there is a really serious danger of a unit such as Conlon being reused. We have never had a specifically designed women's gaol in this State. South Windsor will be the first gaol specifically designed for women. Mulawa was an adaptation. Emu Plains until 1994 was a male gaol, and I believe that in constructing South Windsor we will be able to provide for the first time a genuine purpose-built women's unit which will address many of the issues which cannot be addressed at Mulawa.

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CHAIR: Your submission says that at the moment the Department of Corrective Services draws a lot from a document known as the "Women's Action Plan", which was a report composed in June 1994. One of the remarks made by that report was as follows. I will just read you a couple of lines of it. Referring to a complex at Long Bay it says:

The complex is made up of a part of old-style correctional facilities which are operationally inefficient. Locating female inmates adjacent to such an area, which carries with it a male-dominated history, much of which is unrelated to female inmate behaviour, would not be viewed favourably by most social commentators. A second administrative alternative would be to locate both a modified and minimum security farm and a minimum security facility for females at the department's South Windsor site.

I guess that is pretty much what you are planning to do.

Dr KELIHER: Exactly.

CHAIR: The report continues:

This option would attract similar criticism to the Long Bay alternative, with the additional disincentives associated with perceived remoteness compared to Mulawa and the poor state of local public transport.

Given that sort of fairly comprehensive criticism of the idea of building a women's prison adjacent to the John Morony Centre at South Windsor, why are you doing it?

Dr KELIHER: As you initially stated, it was recommended in the "Women's Action Plan". The view that it would be made more difficult because of the existing culture is an issue which is being addressed. The project is being managed by a very experienced woman, one of our department's most outstanding superintendents. She is convening a Committee to address that very issue.

The question of access is something in which I believe that report is incorrect when it says that it is remote. In fact, well in excess of 30 per cent of our inmates are drawn from the west and south-west of Sydney, so placing a facility only 10 minutes, 15 minutes drive from Emu Plains I think is putting it in the right position.

The other position about public transport is something that we are working on. We are negotiating currently to ensure that public transport is made available, that additional buses are put on on weekends, when visits are on and so on, to ensure that inmates have access to visits.

So while I think that there was an air of caution in the "Women's Action Plan" in 1994, I do believe that we have the facilities and the strategies to address the concerns it raised.

CHAIR: I suppose one of the other things that might concern us is that I think your submission says that somewhere between 50 to 60 per cent of the people who find themselves

in prison in New South Wales are drawn from the metropolitan area of Sydney. It appears that the increase in prisoner facilities will be fairly centralised in the western suburbs of Sydney when this new regime takes place. Does that not seem, in the context of the fact this a lot of people are drawn from country areas, to be centralising a lot of your increase in Sydney so that you will have, particularly in the instance of women, women being arrested in country New South Wales and being brought to Sydney, which makes life much more difficult for them to maintain contacts with their family?

Dr KELIHER: No, that is exactly why we are building the gaol in Kempsey. At the moment we have in excess of 400 inmates per month taken from Sydney to the north coast of New South Wales for court appearances. Now, many of those people will be sentenced and they will then be required to serve their sentence at a gaol elsewhere than the north coast because we only have a gaol at Grafton and then you have to go down into the metropolitan area or out to Muswellbrook or Tamworth. These people will, for the first time, have much greater access to their family and their community, and I believe that there is very extensive documentation of how important that is to inmates.

For women, at the moment there are a lot more alternatives, such as periodic detention which is now operating in Grafton, Wollongong, Bathurst, Broken Hill. That has only come on line in the last few years for those sorts of places. We are expanding our home detention program from the greater metropolitan conurbation out into New South Wales over the next year or two. So there are going to be more sentencing options and more placement options.

The truth of the matter is we do need to put inmates as close as possible to their families. It is not always possible but we endeavour to do that to the best of our ability. If the vast majority of people live in the greater metropolitan area, and that is where we draw the most inmates from, it is important that we do not ignore the metropolitan area when it comes to construction of facilities.

CHAIR: You made reference to community options. This morning the Committee received a briefing from the Bureau of Crime Statistics which said that there had been a significant reduction in the use by the courts of community options. Is that something that is a concern to you, that there seems to have been a shift from the use of community-based options for prisoners to the use of custodial options?

Dr KELIHER: Well, I frankly find it difficult to follow where those figures arose from. Can I give you some recent figures from our Probation and Parole Service. The case load for community service orders in December 1997 was 4,627. That is how many community service orders were being supervised - 3,939 males, 688 females. In December 1999, two years later, the total was 5,500 - 4,598 males and 902 females. So the number of females has gone up by approximately 40 per cent to 50 per cent. The number of males has gone up by about 25 per cent to 30 per cent but that is a significant increase - 4,627 to 5,500. I am not sure what basis they were arguing there that numbers had not gone up.

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Home detention has been significant. Periodic detention has increased significantly. For females it is approximately 11.5 per cent increase in periodic detention. From the Local Courts 5.2 per cent of all females received community service orders. So I just think those figures need to be clarified and perhaps at some future stage the people from the Bureau of Crime Statistics may expand on exactly what they meant by that statement.

CHAIR: You looked to be reading from a page of your submissions, the statistics you were reading. Would you just read the heading of that so we can find them late?

Dr KELIHER: It is appendix 14, Probation and Parole Service Trend Data, December 1997 to December 1999.

CHAIR: Are you aware that at least 39 per cent, and sometimes the figures are larger, of prisoners who arrive for custody in corrective service institutions have been there before. To what extent can Corrective Services improve on the figure of recidivism? To what extent do you consider yourselves in part responsible for the fact that people return, and when a prisoner is finished in a Corrective Services institution, what is the benchmark you would use to measure success?

Dr KELIHER: Let me just say that there are some philosophical problems with the concept of recidivism. First of all, some authors argue that the only true recidivism measure is one which records any return to custody at any future date in the inmate's life. Others would argue, and I am more to be inclined down this path, that recidivism should only be measured for those who return for the same offence.

Say, for example, if someone does three or four stretches in gaol for armed robbery and 10 years later after their last lagging they come back for an 18-month sentence for culpable driving, would that indicate they are a recidivist? I would say no. We do count them and many authors would claim that they should be counted, but I do not necessarily agree with that.

There is also the argument as to whether the return to gaol as a sentenced offender, a re-arrest or simply coming to the notice of police is enough to constitute recidivism. Of course, the whole thing is fraught with the problem of how you count recidivism. For example, in Victoria quite a few people have been shot during the commission of a crime, so they do not get counted as recidivists. We have in our company at the moment a person who has been sentenced to the term of his natural life who shot his own brother dead during the commission of an armed robbery and in the process shot the factory owner dead at the same time. His brother had been gaol before but did not come back this time so he does not get recorded as a recidivist either.

CHAIR: That is possibly true but I think even your submission says the vast bulk of recidivists return to prison within a couple of years.

Dr KELIHER: Only recidivists. When you say the vast bulk are recidivists, I am making the point --

CHAIR: It would appear that the vast bulk fit the normal conventional definition of recidivist.

Dr KELIHER: The point I am making is that the vast bulk are recidivists. They are people who have been in gaol two, three or many more times. For people who have only been to gaol once, only 27 per cent of them come back to gaol but for people who have been to gaol several times, in excess of 50 per cent can come back to gaol. The age of the inmate is very important too. Of people in excess of the age of 60, only 6 per cent come back to gaol whereas people at the very bottom end of the adult scale have a very much higher rate, in excess of 90 per cent return. That is for people who have served sentences.

It also depends on the type of offence. So, people who have served two or more previous custodial sentences, the rate of recidivism for property offenders is 57 per cent, for homicide recidivists 23 per cent, for sex offenders, 11 per cent. So you can see that it does vary quite widely. But the important point that needs to be made is that these people turn up at a gaol well beyond the age of 18 having had a lifetime of socialisation and often times, especially for the first sentence, a very brief sentence.

So if someone at the age of 22 or 23 with an appalling heroin habit gets sentenced to four months in gaol and then 18 months or 12 months later they are back in gaol again, should this be in some way seen as my failing to do my job or my staff being inadequate to do their job? I think that a lot of people should look to their flanks before they start looking to the Department of Corrective Services with respect to recidivism. People have a lifetime, as I say, of socialisation - the parents, the school teachers, the local parish priest, the local football coach. All sorts of people have a major impact on these people who turn up in my custody.

The fact is that we do not have all of the answers in such a short space of time to guarantee that these people will never commit crime again or never come to the notice of police. The only other organisation or area which has recently done studies on recidivism rates was a study done in Illinois in the United States in the 1980s and they actually showed a slightly higher recidivism rate. But I must say that it is pretty much a debased currency in the world of corrective services. People tend not to worry or spend a great deal of time concerning themselves with recidivism rates because of all of those problems that are associated with it.

So if a person from New South Wales is arrested in Queensland, having served three or four sentences in New South Wales, they serve their first sentence in Queensland, they are not noted as a recidivist in Queensland. If a person emigrates to another country and commits further crimes, they are not noted as recidivists. So I think the whole philosophical basis makes it a very iffy proposition. But with the Police Service in New South Wales having stated a deliberate policy to target known offenders, you can almost be certain that the rate of recidivism in New South Wales in our Department of Corrective Services will increase in the years ahead.

CHAIR: So what is your benchmark for success? Our Committee has to report on the effectiveness of imprisonment. What benchmark should we apply?

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Dr KELIHER: I would certainly look long and hard before I thought recidivism was the appropriate measure.

CHAIR: You are the expert. What benchmark should we use?

Dr KELIHER: We can only look at processes that are being used nationally and internationally to address offending behaviour. Our programs, I think, are something that you really should spend some time examining over the next few months, and tomorrow when we visit Mulawa and on Wednesday Emu Plains, we will have the opportunity to identify some of those programs which are being undertaken.

We provide a very extensive series of programs, and again these are listed in the department's submission, which are aimed at all forms of offence. There are specific programs for women. There are specific programs for indigenous inmates. There are specific programs dealing with drug and alcohol offenders. There are programs dealing with sex offenders, violence prevention.

There are a wide range of programs that I think are the ones that we need to look at because in New South Wales we spend a lot of our time especially at the Metropolitan Remand and Reception Centre and at Long Bay taking international and Australasian visitors around those gaols, giving them an insight into how we conduct our programs.

I think that that is an indicator of how other States and other jurisdictions see us. So just a simple thing like saying they have a recidivism rate of 35 per cent and that is good or 50 per cent and that is bad I think really is oversimplification of a most complex issue, so I really do think you have to look at the services that are provided to the inmates.

CHAIR: Do you agree that it would be possible to have a range of programs that are not necessarily effective? How do we benchmark or measure the effectiveness of your department in its efforts to correct prisoners?

Dr KELIHER: Well, the Productivity Commission has set 15 key performance indicators that we must report on annually. Recidivism is, in fact, one of them. But information like rate of escape, assaults - inmate on inmate, inmate on staff - self-harm, out-of-cell hours, number of prisoners employed, number of hours of education services provided, and so on and so forth. I will furnish you with a complete list.

CHAIR: The point I am making is that some of those benchmarks - for example, escaping - would be regarded as a benchmark of your capacity to hold people in custody. Other benchmarks might relate to your success in returning to the community someone who is a repaired individual, if you like.

To what extent are you able to measure the fact that - and I think the public expects and in fact the title of your department is Corrective Services - there is something going on in

prisons which is bringing people out that makes them more law abiding than they were when they entered? How do you measure whether you achieve that or not?

Dr KELIHER: Well, as I say, the measures that we are required to present information to the Productivity Commission on, through the Cabinet Office and the Treasury, includes that list of 15 key performance indicators, but there are also anecdotal processes that we have; there are things as simple as parents of inmates writing letters to us thanking us for the amount of effort that was put into problems that they have had, the successes and failures that they have had. All of those things count in some way or other.

There is no objective measure in New South Wales, or anywhere else in the world, on corrections. No-one can say 53.7 per cent or 15.9 per cent of our inmates are perfectly cured. It is a lifetime thing.

CHAIR: I did not think there were, but I thought there might be benchmarks that you would use to at least measure your effectiveness by comparison to others.

Dr KELIHER: As I say, most of them are inputs or outputs. They are not outcomes. We can say with respect to community service orders or periodic detention how many hours of unpaid work people from periodic detention put in each year cleaning up the foreshores of Sydney, mowing lawns at old people's homes and things like that, and at the end of it we can say, "This was worth \$10 million." Now, that is an output.

What we cannot say is that the person who mowed the lawn will never commit crime again or that the person is an intrinsically better human being for having served periodic detention and mowed lawns.

CHAIR: One of the measures that you might use, I suppose, relates to whether or not a prisoner completes his passage through the classification system arriving, obviously, as a remand in maximum security and departing in minimum. Do all of the prisoners that you have have the opportunity to get through the classification system or are there impediments to getting through those that minimise your effectiveness in that regard?

Dr KELIHER: The vast majority, and when I say "the vast majority", in excess of 90 per cent of all inmates, go through the classification system from start to finish.

CHAIR: Do you have any statistical data that might help us determine that?

Dr KELIHER: Not with me but I can provide that. Let me give you an example of where it does not happen. Where an inmate has been convicted of a very serious crime, that person, say, for example, a person who is sentenced to the term of his natural life, will never get to go on work release, he will never get a C3 minimum security classification. So there are those people who are automatically excluded.

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There are those who are sentenced for what are regarded as relatively serious crimes for a reasonably short period, say, a three-year or four-year sentence for a violent assault, and that person, if he is a very violent person, may spend the entire time in our care as a maximum security inmate. We do have some inmates who are like that. It is something we try to minimise to the best of our abilities.

We believe that by offering the classification system, as it stands as a process, that really gets around the issue of remissions. People will strive to get a minimum security classification so that they can have longer hours out of cells, they can have the opportunity to go outside the walls of the gaol to work, they can have the opportunity to engage in work release programs, education leave programs and so on, and we believe that that is the encouragement that needs to be put in place, but the vast majority, as I say, of inmates do have the opportunity to start at the top of the classification and work their way through, and some of our most notorious inmates have done that.

CHAIR: On page 29 of your annual report your department makes reference to a lock-down:

To manage the increase in inmate population negotiated with the staff a regular partial lock-down at corrective and remand centres to reduce stress and overtime.

Obviously, that had to do with the fact that, I guess, the prison population has increased and it was necessary somehow or other to budget the need to supervise them during open time. To what extent was your requirement to get prisoners through the classification system taken into account when that arrangements was entered into?

Dr KELIHER: Well, the lock-downs referred to there, the key word is "partial", so inmates may be kept in their cells until lunch time or maybe locked down of an afternoon one day a week. This allows for staff training, for staff meetings and other things that need to be done that cannot be effectively achieved with excessive numbers of inmates to manage.

So it is not as though we are saying people are locked in their cells for 24 hours or 23 hours a day for the entire sentence. It is something that varies from gaol to gaol so that in some of our gaols it is more common to have a half-day lock-down than it is in others.

Some of the gaols do not have lock-downs at all, especially in some of our smaller bush camps. That would be regarded as an exceptional situation at, say, Manus at Tumberumba, where a half-day lock-down may occur, but it would be very exceptional, and usually that will occur when there is a full search, the monthly search, of the facility to take place, so every facility is thoroughly searched from top to bottom at least once a month.

CHAIR: Could you give the Committee at a later time some details as to what the impact of that arrangement referred to in your annual report has on prisoners and the passage of prisoners through the security system? I do not expect you to have it now but it just seemed to me to be something that might have an impact on that and where there was obviously a conflict

between the need to manage a budget and the need to be successful in getting people through the classification system.

Dr KELIHER: Well, I could address it right now. In fact, it does not have a major impact at all on the ability of people to go through the classification system. We are talking about people whose out-of-cell hours are varied from, say, 66 hours a week. It might be cut down to 60 hours for that particular week. It does not happen every week. It may happen twice this week and then may not happen for a month.

CHAIR: Does it interfere with their participation in programs, though?

Dr KELIHER: It can. That is the difficulty that does occur where they may miss their English literacy program that particular morning or their counselling with the drug and alcohol counsellor may have to be postponed and rescheduled for later in the week but, essentially, no, it does not interfere or impede in any way, but, of course, it is not popular with inmates.

CHAIR: My final question is that I notice from your submission that 25 per cent of your inmates are from non-English speaking backgrounds and I also noticed in your annual report that last year, of the 265 people that you employed, only three of them were from a non-English speaking background. It would appear that a significant number of the applicants - there were 123 to start with - were knocked out by some reference to a test.

What efforts is the department making to ensure that your staff reflect something of the backgrounds of the people whom they incarcerate? It would seem that as worthwhile an effort as it is to get people who are indigenous employees, it would be worthwhile to have people from a range of backgrounds, and yet your department employed only three out of 250-odd last year.

Dr KELIHER: From a non-English speaking background?

CHAIR: Yes.

Dr KELIHER: Our record in terms of indigenous employment is, in fact, much better than that, but let me talk about the non-English speaking background. There are real problems in encouraging some nationalities to participate in our work force. It is an area that is not very popular with certain segments of the community.

We do endeavour, and we have made active attempts through the Ethnic Affairs Commission and by advertising in local ethnic newspapers, to encourage people to join our department. It has not always been successful. But we have a very good range of officers from various backgrounds.

Quite a few of our officers, and many of our senior officers especially, have come from an ethnic background, but people whose first spoken language is one other than English in terms of our full-time staff 14 per cent of our staff are from that background; of our part-time staff, 10 per cent; of our temporary staff, 11 per cent; of our casual staff, 12 per cent.

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Overall, we have 13 per cent of our staff coming from a non-English speaking background, and I think that that is a reasonable number when it comes to dealing with the number of people that are incarcerated from a non-English speaking background.

CHAIR: Do other Committee members have questions?

Ms RHIANNON: Can I ask you about the "Children of Imprisoned Persons Report"? As you know, it came down in 1997 and it was unanimous when it came down. What progress has been made in implementing it, please?

Dr CHESTERFIELD-EVANS: Is not there a report on that?

Dr KELIHER: I do not have that report with me at the moment.

Ms RHIANNON: So can you make any comment on it?

Dr KELIHER: The Children of Prisoners?

Ms RHIANNON: The response of Corrective Services to that report?

Dr KELIHER: When we visit Emu Plains on Wednesday we will have an opportunity to have a look at the mothers and children's program that operates at Emu Plains at the Jacaranda Cottages there. It is one of the programs that I am most proud of that is currently run by the Department of Corrective Services.

The fact that we have been able to give women the opportunity to be united with their children, especially their little children, is something that gives me personally some joy.

We have a similar program where, at the transitional centre at Parramatta which we will visit tomorrow, women there, too, have the opportunity to have their children in their company. The whole issue of incarceration and children is a very vexed one and a very difficult one to deal with. I believe that the department has addressed those issues that are raised in the report and we have, to the best of our ability, provided particular services to those who are identified.

Now, in the first women's action plan a series of capital works strategies were outlined and recommendations were made. Since 1995, placement options, programs and services for female offenders have improved significantly. In addition to the main women's facility at Mulawa, we, as I said, have now the June Baker unit operating at Grafton, a separate unit for eight women at Broken Hill. We have expanded our periodic detention services to Wollongong, Broken Hill, Grafton, Tomago and originally, I think in 1994-95, there was only one women's periodic detention centre in New South Wales, so certainly that service has expanded.

The women's services unit has been established with a mandate to provide policy advice and advocacy to senior management. A gender specific classification scheme was introduced,

female specific classification scheme introduced to address those women who are incarcerated who constitute only 5 per cent to 6 per cent of the overall prison population in New South Wales. But as I say, the mothers and babies program, the mothers and children program, is one that really causes me a great deal of pleasure and I am sure that you, too, will be impressed when you see it.

Ms RHIANNON: Could you go through section 29 and tell us how that is working with the department at the moment and what particular criteria does the department apply?

Dr KELIHER: The key criteria for section 29 is the welfare of children. That is the key criteria to it. There are many other criteria that need to be addressed in terms of it but the best interests of the child is the paramount consideration. Imprisonment itself is seen as neither evidence of a mother's lack of desire nor her ability to perform parental duties. Participation in a full-time residence program is the option of last resort to be utilised when there are no satisfactory alternatives available for the placement of children.

Children residing in or spending time in a correctional centre are the sole responsibility of their mother. Participation in full-time residence programs must never be used as a part of a hierarchy of privileges and sanctions and the mothers and children's program is designed to meet the highest community standards of child protection. Section 29(2)(c) orders which allow inmates to be permitted to absent themselves to care for their children is something that is used only occasionally.

Ms RHIANNON: Could you explain why it is only used occasionally, please?

Dr KELIHER: Because there are not many people who need to use that facility.

Ms RHIANNON: You mean there are not many women with children who are in that position?

Dr KELIHER: Who fulfil all the criteria and who cannot undertake full-time residence care or occasional care program within the corrective setting. From December 1996 until January 2000 the section 29(2)(c) absences have been for 10 women to care for 19 children. The full-time residence program has had 21 women who cared for 23 children and the occasional care program catered for 34 women with 46 children. So you can see that the section 29(2)(c) is not used as often as the other alternatives.

Ms RHIANNON: Could you explain why that is the case? If I understand correctly, you are not seeing that the majority of women are in a position to be able to be outside the gaol system with their children?

Dr KELIHER: Yes.

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Ms RHIANNON: Considering we had information earlier that the majority of women are in gaol for non-violent crimes and often drug-related crimes, why are you applying it in that way, that is, keeping the majority of women with children in gaol?

Dr KELIHER: No, it is not the majority of women.

Ms RHIANNON: The majority of women who have children, if I understood correctly.

Dr KELIHER: Yes, there are more women with children in gaol than women released on section 29(2)(c) orders and it is for the very reasons that you have said, that many of them have very major problems in terms of dysfunctional households, that there is no where for them to go where they can safely have their children with them. They are the sorts of things that make it very difficult for section 29(2)(c) orders to be implemented.

Ms RHIANNON: Is that the reason you are saying the decision is made to keep them in gaol because there are not the facilities for them to go to outside of gaol?

Dr KELIHER: I have given the guiding principles of the policy. The best interests of the child is the paramount consideration. That is the first thing that is investigated by the staff who deal with the mothers and children's program. We do not believe that just because a woman is in prison that is evidence of her lack of desire or ability to perform her parental duties.

Participation in the full-time residence program is the option of last resort, to be utilised when there are no satisfactory alternatives for the placement of a child or children available. That is a key point. Children residing in or spending time at a correctional centre are the responsibility of the women. Participation in the full-time residence program should never be and must be used as a part of the hierarchy of privileges or sanctions and the mothers and children's program is designed to meet the highest community standards of child protection.

These children must be young children as defined in the Act and that, too, crosses out whether some people get a section 29(2)(c). I recall a case about 18 months ago where a woman pleaded for a section 29(2)(c) to look after her 16-year-old son. That is not something we believe is correct in terms of the guidelines established.

CHAIR: You have provided in your submission a number of case studies relating to other issues. It probably would be helpful for the Committee, if it is possible, to give us an idea of the case studies, particularly where an application has been made and refused, to give us some idea where the decision-making process works.

Dr KELIHER: Only too pleased to do that and we can certainly provide that. Tomorrow when we are at Mulawa, the transitional centre, and the next day at Emu Plains, you can meet with these people and meet with the staff of the mothers and children's program and they can give you chapter and verse of some of the difficulties that these people face.

Ms RHIANNON: Can you give us the figures of how many women have applied for a section 29(2)(c).

Dr KELIHER: We can certainly find that out.

Dr CHESTERFIELD-EVANS: I take your point that we are asking you why there are so many people in prisons when you could actually be asking us. What I suppose we are trying to get to the bottom of is, is prison the best way to deal with this and if not, which seems likely, or how efficacious is Corrective Services to deal with the problem of crime in society and what are the better ways, and from our understanding from you and earlier witnesses this morning, there seemed to be a great deal of difficulty in knowing what to measure and what to do about it.

It seems like the process rolls on improving itself at the edges in terms of numbers or quality of facilities or the way in which it does things rather than looking at what is the best way to solve the problem. I noted this morning that evidence was given to us that the amount of people with community service orders has dropped. Has it dropped as a percentage? I think it dropped in absolute numbers according to the statistics we got this morning.

Dr KELIHER: If I could direct you to appendix 14, page 116 of the department's submission, you will see there that the community service orders in December 1997 totalled 4,627, and December 1999 totalled 5,500. So it has gone up by 25 per cent in two years. I am not sure how they worked out that it went down.

But let me talk to you briefly about rehabilitation and reform within the corrective setting. That is only one of various reasons why people are sent to gaol. People are sent to gaol as a punishment for crime. The simple fact that they are deprived of their liberty is one of the reasons that they are sent to gaol. A second reason is the hope that these people who have erred will be corrected.

The third reason is to give society a break, and anyone who has ever lived in a neighbourhood where a group of drug addicts continue to break into people's houses and rob purses from women going to the shop and so on, will know that that in itself is something that a lot of neighbourhoods would aspire to. So it is not just the fact that reform programs and rehabilitation programs take place in gaol that should be the only criteria by which Corrective Services are adjudged.

Dr CHESTERFIELD-EVANS: Coming back to the community service orders, 1994 and 1998, the percentage of people under community service orders dropped from 6.2 per cent to 5.8 per cent and in higher courts it was more than that.

Dr KELIHER: Is that a percentage of the entire population or a percentage of people facing court?

Dr CHESTERFIELD-EVANS: Percentage of penalties imposed. Do you have any control over that?

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Dr KELIHER: None whatsoever. The other point I will make is that, while the percentage may have dropped in raw data terms, in real numbers they have actually increased.

Dr CHESTERFIELD-EVANS: It would be a heck of a lot cheaper to run a community service than to build the massive prison building program that is currently under way.

Dr KELIHER: It most certainly is and I am sure in the Committee's investigations the Attorney General's Department or some representative of the judiciary will be asked why it is so.

CHAIR: Is it worth asking you the question posed by Kep Enderby that some of the people who are in prison ought not be there. Since you have more contact with prisoners than we do I would be interested in your reaction to that, and community options are obviously a means of getting them out still leaving them under sentence. Is there as much use of these community options being made as there should be?

Dr KELIHER: I think one of the important advances that has taken place in recent years is the expansion of sentencing options. I think it was a very inhibiting factor in years gone by when you only had one periodic detention centre for women in New South Wales. Clearly, if you had a minor problem in, say, Wollongong or Dubbo, you were either going to get a community service order or get sent to gaol.

Now we have these other options available. The modifications to the Sentencing Act, although it has not been proclaimed yet, the proposal to bring in suspended sentences which I might add has widely been believed as the cause of the low rate of incarceration in Victoria for many years, may well serve to lower further our rate of incarceration.

I think that will the judiciary has got a very difficult and onerous task. It is the judges' call, opinion and judgment as to what the appropriate sentence is. My task as Commissioner of Corrective Services is to provide a safe, secure, humane prison system that assists the inmates to address their offending behaviour and hopefully turns them out the gate better people than when they came in.

CHAIR: Am I correctly interpreting your submission on page 53 with reference to people with intellectual disability where it says, "There are a significant number of inmates each year who would be appropriate for community options if they were available", are you suggesting by that that there are people with intellectual disabilities who are in gaol that ought to be or would be better off in community options and that those options are not available?

Dr KELIHER: The number of intellectual disability inmates currently within the Department of Corrective Services is significant. It is small but it is a significant number and there is no doubt that some of these people really have some difficulty in coming to grips with their offence, their behaviour in gaol and their behaviour when they are released.

Some of them would be better served, in my view, in a hospital setting than in a gaol setting, but, having said that, it would need to be a secure hospital setting.

Mr PRIMROSE: At this late stage what I would like to do is just go back to the issue and ask what is the Department of Corrective Services seeking to achieve?

Dr KELIHER: Well, what we are seeking to achieve is the safe, secure, humane management of those people who are sent to us by the courts. We have got a key role to play in that process. We are the key to that whole activity. So we have got specialised programs for inmates; we have intensive training of staff; we have specific management plans for women and Aboriginal inmates; we have case management activities now that we did not have in years gone by, combined with increased levels of participation by inmates in education and work programs that really have altered the way that corrections has been done in New South Wales over the past 15, 20, 30 years, so there has been this great transformation.

As I said in my opening remarks, I think the people of New South Wales are well served by the Department of Corrective Services and its staff. They do an enormous job under very, very difficult circumstances.

Mr PRIMROSE: I do not disagree, but therein lies the problem - your description of managing people. You are probably well aware of the famous *Yes Minister* series and the particular episode where a hospital was being run and the hospital won awards for service delivery, awards because it was so clean, awards in terms of staff morale. The only problem was it had no patients. And that is what I am trying to get.

If your job is, as you have said, managing people sent to you by the courts, you are describing the hotel services almost used in the health system. What I am trying to get is that if it is your job, as you said earlier, to deprive them of their liberty, give society a break from them, fine, we can work out measurements for that, but when we have asked before are you trying to provide something else apart from managing hotel services, how are you measuring whether you are achieving that and should we be looking particularly, for example, at the post-release options?

I notice in your submission there is a page and a half on post-release options. Is that where you put all the eggs in the basket in terms of trying to change people and is that where we should be looking? I am trying to get a handle on what, apart from providing hotel services, you believe the aim is.

Dr KELIHER: All right. Look, let me just say at the outset we certainly do not suffer from the problem that the hospital in *Yes Minister* suffered from. If we did have a gaol that had no inmates, I would be overjoyed.

As I said earlier on, we play a very important role in the reform and rehabilitation of those sent to us by the courts. That is our key activity. Anyone could organise the feeding and

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clothing of inmates. We provide expert psychological services to our inmates. We have in excess of 100 psychologists employed within the Department of Corrective Services.

Mr PRIMROSE: Without cutting you off, can you tell us how you measure the efficacy of their services?

Dr KELIHER: Again, as I said earlier on, the 15 key performance indicators identified by the Productivity Commission are mostly either inputs or outputs. It is very difficult to determine outcomes on a social justice issue, a whole of societal issue such as crime and punishment.

Mr PRIMROSE: But you have 100 psychologists doing something?

Dr KELIHER: We do.

Mr PRIMROSE: What are you trying to get them to do and how do you measure what they do?

Dr KELIHER: When people are sentenced often times judges in their sentencing remarks say that this person should be afforded psychological or psychiatric counselling. We are complying with a court order, a court direction, and we believe that many of these offenders, if they are given an opportunity with expert counselling and advice, can better address their offending behaviour.

For the sex offenders program we travelled internationally. Some of our more experienced psychologists went to Canada and to New Zealand to look at sex offenders programs there. We already had sex offenders programs running in this State. We modified our sex offenders programs, and we now have a battery, a series, of sex offenders programs that people go through as a part of their incarceration. They are required to attend these courses, which gives them an insight into their offending behaviour and assists them to identify the triggers to their offending behaviour and to address their offending behaviour.

For people with drug and alcohol problems - as I say, it is the greatest group in terms of numbers that we have - we have this 70 odd per cent of people who have taken drugs or alcohol at the time of the commission of their crimes.

Mr PRIMROSE: Dependent on independent variables. You have described both of them. How do you measure them and are there reports available to us? For sex offenders I can see that if you have 100 psychologists. Having done psychology, I know how you can design an ABA test of that very easily. Is there something, and is that available to us?

Dr KELIHER: There are risk assessment tests done to analyse the level of risk with particular inmates. There are research programs in place, some of them very long term and, in fact, in our submission I think we note that one of the research projects is going to run for 15 to 20 years.

We have our own research and statistics unit that continues to gather information on these people and, yes, there are some things that can be objectively measured but, again, I get back to the point I was making before: many of these activities are not easily evaluated in the short to medium term, so if a person comes to gaol and he cannot read and write effectively but when he gets out of gaol he can read and write, that does not mean to say that this person will never commit another crime. We can say that our education program is highly effective, that we have turned 500 illiterates into 500 literates.

CHAIR: Can you tell us that?

Dr KELIHER: We can tell you how many people have been taught to read and write. Yes, we can.

Mr PRIMROSE: You have described to us why recidivism is a difficult concept. I think we all accept that, but we need to look at some measures that you regard as important. I think most people would say that being able to read and write is a qualitative and a quantitative improvement and more likely to assist people once they are released than not being able to read and write and that would be one thing that we could look at. I presume that your sex offenders programs have been going on for a while. Presumably someone has measured some sort of outcome in terms of attitudes to women and all sorts of things in terms of a battery of psychological testing? That is what psychologists do.

Dr KELIHER: In fact the sex offenders program as it currently stands has only been going a very short period of time, about two years, and, no, it has not been evaluated to that level. But let me just get back to the reading and writing. I certainly hope that the Department of Corrective Services is not going to be seen as the agency by which reading and writing standards will be measured. Let us hope that Ken Boston or someone else can put their hand up for that.

CHAIR: At the risk of sounding surreal, Dr Keliher, we imagine that your department would have an obsession, frankly, given the other evidence we have got, with getting prisoners more literate and more drug free than they were when they came in. I must say that it surprises me that you, as the CEO, are not in a position to tell us that you have examined programs relating to literacy, drug and alcohol and sex offences and said, "In recent times I have looked at the statistics evaluating those programs and they have either proven to be effective and we ought to spend more money on them or, frankly, they have been hopeless and we ought to discard them." I think that is where Mr Primrose is getting at.

Mr PRIMROSE: You took the words right out of my mouth, Mr Chairman.

Dr KELIHER: If you want, then, to have a review of the reviews we have done, we can certainly provide you with copies of all the reviews that have been undertaken. Our report on the review of educational services undertaken last year by Professor Andrew Gonczi, an internationally renowned educational expert, was only presented at the end of last year, so it has been difficult to achieve anything in terms of implementation and then evaluation of how

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effective that implementation was. That sort of process looked very carefully at what educational services we provided within the New South Wales corrective services system.

Ms RHIANNON: Can you just give us some information on that because we are running out of time? Who was consulted in the preparation for the new women's prison that you are planning?

CHAIR: Just before you do that can I ask Mr Primrose if he has further questions?

Mr PRIMROSE: Can I just get back to the issue of post-release options? I am generally not down on the department. I am trying to get a handle on what it is that you regard as being particularly important, and post-release options would seem to me to be something that is particularly important. I would be interested in pursuing this issue with you further.

I noted in your submission - as I said, a good submission - a page and a half where you cover a number of issues on post-release options, but I would like, frankly, a lot more information so I can understand where you propose to expand those in future. Maybe that is something that we could be looking at. How important are they?

Dr KELIHER: Post-release options are very important, especially the parole services. We provide an enormous number of programs to people who are in their post-release phase, so there is the parole group, which is just a group which helps people to identify personal and social goals and to reintegrate into society. Those groups operate very effectively.

The drug and alcohol programs, relapse prevention programs and dependency and lifestyle programs help offenders to be educated in the benefits of a lifestyle free from substance abuse.

The alcohol and cannabis program, living without violence program, the minor drug offenders program, the personal development programs, anger and aggression management programs, drink-driving programs, traffic offender programs, driver education programs, life management skills programs, living skills programs, social and legal issues programs, women's issues and responsible living and education programs are all particularly useful.

For Aboriginal parolees we have alcohol and other drug issues for Aboriginal offenders, breaking barriers, domestic violence perpetrators program and the indigenous women's issues programs. They are just examples of the sorts of things we do in the parole service.

We also have the community grants programs and we provide funding to a range of settings such as the Glen Aboriginal Alcohol and Drug Centre at Ngaimpe, the Khoompahtoo Aboriginal Alcohol and Other Drugs Program, Glebe House and Rainbow Lodge.

We also fund Guthrie House, the Transitional Centre at Parramatta and a vast array of community agencies, which provide an incredibly valuable support program for those post-release inmates.

Post-release is an area where we have sought additional funding from Treasury in our most recent submission with a view to expanding the period immediately prior to and immediately after release - the New Start program is what we have been calling it. That really is about getting people prepared for release, going into the release program and into that first 6, 12, or 18 months of release, which is the most crucial time. I assure you that no one in Australasia does it better than New South Wales does.

I want to get back to a point you were making before about how we measure things. I was visiting our young offenders gaol at Oberon last week and during the course of discussions with the Governor, he pointed out that they were provided with information from WorkCover that there were 55 people working in New South Wales as backhoe operators who got their licence at Oberon Correctional Centre. That is a very important thing, but it is a piecemeal bit of information that we are trying to put together into more coherent information so we can see how effective these programs are.

Most people would accept that 55 young men, many of whom would never have had a job before they came into our care, now have a responsible job, using a skill that they picked up in gaol. It is a tragedy that they have to come to gaol to get that skill, but it is something that we really do take great pains to attempt to provide.

CHAIR: There are 412 women in prison with about 40 per cent more who have responsibility for children. Where are the children?

Dr KELIHER: 40 per cent of what?

CHAIR: Of the women who are in prison and have responsibility for children. Some 40 per cent plus of the women in gaol have responsibility for children. Where are these kids?

Dr KELIHER: Often times with gran, with their sister or in care or with the father or a variety of other settings.

Ms RHIANNON: That would appear to contradict the statement that your intention is always what is best for the children. It is recognised that it is best for the children to be with the parents and in most of these cases we are talking about the mother.

Dr KELIHER: I do not make that evaluation. That is made by experienced experts within the department. If they adjudge that it would be better for the child to be with the father or the grandmother than with the mother --

Ms RHIANNON: That is because the mother is in gaol.

Dr KELIHER: No, we actually have quite a few women with children in gaol. No one says you cannot have your children with you just because you are in gaol. They have done an

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evaluation of these particular cases and based on their best judgment have recommended either that the child be with the mother or not be with the mother.

CHAIR: What options are there for women sentenced in rural correctional centres to finish their sentences in a transitional centre such as Parramatta?

Dr KELIHER: There is no impediment whatsoever to women being able to finish their sentence in Parramatta transitional centre. That is not dependent on --

CHAIR: Do the people in rural areas have the same access?

Dr KELIHER: Do they have transitional centres in rural settings; is that the question?

CHAIR: Or access to them.

Dr KELIHER: Of course they have access to Parramatta. We have actually had people there who were liable for deportation, so people from Hong Kong, Cambodia, Thailand have actually served sentences in the transitional centre, finished their sentence and then been deported.

Dr CHESTERFIELD-EVANS: When talking about community service orders, do you have control of those programs in terms of funding? Could you put more money into those rather than in to gaols and then the judges be aware of the options and their relative merits? Presumably the judges do not put them into those programs because they are underfunded, they do not work very well or there is some other problem with them.

Dr KELIHER: The community service order program is one that is our responsibility. Those who are sentenced to community service orders are under the control and direction of the department's probation and parole service. We negotiate with local bodies such as city councils, the local P&C of a school, for example, and they will provide us with a list of projects or work that would be suitable to be undertaken by community service order people - people who have community service obligations. We then go and inspect the site to ensure that it complies with occupational health and safety, but in the main the programs themselves are run by community agencies.

So it is the local community agency, charities in many cases, that actually run the programs that are on offer. So we provide the offenders. We provide inspection services but they are community service obligations and they do come under the control of local charities or local community groups.

Dr CHESTERFIELD-EVANS: These have at times been a bit neglected. Is this why they have not been used more? Certainly I know of anecdotal cases on the north coast where there has been insufficient supervision and the project has collapsed because of lack of supervision at a criminal level in the sense of not the supervision of the work being done but the supervision of the people ensuring that they attend that work has collapsed and as a result the person has gone back to gaol at much greatly increased cost, has it not?

Dr KELIHER: I think it is fair to say that being a community and often charity-based management system, it is very much like any other volunteer agency. It depends on those who are there at the time and in some places a group of people for many years will operate something quite effectively and then for one reason or another a couple of people move out of town or pass on or move to another State and all of a sudden the whole thing seems to implode. It seems to collapse.

Dr CHESTERFIELD-EVANS: Volunteers have said to me, "I am wanting to run this program, I have been it for years. I cannot get the people supervised". When they are not chased along to attend they do not attend and when they do not attend finally a big hammer comes and puts them back in the gaol. Is it a problem of lack of parole resources, is it? Are they the same people, parole officers who run the community service programs?

Dr KELIHER: They are. Probation and parole officers do spend a portion of their time on that program. We provided figures in our submission which clearly indicate a high rate of completion of community service orders. Again, I think according to the Productivity Council --

Dr CHESTERFIELD-EVANS: Some 82 per cent if I recall from your submissions.

Dr KELIHER: That is one of the key performance indicators that we have to provide. I believe New South Wales topped Australia last year in terms of completions. So 82 per cent means that in about one in five cases someone does the wrong thing. They do not complete their community service order effectively. But then again, we have a similar sort of figure for people doing home detention. We have a rate which is less than impressive in terms of periodic detention. We often have to take action against people who do not come on their weekend detention. So it is disappointing, but I would not say that it is reason to throw up one's hands and despair. It is something we do have to police and monitor carefully and rigorously.

Dr CHESTERFIELD-EVANS: It is worrying that the percentage of people is dropping and yet the cost of building the gaols to have the percentage of detainees, if you like, increasing is much more than the cost would be of running the community service orders, and if they are within the control of your department, that surely must mean you could be looking at your priorities in that area.

Dr KELIHER: In terms of community service orders dropping as a raw percentage, those have to be offset by the fact that home detention was invented during the course of that decrease. So those numbers have to be taken into account. The fact that we have built periodic detention centres for women at Bathurst, Wollongong, Broken Hill, Grafton and so forth also has to be taken into account. Now admittedly, periodic detention is slightly more expensive than community service orders, but only marginally so. So the real cost I think is something that would not be known without a very detailed and thorough investigation.

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But the offset between the decline in community service orders and the increase from nothing to something in terms of home detention and the expansion, especially for women, of periodic detention I think would more than offset the decrease in that percentage.

Ms RHIANNON: Could we have some information about the new women's prison that is planned? Who made the decision, who was consulted and what was the consultation process that you devised for this?

Dr KELIHER: It is in the submission, page 67. Ultimately it was a decision that was made by the government of the day and there had been this increase in female prison population. Although there had been some upgrade to the Mulawa correctional centre it was impossible to further improve that site. Additional beds being constructed at a new centre, a purpose built centre, would allow us to demolish the 120 bed Conlon unit and the south Windsor facility will enable Mulawa to focus extensively on reception remand and special programs.

Ms RHIANNON: Who was consulted in it and were you asked to give advice? You have said the Government made the decision. Was Correctional Services asked to give advice and, if so, what was that?

Dr KELIHER: We had provided briefings as a matter of course. With respect to female numbers the Minister was made aware of the increasing rate of growth in female numbers and the process, the decision to build a new gaol was endorsed by the Cabinet budget review committee and announced last year as a part of the Government's capital works program.

CHAIR: I imagine there is somebody within your department who is probably familiar with the intricate details of that particular decision and we would have an opportunity to speak to the manager, for example, of your capital works program with regard to that, given it is a fairly significant chunk of our terms of reference. Is that possible in the future?

Dr KELIHER: On how that decision was put together?

CHAIR: And I think initially it was designed for 300 and it is now down to 200 and why it is in that location.

Dr KELIHER: Sure. The simple answer to that last point is that initially the Kempsey gaol did not have a 50 bed women's unit, so we are putting 50 extra beds in Kempsey and we are putting 50 extra beds out at Emu Plains. So we took that off the overall numbers. We do not want to just expand the numbers irrationally, but we believe that was a better way to do it, to have 50 in Kempsey, 50 in Emu Plains and 200 at Windsor.

(The witness withdrew)

WINSOME RUTH MATTHEWS, Project Development Officer, New South Wales Women's Legal Resource Centre and Chairperson, Aboriginal Justice Advisory Council, and

MARCIA LYNNE ELLA DUNCAN, Executive Officer, Aboriginal Justice Advisory Council, Level 16, Goodsell Building, 8-12 Chifley Square, Sydney, affirmed and examined:

CHAIR: Ms Matthews, could you briefly outline your qualifications and experience which are relevant to this inquiry?

Ms MATTHEWS: I am Chair of the Aboriginal Justice Advisory Council, which is the principal advisory body to the New South Wales Government on law and justice issues affecting Aboriginal people as well as being the strategic planner and driver of a community-based initiative to address the post-release concerns of Aboriginal women in custody.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Ms MATTHEWS: Yes.

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

Ms MATTHEWS: Yes.

CHAIR: If you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will usually accede to your request and resolve into private session. I should warn you, however, that Parliament has the power to override that decision at any time and may make your evidence public.

Would you care to address the Committee in relation to our terms of reference? Additionally I meant to ask you did your organisation have a written submission?

Ms MATTHEWS: No, we do not have a written submission, though on evidence given here today we would like to furnish one after the hearing.

CHAIR: Okay. Would you like that future submission to form part of your sworn evidence?

Ms MATTHEWS: Yes.

CHAIR: Are there any opening comments that you would like to make?

Ms MATTHEWS: Just that we recognise Marcia Ella Duncan, the Executive Officer of AJAC, who will be assisting me with evidence given here today.

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CHAIR: Will she actually be speaking?

Ms MATTHEWS: If it becomes a position where she needs to. I suppose one thing that needs to be understood is that as Chairperson of the Aboriginal Justice Advisory Council it is an appointed chair position and the whole depth and breadth of this issue may need other information that Marcia would have more so than I.

CHAIR: Ms Ella Duncan, could you briefly outline your qualifications and experience which are relevant to this inquiry?

Ms ELLA DUNCAN: I was appointed Executive Officer to the Aboriginal Justice Advisory Council in July 1998, I believe. I also have extensive experience in the criminal justice system, particularly in the juvenile justice system.

CHAIR: Have you now received a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Ms ELLA DUNCAN: I have.

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

Ms ELLA DUNCAN: I am.

CHAIR: Are there any opening statements either of you wish to make to the Committee before we ask you questions?

Ms ELLA DUNCAN: I think I would just like to clarify that we have attempted to answer the questions that were provided prior to the hearing. It should be acknowledged, though, that we would like to provide a written submission after this, which will, in essence, contain the information provided by Ms Matthews. We suspect that there will be, in fact, further information that could be provided.

CHAIR: Has there been an increase in the number of Aboriginal people sentenced to imprisonment since 1995 both male and female and, if so, what do you consider to be the reasons for this?

Ms MATTHEWS: There has been a significant increase in the number of Aboriginal people in New South Wales prisons over recent years. Currently there is a total of 1,182 Aboriginal people in New South Wales prisons, 1,076 being men and 106 being women, totalling an increase of 363 people from 1995.

The proportion of the total New South Wales prison population which is Aboriginal has also increased. Currently, Aboriginal people constitute 16 per cent of all prisoners in New South

Wales. Aboriginal men constitute 18 per cent of all male prisoners, and Aboriginal women constitute 31 per cent of all female prisoners.

Since 1995, the proportion of Aboriginal men has increased by 4 per cent, the increase in women being 14 per cent.

In examining this there appears to be a major increase in particular types of offences. Since 1995, there appears to be a significant increase in the number of Aboriginal men in prison for principal offences of robbery and major assault, and that is a 44 per cent increase; major assault is a 29 per cent increase and break, enter and steal is a 28 per cent increase; while the number of non-Aboriginal men in prison for these offences categorised appears to have remained relatively stable over this same period.

The number of Aboriginal women in prison for offences of major assault and other assaults has also increased dramatically, from 89 per cent to 92 per cent respectively.

In examining Aboriginal people sentenced by the New South Wales Local Courts during 1998, we can see that there is a significant difference in the proportion of Aboriginal people being sentenced to imprisonment. During 1998 a total of 1,062 Aboriginal people were sentenced, including sentences to home detention and periodic detention, by the Local Courts in New South Wales. This is representative of 16.5 per cent of all Aboriginal people who were convicted by a Local Court during that year, and that compares to only 7 per cent of non-Aboriginal people who were convicted in the same period.

A recent report by the New South Wales Bureau of Crime Statistics and Research shows that Aboriginal people are far more likely to be sentenced in terms of imprisonment than non-Aboriginal people almost in all offences. That is categorised by 21.7 per cent of all Aboriginal people convicted for offences against the person, including assault and sexual assault, being sent to prison compared with only 9.1 per cent of non-Aboriginal people. For theft offences 29.4 per cent of all Aboriginal people convicted were sent to prison compared with only 16.2 overall.

The offence category for which Aboriginal people were most likely to be sent to prison during 1998 was other assaults, being 17.6 per cent, breach of order 12.4 per cent, assault occasioning actual bodily harm 10.4 per cent and break and enter at 10 per cent.

Overall, Aboriginal defendants were more likely to be sentenced at the heavier end of the spectrum. Penalties of imprisonment and community service orders are more likely to receive a lighter sentence such as a fine.

Also, we are concerned about the apparent inability of Aboriginal people to access alternative sentencing options, and this just is not for the adult system; this is also reflected in the juvenile justice system. For example, during the first 15 months of operation of the home detention scheme, of all Aboriginal men technically eligible for home detention, only 4 per cent

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were placed on home detention. Of all Aboriginal women eligible for the home detention scheme, only 5 per cent received it.

While these figures concentrate on imprisonment for relatively serious offences, it should be noted that there is a clear link between the over representation of Aboriginal people at all levels of the criminal justice system and our overall representation in prisons.

Research completed for the Australian Criminology Research Council encapsulating the probability of a rearrest for Aboriginal people after initial contact with the criminal justice system demonstrates the broader effect that arrest for public order offences has on a spiralling arrest rate. The report states:

If Aborigines are arrested once, the likelihood of rearrest is 92 per cent. If they go on to a second arrest, the likelihood of a third arrest is 94 per cent.

You get to the point of virtual certainty. These people are living in the criminal justice system once the sequence that is set is under way.

A recent report completed by the Aboriginal Justice Advisory Council shows quite clearly the most massive over representation of Aboriginal people for minor offences of offensive language and conduct. The report shows that on a statewide basis Aboriginal people are 15 times more likely to be prosecuted for these offences, whilst in some local government areas Aboriginal people are more than 80 times more likely to be prosecuted.

With the clear link now drawn between minor offences and prolonged involvement in the criminal justice system, it is clear that the over representation of Aboriginal people in prison is the end result of the over representation of Aboriginal people right throughout the criminal justice system.

Ms GARDINER: Could I ask you about the difficulty for Aboriginal people accessing home detention? What do you think are the reasons? Is it because of lack of allocation of resources by the department, it is a cultural thing within the justice system?

Ms MATTHEWS: I would put it down to resources. On your point of being a cultural thing, it is more appropriate that our people are at home because of issues relating to child care and the fact that we are looking at epidemic proportions of abuse, neglect and violence occurring in our communities. The majority of that is targeted towards children. If parents are able to be home more with their children it could reflect in a decrease in those sorts of abhorrent crimes against children decreasing.

Ms GARDINER: Is that partly also a function of a failure to resource non-metropolitan home detention programs?

Ms MATTHEWS: Whilst looking at the statistics relating to home detention, they are very minimal numbers and because of our close connection with the community, we could

almost name those individuals. So we know that only a few people are getting it. Other anecdotal information from the community is that women would prefer it more so, so they are back at home in their communities. I will now pass over to Marcia.

Ms DUNCAN: I can elaborate on the information that Winsome has imparted. It should be noted, of course, that home detention and periodic detention are limited to certain geographic areas in New South Wales and the statistic that we provided earlier, and I think it was that in fact 4 per cent of men eligible for home detention were placed on home detention, that is 4 per cent of men who are technically eligible, so who lived within the geographical area and fitted other criteria. So, while we might talk about inadequate resourcing, in other words lots of Aboriginal people live out in the bush and home detention or periodic detention is not available in the bush, that is correct but we are talking about a particular geographical spread of Aboriginal people who fall within the criteria of home detention.

I believe Corrective Services recently completed a research project into the barriers of Aboriginal participation. While I do not have access to that full report, it has only just become available, I do believe with discussions that have been held with researchers that it has more to do with the classification of indigenous prisoners, that in fact the way prisoners are classified which is controlled in legislation makes it extremely difficult. They have to have a fairly low classification to access those alternative sentencing options.

Most Aboriginal prisoners have a higher classification and are deemed more at risk. The classification often follows indigenous people through their involvement in the Corrective Services. For example, if an indigenous prisoner did some time, say, 10 years prior and played up a little bit, got a more serious classification because of behavioural problems which may have been quite appropriate at the time, but several years down the track he is facing another period of incarceration, their classification usually depends on the reports from the previous period. So it makes it very difficult for Aboriginal people to progress to less serious or to be assessed as less of a risk.

So I think we need to qualify the fact that we are talking about the technically eligible group. There may be other criteria that makes it difficult. But my understanding is the classification system does not in itself present a barrier.

Ms GARDINER: Do you have any explanation for the increase in the major assaults category of offences being committed or Aboriginal women being convicted for those? Why is that statistic so extraordinary now?

Ms MATTHEWS: Again, there is nothing to get down and split the hairs, so to speak and find out as to why. All we can go on is what we know is occurring in our community. The more we are aware on the indigenous perspective of violence the more clearer we are able to understand those findings.

In many situations where women have called on police for assistance in relation to violence, it has been in many circumstances where the initial victim has been charged and taken

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away for outstanding warrants, but the other side of that, whilst being an initial victim they have become a secondary perpetrator by which on the original assault the woman may have fought back, therefore, on police arriving they witness the assault and women are being charged for assault in that way. These are the stories we are hearing from the community.

Ms RHIANNON: With regard to the new prison, you would obviously be aware that the Government hopes to build, was your council or other sections of the Aboriginal community consulted in any way?

Ms MATTHEWS: The Aboriginal Justice Advisory Council was not consulted and we have limited information as to the community's participation as to whether or not they were consulted. So far as we know, no one was.

Ms RHIANNON: Can you comment on the adequacy or otherwise of building a new women's prison as a means of addressing the increasing number of women in prison in New South Wales?

Ms MATTHEWS: Well, just outside of that, we would like to see the money spent on programs and services within Corrective Services to address the inequities that Aboriginal women suffer in there, but also give attention to post release programming so there is a more holistic framework by Aboriginal prisoners that on release from prison still have a program that is following them from custody out into the community to empower them to play more of a role in their community instead of living under fear by which a lot of our people will re-offend to return to prison because of the lack of security.

All this touches on the detribalisation of Aboriginal people. You hear a lot of people who have come out of custody that they will not return to their community. It is like the dirty fish bowl analogy. You take the fish out of the dirty fish bowl and you can train them to be a shark if you want, but they will return to that dirty fish bowl, so it is about resources, and allocations of those resources coming back to clean the fish bowl up so people can return to strong communities where they can continue their modern-day existence as Aboriginal people instead of being thwarted by colonial processes which still inhibits Aboriginal people from living in piece and harmony.

Ms DUNCAN: I want to touch on some of the research we have been undertaking in the executive unit over the last 12 months and examining or further breaking down some of the offending patterns in the Aboriginal community. Both in the area of male offending and female offending in the indigenous community, there seems to be a very strong link between younger Aboriginal people typically being incarcerated for fairly minor offences, good order type offences, and as they get older their offences become more serious and we have seen an increase in the more serious assaults against the person.

So there seems to be a clear happening in the Aboriginal community that you are young, you may commit a less serious offence and have a period of incarceration or have certain other outcomes, but the older you get the more serious the offending becomes. There seems to be

little in the way of interrupting that cycle of offending behaviour. I think that is where Winsome's suggestion comes in, that we need to be able to put resources back into the community to interrupt that cycle of re-offending rather than building more gaols because inevitably we end up filling them and I think we are seeing good examples around built bail hostels. People who would normally be given unconditional bail or relatively minor conditions are then bail refused or bail hostelled and we think the same holds true for gaols. People who would otherwise be getting community-based sanctions or alternative sanction options will be sentenced to full-term imprisonment because the beds are not there and I certainly support that notion.

But I think what we have also been able to see is that there has been little support for indigenous women, particularly, and certainly for indigenous men whilst in custody. They have sometimes extremely complex issues and sometimes issues that characterise their entire family and community, and while we make no attempt to rehabilitate or to support those prisoners to address those issues, we are not doing anything for them. In fact we are sending them back into a community that still has those same issues and they are put back into the environment that influenced their offending behaviour to start with. It has been reported anecdotally by indigenous women that they are fearful of going back into those environments. There are no supports. They do not have accommodation. They often end up in violent relationships and it is much safer to end up back in.

The other thing I wanted to touch on very quickly is that some early studies that we have done as well highlight that women are often not the primary offenders, that they are co-offenders and that often the primary offender is a male who, you know, the offence may be assault occasioning actual bodily harm which may involve one, two, three perpetrators and more often than not the female is playing a secondary role or is the secondary offender in those circumstances. That characterises indigenous offending as well.

Ms RHIANNON: Do you have any information about the impact of imprisonment on Aboriginal children, how many you think are affected and what their circumstances are?

Ms MATTHEWS: Again we have limited access to information to give a clear picture. Again, on the issue of indigenous people in custody, on one hand we have a lot of our people in custody but we have minimal research occurring to look at those dynamics to come up with a scientific validation to create a new way of dealing with Aboriginal people in custody. Though some statistics have shown that Aboriginal adults as children can report child sexual assault and other matters of violence perpetrated against them whilst their parents were in custody, if we were to take that as a snapshot we could say those same incidents are being played out today. Again I would like the opportunity to provide more up-to-date information in regard to that question.

Mr PRIMROSE: You have highlighted the importance of pre and post-release support services and I use that in the broadest possible context. I was wondering whether you could do two things. One is to comment on the effectiveness or otherwise of those services at Emu Plains, Mulawa and Grafton, and could you perhaps point out whether those services are

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working or not? I mean, do we simply need more of the same or do we need other types of services? What are good examples of services that you could point us to that we should be looking at?

Ms MATTHEWS: When you mention post release programs, in our community they say the missing persons list because you never see them. This is feedback from the community but also inmates themselves getting ready for post release. Again, you are alerted to exceptional programming around post release that happens in small jurisdictions like Bathurst. So, whilst you have good outcomes occurring there, other parts of the State they are occurring in a very ad hoc fashion.

Ms BURNSWOODS: What makes Bathurst good? Is it the people who run it?

Ms MATTHEWS: It could come down to personalities in some circumstances but Bathurst is a smaller area that they cover whereas other regions are quite vast and they only have one Aboriginal person to service that area. For some that could be well over 100 or 200 people that they are there to support and assist as well as their families because, again, service provision needs to happen in a holistic fashion. Even though we do not have it in policy, an Aboriginal person will work in that context because that is how we do business.

Mr PRIMROSE: So apart from the geographical area of Bathurst where they are doing something, are there other good services? I go back to it. Is the issue more of more of the same or do we need different types of post-release services?

Ms MATTHEWS: I would put my hand up to more of the same if Aboriginal people were in control to reconfigure it to a process that was more culturally appropriate and that had elements of empowerment through culture. More of the same if Aboriginal people in the communities and themselves were part of finding the solutions to rectify the current process.

To date, the post-release systems as a whole have been inefficient, or ineffective, I should say. They have a bad reputation in the community and, therefore, no-one really has any trust or feels that they can rely on any of the tasks that they say they would undertake to make post-release a smooth transition back into the community.

Again, the Aboriginal Justice Advisory Council is working on a process along the lines of a needs assessment. We need to personally profile each individual on entry into the criminal justice system, but more so into the detention centres and utilising that time in custody to address some basic human need issues, like health, like education, like detribalisation and how do I actually reconnect with my family and friends and community on release.

For Aboriginal men, historically they have been disempowered since settlement of this country. That is a major issue that needs to be undertaken whilst our men are in custody to actually impact on reoffending.

So it is more about a holistic application of services. We know Aboriginal people are not accessing effectively enough services and programs, so we need to reconfigure that to make it a whole lot tighter and on entry to assess people's needs and deal with them but also to come up with strategies that are able to fold them back out into the community and, again, put resource allocation into the community so that that plan can be upheld. Also prisons must take the view in dealing with the individual that on release they have a family to deal with and not shy away from that - again, putting it back into a holistic framework where Aboriginal people can be empowered to make that change, knowing that if I do this I know that this reward is there awaiting me. There has never ever been any concentration on that type of element for Aboriginal people.

Ms BURNSWOODS: I had two or three questions. I think they are all quite different really. I would like to ask you about the role of your organisation in developing strategies to reduce the rate of Aboriginal people being incarcerated. A lot of what you have said touches on that. What sort of role can you play?

Ms MATTHEWS: I think what needs to be understood is the history of AJAC, the fact that it was established in 1993 as a direct response to recommendations 2 and 3 of the Royal Commission into Aboriginal Deaths in Custody.

The primary role of the council is to advise government on law and justice matters impacting on Aboriginal people in New South Wales.

The council was reconstructed in 1997-98 to be more proactive and to have a stronger research capacity to strengthen the council's relationship with the grassroots Aboriginal communities.

The restructuring included a significant upgrade of community support from one person to an executive unit of four people.

In addition, a regional structure was introduced providing a mechanism for a collaborative approach to local criminal justice matters and to have the perspective of Aboriginal communities on these issues being fed back to the peak State Aboriginal Justice Advisory Council.

Regional councils consist of a chairperson, four Aboriginal community representatives and a member of each of the four criminal justice agencies, the Aboriginal and Torres Strait Islander Commission regional chair and a member of the regional Aboriginal legal aid, so you can see it is representative of all the key players within an Aboriginal community but also, in terms of the involvement of the criminal justice agencies, there is that collaborative approach occurring as well.

Regional councils are concerned with resolving local law and justice matters within their own community. Such matters include, for example, increasing the referral rates of Aboriginal young people to cautions and conferencing under the Young Offenders Act, bail determinations

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and issues relating to transport, particularly in rural areas, and support of community initiated support and diversion programs.

The State AJAC considers these issues from the regional council that highlight the systemic issues across the State relating to services and programs and legislative issues.

In addition, the State council considers itself a change agent developing new and innovative ways of addressing the over representation of Aboriginal people in the criminal justice system. For example, we are developing a proposed alternative sentencing model based on the Canadian circle sentencing model and developing a proposal to introduce closed-circuit bail hearings that will enable bail hearings to be conducted in isolated areas, reducing the cost of transport for both the criminal justice agency and the Aboriginal individual, as well as reducing the incidence of Aboriginal people who have been bail refused in police custody.

We are hoping to launch that initiative in the Broken Hill area with concentration on the Wilcannia community. However, the State council adopts a holistic approach to the issue of Aboriginal over representation in the criminal justice system, which is reflected in its terms of reference.

The council recognised the correlation between offending behaviour and other socioeconomic indicators, such as poor school retention rates, poor health standards, low employment rates and other indicators. In this respect, the executive unit is examining ways of increasing the effectiveness of government programs aimed at reducing the disparity between the Aboriginal and the general population in key social indicators.

The executive unit and State council will be examining ways of building community leadership and support, supporting the Aboriginal community, calling for programs to address anti-social behaviour through mentoring and therapeutic behaviour modification programs, and that is more along the line of indigenous leadership programs for our communities, particularly in relation to perpetrators of violence and young offenders and developing models for conflict resolution that resonate with our customs and traditions.

The council will be developing models of holistic case management that take into consideration the individual's family and community with the aim of reintegrating the offender into the community in a more meaningful way. That is what I mentioned before about personally profiling individuals and assessing their needs, but using their time in custody to address those needs but also developing strategies on their release back to the community, how that pulls in the family but also what resources the community needs to provide to make that a successful initiative.

In the year 2000 the executive unit, along with the State council, will endeavour to engage government agencies in negotiation to commit to justice agreements to increase the focus on justice outcomes across a range of human service responsibilities. This will include articulating a set of guiding principles by which legislation programs and service development and their implementation will be measured, incorporating current benchmarking processes.

It is also felt that this approach will assist in building a whole-of-government approach by reducing the demarcation between agencies whilst encouraging individual responses to identified community need. So it is all about empowerment but, again, it needs to be said that Aboriginal people, or this issue of overpopulation, can be seen as an Aboriginal problem.

Solutions lie within the Aboriginal community, yet they are not consulted, they are not asked; they are not even asked to participate when it comes to making decisions. It does not just affect those people now. Aboriginal communities have in their mind the future of those who have been incarcerated, and that is not a future that we wish to visit.

Ms BURNSWOODS: Related to that point, when you talked about the activity of the regional groups, are they provided with any resources and what kinds of links do they have with Corrective Services and Juvenile Justice, I guess, in particular, but also with other agencies that might be able to provide the sort of assistance you are talking about?

Ms ELLA DUNCAN: As Ms Matthews mentioned, regional councils consist of representatives from each of the criminal justice agencies as well as the Aboriginal Legal Service in that region and the Chairperson of the Aboriginal and Torres Strait Islander Commission for that region.

The notion of regional councils is to develop responses to local issues in a collaborative sense.

The executive unit provides support to those regional councils, I guess, in terms of administrative support, but the notion is that there are opportunities for joint funding at a local level and joint resourcing, whether it is a community-initiated or regional council-initiated response.

In addition to that, regional councils have the capacity to co-opt other agencies, and, typically, health representatives are co-opted.

The prevalence of drug and alcohol and substance abuse in Aboriginal communities and its relationship to offending behaviour is a concern that has been expressed by a number of agencies, so area health representatives and, in particular, Aboriginal health, are often sought to join regional councils and help in developing those solutions.

Other agencies such as the Department of Education and its regional representatives are often co-opted on to regional councils, so it is envisaged with those key players that innovative and creative ways of dealing with the solutions can be developed.

Ms BURNSWOODS: Is this happening? Is it producing innovative solutions?

Ms ELLA DUNCAN: Not as much as we would like. In fact, that will be a key focus for this year. It took us quite a while to establish regional councils, particularly in getting Aboriginal community representatives on the councils, and over the last 12 months our primary

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concern at the executive unit has been getting councils up and running and meeting and talking to each other. That has been happening. So now there is a very strong focus on helping the regional councils to prioritise, to plan strategically and to look at the scope for practical localised solutions - often, Aboriginal communities which are aware of a problem.

I guess one of the most common responses in the Aboriginal communities is in the area of juvenile justice. People are keen to sort of work with young people to help build their self-esteem, to provide alternatives to incarceration, and it is not uncommon for Aboriginal communities to come up and say, "We think we can get this kind of program up and running," but they just cannot find the funding for it anywhere. Often they have submitted to numerous organisations but, of course, it just does not fit.

We often refer those types of programs to regional councils to explore ways that they can either be funded from within those resources or to look at ways that these programs can be supported, and probably the Binaal Billa region, which is from Dubbo to Wagga Wagga and south down to the border I think, has recently looked at supporting a particular program targeted at not just young offenders but at young people at risk.

That was recently brought to the attention of that regional council, and it has had significant support. I think that has actually been partially funded by ATSIC, which has provided funding for capital costs, and the Department of Juvenile Justice putting in cloned resources and, of course, funding for their director clients, and I do believe that the Department of Community Services has contributed to that as well.

Ms BURNSWOODS: I do not know whether it is possible but it would probably be useful for us to get some examples of that resourcing.

Ms ELLA DUNCAN: Unfortunately, they are few and far between, but that is what we would like regional councils to be doing. I think the challenge at the moment is to get people to think outside their sort of portfolio, outside their specific area of responsibility and start to get a bit creative and not be scared to take the risk.

We are targeting young people that may be, for example, from 14 to 25. Their reaction is, "We do not deal with juveniles," or, "They are adults, and we do not deal with that." So getting people to cut across. That is a challenge.

Ms BURNSWOODS: I suppose my other question comes back inside the circle, and that is to ask you to comment on your own reaction or perhaps local people's reaction, Aboriginal people's reaction, to the proposed gaol at Kempsey, including the 50 places for women?

Ms MATTHEWS: I do not have a lot of feedback from the community because the prison in Kempsey is news to me. This is the first time I have heard of it. Again, we would be able to get quality feedback from the community in regard to that and include that as part of the

submission that we will make as part of this hearing. And the other part of the question, I am sorry?

Ms BURNSWOODS: What you know of the local community's reaction.

Ms MATTHEWS: Again, I can say that that money would be spent best elsewhere. There is a lot of groundswell in the community that is coming up with innovations to address the overpopulation of Aboriginal people in custody and yet it does not necessarily fall within the guidelines of any government department or any initiative, so it is about, maybe, going back to the drawing board and saying, "Okay, we need to develop an indigenous stream of service provision for Aboriginal people in custody," and throw out all the old rules of how non-Aboriginal people develop programming and allow Aboriginal people the right to come up with the mechanisms and processes that facilitate empowerment through culture but also where Aboriginal people feel they have an ownership and where people who will be the users of those mechanisms feel that it will actually generate the change that they can improve their life by not needing to reoffend, to gain security in their life.

So, no, I would not be in agreement with the establishment of another prison, especially for women, when the application of service provision is so out of hoc now and the troughs and gaps that are there are creating more inequities in the community, particularly on children.

CHAIR: Perhaps in relation to that specific prison issue, are you familiar with the condition of the Ann Conlon wing at Mulawa?

Ms MATTHEWS: It has been a while since I have been there. Is that the section near the buy up canteen where they have a caged corridor leading out to the facility?

CHAIR: It could well be. The understanding Corrective Services has given this Committee is that it is a wing that houses 80 prisoners in dormitory-style accommodation and it is not really part of how a prison ought to be run in the 21st century and there is a strong case to demolish, remove and replace that with something else. Would you not support upgrading that infrastructure at least?

Ms MATTHEWS: I would be supportive of that. The entire erection of a brand new detention centre especially out in the western suburbs, it is AJAC's view that we could not support that because we would rather see the enhancement of current services and programs within Correctional Services and Aboriginal people accessing them more readily.

CHAIR: So what should we do to upgrade the Ann Conlon wing?

Ms MATTHEWS: Again, consultation with those who are going to be using that facility as to the appropriateness of design, but also other aesthetics that would capture a sense of feeling okay. I do know the section you are talking about and it is very much something not out of the last century but the century before that. I would agree to that because the other facilities in Mulawa in relation to the small housing units that go by various names of women a more

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appropriate way of custody for women, but the Ann Conlon, no, I do agree it is not a suitable environment.

CHAIR: Are there further questions? We thank you for your attendance today. We very much appreciate your taking the time. I thank you for the quality of your evidence and how cogently it was put. We look forward to your future submission and it is highly likely that we will need to consult with you again about other matters that arise before the committee. I understand also that you may be able to assist us tomorrow and the next day with an Aboriginal person to travel with us, and I thank you for making that offer. It is very much appreciated.

(The witnesses withdrew)

(The Committee adjourned at 4.08 p.m.)