REPORT OF PROCEEDINGS BEFORE

SELECT COMMITTEE ON THE INCREASE IN PRISONER POPULATION

INQUIRY INTO INCREASE IN PRISONER POPULATION

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At Sydney on Monday, 27 March 2000

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The Committee met at 11.00 am

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PRESENT

The Hon J F Ryan (Chair)

The Hon J Burnswoods
The Hon J Gardiner
The Hon Dr A Chesterfield-Evans
The Hon P T Primrose
Ms Lee Rhiannon

SUSAN CAROL HAYES, Associate Producer and Forensic Psychologist, Department of Behavioural Sciences in Medicine, University of Sydney, Sydney, sworn and examined:

CHAIR: In what capacity are you appearing before the Committee?

Associate Professor HAYES: In my capacity as a forensic psychologist.

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

Associate Professor HAYES: Yes, I have an Honours Degree in Psychology, a Ph.D. in Psychology. I am a registered psychologist; I am a member of a number of learned societies: the Australian Psychological Society, the Academy of Forensic Sciences, the American Association on Mental Retardation.

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

Associate Professor HAYES: Yes, I have.

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

Associate Professor HAYES: Yes.

CHAIR: I notice that you made a submission to the Committee. Would you like your written submission to be taken as part of your sworn evidence?

Associate Professor HAYES: Yes

CHAIR: Professor Hayes, 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 the Parliament has the power to override that decision at any time and make your evidence public. Would you like, first of all, to address the Committee on any concerns you have got in relation to the Committee's terms of reference?

Associate Professor HAYES: Simply to reiterate what was in my initial submission, which is that according to the research evidence that I have gathered over the last 12 years in New South Wales prisons, the proportion of adult prisoners with an intellectual disability appears to have risen from about 12 per cent to just under 20 per cent.

I think that there are a number of reasons within the community to account for this overrepresentation of people with an intellectual disability in the New South Wales prison system. There is an even greater overrepresentation of Aboriginal and Torres Strait Islanders, and I would be happy to answer any questions that the Committee would have for me to give more details about that.

CHAIR: Professor Hayes, I noticed that in your submission that you seemed unable to come up with an exact figure with relation to the number of people who are in custody with an

intellectual disability but, first of all, I suppose it might be useful for you to explain to the Committee, since it is a broad term in any event, what you mean by the term intellectual disability as it relates to inmates.

Associate Professor HAYES: May I use the overhead projector? It might be a little bit easier. I am not sure how clear that is to everybody in the room. The accepted international definition of intellectual disability is that of the American Association on Mental Retardation, which says that intellectual disability is characterised by significantly subaverage intellectual functioning existing concurrently with related limitations in two or more adaptive skill areas.

These adaptive skill areas can include the ones shown on the overhead, such as communication skills and ability to move around the community, ability to take care of the tasks of daily living. So there is a two-pronged definition. That is the important thing: that it is not just intellectual skills; it is also how well a person functions in the community.

This shows you the group that we are talking about. This is a representation of how intelligence is spread throughout the population, and mean IQ is 100. That is simply by definition because it is a nice round number, and you can have people with above-average IQs or standard scores, as the terminology would have it these days, or below average.

Now, the term that I had on the previous overhead of significant limitations refers to this group with an IQ, or standard score, of 70 or less. That usually forms between 2 and 3 per cent of the general population on prevalence studies of intellectual disability. So you can see that. This group, a tiny group in the general population, is a significant group in the prisoner population.

CHAIR: Are you aware whether information gained from any measures within the legal system to identify whether a person has an intellectual disability is conveyed to relevant areas of the legal system, be it the magistrate hearing a case, Corrective Services receiving someone on bail or Corrective Services receiving someone to serve a sentence?

Associate Professor HAYES: Usually, if the identification of intellectual disability is made during the person's lead-up to incarceration, it is either made by a lawyer, who asks for a psychological assessment to be conducted, or the information is conveyed to the police, perhaps by the person's family or community support.

In the absence of those two occurrences, people are not identified as having an intellectual disability, so they may simply go through the court system, particularly at Local Court level, where often the case is dealt with very quickly, there are a lot of cases on in one day, and nobody assesses their intellectual disability or level of intellectual functioning. So they go into the prison system.

The other part of your question was about when the identification is made. If the identification is made during the court case, during the police questioning or during the police investigation when it is realised that the person has an intellectual disability, in my experience, often there is no liaison that enables Corrective Services to obtain that information.

CHAIR: Are you aware of a program that I think is going to occur in the Kempsey area where a magistrate is going to have access to somebody who is going to be able to provide some advice with regard to people with intellectual disability and assist the court in that way? Are you familiar with that.

Associate Professor HAYES: No.

CHAIR: It is only recent. I was wondering whether you would see that as adequate or to what extent that might be an answer to the need to identify people.

Associate Professor HAYES: Yes, I guess it would depend upon how the person in the court is going to assist the magistrate. One of the things that I have found is that if the people for further testing are selected on a kind of an eyeball method - that is somebody somewhere gets a feeling that they might have an intellectual disability, in fact most of the people with intellectual disabilities - the Kempsey person would have to be screening everybody who turns up before the court, not just people who appear to have some problem dealing with the court.

People with intellectual disabilities are often very adept at concealing their disability, and they also do not often evidence abnormal behaviour which would cause them to be drawn to the attention of somebody like that.

CHAIR: Is an intellectual disability a defence to committing a crime?

Associate Professor HAYES: It is a defence in some circumstances. It is certainly a form of a defence under the Mental Health (Criminal Procedure) Act, section 32, which provides that the magistrate has the ability to dismiss the defendant with or without conditions, if the person has a developmental disability, which equates to an intellectual disability, so that is one legal area.

In murder cases, there is diminished responsibility if the person did not understand what he or she was doing because of the intellectual disability or the mental condition that the person had. But usually it is not. It bears more often on their fitness to be tried.

CHAIR: Are you aware of any surveys that have accurately attempted to assess the number of people in custody or in the prison system who have an intellectual disability?

Associate Professor HAYES: I am aware of the work that I have done over the past 12 years, and that has been done in conjunction with and with the co-operation of the Department of Corrective Services and the Department of Juvenile Justice.

CHAIR: So are you able to tell us the proportion of women in the prison system who have an intellectual disability?

Associate Professor HAYES: Yes. The proportion of women does not seem to have risen quite as much as the men. They have remained relatively stable at about 12 per cent for both adults or juveniles on intelligence tests. Their adaptive behaviour test performance is worse. About 19 per cent of them have deficits in adaptive behaviour.

CHAIR: Could you perhaps clarify what adaptive behaviour is?

Associate Professor HAYES: Adaptive behaviour is the second prong of the definition, which includes communication skills, ability to move around the community, ability to cope with anger and frustration, to have friendships, appropriate recreational and social activities, to work, to manage finances and to run a house.

The Hon. JAN BURNSWOODS: I just wanted to clarify, if I can, the first part of your submission where you mentioned an increase from 1 to 20 per cent in the general population and then, when you have this little subheading, "Women prisoners" you say:

> There appears to be the same prevalence of ID in the women prisoner population as in the male.

Now, do I understand from what you just said that it comes up to 20 because when you add together the straight intellectual disability diagnosis with the adaptive behaviour problem you are saying that women are on 20 and men are on 20, in round figures?

Associate Professor HAYES: Yes, but women do not seem to suffer, or not as many women suffer, from the intellectual deficits; it is more their adaptive behaviour deficits, and that is in line with reasons why women become incarcerated often. It is not so much the crime they have committed but their behaviour surrounding the crime and their ability to cope in the community.

The Hon. JAN BURNSWOODS: You then go on to say:

> Women, however, are more likely to have a dual diagnosis.

Associate Professor HAYES: That is right.

The Hon. JAN BURNSWOODS: Do you mean in general or women in the prison population?

Associate Professor HAYES: Sorry, I meant women in the prison population. That came from one of the early studies that I did, which looked at the question of dual diagnosis, and more of the women had a psychiatric problem as well or some challenging behaviour problem.

CHAIR: I know this is explained a little within your submission, but I was going to ask you to perhaps explain to the Committee what dual diagnosis means as a technical term.

Associate Professor HAYES: It just simply means that the person has an intellectual disability and some other diagnosis as well, so it may be a psychiatric illness such as depression or schizophrenia, some psychiatric illness associated with substance abuse, organic brain damage associated with substance abuse, or challenging behaviour as well - severe behaviour problems.

CHAIR: Are you able to tell the Committee what proportion of Aboriginal people in the prison system have an intellectual disability?

Associate Professor HAYES: Yes, I can. Can I try again with the overhead, or is it simpler if I simply explain it?

CHAIR: The only observation I would make about using overheads is that Hansard records only what you actually say, so what we can see on the overhead does not necessarily wind up in the transcript. Are you able to leave the Committee with copies of your overheads?

Associate Professor HAYES: Yes. This shows that Aboriginal and Torres Strait Islanders form 19 per cent of the population. This is amalgamating all of the studies that I have

done over the last eight years which have identified Aboriginal and Torres Strait Islander status - not all of them have. Those studies show that 19 per cent of the sample were Aboriginal and Torres Strait Islanders, 26 per cent of the Aboriginal and Torres Strait Islander subgroup had an intellectual disability as measured on intelligence tests and 40 per cent had behaviour which was lower than the standard score of 70 on the adaptive behaviour.

About 10 per cent of the Maori and Pacific Islander group, which is also a significant subgroup both in my studies and in the prison population, fell below 70 on the intelligence tests and 26 per cent fell below 70 on adaptive behaviour.

Twenty-nine per cent of indigenous women, who formed 9 per cent of the female population that I studied, had a standard score of less than 70 on intelligence tests and 29 per cent had adaptive behaviour. That appears to contradict what I just said about women having greater deficits in adaptive behaviour but it is just a matter of sampling which group is being sampled.

So the answer to your question is that even though Aboriginal and Torres Strait Islander and Maori Pacific groups - well, let us stick with the Aboriginal and Torres Strait Islander group - are overrepresented in the prison population, they are even more significantly overrepresented in the group of prisoners who have an intellectual disability.

I found in studies in the Local Courts in rural areas of New South Wales that this was even higher, that Aboriginal people presenting to rural courts had an even higher proportion of intellectually disabled people. Now, clearly this is not saying that Aboriginal and Torres Strait Islander people as a group are less intelligent than non-indigenous people. What it is saying is that the subgroup of Aboriginal and Torres Strait Islander people who appear before courts are more likely to have an intellectual disability. I think this is in line with many of the other health parameters on which they are compromised.

CHAIR: The material you have referred the Committee to refers to a 1993 survey that has been published by the New South Wales Law Reform Commission and another one in 1996. What I am not familiar with is exactly how do you go about determining these percentages, how many people have you surveyed, where has it occurred and those sorts of things?

Associate Professor HAYES: In the two Local Court studies we looked at - I am trying to remember how many local courts - it is about six or eight different Local Courts, and the second looked at two Local Courts in Bourke and Brewarrina. With the assistance of people known to the Aboriginal community we got everybody who appeared in the court on list days, which are the most busy days of the court, and we followed up all of those people and gave them tests of intellectual functioning.

We were not at that stage able to give that group tests of adaptive behaviour functioning because that is a more difficult test to administer and it is also more of an invasion of people's privacy to be asking them or their relatives about how they function. In the outback courts in particular, in 1996 we managed to get 96 per cent of people who appeared on list days to volunteer to participate in the study.

CHAIR: Those surveys then were done in 1996. Have they been subsequently studied?

Associate Professor HAYES: No.

CHAIR: You would not have any reason to believe that those results have changed in any significant way?

Associate Professor HAYES: No.

CHAIR: What special measures that you are aware of do prisons employ to accommodate inmates with intellectual disabilities and women in particular?

Associate Professor HAYES: There are a number of units, and I am probably not as up to date as some of the Corrective Services staff, but basically the last time I made myself familiar with this there was a unit at Long Bay and there is a unit at Goulburn both for males. There was also proposed unit at Long Bay, and I am not sure whether or not that has come into operation, and for women there is what is called the Mum Shirl unit.

There are two major difficulties. One is that these units cater for a tiny proportion of people with intellectual disabilities in the prison population. For example, at Long Bay I think it is only about 18 sentenced and unsentenced prisoners who are catered for. Goulburn is much the same. So that is one of the difficulties. Only people who are considered vulnerable in the mainstream or identified as being vulnerable in the mainstream are transferred to these units.

The second thing for women in particular is that often places like the Mum Shirl unit take all classifications of vulnerable prisoners. So it might take people with a psychiatric illness who do not have an intellectual disability or people whose behaviour places them at risk of being victimised by other prisoners for a variety of reasons. So it is not just for people with intellectual disabilities. It makes it very hard to design programs that would be suitable for people with intellectual disabilities.

CHAIR: Have you visited the Mum Shirl unit, spoken to its staff and seen the facilities?

Associate Professor HAYES: No, I have not for some years.

CHAIR: Members of the Committee visited it a week ago. I must say, and I am making a presumption here on other members of the Committee, but my observation was that it appeared to be a fairly medically-based facility in that the cells were fairly spartan. There was not much access in the way of privacy. All of the walls were see through other than the external ones. There were cameras used to observe people.

The floors were covered only in concrete and there was not much access to outdoor recreation, certainly not much voluntary outdoor recreation, and the prisoners appeared to be confined either to their cells or to an open area that might have been roughly three quarters of the size of this room and that was during the day and they were only allowed to go outside in a small outdoor area under supervision.

Is that standard practice for dealing with people who have intellectual disabilities, that they would be that confined and subject to such a reasonably spartan environment?

Associate Professor HAYES: No, it is not standard. Certainly the male prisoners, especially the ones at Goulburn minimum security, have different conditions. They have access to basic skills courses such as cooking and literacy. They are allowed to do gardening or farm work,

I think, about one day a week. They are also allowed to go on walks and play sport, so it seems that the males would be better off than the females in some of these units.

Also, from what I have seen of the Long Bay unit, it does not seem as spartan and as medically oriented there and also the inmates have the opportunity to do some work assembling Qantas headsets. In the community and certainly in other programs for intellectually disabled prisoners I have seen elsewhere, the environment is made as much as possible like a group home in the community, so that people can learn appropriate skills such as cooking, budgeting, getting along with other people. That would assist them when they were integrated into the community.

CHAIR: I think the main reason for the spartan conditions of this prison and the close supervision relates first of all to the need to assist prisoners getting on with each other. Apparently they tend to fight a lot with each other and it is necessary to keep them contained in different places so that they do not fight with each other.

The other area of concern is potential suicide and self-harm. So there is obviously a wide level of supervision, and that probably explains the clear perspex walls and use of canvas blankets, for example, in the bedrooms and so on. Do you feel that is an appropriate way to treat all people with an intellectual disability?

Associate Professor HAYES: No. It may be appropriate to treat some of the dual diagnosis ones in that way but, in the main, people with an intellectual disability do not need that kind of containment and, in fact, would probably be disadvantaged by those kinds of conditions.

Having said that, of course, many of the people in Mum Shirl may be there because they are vulnerable in the mainstream and may be liable to be beaten up or in other ways victimised because of the nature of their crime or the nature of their challenging behaviour, so this may be a protective environment, to protect them from either self-harm or harm from others, but it is not an environment which is going to be appropriate for most intellectually disabled prisoners.

CHAIR: There is a tendency within the community to integrate people with intellectual disabilities within the community and provide supports for them going about their lives normally. Are there things that ought to be done in the Corrective Services environment that will enable, if you like, inmates who have an intellectual disability to mix freely with the rest of the prisoner population and carry out the same activities as other members with some additional support? Is that possible or advisable?

Associate Professor HAYES: I am not an advocate of segregating from the mainstream of the prison everybody with an intellectual disability who is a prisoner and I do not think it is appropriate for the reasons that you have outlined. In the community, people with intellectual disabilities are integrated with non-disabled people, and that is fine. What I am advocating is that it is really important that people with an intellectual disability in prisons be identified as such so they can receive appropriate help.

For example, if a person with an intellectual disability also has a hearing loss and cannot read, they cannot hear announcements, they cannot read announcements about enrolling in literacy courses or basic cooking courses. They may not know what is going on.

They are reluctant to ask because to ask would be to reveal the presence of an intellectual disability, so they just go along as best they can often to the literacy, numeracy, drug and alcohol

and anger management courses that are offered in the mainstream which many prisoners go to. Therefore, a prisoner with an intellectual disability may find themselves in such a class; they may not be appropriate for people with intellectual disabilities, particularly if they are very verbally-based programs and the person with an intellectual disability has difficulty understanding sophisticated spoken speech.

Most of my clients that I see in the prisons are functioning verbally at about seven years of age.

CHAIR: Your submission states that people with intellectual disabilities tend to be remanded in custody more than non-disabled people. Have you any ideas as to why this might be the case and what alternatives might be put in place to ensure that the numbers of intellectually disabled people are remanded in custody more than the rest of the population?

Associate Professor HAYES: Many of the reasons why they tend to be remanded in custody relate to their life in the community. They tend to have fewer community supports. They may have no fixed address. They may live in a boarding house or be homeless. There is evidence that the prevalence of intellectual disability among homeless people is abnormally out of kilter with the prevalence in the general population. They may not have a full-time job. They do not have savings for bail. They do not have anybody who can put up bail for them.

So for all of these reasons, those are the factors that courts take into account whether to grant bail or not. If a person does not have those strong community links, then they are more likely to be remanded in custody. Furthermore, people with an intellectual disability often have a history of breaching conditions of bail or probation in the past, sometimes because they simply do not understand those conditions or do not understand the import of the conditions.

I have had clients whose conditions involved reporting at a far-distant police station several times a week. They are not travel-trained to get there, they do not know which buses and trains to catch, it is expensive for them to get there in terms of paying fares, and they might not be able to tell which day of the week it is or what time it is, so there is a breach of their conditions.

Once again, people who have previously breached conditions are more likely to be remanded in custody. I think there is also a perception sometimes that a person with an intellectual disability is different, and because they are different it may be interpreted that they are violent or dangerous.

CHAIR: Have you any idea what measures might be implemented to minimise the number of people who are remanded in custody unnecessarily?

Associate Professor HAYES: A bail hostel where they could be appropriately placed and supervised so that they would not breach bail conditions is one suggestion. That has been tried in other States in Australia. There are staff there to supervise them and also to make sure that they turn up at the police station to report or do whatever else it is that they have to do - turn up at court on the appropriate day.

The main thing is liaison between various departments. In other places liaison based units have been instituted between Community Services and Corrective Services, Probation and Parole, so that the people with probation and parole expertise are assisted by people with expertise in the

field of intellectual disability, and they can make sure that the conditions for parole or bail are not setting up people with an intellectual disability to fail by setting conditions that they simply cannot understand or comply with.

CHAIR: Do you have any data on the proportion of intellectually disabled people who are given a community- based sentence?

Associate Professor HAYES: No, because statistics about intellectual disability are not collected as part of sentencing data, for obvious reasons: there is no test of intellectual disability where people are being sentenced.

The data from Local Courts would indicate that it does not seem that they are being given custodial sentences dramatically out of proportion with the proportion of them who are turning up before the courts - in other words, they are overrepresented before the courts, and then they are overrepresented in the gaols, but there is not a huge overrepresentation in the gaols compared with the numbers turning up before Local Courts. But that is the only measure that I have. It is a negative measure really.

They would probably be given community-based sentences in much the same proportion as they are turning up before courts because there is not a big overrepresentation of them going into the prison system.

CHAIR: Earlier you mentioned a bail hostel being used in other States. Could you tell the community which other States?

Associate Professor HAYES: I am pretty sure there is one in Victoria. I am not sure whether or not there is one in Western Australia.

CHAIR: Your submission mentions a screening instrument which could be used at the time of reception at the custodial facility to alert the staff to the necessity of referring the inmate for further full-scale diagnostic assessment. Could you explain how the instrument operates and how it could be used or is being used by Corrective Services?

Associate Professor HAYES: It is a brief five-to-10 minute screening instrument which could be administered either at reception to the prisoner or within the first few days after reception when the person is undergoing other assessments for drug and alcohol dependence, medical assessments, assessments for risk for suicide and so forth.

It does not diagnose intellectual disability but it indicates which of the inmates should be referred for a full-scale diagnosis. It is designed to be overinclusive in that it would probably also pick up people who have a psychiatric illness as well, and it also picks up people who have no facility in English language. Now, this is because, obviously, it has to be verbally based and the officers have to administer it somehow, so the person must have some basic understanding of English. So it is overinclusive of a completely non-English speaking person as well.

CHAIR: Could you just describe exactly what is required? It is a number of questions, I take it, that need to be administered sitting over a table, or something, is it?

Associate Professor HAYES: Yes, that is right. The person is asked, first of all, about their own self-assessment of their abilities and then they are asked whether they have ever been

on a pension, a disability support pension, or an invalid pension, as it was known, or in a special class at school.

Those four questions have been selected out of a huge battery of questions as being the most discriminatory in terms of including in the people with intellectual disabilities and including out the people without disabilities.

Then they are asked to spell a word backwards. Then they are asked to join dots in a puzzle so that they go from one to two to three and that kind of thing. And then they are asked to draw a clock face, put the numbers on the clock face and put the hands at a particular time.

CHAIR: Is this screening instrument being used by Corrective Services or is this your suggestion as to something it might use?

Associate Professor HAYES: It is being piloted in Corrective Services and Juvenile Justice, and Corrective Services and Juvenile Justice have both indicated that they are very keen to use it. I have to say that at the moment the major hold-up is with the University of Sydney.

CHAIR: What's the hold-up?

Associate Professor HAYES: Publishing it. The university is moving in a glacial fashion on this.

CHAIR: So it has yet to be used other than in a pilot scheme?

Associate Professor HAYES: Yes.

CHAIR: Do you know whether it has been used in a women's prison at all?

Associate Professor HAYES: Yes, it was piloted in the women's prison as well.

CHAIR: Does "piloted" mean that a number of people are using it and will continue to use it or that it was used briefly for a period and then withdrawn?

Associate Professor HAYES: Yes, it was used briefly for a period and then withdrawn.

CHAIR: So it is not used at all?

Associate Professor HAYES: No.

The Hon. Dr A. CHESTERFIELD-EVANS: So why is publishing a problem? Surely it is the date received by the publishing journal. Once it is received by the publishing journal it does not matter when it comes out, does it?

Associate Professor HAYES: The university is just being really slow. It is not publishing in a journal. It is just publishing it as a manual and test forms, but it is bogged down in copyright issues and all sorts of things.

The Hon. JAN BURNSWOODS: Are they selling it to Corrective Services?

Associate Professor HAYES: They will be selling it to Corrective Services.

CHAIR: It seems not too hard for Corrective Services to ask people now whether they have ever been in a special class at school.

Associate Professor HAYES: I think they actually do ask those questions presently.

CHAIR: The other area where people with intellectual disabilities appear to be having difficulties in prison, according to submissions received by this Committee, is proceeding through the classification system in gaols. Are you aware of any of these difficulties or any solutions that have been proposed to assist people with intellectual disabilities at that level?

Associate Professor HAYES: I am aware of it only from my time as a Commissioner of Corrective Services in the late 1980s, and at that stage those difficulties were noted. I am not sure whether they are the same difficulties as exist now, but one of the problems is that people with intellectual disabilities simply do not understand a lot of the prison rules.

Nobody explains the prison rules to them in language that they can understand, so they are more likely to breach those prison rules. They are also more likely to be victimised within prison and used by other prisoners to do tasks like beating someone up or taking drugs from one section of the gaol to another. For all of those reasons, they are more likely to breach the rules and, therefore, be denied a less secure classification.

CHAIR: Do you think prison officers, for example, who are the main deliverers of case management, receive sufficient instruction in their training on how to deal with people with intellectual disabilities?

Associate Professor HAYES: No, they do not. There used to be a small amount of training in that area at the college. I am not sure whether it still exists, but even at its height it was only a couple of hours.

CHAIR: Are you aware of any specialist courses available as post-college staff training operated by Corrective Services in this area?

Associate Professor HAYES: No, I am not. One of the other difficulties for officers is that the average IQ amongst inmates is much lower than amongst the community. That is not, of course, unique to New South Wales gaols; that is found almost throughout the Western world. The average IQ in the prison population is about 85 to 89, well below the average IQ of 100. So if you are dealing with a low-IQ population anyhow, it is much harder to differentiate the people who are significantly lower.

CHAIR: I needed to ask you about post-release programs. Are you aware of any specialised post-release plans to assist people with an intellectual disability either in New South Wales or in other places?

Associate Professor HAYES: There are some attempts made to liaise with community-based facilities when a person with an intellectual disability is going to be released. But this, of course, only pertains to the people whose intellectual disability has been recognised in the prison system. So if a person goes through their sentence or they have a short sentence and nobody notices their intellectual disability, they can be released back into the community with minimal

support, without even a place of accommodation.

CHAIR: It has been said - I do not know whether to this Committee but I think even to the other one - that basically the view goes that because we are carrying out a policy following the report by Mr David Richmond into putting people with intellectual disabilities closer to the community this has result to more people going to prison with intellectual disability because other support in the community is not available. I suppose the general critique is that this is an example of how that policy which is commonly known as deinstitutionalisation has been a disaster. Would you like to comment on that point of view?

Associate Professor HAYES: Deinstitutionalisation would not have been a disaster and has not been in some other countries where appropriate community support is put in place. I think that was the idea of the Richmond report - that the money would be shifted out of the big institutions into group homes and support within the community.

Now, what has happened is that those support mechanisms within the community have not materialised to the extent that is necessary. It certainly is my experience that people with an intellectual disability fall through the sieves provided by just about every other government department, so often they do not receive appropriate remedial or specialist education - they are shifted from school to school because of behaviour problems. Some of my clients go to up to 20 schools. Then they leave school and there are no post-school options for them to assist them to obtain vocational training, which would help them then get a job in the community.

Their housing is often inadequate and, even if they are at home with their family, the family situation is likely to be abusive and violent.

One of the things which I note with interest, and I have not yet been able to organise research into this, is that almost all of my clients tend to be of fragmented background and low socioeconomic status. The intellectually disabled people who come from stable middle-class homes are simply not presenting.

It is the intellectually disabled people who come from unstable family backgrounds where families cannot cope and there is not the ability on the part of the family to purchase specialist assistance in terms of behaviour modification, health care, specialist education or appropriate accommodation and vocational training.

CHAIR: Do you consider that the establishment of a new women's prison in South Windsor is a means of improving services and programs that are delivered to women inmates with an intellectual disability?

Associate Professor HAYES: That would depend on whether they are identified as such, whether they are placed in a specialist unit and whether that specialist unit caters only for women with an intellectual disability and employs in it specialist staff who are experienced in designing programs for people with intellectual disabilities. It could be very helpful. I have seen some marvellous changes in people in the prison system in specialist units, but not enough.

CHAIR: I apologise to colleagues for not leaving a great deal of time left over for questions because there were so many to go through arising from the professor's submission. Do colleagues have other questions?

The Hon. Dr A. CHESTERFIELD-EVANS: You were talking confidently about these numbers, and presumably they are a reasonable sample on which you have done validated tests. Is that right?

Associate Professor HAYES: Yes.

The Hon. Dr A. CHESTERFIELD-EVANS: When we spoke to Corrective Services, it seemed to me - I cannot speak for all the Committee members - that it did not know really how many people there were with intellectual disabilities in each prison because it had not done any global assessment. Is that the case?

Associate Professor HAYES: To the best of my knowledge, they have never done a global assessment of the prison population.

CHAIR: Would it be appropriate to do a global assessment?

Associate Professor HAYES: You could never get everybody in a prison because it would have to be voluntary because of ethical reasons, I would imagine, unless it became a policy to test everybody in the prison.

The Hon. Dr A. CHESTERFIELD-EVANS: Would it not be a good idea to test everybody on admission?

Associate Professor HAYES: It would take enormous amounts of resources because a full-scale diagnostic assessment can take any where between an hour and a half and three hours.

The Hon. Dr A. CHESTERFIELD-EVANS: But if they were given your five-minute test and then the ones who turned up positive in that may be false positive, if that is what you define them as, and they had a more extensive test, that would be do-able presumably?

Associate Professor HAYES: Yes. In fact, that is the plan.

The Hon. Dr A. CHESTERFIELD-EVANS: At the moment you are having a publishing problem but once that is implemented do you think that will be do-able and that will happen?

Associate Professor HAYES: I think it will. I am hopeful that it will.

The Hon. Dr A. CHESTERFIELD-EVANS: Do you think there would then be special programs for the intellectually disabled within prisons?

Associate Professor HAYES: That would be the aim, that specialist programs be set up so that the problems, and you cannot take away substance abuse problems as readily, but other problems which could lessen recidivism could be addressed.

The Hon. Dr A. CHESTERFIELD-EVANS: In that there does not seem to be a life-plan system for any inmates, the plans seem to be while they are in prison rather than for their life from the time of admission to prison, if there were plans for intellectually disabled prisoners would that actually be discrimination?

Associate Professor HAYES: It could be seen as positive discrimination. I suppose it would depend on who else got specialist plans. For example, currently many people with substance abuse disorders get assistance to go into rehabilitation programs post release, and so that is a specialist plan for that subgroup. So I think that sets a precedent for on-going support after the person has been released for some specialist particularly at risk groups.

The Hon. Dr A. CHESTERFIELD-EVANS: Presumably you would support everybody going into prison having a life plan worked out when they got in there based on their skills so that one said where they were going to be in 10 years after they were discharged, not just on the day of their discharge? You were not just planning their time in prison; you were planning their life beyond?

Associate Professor HAYES: Yes.

The Hon. JAN BURNSWOODS: Dr Chesterfield-Evans and I are on the Social Issues Committee inquiring into disability services. Therefore, we are dealing with some of these issues from the other end, so to speak. One thing I wondered about was whether the studies you have done and the information you have enables you to make any comment on changing patterns, say, depending on the age of your clients?

For instance, is the picture any different in juvenile justice or among younger prisoners? I am thinking of the effect of deinstitutionalisation, given that most people remaining in institutions are relatively old and obviously across the general picture of intellectual disability, there are differences depending on geography, gender and all sorts of things, but one factor is obviously age?

Associate Professor HAYES: Yes. I think that many of the people I see are below 25, so they have never been in an institutionalised situation and then deinstitutionalised. They have simply not had adequate support services. There is an interesting piece of research in a longitudinal study in New Zealand which sees that people's behaviour problems pre-school can predict later delinquency and that whilst high IQ is a protective factor, low IQ is a risk factor. So low IQ people who have behavioural problems that are identified at pre-school are more likely to end up as delinquents.

That clearly says that early, long-term intervention during school years is the important preventative factor, and these clients are not getting it. Often they do not have a case manager. They do not have any contact with welfare agencies, possibly because of the culture within the family situation that welfare agencies is punitive rather than there to assist. Most of them are not on a disability support pension. They are on unemployment benefits, if that. So they have not come into consistent contact with welfare agencies appropriate for people with intellectual disabilities and partly that is policies that exclude mild intellectually disabled people and the predominant category would be mild intellectual disability among the prisoner population.

The Hon. JAN BURNSWOODS: I guess while the general picture is fairly depressing for disability services, one's impression is that there has been an improvement in certain sorts of education services and early intervention in services and so on, but my guess is that they have been more targeted towards people with severe to profound disability and it has certainly been put to us on the Social Issues Committee that in some ways the group worse off are those with a mild intellectual disability because sometimes there are literally no services for those, and I guess you are saying they are the group that is disproportionately ending up in prison?

Associate Professor HAYES: Yes.

Ms LEE RHIANNON: Could you indicate of the prisoner population at present, how many should actually be in a secure hospital?

Associate Professor HAYES: No, I do not have the figures. At a guess I would say only a small proportion of the intellectually disabled population would have a dual diagnosis where they should be in a secure hospital. Mostly it is just the intellectual disability with behavioural problems, but it would not be enough to get them into a secure hospital and would not really warrant it.

CHAIR: Have we got such a facility in Sydney or what facilities do we have?

Associate Professor HAYES: Some of them end up in D ward out at Long Bay and Morisset has a fairly high security --

CHAIR: But that is on sentence. What facilities are available for people who are not sentenced?

Associate Professor HAYES: For people who are not sentenced, secure, long-term facilities which would take a person with an intellectual disability, it is hen's teeth. You have great difficulty getting a person with an intellectual disability in a psychiatric hospital even if they have a psychiatric illness.

The Hon. JAN BURNSWOODS: Some people would stay in Lachlan Centre or the secure ward at Rydalmere?

Associate Professor HAYES:. I think given the level of actual disability among that group, few of them would have functioned independently in the community. Even people with moderate to severe disabilities sometimes commit quite violent crimes and murder their co-residents, for example.

CHAIR: What facilities are available for diverting people who are often not violent but people who would otherwise - it was put to the Committee that sometimes people are gaoled because there is no other place to put them. Are there facilities to divert these people to as an alternative to sentencing?

Associate Professor HAYES: Not realistically. If I had a client with a history of violent behaviour who was a sex offender, for example, and I tried to find alternative accommodation, I do not know where I would start.

CHAIR: Thank you, Ms Hayes. We appreciate you attending the Committee.

(The witness withdrew)

EILEEN BALDRY, Senior Lecturer and member of the academic community, School of Social Work, University of New South Wales, affirmed and examined:

TONY VINSON, Professor Emeritus, School of Social Work, University of New South Wales, sworn and examined:

CHAIR: Dr Baldry, would you briefly outline your qualifications and experience which are relevant to this inquiry?

Dr BALDRY: Well, since about 1985-1986, I have been involved with Professor Tony Vinson in research on people in prison. I am involved in active work in advocacy. I have been the President of CRC Justice Support, which is a post-release and support service for prisoners and ex-prisoners and I have done some further research both with Tony and by myself during that time.

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

Dr BALDRY: Yes, I have.

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

Dr BALDRY: Yes, I am.

CHAIR: Professor Vinson, in what capacity are you appearing before the Committee?

Professor VINSON: In my working life I have worked as a parole officer. I have also been head of the Department of Corrective Services. I have engaged in a considerable amount of research into prisons both here and abroad. I have observed prison systems in several countries apart from Australia, but particularly Sweden and Holland.

CHAIR: Thank you. You have just answered my next question for which I am grateful because I would have felt utterly ridiculous asking you to outline your qualifications and experience. Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Professor VINSON: I did, yes.

CHAIR: Are you appearing also as a representative of your university or as an independent academic?

Professor VINSON: As an academic.

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

Professor VINSON: I am, yes

CHAIR: If either of 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 the Parliament has the power to override that decision at any time and make your evidence public. Would either of you wish to make comments to the Committee relevant to its terms of reference prior to being asked questions?

Professor VINSON: Yes, we have jointly authored a paper, which we hope is with the members of the Committee. It was delivered, I hope, this morning.

CHAIR: I will just ask you a further formal question in regard to that. Would you like your submission which you have presented this morning to be taken as part of your formal evidence?

Professor VINSON: Absolutely, yes. We are hopeful that the submission we have prepared is concrete, factually based and pertinent in terms of the terms of reference of the Committee and, therefore, would like to canvass the data and the issues that are contained within it in addition, Chair, to answering any other questions, if that is okay.

CHAIR: Yes.

Professor VINSON: It is jointly prepared by us, but we will give you a change of voice. So I will start off. We tried to make the point in this paper that you can debate the size of a prison population, in this instance the size of the women's population in New South Wales, from many points of view, but we are of the opinion that nothing could be more important than getting down to the level of the transgressions that actually put people into gaol. So we have tried to uncover information which answers the fundamental question: what are New South Wales women in prison for?

We are not ruling out the value of comparative rates, and we will probably cite them ourselves, as most people would, but we basically are examining case by case who was on remand and who was in prison on a certain date when the last census was compiled in New South Wales prisons.

This is not all of the information that we have sought from the department; it is what we have had access to to this point. In order to discover what that information can tell you, we need some kind of analytical tool to open it up, and the one that we have used for this purpose is a simple classification of the inherent seriousness of offences rated by a small group of six magistrates in New South Wales about two and a half years ago in relation to another project which is mentioned in the course of the submission.

The magistrates in no way meant to imply that any offence is unimportant, and we do not wish to interpret things that way, either. But they were able, with considerable success and considerable consensus, to divide the various types of offences that put people before courts and into prisons into three categories: most serious, middling serious and relatively less serious.

We used that as a tool to examine who was in gaol at the last date, June 1999, when we were able to take that snapshot. Wherever there has been disagreement between the magistrates for the purposes of today's presentation, we have been conservative and we have given the offence category the most serious of the available ratings.

Why magistrates ratings? Well, first of all, they account for a very significant proportion of those who are in the prison in their daily work, but, secondly, because the crimes which they

emphasise and to which they attach greatest importance seem to us to tally very closely with what many, many public opinion studies have shown.

They have given greater weight, or more seriousness is attached, to crimes against the person, violent offences, crimes that endanger persons and drug trafficking.

Now, we do not need to go over every passage of this document. We are trying to pull out the essential points. So I proceed to page 4 of the document under the heading of "Scope for reducing number of remand detainees". We first give attention to the remand component of the female prison population.

The way in which we have examined this is in terms of the charge facing women at 30 June last year who were on remand, and we can certainly say on the basis of that evidence and subscribing, as we do, to the magistrates' ratings that there were very few people - in fact, we could find only one - who were on remand for the least serious type of offence.

There were large numbers of women, significant numbers of women, both in the serious and middling serious and relatively low serious categories, but only one that we could detect who was in the relatively less serious category.

Now, if that were true, there was also a very significant number of people in the middling seriousness category. In fact, 51.5 per cent of the female remandees fell into this category. We believe that that is where the scope exists as far as this component of the prison population is concerned for reflection and strategic thought about what are the kinds of punishments or, in this instance, detention arrangements that might be used for those particular women.

In the table, if we just move now to page 7, we set out in a fairly detailed and concrete way the kinds of things that the middling seriousness detainees were being detained for, and although we have already applied the magistrates' own gradings to offences against the person, for today's purpose of spotlighting a group of people for whom something else could be done, we set aside those people who have committed crimes against the person at a level which the magistrates do not place in the most serious category.

Indeed, we concentrate on three groups: those who are on charges of break and enter; those very few - two, in fact, people - who were there for possessing drugs; and the people who were there for theft. From these three groups we say that one-third of the remand population affords the possibility of some other arrangement that would be both satisfactory from the community's point of view and less harmful for the women involved.

We focus attention there on 35 cases, and we begin to foreshadow something we are coming to in just a moment, and that is the other kinds of arrangements that could be made. But at that point and every other point in the submission we say that it is one thing to calculate the size of a group like that and another to convert it into acceptable alternative programs that will satisfy the various interest groups. And that comes down to the vigour and care with which such ideas are promoted.

I want to return to that before we finish, because the instances that I could cite from my career of where alternative forms of punishment have met most people's requirements have required the involvement of the judiciary in the formulation of a program, feedback to the judiciary and the most detailed attention and promotion of the idea to the judicial officers.

Turning to the sentenced prisoners, we note immediately - our tabulation has permitted this sort of comparison - the number of Aboriginal women who were in various groups and the remainder of the prison population. We draw attention to the fact that 29.1 per cent - I am sorry, first of all, the number of Aboriginal women in the sentenced prisoner population was quite disproportionate to the share of population, a finding which is backed up by another study which I conducted two to three years ago called "A comparison of the sentencing of indigenous and non-indigenous prisoners in New South Wales".

So not only on the basis of what is before us on this census but also on a census conducted in 1996 similar results emerged. I should comment there also on the fact that that other study, a copy of which I am happy to leave with the Committee today, also draws attention to the fact that significant numbers of those women were sentenced in areas like the North Coast of New South Wales and the region known as Murdipaaki, or western New South Wales, so that it is not just a matter of thinking of other ways of dealing with this particular group but also the locations from which they are coming.

Then I conclude this first half of our submission by drawing attention to table 4, which shows that in the category of women in gaol, sentenced for offences other than the ones graded most serious by the magistrates, you have a significant number again in the three categories break and enter, drugs in possession - or just two cases there again - and theft.

It is these property offences which we highlight in the submission, and we recognise that they account for 113 women. If we generalise from the census, we can say that a little more than a third of women were in prison and under sentence for those offences. Of course, in today's climate, the commission of those offences is often associated with other things in people's backgrounds that we take up, and Dr Baldry will do that.

Dr BALDRY: We would like to move on now to what can be done now that we have looked in very concrete terms at the women who were in one year ago - that is not greatly different, we understand, from the current numbers except that there are more in now - and the kinds of cases that we are looking at.

We would like to preface this section by saying that there are two general requirements if we are going to seriously address some other forms of punishment which are non-custodial. Tony has already referred to one of those, and that is what we have termed a product champion. That is someone who will sell these alternatives to the judiciary, to the public and to anybody else who has an important interest in this. This is absolutely essential.

It has been shown not only here but in other places that it will not work if it is just said, "Well, let us try this," and let it go. It must be given vigorous support and attention. The other general requirement is that anything that is suggested and taken up must be credible as an alternative to prison because it has to be acceptable to a wide range of people.

We have, in fact, used terms such as the punishments need to be severe and to be publicly presented and interpreted in that way. The main point, of course, is that we are trying to keep people out of prison, prison being the institution which, from all research, does the most harm to people.

Now, we would like to move on to our concrete suggestions using the sample of women

that Tony has outlined. First of all, bail hostels. Now, I know the Committee has heard about bail hostels before, but we would like to emphasise that and give you some very concrete information.

Perhaps the best examples of bail hostels come from the UK. There has been a recent evaluation by the Home Office of both probation and bail hostels in the United Kingdom, and I give you the reference for that in here. Bail hostels are run in a reasonably strict manner, that is, they are 24-hour supervised places. They do not allow drugs or alcohol. There is a requirement for people to be in there, not to break their bail. They are well-run places, but they are a means by which to keep people out of gaol.

We have recommended in our information that we can at this one point, that one day last year, we felt that we could identify at least 35 potential candidates for that bail hostel on that day. Now I want to emphasise here to the Committee a note we have at the end of the last section and which I am sure the Committee is aware of, and that is, remember that when we look at a census, we are looking at the one day. When we look across the year, we are talking about a very large number of short-term people and a large number of women remandees.

So, over one year there are many more than the number that you would be looking at when we are looking at the census now. So we would say that there is the capacity to remove many hundreds of women from remand if we had the possibility of bail hostels. One of the pieces of information we do not have at this point is why these women were not granted bail, but from past experience and past information, indications are that there are many reasons, some being lack of permanent home address, lack of funds, lack of connection to the community, those sorts of things, and the concern that the person is not really reliable enough to be left out in the community on bail. Bail houses overcome that problem and are a successful means to do that in a number of other places.

We would like now to move on to talk about intensive probation and parole. This is a form of probation we are not using in New South Wales currently but which is successfully used in a number of other jurisdictions. This kind of probation and, of course, we are talking about probation being a non-custodial form of dealing with the crime, has the components of very frequent reporting, restrictions on freedom of movement, where appropriate perhaps urine testing, and compensation payments if that is appropriate.

These are intensive probation forms which would enable sentencers to consider this kind of imposition in cases where otherwise they feel that they have to use imprisonment because the form of probation we have at the moment is not strict enough or intensive enough. Together with that, we would put forward that probation hostels, as with bail hostels, have been shown to be a successful means by which to keep those kinds of women out of gaol who fall into these categories of needing more intensive attention but the kind of offence they have committed not being of the kind that necessarily needs imprisonment.

Bail hostels, probation hostels and intensive probation programs would have to be clearly defined and promoted. There is no problem with doing that. There are plenty of examples and we ourselves in New South Wales can certainly turn our minds and our attention to promoting and dealing with a very intensive form of non-custodial and pre-court forms of dealing with criminal activity.

I would like to point out to you that it is the case that women on the whole respond extremely well to non-custodial forms such as this. All of the suggestions we are making, there are indications elsewhere and indications in New South Wales in the very small number of cases like post-prison support, that women do not on the whole abuse these forms of supervision.

I would now like to move to intensive supervision drug units. This is, again, a suggestion of diversion. The two or three things we have mentioned so far have been diversions from prison. This also can be used as a diversion from prison, that is pre-court diversion, as well as the possibility of removing women who are already in prison into such a unit. What do we mean by this? Tony identified earlier for you the women who were currently sentenced for relatively less serious offences, that 38 of these women were in for what we commonly understand to be drug related, things like break and enter, steal and, of course, drug possession.

In fact, of those who were sentenced, 14 women had not previously been in prison. So we are looking at a group that is very suitable for support and intensive work on an addiction, if that is their issue, and that in many cases, as I am sure you have already been told, is the case. We would say that it is incumbent upon our society to help do something constructive about drug addiction and I do not think that there will be any question that that should be the case.

Therefore, the possibility of what we are calling intensive supervision drug units would be of the nature that a woman would be ordered - she would have to agree to do this - into this supervisory drug unit instead of gaol and these drug units would be run extremely firmly and they would deal with a woman's drug dependence as well as practical and educational work. I would like to ask Tony to say something about a comparative scheme.

Professor VINSON: What I want to say there is based on a study that I have made of the diversion program for incest perpetrators in New South Wales, otherwise known as the Cedar Cottage program. I think we are using words at the moment that could float off into the ethos, like rigorous, difficult, hard. We have included a section in this report to show you what we mean.

I personally interviewed in the course of my work at Cedar Cottage about 12 to 15 of the offenders, and I was surprised by the number of them who said, "Listen, Vinson, how do you get off this and simply go to gaol", as a measure of the fact that causing people to very carefully scrutinise their behaviour and in the ways that are described in the document, and I have one eye on the clock so I will not dwell on it, to actually do something about themselves can be one of the most difficult and at times painful experiences people can have.

In making this suggestion, we are not suggesting a program identical to the Cedar Cottage program - it would have its distinctive elements - but we are saying that in lieu of a period in gaol for further contemplation in many instances of what it would be like to get back on the drugs or perhaps even to continue using them whilst in prison, we see it as socially desirable and in the interests of the individuals concerned to have the kind of intensive drug assistance described in the document.

Dr BALDRY: These kinds of intensive units require time. We are not talking about a month or two months. We are talking about a reasonably good length of time in which women have the opportunity to address the issues that are facing them and to do some constructive work towards when they get out. Cedar Cottage is a two-year program. We are suggesting that an intensive drug unit would have the minimum of round about six months, but the point is that

this is not necessarily all live in. These can be day units and that can mean that the women can continue their responsibilities and their family connections as well as possibly work if they have work at the time.

We would now like to bring to your attention work that was done earlier by Tony on the penal ladder and to raise to your attention the fact that currently in New South Wales, if you look at page 18, it has been for some time and it is still the case that on the whole people who have been imprisoned for a similar offence to the one they are now charged with are more likely to be imprisoned than those who come before the courts with no previous conviction.

Professor VINSON: Not necessarily prison but even an offence.

Dr BALDRY: Yes. This might seem an obvious flow on, but the reality is that prison is not necessarily the best way to deal with an offence. I will ask Tony to elaborate a little on the work that he did on the penal ladder.

Professor VINSON: There seems to be a practice, a presumption, that you must go one more rung up the penal ladder each time you appear for an offence within this range of property offences that we have been emphasising. I would please ask the Committee to distinguish between the point we are here making and the very grounded, concrete ideas expressed previously because that pertains to who is in gaol probably today.

Here we are just drawing the Committee's attention to the fact that one of the most formidable obstacles to doing something about finding other forms of punishment to prison is this presumption - one hesitates to say mandatory obligation because this is not Western Australia or the Northern Territory - to push people up the ladder, but if you look at the figures in table 5, you will see in all but one instance a progression of a substantial kind up the penal ladder for those different categories of offences, depending on whether the person has had previous convictions, previous similar offences or previous similar offences with imprisonment.

To some extent that is understandable, but we are stressing two things. Unless focus can be on the instant offence rather than what has preceded it, then choice of other forms of punishment will go on being very restricted. The second point we put before the Committee is that this is not a universal practice. There is at least one country that we allude to, Holland, which is increasing the size of its prison population beyond what I had contemplated to be possible a few years ago which preserves the option of dealing pre-court with property offences.

Indeed, on the latest figures we have from Holland, and they are quite current, a third of the criminal matters are proceeded with via the prosecution service, the Public Prosecutor's Office. Just under a third, 31.9 per cent, are dealt with by way of pre-court negotiation. As a realist, I guess I would think that would be one of the few ways that, if the practices that are currently in train continue, we would have a chance to reduce the size of the prisoner population.

That brings us to the conclusions which you are probably very happy to hear because we are absorbing too much time and I apologise, if you combine the calculations we have made in relation to the remand population and the calculations we have made in relation to the convicted women in prison, then you come to the interesting observation that 170 out of 443 people in total of the combined total of those two groups are in categories where it ought to be possible for a society genuinely committed to making prison the last resort to open up possibilities for other forms of punishment, particularly of the kind that we have outlined.

There is the potential, putting it conservatively, to transfer from the custodial population to less socially destructive forms of punishment upwards of 150 women. Might I say that by international and Australian standards that is a fair sized penal institution. On the basis of that calculation we are led to say, and I will just read the concluding sentence:

> Unless we are to abandon totally all commitment to the principle "prison as the last resort" New South Wales must refrain from constructing another women's prison until the measures outlined have been tested. Thus there should be a moratorium on constructing a new prison for at least two years [while a serious effort is made to do just that].

CHAIR: Thank you for your submission. It is lengthy, interesting and well researched, and we appreciate that. Can I just simply ask you a couple of points in clarification? I do not think I need to ask lengthy questions. You have referred to a series of offence categories called middling serious. I guess it is incumbent on us to find out exactly what is meant in terms of what sorts of offence that would involve. The media-type question would be: what sort of people does this mean are going to be out on the streets rather than in gaol?

Professor VINSON: Well, the first thing I would like to say is that they will not be out on the streets. There is nothing that we have recommended that would abandon control over offenders. They would all be under supervision in one form or another. I think it is a vitally important point, that we are not just simply saying "go free. Do not worry."

We have used the word "punishment" in connection with every suggestion that we have made, and they would be truly punishing regimes. But they would be primarily, with or without previous convictions - and there is scope in our tables for seeing the numbers who have not been to prison before - for possessing drugs.

It really must be, in fairness, said, that that is no longer accounting for very many of the women prisoners. But they would be receiving stolen goods; they would be property offences; they would involve matters as serious as break and enter. That would be at the very high end of the scale. Otherwise they would be drug possession and theft in its various forms.

We have excluded from our calculations crimes against the person, which might be described as minor assaults or occasioning bodily harm. We have excluded those. We have excluded breaches of orders where people have already shown that they cannot be trusted, they cannot observe a recognisance or whatever. We have left those out. Basically it comes down to break and enter, theft and drug possession, but basically the property offences of break and enter and larceny in its various forms.

CHAIR: Also, I have just again another question to tack on to that. On page 14 of your submission you refer to intensive probation and parole. You referred to other jurisdictions that were using this. Could you indicate to the Committee what other jurisdictions you were referring to? Are they international jurisdictions or other jurisdictions in Australia?

Dr BALDRY: The UK also uses intensive forms of probation and uses probation hostels with supervision, and some of the European jurisdictions use the same.

Professor VINSON: And American.

Dr BALDRY: And American jurisdictions.

Professor VINSON: There is no implied criticism here of what is in fact the major alternative form of punishment or certainly close to being it, and that is standard probation, but what we are arguing for is a repositioning of the standard form of probation to help those judges and magistrates, if I could be just personal about it for a moment, who, at various times when I have discussed it with them or have when in an official capacity asked them, "What additional measures would make it possible for you to make less use of prison?" have said, "We do not want too many more or any more at the lighter end of the range. They have to have the appearance and in fact authentically be reasonably severe punishments, otherwise we cannot substitute them for imprisonment."

So we are suggesting that this is just one such thing that might transform something which in its present nature is very useful to a lot of people but make it more adaptable for use in that way.

CHAIR: Your description of intensive probation, which included restriction on freedom of movement, urine testing, compensation payments and so on, made me think of the home detention program that already exists in New South Wales. Were you thinking of something different? Is that not really a form of intensive probation?

Dr BALDRY: Well, it is, but the problem is that quite a number of people are not suitable for home detention. For one thing, home detention requires that the person basically not move from the home unless there is an agreement to do so, and, also, home detention is, in fact, a sentence as such. Now, the probation we are talking about here is dealing with someone in a non-prison custodial way. Probation is prior to the notion of prison, whereas home detention is, in fact, a form of imprisonment.

Professor VINSON: May I just add something to that? The whole point of probation also is to be, and always has been - I have seen it since its earliest days - a very positive influence on people's lives. It would, under the suggested form, continue to be so. It would support people in their work, in all aspects of their lives.

What we have tried to suggest here are a number of measures that could be common - well, they are common - to a variety of ways of dealing with offenders but, in this instance, to safeguard the public interest by the measures we are suggesting, the urine testing, spot checks - is the person where the person is supposed to be according to an agreed regime? All of those things are meant to transform something which is at the social welfare end in its present form and to make it a bit more a combination of that and strongly safeguarding public interest.

CHAIR: I suppose the one thing that comes to mind is that that would be a fairly strong regime of supervision. One presumes that if it were breached a proportion of those people would wind up back in a custodial setting. Are you confident that having that form of supervision is not going to result ultimately in a substantial number of those people winding up in custody anyway for breach?

Professor VINSON: Well, we have empirical evidence that leads us to another conclusion that it is other than that. A European review, and we can supply the reference to the Committee subsequently, identified this --

CHAIR: Would it be necessary to modify what was considered a breach in order to

ensure that people did not wind up in custody, or can a breach of that regime be considered a breach?

Dr BALDRY: You mean to make so-called breaches lighter?

CHAIR: Yes. If a person, for example, was not at work when they were supposed to be, that, presumably, is going to be a reason for which they will come back into custody. Are you going to suggest a certain level of latitude has got to be extended to these people to deal with that or can we use a regime that says, "If you are not there you are in custody for a period of time"?

Dr BALDRY: Well, first of all, I think it is very clear that we are talking here particularly about women, although we would like to extend this to the latter part of the inquiry, of course, as well. But particularly with women, of course, it is important to find out why they may not have complied, and there may be instances that have to do with their children or their inability to meet the deadline for other reasons other than that they are just not doing it. Therefore, that kind of level of leniency or support is certainly possible with something like probation.

The evidence indicates that particularly women on the whole abide by these kinds of regimes because they are possible for them to do, particularly if they are done in the way in which they are made specific to the way in which women can do those. If they have children, then that has to be taken into account. If they have a job or if they have other obligations, those things are dealt with in setting up the way in which this person can meet those requirements.

CHAIR: Your submission deliberately excludes people who are guilty of more violent crimes?

Professor VINSON: Well, you only hope to see so much accomplished in one lifetime, do you not, and mine is going on?

CHAIR: You may be answering more questions later as a result of that remark. What I was going to say is that the Bureau of Crime Statistics and Research has said to the Committee that women are committing more crimes as a result of heroin habits and that many of these crimes are violent crimes, which would indicate that notwithstanding what you might be able to do with people who do not commit violent crimes, there is going to be an increasing size to the women's prison population as a result of this trend that the Bureau of Crime Statistics and Research has observed.

Would you care to comment as to the fact or otherwise of this particular trend and would your conclusions still hold up in view of that observed trend?

Professor VINSON: I failed to mention in my little biographical thing that I was the Foundation Director of the Bureau of Crime Statistics and Research. I have had every reason to respect the work of the present director, Dr Weatherburn. I think if Dr Weatherburn produces evidence of this kind, then I, for one, am inclined to accept it.

There are two caveats, however. One is the use that might be made in public discussion or political discussion if that sort of statement. In fact, I was quoted in the *Sydney Morning Herald* on this very point on 8 January this year. It was said that the increase in the women's prison population was due to the increase in violent crime, amongst other things.

I very carefully scrutinised the data, and what I found was quite extraordinary: that in some instances it seemed the generalisation was being based on a selected view of what constitutes violence, so much so that it left out murder, manslaughter and robbery.

Now, when I recalculated the statistics, including those things, I found the following. Compare 1995 to 1999 in the department's way - it actually says "their way" - and the increase in the percentage of violent offenders increases a dramatic 1.7 times. Take account of the wider range of violent offences and the increase is of the order of 1.2 times, which is much more moderate, so I am inclined to go along with the view that there is more, but it is nowhere near as much as might be being projected in other forums on discussion of this matter.

CHAIR: You said in evidence that gaining the confidence of judicial officers in newer regimes is important. I must say that in private conversations that I have had with a magistrate or two in the last week that does appear to be the case, that judicial officers do have some questions about the available community options. This obviously indicates that it will take some time for new options to work their way through the system.

Do you think that in the intervening time it is necessary to construct additional accommodation with Corrective Services given that your regime would appear to take some time before it started to bear fruit, and then I guess it will be put to us? The existing facilities at Mulawa are at the moment in some instances housing two inmates per cell and so on. Therefore, is there an urgent need to go on and construct the prison in order to deal with those problems?

Dr BALDRY: A first comment on that. It will take at least two years before that prison is finished anyway, so it will not overcome the immediate problem. As far as regimes such as bail hostels and so on are concerned and intensive drug supervision, they do not take as long as that, necessarily, to come on line. It is possible to use current accommodation for that.

I will just mention to you that I know that Corrective Services have commented that they find it very hard. People do not want these things in their backyard, the NIMBY sort of idea, but there is evidence from other places that it is possible to get over that. One example was where people within a particular area themselves became involved on the committee to support such a house like bail houses and intensive drug units.

I do not think that it is an appropriate thing to go ahead and build another prison to overcome the problems that we are addressing here because I think that the way in which we have suggested they be addressed can be done faster than the prison could be built, but it would require a very different approach and, in fact, we have a suggestion as to how that might be done. Tony might like to address that.

Professor VINSON: If I may. There is one iron law of penology. Most other laws fail. But the one that is universal is that as you increase capacity so you shall increase the number of people who will be imprisoned. This is worldwide. It is true of Australia. And the seriousness of that possibility in a country which has managed to maintain a balanced approach to the rate of imprisonment is so great that this is the moment when I think one must risk whatever follows from being candid.

We have seen in recent decades, I think we can say, such passivity in this area of developing other forms of punishment that I am seriously questioning whether what needs to be done can be done from within a department that says, "We are merely the tail end of whatever

happens". If that is the declared position of the department, then one would have to look elsewhere for the drive, energy and commitment to combat this problem.

The following agencies of government, let alone community groups, would be involved in trying to do something about it: you would have departments like the Attorney General to look at the legal aspects; you would have juvenile justice; you would have the police.

You would have almost all arms of government involved in some way in the fashioning of these different approaches. Why, therefore, is it necessary to assign to the department which says, contrary to my view which is that if you are in a position where you see the horrors of imprisonment, the damage that is done, the damage that is visited upon the community as a result of imprisonment, "We are not the ones to take this initiative", why should it not be grounded in a terminating special commission of some kind - three years would see it done - located perhaps within the Attorney General's Department and commissioned and backed in order to secure the co-operation needed, perhaps at the cost of a little of the budget currently allocated to imprisoning people, to see at least the earliest forms of the sorts of things which no doubt other witnesses have put before this Committee and which we have presented here today?

I believe that a great deal could be done that would test whether this is the way for our society to go within two years.

CHAIR: Related to that, I want to quote you a sentence or two from the submission from the Department of Corrective Services with regard to recidivism. One of the terms of reference of our Committee was to look at effectiveness of imprisonment. Recidivism is in the public mind considered to be one of the measures of effectiveness. The quote reads:

> Corrective Services employs a range of strategies to reduce the rate of recidivism among offenders including the use of alcohol and other drug programs, however, it cannot address all of the factors which influence offending behaviour, particularly as it is around 50 per cent of inmates receive a sentence of six months or less. It needs to be appreciated that deeply-ingrained patterns of behaviour, which tend towards a criminal lifestyle, are not easily modified in a relatively short period of time.

Professor VINSON: Or, might one add, in prison.

CHAIR: Well, we put to the current head of Corrective Services that he bore some responsibility for recidivism and he largely referred to a submission like that to say that it was not a reasonable measure of effectiveness, and it was not specifically Corrective Services problem at the end because there were so many factors they could not control. Do you think that indicates a sufficient commitment on the part of Corrective Services at the moment to dealing with preventing offending taking place?

Professor VINSON: No. The Department of Prisons prior to about 1960 could be excused for seeing its role as primarily one of safe custody of people in gaols. The society has now long lived with the name, Department of Corrective Services. I myself have acknowledged here today and will always acknowledge that that is pushing a very heavy barrow up a hill anyway. But that being the case, the full starting point for what I have just heard is that a great deal is going to have to be done to turn people around in prison.

Of course, every effort must be made but rehabilitation is not the justification of imprisonment. Making our lives safer from people is not a bad argument. It is so difficult to achieve, and that has been internationally recognised. So the Department of Corrective Services

could create more very socially useful roles for itself in society by adopting some of the kinds of proposals which I am sure you are receiving and which we have offered.

It would be an extraordinarily useful thing in the career development of its officers if they alternated between the really harsh and not very promising end of the deal, holding people behind walls, and being involved in other activities of a more promising kind. So I regret very much the statement of position by the department on these matters.

The Hon. P. T. PRIMROSE: In addition to the services that you have outlined in your paper, are there any other particularly unique services that you think would be appropriate for Aboriginal people?

Dr BALDRY: Yes. In conversations with some Aboriginal people who have an interest in this, it appears that something like a house or houses that are reasonably well located, probably at lease one in a rural area or more, certainly non-metropolitan, and one in a metropolitan area that took into account the issues that most Aboriginal women have faced, that is, issues to deal with either being part of the removed generation or having had that in their family, of having suffered various forms of abuse, many of them themselves being the subject of domestic violence and so on, that these are all of a higher proportion within Aboriginal women's experience that what one might call, I suppose, intensive supportive houses which are run on the basis of indigenous forms are appropriate.

Now, I think there may be a need for the intensive supervision that we have suggested here, more from the point of view of ensuring that Aboriginal women in these cases get the chance to deal with the things that they are facing. May I quote to you an example of an Aboriginal women who was working at one stage for an organisation that I was in contact with?

This woman met women coming out of gaol and actually took them back to their communities and stayed with them, with their families, for as many days as she could because it was quite clear that when they were released from Mulawa they did not have anywhere else to go and they did not make it past Central Station was her comment. So some kind of secure, safe, supportive environment is certainly needed for Aboriginal women, and I think that is long overdue.

The Hon. Dr A. CHESTERFIELD-EVANS: Your submission more or less deals with the hard end. If prison is one end, then bail hostels and your programs are the next. As I remember years ago, you were talking about social determinants of prison population in the sense that if you do a lot of prison preventive programs, perhaps a lot of people who are helped by those programs would not have gone to gaol anyway, so in terms of cost-effective prison prevention, the submission seems to be very much at the hard end. Presumably you could give us more information at the softer end if you were asked, but in this case you are doing this as a policy because at the moment we are at the hard end of "will we go to prison or will we not".

Professor VINSON: Yes, that is right. When you look at the locations in Sydney, and I think you are remembering Newcastle if my memory is true, if you are looking at the locations in Sydney whence significant numbers of Aboriginal prisoners were last residing in Sydney, I think the problem is made considerably harder than we have tackled it today because there you will find that the very highest rates of unemployment, the highest concentrations of lack of work skills, low income families and so on. But you will also find that that is where the non-indigenous prisoners are coming from as well. Sometimes I am left wondering whether, in order to solve the

abhorrently high rate of imprisonment and court appearance of Aboriginal people, you can actually separate poverty and its effects in that group from poverty and its effect in the rest of the population.

The Hon. Dr A. CHESTERFIELD-EVANS: Presumably if you are spending a certain number of dollars on prisons, you would get a bail hostel and a pretty good rehab support service for the same number of dollars per head and then you would get a pretty good social support network for a disadvantaged suburb with the same number of dollars, but you would have to have a skills transfer, as you say, and a transfer of money from a vested interest to get that.

Can you comment on the prison numbers if you were spending the money in those three different ways, gaol, bail hostels or preventive programs in communities which obviously would not affect people who were not in those communities and would help a lot of people who would end up in gaol anyway?

Professor VINSON: I think there has been a tendency to oversell the economic advantage of other forms of punishment. If those programs are to succeed, they will have to be properly staffed and properly run, just as anything else. Even if you allow for that and do not exaggerate the economic savings, I would be personally confident, is all I can say, that you would be spending about a third as much on the actual management, the social control of those individuals as you would if they were in a prison.

With respect to the pay off for society of intervening earlier in people's lives, it just screams out to be done because it is unjust not to do it, and one is thoroughly convinced that it will have beneficial effects, but I have yet to find anyone who can put a useful figure for a parliamentary inquiry purpose on what the saving would be.

I am pleased to say that after highlighting some of these matters last year in another study called "Unequal in life" in which Newcastle was revisited, we found that the areas that you are remembering as having been extremely disadvantaged 25 years ago are the same areas that are the outstandingly disadvantaged ones today. The Government has instituted an experiment in the form of a community project in one of those areas in Newcastle, so there has been a bit of positive movement there.

CHAIR: Thank you both for your submissions to the Committee. They have been very comprehensive and we appreciate that no end. There were a couple of questions that were more of a pedestrian nature that I would not mind mailing to you for your comment later if you would care to give it. But thank you for your attendance. It is much appreciated.

(The witnesses withdrew)

(Luncheon adjournment)

VIOLET ROUMELIOTIS, Executive Officer, CRC Justice Support Incorporated, and

JAN CREGAN, Psychologist, and Board Member, CRC Justice Support Incorporated, affirmed and examined:

CHAIR: Ms Roumeliotis, in what capacity are you appearing before the Committee?

Ms ROUMELIOTIS: As Executive Officer of CRC Justice Support.

CHAIR: Could you briefly outline your qualifications and experience which are relevant to the inquiry?

Ms ROUMELIOTIS: I have been employed as Executive Officer of CRC Justice Support for a period of four years. I have a Bachelor of Arts degree majoring in Sociology. I have worked in the community sector for about 18 years and have been particularly interested in issues to do with the criminal justice system.

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

Ms ROUMELIOTIS: Yes, I have.

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

Ms ROUMELIOTIS: Yes, I am.

CHAIR: Ms Cregan, in what capacity do you appear before the Committee?

Ms CREGAN: As a member of the board of management of CRC Justice Support.

CHAIR: Could you briefly outline your qualifications and experience which are relevant to the inquiry?

Ms CREGAN: Yes, I am a Bachelor of Arts with Honours in Psychology. I have worked in the prison system as a researcher and as a psychologist. I have also researched a doctoral thesis on the social and psychological effects of imprisonment.

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

Ms CREGAN: Yes, I did.

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

Ms CREGAN: 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 should warn you, however, that the Parliament has the power to override that decision at any

time and make your evidence public.

Do you wish to make any remarks to the Committee either in support of your submission or in reference to the terms of reference? I have one further formal question to ask you. Do you wish your submission which you gave to the Committee to be taken as part of your formal evidence?

Ms ROUMELIOTIS: Yes, please.

CHAIR: Now, do you wish to address the Committee?

Ms ROUMELIOTIS: Just to make a general comment. Over the last 20 years, the New South Wales Department of Corrective Services has been the focus of a range of inquiries, reports and research.

CRC Justice Support welcomes the opportunity at this stage to comment on the state of New South Wales prisons. However, it is worth noting at the outset that the starting point for this inquiry could well be the range of recommendations that have been recommended and discarded over the past 20 years. Of particular note would be the Nagle royal commission recommendations, the Women in Prison Task Force and, more recently, the Ombudsman's Mulawa report from 1997 and the Standing Committee on Social Issues' report into the children of imprisoned parents.

Although there are a number of issues raised by this inquiry that are specific to the current context, one example being the building of the new prison for women, there are a number of issues that need to be acknowledged as recurring themes in New South Wales corrections.

CRC Justice Support would like to restate the importance of two of the governing principles of the Nagle report from 1978, specifically that, firstly, "prison should be a measure of last resort and every effort must be made to find constructive alternatives to imprisonment" and, secondly, "the loss of liberty is an essential punishment, and the prisoner should retain all other rights except those necessarily limited by the need to maintain security. The prisoner is not on unthinking ward of the State but a person with the rights and responsibilities of a parent, a spouse, a citizen and a litigant."

CHAIR: Ms Cregan, do you want to make any remarks or will we just go straight to questions?

Ms CREGAN: I might save them for later.

CHAIR: That is no trouble. Either of you may make any response to any of the questions which the Committee may ask you during the next half hour or so. Could you profile the typical client who presents at CRC Justice Support, particularly women who have just been released from prison?

Ms ROUMELIOTIS: CRC Justice Support works with prisoners, former prisoners and their families and those affected by the criminal justice system with a focus on post-release support.

CRC works closely with families and friends around a range of issues relating to both the maintenance of support throughout incarceration of their family member and the negotiating of a wide range of services and support upon release.

It is worth noting that the issue which arises most for family and the inmate whilst incarcerated is that of visits and, upon release, that the accommodation. The typical clients that present at CRC often are those who are released with no accommodation, no identification, no place on a methadone program, if that is relevant, and no money.

Those who do not have family or friends to support them, who do not have employment, may have a disability and they, more often than not, have been a victim of crime themselves.

These are the people who in some senses represent the failure of the Department of Corrective Services. They are those who have not benefited from the services and programs within the prison system. They have not been able to access the range of programs and services made available to others, and prison has constituted simply, I guess, another step in their being further dislocated and alienated. They are the people from whom the community is to be protected, yet they are also often the people who have been failed by the communities from which they have come.

Last year CRC's staff and volunteers provided 27,000 occasions of service through numerous programs and services. I will not detail them here. They are available in our annual report, and I have a copy here which I would like to table for the Committee members' perusal at their leisure.

1999 Annual Report of the CRC Justice Support tabled

CHAIR: That is the annual report of the CRC Justice Support?

Ms ROUMELIOTIS: That is right, for 1999, and some other resources that may be useful and informative to the Committee. I would, however, very briefly just like to give a snapshot of five case studies of typical clients who come into CRC.

The first one is Lai, who is a woman of non-English speaking background. She presented at CRC without any money, home or medical support. She had been recently released from Mulawa after serving three months for drug-related offences, having got back on the gear, and was picked up by friends at the gate. She had dropped her prison-established methadone program.

Lai had no savings, no job to go to and had walked out of the hostel that she was allocated by welfare prior to her release because her drug use affected her behaviour towards staff. Her family had rejected her and she had no contact with her family. Her hepatitis C was causing her to feel sick and drained, and she was sleeping on the streets at the time she had come into CRC, was wet and cold and quite unwell.

Centrelink had problems with her pension re-establishment so she had been living without any money and her only food had been from soup kitchens. When she presented at CRC she wanted to clean herself up and get her life into some order. She, in particular, wanted support in obtaining some low-cost accommodation and some information about health services for detox. That was one example.

The second case study is Sarah, who is a woman of Aboriginal background. Her partner is in the MRRC and looks like facing a very long sentence. She has four children, three in Department of Community Services care and one who was born in prison and is with her mother. She smokes pot and is seeking counselling to assist her to come to terms with her own violent and abusive upbringing. She was sexually assaulted as a child.

Sarah believes that if she understands what caused her life to be like it is and why she keeps stealing, then she can look at being a better parent and getting her children back, and that is the sort of support she had requested from CRC.

Mar is a transvestite client and was recently released from Long Bay. She was actually working and in accommodation, but had been quite distressed about some inappropriate behaviour from her real estate agent. She was seeking some support in what her rights were and someone to advocate for her and felt that she needed to come to a service that had understood her background and would not judge her for having been in prison.

Barry and Mary are both longstanding clients of CRC. They both have mental health problems. Barry has served prison terms many times. Neither have used illegal drugs but are on heavy prescribed medication. Barry is tattooed from face to feet and Mary drags her feet and mutters and is difficult to understand. Both are continually stopped by the police and often asked to move on by security guards.

Their funds are administered by the Public Guardian, but they have little money management capabilities, so they usually end up in trouble with their rental agreements and bills and come back to CRC to sort that out for them. They are generally homeless because of that, and trying to find accommodation as a couple is very limited in Sydney, so they usually live on the streets or in parks.

Both have been assaulted and robbed recently. They need advocacy and support to constantly be linked into some sort of secure accommodation and also assistance with accessing health service, particularly from the mental health team.

The last example is that of Jenny, who was referred to CRC by Lifeline. She is a grandmother who has a daughter and a partner both in prison and she is trying to keep three children together in a caravan park but she is running out of money and the caravan park owners want her and the children out.

Centrelink has not granted her additional money for the children and she is saying that she is feeling suicidal with the stress. The children were not, when she first presented at CRC, attending school and she was having trouble with the home school liaison officer.

So that is a snapshot, I guess, of five types of situations.

CHAIR: Is there a time frame around that snapshot? Are they drawn from recent cases?

Ms ROUMELIOTIS: All are recent. Barry and Mary are ongoing. They have been known to CRC for at least four years.

CHAIR: By "recent" you mean within, say, the last six months?

Ms ROUMELIOTIS: Yes.

CHAIR: And would you say that they are typical?

Ms ROUMELIOTIS: They are typical. They certainly are.

CHAIR: Your submission states:

> It is the belief of CRC that while prison constitutes a reasonable option for those who are convicted of violent crime and are considered a threat to the community, for the majority of people in prison, prison is inappropriate, costly, damaging and an ineffective response to crime.

What factors have led you to this conclusion.

Ms CREGAN: Well, in respect of women who are in prison particularly, the fact is that women tend to be preponderantly convicted of non-violent offences so the argument of protection of the community does not come into operation in their case.

A prison sentence is damaging in many ways. It is socially alienating. It has a psychological effect on the person who is actually imprisoned and, in the case of women particularly, many of whom are sort of primary or sole carers of dependent children, the social health and developmental effects upon their children are also quite serious.

We would argue that to disadvantage the children of women prisoners in this way puts society at future risk of further disruption when, as those children grow up, they do not fulfil their normal social development.

CHAIR: Ms Roumeliotis, the Committee understands that you are part of an Ethnic Affairs Task Force which undertook a study into non-English speaking background people in prison. Can you explain the purpose and the results of that survey? What action has been taken in response to its findings, particularly in relation to women?

Ms ROUMELIOTIS: It has been generally acknowledged that women from culturally and linguistically diverse backgrounds are generally not well recognised by institutions, and prison systems in particular have been subject to criticism for failing to meet specific needs of women of such backgrounds. The prison environment presents an environment of a complex array of both covert and overt rules and procedures that one is to understand to ensure that they stay safe from other inmates and not get into trouble from custodial officers.

In line with the key recommendation of the Ombudsman's report on Mulawa which was tabled in April 1997, a working group by the Department of Corrective Services Ethnic Affairs Task Force was established to conduct an audit of the needs of and services to women of non-English speaking background at Mulawa correctional facility. The audit was conducted over a four-month period. A series of informal focus groups were conducted with inmates, as were a number of consultations with key service providers and staff in the prison.

The results were summarised into 13 categories that covered areas such as language services, health services, legal issues, family issues, and cultural religious services and programs, and out of these categories were developed 36 recommendations. It was clear to the working

group that many of those recommendations were not specific or unique to Mulawa and they were quite relevant to other correctional facilities, issues around case management, information dissemination, health, visitors and family concerns.

I guess the main thing that came out of it was generally the difficulties in accessing services, information and living within a prison environment were exacerbated greatly for those from a cultural and linguistically diverse background. After a long and difficult process following the limited circulation of the draft, because there was a lot of unhappiness within the department with the recommendations and outcomes of the report, the department accepted all but two of the recommendations, and were sent to the task force to look at implementation. Five of those recommendations were directly related to Corrections Health as well. There was one meeting with the CEO of Corrections Health. However, I am not aware of what the outcome has been in relation to those five recommendations.

The main issues that the women spoke about were, by far, access to interpreters and language services. There was very little evidence that interpreters are ever used. Women spoke about the reception process, being asked a whole range of questions and where issues around their health and safety were concerned, they were being asked these questions in English. Not one of them said they had an interpreter present.

The other issue of concern was when they did bring someone in to interpret because there were women who had absolutely no English whatsoever, quite often they would use "trusted inmates", so somebody they knew who spoke that language, they would bring that inmate in and expect them to translate. Firstly, that was very problematic for the women because of privacy issues and, secondly, if they had to raise sensitive issues they would then be repeated by that inmate and they were very unhappy with that process. Plus, of course, somebody who speaks the language may not necessarily be a good interpreter or be able to effectively translate. So the issue of interpreters was a big issue, as was translated information.

I think seven of the key recommendations of that task force were that information be translated. There is still no information translated in prisons. The visitors handbook, you would be stretched to get it in English. They are not available easily but there is nothing translated. So people who are visitors, if they cannot speak English, have no idea what they can or cannot do. Usually they find out they have done something wrong because they are told they have been breached. Also new inmates have nothing that can help them read and say, "This is what is expected of me, these are my rights an responsibilities whilst I am in prison". These are still issues that the department is to grapple with.

Another issue that came out was the desire of many women who were caught at the airport, for example, and were not residents of Australia, for an international treaty where they could actually go back to their country of origin where their family is and serve their sentence there. Many were very distressed about the fact that they had no access to their children and were keen for something like that to occur.

CHAIR: An inmate raised that with us when we were at Mulawa and subsequently wrote to me and asked me to find out details of how that scheme would work. Only last Friday I got a response from the Commonwealth Attorney General who said there are two jurisdictions in Australia that have yet to agree to that scheme. Until they do, it is not possible to implement it and, it will come as no surprise, that the two jurisdictions involved are the Northern Territory and Western Australia.

In your submission you note the value of the special care unit, the lifestyles unit and the Kevin Waller unit. Can you briefly describe for the record what each unit does and do you think they could be successfully adopted at the women's correctional facilities?

Ms CREGAN: The special care unit is a closed therapeutic unit in maximum security where inmates undergo a really intensive behavioural and cognitive restructuring program. From my own observation and my research it appears to be quite successful in changing some of the attitudes and ameliorating some of the violent thinking of the inmates who actually manage to see the program out. So it has values in that sense, even though it is very difficult to quantify it because some of these expectations of units such as that cannot actually be quantifiable in regular terms of an evaluation.

The lifestyles unit is an even smaller unit. It houses about eight male prisoners. It started out as a unit that was available to people who were HIV positive and it eventually took in people who are hepatitis C positive as well. It does not have a structured program as such. It has a program, but it is not intended to be therapeutic. The main thrust of the program is information, relaxation of the prison regime and an opportunity for people to settle and accept their health.

The Kevin Waller unit was called the crisis unit and it is an intensive, essentially closed therapeutic unit as well. There is some quite strict monitoring of people who are in there because of attempts at self-harm and suicide. It also contains a quite strong psychotherapeutic stream. It also seems to be successful and inmates transferred out of there tend anecdotally to be less likely to attempt suicide but, as I say once again, that is anecdotal.

So far as adapting for women, I would say that the special care unit program could be beneficial to women. Obviously none of the programs that have been developed and work for men can be transported over to a woman's environment and be expected to address the issues that women face and to have the same outcomes. But I think a closed therapeutic unit for women who have behavioural and attitude problems is a distinct possibility.

Given that the main purpose of the lifestyles unit is to support HIV positive inmates and given the fact that hepatitis C positive inmates have quite a different spectrum of needs and also given the very low prevalence of HIV among women prisoners, it is hard to see that a particular unit for what is usually one HIV positive inmate would be a beneficial thing.

So far as hepatitis C management goes, mainstreaming of hepatitis C information and support throughout the prison system because of the fact that 50 per cent of prisoners and 66 per cent of women prisoners are currently positive seems much preferable to a small, closed unit to deal with that specifically. Likewise, for a closed crisis unit for inmates who are attempting self-harm or suicide, yes, I think intensive psychotherapy would be beneficial for women as well as it is for men.

CHAIR: I think the submission that we have from you was probably framed more for the inquiry into crime prevention. It does not actually express a view with regard to the construction of the new women's prison at Windsor. Would either of you like to make a comment as to whether the decision to build a new women's prison at South Windsor offers anything as a means to improving the quality and services of programs delivered to women prisoners?

Ms ROUMELIOTIS: The submission was written specifically for the Committee. Our position is that the whole submission is basically saying that we are against the notion of building new prisons, in particular, a prison for women as a solution to the existing problem. CRC's position is that, despite the best intentions of the Department of Corrective Services and some extremely committed people who work in the department, prison is rarely a suitable environment to address the causes of crime and the specific issues and health problems that people have who are in prison is a very costly short-term and punitive response to crime. It often deals with people who are themselves the product of a lot of inequality and racism.

Offending behaviour, we believe, is best dealt with in the communities in which that behaviour is occurring and to remove people who are already quite disconnected from their communities into another false and quite punitive environment and try to deal with the gamut of issues for those people we feel just further sort of alienates and dislocates people and, in particular with women, when you remove them from their children and their families, then the damage of separation is really quite irreparable.

We also feel quite strongly against the notion of building a prison particularly in Windsor for a number of reasons but, firstly, we believe that the prison is in a geographically inappropriate place. Having a minimum security facility for women in Windsor is not appropriate because they would need to be looking at work release programs. There are not jobs around there. You would need services like CRC, Children of Prisoners and Prisoners Aids to be travelling there on a regular basis and it is a very long distance. It would increase costs and the Community Grants Program budget is $1.1 million for the whole State, looking at post-release services and that, we believe, is not going to increase in any significant way.

CHAIR: Does not your organisation already visit that site to the John Moroney prison?

Ms ROUMELIOTIS: It does but it also visits regularly Mulawa and the Silverwater complex. So we would not be visiting the Windsor site, John Moroney, as often as we are going to the women's gaol at Mulawa and the others at Silverwater. It would be a long, extra trip and the travel costs would increase, and also in terms of existing infrastructure in the area, health services particularly for women, access to legal services or getting their legal representatives out there and getting families to visit because the department has as a priority that the management of visitors is a very important tool for them.

However, trying to get families to the gaol would be very difficult because of poor public transport and most family members travelling to gaols do not have their own car to get there. So we are concerned about that in terms of that but also as we think a very short-term solution to a problem that needs to have a bit more innovation and thought put into it.

CHAIR: Are you familiar with the statement of environmental effects for a new women's prison corrections facility at Old Northern Road, South Windsor, the consultation document that has been issued for public comment by the Department of Corrective Services?

Ms ROUMELIOTIS: No.

CHAIR: It outlines the designs, plans, drawings and concept of the women's prison.

Ms ROUMELIOTIS: No.

CHAIR: You would have written to Corrective Services on numerous occasions about this matter, would you not?

Ms ROUMELIOTIS: Yes, on many occasions, and if I could comment, one of the grievances and concerns of CRC and other community agencies has been the poor consultation with respect to the building of the gaol.

The Department of Corrective Services had a women's advisory network that had not met for a period of about 18 months, and it was during the time that all this planning was happening in relation to beds for women generally within the system, so a tool that the department had which would enable it to actually bring in community and academic and other interested individuals from the community to comment was not utilised.

The Minister does not have an advisory network so that he could at least receive some input from the community. The first that we heard about this new gaol was when we were invited to comment on a discussion paper that was dated May 1999 on the building of this new prison.

We found out, of course, much later that the decision to build this gaol and the position in which it was going to be built were already set more or less in concrete, so that it was really quite ineffectual to invite a handful of people in and ask, "What do you think of this proposal?" when it was already decided that the new gaol would be built and where it would be built. So we have grave concerns about that whole process.

CHAIR: Are you familiar with the arrangements at Emu Plains prison where most of the female prisoners are given either the opportunity to order or given a bulk supply of food and raw materials and they basically cook their own main meals?

Ms ROUMELIOTIS: Yes.

CHAIR: Do you think that that is something that is good for the prisoners and helps to rehabilitate them?

Ms ROUMELIOTIS: Certainly. The position of trying to encourage people to be independent and to take charge of very simple things for themselves, like what they are going to be eating and how they cook it, is a crucial thing. It was one of the main things that came up in the Mulawa audit as well with a lot of the non-English speaking background groups, the importance of at least being able to prepare their own meals and eat them at appropriate cultural and religious times.

CHAIR: Were you aware that the new women's prison has arrangements whereby that will not be possible; it will be using cook chill meals instead and have only a light kitchen which will enable only basically microwaving of a pre-prepared meal rather than allowing the prisoners to cook a meal?

Ms ROUMELIOTIS: No, I was not aware. It is quite distressing for us to hear that some basic essential principles are not going to be met. If you are talking about accommodating women and not allowing them the opportunity to prepare their own meals, this is exactly the sort of thing I am saying that would have been beneficial to the department and to the Minister if he had requested and sought some genuine consultation on this whole issue.

However, I must state the position that CRC and other community groups were opposed to the gaol and would not have in any way, I guess, provided some input into what this new gaol would look like because we so strongly believe that it should not go ahead. We were very heartened to hear about the inquiry, but also concerned that the Government is not in any way respecting the moratorium on the building of the gaol until at least some interim report comes out.

CHAIR: But if you were invited to comment on the outline of the prison in terms of its layout and the facilities within it, you would have participated in that, would you not?

Ms ROUMELIOTIS: Well, if we knew that definitely it is happening, yes, I guess we would have to, although, as I said, our preference is that that 200-bed facility not be built and that the department and the Government look at some viable alternatives that will benefit the community.

CHAIR: Do members of the Committee have questions?

Ms LEE RHIANNON: I just want to go to the issue of community service orders. We are aware that the Bureau of Crime Statistics and Research shows that there is a decline in community service orders for women. Could you just comment on why you think that is the case and also the benefit of those orders for women and the impact on the number of women in prison?

Ms CREGAN: I guess to begin to comment on it I would refer to page 15 of our submission, where we cite a number of authors who note that community service orders are generally being used as a substitution for non-imprisonment responses to offending and that they do not appear to be making as much of an impact on the prison population as might be hoped.

Ms ROUMELIOTIS: It is also a far more cost-effective form of dealing with some sort of criminal behaviour. I think imprisoning women is 20 times more expensive than putting them on a community service order. We are concerned about the numbers dropping on community service orders because we are concerned that other community alternatives being sought may be net widening rather than suiting the purpose for which they were meant, which was to provide some viable alternatives to keep women outside the system.

Ms LEE RHIANNON: Do you feel that community service orders are structured in a way that suits men and that men can move into it more easily than women because of the sorts of things that are offered?

Ms ROUMELIOTIS: I think as a concept, as a model, it certainly could be worked around men, as I think could a number of other programs that the department has. Guthrie House houses women on section 29Cs. We have for a while advocated that there should be something similar for men who are primary carers of children. However, there has not been a lot of support for that.

We understand that probably the reason for that is that the Government believes that the community would be outraged if they were put in hostels with their children and supported and not put in gaol, but we believe that there are lots of viable alternatives that are available for women that would also work for the male population with some thought and a bit of courage from the decision makers.

Ms LEE RHIANNON: How do you think it could be structured so that there were more opportunities for women? How would you suggest it could be changed?

Ms ROUMELIOTIS: Like?

Ms LEE RHIANNON: So that community service orders was an option that was taken up more frequently for women.

Ms ROUMELIOTIS: I think the problem is that it is not very well promoted. If you are providing community service orders, you need to have community programs that women are linked into, and that needs some thought in terms of what sort of programs women could be linked into that would, at the same time that they are doing the time through the community service order, also address the reasons why they are doing it. So, you would need to look at issues around their drug dependency, if that is an issue, or community programs around parenting or support groups.

I think what happens is that they are drawn out and told, "All right, you go and do your 100 hours there. If you do not do the right thing you are tipped back in." Our position is that that should not be the end. If you do not do your community service order, there should be lots of other steps before you go to gaol.

Ms LEE RHIANNON: Do I understand that you are saying that this should be done in conjunction with a number of support programs as well?

Ms ROUMELIOTIS: Definitely. It is the same with periodic detention. We support it, it is a good program, and we would certainly would not like to see it disappear. We know that there are always political pressures on more innovative type of programs but with periodic detention, again, you have people who go in on a Saturday morning and leave on a Sunday night. They go to detention centres. They sit there all day. They are very bored. There are very few activities. The issue why they have offended is not addressed in any way.

It is a very false sort of way of dealing with it. It needs, again, to be more inclusive. It needs to draw in the community, to look at programs and to be structured in a way that they are still part of the community and you are addressing the issues that are relevant to that individual.

The Hon. Dr A. CHESTERFIELD-EVANS: Remission versus truth in sentencing - has that affected women at all?

Ms ROUMELIOTIS: Well, I would not really know. I do not know. I would suspect that probably it would, as it would for most of the prison population.

The Hon. Dr A. CHESTERFIELD-EVANS: Can you talk about any effects of remission on prisoner behaviour or morale?

Ms ROUMELIOTIS: As a principle, CRC would support remission because I guess within a system that is very punitive and difficult there is light at the end of the tunnel if at least you can co-operate and work within the system. That you will be in some way rewarded I think is not a bad thing. I do not think I could really comment any further on that.

Ms CREGAN: Could I maybe just refer back to the practices in the therapeutic units where people do tend to be given incentive systems, not necessarily remission but their engagement in the program, their participation and their progress is dependent on some system of points or privileges or loss of privileges? I think the remission system if it was reinstated could serve that sort of purpose for the entire prison population. I think it is part and parcel of the attitude and behaviour change that you do see at the end of the therapeutic programs.

I would also like, if I may, just to refer back to what I said about the therapeutic programs before in regard to their effectiveness. I think it should be remembered that what quite a large amount of what the therapeutic programs need to deal with are problems that are engendered by the prison system itself. In other words, they would not be necessary for many people had they not been in prison. Prison itself is an instigation of self-harm and suicide attempts and it brings on psychopathological behaviour.

Ms ROUMELIOTIS: If I could comment, women's sentences are generally very short, so our view would be that women, particularly those on short-term sentences, should not be there and should be redirected away from any sort of prison.

CHAIR: In the near future I think that a law that has already been passed by the Parliament and that is due to come into operation at the beginning of May or April - I have forgotten now - basically will require magistrates to provide reasons should they sentence someone to a period of detention less than six months. Do you expect that will have any significant impact on the size of the women's prison population and the need for a new gaol?

Ms ROUMELIOTIS: Oh, yes. We have already seen the numbers slowing down. Although my understanding is that the female population is still increasing slowly, there is an expectation that that number will start to drop. If this law is implemented, then it definitely will have an impact on the numbers of women. Very simple solutions such as bail hostels should be introduced in the community. Thirty-five per cent of the female population in prisons are on remand, so even if half of those women were to go into bail hostels, you would see a tremendous drop in numbers immediately.

CHAIR: One of your case studies referred to a couple who I think appeared to suffer from an intellectual disability. Would you care to comment about the impact of disability on the prison population and the services needed for them when they get out of prison?

Ms ROUMELIOTIS: The tragic thing is that there are very few services targeting the specific needs of people with health problems or intellectual disabilities and quite often when these clients present to CRC we have a very difficult time negotiating services for them because health services will see them as ex-prisoners first quite often or not as a priority or, if there is dual diagnosis involved, a whole range of things, and nobody really wants them.

It is such a game of trying to get a service to admit that it has some responsibility, and a great amount of our time is spent doing that, advocating and trying to find appropriate services. Accommodation for people with intellectual disabilities and mental health problems and people who are sex offenders is also another big area that we look at.

To try to find somewhere for them is very difficult. There are limited beds for post-release men and women coming out of prison; about 32 beds in fact for the whole of the

State. Most of those services will not take known sex offenders because they cannot guarantee their safety. So there is a whole range of issues around special needs groupings.

CHAIR: Thank you both of you for your submission. We greatly appreciate the effort and enthusiasm you have put into bringing matters to the attention of this Committee.

(The witnesses withdrew)

GLORIA JEAN LARMAN, Executive Officer, Children of Prisoners Support Group, Holker Street, Silverwater, affirmed and examined:

CHAIR: Would you briefly outline your qualifications and experience which are relevant to this inquiry?

Ms LARMAN: I have worked at Children of Prisoners' Support Group for the last 12 years plus an interest in the area some eight years before that, and I am trained in welfare and psychology.

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

Ms LARMAN: Yes, I did.

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

Ms LARMAN: 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 the Parliament has the power to override that decision at any time and may make your evidence public. Would you care to make some comments before we ask you questions?

Ms LARMAN: Only one comment that came to light in the previous evidence that was given, and that is the document to do with the new women's prison. I find it amazing that that has been in existence and we have only just discovered it as of now, and just the change that that in itself does show the way that the Department of Corrective Services is now going down a very exclusive or non-exclusive of any community involvement road whereas the building out at Emu Plains was done in a much more fully consultative way. Community agencies and stakeholders had much more input into it. I just wanted that stated.

CHAIR: I understand the document we were referring to was in fact produced for community consultation, but I think it has only been lodged with the local council. Can you describe the work undertaken by the Children of Prisoners' Support Group?

Ms LARMAN: I can. I actually have a printout of what I am going to say for everybody.

CHAIR: That would be fine. If you have a spare copy I am sure Hansard would greatly appreciate a copy.

Ms LARMAN: I also want to put in evidence a video that we produced as well, which is the children telling their story and a cassette as well.

CHAIR: Was that, just out of interest, the material that was broadcast on *Jailbreak* not so long ago?

Ms LARMAN: Yes, that is the cassette.

CHAIR: Did you supply the Committee with a written submission?

Ms LARMAN: Yes, I did.

CHAIR: Would you like that and the material now being distributed to be taken as part of your formal evidence?

Ms LARMAN: Yes. Our organisation is set up to consider what happens to children when their parent or care giver goes to gaol. Assisting children and families to cope with the changes in their lives, the emotional turmoil, financial changes, added responsibilities for older children when their parents are removed, the isolation experienced are some of the issues which workers of Children of Prisoners' Support Group deal with day in and day out.

Various services which I have listed are: children's transport service which is a service provided to children to take them to visit their imprisoned care giver and we take children that would not get there unless we took them, so the children either have nobody to take them or they are too far away or they are living with elderly carers. The worker usually picks up the children from their home, takes them to the visit, stays on the visit, assists them to interact with the parent if needed, prepares the children to visit if required and supports the children before and after the visit and then returns the children home.

This service is an intensive one-to-one service for children and involves much more than transporting the child. That is also carried out by paid workers and volunteers. However, because of the cost and the time involved with working with the children, it is actually quite a restricted service in that it really only services the Sydney metropolitan area. Children who live in country areas basically do not get to see their parents because there is nobody to take them or the cost is far too great for the families to take them. That affects Aboriginal children at quite a high rate because a lot of them come from country areas.

Then we have case work services, working more on one-to-one interactions with inmates, the outside carer, the children and other people involved in the children's lives. We also run support groups for children and young people which actually facilitates and brings the children together so they can discuss issues that relate to each other about having a parent in gaol and the information in the video that I tabled came from the children who attended the support groups.

We run an occasional care centre and drop in centre at Silverwater and that operates with paid staff and volunteers who look after the children that are visiting on Saturdays at the Silverwater complex. So it allows children to be with other children in the same situation, plus it takes them out of the visiting environment where they can only be sustained for 20 minutes. After that children tend to get bored, especially in conditions that the visits take place.

We have been trying to duplicate that service in Bathurst with that project receiving official notification of funding on 12 April, 1999, from the Aboriginal and Torres Strait Islander Commission. Unfortunately, that project has taken us 12 months to actually commence and to date we still have not commenced. One of the problems with that particular project was that we ran a pilot project some 12 months before that which was very successful and was initiated through the schools in the local Bathurst area.

Once we secured our funding, the situation within the gaol itself had changed and we no longer had the support of the correctional centre, so it has taken us 12 months to battle through the bureaucracy of Corrective Services to finally get some positive outcome and I must admit the outcome is good but it has taken us 12 months to get there. Our agency finds it totally disturbing, unnecessary and unacceptable that things should get held up for such an amount of time.

Another problem that we are having at the moment is with the service of our child-parent activity days which is a particular service whereby we take children in and take activities in to various correctional centres and facilitate some good, quality contact between the inmate and the child without another care giver there. After the Wood royal commission was held, there were some recommendations to a whole lot of changes to be made regarding child protection issues. One of those affected the days that we organised and there were some child safety checks put in place.

Last September the Department of Community Services withdrew the service of providing child safety checks, which meant that those days from our organisation's point of view had to stop because there was a safeguard taken away.

CHAIR: I am not sure that I quite understand that. Would you explain that a little bit more? What was the service?

Ms LARMAN: They had a service that was called Child Safety Check, which was a check that DOCS did to ensure that the child's safety was okay on these days on the visit between the parent and the child. They looked at things like notification, or alleged notification, of child abuse and, in particular, child sexual abuse.

CHAIR: I am still a bit confused. I must be thick. I do not quite understand. You would be bringing children to the gaol to have an interaction with the parent and DOCS would check to see whether these children had been subject to child abuse by the parent before you brought them around?

Ms LARMAN: Yes.

CHAIR: What I do not quite understand is that you are actually bringing the children to the parents, are you not?

Ms LARMAN: Yes.

CHAIR: Why would you have the special checks on their parents?

Ms LARMAN: Because they are special days. Not all people on those days are necessarily clients of ours; they are just people who are in gaol. It is complicated to explain. As a safeguard for the children who are seeing that parent and also the interaction of the other people. It may not even be that person they are visiting. It is to safeguard the children in general from all the other parents as well. If there is notification of child abuse, that may not be known by Corrective Services because it is an allegation, but it will be known to the department.

CHAIR: So, essentially, what you are doing is checking to see whether they have had a previous experience of child abuse or checking to see whether the parents or other inmates are potential subjects of a complaint?

Ms LARMAN: Yes.

CHAIR: Which of the two?

Ms LARMAN: Both.

CHAIR: Did DOCS give some reason why it stopped providing the checks?

Ms LARMAN: It did give a couple of different reasons, one of them being privacy, which has since been taken away. It does not appear to exist. But the main one that we are aware of seems to be totally a funding or a resource issue.

Ms LEE RHIANNON: Just to bring those two together, you talked about privacy and you talked about funding and you said that the privacy issue is not there any more. Does that mean that DOCS put that up as an excuse and it was not really a reason, that it just gave it as a reason?

Ms LARMAN: Yes, it does not appear to have carried weight.

Ms LEE RHIANNON: So, therefore, you are suggesting that the real reason in fact is funding?

Ms LARMAN: Yes.

Ms LEE RHIANNON: Where do you get your funding from?

Ms LARMAN: From Corrective Services and Community Services.

Ms LEE RHIANNON: And do you have enough?

Ms LARMAN: No.

CHAIR: I imagine you get it through the Community Services Grants Scheme?

Ms LARMAN: Yes.

CHAIR: Which department grants you the funds? Corrective Services has the capacity to do that. Is it a Corrective Services fund administered through Corrective Services or is it a DOCS service?

Ms LARMAN: These programs?

CHAIR: Yes.

Ms LARMAN: It is funded by Corrective Services, and we are trying to run another pilot of that project at the moment looking at whether or not we can actually guarantee the child's safety on those days. That is occurring at the moment, but it is coming up against quite a few hurdles and a lot more extra time and effort to do them.

Ms LEE RHIANNON: What sort of hurdles? Corrective Services?

Ms LARMAN: Some of them are Corrective Services in that various workers just do not want to become involved in the pilot because it is extra work. The process we are going to undertake is a case management process, which is quite intense. It means a lot more work for our organisation but also means more work for the welfare officers and the workers involved on the gaol side of it, although they are supposed to do case management anyway. It is a different way of running those days.

Ms LEE RHIANNON: Is the pilot working now?

Ms LARMAN: No, the day will not actually occur until April. We are piloting it, supposedly, in two gaols, one at Long Bay and one at Silverwater and then evaluating that at the end so, hopefully, by May we will see whether or not it has been able to support the kids in the best possible way.

The Hon. Dr A. CHESTERFIELD-EVANS: I am still a little confused. I hate to labour the point. You are saying that you have to get permission from DOCS, in a sense, to take the kids to the parents lest the parents be abusive. Is that right? You have to make sure that the parents were not abusing the children otherwise you cannot take them to the parents?

Ms LARMAN: For those particular days.

The Hon. Dr A. CHESTERFIELD-EVANS: So these days involve longer and more personal contact?

Ms LARMAN: Yes.

The Hon. Dr A. CHESTERFIELD-EVANS: They are obviously not boxed visits and they are obviously not visits where you are sitting there beside the parent and the children.

Ms LARMAN: That is right. They are days usually of four-hour duration and it is just the parent and the children. We normally have a couple of workers, and it is usually held in a reasonable area with activity, so you are roaming around.

The Hon. Dr A. CHESTERFIELD-EVANS: The kids are not alone with their parents, are they, in that period of time; there would be other people around?

Ms LARMAN: There is, but it is a different level of supervision. I am not saying the days should not go ahead. I think they are very good. They are one of the best visits that a parent and child can have in a prison situation. It is more just safeguarding. It is only a very small number that you are safeguarding or excluding from that program.

The Hon. Dr A. CHESTERFIELD-EVANS: When you say "funds" do you mean funds for DOCS to make the checks or funds for the people for whom further supervision is needed during that visit, which must be a pretty tiny number, surely?

Ms LARMAN: It is the money. They had a worker in their own department to do those checks.

The Hon. Dr A. CHESTERFIELD-EVANS: That cannot be very expensive, can it? The data must be there or not there. Surely you look it up. It would be a database check, would it not?

Ms LARMAN: Yes.

The Hon. Dr A. CHESTERFIELD-EVANS: It does not take very long to look at people on the database, does it?

Ms LARMAN: I would not say it would, but they are arguing differently that it is quite a lengthy process.

CHAIR: We might refer the question to DOCS.

The Hon. Dr A. CHESTERFIELD-EVANS: It sounds extraordinary to me.

The Hon. P. T. PRIMROSE: You need a judgment as well.

The Hon. Dr A. CHESTERFIELD-EVANS: Surely the case manager would make the judgment. It would not be a legal judgment.

CHAIR: We are best to refer it to DOCS.

Ms LARMAN: And then we do advocacy and community education. That is roughly what we do.

CHAIR: Your service recently completed a survey of all parent inmates in New South Wales correctional centres.

Ms LARMAN: Yes.

CHAIR: What was the purpose of the survey and what were its results?

Ms LARMAN: The purpose of the survey was to compare it to an identical survey that was done in 1982, which was probably the most comprehensive study on children of prisoners. It is also a component of an education package that we are putting together to be introduced into schools and to people within the community to look at the plight of children of prisoners, to raise, I suppose, the awareness and get people to stand up and be counted on the issue of the children's side of it.

The two main objectives of the survey were to determine the special needs and circumstances of prisoner parents and their children in New South Wales and to determine the extent to which these needs and circumstances have changed since 1981, when an identical survey was taken.

When you read this survey, the numbers stand out, but what stands out more than anything are the personal stories that the inmates are telling about their lives and the lives that their children and families have to endure since their imprisonment. This is real life. We believe it is up to government to take responsibility for improving the lives of these children.

Some of the main differences - I have just highlighted a few - are that in 1981, 7.4 per cent of inmates surveyed were Aboriginal - in 1999 the figure was 23 per cent; 24.5 were single parents prior to their imprisonment, a significant rise from 13.5 per cent in 1981; 85 per cent were sentenced, compared with 95.5 per cent in 1981; and 13 per cent were on remand, compared with 3.3 in 1981.

Almost half the prisoner parents surveyed had been transferred to one or more other gaols during their sentence, and that is a huge problem when you are dealing with issues for children and families as well, for them to have to move around all over the State.

CHAIR: Was this a survey of all inmates or women inmates alone?

Ms LARMAN: It is both. It was a sample survey as well. It compared 200, but I cannot remember how many were women. I would have to look at the survey. It had a high percentage of women in this survey compared to the previous survey. Then I just highlight the differences, the length of travel they have to travel to visit as well. I think that is probably one of the most powerful things of a survey, actually reading the inmates comments which are listed at the back, their individual stories. I mean, if you look at the first one, it says:

> Since my wife has been incarcerated for not completing 200 hours community service, my children have been with her mother. She's a good lady and tries hard. But we still have trouble coping. It's like the loss of a hand.

Things like imprisoning people for breaches of community service orders for women are highlighted there. The next one:

> My children are looked after by their uncle. However they lack the support of parents as my wife past away years ago.

Then there is:

> My son lives with his mother and her de facto. He is a happy kid and loves me heaps. It is hard for them to visit as the bus drops them off at Sunnyholt Road and it is a 20-30 minute walk from the road to the prison. My ex-wife would bring him more if transport was easier. Also all kids hate sitting in one spot and we as prisoners must sit in a certain spot at the table and not move.

CHAIR: That would be Parklea prison I take it?

Ms LARMAN: Yes. Another one:

> I know nothing about my sons. My daughter and I are just re-gaining regular contact after many years in country gaols with practically no contact. I am hoping to have an influence in her life. She is 9 years old and one of the strongest people I know.

Another one:

> My daughter is living with my mum and dad. My sister and her son go to pre-school three days a week. I have a box visit on weekends and all day visits on Mondays. These all day visits have been happening for the past four years. I believe that long-term mothers should have an overnight program within the maximum security gaol system so that the children understand that their mums are still their mums. My daughter was snuck into my cell on an all day visit. You couldn't pay with a toy for the look on her face to see I had photos of her everywhere. All she wanted to do was to lay on her mum's bed. She had not understood where I lived until that day. I beg you at least to think about this for long-term mothers.

That is a woman in Mulawa. Then there are a couple more there.

CHAIR: Just looking at your figures on page 8 of your written submission, it says that since imprisonment, 44.5 per cent had one or more transfers as compared to a higher number in 1981. That would seem to indicate that transfers are becoming less a feature of the prison system than they once were; is that right?

Ms LARMAN: Well, from that figure.

CHAIR: That would appear to be a good thing, would it not?

The Hon. Dr A. CHESTERFIELD-EVANS: Multiple transfers have become worse for certain people.

Ms LARMAN: There is still a fair amount of movement within the system.

CHAIR: Currently, what are prisoners visiting entitlements with regard to children? Are they adequate? I think you handed out a moment ago with your submission what looks to be an extract from the report done by Children with Prisoner Parents, an outstanding report done by a colleague, the Hon. Ann Symonds. Did you want to make a comment about the level of implementation of that report?

Ms LARMAN: Only that still so much of it is outstanding.

CHAIR: Which items are of greatest concern to you that are still outstanding?

Ms LARMAN: I think one of the biggest ones is the fact that they still do not keep the numbers of children affected by a parent in prison. There are no statistics kept, so it is quite an estimate. What we did find is that they do actually keep them but they do not actually collate them. So they do not turn them into anything. So they are now apparently asking the question but they do nothing with that information.

CHAIR: Are there any other items that are outstanding that are of concern to you?

Ms LARMAN: There are so many of them. I mean some of the ones I have highlighted which refer back to this inquiry --

CHAIR: The copy of the report I have been given appears to have some highlighting on it. That is your highlighting? For example, you have highlighted recommendations 4, 5 and 6 on the first page, 9, 10 and 11 on the second page and so on.

Ms LARMAN: That is just for my information. That is a copy of one that I have highlighted for myself. There are very few of them that have actually been implemented to any great level. Recommendation 47 states:

> That the Attorney General ensure that, through judicial education, magistrates and judges always use the option of prison as a last resort when sentencing an offender who is the parent of dependent children irrespective of the existence of mothers and children's units in prison.

To our knowledge that has not been implemented. If it had been implemented, I am sure the numbers would actually start going down, not continuing to increase. Then 48 reads:

> That the Attorney General monitor the sentencing patterns of magistrates and judges to ensure that prison is being used only as a last resort for parents of dependent children.

I am not sure whether or not that is occurring, but if it is I would like to see a copy of it. Then 52, looking at the expansion of periodic detention for women, and then looking at 57, the application of Griffiths Bonds to include the deferral of sentences during pregnancy or until breast feeding or until they can actually get admission into the mothers and children program. Then 71:

> That the Minister for Corrective Services examine the feasibility of amending section 29(2)(c) of the New South Wales Prisons Act 1952 to make provision for the conditional release of approved male primary carers.

As it stands, it only refers to women and for women they have to jump through all sorts of obstacles and hoops to even get it.

CHAIR: Did you want to say anything else about visitation procedures? We are particularly at this moment in our inquiry concerned with women prisoners, but feel free to comment more generally.

Ms LARMAN: Well, children under the age of 18 are not permitted to visit correctional centres without an adult being present. Children as such are not seen as having visiting entitlements to their parents. Rather, a visit is seen as a privilege to inmates and one that can be taken away from them for misbehaving within the system.

There is no standardised visiting standards, procedures or policies that take into account the needs of children and families when they visit. Box visits, non-contact visits, is a major issue. Its enforcement depends on the correctional centre and who is the Governor at the time. So there is discretionary things as to whether or not the inmate is allowed to have contact with the child if they are already on box visits or they can stick to the box visits and ensure that that goes ahead.

CHAIR: I am familiar with what a box visit is. What I am not quite familiar with is what are the circumstances under which a prisoner will be put on a box visit as opposed to a contact visit?

Ms LARMAN: It could be for any misdemeanour within the system.

CHAIR: That is an area that is certainly only used as a punishment?

Ms LARMAN: Yes.

CHAIR: Are they used for safety purposes at all?

Ms LARMAN: They may be, but it is not something that I am aware of it being used for safety but rather as a punishment.

CHAIR: Your concern is that there would be prisoners with children who would be on box visits and that clearly has an impact on their children?

Ms LARMAN: Definitely. When we take children to various centres and when we arrive at the gaol with a child and the inmate is on box visits, we will not allow the child to actually visit. What we do is then go through the rigmarole of discussing it with the person on the desk, trying to get in contact with the Governor to advocate on behalf of the child so that the child can get a contact visit with our worker there on the spot rather than just say, yes, we will go for a box visit. But that takes a lot of skill and negotiation with the child present.

CHAIR: Is that application usually successful?

Ms LARMAN: It usually is successful.

CHAIR: That would seem to indicate that there is no real problem excluding children from that regime?

Ms LARMAN: It is very much a discretionary thing but it is something that you should not have to go through every time.

Ms LEE RHIANNON: Is it common that you have to go through that?

Ms LARMAN: It can be common. It certainly does occur.

CHAIR: Obviously, a box visit would still have to apply to contact between a prisoner and their partner but would not apply then to children. Would you see any complications that arise as a result of the child having a contact visit and the partner not?

Ms LARMAN: Only that it will need somebody else to take the child in, which is usually where our agency gets called in but sometimes that is not always feasible because we do not have enough resources to service everybody. But that could be a problem, but they could use other family or friends or in some cases we have known also visiting areas where they actually sit them in front, like, where the officer's desk is, so at the closest point where they can monitor a bit more closely if they are concerned. There are ways around it without necessarily using the non-contact visit as the first point of call.

CHAIR: The Committee has been interested in post-release programs. Are you able to comment upon the adequacy of those or the usefulness of those or the needs of families who have a person being released from prison as to what sort of difficulties they might go through if a person is just released to them without support?

Ms LARMAN: There is certainly inadequacy for post release.

CHAIR: What sort of post-release services would you see as being needed?

Ms LARMAN: Various programs that can actually deal with reintegrating the ex-prisoner back into the community where they come from. If it is women, it is usually around children so it can be things like regaining custody of their children, getting them settled into appropriate accommodation, even getting their children back in the first place sometimes and then working with them over different issues and working more one on one rather than dealing with a mass number of people.

Our agency would see that as a viable option even for the increasing prisoner population, that you are only dealing with a number of women at the moment, although it is increasing, that you actually break that down into small groups of women and look at small units as opposed to dealing with 200 women in one hit.

So more one-on-one counselling, definitely counselling, and quite often family counselling if it involves the family and the children, looking at their drug and alcohol issues.

CHAIR: Does your organisation assist people who are imprisoned or has it provided services to parents at the John Moroney Correctional Centre?

Ms LARMAN: Yes, it does.

CHAIR: Would you have any comment to make in terms of whether travel to that particular correctional centre, given its position and the lack of public transport to it, has proved to be difficult.

Ms LARMAN: It has to be for the children that we take there. The families are not visiting, anyway, unless we take them. Just being in the middle of nowhere is a huge disadvantage and placing another gaol in that area as well is just going to add another huge burden without providing any more services.

CHAIR: The Department of Corrective Services said it had had some discussion with a local bus company. I do not know that it has any guarantee of a service, but do you see that as addressing the issue of public transport at all?

Ms LARMAN: It depends on how reliable it is, when it actually occurs, how expensive it is.

CHAIR: And they would, I imagine, in order to access that have to get to Windsor station in the first place. Is that particularly accessible? Do you service people who have difficulties getting to Windsor already?

Ms LARMAN: We do.

CHAIR: It strikes me that if you are coming from Bathurst it is not exactly down the road.

Ms LARMAN: Well, no, but if you are coming from Bathurst, nowhere is down the road, either. It is just going to put a huge strain on the system. Unless they address the public transport issue and make it a regular, reliable, reasonably cheap service, then people will not be able to visit.

CHAIR: Thank you, Ms Larman, for attending the Committee. We greatly appreciate that. I am sure that there might be other details on which we will need to come back to you. We also appreciate you leaving us some audio visual material as well. I am sure that members will get around to looking at some of that as well. Thank you very much.

(The witness withdrew)

JOHN CECIL NICHOLSON, Senior Counsel, Senior Public Defender of New South Wales, Public Defender's Office, 175 Liverpool Street, Sydney, sworn and examined:

CHAIR: In what capacity are you appearing before the Committee?

Mr NICHOLSON: As the Senior Public Defender.

CHAIR: Could you briefly outline your qualifications and experience which may be relevant to this inquiry?

Mr NICHOLSON: I have been a practising barrister since 1977 specialising in criminal law since about that time, a Public Defender since 1984, and the Senior Public Defender for the last 18 months.

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

Mr NICHOLSON: I have.

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

Mr NICHOLSON: Relatively

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 by the Committee alone, 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.

I understand you have also made a submission to the Committee and have a supplementary one this afternoon. Would you like those written submissions to become part of your formal evidence?

Mr NICHOLSON: Yes, please.

CHAIR: Can I ask the first dumb question before we ask you to make some general comments to the Committee? It will show you how much I know about the law. What is the role and function of the Senior Public Defender, or other Public Defender, for that matter?

Mr NICHOLSON: Public Defenders were created by statute some significant time ago, I think 1967, to appear for legally aided people in indictable offences. Indictable offences means offences tried before a jury.

The bulk of our work is received from the Legal Aid Commission. We do receive in more recent times some significant work from the Aboriginal legal services and we are also able to receive work from the community-based legal services. We appear primarily in the District Court, the Supreme Court and the Court of Criminal Appeal.

CHAIR: Would you care to make any comments to the Committee in regard to our terms of reference before we ask you questions?

Mr NICHOLSON: No, I think that the terms of reference cover the field, at least as far as needs be for the moment.

CHAIR: No, I mean in response to the terms of reference are there things that you want to say to the Committee? Are there any aspects of your submission that you would like to outline orally or add to?

Mr NICHOLSON: Can I just correct one thing that appears on page 17 of the original submission? In paragraph 33, which was a citation from the royal commission into prisons some years ago, in the second paragraph there, the second line of that reads:

> Presently, although the Commission would agree that after-care programs should be made compulsory for any prisoner.

The actual quote is "should not be made compulsory for any prisoner". Can I say that the state of prisons in Australia generally is, in our respectful submission to this Committee, not much better than the state of prisons were 200 years ago.

I have said in the opening paragraphs of my original submission that the criminal justice system really has stagnated through the centuries.

I think that in more recent times there has been an enlightenment creeping into the criminal justice system whereby we are beginning to understand that the punitive model of criminal justice that we brought in the transportation ships from England is perhaps not the appropriate social engineering tool for people who do not conform to the mandated requirements as exhibited in the criminal law in current times.

There is an interesting debate beginning to arise as to what actually constitutes a crime, particularly if you see things that once were criminal offences, like keeping pets, like homosexual intercourse, that now are no longer crimes, and things that are crimes, like kidnapping when done for the stolen people no longer appear to be crimes. With that enlightenment is also coming the proposition that not always is the punitive model necessary.

I did refer in my written submissions first delivered to illustrating that by pointing out that the Truth and Reconciliation Commission in South Africa exposed a number of crimes. The basis of the exposition was frequently that it was more important for the purposes of national reconciliation that the crimes be exposed than that the crimes be punished.

Much the same philosophy occurred in the Wood royal commission, where crimes were encouraged to be exposed, short of murder - or, indeed, probably including murder; it was there - for the purpose of the commission understanding the width and breadth of corruption in the New South Wales Police Service.

So what I am seeking to draw the Committee's attention to is that we do not always need to put offenders into gaol, that there are other options. The first part of my paper is about that.

CHAIR: Much of the evidence that the Committee has heard to date has suggested that the increase in the prisoner population, particularly the female prisoner population, is because more offences are being committed and in the case of women more violent offences are being

committed. Further, we have heard that the courts are more inclined to hand down sentences of imprisonment than had once been the case. In your experience, are these major reasons for the increase in the prisoner population valid or do you think that these are the major reasons?

Mr NICHOLSON: I sought to address these questions in the supplementary submissions. Can I say this? There is no single answer, it would seem to the Public Defenders, why more women are currently being incarcerated. We think that there is an interaction of a matrix of facts which may assist you to understand what is happening so far as the women are concerned.

In the past, some judicial officers used to discriminate between men and women when it came to sentencing. There was a particular inertia in sentencing women to custodial sentences because the courts recognised frequently the brutalising effect that incarceration had on all people, but when people were standing for sentence they felt that that was an unacceptable price to pay for incarcerating women.

There were other judicial officers, or perhaps even the same ones, in the past who were reluctant to separate mothers from their young children or their infants. Now that gaol authorities extend facilities to female prisoners that enable those prisoners to care for their infant children within the system, some judges have shown a greater willingness to incarcerate those people than was before the case. That is an unfortunate counter effect, if I can put it that way, of extending a service, a valuable service in the view of the Public Defenders, to women.

There has been an increase in the use of heroin, particularly among Aboriginal communities, and I have more to say about that later. In years past, women seriously abusing drugs, it would seem, used to gravitate to prostitution, theft, break, enter and steal, social security fraud and what is commonly called fencing of goods.

Public Defenders have noticed a trend for women seriously addicted to heroin and other hard drugs to consider bag snatching and even armed robbery. Given that there is now better security at banks and/or financial institutions, these offences are likely to be committed in circumstances where there is a greater likelihood of capture.

In the less structured environments, for instance, bag snatching in a car park, there is a greater likelihood of victim injury because of a spontaneous and justifiable victim resistance, particularly when the victim sees that the attacker is a woman. There is a greater use of drugs and alcohol within the community and associated with that greater use of drugs and alcohol is an increased incidence of and response to domestic violence.

The Public Defenders currently have three women awaiting trial charged with the killing of their male partner in response to domestic violence situations. Two of the women are Aborigines. The community values are such that now the community currently refuses to accept domestic violence. Whether that culture of refusal to accept domestic violence is amounting to such an intolerance in domestic violence among drunken women that they strike out and fatally injure their partners is difficult for us to assess, but we would commend it for some investigation.

Another area which has contributed to the increase in imprisonment is that since the implementation and recommendations contained in the Richmond report, there has been a failure of the health system to provide adequate support for and supervision of persons with

known psychiatric illnesses. By that, I mean they are known to have psychiatric illnesses; I do not mean some obscure psychiatric illness that is about to be identified.

Moreover, there has been no attempt to address the well-known high recidivism rate among persons suffering psychiatric illness by any system of information sharing, particularly while they are on parole, or provision of support or supervision by relevant agencies in respect of persons who are known to be prone to be psychiatrically distressed.

Since the Richmond report, there has been a marked increase in Public Defender representation of persons who are not guilty by reason of mental illness and/or are unfit to be tried. If I can just interpolate there, I know it is not part of your terms of reference but I cannot miss the opportunity of at least speaking to five Parliamentarians about this. The issue of whether such persons belong in the criminal justice system does need to be addressed.

The better system is the one that operates from Queensland where once a person is identified as likely to be either unfit to be tried or likely to be found not guilty by reason of mental illness, in Queensland that person is referred to a tribunal right at the outset by his lawyers or by the court, that is, the court at first appearance. That tribunal comprises a Supreme Court judge and, as I understand it, two psychiatrists for an assessment in a non-adversarial hearing.

If the person is judged to be unfit to be tried or is judged to be mentally ill, he or she is removed immediately from the criminal justice system and becomes a forensic patient. That is, the question becomes what it always should have been, a health question. If I can just continue answering the Chairman's question, there are currently a number of remand prisoners who have found unfit to be tried and are awaiting special hearing. This usually takes 12 months.

I am told there also appears to be an inappropriate resistance by psychiatric hospitals who will refuse to accept as patients persons who are suffering from psychiatric symptoms, for instance, bipolar disorder or schizophrenia, particularly drug induced schizophrenia, if they are also drug abusers or predisposed to violence. Violence, of course, can be psychiatrically inspired, so the only recourse for those people is the Long Bay prison hospital and bail refused.

Similarly, it would appear from reports of the Public Defenders to me that drug rehabilitation centres refuse to offer their rehabilitation services to persons with psychiatric symptoms. There is no forensic psychiatrist who could deny that frequently psychotic persons are also drug addicts, because in the absence of appropriate medical diagnosis and care, they have taken to self-medicating with drugs of addiction. In particular many people who suffer from depression, a recognised and frequently devastating mental illness, self-medicate with addictive and illegal drugs. Many of those people at some stage or other end up in the criminal justice system.

CHAIR: Are you able to inform the Committee of the effect, if any, of legislative changes that have taken place over the last 10 years that may contribute to the increase in prisoner population?

Mr NICHOLSON: Yes, in 1989 the remission system was abolished. There is no doubt in 1989 that the remission system was thoroughly discredited. Remissions in those days were automatic, overly generous, hard to lose and not subject to any scrutiny or other accountability. The reaction of Parliament, in our submission, however was too severe. It simply abolished the

system. The catch cry of truth in sentencing has a ring that was politically acceptable and particularly palatable to the law and order lobby.

The abolition of the remission system has meant that every prisoner now spends at least his full, minimum term in custody. Some will spend beyond that minimum term, particularly those sentenced to sentences of more than three years. Previously, most prisoners received at least one-third remissions although some repeat offenders only received one quarter remissions at the day of their sentence.

In paragraph 28(4) on page 15 of the Public Defender's original submission I sought to make a case for, to advocate a system of earned remissions which, on the scheme that we proposed, would be overseen by the Parole Board or the Serious Offenders Review Council. On the scheme proposed, a prisoner could build up a bank of remissions amounting to, say, no more than 20 per cent of the full sentence. He would get those remissions for doing things like assisting in the gaol, completing education courses, and perhaps attending work thoroughly. The basis upon which they would be given would be something that could be worked out in detail.

On the scheme proposed, a prisoner could also lose some or all of his or her remissions for proved misbehaviour, for example dirty urine. Losses of remission would also be determined and overseen by the Parole Board or the Serious Offenders Review Council. The remitted time would entitle the prisoner to either early release from the minimum term or early release from the full term, but while it was still elapsing, on our scheme he or she would still be serving the sentence as though on parole.

We argue that the withdrawal of the remission system is one of the greatest contributors to the increase in prisoner population. That must be so when you consider that all prisoners are now doing, on any view of it, a third more of prison time.

CHAIR: It was my understanding that in the scheme that occurred with truth in sentencing, that whilst prisoners had to serve more of the sentence, the sentences themselves were supposed to be shorter to reflect the time that people were supposed to spend in prison. Is it your advice that the length of truth in sentencing sentences are shorter than the previous type of sentences to which remissions applied?

Mr NICHOLSON: No. I think, and I say so later on, that there has been an actual toughening of the sentences by the court. In our view, some of the increase in prisoner population is due to that tougher attitude by the court. I must also say that - it is a long time and I had not appreciated this question would be asked of me - but under the old system, that is when remissions were being imposed, judges were told by the appellate courts that they were not to take remissions into account and it was my understanding, but as I say it is since 1989, that when truth in sentencing came about, the fact of remissions or the absence of them was not to be taken into account. I have, if I may say so with respect, a different understanding of what the law was than you, but I do not profess to be 100 per cent confident of it.

CHAIR: You are the lawyer.

Mr NICHOLSON: But I am also ageing.

CHAIR: That happens to all of us so I have noticed. The other thing that has been said to the Committee is that there has been an increase in the remand population. There appears to

be a decline in the capacity of people to achieve bail. Are you aware of any legal reasons or new laws or anything like that?

Mr NICHOLSON: There have been changes to the Bail Act. As with other areas of criminal law, there does not appear to be a simple answer to your question. It seems to the Public Defenders that there are perhaps three or four interacting reasons why bail is being refused more frequently now than in the past. One, the courts have become more tough in responding to law and order pressures. Two, there are changes to the Bail Act. Three, from the Defenders perspective there appears to be an increase in break down of family ties and, four, there is a failure of the health sector to take sufficient care of mentally distressed or incapable patients.

In respect of the last one, I have already covered that. For instance, if a person is found unfit to be tried, he or she will often reside in gaol for 12 months pending the resolution of his or her psychiatric condition, if there is to be a resolution of it, or for 12 months prior to what is called the special hearing being undertaken. So, as the number of those increase, of course, the remand population will increase.

Looking at the changes to the Bail Act, if I can just treat that this way, once a person has been charged with an offence, the question of whether he or she is to be released after charging is the next step in the criminal justice procedure. That release is governed by the Bail Act. The question of the court's approach to bail is determined by the most serious charge that offender is facing. Frequently there are cases of overcharging by the police. If that is so, then the offender is automatically prejudiced before he arrives in court.

Once in court there are five possibilities: no bail required; the applicant must receive bail; there could be a presumption in favour of bail in respect of the offence that he is charged with; it may be that there is no presumption in favour of bail in respect of the offence he is charged with; and, finally, there are a number of offences where there is a presumption against receiving bail.

There has been a trend for the Legislature to make bail harder for an accused person to obtain by classifying offences into the last two categories. Section 9 of the Bail Act has been amended in 1986, 1988, 1993 and 1995 and my understanding of each of those amendments is that the effect of them has been to make it tougher to get bail. I have not had time to research it as thoroughly as I would want. We think that is one of the factors.

Another factor, as I said, was the break down in families. We find there is a greater number of our clients coming from dysfunctional, disjointed or disintegrated families, and one of the criteria for the Bail Act is family ties. So frequently people are coming to the court without family ties. There is one I should have put in here, and that is changes to the apprehended violence orders.

Where a person breaches an apprehended violence order, now the presumption is strongly against bail and in many communities, particularly where there are alcohol and drugs and, again, recognised to be high in Aboriginal communities, there is a high incidence of domestic violence quite frequently in the face of orders. Such a person coming to court cannot rely upon family ties and already has a presumption against them.

CHAIR: What would be a solution to that, because I do not imagine the community would accept the idea of granting those people bail to return to the potential scene?

One of the solutions, and we deal with it later, may well be the bail hostel, which I received some questions about.

CHAIR: We have received some evidence along that line already from others as well. You refer in your submissions to something called range sentencing and guideline sentencing. Could you briefly explain what these terms refer to, and are they significant factors in the increase in the prison population?

Mr NICHOLSON: Range sentencing is my own term. It is not a term commonly used within the criminal justice system. By range sentencing I mean an approach that has been taken by the Court of Criminal Appeal in the name of consistency in sentencing. It requires a sentence by the initial sentencing judge to fall within what is called a range of approved sentences. That range is established by past sentencing practice and by past decisions of the Court of Criminal Appeal.

My argument is that it really does not promote consistency in sentencing but is a means by which inconsistency in sentencing is tolerated provided that the inconsistency in sentencing is not at extreme ends.

I have annexed to the supplementary written submissions, which I make available to you, graphs which indicate range sentencing. They are Judicial Commission graphs. I do not know what this offence is. I have just picked two at random. Taking money by deception, 178BA. It is a criminal offence that, if memory serves me, carries five years imprisonment.

If you can see there from this distance, 38 per cent of prisoners go to gaol; prisoners on this side do not go to gaol on a full-time basis; 15 per cent get what is called a 558 recognisance, which is a bond with a conviction. Here are 17 per cent getting community service and here are 14 per cent getting periodic detention.

Now, that describes a range for all offenders. Within the prison, 38 per cent go to prison and then, if you go over the page, presumably, it will show the range of prison sentences from six months, 12, right through to 48 months.

Now, depending upon whether the man or woman has prior offences, has been in custody before and the amount of money that was defrauded, they will fit within a range, which may span two, three, four or five of those bars for the same offence.

Our argument is that some judges, who like to be considered tough - and I am not critical of them for that - want to sentence at the upper limits of the range. They are called the hawks in the slang of the criminal justice system. There are other judges who want to be seen as more lenient, called the doves, and they will be down at the other end.

Our argument advanced in the original paper is that the proper approach is not one of range sentencing but, rather, the minimum sentence that the law requires that offender and that offence to receive. We argue from the proposition that liberty is a right that belongs to all people and that simply because somebody is to surrender their liberty to go to gaol they do not surrender all of it. They surrender to the community or to the State the minimum amount of liberty that the State should require of them. That is our argument.

The Hon. Dr A. CHESTERFIELD-EVANS: Is that not mandatory sentencing, though, just by another name? You are saying the minimum that the law requires. Well, the law will then require a minimum, and that is mandatory sentencing.

Mr NICHOLSON: No, it may not, because whenever a sentence is calculated, it is calculated by reference to the offence and to the offender, and the circumstances of the offence may vary. The criminality involved in an offence is not determined solely by the amount of money that is taken or solely by the nature of the firearm that is used.

If I may illustrate that, a person with a firearm at the door who says, "Give me your money," and money is taken may be seen to be less criminal than a person who sticks the gun against your body, pulls back the trigger and says, "Give me the money." It may be marginal. In other words, the circumstances of the offence have to be assessed, and the circumstances of the criminal have to be assessed.

The Hon. Dr A. CHESTERFIELD-EVANS: You are only saying a more complex system of mandatory sentencing, are you not? If you are always going to the minimum, then that minimum is set by the law. Obviously, if you have a minimum, in extenuating circumstances it goes up or down either in relation to judicial precedent within the range or it goes up and down on a formula related to whether the gun was close to the body, it was a powerful gun, people were scared, you actually discharged it, you had had previous offences, whatever the modifying factors are.

Presumably, they either go up under the judge's discretion or they go up on some incremental formula that Spigelman or the Parliament have worked out. Which of all these are you advocating?

Mr NICHOLSON: No, I am very much in favour of the exercise or judicial discretion for sentencing and the call, if I can put it that way, of what is the minimum term. It may well be that judicial minds may differ on it so that I may take the view that an offence when I consider the nature of the offence and the nature of the offender is worth a minimum term of 18 months. If the prisoner feels aggrieved at that, he may take his matter to the Court of Criminal Appeal, which will say that in their study that it either is or it is not an appropriate sentence on the basis of the minimum. I imagine that there would still be scope for movement within the minimum, but what I am arguing about is the range.

The example I gave you in the initial submissions was a quite famous case called Griffith, and those of you who have heard of the Griffith remand or the Griffith bond may remember. His Honour Judge Goran years ago sentenced I think it was a car thief, Griffith, in the light of some very strong evidence.

Griffith was a recidivist offender, but he was 40-something years of age and the Salvation Army chaplain came and argued strongly on his account that he had reached that stage in life where he had not offended in the 18 months or whatever it was between that offence coming to the court and the sentencing and argued very strongly for a recognisance.

The judge would not give a 558 recognisance but said, "Look, I will give you six months more to prove yourself" - the Griffith remand. So he remanded him for six months. The Crown appealed. The Court of Criminal Appeal looked at the offence and said, "That merits a sentence of five years."

Significantly, two things: change from whether he will go to prison or not; they decided he would go to prison and secondly decided that the appropriate term of imprisonment, including the concept of double jeopardy, was five years. So that, I assume, was the range.

The High Court said, "Hey, wait a minute. Why should this man not be given a chance to rehabilitate?" and restored the Griffith remand, after the man, incidentally, had served three years in prison.

The Hon. Dr A. CHESTERFIELD-EVANS: Waiting for lawyers.

Mr NICHOLSON: So I only used it as an illustration of range sentencing. If he had been given the minimum sentence that the law required, that was apparently the Griffith remand.

The Court of Criminal Appeal took the view that the appropriate sentence within the range was five years - in other words, put him into prison for five years. Now, it may be that minds will differ, as I say, on the minimum term. That is a judicial exercise of discretion.

Ms LEE RHIANNON: Can you comment on some of the recent law reform requiring a written opinion when the sentence is under six months? You obviously need to consider what other options are available. I am just wondering if you could differentiate between men and women in commenting on this?

Mr NICHOLSON: I am sorry, I do not understand the first part of your question, which is the written opinion.

Ms LEE RHIANNON: When the sentence is under six months.

CHAIR: That is a law that has not come into operation.

Ms LEE RHIANNON: I am sorry, I have just been reminded that it has not come into operation yet. I am just wondering whether you have any comments on the impact that you think this will have when it does come into operation.

CHAIR: There is a requirement - it may only operate at the Local Court level too - where a magistrate who gives a sentence of six months or less is required to give reasons prior to imposing a sentence. Essentially, I guess the theory of it is that a sentence of six months or less is a fairly pointless exercise and they ought to look for other alternatives. I guess it is intended to make them do that. I guess you are asked whether you see that as making a difference.

Mr NICHOLSON: It is a sentence that probably will apply particularly in the Local Courts. It may also apply to some extent in District Court or District Court appeals. Doing the best I can off the top of my head, there will be many judicial officers who will use that sentencing requirement to avoid sending people to gaol. There can be no doubt about that.

Ms LEE RHIANNON: Do you think some might send them for longer, for a bit over six months?

Mr NICHOLSON: Yes.

Ms LEE RHIANNON: The worst case scenario is that somebody is lazy and will send them to gaol for a bit longer.

Mr NICHOLSON: Yes. There will also be cases where judicial officers, particularly if it is within the range, will take the opportunity, particularly in the case of repeat offenders who may or may not have been to gaol for a short time before but who perhaps have committed a weaker version of the same offence, of increasing the sentence for those sorts of people.

One of the problems with legislation is that one cannot always guarantee how it is going to be implemented. There is a recognised effect called widening the net, which possibly you have heard of - I referred to it in the bail hostel submissions that I made - where people who otherwise would have done pretty well because this provision now exists get the benefit of that provision, and sometimes that can be disadvantageous to them.

The Hon. JENNIFER GARDINER: Do you have a view on why it is that there is this reluctance by the health system to take on board the psychiatric cases? Is it a failure to resource the health service adequately or they just cannot cope with those sorts of people or what?

Mr NICHOLSON: I think, firstly, quite frequently those sorts of people do not come to them when they are in the community. Although I have actually appeared in a case and a couple of the Defenders were talking about these questions that were being raised last Friday night with other Defenders and at least two other Defenders told me of cases they had had where people who were psychiatrically distressed had gone to hospital saying, "I am in a terrible way, I think I am going to do something terrible" and have been sent home in one case with Aspirin, to then later that day or the next commit a killing. I say not murder because in both cases they were found not guilty by reason of mental illness, but there have been at least two human lives needlessly devastated, that is, the victim and the accused.

Secondly, I think there is a lack of resources. Thirdly, we are still in the aftermath of institutional care being infra dig and we have not quite got to what we were promised in the Richmond report, which was the support resources for people who are known to be mentally ill or vulnerable to mental illness. In the submissions, I point out that you have a system where Corrections Health which I believe is run by the Department of Health, will have medical files on people who are there, perhaps, for reasons of being unfit for trial or reasons of being mentally ill or who have presented as mentally ill during the course of their incarceration who, when released to parole, the health files are kept in the prison. They do not follow the person.

So that that person could, for instance, end up in a boarding house, forget to take his medication and not be subject to any supervision other than the parole officer coming by to say, "Have you been in any trouble lately, lad". It is not the first time the problem has been raised. I believe Dr Barclay, who was one of the great forensic practitioners years ago, was raising this problem and it still exists today. I cannot account for why Health Corrections, that is the Health Department, do not somehow while these people are on parole and still subject really to the supervision of the State, if I can put it in that neutral way, I do not see it as an invasion of their civil liberties for their file to follow them.

CHAIR: Follow them to where?

Mr NICHOLSON: Perhaps to Probation and Parole, perhaps to community health centres where they can be monitored.

CHAIR: Could you explain to the Committee what a guideline judgment is and how that operates?

Mr NICHOLSON: There have been to date four guideline judgments. A guideline judgment is a judgment of the Court of Criminal Appeal which sets guidelines for sentencing in respect of a specific offence. If I can illustrate that, the first of the guideline judgments was a guideline judgment in respect of culpable driving. It took as an example an illustrative, if I can call it that, case of culpable driving. I cannot remember the details. The case is called Jurisic. I think the driver was probably under the influence of alcohol and probably driving in a manner that was dangerous in some way to the public. The court set an appropriate range of sentences for those sorts of people.

The next guideline judgment, in the matter of *Regina v. Henry* was a guideline judgment that dealt with armed robberies and, again, took an illustrative example, that is, young men armed with perhaps a syringe, perhaps with a knife, who went into a bank and committed an armed robbery and usually there were more than one. Again, the court set guidelines in respect of that.

Now, those two guideline judgments may well have impacted upon sentencing by increasing sentences or, if not increasing sentences, in the case of the arm robbery guideline judgment may have had the effect of bringing into gaol particularly young men and women who may otherwise have escaped gaol under what was called the exceptional circumstances.

The cases out of the Court of Criminal Appeal prior to the guideline judgment had said that in exceptional cases and only in exceptional cases could a person escape full-time custody in armed robbery situations. A number of the judges would take, among other things, the youth of a prisoner as something that they would weigh in the balance to see whether or not exceptional circumstances applied. The impact of Henry was to take that matter out of the balance for exceptional circumstances. So that the youth of the offender was seen to be a common characteristic for armed robbers and therefore requiring them to go to gaol.

CHAIR: How have they been able to make something like that stick? I am not a lawyer. I understand the concept of obiter and dicta which is where comments might be illustrative but are not necessarily the point. Are not comments about hypothetical cases considered by the legal system as obiter rather than being part of the judgment?

Mr NICHOLSON: They are obiter in respect of a specific case before the sentencing judge but because they are guidelines put out by the Court of Criminal Appeal, they are obiter that require a veneration as distinct from binding by the first instance judge. If he were to sentence outside those guidelines and particularly if he were to sentence below what the guidelines said was the norm, it would be appropriate for the Crown to appeal against the sentence and have the sentence reviewed. So while strictly speaking they are not binding, they do have a powerful impact at first instance.

Indeed, the Court of Criminal Appeal has said, supporting your argument, that a sentence that did not follow the guideline was not for that reason alone appealable and so the Crown cannot put as its ground of appeal, does not follow the guideline judgment, but you can imagine that the lawyers have more wit than that and they would put in a Crown appeal that the sentence was manifestly inadequate.

CHAIR: Thank you, Mr Nicholson. We appreciate you coming and taking the time to give us your submission and to teach us a few things about the law that we did not know already. Thank you very much.

Mr NICHOLSON: Can I make this available to you, tender it or whatever it is so it becomes part of my evidence as well?

CHAIR: Yes. Do you have any objection to your written submission becoming a public document?

Mr NICHOLSON: Not at all.

(The witness withdrew)

(The Committee adjourned at 4.40 p.m.)