REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO

COMMUNITY BASED SENTENCING OPTIONS

At Sydney on

Tuesday 30 August 2005

The Committee met at 10.00 a.m.

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PRESENT

The Hon. C. M. Robertson (Chair)

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

Corrected

JOANNE JOUSIF, Director, Intensive Supervision Programs, Department of Corrective Services, 24 Campbell Street, Sydney, and

CATRIONA ANNE McCOMISH, Senior Assistant Commissioner, Community Offender Services, Department of Corrective Services, 24 Campbell Street, Sydney, affirmed and examined:

CHAIR: Welcome to the sixth public hearing of the Standing Committee on Law and Justice inquiry into community-based sentencing options. The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of guidelines governing broadcasting of proceedings are available on the table by the door. In accordance with Legislative Council guidelines for the broadcast of proceedings, a member of the Committee and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee, the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee.

Witnesses, members and their staff are advised that any messages should be delivered through the attendants or the Committee clerks. I advise that under the standing orders of the Legislative Council, any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or by other persons. The Committee prefers to conduct its hearings in public; however, the Committee may decide to hear certain evidence in private if there is a need to do so. If such a case arises I will ask the public and the media to leave the room for a short period. If a witness does give evidence in camera following a resolution of the Committing, the witness needs to be aware that the Committee may decide to publish some or all of the in-camera evidence. Likewise, at a future date the House may decide to publish part or all of the evidence, even if the Committee has not done so.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during the hearings. The Committee held public hearings during its site visits to Inverell, Bourke, Brewarrina, Griffith and Bega and heard evidence from a number of Probation and Parole officers. On behalf of the Committee I thank the Department of Corrective Services for facilitating the appearance of those witnesses. The Committee found the evidence provided was constructive to the inquiry. This hearing will help the Committee to make recommendations about issues that surround community-based sentencing. If the Committee has any further questions that are not addressed today, do you mind if the Committee contacts you?

Ms McCOMISH: No.

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

Ms McCOMISH: As a representative of an organisation.

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

Ms McCOMISH: Yes, I am.

CHAIR: Should you consider any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice I would appreciate it if the response to those questions could be forwarded to the secretariat by Friday 23 September. Ms Jousif, in what capacity do you appear before the Committee, as an individual or as a representative of an organisation?

Ms JOUSIF: As a representative of an organisation.

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

Ms JOUSIF: Yes, I am.

CHAIR: The first time that the Committee spoke with your organisation you were not available. Some of the Committee's questions at that time were a little over the top, and not able to be answered by the witnesses. The Committee recognised that at that time. When the Committee started community consultation and work in the field, we quickly recognised that we needed to get more specific information from you. There is no ulterior motive about this specific issue. I recognise, and the Committee will deal with this on Thursday during its deliberative meeting, that you have sent us information that you have requested not be published. The Committee will consider that specific issue on Thursday. This morning I re-read your excellent submission. One issue that was not included in the questions on notice related to occupational health and safety and insurance cover for community service orders. Could you outline how the department covers that?

Ms McCOMISH: Yes, I can indeed do that. I have prepared a short presentation, which I intended to present this morning before I answered your questions.

CHAIR: Do you wish to make a statement now?

Ms McCOMISH: Yes. Basically my presentation summarises some of the most important points in the departmental submission and provides a framework for the answers to some of the questions you have listed, including the one that you just mentioned. It is important to emphasise the overall framework within which community-based sentencing options are delivered. The core business for the department, of course, involves a range of management of offenders. In regard to the range of community-based orders, there are about 18,421 currently under supervision in the community. There are 6,900 who have received a full-time imprisonment sentence and 2,017 on remand. Those were the figures in July this year.

Also in community offender services we, of course, provide advice to the sentencing and releasing authorities and around 31,500 presentence and pre-release reports are provided. Approximately two-thirds of offenders managed by the department are managed in the community on various kinds of community-based supervision orders. I wanted to show you just briefly what you know, which is that there has been this very rapid rise over the last decade in the prison population. This has occurred across Australia and, indeed, across most of the world. When you look at what is happening, there has been a rise in sentenced offenders, largely due to changes in legislation and lengthier sentences, but the biggest rise has actually been in the remand population, a very significant rise, which continues. As I mentioned, it is now up close to 2,200.

In trying to work out just what is required of the department over the next five years, of course we try to estimate what is happening with the population. The estimates relate to what is happening in the prison population. As you are aware, the Government earlier this year announced funding for an additional 1,000 prison beds to meet this projected increase in demand. There has also been an increase in the number of offenders with community-based orders. To some extent the department can manage this because with many community-based orders it is possible—when they have completed various conditions of their order and are assessed as relatively low risk—to terminate the supervision, and you may have heard this as you were taking hearings around the State, to some degree with community-based orders we can manage our caseload and try to control demand in that way.

As you will have heard, there are a range of community-based orders for which the department has responsibility. These include home detention, the Drug Court, periodic detention [PD], parole supervision, suspended sentence—that is the section 12 good behaviour bond—and community service orders [CSO]. Something that people are often very unclear about is just what good behaviour bonds mean. Basically, the courts can sentence people to good behaviour bonds under three sections. Section 9 is the one most commonly used. It can be given for up to five years and various conditions and supervision requirements are attached to the bond.

Section 10 is very rarely used. The offence is proven but there is no conviction. The numbers we have under supervision on this particular bond are very small and sometimes they are given a condition such as attending the Sober Drivers Program. Section 11 is also known as the Griffiths

remand or bond, where bail is granted post-conviction but presentence, so people are given a condition perhaps to complete a certain program or to meet certain conditions and then they go back to the court at the completion of that for their actual sentence.

Of course, you are most primarily interested in the availability. Those bonds are available across the State, including suspended sentences. Recently the Bureau of Crime Statistics and Research [BOCSAR] published a paper on the use of suspended sentences. There has been a rapid increase in the use of suspended sentences, particularly in the country, it seems. That can be with supervision or without supervision. Also, it can sometimes be seen as an inevitable path to gaol for some people because if they breach a suspended sentence, they are put immediately into custody.

What is limited? What is limited are periodic detention orders, home detention and Drug Court orders. These figures were provided by BOCSAR when they reviewed sentencing in 2003 and I have two different ways of looking at this, but it is very interesting to see whether there are differences happening between metropolitan and country. The percentages referred to in this slide are percentages of the total. Under "metropolitan", the first one you have is that 5.7 per cent received a sentence of imprisonment, that is, 5.7 per cent of the total that were sentenced at the Local Court in 2003, and so on down that group.

What is not listed is the large number, around 50 per cent, who get a fine, and then there are other orders that do not require our involvement or supervision, such as compensation orders, disqualification of licence and so on. In terms of what we are involved with, you can see the percentages and compare them in terms of the country. So, it is true that imprisonment is a larger percentage of the total country's sentencing, whatever you make of that.

The last slide also confirms what you have heard and what we know, that is, that home detention and periodic detention have very limited availability in rural areas. You can see that in terms of the total percentage, CSO is more frequently used in metropolitan areas. These percentages are more difficult to analyse because you have a much greater population base in the metropolitan area. This slide is to show the spread—and I was hoping to have the district offices on there too so you could see the spread. You have held hearings at various rural locations and probably have developed a very good idea of the range of district offices and community offender services around the State. This shows the gaol locations and the PD locations.

What is noticeable in terms of the community offender services district offices is that we have far more out to the outer west, in the mid-west and down the South Coast, areas that are not well served with custodial options. Home detention and periodic detention are available in the metropolitan, Hunter and Illawarra areas. PD is additionally available at those four centres. Compared to other community-based orders, the numbers involved in these two programs are very small.

When you look at the availability of home detention and periodic detention you would have to say that the legislatively based criteria obviously limits the range of offenders who are eligible for these orders. Community-based orders are the only community-based orders where legislation prescribes certain offenders from participating. There is also legislatively based suitability criteria in relation to both home detention and periodic detention and there is also the issue of the availability of resources that limits the spread of these programs.

PD is available in four country locations. Not all correctional sentences obviously contain PD centres. There have been queries as to whether it would be possible to convert some of our full-time beds. Given the level of demand on full-time beds, the answer is no. In the metropolitan area, again because of the demand placed upon full-time custodial beds, we have recently converted two of the metropolitan PDs and transferred them to Parramatta so we have one very large periodic detention centre at Parramatta and at both Parklea and Silverwater, which previously had PD centres, those beds have been converted to full-time beds.

There is tremendous pressure on the PD beds, rather than the other way around. It is not departmental policy to build anymore standalone PD centres. There seemed to be too many problems, as well as resource issues, in attempting to operate independent, standalone PDs. The issues in relation to the expansion of PDs into rural areas are issues with regard to the suitability criteria, in particular with PDs, and I know that transport comes up as a question today. You have to have transport

arrangements available which will not impose any undue inconvenience, strain or hardship upon the offender. For many people in remote rural communities, that is an impossibility.

There is also an issue in terms of the availability of the offender to attend on a weekly basis for what can be very long periods of time and also issues of people having a particular illness or disability which requires regular daily treatment. That is very difficult for us to organise when we have got isolated centres. I am sorry that the heading on this is not very clear. Basically, it is a picture of what has happened in the PD program from 1988 to 2004. As you can see, there appears to have been a dramatic fall-off in the numbers of offenders who do PD.

Some of it is actually in relation to the counting rules and ensuring that people whose orders have been cancelled are no longer being counted. However, in 1999 there was legislative change, which put further constraints in terms of the focused eligibility criteria and it also provided that the Parole Board was the body that would actually cancel orders. In addition to the fact that there was a much more efficient process for ensuring that orders were cancelled when they needed to be and people were put into full-time custody and the case put before the Parole Board, the population that can actually go to PDs is further constrained.

I would like to focus on something that is referred to briefly in the department's submission and also will emerge in answers to your questions. Because of the limitations placed on home detention—the legislative limitations—if we wish to offer this as an alternative to people in rural and remote areas as a community-based sentencing option what we are looking at is taking elements of the program that apply under the intensive supervision program, which could be incorporated into the range of bonds that the court currently has as set community-based sentencing options. Basically, this is just comparing what strictly applies to a home detention program and what could apply if you applied intensive supervision conditions to a bond.

You could incorporate the following elements of home detention: electronic, or indeed as we are now trialling, satellite monitoring for those who are considered to be at a higher risk level and who need that intensive 24-hour, seven-day a week monitoring. You could apply close and intensive case management and you could also provide access to offence-related intervention programs, which are run through Community Offender Services. For a low risk level you could look at the imposition of curfews related to the monitoring.

The Hon. GREG PEARCE: Can I stop you for a second? Are you suggesting a new form of intensive supervision?

Ms McCOMISH: No. I am saying intensive supervision uses all of these models. At the moment we only apply our intensive supervision program to home detention and Drug Court. So I am saying if indeed really it is available to courts if other resources were available as an option to impose these stricter conditions, which we apply in intensive supervision.

The Hon. GREG PEARCE: As another different alternative?

Ms McCOMISH: No. It is taking the elements of the program of intensive supervision—whether that be monitoring by electronic means or whatever or whether it be the intensity of the case management—and saying, "We could apply these in more remote areas as well, given certain circumstances and availability".

The Hon. GREG PEARCE: Resources.

Ms McCOMISH: Yes. So it is not a new program because, in a sense, the courts have all these options available under those bonds in terms of the conditions they apply. But at the moment we cannot offer that because we do not have the resources available.

The Hon. GREG PEARCE: So that is the key issue.

Ms McCOMISH: Yes. So, basically—and I think this probably goes to what you just asked—intensive supervision in this sense would provide for the expansion of community-based

options if we were given those kinds of resources. You would apply it within the existing legislation. It is not a new program but the courts could just specify the conditions.

I will finish this up by saying that there are some alternative models for community-based sentences—there is certainly at least one—which we have established, which is a diversion for women with dual diagnoses. It is called Biyani Cottage and it is attached to the Long Bay complex. It is not part of a prison; it is not gazetted as a correctional centre but it is on the complex at Long Bay. It is essentially for women who are offenders who have both mental health and/or intellectual disability and drug and alcohol issues, who are greatly overrepresented, particularly in our remand population. They can be sentenced by the court under a bond to, as a condition of the bond, reside at Biyani. It is also used for women in danger of being revoked on breach of parole or, indeed, as preparation for parole.

CHAIR: Who runs it?

Ms McCOMISH: Community Offender Services runs it; we run it. It is 24-hour seven-day a week accommodation. It is a very small domestic-style cottage that can only take five women at a time. They have highly complex needs and we apply very intensive case management. The process is to both do a very thorough assessment and case plan and link it in with appropriate rehabilitation services or supported accommodation in the community and in that way divert these people who essentially have major health and social deficits into the community. The average stay is under three months.

The other is the proposal of developing a model for home detention in the Kempsey area, which the Government is committed to and which we have done significant research on. This was primarily to provide the opportunity for Aboriginal offenders to have access to elements of the home detention model, which at the moment we do not have. It has tremendous support from the courts up there. Also in terms of the population, it was identified as a population centre where a number of offenders did meet the criteria if we were able to offer the model. It would have to be something of a different model because there would not be sufficient population to have a whole intensive supervision team. So we would be looking at some modification of the way in which the services were provided, emphasising both partnership with local communities and also very primary use of the Aboriginal client service officer that we have based there.

I will finish this now, if I may. Madam Chair, do you wish me to now go back to the questions or to first answer the question you put to me at the beginning?

CHAIR: No, we will ask you some questions using our questions. I will go back to that earlier question. I see that you have been sent a quite detailed question in relation to occupational health and safety.

Ms McCOMISH: Yes.

CHAIR: That is one part of the question. The other part of the question in relation to workplace safety is insurance of the workers. If you could answer the question in relation to training and occupational health and safety it would be good.

Ms McCOMISH: Basically, offenders who are engaged in community service order work are fully covered for public liability. There is a legislative provision whereby the Crown assumes civil liability in place of the community agency providing community work. It is section 121 of the CAS Act. The guide to voluntary agencies and supervisors makes it clear that Crown assumes civil liability. I have a copy of that guide here. I think you may have received it but I have copies that I can hand out if you wish to have them.

CHAIR: Thank you. That would be excellent. I guess the question about occupational health and safety and training was a mixed question in relation to individuals getting a ticket for a skill as well.

Ms McCOMISH: I see. Generally—and I think this leaflet addresses the general issues about occupational health and safety—we provide training sessions for offenders at induction sessions

at the district offices. In addition, the specific occupational health and safety training that is provided to offenders of course depends, in part, on their work location and the work that they will be undertaking. We have also—and all district offices have available—a video and standardised operating procedures which cover the range of work that is generally undertaken by offenders, and that is used in their induction sessions. We have standard operating procedures for, basically, working in kitchens, clerical duties, outdoor duties and so on.

In regard to getting a ticket, there are occasions when we will have an agreement with a local TAFE and where the work goes towards them getting a ticket. There are also specific work locations—I will refer to one of these programs a bit later as an example; it is a specific program called the Keeper Keeper program—where they get a ticket in terms of their occupational health and safety training. They get a green ticket in terms of their availability to work on sites. So it does occur. It occurs on a site-specific basis and depends often on the partnership with the training authorities, such as TAFE.

CHAIR: Do you people foot the bill with TAFE?

Ms McCOMISH: It is a partnership with TAFE. It is usually part of their requirements under their access and equity division. We do have an MOU with TAFE which covers some other training programs that we have. We run a program called PEET—programs with education, employment and training—that is done as a partnership with TAFE. We fund TAFE to provide that together with us.

CHAIR: I guess what reinforced this for the Committee was a visit to Yetta Dhinnakkal, but everybody cannot go there—or should not go there.

Ms McCOMISH: No, it is a prison.

CHAIR: Yes.

Ms McCOMISH: It is innovative but it is a prison, which is different to a community-based sentence of course.

CHAIR: You have given us information about private organisations. You talked about more intensive supervision at the beginning and then not so intensive supervision for people on community service bonds. Is this because the organisation doing the community service management is set up with a reporting process? How does this happen?

Ms McCOMISH: No, you are talking about two different orders.

CHAIR: I beg your pardon.

Ms McCOMISH: In the first case, if the court sentences someone to a good behaviour bond on either a section 9, section 10, section 11 suspended sentence, section 12, unless the court specifies, the service is able to take a decision in terms of the length of the supervision and the intensity of the supervision. When it is a community service order that the court orders and we have an agreement with an agency in terms of the work availability, the agency's only responsibility is in regard to having to clearly meet the standards in terms of occupational health and safety of the work site and they also need to provide reports to us on the person's attendance, which we also monitor. They do not make any decisions about reporting; that is always the responsibility of Community Offender Services.

CHAIR: Thank you.

The Hon. GREG PEARCE: Can I take you back to the slide that you showed us on periodic detention from 1988? You said that the figures were impacted by some sort of correction. When was that done?

Ms McCOMISH: I will probably have to put up the slide or I can get you a copy. Where it showed on that slide the two lines and where there started to be a change—a downward turn—that is what it referred to.

The Hon. GREG PEARCE: So the department was recording people as being on periodic detention even though their orders had been revoked.

Ms McCOMISH: No, I do not think it was a simple as that. I think people were still on periodic detention. One of the concerns was the length of time it was taking for orders to be revoked, which is why the legislative change was brought in. So, in fact, they were still on periodic detention. It was not a miscount in that sense; it was that there needed to be a change in terms of the way in which people were breached and revoked.

The Hon. GREG PEARCE: That was the legislation in 1999?

Ms McCOMISH: Yes, the legislative change was in 1999 but obviously the awareness of what was happening began earlier and it was on the basis of that evidence that it became clear that the legislative change needed to occur.

The Hon. GREG PEARCE: We have a number of lists of organisations that provide, or are supposed to provide, community service work. On the road, we heard that quite a lot of the names given to us were either organisations that no longer exist or no longer provide places for community service work. What sort of monitoring do you do to ensure that the lists are up to date? Are these lists up to date? Can we rely on them?

Ms McCOMISH: You make an interesting point because we rely on the local knowledge and the manager of the local district office. We review it regularly—probably annually—in terms of whether these agencies are still agencies that we are using and whether they still exist. Some of them are indeed very small and they take maybe one offender. They may well have places available one year and then not the next year but they will stay listed with us because they are a possibility for the future.

The Hon. GREG PEARCE: You made the point about lack of resources. What sort of additional resources are required to allow greater coverage across the State? How do you qualify that?

Ms McCOMISH: In order to allow greater coverage you need additional resources to ensure that people can get access to the targeted group work that we can provide through the service. Some of that is staffing, and sometimes it is specialised staffing. For example, we have trained our staff in the delivery of group work programs. We have issued a whole suite of group work programs. But when you are looking at more remote locations and smaller locations it is very difficult for staff to both run those intervention programs as well as manage their casework. So one proposal has been to establish in a rural area—say, the north west of the State—a small pool of trained group work providers who could work together with staff at the district offices to ensure that they were able to offer the full suite of programs, which would then make a difference to the availability of certain orders.

There are also resources such as transport. Again, for people to attend groups, which are the way in which we are moving to deliver most of our services in case management, in rural and remote areas it is often very difficult to bring people together. One solution that has been provided in locations such as Griffith is that they have access to a bus and they will actually pick people up from surrounding areas. Another is that we develop the programs such that we can offer one-to-one intervention and then perhaps bring people together for just an intensive one day. That also takes resources to modify programs in that way.

The way in which we attempt to estimate what resources are required is by using pilot projects to give us an idea of what that sort of additional service would cost. We did receive enhancements to develop specialised group work programs. We have established special modules so that they can be offered remotely in certain circumstances and/or offered in a kind of intensive version where you could bring people together for just a few days, maybe then a month later a few more days. We know what that costs. So then we can say, "If we are going to do this across other areas, this is the approximate cost we are looking at."

The Hon. GREG PEARCE: Can you give us a rundown of all the pilot programs you have done over, say, the past six years and your evaluations and costings of them?

Ms McCOMISH: Are you referring to group work programs?

The Hon. GREG PEARCE: The pilot programs you were just mentioning and the way you have looked at evaluating and testing the costings of some of these solutions.

Ms McCOMISH: I would need some more specific direction on that. I have got—and I can hand out to you—a table of the suite of group work programs we have developed, which I was just talking about, and a couple of them have been as a result of enhancements under, for example, the Drug Summit or the two-ways together strategies of the Government. That is where we have had the opportunity to develop specialised resources and also training for staff. They have not been evaluated in the sense of the pilots have been evaluated so I can hand that out now. I will also refer to some innovative programs that have been developed and are being implemented, particularly with Aboriginal communities in rural areas. Again, they have only been implemented over the past 12 months so evaluation is still at this stage of the program development, not of the final outcome because you need people to have participated and then been in the community for a couple of years before you really know whether their behaviour change has been maintained. Would you like me to pass out at least the group work sheet?

The Hon. GREG PEARCE: Yes, that would be good.

The Hon. GREG DONNELLY: In your judgement in terms of the home and periodic detention programs, are there any particular parts of the State where you think there is a greater value or need for these to be introduced compared to where we are at the moment? I gather from your explanation that where resources permit you endeavour to try to introduce it and push it out, I guess perhaps from the centre. But are there any particular parts of the State where you think it is a bit light on and if there needed to be a decision about the allocation of resources you would discern that it would be better served over here?

Ms McCOMISH: I will respond briefly and I will hand over to Joanne Jousif who can fill you in with more details about consideration of home detention expansion. Some years ago there was an attempt through the home detention area to look at the population spread of offenders across the State and match the profile in terms of the criteria that is demanded by the home detention programs and therefore to be able to focus on where the population need is that we could first expand to, and that is how we came up with the Central Coast in Kempsey. But in terms of the areas of the State where the options are limited, you would have to say that the South Coast is clearly an area, and one of the reasons I would say that is on feedback from the courts. I regularly present to magistrates and district court judges—

The Hon. GREG DONNELLY: Do you mean the Illawarra or the lower South Coast?

Ms McCOMISH: The lower South Coast where they do not have any other sentencing options other than either the bonds offered, in which people have been tried on them and it has not worked for various reasons, or full-time custody. The far west from Dubbo west we are also clearly limited partly by geography, partly by the lack of other services that are available for the offender population. Indeed, the high-population demand area of the Central Coast is the other region that has been identified.

Ms JOUSIF: I can certainly answer that question within the context of my response to question 7 of the questions that were asked of us. Would you like me to do that or wait until Ms McComish has finished?

CHAIR: No, that is fine.

Ms JOUSIF: As far as the statistics that I have recently managed to get from the New South Wales inmate census it appears that the mid North Coast region is also a region worth considering for an intensive supervision program as the statistics of a given day, for instance, at 30 June 2004, on that particular day in the mid North Coast region the New South Wales inmate census indicated that there were 147 inmates imprisoned from the mid North Coast area. That area encompasses—

CHAIR: Taree.

Ms JOUSIF: Taree, the Kempsey area, Bellingen, Coffs Harbour, the greater Taree area, Hastings, MacLean, Nambucca, et cetera. Interestingly enough, as Ms McComish has already indicated in her presentation, of those 147, only 20 are currently in periodic detention centres at the Grafton detention centre, which is the only PD centre in that area. That would leave 127 doing full-time imprisonment. Of that 147, on that day, 30 June 2004, 44.9, which is about 45 per cent, were ATSI recognised offenders.

The Hon. GREG DONNELLY: Sorry?

CHAIR: Aboriginal persons.

Ms JOUSIF: Or Torres Strait Islanders. A more recent—however, this particular statistic, I would just like to add, is preliminary—as at 30 June 2005 there were 144 in the mid North Coast region I described earlier serving full-time imprisonment in that area. Twenty-two of those were periodic detentions so we will say 122 were in fact serving full-time imprisonment in that area. Of those 122 inmates, 46.5, 47, close to 50 per cent were Aboriginal or Torres Strait Islanders, so it is close to half. This is the area that we have considered providing, the home detention program in the Kempsey area, due to those statistics.

The Hon. GREG DONNELLY: In terms of the evaluation of the success or otherwise of home detention and periodic detention, how are those assessments made? What methodology is used to make judgements about the success or otherwise of the programs?

Ms McCOMISH: Basically, one pretty gross measure of success is recidivism and return to offending. I say "gross" because there are clearly many other factors other than the person's participation in a program or a sentencing option that affect the likelihood of them reoffending. We also look at the successful completion of the orders, that being an indication that the person has actually managed to make the changes and remain law abiding usually for a fairly significant period of time that they are on the order and meet the requirements of the order, which with both periodic detention and home detention are quite demanding, particularly home detention. The completion rates are available in the department's annual report and I believe in the department's submission.

The Hon. GREG DONNELLY: In terms of making this evaluation, is there any indication that it seems to be more successful for the female population compared to the male population, or is it too early to tell?

Ms McCOMISH: No. I think that partly it is that numbers are small and also there is concern with both periodic detention and home detention that there may be aspects to the suitability and legibility criteria which actually work against women being involved in those two alternatives. Women are generally a very small minority of the number of people convicted of criminal offences but they are even fewer in their percentage that attend both periodic detention and home detention.

The Hon. DAVID CLARKE: We hear a lot about the high indigenous prison population in comparison with the non-indigenous prison population. However, would not these figures be skewed by the fact that home detention and periodic detention is not available in large areas of rural and regional New South Wales?

Ms McCOMISH: That is certainly an hypothesis that is put forward, and I think it goes to the figures that I gave about the percentages in rural areas of offenders who are sentenced to imprisonment as compared with those in the metropolitan area.

Unfortunately, at this stage we do not have a detailed analysis that would allow us to work out whether that discriminates against a particular group, such as Aboriginal people. What we do know is that in the large metropolitan communities of Aboriginal people there is certainly an overrepresentation of Aboriginal men and women, particularly Aboriginal women, from the metropolitan areas in that remand population. So it is perhaps not so much the sentencing options as the bail options that are available, and that what is discriminating against certain groups, including Aboriginal people, are the guidelines around the provision of bail.

The Hon. DAVID CLARKE: But you do not exclude the possibility that the limitation of home detention and periodic detention is working against Aboriginal communities?

Ms McCOMISH: I do not preclude it, and I do not think anyone does. It is certainly one of the concerns about those kinds of alternatives not being available in rural and remote areas, given the goal of us all, I think, to reduce the high levels of Aboriginal incarceration.

The Hon. DAVID CLARKE: Do you believe that periodic detention and home detention options will become more readily available and that the problems involved in offering them will more or less melt away with continuing satellite and electronic advances?

Ms McCOMISH: Whether it is home detention as it exists now or using conditions of intensive supervision attached to violence, I think the availability of electronic monitoring and satellite monitoring add a level of surveillance that clearly addresses concerns of communities about security and safety.

With regard to periodic detention, I do not think that those technological advances will have an effect on periodic detention as we do it now. If we were to change the way in which periodic detention operates, so that instead of requiring a residential component in a custodial environment you used the technology to ensure that people were safely and securely in their home, of course it would have an effect, but that would require changing our periodic detention legislation and program.

CHAIR: Would you please take on notice the questions forwarded to you and provide the information to the Committee?

Ms McCOMISH: Yes.

CHAIR: One of the Committee's terms of reference relates to looking at this issue in other jurisdictions. Do you have an opinion about a jurisdiction within Australia that would be good for this Committee to look into in more detail in order to properly complete our report?

Ms McCOMISH: Yes. Two jurisdictions spring to mind, for quite different reasons. Victoria has witnessed a reduction in its prison population—it is the only State in Australia to show that over the last year—and it has been through a process of greatly strengthening its community corrections operations. I think at least part of that would be the range of options that State has available for the sentencing authorities.

Queensland is very interesting because of the extent of its rural and remote locations. It is now engaged in a similar process to that of Victoria, in that Victoria did this some years ago and Queensland is now looking at what it needs to do to strengthen its community options so that there is greater usage and greater efficacy particularly in its rural and remote areas.

CHAIR: Despite the fact that the Committee has not heard a lot of angst from the community in relation to community service-type penalties, there definitely is some; indeed, we have submissions to that effect. Do you have any suggestions to make about ways of introducing information to the community so that there is more recognition of the harshness or otherwise of these penalties?

Ms McCOMISH: Yes. We are working to develop a package of information and publicity about community sentences and community-based operations for the department. Again, there is something of a model in the way it is being done in Queensland. So there is a package available for me to send out to all my district officers, the district managers then use a template in terms of a presentation about the orders in general, the kind of bonds there are, how issues of justice, such as punishment, incapacitation and rehabilitation, are addressed, and they can specify in terms of what is available locally in that community.

There will then be a requirement upon managers to engage with a wide range of groups in the community, both informally and formally. That is something that we see as extremely important if

you wish to build the kind of community support for the range of options to manage people in the community.

Answers to questions on notice and PowerPoint presentation tabled.

(The witnesses withdrew)

TREVOR CHARLES CHRISTIAN, Manager, Sydney Regional Aboriginal Corporation Legal Service, 619 Elizabeth Street, Redfern, sworn and examined,

NADINE ANNE MILES, Solicitor, Sydney Regional Aboriginal Corporation Legal Service, 619 Elizabeth Street, Redfern, and

SHERYN OMERI, Research Solicitor, Coalition of Aboriginal Legal Services New South Wales, 619 Elizabeth Street, Redfern, affirmed and examined:

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

Mr CHRISTIAN: I am.

Ms MILES: I am.

Ms OMERI: I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you wish to tender should be seen or heard only by the Committee, please indicate that fact and the Committee will consider your request. If you take questions on notice, we would appreciate your response to the questions to be forwarded back to the Secretariat by Friday 23 September. Would any of you like to make a short statement?

Mr CHRISTIAN: I have been working in the prison system for the last 35 years, the last 8 or 9 years as the Manager of the Aboriginal Legal Service in Sydney, so I know a lot about the people involved.

Ms MILES: I do not wish to make an opening statement.

Ms OMERI: I would like to make a short opening statement to clarify my role. As the Committee is aware, I am a research solicitor for the Coalition of Aboriginal Legal Services, which is the peak body that represents the six Aboriginal legal services in New South Wales. As such, although I attend today's public hearing with managers of the Sydney Regional Aboriginal Corporation Legal Service, which is a COALS member organisation, I do so as a representative of all six Services in New South Wales.

I will allow Trevor and Nadine to answer questions that pertain directly to the Sydney region, but if a question pertaining to one of the other Services or the six Services generally should arise, I will do my best to respond.

CHAIR: I would also like to thank you as a group for the excellent submission that came from Melissa Wood.

Ms OMERI: Melissa Wood is the receptionist. I prepared the submission.

CHAIR: It is a very good, detailed submission, thank you. Before we start I would also like to ensure that you know when we were doing our field trips Aboriginal legal aid persons came wherever we were and gave some very good information and there was some interesting information that we got from the community and we would like to ask some questions based on that that you people may be able to straighten us out on so we know where we are heading.

I will start the questions from the formal questions that you have. Can you comment on your experience in dealing with Aboriginal clients in the Sydney metropolitan area and the impact of the availability of community-based sentencing in the Sydney area?

Mr CHRISTIAN: Facilities and resources are very limited because 80 or 85 per cent of the clients that we deal with have a drug and alcohol problem or a mental illness and each year we spend between $75,000 and $90,000 on medical reports that do not finish up in correctional health to help with rehabilitation. I have been talking with the Attorney General about it and different other people—

even this lady here, Catriona McComish—about assisting people when we pay for these medical reports that go to the sentencing judge in the court that are not carried on to correctional health to help those people with rehabilitation or classification within the prison system.

Even the resources outside are very limited. We have Aboriginal medical services that do not cater for a lot of these things that we need for sentenced prisoners in the way of psychological reports or psychiatric reports and stuff like that. So it makes it very hard when probation and parole in the court system are writing pre-sentence reports for Aboriginal defendants.

CHAIR: Could you tell me who does medical reports for you? Who do you hire? Private psychiatrists? Private psychologists?

Mr CHRISTIAN: We have got a couple of private ones but one big one that we deal with is Robilliard and Duffy at North Sydney. So we put a lot through there, although we have got different other individual ones that we use as well. But it is a big thing out of our budget when we are paying that sort of money. We have spoken with the health authorities in New South Wales about it many, many times; I have spoken with Catriona McComish about it many, many times about stuff in the prison system.

CHAIR: Do you know if there has been any influence by the introduction of the psychiatric nurses through the Attorney General's department with the courts? Has that assisted at all?

Mr CHRISTIAN: We have written letters. Sheryn has written letters to the Attorney General's department and the chief judge and we have got replies back from them, but there is still some red tape involved in whether there is some legal problem with it at the moment, so we are still trying to work that out. But it would be very good if those reports could follow those people to the prisons; that would assist us in rehabilitation and being able to do things as an aftercare when these people come out or while they are in there.

CHAIR: When instead of going to prison people get community-based sentences do you know if probation and parole actually get access to this information or do they have to start from scratch again?

Mr CHRISTIAN: They have got to start from scratch again.

CHAIR: That is a very important issue, thank you.

The Hon. DAVID CLARKE: Mr Christian, a lot of publicity has been given to the high indigenous prison population in comparison to non-indigenous levels. Do you believe that the limitation of the home detention and periodic detention programs in rural and regional areas of New South Wales skewer those figures?

Mr CHRISTIAN: There are a few problems with that because of the housing, because of the floating population that we have with Aboriginal communities in the State in and out of the city; in and out of this city alone we have a between 8,000 and 10,000 floating population that come down here for sporting things or they have got relations here in the city and they come down from Brewarrina, Dubbo, Walgett, Griffith, all those areas. They are in and out of town all the time, so it makes it very difficult for these people.

The Hon. DAVID CLARKE: But do you believe if these programs were fully available right throughout the State that the prison rates for indigenous Australians would be lower?

Mr CHRISTIAN: No, I do not.

The Hon. DAVID CLARKE: You do not think it would make any difference?

Mr CHRISTIAN: No.

The Hon. DAVID CLARKE: Do you have any comparison figures of indigenous Australians between regional and rural areas and metropolitan areas where these programs are

available? Is there a higher percentage of indigenous Australians going to prison in metropolitan areas than in rural and regional areas of New South Wales?

Mr CHRISTIAN: In all my years in the prison system I have only known of two or three that have completed periodic detention and home detention—of all the people that I have known. So it is not a very good success rate.

The Hon. DAVID CLARKE: You are saying there are virtually none who have successfully completed home detention or periodic detention?

Mr CHRISTIAN: I think two or three.

The Hon. DAVID CLARKE: And what is the reason for that?

Mr CHRISTIAN: In the country areas, as I say, it is pretty hard because of the housing problem; they have got no air-conditioning; they have got no telephones in their house; they have got nowhere to ring up to see if they are home and things like that, so they are going out to make calls or when they get the calls to let them know where they are.

The Hon. DAVID CLARKE: What about in metropolitan areas?

Mr CHRISTIAN: It is a little bit different in the metropolitan area, but I do not think there has been a lot of success here in the metropolitan area because a lot of the people that go before the court for home detention because of their classification and recidivism are not suitable unless they are first-time offenders.

The Hon. DAVID CLARKE: So how do we overcome this problem?

Mr CHRISTIAN: I think with rehabilitation and education while they are in the system. I have spoken about this many, many times to correctional health, corrections, about when people go into the prison system that they have a medical done on them when they first go in to prison, and this does not happen at this stage, that they going to prison and they are asked what is wrong with them. We have so many people that go into prison that have medical problems, that have heart problems, diabetes, epileptics and different other things when they go into the prison and they are not picked up because they are not diagnosed by doctors that they have in the medical field in the prison system.

The Hon. DAVID CLARKE: Would you not say that home detention is in fact a form of rehabilitation?

Mr CHRISTIAN: Well it is if they are educated in that way and told about that and helped along with that system.

Ms LEE RHIANNON: This question might be directed to the three of you. When we were on the road there were stories that we might hear, that maybe because of the bulk of the work or for other reasons Aboriginal clients were often encouraged to plead guilty to an offence. Is that something that you believe happens, and if so why?

Ms MILES: Can I just say that in working with the Aboriginal legal services for a period of now over six years, it is clearly something that has been brought to my attention time and time again by other solicitors but, more importantly and unfortunately, by the client population themselves. It is the case, as a practising lawyer now dealing with Aboriginal clients, that more often than not you have to sit down with your client and you have to explain the strength of the Crown case that they face. They may well face an overwhelming Crown case and we have an obligation both ethically and an obligation to the court to explain to that client their likelihood of successfully defending that case.

It may be the case that there is no legal defence to the matter at hand. So do we encourage people to plead guilty I think is stating the case too strongly. What we do is we meet our obligations to our clients, as I said, professional obligations, to explain to them the options that they have and to encourage them, if appropriate in all the circumstances, to indeed take up the option of entering a plea of guilty to ensure that they get the maximum discount on penalty that would flow from an early plea

of guilty. Do we not give the clients an option to plead not guilty and run the case anyway? Absolutely not.

I want to make that very strongly that lawyers in the Sydney Regional Aboriginal Legal Service are trained and also time and time again it is explained to them that if they are having a difficulty with a particular client in their practice who they feel is not accepting advice with regards to the strength of the case, then we will plead them not guilty and there is absolutely no problem whatsoever in doing that. It is the client's choice. The lawyers know that it is the client's choice and there are no questions asked: it is a not guilty plea. I hope I have answered that adequately.

Ms LEE RHIANNON: Just staying with what happens in the courts, in your experience do the courts ensure that offenders with a low level of literacy understand their obligations when on bail or undertaking a community sentence by reading the requirements of the bond to the person or is it more often left up to the solicitor to explain what has happened in the court?

Ms MILES: In my experience it is the case that many magistrates in the Sydney regional area do take the time and do make a concerted effort to explain clearly the obligations that a client will have, whether it be on a bond or on bail. I can also say that there have been many occasions when I have been standing at the counter listening to counter staff and court staff also attempting to explain clearly the obligations that a person will meet. Unfortunately, there are many occasions where, despite the best efforts from court staff and magistrates and judges, clearly it is the case that the client has just completely misunderstood the terms and conditions that they walk out the door and are obligated to follow.

For instance, just anecdotally, many clients in my experience once given a bond the first question that they have for me is, "Do I still have to report now?" Meaning that they have missed the difference between obligations on bonds and the obligations that they had previously on bail. Breaking down the legal language which court staff and magistrates are so familiar with that is second nature to them I think is a difficulty which needs to be combated perhaps with an education or further education and training in breaking down and using very simple English and very simple explanations, because people are nervous; people have difficulties with comprehension; Aboriginal people, unfortunately, have difficulties with hearing. They do not admit to these difficulties readily. I and solicitors that I work with do everything that we can to ensure that our clients understand their obligations.

But the community has to realise that our lawyers are not going to one court with one client, our lawyers more often than not have a number of clients on one day and a number of obligations with different courts in the same complex. To be able to have the time to explain to your clients clearly their bond obligations or bail obligations is not a luxury we have every day with every client, which is an unfortunate thing. But we do our level best to ensure that clients do understand their obligations.

Ms LEE RHIANNON: It is a similar situation outside Sydney?

Ms OMERI: It is, yes.

Ms LEE RHIANNON: Have any of your clients whom you considered eligible for a community-based sentence been deemed unsuitable and not received a community-based sentence?

Ms MILES: I see this question effectively mirrored through the questions that have been asked of us that the idea of a person being eligible for a community-based option is one which I see as defined by the legislation and the built-in criteria. The suitability rests pretty much solely on the shoulders of probation and parole officers. When they come to assess people, for the assistance of the court and writing their reports, they place upon them further guidelines which, in my understanding, are probation and parole guidelines but also, again I should say and I accept, are guidelines that have been set up by the statute.

I speak generally and I will talk about certain community-based options. As Trevor previously said, our clients unfortunately but generally are clients with significant alcohol and drug dependency problems. They are people with significant and sometimes crippling mental health problems. Our clients have a range of difficult circumstances that follow them and that will continue

to follow them for quite some time. Our clients also unfortunately come from situations where domestic violence and personal violence is a large factor in their upbringing and a large factor in the life they currently lead. Those particular key issues that I have addressed to you, I think the Committee would understand, are built into the suitability/eligibility criteria of the community-based sentencing options past a supervised bond.

If a person has a significant problem—I think the legislation speaks of a major problem—with alcohol and drugs, then they are deemed to be an unsuitable person. If they have a major medical problem which would see them unfit to attend they are deemed unsuitable. Probation and parole has, in my mind, significant power essentially placed upon them by the legislation in that one probation and parole officer who writes the report—and the report is primarily resourced from a person's previous file with probation and parole and perhaps one further meeting with that person—can deem a person to be suitable or not suitable for community-based sentencing options. That one officer can sometimes, in my mind, be seen to usurp the discretion that the court should ultimately have in making sure that if a person has some difficulties in their previous history but also their personal circumstances that there cannot be a little bit more effort and perhaps some support—whether it be from probation and parole itself or from their particular community or from another service that they can be referred to—to combat some of the difficulties that they might face to actually push them just over the limit and be deemed to be eligible for some of the community-based sentencing options.

It is unfortunate that a lot of our clients go through the system—and I think the Committee would realise that a lot of our clients have significant criminal histories—and they receive bonds, they receive supervised bonds and then there is usually and unfortunately a jump from a supervised bond straight through into full-time custody. There might be a section 12, which unfortunately they would breach and then go straight into full-time custody. They are not being given, because they are not deemed eligible or suitable for community service orders, home detention or periodic detention. In my mind, and I have consulted with several lawyers that I work with, there seems to be a degree of inflexibility built into the system and the criteria set up both in the legislation and in the policies and framework of probation and parole.

With some thought given to the realities of the Indigenous people of New South Wales and the realities that they live in, together with some innovative thinking, perhaps further programs could be designed and perhaps ways could be put in place to ensure that more of our clients are deemed to be suitable for these community-based sentencing options. I also want to throw in the fact that the recent sentencing amendments—I should not say recent because it has been several years now—ensure that someone who is sentenced to more than six months full-time custody is deemed to be automatically ineligible for periodic detention. There is no cut-off for that. It is not limited to within the last two years or five years or even 10 years. It is across the board. A person could have been sentenced on only one matter 15 or 20 years ago, they have shown significant rehabilitation but caught themselves up in a situation where they are back before the court today. They are cut out of that particular alternative due to their history.

It would be of benefit to Indigenous clients, particularly given that they are clients who come before the court with large and unfortunately lengthy histories, to be able to see an amendment to that particular section of the legislation to ensure that there is some time limit or something built in to allow the courts to revisit and utilise that discretion if a person is deemed acceptable but for their previous criminal history.

The Hon. AMANDA FAZIO: Ms Miles, we have heard previous evidence that magistrates may give a section 12 bond with a lengthy period to an offender in the absence of any alternative community-based sentencing. In the event of a breach of the bond the offender is returned to gaol for the entire period of the bond. Would you comment on the use of section 12 bonds and what you would like to see happen to them in the future?

Ms MILES: Anecdotally speaking, I think it is the case that since the introduction of section 12 into the sentencing options that magistrates and judges tend to rely on the section 12 bond. They offer a person a chance to stay in the community but still have gaol effectively hanging over their head for a significant period of time and a significant lengthy sentence. I think it is unfortunately utilised too much, particularly with young offenders. Young offenders, in particular, seem to receive quite lengthy section 12 bonds. It is the case that courts are not moving down the sentencing scale; they

tend to move up the sentencing scale. Once a few options are not available to the court, we are straight into a section 12 bond.

The idea that the sentence should be lengthy to ensure that there is supervision for an extended period of time—and the only way that the magistrate or judge can secure supervision for an extended period of time is to make the actual sentence quite lengthy—is an unfortunate thing because the offence may indeed be an offence that should attract sentence of say three or four months. But to ensure that the person is given an opportunity they might be put on a section 12 bond for a period of nine or twelve months to ensure that the supervision is for a lengthy time. What could be done about it? I will see if I have made notes. I do recall thinking about this. It may be the case that I would ask the Committee to allow me to put something in writing with regard to that particular question.

CHAIR: That would be excellent, thank you.

The Hon. AMANDA FAZIO: Does the Sydney Regional Aboriginal Legal Service participate in circle sentencing? If so, what are the challenges for the program in a metropolitan environment where there are Aboriginal people from across the State living in the area?

Mr CHRISTIAN: At this stage we have not got circle sentencing in Sydney. It will come about out at Mount Druitt, I believe, very shortly because there has been a community justice program set up out there. It will take place hopefully after Christmas. I do not think it will be real successful here in the city because of the faction problem we have in the city. It is okay if it is up in Brewarrina or out in the country areas where you have a community that has been there for years and years and they live in that community. But because we have so many factions in the Sydney area there is really no Aboriginal people here from Sydney. They are nearly all resettled people and there are different factions from all over Australia. It is very hard to run a circle sentencing program here. I hope it does get off the ground but I think it will be very, very difficult. One particular area that circle sentencing does not have an answer to is drug problems. It is unfortunate and I have asked many, many times what have they got in place in circle sentencing to fix up somebody who is a drug addict.

The Hon. AMANDA FAZIO: Do you think there are sufficient health services, such as alcohol and drug counselling, in Sydney for Aboriginal people on community-based sentences?

Mr CHRISTIAN: No, I do not.

The Hon. AMANDA FAZIO: What do you say is needed?

Mr CHRISTIAN: Resources. At the medical centres now there are a lot of things. We try to talk with medical about psychology reports. We are unable to do them through the medical centres now. Very few have got drug and alcohol workers or drug and alcohol counsellors in them because they have not got the resources to be able to employ those people because of all the funds that have been cut by the Federal Government.

Ms MILES: Could I just add that we previously said that drug and alcohol problems, but significantly drug problems, are a huge difficulty that we find our client base has. It is an unfortunate thing that there are no Indigenous-specific rehabilitation centres set up in and around Sydney. We find that we refer a lot of our city clients—people who live in Mount Druitt, in Redfern or in other suburbs around Sydney—to places like Kempsey up to Bennelong Haven and Orana Haven. There are Indigenous-specific rehabilitation centres at Oolong House down in Wollongong. There are Indigenous-specific rehabilitation centres set up in regional areas, which is fantastic and we applaud that. It would be of benefit, I think, to see some Indigenous-specific rehabilitation centres set up in the Sydney regional area so that we can refer our clients to those particular services.

We do that all the time. It is a significant issue for our clients to leave their family and children in the western suburbs of Sydney to travel all the way up to Kempsey for a rehabilitation program that they could enter into for six, nine or twelve months. The closest we have is Wollongong House at Wollongong. We also have The Glen, in the Gosford area. In itself that has significant barriers with leaving family at home and also with throwing oneself into a rehabilitation program that you may find of benefit to you, because it is culturally sensitive and culturally appropriate.

The other drug rehabilitation resource that we rely on heavily is the Aboriginal Medical Service [AMS], about which Trevor has spoken. The AMS is an organisation that I am reasonably familiar with; the Redfern service is just down the road. It has a drug and alcohol worker and a visiting psychiatrist. That visiting psychiatrist comes in one afternoon per fortnight to see all clients from that AMS who might need that kind of assistance. There are not enough drug and alcohol workers in that unit to take on board all of the referrals that we send to them. That is unfortunate. Furthermore, clearly with indigenous people who are coming to Redfern to utilise that service, they are not only coming to where they may get assistance but also effectively to the honey pot of Redfern, where it so very easy for them to be tempted by friends, relatives, extended families, to visit The Block and maybe spend the afternoon or the next three days down there getting involved in all sorts of things that might not assist their rehabilitation, so to speak. There are only two AMSs that are significant and run in Sydney—

Mr CHRISTIAN: Three.

Ms MILES: I apologise, there are three. One in Redfern, and one in Mt Druitt.

Mr CHRISTIAN: And one at Campbelltown.

Ms MILES: Our people rely heavily on building relationships of trust with their medical workers, lawyers and Probation and Parole officers. Relationships of trust are significant to indigenous people. It seems that once that relationship is built, ostensibly the work can start. Dealing with relationships of trust, I want to draw attention to the fact that the Probation and Parole Service has approximately 70 officers around New South Wales. I understand that seven officers are indigenous, and there are only 10 designated positions currently filled with Aboriginal client service officers. To my understanding those Aboriginal client service officers do not do the day-to-day supervision of the clients of Probation and Parole.

The indigenous Probation and Parole officers do not work in indigenous-specific caseloads, which I can understand. But it is the case that because relationships of trust need to be established with our clients more often than not, one way to do that is to work with indigenous people who have been trained specifically to deal with indigenous clients. I want the Committee to look at that issue and consider whether there are significant resources set up in the community to assist with rehabilitation of indigenous offenders.

Mr CHRISTIAN: To continue with that, I have had a lot to do with Probation and Parole over the years. I have spoken many times about them going out into the community and talking with the community about the particular people who they are doing pre-sentence reports on. Because of their resources one may be situated around the courts. So when an Aboriginal guy goes to court he never ever tells them of all the bad things that happened to him, he just tells them about the good things. He does not realise that he is not telling all the story; he is not doing himself any justice by not telling the Probation and Parole officer, because they only go on what they get off that particular person.

But behind that, in the court system we have some lazy magistrates as well. I go to the courts quite a bit and when a Probation and Parole officer writes out a 10-page report, I see them read out the papers like this—they all refer to the last three paragraphs of the report saying "this person is not eligible for community service or weekend detention but we believe he should get a custodial sentence". I know it is very hard for magistrates who have 50, 60 or 70 people to go through on certain days, especially in some other areas such as Bourke and Walgett where there may be 50, 60 or 70 people on a list day. It is very difficult for that magistrate to consider all those things when sentencing. It is different in the city where there is one court to deal with the list and another court to do the sentencing. But even then they are pretty well under the whip in dealing with the clients.

The Hon. GREG DONNELLY: Mr Christian, in your opening comments you indicated that in your experience a deal of your resources are spent on the production of medical reports. What are the medical reports designed for, what are they produced for?

Mr CHRISTIAN: When I guy or woman, a client, goes for sentencing, normally they are asked for a medical report to support their claim. The judge asks the solicitors for a report.

CHAIR: Mostly to do with their mental health status?

Mr CHRISTIAN: Whatever is wrong with them, whether they have a drug and alcohol problem or whatever.

The Hon. GREG DONNELLY: You indicated also that in your lengthy experience there was trouble in getting a breakthrough of that material contained in a medical report before the criminal justice system in terms of recognition of what is in that report.

Mr CHRISTIAN: True. Correctional Services.

The Hon. GREG DONNELLY: Yes. What is the way forward to enable that material to be put forward and considered better than the way it is considered at the moment?

Ms MILES: Trevor, can I answer that?

Mr CHRISTIAN: Yes.

Ms MILES: With all reports we have commissioned to assist people in sentencing, we will ensure that we receive their instructions, ensure some degree of privacy with regard to that information. If we hand it over to Corrections and it follows them to the gaol, who sees it? What is it utilised for? We want to ensure that our clients' privacy is protected to the degree that it should be for us to release to reports we have obtained to assist the courts in sentencing, and allow those reports to follow them into Corrections. That is the area we are looking at now. Ultimately we would need to receive instructions from each and every client to ensure that we can let that report follow them through.

In answer to your earlier question regarding the reports we have obtained: for anyone who is to face a significant custodial penalty, in the Sydney regional area we get a psychological report. We send out a psychologist or a psychiatrist if need be, to write a comprehensive report regarding the background and any difficulties that the clients might face with depression, drug addiction, mental health or a whole host of areas. It is a report to assist the courts in understanding their background and their subjective history and any concerns they may have that a psychologist can pick up on in conferences with a client. It is to ensure that the courts understand the background from which the client has come.

Also it is to assist the courts in offering options with regard to any potential treatment that the person might receive, or assistance that the person might receive, in the community. It is essentially to assist the court in exploring all sentencing options, in particular to be able to make a case for exceptional circumstances for our clients, given the background and current circumstances. Primarily that is what we use the reports for.

Ms OMERI: To briefly add to your second question, in relation to the COALS initiative on transfer of psychiatric or psychologist reports to Correctional Health: Most recently COALS has written to the Chief Judge of the District Court, Justice Blanch, and asked His Honour to issue a practice direction to the effect that with the consent of the defendant the report is to travel with the client to the Department of Corrective Services. It is to then follow them through to their sentence.

The Hon. GREG DONNELLY: Has that been introduced?

Ms OMERI: No, we have just asked for it. We have had a response from His Honour. He indicated that he would support the issuing of such a practice direction, but he needs to confirm the logistics of that with the Department before finally issuing it.

The Hon. GREG DONNELLY: It picks up some of the points you made.

Ms MILES: Yes, and we would need to ensure that if we are telling our clients to consent that we are happy with what is going to happen with that information.

CHAIR: Do you think that community-based sentencing is harder to deliver in rural areas because of intensive policing?

Ms OMERI: I think intensive policing is applicable also to the Redfern area. Quite a bit of study and research has been done on that.

CHAIR: This is just a general area question. Do you think it is more difficult for Aboriginal people to maintain community-based sentencing because of intensive policing?

Ms MILES: To maintain community-based sentencing?

CHAIR: To deliver, to do it? Is it more difficult for Aboriginal people to do community-based sentencing and get through to the other side of it without something going wrong because of intensive policing?

Ms LEE RHIANNON: Because the police are there more.

Ms MILES: I think this is a complex area. That could probably be a factor. Whether it is a significant factor or an overriding factor, anecdotally I would say it is just one of a range of factors and a significant contributing factor. Many clients come to our office, even though they are attempting to address the problems in a significant way, but daily they are stopped and searched by police in and around the Redfern area because the police know them. The police want to know what they are carrying in that plastic bag. You set up people by many means, but that is a significant way to set them up to effectively fail.

CHAIR: Is there difficulty with appeal processes from local courts?

Ms MILES: No.

CHAIR: Thank you for your excellent submission. The Committee has gained quite a lot of extra information. I trust the final report will be of use to you.

(The witnesses withdrew)

(Short adjournment)

PETER BRUCE HARVEY, Co-ordinator of the Sober Driver Program, and President of the Probation and Parole Officers Association of New South Wales, P.O. Box 1327, Parramatta, and

MOIRA ELIZABETH MAGRATH, Manager, Resources and Executive Services for Community Offender Services, and Secretary of the Probation and Parole Officers Association of New South Wales, P.O. Box 1327, Parramatta, sworn and examined:

CHAIR: Welcome and thank you for attending. As the media are not present I will not read the usual statement. Are you conversant with the terms of reference of this inquiry?

Mr HARVEY: Yes, I am.

Ms MAGRATH: I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you do take any questions on notice, I would appreciate it if the responses to those questions could be forwarded to the secretariat by Friday 23 September. Would you like to start by making a short statement?

Mr HARVEY: Yes, we would. First of all, I want to thank you for giving us the opportunity to speak to you today. We believe that our association, the Probation and Parole Officers Association of New South Wales, has a significant contribution to make to debates on criminal and social justice issues and we are keenly interested in the outcomes of this inquiry.

Gaol sentences are on the increase in this State, even though we repeatedly hear that crime is not. Gaols are expensive and largely ineffective in achieving the purpose of sentencing. We recognise the imperative for a punishment at the level that is necessary to deter future offending and hold sacrosanct the protection of the community. Our recommendations echo the experience of other jurisdictions aiming to achieve a sentencing regime which protects the community, punishes the offender with a focus on minimising reoffending, and expedites the offender's reintegration into the community.

We have a PowerPoint presentation and I will go through that. The question is: why sentence? The purposes for which a court may impose a sentence on an offender are as follows: to ensure that an offender is adequately punished for the offence; to prevent crime by deterring the offender and other persons from committing similar offences; to protect the community from the offender; to promote the rehabilitation of the offender; to make the offender accountable for his or her actions; to denounce the conduct of the offender; and to recognise the harm done to the victim of the crime in the community. Imprisonment rarely satisfies all these purposes but community-based sentences can. We are now ready for questions.

CHAIR: When we were doing our field trips we met several very hardworking, innovative good people, who work for Probation and Parole. In your submission you state, "with adequate resources we can develop a suite of options tailor-made for rural and remote areas and disadvantaged groups". Can you please provide the Committee with more details on these possible options?

Mr HARVEY: At this stage in New South Wales, unlike other jurisdictions and clearly most Australian States, the United Kingdom, New Zealand, Canada and parts of the United States of America, we are continuing to put most resources into gaols. It is a chicken-and-egg argument. The demand is there so we need to produce the inmate beds to meet demand. Other jurisdictions tackle this by saying, "Demand is there. Let's develop alternatives." Courts have welcomed the availability of other options.

In Victoria, for example, the inmate population is, in fact, decreasing. We will take our lead from other jurisdictions like the United Kingdom, which provides the equivalent of supervision on bonds, community service orders, as well as intensive supervision but also has the option of drug

treatment and testing orders and curfew orders. The optimum would be to roll the orders up and determine them, as necessary in particular cases, under a broad order with specific conditions.

What we are saying here is that we believe in the United Kingdom model where someone gets an order which allows the supervision officer to determine what part of that order they may take. They might want a community service order, a supervision bond or some intensive supervision order, or even a curfew placed on the offender. We believe this would help because, currently, such orders as home detention and periodic detention are very exclusive. For example, we heard from the previous people that you cannot go onto a periodic detention order if you have had six months or more gaol, which is exclusive. We would like to broaden that so that people could be put on home detention or periodic detention with broader specifications.

Assessment would be fundamental and include a whole-of-sentence plan, which could form the basis of a case plan, whether the offender was sentenced to imprisonment or a community order. Flexibility is the key to allow for the implementation, regardless of the offender's location or particular circumstances. Assessment, we believe, becomes very crucial in terms of being able to meet people's needs. We need to be able to assess them to see whether they have alcohol and drug issues, mental health issues or domestic violence issues. We need to see that what we are assessing them for is appropriate to their cultural backgrounds and the individual person's circumstances. For example, they might live in remote locations where there is not the ability to undertake a home detention or periodic detention order, as we currently have them. Do you want to add anything?

Ms MAGRATH: No.

The Hon. GREG DONNELLY: The Committee has heard in previous evidence today that in other States increasingly private security companies and local communities are contracted to provide correctional services—and there is international experience to that effect as well. In your opinion could this be an effective model to be looked at for probation and parole in New South Wales and if you do not think it is, why do you not think it is?

Ms MAGRATH: We have structured our presentation in the order of the questions.

CHAIR: We had better stay in order.

Ms MAGRATH: It probably makes more sense. The way we have structured means it flows on, which will save repetition.

The Hon. GREG DONNELLY: On page 3 of your submission you talk about early indications of high eligibility rates for home detention in many remote areas surveyed. Could you please provide the Committee with more information about this survey and the results?

Ms MAGRATH: Certainly. This exercise was completed several years ago and what they did was to match the broad criteria for exclusion from home detention, being the length of the proposed sentence of imprisonment over 18 months and the offences which were excluded from home detention consideration—rape, pillage, murder, those sorts of things—and they matched that against the data from the inmate census by postcode. The return of that was a substantial pool of inmates who, on the face of it, against the broad criteria, were potentially suitable for home detention or certainly were candidates for assessment in rural areas. Even though this exercise was done several years ago, nothing has significantly changed in the criminal justice arena to suggest that the results would be any different if we replicated it now.

On top of that, the then director of the intensive supervision programs, who is responsible for home detention among other things, met with magistrates from the mid North Coast to the far North Coast and talked with them about home detention. Without exception they were very enthusiastic about having access to home detention as a sentencing alternative. They talked about a lack of access to periodic detention in those areas as problematic for them and they saw home detention as a real sentencing solution for an identified gap.

In fact, the previous witnesses were talking about heading up the hierarchy of sentencing and what happens a lot of the time is that sentencers feel that they have exhausted the community-based

options so they are looking for more intensive options and if they do not have home detention or periodic detention, the jump is straight from a section 12 bond to gaol. They were loath to proceed to that alternative but felt that they had no option.

I suppose the other thing is that the establishment of the Mid North Coast Correctional Centre in the last 12 to 18 months recognised the number of offenders actually living in those areas and the need to "accommodate" them closer to their homes, their people and so forth. If we had made a significant investment in community-based options, we may well have obviated the necessity for the establishment of that particular correctional facility. The opportunity exists to act now. If we read the regional papers, they are all talking about "how we might get a gaol for our area", so the opportunity is there now, before yet another correctional facility is announced in the countryside, to create those community-based options to fill that gap between bonds and gaol.

Just leading on again from the previous witnesses, in terms of the way that home detention is structured and the exclusions that are in the legislation at the moment, if we adopted the model that Peter mentioned earlier of having a broad roll-up order where either the sentencer or the supervising officer could add bits and take away bits as offenders progress or regress in the course of complying with the sentence, we could vary the home detention model to much better accommodate Aboriginal offenders and a lot of offenders who are in now considered not suitable; this would be just by varying the way that we do it.

I know that the Community Offenders Services Senior Assistant Commissioner is certainly very keen to develop a model that would apply in rural and remote areas. I do not know whether she spoke about that earlier today.

CHAIR: When we were out in the country some Aboriginal people said, "Don't lock us in our houses. It would be terrible."

Ms MAGRATH: Home detention is perhaps something of a misnomer in that it does not necessarily mean locking in a house. Certainly, that is something we would have to look at for Aboriginal offenders. What it is about is containing activities and whilst you might look at imposing curfews and say that people have to be at home between 8.00 p.m. and 9.00 a.m. or whatever, we would really be encouraging and doing our best to facilitate attendance at programs and engagement with the community. All of the evidence points to engagement with the community as being the lead factor in rehabilitation and reintegration with the community.

Ms LEE RHIANNON: The Committee has heard previous evidence that periodic detention combined with development programs would be beneficial. What types of programs do you believe would be most beneficial to prevent reoffending for those on a periodic detention order?

Ms MAGRATH: Community Offender Services already provides a range of programs targeting offending behaviour and more are being developed all the time. If periodic detention is to be anything more than merely punitive and just periodically incapacitating to people and if it is to contribute to rehabilitation at all it has to include a program option. I would see that certainly that could be included at stage 1 of periodic detention. There is no reason detainees could not participate in programs in addition to doing community work. Given that periodic detainees are generally towards the lower risk of the likelihood of reoffending and are often there for driving-related offences, some of the programs currently offered by Community Offender Services could be of real benefit. I am thinking of things like the Drug and Alcohol Addictions Program that we have just rolled out. We have also just rolled out a Relapse Prevention Program and Peter—the king of the sober drivers—has been co-ordinating the Sober Driver Program in the community for some time.

Mr HARVEY: At one stage sometime ago a commander of periodic detention in the northern area rang me, as co-ordinator of the Sober Driver Program, and said, "Could we run the Sober Driver Program in the periodic detention centre?" simply because they had a lot of drink drivers there and it would have been beneficial. Unfortunately, that was not to be the case.

CHAIR: Why?

Mr HARVEY: The Sober Driver Program is developed for delivery in the community. It is an educational program that has some therapeutic basis to it but it is on the presupposition that you are living your life in the community, you are able to go and drink and you have access to a motor vehicle. It teaches people that in that particular scenario if you are going to drink do not drive and if you are going to drive do not drink. That is the mantra of the program. We were testing it within a full-time custodial setting at the time—we piloted it there—and noted that there needed to be some changes. However, additional resources were needed and they were not available. So it did not get off the ground—although I have to say that it is being looked at by Community Offender Services and the department as a whole.

Ms MAGRATH: Following on from that, in talking about delivering programs in periodic detention, we would say that periodic detention is not a preferred option among community-based sentences given the cost of the infrastructure and the consequent access issues for offenders in rural and remote areas. To build it, to maintain it and to staff it is much more expensive than other community-based options which would be equally, if not more, effective. You also have the question of the vulnerability of some groups of offenders, who just cannot ever be assessed as being suitable for that dormitory-style accommodation that periodic detention begins with. They are unsuitable for periodic detention and so they are straight into gaol.

The other thing about periodic detention—and probably for all orders—is what happens when an offender fails to comply: when there is a breach of the order. Very often that leads to the next step in the hierarchy of sentencing, which is very often gaol. So you get people going to gaol because they failed—sometimes in a way that was outside their control—to comply with a condition of the order. They are not in gaol for a new offence; they just did not comply. We believe that, with the sort of roll-up order that we were talking about before, we could step those sanctions for failure to comply in a much more constructive and productive way that would lead to reducing reoffending for particular offenders and for groups of offenders.

CHAIR: Page 4 of your submission states that about 18,000 people on community orders in New South Wales are managed by about 600 Probation and Parole officers. Do you believe that the Probation and Parole Service is currently sufficiently resourced to monitor this number of offenders? If the number of offenders monitored in the community were increased, what resources would the Probation and Parole Service need?

Ms MAGRATH: Community Offender Services operates with a workload model that allocates a number of hours for each offender based on their presenting risk of reoffending, which is measured by an actuarial instrument. But we tailor our level of service according to the available budget because we cannot increase the pie. So Community Offender Services within the correctional environment operates as a very lean machine. We have been blessed with a very able, capable senior assistant commissioner, who has done her utmost to bolster the resources available to Community Offender Services to enable service delivery of the highest calibre. But obviously with more resources we could achieve much more, and it is interesting to note that other jurisdictions have made much more investment in community-based options. In Victoria and New Zealand, for example, they have had significant budget enhancements—lots and lots and lots of dollars—and as a result have been able to achieve a lot of change, with Victoria effectively stalling the rise in the prison population.

In New South Wales about two-thirds or 67 per cent of inmates are serving short-term sentences. They cost about $190 each a day. Because they are in gaol for less than six months they cannot access the programs that are available in custody because—I suppose it is quite ironic—they are not in gaol for long enough. So they go in, they are temporarily contained, they come out, nothing has changed so they reoffend. They just keep clicking through the turnstiles. This is the population that we most need to target. Many of them are Aboriginal. We have in New South Wales an embarrassingly large proportion of Aboriginal offenders, in particular Aboriginal women, in custody.

Training is provided for probation and parole officers but there is no relief provided for them while they are at training. So if we take somebody to do a training program for four days for Sober Driver, for instance, with some exceptions for some programs, there is no backfill so either the colleagues pick up the work that happens during those four days or the officer comes back to work with four days extra work to do. In programs such as Sober Driver, where there is external funding

through other agencies, we have been able to backfill and, with an injection of funding, we would be able to do that with all training programs.

Similarly, it is our belief that Community Offender Services should be exempt from the budget cuts that operate across the department. So if the department is going over budget and the bean counters suggest that the budget has to take a 10 per cent cut, that is across the board. If you do not have any fat, there is no fat to cut so you start to cut the meat. So that starts to cuts into our core service delivery and, again, we are unable to deliver the service because of resource issues. So the answer to the first part of the question is: No, Community Offender Services is not adequately resourced for current operations.

Regarding part two of your question, that would depend on the nature of intervention provided and it would be a direct equation. Given that we would be looking for diversion from custody of a lot of those short-term inmates and that we would want to deliver programs without the exclusions currently operating in, say, home detention, we would be looking at a medium- to high-risk group of offenders—high risk of reoffending—so the equation would be something in the order of 15 to 20 offenders per officer plus administrative support, technical support, vehicles and so forth. But even with our most expensive interventions, we average about $65 per offender per day compared with the $190 for each offender in custody. If we picked up just one-sixth of those 67 per cent, we would be looking, in the current climate, at picking up, say, 1,000 offenders and that would generate a saving of $125,000 a day. So a short-term investment to properly equip and train as well as develop the programs will definitely have a long-term return for the department, for the justice sector and, most importantly, for the community and for the offender.

CHAIR: Thank you.

The Hon. DAVID CLARKE: Ms Magrath, can you outline the ways in which Probation and Parole can increase coverage in rural and remote areas, including any new equipment that probation and parole officers may require?

Mr HARVEY: Can we come back to that question in a little while?

The Hon. DAVID CLARKE: Okay. Can you expand on what type of training or staff development you believe is required for probation and parole staff? Are probation and parole staff trained in alcohol and drug and anger management counselling?

Ms MAGRATH: Officers are selected for the job of probation and parole officer on the basis of existing knowledge and skills. When they are successful in getting the job they complete a primary training program over eight weeks and they receive additional training during the first year of the service. That leads them to certificate 4 correctional practice. The training encompasses such areas as writing reports for courts and for the Parole Board, case management in a correctional setting, alcohol and other drugs and there is also training available in group work facilitation, motivational interactions and for specialist roles such as community service work organiser and for working in the pre-release function in gaols. Recently introduced programs have their own specific training packages which officers have to complete before they can deliver the program, and that applies to Sober Driver, drug and alcohol programs and to Think First and the new domestic violence program that we are piloting at the moment. Training is available but, with a few exceptions, there is no backfill for staff attending training. By comparison with other jurisdictions, the training is not as intensive as it needs to be in order for us to go more down the therapeutic path, which would enhance the contribution to reducing reoffending.

The Hon. DAVID CLARKE: Thank you.

Mr HARVEY: Returning to question 5, about increasing Probation and Parole coverage in rural and remote areas and new equipment for probation and parole officers, if more offenders were sentenced to community-based orders instead of gaol the numbers of available programs would increase correspondingly. That is the reality. I will give a little example. Today I had a phone call before I came here from Narrabri. They want to run the Sober Driver Program, which I co-ordinate, but they have to wait a while before the court generates the numbers for them to be able to deliver the program. So it takes them a while before they can run a program. Unfortunately, people who are on

short orders sometimes finish their supervision, say, on a good behaviour bond and therefore cannot go through the program simply because there are not the resources and the numbers to run the program. But with adequate resources we could develop distance learning modules and modify interventions for one-to-one delivery where necessary because of the particular circumstances of the individual, such as geographical location of residency and unsuitability for group work.

A good example is the program that I oversee, the Sober Driver Program. We are externally funded and, therefore, it is one of the very few programs that Community Offender Services runs that is able to develop, and has developed, a community option. We have developed a rural and remote area component of the Sober Driver Program that has a specific target for Aboriginal communities as well. We have been able to do that because the resources are provided by the Roads and Traffic Authority and the Motor Accidents Authority. That program then allows us to deliver the program, as in Narrabri, to a small number of offenders over a smaller amount of time. We allow funding for transport of the offenders, because often, particularly with driving offences—which is a major cause of concern in rural and remote areas, particularly amongst Aboriginal offenders—offenders cannot get to the location to attend the group work program. So we are able to deliver them there. In some cases we actually accommodate them so that they can end up going through the program. That is a significant step.

We also at the time, and have put it on hold, have looked at developing the Sober Driver program on a one to one. That is a key issue as I talk to the probation and parole officers who work in rural and remote areas. They often say, "Can't we have one of these programs developed so that when I go out to a remote location there are one or two offenders, for example, they might be family violence or domestic violence." At the moment the current suite of programs are all developed for groups, and those groups are up to mostly a minimum of 12 people. Even for the Sober Driver program our rural and remote condensed version is for up to six people, and often in locations where there may be only one or two people.

So they are mainly in the resources to be able to develop these programs for one-to-one delivery and again the ability to bring in and transport people and health people. The school of the air provides an interesting model for us to contemplate as they are able to deliver developmental educational programs. Again, many offenders in rural and remote areas and in the city, in metropolitan areas, lack educational qualifications and often that links to their offending behaviour. Therapeutic programs cannot be run by school of the air but certainly some sort of educational program. Again, the Sober Driver program is a very good example because it is primarily an educational program rather than a therapeutic program.

We would also need to resource the offenders so that they also had equality of access such as the electronic equipment that may be necessary to complete the programs. We already have experience in using electronic equipment in terms of home detention so monitoring of offenders by electronic means is possible. Other considerations may be partnerships with TAFE and using local schools and art schools. Have to say again these are initiatives that Community Offender Services, and particularly the senior assistant commissioner, has taken up, and we applaud them. For example, pathways to education, employment and training is a current initiative which we run with TAFE New South Wales, again both in the metropolitan area and in country areas as well. The program is being written and designed within Community Offender Services but delivered by TAFE New South Wales.

Offenders can be transported to regional centres like Dubbo, for example, to complete intensive programs and be accommodated in departmental temporary accommodation in the form of a hostel following a proposal. Again, this is a unique opportunity for extra resources to be able to bring offenders in from rural and remote areas, Aboriginal areas, and have them housed, go through an intensive programme and then go out hopefully back into the communities, not to reoffend.

CHAIR: You have just answered question seven as well. There is one question relating to periodic detention and disability, which I think we have removed from our question list. You have written, "don't go there" so we already decided not to.

Mr HARVEY: Is it appropriate—the next question on our list was out of sync again.

CHAIR: Which one?

Mr HARVEY: We just did it; I guess we followed through. Can I just add briefly to that? We believe that we can monitor high-risk offenders, high risk of reoffending, through electronic monitoring, satellite tracking, as an issue. We also believe that communities can play a role in this. For example, in the Northern Territory they have a system where the community helps monitor someone. It is not a monitor in that they may have to restrain them but just reminding them, for example, "Fred, you need to be home now" or "You can't be drinking that alcohol". So again community involvement in monitoring these people.

There was a reference in our paper in terms of equipment. Often, when probation and parole officers—it is starting to change now; more resources are being put in—go out to rural and remote areas they have a pen and paper and that is about it. The use of laptops for example would be very beneficial. The ability to be able to stay in a rural or remote community for some days and meet up with a range of offenders to work with would also be helpful. We also believe that the recent appointment of area managers will probably help in this regard.

CHAIR: The next question relates to Aboriginal persons being employed in probation and parole. Is this correct?

Ms MAGRATH: I think we are on the same pages now. If I could just say very quickly, one of the reasons that we said, "Don't go there" with periodic detention and disability is that we need to stop trying to squeeze the offender to fit the predetermined punishment. What we need to be looking at and aiming to provide as a large community is punishments that meet the purposes of sentencing as we described earlier and which fit the individual offender.

CHAIR: Excuse me for interrupting but we have been told that there is minimal supervision of periodic detainees. Do you know this? I know it is outside the probation and parole issue; it is a corrections issue, gaol issue.

Ms MAGRATH: And for that reason probably we would be a bit reluctant to answer it but just to clarify when you are talking about supervision—

CHAIR: I mean when they are in there.

Ms MAGRATH: While they are in there, we could not comment on it.

CHAIR: Okay, thank you.

Ms MAGRATH: As the previous witnesses so rightly described, there are very few staff of Aboriginal or Torres Strait Islander background in Community Offender Services and this is despite the best efforts to recruit them. Maybe it is an unsavoury occupation to be a probation and parole officer, and maybe those people who are qualified to fulfil the role are attracted to other areas. In the past couple of years the introduction of the Aboriginal client service officers who were mentioned earlier, that position has been introduced and seems to have been much more effective, working with probation and parole officers. As was mentioned earlier, they do not actually supervise themselves but they work with the officers, assisting the officers, making the links with the communities and in a sense educating the officers as well as participating in some of the group work we do. These positions are located in regional centres across the State and they provide support to all staff within the cluster. While sometimes efforts to recruit Aboriginal—

CHAIR: Excuse me again. As a professional body, what do you think of the concept of only Aboriginal persons serving Aboriginal persons in probation and parole issues? This is a professional question, not a trick question.

Ms MAGRATH: That is fine because I think we were just about to answer it. We have had trouble recruiting Aboriginal staff for whatever the reason might be, but we, from an association point of view, do not believe that necessarily Aboriginal staff are the answer, and that non-Aboriginal staff can and do work very effectively in communities when they are suitably qualified, suitably trained, suitably in tune with the communities they are working with. They can achieve a lot in working with those communities. My own experience—again, anecdotally I suppose—of working with Aboriginal

offenders is that they are just some very basic differences that can be made when the Aboriginal is accorded respect and dignity and is treated as a human being. If I interact with an Aboriginal offender with that respect, generally speaking I will get much further.

I suppose the education is about knowing what is disrespectful and understanding and being aware of some of the cultural mores which operate so that when an offender fails to report—and this is probably one of my personal pet hates—to the district office to see their probation and parole officer and the officer's response is, "breach", my view is that we do not breach. Offenders breach; we report failure to comply. But before we take that step we have a plethora of information about the particular offender and ways of finding the offender because we know that Aunty Elsie lives at Taree even if the offender was living at Mount Druitt. So we need to get in touch with our Taree office and get them to go out and speak to Auntie Elsie or put the word out in the community, "Billy, come home" or "Give us a call, we can work it from here", rather than straight back to court and then when they are apprehended potentially gaol. We need to be doing everything we can to avoid that.

CHAIR: The next question relates to—

Ms MAGRATH: Sorry, a couple of other things occurred to me while I was listening to the previous witnesses and that is about specific programs that we have operating in Community Offender Services that are designed around working with communities with Aboriginal offenders. I mention in particular a program called Rekindling the Spirit, which operates in the Lismore-Casino area, Walking Together, which operates from our Newtown office but around the Redfern area, and Yindyamala, which is being developed in the Dubbo district. Going back to our original concept of this broad rollout order, the association's view is that that would give us much more flexibility in the management of Aboriginal offenders, particularly in how we apply sanctions, when we apply sanctions and what sanctions we apply.

CHAIR: I found the disability question. The next question relates to the one Greg read out earlier in relation to private security companies and local communities being contracted. In your opinion would this be an effective model?

Ms MAGRATH: In a nutshell, no. The association would not support the rolling out to private security organisations undertaking the role, given that their focus is on security. Again it is about incapacitation and containment without any view to rehabilitation and reintegration and those are the things that make a difference in terms of reducing reoffending. Even with our primary surveillance program, the home detention program, Community Offender Services adopts a case management model and that is supported by the monitoring rather than the focus being on the monitoring per se. So we would see that a private security organisation would be only looking at security and putting the electronic fence or whatever it is around the individual. In the absence of case management, all the research internationally says that that just does not work. On the other hand, partnerships with local communities are highly effective and communities can do things with, for instance, community service workers, identifying community projects so that the workers are working for the community, with the community on projects designed by the community that will contribute to the welfare of the community.

That engages the offender with the community and engages the community in the rehabilitation of its own offenders. While we are very happy to look after our frail, our sick and our elderly, we are generally not so happy to look after our offenders even though they come from within and will return to the community. This is all about social inclusion, which again is where the evidence places great emphasis on the effectiveness of achieving a reduction in reoffending and about offenders having pro social models and perhaps even to the extent of developing mentoring programs within the community and it is within the community that we need to be working.

CHAIR: Thank you. You have another little table here and it is about who you want to work with, is it?

Ms MAGRATH: It was actually in response to what we had as the—

CHAIR: The disabled question?

Ms MAGRATH: No, another last question. What we are trying to say in this slide is that that Community Offender Services already case manages people with intellectual and physical disabilities quite effectively, and we do that by accurately assessing their needs and developing case management strategies that take account of their individual needs within their environment. Clearly, this is more effective when we engage in partnership with other relevant organisations such as the Department of Community Services, health providers, health agencies, and we adopt an interagency case planning model and this is one that can work very well in rural and remote areas. The Department of Ageing, Disability and Home Care must play a significant role, accepting offenders as part of its client base in that regard.

The Hon. GREG DONNELLY: On two or three occasions you have referred to the broad roll-up order. Can you provide the Committee with some details as to the form and content of such orders, or do you not yet have it developed as an idea?

Ms MAGRATH: It is conceptual at this stage. What we are looking at is something in the nature of a bond with teeth. For instance, if an offender fails to comply with whatever condition, instead of going back to court, or perhaps to the Parole Board, the supervising officer, obviously in consultation with his or her senior officers, could apply a range of sanctions. There is some precedent for this; for instance, with Drug Court orders. I do not know whether that has been addressed with the Committee.

CHAIR: A later witness will speak about the Drug Court.

Ms MAGRATH: That order type allows for certain sanctions to be introduced at various stages, including community service work, curfews, and the like. We see no reason why such an order could not be developed in legislation. As a person progresses, the reins could be loosened, and in the case of regression, sanctions such as curfews could be applied. We could go as far as having electronic monitoring and adopting a containment-style operation, under the ambit of this broad order that we keep referring to as the roll-up order.

Mr HARVEY: For example, one of the previous witnesses' mentioned the use of section 12 bonds and the fact that there is no street time if someone breaches that bond. The person automatically goes to gaol and does not pass go. The breach of the order may not necessarily be a major issue in terms of reoffence. So in order to rehabilitate the offender, if you have an option there you might be able to stop them from going straight to gaol.

The other issue is that when Probation and Parole assesses people, it might assess someone as suitable in terms of the hierarchy of orders so they are suitable to undergo some sort of group work program. However, in terms of the hierarchy and the criminal history, the magistrate might say he wants them to do 300 work hours. Probation and Parole perceives that if that person went into a domestic violence, anger management or drug and alcohol program, that might be better than doing 300 work hours. It might be good for them to do 200 work hours or 250 work hours ever with 50 hours of program components or rehabilitation, for example.

It is important to have that flexibility, rather than having to go back to court or an offender breaching the order and then going up the hierarchy again because they failed to attend, for example, under community service orders. There is a good example of Aboriginal people who often failed to complete their work order simply because of their cultural background; it might have nothing to do with their offending behaviour.

(The witnesses withdrew)

PAUL MARSHALL WINCH, Public Defender, Public Defender's Office, 13/175 Liverpool Street, Sydney, sworn and examined:

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

Mr WINCH: Yes.

CHAIR: If you consider at any stage that any evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice, I would appreciate it if the responses to those questions could be forwarded to the Secretariat by Friday 23 September. Would you like to make an opening statement?

Mr WINCH: No. You asked the previous witnesses about roll-up orders. The first page of my submission to the Committee refers to community-based orders, which are available in Western Australia and Victoria, and intensive corrections orders, which are also available in other States. It is not really my field, but it is my suspicion that the kinds of orders that the previous witnesses were referring to are akin to those orders. With respect, the Committee might be assisted by at some stage having a look at the legislation that underpins those regimes in Victoria and elsewhere.

CHAIR: Is there an issue to do with appeals from decisions made in the Local Court?

Mr WINCH: There are issues to do with delay and issues to do with time passing. The legislative regime that is now in place to do with those appeals seems to have moved to be one in which they are very much done on the document, and there are limited opportunities to introduce new and different material that might assist in the appellant changing or varying the order.

CHAIR: On page 6 of your submission you note that community service orders are often not appropriate for older offenders and those with a disability. Do you have any ideas as to how these special need groups could be accommodated?

Mr WINCH: In essence, by enhancing them and by expanding the activities and kinds of orders that are available so that those groups are more easily accommodated so that the kind of work that might be required ought to be more varied than it is presently, as it seems to be fairly much for able-bodied and moderately young and healthy kinds of people. It would seem that it does not need too much imagination to be able to see how those things could be expanded. That is really what I was referring to.

CHAIR: You also suggest a travelling Drug Court.

Mr WINCH: Yes. I am mystified why the Drug Court is so geographically constricted. It seems to me that, in the same way as an ordinary Local Court goes on circuit to various places, it is inexplicable that the Drug Court could not, and should not, do something similar. On certain days it could be in a specific country town, on others it could be in a nearby town, and during the third week it could be in a different town altogether. It is my belief that the Drug Court is a very useful tool. While it is very intensive, it seems to have its successes.

That leads to the next question, which is my view of videoconferencing facilities. It is my belief that videoconferencing facilities work very well. We use them fairly often to speak with people in various prisons and so on, and the bail court uses them fairly often to speak with prisoners in various places. It would seem to me that the Drug Court could use videoconferencing facilities. You will hear about this in due course. The Drug Court has a regime where people are brought back before it on a fairly regular basis. They are checked up on, spoken to, and encouraged and/or sanctioned, depending on how they are going. It seems to me that much of that could be done, perhaps in conjunction with Probation and Parole officers in the various areas, but the judicial officer would not necessarily have to be there.

The Drug Court could travel in the sense of videoconferencing but it could also, I would have thought, travel in the same way as the circuit court does. I do not really know—because I do not

pretend to be an administrator and to have that kind of knowledge—how that might be set up and whether there are any administrative impediments. I am sure the Drug Court people would be able to assist you better.

The Hon. DAVID CLARKE: You say that better than mental health facilities are needed to support periodic detention in rural and remote areas. Can you elaborate on what support in particular you believe is required?

Mr WINCH: I may have put it imperfectly in my submission. The mental health facilities are needed to support not just periodic detention in rural and regional Australia but also people suffering mental health disabilities as and when they interact with the criminal justice system, as they seem to do with alarming frequency. I do not mean to be suggesting that there is a special and particular need linking periodic detention and mental health facilities in the bush but, rather, that there is a real need for more support for people suffering mental illnesses and disabilities in rural and remote areas, especially as they interact with the criminal justice system in a broader sense. That is really my focus, rather than that particular periodic detention method of disposition.

The Hon. DAVID CLARKE: What do you believe is the current level of unmet demand in relation to mental health services for offenders on a community-based sentence? How can community-based sentences be made more appropriate for people with mental health issues?

Mr WINCH: The second part of the question first. My answer to that is pretty much the same as it was in answer to question one, which is that there is a need to expand the range and the style of community-based sentences in order to make them available to people suffering from mental illnesses and mental health issues. That is to do with tailoring them and individualising them rather than having the one style of order into which everybody has to fit. That is how I see it has to be dealt with: by allowing a range of individualised dispositions. In general, and it is based on anecdotal evidence, it seems to me that there is a fairly high level of unmet demand in relation to mental health services in regional areas and not just for people that are subject to community-based sentences.

CHAIR: So you are actually suggesting that the legislation be changed so that magistrates can have more discrepancy about exactly what they put in an order and how because of the different person's circumstances?

Mr WINCH: Yes. I think it is as simple or as difficult as that.

The Hon. DAVID CLARKE: The Committee has heard previous evidence that magistrates may give a section 12 bond to an offender with a lengthy period in the absence of any alternative community-based sentence. In the event of a breach of the bond the offender is returned to gaol for the entire period of the bond. Can you comment on the use of section 12 bonds?

Mr WINCH: One of the unfortunate effects of a section 12 bond is that once it is imposed in that way, as I understand it, it is not been possible to deal with the offender in any other way. Part of the problem, I think, that arises out of a lack of alternatives in regional Australia is that the magistrate might well be tempted, and for good motives and good reasons, to give a much longer section 12 bond because it has to appear to be a severe sentence because it is a severe crime rather than he or she might in a metropolitan area, which might be to impose either periodic detention or perhaps home detention or some other kind of detention which would be of shorter duration potentially but of more seriousness.

There is a danger that people can be set up to fail by being put on bonds that are of great length and the Committee has heard, obviously, a fair bit today about the hierarchy of punishments, and it is an unfortunate thing that between section 12 and prison there is nothing available in many parts of the State. It is very common to hear in magistrates courts and other courts—district courts and other courts too—that the judicial officer will comment that, "If there was something else available then I would be able to do that, but it is too serious for a bond. But your circumstances are such that if there was some other kind of periodic detention I might be able to do that", but it has to be some kind of imprisonment and, bingo, all that is left is full-time. That is my comment on question six.

CHAIR: What do you think the chances are of people actually getting through things like a suspended sentence with the intensive policing that is occurring in country New South Wales?

Mr WINCH: It can be pretty hard I think. As the level of policing for the sort of street and nuisance kinds of things gets closer and closer to those so-called zero tolerance kind of approaches to the streets then it can be very difficult for someone to get through a suspended sentence. But those two things can be interrelated in that you can activate a full-time period of imprisonment for what otherwise would be a fairly minor misdemeanour street crime.

The Hon. GREG DONNELLY: The Committee has heard that a client's previous conviction for driving and licensing offences may preclude them from being deemed eligible and/or suitable for a community sentence. Firstly, should the eligibility criteria for a community-based sentence be amended to allow offenders with prior driving and licensing convictions to serve community sentences, and secondly, what can be done to break the cycle of multiple charges, fines and long disqualified periods for driving and licensing offences?

Mr WINCH: The answer to the first question I think is yes, the eligibility criteria should be amended to allow people with those kinds of prior offences to serve community sentences. It is my belief that there may well be many circumstances in which someone with a prior conviction of whatever kind might at that particular stage of his or her life be particularly amenable and it might be particularly sensible and suitable for a person to be given a community-based sentence now even though they may have had a variety of prior criminal entries, if I can put it that way, on their record in the past. People's lives change and someone who was a tearaway in their late teens and early twenties and who may therefore carry some serious convictions on their criminal history often until later adulthood ought not really be in a complete way locked out of a community-based sentence at some later time when the person's circumstances might be unrecognisably different from the way they were when they were in their twenties.

It is easy to think of many kinds of circumstances in people's lives where that could be so. So my answer to the first part of the question is that I think it is unsatisfactory in principle to lock people out of community-based sentences on the basis solely of the criminal history, that a criminal history of itself provides a bar. It seems to me there are lots of circumstances when that is going to result in an injustice or an unfortunate and counterproductive, potentially, result.

As for the second, the cycle of multiple charges, fines and long disqualified periods for driving and licensing offences is a really intractable one. I do not really know what the answer is though I do suspect that there is a problem with driving offences—and there was something in the paper today—when someone is disqualified from driving and then continues to drive and continues to drive and continues to drive and eventually gets sent to prison, but then has a huge amount of fines to pay and when released from prison still cannot drive and still cannot get his licence. I do not pretend to have the answer but it is a problem. It may simply point out this: that the criminal justice system does not work in some circumstances very well at all deterring people from kinds of behaviours, and the regime of fines and disqualifications and fines and disqualifications seems to be built upon the notion that if you make the penalty serious enough the person will change the behaviour.

I think that with driving it just does not seem to work, and I do not pretend to know what the answer is but it certainly is a cycle and I do not know whether there is anything more than anecdotal evidence about it either by on the one hand there is a tension between the level of training and the level of hours behind the wheel that a learner has to have before he can get a licence that is wrapped up in a family where getting food on the table and having enough petrol to put in the car to do the chores is the priority, it is easy to see why people just never get a licence at all. And they are policy decisions, but the tension between them is a real one I think. It is a long-winded answer but the answer I really do not know, I am sorry. I do not have an answer.

CHAIR: It would be a miracle if we find the answer. It certainly has been impressed on us as a major problem though. The next question is in relation to the Committee hearing about driving while unlicensed offences can attract higher penalties than high-range drink driving. I guess it is much the same problem.

Mr WINCH: I do not think I can really add anything. The question is slightly different but it focuses on very much the same kinds of intractable difficulties that I was speaking about in relation to question seven. Unless there is something in particular that you want me to address you about?

CHAIR: No, I think that was well answered. Submissions to a recent inquiry by the sentencing council noted concerns about—did I ask you this question?

Mr WINCH: I think you asked me that.

CHAIR: It was not just that, it was the people saying, "No-one will take an appeal on for us". That was the people in the country.

Mr WINCH: It was. This is to do with lawyers not being interested in taking—

CHAIR: That is their evidence but we spoke also with the lawyers and the lawyers were very enthusiastic and devoted to their work and did not feel that way. We are just trying to put a point on what was happening with appeals—other than accusing anyone.

Mr WINCH: I cannot comment more usefully than I have on it partly because much of my work is not in the local court, but I would be surprised if in those areas that are covered by Aboriginal legal aid and legal aid itself there would be anything but a steady stream of work.

CHAIR: There is that.

Mr WINCH: And of people pursuing it on behalf of their clients too.

CHAIR: We have had contradictory information there because we had someone today saying that people are not interested in appealing if they only get a bond or a suspended sentence because they are not in gaol. So you get contradictory information.

Mr WINCH: I can well imagine that the enthusiasm to pursue an appeal is going to be greater the more heavier the penalty. I think as a matter of course that would have to be so.

CHAIR: Thank you very much. Your submission has been very useful and your information has been very valuable. This particular section we are bringing people who know a bit more about things so we can tidy up some of our big questions. You have helped us, so thank you very much.

(The witness withdrew)

(Luncheon adjournment)

CHAIR: Welcome and thank you for attending the sixth public hearing of the Standing Committee on Law and Justice inquiry into community-based sentencing options. Information about our broadcasting guidelines is available. If any messages or documents are to be tendered to the Committee by any witnesses, members or staff, the Committee secretariat will assist. The Committee prefers to conduct its hearings in public. However, the Committee may decide to hear certain evidence in private if necessary. If such a case arises, I will ask the public and media to leave the room for a short period.

If a witness does give evidence in camera following a resolution of the Committee, he or she needs to be aware that the Committee may decide to publish some or all of the in camera evidence. Likewise, the Legislative Council may at a future date decide to publish part or all of the evidence, even if the Committee does not do so. Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I ask everyone to switch off their mobile phones for the duration of the hearing.

I welcome this panel of witnesses. I have met some of you before. On behalf of the Committee I thank you for attending today and taking part in this hearing. The Committee received a number of submissions from organisations involved with people with disability who are in contact with the criminal justice system.

HEIDI FORREST, President, People with Disability Australia Inc., 52 Pitt Street, Redfern, and

JAMES CHRISTOPHER HEATON SIMPSON, Lawyer and Advocate, 131 Bilga Crescent, Malabar, representing the New South Wales Council for Intellectual Disability, affirmed and examined:

MATTHEW ST CLAIR KEELEY, Solicitor, 52 Pitt Street, Redfern, representing People with Disability Australia, and

LINDA JANE ROGERS, Solicitor, Suite 2C, 199 Regent Street, Redfern, representing the Intellectual Disability Rights Service, and

JUDITH ANN HARPER, Project Manager, Criminal Justice Support Network, Suite 2C, 199 Regent Street, Redfern, representing the Intellectual Disability Rights Service, sworn and examined:

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

Ms FORREST: I am the President of People with Disability Australia.

Mr KEELEY: I am a representative of People with Disability Australia.

Ms ROGERS: I am representing the Intellectual Disability Rights Service.

Ms HARPER: I am a representative of the Intellectual Disability Rights Service.

Mr SIMPSON: I am representing the New South Wales Council for Intellectual Disability.

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

Ms FORREST: Yes.

Mr KEELEY: I am.

Ms ROGERS: Yes.

Ms HARPER: Yes.

Mr SIMPSON: Yes.

CHAIR: If any of you should consider at any stage certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you do take any questions on notice, I would appreciate it if your response to those questions were forwarded to the secretariat by Friday, 23 September 2005. This particular component of our inquiry is very important because it has been difficult to get real information on issues that relate to people with disability in the criminal justice system. It will be important for the Committee to get feedback today on what you perceive to be the issues and how we should deal with them in relation to community-based sentencing. Thank you all for attending this hearing. Would anyone like to start by making a short statement?

Ms FORREST: Yes. My name is Heidi Forrest. I am the President of People with Disability [PWD] Australia. Thanks for the opportunity to speak to the Committee. PWD is a national cross-disability rights and advocacy organisation and has been operating for over twenty years. PWD is an organisation of and for people with disability and it represents the rights and interests of people with all kinds of disability. In particular, we advocate for people that are more marginalised, which includes people with cognitive disability, people with mental illness, people with acquired brain injury, people with intellectual disability, as well as people with other conditions that impair cognitive function. Through our close ties with the Aboriginal Disability Network we have also gained considerable experience in advocating for Aboriginal Australians that have a disability. Our evidence

here today is informed by our experience of advocating for thousands of people with disability that are in contact with the New South Wales criminal justice system.

While it is important to acknowledge the different life and disability experiences of people with different types of disability, it is equally important to acknowledge the similarities in those life experiences, levels of social disadvantage, functional limitations brought about by impairment and the barriers to social participation existing within society for all people with cognitive impairment. For these reasons, we advocate for social and criminal justice policy responses that are cross-disability in nature, that otherwise than where necessary do not seek to divide up the disability experience by ever more finely described diagnostic terms, and acknowledge that the experience of disability itself—particularly involving impaired cognition—presents as a major barrier for all people with cognitive disability howsoever diagnosed.

By ensuring the focus is on all people with cognitive impairment, we can also seek to ensure that resources are equitably provided to address the issues for all such persons in need. Public monies should be expended equitably on the basis of the best available data to address the identified needs of all people with cognitive impairment, whether described primarily as mental illness, intellectual disability or acquired brain injury. Where program monies are necessarily targeted toward people with one disability type to the exclusion of others—that is, intellectual disability only or mental illness only—equity demands that on a pro rata level similar funding to meet similar needs is provided for people with other forms of cognitive impairment. The provision of community services to people with disability generally, and specifically to those people with disability who may be eligible for community-based sentencing options is an area bedevilled by the lack of such equity, by a lack of transparency and by a lack of co-ordination and overarching planning. I respectfully call upon this Standing Committee to ensure that the recommendations that you make relating to people with disability are equitable as regards the needs of all people with disability, howsoever described, and that such recommendations provide for the effective planning and co-ordination of responses aimed at addressing the issues for all people with disability in accessing community based sentencing options. Thank you.

CHAIR: Thank you, that was very interesting. Can you briefly outline the Volunteer Support Worker Program run by the Criminal Justice Support Network?

Ms HARPER: Yes. The Criminal Justice Support Network has been funded by the Department of Ageing, Disability and Home Care as a project for three years to establish a statewide service providing support to people with an intellectual disability who are in contact with the criminal justice system. The Volunteer Support Worker Program is just part of the service that we provide. There is also an outreach service that has started working with regional and rural areas. There is a lot of capacity building and also working with people with intellectual disabilities, to increase their awareness of the rights and their ability to assert their rights. The Volunteer Support Worker Program, particularly in relation to courts, provides support to people with an intellectual disability not only at court but at associated events such as Legal Aid appointments, community justice centre mediation, youth justice conferencing. It is not just at court that the support occurs.

We support victims, witnesses and offenders. At present we have what we call direct support, under which we are able to send a volunteer with a person if one of those events is in the three regions. We have one service based in Sydney, one based in the Hunter area from Newcastle and one based in the southern region that covers the Illawarra and Shoalhaven areas. The regional co-ordinators in those areas co-ordinate that direct support through volunteers and through work themselves. They recruit, train and support volunteers to provide that support at court. Predominantly the support role focuses on assisting the clients to know their legal rights to get access to legal representation; to navigate their way through the system; to understand what is going on and overcome many of the barriers that they would face due to their intellectual disability as they go through the court system; and to be able to make informed choices, because they genuinely understand what is happening to them in that environment.

We focus also on the quality of support that is provided and, again, overcome a lot of the barriers that they experience such as maintaining the same support person throughout that support. Often they will be the only consistent person in the entire process, from start to finish. Another key factor of the quality is about maintaining our independence, as the role is not influenced by being a

service provider to that person in any other role or being a support or family member. The volunteers we have for court support come from a wide variety of backgrounds, predominantly from a disability background. For example, this calendar year we have provided 184 supports to 100 clients, with 35 different volunteers, plus our staff of six. That was in relation to the first question about the Volunteer Support Program.

CHAIR: Does that particular program relate to court support only?

Ms HARPER: No, we also provide support in police stations 24/7 in those designated areas.

CHAIR: If someone is arrested could you be called in to assist?

Ms HARPER: Yes, in those three designated regions. Outside those regions, at this time we are able to provide advice and support through our 24-hour 1300 number. We may be able to link the person into after-hours legal advice, or provide information or advice to someone in a police station, or in fact to the police officers.

CHAIR: Could that program in any way support community-based sentencing? Does it just help people make choices to get community-based sentencing instead of going to gaol?

Ms HARPER: No. The role of the support person is to try to make sure that the person understands what is happening. If that is an option, they need to understand what that may be. It may be they highlight that with their legal representatives. Certainly if there was to be a community service order or the person needed to link with community offender services, they ensure that that link happened. But at this point in time our court support role finishes when the court case finishes. We are able to do some limited referral and, hopefully, referral for ongoing support because there is a really big gap at that end, particularly once you make the link with community offender services. There is still a need for ongoing support.

To date, in the past two years, we have had only two clients referred to community offender services, and they were in relation to supervision for a bond. At this stage we have not had anybody who has been given a community-based option.

CHAIR: Bonds are included?

Ms HARPER: Yes.

CHAIR: Your service is currently in two places; those of us from the bush would not call it a region. Are there any plans to widen the service throughout the State?

Ms HARPER: At this stage our funding is guaranteed only until June of next year. Currently we are being externally evaluated. It was established as a pilot program through DADHC. At this stage we are not entirely sure whether we will have funding post-June 2006. Because this is a new type of service, obviously one has not been established before, our focus in the past two years has been on 24-hour support in police stations and support throughout the court processes. We have certainly identified areas where there needs to be ongoing support and certainly barriers exist to people with an intellectual disability having access to more community sentencing options.

CHAIR: How is a person defined as having an intellectual disability? Does the policeman do that, or does the court do that?

Ms HARPER: On the referrals from the police station, sometimes it is the police. Police are probably the least likely to identify that a person has an intellectual disability. Often it is the person himself, or somebody associated with the person, who will identify it. In relation to courts, the referrals come from many places, often from Legal Aid lawyers and often from court staff, because that is their first point of contact with the court and someone could actually identify that a person is not understanding. Sometimes it is the person, or family or other service providers. Referrals come from a broad variety of areas. We have particularly targeted our promotion in that way, to try to make sure we pick up the people who are going through the system, because many of our clients are not in contact with regular support services.

CHAIR: Do you know what sort of performance indicators are used to evaluate your program?

Ms HARPER: Part of the evaluation is looking at qualitative things around interviewing the clients and other key stakeholders to see where support has made a difference in terms of people turning up to court, or being able to get legal advice, or not participating in police interviews after having had legal advice; those sorts of things. Also it is looking at the regions and where we provide direct support, at how much support one regional co-ordinator can facilitate in terms of the number of volunteers they may be able to maintain, the number of clients they would be able to support, and the geographic size of that region with its courts and police stations. As you can imagine, in Sydney it is very different. The flow-through from the police stations and courts in a small area can be spread over a much larger region in areas outside Sydney.

The Hon. GREG PEARCE: The IDRC submission stated that there was a special argument for being cautious about sentencing people with an intellectual disability generally. Could you expand on that?

Mr SIMPSON: There are two particular issues here. First, an intellectual disability and equally other cognitive disabilities impact on a person's ability to understand the wrongness of what they are doing and on their ability to have impulse control in some circumstances. The overall effect is one of having some reductive effect on the culpability of actions. Second, there is very strong argument to say that prison tends to be counterproductive for people with an intellectual disability. We submitted to the New South Wales Sentencing Council in relation to its inquiry into short sentences, and which it accepted, that indeed prison was often counterproductive for a person with an intellectual disability in a number of respects. Firstly, it tended to make the person more entrenched in the culture of criminality. In addition to that you could make similar arguments about imprisonment for a whole range of people, particularly in relation to people with intellectual disabilities.

Having an intellectual disability tends to make you want to be accepted and to be very vulnerable to negative role models and very positively affected by positive role models. In prison the role models tend to be negative, which, therefore, is likely to make you likely to emerge from prison more likely to reoffend rather than less likely.

Secondly, inherent in intellectual disability is a difficulty in adapting to new circumstances and a person with intellectual disability who goes to gaol may eventually adapt to the very structured rule-based existence that they have in gaol but then, in turn, when the person leaves gaol, they may find it all the more difficult to readjust to all of a sudden going out of this incredible structure into the freedom of the community. That again can make it more likely that the person will reoffend and simply not readjust to community life.

Thirdly, people with intellectual disability are very vulnerable in gaol in terms of assault and other mistreatment. People with an intellectual disability can find it very difficult indeed to understand both the rules imposed by the authorities in gaol and also the rules that can arise from the subculture of prisoners. When people are not able to look after themselves too well or break some of those underwritten rules, they are liable to be victimised or mistreated.

Ms ROGERS: It is certainly clear that people with intellectual disabilities are generally more vulnerable to assaults and sexual assaults and one would say all the more when in custody. Indeed, many people with intellectual disability serve their prison sentence in protective custody, in with all the other prisoners who are perhaps viewed as undesirable by the prison population. Many offenders with intellectual disabilities are kept in their cell 23 out of 24 hours a day, so they are serving a more onerous type of sentence.

We have one client at Intellectual Disability Rights Service who was assaulted as a result of being kept in protective custody because assumptions were made by the prison population about what their offence was. Also, people with intellectual disability, to address their offending behaviour, really require services. For example, behaviour intervention and support services are often of great use, a service often provided by a disability worker. Sometimes the Department of Ageing, Disability and

Home Care provides behaviour intervention services to assist the person to adjust their behaviour and perhaps avoid the risk of reoffending.

These types of things are clearly not available in gaol. Just from the recidivism rates you can tell that prison really is not something that is working for offenders with intellectual disability. Corrective Services' own figures from 1990 to 1998 show that 68.3 per cent of inmates with intellectual disability are re-imprisoned within two years whereas for the general population prisoners it is 38 per cent, so you are effectively doubling the recidivism rate. It is clearly not working for offenders with intellectual disabilities.

The Hon. GREG PEARCE: What is your experience with Corrective Services identifying people with intellectual disabilities and what do they do to try to deal with the special concerns?

Ms ROGERS: Firstly, there is a unit within Corrective Services. I think it is called the Disability Services Unit.

Mr SIMPSON: Yes.

Ms ROGERS: And they are certainly open to disability workers and others who know the person alerting them to the fact of the person's intellectual disability. Intellectual disability is a funny situation in that if you have an intellectual disability, it is often the case that you do not want others to know and so people will not necessarily, perhaps because of the social stigma, put their hand up and say, "I have an intellectual disability", but certainly they do capture a number of people with intellectual disabilities.

There are specific units at a couple of gaols for housing people with intellectual disabilities but they are often full and so those beds do not become available. The other option appears to be containing the person in protective custody.

Mr SIMPSON: The Disability Services Unit that Linda referred to does perform a valuable job and they do have a certain number of psychologists and so on to work with people, and that is very important. Some people who have an intellectual disability are always going to be in gaol, but I think the nature of the prison environment means that it is very hard to do a whole lot with people in there in terms of heading them towards lives where they are much less likely to reoffend; it is much easier to do that on a community-based sentence, provided the person has the right kind of supervision and support to make that work.

The Hon. GREG PEARCE: Picking up on that, I think you said in your submission that you were concerned that most of the current non-custodial sentencing options do not really suit the needs of offenders with intellectual disability. Perhaps you can outline your concerns and experience?

Ms ROGERS: Yes, just to go through the various non-custodial options perhaps.

The Hon. GREG PEARCE: Yes, just one at a time.

Ms ROGERS: There are a number of difficulties for offenders with intellectual disabilities in having access to those options. You would be aware that the Law Reform Commission Report, which is almost 10 years old now, made similar findings that offenders with intellectual disability are more likely to be sentenced to gaol. Some of the reasons for that are that it is quite difficult for someone with an intellectual disability to be viewed as suitable for complying with a bond or a community service order.

Having an intellectual disability itself means that you are less likely, for example, to have the skills yourself to comply with an appointment or to see your parole officer or to turn up for your community service. You are less likely, for example, to have suitable accommodation for a home detention order. You are less likely to be seen to be able to comply with the conditions of a bond or bail conditions by the mere fact of your intellectual disability.

You also will be less able to pay a fine because of your limited income. You also may not have the skills to manage your money to be able to pay the fine and you may be actually being

financially exploited by others. The court certainly is obliged to take into account intellectual disability when determining the bail conditions to be set and I think also in relation to whether or not to give a good behaviour bond, but the realities are that people do not have the support services they need or the appropriate employment services.

Many people with intellectual disability may not have the skills to participate in some work programs that are available as a community service order. They need the support to be able to carry that out just by the fact of their intellectual disability. So many of those clients are not seen as suitable for these types of orders when those assessments are made. One reason that bail is often refused is the lack of suitable accommodation.

We could refer you to a number of cases in our practice where bail has been refused by the mere fact that the person has not been able to secure accommodation, even though they are eligible for disability services by virtue of their intellectual disability but they are determined "bail refused" because of the lack of available accommodation and the person remains in gaol. That is the outcome. On occasion the other option is transfer to an institution, when the ideal would be that these places are generally phased out.

CHAIR: What kind?

Ms ROGERS: One that offers some secure accommodation to ensure that the person is no risk to the community or at any risk of offending. There have been a couple of instances in our client group where people have been unfortunately transferred to institutional settings rather than remaining in gaol, but it is not necessarily a very helpful option to the person; they are not necessarily going to have access to the skills and support they need.

CHAIR: I am sorry, what kind of institution?

Ms ROGERS: One operated by the Department of Ageing, Disability and Home Care, for example.

Mr SIMPSON: I think our advocacy has consistently been that there needs to be these community-based accommodation options where people have got the support and the supervision they need, within the context of this Committee to help them comply with the conditions of a bond or home detention or whatever, but all too often, when it comes to a probation officer doing a presentence report or the judiciary looking at a matter, they are quite keen to avoid the person going to gaol but their response is, "Look, there just isn't somewhere where we can be satisfied that this person is going to comply with the conditions of a community-based order."

For many years we have been advocating for the development of a range of such accommodation, which might be a group home for some individuals with a very high degree of supervision; for some individuals through to perhaps living in their own Department of Housing flat but with the level of drop in support that the person might need, for example, to remind them about complying with reporting requirements or the other conditions they have agreed to, to avoid unwitting breaches of the orders.

In the recent budget there has been a significant breakthrough in relation to accommodation for people with intellectual disability leaving gaol, quite a significant budget allocation, and we applaud that wholeheartedly, but what we also say is, Look, it is equally important and probably more cost effective to get in much earlier before a person gets entrenched in the life of criminality that gaol is more likely to entrench them in, and so for similar accommodation options to be available for people as a sentencing option rather than as a post-release option.

Ms ROGERS: And magistrates and judges are often keen to adjourn a matter and see what accommodation options are available. We have a matter at present where a magistrate has written directly, herself, to the Department saying that the court recommends that an urgent assessment be carried out; that the client is in crisis; he requires an urgent assessment for the provision of long-term accommodation. The courts are having to take this role and are quite interested in having those options and making these orders, should those support services be available for the client.

The Hon. GREG PEARCE: Do you operate just in the metropolitan area or do you have operations throughout the State?

Mr ROGERS: The Intellectual Disability Rights Service is a statewide service. It is a community legal centre providing legal advice and representation to clients with intellectual disabilities.

Mr SIMPSON: My group, the New South Wales Council for Intellectual Disability, is more of a statewide peak advocacy group on systemic issues—some individual work well but more of a systemic advocacy group statewide for people with intellectual disabilities. Can I add one more point that I think is very important?

The Hon. GREG PEARCE: Yes, go ahead.

Mr SIMPSON: We have tended to focus on the role of disability services, and that certainly is an important role which, to be fair, has developed to a certain degree in recent years but still has a long way to go in the development that it needs, but it is equally important to say that agencies need to work together. There needs to be a strong partnership between disability services, which may be able to provide the support for someone on a community-based sentencing option, and community offender services, which need to be doing the supervision, providing the presentence reports and so on that satisfy the court that that is appropriate. So there needs to be a dovetailing there, but it is not as simple as that either. We are often dealing with people who need a mix of a range of services, which might include disability services, Department of Housing or mental health services. A lot of people have both intellectual disabilities and mental illnesses so there is a really major need, which has been long identified, for developing a whole-of-government plan of action around co-ordinating services for this group.

There has been a senior officers group which has been dealing with that. The Ombudsman reported adversely on its lack of progress last year. The Department of Ageing, Disability and Home Care, under new leadership, was reinvigorating that process. We are now very concerned that that process seems to have gone very quiet again. The recommendations from the Ombudsman in relation to the time frame for that senior officers group showing some clear results to the Ombudsman, as we understand it, have not been met. That is something very concrete that needs to happen which, unlike the accommodation, does not cost money. It is just about working much better together, and we are very keen to see that process brought to a practical conclusion.

Ms ROGERS: In relation to non-custodial sentencing options, it may be that there is a case for particular options for people with disability but on the other hand it is not necessarily the case that the existing options are unsuitable; it is the fact that the support is not provided, the services are not available and perhaps the players in the system, such as lawyers, court staff and so on, and Community Offender Services do not have the expertise or the time to work well with clients with intellectual disabilities.

The Hon. GREG PEARCE: Picking up on that, what is your experience with probation and parole officers and their training and experience in dealing with intellectually disabled people?

Ms ROGERS: We do not have a lot of contact with Probation and Parole, but it is my understanding that they have quite significant caseloads. It is a bit like when you assist someone who needs an interpreter: people with intellectual disabilities need additional time because they often have communication deficits because of their disability. So we have some real doubts as to whether Community Offender Services officers have the additional time to give to clients with intellectual disabilities. Also we doubt whether they have the disability expertise to effectively work with clients with intellectual disabilities. Jim was referring to cross-government approaches. Another thing that would interest us are these partnerships. Perhaps Community Offender Services working with government or non-government disability or other services in partnership—a combination of those skills and knowledge—would work well with an offender with an intellectual disability and construct some of these options that the court would then feel able to grant.

CHAIR: You are using the proper title; we still say "Probation and Parole". Do you think Community Offender Services officers should negotiate these partnerships before a magistrate makes the decision—while they are doing their report, for instance?

Ms ROGERS: I am suggesting that it be done at a higher level—between the organisations themselves. They have an agreement and there is a divvying up of funding and so on. So at a higher level there would be co-operation between—

CHAIR: What would happen in the country when your resources are few and far between and you have a higher-level directive and then there are no staff on the ground?

Ms ROGERS: That is always a problem for remote areas.

CHAIR: I was not trying to trick you; I just thought they would be better being responsible for getting an individual endorsement of this partnership before.

Mr SIMPSON: Yes.

Ms ROGERS: That would be another option. There may be a non-government service or something there—it may not be a government disability service or the like but there may be other service options and perhaps in an individual case there could be—

CHAIR: So you get a higher-level approval and then make the officers do it?

Ms ROGERS: Certainly. I guess it comes down to money and that is why I am suggesting that there needs to be a higher-level decision.

The Hon. GREG DONNELLY: Continuing the discussion about disability and availability of community service orders for people with disabilities, do you have a view that a judicial officer's perception of the value of these orders for people with disabilities is shaped by those things you have mentioned already or are there other things that also come to mind that influence their consideration of the suitability of such orders for people with a disability? You have given a series of reasons why; there does not appear to be the utilisation of these orders in any significant way for people with disabilities. Do you think judicial officers are taking account of, or giving consideration to, other things that are making them disinclined to go down this path?

Ms ROGERS: Are you asking whether there are preconceived views on the part of the bench about people with intellectual disabilities?

The Hon. GREG DONNELLY: That might be your answer or you might like to add other things as well. I am prepared to hear from you.

Ms ROGERS: I think for the reasons that I have already stated, there may be perhaps a preponderance in the system to say, "This person has an intellectual disability so we will rule them out". The assessments are done by Probation and Parole and it may be that as soon as they come across the intellectual disability it just automatically rules them out. I do not know exactly what the practice is in every instance. As to whether there are any preconceived views about intellectual disability, I think generally in the community there are preconceived views about people with intellectual disabilities. Many people think the person is just like a child, they cannot learn or it is hopeless even attempting it. Whereas quite clearly somebody's capacity to carry out certain things and, for example, comply with the conditions of a community service order are really largely dependent not only on their intellectual disability but on the supports that they are given. Those two factors really influence how the person functions. It is the support and the disability. If we provide those supports a person quite clearly would be able to comply with those orders.

Mr SIMPSON: In terms of what might be in the judicial officer's mind, I think it can be a combination of two things. One is an assumption that because this person is intellectually disabled they will not be able to comply and, linked to that, an assumption that there are not the supports available to assist the person to comply. That latter assumption is well based in history because those supports just have not been there. We have started in the last few years to go some steps down the

road—I do not want to say we have gone too far yet but we have certainly taken some useful steps—towards changing that. There may well be an issue linked to that of thinking about the attitudes of the judiciary and ensuring that the judiciary are aware that, with the right support, people can comply and, sometimes to a degree, exceed people's most optimistic expectations.

The Hon. GREG DONNELLY: I have a final question for Mr Simpson. I picked up a comment you made in answer to an earlier question about the importance and significance of positive and negative role models to people with disabilities. I gather from your answer to that question that, in terms of people with disabilities, that was even more significant than in the general population. Can you explain that to me because I do not understand the reasons behind it?

Mr SIMPSON: Sure. It is because an intellectual disability tends to make someone more impressionable, and therefore liable to those negative influences, and often a person with an intellectual disability is very eager to be accepted within whatever grouping they are in—so if they are in a grouping of people who live very negative lifestyles they have a tendency to do whatever you do to fit into that grouping.

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

Ms LEE RHIANNON: According to your submission, community-based sentencing options discriminate against many people with a disability. What evidence do you have to support that claim? Are people with certain types of disabilities less likely to receive a community-based sentence?

Mr KEELEY: Thank you for your question. Using for the time being the word "discriminate" in its broadest meaning rather than the strict legal meaning that you would find, for example, in the Anti-Discrimination Act, discrimination against people with disability may take many forms. The first is the type of discrimination that occurs when people with different types of disability fall through gaps because service provision is not coherent, integrated and planned. Those comments have been made by both Ms Rogers and Mr Simpson already, and we endorse the need for overarching planning and coherence absolutely. If one were to look at the service system as it applies to all people with disability in need of community-based sentencing options, however, we would find that there are services that exist for some on the basis of their diagnostic category and not perhaps for others. This is not necessarily a bad thing. However, it does perhaps disclose a lack of equity in funding and in identifying the needs of people in different disability categories.

Ms LEE RHIANNON: Can you give some examples of this variation?

Mr KEELEY: This is in no way intended as criticism; rather, it is a strength. It is a wonderful thing that we have the Criminal Justice Support Network, which exists for people with intellectual disability. But we do not have a similar service for people with mental illness or acquired brain injury, for example. While I believe that the Criminal Justice Support Network has done its best to not discriminate against people who identify with those primary disability categories, it is funded to provide services to people with intellectual disability. So we welcome that service and say, "Wouldn't it be great if, identifying the very similar needs of very many people with mental illness and with acquired brain injury, we could also have something similar to support them in the criminal justice system."

We can go further, if I may. DADHC, which has been mentioned on many occasions in evidence, is a department which sees itself as providing services solely to people with intellectual disability or people with, as they call it, a "primary diagnosis of intellectual disability". What this means is that there can be intractable turf wars between DADHC and the Department of Health where each is asserting that the other has responsibility for a person with what is called "dual diagnosis", or intellectual disability and—

Ms LEE RHIANNON: Does that happen a lot?

Mr KEELEY: Yes, it happens a lot. I have my own individual caseload. I currently have a man who has been effectively eligible for release from gaol for 10 years and the issue in dispute—which was only recently resolved, I might add—has been whether or not DADHC or the Department of Health should provide services for him in the community.

CHAIR: We do not need a specific example but can you give us an idea of a dual diagnosis?

Mr KEELEY: This gentleman has schizophrenia and an intellectual disability.

CHAIR: A mental health illness.

Ms LEE RHIANNON: To clarify, he was not allowed out of gaol for 10 years after his sentence had been completed because it could not be resolved?

Mr KEELEY: That is correct.

Ms LEE RHIANNON: That is extraordinary.

Mr KEELEY: He happens to be one of the few life sentence individuals in the State, but very similar situations occur when people with disability are incarcerated, are unable to obtain parole and so remain in gaol for the full sentence when it was clearly anticipated by the sentencing judge that, as a person with disability, given available community resources they would be eligible for parole. That situation is being experienced by the services at this table—and I can confirm also, in my understanding, by another agency, the Office of the Public Guardian, which has many such individuals as clients. They can attest to the fact that there are many people with disabilities in gaol who are eligible for parole but who are not obtaining it because of the lack of community-based resources. I appreciate that this is a Committee about community-based sentencing—

Ms LEE RHIANNON: But we still need to know this.

Mr KEELEY: Yes. I think the point that was raised by the framework report is that you would probably want a fairly seamless transition of services. Similar services might provide for someone on release from gaol as might also provide for a person who is at risk of entering the criminal justice system and who is in need of some intensive intervention before a conviction. So we have this sort of discrimination based on plain ineffective planning, which is based on diagnostic types rather than demonstrated disability-related need.

We also have the discrimination inherent in practice. I do not need to go too much further into it but identification at court is a crucial issue and it is clearly dependent on the issues that Ms Rogers raised. It is also dependent perhaps on adequacy of service provision, for example, by Justice Health and its provision of mental health liaison staff at only a few of our courts—a worthy development but one we would need to see expanded across the State. Similarly, adequate resourcing of probation and parole staff—I would use the old language—and in this respect I refer to the submission of Magistrate Toose who, given her experience in regional and remote New South Wales, identified a clear lack of resources for probation and parole staff to develop their reports on the day, if you like, and as a result the delay of six to eight weeks in the preparation of those reports.

If an adequate report can indeed be pulled together using the sort of IT solutions that Magistrate Toose had in mind, then clearly justice that is brought about more speedily is no longer justice denied. So we have these forms of discrimination, and we also have the discrimination inherent in the terms of eligibility and the conditions. Again, I think Ms Rogers spoke volumes about the difficulty that people with an intellectual disability have in meeting conditions of certain community-based sentencing options. Again I reiterate that point that many people with mental illness and many people with acquired brain injury, including those with complications arising due to drug and alcohol usage, experience the same difficulties in complying with conditions and, we would suggest, would be in need of a similar range of services to support and assist them in so complying.

In our submission we refer to the discriminatory nature of eligibility requirements in and of themselves. There is some evidence to support the proposition asserted earlier that there may be some reluctance in some situations of judicial officers to support a community-based sentencing option for an offender with a disability. I refer you to a study that is cited in the New South Wales Law Reform Commission report 80, cited on page 407. That is a study by Messrs Bray and Chan, in which—and I summarise the Law Reform Commission—a survey of judicial officers suggested that "some

magistrates believe that physical or mental disabilities make some offenders unsuitable for community service orders".

CHAIR: I will get you to elaborate a bit further. Why is acquired brain injury not included in any definition of "intellectual disability"? Is it a DADHC issue, is it a bureaucratic issue or has it just happened?

Mr SIMPSON: I think it is a historical issue in relation to the focus of disability services.

CHAIR: It has nothing to do with justice but it sounds like it will have the same effect of exclusion.

Mr SIMPSON: Certainly, there are demarcation issues that have been outlined which can lead to some people getting a half decent service and others getting nothing at all. Certainly, that has got to be acknowledged. It is important I suppose to say that different kinds of disability can lead to different kinds of supports and service systems that build up to some degree about meeting those different kinds of supports. So we have mental health services focused on the needs of people that arise from their mental illness. We have intellectual disability services focused on the needs that arise from an intellectual disability but—

CHAIR: But a kid who gets kicked in the head by a horse at the age of 12 and develops and intellectual disability has exactly the same issues and somebody who is born with it.

Mr SIMPSON: Yes.

Ms HARPER: And if that instance arises, if an acquired brain injury occurs before the age of 18—

CHAIR: No, that is worse.

Ms HARPER: I know—because they say it affects the person's development, whereas if it is a car accident at 25 or even 45 you are much worse off because a lot—

CHAIR: I should have said that kid at 18.1 month.

Ms HARPER: Exactly.

CHAIR: We will remember this.

Mr KEELEY: That was the point so eloquently made by my president, Ms Forrest, and of course accepting what Mr Simpson was saying about the fact that certain disability types result in different needs but acknowledging too, particularly in this area of what we call cognitive impairment—impairments that on the whole will affect cognition that include intellectual disability, mental illness and acquired brain injury—that there are both divergence of needs and similarity of needs. But so far as service provision, for example, provided by the major service provider in this area, DADHC, it is true to say that the service provision does typically exclude people with a primary diagnosis of brain injury or mental illness.

This is the case even though the legislation which the Minister for Disability Services has responsibility for administering and which he administers through DADHC, which is called the Disability Services Act at section 5, has a broad and inclusive definition of "disability" which would include people with brain injury and people with mental illness. So we have an historical anomaly where a service provision department continues to focus its work in the area of intellectual disability, as did its now long ago predecessor the Department of Community Services, long after a 1993 Act of Parliament which gave it responsibility for providing services more broadly.

CHAIR: Our terms of reference cannot get us to reform DADHC but most definitely in relation to community-based sentencing for people with a disability then we most certainly can include the gamut of disability that requires resourcing in order for delivery of. So it is important information. Do you have anything else we have not asked you?

Mr SIMPSON: I shall briefly touch on one other important issue and that is the particular needs of indigenous people with cognitive disabilities in contact with the criminal justice system. There is a whole range of additional issues for people which would impact on their capacity to access community-based sentencing options, including a disability as perceived in indigenous communities, the capacities of communities themselves to be able to provide people with relevant supports and the relevance or lack thereof of mainstream service provision. I would like to table a paper which my New South Wales Council for Intellectual Disability did not do, but a woman called Mindy Sotiri and I did a research project for the Australian Government on this issue. If I could perhaps just table a brief paper on that project, which also provides a web reference to the full report which might be of some interest.

CHAIR: Thank you, we will accept that. There is an issue in the people with disability submission in relation to the court. "In imposing a sentence of six months or more on a person with a disability, the court should give its reasons for doing so." Can someone say why that is relevant or the rationale for it?

Mr KEELEY: The issue is that the vulnerability of people and particularly with cognitive impairments as we have described that concept before, and has been asserted by others at this hearing, is such that we believe that where that has been identified in proceedings and a custodial sentence is to be imposed, it would be in the public interest for magistrates and judges to give their reasons why sentencing options other than a custodial sentence were not appropriate in the circumstances. The reason behind that, apart from the issue of vulnerability, which we have addressed previously, is that sentencing can represent somewhat of a closed system and it is not always apparent all the reasons why the particular disposition is ordered. We feel that where the fundamental issue about why a person has been imprisoned is because of a lack of community-based options such a provision would encourage the decision maker to record that in the his or her decisions.

So we would move from a state of being where this issue is largely unspoken of, except at hearings like this or 10 years previously in a New South Wales Law Reform Commission inquiry, to a time where on a daily basis in our courts judicial decision makers are recognising the issue. The people involved in the system would therefore recognise the issue and we might be able to get some sense of the magnitude of the issue as well. We would also have the creation of a ready data stream by which we could assess the number of people being imprisoned purely through the wont of appropriate community-based resources.

CHAIR: In relation to the rights for people with cognitive disabilities, do you perceive they would all be accepting this to be publicly stated when they are being sentenced or what is the privacy type control issue here? I am just interested; I am not arguing against you.

Mr KEELEY: There is already a presumption that imprisonment should be the last resort, which would necessitate that a judicial decision maker should have turned his or her mind to the other options. So in this respect I do not doubt that it is happening on occasions.

CHAIR: I think it would be more, like you said, not transparent earlier So I understand what your issue is. You just wonder where the line is to suddenly label people openly in a court and still have equitable decisions.

Mr KEELEY: It is a very good point and it is a point in truth I am not at this point in time feeling comfortable to answer so I would be happy to take that on notice.

CHAIR: Judy, do you believe that volunteers from the community could be trained to provide assistance in mentoring to offenders with a disability to help them comply with a community service order or a bond? So it is an extension of your program that we are talking about. You have seen the questions.

Ms HARPER: Yes, I have. It presents a couple of issues and some of it goes back to one of the previous questions about the difficulties experienced in managing volunteers. There is definitely a need for there to be ongoing follow-up and at this point in time and because we have not had a huge demand we have been able to facilitate a person's access to probation and parole if necessary. The

barriers that I see to that support being provided by volunteers is predominately around the length of time involved, the time commitment required, and that is a barrier that we experience in terms of the volunteers who do work for us currently and that ongoing involvement through a long term, for instance, community service order or bond. I would imagine it would present a barrier to utilising a volunteer and also just the varied and complex nature of once you get to that in terms of the support that the person may need to have provided to the probation and parole officer or to modifications to, for instance, the drug and alcohol program, those sorts of things, is quite a complex role.

I think it is a very necessary role. That is also the case with the mentoring, the follow-up and the follow-through, with things like bail conditions and bonds, and making sure people are getting access to the services they are supposed to.

But I have doubts that it could be supported purely by volunteers. In our experience of providing court and police support, about 30 per cent of our supports are currently done by volunteers and the rest are done by paid staff. Part of the work we have been doing is to look at the areas where it is really not appropriate to use a volunteer. For instance, in very serious sexual assault cases or where the person is already in gaol, it often requires a much higher skill level and a much longer time commitment. The people who volunteer for us, particularly with the court, are happy to do three or four days spread over a six-month period. But in terms of what is really required to assist people through supporting the community service order or a bond, it is really a much longer-term commitment and it would really need to be a joint process on the ground by a number of paid staff, not just one person. It would be a huge responsibility for one volunteer to undertake.

Having said that, there are roles within things like community service orders that a volunteer could undertake, even if it was about prompting a person to remember to attend at a particular time. In our experience, they are the sorts of things, which are time-limited and for a particular purpose, where volunteers have been really useful and they have fulfilled a very positive role in that respect. But certainly that time commitment is a big barrier for volunteers.

Mr KEELEY: In support of Mr Simpson and his comments about the senior officers group, a question on notice to us was about our suggestion in our submission that that be reconstituted. In the interests of saving time I will be very brief. That was that it be an interdepartmental committee, rather than an ad hoc senior officers group, that it have an independent, expert chair, and that it include community members expert in the issues of disability and criminal justice, including disability or non-government organisations. Otherwise I endorse fully Mr Simpson's comments about the senior officers group.

(The witnesses withdrew)

CAROL MILLS, Deputy Director General, Development, Grants and Ageing, Department of Ageing, Disability and Home Care, and

ETHEL McALPINE, Deputy Director General, Accommodation and Direct Services, Department of Ageing, Disability and Home Care, affirmed and examined:

CHAIR: If you should choose to give your evidence in camera, the Committee will exceed to your request. However, the Committee or the Parliament may subsequently decide to publish the evidence. The Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused.

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

Ms MILLS: I am.

Ms McALPINE: I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice I would appreciate it if the response to those questions could be forwarded to the secretary by Friday 23 September. But any notice you receive would have that date on it. Would you like to start by making a short statement?

Ms McALPINE: I will make a very short opening statement. We would like to thank you for the opportunity to attend today. You would be aware that we did lodge a submission earlier in the process and we thank you for the opportunity to come back and talk at length. We would like to start by clarifying that the group that DADHC supports who are involved in the criminal justice system or the juvenile justice system are people with an intellectual disability and therefore our comments will be focused on that group.

CHAIR: I will start with a question that came up from the last session, and it is in relation to cognitive impairment and the definitions of intellectual disability. Issues as far as our terms of reference are concerned, which are about equity and community-based sentencing options, relate as much to persons who may have sustained their cognitive impairment after the age of 18 as to others. Can you talk to us about that?

Ms McALPINE: I need to make a note that historically the services that government provide have come in most Australian States from the time when we were colonies and where there was not a distinction between mental illness and intellectual disability. As departments have split over time mental health issues have stayed with health and intellectual disability has come first into the ADD—whatever it was historically—and has ended up within DADHC. Most States have got a fairly extensive provision of services to people with an intellectual disability and that is based on that historical arrangement where those people were serviced for many, many years.

The definition of intellectual disability that we use within DADHC is the international one from the American Association on Mental Retardation, which is an IQ of two standard deviations below the mean—that would be 70, given the standard error margin on the test which is usually five—that there are significant deficits in adaptive behaviour and that both of these will manifest in the developmental period, that is, up to age 18. The services for people with that set of needs are actually a bit different from those folks who have a cognitive impairment. That is not to say that we do not recognise that people with a cognitive impairment require services, but our resource base at the moment is actually challenged to provide to people with an intellectual disability.

CHAIR: I understand that. I am just interested that there is a difference when as far as our terms of reference are concerned quite possibly any behavioural issues that are causing the issues that get them into trouble are identical.

Ms MILLS: If I can just make a comment on that? In terms of the department's services, we do offer services right across the spectrum of disability, however, we do not offer the same match of services for all disabilities. So in terms of our services for people in contact with the criminal justice system, certainly with regard to accommodation and some of our more intensive support, they tend to be targeted very much for people with an intellectual disability as defined by Ms McAlpine.

CHAIR: Can you please outline the services the department provides for offenders with a disability and the services provided to other agencies dealing with people with a disability who are in contact with the justice system?

Ms McALPINE: Perhaps if I can start by just talking generally about what we provide and then how that applies to people involved in the criminal justice system, and again we are referring to people with an intellectual disability. The department provides a range of services across all of its seven regions; they include case management, behaviour intervention programs, a range of therapies, day programs, respite services and accommodation and support services. We also fund a number of non-government organisations to provide accommodation and support services, respite and a range of post-school programs. In addition to those, which are disability programs, the department funds and administers the home and community care program, which may be utilised by people with a range of disabilities.

For offenders with an intellectual disability, they can access case management and behaviour intervention programs through the department's community support teams which are located in each region across the State. The individuals and their families may approach DADHC directly or other agencies that are involved with the person may request assistance. That group of clients receives a priority for our services. Having said that, even though we prioritise there might still be a lag until a service is available. The range of services that we would provide in that context covers intensive case management, co-ordination of services from other agencies involved with the individual, and I would just like to stress that often people with an intellectual disability involved in the criminal justice systems may have other compounding problems as well. So dual diagnosis, drug and alcohol issues, there are often a range of other agencies that are involved with them and we work to co-ordinate and assist in the provision of services.

We work to reduce the risk of involvement in the criminal justice system or the juvenile justice system through behaviour intervention, risk assessment, risk management strategies, training to others who may be involved in the person's life—such as other agencies, families, other service providers—support if the person is in active contact with the justice system. So it might be all of those things above plus complex case reviews, court reports, treatment plans and the development of strategies to assist individuals comply with any sentencing or bail options.

In addition, DADHC operates a specialised statewide behaviour intervention service that can provide assessment, program development and training to front-line workers who are working with people involved in the criminal justice system or are at risk. There is a team in that service who provide specialist case work that assists regional workers supporting clients or who undertake the initial case management of clients who are leaving the justice system. That is the range of community-type supports. We also provide accommodation and support for people with intellectual disability who are involved in the justice system, and that is provided both directly by DADHC or through some funded non-government organisation [NGO] agencies as well.

CHAIR: Much of this work is done in relation to people on community-based sentences?

Ms McALPINE: The full range. We have people who are exiting gaol as well and we do the case planning for them coming out.

CHAIR: Do you know the proportion of your client base that is in gaol compared with those with community-based sentences?

Ms McALPINE: Not off the top of my head, no.

CHAIR: Would you take that on notice and provide that information to us if you have it?

Ms McALPINE: Yes.

The Hon. AMANDA FAZIO: Do you believe volunteers from the community could be trained to provide assistance by mentoring offenders with a disability to help them comply with a community service order or bond? I do not mean that the volunteers would take over the role of a paid employee, but that they basically give guidance. Do you think that could work? If so, what would need to be put in place to make it work?

Ms MILLS: We recognise that volunteers can be a valuable resource in a number of areas connected with disability, including this one. However, there are many issues relating to the skill base that would be required and the level of ongoing commitment and support that would be needed, which would provide certain challenges. One of the issues, for example, with regard to training is being able to understand the communication needs of people with an intellectual disability and being able to deal with challenging behaviours, particularly with complex clients who may have dual diagnoses, and the skills that are required to assist them. The second challenge is that many people with an intellectual disability benefit most when there is stability and certainty in their environment, and that includes the people with whom they deal. That means we may be looking for volunteers to make a long-term commitment to an individual.

Whilst that may suit some volunteers, it might also be more realistic to look at volunteers perhaps in other roles contributing to areas connected with the community justice system but not necessarily community-based sentencing. There is an example, for instance, in Victoria where the Independent Third Person program provides an individual volunteer who sits in on interviews for both victims and alleged perpetrators of crime and provides an independent form of assistance to them. In any of these roles training is absolutely critical in the areas I have spoken about, but equally critical is the commitment of a volunteer and, therefore, ongoing support for that volunteer and retraining from time to time.

It would seem to me that some examples of the type of support that might be required are similar to homelessness services. There are a number of longer-term befriending programs and visitors programs in homelessness services both here and in the UK in particular where there have been designated training programs to support people who are re-establishing themselves. Often in those sorts of programs there is, however, a time limit because people actually reach a level of stability and independence, which means that the volunteer might be able to move on. Again, a particular challenge for us would be not only supporting and training volunteers in the first instance, but providing ongoing support for them to maintain a role over what might be a very extended period of time if it is to be truly meaningful.

The Hon. AMANDA FAZIO: In your opinion, what can be done to improve the level of understanding for a person with a disability about their obligations under a bond, both at court and to the Probation and Parole Service during its monitoring of the offender? Would you also comment on whether the Victorian program you referred to does that sort of work?

Ms McALPINE: No, it is at the interview stage, the initial involvement with the police.

Ms MILLS: They do not have an ongoing relationship with an individual. They have an ongoing relationship with a particular location and they assist the individuals who move through that service.

Ms McALPINE: Perhaps if I could begin by saying there are number of issues that are part of the manifestation of having an intellectual disability. It is difficult for them to sometimes understand information, to generalise information, to process information and to work out the real meaning of information. So my comments are based on that set of features that is characteristic of intellectual disability. In a court situation a verbal explanation of what is required needs to be kept very simple and very concrete, so that the person has got a possibility of understanding. Rather than saying something like, "You are not to associate with X persons", the more helpful explanation would

be, "You are not to seen John, you are not to visit him, you are not to go to his house. If you see him in the street you are to pass him by." Then the person's understanding of that needs to be checked—not just by asking, "Do you understand?" because you will get the obliging "yes", but by asking "If you see John what do you do?', "I pass him by." It requires that sort of provision of information, checking for the understanding, what it really means rather than just assuming a phrase that is common usage in court would be understood by the person.

The second issue is any requirements or obligations that are put on the person need to be simple and have a reasonable chance that the person can comply with them. It might be that the person wants to comply with them but does not have the skill to do that. If they have to be somewhere every Wednesday at 11.30 to check in, then we need to know that they can tell the time, that they can get there, that someone can get them there if they cannot, that they know when Wednesday is. They might have the desire to comply but not have the skills to comply. It is those concrete manifestations of what an intellectual disability means that need to be taken into consideration at the court.

In terms of probation and parole those issues I have just described also apply. But because the time is not so short when that has to be dealt with, then there are other things that can also be used: simple verbal explanations and visual presentation of information using COMPIC, which is a visual symbol of communication used by many people with an intellectual disability. If the information is provided in written form, then that information or instruction should be at a level that is appropriate to the person's skills. The reading level would need to be at a level that the person can understand. It is the nature of intellectual disability that tasks may be slow to be learnt and that the person may need many repeats of the information or practice to be able to master the expectations. Therefore, if things are being expected of the person, one telling will not be enough. They will not understand, they will not remember, they will not integrate the information.

It is the nature of intellectual disability that tasks do not automatically get generalised from one situation to another: "I am not to see John on the street but if he has at someone's house when I go there that is okay, because he is not on the street." That generalisation of skills can be a difficulty. Therefore, we need to not make assumptions that people can generalise information. Appropriate behaviours and responses need to be reinforced because that is what keeps the behaviour.

The Hon. AMANDA FAZIO: How do you think we would best achieve that? We have had evidence from other witnesses, not just in Sydney but also on the far South Coast, that the judges are usually busy on a list day and they just rattle off the conditions of the bond and the courthouse office staff, where the people sign the bond, do the same thing and rattle off the information. How would that be best achieved, given that people without an intellectual disability are often in the same boat of not understanding the conditions of their bonds?

Ms McALPINE: That poses a question mark in terms of how that is resourced. It might be that the various organisations that support the person, not just DADHC but mental health and other non-government organisations, have a role in trying to support people at court, particularly in understanding what is happening around them. That is the role our case workers undertake in our service—court is explained to them simply and any conditions that arise from their appearance are also simply explained.

The Hon. GREG DONNELLY: My question goes to the issue of dual diagnoses and the split of responsibility between the Department of Health and DADHC. Can you give us an insight into how that is practically managed on a day-to-day basis for a person who has dual diagnoses?

Ms McALPINE: Where the person has an intellectual disability and also a mental illness we continue to be the primary agency involved. But our skill and expertise is around the intellectual disability. We do need support from mental health. That is in the form of referral to psychiatrists. Many of our clients see a psychiatrist as well and we get overview information about the impact of their mental illness and the medication for the management of their mental illness. At times if they are in a particularly florid state they may need an admission to a mental health unit. So it is collaborating with the mental health system around how best we respond to that person at that point in time.

That might seem fairly easy when I say it like that, but this is actually one of the hard ends of the spectrum for us. Many mental illnesses have atypical presentations in people with intellectual

disability and they have atypical responses to psychotropic medication. So there is often a long process of trying to work out what is actually happening and how to manage it.

The Hon. GREG DONNELLY: I appreciate the difficulties you have outlined. It would be difficult in the context of a person outside incarceration, but if a person were incarcerated in gaol does DADHC still have the primary carriage of dealing with that person?

Ms McALPINE: If they are in gaol the primary contacts are the corrections system and Justice Health. We become involved as the person is moving towards the end of their sentence or moving towards a parole period.

The Hon. GREG DONNELLY: You said the primary responsibilities are Corrective Services and Justice Health.

Ms McALPINE: If they are in gaol, a yes.

The Hon. GREG DONNELLY: Is that the Department of Health?

Ms McALPINE: No, Corrections Health, or Justice Health, which is part of the Department of Health. The role for us is at the point where the person is either getting to the end of their sentence or getting to a period of parole. We work with the Disability Services Unit in Corrections and Justice Health, they have been involved, for that person's transition back to the community.

The Hon. GREG DONNELLY: When they re-enter the community the interface would then be with the DADHC and not the Department Health because of what you previously said?

Ms McALPINE: We would be the primary contact but clearly if they had mental illness that required ongoing management, part of what we do in the transition period is ensure we have a protocol in place with mental health in the area that the person was going to and ensure that we had their supports ready to be mobilised.

The Hon. GREG DONNELLY: Could you explain in more detail the point at which leading up to the person being released from gaol brings in DADHC?

Ms McALPINE: We have regular contact with the Disability Services Unit of Corrective Services, Anne Langford. The caseworkers statewide meet regularly with her and her staff.

The Hon. AMANDA FAZIO: Often located in the courts are psychiatric nurses who try to identify people with psychiatric injuries who are coming before the courts. They try to convert them into appropriate programs, or whatever. Does anything like that happen with a person with an intellectual disability? Or is it just assumed that that would be obvious when the person appears before the court? Not all people with an intellectual disability look different from other people.

Ms McALPINE: We do not put positions in the courts.

Ms MILLS: As part of the Senior Officers Group [SOG] we are going to put a position into one of the Central courts for a 12-month trial in co-operation with the Attorney General's Department to actually identify whether it is a useful role and whether there is an ongoing need for such a position. It will also help identify some of the issues you have spoken about. Historically in New South Wales there has been somewhat anecdotal information about whether better assistance could be provided, whether there is good awareness of the issues, whether the courts are aware that someone coming before them has an intellectual disability. The role will be to provide support and equally importantly to identify whether there are issues that need to be managed on a more regular basis. That position will be funded for a 12-month period as part of the trial.

The Hon. AMANDA FAZIO: You mentioned a Senior Officers Group.

CHAIR: The Senior Officers on Intellectual Disability and the Justice System Group. Currently is any other work being undertaken by that group?

Ms MILLS: Yes. As part of the review of that group, which has been operating for some time and has not really achieved its original objectives, we undertook a major review of that SOG at the beginning of 2005. We have refocused its attention on a number of practical priority projects that involve partner agencies. I would be happy to speak broadly about six projects that have been identified. First, there are four categories of project. The first is assessment and service co-ordination. We are going to trial an assessment system for people with an intellectual disability in the courts, by which needs would be assessed, options and supports available to be identified as appropriate. The position I spoke about would be forming part of that project. That will be a partnership led by DADHC, but with two other government agencies also involved.

We have three projects that we have classified as case management work. The first is to develop a case management approach across agencies for people with an intellectual disability giving priority to establishing a system for adults in correctional centres. The lead agency for that project will be Corrections. The third project is to develop a case management approach to assist adult offenders who have repeated minor offences and in frequent contact with the police; that will be led by NSW Police. The fourth project is to develop a case management approach across agencies for young people with an intellectual disability in the Juvenile Justice system, giving priority to Aboriginal young people; that project will be jointly led by Juvenile Justice, the Department of Ageing, Disability and Home Care and the Department of Education and Training.

Under the category of supported accommodation, we are undertaking a project to develop supported accommodation models that provide sustainable long- and short-term accommodation options for people, giving priority to those exiting Corrective Services; its lead agency will be DADHC. We also have identified an early intervention community support project, which will engage a whole-of-government community program to assist young people at a special school in a disadvantaged area with a high incidence of offenders. Its objective is to improve education, training and employment outcomes; that will be led by the Department of Education and Training.

The Hon. GREG PEARCE: How do you believe co-ordination and co-operation between the department and other government agencies can be improved to support people with a disability to complete community-based sentences?

Ms MILLS: The Senior Officers Group, about which I have spoken, was originally established with that intent. It pursued that at a very philosophical level initially. There was a view that insufficient progress had been made. We have taken a different view. I have chaired that committee since late 2004 and have focused it instead on a number of projects to identify ways in which we can have partnerships on the ground in a number of key areas and targeting people in contact with the criminal justice system or at risk of contact, particularly in population groups such as Aboriginal people, young people moving out of home care, people who refuse support services. That was an early challenge for us and is a challenge for us in talking about community models of care.

Whilst we have not identified specific projects to do with the group you are speaking about, all of those projects could include people on community support programs as part of the project. For us, the focus is on people who have been in contact with a system to either prevent recontact in the system or minimise the likelihood of them being incarcerated. Certainly, each project has that objective. The key for us is practical ways in which government agencies can work together on the ground. Whilst it is important to have a framework and a set of principles and broad goals to be achieved with the Senior Officers Group, our focus is very much on practical ways to demonstrate that working together will make a difference.

Each project has that in mind and each project has tight and firm timelines in which to achieve the specified outcomes. Each project will have a very strong set of measurable outcomes so that we can demonstrate that the effort brings reward.

The Hon. GREG PEARCE: Page 4 of the department's submission notes that periodic detention could be considered for people with an intellectual disability in accommodation with other undertakings. The Committee heard from some disability group representatives and their view was that people with intellectual disabilities in particular have a great deal of difficulty being considered for and complying with anything like a periodic detention order. How do you see that as achievable?

Ms McALPINE: It would require intensive case management to ensure that the person attended at the periodic detention, and again it goes to the heart of intellectual disability. If there is no-one in your life that is assisting you to understand that, of course you will not be able to comply. It also needs intensive case management to ensure that there are linkages between that setting of the periodic detention centre and other settings for that person's life—their home, their daily placement if they have one—so there is also co-ordination of such things as health care or the monitoring and management of mental health issues. That information needs to be passed from one environment to another for consistency for that person.

It is unlikely that a person with an intellectual disability, on their own, would be able to ensure that that occurred. They need the intensive case management to facilitate it. Staff at the periodic detention centre would require specific training relevant to the person's functional needs including how to communicate; behaviour intervention principles; what is the effect of an intellectual disability on a person's ability to function in relation to learning; generalisation of skills; and the ability to follow directions. The detention centre would need to be a suitable physical environment; a good physical environment can assist in minimising or managing inappropriate behaviour. Staff and routines would need to be consistent and predictable. It would need to be both culturally appropriate for people from CALD and ATSI backgrounds. The process of integrating a stay in a periodic detention centre with the rest of the person's life would have to be very carefully managed.

The Hon. GREG PEARCE: From what you are saying, that does not happen now?

Ms McALPINE: No.

Ms LEE RHIANNON: It is likely that a person with the disability who is undertaking a community-based sentence would be eligible for support in the community such as day programs? If not, could eligibility for day programs be brought into support people with disabilities on the committee-based centres?

Ms MILLS: People with an intellectual disability on a community-based sentence would be eligible for DADHC-funded or DADHC-operated day services and the other programs. However, entry into the system is based on relative need. Demand for services is very high. All applicants go through a prioritisation process to be allocated a place in a DADHC service.

Ms LEE RHIANNON: When you say "relative need", you mean there are not enough services to meet demand. Is it first in, first served who gets it? Or does it depend on the level of disability?

Ms McALPINE: It depends on the level of need. It could be the level of disability, but it may in fact be a risk of homelessness or abandonment. A number of factors are taken into account. A person on a community-based sentence as an individual would be weighed up against other individuals seeking access to that same service. Of course, there also has to be a vacancy available. In some instances we do not have vacancies at various times.

Ms LEE RHIANNON: Considering that you weigh up a number of factors, would the fact that they are on some sort of order be factored in?

Ms McALPINE: It is a priority.

Ms LEE RHIANNON: Adding up a number of points?

Ms McALPINE: There are a number of criteria, so there would be a tick for that criteria.

Ms LEE RHIANNON: Are people with a disability on community-based sentences eligible for supported accommodation provided by the department? Do you have a sense of the proportion of non-government providers which the department funds that would provide supported accommodation for people with a disability on a community-based sentence?

Ms McALPINE: Yes, they are eligible for accommodation, however, I have got to make the same caveat and that is, subject to the availability of places. In filling a vacancy, both in our sector and

in the non-government sector, a number of factors are taken into account, so the nature of the vacancy, the client compatibility, the skills of the staff, the availability of support services, for example, mental health services, and in a non-government agency there would be a particular issue around risk assessment for that person and the organisation's ability to manage that person's risks.

That becomes an issue for some non-government organisations, where their ability to reasonably and safely manage the risk might be limited and therefore would pose problems. Given the nature of the group, the provision of accommodation and support is specialised and, therefore, it is only likely to be a small number of non-government organisations that would be assisting people in that area.

Ms LEE RHIANNON: Are you able to give us any figures, if not now, maybe you could take the question on notice. You have talked about relative needs, so we get the impression that people are missing out. How many people are missing out and how many people who are on orders and come to you miss out?

Ms MILLS: We would have to take that on notice. I believe we would probably be able to answer part of that question, but I will certainly look at all that data that we have available.

Ms LEE RHIANNON: If you could, that would be useful. Do you have a view on what type of work is appropriate for an offender with a disability on a community service order?

Ms MILLS: DADHC's view is that it would very much depend on the skills, desires and interests of the individual. In our perspective, we take the notion of work very broadly. We may be talking about paid employment but we may equally be talking about paid work, volunteer work or activities that contribute to somebody's wellbeing that may not fall into the conventional definition of work. We have a view that it really should be guided by the needs of the individual rather than any specific category that would be applied because they are on a community-based sentence.

CHAIR: We have had some evidence that people with intellectual disability very rarely get community-based sentencing because it is perceived too difficult to set the structures up and without enough information they often go to gaol. Are you working on this issue? Does the issue really exist or is it just perception?

Ms McALPINE: No, I think the issue does exist. We have, for the first time in the recent budget, received specific funding for accommodation for people with an intellectual disability who have been involved in the criminal justice system. Our first year's priority for that is the funding of a transition unit for people as they move out of prison, given that prison is an artificial environment and it is hard to assess their adaptive behaviour skills and how they might react in the community. It is hard to know currently what environment might be best for them, so that is our first priority. For subsequent rounds of the funding, yes, we would be looking at a range of supports that would enable better access to community-based orders.

CHAIR: Are there any further questions?

Ms LEE RHIANNON: No.

CHAIR: Is there anything else you would like to add?

Ms MILLS: No, but we would be happy to take any further questions if issues arise.

CHAIR: That is very good. Thank you for coming. Inquiring into this issue is important to our terms of reference and we have had some difficulty in getting proper information, although certainly not from you. Thank you very much.

(The witnesses withdrew)

CHAIR: Thank you very much for attending this hearing. As we have travelled around, we have heard a lot about the Drug Court. It is incredibly important to the inquiry that you are present to explain some issues and perhaps deal with some of the dreams we have heard out in the world. Welcome to the sixth public hearing of the Standing Committee on Law and Justice's inquiry into community-based sentencing options. The first issue relates to broadcasting guidelines. If the media comes in, there is information at the table. The secretariat is responsible for dealing with messages. If you wish to give evidence in camera, the Committee will consider that request, but cannot guarantee that it will stay that way. Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings.

JOHN ROGER DIVE, Senior Judge, Drug Court of New South Wales, corner of Marsden and George Streets, Parramatta, sworn and examined:

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

JUDGE DIVE: I am.

CHAIR: If you consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you do take questions on notice, I would appreciate the response by Friday 23 September. Would you like to start by making a short statement?

JUDGE DIVE: I will, thank you. Firstly, can I say that the Drug Court certainly very much welcomes an inquiry into how we can look at reducing crime and provide protection for the public. In my view, the Drug Court has very significant insight into offenders. There are 170 active participants on our Drug Court program at any one time and, in my view, perhaps only one of those 170 would be someone who could be regarded as a person with advantage. I think the rest are all disadvantaged.

Our participants almost universally have appalling childhood abuse, neglect, tragedy and trauma. They struggle with personality disorders, mental illness, HIV, chronic illnesses, lack of education, lack of skills and work history. Their deficits are multigenerational. They have often arrived alone from refugee camps and endured war and violence in their lands of origin. The women have almost universally been abused, experienced domestic violence and are often very sensibly wary of placing trust in anyone. Participants, and often our Aboriginal participants, sometimes struggle greatly with the demands of a structured program and for many planning a day with multiple appointments where there are limited funds and difficult transport links can be a very taxing issue indeed.

As an overall thing, I would like to suggest that a successful program is one that makes an impact on offenders. The Drug Court uses the sentencing of recidivist offenders to create an opportunity to achieve long-term change. We do that by providing tailored case plans and then encouraging and enforcing new behaviours by offenders when they are in the community. I think that is a very strong point. It is one thing to achieve compliance in a custodial or quasi-custodial setting but achieving change when they are back home in their ordinary environment is when we know we are having some success.

The greatest challenge for all of our offenders is making those changes in the community, with all the stressors, temptations and problems that it always has. We might have a participant who has spent many months in a residential rehabilitation centre but the challenge is to put that into effect when they come back into the community. In order to make the impact that I think the community wants, it requires structured, well-managed resources and I think it could fairly be said that the outcomes need to be measured and monitored. That is exactly what the Drug Court does. It targets a significant population of disadvantaged offenders. It then provides a proven program that can achieve long-term change.

I would like to suggest to the Committee that any recommendations made should build upon the expertise of what I see as a mature and proven program. We have learnt so much at a micro and

macro level about the delivery of results to the community using innovative, flexible programs and constantly searching for new ways to create change in our offenders. We have achieved teamwork in government and beyond and, in my view, that is worthy of replication in itself. For example, we may call upon a trusted Aboriginal elder to come and speak to an Aboriginal offender who is struggling.

Another way in which we have demonstrated imaginative teamwork is that recently with an Aboriginal woman who is pregnant with her sixth child and is terrified that the Department of Community Services [DOCS] will remove that child when the child is born—as has happened with all her previous children—we have actually achieved her working with DOCS even before the child is born. It was a huge step for her to meet with DOCS and engage with them. But, of course, we have had excellent liaison, where she is working towards the goals that DOCS is talking to her and us about, to be able to perhaps keep that child when it is born, which is entirely different to the process before. What was going to happen when the baby was born has been a huge stressor in her life and we have actually removed that stressor in advance.

We have excellent relationships, which we build constantly with organisations such as Centrelink. We have seen resource sharing between area health services to meet the health needs of our participants. Indeed, rehabilitation services often prefer our clients, which I think is interesting, because they have the backup of the court and because the clients have access to resources such as legal aid that we can provide. When the rehabilitation service has the resources of the Drug Court behind it, they find that they can do their work better themselves.

Can I emphasise in the close of this short opening statement that what we are doing is seeking to reduce risk to the community. That is what all of this is about. It is about protecting the community and reducing risk. By engaging offenders in treatment and rehabilitation, providing them with supports, we can also do things such as target and program special conditions to their programs. It might be things like curfews or non-association clauses or to prevent an offender from being even seen in the driver's seat of a motor vehicle. Of course, we have so much to do with them that we can actually enforce that.

Very importantly, we are about reducing risk to the community. The last thing I would like to say is that not only does it do all of those things, but also it saves money. A quick snapshot of savings would suggest that in 2004 there were 55 successful outcomes of approximately 115 finalised cases. The average sentence is something like 15½ months they would have served. If you do the quick maths, 15½ months times $160 a day is $4.17 million. We are not only doing something important but it costs less than conventional imprisonment of offenders.

CHAIR: Can you please outline your experience working as a senior judge with the Drug Court?

JUDGE DIVE: I have been the Senior Judge of the Drug Court for 13 months. Before that I had 15 years as a magistrate and for four of those years was the Senior Children's Magistrate. In that time I sat in the Youth Drug and Alcohol Court every week, so it has been the adult Drug Court for 13 months, the children's Drug Court for four years and a total of 15 years as a magistrate.

CHAIR: You have had lots of drug work?

JUDGE DIVE: Yes.

CHAIR: Can you please clarify for the Committee whether the Drug Court can hear both summary and indictable offences?

JUDGE DIVE: It is a very clever piece of legislation in that the Drug Court has the jurisdictions of both the Local Court and the District Court, is the best way to describe it. The one offender may have cases that can only be dealt with in the Local Court, cases which are strictly indictable and which can only be heard in the District Court, and they may even, at the same time, have appeals against other sentences imposed in the Local Court that are on appeal to the District Court. So I may be able to exercise three different jurisdictions at one time. But they must have pleaded guilty or indicated an intention to plead guilty. So it is never after a defended hearing in either the Local Court or the District Court.

CHAIR: So your court has the ability to draw together all the current cases against that human being to be dealt with at the one time.

JUDGE DIVE: Yes.

CHAIR: That is important to know. Thank you.

JUDGE DIVE: It is a very important and very clever part of the legislation because it means that we do not get delayed.

CHAIR: Holistic law, good heavens!

Ms LEE RHIANNON: Revolutionary! Has there been an evaluation of the Drug Court and can you provide the Committee with some background on this, please?

JUDGE DIVE: I have brought with me all the evaluations, which I can leave for the Committee. There have been essentially six evaluations. The most important three were by the Bureau of Crime Statistics and Research [BOCSAR] in 2002. They were very important for the Drug Court because they did a number of things. Firstly, they told us it was successful even though they were assessing the very beginning of the program—which is a little bit of a shame because it would have been nicer if it was assessed a little further down the track when the set-up costs were less per person and the program had matured a little. But even for that first group the key findings from the Bureau of Crime Statistics were that it is cheaper than imprisoning offenders—and that is not counting the clear broader societal savings—there is a lower crime rate while offenders remain on the program; there is a lower recidivism rate for those not sent back to prison; and the community is enhanced by the reintegration of successful participants.

They were just some of the key findings from just one of the three evaluations. But an important part of this is that there is a relationship between the Drug Court and the Bureau of Crime Statistics and Research. So what the bureau has done, even on an ongoing basis, helps to direct the development of the Drug Court program and the maturing process. For example, in the 2002 evaluation one of the big costs was placing people back into custody to serve days of imprisonment on sanctions for breaching their program. It is very expensive to put people in and out of gaol for a day or two. What the court does now is allow there to be an accumulation of such sanctions. So I am trying to keep them successful and in the community but if sanctions reach usually a nominal period of 14 days that they need to serve in custody, then they will serve 14 days in custody. We use that then as a treatment review stage. They might have been struggling for five or six weeks and they now have two weeks of sanctions to serve. We will look at their program again while they are in custody and perhaps they will straighten out a little bit in that period of time. The evaluation suggested that it was very expensive so we have addressed that and used sanctions as a more positive process.

What is extraordinary in this court is that every week participants come to me and say, "I need to go in; I'm using too much; I'm not coping; I need a break". Then they go in and serve their sanctions. They will often come out and say, "Thanks for that, it was really good; I got things together, straightened my thoughts out and I'm ready to start again". Sometimes they write me long letters about all the plans they have thought about in the time. That is a benefit from that evaluation process.

The evaluations also suggested that there was a problem with things such as participants staying on the program too long, so a lot of money was being spent but they were not progressing. There was a legislative test that meant they could only be terminated from the program if there was no useful purpose in continuing. The evaluation led to statutory amendments to change that to a potential progress test. It may be that someone is on the program but they are really not going to go any further so their program might come to an end and someone else will get an opportunity. That is saving money for results.

The Health, Wellbeing and Participant Satisfaction evaluation was one of the three done in 2002. It found that there were improved and sustained outcomes regarding health, social functioning and drug use. There were significant improvements in all but one of the health dimensions

examined—and eight dimensions were examined. In seven of them there were significant improvements. One of the findings was that after 12 months on the program male participants' health was rated as high as or higher than the Australian population norms for each of the health dimensions examined. BOCSAR found that social functioning significantly improved within the first four months on the program and further improved by eight months. Illicit drug use was significantly reduced through participation and median weekly spending on illicit drugs fell from $1,000 per week to $175 per week over that four-month period.

That evaluation suggested that the effectiveness of the program could be increased by improving the retention rate of participants. I can say that retention rates are now at record levels. Indeed, we have to have a ballot as to who can get an opportunity each week to join the program, and how many places are available is dependent upon how many people are still active on the program. So we have to be very careful not to keep people for too long who are not being successful because that is preventing a new person coming onto the program. So we have used all of those evaluations as ways to change the program as we have gone along.

CHAIR: I will ask the next question mainly because the people who would want to ask it are not here. After all you have said about evaluation I understand that much has been done. But the next question is in relation to page 2 of your submission, on which you state that 129 participants have graduated from the Drug Court and in the past two years 39 per cent of participants have achieved a non-custodial sentence at the completion of the program. Can you please explain what you believe the factors are that impact on that completion rate?

JUDGE DIVE: I would ask the Committee to look at levels of success rather than completion because we have defined success for ourselves in a number of ways. Sadly, our first measure of success is whether anyone has died, because these are a group of people who die. Nine people have died on the program since it started. I am very pleased to say that no-one has died for the last 17 months. That is always our first measure and I do that deliberately because it brings focus on what we are dealing with. Firstly, we have got them alive and, secondly, how are they going as far as their recovery is concerned?

The second key measure of success is the level of graduation, which is our gold standard. There have been 18 graduations this year so far and there are be another eight in early September, so it is going very strongly this year. I mention in my submission a non-custodial rate of 39 per cent in the last two years. As that today, it is 45 per cent this year—for 2005. So we are doing very well. I think it is important that I say this: If they receive a non-custodial sentence it is because it is justified and proper, applying the ordinary sentencing laws of New South Wales. It is not some second prize: you do not walk away with a non-custodial sentence if you do not deserve one. It is important for me to say that if they have got a non-custodial sentence it is because they are entitled to it under the ordinary sentencing law. As I said, we are running at some 45 per cent or 46 per cent this year.

If I may have a few moments, a young man completed his program on Friday just gone. He came to the court for two matters of break, enter and steal, receiving goods and larceny charges. He received an initial sentence of 12 months. He was with the Drug Court Program for nearly two years but decided recently that he did not have the ability to meet all of our very strict requirements about appointments and urinalysis to graduate. This man suffers from a social phobia so he finds it very difficult to travel on trains—in fact, he cannot travel on trains and needs to drive or be driven. He found it excruciating to come into the courtroom for his report-backs each week. But he has been working on his social phobia throughout those two years. What would happen with John—I will call him that—is that he might miss an appointment, perhaps for some good reason, but then he would be so distressed about that because of his social phobia that he would find it very difficult to come to court to tell me about it. Then he might miss the next test or his court date. So he was always breaching his program in small ways.

This man suffers from a social phobia but he wrote a letter—I have a copy of it; I certainly will not read it all out—and stood at the dais in the big courtroom and read it out on Friday. He did not even hand it up. It is rather gorgeous because even the funny bits are written on the pages. Some of the things he said were: "Can I please explain exactly how everybody changed my life and got me to wake up from a self-pitiful sleep that constantly hurt everyone in my path? The only time before Drug Court I ever had a house was when I got parole. But like most addicts I could not resist the temptation

of the drugs and the streets. The only other time my family knew exactly where I was and I was safe and alive was when I was in prison."

He then goes on to talk about when he came to the Drug Court. He said, "I was in prison and awoken to go to court. This is where my life changed for the best. I was taken to Parramatta Court where two detectives charged me with old DNA charges. Believe me, I still regard this as one of the biggest miracles. I was to appear at Parra. So I asked for the Drug Court. In my head all I wanted was to get out anyway, possibly to see my son born, and I would have used any excuse to get out. Well, I got on Drug Court but did not take it very serious and honestly thought I could beat the system. But, to my huge amazement, this was impossible and put me in a situation which meant snap out of it and grow up or lose my whole family again by going back to gaol. So to sum things up, I really want each of you and the Drug Court team to understand how special you all are to me and my family."

He describes how he spent about four years living in the woodchips under the Harbour Bridge. At the end he says, "So Drug Court has given me my mum, dad, brother and sister, a son, a daughter, a fiancée, many assets, hobbies, someday soon a recognised business, true friends, almost beaten a concerning phobia, a car, a permanent roof over my head, bills, my licence back within months, a drug-free life, savings and, lastly, the courage to wake up and face the world without hiding behind heroin. Thank you everyone and please forgive me if I forgot to mention you as it was not intentional. Thank you, thank you, thank you."

It was a very moving moment because this was a man with a social phobia who said all of that, and we know that all of it is exactly true. He does have his fiancee, his little son and little daughter, and reunited with his family; all of those things have happened. This is someone who did not graduate, so you can see why I like to talk about successes as apart from simply graduations.

The Hon. AMANDA FAZIO: One submission to this inquiry suggested that a possible way to overcome the lack of availability of community-based sentencing options is by encouraging relevant community groups to support sentencing initiatives in the community. Can you tell the Committee which particular types of community groups are providing this support and which other groups could also be approached to do this? Can you give us a little more detail about what they do, the ones that are involved, and where they get their funding from?

JUDGE DIVE: There are a number of parts to that question I cannot answer but I think there are some things I could say that might be relevant to it. I think the starting point would be to look at a population or community where there was a concern and then review what assets and resources were available within that community around which you could develop a plan and perhaps what were the deficits and what needed to be provided. Can I turn to an example which is that intensive court supervision model that has now started at Brewarrina. That arose from when I was in the Children's Court and I did make recommendations to the Government to use a Drug Court style process to assist a chronic issue in a far western town where there was ongoing substantial community unrest as to the level of juvenile crime.

My view is that what we are doing in the Drug Court is not about drugs; it is just an excellent way to use the sentencing process and the criminal justice system to make some changes. So what has been developed in Brewarrina is an intensive court supervision model, which will be very like a Drug Court program in that the partners will meet with the local magistrate each fortnight when the magistrate goes to Brewarrina and the partners there will be the Department of Community Services and the Department of Juvenile Justice and, critically, the Aboriginal elder group which has actually been funded and assisted to provide day-to-day supervision and involvement with the young people in town. What happens in towns such as Brewarrina is government services might only go there once a fortnight for an afternoon but the other 13½ days of the fortnight there are essentially no services available.

The community was quite excited about the opportunity of being involved and having a role but of course they needed resourcing and assistance to do that, so a co-ordinator was appointed and has been paid for. The other partner who is to come to the table is the school principal of the high school because there are no activities or any sport outside the school environment in Brewarrina. So if you are suspended or expelled from school you are expelled from all lawful community life. There is no basketball, there is no pool, it is impossible. If the school principal can be involved then perhaps

you might reach an agreement with the principal that if he does these three steps this week he can come to school for three mornings a week and we will review his behaviour at the end of that period of time. So very much a Drug Court style short-term plan involving those partners.

It is still in its very early days but it is actually happening and running at Brewarrina and it is about to start in Bourke. Why I mention this example is Bourke and Brewarrina, even though they are only 100 kilometres apart, are entirely different communities so what might work in Brewarrina will not necessarily work in Bourke and there needs to be that process of talking to the community - what are the resources in Bourke? What will work better in Bourke, and it might not necessarily be the same thing that is working in Brewarrina. So there is a lot of work to be done in assessing and finding out what the resources are and where the deficits are and then you can put together a program.

The Aboriginal community was there and wanted to be involved but it had no vehicle to actually do that and was often just as much a victim as perhaps the white population which was complaining more loudly. So that would be my answer. You need to look at each individual population or group or geographical area to make those assessments and then you move forward from there, but the process is quite a simple one. It is very transportable if you can create the resources to work with.

The Hon. AMANDA FAZIO: Speaking of transportable, another suggestion we had in the submission was that you have a sort of travelling Drug Court for rural and remote areas that went around in some sort of circuit system. Do you believe that this could be an effective model? If so, why? If not, why not?

JUDGE DIVE: Yes, it could be. What was chosen to happen in the Bourke-Brewarrina area was, as it is so far away it was easier and better to have the magistrate, the one who had the skills as well and so the magistrate, or one of the two magistrates who goes to Brewarrina, is one of the magistrates who does most of the Youth Drug Court work in Sydney and the magistrate flies each fortnight to that centre. So in that way, rather than another judicial officer flying there, they are actually using the one who goes there on a regular basis to do all of the court work for Brewarrina but there would be nothing that could not be overcome to have, for example, a Drug Court in a larger centre such as Dubbo, Wagga Wagga or Taree and have the judge or magistrate fly to that centre each fortnight or something like that. All the hard work is done by the day-by-day team that works with the offender on the ground so probation and parole, health services, mental health services would all need to be funded and available.

CHAIR: Which is why you need a regional centre, is it?

JUDGE DIVE: You can tell that I am very interested in remote Aboriginal communities and assisting them, but it could be quite expensive for a small number of people to do it even in a large country town, whereas the reality is that we have a drawing area of western and south-western Sydney. We have to hold a ballot each week to restrict those who can come to the program, and people who desperately need a Drug Court program even miss out today in our drawing area, let alone the rest of the Sydney metropolitan area or the eastern side of the city, Newcastle, Wollongong. I am a great supporter of providing services further afield but we still do not cover large populations where we could deal with a lot of people with the resources.

Ms LEE RHIANNON: Are you saying that considering there are more people in the city who need these programs, priority should probably come before a travelling court for western New South Wales?

JUDGE DIVE: Yes, I think so. As I said, even though I have a real desire to see better services available for small communities, I think it would be sad to see the money soaked up in a western—

CHAIR: So Magic has happened. I understand that the west is greedy—they get so much all the time.

Ms LEE RHIANNON: I was not saying that.

CHAIR: I was not either, but he was.

JUDGE DIVE: In part of my submission I did say how much is not—

CHAIR: Magic has happened and Sydney east has one, Sydney north has one, Wollongong has one, Newcastle has one. They all have their own separate Drug Court with the resources attached. Now we are able to think about how to do it in country New South Wales. Why do you still think it would be important to have it in regional centres if you are going to talk the Drug Court concept as a whole?

JUDGE DIVE: My suggestion would be that you would start at a large-size regional centre with a good-size population of might-be participants. You do it on a pilot program. You find out what works and what does not, and then you get moving from there. I think pilot programs have a real place in learning from experience. The Youth Drug and Alcohol Court did not turn out the way it was envisaged, and I am very happy with the way it ended up but it was not what was envisaged. It was thought there would be many, many more people taking part in that program and that it would be easier than it was. Actually it turned out to be a small group of very difficult offenders and very hard to create change.

The Hon. AMANDA FAZIO: You said that you held a ballot every week to work out who gets to come to Drug Court. How many people's names go in the ballot and how many actually get to go?

JUDGE DIVE: Over the past few weeks it can range from 12 names and six coming on to last Thursday I would have taken six and there were only five names in the ballot. But there have been weeks when there has been 15 names and we have only had three or four places. So we are being much more successful at the moment in retaining people in treatment and engaging them. So we actually have to almost make assessments as to how many places are becoming available before we decide how many to take on a ballot each week. But to come back to your question, yes, it could certainly be done.

The Hon. GREG DONNELLY: In terms of the drug addictions experienced by the participants in the program, can you provide a rough breakdown of the types of drugs, using the broad categories of the soft drugs, heroin and then I guess the so-called party drugs, chemically manufactured drugs? Can you give us an approximate breakdown?

JUDGE DIVE: I would be reluctant—I mean, we could do that. I could take it on notice if you would like me to but certainly I could give you a quick overview. Heroin and speed are the principal drugs of concern at the harder end, if we could call it that. There is certainly cocaine around, not a lot of ecstasy, pills, benzodiazepines are often used by our female participants and males but perhaps it is more females. Cannabis is widely used but many of them are polydrug users so they may well use a combination of drugs to get a greater effect from it. For example, they might use speed in the morning and then cannabis to bring them back down again later in the day. We see every manner of ingesting drugs. Snowcaine, which is a sort of heroin usually sprinkled on cannabis, is another common way of having a combination of drugs.

The Hon. GREG DONNELLY: With the cannabis do you find hard cannabis addicts who are regular users?

JUDGE DIVE: Yes, and they are very hard to assist. It is very difficult to give up cannabis. Many people fall into the category of being successful candidates who do not graduate. They do not graduate because they cannot give up smoking cannabis. They have left crime behind, they have left heroin behind, but still they will smoke cannabis once a week or something along those lines and so will never qualify to graduate.

The Hon. GREG DONNELLY: With regard to the longitudinal tracking of participants when they leave the program, I gather there is some such tracking.

JUDGE DIVE: These days the Bureau of Crime Statistics and Research does have more tools to track, and for long-term results. There is no published data from the Bureau of Crime

Statistics and Research that tells us whether the ordinary custodial sentencing regime is effective or how effective it is. I am frequently asked, and happy to answer questions, about recidivism rates and our levels of success, but there is nothing to compare it with. If the Bureau of Crime Statistics and Research were to say 20 per cent of our group re-offend within three years, that is in comparison with nothing.

Ms LEE RHIANNON: It is not a bad result?

JUDGE DIVE: It is a very good result, but the ordinary system is not assessed and evaluated in the way that we have been.

The Hon. GREG DONNELLY: Given the long-term issue of drug addiction and the manifestations for the criminal justice system, one would have thought that this would be starting to be tracked and identified.

JUDGE DIVE: The Bureau of Crime Statistics and Research may well be prepared to do such a review. I note that at the moment the bureau is working on a review of parolees in the ordinary criminal justice system, and that might be a very interesting report when it is published. Recently the bureau has done some research, which has not yet been published, on the Drug Court group as to what are the indicators of future success. The bureau tends to provide reports that can help you change and redesign programs, so it may do that for parolees as well.

CHAIR: Would you mind taking the remainder of the questions on notice and provide the information to the Committee?

JUDGE DIVE: I would be very happy to do so.

CHAIR: The Committee also needs to consider issues in relation to MERIT[1]. It would appear that MERIT may be able to be introduced in places where it has not yet been introduced, and perhaps we need to look at additional resources to support it as an additional value program to your program throughout the State.

JUDGE DIVE: With regard to MERIT, it is a very helpful thing that MERIT exists as well as the Drug Court. MERIT tends to absorb people who do not need to be on the intensity of the Drug Court program but are getting a great deal of assistance through that program. There is no competition between the programs because they are different populations.

(The witnesses withdrew)

(The Committee adjourned at 5.04 p.m.)

[1] Magistrates Early Referral Into Treatment