REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO COMMUNITY BASED SENTENCING OPTIONS

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At Sydney on Wednesday 31 August 2005

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The Committee met at 10.00 a.m.

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PRESENT

The Hon. C. M. Robertson (Chair)

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

Corrected

CHAIR: This is the first public event in Parliament House since the incidents of last night. Members of the Committee were saddened to hear of what has happened to Mr Brogden. Working in this place can sometimes have an onerous effect on those who work here and we wish him well in his recovery. Thank you.

I would like to welcome you to the seventh public hearing of the Standing Committee on Law and Justice inquiry into community-based sentencing options. Before we commence I would like to make some comments about aspects of the hearing. The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of guidelines governing broadcast of the proceedings are available from the table by the door. In accordance with the Legislative Council guidelines for the broadcast of proceedings, members of the Committee and witnesses may be filmed or recorded. People in the public Gallery should not be the primary focus of any filming or photographs.

In reporting the proceedings of this Committee the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee. Witnesses, members and their staff are advised that any messages should be delivered through the attendants or the committee clerks. I also advise that under the standing orders of the Legislative Council any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or by any other person.

The Committee prefers to conduct of the 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 short period. If witnesses do give evidence in camera following a resolution of the Committee, however, they need to be aware that following the giving of evidence the Committee may decide to publish some or all of the in camera evidence. Likewise, the House may, at a future date, decide to publish part or all of the evidence even if the Committee has not done so.

Committee hearings are not intended to provide a forum for people to make adverse reflections on others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference. Finally, I ask everyone to turn off mobile phones please for the duration of the hearing. I now welcome the Committee's first witness.

TERRENCE ANTHONY O'CONNELL, Australian Director, Real Justice, PO Box 95, Springwood, New South Wales, sworn and examined:

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

Mr O'CONNELL: As a representative of an organisation.

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

Mr O'CONNELL: I am.

CHAIR: Should you consider at any stage that certain evidence you may 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. Should you take any questions on notice I would appreciate it if the response to those questions could be forwarded to the Committee secretariat by Monday 26 September. Before I ask you whether you would like to make a brief opening statement I would like to welcome the Hon. Peter Breen the to sit in on this session. The Committee voted yesterday evening that that would be appropriate. Mr O'Connell, would you like to make a short statement?

Mr O'CONNELL: I would like to make a brief statement. In fact, I was first alerted to this Committee's terms of reference by the Hon. Dr Arthur Chesterfield-Evans, who thought that I might show some interest. I suppose the focus of my submission is in itself unusual, in that I am trying to draw the attention of the Committee to what I think is the fundamental issue that really needs to be addressed, that is, the issue of criminal justice practice in particular the most predominant practice used by the Probation and Parole Service. I suppose my concern is that regardless of whatever suggestion or option the committee finds suitable in terms of addressing the broader issues of community sentencing options in not only remote but disadvantaged communities, if the broader issue of what works is not addressed as part of that whole process, whatever is offered by way of suggestion or recommendation has limited potential. The threshold question that is really important for me is the question of what ultimately will influence behaviour. It is a question that I want all Committee members to talk about.

In fact, yesterday I worked in a school with a group of schoolteachers whose business is really about behaviour management and relationships. I asked them the question: What is it that influences behaviour? Sadly, it was a question that very few were able to answer in any satisfactory way. Why I believe that is so critical to the broader issues that this Committee is addressing is that I think the present practices in Probation and Parole really do not adequately address that issue; that the preoccupation, as I have indicated in the submission, is largely about compliance with and completion of court orders—whatever they look like—without thinking about ultimately the broader issue: How do we engage offenders and their families in a way that focuses on the harmful effects of their behaviour and its impacts on relationships?

What ultimately is needed is to not only identify but also to address the nature of most offenders, and most of those issues are really relationship issues. I suppose the ultimate aim is how do we really integrate them in a way that is meaningful, that does start to build connections and that does promote the idea of responsibility taking? How do we create opportunities for offenders to genuinely take responsibility? A lot is said about accountability and about taking responsibility but when one looks at the practice it is devoid of opportunity because we are very often preoccupied with doing things to them. That is the very nature of the criminal justice system.

As a policeman of 30 years experience I suppose I realise that the court process, particularly in respect of young offenders, talks a lot about being accountable and responsible but is actually the antithesis of an effective model that would promote that accountability and responsibility. Predictably, offenders who are at risk of reoffending, continue to offend; those who are not at high risk do not. There is nothing novel in that. That draws my attention to the fact that we have to think about the issue of what influences behaviour and its relationship to practice, and whether the practice itself pays attention to the things that will maximise the opportunity for insightful learning that ultimately builds

community connections and develops empathy where individuals make choices, not because there is some fear of punishment but because they understand that their behaviour impacts of those who are significant in their lives and on the broader community. Unless we pay attention to that, I think that whatever options the Committee comes up with, be they about resources or whatever, will make only a marginal difference. I will leave it at that.

CHAIR: In our travels, particularly in country areas, we have seen the influence of what you are saying. Many of us are trying to work towards the resources to deliver family-oriented results. We are not averse to what you are saying.

Mr O'CONNELL: I appreciate that.

CHAIR: What do you mean by the term restorative justice? What is the role of the organisation, Real Justice, of which you are a director?

Mr O'CONNELL: Restorative justice refers to a set of principles and practice that seek to deal with wrongdoing to identify and repair harm rather than a preoccupation with attributing blame and metering out punishment. They are not mutually exclusive. If we talk about restorative justice and punishment, it creates a context in which punishment has meaning and relevance. Real Justice is part of an international, non-profit organisation. It was established in 1994 when I was on a Churchill Fellowship and I presented to a criminal justice audience in Philadelphia in the United States. A fellow by the name of Ted Woktel came out of the audience and said, "You've got the bit we've been looking for." Ted and his wife, Susan, had been running alternative schools and group homes for problematic kids for 30 years. What I was on about was very explicit and they were really excited about the focus on practice that I had.

He became very committed to wanting to start an international organisation to promote restorative justice practices that came out of my experiences as a cop in the early 1990s. With other cops we developed what was known nationally and internationally as the Wagga Conference Model, the idea of bringing young offenders, victims and community members together. It was the forerunner to what we now know as youth conferencing in this State. We are doing some fascinating work in a number of countries. My greatest contribution is in the United Kingdom when working with the Thames Valley place from 1994 onwards, which has had a significant influence on the direction of youth justice. Importantly, it is now starting to permeate the broader criminal justice system. I am referring in particular to the use of restorative justice conferences otherwise known as victim offender conferences.

The Hon. AMANDA FAZIO: In your submission you said you thought there was a problem with probation and parole officers in employing restorative justice principles in their day-to-day work with offenders, even people on community-based orders, because they just seem to concentrate on their requirements to make sure that conditions that are placed on people by the courts are being adhered to. What would enable that to change? Would probation and parole officers need different training? Would the whole department need a new approach? Or is it resourcing because they would have more time to do this sort of work if there were three times the number of them?

Mr O'CONNELL: If we had three times the number I do not think it would make any difference. Fundamentally it is about the conversations they have or do not have. It is about the fact that there is no rigour in the practice. They do not sit down to talk about what works and what does not. They do not have those conversations. Since 2000 I have worked with probation officers throughout Australia, particularly in the Northern Territory, to the backdrop of mandatory sentencing. I had the opportunity to train a whole lot of cops, probation officers, school people and community people in the Northern Territory about diversion rather than the old idea of mandatory sentencing. It is not unique to probation and parole, but when I asked them about their practice, what works and what the rationale is, how they would explain their practice, they struggle.

I asked, "What influences behaviour?" which would be germane to what they are doing—in other words they would have to have a sound understanding of it. A particularly strong institutional feature is that custom and practice kicks in. As I said, this is not only in probation and parole, it was the very thing I discovered in policing. When you ask cops, "What do you do?" they really are good at describing that. "Why do you do that?" the answer is, "Because that is what we have always done."

When asked, "Does it make a difference?" They say, "What are you talking about?" "Would know what a difference looked like and how would you measure it?" The funny thing about police officers is that we are in the business of collecting evidence but we have no idea of how to apply it in terms of our own practice.

The thing that I discovered on the probation and parole side of it is the frustration they experience because they are at the sharp end. They are in a place that has very little recognition because the strong theme today is about how we can be more punitive. This Parliament is a classic example of that. I guess it is Einstein saying that you know something does not work but somehow it is the first sign of insanity: the more you do it the more it will make a difference. I am often asked, for example, about someone getting 50 years for rape and I will say, "I am not sure that the community is any the better for that experience." I say that because it has a significant influence on the workload of probation officers. The political imperatives kick in. They struggle. When we ask them when do they sit down and reflect on their practice in a healthy way as part of a strong collegiate process they look at you and think, "What planet are you on? We just do what we do because that is what we do." That does not mean they do not do some wonderful stuff. There are some tremendously committed individuals out there.

When we ask them, "When do you have the greatest impact on offenders?" is when we are able to engage them in a way that gets them to focus on their offending behaviour and they start to think about what is important. Very often they say: "It is those we are able to develop some rapport with." It is not a question of resources. It is a question of practice and rigour. There are enough resources. Sure, there could be more resources. I would like to see probation officers get out of their bloody offices and get out onto the highways and the byways, and get involved with offenders. Today, the district office arrangement is that offenders report all of the time it. I would like to see the probation office become more involved so that it is a much more realistic experience. Otherwise you get through this process of the turnstiles of dealing with offenders. That is a generalisation, but if there were an area I would want to push for greater resources it is to free up officers from the shackles of all the paperwork and the office requirements to get out onto the highways and byways to interact more with offenders and their families.

The Hon. AMANDA FAZIO: Our focus is on community-based sentences. Can you tell us how they might be tailored to make them more accessible to people in rural and remote areas of the State?

Mr O'CONNELL: I probably did not address that, and I did that deliberately because I am more interested in trying to develop some rigour around the practice. If, at the end of the day, we cannot engage offenders within the context of the broader community in a meaningful way, whatever the option you come up with it does not make a great deal of difference. The problematic or addictive behaviours of many offenders have their genesis in fractured relationships. An example is drugs and alcohol. The problem with offenders who are angry is that we want to trot them off to anger management, which is a manifestation of behaviour without fundamentally understanding what the triggers are. I have worked in family violence and the Delouse model is really interesting. The two strong characteristics of offenders in family violence is that they dominate and isolate victims. What do we do as a State? We dominate and isolate offenders and we somehow pack them off into anger management in the belief that somehow that we will make a difference. Marginally it might do something useful, but the downside is that it makes them worse of offenders and better abusers

The Hon. AMANDA FAZIO: How does that work?

Mr O'CONNELL: We are dealing with anger, which, in my experience, is triggered by a sense of shame. When you isolate them from significant others, when there is no opportunity for any dialogue so that they can begin to understand the impact of their behaviour on those who are important in their lives, they cannot have those conversations. All you give them is a set of strategies, and I am not saying that they are not useful, but as part of the bigger picture dealing with behaviour in isolation you really need to understand what the triggers are and the importance of relationships. You end up with a mismatch of practices that ultimately do not make a great deal of difference. How in the hell do the families feel safe?

I had a meeting with a group of workers in Melbourne working in isolation with offenders. They said, "We have offenders who are involved in family violence support who say, 'We are ready to change', but the families are saying, 'What about us?'" From facilitating lots of processes from the most horrific crime to the most minor crime I have learned that unless you widen the net in a way that there is a shared understanding about what happens, the impact of behaviour and its profound impact on relationships, and unless we provide a forum for people to deal with those in healthy ways, we end up doing things just to offenders. It is as simple as that.

The Hon. AMANDA FAZIO: Do you think that restorative justice can be applied to the whole range of offenders?

Mr O'CONNELL: Absolutely. But I am not talking about it as an alternative, rather as an integral part of the whole criminal justice system. I am not in the business of deconstructing the criminal justice system. I am in the business of trying to make it more effective. In other words, what we needed to do is find ways in which we can make the impact of experiences far more effective.

The Hon. GREG PEARCE: I find what you have to say bit contradictory. Earlier you said you thought that probation and parole had adequate resources, but you seem to promote a model that promotes a great deal of extra resources to get to the bottom of problems. Could you run through it in a little more detail and explain to me how we can come up with some suggestions for some of the sentencing options that already exist that might deal with some of the issues you raise?

Mr O'CONNELL: I understand why you think there is a contradiction because at one level I said I thought resources were adequate. What I am really trying to do is advocate strongly for a greater focus on the capacity for probation and parole to challenge offenders to think about their behaviour and create opportunities in which they can begin to understand the impact or nature of their behaviour on significant others. You will notice I make reference to a concept called the game, which is quite a specific activity that tasks offenders to go out onto the highways and byways to discover who they are impacting on.

It is an opportunity to develop very different conversations with significant others. That is a general proposition that I think ought to underpin all our practises and, in particular, probation and parole practises. So that what happens is that when a probation officer engages the offender they really need to be explicit about the practises, and, not only that, to challenge them in a way where the focus is about what is really important to the offenders? It takes them on a very different path. The bit that, I guess, is the contradictory bit is the fact that where I think greater resources are needed are about the need to free up and encourage probation officers to go out into communities and work closer with offenders and their families.

My experience says that most of them talk about they are so caught up in the machinations of the paperwork and the heavy workloads that they struggle to be able to do that, whilst a lot of them think that it would be, in an ideal world, the way to go. I would like to make that distinction: I am talking generally about a fundamental rethink of the practise and the whole process of engagement of offenders and their broader communities.

The Hon. GREG PEARCE: I just do not see where that gets us though at the moment, particularly in regional areas where probation officers from whom the committee has heard, as you say, say that they are snowed under with the workload and the paperwork. I think they would also say that they are taking a case management approach and are trying to do exactly what you are advocating. I am having trouble following what change you really think should be made and how it could occur, unless you are talking about putting in a whole lot of additional resources and extra people?

Mr O'CONNELL: I guess that is where I hold a different view, that is, they are not doing what I am advocating at all. Some think they are but they are not, and I guess I rely on my firsthand experience of training probation officers. In fact, they are frankly not in the ballpark. Now that sounds a pretty sombre statement but that is my reality. When I get to talk about it to describe the processes that they use to engage offenders and their families, they are poles apart frankly.

The Hon. GREG PEARCE: Accept that proposition for a minute, what do you do to change it?

Mr O'CONNELL: That is what I talked about, I guess, when I was asked the other question. I think there needs to be a fundamental rethink of the whole area of practise. We need to develop a much stronger rigour and focus on the things that ultimately influence and change behaviours so that there is much more attention paid to the whole process of engagement. We need to be far more explicit. We need to be able to measure, not whether or not there is compliance or completion, but whether fundamentally there is any sort of behavioural change. That is what we need to do. That is the focus of my submission. Frankly I do not care what community sentence options, I am just suggesting that their real potential will not be appreciated if we cannot basically engage offenders and their families in a way where everyone is orientated in the same direction.

Ms LEE RHIANNON: I want to build on the questions asked by Mr Pearce to try to understand where you are coming from. Would you be more specific and give an example of an offender and the crime they have committed. How would you have the authorities interact with that person? What would the parole officer do? Would you provide a specific example so that the committee can understand the way in which your proposition is different?

Mr O'CONNELL: I welcome that opportunity. If I look at the most indicative practise it is someone who reports to a probation office. I guess, what probation officers largely do is to actually meet and greet and then describe what the reporting conditions are, as well as making—it depends on the particular case—some sort of risk assessment which is a pro forma system. I propose that when someone comes from a court that the first thing that we do is to engage them in a way which says "Tell me about what has happened in court?" "Tell me about what you understand this is all about?" "Tell me about why it is you have been sent to me?" "Tell me about how I might be able to help you in that process?" What the officer would then do is to proceed to give them a very explicit set of practises which says that the basis on which I could contribute to that, as would be for you, is to have a very clear understanding of what are our shared expectations. That is, we introduce a very explicit way to describe that both visually and in terms of how we engage them.

We talk about the need that our interactions are built around mutual respect and trust. We talk about, in my case if I were a probation officer, the focus is about creating experiences so that the offender begins to understand the impact of their behaviour on significant others; to expose them to a set of very simple questions that are restorative in nature that will assist them to undertake that activity; and ultimately to expose them to this notion of what we call the "game" which is a requirement in which they will be given a number of tasks or undertakings to go out in their communities over a period of time and, firstly, identify those who are significant in their lives and to then engage who are significant in a range of conversations about how they see the offender's behaviour and its impact, as a way of broadening that net. You would overlay other requirements, such as drug and alcohol programs, or whatever else is needed.

The interesting outcome of that approach is not only explicit in terms of those practises but the individual who developed the notion of the "game" who is a very experienced correctional officer, the moment he started to levy responsibilities onto offenders to undertake those activities, he started to discover there were certain significant changes. You will notice in the submission there is a case study of an offender—actually it is an Aboriginal offender—in which he uses that as an example of how he changed his practice as a probation officer and gave this guy, through using this concept of the "game" and ended up with very different outcomes in terms of behaviour, opportunities for reflection, insight and learning.

Ms LEE RHIANNON: I will interrupt you, because time is short and I want to ask another question. I appreciate how you have explained that but it sounds as though it would need more resources. I understood from your opening that it did not need more resources. Surely, initially parole officers would need to be retrained to go out into the field to engage with people who are significant to the offenders and that would require more resources?

Mr O'CONNELL: I think you are absolutely right but that is a different question to the question about existing resources. If they were to embrace this approach, clearly there would be a need for additional resources to make it happen but ultimately, at the end of the day, my argument is

that apart from freeing up the officers so that they can go out in the highways and byways, fundamentally the existing resources if aligned in that direction would be much more effective to engage offenders and families. Therefore, ultimately it would have a much greater impact—that is how I would describe it.

The Hon. GREG DONNELLY: In light of the time I know the Hon. Peter Breen has some questions he would like to ask first, and then if time allows, I will ask my questions.

CHAIR: Yes.

The Hon. PETER BREEN: I did not think I was actually going to be asking questions. My secretary was told that I was not going to be asking questions.

CHAIR: We voted to allow you to do this.

The Hon. AMANDA FAZIO: Democratically.

The Hon. PETER BREEN: I am very grateful.

Mr O'CONNELL: It does happen.

The Hon. PETER BREEN: I refer to victim offender conferencing, a model that you would suggest for probation and parole?

Mr O'CONNELL: Part of the possibility, yes, but not specifically, no. I am talking particularly in terms of practise. One of the extensions of that practise may be a conferencing model.

The Hon. PETER BREEN: Were you in quite a famous film called *Facing the Demons*?

Mr O'CONNELL: Yes, I was the cop, the good-looking cop.

The Hon. PETER BREEN: That was a very interesting film because it was about victim offender conferencing about which you are talking?

Mr O'CONNELL: That is right.

The Hon. PETER BREEN: I think it was the crime of the murder of the Marslew boy who was in a Pizza Hut and three or four kids, one of whom had a gun, came into the Pizza Hut and this Marslew boy was shot?

Mr O'CONNELL: That is right.

The Hon. PETER BREEN: At the victim offender conferencing two of the offenders were boys named Kramer, I recall?

Mr O'CONNELL: That is right.

The Hon. PETER BREEN: One of the Kramer boys was in the conference?

Mr O'CONNELL: That is right.

The Hon. PETER BREEN: Mr and Mrs Marslew were in the conference?

Mr O'CONNELL: That is right.

The Hon. PETER BREEN: It seemed to me that Mr Marslew was prepared to build some kind of bridge with this offender?

Mr O'CONNELL: That is right.

The Hon. PETER BREEN: Mrs Marslew, on the other hand, took a very different approach: "You have murdered my son. I do not want anything to do with you. You are a scumbag." It seemed to me that although the film was very dramatic, the outcome was not effective from her point of view, that is, the victim's mother's point of view. At the end of the film, in fact, she gave the offender, Kramer, the ashes of her son and said "You've killed my son. Here are his ashes. You work out what you want to do with them." That was very dramatic in terms of the film but I wondered whether it was productive. What happened as a result of it all?

Mr O'CONNELL: It is interesting. Of course, it won a Logie as the best documentary in 2000.

The Hon. PETER BREEN: I told you it was a famous film.

Mr O'CONNELL: The universal view was that for Mrs Griffith, who was Ken Marslew's wife, and the mother of Michael, that not a great deal was achieved but, of course, that is how wrong we are. I have the benefit of a follow-up interview 18 months later and, in fact, that opportunity was so significant for her that it fundamentally changed. It actually allowed her to move forward. What she was actually doing—because she had never been provided an opportunity in the criminal justice system to be heard or to be given an opportunity to talk about her experience—she ended in a way that was pretty significant. It was nothing more than that. Eighteen months down the track she reflects on it and says, "You know, that was the turning point for me. That allowed me to put away my demons. It allowed me to humanise the experience. I don't feel any ill will towards these guys. I have moved on. I have been able to normalise my life."

She said, "I realise now had I not participated in the process that wouldn't have been possible". I guess the bottom line in all of this is how do we humanise experiences or do we continue just to humiliate and to outcast people? I know that if we continue to do what we are doing at present it will be a pretty nasty society we live in.

The Hon. DAVID CLARKE: Have you had any experience with community-based sentences in other Australian States or overseas? If so, how might these be adapted for New South Wales?

Mr O'CONNELL: I guess I have had pretty limited opportunities, apart from in the Northern Territory and they have been fairly limited. A few of those I have been involved with, in fact I have facilitated processes as part of the community sentencing option involving home detention. But apart from that I have really not had any great involvement.

CHAIR: Do you know if any of these processes have influenced what is happening in Victoria?

Mr O'CONNELL: No. I am not really across that in Victoria. I cannot help you there.

The Hon. GREG DONNELLY: My question goes to the points you made in your opening remarks about the significance of relationships, which I agree with. Of course, I think arguably the most significant relationships that most people experience in their life is their family relationship, which, obviously, profoundly affects people's attitudes towards dealing with other human beings. No doubt a number of offenders come from backgrounds where there is a broken family or a dysfunctional family of some description. In terms of your model you explain that you discuss with the offender matters that deal with restoring relationships, but to the extent that many of these people do not have a family relationship to speak of, how is the way forward for those people?

Do you focus on trying to present, shall we say, the possibility of them having some normalised family relationships, particularly if they are young, later in life or do you give focus on the notion of, as you have said, the significant other—in other words, relationships outside the family in the community—or do you do a combination of the both?

Mr O'CONNELL: I think your question is interesting because of this notion of restoration when it is very questionable whether a relationship exists. I just want to start by saying that I discovered the other day I never found a parent who has woken up and said, "I want to be the worst

parent in the world today". In fact, I do not know of a parent who actually does not—regardless of what the nature of the relationship is—who does not care and love their kids in some way. What I have discovered working with the families is when I asked them about what would "normal" look like, they struggle around that.

I guess my proposition is whatever is possible in terms of relationships, whether it is directly in terms of family or significant others in communities, that the basis on which we can work towards some certainty about making a difference with offenders depends upon the extent and the degree to which we can engage significant others who can really hold them to account in lives and say, "We value you as an individual". What is critical is that if we do not experience any sense of relationship we are unhinged; nothing moderates our behaviour. The difficulty is that when we look at most offenders it is all about tenuous relationships.

What I am talking about in terms of practice is the capacity to engage offenders to start to discover the importance of relationships. The only way you can do it is to quote very different conversations. This ain't rocket science. But at the most basic level we are missing it in terms of our predominant practice. I find the same thing happening in schools; I find it in most institutions. Because fundamentally there is no rigour in practice and at the end of the day if we can build some community net that can strengthen relationships, whatever they look like, that is the basis on which I think we can look towards making some reasonable changes around families.

CHAIR: Thank you very much indeed for your input. I think it has been conceptually very helpful to us. I guess we could have a long debate about the definition of a resource, but we will have that at committee level.

Mr O'CONNELL: I also would like to think it was very practical too.

CHAIR: Yes, it was, thank you. I have another question that I would like you very much to take on notice if you feel it is sensible. In your submission you have given incredibly good examples of your process in action. Is there any information that you could send back to the secretariat on empirical evidence? Could you take that on notice because we have run out of time?

Mr O'CONNELL: How many boxes do you want?

CHAIR: Just a couple of good examples.

Mr O'CONNELL: I will send you something that is very practical.

CHAIR: Thank you very much indeed for coming to see us. It has been very important.

(The witness withdrew)

(Short adjournment)

CHAIR: Welcome and thank you very much for coming today. This inquiry has become complex and interesting. The Committee is particularly interested in what you have to say to us. This is the seventh public hearing of the Standing Committee on Law and Justice inquiry into community-based sentencing options. Information on our broadcasting guidelines is available. Any messages or documents to be made to the Committee will be attended to by the secretariat. The Committee prefers to conduct its hearings in public. However, we may hear certain evidence in private if necessary. If such a case arises, the Committee will make a decision whether or not that evidence remains private. The Parliament may overturn the Committee's decision if it wishes to 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 therefore request witnesses to avoid the mention of other individuals unless it is absolutely essential in order to address the terms of reference. I ask all present to completely turn off their mobile phones for the duration of the hearing.

SUSAN JANE SMITH, Branch Manager, Indigenous Education Policy Branch, Australian Department of Education, Science and Training, affirmed and examined:

MARK JOHN DE WEERD, Director, Australian Department of Education, Science and Training Action Team Council of Australian Governments Trial, sworn and examined:

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

Ms SMITH: I am representing the Department of Education, Science and Training.

Mr DE WEERD: I am representing the Department of Education, Science and Training.

CHAIR: Are you conversant with the terms of reference?

Ms SMITH: Yes, I am.

Mr DE WEERD: Yes, I am.

CHAIR: If you should consider at any stage 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 questions on notice I would appreciate it if the response to those questions is forwarded to the secretariat by Monday, 26 September 2005. Would either of you like to make a short statement?

Ms SMITH: I would like to make a short statement. I would like to thank the Committee for the opportunity to provide some information on the Australian Government's work in the Murdi Paaki region of New South Wales and specifically on our work as lead agency in the Council of Australian Government's [COAG] trial on Indigenous service delivery. As lead agency we are working in partnership with the New South Wales Department Of Education And Training and with the community, represented at the regional level through the Murdi Paaki regional assembly and at the community level with the 16 local community working parties, as well as of course with a range of Indigenous and non-Indigenous organisations both at local government and State level and with service providers.

The department and our New South Wales counterpart or co-partner sees these arrangements as a partnership with the explicit objectives of engaging with Indigenous communities to improve outcomes for Indigenous people in the region and, in particular, to improve the service delivery and policy co-ordination arrangements in our efforts collectively. I thought the Committee might be interested in my role and Mark's role. I am the Branch Manager of Indigenous Education Policy in the department. As part of my responsibility I have an oversight of the COAG trial in the Murdi Paaki as well as engagement with other COAG trials around Australia, as well as a range of other policy advice and support. I am not alone in that. I have a team that works to me and I also report to our group manager, our Deputy Secretary and our Secretary, all of whom are very much engaged in our work in the COAG trial.

Mr De Weerd’s role is located at the edge of the region in Dubbo as the Director. He might like to outline what those things are. We thought we would be able to give you a different perspective. I can give you the national overview and Mark can give you much more of the direct involvement with the communities. We are very happy to answer questions and we thank you for providing some of those. To the extent that we can comment on law and justice issues, I think we are somewhat limited. But we have noted the communities' priorities in those areas and we can comment on those if you are interested. I will ask Mark to outline his area of responsibility.

Mr DE WEERD: I would also like to thank Madam Chair and the Committee for giving us the opportunity to speak to you. I am a member of a small team, the Council of Australian Governments [COAG] Action Team, which is made up of myself and a representative from the New South Wales Department of Education and Training, which is the State lead agency for the COAG trial. As well, I work with the Manager of the Bourke Indigenous Co-ordination Centre. Our role is to

work directly with the 16 communities in the Murdi Paaki region and to develop solutions with them on their priorities, in conjunction with Australian and State government agencies as well as local government. I am also responsible for the engagement as an Australian Government representative to engage other Australian government agencies and to work and engage with the communities. I am also responsible for identifying barriers that may be brought up as part of the COAG trial and bringing those to a more senior level to be able to be dealt with.

CHAIR: Would you give a description of the aims of the trial and what it is about? You may be aware that we held hearings in Brewarrina and Bourke.

Ms SMITH: As the Committee would understand, that Council of Australian Governments, the peak intergovernmental forum in Australia, agreed in April 2002 to trial working together with Indigenous communities in up to 10 selected regions. The decision was that there would be 8 COAG trial sites in Australia, and the Murdi Paaki region is one of those. Australian government agencies have been assigned as the lead agencies to work in particular sites and the Murdi Paaki region was the one the Australian Government Department of Education, Science and Training was asked to work on.

The ultimate responsibility for the COAG trial sites and arrangements are with the Minister for Immigration and Multicultural and Indigenous Affairs. However, secretaries of the agencies have been asked to take a championing role, a lead role, in making the objectives of the trials work. In that context, our secretary, Ms Lisa Paul, is very strongly involved with the New South Wales department as the co-partner and also the Murdi Paaki Regional Assembly in championing and working through solutions for the communities.

The Murdi Paaki region, as you would know, is a large area and covers at about one-third of the State's landmass; there are 7,500 indigenous people, 13 per cent of the region's population are indigenous. As Mark outlined, there are 16 major communities that we are working with. Primarily, we are trying to apply the COAG principles of improving service delivery and policy co-ordination arrangements to improve outcomes for indigenous people. We have been asked to work in a joined-up whole-of-government way to give effect to that. In practice, this has meant that we have established working relationships with the lead agencies and with the community and set about establishing a strong engagement relationship with the existing governance arrangements that the indigenous people in the region had set up.

When the trial was established, that was the Murdi Paaki Regional Council, formerly the ATSIC council; subsequently, as you would know, ATSIC has been abolished. The Murdi Paaki communities have formed a regional assembly and the governance structure is a very strong model in which they have asked the community members to join the community working parties. They have representatives of those community working parties working on the regional assembly. Our strategy has been to engage with both those structures and build on the governance arrangements that the indigenous people wanted. We work across government and across levels of government in that context.

CHAIR: When did your trial commence?

Ms SMITH: In December 2002, almost three years ago.

CHAIR: Recognising that this is probably not your issue, but I am very interested to know that Murdi Paaki crosses over Gamilaroi people and the people next door. I know that happened earlier, but it is very interesting.

Mr DE WEERD: Given that it is such a large area, there are numerous tribal groups that originate from the Murdi Paaki region.

CHAIR: Do they work together?

Mr DE WEERD: Yes, they do. Obviously they see this as an opportunity for them to improve outcomes for indigenous people in their communities and across the region. Obviously they realise that they need to work together to be able to get those improved outcomes.

CHAIR: The trial started in 2002. Has that trial been evaluated?

Ms SMITH: We have embarked on it, we certainly have a monitoring and evaluation framework that we have agreed with the community and with our New South Wales lead agency. We started on initial baseline evaluation work. Earlier this year we commissioned an independent report, which started to look at the communities' views of what the COAG trial was achieving. Did the community understand what it was setting out to do? Was it, in their view, achieving those things? There were six focus groups in six communities in May this year. A report will be released, it is currently being finalised. That is the first part of our evaluation.

The second half will be to ask more deliberate questions about what has changed about the behaviour of agencies; whether we are changing the way we respond to communities, and are we more effective in meeting the community's needs. In addition, there is an overarching evaluation intended by the Office of Indigenous Policy Co-ordination for all COAG trial sites. That will happen this year. Individual trial sites will be evaluated. Next year the Australian Government agency, the Office of Indigenous Policy Co-ordination, will draw together the themes arising from each of the other COAG sites. Work has progressed. I can give you some of the thematics that have come out of that initial work in Murdi Paaki, if that is of help.

CHAIR: Yes, that would be, thank you.

Ms SMITH: Broadly, as I said, there were six focus groups with an independent consultant paid for by our department and the New South Wales Department of Education and Training. We asked a series of questions about whether the communities were engaged in the process, whether they understood the objectives, and had they seen any changes. There was a set of questions around focus groups. Their findings were that overall the feeling from the communities are positive about the potential of the COAG trial, but it is too early to tell whether a lot has changed and that primarily the people who were fully engaged in the community working parties were much more knowledgeable and understanding of what was being achieved, as opposed to the people who had not really fully engaged. However, there was a level of optimism. Also there were some words of criticism, that they really had not seen a lot of changed behaviour from a host of agencies, both at the Federal and State level.

The Hon. GREG PEARCE: Which of the New South Wales agencies do you work with?

Ms SMITH: We work most closely with the New South Wales Department of Education and Training [DET], as they are the lead agency at the New South Wales level. We work also very closely with the Department of Aboriginal Affairs [DAA]. We have a steering committee for the work and we have DAA and New South Wales DET attend those steering committees. The chief executive officer of the DAA attends as do high-level executives in the New South Wales department. Our deputy secretary chairs that meeting.

The Hon. GREG PEARCE: Is all the funding from the Commonwealth Government?

Ms SMITH: No, there are joint funding arrangements.

The Hon. GREG PEARCE: How do you work out how to evaluate the programs and the trials?

Ms SMITH: I did not bring the table with me, but I can provide it. We have a monitoring and evaluation framework in which we are setting out the objectives, the research questions in terms of evaluation, some of the baseline data we are seeking to gather, and what impact we are making on changing behaviour. Would the Committee like me to provide that?

CHAIR: Yes, that would be excellent.

Ms LEE RHIANNON: The Committee heard, during its trips, about staff burnout, particularly in rural and remote areas where there is often a lack of support. Do you have any comment on that and what can be done about it?

Ms SMITH: My initial comment is that we are aware of the impact of staff working in rural and remote areas. The department has a long history of having a large number of our staff in rural and remote areas—sorry, more so in rural areas. As you would understand, we are a Canberra policy department but we have a large network of 41 offices in States and Territories. In working with indigenous communities, we have a large proportion of staff who are indigenous themselves. We always have had mainstream work on indigenous education in particular, and we have been working with indigenous communities. Using that experience, we have made sure all that we have appropriate training and support for staff. We have a distributive network structure, a State office with a State office manager and district managers, and so on.

Ms LEE RHIANNON: You would be aware of some of the Committee's work on community-based sentencing. Could you comment on what barriers are in place for Aboriginal people taking up community-based sentencing, from your experience?

Ms SMITH: We do not have a great deal of expertise in that area. However, to the extent that this is helpful, we looked at the community action plans that the various communities have identified, law and justice issues. Some of those communities have identified some of the issues that they see as barriers. My colleague is happy to outline some of those, if that would be helpful.

Ms LEE RHIANNON: Yes.

Mr DE WEERD: A number of common themes have been identified through the community action plans relating to law and justice. I will run through some of those. They identified a need to build stronger relationships with local police, and have regular consultative meetings between police and communities. That relationship building needs to occur to try to move young people away from committing crime and actually dealing with young people who get into trouble. There is a preference for permanent police officers in communities. A lot of the smaller communities do not have a permanent presence; they are serviced by the larger communities, which could be up to 100 kilometres away. Therefore, if there is an issue in the community, it takes some time for officers to get to those.

There is a requirement for greater access and an increase in the number of Aboriginal community liaison officers that service the indigenous communities that we work in. Also there is an identified need for more female Aboriginal community liaison officers to deal with women's issues.

There is also a want to investigate the suitability of circle sentencing in communities. It has been identified by numerous communities that they are quite interested in the model that is being trialled and undertaken in some of the communities. Numerous communities would like the opportunity to determine whether that would be suitable and would meet their needs. There is also a request for an increase in the number of female police officers. There is a feeling that male officers are not necessarily the most appropriate people to deal with some of the issues that are faced in communities.

There is also a request to expand the number of night patrols that operate in the Murdi Paaki region. At present there is only a small number and they see night patrols as an opportunity to reduce the level of crime and also to make communities feel a lot safer, knowing that there are patrols in place to support the communities. They request effective youth services to look at intervention and diversionary strategies for young people to try to keep them out of trouble in the first place so that we do not have to get to the situation where we are dealing with offenders. They are the major common themes that have come through community action planning.

The Hon. GREG DONNELLY: I am interested in comments about relationship issues. One of the witnesses yesterday spoke about what he saw as difficulties with community-based programs in Sydney in the context of the floating population of between 8,000 and 10,000 Aboriginals passing through Sydney at any one point in time. This has created an issue in that Aboriginal communities are very much based on relationships and the authority that runs through those relationships, and if those relationships are not solidly in place, issues will arise that push back against community-based type programs. Would you like to comment on that with respect to the points you have just made? You did not refer to that as an issue but he, as an Aboriginal, identified that as a key problem for Sydney. The

flipside is that in regional New South Wales perhaps communities are more stable. To the extent that that is the case, does that assist in the application of these community-based programs?

Ms SMITH: We both might like to comment on that. Some expressions of those themes coming through in the community action plans are relationship-based. It is about trust. Some lessons we have learned from being the lead agent are that we have to learn new ways of making sure that we are overcoming the traditional distrust between indigenous communities and government agencies of all persuasions. That is one of the things. In some respects the governance model that the Murdi Paaki communities have set up is a mechanism through which the need for relationship-based and local level decision making can be addressed. That would be my overarching theme and Mark is much more close to that.

The Hon. GREG DONNELLY: Before Mark comments, does the trust go to the question of Aboriginal communities interfacing with government agencies or is it also trust inside the Aboriginal community, between members of that community, or both?

Ms SMITH: I think it is probably both. The one that we think is within our area of influence is obviously the one about establishing respectful relationships that ensure we indicate that we are there to be responsive and to meet needs in a much more joined-up way. As to the interworkings of those community working parties, there are challenges for people and Mark is best placed to comment on those.

Mr DE WEERD: Obviously, one of the priorities identified of the COAG trial was to strengthen community governance. Part of that is to build trust within the Aboriginal community. We see it as critical that community working parties are representative of the whole Aboriginal community and not certain sections. We are working closely with the community as a whole to ensure that that representation does happen and that the interest groups, such as elders, women and young people all have a place around the table and have some input into what role community working parties play.

Therefore, the work we have done over the last two years has focused strongly on community governance in that we need to be able to have that trust within the community and then be able to engage with government. As Susan has indicated, there is then the need to build that trust between the Aboriginal community as a whole and government agencies. As we all know, there have been issues in the past around the relationship between government and Aboriginal communities and we need to play a part in being able to strengthen that partnership. We see that as a critical role on the ground, of being able to build that partnership so that we can move forward and look at the issues that Aboriginal communities face.

It is acknowledged that the Aboriginal community is a transient community and hopefully what we can achieve out of the COAG trial is improving the Aboriginal communities in the Murdi Paaki region, which may reduce the requirement for people to have to move away, to be able to get a better standard of living and so on. If we can work with communities to improve outcomes locally, that may encourage more Aboriginal people to stay in their local communities, which would reduce the conflict issues that you identified in your question.

Hopefully if we can work with the Aboriginal communities to strengthen them at a local level and to be able to provide employment opportunities, good education and good health services, that may encourage those people to stay in their local communities, which may be able to overcome some of those concerns that were raised.

The Hon. GREG DONNELLY: On the question of this internal trust you just mentioned, do you believe that there are any small number of factors which significantly contribute to undermining those trust relationships inside Aboriginal communities and, if they are identified, can you name them?

Mr DE WEERD: I think in terms of the governance work we are doing that, in the past, this has been done through Aboriginal organisations that have been incorporated bodies, which have had access to the dollars and so on. This has caused problems because if an Aboriginal group in the community has control of that organisation, it can cause some friction with other groups. The

community working parties overcome that by not being incorporated. They do not directly deal with money so, therefore, you do not have that level of conflict that you may have had in the past. That is not to say that there still are not some issues but they are not as entrenched as what they may have been in the past under older models.

Those older models, in a way, have been encouraged by government so that to be able to fund the community, you need to have an incorporated body who can manage the funds. In a way they have been set up through the need to have an incorporated body but the model we are attempting to get too will hopefully overcome that by having a community working party that makes decisions on behalf of the whole community and will hopefully overcome the issue of factionalism and friction within the community.

The Hon. AMANDA FAZIO: You have talked about the self-governance issue. Can you tell us about the shared responsibility agreement that you have? How does that affect co-ordination between Federal government, State government agencies and the Aboriginal community? Also, do you think having the shared responsibility agreement has helped to break down silos in service delivery?

Ms SMITH: We have nine shared responsibility agreements in the Murdi Paaki region, three of those at the regional level and can be characterised as responding to priorities that the whole region has wanted a response to. Then there are other shared responsibility agreements at the local level. To build on what the Hon. Greg Donnelly said about transience and wanting to keep people back in communities, the Enngonia community has signed a shared responsibility agreement, to give you an example—and we can make these agreements available to the Committee if you would like that information—about distance education provision for the young people.

Years 7 to 12 students needed to go away from Enngonia, which is a far-flung community up north of Bourke, and the community was worried about its young people leaving. The shared responsibility agreement is about the provision of distance education and some support. The obligation on the community is about encouraging young people to attend school and encouraging parents to support the young people through distance education. That is an example of a local level agreement.

We think those agreements do have the potential to bring together services in a much more co-ordinated way. There are three signatories to the agreements that we have done in Murdi Paaki—the community; if it is a local level one, usually the chairperson of the community working party, the secretary of our department—Education, Science and Training—and the chief executive officer of the New South Wales Department of Education and Training. Those agreements identify what each party will bring, what they will contribute and what their obligations are.

The Hon. AMANDA FAZIO: We had previous evidence in earlier hearings that additional resources are required to assist agencies with co-ordinating service provision. What other things can organisations do that will improve the way that they work together?

Ms SMITH: I think I would start by saying that this work is resource intensive. That has been our experience, but we know that the work can be improved by ensuring that people share the objectives that understand what we are trying to achieve. I think that is happening through the trial. We know that there is a need to communicate well and to meet regularly, so we have set up some structures to help operationalise what we are trying to achieve. We have various co-ordination points across government agencies and into the community.

We also have set up a series of governance workshops and getting together of the community working parties throughout the region. We have had three of those to date and we will have another one in October this year. We respond very much to what the communities want to cover in those meetings. We have concentrated on governance support and leadership to date and we will be going into some specific issues that the community wants to raise. An employment strategy is likely to be one of those this time.

The other things that can help support that joined-up work in co-ordinating service provision is to think of the other players as partners, treating them in that manner but recognising, of course, that

there is an imbalance in the power relationship potentially, so we need to be mindful of that. We have actually given resource support to community working parties in the form of secretariat support and we are hopeful that we can provide some technical expertise in the near future to community working parties to implement their plans.

The Hon. AMANDA FAZIO: You said earlier that you had some focus groups to try to help you evaluate the success of the trial. Did you use a similar method to come up with determining regional priorities?

Ms SMITH: The regional priorities actually came through from the community. It is entirely the communities that have identified the priorities and I think I omitted in my opening statement to identify the regional ones. There have been four of those.

In August 2003 the then Murdi Paaki Regional Council expressed broad priorities for the region as improving health and wellbeing of children and young people, improving educational attainment and school retention, helping families to raise healthy children and strengthening community and regional governance structures. So the latter was where we thought we would start and we have been moving on to some of these other priorities.

CHAIR: When we were conducting community consultations in some towns communication between the police and the community appeared to have increased quite a lot but the outcome was the same—many people were locked up and there were many, many police in each small town. I recognise that people have asked for things like night patrols but the effect seems to be the same. Are you able to work through these issues?

Mr DE WEERD: I think by having increased communication between the community and police—which, as you have indicated, has improved—we now have police participating in community working party meetings.

CHAIR: Thank you. Another interesting thing that came from the people was that quite a few groups, not just those in the west, were feeling desperate about young people but proposed having a camp or a place to lock them up and keep them out of trouble. Have you heard suggestions like this?

Mr DE WEERD: There has been some discussion in a small number of communities about utilising properties outside the community to take young people when they get into trouble to try to keep them out of gaol and to have diversionary programs and so on in place to support them. So there has been some discussion with the communities about those.

CHAIR: I am not asking for an opinion; I am simply interested to know whether you have heard the same message.

Mr DE WEERD: Yes, that has been raised.

CHAIR: I have another question in relation to the premier co-ordinators. The Attorney General has put co-ordinators into towns all over the place. How are you working with those positions?

Mr DE WEERD: We have a very good working relationship with the premier co-ordinator based in Dubbo. She sits on our Murdi Paaki regional group and has input into what we do in the region. So there is a very good relationship.

CHAIR: That is very useful, thank you. Do you know why the Murdi Paaki region was chosen? It is not the region with the highest Aboriginal population in the State of New South Wales.

Ms SMITH: It was chosen on the basis of many indicators of disadvantage, as identified in the recent "Two Ways" report by the Department of Aboriginal Affairs.

CHAIR: The Federal or State department?

Ms SMITH: The New South Wales State department. On many indicators—almost all—Murdi Paaki is one of the most disadvantaged regions. Using those similar indicators in the "Overcoming Indigenous Disadvantage" report, which goes to early schooling, health, employment and so on, Murdi Paaki is significantly disadvantaged. Similarly, there is overrepresentation in law and justice, as you would know.

Mr DE WEERD: There was also consideration given to the governance structures that the Murdi Paaki had in place prior to the trials. That was also taken into consideration.

CHAIR: Yes. It seems that if it works they get more. We gave you a question on notice and the Secretary will contact you for that information. Thank you for coming and for your work.

(The witnesses withdrew)

LLOYD ADAM BABB, Barrister, Director, Criminal Law Review Division, Attorney General's Department, Level 20, Goodsell Building, Chifley Square, Sydney, sworn and examined:

CHAIR: Welcome, Mr Babb. Thank you for attending the seventh public hearing of the Standing Committee on Law and Justice inquiry into community-based sentencing options. As I have said to most witnesses, this particular inquiry and its terms of reference have been very interesting and, as the inquiry continues, are becoming more complex. It has become a very complex inquiry and we are pleased about that, but at this stage we need some concrete, tying-together information. Before we commence questioning I will outline the broadcasting guidelines, copies of which are on the table—although most reporters are in the garden. The delivery of messages and documents tendered to the Committee is to happen through the secretariat. If you choose to give some private evidence, that is fine and the Committee will consider that. However, the Parliament may overturn our considerations. Committee hearings are not intended to provide forums for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. Therefore, do not talk about individuals unless absolutely necessary. Mobile telephones should be turned off. Mr Babb, are you conversant with the terms of reference of this inquiry?

Mr BABB: I am.

CHAIR: Thank you. If you consider at any stage that certain evidence you wish to give or documents you may 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 any questions on notice we would appreciate it if the responses to those questions could be forwarded to the secretariat on Monday 26 September 2005. Would you like to start with a short statement?

Mr BABB: No, I am happy to answer questions.

CHAIR: We have reviewed the original questions sent to you a day or so ago. I will try hard to stick to the questions because we know that we want the information they request but I am sure that more diverse issues will be raised. Can you please outline any legislative review and/or changes that the Criminal Law Review Division is undertaking or proposing to undertake that are relevant to community-based sentencing?

Mr BABB: There are currently two statutory reviews being conducted by the Criminal Law Review Division. The first into the Crimes (Sentencing Procedure) Act and is due on 8 December 2005. The second is in relation to the Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill 2002, and that is due on 1 February 2006. They are both required pursuant to statute, sections 105 and 106 of the Crimes (Sentencing Procedure) Act. The stage we are up to in relation to those reviews is that we have given formal notice and written to key parties in relation to sentencing procedure and received a number of submissions from key parties. We are fairly advanced in the process of going through submissions in relation to crimes sentencing procedure and preparing a discussion paper that will cover both those Acts because the amendment Act was incorporated into the Crimes (Sentencing Procedure) Act and is relevant to an overall assessment of the Act. That discussion paper will be released in September in order for us to get further responses back in relation to specific questions. The initial requests made of people and in the newspaper advertisement were general requests for submissions. We are now refining specific questions and will ask specific questions.

CHAIR: It was very convenient for us. It is a complex area and we have kept putting back the reporting date so that we have the benefit of your discussion paper.

Mr BABB: Yes.

CHAIR: We have been reading the Sentencing Council reports, and they have some very firm recommendations in relation to sentencing, community-based sentencing and the six months. It appears that those recommendations are somewhat connected to our terms of reference, which is good because it gives us more direction as to where to go. It has been quite difficult during our inquiries to

really gauge community reaction. I have received some letters in the office and some submissions that are very angry and say, "Lock everybody up and throw away the key". I recognise that part of our terms of reference is about community reaction. But during community hearings people who were very vocal before and who said "Throw away the key" have been very well-behaved when we talked about innovative approaches. I know it is not for you to state why the Committee has been given these terms of reference, but does the Attorney General's Department have any process to consistently get this sort of information? We have been on the ground and that has been the reaction.

Mr BABB: Yes. So I understand the question correctly—

CHAIR: The question is: Through your consultation processes have you been able to get solid community reaction that you are able to measure?

Mr BABB: In relation to the statutory review?

CHAIR: Yes, or in relation to the Sentencing Council reports, for example.

Mr BABB: No, but I can speak for myself as Director of the Criminal Law Review Division. I think it is difficult to properly assess community reaction. I know from experience with friends and family that people may express a particular view in relation to sentencing in the abstract yet when they are presented with the complexities of sentencing can accept and understand why a more lenient sentence may have been arrived at.

CHAIR: Yes. Thank you.

Ms LEE RHIANNON: Could you provide the Committee with information about the work the department is doing in relation to the review of section 12 bonds? What options is the department currently investigating for breaches of section 12 bonds?

Mr BABB: The section 12 suspended sentences is part of the overall review of Crimes (Sentencing Procedure) Act, and we have received quite a few submissions in relation to it. One of the key areas for more immediate consideration is perhaps breach of section 12 bonds. Through a number of Court of Criminal Appeal decisions it has become apparent that the provisions as currently structured are difficult to interpret and implement—two decisions are *Regina v Tolley* and *Regina v Graham*. The department, in conjunction with the statutory review, has focused on options for amending section 12 in relation to breaches. One of the options being considered is that section 12 (3) of the Crimes (Sentencing Procedure) Act be amended, which relates to suspended sentences, to abolish the practice of fixing a non-parole period at the time of fixing a suspended sentence. Why that is difficult at times is that we are asking the initial sentencing judge to determine a non-parole period, that is the earliest possible release date, when a suspended sentence does not result in prison and consideration of an earliest possible release date until there has been a breach.

If that is binding on the court in the case of a breach it could work an unfairness if additional considerations need to be taken into account, such as change of circumstances, during the period of serving whatever portion of the suspended sentence has been served. It would be possible through legislation to remove the requirement for setting the non-parole period at the initial stage, which could give more flexibility upon breach. In relation to the breach provisions as set out in section 99 of the Crimes (Sentencing Procedure) Act, in relation to section 12 bonds the Criminal Law Review Division is considering an amendment that would require the court, upon breach, to substitute a new sentence rather than implement the sentence that was determined initially by the court.

The Hon. AMANDA FAZIO: They would not be allowed to substitute an increased sentence, would they?

Mr BABB: Interestingly, our recommendation is that this substitution be limited by imposing a requirement that they may not impose a custodial sentence greater than the one originally imposed. The basis for that would again be flexibility to take into account change in circumstances and also the fact that a person may have served varying amounts of the initial bond that goes with a suspended sentence.

CHAIR: What are the chances of getting that through?

Mr BABB: I cannot say.

CHAIR: Going around not just legal people but anyone who seemed to understand, perceived that to be a major problem. The use of suspended sentences in the country is quite high because they perceive it as a form of community-based sentencing.

Ms LEE RHIANNON: Under section 65A a periodic detention order may not be made for an offender who previously has served imprisonment for more than six months by way of full-time detention. Should legislation be amended so that more people with previous convictions are deemed eligible?

Mr BABB: Yes.

Ms LEE RHIANNON: What would be the impact of putting a time restriction on section 65A so that offenders who were sentenced to gaol for a long time ago, but have not reoffended, could be deemed eligible?

Mr BABB: It would make the alternative more available, and that would be reasonable in my opinion.

The Hon. GREG DONNELLY: How could legislation be amended to incorporate programs such as alcohol and drug counselling as a condition of a periodic detention order?

Mr BABB: This was not one of the questions I had initially, and it may be something I prefer to take on notice, if I could.

The Hon. GREG DONNELLY: Certainly. People who have their licences suspended by the State Debt Recovery Office because of fine default may then receive a penalty for driving unlicensed. Can you comment on this in terms of the legislation?

Mr BABB: That is a true statement. In a sense I really do not have a comment in terms of legislation. Exceptions could be drafted if there were a will to stop fine default being the basis of cancelling licences. In this State we have stopped sending people to prison for fine default, yet ultimately people could end up in prison where fine default is the start of their contact with the criminal law because a series of even traffic offences can eventually result in a prison sentence.

The Hon. GREG DONNELLY: Yesterday we had the benefit of his honour Judge Dive from the Drug Court give us a very good and worthwhile overview of the Drug Court. Could you comment on the effectiveness and the general perception of the operation of the Drug Court in New South Wales from an outside perspective looking in?

Mr BABB: Even beyond the general perception a review of the Drug Court by the Bureau of Crime Statistics and Research was positive. My impression is that it was a very positive program that has flexibility. It is one of the things of which the State can be proud of introducing. It is reasonably innovative within Australia and it seems to have worked very well.

CHAIR: Traffic offences were a major issue during our consultations. The Committee has to think seriously about its recommendations. Many of the people who came to see us, their children or their relatives had been gaoled because of the cumulative effect of not having a licence and continuing to breach traffic rules. Would the legislation the Committee should look to reduce the impact on the poor people in our community be the Roads and Traffic Authority legislation and the criminal legislation?

Mr BABB: Yes, it would be mainly the Roads and Traffic legislation, which contains criminal penalties. It would be a major focal point in a relationship between fine default, licence cancellation and subsequent charges being laid under the roads and traffic legislation.

The Hon. AMANDA FAZIO: We have heard evidence that people receive higher penalties for driving whilst unlicensed than they do for drink-driving offences because of their cumulative effect. They might have had 10 offences for driving unlicensed. What would be the impact of giving a sentencing court the legislative basis for discretion in relation to penalties for driving whilst unlicensed? We were told that 12 or 13-year-old Aboriginal kids, for example, are pulled up on their pushbikes for having no light on the bike and not wearing a helmet. They are fined, but they do not pay it. At the end of the day they have so many fines that by the time they are 17 that there is no point in applying for a licence because they would have to pay $3,000 to clear the fine to get a licence. They do not bother. They drive around on the roads without a licence, but they are not creating mayhem. They are just known for not having a licence and they are pulled up time and time again. They have attracted these driving whilst unlicensed penalties that are quite high, yet their danger on the road is probably less than someone who is arrested for high range drink-driving offences. Do you have any suggestions about the ways in which sentencing judges could take into account the degree of danger they are creating on the roads or whatever, because without a licence they are locked out of all sorts of opportunities such as education, jobs and even attending community-based service orders?

Mr BABB: There is a degree of flexibility in the current driving unlicensed provisions. The maximum penalties are not as high as high range drink-driving. I have the statistics, which I will table, that show general anecdotal evidence is not borne out in the statistics. Generally, as one might expect, people are sentenced less harshly when driving unlicensed than they are for high range prescribed concentration of alcohol. However, I do not doubt that there are examples of the imposition of harsh penalties.

CHAIR: Is driving whilst disqualified and driving unlicensed two different offences?

Mr BABB: Yes, they are.

CHAIR: Often these people are charged with driving whilst disqualified despite the fact that they have never had a licence.

Mr BABB: The courts should have discretion to take different matters into account. However, like other licensing provisions possession of a driver's licence is important. We should focus not so much on legislative change in relation to penalties for driving unlicensed because it seems reasonable to take into account a vast array of circumstances and mostly they are not mandatory disqualification provisions, unlike like drink-driving, which have minimum driving disqualification period. The exception to that is multiple offending.

What I think needs to be looked at are alternatives to licence suspension for fine default and alternatives for specific groups within the community that although they may be good drivers do not have licences, and examples of that are not only—I understand, again anecdotally, that some people through illiteracy find it difficult to get a licence. So really driving is an essential part of most young people's lives; it is something they aspire to; it is something they are likely to do regardless of whether they have got a licence or not, and I think the best thing we could do is work on systems where fine default will not disentitle them from a licence but in some other way we can ensure that fines are paid.

Of course it works; it works for most members of the community and I in fact once found out my licence had been cancelled through fine default because as a Crown Prosecutor my details are suppressed and the letter had not got to me. No problem for me to pay it but I can understand when there is a problem that it creates great difficulty. I have had a look at the legislation and I am not sure that it is overly inflexible and I am not sure that a change to the legislation has occurred but rather changes to the way that we enforce fine default and specific programs targeting Aboriginal communities and assisting young Aboriginal men, for example, to get licences and to keep their licences, whether it be through special tests in order to get their licence which focus less on the written test and more on a verbal test and a driving test so that we do not have the situation where people who are obviously good drivers and not a danger are aggravating that contact with the criminal law.

The Hon. AMANDA FAZIO: Has the department reviewed or is the department planning to review section 21A of the Crimes Sentencing Procedure Act, which sets out aggravating, mitigating and other factors in sentencing?

Mr BABB: Yes, that is a key part of the statutorial reviews that are taking place.

The Hon. DAVID CLARKE: Submissions to a recent inquiry by the New South Wales Sentencing Council noted concerns about the process of appeals from the local to the district courts. Can you make some comments on this?

Mr BABB: You would have to refresh my memory in terms that this was not one of the initial questions on my list of questions. I do recall the general thrust.

The Hon. DAVID CLARKE: I am happy to move to something else that I know you are prepared for. Has the department reviewed or is the department planning to review section 21A of the Crimes Sentencing Procedure Act 1999 which sets out aggravating, mitigating and other factors in sentencing?

Mr BABB: Yes. That will be part of a statutorial review that is due to be completed on 1 February in relation to the amendment to the Crimes Sentencing Procedure Act.

The Hon. DAVID CLARKE: When did you say that was?

Mr BABB: 1 February 2006, with a discussion paper likely to come out in September of this year.

The Hon. DAVID CLARKE: Could section 21A be amended to include further factors for consideration by a magistrate or judge, which relate to particular disadvantaged groups or rural or remote areas?

Mr BABB: I am not sure whether 21A will be the appropriate position for that to be located. When you look at 21A and the mitigating and aggravating features that are set out there, in a sense they are absolute mitigating and aggravating features whereas disadvantage that arises through being a member of a particular group, for example the Aboriginal community and the fact that quite often that can mean that you have had a disadvantaged upbringing, are not general rules that are always the case. Section 21A has a catch-all provision and that catch-all provision allows all relevant factors to be taken into account. A provision that is found at 21A says that, "In determining the appropriate sentence for an offence the court is to take into account the following matters…" Subsection (c) is, "any other objective or subjective factor that affects the relative seriousness of the offence".

It would seem to me that disadvantage arising because you are part of a particular group or live in a rural or isolated community is something that will only be relevant in relation to sentencing in some instances and the court would properly take that into account in the appropriate instances. I do not know that it would be appropriate to put it in the general mitigating and aggravating features set out in 21A (2) and (3).

The Hon. DAVID CLARKE: And you would like to take that other question on notice?

Mr BABB: Yes, I would be happy to.

CHAIR: In relation to question seven, we had lots of feedback from community persons that it was difficult to work out if they were just angry and that they felt that legal aid was not helping them properly but they said, "There is no point in us asking for an appeal, they won't do it". When we read the sentencing council reports, although they are very much talking about appeals and the local court in relation to magistrates giving the same sorts of rulings, there was some suggestion that there was some issue of difficulty in relation to appeal processes from the local courts. That is what that question is based on. It was difficult to work out if the people were just angry and frustrated that things were not working for them or if there really was an issue of difficulty in relation to getting the appeal process functioning there.

Does the current legislation allow a magistrate or judge to order a person to attend programs—we have already asked this in a different way—as a condition or a bond of the community service order?

Mr BABB: What is the question that I am asked?

CHAIR: This actually mixes with question 11 because people are saying that judges are restricted by the recommendations from probation and parole from the first report and also they are restricted by the bond conditions on what they can actually recommend, and it particularly comes up in relation to periodic detention.

Mr BABB: The initial question that I did take on notice was in relation to periodic detention. In relation to bonds or community service orders I am in a position to answer that. In my opinion there is sufficient flexibility in the current legislative provisions for orders to be made in relation to the attendance of programs such as alcohol and drug counselling. The relevant section, section 90 of the Crimes Sentencing Procedure Act, and section 95A, are flexible and allow, in relation to section 90 (2) (a), "A court may impose as a condition a requirement that an offender participate in development programs, undergo testing or assessment for alcohol or drug use and the court may impose such conditions as it considers appropriate in relation to community service orders". So there is certainly flexibility within the provision to make it a requirement of the order.

Similarly, in relation to section 95A, intervention programs as a condition of a good behaviour bond also provides flexibility. Section 11 of the Act also provides a mechanism where matters can be deferred to allow participation in an intervention program which relates to section 95A. Section 95C of the Crimes Sentencing Procedure Act in relation to good behaviour bonds is again flexible. A good behaviour bond may contain such conditions as are specified in the order by which the bond is imposed other than conditions requiring the person under the bond to perform community service work or to make a payment, whether in the nature of a fine, compensation or otherwise.

So they are extremely flexible provisions and able to be used by the courts. What I seem to be gaining from what you have told me of the anecdotal evidence is that there is some dissatisfaction that those conditions are not making their way into orders, and that may be the case, but certainly the legislation itself is flexible enough to enable such conditions to be imposed.

CHAIR: Periodic detention—are you taking that on notice?

Mr BABB: I will, yes.

CHAIR: Because we had it inferred that it does not exist for periodic detention.

Mr BABB: I would like to look at the legislation and check in relation to that, so I will take that on notice.

CHAIR: What would be the effect of amending section 86 to give extra discretion to sentencing an offender to a community service order, even though a probation and parole report stated the offender was not suitable?

Mr BABB: That is only partially a question that should be asked of me. I think it is a question that would also squarely sit with the probation and parole service of corrections and I think that they would have something to say about the ability of the court to make such orders against their advice. From the position of the Attorney General's department the only points that I would like to raise are that I could envisage that in some instances although the order was initially made people will be breached quite quickly because they were not suitable for work or work could not be found for them and they were ineligible for some reason that may have been the basis for the recommendation against, and if that was the case it would concern me that a prisoner's expectations were raised that they were going to be dealt with in a way other than a custodial sentence, even though they are not suitable for it, and also that the court's resources could be wasted in that it would require a breach to be brought back before the court and a double handling of someone.

CHAIR: The last question that we have is in relation to the processes for a person who is sentenced and do they actually understand everything about the sentencing. It has come up in ways that the persons who had been sentenced said they did not have a clue what was going on when they walked out and the legal people and the court people most definitely told us there are processes for the clerks to fully explain and it would appear there is major literacy and comprehension problems in

relation to this as well as the people's perception when they feel they have been "let off". Is there any way that this can be addressed in the long term? This, of course, is just a usual people dealing with a different organisation problem, but it has great ramifications for the individuals.

Mr BABB: Yes, of course. The section itself seems to me to set out what information should be imparted. The section is clear and quite prescriptive as to what information should be passed on. It may be a question of process and ensuring that better processes are in place to ensure that that happens. Also, there is simply, I think, a real difficulty. What we are dealing with on the day of sentence is someone who is very nervous and overawed by the whole experience. Immediately upon finding out that they have been given a non-custodial sanction they are no doubt delighted and their mind is elsewhere at the time. I think it could be the case that in lots of instances the explanation is fully and properly given, but if you ask the person shortly after leaving the court they have very little recollection of what was told to them because of the circumstances in which it was passed on. That, no doubt, can create problems.

CHAIR: It is a process issue.

Mr BABB: I think so. I think the section sets out what is required. So it is a process issue and possibly even a question of whether if the resources were available there could be some follow-up on a day other than the day of sentence because a person, I think, is very likely to be in a real difficulty in terms of understanding complex information on their day of sentence.

CHAIR: Thank you very much for attending this hearing; you have been very helpful.

Mr BABB: I will table the statistics that I have taken from the Judicial Commission sentencing database that detail the sentences imposed in terms of orders and imprisonment in relation to driving unlicensed and drink-driving offences.

CHAIR: Is there anything-else you want to tell us?

Mr BABB: No.

CHAIR: Thank you for appearing before us today.

(The witness withdrew)

GAIL PATRICIA WALLACE, Project Officer, Circle Sentencing, Attorney General's Department, Nowra, sworn and examined:

CHAIR: Welcome to the seventh public hearing of the Standing Committee on Law and Justice inquiry into community-based sentencing options. Information on the broadcasting guidelines is available. The secretariat will look after any messages and documents that are tendered to the Committee. The Committee prefers to hold its hearings in public, but if you decide you want something to be heard or seen in private the Committee will consider your request. If you say anything in private the Committee can make a decision to make that public or, otherwise. However, the Parliament can make a decision on that as well. Committee hearings are not intended for people to make adverse reflections about others.

The protection afforded to witnesses under parliamentary privilege should not be abused during the hearings. I therefore request witnesses to avoid the mention of other individuals unless it is absolutely essential to address the terms of reference. In what capacity do you appear before the Committee?

Ms WALLACE: I am here on behalf of the Crime Prevention Division.

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

Ms WALLACE: No, I am not.

CHAIR: When the Committee holds an inquiry, Parliament gives us terms of reference upon which we base our questions.

The Hon. GREG DONNELLY: It means the scope of the inquiry, the area that is covered.

CHAIR: If you take any questions on notice I would appreciate it if your responses to those questions could be forwarded to the secretariat by Monday 26 September. The secretariat will send you a formal letter asking for that information. The issue of circle sentencing, when it originally came forward during the Committee's inquiries, was perceived to be a sentencing process and not to do with community sentencing. As members of the Committee and the secretariat learned more about the process of circle sentencing we recognised how important it was to the process of community-based sentencing. That is why we believe it is incredibly important to get from you exactly how it is going and how it is operating. That is why we needed you especially to come. Do you wish to make a short opening statement?

Ms WALLACE: Yes. When dealing with the Aboriginal community restorative justice process you should be culturally and socially responsible wherever possible. Circle sentencing provides a cultural response to crime. The people you are dealing with have to have a culture for it to function effectively. Circle courts allow the values of indigenous people and the structure of the western justice system to be merged. While still operating in a setting of a court, circle courts allow for greater community participation and are able to incorporate the values and culture of the local Aboriginal community. Circle sentencing allows communities to reclaim some control over their own social problems; establish mechanisms to solve those problems; the community is directly involved in administration of the justice system and has found a way in which that system can be modified or reformed to meet cultural needs.

So far, circle sentencing has achieved its main objectives, which are: to establish a sentencing format that allows the greatest amount of Aboriginal community involvement; to establish a sentencing format that allows the greatest amount of Aboriginal community control; to empower the Aboriginal community in the sentencing process; to increase the Aboriginal community confidence in the sentencing process; to reduce barriers between Aboriginal communities and the courts; to improve communication between Aboriginal people and the courts; to provide more appropriate sentencing options for Aboriginal offenders; to provide relevant and meaningful sentences for Aboriginal offenders; to provide effective support to Aboriginal offenders when completing sentences; to provide support to Aboriginal victims of crime; and to reduce offending in Aboriginal communities. They are the objectives of circle sentencing and I honestly feel those objectives have been met.

CHAIR: An issue that came up while the Committee travelled around the State was in relation to the Probation and Parole Service, which carries a lot of the load of support following community-based sentencing. How do you feel about the Probation and Parole Service being actively involved in this circle sentencing process?

Ms WALLACE: It actually has been involved. For instance, if someone is placed on a good behaviour bond by Probation and Parole, there are conditions that the elders will place in the sentencing outcome. For example, that they abstain from alcohol and drug use, and Probation and Parole meets with the offenders and also is involved in the testing as to whether they are indulging in drug and alcohol abuse.

CHAIR: They are involved in the policing and monitoring of the sentence. I am asking about the Probation and Parole Service participating in the circle so they are able to get the benefit of the structures within the circle when attempting to assist the person to deliver on their sentence.

Ms WALLACE: That is the decision of each community-based circle sentencing court. They do that in Dubbo, but we decided not to do it in Nowra as the manager of the Probation and Parole office came along to one of our circle sentencing courts and felt that he was intruding in a Koori court. He felt that he would be better off not being involved in a circle court.

The Hon. DAVID CLARKE: Can you outline your work in relation to the Nowra circle sentencing program?

Ms WALLACE: I facilitate the organisational side of circle court by preparing reports for the outcome. I am responsible for reporting upon sentence compliance, preparing breach reports for consideration by the magistrate, and receiving reports from other organisations on the satisfactory completion of sentence and otherwise. I initially established the community justice group. They are a group that does the assessment for circle sentencing court. I am involved in doing administrative work for the community justice group. I am involved in contacting offenders who choose to go through circle sentencing court and informing them of the procedures and also speaking to their support people on what to expect if they go through circle court. I also contact the victims.

Part of my job is also to study the facts of the offence and decide on who are the appropriate elders to be seated in the circle sentencing court. What I also keep in mind is that the elders are people who the offender respects, who they have an affiliation with and, more importantly, who they trust. If they do not have those qualities, whatever the elders have to say in circle court would not have an impact on the offender. I organise venues. Because we have six distinct Aboriginal communities in the local Nowra court jurisdiction, what we do is have a circle court in each of those communities. For instance, if the offender is from Jerrinja Mission we will have a circle court down at Jerrinja Mission. If they are from Wreck Bay, because of the borderline we do not actually have it at Wreck Bay; we have them close by. If they are from Nowra we have them at the cultural centre at Nowra. So part of my job is to organise the venues.

Also, after I choose the elders, I actually sit down with them and explain the procedure through circle sentencing court and answer any questions they might have. I also go out of my way, because we are dealing with the most disadvantaged group of all—the elders may be in poor health or have no transport; they are only on pensions—I actually transport them to circle sentencing court. It is very important that I keep in contact with them because some mornings of the circle court date there may be something wrong. I go and find out if they are okay to come along to circle court that day. So in my job I do quite a bit of talking to the elders, the offenders, the victims and the support people in order to get them to the circle sentencing court because most of them are very shy people as well.

The Hon. DAVID CLARKE: Do the you have any support staff?

Ms WALLACE: No, I work on my own. Sometimes the Aboriginal client specialist officer who works at the courthouse will assist me, particularly in transporting elders to circle sentencing court.

The Hon. DAVID CLARKE: Has there been any further evaluation of the circle sentencing program since the evaluation that was carried out in 2003?

Ms WALLACE: No. However, there were statistics provided by the Shoalhaven area police command, which was completed on 8 June 2004, which gives the client statistics for indigenous offenders. In 1998 the crime statistics for indigenous offenders in Shoalhaven was 20 per cent of the total offending population. In 2004 it was down to 6 per cent. Circle sentencing court also has a rippling effect on the juvenile offending rate. We had a high number of Aboriginal juveniles in court in the past; currently it is next to nothing. There is ongoing local evaluation and university analysis study by Griffith University in Queensland. I do not know when they will be completed.

The Hon. DAVID CLARKE: Do you attribute that dramatic drop in crime statistics directly to the success of this program?

Ms WALLACE: I do but there are also other programs operating in the Nowra court jurisdiction. There is a program that involves taking young juveniles out on cultural camping trips and the like.

The Hon. DAVID CLARKE: As the one who is administering this you need to be congratulated on apparently administering this program in such an effective way.

Ms WALLACE: I do not take all of the credit. It is basically the elders who have actually shaped circle sentencing court and provide that ongoing aftercare after circle court.

The Hon. DAVID CLARKE: Can you provide the Committee with current completion rates for the various circles?

Ms WALLACE: We have had 31 serious offenders go through circle court. Unlike Dubbo, which takes on first offenders, we look at serial offenders. Ten have reoffended and the majority of those offences were only minor and six were imprisoned. So we have had an estimated 66 per cent success rate.

The Hon. GREG DONNELLY: In evidence given by previous witnesses to the Committee, they explained the importance within the Aboriginal community of relationships between persons and how that affects the community in general. Just for my understanding, with the circle sentencing model, is it always the case that those participating in deliberating and considering the whole matter are from the same tribe or community as the person?

Ms WALLACE: Yes. The elders, for instance, like I explained earlier, if the offender was from Jerrinja I would choose four elders from Jerrinja reserve in because it has more impact on the offender when it comes to sitting around in a circle with people they know who they look up to, who they respect, who they trust. It operates in another way as well. When it comes to community sanctions, you can just imagine living down the road from one of the elders who sentenced you. I do not know about you but I would be more likely to behave myself, and that is the type of rippling effect circle sentencing has on offenders.

The Hon. GREG DONNELLY: There are normally four elders who actually oversee the sentence. Is that the typical model?

Ms WALLACE: Yes, four elders.

The Hon. GREG DONNELLY: In your experience, if the elders are not drawn specifically from the community or tribe, that works against the effectiveness of the circle sentencing model?

Ms WALLACE: Definitely. I think it was the second circle court we had, we allowed an offender to go through who was not from our local community but the name was familiar and the elders thought, "Well, if the name is familiar with the locals then they must be local." As it turned out, he thought the people in the circle were picking on him because he did not know them and he did not grow up with them and he did not have that respect for them.

The Hon. GREG DONNELLY: So in your opinion it is critical that they be from the same tribe.

Ms WALLACE: Yes.

The Hon. GREG DONNELLY: From your experience, which is quite extensive with the model, what suggestions do you see could be followed up to improve the operation of the model? Can you see things that are not working as well as they could and what would those things be to improve the model?

Ms WALLACE: I do not think there needs to be an improvement on the model we have. Circle sentencing court can only identify the problems within the Aboriginal community; it cannot solve them. What we need is aftercare like the resources within the community that provide the support by drug and alcohol rehabilitation centres, cultural awareness programs. We are finding a lot of our offenders who go through circle sentencing court are connecting through drug and alcohol rather than their culture. So we need our men to actually teach our young males particularly about their culture. Because of that lack of knowledge, they have very low self esteem and a lack of confidence.

For instance, the circle sentencing court understands that drug and alcohol abuse is the main cause of crime within our community but what we manage to do, because a lot of information comes out in circle court, is that we identify the underlying trauma that causes the drug and alcohol abuse. A lot of it is connected to mental health and also lack of identity.

The Hon. GREG DONNELLY: If the primary value is the identification of the problem?

Ms WALLACE: Yes.

The Hon. GREG DONNELLY: Would it not be an improvement for the elders to receive some education, training or development to be able to provide advice to young people about what they can do to lift themselves out of the situation?

Ms WALLACE: The elders do not need any training whatsoever. They already have that knowledge. They have had that knowledge for 200 years but they have not been given the authority or the opportunity to utilise that knowledge. They can assist offenders in cultural ways, but when it comes to professional assistance, like in the area of mental health and drug and alcohol, they are unable to assist. For instance, there is one case where the offender was schizophrenic. He had a drug and alcohol problem and was a serial offender. The reason he was so self-destructive is because no-one has ever bothered to sit down with him and explain or show that they care what happens to him and explain that he should seek help and that help was available.

Because it came from the elders that he should go and seek medical assistance from psychiatrists and also get some drug and alcohol counselling; just the support of the elders after the circle court assisted him to turn his life around. He went through the circle court in May 2002 and he has not offended in that period of time.

The Hon. GREG DONNELLY: That is very good, is it not?

Ms WALLACE: Yes.

Ms LEE RHIANNON: Have any of the elders dropped out of the program?

Ms WALLACE: No, quite the opposite. There are more elders wanting to be involved.

Ms LEE RHIANNON: That is good.

Ms WALLACE: Because they see the positive impact it has on the community; how it is empowering and educating the community, which is good because, particularly in the area of domestic violence, our elders are learning about the seriousness of the offence before the law and the impact that it has on the victims. That information has been taken back out into the community and they are

becoming very vocal about these types of crimes happening in the community, whereas previously they would hear about someone going to court for these crimes and all they would hear is, "Poor so and so has got six months" and then it is us against the criminal justice system—"They are sending our people to gaol."

They had no idea of the impact of the crime on victims. There was one circle where the mother sat in the circle as a support person. We prepare reports for them to read through on the facts of the case and also the criminal history. The mother read all of that. She looked at her son and she said, "Now that I know what you really did, I ought to slap your face." And she was there as the support person! It is educating the whole community about how serious these crimes are and what type of impact it is having on victims.

Ms LEE RHIANNON: You mean that when the elders understand that this is the law and these are the consequences, irrespective of the courts, they are talking about this in the community?

Ms WALLACE: Yes.

Ms LEE RHIANNON: So that there are many other flow-ons of circle sentencing apart from the actual court itself?

Ms WALLACE: Yes.

Ms LEE RHIANNON: If there are not support programs, such as alcohol and drug counselling, do you think it is possible to have circle sentencing or do you need the support services in place?

Ms WALLACE: You need those support people in place, yes.

Ms LEE RHIANNON: What services do you need in place for circle sentencing to go ahead?

Ms WALLACE: Particularly with mental health, there needs to be cultural awareness training for people who actually work in that area. They need to be taught about particularly the communication barriers that are linked to language and culture because a lot of our people will not access those services if they go along and feel that they are not being understood and that the service is not culturally appropriate.

The Hon. AMANDA FAZIO: You said earlier that in Nowra you take serial offenders, unlike Dubbo, which takes first-time offenders into circle sentencing. Can you tell us what eligibility and suitability criteria you use in Nowra for circle sentencing?

Ms WALLACE: Yes. The suitability test is determined by the magistrate and he determines on a criteria which excludes offences such as indictable offences, sexual assault matters, indictable drug offences and any offences involving children of a violent or sexual nature. They have to be repeat offenders or looking at full-time imprisonment. Then it goes on to the acceptability test, which is carried out by the Aboriginal community justice group.

The group determines applications by examining the offences, whether the offender was part of a nominated community or had strong links with the Aboriginal community in the trial location, the willingness of the offender to be an active part of the process and the support that the offender has in the community, the impact of the offence on the victim and the community and the potential benefits to the offender, victim and community through the use of the circle sentencing process. They mainly look at the level of remorse that the offender has and that is in order to protect the victim so when it does end up in the circle court, you are not having an offender who will argue back and forth with the victim as to what actually went on. They have to admit guilt and take responsibility for their actions.

The Hon. AMANDA FAZIO: Even though I missed the trip to Bourke, I went to Bega and people there were talking about access to things like anger management courses. It almost seems like there is this mantra developing in some sections of the community that domestic violence problems

can be solved if the male perpetrators go and successfully complete an anger management course. What do you think are the practical values of anger management courses?

Ms WALLACE: What we are finding is that there are different types of domestic violence offenders. There is poor impulse control and there is the drug and alcohol related type of offence. What we are looking at is actually developing a particular program for Aboriginal offenders of domestic violence because you also have to take into consideration the transgenerational trauma that the majority of our men have gone through. It is not like a non-Aboriginal offender, who does not have that type of experience as well as the drug and alcohol abuse. We take into consideration underlying trauma. We need programs that are specifically for Aboriginal domestic violence offenders.

The Hon. AMANDA FAZIO: It has been suggested to us that circle sentencing could include the compulsory attendance of the offender and the victim at a counselling course, such as a domestic violence course, for a charge relating to domestic assault. Do you think that the court or the circle would be the most effective body to direct such attendance?

Ms WALLACE: I have a really good answer for that. It is here somewhere. I do not feel it should be compulsory but encouraged because sometimes when someone is forced to do something, it does not work. But our elders are quite persuasive in encouraging Aboriginal offenders to do certain things, yes, but I had a really good answer for that one. I just cannot find it.

CHAIR: We will wait while you have a look.

Ms WALLACE: Yes. Sometimes the circle court gives them a Griffiths remand or bond and they recommend that they receive counselling and then come back for sentencing. The circle court reconvenes and they recommend they go and do some type of counselling. It could be marriage counselling or drug and alcohol counselling. It is basically the encouragement of the elders that is very effective in most cases.

The Hon. AMANDA FAZIO: We have also heard previous evidence that the sort of circle sentencing model that you operate in Nowra would not be suitable for smaller towns. Do you think that is correct and how do you think the current model could be tailored to make it most suitable for smaller communities?

Ms WALLACE: The Nowra model is not one that fits the size of the town. It is a model that fits our community, so it has nothing to do with size. The elders within each community should have the opportunity to shape their own circle court because each community has a different culture and different issues. Dubbo, for instance, conducts their circles different to ours. When we first commenced, we had a framework but it was the elders eventually who shaped the circle sentencing court.

With the first circle sentencing court the magistrate asked that a desk be placed in front of him. One of the elders said, "No, I'm not going back to school. I don't want a desk in front of me" and apparently that is how it was shaped. With each circle the elders would object to something or they would suggest that we improve in a particular area. That is how we ended up with the model that we have today.

CHAIR: There are very powerful people in the Nowra area and always has been. In a lot of ways, unlike some of the communities that we visited, the people of Nowra have managed to keep themselves together longer. I know there are still a lot of problems.

When we went to some of the smaller places, for example, where there were massive problems for the elders and the general community, it was a little worrying. The people themselves were also somewhat worried about the responsibility that would be left to so few elders. Do you think this is an issue, or do you believe that others will be empowered by the process?

Ms WALLACE: I think others have been empowered by the process, because it is not only the elders. They are encouraging their children and grandchildren to also assist offenders who have gone through the circle sentencing court and provide personal support. They cannot provide

professional support, but they can provide personal support. When the older communities witness an offender doing really well, they all chip in and assist in various ways.

CHAIR: So you think a very small core could gradually grow if the support is maintained?

Ms WALLACE: Yes, definitely.

The Hon. GREG DONNELLY: Is it part of Aboriginal culture to require or force something to be done? For example, is it part of Aboriginal culture that elders require young people to behave in a particular way? I put that against your comment about not forcing or requiring young people to, for example, participate in the program.

Ms WALLACE: No. It is all done through respect.

The Hon. GREG DONNELLY: The culture operates on the basis that young people respect the elders?

Ms WALLACE: Yes.

The Hon. GREG DONNELLY: And accordingly, they will respond to that respect?

Ms WALLACE: Yes.

CHAIR: Is there anything else you wish to tell us?

Ms WALLACE: No.

(The witness withdrew)

CHAIR: I advise the Committee that the in-camera witness has decided not to attend today and will be negotiated with to attend at a later time.

ALISON CLARE CHURCHILL, Executive Officer, Community Restorative Centre, 174 Broadway, Sydney, affirmed and examined:

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

Ms CHURCHILL: Yes.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take questions on notice, I would appreciate it if the responses to those questions could be forwarded to the Secretariat by Monday 26 September. Would you like to make a short opening statement?

Ms CHURCHILL: Yes. The Community Restorative Centre [CRC] clearly has been funded primarily as a post-release support service and family support service. We have a strong belief in the restorative justice system and we see the incarceration of people as the sentence of last resort.

I am only making that statement on the basis that I know that this is about community sentencing options, which is something that the CRC would see as preferable, as opposed to a custodial sentence. I would like to make that point upfront, given that some of the comments I will be making will probably be detrimental to some of the community sentences that are discussed here. However, we would certainly recommend an increase in community sentencing options.

CHAIR: Can you tell us the role of the Community Restorative Centre in relation to community-based sentencing?

Ms CHURCHILL: The Community Restorative Centre currently has about six different government funding bodies. We provide an accommodation service for people immediately upon their release from prison, a transport service for families, a low-cost transport service to correctional centres, transitional support for people coming out of prison, mainly women, where we meet with them three months prior to their release and then work with them for up to 12 months post release.

Recently we have embarked upon a project in the Villawood area, training services around the needs of families of prisoners. We have a health project focusing on communicating with family members about their increased risk of the transmission of HIV, hepatitis C and other blood-borne communicable infections as a result of having somebody in prison. We also provide a court support program, and we are about to start working with the Drug Court.

I say that primarily because most of our funding to date has focused on assisting people with the transition from incarceration into the community, which means that a lot of our clients do not come to us on community-based sentences. That is not because our services would not be relevant to people on community-based sentences; purely we are dictated to by our funding bodies as to what services we provide.

Clients that come into our accommodation service may be on merit, or may be attached to the Drug Court. We have worked with people who are on home detention. Certainly clients of ours undertake community service orders at times, but we are not usually a point of referral for people involved in community sentences. The CRC tends to work with people who have had several periods of incarceration and therefore usually are slightly further down the track than a lot of the community sentencing options.

However, we spend a lot of time speaking with people in Victoria and visiting services in Victoria. We are fully aware of a lot of the other options that are available, and there is no reason why we could not be providing more services. On the whole, we are on the fringe of being directly funded to provide support to those services. We provide about 1,700 items of service to people via our crisis drop-in and telephone support service. A significant percentage of those clients would be undertaking some form of community service order.

CHAIR: The Committee's previous terms of reference, which we have rolled into the present terms of reference, related to back-end home detention. Would you outline the services you provide with regard to home detention?

Ms CHURCHILL: Yes. As I said, very few of our clients are on home detention. It should be noted also that when clients end up in contact with the CRC, it is usually at a point of crisis. Unless they enter our programs whilst they are in custody, if they contact us once they are out, it is usually because things are going wrong. So we do not tend to be privy to all the success stories of home detention. We tend to work with people who are experiencing breaches in their drug and alcohol use. They may ring and want somebody to advocate for them with the department in relation to having increased access to drug and alcohol services.

Both men and women may well be living in a situation that they feel is untenable. Their partners may contact us, which is quite a frequent occurrence, and say that they are finding it really difficult, that the person who is sentenced to the home detention order is quite depressed, that they are moody, and the rest of the family are having difficulty dealing with that. There may be pressure put on families to bring drugs and alcohol into the house. Often people have felt that the whole family has been imprisoned as a result of the one person being sentenced.

CHAIR: Would you mind taking on notice what your organisation could offer for support for something like back-end home detention?

Ms CHURCHILL: Yes.

The Hon. AMANDA FAZIO: Was your organisation formerly known as the Civil Rehabilitation Committee?

Ms CHURCHILL: Yes. It was the Civil Rehabilitation Committee, it then changed to CRC Justice Support, which has now gone back to CRC, which stands for the Community Restorative Centre.

The Hon. AMANDA FAZIO: Can you tell us a little about the transport to gaol service? Does it only involve taking family members to visit people in gaol?

Ms CHURCHILL: Yes. It picks people up from about five different locations throughout the city, including Central, Parramatta, Strathfield, and delivers people to the correctional centres, and picks them up at the correctional centres and drops them back. We visit eight different country correctional centres, and a bus visits each of those correctional centres on a fortnightly basis.

The Hon. AMANDA FAZIO: Can that sort of transport service be changed or tailored to transport inmates from local police stations to periodic detention centres? I ask that because when the committee went to Bega if people on periodic detention at Bega had to somehow get themselves to the Illawarra region and most of them do not have cars.

Ms CHURCHILL: When I saw that question I thought how long is a piece of string because I was not sure how many pick-up spots there may be. Certainly it is possible, if people could get themselves to one or two central police stations it could be put out for tender for somebody to actually run a bus service. I am not sure of the numbers so to cost that I thought was actually quite difficult. I did not know whether we were looking at one police station to one periodic detention centre or whether we were talking about the Far North Coast where there might be a whole route of picking up people. Obviously the further the distance, the different coach awards they would have to go under. I did think that it would be possible.

I spoke to a bus driver about this to try to work what sort of model one might be able to look at. We did think that it might not be that dissimilar to a school pick-up run that the Department of Education and Training must actually organise with the country. Certainly there does not need to be any security with that sort of program so we thought you would actually be able to put that out to tender in the local community. Often people have 21-seater coaches and buses that are idle during the week and somebody would be quite happy on a relatively low salary to do a run several times a week.

I could not give you the costings for that model but I do not see why that would not actually be possible at all.

The Hon. AMANDA FAZIO: Would you outline the stamp mentoring project, the number of volunteers the project currently has, the training, potential for expansion for community-based sentence and that sort of thing?

Ms CHURCHILL: Yes, the stamp mentoring project came out of a partnership between CLC and Marrickville Council. Marrickville recognised that it had a significant number of ex-offenders in its community living in boarding houses. It has a strong policy of social inclusion and belonging so it set up a large working party to look at how they could increase connectiveness and link ex-offenders in boarding houses into services in the Marrickville community. It came up jointly, and the steering committee came up, with this idea of mentoring. We kind of researched different models and made up this model.

We advertised in the local Marrickville community for any members of the community who might be interested in providing a social connection with somebody, upon their release from prison. We recruited 15 and we are down to 13, so two actually dropped out. None of those people have had periods of time in prison themselves, although that was not an exclusion factor. So really it is your general members of the community. We have got seven students, two retirees, two working in the community services sector and a solicitor who volunteered their time—10 women and three men. One of the partners in the project is Petersham TAFE Outreach Program. It provided the mentoring in the community. We adapted the mentoring in the community model that went for about 38 hours, of which we did about 20 hours prior to linking the mentors with their mentees, and then we conducted the rest of the training once the mentors and mentees had been linked.

We actually learnt at a conference not long after we started the project that a lot of the mentors actually did not retain a lot of the information that you gave them prior to being linked and so we have graduated the training. At the moment we have 12 mentors and 12 mentees that are matched. The longest period of time for the link is about 10 months and the shortest is only a matter of weeks. We have several questions about this one. Just out of interest, the mentees that we have recruited, three of them actually had to three to five previous periods of incarceration, six of them have six to nine previous periods of incarceration, two had had 10 to 15 periods of incarceration and one had more than 16. We have recruited eight women and six men as the mentees. We provide the mentors meet on a monthly basis for about two to three hours and that usually involves a group sharing session, a group supervision and usually a guest speaker with some sort of training that is attached to that. They are contacted either by telephone or have a face-to-face contact with the co-ordinator of the program for individual supervision on a weekly basis. They actually submit information about what they have been doing with their mentors to the co-ordinator on a monthly basis.

The Hon. AMANDA FAZIO: It seems that it would be easy to adapt that to help people on community service orders as well?

Ms CHURCHILL: Absolutely. I mean in relation what it would need to be adapted—finances really. It is funded for only three days for the co-ordinator. We have just received some funding from the Lord Mayor's Trust Fund to extend that program to five days so we are going to move into the inner city region and we are speaking with the Attorney General about expanding that. We have been successful in getting the project funded for another year so we can evaluate it more effectively because it is a very short period of time to actually look at whether it is a successful crime prevention strategy. Clearly that was the idea behind the project that it would actually be a crime prevention strategy that would increase connectiveness and social connectiveness of inmates or ex-offenders who are often isolated, and increase their links with services.

It is a voluntary project and I think it needs to be a voluntary project. I guess the power of the project to date appears to be the fact that the mentors are, in fact, non-paid. It is the first time for many of these clients that anybody has been actually interested in their life that does not have to be, and is not there as a paid worker. I guess that is what we really want to evaluate its strength as whether that principle actually really is effective as a crime prevention strategy. Certainly if somebody were on home detention, for instance, which can be quite an isolating experience for many people then whilst they may not be able to go out and about with a mentor like some people, you would have to adjust

the notion of a mentor being able to link them into other communities and actually get approval. But certainly in relation to visiting and having some sort of social connectiveness and different peer modelling it could certainly be utilised.

Ms LEE RHIANNON: How can a community based sentence be tailored for socially disadvantaged people?

Ms CHURCHILL: It is a big question.

CHAIR: I do not think we will panic at the time. We will continue for the allotted time and then we will ask you to table your answers to the questions not reached.

Ms CHURCHILL: Sure. Most people that are socially disadvantaged that are in contact with the criminal justice system are cumulatively disadvantaged so they have issues with mental health, alcohol and other drug issues.

CHAIR: Questions 4 and 5 are much the same.

Ms CHURCHILL: Yes, for people that are social disadvantaged. One of the things that we know and we work with every day is that the living expenses of people are far greater than their income. So certainly in rural communities, and even in the city centre, people in contact with the criminal justice system usually have a lot of obligations that they have to fulfil. They have to pick up methadone, they often have the gaze of family and community services or the Department of Community Services, they have to report to Probation and Parole and they may have to report for drug and alcohol counselling. Any community based sentence that actually increases a cost, for instance, having to travel from one remote area to do periodic detention actually just becomes an overwhelming burden on somebody.

So at our crisis drop-in centre, for a little while we were actually delivering emergency relief. We actually found that we were spending quite a lot of our time providing money for people to actually attend the ordered services, say, a drug and alcohol service. They did not have the bus fares and the money to be able to maintain that every day.

CHAIR: Do you know that Social Security removed two days from people on periodic detention?

Ms CHURCHILL: Yes, absolutely, so there is another issue. The fact that they actually lose their money, they still have to pay the rent even when they are in a periodic detention centre. Yes, usually there is a financial cost for people on community service orders. Then there really is just this nature of this particular client group, a huge percentage of this client group—I know the committee has had a lot of information on this already—have acquired brain injury, have mental illness, intellectual disabilities and alcohol and other drug issues. They live very chaotic lifestyles. Basically they struggle to survive from day to day. They are living hand to mouth. They are worrying about where they are going to sleep tonight and any other obligation that is put on them is often too much. I will preface this by saying this is obviously the group that CRC is working with—I know there are people who do really well but I guess we are working with some of the most disadvantaged and the people that this impacts on the greatest. They often end up being breached from their community sentences for non-criminal issues.

Their failure to attend is due to lack of income, mental health or lack of medication because they cannot afford their prescriptions. Really they are further criminalised for their social disadvantage. It is one of the issues that is extremely problematic. I guess, our view would be that if we are going to impose any community based sentence it is essential that there are support services offered with it because without that the people are in the same situation that led them to offend, but now they have got an increased commitment that they were not able to cope with prior to that.

Ms LEE RHIANNON: Are there sufficient public health services, such as drug and alcohol services?

Ms CHURCHILL: No, there are not. It is very difficult because we work with many of them and we know that there is a huge directory full of them—

Ms LEE RHIANNON: There are existing services in some places but what are the barriers for socially disadvantaged people? Are they missing out in a greater proportion than people who have got some resources within the community?

Ms CHURCHILL: Yes, without a doubt. Certainly there are groups culturally and linguistically diverse, and indigenous groups and things that may equally be missing out. For people who are homeless and extremely socially disadvantaged with a whole range of issues happening for them, they are not in a stable environment. They are not actually at a stage where they are able to actively go and have pro-active help seeking behaviours, so that is one issue. Actually getting themselves organised to get there, they have to be thinking fairly long term about their wellbeing in order to actually access them in the first place. But also many of our clients will rock up agitated; they have not had their medication, they may be under the influence of alcohol or other drugs, they have mental health issues, they are the great unwashed and a lot of the services will refuse to work with them. It is too simplistic to say that they are fearful of them, but they are overwhelmed by them, I think, and so they will be sent away because they have clearly got a mental illness and this is a drug and alcohol service, and vice versa, so they fall through the gaps.

If they have intellectual disabilities or acquired brain injury—which is a huge number of ex-offenders—then often the services that are provided run in the form of cognitive behavioural therapy. They are rarely pitched at a level that a lot of the client group can understand so it goes over their head. They are not particularly relevant. A lot of the programs from groups and a lot of indigenous and culturally and linguistically diverse communities are not able to sit in a group. It is not a concept that a lot of our clients feel comfortable with. If you come from the prison mentality information is what you trade in so people feel very unsafe sitting in a group work environment and sharing their experiences because the person next to them may use it against them in another meeting or if they go back to prison that information may be used against them.

What services there are available this client group often do not feel comfortable accessing nor do the workers feel comfortable in accepting. There is a plethora of them; they are out there. But at CRC we spend more of our time advocating with services to try to get access for our clients than doing anything else. Clearly, in rural communities we have clients who are told that they have to report for counselling but the counsellor only comes to the town once every three weeks. So the issues are far greater there.

The Hon. GREG DONNELLY: With respect to the support given post release from gaol, is there a fundamentally different range of services that need to be provided to women over men? In other words, in terms of the gender difference, in your experience do women require particular types of support services post release vis-a-vis males? If that is the case, can you outline what they might be?

Ms CHURCHILL: I think right across the board women require different services to men in relation to the criminal justice system. They do not always look different. We provide a very similar transitional support model to women and to men. However, our support hours tend to be a lot greater and usually per head of population when women come into contact with the criminal justice system their range of issues—emotional, psychological, mental health, homelessness, family dislocation and so on—are greater than they are for men. There are fewer services out there for women. Most women's services will not work with people who are violent or who have a history of violence, which is increasingly our population. Women often tend to be a little more erratic when they come into the prison system.

It is not so much that services have to be completely different—I certainly think they are in relation to community-based sentences—but I think they need to be more intensive and they need to be outreach services for both men and women. I think you need to be taking services to the client groups working with them in their environment. So I guess probably not. I think in relation to community-based sentences, they need to be different. We have not talked about periodic detention and those things. I think they are different for women. But post release we just need more services. There is less accommodation.

The Hon. GREG DONNELLY: It is the intensity of it.

Ms CHURCHILL: It is increased intensity and there are less services available for women.

The Hon. DAVID CLARKE: In your experience do homeless people receive community-based sentences?

Ms CHURCHILL: No.

The Hon. DAVID CLARKE: They do not?

Ms CHURCHILL: No, they do not. Most courts recognise that most community-based sentences require you to be able to follow somebody up, monitor them and get in contact with them if they fail to attend. Without a doubt, homeless people are put on remand and we know that if people are remanded they are more likely to receive a custodial sentence. So, no, they do not.

CHAIR: Thank you very much. I hope you will take the rest of the questions on notice.

Ms CHURCHILL: Sure.

CHAIR: When you are answering the questions on notice would you mind giving us contacts in Victoria so we can work through with them the way that they have structured their support services?

Ms CHURCHILL: Yes.

CHAIR: Thank you very much indeed.

(The witness withdrew)

CHAIR: Welcome to the seventh public hearing of the Standing Committee on Law and Justice inquiry into community-based sentencing options. Before we commence I will make some comments. There are broadcasting guidelines. The press are busy elsewhere but the information is available and the secretariat will ensure that those guidelines are adhered to. The secretariat will also take any messages or documents you want to tender before the Committee. The Committee prefers to conduct its hearings in public but may decide to hear evidence in camera if there is a need to do so. You can request that. However, the Committee will then make a decision as to whether or not that information can be made public and Parliament may overturn the Committee's decision at a later stage and make that evidence public.

Committee hearings are not intended to provide a forum for people to make adverse reflections on others. Protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. Witness should avoid mentioning the names of other individuals unless it is absolutely essential to address the terms of reference. All mobile phones should be turned off because they interfere with our recording device—that includes the "silent" phase.

CLARE JOANNE FARNAN, Local Court Magistrate and Children's Court Magistrate, Level 5, Downing Centre, Liverpool Street, Sydney, affirmed and examined:

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

Ms FARNAN: I suppose as an individual.

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

Ms FARNAN: Yes, I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee please indicate that fact and the Committee will consider your request. If you should take any questions on notice I would appreciate it if the response to those questions could be forwarded to the secretariat by Monday 26 September next. Would you like to start by making a brief statement?

Ms FARNAN: I have been given a copy of questions on notice and I have prepared some fairly short responses to those. In relation to my reason for being here, I have come here by invitation. I am a Magistrate and I sit for one week each month in the Local Court and, of course, also exercise Children's Court jurisdiction in Bourke and Brewarrina in the far north west of New South Wales. It is in that capacity, I assume, that I have been invited to attend. I should say for the information of the Committee that of the other weeks of the month I sit in the Youth Drug and Alcohol Court three days a week—which is, of course, a community-based option available to juvenile is in New South Wales—and regularly also sit in the Children's Court. I do sit in Local Courts as well around Sydney.

I have an interest, obviously, in community-based sentencing. Community sentencing options are always at the forefront of a magistrate's mind when one is choosing what sentence to impose on a particular offender. In regional areas, of course, they are far more limited than they are in Sydney. Having had the experience of doing both I suppose I feel reasonably well qualified to speak on the subject. I have not actually prepared a presentation for you today but I am happy to answer any questions you have. If you would like me to go through the questions that you have given me on notice I will be happy to do it in that way.

CHAIR: Members of the Committee will ask you some questions. I will begin. Can you outline the community-based services that are available to you when you are sitting in the Bourke Local Court?

Ms FARNAN: Bourke, for juveniles, has the full range of community-based options—that is, Young Offenders Act alternatives, conferences, supervised orders, community service orders and suspended control orders with supervision. The only thing for juvenile that is not available in Bourke is the Youth Drug and Alcohol Court, which of course is not available to most of the State. That is not a specific sentence in itself, of course; it is a bail-based program, but that program is not available. There are some aspects of the supervision that is provided to young people in the Sydney area through, for example, the Stanmore Intensive Programs Unit, which are not of course available in any regional areas. But those are aspects of the sentencing outcome, as opposed to a specific outcome itself.

For adults, supervision on bonds, suspended sentences and supervision on those and community service orders are available. There is no periodic detention in Bourke or at least in my view reasonably accessible periodic detention. There is no home detention available to people who live in Bourke. The Adult Drug Court is not available to people who live up there and also there is no Magistrates Early Referral Into Treatment [MERIT] scheme in that area for adults, which I think is a great lack. That, of course, is not a sentencing option; it is a program that is available in some areas of the State that is not available up there. One can always put someone on a Griffiths remand and allow them to participate in drug and alcohol rehabilitation, and there is a rehabilitation centre particularly

for Aboriginal people out at Brewarrina which many people attend. Some people from that area also go to rehabilitation facilities outside that area if they seem to be the appropriate facilities for them. In practical terms the only things that are not actually available are periodic detention and home detention. What is available to people of supervised orders is different in that community than it might be in another community.

CHAIR: With regard to community service orders, would Probation and Parole be able to find work for such people?

Ms FARNAN: In a sense that is not a matter for the courts. It is not a matter for me. I make community service orders regularly but it is up to Probation and Parole to find work for people. They assess the person's suitability and I have to presume they do it in light of their assessment of what is available or likely to be available for that person. I regularly make those orders. One thing that is not available up there specifically is what is called "attendance centres orders", which are orders requiring a person as part of a community service order to serve part of their hours at an attendance centre, which provides programs which may be directed towards literacy, drug and alcohol rehabilitation or counselling of some sort. Those are not available as part of a community service order at the present time in Bourke, although those sorts of programs are at least theoretically available as part of supervised bonds.

CHAIR: That is important, thank you. Do you if they are not available because of Probation and Parole resources or because organisations such as Health are not able to provide the resources? Do you know that?

Ms FARNAN: The whole attendance centre program relies on having enough people to participate in the program and I suspect, although I do not know, that Probation and Parole may not have the numbers of people to justify setting up that sort of program in that area. The question would be better directed to them. Certainly I believe that Probation and Parole Office in Bourke is very busy doing what it already does and its ability to do other things is probably limited because it has to provide services over a wide geographical area. I suspect that the staff spend a lot of time driving around, which other Probation and Parole officers may not need to do. Again, it is really a question that they would need to answer.

CHAIR: This is a difficult question. The police—I am fairly sure it was in Bourke—informed us that they did a very good job in relation to arresting a lot of people. I am not asking you to make a value judgment but do you see many people have broken their community service orders repeatedly?

Ms FARNAN: I do not know if I quite understand the question. There are different ways of breaching a community service order. You can breach a community service order by committing a further offence, by not doing your hours or by not working effectively.

CHAIR: Not obeying Probation and Parole, yes. I am talking about the commission of a further offence.

Ms FARNAN: Are you asking me do people who appear in court for fresh offences frequently have current community service orders?

CHAIR: Yes.

Ms FARNAN: I suppose a better answer would be that it is not unusual.

Ms LEE RHIANNON: Have you sentenced an offender to a section 12 bond with a lengthy period because that was the only non-custodial option available?

Ms FARNAN: That question caused me some concern because a section 12 bond is not a non-custodial option. You cannot impose a section 12 bond on someone unless you form the view that a prison sentence is appropriate. You then go to the next step of saying, "Okay, but should I suspend the sentence?" It is not a non-custodial option.

Ms LEE RHIANNON: But in some ways that is exactly why we are asking it. We are just trying to see if you have a lack of options. Have you felt that if you had other options you would not impose a section 12 bond? I understand that as a magistrate you are trying to determine whether a person should go to gaol, but we are asking you precisely for that reason.

Ms FARNAN: If the answer to the question is, yes, they should go to gaol then how they serve the sentence—whether it is suspended, home detention, periodic detention or full-time prison—is a question you do not get to until after you have decided that they should go to gaol.

Ms LEE RHIANNON: I appreciate that, but do you think, "This person should not go to gaol. However, I do not have these other options and, therefore, section 12 is the only way I can do it"?

Ms FARNAN: If I am properly sentencing someone that should not happen. The difficulty with the section 12 bond and suspended sentence option is that because you have to sentence someone to imprisonment before you can suspend the sentence and because you can suspend the sentence only for the length of the prison sentence sometimes you will give someone a much shorter section 12 bond than if you had given them a section 9 bond because you can only suspend a sentence for the length of the sentence. You might want to say to someone, "I am going to put you on a bond for 18 months. If you breach the bond you will go to gaol for six months", but you cannot do that. You can only give a section 12 bond for 18 months if you give them an 18 month prison sentence and fix a non-parole period, which is quite a lengthy sentence for a magistrate's court to impose. Frequently you will find that people receive shorter section 12 bonds because they are limited by the length of the sentence. One certainly should not increase the length of the sentence because it is being suspended. I accept it may be something that psychologically appeals to one, but it is not something that should happen. I do not know if that adequately answers the question

Ms LEE RHIANNON: It reflects the problems that you are up against, which is useful.

Ms FARNAN: There are particular problems. One of the issues, which perhaps comes up in one of the later questions, is that a problem arises when someone breaches a section 12 bond because you do not have the same options that you would have if someone in Liverpool were to breach the bond.

Ms LEE RHIANNON: What are the main reasons that you may decide not to give a particular community-based sentence, even if an offender is at least as eligible and suitable under the legislation, and assessed as suitable by the Probation and Parole Service?

Ms FARNAN: One of the main reasons would be their prior criminal record, seriousness of the offence and, in some circumstances, the prevalence of the offence. In addition, sometimes one is constrained by, for example, a guideline judgment in the sentencing options that one might have, or by the legislation. For example, if someone commits an offence of breaching an apprehended violence order by the courts, involving violence, the legislation that says that, generally speaking, they should get a prison sentence. If a person in that situation is assessed as suitable for a community-based order, but they have already served a prison sentence for breaching an apprehended violence order for an offence involving violence, generally speaking and unless there had been some other extenuating factor it would be very difficult to impose a community-based order. In the far north-west offenders appearing before the courts frequently have extensive criminal records with many prior prison sentences. If they commit serious offences then as a matter of general sentencing law it is difficult to justify imposing non-custodial sentences on them.

The Hon. GREG DONNELLY: Earlier I said we had the benefit of his honour Judge Dive yesterday giving us quite a comprehensive overview of the operation of the Drug Court, which has a particular model of operation that requires intensive work and co-operation between the individual before the court and, obviously, the court and all its associated support services. On the analysis so far it has produced some pretty good result for those offenders. Do you have a view that there are other ways of dealing with young offenders who have a drug problem that could perhaps produce similar results using fewer resources than the Drug Court, given there is always competition for resources. Obviously, the evidence is quite convincing that the court is a success. Given that it may not be

possible to apply across the whole State, do you have experience of other ways of dealing with such young people?

Ms FARNAN: I do not know whether the Committee is familiar with the Intensive Court Supervision Program in Brewarrina, which is a pilot program that has been in place for fewer than six months. It is an attempt to do exactly what you are suggesting, although it does not target specifically offenders with drug problems. It specifically targets juveniles, not adults, who are at risk of receiving a control order—a custodial sentence for whatever offence or offences for which they are before the court—who are willing to participate in an intensive community-based program, which requires the young offenders to return to court every two weeks for an informal report-back session. A Juvenile Justice person is charged with the task of organising intensive programs, such as worker training, drug and alcohol education, counselling such as is available, education through TAFE and work if work is available, for them while they are in their community. They try to target those things in young people's lives that might lead them into offending and not leading law-abiding lives.

But as you know the intention of the pilot program is to move further afield if it is assessed as working. At this stage I do not think any analysis has been done because it is such early days. I do not know if Judge Dive said anything about the program, but I think he was responsible for its genesis when he was involved in that area and when he was also involved in the Drug and Alcohol Court. It is modelled on very much on the same model. You get a young person and you put them on bail for six months. The carrot is that if they comply with and graduate from the program they will not receive a custodial sentence. The stick is that if they breach their bail, which is on condition that they comply, they will then be sentenced on whatever the offences are. They are on the program only because they are looking at a custodial sentence. As I am sure you would be aware having been in Brewarrina, it is a very small community. At this stage we have only a very small number of people involved in it.

CHAIR: It appeared when we were there that the community had some diverse opinions about its effectiveness. One of the views we picked up in quite a few places is that many people perceive a good thing to do for troubled young people was to farm them off into some place away from them. Do you think that supportive-type attitude may improve if the circle sentencing process works in the area?

Ms FARNAN: At the moment circle sentencing does not apply at all to juveniles.

CHAIR: No, but the attitude of the community towards the support

Ms FARNAN: I do not feel qualified to answer that. The community has a very long history. I do not have any history with that community, apart from having sat there one day a week for 12 months and having conducted circle sentence proceedings. It is a fair question and I would love to be able to answer it. I would love to be able to resolve the difficulties of that community. But those diverse views seem to reflect the views of the general community about how to bring up children and how to solve the problems of juvenile crime. There are different views about it. That community has different views, too. I hope that circle sentencing and the involvement of the community in the programs that are on offer and the success of some of the young people who are involved in that program will encourage the community to feel as though it is a positive way of going about dealing with juvenile offenders.

The Hon. GREG DONNELLY: Is it your view that the success or otherwise of these intensive-type programs really turns on the preparedness of the person to co-operate as opposed to saying, "This is the way in which we are going to deal with you"?

Ms FARNAN: Any psychologist would agree with that. There is some debate about the appropriateness of coercive programs, and certainly the Youth Drug and Alcohol Court and the Adult Drug Court are predicated on voluntariness. Having said that and sitting in the Youth Drug and Alcohol Court, certainly quite a number of young people on that program who, while they are contracted to participate in it, one would not exactly say they were driven by an enduring need to do something about the drug problem. They are trying to do the best they can in the circumstances in which they find themselves, but my experience is that the people who do best on that program are the people who appear to have a genuine desire to do something about their problem.

The Hon. GREG DONNELLY: I am not quite sure of the term Griffith remand.

Ms FARNAN: It is named after a case, Griffith, after which it was used, and refers to a matter that is adjourned for sentence for a lengthy period for the person to show their prospects of rehabilitation. Most frequently it is for them to go into a drug rehabilitation centre for three months and you adjourn the matter for three months on condition that they go into that centre. You get a report in three months and if they have done well, happy days. If they do not stay then usually they will come back on a breach of the bail.

The Hon. AMANDA FAZIO: Are the probation and parole service pre-sentence reports and assessment reports effective advice for you to sentence an offender and if not what could be done to improve the effectiveness of the reports?

Ms FARNAN: This is a question that I was given on notice. Can you tell me what number it was?

The Hon. AMANDA FAZIO: Number 10.

Ms FARNAN: I think the answer, generally speaking, I would give as yes. I would not really describe those reports as being advice, they are more background information and options. Generally speaking I find probation and parole reports very thorough and very helpful. It seems to me, just from observations I have made, that there have been recent moves to standardise their presentation across the State and those moves have meant that pre-sentence reports tend to contain more standardised information than they may have, say, five years ago.

I made reference earlier on to the difficulties I think probation and parole in Bourke specifically have with the need to travel to different locations. They also service courts other than Bourke, as I understand it. I have no doubt that they have difficulties in balancing the needs of writing reports with the other things they are trying to do such as supervising offenders and providing programs and things like that. It is certainly true to say that there are some occasions when probation and parole reports may not be as helpful as one would like but in some circumstances it is easily explicable by the background that the service has with the particular offender and one does one's best.

The Hon. AMANDA FAZIO: We heard evidence this week from one of the Aboriginal legal services that they spend quite a considerable amount of money getting medical and psychiatric reports done for their clients before they appear before the courts and they suggested they thought it would be a good idea if those reports could somehow be linked through to a person either in a custodial or non-custodial sentence so that they could be used by probation and parole and other people to help tailor programs for that person while they are under the sentence. Do you think that would be a reasonable proposition? Are those reports any good?

Ms FARNAN: I do not see any reason why that cannot happen now if a report is tendered on sentence proceedings. If it appears to be a helpful report to provide background, I normally direct that it go to the supervising agency, particularly if their lawyer asks for it. There is no reason why that cannot happen and indeed there is no reason why lawyers cannot directly supply them themselves, if they have got their client's consent, of course.

The Hon. AMANDA FAZIO: Question four. Without discussing any particular sentencing decisions you have made, what are the main reasons that you may decide not to give a particular community-based sentence even if an offender is assessed as eligible and suitable under the legislation and has been assessed as suitable by probation and parole?

Ms FARNAN: I think I have already answered that question earlier this afternoon. I may not have done it very effectively. I think I said that it would be usually their prior record, the seriousness of the offence, the prevalence of the offence and possible binding guidelines, things of that nature.

The Hon. AMANDA FAZIO: Question nine. Also without discussing any particulars, in your opinion do some magistrates not sentence a person with a disability to a community-based sentence simply because of their belief that a person with a disability would not be suitable despite receiving a probation and parole report that says the offender is eligible and suitable?

Ms FARNAN: I frankly find that a remarkable question. I certainly have never seen or heard that happen myself. Of course, I do not spend any time in other magistrates courts; I do not know whether that is something that happens but in my experience I would expect that magistrates would go out of their way to try to avoid sentencing a person with a disability to prison, and inevitably that means providing them with some form of community-based order. There may be circumstances where one received conflicting reports or something like that. But that is a surprising question to me.

The Hon. AMANDA FAZIO: We heard yesterday that they are going to be doing a trial of having someone in the courts to try and identify people with intellectual disabilities who are coming before the courts in the same way they have people who look out for people with mental health problems. Do you think that would be valuable in terms of ensuring that the person knows exactly what is going on and that if they are given a community-based sentence they are followed up adequately?

Ms FARNAN: I suppose the more resources the better. I certainly would not say no. I am not entirely sure. The mental health services at the moment are particularly helpful, particularly for people in custody. I am not quite sure what that person would do at the initial stage and once, I suppose, one has ordered a pre-sentence report if a person is legally represented one would hope that their lawyer might pick up on that sort of issue. Certainly for people who are unrepresented, but the difficulty is with the sheer numbers of people who come before the court it is unlikely that a person with an intellectual disability who functions sufficiently well for it not to be obvious is going to be easily identifiable in the very large volume of people who come into courts on a daily basis. But I certainly would not oppose something like that, no.

CHAIR: I will just pick up some of these questions about periodic detention. Did you know that they dock their people their social security payments?

Ms FARNAN: No, I never knew that.

CHAIR: We were surprised too.

Ms FARNAN: I cannot imagine how it would have any impact on sentencing decisions even if one did know it. Frankly, when I read that I thought to myself would it make you more likely to impose it or would it make you less likely to impose it? To me it is a completely irrelevant consideration to the question of what sentence somebody would receive. And I did not know.

CHAIR: There is a lot of issue about travel time in the country, particularly to detention centres. Do you think it would be feasible for us to suggest in some cases that some of the travel time be included as part of the time?

Ms FARNAN: It may be in some centres. The legislation already requires you to consider whether travel is reasonable in deciding whether to impose the sentence.

CHAIR: We understand that, it is just that it could be four hours, five hours or six hours—

Ms FARNAN: Well, I would not consider that to be reasonable. Some magistrates might consider that to be reasonable, but if you were travelling six hours there and six hours back, as you might be if you were in Bourke and wanted to go to Tamworth, to include that in the sentence time means that you are doing your sentence sitting in your car.

CHAIR: So it would not be a sensible idea?

Ms FARNAN: My view is that periodic detention ought to be available to everybody statewide and there should not be any discrimination; there should be centres that are sufficiently proximate to all of the areas where people might need to be sentenced to those sentences. My view is there ought to be periodic detention centres, if possible and if feasible, attached to every prison, and if that were to take place then it would be far less of a problem. Obviously that is a resource issue. It seems to me very unfair that people in the country are discriminated against in that way, but to add-on travel time to the sentence I just do not know if that is a solution.

CHAIR: The other issue about periodic detention is we have discovered that they do not participate and there is nothing in the law that allows the magistrate to order that they can.

Ms FARNAN: To participate in rehabilitation?

CHAIR: And the courses or the special drug and alcohol counselling. Do you think it would be beneficial if periodic detention persons could be ordered to do other programs as well, particularly considering the majority of periodic detention persons are not employed?

Ms FARNAN: I certainly was aware that they do not. I do not really think it is necessarily a matter for the magistrate to make that order because the administration of prisons is a matter for the Department of Corrective Services, not for the courts. However, I certainly would not have any difficulty with those programs being provided in periodic detention centres but it is not something I would personally regard as being a higher priority than the provision of programs in the community, given the lack of availability of periodic detention to so many people already.

CHAIR: So part of the issue in relation to periodic detention is that it actually belongs to the gaol part of corrections and therefore the magistrate, of course, is not responsible for what happens inside of the corrections service?

Ms FARNAN: Yes.

CHAIR: That is important to know, thank you. We had interesting information from some community persons saying that nobody would take up an appeal for them and we have looked at some other information, particularly from the sentencing council. The question is, is there a problem with the appeals process in the local court?

Ms FARNAN: I do not know is the answer. Anybody who is dissatisfied with a criminal law decision of the local court can lodge an appeal within one month or, with leave, within three months. And they can do it whether they are represented or unrepresented. They can run it in the district court whether they are represented or unrepresented. There may well be issues around that but it is out of my hands; it is not something that I have any experience of.

CHAIR: Do they? Are there many appeals?

Ms FARNAN: Oh yes, all the time. I am sure the statistics are available to the Committee. I do not have them.

CHAIR: I think it is slightly distorted information but we need to ask the question.

Ms FARNAN: And the appeals can be lodged at the local court. If the person has been sentenced to a prison sentence they can make a bail application right there; that is a regular occurrence. They either receive or do not receive bail. My experience is that those appeals are heard quite expeditiously; they seem to be heard—particularly if they are sentence appeals as opposed to conviction appeals—sometimes within weeks, sometimes longer. The Bourke appeals are heard in Dubbo so they do not have to wait for a district court sitting in Bourke, which might only be twice a year. It is not something I am aware there is any difficulty with.

CHAIR: We heard quite a lot of evidence as well from legal persons and from individual community people in relation to the processes for ending up in gaol over disqualification for driving problems. I realise it is a new sequence of events. Do you have any ideas that we could put forward to remedy this issue?

Ms FARNAN: There are all sorts of things that one can think of that could be done but most of them are entirely inconsistent with the current scheme of the legislation, but all of that legislation has been relatively recent. We are not talking about things that have been on the statute books for 100 years here, we are talking about things that the Parliament has chosen to enact.

The Hon. AMANDA FAZIO: In the last 10 years?

Ms FARNAN: I would say yes, in the last 10 years. And to some degree that particular problem—and it is a problem—and I have to say I have identified people who I have sent to prison who have ended up there because they did not pay fines for what I would regard as matters that the community would not have been concerned about then, and their driving has been unremarkable, it has not been dangerous, it has not been drunk, it has been unlicensed or disqualified, but they keep on doing it because they feel they have a need to take children to hospital often or to go down to the corner and get a kebab, as the case may be. People keep driving because they do not think they are bad drivers and some of them end up in prison.

I say to young men when I first disqualify them that that is a track that they could now be heading down and if they do not want that to happen they have to be very careful.

CHAIR: Does this issue relate more to rural Aboriginal people rather than the city people you work with?

Ms FARNAN: It is an issue in every local court in New South Wales. I have spent some months sitting at Sutherland, it was an issue there. I spent some months sitting at Liverpool, it was an issue there. It is an issue at the Downing Centre. It is an issue in Bourke. It is an issue everywhere.

The Hon. AMANDA FAZIO: If a person goes before the court a couple of times for being an unlicensed driver, can they then be disqualified as well?

Ms FARNAN: There is a mandatory three-year disqualification period for your second unlicensed offence, arguably. I think that is the law. There are two issues here. That is one issue. The person who has never had a licence or whose licence has lapsed and is now an unlicensed driver, for their second unlicensed driving offence they get a three-year disqualification. If they continue to drive they are a disqualified driver and there is a mandatory two-year disqualification to add on. If they keep driving and they are disqualified, most people will receive a prison sentence at some point or stage of disqualified driving. They might not get it the first time, they might not get it the second time, they might not even get it the third time. But if they do it a fourth time I would say it is inevitable that they would get a prison sentence. Most would probably get it the second time. That is one group of people.

The other group are people who have unpaid fines. I had a gentleman who had not paid a fine for not voting in a council election. Their driver's licence is suspended and they continue to drive. Obviously that is not something they should do, but they do. If they come before the court for driving whilst suspended, the mandatory minimum disqualification period is 12 months. If they drive again during that period of disqualification the mandatory minimum penalty is a two-year disqualification. Again, they are on that same merry-go-round. Obviously those people should not be driving because they are not licensed drivers, but they do not understand where they are heading and they do not believe they are bad drivers. I suspect their chances of being pulled over in larger communities are lower than their chances of being pulled over in smaller communities because in smaller communities the police know who the unlicensed or disqualified drivers are. In that sense it is more of a problem because the chances of detection are greater, I would imagine, in rural areas.

CHAIR: There are more police per population in rural areas.

Ms FARNAN: There are more police.

The Hon. AMANDA FAZIO: You said people do not understand the track they are going down. Another issue we have had raised with us by a few witnesses is that a list day in court is very busy and at the time of sentencing people are told, "You will be put on a bond. You will be given this, you will be given that and you have to abide by X, Y and Z." The people stand there like stunned mullets and nod.

Ms FARNAN: The only thing they are getting out of this is, "I have not been sent to gaol."

The Hon. AMANDA FAZIO: We realise that is a problem. Even if the court staff try to explain it to them the people arrive are so happy that they have not been locked up or are shell-shocked that they are not taking anything in. Do you have any positive suggestions about the services

that could be put in place to make sure that people are fully informed of their obligations so that they do not merrily go off down the road and breach their conditions straightaway?

Ms FARNAN: I do not think the problem is that they are not informed. I think that they are generally informed. Before I became a magistrate I was a defence lawyer. I regularly had the experience of coming out of court and my client saying to me, "What happened?" when I thought it was completely obvious what had happened. They really were in a very different world.

The Hon. AMANDA FAZIO: They just do not take it in.

Ms FARNAN: I do not think the problem is that it is not explained. The problem is it is not communicated. Where Probation and Parole is involved, I honestly do believe that if a person gets to their first appointment their obligations are, generally speaking, impressed on them at least at that stage, if not before. Some of them do not even get to their first appointment. Where they are not being supervised by Probation and Parole I am afraid I do not have any suggestions. I think many of the court staff do a very good job and are doing their best in plain language to explain to people. I think one of your questions refers to reading out the provisions. My personal view is that reading out the actual terms of a section 9 bond is almost completely useless. I would never do that in court when I was sentencing someone. I would tell them that they can be sentenced again for this offence if they commit another offence during the period of the bond and they can be sentenced again for this offence if they do not comply with any orders that I have made in relation to supervision, et cetera, and that if they are sentenced again it is all up for grabs and they may go to gaol, if that is in fact a possibility. But whether people understand that, it is difficult to know.

CHAIR: We have finished our questions. If there is any further information you would like to give us we would be grateful to receive it. Is there anything-else you want to say?

Ms FARNAN: There were a couple of things I neglected to say that I did make a note of when I was looking at your questions in relation to the fines and unlicensed offences in that particular cycle. I am fairly sure—and unfortunately I did not have an opportunity to look it up—that in Western Australia at least magistrates have the power to bypass the other enforcement provisions of the fines legislation and go straight to community service. So that, in effect, if a person is clearly never going to be able to pay a fine one can direct that they perform a certain number of community service hours in lieu of the current procedure in New South Wales, which requires that an attempt be made by a bailiff to execute against goods and various other things. The result is that for some people it is many, many years before they can be given the opportunity to do anything to pay off their fines. That seems to me to be a procedure that we could consider introducing here.

The other thing in that same area—again this is one of those things I suspect would be unlikely to find favour with the public—my personal view is that I sentence people in court who are already disqualified from driving until 2025, that sort of period of time. Disqualified driving for them is just a way of life and they just run the risk and say, "Well, I will get 6 months or 12 months or whatever it is if I get caught. I have got no way of ever getting a licence, so that is what I am going to do. That is the risk I am going to run." I think we need to provide those people with some incentive to get back their driver's licence, such as, applying to a court after a certain crime-free period, say, three years and say, "If you can get through three years' disqualification without an offence you can make an application to a court and ask to be given an opportunity to get a driver's licence."

Again going back to Western Australia where I did practice for a short time, they had very stringent drink-driving laws where on your third offence you are disqualified for life but after 10 years you can go back to the District Court and say, "Let me have my licence back." It provides some incentive. If I were able to say to someone who was disqualified to 2026, "If you could get through a three or five-year period crime free, you might have some hope of getting your licence back ", it would be a significant improvement on the current situation.

CHAIR: Thank you for coming to speak with us. Your evidence ties up with other evidence we have heard.

(**The witness withdrew**)

CHAIR: Welcome to the seventh public hearing of the Standing Committee on Law and Justice inquiry into community-based sentencing options. Information is available to the media on broadcasting guidelines. If you have any messages or documents you want delivered to the Committee the secretariat will deal with that. We prefer to conduct our hearings in public but the Committee may decide to hear certain evidence in private if you wish. We will make a decision whether or not we will make it public. The Parliament can make a decision to make the evidence public, even if we have decided otherwise. 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. Therefore, I request that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference. I ask that all mobile phones be completely turned off, including silencing devices as they interfere with recording equipment.

JANE SANDERS, Principal Solicitor, Shopfront Youth Legal Centre, 356 Victoria Street, Darlinghurst, affirmed and examined:

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

Ms SANDERS: As a representative of the Shopfront Youth Legal Centre.

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

Ms SANDERS: Yes.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice I would appreciate it if the response to those questions were forwarded to the secretariat by Monday, 26 September 2005. Would you like to start by making a short statement?

Ms SANDERS: If I start I do not think it will be short. I might perhaps just say that after addressing some of your questions if there is any further time I certainly would concur with Ms Farnan's comments about fines and unlicensed driving. If anybody wishes to explore those issues any further I would certainly have a couple of comments about that.

CHAIR: You can start with those comments if you like because that is an issue we need to hear about.

Ms SANDERS: If you would like me to. I do not want time to get away. I would concur with what Ms Farnan has said. Looking at it from the perspective of a legal practitioner who acts for young people daily, we have been seeing at our service a dramatic increase in the number of young people who have outstanding fines and who are being charged for some form of unlicensed driving. The two are definitely linked. We find that an enormous number of young people have their licence suspended or are unable to get their licences because they have incurred, largely, railway transit fines when they are young.

Often they are 15-year-old homeless people sleeping on trains or with no income and a means of support running the risk of travelling on trains without tickets. They are given very hefty fines and they have no means to pay them. They reach the State Debt Recovery Office and then they find that if they have got a licence it is suspended or they cannot get a licence. The provisions in relation to young people, people under 18 with non-traffic fines, have been somewhat amended to make it easier and reduce the hardship on these kids. But there is still an enormous problem.

There is a real perception among young people that if they have outstanding fines they will never get a licence until the fines are paid off in full. That is no longer the case. The fine system has become a bit more flexible, but still not flexible enough. Very often we run into the situation in which magistrates are forced to imprison people who are not bad drivers, they have not had an accident, they

have not driven negligently, drunk, or whatever. They simply have not had a licence and they have driven in breach of a suspension or court disqualification order. It is an enormous problem. The legislative scheme of mandatory disqualifications is very harsh, it is very inflexible.

For some kinds of traffic offences and offenders there is a need for deterrence, and taking their licence away is the ultimate deterrent for many people. But for the disadvantaged people that we are dealing with, particularly young people, licence disqualification is really not a deterrent; in effect, it may have the opposite effect. The example was given of someone disqualified until 2025 who thought "I'm never going to be able to get a licence. I need to drive. Well, I'll just run the risk." That has disastrous consequences for not only the individual but for their family and possibly the community.

CHAIR: What is the role of the Shopfront Youth Legal Centre in working with young people aged 18 to 25?

Ms SANDERS: We work with people aged under 18 as well. I am aware that the Committee is particularly interested in the young adult age group. We are a small legal service targeted mainly at homeless young people. We represent young people in court, mainly on criminal matters. We deal with other areas of law as well, but probably 75 to 80 per cent of our work is criminal law. We appear in court and generally act in matters when young people may be eligible for Legal Aid, but they have very complex personal problems. They may have a lot of different matters in different courts, different legal issues, a real need for continuity and flexibility, which the Legal Aid Commission is perhaps not resourced to provide. That is no criticism of Legal Aid, of course, it is just the way things are unfortunately.

We do not just go to court with our clients, we advise them if they are under arrest at the police station, or if the police are looking for them, or if they have unpaid fines, or if they need advice from time to time. We try to provide a really holistic service and follow through with a client. That includes working very closely with other organisations such as welfare, drug and alcohol services, mental health services, and the like.

CHAIR: What sort of community-based sentence does that age group get?

Ms SANDERS: Bonds mainly. Section 9 bonds. Certainly for the young people that we act for, who are disadvantaged and have mental health or drug problems, or whatever, a supervised section 9 bond is a very popular option because it is very flexible. It allows some kind of supervision and support to be put in, provides for conditions to be imposed so they can get treatment, or see a counsellor, or go on methadone, or whatever. That would be the main type of thing. Generally for young people, fines are not imposed so much by courts because their capacity to pay is quite low. We find that community service is not imposed very often. The incidence of community service is decreasing as far as our client group is concerned, mainly because it seems that the suitability criteria or assessment seems to be tightened up. A lot of our clients are perceived as unstable and unreliable so they do not get that option.

Ms LEE RHIANNON: In your opinion what additional support would be required to assist young people to comply with and complete a community-based sentence?

Ms SANDERS: Where do I start? I would have to put them into two categories. One is support which the criminal justice system is capable of providing. In that category I would say increased resources to the Probation and Parole Service and also to their counterparts in Juvenile Justice. In recent years we have seen the Probation and Parole Service has increasingly been stretched in terms of the work it is required to do within the available resources whereas the custodial arm of the department is perhaps given the lion's share of resources. I would say more resources to Probation and Parole is required, more provision for supervision on periodic detention orders.

Earlier the point was raised that there is no provision for supervision and conditions to be attached to that. I would like to see some provision for that. Other supports come outside the jurisdiction of the criminal justice system such as housing, adequate mental health services, and adequate disability services. They are integral to efficient or effective functioning of community-based sentences. That, of course, requires co-operation between a number of different departments.

CHAIR: What do you think of hostels?

Ms SANDERS: Such as bail hostels and the like?

CHAIR: I understand the concept of bail hostels, but what do you think of a hostel system so persons could be assisted to deliver on their bonds?

Ms SANDERS: Yes, as long as it does not turn into some kind of de facto gaol or some kind of ghetto for offenders. Accommodation for young offenders is really important. Of course there are youth refuges and men's hostels and women's refuges but many of those, for understandable reasons, often exclude certain types of offenders, particularly anyone with issues of violence because they have to protect the other residents. There is a need to examine the kinds of community accommodation available for people who have committed offences and who are on community-based sentences.

Ms LEE RHIANNON: Thank you for outlining how there needs to be more services to support young people. With community-based sentences how are the orders structured? Is there any way they could be changed that would make it easier for them to apply to young people and for young people to then follow them?

Ms SANDERS: The main change would be in providing more support and supervision from the Probation and Parole Service. Obviously explaining the terms of the orders more clearly is always a good idea. Drawing on what Ms Farnan said earlier—and this is a question that is on my list but I may as well address it now—in my experience magistrates and court staff generally do explain orders to people who have just received them. But often the people are still a bit shell-shocked, or so happy not to be going to gaol that they do not really take it all in. There needs to be constant reinforcement of those obligations to make sure the person understands them. There needs to be flexibility on behalf of the Probation and Parole Service, who supervises those orders.

A good probation officer or a good Juvenile Justice officer would be flexible and would realise that people may sometimes miss appointments. With community service also there needs to be careful thought given to matching up work with offenders. Juvenile Justice seems to be able to do it with kids; people with a relatively low level of maturity are able to do community service orders imposed by the Children's Court. Perhaps there needs to be a bit more thought given to the type of community service work that young adult offenders could do.

The Hon. AMANDA FAZIO: Do you believe adult conferencing for people aged from 18 to 25 years could be an effective community-based sentence?

Ms SANDERS: Definitely.

The Hon. AMANDA FAZIO: How could youth justice conferencing be tailored for the 18-to-25-year age group? Do you think it needs tailoring?

Ms SANDERS: Yes. Presumably you know that there is a working party in the Attorney General's Department working on this very issue and there is a pilot program about to start. I have been on that working party. The youth justice conferencing is a very sound model, it is something that has been very well thought out and has been operating now for a number of years. We do not need to fiddle with it too much, but for the 18-to-25-year age group clearly we have to recognise that we are operating in a slightly different system. Probably the importance of parents and family is perhaps less significant for the 18-to-25 age group than for the under-18s, although certainly family might still have a very important role to play.

It is a very sound model and it can apply very well to young adults. In fact I have had many young adult clients over the years about who I have said, "If only there was some sort of conferencing mechanism like there is in the juvenile system, this young person could really benefit. The community would really benefit from being able to talk it over and really address why they are doing this and what the impact of their offending is."

The Hon. AMANDA FAZIO: Earlier you mentioned having some sort of hostel accommodation for people on community service orders. What other things could we do to improve support for young people who are either homeless or at risk of becoming homeless? You do get a transient population of younger people who sometimes have not had the experience of living in a settled lifestyle. What can we do to help them?

Ms SANDERS: I wish I knew! It is very difficult. Simply providing more housing is not the solution to homelessness. We are talking about youth homelessness; not talking about just providing bricks and mortar, although I think a bit more physical housing would not go astray given the enormous waiting lists for public housing. There needs to be more SAAP services [Supported Accommodation Assistance Programme] or appropriate youth accommodation services funded to actually take on those young people. They should be adequately resourced to deal with so-called difficult kids. I know a lot of youth refuges or housing organisations really work very hard to accommodate young people who have very complex issues. If there are too many young people in the house, or someone may have a mental illness, or someone may be using drugs, or whatever, it is very difficult to accommodate them all without putting other young people at risk.

There really needs to be more resourcing, perhaps more specialised services and workers, particularly for young people with mental health issues and drug and alcohol issues. As well, not necessarily just accommodation services but also really good youth support services. A couple of services that I work very closely with are The Crossing, in Kings Cross, run by Mission Australia and the Come in Youth Resource Centre, run by the Catholic Church's St Francis Welfare. They are both excellent in that they work with young people who are homeless or who are at risk. The Come in Youth Resource Centre provides very intensive and sometimes specialised counselling. The Crossing provides case management.

They follow their clients around. They are not hampered by strict geographical boundaries or criteria. I think that is vital when we are dealing with a transient population. Services—and we see this with mental health services and community health centres—have geographical boundaries.

I have a client at the moment who is sitting in—I do not know what gaol he is in because he has been transferred to about three in the last week; I have given up. I think he was in Parramatta the last I heard. He has a serious mental illness. He has committed offences when he is in the acute phase. When he is psychotic he tends to get involved in fights or shoplifting or whatever. At the moment he is in gaol and we are desperately trying to get him out and get him somewhere adequate in the community. Until he was locked up, for the last year or two he was sort of ping-ponged around the eastern suburbs between Darlinghurst, Paddington and Bondi Junction. One week he is in the Bondi Junction community health area; the next week he is in the Darlinghurst area. There seems to be no capacity for him to have the same mental health worker for any length of time. That is a huge problem. Fortunately he has had some support from the Come-In Youth Resource Centre, which does not care about these kinds of boundaries and can provide quite intensive support. That is a huge problem, those kind of artificial boundaries.

CHAIR: We have had some contradictory evidence in relation to the usefulness of bail hostels and bail farms. It does not quite say that in the question but that is what happened. Do you think it is a suitable model?

Ms SANDERS: In principle, yes. I do not have much experience with bail hostels because there is really only one in the State that I know of.

CHAIR: It has died.

Ms SANDERS: That has died too now, has it?

CHAIR: Tingha.

Ms SANDERS: I was thinking of Jabiah. The one in Armidale has died but there is Jabiah out near Blacktown. As far as I know that still exists. I have had one or two clients there over the years and I think they have a role to play. The difficulty is—I know we are talking about sentencing and not bail but the difficulty again is that a lot of the things that this Committee is no doubt trying to

achieve are at odds with the prevailing legislative regime which makes it increasingly difficult to get bail, and if a person does get bail the conditions seem to be becoming increasingly onerous. The prospect of being picked up for breach of bail seems to be increased so there are real problems.

For example, the repeat offenders provisions: If you have previously been convicted of failure to appear, which is all of our clients just about, if you are currently on a bond, if you have previously or in the past five years been convicted of just about any offence—that is just about all of our clients—the presumption in favour of bail has been removed with one stroke of Parliamentary Counsel's pen from just about all of our client group. That has a flow-on effect. People who find it difficult to get bail will find it very difficult to get community-based sentences because they are not able to prove themselves in the community. They are picked up, they are refused bail or maybe they are initially given bail but then they fail to appear once or they breach the conditions, they forget to report to the police, they are arrested, they are in the cells, they are taken to Central Local Court. The magistrate just says, "Sorry, I am just going to sentence you to three months imprisonment. Really I will not even look at community-based options. You have failed to appear too many times. I cannot let you out again."

Sorry, I am digressing away off the question a bit. Yes, I think there is a role for bail hostels. I do not have enough experience as to what is the appropriate model but anything that can satisfy a court that a person will be adequately supervised, that they will be reminded that they have to actually appear at court again on the second day and that they will be assisted perhaps with transport to court, because that is a big problem—just these practical problems again among our client group who may be homeless. They may have an intellectual disability. They may have a mental health problem, drug problem or whatever. It is so easy to forget the court date, even if you write it down. You are in a refuge, your stuff gets stolen, you have to run away from home because of violence and you leave your stuff behind. It is so easy to miss court. You are stuck out at Blacktown for the night and you have to appear at court in Waverley. How would you get there? It is a big problem.

CHAIR: You have given us another example to look at as far as bail hostels, which is incredibly important because we only had the story about Tingha.

The Hon. AMANDA FAZIO: Do your homeless clients ever get bail?

Ms SANDERS: Yes, they do a lot. It depends on the seriousness of the offence. Most of our clients are committing relatively low-level type offences. Mostly, as you might expect, property offences, crimes of survival, shoplifting, perhaps some kind of financial fraud, stealing. A lot of the offences are street offences, things that they are perhaps not even guilty of but get charged with—offensive language, resisting police, things that their homelessness and their visibility on the street means it brings them into contact with the police.

Generally, on those fairly minor offences, they get bail. The difficulty is though if police or courts are a little bit overzealous in setting bail conditions, and they often are, I think because a person is homeless, as a matter of course the police will put on a reporting condition: report to Surry Hills police station every Monday, Wednesday and Friday. So you are homeless, you get accommodation out at Blacktown or whatever. How would you get to Surry Hills? You can apply to the court to vary your bail conditions but it can be a cumbersome process and without legal help a lot of people often find it very difficult to do. So there are those kind of practical problems. They may start off with bail but then get arrested for breach of bail. I could talk all day about bail and it is beyond the scope of this inquiry but there are real problems.

CHAIR: Do your clients have appeals and are they relatively easy to deliver—not get the result for but deliver?

Ms SANDERS: Yes. We like to think that we do a really good job in the Local Court so that our clients do not need to appeal. I guess a lot of the time, because we work very hard with the client and with other community organisations, we are able to achieve a good result in the Local Court which the client is happy with. I do not mean to claim the credit for that; certainly there are a lot of reasonable and understanding Local Court magistrates. When a sentence is perhaps a bit harsh we will pursue appeals for our clients. They are relatively easy to get listed. As Magistrate Farnan said earlier,

they are generally dealt with quite expeditiously in the District Court. You generally get a fair hearing. You do not always get the result you want but certainly the appeal process is fairly good.

I think the difficulty is sometimes—and I think it is addressed in the question—that people who are given a bond or particularly a suspended sentence often will not appeal even though we think that the length of the bond is much too long or the person should have received a section 9 bond instead of a suspended sentence. The client is often just so glad not to be in gaol they say, "No, I am not going to breach it." They do not bother and then of course they come back to say, "I have breached my bond."

CHAIR: You have given us some very important information. If there are any answers you want to give us to questions we have not asked we would be very grateful if you could take those on notice and get them back to the secretariat or any other information you think we should have.

Ms SANDERS: If I think of anything I will let you know.

(The witness withdrew)

(The Committee adjourned at 5.10 p.m.)