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Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON ABORIGINAL AND TORRES
STRAIT ISLANDER AFFAIRS

**Reference: Involvement of Indigenous juveniles and young adults in the criminal
justice system**

THURSDAY, 6 MAY 2010

DARWIN

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**HOUSE OF REPRESENTATIVES STANDING
COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS**

Thursday, 6 May 2010

Members: Mr Debus (*Chair*), Mr Laming (*Deputy Chair*), Mr Andrews, Ms Campbell, Ms Rea, Mr Kelvin Thomson, Mr Trevor, Mr Turnour and Mrs Vale

Members in attendance: Mr Debus, Mr Laming

Terms of reference for the inquiry:

To inquire into and report on:

High levels of involvement of Indigenous juveniles and young adults in the criminal justice system. With a particular focus on prevention and early intervention, the Committee will identify:

- How the development of social norms and behaviours for Indigenous juveniles and young adults can lead to positive social engagement;
- The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this;
- Any initiatives which would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system;
- The effectiveness of arrangements for transitioning from education to work and how the effectiveness of the 'learn or earn' concept can be maximised;
- Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres;
- The scope for the clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision for Indigenous juveniles and young adults in the justice system;
- The extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional well-being of Indigenous adolescents, any gaps or duplication in effort, and recommendations for their modification or enhancement.

WITNESSES

ABBOTT, Mr Barry, Manager, Ilpurla Aboriginal Corporation	78
BALA, Miss Chantelle, Criminal Solicitor, North Australian Aboriginal Justice Agency	53
BROCK, Mr Josh, Criminal Solicitor, North Australian Aboriginal Justice Agency.....	53
CARROLL, Ms Antoinette, Youth Justice Advisory Project Coordinator, Central Australian Aboriginal Legal Aid	69
CUNNINGHAM, Dr Teresa Ellen, Research Fellow, Menzies School of Health Research.....	24, 39
HOWARD, Dr Damien, Private capacity	13, 39
KELLY, Mr Danial, Former Solicitor, North Australian Aboriginal Justice Agency	53
McADIE, Assistant Commissioner Mark Alexander, Assistant Commissioner, Crime and Support, Northern Territory Police	2
McFARLAND, Mr Blair, Manager, Central Australian Youth Link Up Service, Tangentyere Council Inc.	78
MUSK, Miss Shaleena, Practice Manager, Criminal Solicitor, North Australian Aboriginal Justice Agency	53
O'REILLY, Mr Mark, Principal Legal Officer, Central Australian Youth Justice Committee.....	69
OLIVER, Ms Suzanne, Youth Magistrate, Youth Justice Court, Northern Territory	41
RAY, Mr Tristan, Manager, Central Australian Youth Link Up Service, Tangentyere Council Inc.....	78
SENIOR, Dr Kate, Senior Research Fellow, Menzies School of Health Research.....	24, 39

Committee met at 9.30 am

CHAIR (Mr Debus)—I declare open this public hearing of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system. I acknowledge the traditional custodians of the land and pay respect to elders, past and present. I point out that these meetings are of a formal nature. Everything that is said should be factual and honest. It can be considered a serious matter to attempt to mislead a committee. The hearings are open to the public. A transcript of what is said will be placed on the committee's website.

[9.31 am]

McADIE, Assistant Commissioner Mark Alexander, Assistant Commissioner, Crime and Support, Northern Territory Police

CHAIR—I should formally introduce to the Assistant Commissioner my parliamentary colleague Andrew Laming, who is also the member for the seat of Bowman in Brisbane. Rebecca Gordon is a member of the secretariat of our committee. It is my great pleasure to welcome Assistant Commissioner McAdie, representing the Northern Territory police department, to give evidence. As you know, we have written submissions from the police and from other government departments of the Northern Territory. We look forward to receiving your oral evidence, Assistant Commissioner. Perhaps it would be useful if you were to make some sort of an opening statement and then we can have a discussion, of a more formal nature, of the sort that we have already been having off the record.

Assistant Commissioner McAdie—My area of responsibility is the crime and service command. I have responsibility for two principal youth issues. One is child protection and the other is youth diversion through our youth diversion unit. Of course our primary evidence to the committee is the written submission that was made through the NT government.

Our involvement with Aboriginal youth is quite extensive in the Northern Territory. We have a number of processes and programs in place that are intended to try to deal with, what has to be frankly admitted, a very high involvement in the Northern Territory of Aboriginal youth in the criminal justice system. The primary components of our processes and programs are things like our school based policing program and also our youth diversion program, which is slightly different from some of the youth diversions elsewhere in that our program is a pre-charge diversion program. These are youths that we have dealt with through the criminal justice system but at the point at which we are dealing with them they have not been charged with any offence although we have conducted an investigation and made a determination about our belief in their involvement in offences.

That has both advantages and disadvantages. One of the principal disadvantages is that it time limits what we can do because, where there is a statute of limitation, we have to go through the entire process of youth diversion before those time limits are completed in case the diversion fails for some reason. It also requires an admission of guilt on the part of the alleged offender, to some degree or other. We are not hugely fixated on a full, frank, free confession, so to speak, but we need some evidence that the youth concerned is prepared to accept their part in the offending that occurred and that they are going to be able to engage in a diversionary program in a positive way that will lead to an outcome that is useful from a youth justice point of view. That has its own set of difficulties. We are obliged to give youth access to legal advice. Quite often they get the legal advice to not talk to us, and that limits our capacity to deal with those youth. Those youth then tend to end up in the court system. There are diversionary processes within the court system for which the police force is not responsible, but some of the programs that we manage, along with the health department here in the Northern Territory, are used for exactly the same process. So the outcomes in those circumstances can sometimes be pretty similar.

We have always done a certain amount of diversionary work in our engagement with the criminal justice system but, when the more formal processes that we are engaged in now were put in place, one of the things we realised was that there was a lack of programs out there to which we could divert youth. From the beginning, the Northern Territory government and, since the intervention, the Commonwealth government have been engaged in the process of providing programs. We also realised that those programs needed to be not just for youth who had been diverted from the criminal justice system. For it to be effective, we needed programs that would prevent youth from becoming engaged with us. In other words, there needed to be programs that dealt with youth at risk, before it was necessary for the police to engage.

Therefore—and this is evident in our written evidence to the inquiry—there is a series of programs. There are not enough of them yet, but there are very promising signs from those programs that they reduce the amount of engagement we have to have with youth. In many respects, the ideal in this circumstance is that the youth do not get to either the police or the courts. A former chief magistrate of the Northern Territory once put it pretty usefully, I think: when you think about these sorts of things, it is like a train travelling over a railway track, and the police and the courts are the caboose of the train; it is better if youth do not get to the caboose. That is more effective, because it has less effect both on the youths' lives and on other people's lives, because it prevents crime rather than deals with crime once it has occurred. Let's face it: when we are dealing with youth at the policing level, we are essentially dealing with a failure of any processes that had been able to occur before that, because we are dealing with the youth that are still offending.

CHAIR—I noticed that in your written evidence there is a pretty conclusive observation suggesting that the NT police do find diversion to be effective and, as you have just said, that there are still not enough programs to deal with those whom you know may, in principle, benefit from them. So I suppose you would be suggesting to us that it would be a good idea to spend some more money on those programs. There is a theme through the evidence that we have been getting from all over Australia which puts the commonsense proposition that it appears to be better to spend money early in the potential process of criminalisation than to spend it at the end on jails. That is easier said than done, of course, but I think we would be very interested in your observations around those ideas.

Assistant Commissioner McAdie—Absolutely. It almost is trite to say that from the moment a youth engages with the police the process for government becomes extremely expensive. The police are a pretty expensive solution to the problem. The courts are a pretty expensive solution to the problem. The corrections are clearly a very expensive solution to the problem. As a consequence, if there are ways of preventing youth getting to the point where they need to engage in the criminal justice system, they are not only better outcomes but also overall most certainly cheaper. The difficulty in the Territory in part lies in the dispersal of the population because the Territory is less centralised than the rest of Australia. Whilst there are reasonably good programs available in the regional centres and some good programs available in some remote localities, it is making it available in all remote localities that is the real difficulty. That does get pretty expensive, certainly from a start-up point of view. The reality is, however, that in the overall cost of things it is clearly going to be cheaper to divert youth or to prevent youth from becoming engaged in the criminal justice system than it is to have them involved.

CHAIR—Just to follow that thought, the provision of diversionary programs in remote places will involve establishing arrangements whereby local people can to some significant extent actually conduct those programs, won't it?

Assistant Commissioner McAdie—Absolutely. The programs that work, and they are in our written evidence, are programs like on Groote Eylandt and the Tiwi Islands. There is some external involvement in the setting up of programs, but there is a lot of involvement from the community itself in the program itself, because unless the community also re-engages with these youth—because some of these youths are disengaged from their own communities as much as anything else—then there may be a solution but it may only be temporary. The reality is that you want to get them re-engaged with their community and the offending behaviour stopped entirely. What has to be remembered, then, especially in the remote communities, is that the offending behaviour is against Aboriginal people, largely, as well. Because of that it is very disruptive to the community and has some real long-term effects because these are small communities where offending behaviour has a ripple effect through the community.

CHAIR—Could you elaborate on the nature of the programs you have seen in remote areas that seem to you to work best. There are some here and there. There is a problem about their fragmented application, as it were. Can you describe to us the ones that you think of as being successful?

Assistant Commissioner McAdie—Two in particular that we mentioned in our evidence are the ones at the Tiwi Islands and Groote Eylandt. They share some characteristics. One is that the largest part of their effort and purpose is not to deal with kids that are actually in the criminal justice system but to deal with youth at risk and to deal with youth in general. These are really youth development programs. In fact, the terminology we use for them are 'community youth development units'. The intent is to deal with some of the issues that are on the ground in those communities by providing youth with some youth development opportunities. They vary from program to program because they need to be custom made for each community and for these particular issues that are at hand in each community. One of the characteristics they share, besides the fact that they are engaging with youth at risk and are capable of engaging with diversion as well, is that they have a heavy involvement from the community itself. So both in the Tiwis and on Groote Eylandt the community itself has a considerable buy-in to the existence of the programs. That, in our view, makes them more effective because it enhances community processes for dealing with problems rather than having law enforcement deal with those problems.

CHAIR—We have seen evidence of some programs. There is a particular development at Fitzroy Crossing where local people, in cooperation with local police officers, conduct culture camps, which is one of the generic words for it. They take kids on journeys in the bush and those journeys are closely connected with traditional law, but they involve a lot of physical activity and the learning of some skills. In that case it related to the cattle industry, but I assume that you would think that that kind of activity would be entirely consistent with the work of your development diversion units?

Assistant Commissioner McAdie—Absolutely. The ones that work best assist the local community to reinvigorate its own culture and have its own cultural processes deal with some of the problems. I do not think it is a mystery to anybody that in some communities the cultural

process either is not working well or has broken down entirely. What is very clear is the best programs assist to get those sorts of cultural things working better. There is a fair bit of variation in that and it depends on how well we can engage with the community to get its buy-in to do things and, to some extent, it really depends on what the community wants and needs. We certainly went into it with our eyes very wide open to the fact that one model is not going to solve the problem in all communities. Each community really needs sometimes subtle variations and sometimes very different programs. Because of that it is quite complex to do, but it has to be community based. We are not tending to impose things from outside; we are trying to encourage the community to find a solution to its own problems.

Mr LAMING—I was going to ask you more about the CYDUs and the role the police have, particularly in the ones that are conducted outside Darwin and Alice Springs. Are staff dedicated to that or is it something that is rotated through a small police office where everyone has a small part to play with these units?

Assistant Commissioner McAdie—There is the central office, the Youth Diversion Unit, here in Darwin, which helps to manage those programs. To be honest, those programs are funded by grant and are locally managed and developed, and that is to get that local buy-in. The degree to which there might be any police involvement locally in those programs is highly dependent on the individual police officers in the community. I have to be frank: we get really good buy-in with some police officers and poorer buy-in with others.

One of the things that we are presently trying to develop is better community engagement processes with police officers in remote localities. We sometimes do not have a lot of choice about the police officers we send to these communities. Sometimes we only get one volunteer to go and sometimes we are conscious of the fact that that person may not be the absolutely ideal person to be in those sorts of communities. But, overall, through the intervention we have increased the number of police stations. We have some pretty promising signs. The only problem with the intervention police stations, which we call Themis stations—the name of the operation we are running to manage those police stations—is there is a very high turnover of police officers. In the past it has been both AFP and NT police officers.

We are in a transitional process to make it only NT police officers, and as we build permanent facilities at those places that will be getting permanent facilities, those places will be normalised in the sense that they will get police officers who stay there. We expect police officers at remote communities to be there for a minimum of two years. We hope to get them to stay three years but, for non-Aboriginal police officers especially, the life at remote communities is pretty tough. It is pretty isolating and it is hard to get them to go there and it is hard to get them to stay there for long periods of time.

Mr LAMING—With Indigenous staff who work with your police, what is the training required and how many do you have?

Assistant Commissioner McAdie—There are several levels at which that works. We have two principal programs. One is the Aboriginal community police officer program, which has been going through a lot of transitions over the last few years. That involves the employment of Aboriginal people to be community police officers. They are sworn police officers and they have some level of police power but it varies with the individual according to their training level.

Over the last couple of years we have introduced what is called the transitional entry program for Aboriginal community police officers, which puts them in the mainstream policing. Our hope in the very long-term—it is far too early at this stage to know how well this is working—is that it will be a means by which we can get Aboriginal people engaged in mainstream policing and therefore we will be able to have people at remote communities for much longer periods of time.

Mr LAMING—Separate from diversion, do you have anything in place? The court based alternative is also a form of diversion. So, where someone admits guilt and fulfils those criteria that you have listed, are they then able to participate in a more informal Indigenous court, so to speak?

Assistant Commissioner McAdie—You probably need to speak to the courts. There are some of those processes in place and developing, but it has been pretty difficult to sustain, as I understand it. The courts will probably have to explain the reasons for those things but it has happened, it is happening and it is pretty patchy, as I understand it.

Mr LAMING—Are you the right person in the police to inquire as to the police role in those courts or would it be under someone else's testimony?

Assistant Commissioner McAdie—No; I am responsible for the prosecution area of policing. For our part in the process, those courts are not terribly different from the normal courts because they are really built around the normal court processes. They are more about sentencing than they are about the process of determining guilt.

Mr LAMING—So they do not involve Indigenous elders from relevant parts of the country together with out-of-uniform police?

Assistant Commissioner McAdie—As I understand it, the process where it occurs at the moment, involves Aboriginal elders acting as advisers to the magistrates. So from our perspective it is a relatively similar process, because it really engages more at the sentencing end than anything else—not really in the determination of guilt.

CHAIR—That is what the magistrates, I think, call 'bush courts' in the Northern Territory.

Assistant Commissioner McAdie—Yes.

CHAIR—But there is no close equivalent to the Koori courts or the circle sentencing courts in the south.

Assistant Commissioner McAdie—No. I read the Chief Magistrate's response to the inquiry and I think there is a different dynamic at work here in the Northern Territory, because of the different proportions involved. When you are talking about the Northern Territory, dealing with Aboriginal people through the court process is part of the day-to-day business of the court because the majority of people who are going through the courts are Aboriginal people.

Mr LAMING—I just ask the follow-up question: why isn't that kind of configuration that might be reporting good results becoming the mainstream form of operating a court?

Assistant Commissioner McAdie—I think one of the reasons is that it is much harder to manage, because one of the things you need for that process, as I understand it, is a disinterested Aboriginal person, and in remote communities there is pretty well no such thing. Simply because of the volume of the people who are being dealt with there are familial relationships and those sorts of things which make it difficult. I know it has been tried over and over again. It presents some considerable difficulties. The experts to deal with, obviously, are the courts themselves. In a remote community, pretty well every defendant is an Aboriginal defendant. It is quite rare to deal with non-Aboriginal defendants in the bush courts.

Mr LAMING—I just want to drill down to that. My response to that would be, ‘Why can’t the Koori Court model become the mainstream form of a court?’ If some evidence shows that it works for the five per cent in the south better than what we would call a mainstream court, why doesn’t that model become reflected as the mainstream model in the Northern Territory?

Assistant Commissioner McAdie—Part of the answer to that is that here in the Northern Territory, because the majority of people being dealt with in the courts are Aboriginal people, perhaps some of those processes are more built into the mainstream process. In the other states, whilst there is over-representation of Aboriginal people, you are still talking about a very small proportion of the cases that are going through the courts. Here in the Northern Territory, the over-representation leads to a majority of the people going through the courts. In fact, the court processes in the Northern Territory are, arguably, mostly for Aboriginal people in that sense. It is a sad fact of the way we do business that, whilst Aboriginal people are only 32 per cent of the population, the majority of people who are dealt with by the courts are Aboriginal people.

CHAIR—That causes me to ask: do you have what you would regard as substantial difficulties with the court processes in consequence of the different languages that are spoken and the difficulty some people have in being able to understand what is going on?

Assistant Commissioner McAdie—It sometimes represents an almost total barrier. One of the difficulties in the Northern Territory, of course, is that while Aboriginal language is alive and well, what has to be understood is that two qualities are needed for a translator. You firstly need a person who is fluent in the two languages that are involved in the translation: the Aboriginal language that the person speaks and English. The second quality, which is actually the more problematic one, is that the person must be a disinterested party. Again, some Aboriginal languages are spoken by a relatively small number of people. The primary language that an Aboriginal person might speak might be spoken by only 100 or 200 people. It is pretty hard to find a disinterested player in that circumstance. We have certainly had a couple of occasions when we have become aware that the translator has actually stopped being a disinterested player and what is actually going on is that the translator has interposed themselves in the process. It does not happen a great deal. A lot of work is being done around Aboriginal interpreter services. But not every engagement we have with Aboriginal people requires us to use interpreters. Lots and lots of Aboriginal people speak English very well as well. It is about getting that engagement properly. Quite often we have to hold off investigations whilst we wait to get translators, and sometimes we can be waiting days or weeks to get hold of a translator for a particular language.

CHAIR—Presumably, too, in remote areas there are problems aside from language difficulties, but associated with language difficulties, of just understanding what the court processes are. A friend of mine told me that he was in a court and a young Aboriginal man was

called as a witness. When the young man was sworn in as a witness the prosecutor asked him some questions, and he said, 'guilty'.

Assistant Commissioner McAdie—I think one of the differences is that, in the other states, the Anunga guidelines are referred to as the Anunga guidelines. We do not refer to them as the Anunga guidelines in the Northern Territory; we call them the Anunga rules. We expect our people to strictly abide by them, and compliance with the Anunga rules is extremely high.

The courts and the defence lawyers in the Northern Territory watch us like hawks in that regard, so the compliance is very high. Aboriginal people, when they are being questioned by the police, will have a friend with them. If there is any sign that there is need for a translator there will be a translator. Our compliance with those rules is very high. I have certainly had comment from the legal profession in the Northern Territory that this is not a really significant issue.

I would have to admit that when the AFP came here they did not have the same visceral understanding of the Anunga rules that our people had, and we did have a few little hiccups along the way with it. Their understanding of the degree to which we comply was probably not the same because in the other states they are seen as guidelines and in the Territory they are seen as rules. They have to be obeyed and they are obeyed.

Mr LAMING—The challenge for us, because we are just looking at youth incarceration, is that we are going to report and say that more money spent earlier in the process is going to be more efficient and effective in keeping people away from incarceration. But it is quite possible we actually have no evidence for that whatsoever. I have to take the reverse view—we often call it the null hypothesis—which is that it is possible that nothing we do makes a great deal of difference. It is possible that—and if I could just explain this—simply by investing in diversion we momentarily in someone's life cycle delay slightly the odds of them offending. It would not really matter what we were doing with the diversion. As long as we funded something and gave people something to do we slightly reduced the odds that they had some free time to offend. The hard reality is that if this is just another report that says it is good to spend money earlier than in jail, without any absolute evidence, then the risk is that we simply do spend more money but do not change much. I am genuinely concerned that between the age of 12 and 22 Aboriginals, like mainstream Australians, simply live to the degree of risk they are comfortable with, whether it be speeding, drinking or whatever. Diversion is merely a way to make us feel like we are actually doing something. But in the end these guys will simply find a way to offend. I have to find some evidence that is not the case.

Assistant Commissioner McAdie—Yes, and it is difficult to find that evidence. In our submission to the inquiry there is some degree of evidence of that. It is not very long term. There is one thing I can say from my own experience. I have been in the Northern Territory Police force for 35 years, and I have been an officer in the Northern Territory—and the reason I mention this is that it is important to this component of it—for just short of 20 years. Prior to the youth divisionary programs that we have now, we had a very informal program that worked. It was extremely simple. It had very few rules attached to it, but we thought it was very effective. It was what we called loosely the officer's caution, which just required a commissioned officer to speak to a youth who had come to our attention and who had committed crime at a low level. The requirement was that it was low-level crime—things like shoplifting, minor criminal damage and those sorts of things. Remembering that that is one of the factors in this, our

experience was that with a simple process of simply getting the youth and the parents in and having a chat with them—in fact beyond the fact that the youth and the parents had to be engaged there were no rules for it and therefore every officer went about it in a different way—80 per cent of those youths we never saw again. They were the bottom end, the ones that were most easily diverted from a life of crime, I guess you would say. In the Northern Territory we have, clearly, a lot of more hardcore criminals. But there is some evidence that says youth offenders frequently do not appear as adult offenders. They stop being offenders when they make some sort of transition to maturity. So part of the argument might be that those people, in any case, no matter what you do, are simply going to stop offending when they reach maturity.

There is some evidence in what we have done that it takes longer for people who have been diverted into our programs to reoffend, and fewer of them reoffend. We are only talking shorter spans of time, because we have only been doing it for a few years. I think one of the things with these programs is that, because they deal with life cycles, it takes a long time to get a really good handle on it. I think there needs to be a fair degree of research done. Our program is built around things like family conferencing and conferencing with victims, and the anecdotal evidence we have is that quite often that has a salutary effect on offenders. Is it going to have a really serious effect on the hardcore group who are heading for detention no matter what? That is a bit harder to argue. There is clearly a group who are going to head that way, and there are some factors that are involved in.

There is another process that has been more recently engaged in in the Northern Territory called family responsibility orders. Some of the problem is in the way the parents engage with their kids, or in fact their failure to engage with their children and to prevent their offending behaviour. Family responsibility orders about trying to get the parents to become better engaged with their children and to try and prevent the offending behaviour. Ultimately, we are talking about different things with different kids. It depends on their family circumstances. Quite often in the debate around how youth are dealt with, there is a rather simplistic view taken by some sectors in society that the police should simply take the kid home and make sure their parents look after them. Our people tell us—and I fully understand what they are saying—that with some kids you would not take them home because you would just be doing them damage.

I guess that is more the child protection side, but there are strong correlations between the child protection side and the youth offending side of the business that cannot be ignored. Kids who have suffered some degree of abuse as children often become offenders themselves in later life. They often become engaged with the criminal justice system not only for abuse but for other offences. We do see some signs that kids sometimes commit offences to get some assistance—they steal money, food or drink, and they are just trying to survive.

Mr LAMING—That is exactly what we are trying to get to in this report. I guess the first thing is that you do not want to have any selection bias—to have the people who are going to family conferencing being a different cohort to those who are not—and to then start to see different results simply because you are self-selecting. But the corollary is that you actually do not mind if you self-select if it is working for that group, and there is another cohort that needs a completely different kind of intervention.

Assistant Commissioner McAdie—And I think it would be a mistake to think that there is a single solution. The kids who start making their way through the criminal justice system have to be treated differently from each other because they are different from each other.

Mr LAMING—The question then becomes: how efficiently can we identify the right intervention at the right time for these different subgroups, or, to flip that question, what is the damage of making those decisions too late and highly expensively?

Assistant Commissioner McAdie—One of the ways in which we have been trying to deal with that in the Northern Territory is by having different processes for kids at different stages of engagement. In the earliest engagement, the processes are simple, quick and efficient. The first engagement is still very similar to the officer caution that I spoke about before, which is just called a verbal caution. For instance, a kid who has first come to our notice because they have done something minor like shoplifting or some minor criminal damage will simply be given some information by a police officer in a relatively formal sense about the effects of that sort of behaviour and then sent on their way in the hope that we will never see them again, and a proportion of those kids we never will see again—they have engaged with the criminal justice system, they have not liked what they have seen and we never see them again. They learn their lesson, so to speak.

Then we try and make it progressively more complex and more able to deal with the particular circumstances of each kid. In some cases, the verbal caution will not occur at all, simply because the first engagement we have with them is at the very serious level. The way the system is structured is that, at the very serious level, we cannot do the youth diversion at all; they have to go to the courts. But the courts have some capacity to divert as well, and into the same programs that we divert kids into. So those programs are available to the courts as well as to us.

CHAIR—I agree, and your account of things is especially useful to us. Yesterday I went to see the healing centre called Balunu, which I know that you know of, Assistant Commissioner. This is being conducted at the present time in a camp on a headland on the other side of Darling Harbour. It is a circumstance familiar enough, where a dozen boys between the ages of about 11 or 12 and about 18 or 19 are kept together for nine or 10 days and engaged in a lot of physical activity and contemplation of their behaviour under the guidance of some intelligent and committed adults. It is pretty clear that these kinds of exercises are—not always but often—quite transformative for the kids. The transformation may last a long time or a short time, but the stories that we heard there were that the majority of the boys—all of them, I think, had either committed offences or were seen to be at risk of doing so—had extraordinarily difficult home situations, and part of the healing was for them to get away from home and to have the feeling that they were safe and secure for a time.

The extraordinarily impressive men who run this program told to us that the incidence of attempted suicide amongst the boys that come to their program is astoundingly high. It is clear that you obviously have to deal some of the time with a cohort of boys—not just boys, but the ones we have seen offending are mostly boys—who are in situations of stress and emotional deprivation that are quite hard for people brought up in more ordinary homes even to contemplate. It seemed to me that, unless we become better at dealing with that group of kids, we are always going to have this significant core of people who offend as boys, go to jail later and are always at risk of self-harm and suicide. I would be quite interested in your view of those

sorts of healing arrangements and how you see those fitting in with the spectrum of activities for which you are more responsible.

Assistant Commissioner McAdie—One thing that we are very conscious of is that there is a relationship between offending and coming from dysfunctional circumstances. In the Territory it is actually worse than just dysfunctional families—there are dysfunctional communities as well. There is a very clear relationship between offending and dysfunctional families and communities. One of the reasons for that, obviously, is that the youth are trying to find ways of coping with that level of dysfunction in their life. Quite clearly, some of these programs are intended to help them and give them some skills for coping with the dysfunction, and some programs are about just getting them out of those dysfunctional circumstances for long enough for them to, I guess, gather their breath and straighten themselves out a little bit. But all of those things are true.

As I said before, we are dealing with really quite large and complex issues, and in the Territory particularly so. Therefore, the solutions to these things are going to be large and complex as well. When you are dealing with a family where it is hard to see why a kid would behave at all because of the family circumstances they are in, it is pretty hard to see how temporary solutions are going to really fix the underlying problems. What happens quite often in those circumstances is that they go to those programs and it helps for a while but the dysfunction at home simply means they fall back into the offending behaviour. But, as I said, these are big problems and they are going to require some big solutions.

CHAIR—Yes. I should acknowledge that in at the beginning of your submission you point out that the adverse social issues that are driving Aboriginal offending will continue to result in Aboriginal incarceration unless we deal with these primary circumstances.

Assistant Commissioner McAdie—Or unless you can deal with them. We call it the revolving door. The reality is that if what is driving the offending behaviour is the dysfunction at home or the poor home circumstances, no matter what programs you apply, if they still end up back in the home and there are dysfunctional circumstances in the home, it will drive them back towards offending behaviour. Some of the programs are actually built around giving them mechanisms to cope with that dysfunction. But at the end of the day the best solution, clearly, is to get rid of the dysfunction. When the dysfunction is gone, the offending behaviour will largely disappear as well.

CHAIR—We are interested in a more specific and technical question. The illness known as foetal alcohol syndrome disorder is increasingly problematic, we know, in some communities. Is that something that the NT police are recognising? Are your officers being trained to actually recognise the symptoms?

Assistant Commissioner McAdie—Yes. It certainly is a part of the training. It is a significant issue in the Northern Territory. Having said that, in fairness we have to recognise a few factors. There is a larger proportion of Aboriginal people who are teetotallers than there are in non-Aboriginal society. There is a tendency, however, for Aboriginal people who drink, especially in the communities, to be problem drinkers. A lot of women drink through pregnancy, and that does cause the foetal alcohol disorder, which has effects in later life that bring people into intersection with the criminal justice system. Some of the behaviour is criminal behaviour by any measure.

The problem is that the effect of the disorder is that it brings them into contact with us without them having some of the defences for their behaviour, or the effect of their behaviour—that is, it is not so much that they have any defences of unsoundness of mind or anything like that; it is in the middle order and it causes them to come into contact with us. It is certainly one of the many factors that lead to that overrepresentation, but it is certainly by no means the principal one—not in my view. But it is one of those factors out there that is causing difficulties. Again, the solution lies in having the mothers not drink whilst they are pregnant.

CHAIR—There is the question of whether police are trained to recognise the symptoms of FASD.

Assistant Commissioner McAdie—I will have to take the question on notice if you want to know the detail of the training, but my understanding is that it is amongst the information that we give our people. There is a tendency for people to see a lot of these solutions in terms of police training. We train people for six months. It is a fairly limited amount of time to get a lot of information into people. There is not an identifiable class in the program about foetal alcohol syndrome. It is part of the issues surrounding Aboriginal people, which we expend a fair bit of time on. I am sure it is buried in the program somewhere. It might be a bit difficult to winnow out precisely where it is and what it is we do.

CHAIR—Thank you, and thank you for the remarkable common sense you have brought to our hearing. It has been very useful to us.

Assistant Commissioner McAdie—Thanks very much.

Proceedings suspended from 10.21 am to 11.13 am

HOWARD, Dr Damien, Private capacity

CHAIR—Dr Howard, earlier in the day I went through a number of formal procedures that must accompany a parliamentary sitting. It is not necessary for me to do so again, except to mention to you that our discussion will be transcribed and go on the web unless you wish otherwise. We normally proceed by having the witness make some kind of opening statement and then having some further discussion. We have your written documentation. We welcome you.

Dr Howard—I will start with an introduction. For most people, hearing loss in relation to the criminal justice system is probably an unfamiliar topic, but it is a hugely important one that has been long neglected when thinking about the overrepresentation of Aboriginal people in the criminal justice system. As my submission outlines, hearing loss is particularly prevalent amongst Aboriginal people in Australia. This prevalence comes about because of pre-existing disadvantage, particularly in relation to ear disease, which is endemic in Aboriginal communities—particularly remote communities but also urban communities.

To give you an idea about that, up to 70 per cent of Indigenous adults in remote communities have some degree of hearing loss and around 40 per cent of Indigenous adults in urban communities have some degree of hearing loss. That compares with about 20 per cent of adults in the non-Indigenous community overall and only three per cent or so of youth in the non-Indigenous community. Aboriginal hearing loss starts earlier, and it is far more prevalent amongst younger Aboriginal people and Aboriginal people throughout their lives. While less than five per cent of non-Indigenous youth have some degree of hearing loss, the respective figure for Indigenous youth is likely to be somewhere between 40 and 70 per cent. So hearing loss among Indigenous people is a massively different picture. One of the major problems with recognizing that is that mainstream institutions and services are focused on the non-Indigenous profile of hearing loss, which, while certainly important, has nowhere near the same prevalence and importance as the Indigenous profile.

I reread the terms of reference this morning, and I think the first term of reference—I rushed out without my copy of them today—refers to models or standards of behaviour. In the last few weeks, in a project I am doing on behavioural indicators of ear disease amongst very young Aboriginal children, it has become clear that one of the behavioural indicators is arguments with parents, being defiant in the home situation and having evidence of antisocial behaviour. That is an identifying feature of hearing loss. That highlights that, from a very early age, hearing loss contributes to behaviours and interpersonal responses with families and caregivers and in child care that can start a child on a path to the criminal justice system. Our services for, and our awareness of, these issues are almost nonexistent in the criminal justice system. Creating processes around hearing loss that both assist Indigenous youth not to take the path to the criminal justice system as well as address the rehabilitation of Indigenous people in the criminal justice system requires a massive effort, and a different kind of effort than is made for non-Indigenous people.

I refer you to some work that is currently being undertaken in Perth by the hearing bus, who I have been talking to recently. They usually work with kids, but they have been doing some

testing in a detention centre over there and finding not only massive levels of hearing loss amongst detainees but a profound impact in terms of management issues and the social and emotional wellbeing of the inmates. This is the first time that this kind of work has been done in Australia to date.

It perplexes me why this is such a neglected issue in the criminal justice system. We know about the massive levels of hearing loss. We know about its association with antisocial behaviour in schools. In fact, a lot of my earlier work was around the association between hearing loss and behavioural problems in school situations. There has been no information about, and there is no awareness of, hearing loss as a contributing factor to antisocial behaviour and a compounding factor of social dysfunction in Aboriginal communities.

I first started to try and raise this issue with some colleagues in the early nineties, and have consistently had the response, when trying to raise this, that it is a health issue, not a criminal justice issue, whereas the health department says it is a criminal justice issue, not a health issue. So when there is this dual responsibility—in fact, there is a multiplicity of responsibility—it is very easy for it to become no-one's responsibility. I might draw breath and let you speak!

CHAIR—I suspect that my colleague has some particular professional expertise which will allow him to best discuss these issues with you, but could you explain a little more about why this hearing loss occurs. As you were speaking, I was reminded of a conversation that I had long ago with Professor Fred Hollows, who told me that he believed that Aboriginal people had much better eyesight than Caucasians. He said that part of the explanation for the astonishing capacities of Aboriginal boys to play football was that they had better peripheral vision than Caucasians, and he thought also that many Aboriginal people had much longer sight. I mention it because sometimes we feel very hesitant to talk about actual physical differences. But what is the circumstance that is causing this systemic loss of hearing that you are speaking of?

Dr Howard—It is related to ear disease, which is an infectious disease that almost all young children get to some extent. But a middle-class child in an urban environment gets that infection which can translate into hearing loss for an average of about three months during their childhood; the comparative average for Indigenous children is 2½ years. And that level of ear infection which is persistent and very serious can lead to damage to the middle ear structures which then can eventuate in a permanent hearing loss.

The reasons why those infections are so prevalent amongst Indigenous people are crowded housing, poor hygiene and lack of access to water and services that enable hygiene, and limited access to health services. So it is very much a disease of disadvantage. All around the world in communities that experience a high level of socioeconomic disadvantage there are much higher levels of middle ear disease. And, in fact, in Australia and in the Western world in times past, in impoverished and lower-class communities there were much higher levels of middle ear disease. That has generally been resolved with the improvement in living conditions.

So the high level of hearing loss stems directly from the poorer living conditions that Aboriginal people in Australia experience. So there is a nasty cycle, where these poor living conditions contribute to hearing loss, which impacts upon education and social functioning and has the outcome that people do not have employment options the same as others do and are

caught within a cycle of disadvantage that leads back to more ear disease and more impoverishment.

CHAIR—Finally, in your written submission you seem to be quite careful to be saying that you do not think that hearing loss is the answer to everything. You are just saying, rather, that hearing loss is an unrecognised element in a multifaceted problem, but you are saying that it is really a very significant element for many people.

Dr Howard—Yes, that is exactly right—and a very neglected one. We are aware of most of the other factors that contribute to that disadvantage, but hearing loss is often an invisible one and a misidentified one. Very commonly, people see someone’s difficulties in communication as related to language or cultural differences rather than recognising that the language and cultural differences interact with hearing loss.

A good example is from yesterday when I was interviewing an Aboriginal woman who had been the victim of crime. She came in and said, ‘I’m very anxious. I’m very worried because I have never done anything like this before.’ Then she sat down and I started to ask her about what had happened and she was watching my face very intently, which for me was a giveaway sign together with her anxiety that she likely had some hearing loss. When I asked her whether she had lots of ear troubles when she was a child, she said yes. I then asked her if she had some trouble hearing people and she said, ‘Yes. I have trouble when it is noisy or when it is someone I don’t know really well, like in this situation.’ So I used a portable amplifier, which she said massively helped her to cope with that situation, reduce her anxiety and communicate more effectively.

Most often that would not be recognised in court processes, interview processes or Centrelink processes, and people would seem to be simply disinterested, unmotivated, defiant and avoidant rather than hearing loss being identified and compensatory communication strategies enabled for that person to access those basic services or to engage with police. An example of that in the submission is of a client I worked with out bush. He had a constant history of involvement with police. There was a pattern where police would talk to him and would realise he had difficulties communicating and they would raise their voices. He would get angry because they were shouting at him and that would lead to him assaulting police, being arrested and going to jail quite regularly. An intervention providing him with a hearing aid—which is not a sole solution either; amplification alone is not the sole solution for hearing loss—and also talking to the police about his difficulties in communication and making them aware of his hearing loss really helped them to change the way that they responded.

That is one of the key factors that is often neglected. A lot of work has gone into treating the disease, which hasn’t got the medical magic bullet. That means that we are going to constantly continue to live with a high proportion of our Indigenous population having hearing loss, and services that are provided to them need to adapt to that. Unless they are adapting to that, they are not providing an equitable access to any of those services. In fact, they are funnelling people to the criminal justice system through the poor access. The criminal justice system also acts as an accelerator.

Another client who had avoided contact with police told of his experience with the police when he was called up for something as a young man. He was talking quietly, which is another

common indicator of hearing loss. Someone who talks very loudly or very quietly may have hearing loss because it is harder for them to adjust to the right modulation that someone else needs to be able to hear. The police told him to stop mumbling and ridiculed him and humiliated him in front of his friends. He got very angry. Someone else in that situation, as I have heard often, will get angry and respond aggressively. In turn the police may respond aggressively and it will be on for young and old. Another hugely important intervention can be training for police to realise that the vast majority of people they are in contact with have hearing loss and know how to go about working with those people to make sure that communication takes place that is more likely to be successful.

I was once working with a council person who had the task of moving on Indigenous people from areas a lot of times. He said, 'They lie all the time. I have been to see them and talk to them and they will say that I did not say something to them that I did.' When I explained about how the majority of the people he would be talking to have hearing loss he realised how quickly he said these things and how likely they were to misunderstand or not understand at all and just nod in agreement out of embarrassment. He realised that the problem of their lying had to do with him not explaining himself well enough. Very commonly that is an issue for police. In their nonrealisation, the antagonism that they get back from people who have not heard or have misunderstood is seen as illegitimate aggression coming from nowhere, but it comes from the lack of identification of the contribution of hearing loss.

Mr LAMING—Are you invited to speak to every graduating program of NT police in their six-month training program?

Dr Howard—No, I have never been invited to speak to any police agencies. In fact, through a contact I had I approached not an NT agency but an interstate agency, highlighting the need for their police. After some time word came back after they had considered it, and it 'was not necessary for them'.

Mr LAMING—We have been focused on recognition of foetal alcohol syndrome, but recognition of hearing deficit is so much more important because it makes a difference in the way you manage a potential offender. Foetal alcohol syndrome is a constant that is found in a significant proportion of Indigenous people whereas hearing loss that perhaps can be addressed, treated, reduced and had its harm minimised. Has anyone worked on whether the degree of conductive hearing loss might in some way be a proxy for disadvantage, not the other way around? Can we look at hearing loss in groups in their teens and find that it is a measure of a whole lot of subacute and substandard living arrangements through childhood?

Dr Howard—There is a cycle that those people who have conductive hearing loss have some related auditory processing problems, which are a different kind of hearing loss. To relate it back to foetal alcohol syndrome, one of the things that foetal alcohol syndrome does is increase the neurological problems that include difficulties in auditory information, so very often children who have foetal alcohol syndrome also have listening problems. There has been a lot of work internationally, much of it not relevant to Australian Indigenous people because of the level of other disadvantages amongst those groups, because the people who are most accessible to a search are those who are middle class and have many other advantages. In those situations there is a lot of controversy about the extent to which hearing loss contributes to disadvantage. The clearest evidence is that when someone has other pre-existing disadvantages then hearing loss is

a compounding and magnifying factor in that situation. It then becomes a chicken and an egg. It depends who is looking at what. The origins are seen as a question of whether hearing loss contributed to that disadvantage in the first instance or is an outcome of it, and in fact it is both. When you look at transgenerational effects you can see whether hearing loss contributes to the disadvantage or whether disadvantage contributes to more hearing loss.

Mr LAMING—In your submission you made the point that in an interaction with the police Indigenous people are twice as likely either to be detained or to find themselves sucked into this pathway towards incarceration. Who knows how much of that is attributable to hearing loss? It would be hard to assess, but we can see it could well be a contributor. You made a really good point about social deprivation leading to adverse social outcomes. Hearing loss is already a problem that is funnelling people out of effective education and out of being able to engage the normal services that are available in mainstream Australia, so they are already more likely to be turning up in front of police, and then you have the hearing loss doubly disadvantaging the same group because of that interaction. Instead of having a really long conversation about a fascinating area, if you were to recommend areas where you could intervene—my real focus is on how useful hearing aids are in isolation—where would you like to see some interventions, be they resources or otherwise, with a specific focus on hearing aids, because the criticism may well be that in isolation they are things that just get thrown away?

Dr Howard—To start with hearing aids, the most sensible intervention would be to allow sound field systems rather than individual hearing aids to be funded by Commonwealth agencies. The current situation is that a sound field system is like a PA system. There may be one in this classroom; there is a loudspeaker up there. The teacher speaks into the microphone and the amplification goes to everyone in the class. This is in contrast with a hearing aid. A hearing aid is worn and prescribed for one particular individual because of their hearing loss and costs \$2,000 or more for some types of hearing aids. A sound field system is about \$1,500, so it is economical for a class of kids with seven or eight who are entitled to individual hearing aids and can get them funded through the Australian Hearing Service but will refuse to wear them because they do not want to be seen to be different in the classroom. You get a real problem with usage and access to that amplification, whereas if you had the sound field system there would not be a choice that anyone needed to make and no-one would be stigmatised. Currently, though, federal legislation restricts Australian Hearing to providing only individual devices. They cannot and do not fund sound field systems, which are a far better intervention to enable better educational access for children.

Mr LAMING—That certainly is something we need to look at further. If that is the case, that will be of interest to the committee. I also want to understand your comments about hearing aid destigmatisation. Does that mean that we really should not be looking at hearing aids for minors unless there is some evidence that they do not feel stigmatised? How can you get around the stigmatisation?

Dr Howard—That is a very big question in terms of how to provide hearing aids in such a way that they will be accessed. I think there needs to be research done on how that can be done and how it can be accessed most effectively. To take it away from hearing aids per se, another huge intervention that would be beneficial—this goes back to your question about police—would be teacher programs, of which there are none that to any great extent train teachers in how to communicate and teach effectively with students in their classroom when 80 per cent of them

have hearing loss. So another important intervention would be teacher training programs that, as part of the core curriculum of teachers, enable them, firstly, to identify the children who have hearing loss or are likely to have hearing loss and then to address it. Most of what happens at the moment happens post service training and on an ad hoc basis depending upon what resources are available amongst the advisory hearing teachers, who are generally not really resourced to work with these things. They are resourced to work with more severe and permanent sensorineural loss. There is a whole range of individuals working in schools, doing their best to address this issue but not mandated to by the current funding processes.

CHAIR—Are there a few simple techniques that a teacher might use that could be communicated to them?

Dr Howard—Yes. In fact, that is an area that I have done a lot of my work in. I have run training programs for teachers around on Australia. In my doctoral research I found that there was a massive association between hearing loss and behaviour problems. The first things that teachers are interested in are behaviour and learning, and when they find that the majority of children in their classrooms who have learning and behaviour problems also have listening problems they, through changing what they do in response to those children, have outcomes of behaviour problems dropping by two-thirds, engagement in learning increasing by up to one-third and teacher stress diminishing by one-third without any work being done on the children. It is from the simple information about identification strategies that can enable teachers who are working with Indigenous students to identify hearing loss and respond communicatively in a way that does not see those children as defiant and then create a conflict that often leads those children to leave school and become part of the cannon fodder of our criminal justice system.

Mr LAMING—You did that work?

Dr Howard—I did, yes.

Mr LAMING—Is that in your submission?

Dr Howard—It is in my submission, yes. Those are a lot of the factors leading through to involvement in the criminal justice system. Some other hugely important interventions in the criminal justice system are training of police to identify these issues and develop their communication skills, addressing the criminal justice system and how communication takes place within that and in corrections facilities.

At the moment, in corrections facilities for many Indigenous people with hearing loss a sentence is a sentence of isolation—of much more profound isolation than for other prisoners—because of the difficulties in communicating with other people in the prison system. So there is a compounded outcome for them that often has very serious implications for their social and emotional wellbeing and contributes to deaths in custody, as was touched upon by the royal commission in finding that for a number of deaths in custody there was a history of ear disease and hearing loss.

CHAIR—In a prison, can you suggest some at least elementary changes to procedures that would be beneficial?

Dr Howard—The first one would be that, when people enter a detention centre, as part of their health check they should have a hearing test. There may be issues in terms of a perforation of the eardrum, because often middle ear disease leaves people with a perforation, a hole in their eardrum, that makes it harder for them to hear, and through medical intervention and surgery that can be healed so that the person can hear better. As a rehabilitation strategy, there is anecdotal evidence that, when people have had medical treatment or are provided with a hearing aid that has improved their hearing, their involvement in criminal behaviour, or what is seen as criminal behaviour, diminishes.

One of the problems of doing that surgery outside the prison is people being compliant with the treatment, getting to appointments and all those things. It is difficult. You have literally a captive population where that kind of medical treatment can sometimes happen for the first time in people's lives. So that provides an enormous rehabilitation opportunity that is currently not being utilised by any corrections services that I am aware of.

There is a possibility of rehabilitation processes within prisons, where they occur, addressing the kinds of problems that have brought people into contact in their communication, because it is very much a two-way street, where people's communications strategies, their frustrations and their anger are often related to unrecognised hearing loss. So amplification through hearing aids can help.

The awareness of corrections staff is an issue. Some of the comments from prisoners who have been tested interstate are that corrections officers may say, 'I'm only going to say this once,' because they think people are not listening, are not motivated or are not attentive when in fact they cannot hear. Those kinds of dynamics of the relationships have hugely important implications for management within corrections services that are currently completely neglected. I believe that the understanding of these kinds of issues could help with the retention of corrections staff, because the stress and the frustration goes two ways. It is not only with inmates; it is also with corrections staff when they are unaware of these issues. In the same way, teachers being aware of it and having communications skills to deal with it helps to improve their wellbeing as well as that of students. I suspect the same thing would be the case in corrections facilities.

Mr LAMING—I have a small question. You had a table from Harris and Malin but you had our first table about cultural appropriateness. Was that Harris and Malin as well—the one that you put together?

Dr Howard—Could you just read the first couple of things on it?

Mr LAMING—Sure: 'comparing non-Indigenous with Indigenous staff', 'cross-cultural challenges and essential competencies'.

Dr Howard—That is some work that I have done in the health system where the cultural competencies that each need to learn are quite different. One of the implications of another intervention is that many of the communication skills in terms of non-verbal skills or speaking a language that people can most easily understand are very much culturally based, so Indigenous people providing services do not have the same level of problems as non-Indigenous people because they have grown up in a community where most people have hearing loss. In the same

way, a non-Indigenous person who grows up with a family member who is deaf gets very good at non-verbal communication and knowing how to say things. In general, so many people in Indigenous communities having hearing loss improves communication, so an important aspect of addressing this issue is having Indigenous people employed and engaged in those kinds of management processes as much as possible. But they too need to be aware that hearing loss is the reason why many of their countrymen have difficulties with communication.

Mr LAMING—I want to ask a general question about people who do not have a lot of skill in communicating with Indigenous people. Often they might choose to speak in what they deem simple English, speak louder or try to make it easier to lip-read. What are some of the common mistakes and what would be some of your recommendations to someone who is attempting to communicate with Indigenous people with hearing loss?

Dr Howard—Before talking about some specific things I would make the point that currently we have a system where those least competent at communicating with Indigenous people are put in the position of doing so, and that process is our education system. Traversing through the education system requires good listening skills and literacy, and anyone with any major listening problems gets excluded from that both in the Indigenous and in the non-Indigenous worlds. Most of the credentialled professionals coming out of universities and schools are those with the least skills in non-verbal communication and in knowing how to communicate with Aboriginal people with hearing loss. Really, because of that process, the training of those people as part of their pre-service training is absolutely essential—because the system operating by itself excludes people with communication skills.

Some of the very important strategies are to speak plainly and not too fast, because people need time to tune into what is being said and, if they have some auditory processing problems, time to think about that. People with hearing loss take a greater length of time to think about things. Diana Eades, in some comments that I think are listed there, was being consulted in a court process about a witness who wanted to give evidence but was having difficulty doing so. The judge and lawyers asked what they could do, and her answer was: ‘Wait for them to answer.’ Simply give people enough time to formulate their understanding of what is being said, because someone with hearing loss needs a longer time to do that, to formulate what words to use to express what they want to say. People who have hearing loss and auditory processing problems take longer to do that, and then they need to be able to say what they want to say. So waiting for people to finish is a hugely important thing for Indigenous people.

Pre-learning and post-learning are also important. Aboriginal people who have described what helps them most say that knowing what is going to happen beforehand really helps them to hear better when it happens, because by knowing what is going to happen you reduce the full range of possibilities to the kinds of topics they know are going to be spoken about. Their thinking skills in being able to guess what was said improve. That kind of pre-learning really helps people to hear better during the conversation. Providing people with the big-picture information beforehand helps them to cope better in that situation.

Then there is post-conversation discussion. I have an Aboriginal friend with hearing loss who says that an important thing to have at a meeting is a listening mate, someone who can explain what is going on. If I am at a meeting with her I might get a nudge in the ribs, which means that I need to turn to her and explain what has gone on because the topic has gone off somewhere

else and she wants to know if it is important: does she need to focus on it or are people just rambling on? That kind of listening mate really helps. But also, after the meeting, with a listening mate she can have a post-conversation discussion. She could ask: 'What was that all about? How did that go?' She could then find out all the different things that were said and, importantly, how people felt about them. So the next time that group came back for a meeting she knew what had been said and knew how everyone felt about what had been said. Her strategies took more time, but they enabled her to function more effectively than most fully-hearing people at that meeting as a consequence. Her response relied very much on the capacity to get the information beforehand to plan, the opportunity to get things clarified during the meeting and then the opportunity to discuss things afterwards.

The response also relied on how much visual input there is during a conversation. A good example of that was an Aboriginal woman with a hearing loss who was in a training program. She said it was just like talking heads, that this person out the front was very well educated, which usually means they have very little facial expression, and they just talked at a great rate using big words. So very quickly she tuned out, pulled out the paper and started to read it. That highly irritated the speaker and he then complained to her management, who sent her a letter of reprimand. When she was talking to me later she said: 'That was just rubbish. That was just too hard. He was just a blank face going blah blah blah, because he was giving no non-verbal indications, he was talking too fast using too big words.' She contrasted it with someone else who was presenting at the meeting, saying that she was really easy to understand, she had lots of visual cues that helped to explain what the words said, she used plain words and she was from an Italian background, so she was very much gesturing and using her hands to explain. She said, 'That's the kind of people we need to tell us what to do, not this person,' who was far more educated and erudite, but suffered for it because of that process by which his erudition had actually rendered him less capable of working with Indigenous people with hearing loss.

CHAIR—Thank you very much. At the end of your paper you say that you are concerned also about problems that the Commonwealth has prioritised, from the point of view of the delivery of services. Then you have a number of dot points.

Dr Howard—That caught me on a bad day, when I was writing that. I had just had some frustrating experiences, and I usually try to manage my frustrating experiences by writing and doing something constructive. That was my effort on the day to look at the system problems.

CHAIR—They seem to me to be a series of dot points that would challenge any senior bureaucrat rather profoundly. Do you mind just talking about them for a minute—about the problems you see with the actual grant-giving process and its implementation. Obviously it is of interest to us because we get a bit worried about the fact that there is indeed lots of money given for the purpose of attempting to overcome the disadvantage of Aboriginal people and yet in some respects, particularly the one upon which we are focused, which is the rate of imprisonment, things are getting worse not better. We know that there are large numbers of intelligent people really worrying about these problems.

Dr Howard—I think many systems have a learning disability in relation to Indigenous matters, and I think that learning disability comes from an assumption that those with the central expertise must know better. They are not asking the people on the ground who have the knowledge and expertise and consulting with them constantly to formulate programs. I see the

information from people on the ground being filtered through numerous levels that make it more palatable to the ears of the central bureaucrats, until it fits into a formula that is a national program that is mainly structured around the south-east seaboard population, and then Indigenous matters are an afterthought to that. When you are doing something that does not work, and you keep on doing it and throwing money at it, it just becomes a more expensive failure and actually undermines and creates a worse situation. Many of the strategies that are done with the best intentions I see having a worse outcome. In terms of the criminal justice system, I think there are many such factors.

I am looking at it from the ant's eye view on the ground of a service provider working with Indigenous people and wondering why things are not working. From that perspective it looks like it is a game of musical chairs in Canberra. If there is a program operating, every three months there will be a new person sitting in that chair. While you may brief the first person on that, then three months later you brief the second person, three months later you do not bother with the third person. So there is an intentional destruction of corporate knowledge in terms of services. I understand promotion and variation of experience in the Commonwealth Public Service is an important thing for career advancement, but it is absolutely a nightmare for service provision, particularly around hearing related issues, which many people have, because an ongoing and continued relationship is all important. So that musical chairs that operates in those services becomes a massive liability in terms of any sense and any learning being able to be done at a central level in many ways.

CHAIR—You spoke, too, in your paper of what you called asymmetric accountability.

Dr Howard—Yes. It seems to me very clear that there is quite strenuous accountability enforced upon people who receive funds, but when it comes to Commonwealth agencies giving funds in a timely manner, sticking to the guidelines, that does not happen. There is not a 360-degree accountability process. There is often a lack of accountability. Certainly those in receipt of funds are not in the best position to advocate action towards those giving the funds in case they lose out next time. There is an important role for an independent arbiter of those kinds of concerns to hold the Commonwealth to account so that it gets value for its money and for what it is doing. It will also be a learning process. Too often it is easy to not hear what we do not want to hear and to carry on regardless. That seems to be a juggernaut that often drives through many programs.

CHAIR—Dr Howard, we are very grateful for your insights.

Dr Howard—Thank you. Could I ask one last thing. Usually when I am working and training I look for the Aboriginal faces in the audience and ask them for some sort of input and comment on what I have been talking about. I noticed the non-verbal communication there—the nods and whatnots—but it might not be appropriate to ask you in the circumstances. If I may, I invite you to express your views to the committee later.

Mr LAMING—Everyone was nodding, so it might be a bit difficult to single out one person.

Dr Howard—I noticed you all nodding. It is the nodding at different things that always intrigues me.

CHAIR—By way of explanation, can I say to you that it is normal for our hearings to have lots of Aboriginal people in the audience. But, through a series of coincidences, that is not so right at this moment. Yesterday we were out visiting a number of the organisations who are struggling with funding in exactly the way that you have described. We do have lots of Aboriginal voices before us in the course of our hearings.

Dr Howard—That proactive approach of going out to talk to people is far better than a reactive one of inviting people to come in, because then you only get those who are already empowered to speak.

Mr LAMING—What the chair is saying is that today is the day for fast speaking, big words and very few facial expressions.

Dr Howard—You seem to have lot of facial expressions and not so many big words. Thank you for your attention. I have brought a copy of a work on employment—not specifically criminal justice—and how Indigenous employment can be improved by supervisors and mentors having an awareness of hearing loss amongst the majority of the workers. Thank you.

CHAIR—Thank you very much. Dr Howard, just before you leave, with your permission, Andrew has suggested that we ought to put you in direct contact with our last witness, who was Assistant Commissioner Mark McAdie of the Northern Territory police. Given the nature of his evidence, we feel certain that he would be interested to talk with you.

Dr Howard—Thank you. I certainly shall get in contact with him.

[12.00 pm]

CUNNINGHAM, Dr Teresa Ellen, Research Fellow, Menzies School of Health Research

SENIOR, Dr Kate, Senior Research Fellow, Menzies School of Health Research

CHAIR—We welcome Dr Kate Senior and Dr Teresa Cunningham. I hope it is sufficiently demonstrated that these meetings are not excessively formal. I assume that you would like to make some introductory comments before we discuss your paper and commentary.

I would like to say for the record two things about the order of witnesses today. One is that indeed it is unusual for us not to have Indigenous people in the room one way or another, but it is a coincidence that that is occurring today. We have been talking to lots of Indigenous people and we spent all of yesterday with Indigenous organisations. The other thing to say for the record is that a number of departments of the Northern Territory government did not appear before the committee to give oral evidence although they had made written evidence. We are uncertain why they made no appearance, but they were invited to do so. I speak particularly of the Department of Health and Families, the Department of Justice, Northern Territory Correctional Services and the Department of Education and Training. For the record we have to indicate that we did ask a number of times and had very little response. That being said, I would be very happy if the representatives of the Menzies School of Health Research proceeded.

Dr Senior—I am a social anthropologist and my broad area of interest is in youth focused research. I am very much interested in ground level interventions and working with young people to understand what drives them, what their motivations are, what their aspirations are and how those influence things like their substance misuse, their involvement in delinquent activities like gangs and their sexual health.

I am currently involved in two large projects. One is a study that is funded by the Institute of Criminology looking at gang membership in Port Keats and looking at how the gangs in Port Keats have become almost an alternative form of leadership for young people. It has become a pathway into a world where they can generate some self-esteem, show some leadership and have some identity where very few other alternatives are available to those young people. We are really looking at that gang focus from a more positive viewpoint. We are working with young gang members, getting their life histories, working out what their drivers are, seeing what is good about being involved in gangs and then hopefully making some recommendations so that they do not actually end up being involved in the criminal justice system.

The other large project I am involved with is a project across the Northern Territory, Western Australia and South Australia looking at young people's sexual decision-making within the context of their life histories and really looking at how they view the trajectory of their lives. The area of sexual decision-making is where our funding came from, but we are very much interested in how young people articulate their lives, how they plan their lives and how the various decisions they make affect their life course. A smaller project I am just winding up at the moment is an evaluation of the Balunu intervention for at-risk Indigenous youth, which you have probably heard about in the last few days.

CHAIR—We were there yesterday.

Dr Senior—You were there with David. Did you go over to Talc Head?

CHAIR—We got our pants wet.

Dr Senior—I have been working with David for the last 2½ years, not evaluating but trying to work out an evaluation framework for him where he can systematically evaluate and demonstrate outcomes.

CHAIR—This will be very helpful to us because he was wanting to give us some documentation and it was not immediately available to him. So if you are able to do that then that will be most appreciated.

Dr Senior—Yes. I actually have a paper here for you.

CHAIR—We will treat that as an exhibit. Thank you.

Dr Senior—So I have been working with him. I think the interesting thing—

CHAIR—If I can just intervene—Andrew, this seems really significant, because there is an attempt to make an evaluation of these programs that encompasses something more than the rate of reoffending—something more than recidivism.

Dr Senior—That is right. When we were thinking about this evaluation, what we wanted for David was something that he was able to immediately understand and use quite quickly and effectively, so that he would be able to report demonstrable outcomes. Amongst a range of things, we utilised a tool called the schedule for self-assessed quality of life, which is an internationally used tool. It is an entirely pictorial tool which is based on an individual's self-ratings of various aspects of their life, which can be documented and then compared at a point down the track.

He found it fabulous when he used it as a case management tool for his clients. He was able to say, 'These are the things in your life that are important to you. This is how you are going in your life. How can I help get you back on track? You say that your family is really important to you. What can I do, through this program, to actually get you back on track in that area? How can my service help you, and how can we maintain that help over time?' He was able to use that to case-manage his youth as they moved through, but he was also able to demonstrate outcomes because he was able to do a measurement at the baseline and at the end of the camps, and then at a subsequent period after the camps to show that, yes, the quality of life of these young people had measurably improved, as had the range of options that they were actually interested in in the first place. So it was very successful for him. So that is what I have been up to, anyway! Sorry—that was a very long introduction.

CHAIR—No, it wasn't. It was about average.

Dr Senior—No long words, though!

Dr Cunningham—I have been working with Kate for about the past six months or so, also working on evaluations. We are actually putting together an evaluation at the moment for the youth council, of Balunu, Brahminy and Tangentyere—if I have pronounced that correctly; that is a long word! We are also looking at corrections in relation to getting some funding for a long-term, longitudinal study of correction programs in relation to mental health prisoners and other types of programs, because they do not seem to be succeeding terribly well at the moment. So those are a couple of projects in the pipeline.

My background is actually in criminology. I did a five-year evaluation of the youth diversion program for the Northern Territory Police. It was to do with reoffending, obviously. It was one of the major outcomes of it. But I came from the area of restorative justice, and I was looking at the way in which diversions and conferences actually helped kids to get back on track—which they seemed to, whereas the court system had a negative impact on reoffending. In other words, kids who went through the court system tended to reoffend more quickly and also to reoffend more often than those juveniles who had gone through diversions and conferences.

So that was an evaluation, at that level, of that diversion program. It was not necessarily an evaluation of the programs underneath that because, at that time, they were quite ad hoc. That has been one of the problems with the diversionary process across the Northern Territory: a lot of programs have been ad hoc because either resourcing has not been—not so much adequate, but equally spread across programs. There have not been staff available to actually implement programs—either that, or they have had staff who have been there, in a community, say, running a program for maybe a year or two years and then have had to go elsewhere. There have been a lot of inconsistencies in programs, anyway. We have not had time—which I think is one of the things we are trying to get down to do at the moment.

I am also involved with the Wadeye-Port Keats project, which looks at the youth themselves actually getting involved in building their own youth programs, to get them out of that cycle of offending or gang membership—if that is what is necessary, because there are all the issues of what gangs actually mean to the youth there.

But the level I think we are coming to at the moment is trying to get some consistency across evaluating programs across the territory and probably across the north, the top of Australia—comparing programs to see what works, what seems to be the best practice.

CHAIR—Are you aware of any similar attempts elsewhere in the country? I am not.

Dr Cunningham—No.

Dr Senior—No.

CHAIR—It would be, I am sure, very useful to us if you could then give us a slightly elaborated account of the conclusions you have so far drawn. I understand that a major conclusion is that you do not yet know enough, but can you tell us what you do know? It is obviously of critical importance to us as well if people in all sorts of sectors and elements of society are working towards these ends. We need to line up a few ducks.

Dr Cunningham—I think one of the most obvious conclusions you would come to is that one size does not fit all. There has to be flexibility in these programs. We are talking about the Territory. You have to take into account the local environmental factors, where a person is from, their location, their family situation and the whole community situation. Basically, there is not a one-size-fits-all solution to it, is there?

Dr Senior—I also think that the smaller programs, which are probably very well placed to be responsive to the specific needs of the community, are actually very vulnerable. I am just thinking about my experience with Balunu and their funding crisis from year to year. They have almost no staff. They are running on a shoestring budget and, at the same time, they have to be accountable to the various funders. They find it almost impossible to run their programs, to be accountable and to keep going.

CHAIR—That was the point of Dr Howard's list that we were talking about previously.

Dr Cunningham—I think there needs to be a resilience built into the program, as well as a need to teach these kids resilience—

Dr Senior—Absolutely.

Dr Cunningham—that whole sustainability and resilience of the program itself.

Dr Senior—What we see is a huge turnover of staff and programs because they just cannot keep going.

CHAIR—I think you are saying that, insofar as you have been able to make some systematic research, you think that diversionary programs do work in the sense that, at least, they cause people to offend less often?

Dr Cunningham—Put it this way: they cause the least harm as well. The court system and prison obviously do not work. It has been proven internationally throughout the world that, for most people, it is not a solution and it certainly does not help people. The path of least harm is: restorative justice and diversion, community involvement, getting the person involved in responsibility for their own behaviour rather than laying it at the feet of police or the court system. People who go through the court system, particularly Indigenous people, do not understand the system or it is meaningless and irrelevant to them. It is too reactionary and does not actually deal with the problem when it is happening. It happens months after something has occurred. There is no link between an offence and any punishment. Sometimes it is not seen as punishment. It has been suggested that, in some respects, the court system and the prison system are seen as a rite of passage. Alaskan natives, American natives, Indigenous people in Australia—across the world, those are the kinds of issues that come up with respect to the whole criminal justice system.

CHAIR—I am sure Mr Laming wants to ask you some questions. We have heard today from the assistant commissioner of the Northern Territory Police Force, who showed a really profound common sense understanding of exactly the issues you speak of. We speak endlessly to magistrates and judges who want to say the same thing. We are not necessarily talking about a

system of criminal justice that is simply blind to the problems that you are speaking about. What does that mean?

Dr Cunningham—The law itself is a fairly conservative body. I note that there are people within it—for instance, I have worked with police for a number of years. I have actually worked with Mark and I know that some police are very open to the idea of giving, if you like, kids a second, third and fifth chance and are very open to the idea of working with communities and developing programs within those communities. But there are other elements within the police force which are not. I know that Mark himself is very much in favour of keeping the kids out of the system. But I am not sure that there is a consistent approach to it.

Mr LAMING—We are having this debate about the difference between the public health mantra, which is that keeping people out of jail is a good idea, and the public perception that the only one absolute in this entire debate is that, while you are incarcerated, you are not offending. That is a denominator that we are all operating from. If I can incarcerate people from the moment they become a risk to themselves or society through to the period when they begin to burn out from those risky behaviours in their early 20s—that is the denominator. Incarcerate everyone, and I will not have a problem. Now I have got to be able to work back and prove that I can remove people from incarceration and actually have less damage being done, when the denominator is simply \$100,000 a year to incarcerate them. If they are doing more damage than that while they are out, then that is a bad thing. If they are doing less, it is a good thing. How can I prove that, within that cohort, there are some little subgroups that I can remove from incarceration and have some positive outcomes?

CHAIR—My colleague is an unreconstructed Benthamite.

Mr LAMING—But that is also a public perception, isn't it?

CHAIR—Absolutely.

Mr LAMING—So I really have to have some evidence. Another hypothesis is that there simply is not the political will, the resources or the qualified people to deliver diversion in the quality in these remote areas that will actually change anything. As long as there is a program out there, I am happy, but what is actually changing? Am I merely diverting people by keeping them busy enough that they do not have time to offend or am I actually changing trajectories of life choices?

Dr Cunningham—A good program will actually be providing them with life skills so they do not need to reoffend. That is what these programs are trying to do—to give these people life skills.

Mr LAMING—There is precious little evidence that that is the case.

Dr Cunningham—That is what we are trying to find out by doing these evaluations now. The one that is coming up is for Brahminy, Balunu and Tangentyere, looking at: are they producing these outcomes? You are right: nobody actually knows.

Mr LAMING—If we do not know that answer in 2010, having done this for 30 or 40 years—with fairly intensive research by organisations like yours, which are about as good as you can get—it is quite possible that the differences are so incredibly minute that the political will and the resources simply are not there to achieve those outcomes. There are simply not enough people, with not enough money, with not enough skills, to actually make any difference at all in these remote areas, because there simply is not the money to be spent on it. The need in Indigenous Australia is so great that I will never be able, through this report, to divert enough resources to achieve what you are saying might occur with a program. That is the horrible reality.

Dr Cunningham—But there is a lot of money that is being channelled into Indigenous education and Indigenous health, and they are not achieving outcomes either, it would appear. What we are trying to do is say, ‘There’s got to be a better way to do this.’ I do not think you can just walk away from this and say, ‘There isn’t a better way, so we’re not going to bother.’ I think what has happened is that there has been so much money, as you say, over the last 30 or 40 years channelled into this kind of research and it has not actually produced—

Mr LAMING—And to health and education.

Dr Cunningham—That is right, and it has not produced the outcomes. We are still looking at Indigenous rates of education which are far lower than non-Indigenous, and Indigenous health outcomes are not occurring. So we are obviously not doing something right. So there must be something better we can do.

Dr Senior—I think research that has privileged the views of the very people who are the target of these interventions and who become the reoffenders has been notably lacking. It has not been done. We have not been working with young people to find out what they think about their situations—how they actually think about going to jail. I was told something quite interesting yesterday: one thing that seems to have been quite effective has been the elders visiting program that has been run by the Department of Justice, simply because people who have been in jail themselves can go into places like Don Dale and say: ‘This isn’t a rite of passage. This is not a good thing to be doing. If you think this is a great thing to do in your life, you’re completely wrong. This is going to set you up for a course of failure.’ That actually has had some impact.

CHAIR—It strikes us all the time that we have the privilege in our committee of talking to senior bureaucrats who, so far as I can discern, are more dedicated and more precisely concerned with addressing problems like overrepresentation in prison than ever before. In most jurisdictions you can find that there is a significant attempt to join up various bits of government in order to address the problem. There are university departments in plenty of places that are thinking about it. There are all of the community people and there are, I think it is fair to say, a much higher number of educated Indigenous people active in many organisations than there were 20 years ago. Wherever you go, you find such people. So it is in some ways quite extraordinary that the rate of imprisonment is getting worse, and getting rapidly worse in some places, isn’t it?

Dr Cunningham—It depends on the local legal factors. For instance, at the beginning of the NT Police pre-court diversion program there were quite a number of property offences which were actually eligible for diversion. Over the years, those were whittled down. A few of them—

in fact the ones for which most juveniles were getting diverted—were actually excluded from diversion. There was kind of a local decision to do that, so that diversion basically lost its teeth. That is actually what happened legally. The will has to be there to say, ‘Okay, well these kids are committing these types of crimes and they need to be diverted for them,’ because not diverting them is not helping—they are just reoffending to a greater extent. To actually then exclude those particular offences from diversion leads, as I said, to it just losing its teeth.

CHAIR—In their submission to us, the Northern Territory Police have said that some offences committed are excluded because of the ‘serious nature of the offending’, which is understandable, although I know that in Canada, for instance, all crimes except murder and rape may be put to a restorative or a diversional process. It goes on to say that another reason some offences are excluded is because ‘they are—regulatory—traffic offences’. It says—

Dr Cunningham—Property over \$100.

CHAIR—It says ‘recidivist offenders are often denied diversion after failing to complete earlier diversions’ and then it speaks to the reluctance sometimes of an offender, on legal advice, to admit at their earliest opportunity that they are actually guilty. That raises a number of issues which you have begun to touch upon—that the political pressure, which normally comes out of public opinion, to restrict the circumstances in which somebody may be the subject of some kind of restorative process is clearly an issue. There is quite a specific one about motor vehicle offences, which we have come across in a number of jurisdictions. I do not know if there is anything you could enlighten us about in those respects.

Dr Cunningham—Not really, because different jurisdictions do have diversion for different offences and that changes quite often. I am not up with that at the moment.

Mr LAMING—Something that is slightly relevant is that what we have as an advantage here is really discrete communities, which can sometimes make it easier to research than, say, outer metropolitan parts of major cities. But has anyone ever looked at characteristics within communities that determine whether, if you take a whole age cohort of Indigenous kids between, say, 12 and 15 or 15 and 18, being from particular communities makes it more likely that you are going to end up hitting the criminal justice interface?

Dr Cunningham—Port Keats is basically saying that. What was the percentage of—

Dr Senior—Port Keats has a rapidly growing youth population. I am not sure what the percentage is.

Dr Cunningham—The average age is about 24, I think, so it is a very young group—

Dr Senior—who have had the least involvement in education of any generation of young people coming through.

Mr LAMING—Incredibly low school attendance rates.

Dr Senior—Very low school attendance rates.

Mr LAMING—And you can compare that to Borroloola or some of your major communities and you can still see differences within communities. If you start to try and tease that out—not taking just one community—is there any sense that the more remote you are, the more likely you are to be removed from the town camp experiences around Katherine? I am just trying to understand—does leaving a community for a job in some way indicate that you were better educated? By the same token, if you fall out of a job and start drinking in a town camp, things are worse, so it becomes really hard to tease out positive and negative effects.

I am really worried that the reason we don't have any information about this in 2010—and criminology is never terribly well funded in the first place—is that possibly nothing is really going to make any difference. I know I am being a bit nihilistic here, but, if something was going to work, maybe the evidence would have flashed up in front of us a while ago—it would be so obvious that particular types of engagement, such as using elders, would be productive that we would all be doing it by now. This program possibly only works because you have a couple of elders who are good at it, but, once they have gone and you replace them with elders who are not, the same program does not work. So what works and what does not? We do not know—possibly because we have never resourced it properly. We do not know—possibly because nothing makes much difference. The reality is that people go out and drink and take drugs and do not wear seatbelts because they want to. The harder you try and stop them from doing it, the more they will find a way of doing it. Once the 'diversion train' moves on, they will simply restart. Is there any evidence that that is not the case?

Dr Cunningham—I think you are still looking for a one-size-fits-all solution. But I do not think that works. As Kate said, elders in prison may work for certain groups of Aboriginal people but not for others—because they are different.

Mr LAMING—So do it for those for whom it works and accept that it does not work for everyone?

Dr Cunningham—Yes, that is right.

CHAIR—What I saw yesterday at the healing camp was that, although the kids may have failed to wear seatbelts and failed to have a licence and those kinds of things—and the whole system may have some kind of response to that kind of irresponsible teenager behaviour—they were often on the verge of suicide. These kids had committed one offence or another—I do not know what they were; some of them might have been rather worse than driving without a seatbelt—but they were totally distressed and obviously at risk of harm, however that might come about. They were not at risk of doing something naughty; they were at risk of harm. I think that is a legitimate separation to make. What do you think ought to be done about those kids? We also have the situation where health and criminal justice issues are blurred together in a young person's life and you have to deal with them both. But we are not just talking about gang behaviour or even serious naughtiness or criminality; we are talking talk about kids who are offending, almost at random, in the midst of profound personal crisis.

Dr Cunningham—The camp was set up to deal with those kids. They are some of the most troubled kids around, and that is the whole reason the camp was brought into being. Obviously kids like that are better off in that situation, where we are trying to build self-esteem, than being put through the court system and detention.

Dr Senior—What is also evident with those kids is the huge level of disconnection from their family. They felt isolated and unsupported. Their mental health and behaviour—

CHAIR—I think that was almost systematic among them.

Dr Senior—Yes, and the level of suicide intention was very much related to that level of disconnection and feeling that they had no-one to look after them anymore.

CHAIR—If there is some truth in the proposition that it is very hard to stop young people aged 12 to 22 from doing plenty of silly things, if it is really hard to stop lots of them from committing minor offences and getting into a bit of strife every now and again, how would you answer the proposition that is really hard to do anything about kids that are in these absolutely destroyed circumstances that I have described? How would you respond to the proposition, which I make from a devil's advocate point of view, that you cannot do anything about them either?

Dr Senior—I think the Balunu program has been doing things about those young people and has been doing so successfully and in a sustained manner. I have been able to look at kids six months or a year after being involved in that program and they are very different to the kids that went in.

CHAIR—Can you talk a bit more about that? It is terrifically important to us to know.

Dr Senior—The numbers, as you probably appreciate, are very, very small. Nine or 10 kids go on each healing camp. They are pretty sporadic through the year because they do not have an awful lot of funding, but they do follow up with these kids and maintain their relationship with them, and they put a huge amount of effort into that. The kids certainly have changed. They show noticeable changes from the beginning to the end of the camp. From day one to day nine, which is the end, they have showed marked increases in their levels of self-esteem, in their optimism for the future and simply in their ideas about what they might be able to do with their lives, how they might reconnect with family, education, employment and all those sorts of things. Those things in a lot of the kids are actually sustained. They get involved in training, they go back to education and they get re-incorporated into their families. That is great news for a small number of kids, but there is a huge level of support from that organisation.

CHAIR—But it is not \$100,000 a year which is the cost of incarceration.

Dr Senior—No, it certainly is not. It was run on almost nothing until quite recently, but the level of input into that program is so high and the risk from my perspective is: how do you actually sustain that? How do you get a person who is going to run this sort of program and keep it running? How do you train people to take on that sort of role? What sort of succession planning is built into these programs? They cannot just rely on one charismatic person. They have to be planned.

CHAIR—Obviously they need some more money.

Dr Senior—Yes, they do.

CHAIR—But have you had some further thoughts about how such a program might be sustained? We are talking about this in a context where we are from the government and there are really big amounts of money being put into the intervention and the Closing the Gap proposals. Some of it, in health, education and what have you, I am sure is being properly spent but there are big amounts of money. If we could identify a kind of program that worked especially well and show that it works better than lots of other programs, we may only be talking about the reallocation of existing resources.

Dr Senior—I think that is the point of the work that we have been doing. We have really been trying to set up a framework for Balunu to be able to work in a systematic way so that they can be accountable for what they do. So they have actually started to think about the issues of governance and sustainability and to think about the risks to their particular organisation, which they had not done before because it has always been rather reactionary rather than a planned intervention. David will tell you himself he has always been crisis driven. He has always decided that he has got to help people and help people immediately rather than thinking about how to set up an intervention that is going to be well managed and sustainable in the long term. As a result, his intervention does not look very attractive to funders because it does not have the structures that they are looking for, and that is where our intervention has been. It is trying to help him set up those sorts of structures, and it has been reasonably successful.

CHAIR—I have known some Aboriginal people like David at times all through my life. There is a very famous woman called Mum Shirl, who in the seventies saved dozens and dozens of young Aboriginal people in Sydney. At the time, there was a kind of migration out of country New South Wales into Sydney and she used to meet them at central and find places for them to live. She was a perfectly astonishing person who will always be remembered, but she was a particularly outstanding example of a kind of person who has always been around. The question then is—I know in some sense it is unfair, but nobody knows the answer to this question; you have a better idea than most, obviously—what do you think about the possibilities of replicating David's kind of organisation?

Dr Senior—I think the best opportunity we have is probably through the evaluation processes that we are going through. We do not know that we are going to get this evaluation, but if we start to look at Brahminy, Balunu and Tangentyere we will be able to see the different models of intervention and be able to draw out the aspects of these models that make them successful and the problems too. Each of those carries a range of risks as well and those probably have to be identified.

On the one hand, yes, Teresa and I totally agree that everything has to be developed with the specific population it is working with in mind. David's intervention is really for Indigenous urban youth in Darwin, although he has branched out to some of the more remote communities. But it is mostly focused on that particular population. It seems to work for them. But I think there are elements of the structure of how these interventions can be set up that should be universal and shared between them. They would be structures of governance which are transparent, where people know what the structures are and actually report what they do, thinking about their long-term planning and their activities. It is really about those governance and planning issues.

CHAIR—Bureaucracies, quite understandably, want to be sure about how their money is being spent. There are many long words you can say without expression on your face about the kind of accountability that is necessary. I think you are saying that you can help generate some models for accountability that do not send a person like David completely nuts trying to fill in forms. I have been puzzled for a long time about why it is that bureaucracies cannot work out that what you should do is actually help people make systems of governance and accountability that will work. I do not know why bureaucracies find it so hard to assume that that is their first job. Instead, they sometimes try to make other organisations altogether and, to one extent or another, bypass the Indigenous people. I think you are agreeing with me.

Dr Senior—Yes.

CHAIR—And you are submitting your accountability device for us to look at.

Dr Senior—Yes.

Dr Cunningham—Or at least a paper about it. There are almost single practitioners working these interventions. These people just feel completely persecuted by the amount of accountability that they are required to do, particularly with the almost missionary zeal that is involved in some of these things. They think, ‘What? I have to tell you exactly why I am doing it as well when I am doing all these good things?’ It is very difficult for an organisation like that to see the importance of being accountable. And, then, it is even more difficult for them to have the resources to be able to do it.

CHAIR—On the other hand, it cannot be denied that in the immediate past there have been plenty of instances of fraudulent misappropriations. That cannot be denied or avoided. We need to find ways in which it can be prevented.

Mr LAMING—I have a question about the evaluation that you are planning to do on these small services. NT is a great opportunity for us, because it has, among other things, the highest ratio of researchers to Indigenous people in the world probably. I wonder whether you have the ability to say, through records and from Corrections, the number of Indigenous people who have been incarcerated more than once—and you could cut it up by age strata and stuff like that. Through ethical requirements, are you able to do a paired-cohort study where you take so many into the program and just watch the number of similar match controls that have got similar backgrounds? Would that be part of the study?

Dr Cunningham—Yes, it would be. We usually go through the Department of Justice, who manage Corrections now, and get data through them. As long as they are okay and we have ethics clearance, it is easy—well, not easy, but it can be done, yes.

Mr LAMING—Am I being overly simplistic in trying to draw together what we talked about in saying that there is effectively the small group that you saw yesterday that you have described as being involved in really serious crimes and destructive behaviours. They are almost too serious to be ignored and there is a moral responsibility to do everything we can to intervene even if it is not doing much. We have to do something. And for that group really our questions are: how early do you intervene and how early can you identify these people who are certainly ending up there eventually?

You have then got your other cohort of people—and I do not have a lot of experience in this area—more of the attention-seeking, rite of passage, nothing to do—and doing it because friends are doing it—slashing tyres, breaking windows and these sorts of incidental encounters with police. To me, that is group B, a much larger cohort. I am trying to find something that efficiently deals with those two different groups, but I know that the first group passes through that second group to get to where they end up anyway, so they are woven together. How do we treat these two different groups efficiently?

CHAIR—I think that is a really good analysis and good question, except that group A is actually quite big. Group A is not just a handful in Darwin; there are a lot of kids in Darwin who are in this dire circumstance. They may not have committed really serious crimes—yet.

Dr Cunningham—Intervention—how soon? The sooner the better—

Mr LAMING—For those two groups. What is different about the approach?

Dr Cunningham—Having done that five years of juvenile offenders, the majority of them do not reoffend within the five years. Three-quarters of them do not reoffend—they get in there, do something stupid and decide that they are not doing that again. You are left with 25 per cent of kids, and probably 10 per cent of them are the reoffenders. But the group you are talking about at Balunu have not necessarily offended, have they?

Dr Senior—Not necessarily, no.

Dr Cunningham—So they are quite a different group—

Dr Senior—They are defined as ‘at risk’ in the broader sense.

CHAIR—They might have done something or they might not.

Dr Cunningham—Within the group that have offended and have actually been picked up as offenders by police—and I interviewed quite a number of police when I did a mixed-method research with a qualitative and quantitative methodology—the diversion scheme does not start until they are 10 years of age, and they were saying that lots of those kids have got into trouble way before then, four- or five-year-olds even, and six-year-olds. Their brothers and sisters send them out to do things. It is a whole family cycle. Police say, and it is quite true, that they are not responsible for that behaviour. All they can do is try to at least divert these kids away from the system, but they have a really hard problem trying to stop them getting into the system in the first place. They do not have any powers to deal with kids under 10. They cannot do anything with them.

Mr LAMING—In Cape York that will come in under their family responsibility and agreements between community leaders, the family, and a visiting magistrate.

Dr Cunningham—That might be a good model to bring here to have a look at and—

Mr LAMING—That is quarantining of income, though. That would end up with voluntary quarantining of income, if nothing else worked. The question there is: how effective is

quarantining of income in those situations where you are either giving money in a form that cannot be spent on anything other than essentials for children, or you are placing another member of the extended family in control of the budget, with all of the humbugging that goes with it?

Dr Cunningham—Again, it probably works for some people but it is not actually teaching people to manage their own lives, is it? It is doing it for them. It is another kind of imposition, if you like. It is not developing those life skills. Again, it is a matter of, ‘Okay, it is taking over our responsibility and giving it to somebody else and they are letting us do things when they want us to, not when we actually have to.’

Mr LAMING—I should point out that there is a series of measures, from warning and sanction through to sitting down and managing and making decisions—

CHAIR—Cape York is not on universal income management. It is the last stage of a process—

Mr LAMING—It includes counselling about decision making. That is step 2, that discussion about making choices, decisions and budgeting, and then step 3 is where they are failing to a point where children are at risk. But that is yet to be expanded; it is still being evaluated.

Dr Cunningham—I have not looked at it. I do not know anything about it. That would be an interesting model to look at, actually—to see how it is working. Again, there would need to be some evaluation, I guess, to see if the outcomes are being met over a period of time.

Mr LAMING—Who knows. Thank you.

CHAIR—We have gone over time—we do not care—and we thank you for your openness to our questioning. Is there anything else you would like to suggest to us before we wind up? Isn’t it astounding that a lot of the work you are doing has not really been done before?

Dr Senior—Yes.

CHAIR—How can that be so?

Mr LAMING—There are so many other competing needs.

Dr Senior—Yes, absolutely.

Dr Cunningham—Also, we tend to be the social science side of the Menzies School of Health Research, I think. Menzies is very much about clinical health.

Dr Senior—I think it has a lot to do with the fact that it is a mixture of disciplines. Research is often very discipline focused, and we have been able to draw together a group of people that are focused on adolescent youth and their wellbeing who are able to look at these things from a range of different perspectives, which is not often available to everybody. It is quite unusual for me to be able to work with a criminologist, for example.

CHAIR—There is one thing I would like to ask you about before we close, which is that there is a pattern in the evidence we have heard in that Aboriginal people say they are not given support for local programs that they think they need. This is not just from people who might be in a remote settlement or in the Northern Territory. It happened to us the day before yesterday with a group from Ipswich in Queensland who suggested that the large numbers of kids who were engaged with the juvenile justice system in one way or another were not being followed up by the available services run by agencies of the government; that they, a community justice group, were doing it; and that the numbers that they were engaged with were much bigger than the numbers that the state agencies were dealing with—but they had almost no money and no recognition.

This same complaint happens in many different forms. We often find people in local organisations saying, ‘All the money’s gone to a big NGO somewhere.’ Many of these big NGOs are highly respected organisations, but they are getting money to run programs which, the Aboriginal people imply, are to some degree—notwithstanding the ideology of those big NGOs—imposed on them. They lose control. Then we find communities which really aggressively continue to demand to control things. For example, at Fitzroy Crossing they would accept help from all sorts of people, but they had to accept the help, not have the help imposed on them. I have just made a kind of thesis, haven’t I? But I would be very grateful if you could comment on this, because it is a theme that comes through so often and it is implicit in Dr Howard’s dot points. It would be useful if you could speak on it.

Dr Senior—I lived in Ngukurr, in south-east Arnhem Land, for four years while I did my PhD research and I actually documented all the community attempts to deal with local problems, looking at how they formulated committees, set up processes to deal with a particular problem and so on. One in particular was a petrol-sniffing problem, which had been a really absorbing concern for the community over a long period of time. They set up quite strong, locally driven interventions, which were completely unsupported by the non-Indigenous gatekeepers within the community and certainly completely invisible to anyone outside the community.

Part of that was a blinkered approach from the non-Indigenous community to say, ‘They are always doing things but they are never going to work.’ But another one was the lack of resources from the Indigenous groups to leave any sort of communication with the outside world and to say to governments, ‘Look, we are setting up this really important program here and we could do with some support.’ But those linkages were not being made. Because of that, not one of these programs was actually sustainable in the long term or even in the short term. They would come up for a few weeks and then they would disappear again and communities would get further and further demoralised about their ability to do anything.

I think there is need to recognise local initiatives and provide support which is directed by communities like, as you say, Fitzroy Crossing—for them to be able to say, ‘Look, this is the level of support we need.’ But that need has to be articulated in the first place. There has to be some knowledge in the community about where you can ask for help. What are the resources you need to support your intervention? That seems to be me what is lacking over and over again. They did not know what was available to help them.

CHAIR—But that kind of questioning takes a long time and can be very confusing to the non-Indigenous person who is representing a bureaucracy. You need to have a lot of skills, don’t you,

to be able to even ask the questions? It is fair, is it not, to be saying that, whoever is governing a program, the bureaucracy that is providing the funding is entitled to some form of accountability and transparency and all of that? I know you have been thinking about that issue. Can you just be a bit explicit about how to resolve that kind of problem? How can we provide funding in ways that allow for more local control but, nevertheless, satisfy reasonable expectations from government and bureaucracy that the money should be decently accounted for and that the program should be evaluated?

Mr LAMING—Give it all to Menzies.

Dr Senior—There are educational opportunities in this. The one thing that Indigenous communities are getting an awful lot of is training. They are getting interventions at the training level all the time. If it could be directed in this sort of way, it may be more appropriate—thinking of training for a more community development approach, about how to utilise resources, how to get in touch with your local government, how to set up your projects so that they will be accountable in the long term. These seem to be incredibly viable skills for communities that are always setting up these sorts of interventions but do not necessarily have those sorts of resources to draw upon. That would possibly be a first way to do that. It is just lack of knowledge about how to lever different parts of government, or even non-government, resources and support.

CHAIR—Thank you both. It has been really useful for us.

[12.58 pm]

CUNNINGHAM, Dr Teresa Ellen, Research Fellow, Menzies School of Health Research

HOWARD, Dr Damien, Private capacity

SENIOR, Dr Kate, Research Fellow, Menzies School of Health Research

CHAIR—Dr Damien Howard has been listening to our discussion with the representatives of the Menzies School of Health Research and he wishes to make some comments in consequence.

Dr Howard—In terms of the processes by which Aboriginal control can be maintained but engagement with bureaucracy can be facilitated, I think Kate is right about the local education of those processes. But I think there is also a responsibility of the bureaucracy to do as you have done as a committee and go out and be proactive in seeking out good examples and working out how you can support them, rather than having a reactive process where only people with the capacity to go through that filtration process of submission writing and knowing where to write submissions get a guernsey.

One of the most inspiring people that I have seen in that regard is a guy named Bill Medley, who working in the health department many years ago. He was wanting to encourage some disability employment support in some remote communities and there were not any applications coming from any of those places. So he took his hat off for a while as a bureaucrat and went out to the community and helped them put together their submission, which then went in and was successful. They have been running a fantastically successful Tiwi art supported employment centre ever since. What seems to be part of that learning disability of the bureaucracy is the demanding of those least empowered to have most skills in meeting their criteria rather than setting up intermediaries that can help to broker between communities and Aboriginal organisations, who maintain control but can have the support that they need of people with those bureaucratic and submission writing skills.

You made some comments as to whether there is anything else that could be done better and whether there is a system. Particularly in relation to the comments about Mum Shirl, in my experience there are Mum Shirls and varieties of her throughout every community that I see—grandmothers who are taking up the gauntlet with other people's problems and trying to sort them out. Rather than create a program that is abstract and organisational based, having systems that can enable those people to keep doing what they do and support them in doing it is going to be a far more adaptive and successful process of finding those people and supporting them rather than some organisation frustrating the hell out of them by fitting them in.

In terms of assimilationist principles in Australia, so many of them operate by forcing Indigenous people to fit into the structures that work for mainstream society. To really redress that and create systems that work for Aboriginal people requires the bureaucracy to adapt to what Indigenous needs are. Talking about the consistent failure of so many policies, programs and funding in the past, it has been consistently doing more of the same of what has failed before and not realising it. In terms of problems being insoluble, I often see them as being insoluble

because the systems are not learning. They are keeping on doing the same thing and failing again and again.

CHAIR—Thank you.

Proceedings suspended from 1.02 pm to 1.19 pm

OLIVER, Ms Suzanne, Youth Magistrate, Youth Justice Court, Northern Territory

CHAIR—I formally welcome Her Honour Suzanne Oliver, who is a magistrate in the Youth Justice Court of the Northern Territory. We normally proceed by asking you to make a shortish introductory commentary and then we will enter into a discussion.

Ms Oliver—Thank you. I should clarify my position: I am a youth justice magistrate in the Northern Territory but I hold a general appointment as a stipendiary magistrate. One of the large issues in the Northern Territory is the fact that we are small in numbers but large in geography, which means that, unlike in other jurisdictions, all of the magistrates in the Northern Territory sit from time to time as Youth Justice Court magistrates. My appearance here in my position as a youth magistrate is really just to acknowledge the special interest that I have in that area and the experience that I have gained in that area since the time of my appointment, as opposed to any particular managerial role in relation to that court.

I read the submission that was put before the committee by the former Chief Magistrate, Jenny Blokland, and I agree with the comments that she made. I have also taken the opportunity to read the submissions that have been put forward by the North Australia Aboriginal Justice Agency, the Central Australian Legal Aid Service, the Northern Territory Legal Aid Commission and the Central Australian Youth Justice Committee, and I might refer to some of their observations. I thought it might be of use to the committee if I were to identify some of the features of the submissions I have referred to, which perhaps might then open up some questioning.

CHAIR—It would indeed be useful.

Ms Oliver—It is no surprise, of course, that many of the young people or young adults who appear in the criminal justice system come from backgrounds of dysfunction. The issue which I think is particularly important to note in the Northern Territory is that the level of dysfunction is probably more extreme in many areas, perhaps even in the majority of areas, and is seen in other parts of the country. There are the common features, of course, of alcohol and drug abuse and domestic violence. There are absentee parents, with children simply left with whichever extended family member might be prepared to take them in a community while the parents leave and go off to the regional centres, usually to pursue substance issues. There is the enormous problem of overcrowded housing, which has issues in relation to what children see and hear and has an effect on their ability to engage meaningfully in education. Often—and I am not talking just about remote communities here—the young people and the adults that we see have either had limited or no encouragement to education, and that includes in centres such as Darwin and Alice Springs. In many communities children grow up in an atmosphere where they see adults resorting to the use of weapons in mass numbers in order to settle disputes. Those, I think, are the social norms that many children absorb when they grow up in the Northern Territory. So it is not just a matter of encouraging young people to the social norms; they are the social norms that exist for many people.

Other factors, of course, are foetal alcohol syndrome, which is an increasing feature of the young people that we see, and physical, sexual and emotional abuse of those children. Certainly in Darwin—I do not think Alice Springs is any different—we are seeing larger numbers of

children in the 11-to-13-year age group as offenders before the Youth Justice Court, often on quite serious offences. To my mind, that is probably an indication of where the level of dysfunction that I have just spoken about is leading to.

The present pressing issue is obviously finding ways to overcome that background for those children and young adults who are already in the criminal justice system. They are the sorts of issues that I thought I might talk to the committee about today. The first thing that I thought I would raise is the question of diversion from the criminal justice system. I am strongly supportive of diversion; I think it is a way that can produce positive and lasting results. The court plays a role in that by referring young people into a diversion situation even if they have been refused on the first occasion. On most occasions when the court refers a young person back to diversion, they are accepted and, generally speaking, proceed well through that program, with their charges ultimately dismissed in the court. It is a very productive way of keeping young people out of the criminal justice system.

The youth diversion units work extremely well. I suppose I should mention that all the magistrates in the Northern Territory undertake circuit work as well. The circuit that I do is the Groote Eylandt circuit as well as Numbulwar, which is a small community back on the mainland just opposite Groote Eylandt. I am familiar with GEMYDU, which is the youth diversion unit on Groote Eylandt, and it does extremely good work. We have very few young people before the court on Groote Eylandt these days, and that is against a situation a decade ago when it was almost a right of passage for young people, particularly young men, to appear before the court there and be sentenced, depending on their age, either to a term of detention or to imprisonment in Darwin. That situation has turned around considerably, and I think a large part of that can be attributed to the work of GEMYDU. So I am strongly supportive of diversion units. The difficulties of being able to set up effective diversion units in remote areas are the remoteness issue and the resource issue.

Diversion, however, is not always a suitable option. There are young people before the court who have committed very serious crimes—crimes that are not appropriately dealt with by way of diversion. Often the matters involve serious violence. Community courts are, in my view, another effective way of dealing with serious offending, particularly serious offending by young people in remote communities. I refer again to the circuit work that I do on Groote and at Numbulwar. We have used community courts there as means of dealing with young people who are before the court on serious crimes. The exercise involves senior people from those communities, as well, usually as a disposition that sees the young person placed under some form of control or direction with senior people—including, perhaps, direction to engage in particular ceremonies that might be relevant at that point in time.

Once again, it is difficult to set up community courts in every available remote location. There is the need to get the involvement of senior people. There are not always the people available in every community who are capable of taking on that role or who want to take on that sort of role. We are hampered often by the court facilities that we have in those areas. To say that we are using a courthouse would be a generous description of the places in which the court sits in most communities. Usually it is a meeting room, for example, at the local council office. The facilities are often too small for us to be able to conduct a meaningful community court. I am sitting at Borroloola next week. The room that we use there can barely accommodate the defendant and the lawyers, let alone allow for bringing in large sections of the community. It is physically not

possible. So we are hampered, in expanding our community court program, by the physical facilities that are available.

There is a large distinction, I think, between the way in which we run community courts and the way in which courts such as the Koori Court in Victoria are run. They really do not bear much resemblance to each other. Ms Blokland outlined that in her submission. Even the types of offences that we deal with are very different from the sorts of offences that would be dealt with in those courts in Victoria and New South Wales.

Mr LAMING—Would they be more or less serious?

Ms Oliver—They would be more serious, to my mind. I can give some examples, if you like. The most recent community court I held on Groote Eylandt was for a 13-year-old boy who pleaded guilty to a charge of causing serious harm. He had found his 15-year-old girlfriend walking with a cousin and another young man at 2 am and so he attacked her with a machete. She suffered some defensive wounds which required her to be medivaced to Darwin and will require ongoing surgery. He is a young man whose father was before the court at the time on assault charges against his mother. His mother is a person who has appeared before the court on assault charges. His brothers have all appeared before the court on assault charges. He is a reasonable example, I think, of what I was saying—that is, somebody growing up with social norms where violence is the way in which you respond.

CHAIR—In Ms Blokland's paper she mentions that the general pattern of offending in the Northern Territory is similar to that of the rest of Australia and that the rate of imprisonment of Aboriginal people is similar to that of the rest of Australia. But she suggests that the proportion of convictions for crimes of the sort that you have just mentioned is much higher in the Northern Territory than elsewhere.

Ms Oliver—I think she was saying that it is the same categorisation of offences. The thing that would perhaps be different and that perhaps has an effect on the level of imprisonment is that you are often dealing with people who have a considerable history of similar offending. That, of course, makes some difference to the sentencing outcome. I was giving some examples of the sorts of matters that we see in community courts. Taking up spears and chasing people through the community with spears, I suspect, is not something that is commonly seen in the courts in Melbourne and Sydney.

Mr LAMING—I am just not convinced about the exceptional cases in the Northern Territory and the idea that what works down south does not work here.

Ms Oliver—I do not think that is what I was saying.

Mr LAMING—That was what was in that letter. We have referred to that submission as saying that there are some reasons why it is different, but I cannot see why it is different. I sort of accept the Canadian example that anything apart from murder and—what were the two exceptions?

CHAIR—Rape, I think, was the other exception.

Mr LAMING—Rape and murder. Why isn't everything else dealt with in a community court or Koori Court arrangement and, to go the next step, if a huge proportion of your work is Indigenous then why isn't that Koori Court model the mainstream?

Ms Oliver—Because if it was we would need, we think, 100 magistrates to be able to run it. In order to set up a community court we need to locate people who will sit as panel members in a remote area. It requires someone to engage with people in the community to identify appropriate panel members. It is not the case that you can use the same people all the time because of the kinship issues—some people will not be able to sit as panel members on particular community courts because of their relationship. So on each occasion it requires an assessment as to whether the matter is suitable for community court and identification of the panel members. The time taken for the process of a community court can be in the order of one to two hours because people do not speak English as a first language—there is the need for interpretation. It is a lengthy process. With the number of matters that we have on circuit court lists we would be at that circuit for an entire month if we attempted to deal with every single matter in that way.

Mr LAMING—Can I just clarify then—I might have used the wrong term—I am not suggesting that they go out to communities. I am happy with the average that you currently have. I would not expect necessarily that a magistrate always be present for a lot of those discussions, so potentially a lot of the discussion is the informal discussion that occurs before and after—we use the term Murri or Koori court. I do not want to get my terminologies mixed up, but it is effectively where there is a significant involvement of senior and respected Indigenous people from the community representing the person concerned, there is a non-uniform police presence, and there is an informality that is a less confronting experience. That is the model I am talking about that everyone is saying is potentially more effective than our traditional court approach. Again, I am not saying that a magistrate has to sit through all of that. A magistrate really only has to be there at the end, at the conclusion of the discussion. They can basically come in and report where they have got to. Are there some models like that that might be—I am trying to address the geographic dispersion of the service and the lack of access to magistrates. A lot of the Koori Court stuff is not done in the presence of a magistrate at all, so it becomes, effectively, a circle of discussion.

Ms Oliver—I do not see that that would be an impossible model in a number of communities. I do not think it would be a possible model in all communities. Again, it is the difficulty of identifying in advance people who would be panel members in that community. Leaving aside the kinship issues, which disqualify people in particular matters, people just are not always available for these matters. Tragically, there is such a high death rate among people in communities that people are frequently on sorry business and so they are unavailable in advance of the court sitting—they are often unavailable for the court sitting for the same reasons. I do not think it is impossible, as I say, and maybe it is a model that we should consider for use in some communities where there is perhaps a stable environment, but there would be a number of places where it would not work as a viable model for the sorts of reasons I have outlined.

CHAIR—Why we are interrupting you: you were speaking of the success of the youth development units on Groote Eylandt—I think there were three that we heard about this morning—and they obviously are a most useful initiative. There is an issue, though, that diversionary programs are either unavailable or are hardly available in many very remote areas. Could you comment on that? It seems as if, by the way, it is only conceivable that those

diversionary arrangements could be made available in very remote areas if the communities themselves could do a fair bit of the running of them.

Ms Oliver—I think that is an accurate observation. The logistics of setting up a diversion unit are very difficult unless you have people on the ground who are there and capable of running it. Unless communities are willing to put people forward and participate in diversions, it becomes difficult.

CHAIR—If they were willing, would you support the further development of diversionary programs, culture camps and what have you?

Ms Oliver—Absolutely. I think they are a very valuable tool for dealing with young people.

CHAIR—I think I heard you say, in fact, that you believe there are far fewer young people coming before your own court in Groote Eylandt now than there have been since the establishment of the development unit. Is that the case?

Ms Oliver—Yes.

CHAIR—That is a rather important piece of information for us.

Ms Oliver—I think there may have been other influences on that as well—there are other things that have happened in that area as well—but, certainly, it has contributed greatly.

Mr LAMING—I guess we all agree that more diversion is better, but there is something else I am trying to drill down into, because you are the only person we can speak to about the court processes. The submission that we have here from Ms Blokland is quite resistant to the idea that Koori courts or circle sentencing would be applicable in the Northern Territory, and I need to understand why. The submission suggests an overt resistance to the model.

Ms Oliver—I have it here so I can turn to it as well.

Mr LAMING—I will just read this out as a prelude to our discussion. It says:

... although a successful approach in that jurisdiction, Koori Courts are conducted in English in urban or large regional centres without the same entrenched complex issues that mark ... the Northern Territory. This bears little resemblance to the circumstances of the Northern Territory and should not be considered a model necessarily capable of easy modification ... The same observations could be made in relation to circle sentencing.

It is a very strong statement. There seems to be considerable optimism in southern states that operate under completely different circumstances, so what I need to work out is whether it is simply a resourcing issue or it is more than that.

Ms Oliver—No. I do not think that Her Honour intended that to be a negative statement. She has been strongly supportive of community courts and has worked to get greater resources to expand community courts. I think what she is saying there is that 85 to 90 per cent of the people before our courts are Indigenous and it is just not feasible to apply that model to all matters. Not all matters are necessarily conducive to being dealt with like that. A lot of them are traffic

matters, for example, which do not represent any great difference from offending by non-Indigenous people.

Mr LAMING—Unless those offences turn out to be important signs of subsequent interactions with the system. It would be interesting to know, even though we regard them as fairly minor, whether traffic offences turn out to be a central indicator of subsequent returns to court, as opposed to someone who is not committing traffic offences. It might be a useful sign that there is trouble ahead. I do not know.

Ms Oliver—No, I would not say that but I would say that, in my view, traffic offences present a particular difficulty for Indigenous people in the Northern Territory. That is because—

CHAIR—We may as well ask you to comment on that, because it has been suggested to us that traffic offences are a really serious problem in all remote places.

Ms Oliver—Yes—probably for the reasons that I am about to give you. There are mandatory disqualification periods on traffic offences. The court has no discretion to set anything less. It is, I think, quite unrealistic to expect that someone who lives in a very remote community where there is no public transport and great pressure by other people to drive vehicles is going to observe a five-year licence disqualification. The consequence is that people drive disqualified and then they find themselves in prison for those offences. And they are committed over and over again, and there is a cycle that they just do not get out of.

There is also a problem with getting people licensed in communities. I have taken an approach on my circuits that, if people appear before the court with a drive-unlicensed charge, I either stand the matter down while they go and see the police station about getting their licence, or put it over to the next court sitting with a view to discharging them without penalty if they can come back and show me that they have got a licence, as a way of assisting people into becoming licensed as opposed to continuing to drive unlicensed. And I think that, if you like, diversion programs for those sorts of offences would be extremely useful. I think it is much more useful to assist young people to become licensed drivers than it is to penalise them and place convictions against them.

CHAIR—I do not know if you have access to any statistical information about the incidence of driving offences and their connection to jail sentences, but it has been suggested to us anecdotally in Western Australia, outback New South Wales and in Queensland, to my immediate memory, that a great many young people begin a progress towards prison by failing to have a licence and being prosecuted for that, or losing their licence in consequence of some kind of traffic offence and then having an escalating number of charges until they end up in jail.

Ms Oliver—I do not have any statistics to support that, but anecdotally that would be, certainly, my observation.

CHAIR—But it is significant.

Mr LAMING—I can see your point but what we need to know is whether people are hitting the screen of the incarceration system purely by virtue of the case you have talked about: vehicle offences leading to incarceration which then sets off a spiral of other criminality, or whether the

people you are talking about actually would not be at risk of any other engagement with the court system had they not had the vehicle offence. So is the vehicle offence picking up people who are at high risk of other criminality, and therefore it is a good thing, or were they probably highly unlikely to have offended in any other way except the vehicle offence, and therefore it is a bad thing? If people who happen to drive unlicensed also happen to beat up their family—use physical violence—I am kind of happy you are finding them! So I just need to tease that out. And we have only got anecdotal evidence.

But I do want to go back to teasing out the difference here between community courts and the Koori Court. It is not the geographic placement of the court. It is the fact that the process occurs in the language of the person who has offended. It is the fact that the police presence is minimised by them being in non-threatening clothing. There are a few elements to it that turn it into an experience that is different from an experience where they are so frightened of the court process that they either learn nothing or become hostile or there are a whole lot of other adverse outcomes we do not want.

So I am looking for the engagement with the system that is as constructive as possible. It might be called the Koori Court in Victoria; it might be called something else in another community. It is not the fact that it is held in a regional area that I am interested in. But how do we get the court system to be one that is as appropriate as possible to what is the 90 per cent or 82 per cent of your work which is Indigenous work. So, for that group, is it in their own language? Is it a non-threatening environment? Is it sitting in a circle or does it have the magistrate on an elevated platform somewhere? What are the elements that we know make it destructive instead of constructive that we can address? And if you want to call it a circle court or something, I do not care. But what are the elements that you look at that you say make this process less constructive than it could have been? When these people leave the court, do they understand what they have done? Do they understand what has happened, why it has happened to them and how to avoid it? Or is it just one big horrible experience that actually makes no difference to their trajectory towards a resume of criminality?

Ms Oliver—I am not sure that that sort of generalisation is possible. A good deal depends on the background of individual people. You are dealing with Indigenous youth who have grown up in Darwin or Alice Springs. They have a different background and understanding of the court processes from a young person who has grown up in a remote community, so their experiences and what they take from the court, however it is set up, will be quite different. So I am not sure that you can necessarily deduce anything from that.

What I am strongly in favour of, and one of my other interests and what I was doing this morning, is sitting on a drug and alcohol diversion court. I think for many people the processes of that court, where the magistrate engages on a personal level with the person before the court, produces much more positive results than the traditional model where the magistrate seems to talk to the lawyers and no-one else. I think it is very important in youth justice matters that that is the sort of model applied, where people are engaged.

Mr LAMING—Is that happening at the moment?

Ms Oliver—I think it varies depending on who is presiding in various courts, to be honest.

Mr LAMING—And how much of it is done in Indigenous language, which means the moment the magistrate speaks it is immediately translated into a language understandable by both the defendant and senior people that are representing him? To me there are a whole series of things, a menu of things, and I wonder how many of them happen in the NT. Apart from a lawyer, how often do you have a senior person from the community present who can understand both English and the local language? How often is everything that the magistrate says immediately translated so it is understandable? If we were to do an interview of defendants going into the court, what is the level of understanding about what is going to happen so that they can prepare for it and not just freeze and then walk out and have lost everything? If I did an exit interview, how much could these people explain in their own language what has just happened? Has there ever been any research into that?

Ms Oliver—I am not aware of any research on that. Very few court proceedings involve interpreters, much more so in remote communities. They will use interpreters much more often there. But there is a scarcity of interpreters. We often cannot proceed with matters because we cannot find anyone to interpret for the defendant, so the matter might have to be adjourned several times before the interpreter service is able to locate an appropriate interpreter. Again, it is the complexity of there being a very large number of language groups.

CHAIR—Hundreds.

Ms Oliver—Hundreds. In an area like Groote Eylandt I can generally rely on the fact that, even if I do not have a qualified interpreter, there will be someone in the courtroom who is fluent in Anindilyakwa and English and they will assist. They will sit beside the defendant and they will assist that person's understanding. That will not be the case in many of the courts around the Northern Territory.

CHAIR—We were mentioning the mandatory sentencing aspects of traffic offences, but the Northern Territory has had a number of other offences with mandatory sentences, and I think it is alone amongst Australian jurisdictions in imposing a circumstance in which a court cannot order diversion if there is a police assessment to the contrary. So there are a number of ways in which mandatory provisions do impose upon the kinds of decisions you can make. I wonder if you can comment on them and if you think indeed the mandatory provisions have some effect on rates of imprisonment. I understand that statistics is not your business, and we ought to be asking somebody else about these things.

Ms Oliver—I have read the submission from one of the Central Australian agencies that suggested that young people do not get into diversion if police say no. I do not know if that is an experience particular to Alice Springs or whether it is an accurate observation, because I do not often sit there. I do know that in Darwin I frequently send people back from court for a reassessment for diversion and they are then accepted into diversion. So I do not think the situation of police being the absolute gatekeepers is quite as stark as that submission seemed to suggest. But, as I said, not all offending is appropriate for diversion. There are matters, because of the serious nature of the offences themselves, that should be before the court.

Mandatory sentencing, by its very nature, imposes a limitation on the dispositions that a court can utilise. I suppose I am talking here of young adults who have committed violent offences, because we are constrained by the Sentencing Act in terms of setting actual terms of

imprisonment for violent offending in particular circumstances. In many cases the serious nature of the offence probably would warrant imprisonment in any event. There may, however, be matters where a court would consider an alternative disposition if in fact that were available. Statistically, I could not give you a feel for how that weighs up.

Mr LAMING—What is the longest period of community service that can be applied in a Northern Territory court?

Ms Oliver—480 hours.

Mr LAMING—Which is the equivalent of 10 weeks. That seems extraordinarily short to me—not by interstate comparison, but it surprises me that there cannot be CSOs for as long as a year. Is there some reason we keep them that short? Is it only lack of resources?

Ms Oliver—I really do not know the reason.

Mr LAMING—I do not want that to be a political question, but from a judicial perspective it seems extraordinarily short. You can incarcerate people for decades but you can only give community service for a few weeks. I just do not understand why that level was ever conceived. I also wonder why no-one in the profession questions that.

Ms Oliver—I do not know either. I have often considered myself that it seems ultimately a fairly short period.

CHAIR—I am conscious that we are asking you a lot of questions that should be answered by criminologists or members of parliament.

Mr LAMING—This is a good one for a magistrate. It is actually nice to hear from a nonpolitician about it.

Ms Oliver—In relation to community work, because it was one of the issues that I wanted to raise, 480 hours or not, it is extremely difficult to find community work—

Mr LAMING—That is suitable.

Ms Oliver—Well, that is available. I mentioned before that I am going to Borroloola next week. Last time I was out there, a month ago, there were no community work projects. That is the case across many, many communities. Community work is not available. Home detention is not a viable option, sometimes because of the overcrowding in the house or the sort of conduct that is being engaged in by other people who are living in the house. There are no surveillance officers available to go and check on people who have been ordered to serve home detention. So the sentencing dispositions are very limited.

CHAIR—Which makes some of the diversion programs that exist and those that do not exist particularly significant.

Ms Oliver—Yes. That is even in Darwin—and I think one of the other submitters might have put that in her submission. It seems to me from a youth justice perspective that one of the

positive outcomes of ordering community work for a young person—particularly a young person who has grown up in a family situation where they see nothing to aspire to at all because no-one has ever worked in their family—is that they can be introduced through community work to the idea of work as something meaningful and rewarding. But the sorts of projects that are available do not seem to offer that sort of opportunity. I would have thought that for young people community work should be an opportunity both to get the idea that work can be a positive influence on their life but perhaps also to get some skills so that ultimately they move from a community work situation into a real work or training situation. Again, those opportunities do not seem to be available.

Mr LAMING—We have had three decades where that conception has been eroded and I think Pearson is the first person to question this and talk about self-image beginning with having a capability—something that one can do that is valued by others and is worth doing. But there has always been the notion, from a whole range of social sector providers, potentially, that you should not have to do something if you do not want to. We have had that building up over a generation.

Ms Oliver—I personally disagree with that position.

Mr LAMING—Good.

CHAIR—Is there something that you have wanted to mention to us that you have not yet mentioned?

Ms Oliver—Yes. Drug and alcohol rehabilitation is a significant issue. I think that there is an insufficient amount of rehabilitation facilities available. The ones that are available are pretty well stretched to the limit and, generally speaking, residential rehabilitation is not available for young people. I know that some clinicians would say residential rehabilitation is not suitable for young people anyway. Maybe that is right. But there is even a problem of those young people engaging in counselling because they often have issues of homelessness or they simply do not have stable accommodation or they do not have a supportive adult person who will ensure that they continue to go to counselling and make the arrangements to get them there and back. Having sat this morning in our drug and alcohol court, and frequently, I often see reports of people who are now in their 20s, 30s or 40s who have a history of having started high-level alcohol and drug abuse at the age of 12 or 13. That it takes to 40 to address that issue and get someone into rehabilitation is a tragedy.

CHAIR—Your alcohol court, I take it, works under a procedure whereby you may suspend a sentence or bail somebody on a condition that they attend a rehabilitation program and seek employment and what have you. Is that how it works?

Ms Oliver—Yes. The drug program is a bail program. The alcohol court program is under an Alcohol Court Act with an alcohol court set up with a specific jurisdiction and the procedure is essentially to make an alcohol intervention order, which is in essence a form of a suspended sentence order. People are only directed into the alcohol court if they otherwise would be looking at a term of imprisonment for their offending. There is a review of that act at the moment and we have made some comments about how it might better operate.

CHAIR—That bears a resemblance to some courts that exist in some other jurisdictions; it is not identical but it is generically very similar. You must have at least an impression of how well it is working. Could you talk about that for a moment?

Ms Oliver—Yes. The CREDIT program, the drug program, which sometimes includes people who have alcohol problems as well—they are not always mutually exclusive issues—seems to be working extremely well. We have very good, very positive outcomes from that. For the people with strictly alcohol problems it seems to be much harder to address their issues through rehabilitation. I would include Alice Springs in that as well, from my observations when I have sat there. Whether that is a clinical issue, whether alcohol abuse is more difficult to address, may be part of the problem. Sometimes people's lifestyles are so entrenched and they return to family and friends and resume their previous lifestyle. I think that is one of the factors that causes that program not to work as well as the drug program appears to do. Nevertheless, I think they are both very positive models of intervention.

The other thing I would note about rehabilitation is that it is basically only available in the major centres. There are very limited resources for rehabilitation in areas where there is actually very high drug dependence. Groote Eylandt is an example. It has a very high incidence of cannabis abuse and it is very difficult to get any rehabilitation treatment for people there.

I want to mention the detention facilities—again, this is a geographical issue. We have the Don Dale Detention Centre which is used for long-term detention. The Alice Springs Detention Centre is used for short remands only. We have a situation where young people from remote communities are being brought in and detained in Darwin and their families are unable to have any regular or real contact with them other than by way of video link, which, of course, is not always available to people in remote areas.

CHAIR—I take it your assumption would be that the removal of kids from faraway to a detention centre in Darwin is not overly conducive to rehabilitation.

Ms Oliver—No. And it perhaps presents as a harsher punishment for that young person than for a young person from Darwin, for example, who can still maintain regular contact with their family when they are detained. The other important issue I want to mention is that, in my view, there is a lack of a coordinated approach on the services that need to be provided for young people and young adults to address the issues that they have. We were told almost two years ago that the community corrections officers who would deal with young people would essentially be amalgamated with Children's Services so that there could be a better coordinated approach to young people, many of whom have been abused and neglected and have care issues. But that still has not happened. It creates delay in the court because we are dealing with separate agencies when, in my view, there should be a much better coordinated approach to identifying the issues with the young person, identifying the issues with the family, and putting into place the things which are necessary to support the young person. I support suggestion in the submission by the Central Australian Youth Justice Committee that there should be a comprehensive, independent review of youth services across the NT to map existing services and identify gaps. That is a very useful suggestion which I endorse.

The Northern Territory is, of course, the only jurisdiction in which the care and protection jurisdiction in relation to children is in a separate court from criminal justice issues. We have a

youth justice court and we have a local court which has jurisdiction to deal with care and protection issues. The same young person can be involved in proceedings before each court, but the ability to case manage those young people is hampered by the fact that they are in different courts and the services are not coordinated. That stands, in my view, as a major bar to a coordinated case management approach to young offenders.

The remaining issue is one that has been mentioned as well: there is no single court facility for youth at any centre in the Northern Territory. We use a particular court but it is part of the same complex. Young people wait—I am talking about Darwin but this also applies to Katherine, Tennant Creek and Alice Springs—in the same area as adults. They are kept in the same cell complex as the adults—not in the same cells, but in the same cell complex. There is a huge difficulty with being able to set up separate court facilities in remote areas. I have already mentioned the constraints, so I am not being critical of that—and I think that is a problem that is probably not capable of being overcome. Nevertheless, in the major centres we stand in quite a different situation from the rest of the country with respect to providing separate court facilities for young people.

CHAIR—I have no way of mounting an argument against your proposition in that respect. Thank you for taking the time to appear before us and for speaking so frankly as an independent part of a system that separates our powers so well.

Ms Oliver—Thank you for the opportunity.

[2.13 pm]

BALA, Miss Chantelle, Criminal Solicitor, North Australian Aboriginal Justice Agency

BROCK, Mr Josh, Criminal Solicitor, North Australian Aboriginal Justice Agency

KELLY, Mr Danial, Former Solicitor, North Australian Aboriginal Justice Agency

MUSK, Miss Shaleena, Practice Manager, Criminal Solicitor, North Australian Aboriginal Justice Agency

CHAIR—Welcome. I think you have heard the general nature of our discussion. Earlier in the day, we established our inquiry as a formal element of the proceedings of the parliament. Our conversation will be recorded by Hansard and published on our website. I now invite you to make an opening statement and then we will enter into a discussion.

Miss Musk—We operate in the top half of the Northern Territory, pretty much from Katherine upwards, and CAALAS, the Central Australian Aboriginal Legal Aid Service, operate in the lower half of the Northern Territory. As you can see from our name, we are not just an Aboriginal legal service. We deal with criminal, civil, family and commercial advocacy matters. We have a welfare rights branch. We are involved in a lot of the law reform submissions going to parliament. We have a media officer involved in any issues topical to our organisation. We have a very strong criminal team. Our representatives here today are from our criminal term. Danial Kelly worked for a lengthy period in the CLE advocacy section, and he is the prominent writer of the submission we produced for the inquiry. There are a number of key issues that we hope to put across to the committee today. Maybe Danial can start off with one of the issues he has to raise.

Mr LAMING—I have a question before you start. You pointed out that you have an equivalent body in Alice Springs. So, firstly, how are you funded? Secondly, is the Central Australian Youth Link-Up Service completely unrelated to you?

Miss Musk—I have limited information about them.

Mr LAMING—Is the Central Australian Youth Justice Committee a spin-off of the Aboriginal legal service, which is basically another name for you guys down there in Alice Springs? Before we go any further, just so that we know the context, we need to know the structure and we need to know how you are funded.

Mr Kelly—Are you referring to CAALAS, the Central Australian Aboriginal Legal Aid Service?

Mr LAMING—Yes.

Mr Kelly—It is a totally separate organisation from NAAJA. As Shaleena explained, NAAJA provides not only legal services; there is a broader range of activities. CAALAS do a similar

thing but on a smaller scale. CAALAS and NAAJA are totally separate and they are almost 100 per cent funded by the Attorney-General's Department.

Mr LAMING—So there is no land council funding or anything like that?

Mr Kelly—No.

Mr LAMING—So you have simply evolved slightly differently. Is that the only reason for having different names? The two different centres do almost the same kind of work.

Miss Musk—We do pretty much the same sort of work. Before Aboriginal legal services went out to tender some years back, there was not just NAAJA but three separate organisations—NAALAS, KRALAS and Miwatj. NAALAS was the North Australian Aboriginal Legal Aid Service. KRALAS was the Katherine Regional Aboriginal Legal Aid Service. The Miwatj Aboriginal Legal Service covered the Arnhem region—Gove and the like. To strengthen and combine our resources and cut down on administrative costs, the three legal aid services combined into one—NAAJA. CAALAS remained separate because geographically they were best placed to remain separate from us. Representatives of the board were there, and they had a greater network. That is why they remain separate. We still have a good working relationship with them. We utilise mixed resources and we still have an annual meeting with them and Western Australia. So we share information and we often feed off each other, but we are very much separate.

Mr LAMING—Thank you.

CHAIR—Mr Kelly, would you like to make a comment?

Mr Kelly—I was formerly a solicitor with the North Australian Aboriginal Justice Agency. I am currently a lecturer in law at Charles Darwin University, but today I am speaking on behalf of NAAJA. We are very appreciative of this opportunity, we are very happy that the House has called this inquiry and we are very much in favour of this inquiry going ahead. We thank you very much for that opportunity. The written submissions we have made are quite comprehensive in response to the terms of reference you have set.

CHAIR—They are!

Mr Kelly—There are a number of particularly important issues, but there is one that I would especially like to emphasise with you today. That is, the solutions for the problems that we are discussing here do exist and are with the senior people in the remote Aboriginal communities that we are speaking about. I should have prefaced that what I would like to discuss really pertains to the Aboriginal communities in the Top End of the Northern Territory, which would be very similar to the Central Australian remote Aboriginal communities. But our experience and our submissions are based on those experiences.

As you would well know, there is a lot of dysfunction in Aboriginal communities, but that does not mean that there are not a significant number of extremely capable people who, given the opportunity and the facilitation, would be able to express and put into function the solutions for the things we are talking about. The greatest barrier to that happening is, in particular, the

executive not having successful or effective communication with those people in the first place. Obviously when I talk about the executive I am talking about the various departments, both at the Territory and the federal level, that engage—although the establishment of the GBMs, the government business managers, are a good attempt at overcoming that.

CHAIR—Although the advantages themselves are rather alarmingly different in their capacities.

Mr Kelly—That has proved to be so, yes. It probably could be noted that where they have an Indigenous liaison person assisting them who has been properly selected from within the community they have been much more effective. There are a couple—I will not name communities today, but no doubt you have come across them—that have achieved a great deal and others that are yet to do so. That type of model where there is a central and coordinated point for people in the community to come to government is a very good one. The next thing that has to happen is for the solutions to be drawn out. The solutions are not going to work so long as they are top-down approach from government to people in the communities; it misses the target every time. That has happened for as long as we have been Australia and is probably going to continue. There is no indication that it will change. The solutions are there, though, and the people are there and they have those solutions. It is a matter of whether those people are effectively consulted. I am not talking about a fly-in fly-out quick visit or writing a quick report and sending it in. I am talking about the effective ways of communicating with those people. In the first place, identify who those people are. That takes time. Then sort out the relevant groups that need to be consulted. These types of answers, for the overwhelming majority of communities, cannot occur at a community level. There are clans within communities that need to be incorporated into this. For nine out of 10 communities it will not be effective just to have someone from the community. There need to be the clans and the families within the communities who have been identified contributing and taking on board themselves the responsibility of working with government on this. The examples I could point out are numerous, but the one thing I do want to emphasise is that the solutions are there. They do require government to have effective listening skills and then to facilitate the people who have always lived there to implement those solutions.

CHAIR—It is interesting that a witness earlier today said he believed that government agencies had a listening disability. Possibly it would be useful if you could think of a good example or two.

Mr Kelly—The example that Her Honour Ms Oliver was talking about before, about the lack of youth diversionary opportunities, is an obvious one to someone who understands how things happen in communities and the ineffectiveness of the few opportunities that do exist in the odd place. Most communities do not have a youth diversionary system. At a very practical level, whoever the young person who is in trouble is, the correct person to conduct the youth diversionary activities for that offender is not just a government agency or even an Aboriginal person who an agency has determined is the employee, but it is dependent upon a blood relation to that offender. In most cases, that would be what is called an uncle. For these purposes, it is enough to just describe that person as the uncle. Essentially it will be a senior man and that person will be related to the offender. Relationships in traditional Aboriginal communities are what keep places alive. They are the currency. They are what is important, not government

programs, not even Centrelink money. It is family relationships. That is the No. 1 norm that controls people, that drives people, that keeps people functioning.

If I can make a correlation back to mainstream Australian society, if I were in trouble and I appeared before Her Honour, I would accept the punishment that Her Honour gave me because she is socially sanctioned by our society to do so. However, if I were to turn up to the desk of my friend here Mr Brock, I would not accept such a punishment, because he is simply not socially sanctioned to do so. That parallel can be drawn with the Aboriginal communities that we are talking about, because not everyone—and certainly not the people who have been employed, necessarily, by the government agencies to do so—are the correct people to run the diversionary programs. When I say ‘diversionary’, we could extend that to similar types of home detention or other types of community service arrangements.

How do we identify who those people are? The work is case by case. The people who would be conducting those types of diversionary programs or alternative types of sentence arrangements do not, in my opinion, need to be paid employees of any department, but they do need to be facilitated. So how might this be done? It might be the use of a vehicle; it might be the use of funds for food; it might be, if not the use of a vehicle, some sort of other travel provision. The typical arrangement for a punishment of this type is to remove the person from the main community, take them to an outstation for an amount of time and then for them to come back later. That might be one month, six months—it depends on the offence that has happened. All that costs money—to move people from one place to another and to keep them there without access to a shop and so on.

Those are the sorts of things that are effective and already do occur, even though the formal criminal justice system does not regularly engage with that. These things are occurring. I know the people who are conducting this type of taking young people out to outstations for a type of diversionary program. It is all informal and there is no support in any way from any organisation, government or NGO. But they are the programs that are effective, because those young people, mostly men, come back and have a changed approach to how they ought to conduct themselves in the community. They are the solutions that are already functioning. If they are going to support the formal criminal justice system then they ought to be facilitated or supported to do so.

CHAIR—Obviously, you are talking about Aboriginal communities in which there is some significant degree of traditional culture still in tact. We are not talking about what might happen in a regional town in New South Wales or what have you. Your point is that, especially in the absence of the possibility even of providing a lot of conventional diversionary or other services in remote areas, it is more important to find ways to engage with the traditional approaches.

Mr Kelly—Absolutely.

CHAIR—I take it that you would say that the propositions that you are making are contained within a wider idea that, wherever possible, Aboriginal people and Aboriginal organisations should have substantial influence of and therefore feelings of ownership about whatever is going on.

Mr Kelly—Yes, I would agree with that.

CHAIR—Certainly while we have in the Northern Territory, and indeed elsewhere, it has been very common for us to be told by Aboriginal people that their particular arrangement—and this may be an arrangement that has nothing to do with traditional law but rather an arrangement in a suburb of Sydney or Brisbane—is neglected by agencies in favour of mechanisms that are controlled elsewhere.

Mr Kelly—Yes.

CHAIR—Andrew, you would like to ask some questions.

Mr LAMING—The submission from the Chief Magistrate is a response to what you talk about as more culturally appropriate court processes. Her response stated that it would be wrong to compare the Northern Territory with some of the southern arrangements because in those jurisdictions English is predominantly used and they do not have:

the same entrenched complex issues that mark some communities in the Northern Territory. This bears little resemblance to circumstances of the Northern Territory and should not be considered a model necessarily capable of easy modification to the Northern Territory situation.

That was her response to circle sentencing, Koori courts and some of the things you have described. There is significant resistance at the highest level to what you are describing.

Mr Kelly—To what I am describing?

Mr LAMING—Yes, because of the lack of resources available, the more complex cases that are dealt with, the fact that English is the major language down south and the fact that Indigenous issues are only a small part of what their systems have to deal with. I might be reading this wrongly, but I sense there is a whole host of reasons why we cannot do what you have described. We need to rely on you to convince us that there is the resourcing or the ability to identify those key Indigenous figures, to have them at court at the appropriate time and to be able to set up a system in the Territory to make what you are describing as viable.

Mr Kelly—Firstly, I will give the other members of the NAAJA team an opportunity to speak.

Mr Brock—First of all, I have to point out that I was not involved in the composition of our written submissions, to my great regret. That is perhaps born of something that is very frustrating—that is, simply keeping my head above the water in terms of my case-load management has prevented me from any meaningful engagement with those written submissions. But reading them today, in a general sense, I wholeheartedly agree with that perspective.

On the point you have just raised, given that I was not involved in that process, perhaps the real value I could add to any inquiry at this stage is to provide some examples. I am very surprised that that comment in relation to the Chief Justice, as she then was, has been read in a way to suggest a degree of resistance. She is probably right in pointing out that clearly there is a range of different cultural assessments that need to be made from places like New South Wales or other southern states, or even those further north. I would be surprised if her intention was to indicate a resistance to programs like that.

The two examples that I thought I would rely upon are one involving the diversion scheme in remote communities and, the other, a participation in the community court scheme. I think at least they are tentative steps. I would only describe them as tentative because my suspicion is that they do not have the backing that they warrant, particularly financially, towards engaging some processes that Danial has identified.

The diversion example that I had used comes from Port Keats and involves a very young defendant of 11 years of age. He found himself charged with offences relating to an incident in Palmerston where he was living with his mother. His grandmother essentially intervened and has relocated him to a very small community, which I will not name, outside of Port Keats. She has engaged the local school in a very effective way and the school, much to their credit, has also engaged a paediatrician to make an assessment which has led to some very effective diagnoses—effective in the sense that some medication regimes have been implemented. This is all on the initiative of the grandmother and yet we still have a situation where we have sent three requests for diversion to be considered and at least at this stage we have no positive response.

I must admit that it is pleasing that recently I had a brief discussion which gives me hope. But for a young child of that age and the fact that the police discretion in relation to a diversion program being available is absolute—albeit the case that the court can suggest another reconsideration, at least at the outset of matters—means that if the police do not take that I am faced with a situation where on my instructions there needs to be a hearing run. For that to occur this young boy has to come back to Darwin to engage with the court process because the incident took place here. It exposes him to all the environmental risks that his grandmother so effectively removed him from and the grandmother essentially is an available point of contact to set up a very effective diversion scheme.

Mr LAMING—In Port Keats?

Mr Brock—Just in a little community outside of Port Keats.

Mr LAMING—I am trying to understand that: a diversion program just for him?

Mr Brock—Just for him in this case. My understanding of diversion from the police perspective is that it can be extremely flexible. The reaction we often get from remote centres in particular and I think from remote youth generally—and it is a theme that I heard her honour Ms Oliver relate—is that remote communities and remote youth are at a particular disadvantage in engaging with the system. But, generally speaking, many remote police officers feel that diversion is essentially extra work—where they can put a matter before the court without going through the diversion program, except that sometimes as a solicitor I might be complicit in it. You can seal the deal within a couple of weeks of a bush court sitting, rather than looking at a long-term prospect of a three-month diversion program that in this case perhaps focuses less on tasks for the child and more on supports for the grandmother in continuing the steps she has already made for this child.

Mr LAMING—Were you to get that diversion program, what would it look like in a remote community where he was the only person in a program? How do you deliver a program for one person?

Mr Brock—Thankfully in Port Keats an approach was made by our office because we would receive feedback that was not available as far as the police were concerned. That ran in conflict with our understanding of the legislation and after some inquiries we think it runs in conflict with general police policy. A service that operates from Port Keats has indicated a willingness to support such a program—Catholic Care. I do not want to make commitments on Catholic Care that have not been formally established but they have certainly indicated a willingness. In this situation it is one child but again the grandmother is bearing the bulk of the burden. It seems to me a very sensible solution that there becomes full support behind engagement, either through the Catholic Care or the police officers themselves for a diversion program.

Mr LAMING—So that might involve a social worker visiting two mornings a week. What is the intensity of it?

Mr Brock—It varies depending on the need of the child. In this case it has been suggested perhaps once a week. There have been various attempts at different alternative therapies—for example, music therapy has been suggested. But also particularly supporting what is already in place—just the fact that this child is regularly attending school. Sometimes I have heard of effective diversion programs, which is that the child needs to attend school—that is the diversion program.

Mr LAMING—Exactly. So if they are attending school and there is a supportive grandmother, why do you need any other program?

Mr Brock—Admittedly, my representations at this stage are that the diversion scheme that would be appropriate is a verbal warning in this case: ‘You have come close to being engaged in the system. You are lucky your grandmother is here and you get your chance to step back.’ If it were seen that, for some reason, the offence were more serious than that—indeed, the offence is relevant; it is quite serious—it could be effective in the sense that those issues have been addressed but there needs to be further work done, perhaps through Catholic Care, in identifying exactly why that behaviour is considered wrong, more than the idea that it is criminal and you go before a magistrate. Particularly for an 11-year-old, it has no meaning. That comes back to what Danial said. It particularly has no meaning when the person trying to explain it is not relevant in the context of that child’s life.

CHAIR—But, after all, if an 11-year-old kid did something very bad in a metropolitan area and went to the Children’s Court then it is quite likely that the magistrate or the legal representatives or someone would bring forward a grandmother who knew what to do and the magistrate would lay down some conditions. It is not that different.

Mr Brock—It perhaps is not, but I think there is a difference, particularly in a remote setting, particularly when we are faced with the choice that, until that course is essentially available, then this child needs to return to Darwin for those court proceedings, and that is a great frustration. It seems very pointless.

CHAIR—I am getting worried about our time. I know that you have got a great deal more that you can say. By the way, we are acknowledging that you have written a very comprehensive submission.

Mr LAMING—Did Chantelle write it?

Miss Bala—Like Josh, I did not have any involvement with the writing of the submission, unfortunately. I commenced employment with the North Australian Aboriginal Justice Agency in October 2008 and my initial initiation into NAAJA was being placed into the Youth Justice Court fairly intensively for a period of four or five months before I then handed over to someone else, and I have intermittently gone back.

My major concerns with my time in the Youth Justice Court up here in the Northern Territory were primarily focused around our unique Northern Territory system of not banning publication of names of youth offenders and the flow-on effect when it gets picked up in the media in our local newspaper. Shaleena Musk has a wealth of experience on this and has worked in different jurisdictions where this is not the case. When you are presented with a youth in detention, very often you are the only resource available to that youth when they have hit that stage where they are at the court, and it is then up to the NAAJA lawyer to take on the role of social worker, to liaise with schools, to see that they are in the good care of the department, to liaise with FACS and to try to implement all these strategies into a young child's life. I think what that highlights is the absence, as Ms Oliver was talking about before, of any concerted, coordinated effort. Shaleena was telling you that when she worked in Western Australia there was actually a dedicated juvenile justice team that filled the gap in all of those services. As an Aboriginal legal aid lawyer it places a great burden upon you when you do not have assistance.

CHAIR—It seems to be an issue that is really much more straightforward than most that we are talking about, because in most jurisdictions there is such a person and a separate children's magistrate.

Miss Bala—But they were the two main issues in that. There is a provision in our Youth Justice Act where you can, for example, apply for a suppression order for the non-publication of the names of any children, but in my whole time at NAAJA I have never once had the court, of its own volition, make an order to that effect. I think it is really a system where the onus is placed on the defence lawyer to provide a court with good reasons why it is not in the best interests of this child's rehabilitation for a publication or non-publication order to be made. In my time there have been front-page news articles about publishing the names of children and details of offences which have spiralled into very big, heated, polarised public debates, with letters to the editor et cetera. That was always something that weighed very heavily on my mind when I was in the youth justice court—that I constantly had to make these applications and be at loggerheads with people to fight for these orders to come in to make sure that my client's privacy and best interests were protected and it would not be reported in the next day's paper.

Mr LAMING—Can I presume that most of you have done significant time in youth courts—in that, as you were saying, initiation process for working in NAAJA? Do you all have some experience with that?

Mr Kelly—Not me, no.

Mr LAMING—Okay. I want to ask all of you a general question about conferencing. In the southern states we have heard about the benefits of sitting in a non-threatening arrangement where respected community elders are part of a discussion, instead of a very Western notion of a

court appearance. The person is briefed in their own language so they can fully understand why they are there, what is going to happen and what their options are, before they are thrown into a court setting. There was also the notion that conferencing or Koori court was getting better results in Victoria and possibly Queensland. My question is: when you were in these situations, did you often think, 'This court process could work better,' and, if so, how could it?

Miss Bala—As far as my experience of the Northern Territory courts goes, the responsibility of finding interpreters falls upon me if my client requires that. The court does not seem to take any proactive role in facilitating that, whether we are sitting in Darwin or in, say, a community court in a remote community. It would certainly assist your client's understanding. I heard the tail end of Ms Oliver's comments, and she is right that we are very much hamstrung, in the sense that it is sometimes difficult to find interpreters and they are not readily accessible. There are often delays because of it.

Mr LAMING—Can I clarify that an interpreter is different from a respected community elder who potentially speaks both languages. Interpreting services aside, where is the pressure to have someone from the community present at court appearances coming from? You have sittings in Borroloola, Timber Creek and places like that.

Miss Bala—Sorry, I misunderstood your question.

Mr LAMING—Interpreters are important, but what about a senior community person who would be respected by the defendant always being present?

Miss Musk—Our office, NAAJA, have put in numerous submissions to the Attorney-General about trying to reinvigorate the community justice plans that existed in the past. One that comes to mind is Lajamanu, where there were a lot of resources expended, and the community identified elders as having a role. Elders were part and parcel of the court circuit every time it went out there. They were also involved in diversion programs and minor community disputes, in settling issues before they became greater issues. We know that in Yuendumu—you will hear from CAALAS soon, and they will raise it—they have elders sitting in court every time there is a sitting out there. The magistrate effectively invites the elders to participate, to provide information about the background of the defendant and their family and provide options for, say, discipline and maybe a rehabilitative process that they can put in place for a particular order. Those things work, and that is why I said you will hear from CAALAS about how well Yuendumu works.

We were saying as part of our submission—and it has been an ongoing process and we keep getting knocked back, that we think that these community justice plans work—not only in the Koori Court or community court option but as an ongoing alternative to the western criminal justice system, and they can be incorporated in the western community justice system by virtue of the court sittings and the alternative diversion process with influence from the police. I think they do work, and I have identified elders in most of our communities. We have already put in submissions asking for us to be facilitators in this process.

Mr LAMING—Without being too mercantile about this, and you will probably say you should not need to pay for this, what if there were an appearance fee of \$100 if it is in the community or \$500 plus free transport if elders have to travel, to be absolutely sure that they are

always there at every court hearing? To me, that would be money reasonably well spent compared with the cost of incarceration. Would that increase in any way the likelihood that there might be two or three elders who would travel up, knowing that there would be perhaps two days of sitting in a major centre and to get them there?

Miss Musk—I do not know if you can just simplify it like that.

Mr LAMING—I am just trying to find a simple way that you would always have conferencing with senior trusted, respected people in the room.

Mr Brock—I will very quickly throw out an example. I do not think it answers the question directly. It is a personal rather than an organisational belief that remuneration is perfectly appropriate for that kind of role. My experience out on Tiwi Islands, where I was involved in a community court—somewhat removed from the thought that you are having—was a very effective one and there were a number of elders who were essentially requesting to be available for those courts. There was a great deal of enthusiasm for that potential, and I found it very effective not only in that sense but also in the youth having to answer to what are classified as victims, who also have an opportunity to speak. I think that has a profound impact on the youth. Also my conclusion was that the elders' approach was probably much harsher than I anticipated. So it is not a soft option.

CHAIR—I had something to do with circle sentencing courts in New South Wales, and we were quite disconcerted by that same circumstance. Do I understand, Danial, that you wrote the paper?

Mr Kelly—I was the primary person who wrote it, with assistance from other NAAJA lawyers.

CHAIR—It is often difficult with our inquiry to keep a proportion between specific and technical issues on the one hand and general and strategic issues on another. That is often the case in the real world, isn't it? What I notice is that your paper is actually infused with the idea that nothing will work unless Aboriginal people have more control and ownership over the circumstances of the delivery of the justice system and diversion from it. We all know that the best thing to do is to do what we can to prevent kids getting into it in the first place, even though we are not quite certain how successful any program is for stopping kids getting into it. We discovered again today how little research there is on quite crucial issues. Nevertheless, there is now a fairly persistent theme in much of the evidence that has come before us in the Northern Territory, and that is that government, and not least the Commonwealth government, is just kind of unable to talk to Aboriginal people in a way that will actually lead to that circumstance in which they do embrace the system and the need to keep kids out of it. Because we do not have much time, I would be grateful if you might expand on that idea, explain those ideas to us in ways that might be helpful from the perspective of what we as a committee will say to government ministers.

Mr Kelly—Okay.

CHAIR—We are talking about an issue that has hung around forever and that seems to be well enough understood in, say, our foreign aid program, where everybody proceeds with the

idea that you find ways in which to develop a community and let it take control of its own destiny. But we do not do that domestically, and we sort of systematically do not do it domestically. It is a matter that is not particularly owned by any political party or any particular government department; it is a generic and persistent problem. I am really interested in what you think about what we might actually do.

Mr Kelly—Thank you. That is a very good question. I will have a go at answering it and, at the same time, answering Mr Laming's question before about how this might look on the ground if there were a juvenile who had come into trouble with the law. In the first place, if police are exercising their discretion then there would be the opportunity to take this before the criminal justice system or to deal with it in another way. If the police had this knowledge then this type of diversionary program could occur—that is, to discover the child's moiety and discover the appropriate Dalkarmirri man if this were, say, in the context of Arnhem Land. That is a type of judicial officer in the Yolngu context. We could ask that person who are the appropriate elders for this boy—it is most likely to be a boy—to advise on punishment and correction and so on, and to convene that meeting. But that is all knowledge that comes about after one has properly listened in the first place.

How might this happen? The knowledge does exist, as I said in the beginning, and there are non-Aboriginal people who have some understanding of how this can happen as well. Some of that knowledge exists at NAAJA among us up there. Some of it is here at CDU and in other places as well. It is a genuine listening that comes before a successful program.

I have the benefit of a couple of years working on a couple of AusAID programs in Indonesia, so I can speak from that side of the fence, since you mention it as well. In those cases, Australian people are properly funded to be in the local context on an extensive timescale—two years or more—to (1) learn the language and culture and (2) know how to operate in culturally appropriate ways in those communities. Then programs can occur successfully.

Sorry for sounding like a broken record on this, but it is about government being able to listen. That listening does not occur by convening a meeting in the sort of format, for example, that we have here today. That works fine for us, because we are culturally used to that, but in the remote Aboriginal contexts that is not the method of having successful communication. Again, if we wanted to have this inquiry out in an Arnhem Land community, it would be about finding the appropriate Dalkarmirri men in that community and asking them to extend the invitation—not from us—to the appropriate people. You will get all the appropriate people at that meeting, they will turn up without fuss and that will work for that clan. In that community you may need to do that a couple of times, depending on the community and the number of major clans there. Again, it comes back to effective listening and putting people—

CHAIR—I think you are saying, too, that the process you are describing could link into a community court of a conventional nature once everyone understood how things were working. In other words, you are not saying we should abolish magistrates of the sort that we now know; you are asking that the magistrates oversee a system in which the understandings that you are describing have been achieved.

Mr Kelly—All of the senior law men in the Top End, in the Northern Territory, that I have spoken with—and that is a number—want to have the two systems working together, white and

black. In fact, I have seen that with Ms Oliver. We held a community court in Numbulwar, which I attended and assisted in getting the right people there. When the right people are there, the effect upon the person is many times greater than having outsiders who are not connected to that person's life dishing out the sentence.

CHAIR—If that is the case with the legal system, how would you suggest, in a generic way, a government department might behave as it was working out what programs to fund and how to fund them? You said before that you thought the appointment of the government business managers was a step in the right in the direction. If we are to have a system by which any Commonwealth, state or territory government is to decide on what programs to support, there has to be some kind of an understood procedure which is not too separated from the kind of bureaucracy that we all know and it has to be able to operate a system which provides money on a basis that there is some kind of accountability and all the rest of it. The problem is in finding a way to work out what programs should be funded and then how to keep them accountable. The accountability is easier to deal with—and there were some good people from the Menzies school talking about that earlier today. Can you describe a process in which a government would identify the best kind of diversionary program to fund and put in place in Yuendumu?

Miss Musk—I just went to a meeting with the regional operations manager to do with the closing the gap agenda. We heard that quite a number of Aboriginal communities—I think 29—are targeted and there is going to be this all of government approach, with the Commonwealth, Territory and the shires working towards what the underlying issues are. There are community safety plans and justice comes into it. I have been told that they are going to work this out: that the community, in consultation with government, shires and relevant people, will identify the issues and work out the great plan. I think they are already on the right path—do not get me wrong—but it is with some cynicism that I say that.

CHAIR—The question still remains. Everyone has a desire to do it, but the question is: what is the actual process that ought to take place? What are the skills that should be brought to bear to answer the question. It is a matter of goodwill that people are trying so hard to find out what the problems are and what the solutions are, but it is all pointless if somebody just comes in and tells everybody else what the problem is and we begin another cycle of only barely relevant expenditure.

Mr Kelly—In a generic way, the answer does lie in having people involved who have cross-cultural and intercultural skills—they might be Aboriginal people or non-Aboriginal people but, either way, they will be competent in both cultures—and then for the government department to take their advice, rather than put it aside or not have the preparedness to attempt it, because many of the solutions will not look like things we currently see as solutions, but they will be effective.

CHAIR—They might not cost much either.

Mr Kelly—I think we mentioned before that it is not necessarily about throwing more money into the mix. It is about listening effectively and then being prepared to try methods that would seem unconventional to someone from, say, Melbourne or Sydney.

CHAIR—I am sure we have to stop. I notice that in your paper you gave support to the Cape York initiative too—the Family Responsibilities Commission. You thought it was a valuable model, which is very interesting.

Mr Kelly—The point on that is that—

CHAIR—And you like the Balunu Foundation, which we have been talking about a lot in the last two days.

Mr Kelly—Yes. Just a point on the Cape York one, though—we are not speaking on behalf of Aboriginal communities. The invitation there was to take that model to Aboriginal communities and see if they would be interested. From my position, I think a number would.

Mr LAMING—I also know that there are plenty of communities involved in that trial up there who would not necessarily speak highly of it, unfortunately, so there are always those tensions.

Mr Kelly—Yes.

Mr LAMING—You made the very good point about intercultural and cross-cultural issues, but you have also got the intergenerational issue. We have just talked about having elders involved, but we need to make sure that there is actually respect for elders from some of those involved. We cannot always assume that is the case?

Mr Kelly—Oftentimes, government will come in and consult and go. The elders give their opinion and information, but that is not implemented. The elders come away from the meeting with the idea that, ‘Oh—this is going to happen’. So they tell their families and the word goes around the community that this is going to happen. That does not happen, and so the elders lose face. So elders are very weary now of giving advice because of that reason.

Mr LAMING—They do not want to get exposed to it.

Mr Kelly—That is right. But there is still lots of goodwill in Aboriginal communities to work together with government. Mr Debus’ questioned before if the existing machinery can work—yes, it can, but in a collaborative way. That is what all the senior law men talk about: two systems working together.

CHAIR—Yes.

Mr Kelly—That is not just in a strict legal sense, that is more generally.

Mr LAMING—As we finish, can I just get you to confirm that my concern about what the chief magistrate said is not warranted; that you would be strongly in favour of a more conferencing approach with more use of local language and more engagement of local senior people, that you would be prepared to pay to ensure that they are there and to have a less adversarial, mainstream and hierarchical process which we would think of as being a court process. Are you prepared to support that shift?

Mr Kelly—I would hazard a guess that those comments by his honour actually suggest that the down south model ought not to be imposed upon us in the Northern Territory but rather the Northern Territory ought to develop its autochthonous methods—community by community, if required.

Mr LAMING—It has had a long time to do it and has not done it, so the question is either: is there a sense here that it does not work, or a belief that there are not the resources to do it?

Mr Kelly—The community court is a fairly recent development here in the Northern Territory. It has only been going for a handful of years—

CHAIR—Quite recent, yes.

Mr Kelly—But it is growing, and there have been fantastic results.

Miss Musk—But some magistrates are not interested, and they will refuse an application.

Mr Kelly—Definitely, I think the community court approach is fantastic and ought to be supported fully.

Mr LAMING—Can I ask you the provocative question: why is the community court not the only way of doing it: that becomes the Northern Territory court system? You have just made the case—82 per cent of it is Indigenous—

Mr Kelly—Sure.

Miss Musk—The intervention legislation prohibits it—it is basically taking in without customary law to mitigate sentence. The whole flavour of the power the intervention has gone about the way the government has been—

Mr LAMING—That was all before the intervention though. That court decision was—

Miss Musk—The legislative changes have very much favoured the way the magistracy operates.

Mr Kelly—Practically, it is very time consuming. A matter that might be dealt with in the regular system may take 20 minutes and it may be half a day in the community court.

Mr LAMING—But you do not need to have the magistrate sitting there for half a day. A lot of this conferencing can occur and then be brought to the magistrate once you have had a significant discussion outside. The people involved in the conferencing say that the most valuable part of this is the discussion we have in the corridor, not the time in front of the magistrate.

I know you are trying to wind up, but can you see where I am going? We do have to have a pretty strong recommendation from you guys as to whether you are in favour of that general shift or not. I have mentioned this idea about paying for appearance but I cannot make that as a

recommendation if you say after this hearing, ‘Actually, that is probably a bad thing because you should not have to pay for that kind of thing and elders would not want to receive money for it.’

Mr Kelly—That conferencing is also very labour intensive, whether or not the magistrate is there. It still requires others, such as the solicitors, and often our travel requires chartering small planes. It is very expensive.

Mr LAMING—And having limited time.

Miss Musk—It is the quantity. We have up to maybe 50 or 60 people on a two-day circuit. We would love to do community court for all these people, because again it is about recognition of the strength of the customary law and respect for the elders and making it meaningful to our people. I have been a community court which took four or five hours, and that is one person. I just do not think they have got the capacity.

Mr LAMING—Then we need to look at your models, potentially, and you need to tell me if it is not possible. I am a surgeon, and I am in the same situation that you are in, having so many hours, but I send out an advance team and they do all of the work of case finding and preparation and they do not need the skill of a surgeon to do it. So who are the people who can start the conferencing process without western-trained lawyers?

Miss Musk—I think that was the sort of model they had in the Lajamanu plan—I do not know if it was Lajamanu but it was another court as well. They used to provide a page saying, ‘This is what we know about the youth, these are our recommendations.’ They used to do a handwritten letter that just got tendered, and that was the community input into the process.

Mr LAMING—Which is better than nothing.

Miss Musk—And it was fast-tracked. It ensured that the most information was going through.

Mr LAMING—That is an area that we are really interested in.

CHAIR—But anyway, if you have got some diversionary programs in remote areas, the magistrate can stick people in there quickly. The magistrate can do it.

Miss Musk—But again, diversion comes through police. It has nothing to do with the courts.

Mr LAMING—Would you like to make a small supplementary submission on that particular topic, given we are running short of time?

Miss Musk—Yes, very much.

Mr LAMING—You have just touched on some good ideas there from Lajamanu, but how can we find innovative new models to make it possible, even though we have scarce resourcing as far as legal capabilities go?

Miss Musk—We can do that.

Mr LAMING—If you would like.

CHAIR—Thank you very much.

Proceedings suspended from 3.11 pm to 3.21 pm

CARROLL, Ms Antoinette, Youth Justice Advisory Project Coordinator, Central Australian Aboriginal Legal Aid

O'REILLY, Mr Mark, Principal Legal Officer, Central Australian Youth Justice Committee

CHAIR—Welcome, Ms Carroll and Mr O'Reilly. I need to mention a couple of things to you. The proceedings are being recorded by Hansard and unless you say otherwise we will be reproducing the conversation we are about to have in a transcript and then on the committee website. We normally would have an introductory comment from you, and then we will engage in some discussion and questions and answers.

Ms Carroll—You have two submissions, one from CAYLUS and the other from the Central Australian Youth Justice Committee, which is a committee I also sit on and which is made up of representatives from government and non-government agencies in Central Australia. That has been established effectively since 2003, and basically the aim of the committee is to look at the processes in the criminal justice system in Central Australia.

CHAIR—Do you wish to make an introductory statement? You do not have to.

Ms Carroll—I should mention that I also chair the Youth Justice Advisory Committee for the Northern Territory Government. I do not need to make an introductory statement; I am happy for you to refer to the submission.

CHAIR—Would you like to make a statement, Mr O'Reilly?

Mr O'Reilly—I do not need to do that either unless you would like that. I am happy just to rely on the submission that we have put in and answer any questions and raise issues.

CHAIR—Okay.

Mr LAMING—We have just had a discussion with NAAJA, and I want to follow on with some discussions that we had about the structure of courts; the Northern Territory's attitude to what we call conferencing; the introduction of more use of local language in a conferencing process; having senior respected Indigenous leaders from the clan group or community of the defendant present; the potential to have pre-hearing meetings and conferencing where communities decide about their views on what would be appropriate treatment for defendants in the court proceedings; having plain-clothes police present to be part of the process; a less threatening environment, with magistrates being seated at the same level; having a better understanding of how defendants are informed before they enter the courtroom; and having a better understanding of what they have thought and understood about what they have just been through. In that whole idea of reforming the court process, are we limited purely by resources or are there some other considerations that we would want to hear about from you before we might recommend that that occur in the Northern Territory?

Miss Carroll—That is fantastic in that it seems as if everybody is on the same page. My role specifically is to support young people and families who are involved in the criminal justice system. The position itself is the only kind funded in the Northern Territory. Obviously we have clearly identified that there is a serious breakdown in relation to the juvenile justice system across the board. One of the things that we have been advocating for a very long time is specialist training. Everything that you have described in terms of a community court setting is definitely the way forward in terms of how young people are processed in the courts in Alice Springs. As it currently stands, it is a very formalised process. There is no specialist training for magistrates, prosecutors or correction workers. There is very little scope for looking at conferencing due to the lack of trained facilitators. So we are certainly very behind in terms of national children's court processes. Resourcing would definitely be an issue. However, some of the goals of the Youth Justice Advisory Committee, CAALAS and CAYJ have been to try to push for a more relaxed setting and not get bogged down by the resourcing of it but look at how practitioners work with young people. So, even as a starting point, it is looking at specialist training for magistrates, court officials, corrections workers and lawyers across the board and then looking at location—the court setting—and how community members would then be trained appropriately—because that is a really big process as well in terms of conflict for certain community members.

Mr LAMING—So training is one area. Let us also focus on potential investment of money if these were to be recommendations. I want to ask first about this: if we have only a limited number of magistrates, lawyers and defence lawyers, how can we devolve some roles in the pre-case preparation to justice committees within communities so that communities have already had a discussion about individual cases in an appropriate way to reduce the need to have a lawyer or magistrate sitting in four-hour sessions for community court hearings? That is role devolution. The second issue is pre-preparation. There might be a justice committee report prepared by a community prior to a case so that you do not have to start from scratch as people are pushed through a court hearing that is rushed. The third issue is the use of appearance fees—payment to community elders to help them with the costs of being at court if having their presence is an issue, not just for interpretation services but for having the appropriate elders from communities present. Without them, there cannot be a hearing conducted.

Mr O'Reilly—I will make a point right at the outset. The situation in Central Australia is very different to what it is in the Top End in terms of how far along we are with any of these processes. We do not do any pre-court conferencing for juveniles in Central Australia. That is something that we have raised at the court at youth court users forums, and in principle there has been a recognition that it would be a good idea, but that is all that has happened; there has not been any move towards that. There has been some discussion about who might be the appropriate person through the courts to convene and organise conferencing, and we are about to try to raise that issue again with the courts here.

We do not do nearly as much community court work in Central Australia as they do in the Top End, and that is again something we have been pushing for and trying to facilitate. In one community, Yuendumu, we are doing regular community courts. Mostly they do not involve youth. There is scope for them to involve youth, but mostly they do not. That is not just a resource issue; that is an issue of local interest to some degree. There is a community courts magistrate in Central Australia who recently said in a meeting that he does not think community courts work, so there is not great judicial will for it to happen here.

What is happening at the moment is that there is a look at trying to do something in Tennant Creek that specifically involves youth, but it is designed as a kind of bail program. We are still exploring it. It is only on paper at this stage. It is designed as a bail program and it seems to have a potentially punitive focus. That is something we are in the process of discussing with the court. So we are not in a position where we are talking about even appropriate elders and community conferencing prior to community courts. We do not really have them in any real sense for young people in Central Australia.

It is partly a resource issue, but that is not completely it. There is a culture here that is different from that of the Top End. Antoinette referred to issues about specialist training for magistrates. My understanding is that in the Top End there is a magistrate who has a role in coordinating at least the Youth Justice Court and has some special role. There is none of that in Central Australia. The court here has only relatively recently started to sit separately from the adult court. That was something that our organisation pushed for some years to try to achieve. It still happens in a very formal kind of way. Practitioners out there are uniformed police. There is not a lot of interagency involvement in that process. We do not have a separate Youth Justice Court building here. So there are a lot of pretty fundamental issues that have not really been addressed. While the Youth Justice Act envisages that they can happen, they do not happen on the ground.

Mr LAMING—Can I just interrupt. I need to know this: when you say something does not happen, are you recommending that it should or are you giving an explanation of the good reasons why it does not?

Mr O'Reilly—No, I am recommending that it certainly should. We have the resources within our organisation to get involved in youth conferencing and to help to facilitate that, and we represent the vast bulk of youth in court here in Central Australia. It is something we have been agitating for with the courts, and we have written to the court about it and raised it at youth justice forums. That did not translate into any particular outcome.

Mr LAMING—Thank you. Quickly moving through those other issues, is there a role in that pre-preparatory phase to use people less skilled than legal graduates, who are obviously in short supply in what is a complex and time-consuming process? Is it possible for social workers or other trained Indigenous people to lead that conferencing process? What level of skill do you need to do what you are describing, a form of devolution of roles down from lawyers and magistrates?

Miss Carroll—There is a major push on at the moment about how the community justice centres could play a role in terms of mediation, in particular, family focus mediation. There is nothing to suggest that that could not go through into diversionary practices. For young people who are on diversionary programs, it is somewhat different to other states in terms of the way other agencies are involved and the types of mediation, family focus conference and victim-offender conferencing that take place as well. I know there have been reviews of that in the past, but we are still unsure of exactly what the process is for a young person who is, say, on diversion.

Mr LAMING—Can you tell me what level of skill is required to run a community justice centre in a community, say, the size of Yuendumu? Would you need a solicitor there to do that full time, which obviously is prohibitively expensive?

Mr O'Reilly—I do not know that you really would. There are some good resources out in these communities. Yuendumu, for example, is close to the Mount Theo program, which runs well out there, and I am sure they could play some sort of role in conferencing. I think you are looking at mediation skills rather than legal skills at that stage. It could well be part of a whole diversion program. Diversion here is pretty rudimentary; it does not really often address the needs of young people and it does not really take a very soft response to the situation young people are in.

Mr LAMING—Are we looking at compulsory jury duty, where it becomes mandatory, or are we looking at professional jurors, where we are actually paying elders to be present? Is there any need for recommendations around that to make absolutely sure that there are appropriate senior people represented at the time that these defendants come to court? We have decided that it is such an important part of the process, and we do not want to have these defendants completely isolated and represented only by a Western-trained lawyer doing their best with an interpreter. If we say that we can do better, is there a need to pay to have that capacity at our court hearings?

Mr O'Reilly—There are different schools of thought about this. Some of the best things that have happened out at these communities—Yuendumu, for example, and other communities—is that community justice panels have sort of evolved on a voluntary basis. People have become involved who are generally interested in these issues and who have the interests of the community and their people at heart. That is a very precious resource. There is a very good argument in terms of recognising their time for lots of reasons, not just because of the fact that it potentially builds up some expertise and a different level of commitment but also because it is a recognition of the valued role in the community. It is a difficult issue.

Miss Carroll—More importantly, because of the isolation and remoteness, that ongoing professional development is really important. So reinvesting in community members being upskilled, for want of a better word, is also really important.

Mr LAMING—Thank you.

CHAIR—We know from your submissions, amongst others, that in Central Australia, other than the program at Mount Theo and the other one, which I think is called Ilpurla Outstation, there is precious little facility for diversionary programs at all. It is also fair to acknowledge that it is pretty hard to provide intense opportunities for diversionary programs across the vast reaches of inland Australia without any way involving the development of programs that the communities themselves can actually conduct. But, for all that, there is this obvious program about which just about everybody involved in the system—except possibly for a few dinosaurs—agrees that we need to have more diversionary arrangements at several stages in a person's potential progress through the criminal justice system. What are your ideas about what more might be done immediately if we had even a little bit more money?

Mr O'Reilly—The answer to that will probably come with some detail, but can I make the point that it is true that it is very difficult to service these remote communities, but we are also talking about Alice Springs. There is not much in Alice Springs either, and it is a sizeable community. If there were something that was rigorous and organised and well established in Alice Springs, there would be no reason why, to some degree, you could not get diversionary

programs that could travel. You are not talking about vast numbers of juveniles being before the courts.

CHAIR—That is the other thing, isn't it. They are tiny numbers compared to Sydney or Melbourne.

Mr O'Reilly—Yes, they are. There is a culture here that is used to people with these sorts of resources travelling and visiting communities. It is not ideal but given those geographical issues it would be better than what is on the ground at the moment, which is nothing. You could start with some real initiatives in Alice Springs and then see how they translate to communities and how the resources based here could be used. Antoinette is probably able to talk about some of the specifics of what is on offer and what might work.

Miss Carroll—In terms of that resourcing, with sentencing options, for example, we are looking at diversion or community correction sentencing options. As Mark highlighted, in Alice Springs we actually do not have many community work orders. Young people in the department of corrections are currently treated in exactly the same way as adults are. There is no recognition of young offenders. We have no corrections workers who are specially trained to work with young people. Clearly there are other models of diversionary programs that are really effective nationally that also work specifically with Indigenous young people. I think resourcing and adapting and translating some those models to central Australia would be very easy. As I said, we do not have that either.

It is quite ad hoc. Everything in relation to how young people are processed, ranging from the courts, diversion, corrections and policing, is incredibly ad hoc. As a result we often see young people coming before the courts time and time again and there are not many processes to look at the overarching offending behaviour. Engaging immediate and extended family is a crucial process here as well. As Mark was saying, the resourcing is an issue, but it is also about being creative about some of the programs that we have on the ground that could be built up.

CHAIR—It does cross my mind, however, that the government is spending lots of money on the Closing the Gap process and that is going into education, housing and health. Would it be your recommendation that a little bit of it went into the justice system for these kinds of purposes? It is true that the Northern Territory government often has resources that are stretched for good reason or, to put it the other way around, has difficulty resourcing particular programs because there is a lot of land and only very few people. Why shouldn't we use some of the Closing the Gap funding for this kind of purpose?

Miss Carroll—In terms of the Alice Springs Transformation Plan, which is quite a huge process, there actually is not anything on there for youth. Youth have not even been identified.

CHAIR—Is that a Closing the Gap program?

Miss Carroll—To my knowledge it is. It is a 22-point plan that youth have been completely relegated from. There are some initiatives at the moment currently happening with the Northern Territory government in relation to young people, but they are not necessarily addressing the long-term issues of young people coming through the criminal justice system, their offending behaviour and being creative about program development, particularly around engaging key

elders from the community to participate by looking at how young people are after hours, at recreational activities and all of the above that can lead young people into offending behaviour. So we are still very far behind in terms of being creative about that.

CHAIR—Both of you had observations about alcohol, drug use and mental health, which obviously are quite closely related to the matters we have already been discussing. It would be useful if you could give us your thoughts on those particular problems.

Miss Carroll—When a young person has come before the courts or has come to the attention of family and children's services, where it is very clear that there are substance misuse issues and family breakdown issues, it is a generational cycle. We are now looking at some family support services that may help, but if a young person comes before the courts we can clearly demonstrate through our data at CAALAS that often their substance misuse issues have led to their offending behaviour, but over many years the overarching substance misuse issue has never been addressed. For example, they have never had the luxury of accessing appropriate treatment or rehabilitation programs. That is a really significant issue for young people.

Mr O'Reilly—And the same is true in relation to mental health. Amongst the mental health services here there is no youth specific mental health service, and I know that the mental health unit at the hospital has real problems in terms of being able to cater for young people. Just in terms of housing, for example, there is no specific place to house mentally ill young people who are committed, say. They tend to use the high dependency unit here when they need to separate a young person from the rest of the population within the hospital. That is something that is being looked at and steps are taken to address that, but that is a resource issue as much as anything, I think.

Miss Carroll—If I could just make one last point on that as well—because I have been in Alice Springs for 10 years—the correlation with the young people who came into the court system with substance misuse issues who have then gone on into the adult system with the same issues is quite large also.

CHAIR—Your colleagues from the northern half of the Territory have just been speaking to us at some considerable length about the ways in which they believe government agencies should attempt to relate with the traditional elders that you have just mentioned, Antoinette. They have spoken at some length about what they believe to be the necessity of finding better ways to allow Aboriginal people to have real influence over, or indeed control of, programs that are being established so that indeed they may embrace them and ensure that they are used effectively. Obviously you have some ideas of your own in that respect. I would quite like to hear what you think about that. As we have been saying in plenty of other contexts, our foreign aid program has no difficulty with the idea that you should, if you wish to help a disadvantaged community, assist it by building its capacity to help itself by giving it ownership of the programs that are consequently introduced, but we seem to have a lot of difficulty introducing exactly those principles into equally poor communities on the continent of Australia.

Mr O'Reilly—A good example of that is that Mount Theo and Ilpurla that have been referred to are examples of two programs that work and they are both organic programs. Mount Theo arose out of an outstation from Yuendumu where local families recognised the needs of particular young kids and, on a voluntary basis I understand, started taking people out there and

trying to deal with them in relation to petrol sniffing, and the same happened with Ilpurla. Over the years there has been recognition that those places were actually achieving something and so there has been funding poured into them. But I think they are successful because they work in the local area and they have come up from the local people who know what their needs are and what works. The offshoot of that is that Mount Theo is still a place which deals with Warlpiri people in Warlpiri land, and it seems to work.

CHAIR—I gather, indeed, that people come from over the border to it. People in Fitzroy Crossing were talking to us about it only a few weeks ago. I should know this, but am I right to think that there is federal government funding in Mount Theo?

Miss Carroll—Yes there is. In terms of solutions for remote communities if you look at the trends of offending behaviour for young people in Alice Springs—and we have seen an escalation in some ways in some violent offending—one of the things that we can clearly identify is that local family connection; so, peer pressure for young people who are offending with family members. What would help is, for example, someone in the community just to centre initiatives that would lead to family group conferencing taking place and for families to play a really strong role.

On the ground, when I speak to families at court they are very distressed about the offending behaviour of their young people. It also causes fractious relationships because of non-association orders for young people and their families. So it ripples through to really affect family members. One of the focuses here at a local level could be to look at family group conferencing. Some of the models that currently exist in South Australia have been very effective. Again, it would not be resource intensive to adapt that. It would mean looking at having appropriate facilitators who can support the process.

CHAIR—There is another subject about which you have spoken to a degree and about which others have spoken. It would be valuable to hear from you specifically on it. You said in one of your submissions:

It is our experience that youth justice presently operates in the Northern Territory in an ad-hoc fashion and is under-resourced, culturally inappropriate and not youth specific.

That is a pretty comprehensive statement. You go on to say:

We believe that this leads young people being treated as ‘little adults’ in the court system, in contrast to other Australian jurisdictions.

It leads me to ask in that context: if we are to close the gap, would you agree that dealing with that issue is as important as many others? Do you think that that is as important as improving the education system and the health system directly for the purposes of improving the circumstance of Aboriginal people?

Ms Carroll—Yes, I do. We have a growing young population in Central Australia. As it currently stands, if we do not address the youth justice system, from my personal experience of working in other jurisdictions I can only see it getting worse. The punitive approach that the courts currently take is not very helpful. As I said before, we do need to be more creative. We

need to look at what other jurisdictions are doing to involve family and to involve community. We are a small community. It is very interesting to track families who have generationally been involved in the criminal justice system. Clearly that would lead one to believe that the family need support.

Mr O'Reilly—The other aspect of that is that if you deal with issues through the youth justice system effectively it often means helping people re-engage with education and health. Those things are very much linked. They are things that are passed on. If you can get a young person back on track and reconnected with education and health that pays off down the line with their own children.

CHAIR—Mark, I have a specific and more technical question for you. In many places where we have taken evidence, lawyers and judicial officers have drawn attention to the special problem that is associated with driving offences and the failure of many young people to have a drivers licence. In many places it seems that these kinds of licence offences, associated with traffic charges, are a pathway into the prison system. Do you notice that that is a special problem? These offences are often associated with mandatory disqualification and, in some cases, mandatory prison sentences. Can you see a better way of dealing with all that stuff?

Mr O'Reilly—There are a few issues there. My understanding of the way that diversion works is that driving offences are excluded from the diversion process. There are often offences where substance abuse issues can be picked up early. In some ways, they seem like a good vehicle for early deterrent. That is one issue, and it does lead to a very swift introduction to the criminal justice system.

There are mandatory, and quite severe, disqualification periods attached to driving offences here, and there is no distinction between what happens to juveniles and what happens to adults for those offences. Obviously, the effects for young people can be devastating. If you get disqualified, at 17, from driving for five years, it is a significant penalty.

The other thing is that, while there is not mandatory sentencing for driving disqualified here, in a legislative sense, there is in a judicial sense, pretty much. For first-time driving disqualified, the state of the law is that you are looking at a term of imprisonment. For young people that will often mean a suspended term—not necessarily on the first time, but sometimes on the first time—and it is not a hard road from that point to serving some time in custody. So I think there is a real and very strong argument that those kinds of mandatory disqualifications and the way that young people are dealt with for driving offences should be looked at.

I think to some degree it may be reflective of the attitude and the culture. Diversion really came into play in the Territory as a result of negotiations between the Commonwealth and the Northern Territory when there were mandatory sentencing laws, about 10 years or so ago. The mandatory sentencing was repealed for young people on the basis that there was a lot of money put into the territory for diversion. Most of that money went to police—and it is acknowledged that police play an extremely important role in diversion and in dealing with young people—but there was not really a look at changing attitudes towards policing and dealing with young people. So there is still quite an adversarial attitude.

Often diversion is something that is given—it seems to me, anyway, and there would be different views—grudgingly, and that it is given with a kind of punitive overtone, and any kind of breach of diversion or any hiccup along the way sees people in court. That is particularly obvious when you have young people who are going through a diversion program who are on bail for offences and whose bail conditions are extremely onerous, so that, while they might be doing what they need to do for diversion, they get breached on their bail and end up in court if they are not at home by a certain time or if something goes wrong with their bail conditions. It just seems to be a very swift track into court, and into custody, often. So I think a change of attitude towards driving offences would be very useful and could be seen as perhaps part of a rethink of how juveniles are policed and what role diversion can actually play. That was a bit rambling, but I hope it answered something.

CHAIR—We are very grateful for your time and the trouble that you have gone to to talk with us. We are trying, for the first time, today at least, to remain roughly within our schedule. But, just before we finish, is there anything that you feel you would like to mention to us that we have not asked about, or anything that you would like particularly to emphasise?

Miss Carroll—I am just wondering, in terms of the recommendations, how your recommendations influence the Northern Territory government?

CHAIR—Well, the answer is: in a formal sense, not at all! But, as you are aware, the federal government plays, in both a formal and informal sense, a much more active role in the Northern Territory than anywhere else. And obviously we are making this inquiry and our recommendations, particularly to Minister Macklin, in the context of the whole Closing the Gap program, so we at least have the good circumstance that we are talking at a time when there is a little bit of money about.

Miss Carroll—Great.

CHAIR—I am not thereby promising anything, I am not thereby assuming anything on behalf of the minister and I should be careful to indicate that; nevertheless, I have my hopes. Thank you for appearing.

[4.02 pm]

ABBOTT, Mr Barry, Manager, Ilpurla Aboriginal Corporation

McFARLAND, Mr Blair, Manager, Central Australian Youth Link Up Service, Tangentyere Council Inc.

RAY, Mr Tristan, Manager, Central Australian Youth Link Up Service, Tangentyere Council Inc.

CHAIR—Welcome. Do you have any comments to make on the capacity in which you appear?

Mr Ray—Barry also sits on our reference group for CAYLUS and runs a very important partner organisation. We will talk about his service later.

CHAIR—Thank you. I invite you to make an opening statement.

Mr Ray—You have our submission so I will not reread it to you, but I will touch on some important points that I think potentially your inquiry could have some impact on such as the need for legislation that could mandate the supply of Opal fuel in strategically important places. Opal fuel has made a very big difference. It has been well documented. Independent reports have found that there has been a sustained impact from Opal both on the health of children in remote communities and on the level of damage and destruction that has been caused by petrol sniffing over the years. In our region we have seen numbers of people sniffing go from around 500 people in our estimate to more like 20 or 30 these days. Peter d'Abbs and Gill Shaw, who did a prevalence study, have found that there is a sustained 94 per cent reduction in levels of sniffing because of Opal fuel in the region. It has been an unmitigated success and is now four years old. Whilst we pushed for it with greater hope, I do not think any of us sat here thinking it would be quite as good as it has been and last quite as well as it has.

However, in the region there are a couple of sites, a minority of sites, that refuse, for no good reason, to use Opal or stock it. We have generally been able to work with local business owners in a very productive way. They see the damage of petrol sniffing and know it as well as we do and have generally taken action to deal with that because they know it is for the benefit of the community. Just in a minority of instances there are a couple of suppliers who refuse to use it and we argue that there is a need for federal legislation to address this to force those retailers to stock Opal fuel.

There has been a recent, post our submission, Department of Health and Ageing study by the South Australian Centre for Economic Studies in Adelaide which has come down. They analysed the impact of that legislation and found that \$1.4 billion in costs to the public health system and other types of costs could be avoided over 25 years if such legislation were enacted. We think there would be a potential for a really big gain for your people and their interaction with the criminal justice system if such legislation were implemented.

Mr LAMING—Why does it have to be federal legislation, apart from the cross-border issue? Is it possible for there to be NT legislation with other states to follow?

Mr Ray—It is feasible that states could legislate. The South Australian Centre for Economic Studies' study looked into that issue. Also the Gilbert and Tobin Centre of Public Law looked into the issue and found that whilst it is feasible practically it would not happen, to get four states to legislate in a timely manner and with complementary legislation. I do not know of an example where that has happened in the region. The Commonwealth studies have found—

Mr LAMING—Tort law reform with medical litigation issues was one in the late 1990s. If this were to be a recommendation in our report, are there any cogent reasons for federal legislation presenting a problem in areas where petrol sniffing is not an issue? How would we develop that legislation to cover large areas of the country where it is not a concern?

Mr Ray—The South Australian Centre for Economic Studies' study does map it out pretty well, but whilst the legislation we are asking for would exist, it would only be enacted in those sites where it is important. It would not be a blanket ban across a large region. It would be where you have studied the cost benefit in each site. What we would like to see happen is this and only in sites where retailers have absolutely refused. As I mentioned, the vast majority do it voluntarily and are on board. So only in those sites where retailers have refused would you enact it. You would assess it case-by-case.

Mr LAMING—Thank you.

Mr Ray—On the issue of youth services, we have worked with around 20 remote communities in the region trying to establish good youth services and have had some success in that we have a lot more going on in the region than we did when CAYLUS started seven years ago. I will not repeat our statement, but they are very important in the mix particularly in remote communities. If you have any questions around those we could talk about what works well and how to get it happening.

Mr McFarland—I will just interject a point here. One recommendation which you could consider making is in relation to the funding of youth services. At the moment, youth services in remote communities are funded out of a particular FaHCSIA funding bucket which funds out of school hours care and vacation care. Whilst that is very appropriate in urban centres, where it is almost like an after school child-minding type service for working people, in Central Australia that is the only real funding source that is used in remote communities to put on youth workers. It is not a particularly good mix.

In the Northern Territory, FaHCSIA have sort of bent the rules to allow it to continue to operate, because the programs in remote communities target people from four to 24 and provide a range of opportunities for young people. They particularly try to target older demographics—people who have fallen out of the education system, or who have done a bit of primary school but for whom there are no local educational opportunities. So there is not really a particular funding stream that exists which targets that need in that remote community. Consequently, it is very patchy.

In one of the shires in this region—before the shires came into being—a number of communities had that sort of funding. Consequently, they have a reasonable funding pool to run their youth services from. But a couple of other shires just never had that funding, historically, and so they are running youth services on the smell of an oily rag—if that is not an inappropriate metaphor for a sniffing program!

CHAIR—Barry, how do the programs at Ilpurla and Mount Theo differ from the youth programs that are being put into place more generally? We are very interested in the whole question of diversion or the relative absence of diversion programs. It would be quite good to talk about your youth programs and the diversion programs together.

Mr Abbott—You might know from Ilpurla community that I have run youth programs for nearly 51 years, but I have done it for 25 years out of my pocket because I have seen the kids starving and nobody caring for them.

CHAIR—Did you say for 51 years?

Mr Abbott—Yes.

CHAIR—That is quite a long time, Barry!

Mr Abbott—Yes, but I have done it out of my pocket for a while. I am not just mucking around getting people's money to run it, but I did it out of my own because I care for the kids. Steve Atherton took over the office, and he had known my old man pretty well. We met up at the races and he said, 'How the hell do you feed these?' I told him exactly how, and a week later he sent one of his colleagues down to us and he put some application in for me because I did not know where to go. I just did not care; I was just doing it—just saving kids' lives.

We are getting better funding for wages and fuel costs and things like that. But I am still paying for them out of my pocket, and get my racehorse to win to feed the kids for a couple of months or so. It gradually went up—slowly. Then health and aged care took over and they gave us \$230,000 a year, I think it was. Otherwise I would never have had anything to feed the kids with. We were still chucking in. We were also getting family to chuck in to pay for the tucker and everything else. But we look after the kids up to 27 years old. There are 27 or 28 kids and anything from 12 years to 30 years old. It is just a place for them, where they can go and dry out.

I was a drinker once. I will tell the truth: I was a drinker. I used to work hard, too—I would drink all night and then go to work half asleep. I gave up drinking when I turned 27 and have never touched it since. I was one of them, so I know how the kids are feeling when they have got nothing and they have got nowhere to go. That is why I started it all. All of my kids grew up with me when I was working with the kids so I got them to work with me to look after kids, and I have a few volunteers to give me a hand.

Now we are getting funding from the government but we are underfunded all the way through. I will let these blokes talk about those things. We survived but we are scratching through. We got into strife getting a bit of money that was left over putting it over here, but we applied for it and some people down the bottom said yes but not the people at the top.

Mr LAMING—Barry, without listing the communities from which the kids come from for your program. have you taken kids from further afield and have you had different results the more remotely these kids come from Mount Theo?

Mr Abbott—I take a lot of kids like Warlpiri kids, Anmatyerre kids, Arrernte kids, Pitjantjatjara kids, Luritja kids and white kids. We all bleed the same. I just take any colour; I do not care what it is as long as they need help. I take the worst ones. I do not take the amateurs; I take the worst ones. It is hard work, and some of the people that come in and see me doing it say, ‘How the hell can you do it?’ But I have got time.

Mr LAMING—I have two questions. When these kids arrive, does your gut feeling tell you whether these kids are going to succeed or not with your program; what do you look for? The second question: when they go from your program, do you have a gut feel about who is going to do well and who is going to do poorly and find themselves back in jail again?

Mr Abbott—I do not know which ones are going to come out good. When some of the kids come, I do not do anything with them for about a week, sometimes two weeks. I just keep an eye on them and make sure they are not going to fall over and things like that. I always make sure because they are somebody else’s kid. With some of the kids I work on, I can tell if there is brain damage. I ask them to get me something and, as soon as they get up, I will yell out and count the steps. Some of them take 72 steps before they realise that I have said something. Gradually, they come back. That is how I can tell and I will count right back down to zero. Then I know they are right. They are ready to go back but a lot of the kids, even in the courts in Alice Springs or wherever, 95 per cent of my kids were successful and only a few go back sniffing—might be one or two that will go back drinking. Everybody drinks.

Mr LAMING—What about committing crimes again?

Mr Abbott—Not too many commit crimes because I never go any feedback. I go to court a lot with these kids and I see all different kids but not the ones that were here. In Alice Springs kids walk around—10 and 12 year olds—at three o’clock in the morning. I see that happening a lot when I am in town to pick up something. There is no control. The police cannot do it because there is no policy; I do not know why. Ten- and 12-year-old kids should be in bed by nine. That is one concern I have for our area: they walk around all night; just little kids.

CHAIR—Blair, you had some other systematic proposals for us.

Mr McFarland—I think Tristan may have.

CHAIR—I am sorry: it is Tristan; I see he is getting ready.

Mr Ray—I was just going to give you some stats in relation to Barry’s program that I came across today. Since 2007, he has had 76 clients through Ilpurla. At the moment, I think there are around 16-17 there.

Mr Abbott—I have got 18.

Mr Ray—Of those—just to quickly to tell the story of those so you can see the value of that type of a service—five come from Docker River. In Docker River there was a petrol-sniffing

outbreak about four or five weeks ago. It is the first outbreak for about six months that we are aware of and it got reasonably concerning. There were quite a few going there. People there were sniffing glues that they had stolen from a contractor and they broke into a few places and got glues and paints and those sorts of things. Two community elders who had left Docker because of their dialysis issues—

Mr McFarland—Their partners are on dialysis in Alice Springs.

Mr Ray—So they are men with some serious leverage who are no longer there and, when you lose them, you lose your ability to push these kids around and take some action. They returned with a CAYLUS worker to Docker River and initially they rounded up the key four or five. They took them to Ilpurla, and sniffing stopped in Docker.

In Wiluna in Western Australia, which is a small town situated between a few mines, there was an outbreak of sniffing. It was not just an outbreak; it has been pretty consistent there for the last 18 months. Initially they were getting paint from the mines. The mines use spray-paint to mark where they will drill, and they were throwing a lot of these paints in the tip. They have taken some good action now to secure those paints. These young fellows were sniffing and the court there sent two to Barry. The issue of using a court to send people across a border is an interesting one, because you actually cannot do it. So really it has been magistrates—

Mr McFarland—Talking together.

Mr Ray—talking to those young fellows and saying, ‘You need to go,’ without necessarily having the power to do that, as far as we are aware. It is a very valuable program.

Mount Theo is a separate program. It is also very valuable and similar. Some other lads were from Balgo in Western Australia. Again, those guys have been pretty full-on. One of them has over 20 counts that he has to go to court on. He was sniffing absolutely whatever and it was agreed to be the major issue. He was committing crimes around Balgo—mainly break-ins—looking for things to sniff. Agencies there banded together and drove three young fellows from Balgo to Ilpurla. They stayed there for about six weeks. They were very difficult to look after. They were very challenging. But there is just nothing else like Ilpurla, so people are coming from a long way away. Also there are some Palm Island young fellows there at the moment.

Mr McFarland—And some from Darwin.

Mr Ray—They are mostly young blokes. There are a lot of women who work on the program and occasionally girls will come into the program and stay with the women. To us, it is a very valuable model. There is really nothing else like it. Pretty much any time we get to a case with a young person where it is just too hard, we say, ‘Ilpurla’. At the moment Ilpurla is full. We also have to be careful to look after the Abbott to family and make sure they do not have a ridiculous number of clients loaded on them, which can completely burn everybody out and be dangerous for everybody. There is a lot of demand on the program.

CHAIR—Can you talk about the gap that still exists for youth programs and diversionary programs, as you perceive it.

Mr Ray—Yes. Ilpurla is kind of the tertiary end of dealing with things. When you have young people for whom things have gone totally wrong, it is a great place where they can go to clean up, have some counselling and live with an Aboriginal family who are together and living in a good way. But you also need to deal with the environment they come from. At the moment, we really have a long way to go in doing that. One really effective way to do that is to have a youth program. We call them youth development programs often these days. At their core they are about working with community members to talk about what they want for their young people and giving them some people with skills to help develop those ideas and those programs. We had a youth program at Yuendumu and then we had an outstation at Mount Theo. That joint combination made a big difference in the community. With Ilpurla we have a place where some young people can go, but we need to work back on the community development side to provide incentives and good things for these young people. Also, often that work is with the families to crack down on problem behaviour, getting kids to school and a whole range of things that youth programs can do. They develop in a different way on different sites, depending on local opportunities and aspirations. There is a long way for them to go.

CHAIR—Can you make even a very general estimate of how many more services you think should be in place to get something like a reasonable coverage of Central Australia? It is a bit ‘how long is a piece of string’.

Mr Ray—We have a pretty good idea of this. Blair looks like he is ready to talk.

Mr McFarland—I was just doing some counting in my head. To break the area up a little bit, the Central Australian area where we work consists of three remote area shires. One is the MacDonnell Shire, which we have been working with for a long time, and they are in a reasonable state. They have youth development programs in most of their communities. They are a little underresourced in a couple. To put some numbers on it, they probably need another four full-time youth workers amongst the 12 communities where they work. The next shire up is the Central Desert Shire. Some of the communities in it, the Warlpiri communities, have youth work support from the Mount Theo program but there is another bunch of non-Warlpiri communities that do not get support and do not have youth programs. They are Yuelamu, Laramba and Atitjere. We are just starting one in Harts Range as a pilot and there is also Engawala. So there are five communities in that shire that just do not have youth programs.

In the bottom part of the next shire up, the Barkly Shire, there is Arlparra, which is a diverse group of outstations, and they do not have a youth worker program, and Ampilatwatja, which does not have a youth work program. So there are another two in that region that do not have this, and each of those could use at least two workers, two troop carriers, accommodation, rec halls—a whole range of infrastructure and ongoing operational costs that just simply are not there right now. That is what I explained to you before. There is no stream of funding for diversionary youth programs. It just does not exist. We find bits of money here and bits of money there, and we are starting a pilot program in Lake Nash with money that we helped the Barkly Shire get from the binge-drinking funds. There are short-term bits of money you can get, but there just is no funding stream for what we consider to be very important programs, which are youth diversionary programs.

If you look at those communities, there is not really anything else going on in those communities. I was briefing somebody about one community where he might be working and he

was saying, 'What's out there?' and I said: 'You'll be running movies, you'll be running discos, you'll be running bush trips with elders and you'll be running craft and sport. In terms of what is in the rest of the community, there's nothing.' There is a clinic, a school and maybe an arts centre. That is probably pretty much it. Without these youth development programs, there is really nothing going on there, so you have the problem of boredom on the ground, and then Alice Springs becomes a magnetic hub for young people who are looking for something, anything to do. They end up in fringe camps, being at the bottom of a pecking order and starving in Alice Springs. So, just to flag it again, with some line of funding that is there specifically to put youth development programs in as a diversion in these remote communities you would address a whole lot of issues.

CHAIR—Before I forget to do so, can I just read to you one line in your submission. It refers to the fact that you developed a model for, I think, four youth programs in the south of the area where you operate, including Docker River, Imanpa and Mutitjulu. I think you pointed out that they were developing local capacity and providing recreational activities and you said:

Although we helped develop the overall strategy, we were not able to provide close ongoing support to the interstate provider selected by the tender process.

You say it is doing better now, but I am interested that somebody was brought in from interstate to run that cluster of programs and what you thought about that.

Mr Ray—An addendum to that is that the tender was just re-let. It was taken off them because there was wide acknowledgement of their lack of success and it was tendered back to NPY Women's Council, which the programs were taken off in the first place—and at half the money.

Mr McFarland—Those programs are running on half the money they had when Mission Australia, who was the interstate provider, tendered for and received that contract. We were surprised. It seemed like a perfect opportunity to develop local capacity, but through the mysteries of the government tender systems it did not go to the people who were on the ground, with local representation in their boards, and with a track record and experience in the field. No, it did not go to them; it went to an interstate provider.

Mr Abbott—Who didn't know anything.

Mr McFarland—Yes, who hit the ground with very little knowledge and experience. They got better over the years, but now they have lost the contract. So we wonder what it was all about in the first place. Basically it was three years and most of \$9 million. Here we are three years later starting again but with a smaller bucket of money.

CHAIR—Thank you.

Mr LAMING—I want a very quick clarification on the roadhouses that continue to sell non-Opal fuel. You mentioned when you were talking about spray-paint that some were warned that it could result in criminal charges for a person supplying paint for someone else. So legislation does exist for buying paint and providing it to someone else? Is that correct?

Mr McFarland—That is correct, and it has existed since the seventies.

Mr LAMING—Which state jurisdiction is that?

Mr McFarland—That is in the Northern Territory.

Mr LAMING—Why can't that simply be expanded to include the provision of non-Opal fuel in the same list so that anyone who is selling it is committing a criminal offence? Why can't they amend the law?

Mr McFarland—That would work if Opal was sold everywhere in the Northern Territory, but it is not. The cost would be prohibitive to put Opal absolutely everywhere. So what we are recommending is a more targeted piece of legislation that gets a better bang for your buck, so to speak. Opal costs more to make and the federal government provides a subsidy so that it stays the same price for the retailer. It would just be prohibitively expensive to put Opal absolutely everywhere.

Mr LAMING—You referred to a report and you mentioned the two authors on this topic. Has there been a Law Commission report or something recommending that this piece of legislation be developed?

Mr McFarland—There have been two. One was the Gilbert + Tobin Centre of Public Law study. There was a Senate inquiry that considered this issue and they made a submission to that. But since then the Department of Health and Ageing commissioned a study about the feasibility of such legislation and the potential impact. That was made public about six weeks ago. It was very supportive. It was by the South Australian Centre for Economic Studies.

Another thing we did not mention in our submission that we talked about post this was the really big opportunity of impacting on the number of kids going to jail—the number of Aboriginal people going to jail full stop—with better access to driver's licenses. The vast majority of people in Alice Springs prison are there for driving offences, and a big one is driving without a licence. It is hard to get a licence when you live in a remote community. If you have a police station you have some limited access to sitting your licence test. You cannot do it a lot of the time.

The other thing is if you get done for drink driving, which a lot of people do, you do your penalty. You go to court and you get your licence suspended for a particular period. You then have to undertake a course to get your licence again. You have to undertake that course in Alice Spring, and it costs a lot of money. Making that course available remotely and perhaps with a Centrepay option so you could sign away to have some money taken out of your Centrelink payment to pay for the cost of that course would mean a lot of people would not go to jail.

Also, dispensing with the course—I do not think there is any research that shows that sitting in a course delivered in a language you do not speak will have any effect on your behaviour. It is another incredible hurdle that has been put in the path of people that can result in their imprisonment.

CHAIR—We have had commentary on this kind of matter from many parts of remote Australia and, if I am not mistaken, the Chief Justice of Western Australia talked to us about the issue as well. It is no particular responsibility of yours, but have you got any suggestions about

how we might better administer a system of driving licence that did not build in such astonishing handicaps for people who are in remote places.

Mr Abbott—I have got no answer to that one or how to deal with it.

CHAIR—Some people suggest, for instance, a remote driving licence—that is to say a licence which will allow you to operate outside Alice Springs. It would at least allow you to drive about in a very remote area without having the level of testing or qualification that you require to be in a larger town, let alone the city.

Mr McFarland—It seems like a very good idea to have some level of standards on people in terms of driving. It is the most dangerous thing we probably do every day, but I think the way to do it would be to have the police run driver training courses. There are all these police out bush now and a lot of them have not got an awful lot to do. In a town like Papunya, population 300, there is not that much crime. Possibly getting the police to start running driver training and giving licences would be one way of making sure that people were not disadvantaged by their location. Making it possible for people to do tests and even get their training in languages would also probably improve their comprehension of driving laws. I think there are some fixes that you could do.

CHAIR—Certainly those sorts of initiatives would have much less resistance than the kind of arrangement that I just mentioned.

Mr Abbott—I do not believe that. I do not agree with what you said about getting a licence just to run around your own area sort of thing. Once they get a licence they should drive the same as you and I—into town to do shopping and whatever. I do not think you can get that too easily, mate. You will run into more strife because a licence to just drive around the place is a licence to give them permission to go into town, wherever.

CHAIR—That is consistent with what—

Mr Abbott—You have to get a full licence where you can drive into town, do your shopping, whatever. That other licence just for your community is out of the question.

CHAIR—We hear that. I want to ask a particular question about a specific program, which you have run, which I think was called the Central Land Council ranger program. Is someone able to talk about that?

Mr McFarland—Sure, I can talk about that. We do not actually run it; the Central Land Council run it. We support it and we help them with some negotiations in Papunya and Ikuntji, which are communities we have long associations with. We think employment as rangers is one of the most realistic and viable employment options for Indigenous people in remote communities. It values their connection to the land. It provides employment in remote communities, which is not there otherwise. There are no factories there. There are no coffee shops. There is not very much out there except the land, so the rangers are a really good fit. If you think about jobs where Aboriginal people would have a clear advantage in employability, being a ranger is one of the very few. Employment is a really great thing to give people some

investment in the system, and a way of diverting some people from crime is by giving them some level of investment in keeping the system going.

So we propose that. I think we mentioned it in relation to having a coordinated regional approach to employment. I mention that one in the context of having training courses in primary schools that orient kids towards science—towards botany and biology—where local elders with all their botanical knowledge are drawn in. Then there is a stream in the sport and recreation programs where you can do Junior Rangers—get some experience doing ranger work and see the existing rangers as role models and as somebody to aspire to be and somebody you, as a young person in the community, could look up to, thinking, ‘Well, that’s what I can do with my life.’ Then there are the rangers themselves. Once there is a ranger program and once areas are declared to be national parks or Indigenous protected areas then a whole range of funding opportunities turn up for controlling feral animals and weeds, doing botanical and biological surveys and looking after visitors. It seems like a really good match for the region and it would be a way of addressing unemployment and that sense of general ‘going nowhere’ hopelessness that really can contribute to criminal behaviour.

CHAIR—I am sure you are aware that the Department of the Environment, Water, Heritage and the Arts has a very large program, but you are saying it should be bigger. Others can also sponsor it, yes. My final question is to ask if you or Barry could perhaps talk about the significance, as you understand it, of actually engaging elders in the programs that you conduct and about the significance of providing authority to local Aboriginal organisations in the context of the programs that you are promoting.

Mr Abbott—A lot of old people get onto me about their problems with the kids and things like that. I just go along with them and talk to them on how to do it. Most of them cannot handle it so they bring it over to me to let me work on them, because I speak seven different Aboriginal languages and I get along with the kids anywhere. We show them the things that I know, what they can do now and what they can do when they go back, but there is no job on the end of it when they go back to the community. That is the biggest problem. I talk to the people and I talk to the managers in the communities where the kids come from. They all say yes but they have not got the money to fund those kids to go back to a job. If they have got a job on the end of the program, the kids will do it, but a lot of them go back and get a six-week job and then they have nothing for another six or seven weeks.

Mr Ray—Ipurla itself is a good example of the importance of involving elders. There are other rehab options around and for them you are talking about removing a young person who is sniffing from a remote community to a residential rehab treatment program—in the middle of Alice Springs generally—where none of the staff speak their language, to come off drugs for two months; that is a treatment order for petrol sniffing. The kids have no chance at all. They walk out on the first day and do not come back, whereas at Ipurla people speak their language, understand where they come from and have some authority back there too, so they can say, ‘No, pull your head in or I’m going to get your uncle involved in this and you’ll have trouble when we go back.’ They know some of the factors. For example, one young fellow recently came from a community and he was very, very upset. He came with no handover whatsoever, but Ipurla were able to work out that he had killed someone—as a child he had accidentally shot someone—and that despite the upsettedness of that incident he was also expecting some form of punishment when he became an adult at 18 because of what he had done. There was increasing

trouble with the family of the kid he had killed. They are the sorts of things that only an Aboriginal elder—an Aboriginal person—would find out.

Mr Abbott—Yes. I talked to the families about it, because a kid was involved, but they said there has to be payback. There should not be payback, because he was only a child when he did this thing. They wait till they are about 18 or 19 before they get payback. Because I can talk to the old people, I could talk a bit more sense to them and get them to forget about their laws a bit, give the kids a chance to grow up and talk to them, and they will never do it again. A lot of the kids, when they do something like that, are worried that they are going to get those things—you know, get speared or whatever. This one got out of it pretty easy, and I am really proud of that and some of the family were really proud, just because I could talk to someone.

I do not just work with petrol; I will work with ecstasy. I will work with marijuana. I will work with any sort of drug that you name—paint, glue, petrol, whatever. I have done it for years. I do not think any of the doctors are going to come along and tell me off—‘You should not do this; you have to do it this way.’ I do not think they can, because I have an answer for everything because I have done it. They have not done it; they are just reading the books and they are trying to say, ‘That’s the way you can do it.’ You cannot.

Mr Ray—When we first met that young fellow it was at a meeting with 12 services from the Kimberley, all on a teleconference throwing their hands in the air, not one of them with any idea of anything practical they could do for him. There was just nothing. The combined resources of a whole-of-government initiative up there had no solution for this young bloke. That to me shows the importance of involving Aboriginal elders.

Mr McFarland—When that young fellow was sent to Barry’s, the petrol sniffing in that community stopped.

Mr Abbott—It was stopped because he was being led.

Mr McFarland—I was in that meeting as well and nobody could think of anything to do. Without Opal fuel they would still be sniffing in that community.

Mr LAMING—I just ask the obvious question, gentlemen. In these large communities we have an enormous proportion of older people who we have always said are very ‘busy’. How do we genuinely engage those people to play a bigger role? I know we say this is business between elders and younger people, but there is an enormous capacity there of people for whom very, very little is more important than protecting their youth. How do we re-empower them to have more of a role than just one person like you, Barry, or one elder who, if they get on the grog, causes the whole community to fall apart?

Mr Abbott—The answer is: because all of the people on the big community sit around and drink and they have nothing to do and, if the kids have nothing to do, then the kids get out of their hands. A lot of the people that I talk to had their rights to discipline their own kids taken away. I am sorry to say this, because a lot of people are saying that to me. Their rights to discipline their own kids were taken away and when they do something or try to do something there is no vehicle to go to the police or go to the welfare. Some people are scared of them. Their rights were taken away. That is what a lot of people said to me, and I am sorry. So we have to

work around that and give the rights and the power back to mothers and fathers and uncles. That is the only way we are going to work it.

Mr Ray—There is not a silver bullet. We look at programs like the Mount Theo program and some of the youth services that really actively engage with them. They take young girls out hunting with their grandmas. They talk to those old people about what their concerns are and talk through strategies to deal with it. They are things that we can look at that do make a difference and we are constantly looking for ways to do that. It takes time and it takes relationships.

Mr LAMING—I ask a provocative question: what happens if everyone is being paid the same amount whether they sit around under a tree drinking or get out and take the grandkids out hunting? If we look at the notion of compulsory jury duty, why don't you have a similar situation where you quarantine welfare payments if they are not making some regular contribution like they used to, before welfare was paid, to the welfare of their community?

Mr Abbott—No, that is not on, because the parents have to have money to buy the clothes for kids and whatever. That should not be taken right away from them, but they should look at it and get somebody to talk to them. There is so much money going to the store. Do not take it away from them. You should start looking at things like that. You have to train people like the last two I got—I do not want to name them. The mother was doing it, but they are not from our area. They are from a different area altogether, away from us.

She used to leave the kids for week or over the weekend for about five days. She would go to other places—get on the bus or whatever. The kids had nothing to eat, so the two of them would come to me, desperately weak, and we would help them. The first thing they said was: 'That's a good place. We've got somewhere to sleep, we've got someone to talk to, we eat three times a day and we do a little bit.' They are very pleased to get out there. The mother was just leaving them and going away. She was getting paid as well from the work she did. I do not want to name any one of them.

Mr Ray—The way welfare quarantining works currently, there is not that incentive, because everyone is quarantined. People talk about a Family Responsibilities Commission model. That could be something that would give local people more input. Quarantining the responsible families means the inverse of what we just suggested.

Mr LAMING—Yes, that is true.

Mr Abbott—It means quarantining everybody. The easy way to quarantine people is to go to the court list and see which families are getting into grog and going to jail. Quarantine those people. Don't let other people suffer on the outside who look after their kids pretty well. That is a simple thing. It is easy. You do not have to go and look for it. Go to the courthouse and get the list. It will work.

CHAIR—Okay.

Mr McFarland—And ask for the school attendance information.

CHAIR—You have been very patient with us. Thank you very much for spending so much time talking to us.

Mr Abbott—Thank you for the opportunity.

CHAIR—How long have you been working with this organisation? Did I hear someone say it was seven years old?

Mr McFarland—It started in November 2002, so has been going for 7½ years. Ilpurla has been going for 51 years.

Mr Abbott—Not just in Ilpurla but at Wallace Rockhole and Papunya. I started in Papunya. I was a mechanic and I was treating everybody's kids instead of fixing government motor cars.

CHAIR—Thank you again. We congratulate you on the work that you are doing.

Resolved (on motion by **Mr Laming**):

That this committee authorises publication of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 4.52 pm