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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON ABORIGINAL AND TORRES
STRAIT ISLANDER AFFAIRS

(Subcommittee)

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

THURSDAY, 4 MARCH 2010

SYDNEY

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

Thursday, 4 March 2010

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

Members in attendance: Mr Debus, Mr Laming, Ms Rea and Mrs Vale

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.

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Subcommittee met at 8.36 am

CHAIR (Mr Debus)—We do not know when our colleagues will arrive because they are travelling here by air. My colleague Danna Vale and I can continue because we have subcommittee arrangements. I declare open this public meeting 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 this land and pay respect to elders past and present. I note that these meetings are formal proceedings of parliament. Everything said should be factual and honest and it can be considered a serious matter to attempt to mislead the committee. I invite witnesses to make comments that will assist in our inquiry into involvement of Indigenous youth in the criminal justice system, with a focus on prevention and early intervention.

Today we will be hearing from two witnesses followed by a roundtable public hearing. This hearing is open to the public and a transcript of what is said will be placed on the committee's website. Any person who would like further details about the inquiry or the transcripts should speak to the committee staff at the hearing.

I should also mention that the Parliamentary Media Service is recording our proceedings although it will cease doing so should any witness feel it to be necessary. The proceedings are then extracted and some small part of what occurs today may appear in a parliamentary webcast, for instance, and I think may appear in publications of the parliament itself.

[8.39 am]

MADGWICK, Acting Judge Rod, Private capacity

QUINN, Magistrate Margaret, Private capacity

CHAIR—Welcome. I am aware, Judge Madgwick, that you need to leave soon after 9.15, so we should deal with you with that in mind. I can tell the committee that Judge Madgwick has a distinguished career in the law in New South Wales as a barrister and then as a District Court judge, a judge of the Federal Court of Australia and now again as an acting judge of the District Court. Margaret Quinn is a magistrate in the Local Court of New South Wales. They are together to make the presentation this morning. Would you like to make an opening statement?

Judge Madgwick—I am presently an acting judge of the District Court of New South Wales. As a lawyer I have had a long interest in the question of Aborigines and the law, including Aborigines and the criminal law. However, I make the point in the paper that there are other people with much greater current knowledge than me. Although some other judges and Ms Quinn have joined with me and would like to be associated with this submission—and I say that they agree with the submission—I think it would be better to say that they generally agree with the submission. That is because Judge Norrish has put in a separate submission which argues for a positive discriminatory approach to the law as it relates to Aboriginal offenders. I do not advocate that, even though I know the Commonwealth has power to do it, because I do not think it is politically acceptable. You people are politicians; if I am wrong you will be quick to correct me. If it is politically acceptable to positively discriminate in favour of Aborigines as, for example, by requiring cultural disadvantage to be a mandatory criterion for sentencing, I am all for it. But I do not believe that ordinary members of the community will care to have Aboriginal thugs less firmly dealt with than non-Aboriginal thugs. I do not myself, and I do not see why anyone else should.

The first big idea that I want to put before you is that we should probably proceed on a non-discriminatory basis of trying to address all young offenders and potential offenders, whether they are Aboriginal or not, among other reasons because in the process we will end up catching a disproportionately high proportion of Aboriginal people and it will in fact be much to their advantage anyway.

The ideas that are put forward in this paper, one of which involves some modification, are in roughly descending order of importance. Firstly, prompted by the justice reinvestment approach, it seems to me that the really valuable part of the United States experience as recounted by the Social Justice Commissioner is not that we should necessarily take money out of jails and put it into community rebuilding but that we should have targeted community rebuilding on a coordinated basis instead of a whole lot of concurrent programs with various aims. We might as well say, 'Here's an overall program with many disciplines involved,' to try to support and rebuild the community with a view to stopping the production of criminals from that community—and, again, I think we should do it on a non-discriminatory basis. The people of the Campbelltown area, where there are not many Aborigines, are as much in need of support and as

apt to produce, tragically, young people who will come into contact with the criminal justice system as the people of Bourke.

I do not like the idea of diverting prison money to community rebuilding, because the prisons themselves seem to be not very well resourced, as judged by the complaints of offenders, including Aboriginal offenders, about the unavailability of this or that program in this or that jail and by the difficulty, for example, in getting timely reports out of the justice health people, who are clearly simply very heavily burdened in their work.

So, if there is money to be rediverted from keeping down the prison population, I would redivert it to in-prison, for-prisoner services rather than to the communities. I think the Commonwealth should pick up the tab for community redevelopment because I have found, since being back in the state system after working for 13 years in the federal system, that the state justice system, at least on the court side, is infinitely more poorly resourced than the federal. I think it is due to the fact that state governments are hard-pressed for money.

The second idea is as follows, and I do not know the degree to which it is original or otherwise. I suggest in the paper that, once a young person is in the criminal justice system, it is too late. Overall, once you are in the system really only marginal effects can be achieved. There is an irreducible point at which offenders simply must be incarcerated. A common example is repeated domestic violence. It is not acceptable to the community at large for such offenders not to be jailed. Therefore, I have suggested in the paper that there should be a multidisciplinary intervention of a non-punitive kind at the point where there is a credible report to anybody of a young person's involvement in some criminal activity.

Since writing this, and I indicate in the paper that the idea is a work in progress, a better idea has been suggested to me. That is to have the intervention at the point of truancy, which almost always—I am sure the statistics would show—precedes a criminal career. Richard Matthews of the New South Wales Department of Health has gone so far as to suggest that it should happen earlier: at the stage of the pregnancy of a woman who meets one of the few criteria, which he can tell you about, which he says are an accurate predictor of the involvement of that woman's child in criminal activity. The advantage of at least interfering no later than truancy is: (1) truancy involves a breach of the law by somebody, (2) it is non-criminal and, therefore, does not have the taint of punishment about it, (3) it is remediable and (4) the intervention should be multidisciplinary and non-punitive.

The next idea I want to put to you is that there is a great regional imbalance in the availability to offenders of services and diversionary programs and, I suspect, pre-criminal services such as mental health that would prevent involvement in the criminal process. I spell that out in the paper.

The next thing is that, strangely, what I would call the 'well-meaning' road safety lobby has overreached itself and been insufficiently subtle in the success it has had in punishing infractions of the laws intended for safety. Nobody wants to decry the importance of road safety, but the practical effect of all this, which Ms Quinn can tell you more about, is that the lack of a licence leads to jail for a large number of people, including Aboriginal people. This is irrespective of whether there has been any actual danger to the public, as distinct from merely disobeying the law that says you should not drive without having a licence. It is a strange thing but it would

have a considerable effect of diversion. While many of these things might apply to adult offenders, this is highly relevant to your inquiry because, every time an adult Aboriginal offender is put in jail, there is very likely an effect on one or more Aboriginal children. There is a large chance that the incarceration of a parent, an uncle or somebody near to them will disrupt a child more and perhaps lead to that child's involvement in criminal activity.

It is wholly illogical that place of residence should be a limiting factor on the sentencing dispositions of choice or that the consequences of the Rudd safety laws should cause differential hardship to people simply because of where they live. In many country towns you can only get around by car. Sometimes you have to drive for compassionate reasons; sometimes you have to drive simply because you are a human being and you wish to travel for a reason that to you seems important.

The other thing is there has been increased punitiveness in the system generally, which I doubt is doing anything to reduce crime overall. That leads me to this idea: there need to be national standards to which state governments can resort at times of political pressure on them to engage in the law and order option, to assuage powerful shock jocks and so on. The state government is in a difficult position when opposition of every political character hugely and enthusiastically joins in a law and order auction which achieves very little. As the social justice commissioner, Mr Calma, who wrote the report that recommends justice reinvestment says, this is not a question of being soft on crime and, in particular, road safety but a question of being smart about it.

I have suggested that the committee recommend that there be specific mechanisms for bringing to the attention of busy state legislatures and appellate courts the necessity to have regard to potentially unjust relative hardship because of geographical or cultural factors in formulating general prescriptions as to sentencing and regulatory regimes with sentencing implications. Indeed, I suggest the committee get some legal advice as to the power of the Commonwealth to legislate in relation to this matter, not only in relation to Aborigines but generally. I would be very surprised if the international treaties to which we are a party do not under the foreign affairs power give the Commonwealth a fair bit of power to interfere.

They are the main ideas spelt out in the paper. I do stress that I have modified the idea about multidisciplinary intervention. I think it would be better, for a whole variety of reasons, to intervene not when there is a credible report of a crime to the authorities by a child or young person but at the point of truancy.

CHAIR—We are extraordinarily grateful for the effort that you have both made to draw these issues to our attention. I am sure we will, as the morning goes on, have more detailed discussion about the kinds of intervention that you are suggesting to attempt to divert people from the criminal justice system at younger ages, even down to in the womb.

Several of the matters you mentioned go to practical issues that affect young adults on a day-to-day basis and they refer particularly to a kind of widening of the net that brings people into the justice system. There are two ideas that I wonder if you could both talk about a little more. One is your proposition that there are lots of problems of a social nature that draw people into the criminal justice system that are not particularly Aboriginal; they affect anyone from a disadvantaged background. The other is the particular question of the driving licence

disqualification. This seems to be a small and specific question in the context of the general questions that we are considering but it has, as I understand it, a quite dramatic effect on the engagement of many Aboriginal people in remote places with the criminal justice system. It would be really useful if you could talk about your experience dealing with people day to day in court who are afflicted by those realities.

Judge Madgwick—Margaret has much greater experience, in particular in Walgett, of the second matter and I will ask her to answer that first, and then I will turn to the first matter.

Ms Quinn—I am a magistrate at Newtown but I spent four years in Walgett and Lightning Ridge in the country service. One of the main things I found there, whether it is Aboriginals, and a lot were the Aboriginal community, was the disproportionate penalty on persons who come before the court for road traffic offences. I will just give you an example. The road traffic laws do not take into account any geographical points, so the same law applies here in Sydney as does in the country. Of course, in the country they do not have the availability of public transport that we have here, and so the offenders come back and back before the court, because they must drive. In a place like Walgett, a witness or an offender or just a person going to work can travel between 50 and 150 kilometres a day each way, to go to work, to go to court or just to travel around. It is a huge area, the west. People think the west stops at Dubbo. Well, they have not been past Dubbo out further.

CHAIR—We are going there tonight.

Ms Quinn—Good. I will give a small example. The problem is that, say, you have a licensing matter of never being licensed, and there are many people who are never licensed, I can assure you. We know we need uniformity of law; it is terribly important. We must have uniformity. But if you are having someone who has never been licensed and there is only a penalty of a fine and then for the second offence—and are often second offences—you get a three-year disqualification. My view is that there is nothing in the legislation that provides the courts to ameliorate that dreadful disadvantage that people suffer and disproportionate penalty, particularly in geographical areas of great disadvantage. These people, whether they are right in Walgett, right in Lightning Ridge, at Brewarrina or wherever, only work certain times of the year. That is often not because of their own fault but the wheat comes it and the cotton comes in and they travel for miles to work, perhaps eight to 10 weeks a year; that might be their only full-time work in that period. It is terribly important to them. When the wheat and cotton is being brought in the crime rates go down substantially, I can tell you, because I have been in those areas.

The other thing I want to say is that the road traffic legislation particularly does not provide in New South Wales any availability to give people a work licence. So many people, whether they are Aboriginals or not, come before the court and say, ‘Can I get a licence to go to work?’ I have to say, ‘No, I haven’t got the ability.’ There may be reasons for the legislation being as it is, and uniformity would be one of them, but I would strongly recommend that consideration be given to work licences in New South Wales. If the parliament or the public are concerned that the courts will just hand out these licences, there could be compelling reasons for work licences, and one of them could be rural isolation. I think it is very important. The application of that law across the board which is one-dimensional simply is disproportionate and disadvantages many.

CHAIR—Is it your understanding or experience that the disqualification of a licence can lead to a series of further convictions and eventually imprisonment?

Ms Quinn—Yes, and I think that is the whole point—that people keep coming back before the court. In rural areas, as we know, we do not have the community service orders or periodic detention available. We do not have those options, so you have a choice—a section 9 good behaviour bond or jail. If somebody is coming back eight, nine or 10 times and the community is in an uproar, what can you do? You can find that you are in the situation—I am not talking about serious drink-drivers. You have great difficulties up there because of alcohol problems but you find that the options are not available for you. Our court, the Local Court, is very committed to community based options and dealing with the community in these areas. There is circle sentencing in Walgett, there are all those matters. We try to go to circle sentencing for Aboriginal offenders in driving matters or any sorts of matters so that you can divert people out of the jail system. One of the major factors of those disqualifications is that, if they come back a third time, they get another three years and then a five-year mandatory period of disqualification as a habitual offender.

CHAIR—Just for explanation for the committee and for our audience, could you describe in more precise terms exactly the sequence of events that may lead to somebody ending up with a prison sentence who began their criminal career, as it were, by speeding or driving without a licence?

Ms Quinn—Yes, I can.

CHAIR—You are not arguing against disqualification for people who have had bad drink-driving convictions.

Ms Quinn—No, definitely not.

CHAIR—It would be useful if you could be precise about it.

Ms Quinn—I do not have my bench book here with me but I will give you an example. If you are caught, first of all, on a speeding offence and you do not have a licence, I can give you a fine on that first no-licence offence. A second offence carries a 12-month jail sentence and a three-year disqualification. Naturally, you do not put people in jail as a first or second offence; it is a last resort. Then they come back again, still driving without a licence and you might wonder why—the availability of getting a licence in those country areas is not as good as in Sydney. When they come back again it might be their third or fourth offence of driving without a licence or driving cancelled, something like that event. You are then looking at the history of the person and all of those subsequent offences carry a jail sentence. So by the time I have given a couple of good behaviour bonds, I then send them to probation and parole to get any options. There are not many options because the community service is not available or periodic detention is not available. Then I am forced to look at jail suspended sentences. That I simply must do, because a person who has done nothing else of a criminal nature—and it is a crime, it is an offence against the law—has driven without a licence. There are many of them in jail.

Judge Madgwick—Not necessarily in an unsafe way.

Ms Quinn—No, they might be the safest drivers of all, they just do not have a licence. Many of them may not be able to read or write, which causes a difficulty and an embarrassment. There is facility for them to get a licence even though they cannot read or write, but it is quite difficult.

CHAIR—So the issue is the mandatory nature of the—

Ms Quinn—Indeed so, and if they could get a work licence, even if they were disqualified, they could go to work, which is the fundamental need.

CHAIR—I am conscious that you have time constraints. Both of you have referred, a number of times and indeed in the paper, to the absence of diversionary sentencing options in isolated places. They are, in fact, quite difficult to provide. They are not just expensive; sometimes it is hard even to find the people who may implement them. But I am sure we would be very grateful if you could talk some more about the actual consequences that judicial officers see of this shortage of diversionary options for sentencing.

Judge Madgwick—I talked about this in the paper. A lot of the diversionary options say that if a jail sentence is appropriate then, in a proper case, the sentencer can give periodic detention, home detention or community service. But the precondition is that a jail sentence is appropriate. If the alternative is not regionally available, what do you do as a sentencer? If you have been considering it, you have been considering it because you think that but for the availability of that option, prison was appropriate. So, as a matter of logic perhaps what you should do is impose the jail sentence, when it is not something that you would want to do—not something that in the city you would do. It seems a terrible injustice to the person. If you do not do that; if you say, ‘No, no, no—

CHAIR—So that this is clear cut, if you were in the city there is no question that you would give the community service order or the periodic detention or whatever it is. If you are in Wilcannia, you cannot.

Judge Madgwick—If you are in Wilcannia, you cannot.

CHAIR—So you don’t.

Judge Madgwick—So what do you do? I have to confess to you that what I do, against logic, is say, ‘Well, the law is meant to be applied with a bit of justice and compassion. It is not his or her fault that community service isn’t available in Walgett or the back of Griffith or somewhere. I will therefore go to what is available, which might be a supervised bond.’ Now, this is not good either, because I really thought to myself in the first place, ‘A punishment greater than a supervised bond is actually called for here.’ And if I do that I am conscious, firstly, that it may be sending the wrong message to the offender and the community who think, ‘This sort of crime is only attended by a bond,’ and, secondly, victims and the people at large are likely to think that this is an unduly lenient outcome for the person. So whatever you do you are going to have a less than satisfactory outcome. And I think that is wrong.

I agree with you, that the implications are difficult because you cannot just have periodic detention centres in every hamlet, or within 10 miles of them. But you could certainly enlarge

the net very considerably. And parliaments should resolve this question for the judicial officer by saying, 'If this is not available the officer should consider the next lowest alternative.'

Ms Quinn—They could expand the community service order somehow. I am not sure how they can do it but there is not much availability of community service. It has to be expanded. There is often an argument that if you put people doing community service into areas that are not council based they will be working for other people for nothing, and not getting anything out of it. But it is work experience. If they could work in areas other than councils—I don't care if it is in private practice—that would be work experience. Of course, the argument against that is that you are providing private enterprise with people to work for nothing, but the counter argument to that, in my view, is that it is work experience.

Secondly, people in paces like Walgett and Lightning Ridge have to go to Bathurst for periodic detention. How on earth can you get there every weekend? You simply cannot. It is a ludicrous idea. So you need something else—other, closer centres for periodic detention—or another form of periodic detention that can be served closer in the community.

Judge Madgwick—Could I return to your first point?

Mrs VALE—That is all right. You continue the thought and I will ask the questions.

Judge Madgwick—Some of the common social factors that might produce children and young people who are exposed to the criminal justice system—whether they are Aboriginal or non-Aboriginal—are pretty common: drunken parents; parents on drugs; homeless children; ill-educated children; parents who, through illiteracy or some other factor simply cannot support the children at school; undernourished children, and so on.

In the Human Rights Commission Social Justice Report there is a bit of a discussion of which areas Aboriginal offenders come from and which are the poorest, least privileged postcodes or whatever they are in Australia. They are almost entirely synonymous—but not entirely. When we look to see where the others are we find the Campbelltown area around Sydney—which you know about, Ms Vale—where the social problems for many of the people who come before the courts are just horrific.

I happened to be sitting in Campbelltown last week. The Children's Court magistrate there—an experienced woman who has just come to the area but who has a background as a social worker, so she has perhaps a broader appreciation of things than the average lawyer like me—says that she has seen things of an extraordinary nature. For example, there was one boy of about 15, who psychiatrists have refused to see because he is so out of control that he is likely to pull out a cigarette lighter and try to burn them and things like this. People will simply not do it. This is a kid who is just out of control through a degree of social and familial deprivation that is almost unimaginable. She says that parents of children regularly abuse her with foul language in the courtroom. I have never struck this in my life. I have had the occasional case of somebody—I do not think ever an Aborigine, as a matter of fact—who because of the emotion will swear at me, and it is of no significance. But it is usually the offenders themselves; I have never had parents do it.

The corrective services officers down there were starting to bring people for sentencing into my court in handcuffs, which I did not like because I do not think people should be restrained in a courtroom except in extreme circumstances.

Mrs VALE—Was this in the Children's Court?

Judge Madgwick—No, this was adult court, but it is indicative. On inquiry as to why this might be so, the answer was that there had been several runners—people just taking off from the courtroom. Again, I have never struck this in my life anywhere but in Campbelltown. So Aboriginal social deprivation is not always the worst; there are other people too. As a matter of social justice, if you are going to put resources into trying to keep young Aboriginal people out of jail—which I thoroughly agree with—I do not see why you should not also do it for the deprived young non-Aboriginal people. Does that answer the question?

CHAIR—Yes, it does. So on the one hand you are eloquently establishing that social deprivation leads to behaviour that is criminal—it does not only lead to such behaviour, but it is frequently the case—and on the other hand we often hear in this committee of the great value of reintroducing Aboriginal people to their own culture as a way of helping to stabilise the behaviour and circumstances of people who have been in distress in some way. I wonder if you have had any experiences which suggest that is a useful pathway for Aboriginal people to find their way back to some kind of psychological equilibrium.

Ms Quinn—I can say that they had circle sentencing in Walgett and it was very successful. Circle sentencing in most places is where they are in the court system, of course, you go and meet with the community leaders, and the penalty is put forward by those community leaders. They know the person, they talk about the disadvantages, and it is very important as a matter of respect for them.

I think also that if there could be the availability of drug programs in all areas—the MERIT program, for instance, the early referral for drugs—and also alcohol programs, that would greatly assist in country areas and where people have these difficulties.

CHAIR—Do you find that MERIT is useful?

Ms Quinn—I do, indeed, absolutely.

CHAIR—Again for the benefit of the committee, it would be terrific if you would explain a little more about MERIT, which, by the way, is not available in the country.

Ms Quinn—It is a magistrate's early referral to a treatment plan. We have officers who are social workers and drug workers available in the court. In Newtown, I have one person who comes once every week. I send anybody who I think could be assisted by this to see if they can be approved for this MERIT program. That involves intensive, weekly, one-on-one discussions and treatment with that person. It is very, very well regarded and highly successful. They can have group discussions as well, but people like one-on-one interaction, particularly if there is a drug problem—it is surprising, but they do. They come back after eight weeks. I have two weeks for the referral to see if they are suitable and six weeks down the track they do urine analysis to see if their urine is clean or they have been on drugs—all of those matters. If they need a bit

longer, they go into an intensive program for three months. They do not have to plead guilty to go to MERIT; I adjourn the sentencing for them to finish that program. If they are successful in those programs, and I get a positive report from the social workers saying how many urine samples were clean, what their attitude was, how many courses they attended et cetera, then I certainly am much more lenient in my sentencing. I give them full credit for what they have done. It is an amazing thing.

Judge Madgwick—On the broader question of whether re-establishment or, in many cases, establishment of cultural identity is an important factor, I confess I have doubts. I would simply say that, if studies show it works, fine. But to me it has the capacity to be a sentimental raiser of false hopes, much as, to my mind, the existing native title system has in large measure raised the prospect of something great but, in practice, has turned out to be rather a disappointment. I think Aboriginal people themselves have to confront these issues. If they consider that establishment or re-establishment of cultural identity is an important factor in this area, as in many other areas also, then that is fine. But I think there is a capacity to be sentimental about this without result.

Ms Quinn—In relation to MERIT programs and drug programs, one of the reasons they are successful is that they do not just look at the drug program; they look at whether there are welfare issues, what the home situation is like, what the difficulties are and whether they have suffered abuse—all those sorts of issues—and then they can divert them into those areas. That is one of the critical points of it. I think the need for alcohol diversion as well, tied in with MERIT, would be very helpful. It is only just coming now.

Mrs VALE—With some of the practical suggestions that you have made and the fact of problems with the licensing system and lack of appropriate diversionary programs, especially in the regional areas, do you as members of the judiciary have any mechanisms whereby you can have interface with parliamentarians or departmental people where you can put your concerns up and they will be listened to? I know you are doing it here with us today, but do you have any formal mechanisms where you can engage with the people who can make a difference for you—where new legislation or amendments can be brought on? Listening to you speak, Ms Quinn, it is obvious that you do need more mechanisms. You need more diversionary programs that look at the individual in a holistic way.

Ms Quinn—Our chief magistrate is very committed to community based involvement. In fact, he has written to this committee. In relation to our court we are very lucky to have him so interested in it. He would put forward any views to any parliamentarians and he does so on behalf of our court. We can put our views to him, and that is really the opportunity that we have.

Mrs VALE—So it is like an informal thing? There is not a formal mechanism?

Judge Madgwick—No.

Ms Quinn—No.

Mrs VALE—Do you understand what I am saying?

Ms Quinn—Yes.

Mrs VALE—We are Commonwealth; we are a Commonwealth committee. But you have to deal with, if you like, state government departments and state politicians. There is no formal interface for members of the judiciary—

Judge Madgwick—No, there is not. Second, there is a cultural thing about it. There will not be too many judges or magistrates giving evidence before you, for sure. It is a bit out of the ordinary.

Ms Quinn—No.

Judge Madgwick—Our involvement has arisen because at a social function I spoke to the chairman and there were a few ideas that I got in his ear about.

Mrs VALE—That is wonderful. I am glad you did.

Judge Madgwick—He said, ‘Why don’t you make a submission?’ Then I could see no adequate reason not to. I spoke to a few colleagues, including Ms Quinn—whom I know from her former career at the Federal Court—and here we are. The cultural thing is that judges and magistrates are shy about going before state committees or even this committee, because it seems like you are intruding into the political process. To the extent that, on some issues, we do have some experience and some expertise to offer, it is a little cultural gap that needs a bridge over it.

Mrs VALE—It seems to me that your evidence is just so valuable. The information has to get back somehow. I am sure that, as a committee, we will make sure that the people who actually have the say here in New South Wales get copies of our report. I think we can honestly say that.

Judge Madgwick—You might like to include a recommendation that changes in the criminal law be accompanied by preconsultation with those whose job it will be—

Mrs VALE—to deliver it at the coalface, yes.

Judge Madgwick—with whom the buck stops—

Mrs VALE—Yes.

Judge Madgwick—and who are likely to be blackguarded without reason as weakly merciful or as judges and magistrates who are too soft on crime. Again, as Tom Calma said, this is not being soft on crime—which none of us are—but being smart about trying to avoid and prevent it.

Mrs VALE—Of course, the reason for this inquiry, your Honour, is the fact that whatever is happening at the moment is not working.

Judge Madgwick—No.

Mrs VALE—There are obviously real impediments to how it can work. And we need to take into account the particular circumstances of people in the outback. There is a phenomenon in

Sydney right now with highly respectable, middle aged, mainstream society regarding loss of licences, Ms Quinn.

Ms Quinn—Yes.

Mrs VALE—But you will never see these people come before your court. I have a dear friend who is a grandmother. She has been driving for something like 45 or 48 years and has never had a blemish on her licence, except in the last three years she has managed to lose her licence on points. You will never see her before your court, but she is appalled that she could have actually lost her licence on points and has never driven over 50 kilometres an hour.

Ms Quinn—The point system itself is shocking in itself—that is, taking away the licence for that. That is another issue.

Mrs VALE—Yes, it is another issue, but I can understand how hard it must be for young Indigenous people.

Judge Madgwick—The safety laws have buckled safety with simple social control. They should be about safety, not about social control and whacking people increasingly hard just because they do not buckle under to what is simply a bit of regulation.

Ms Quinn—If they turn left when they should not, they lose three points.

Mrs VALE—How hard it is for young people who live in remote communities. It just must be horrendous.

Ms Quinn—In Walgett there are five rivers. We had a drought there for nearly four years, with no rain. The wheat people hired 65 people one year, 38 the next, 17 the next and six the next and then the rain came. They hired a huge number of people. They came from everywhere. That work comes in at Christmastime. That is the time when they want to spend money on their children. They earn nearly \$1,000 a week. Good luck to them. They have to work very hard to get it. They get something like six to eight to 10 weeks straight a year, and they work non-stop.

Mrs VALE—As you said, I think the test in that too is the fact that your crime rate lowers at the same time.

Judge Madgwick—The crime rate also drops.

Ms Quinn—Indeed. It is because they have the work, and it is a respect thing as well.

Mrs VALE—Thank you for your evidence. It has been very valuable.

Ms Quinn—They cannot get there if they cannot drive, I can tell you.

CHAIR—We will rely in our deliberations on your carefully prepared paper. Thank you for your insights, which are the more valuable because of your direct experience of what happens in the courts and because, as you indicate, it is not exactly common for judicial officers to appear in circumstances such as these and to talk about their real feelings. We thank you both.

Judge Madgwick—I am sorry we cannot stay for the roundtable, but we both have courts to do at 10.00.

CHAIR—You are both going to court. Members of the roundtable have heard you and you will, I am sure, find intimations of your submissions being discussed in the roundtable.

Judge Madgwick—They can get stuck into us in our absence!

CHAIR—Thank you.

Proceedings suspended from 9.25 am to 9.36 am

ARELLANO, Mr Byron, Private capacity

BABINEAU, Ms Julie, Chief Executive, Justice Health, New South Wales Health

BROWN, Ms Laura, Solicitor, Indigenous Justice Program, Public Interest Advocacy Centre

COOLEY, Mr Peter, Director, Koori Communications and Training Pty Ltd

CRAWFORD, Ms Edwina, Manager, Aboriginal Strategic Coordination Unit, Department of Human Services, New South Wales

DUFFY, Mr Shane, Chief Executive Officer, Aboriginal and Torres Strait Islander Legal Service (Queensland) Ltd

GOODA, Mr Mick, Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission

GRANT, Mr Luke, Assistant Commissioner, Corrective Services New South Wales

HANNAM, Ms Hilary, Children's Magistrate, Youth Drug and Alcohol Court, Children's Court of New South Wales

MARTIN, Ms Rachael, Principal Solicitor, Wurringa Baiya Aboriginal Women's Legal Centre

MATTHEWS, Dr Richard, Deputy Director-General, Strategic Development, New South Wales Health

McKENZIE, Mr John, Chief Legal Officer, Aboriginal and Torres Strait Islander Legal Service (New South Wales/Australian Capital Territory) Ltd

MUIR, Mr Peter, Chief Executive, Juvenile Justice, Department of Human Services, New South Wales

OWENS, Deputy Commissioner Dave, APM, Deputy Commissioner, Field Operations, New South Wales Police Force

PHILLIPS, Mr Shane, Private capacity

PRIDAY, Ms Emilie, Policy Officer, Australian Human Rights Commission

PRITCHARD, Mr Bill, Chief Executive Officer, Aboriginal Child, Family and State Secretariat

WEATHERBURN, Dr Don, Director, New South Wales Bureau of Crime Statistics and Research

WILSON, Mr Andrew, Practice Manager, Law Society of New South Wales

ZULUMOVSKI, Mr Ken, Indigenous Men's Access to Justice, Public Interest Advocacy Centre

CHAIR—I would like to welcome everybody. Thank you for coming. Two of my Queensland colleagues are having difficulty finding their way through the backblocks of New South Wales and are not here yet, but they will be soon. Danna Vale is the member for Hughes, which is in the southern part of Sydney.

We have already been through the process this morning of formalising this meeting. The transcript of the discussion we have here today will be made public unless anybody has an objection. It is possible that snippets of what we say today will be broadcast.

I know some of you have to leave early. Richard Matthews, who is the Deputy Director-General of the NSW Department of Health, must leave soon. The Premier has called him—I cannot imagine why—to see her by 10.30 am. Richard has spent years not only in the health sector generally but as one of the directors of the prison health service of New South Wales. That is a particularly useful perspective to have.

You will understand, too, that our inquiry is receiving submissions from all over Australia. We have well over 100 from the widest variety of government agencies, NGOs, Aboriginal grassroots organisations and, indeed, from some academics. We are conducting this inquiry against a background of the initiatives of the so-called Closing the Gap process, in which the federal government is trying—in a more systematic way than has ever previously been attempted—to make a whole-of-government approach to the problem of Aboriginal disadvantage, and there are now programs underway and reported upon in education, health and housing. Our concern—our focus—is on the question of community safety. But that, in turn, leads us to the obviously chronic problem of Aboriginal imprisonment, which, I am sure Don Weatherburn will remind us again, is getting worse and not better, for a variety of reasons. I am especially grateful that you have all given up your time in order to have this discussion, because I am at least hopeful that it will be able to feed directly into a reporting process that will allow us to influence federal government policy into the future. This is not, I hope, a mere talkfest. I am well aware that plenty of people around this room are a bit sick of them.

I would request that Richard and then Don give us five or 10 minutes each about the dimensions of the problem, as they see it. One is from the point of view of a very experienced administrator in the area of health, and the other is from someone who has spent a lifetime studying not merely criminal statistics but the causes of crime. Thank you, Richard.

Dr Matthews—I would prefer to leave the nature and extent of the problem—which I think most people in the room are aware of—to Don. With your permission, I would like to go straight to some suggested strategies for a solution. I am going to suggest that we need a three-pronged strategy, which involves three quite different areas. Because I am anxious for no-one to think

that I am suggesting we neglect it, I am going to go to the pointy end first. This is the area where young people are already heavily engaged with the criminal justice system.

I first became involved with this group in the eighties, treating people who left adult jail on methadone. Subsequently, I went to work in the prisons in drug and alcohol work—I think at a time when you were the Minister for Corrective Services—and I spent 16 years out there one way or another. We, being the state government, have invested heavily in health services for people in custody. In 1992 the budget for justice health was about \$12 million. It is now well over \$100 million. We have invested in treatment services for people in adult and juvenile centres, in the main because such services are necessary but also because there is a well-recognised link between some aspects of mental illness and, in particular, drug and alcohol dependence and criminal behaviour.

We have also invested in community programs, we have invested heavily in court liaison services to give advice to the courts about people before them and we have worked cooperatively with the Australian government in programs such as MERIT. At the moment that program is only available for over-18s but it is moving from its 10-year history in illicit substances to tentatively dipping its toes into the area of alcohol. So we have a broad range of treatment services in all the areas where illness and the criminal justice system intersect.

We have also invested fairly heavily over the years in prevalence studies of people in custody. I would like to give you a couple of figures from the latest prevalence study in juvenile detention, because I think they illustrate the real nature of the problem and of the other strategies that I want to move on to. When we did the last one in 2009, in partnership with Juvenile Justice, we got a 94 per cent response rate from the people in custody at that time, so it was a pretty robust representation. Forty-eight per cent of those were Indigenous. Sixty-one per cent of the Indigenous people had lost a parent to incarceration themselves; 21 per cent had a parent in jail on the day the survey was done; and 38 per cent of the Indigenous detainees had been at some point in out-of-home care. So it is pretty clear that we are dealing with a problem that is in some measure generational. The same issues apply to non-Indigenous people, although not to quite the same extent. Fifty-six per cent had already been in custody on more than five occasions and 83 per cent had been in custody at least once, so we are talking about a recidivist group. I think Don is going to say that alcohol is a big factor. Already, 83 per cent are indulging in risky drinking at this stage and 93 per cent have used illicit drugs at some time.

So we are dealing with a problem which, when people come into detention, involves some seriously entrenched behaviours which are also significantly generational. So I am going to suggest that, as well as providing all the appropriate treatment and rehabilitation services for these folk, we need to take a very significant, concerted generational approach in relation to prevention and early intervention. There is very strong evidence that improved antenatal care, improved maternal health and initiatives like Healthy Housing for Indigenous people improve the overall environment. And for those people who are predicted to be at risk programs such as targeted, sustained home visiting for the first two years, to assist with parenting skills, and the linking of programs for young children with health programs for parents or guardians of those children who themselves have drug and alcohol, mental health or other health problems, are critically important to reducing the number of children who go through this spectrum of unusual behaviour, poor school attendance and truancy.

We also have to remember that very significant numbers of Aboriginal children attending school have a hearing deficit as a result of multiple ear infections. This is a failure of the provision of primary health care in the community. Poor hearing leads to problems in the class which may not be recognised as being due to hearing. All these health related factors compound and add into behaviours which are considered undesirable. Then, hey presto, something very special happens: you turn 10 and behaviour that was previously considered to be problematic but needing help suddenly becomes criminal behaviour and, as we know, and as I think Don will say—I am putting words in your mouth, Don—the treadmill of involvement with the criminal justice continues.

I think that, in getting a national strategy—which is what we need—there are interventions for people who are on the treadmill, there is early intervention for those with risk factors and, sitting behind, there is a broadly based program of child and maternal health, in the broader sense of health, to reduce the number of people going into the problematic areas. Exactly the same things apply to non-Indigenous people in this situation as they do to Indigenous people. It is not a problem of being Indigenous; it is a problem of poverty, social deprivation, alienation, a lack of respect by the dominant culture for the minority culture and all the social determinants of health. I will shut up now, Chair.

Dr Weatherburn—I should say the things that Richard said I was going to say, but I have forgotten what they were. I will just say two things about the size of the problem. I think we can easily spend too much time talking about the size of it. Everybody knows that we have gone backwards since the Royal Commission into Aboriginal Deaths in Custody. Across the country as a whole, the imprisonment rate of Aboriginal people has gone up about 37 per cent. In New South Wales I think it is about 48 per cent. The one figure that I think tells it all for me is that, if you are a young Aboriginal person turning up in a court for the first time between the ages of 10 and 14, there is a 60 per cent chance that you will be in an adult jail within eight years—which I think is a depressing figure.

I will split my comments about causes into two parts, one of them having to do with what the factors are that get you into the justice system in the first place. The evidence I can shed on that—to any extent that I can shed any light on that—comes from a study we did using the National Aboriginal and Torres Strait Islander Survey. That survey contains measures of most of the factors people have speculated are important. It contains measures of unemployment, measures of income, measures of financial stress, measures of education and measures of drug use and alcohol use. To cut a long story short, when you put all those factors into a statistical mix, the two factors that stand out as big predictors of whether an Aboriginal person will be arrested or imprisoned are substance abuse and alcohol abuse—in that order.

The second or third important factor is year 12 complete. Kids who complete year 12 are far less likely to end up arrested or imprisoned. All the other factors are significant—the financial stress is important—but substance abuse and alcohol abuse are so important they stand head and shoulders above the pack. Part of the reason they are important is that they, particularly alcohol, tend to get Aboriginal people involved in violent crime—predominantly family violence of one kind or another. If there is any way of getting yourself into jail, it is certainly by committing a serious assault—much more so than property crime. Alcohol and substance abuse have damaging effects on parenting as well not just for Aboriginal people but also for anyone in the community. I think that is another reason that those factors loom so large.

In the justice system itself the story has been changing. You might divide the time period up—before 2001 and after 2001 in New South Wales. I do not know how things stand in the other states. Before 2001, most of the external drivers of Aboriginal imprisonment in New South Wales were causing increasing rates of entry into the justice system. Since 2001, what has tended to happen is that the major reason for the growth in imprisonment since 2001 is a much tougher criminal justice response to offending. For example, we have tougher bail laws, much tougher sentences. People—Aboriginal and non-Aboriginal—are far more likely to get a prison sentence now than they were back in 2001 and they are all far more likely to be refused bail now than in 2001. Also, they are all far more likely to be breached for violations of bail and parole now than they were in 2001.

This has a differential effect on Aboriginal people because, amongst all those at any given time who might be at risk of getting a jail sentence or of being refused bail, Aboriginal people tend to outnumber non-Aboriginal people. So, whenever the justice system gets tougher, as it has in New South Wales and other states, it always has a bigger impact on Aboriginal people than it does on non-Aboriginal people. That is part of the reason the Aboriginal imprisonment rate has gone up in New South Wales. If you are looking for the evidence of all of this—I am not going to drag you through it—it is on our website, and I have details of the reports here that you can follow.

The third point I would make is that there is a tendency to think that we need short- and long-term strategies to reduce Aboriginal imprisonment, and I think that is absolutely right. I agree with everything Richard said about the long-term strategies—that is, the importance of improving Aboriginal health, the importance of improving Aboriginal education and all of those things—so I will not add to that. In the short term, people usually look to changes in the justice system to improve the situation. The first thing they tend to think is, ‘Let’s have a diversion program of some type to stop Aboriginal people going to prison.’ I am here to tell you the bad news about diversion: almost every diversion program has failed to reduce the rate of entry into prison. Almost invariably, diversion programs at the front end do nothing more than split the non-custodial vote. What I mean by that is that people who would otherwise have received a fine, a community service order or periodic detention get the newest alternative on offer. That is what has tended to happen time and time again, and that is why the introduction of successive diversion programs at the front end has had very little effect on the rate of Aboriginal imprisonment. Here I am emphasising New South Wales; I do not know how it has played out in other states.

It is important to know, though, that the population of any group in jail is far more sensitive to the rate at which people come back than to the rate at which they go there for the first time. One of the reasons the Aboriginal imprisonment rate is so high is not so much the differential in the rate of arrival for the first time as the huge differential in the rate at which they come back. For reasons that only a mathematician would care about, tiny changes in the rate of return to prison make big differences to the number of people in prison. So, if you are looking for a short- to medium-term strategy for reducing Aboriginal imprisonment, there could be no better place to start than rehabilitation strategies for reducing the proportion of Aboriginal people who, after release from prison, come back to prison. The evidence for this is not actually on the website yet; I am hoping the report will come out tomorrow. But, in terms of leverage on the problem, you could not do better than that.

If you could not get a rehabilitation strategy that was successful—and I am sure you can; we list them in our bulletin—another thing that could be done would be to reduce the likelihood of a prison sentence for someone who reoffends after going to prison. You might think, ‘Why would you do that?’ At the moment, the odds of someone going back to prison if they have been to prison are 7½ times as high as for an identical person who has not been to prison before. That has a really big effect on Aboriginal people. There is no reason you could not make it more likely that they would go back to jail, but 7½ times as high is very high indeed. If there were some scope for reducing that to something like 3½ times as high, you would certainly have a big effect on the Indigenous prison situation. Is this making sense? So, my plea in the short run would be to pay not so much attention as we have paid to the front end of prison but a lot more attention to the back end—a lot more attention to what happens to Aboriginal people once they leave prison. End of story.

Dr Matthews—I have to add that when you link prison departures to the national death index you discover that one of the principal reasons people stop going back to prison is death. The rate of death from drug overdose, suicide and various accidents related to behaviours is very significantly higher than for the general population. So you also have to adjust the criminal justice outcomes of your program for death.

CHAIR—We try to make this a genuine roundtable where everyone speaks when they find it appropriate, so people should feel free to shout out if they want to. Danna Vale wants to ask a question, but it did occur to me, Don, that if what you are saying is true then Luke and Peter might have something to say by way of putting some order in the conversation. Perhaps Dave Owens, too, might have something to say to provide a context for our discussion.

Mrs VALE—I would like to ask Don a question. Do your statistics reveal the nature of the crimes that get people sent back to prison? Is it criminal activity that returns Indigenous people to jail or are they breaches of conditions or failure to pay fines? I understand that the amount of crime have not changed a lot from 1992. But the prison population has increased. What is the differential? Do you understand what I am trying to ask—very badly?

Dr Weatherburn—I cannot resist putting words into Dave Owens’ mouth here. He will argue, and others have argued, that the reason that the crime rate has remained stable or fallen is because they have got a lot tougher. In terms of the offences for which Aboriginal people are turning up in court, they disproportionately involve violent offences. There are also a fair proportion of driving offences. Those driving offences relate to the current regime for dealing with fine default. A typical scenario is that you do not pay your fines and do not do the alternatives. Your licence is suspended or disqualified. You drive without a licence, and if you drive without a licence you get picked up for a driving offence. So a fair proportion are going to jail for driving offences. There are also a fair proportion of Aboriginal people going into prison at the moment, even though robbery and burglary are not going up, for robbery and burglary. Does that answer your question?

Mrs VALE—Are there any statistics on Indigenous returns to jail that are based on non-violent crimes, breach issues or because there are no diversionary programs available?

Dr Weatherburn—There are certainly a fair proportion going in for what are called justice procedures offences, which are breaches of bail, breaches of parole—

Mrs VALE—That is the phrase that I was looking for: justice procedures offences. Thank you.

Dr Weatherburn—A big proportion go in because of those things. But the courts and the parole boards would argue that you set conditions for release that you would be a fool to ignore if they were breached. But it is not for me to make the argument in favour of that. I just observe that that is a fair proportion of them. You will see a full breakdown of the reasons for going to jail in the little document called *Why Indigenous imprisonment rates are rising*. It is ABS brief No. 41 and it is on the website now.

Mrs VALE—Thank you very much.

CHAIR—Has that just been published?

Dr Weatherburn—That came out about three or four months ago.

Mr Grant—I would like to make some comments on the numbers in relation to that question. One of the questions that were asked a minute ago was about the differential rates of return for Aboriginal people in relation to specific offences. From our data on the two-year reoffence rate from 2005-06, if you were an Aboriginal person convicted of and jailed for a sexual offence, you were about three times more likely to return to custody than a non-Aboriginal convicted of that offence. So 33 per cent of Aboriginal people convicted of sexual offences return within two years compared to about 10 per cent of non-Aboriginal people. For property offences, 62 per cent of Aboriginal people in custody will return to custody within two years, whereas for non-Aboriginal people the figure is 48 per cent. That is across almost every category of offending. There are particular categories where the reoffence rate and return rate are higher. Importantly for this discussion today, 61 per cent of younger Aboriginal adults, who we categorise as people under the age of 26, return to custody within two years, whereas 48 per cent of younger non-Aboriginal adults return to custody within two years. So there are significant differentials with respect to that.

In relation to community based orders and revocations of community based orders, there are also significant differences. For Aboriginal men in jail, 28 per cent have had a breach of parole within 12 months of coming into custody, whereas 14 per cent of non-Aboriginal people have had a breach of parole. In relation to other community based orders, 12 per cent of Aboriginal woman have had a breach of a community based order and within 12 months have come back into jail, whereas it is eight per cent of non-Aboriginal women and about six per cent of non-Aboriginal men. So in basically all measures the rates of recidivism for Aboriginal people are significantly higher.

Mrs VALE—What about the rate of return for the justice procedures offences, especially in remote regional areas where there are no other diversionary programs available?

Mr Grant—I can provide that figure. I do not have it with me.

Mrs VALE—Thank you.

CHAIR—Would Peter Muir and Dave Owens like to respond to those remarks? I do not mean for the debate just to be between representatives of government agencies, but it is just a way of laying the groundwork.

Mr Muir—In New South Wales today, 47 per cent of all young people in juvenile detention are Aboriginal and Torres Strait Islander young people. I will not go over a lot of the ground that has already been covered. I would add, following on from Dr Matthews, that one of the more concerning factors coming out of last year's health survey, which is jointly conducted by ourselves and Justice Health, is the rate of intellectual disability and borderline intellectual disability of young people in custody. Of all young people detained New South Wales, 44 per cent have an IQ of 79 or less. To me this starts to get to some really critical issues when we talk about justice procedures and things such as a young person's ability to understand and comply with the requirements of the justice system. If we are seeing that a very large proportion of the detained population have significant levels of intellectual impairment, I think there needs to be some real questions asked about how we administer justice to that group of people.

CHAIR—That is an astounding figure really. You are saying that nearly half of the kids in juvenile justice detention centres, regardless of their ethnic background, have an intellectual disability.

Mr Muir—Or a borderline intellectual disability—that is, a functional IQ of 79 or less.

CHAIR—That is saying that there is a justice response for a health problem.

Mr Muir—Adding to the things both Dr Matthews and Don have said about discharge, with the young people we detain and their response to both education and health issues, the sad irony is that many young people receive the best level of education and health care that they will ever get in their lives when they are in custody. I have seen figures from the Department of Education and Training of young people entering custody with reading ages of six and seven and leaving with reading ages of 14 or 15. So we actually do see significant increases in literacy and numeracy. In our prevalent studies numeracy is actually worse than literacy in terms of young people coming into custody.

Also in health—and Julie may want to comment on this—we again see incredible stabilisation. We have very high levels of young people with mental illness. I think something like about 28 per cent of young people in custody have had an admission to a mental health unit. Our figures in the last study, and I do not have figures from the current study to hand yet, show that something around a third have a severe mental health disorder under DSM-IV. Justice Health will then look at their interventions. We get incredible levels of stability of people whilst they are in custody. When they leave, both the educational achievements and the health achievements are often lost. To go to Don's point on the follow-up in those two areas alone, Justice Health have actually put a large investment into what we are calling community integration teams, which follows a successful pilot in Dubbo where we actually tracked young people back into the community. They do basic things like make sure that medication is available and ready. Whilst it is available in custody, often families do not have the means or the priorities to continue some of those regimes. The aim of the community integration teams is to ensure that what is started in custody is actually followed into the community.

To me, one of the great missing pieces is education. A lot of these young people have burnt their bridges in mainstream education and training. In custody, you will have a regime with a ratio of two adults to every six children in custody, so a young person would actually get very intensive education. A lot of those gains are simply not followed into the community. I think that would be one area that we need to concentrate on.

In terms of what Juvenile Justice is doing—and I will talk about this very briefly—one of the more promising programs that we have started in my lengthy period in Juvenile Justice is based on a program called multisystemic therapy. It is called the Intensive Supervision Program here in New South Wales. Don will be involved in an evaluation of that program over the next four years. It is a program that works with the families of young people. It actually does almost no work with the young people themselves. It is a program that concentrates on identifying in the family the strengths and the processes needed to support the young person in the community. I am not going to quote figures because I think that will be misleading, but our early data in the program is very promising. Over half the families in this program are Indigenous families. We are seeing a high level of engagement with Indigenous families in this program, and the very early signs are that it is showing all of the promise we had hoped for. It is only operating in two locations—in Western Sydney and in the Hunter—but it is, in my view, a program that is certainly worth watching.

CHAIR—Later in the morning we might discuss the notion which these days goes under the label of ‘justice reinvestment’.

Mr Muir—To save time here today, you will be hearing about it this afternoon. When the committee is at, I think, Juniperina today—

CHAIR—Yes.

Mr Muir—we will be talking to you more on it this afternoon, so there is no need to take up time here today.

CHAIR—Dave, did you want to make a comment?

Mr Owens—Just very briefly. Some of the questions that were asked were about how juveniles came into contact with us. There are a number of ways—diversion options—particularly under the Young Offenders Act. When you come down to warnings, cautions and conferencing, they are all available to the police. But one of the barriers that comes up—and it is not a criticism of the legal profession but of the act itself—is that, while we, the police, may wish to proceed with a caution, the young person in a number of instances only has telephone contact with their legal representative, so they only have limited information. The juvenile actually has to admit their guilt at the time, then and there, to be subject to one of those diversion programs. Rightly, given the limited information they have at the time, the legal advice generally is, ‘Do not say anything’—and I am generalising. Therefore, the police cannot proceed with those cautions, warnings or diversion programs. That is one of the issues that we need to address.

Don rightly referred to bail and remand populations. We saw a marked increase in bail compliance because, in our view, with the correlation between bail compliance and reoffending,

bail is there to stop people from reoffending whilst they are out on bail with conditions. If you look at why they are not complying, there are three barriers, two of which greatly affect us: (1) there is a lack of fixed residential address for the young people, and therefore we cannot bail them to those addresses; and (2) there is a distinct lack of parental support. Therefore, they are two of the largest impediments we have to issuing bail while these juveniles are with us.

In one of the BOSCAR studies which Don put out, there were 102 randomly selected people, 50 of them on remand. Thirty-five of the 50 did not comply with a curfew. Twenty-nine were not in the company of their parents and then were associating with co-offenders. We have found a distinct correlation between the time they were out on bail and their recommitting of offences; it is very high. That is why we proceed along those lines. There are a number of programs in which we are working actively and which may or may not be covered at the moment. But the front end of it is when we come in contact with the juveniles. Unfortunately, generally we deal with them not once but over and over again. The kids get to know the system really well.

CHAIR—Although Don has said there is an understandable tendency for anybody thinking about these particular matters to wonder about diversion programs before prison, and he is also indicating that those kinds of programs actually do not change the rate of imprisonment very much, nevertheless there is in the submissions and even in evidence given earlier this morning great emphasis laid on the fact that there are fewer diversionary sentencing options available in remote parts of New South Wales. You have just mentioned that again now, with respect to bail, or cautioning arrangements. Does anyone have more to say about this problem of remote communities not having the suite of justice alternatives that are available in the cities?

Mr Grant—There are changes afoot, so there is a bit of a paradox in relation to the availability of diversionary options in remote communities. The availability of them or otherwise did not have an impact on the likelihood of a court sentencing someone to a prison sentence. In fact, an inverse relationship appeared. Notwithstanding that, there is a move afoot in New South Wales to expand on some of our adult diversionary programs from the community, so we were limited in relation to the availability of home detention and also periodic detention, which was a place based type of sentencing option. We are expanding the availability of all those options in the community now. Whether or not people end up going to jail or not, there can be no argument that there is a misplaced emphasis on incarceration. It is absolutely expensive—for adults we are spending almost \$1 billion a year in New South Wales. When you put someone in custody, you have to invest a lot of money in just mitigating the effects of incarceration. If I look at the workers in jails who are involved in the program side of things, and I have done some analysis of how they spend their time, they spend about 60 or 70 per cent of their time involved in activities that are about maintaining their wellbeing, reconnecting them to the things they are disconnected from by coming to jail. If you could invest the same resources in a decent community-based program, you would get a significantly better investment return for your dollar. That is not saying there are not people who for community safety purposes should be in jail, but there is a large number of people who do not need to be in jail to protect the community's safety. In fact, the inverse is probably true because there is quite a deal of evidence to suggest that incarceration is a criminogenic factor in itself and that the experience of incarceration results in an increased likelihood of someone offending.

Whereas the existing diversionary programs may not be producing the results in terms of non-net-widening, there are some things that do work, including home detention. It is a fairly safe,

well structured non-custodial sanction. It requires the court in the first instance to sentence someone to a term of imprisonment—having sentenced the person to imprisonment, reconsideration is made of the nature of the order. Unfortunately in other cases, including community service orders, suspended sentences and other orders like that, you cannot assume that because someone is given that order that they would have got a prison sentence, unless they are sentenced in advanced. The problem that arises is, when you put someone through a diversionary program, very rarely are all the necessary resources available to address those issues. The people who are on those programs in the community generally are excluded from access to mainstream services because of certain problems that people perceive about dangerousness, personality disorders, drug use, violence and so on. Their access to the services they need to stay in the community is not as it should be.

Dr Weatherburn—Luke said what I was going to say, so I can only echo his sentiments. Yes, we did do a study called ‘Does the lack of alternatives increase the risk of a prison sentence’, and, strange as it may seem, we found that it did not increase the risk and in fact, once you control for other factors, people living in remote areas are less likely to go to jail. But that is not to say that there is not value in putting more resources into rural communities. There is a real point to be made here about the importance of improving compliance with bail conditions and parole conditions. That is the second most important reason for Indigenous imprisonment. Violence is No. 1; breach of justice orders is No. 2. I am sure the police would be happy if some means could be devised to improve compliance with parole orders and bail orders, which might or might not involve fine-tuning the conditions of bail and parole orders to make them easier to comply with. That is the only point I would make about it.

CHAIR—I think people on this side of the table should begin to ask a few questions or make a few observations about all of that.

Mr Duffy—If I may, I want to acknowledge country first and foremost, the Eora nation whose land we are on. I acknowledge myself, for the elders, as a Kalkadoon man from Mount Isa. To give you some sense of position and who I represent today, there was a joint submission from the Northern Territory, New South Wales, ACT and Queensland Aboriginal and Torres Strait Islander legal services. John will speak on behalf of the New South Wales service, from the local perspective. I just want to respond in relation to the challenges that Dave Owens raised about the usage of cautioning and conferencing. The Aboriginal Torres Strait Islander legal services are funded by the federal Attorney-General’s Department to provide community legal education to our communities across the country, to be able to give them the knowledge about the benefits of utilising restorative justice principles and diversionary options that are available to them. A recent example is that people do not trust the police—and I am just talking about the facts. So it is a historical context. What we are trying to do from our perspective is inform the community about the advantages of these approaches.

I was in Mount Isa last week on the Northern Territory border, and I had an opportunity to sit in a magistrates court with the superintendent of police for that region. The challenges I put up to the superintendent within that region were concerning the court ordered precautions conferencing versus the police ordered conferencing. The reality is, from his perspective, that young officers come into those remote and regional areas and, picking up on their own duties and obligations in line with police powers and responsibilities, they cannot consume everything—that was his response to me. If we have police officers within Aboriginal

communities not understanding their roles and responsibilities and taking a proactive approach in relation to utilising diversionary and restorative justice options then there is a real issue. I saw that as no excuse from the Queensland Police Service in that case. They say, 'We have new officers and they do not know what they are doing.'

So it is a two-way responsibility. It is a whole-of-government approach. From our perspective, educating our people in relation to cautioning and conferencing and the advantages of those options is high on our agenda, but it is also looking at the reality that this will take time. And there is the historical context of contact, not only with state government agencies or departments but also with police in particular, which is one of the barriers to ensuring a far more effective uptake of those cautionary and diversionary options.

Mr Pritchard—I just want to touch on the correlation between kids in the justice system and the out-of-home care system. They are entering the system for the same reason. Often it is transgenerational issues that have led to them being there. Their parents have been through the system, often, themselves—either the out-of-home care system or the justice system. I do not think there has been enough work done or research done around the correlation between the two. Our kids in the out-of-home care system feel disenfranchised when they enter the system and often go on—for the very reasons mentioned, drug and alcohol or whatever—and end up in the justice system. I think Peter would admit that often the juvenile justice system is a pseudo out-of-home care system. It was conceded by DOCS that often they cannot find appropriate places for these lower level offenders—foster care, residential care or appropriate out-of-home care. So as a fallback position these kids often end up in the juvenile justice system. I think there really needs to be some work done around that. I do not know whether Don has done any work around that.

Dr Weatherburn—No, but it has certainly got my interest. Next I need the money.

Mr Muir—Could I just point to one piece of research I was interested in last week. I think I have got the name right. A Dr Philip Mendes from Monash University presented a paper on, particularly, young people leaving out-of-home care and pathways into the criminal justice system. It does not quite go to the extent that you, Bill, raised, but certainly I know that there has been some work done out at Monash on the pathways between young people exiting home care into the criminal justice system. If that reference is not right, Chair, we will get it through to the secretariat.

CHAIR—Thank you.

Ms Martin—Firstly, I would like to say that we do not claim to be experts at all on the criminal justice system. In our service we are very much focused on working with Aboriginal women and children who are victims of violence, and what we are particularly interested in is the link between victimisation and criminal behaviour and thus engagement with the criminal justice system.

There has obviously been a lot of talk here today about drug use being a very strong pathway to engagement in the criminal justice system, and we would suggest that there is a fairly strong link between drug use and victimisation. Our paper refers to a plethora of statistics which show that Aboriginal women and children are significantly overrepresented as victims of violence,

whether it be domestic violence or sexual assault. Our paper refers particularly to two studies that focus on Aboriginal women in custody. That was a survey done by the Aboriginal justice advisory council a number of years ago which showed that 70 per cent of Indigenous women in prison had been sexually assaulted as children, 14 per cent were incest survivors and around 61 per cent were victims of physical violence. Nearly all the women who were victims of child sexual assault had a drug problem and were also victims of violent abuse as adults. That same group of women identified that child abuse, and unresolved trauma as a child, was primarily the underlying issue in their drug abuse, offending behaviour and current imprisonment.

I also refer the committee to the report done by the NSW Aboriginal Child Sexual Assault Taskforce, which was a specific report that focused upon child sexual assault within the Aboriginal communities in New South Wales. That report noted:

Communities described children and young people as seeing violence and sexual assault as a completely normal way of life. They are involved in crime and other risk taking behaviour such as substance addiction and prostitution, are ending up in gaols and institutions and experience a hopelessness and despair that is all too often resulting in self-harm and suicide.

So, in terms of looking at the issue of intervention and prevention, our submission is that one of the big issues that need to be looked at is violence within the Aboriginal communities and how to address that.

CHAIR—Do any of the state agencies have a response to that?

Ms Babineau—It is evidence as well in the studies we have already done.

Ms Martin—Yes. I thought it was interesting in relation to the young people in custody health survey, which I think Mr Muir was referring to—I have not read the report—that there was an article in the paper the other day which showed that 28 per cent of the girls in detention centres had been admitted to a mental hospital and 43 per cent have harmed themselves. I suppose it begs the question: why? What is going on in those young people's lives? I would suggest that one of those issues would be the experience of violence.

CHAIR—So this is drawing attention, too, to the general issue of the intergenerational nature of some of these problems we are speaking of. That is a kind of political problem because, even in acknowledging that characteristic of these actual manifestations of criminal behaviour or, in any event, antisocial behaviour, you are also saying that you have got to have policies that will work for generations, and the political cycle is three or four years long. I wonder if anybody has anything to say about the way in which that kind of paradox might be dealt with.

Mr Zulumovski—I will do it. I would also like to acknowledge the traditional custodians of the land. In traditional times we had songlines that connected communities and culture and traditions and customs. These days we have what Professor Judy Atkinson calls trauma lines. This is a connection of intergenerational trauma and violence that is prevalent in communities. The symptoms that manifest from that are some of the symptoms that we have just highlighted in the previous comments. This highlights the importance of acknowledging something I have not heard in the room today. We have been going for 2½ hours and the topic of Aboriginal healing

has not yet come up. We always hear about education needs, housing needs and needs for programs within juvenile prison settings, but we have not touched on the issue of healing.

This is an issue that was highlighted by our former Social Justice Commissioner Tom Calma. In that particular social justice report, from 2008, he made it fairly clear what healing is and where it is needed in communities. He also made it quite clear what healing is not, by definition. What healing is not is more education, more housing, more policing—things that are human rights. What he highlighted was the need for more cultural renewal and culturally appropriate and sensitive therapeutic change. So within any program I believe there must be a component of healing, because we are talking about, essentially, people who are largely unwell coming into the system. There are juveniles who are yet to be diagnosed in psychiatric terms but they present with all manner of behavioural issues. Some of them are labelled with emotional conduct disorder; some of them are labelled with oppositional defiance disorder. By and large, there are young fellows that have been exposed to domestic violence, neglect and a whole list of other issues.

Healing programs allow for those problems to be addressed in a culturally appropriate and safe setting. That is something that modern psychiatry—and certainly the medical model—does not quite allow for. This is the reason programs like Gamarada men's healing and life skills have evolved from that grassroots level, often without funding, and the reason why they are successful. If 20 or 30 men can turn up on a Monday evening between 5.30 and 8.30 and start to address this and start to admit there are problems in the community—some of them being domestic violence and some of them being loss of identity and culture and their role in society—then that is a step in the right direction. Is it okay if I just make comments about some of the comments that were made earlier this morning between 8.30 and 9.30 by our judge?

CHAIR—Of course it is.

Mr Zulumovski—For those who arrived at 9.30, there was a discussion that took place with Judge Madgwick. I guess it is important for us who are advocating social change, diversionary options and grassroots programs to know the other side of the argument. There was a conversation this morning that sort of digressed to road traffic penalties, which in some cases lead to our people being behind bars. But I believe we are here to talk about the issue of juveniles in correctional facilities. There are a number of our mob—our kids—in prisons who are not old enough to get a licence. I was wondering where that was going for some time.

CHAIR—It is also about young adults—

Mr Zulumovski—Young adults as well—thanks for that.

CHAIR—a lot of whom are in jail for driving offences.

Mr Zulumovski—You are right. My community would have appreciated a bit of a highlight of disproportionate penalties for Aboriginal people in our justice system in general. Our dear judge also made comment of the highest traffic laws as examples of social control. Again I think there are people in our community who would agree that the disproportionate locking up of our youth is a means of social control. There was also surprise about a lack of conduct, being

children swearing court rooms. I would say to that that I would investigate to what extent the system has dealt with that particular individual before their arrival in the court room.

CHAIR—To be fair, I think he was saying that he was appalled by the circumstances that a young person must have been through to lead them to behave like that. He was concerned that they were not healed.

Mr Zulumovski—I see. I did pick up the term ‘social norms’. I was wondering which social norms he might have been comparing. Those are just a few comments I wanted to make on what was said this morning. Coming back to the point, a comment he did make was that he was not a fan of extra discretion towards our mob, our young people. He was of the opinion that we should treat them all exactly fairly and, if that is the case, then we should support our people to a position in society in health, in mental health and in social and emotional wellbeing before we take that position, if we are going to advocate for social justice.

CHAIR—Can you tell us how you see healing programs being given more recognition. What do you think might be an appropriate way for us to give more support to those sorts of processes?

Mr Zulumovski—We have been advocating for a while now pushing the healing agenda. It has been in previous social justice reports. There is a challenge out there to get agencies talking the language, understanding firstly what healing is in an Indigenous context, and then changing or modifying the models that deliver their services to allow that to flow through. As my brother said down there, it is a two-way approach—it is an intersectoral arrangement—but, if we have to move beyond the silo model which still exists regardless of the amount of rhetoric about the holistic approach, we need to investigate and educate key service providers and people at all levels of management, including senior management, about what healing is and how they can modify their models of service delivery. Otherwise, if it is a bottom-up approach, we are not going to embrace these concepts that Mr Calma spoke about in his social justice report.

Dr Weatherburn—I am not opposed to diversion programs for Indigenous people. My problem is that I think they are often presented by government as a pretty quick solution to the problem of Indigenous overcrowding in prison or Indigenous reoffending, whereas they might be better presented as capacity building over the longer term, a means by which to strengthen Aboriginal communities, perhaps down the track having an effect on offending. The thing to remember about Circle Sentencing is it may not have any immediate effect on reoffending but it certainly does not make things worse and if you had to choose between that and a classic court format and your concern was capacity building and strengthening Aboriginal communities, it would be better to go down that Circle Sentencing track. It is good to think about diversion programs not just in terms of the narrow focus on getting the imprisonment rate down now, or getting the reoffending rate down now, but looking to the medium to longer term. That may be where your program or concerns come into play.

Mr Zulumovski—I would agree, and I would say that I see Circle Sentencing and other diversionary options as a step slightly outside the justice system and it has a capacity to delay the process of a person eventually ending up in incarceration or as a way of referring them to an appropriate service. What I see that is lacking in the community at the moment is appropriate services to refer to, one of which is drug and alcohol services. As we know, a lot of our people

end up with the police or before the courts because of drug and alcohol issues. That stems back to the need for healing and early intervention beginning at puberty.

Mr Duffy—I want to pick up on some of these points and to pick up on the healing and raise that, looking at alternative dispute resolution processes in the National Alternative Dispute Resolution Advisory Council and looking at mediation as a way of healing in community. There is a range of successful programs where mediation has worked. I always make reference to the federal Attorney. I note that the federal Attorney has endorsed that alternative dispute resolution mediation is but one tool in the bag for healing in community. There are successful models in Halls Creek in WA and in Mornington Island on the Gulf of Carpentaria in Queensland. Those successful models I am trying try to focus on more as people do not enter into the system, so looking at, I suppose, a pure diversionary option. It is about the Aboriginal legal services, it is about police prosecution and about the magistrates being able to identify that people will be able to be diverted away from the system. I know the challenge will continually come up around the dollars, but we are talking about a reinvestment in justice. I would ask do we know where we are investing our dollars to this current point in time, from the Commonwealth and state government levels. I could answer that myself and I could say that the whole of government approach is all over the place. We cannot identify diversionary options within community because we do not know who is funded.

In relation to a range of healing programs, I just want to reference Red Dust Healing, Ending Offending, Ending Family Violence and Our Journey to Respect. That is about moving from a different starting point and having more of an embracing perspective than the conventional individualised programs. Those individualised programs are owned by agencies, so this is mine, I will work with it. What does not work is working across government departments and agencies in trying to move towards the same goal. So when we talk about those individual harms and wrongs they are always placed within a collective context. On the one hand offenders are dealt with as individuals that are responsible for their own actions, so their pain and their forces compel them to harmful behaviours towards themselves and others that are confronted. They are understood within the collective context of experience with Aboriginal and Torres Strait Islander people in a non-Aboriginal and Torres Strait Islander society. So our explanatory context is the explanation for behaviour where we talk about this collective experience as Aboriginal and Torres Strait Islander people.

Those programs that I referenced before are programs that are unique because they seek individual change within that collective context. Mainstream programs cannot and do not do that. They do not understand individual change is a part of a collective experience. In Mornington Island mediation involves 130 people. People fight amongst each other over age-old issues and when we sit down with our mob and talk about why there is violence in communities the vast majority of people cannot tell us why, other than to say that we have been socialised that violence is a normal way of life. So within a mediation and alternative dispute resolution process it allows people to actually sit down and talk about what they perceive to be the conflict in the community.

As I said, it involves 130 people, and it is a successful program, albeit a pilot program at this point in time. Within that is another issue—that ‘pilot’ and the word associated with that mean that it is going to be here for a very, very short time. Later on John may be willing to touch on a 10-year pilot but in New South Wales. So ‘pilot’ is quite scary.

The advantages of these healing programs are really about community ownership. It is about community control where our people have a say about the issues and the solutions that impact upon us. There is one key point that I want to make in relation to that, and it takes time. It may be that a 12-month pilot or whatever it may be may not be enough time, because our mob need to get their heads around it, they need to start looking back at themselves and then look at the solutions that they see as viable for the healing within their communities. Thank you.

Ms REA—I have a question to follow up on that in hearing what you say about the pilot mediation. Can you think of how you would apply that in an urban or a city setting? I imagine that with places like Mornington Island you are talking about a very different set of circumstances, but I suspect we are talking about significant incarceration rates in cities like Sydney and Brisbane.

Mr Duffy—Not only do I have a solution to that, other than to focus on the data that is being projected and shared within the inquiry about regional and remote but I acknowledge that urban is a challenge, but our clear focus is looking at the regional and remote service delivery and how we try to meet the needs of those who are more vulnerable due to the lack of access to alternative healing and mediation or diversionary options. I am sorry that I do not have the answer for the urban.

Mr Muir—I just want to give some perspective on alternative mechanisms here in New South Wales. Of the young people apprehended for crimes in New South Wales, something like 48 per cent of Aboriginal young people apprehended go to court compared with 21 per cent of non-Aboriginal people, so we are actually seeing a lot higher percentage of Aboriginal and Torres Strait Islander young people proceeding to court. The reasons behind that need discussing. I think that we, the police and the legal profession will have a myriad of perspectives. But, from our point of view as administrators of youth justice conferencing in New South Wales, we have a process that I think achieves a lot of those objectives. It has been evaluated by Don's organisation and has shown that the outcomes in terms of reoffending are better. All the evidence is that it is better for victims, and there are some very powerful stories about that.

So, again, I would probably just advocate, and back up, that as Juvenile Justice runs youth justice conferencing in New South Wales, I am of the strong view that it is an alternative that is highly underutilised in New South Wales. We believe that there are lot of young people who are getting deeper into the criminal justice system, into our supervisory services, who could be more effectively dealt with in a way that achieves, I think, a lot of the things, because a youth justice conference is an outcome plan that is actually mediated by the conference itself. The convenor of the conference does not come up with the outcome. It is the victim, it is the police, it is the community, it is the family that dictates, and those outcome plans can be as simple or as broad as the imagination of the conference itself. For example, they could achieve the sorts of things that Ken talks about about directing young people into healing processes. I am well familiar with both Red Dust Healing and Journey to Respect, and I will briefly come to that in a minute.

I think there is an enormous scope for the expansion of youth justice conferencing in New South Wales, in terms of not only the numbers of young people going through it but the types of outcomes that are being generated by those conferences. I think just to endorse the things on healing—Gadigal Corporation actually wrote Journey to Respect, and we are also well familiar with Red Dust Healing. We have also just written a program called Dthina Yuwali, which you

will hear about this afternoon. We have started from the point with some of these programs that our existing cognitive behavioural programs are not effective for Aboriginal young people, that we have to adapt the style, and Dthina Yuwali is one of our first attempts to do that. It is a drug and alcohol program that has been written by our Aboriginal staff for Aboriginal young people. It involves cultural learning and the involvement of elders, and in almost every one of our centres these days we are involved in men's groups—and I will get back to a point I made earlier. The sad thing is, though, that a lot of these services are only available once young people enter custody. Certainly, from my experience, the availability of these services to young people prior to that is limited within the criminal justice system. That is all I want to stay at this stage; thank you.

CHAIR—There is a discussion to be had about the whole issue of access to programs and the coordination of them, and it would make sense to have that after morning tea because it is a crucially important issue. I know that Emilie Priday wished to say something, bearing in mind that you are representing the Human Rights Commission.

Ms Priday—Firstly I would just like to acknowledge the traditional owners of the land we are meeting on. I am really happy to hear that healing has come up this morning. From our research it is something we have found that is so important to young people in the juvenile justice system. I will not go into all the successful programs at the moment; it is not the time.

I would like to say—and I think it is echoing some of the things that Shane said as well—we need to commit to healing over the long term. These are not things that are going to be solved quickly or easily. The other issue with healing that we found is that there needs to be some support for research and evaluation. One of the barriers to establishing some healing programs—notwithstanding some of the great things that New South Wales Juvenile Justice are doing in terms of developing some healing programs—is that there is not that sort of robust evidence that a lot of government departments need for getting some things off the ground. That is one of the things that we like to advocate for.

If I can just return quickly to a couple of other points that were raised this morning: the issue of intellectual disability came up. We have done some research on that as well, and I think you are absolutely right to articulate that it is indeed a justice response to a health issue. What we found in our research—and I am sure that everyone in the room knows this as well—is that there is just not the amount of culturally appropriate services out there for Indigenous kids with cognitive disabilities and those sorts of issues. I think the other issue around that is that there also needs to be some work done with communities to help communities recognise these issues as well. That is a long-term thing.

The other point I would like to quickly touch on is that you raised the question, Mr Chair, of what we can do to make these things happen in the long term. Obviously they are not problems we can solve in short-term election cycles. I guess I would return to the COAG initiative of Closing the Gap in Indigenous Disadvantage. There have been some very good targets and step-down action that take it beyond an election cycle and look at things in the long term, particularly the issues around health. One of the things we have argued for in the last social justice report is that there should be targets around criminal justice as well. Obviously targets around criminal justice and reducing Indigenous imprisonment are going to then support the other targets that have been set in the Closing the Gap agenda as well.

CHAIR—Other people less familiar with the COAG process would possibly not be aware that in areas like health and education there is now, under that so-called Closing the Gap project, a whole series of targets for improvement set. But—if I am not mistaken—there is not one set in the area of community safety and criminal justice.

Ms Priddy—I believe the Standing Committee of Attorneys-General have said they would like to establish those targets but it has not happened yet.

CHAIR—There are two things I would like to talk about after morning tea. One is that there is apparently an endless problem of coordinating the provision of services that will assist Aboriginal people. Silos and pilots, I assure you, are abused everywhere we go. There is the notion which the Human Rights Commission has raised more formally of justice reinvestment. I think it might be quite useful in the context of talking about coordination.

Magistrate Hilary Hannam has just arrived. She is at present overseeing the Youth, Drug and Alcohol Court in New South Wales, which itself is a form of diversion. Perhaps just before morning tea, in order to keep a little more coherence in our discussion, it might be worth asking you to give us a quick account of what you do and an assessment of what its achievements have been.

Ms Hannam—Thank you. Our program is a multi-agency program in that it involves four New South Wales government departments—that is, Health, Juvenile Justice, education and Community Services—together with the court, the police and legal aid. It is a program that has been a 10-year pilot. It commenced in July 2000; we have our 10th anniversary this July and it is still a pilot program. Notwithstanding that, after a couple of years a review was done, with a recommendation that it be made permanent and also that it be expanded to other areas. It still is only available in the Sydney metropolitan area, although we do have very broad criteria so that if there is anyone—and this is something that particularly does assist Indigenous young people—who can find any connection with Sydney and can come to Sydney to do the program, they are able to. So we do in fact have young people from all over the state.

It is a diversionary program in the sense that it does divert young people out of custody who, because of the seriousness of the offences they have committed, would ordinarily go into custody. But it is not diversionary in the sense that it is well grounded within the criminal justice system. It follows the model of drug courts that are now extremely common in the United States, and there are some, but I do not think enough, in Australian jurisdictions. Essentially it integrates the rehabilitation process into the court system itself. The court team, which is the magistrate, the police, legal aid and a representative from the treatment team, monitors the young person. So, rather than having them sentenced and it being supervised by an external agency such as Juvenile Justice, the rehabilitation occurs while the young person is still before the court. One of the features is that the young person actually comes back to the court every two weeks for a meeting with the court. The court practices what is known as ‘therapeutic jurisprudence’, which is concerned with the interaction, the experience, that the person affected by the law has with the law. So the role of the positive engagement of people in authority, in particular represented by the justice system by the magistrate being involved, is a powerful agent in assisting the young person through the court process.

We have been reviewed formally only once, in 2003, and positive outcomes were found from the program. Otherwise, it really is only anecdotal. I have been involved in the court for a number of years, and there are lots of success stories for young people who otherwise would be the very sort of people who would reoffend and end up in court. I can certainly provide more details, but that is just an outline of what the program is. As far as I understand it, we are the only youth drug court in Australia. There is a small program in Western Australia.

I think one of the features in particular that makes it a good program for Indigenous young people is that, unlike other drug courts in Australia and around the world, we do not screen out violent offenders. We are dealing with the most serious offenders, and most of the young people on our program have committed offences of violence. Historically, these kinds of programs screen out the most difficult offenders and the ones who need it most. It seems to be something that we have inherited from the United States and it seems to always be a given that drug courts do not have violent offenders, but we do. In fact, they are mainly the kids that we do deal with. Because it is a youth court, we also deal with problematic alcohol use as well as drug use. That is for most of the young people on our program at least one of the principal areas of concern.

CHAIR—Do you know anything about recidivism rates?

Ms Hannam—Not in a formal way. I am looking across at Don because it has been something that we have been trying to have assessed. Don would be able to explain the reasons. It is a difficult project but he has been looking at it. We do not know actually; it is really an anecdotal kind of feeling.

CHAIR—A number of us over the years would have to work out ways to deal with some of the things that Don says. One of them, which he himself offered up just before you came in, is that, with some kinds of courts that involve attempts at rehabilitation, there is a long-term significance that goes beyond the question of short-term recidivism. I presume you would be saying that your anecdotal evidence, at least, is that there are a lot of kids who would be much worse off now if it were not for the fact that they are in your court—or is that a sort of irresistible proposition?

Ms Hannam—Absolutely. That is how we feel, because the program is unlike some other programs such as MERIT, which is concerned primarily with the substance abuse issue as a health issue. We are holistic because we have the department of education, we have community services and we have health. We also have involvement of the non-government sector. Each one of our young people is allocated a support worker, who is a person from the non-government sector, and they can have a relationship with them that endures long past being in the drug court. I know this because I make it my business to keep up with certain young people. There are really incredible stories because what is being addressed is not just the substance abuse. It is being looked at in a vacuum; we have young people who have returned to school, have got jobs and have done all of the other sorts of things as well as specifically looked at the health aspect. They stay within our system for up to 12 months and then there is at least six months aftercare. So we are talking about a relatively long-term program. All of them get some benefit from it even if some go on to reoffend, if it means that they reoffend with less serious offences or it takes a longer time to reoffend. We believe that even those who do not successfully complete the program still get some benefit from it.

Mrs VALE—Thank you for your evidence. It is very valuable. Can you tell me exactly how the educational component fits in with the drug court, apart from justice?

Ms Hannam—First of all, our cohort of young people have, almost without exception, serious educational deficits. The typical young person who comes to the youth drug court will have dropped out of the education system at about year 8 or maybe year 9. We have an education officer, a person from the department of education who is a full-time member of the team, plus another TAFE teacher. We run within the drug court program some basic programs to do with literacy, life skills, numeracy and those sorts of things. On an individual level we also try, where we can, to get children back into either mainstream school, into special kinds of schools to meet their needs or into the TAFE system. This year, of the 30-something young people that we have on the program at the moment, four are actually back at school, and two of them are in mainstream schools. That is really a great success and due to a lot of work in that area. That might not sound that good, but the education person will advocate on behalf of the young person to get them back into a school. A lot of our young people are either suspended or expelled and then they are just told that there is no school for them to go to. There should be but there is not.

Mrs VALE—Are you able to send the children to a residential educational facility, or do the children generally go to schools within our own area?

Ms Hannam—Usually schools within their own area.

Mrs VALE—They usually return back to their schools.

Ms Hannam—Yes. We have looked at the whole boarding school option. With a couple of our young people that could be possible if we could advocate with those schools, but most of our young people have dropped out of education very early and it would take a long time for them to get back to a level where they would actually be able to function.

Mrs VALE—In the Sutherland Shire where I come we have an Indigenous hostel, Kirinari. I am not sure where the young people come from. I do not think they are criminal offenders in any way. My understanding is that they come from remote communities and they attend local schools. I do not know if a facility like that would be of assistance to you.

Ms Hannam—There are a lot of agencies and organisations that say they want to help difficult young people and they want to help people who have got deficits but, as soon as they realise they are in the criminal justice system, they say that is another league. It is the same across the board with trying to get assistance. A lot of organisations that say, ‘Yes, we will take disadvantaged young people,’ do not want disadvantaged young people who have committed offences.

Mrs VALE—This tie-in with education is a very important indicator, isn’t it?

Ms Hannam—It is absolutely critical. We have had a number of cases where our education officer has gone out and tried to help the young people and advocated on their behalf but getting them back, particularly into mainstream schools, is very difficult. They need to be in mainstream schools. These young people are so used to seeing themselves within this small percentage of the population that do not do the sorts of things that the rest of the community do. They see

themselves as people who miss out on education and for whom going to jail is an inevitability. They do not even often know about normal—for want of a better word—forms of social interaction.

One of the things that we offer is a living skills program, which takes them snorkelling, water skiing. We do a whole range of activities. They have never done these sorts of things before and they can see that they can have fun in a normal setting, they can relate to other members of the community and they do not have to take drugs. That is why mainstream schooling is so important. They are so used to being stuck into special programs and programs for the disruptive and difficult. They are labelled when they are 11 or 12 years old and trying to get them back into anything is almost impossible once they have entered the criminal justice system. Our support workers who come from the Salvation Army often get them into programs on the basis that it is a Salvation Army worker helping them. They do not dare say 'We're attached to the Youth Drug and Alcohol Court.' As soon as you say 'drug and alcohol' and as soon as you say 'court'—but we try and offer as much as we can.

Mrs VALE—Is there any chance there will be some appropriate survey, review or research done on your court so that you have got some hard figures regarding not just the recidivism business; it is really the quality of the young person as they leave and maybe the impact on their community or family? Is that too big?

Ms Hannam—You did one on the adult drug court about the effect—

Dr Weatherburn—Health and social function.

Ms Hannam—on wellbeing and social functioning.

Dr Weatherburn—The problem is not that we have looked at the program and found it wanting or anything remotely like that; it is that when the program was set up—and this is not at all uncommon—the flow was never sufficient to get a large enough sample size to do the usual constructive comparison group and compare people who are similar to those on the youth drug court program do not get the program to see what the difference between them is and their reoffending rates. The other problem is that again this is a recurring problem: it is a youth drug and alcohol court. One of the things we need to match the control group on is drug and alcohol use. We know nothing about the drug and alcohol use of young kids who do not go to the Youth Drug and Alcohol Court. It is another major stumbling block to evaluation.

It is true to say that we could look at measures like improvements in health and social functioning. One of the problems with that measure, though, is that—dare I say it?—the health and social functioning of most people who go to custody will improve simply because it is not as easy to get access to the sorts of drugs that would normally do bad things to their health and social functioning. So, when you see an improvement, as we did with the drug court, it always invites the question: well, didn't the control group improve when they got sent to jail? It is very difficult—Luke might help me here—but it would be very nice to do a study of health and social functioning where we look at improvements, not just in the group that has gone onto a program but also in a comparison group that might have gone off to custody. That is also difficult to engineer. So it is not that we have found a problem with the program; it is just that it was set up

fairly early on at a time when these sorts of considerations were not as important as they are now.

Ms Hannam—The other thing is that there is very a detailed comprehensive report that is done on each young person before they come onto the program. That is called the ‘suitability assessment’, and each of the agencies looks at them. That takes two to three weeks in itself. I think there would be real ethical considerations about finding a group suitable and then not offering them the program that they were suitable for.

People do not just come onto the program because they are eligible; they also have to be suitable, because issues such as motivation to make a change are obviously highly critical. We get a lot who are eligible but, for one reason or another, they may not be suitable. One of the sad realities is that a number of them—particularly Indigenous kids—decline the opportunity to participate, and the reason they give is, ‘It’s easier to do my time.’

Mrs VALE—Have you ever got any feedback from the young people themselves about what they thought of the program at the drug courts? Is there any sort of old-fashioned exit survey when they leave, about their responses and how they felt it impacted on them?

Ms Hannam—Again, that is difficult to do. When would you do it? They graduate. We have a ceremony and a really nice day, as part of the graduation, on the same day that they are sentenced. But if you did an exit survey before that point they would be thinking that they have to say nice things about the program because that would make sure they would get a good sentence. If you waited until after they were sentenced the reality is that they have had six to 12 months of extremely restrictive bail conditions. They would not want to fill out a survey.

Some come back and visit us. They drop in and say hello. I stay in contact with others through their support workers et cetera. We do get some very good feedback but it has never been done in a formal way because it would be difficult to work out when you could collect that information.

Mrs VALE—Well, it is positive, anyway, to have that kind of feedback.

Ms Hannam—We do get that. And, as I said, some drop in. I know they drop in to Juvenile Justice. We actually have a bit of contact with a number of our young people. Sometimes they encourage their siblings to participate. So we do know a bit about them but not in a formal way.

CHAIR—I reckon everybody has been incredibly patient, and we ought to have a cup of coffee. When we come back I would like to get Peter Cooley to talk a bit about diversionary programs that are supported by communities rather than by agencies. As I said, we are, of necessity, tremendously interested in the whole question of how to better coordinate all of the services—community and government—that are available to Aboriginal people. It would be good if you could think about that just a bit.

It is very interesting, isn’t it, that Aboriginal legal services are, kind of, systematised but enormous numbers of other services are not—they are very patchy or unavailable at all in more remote areas? It is quite hard to think about what is best to have available in remote places as distinct from in urban settings. Even today we spent a lot of time talking about an individual

initiative that seems to be doing well here and another one that seems to be doing well there. The issue of coordination and therefore, also, of wide access, is one that has to interest governments. It may not be interesting to anyone, in the course of their daily occupation as it were, but at the level of delivering effective programs for the whole community, it is really important.

Proceedings suspended from 11.14 am to 11.40 am

CHAIR—Ladies and gentlemen, begging your indulgence, I do not think we have yet talked much at all about diversionary programs supported by Aboriginal communities. I am going to ask Peter Cooley to talk about that, at least briefly. There are also some other people who have just arrived—such as Shane Phillips, who is responsible for another program in the community. I think these ideas are quite closely connected with what Ken has been talking about, and obviously they are part of a spectrum that any sensible examination of the subjects that we are concerned with would be addressing. Peter, could you tell us briefly about your experience with your programs.

Mr Cooley—Thank you, Mr Chair. I can basically talk about my experience of growing up in the La Perouse area and also about what I am currently doing with regard to working with the young people and stuff like that. In relation to the grassroots stuff, when I was a kid—and I know that a couple of people here can relate strongly to this, and it is something that people touched on this morning—the interaction between the generations was extremely high. The elders in the communities would always be doing stuff with you and passing on a lot of valuable skills and knowledge. Unfortunately, when I look back at what we had and then at the way that young people today are growing up, that is lacking a bit. I cannot touch on why it is so, but there does not seem to be that interaction or as much of it as there used to be when we were kids.

I grew up near the ocean and one of the things that we used to love was when all the families went to The Rocks. There would be 15 families. I have not seen that for 20 years or so. It is the cultural side of things that I am talking about, too. You have touched on that as well, but I do not think enough importance has been placed on the cultural side of things. That was huge to us. We would look forward to when we could go out with all the families. It was not just about what we were learning at The Rocks; it was also about interacting with other families and other people. I knew every single person in the community. That is not the case today.

A lot of the stuff that I do today is based around reattaching young people to culture, trying to get that intergenerational interaction going again and also a bit of respect from the young people to the elders and the elders to the young people. It is a hard game that one. I run programs like fishing, surfing and sailing but I also teach a program in schools, and all of them are based on getting the respect back. The elders work with the young people. I also do cultural stuff like didgeridoos and things like that. I have worked with Shane in the past where we take the young ones on Shane's program, the Tribal Warrior, so as to get them to understand a bit of culture from different groups. It is all based on reattaching respect.

The program that I run in high schools is a small engines program where we get the kids to learn about two-stroke engines, but we do it in a really fun way where we use remote control race cars as an incentive for the young ones to learn and also stay at school. It is a 10-week program and it is tied in with the curriculum as well. I teach them stuff like that, but teachers are also becoming a bit more creative and relating some of the stuff they do with these students in

their other classes to what is in the class I teach. That makes it a bit more relaxing for the students. But it is a 10-week program. They get to build remote control race cars from scratch. There are about 400 pieces and they have to follow detailed instructions. If they do the right things and follow the rules we lay out to them in the program, they get to keep the car at the end of the program. But during the program we encourage things like racing together, race meets and asking the school in the right way about running this stuff, which is driven by the students at school.

Mrs VALE—Is there any recognition of the fact that your program about the two-stroke motor car, building it from scratch and following a plan is embedded into the school curriculum? Has there been any improvement in the students' responses to other classes?

Mr Cooley—Absolutely, yes. One of the responsibilities of the school is to monitor the students' participation and attendance at school, and from the time they took up the program until they finished there was a drastic improvement in the attendance at school—and not only the attendance but participation in other classes.

CHAIR—Shane, do you want to tell us about your program?

Mr Phillips—Byron and I are from the Tribal Warrior Association and we work along with Peter. Just to add to what Peter was saying, Peter does what we do as a group—mentor people. The mentoring asset in a community is so important. If you think about it so it is relative to you guys, everyone who takes someone under their wing in their own family and makes sure they get things done is a mentor. What Peter does is proactive. He is limited to the number of people helping him in this program. We run a proactive mentoring program along with police, juvenile justice and a job network. One of the things that we have problems with is that, if kids are 15, they are not eligible for it, but we run them through it. It is probably bad business because we do not make money out of it, but 15 is a really important age for a lot of our kids. I am sure it is for both communities—ours and yours.

I will give you a little bit of the ins and outs of the program and how it works. The structure is that we pick the kids up. It is based on culture, it is based on work ethic and it is based on giving kids a sense of belonging and a sense of worth. We pick them up at 5.30 in the morning and they go and do training with the police. They get physical exercise, have breakfast and have a proactive discussion about culture, where they are, being in the moment and what they have to do to make a decision.

I am not being negative about this hearing, but I have been to many—as I am sure some of you have been to many—roundtable discussions on juvenile justice, and I only see reactive programs out there. The community are asking for the resources to give people money to be mentors. Those mentors could engage communities and help kids engage at a community level. A mentor program could relate to employment and why it is so important to have a job. Kids do understand and aspire to that.

I probably do not have much time to talk about it, but in the Redfern area—and Luke from Redfern police might be able to talk on this—we are looking at some of the honest things that can do within the community. Some kids are coming from homes where there are difficulties, whether related to substance abuse or other things. We are focusing on helping these kids to

think about their opportunities and what they can do to change them. This is a pilot project. We have run 15 kids through and we have five more. Out of those 15, I think five are retaining jobs. They are kids who were not doing well in school and were probably causing a lot of problems in the area. Around the area now the robbery rate has dropped dramatically. The police targeted the kids who were having problems.

There is a police program called the Clean Slate Without Prejudice Program. We also work with them on that. The police identify the kids and we get them into it and help them with the simple things. We try to give them a sense of belonging and worth and a good work ethic. We are very blunt. It is very honest and it is community based. I will give you an idea about the project. On a training day we might go to the golf club in Bondi for a training session. There are some fantastic sites that people do not know much about, so we talk about those sites. We talk about the relevance of the sites, the kids' connection to them—being Koori kids—what they can give and what they are worth.

I am not going to rave on to you but I want to say one more thing. We need proactive mentors, not just in the area of employment but in the area of health, to work with these kids in understanding that they can be the glue. They can be either part of the solution or part of the problem—we have to make them part of the solution.

CHAIR—I do understand that all the indicators in Redfern are better than they were a couple of years ago, which is fantastically encouraging. A really good opening for us might be to have a discussion around an idea which that everybody in this room understands at some level or other but which the human rights commission has been particularly promoting under the rubric of justice reinvestment. I thought Mick Gooda, who is the new commissioner, might be good enough to introduce that subject for us. One way or another it is of relevance to everybody in the room. If we are going to reinvest in something, we might find we could put a bit more money Shane's way.

Mr Gooda—Thank you, Mr Chair. Can I say I think having a roundtable following on from the House Standing Committee on Torres Strait Islander Affairs inquiry is a great concept. It is a nice way of not having the formal part. I congratulate you on that.

I think that was a great introduction by Shane about resources. Justice reinvestment is a concept out of the US that is about, instead of building more and more prisons, reinvesting back into the community, giving the community options for rehabilitation and other forms of accountability. I have been on accountability for a while. I have done a lot of work in Canada with a group called the Native Counselling Services of Alberta, which is the biggest community based organisation in Canada. They run their own prisons, and they talk about accountability. I think there are a whole lot of benefits in the concept of justice reinvestment, and I think you are right—people have been talking about that in one form or another around this table and around Australia for a long time. This formalises it. It is what it says it is: reinvesting the money that goes into prisons in other ways.

If you look around Australia at the moment, there would be a great big capital works program building new prisons in just about every state. The phenomenal cost of those upfront is just unreal, and a lot of them are Aboriginal specific prisons. If you look at the prison they are building in the Kimberley it is an Aboriginal prison. Not many whitefellas offend up there, but

there are a lot of Aboriginal people up there. I worked in WA for quite a few years and the feeling out of that mob is that—and I am not saying anything new here—they are just revolving doors, people coming in and out. There are a whole range of reasons why that happens. This is a chance for communities to start getting involved.

To give you the starkest example of savings, in Texas they had a capital works program around building new prisons of about \$240 million in one year. By diverting money they not only did produced better outcomes for people going through the system but they actually saved \$210 million, which I think is an argument we always have to put up. Not only is spending more money producing worse outcomes for society as a whole but it actually costs less money to get better outcomes. It is beneficial because it goes to people like Shane, who are asked: what do you think? I do not think this will work in every community unless there is proper engagement with them. Mr Chair, you spoke earlier about government coordination and engagement. I missed the opportunity to say, if you go back to the *Little children are sacred* report in the Northern Territory, the first report of Pat Anderson and Rex Wild was about proper and meaningful engagement with the Aboriginal community. You do not have to be Einstein to say we have failed in that up in the Northern Territory. This will not work unless there is proper, meaningful engagement with the community. What do you want to do about accountability? What do you want to do about fixing these problems? It is really getting to that level of engagement.

I will put my hand up, seeing everyone is doing the mea culpa thing lately, and say I have worked in government for 25 years and I am part of the problem. Forever we talked about coordination of government services to Aboriginal people. My observation is the only place coordination happens is the place the least equipped to do it—that is, the community. That is the only time they come together. I have been in so many meetings and we say, 'We're going to Balgo,' and we all go out in our different cars or fly out. We all say, 'We're not going to tell that mob about what we're doing,' but the community is the one that is expected to coordinate it. I used to do that half in jest, but I am now getting a bit more serious about it. Let us be pragmatic and fund and resource communities to coordinate government. The coordination of government is one of the most dysfunctional parts of this equation. We have to be a bit pragmatic about that. Where it does happen is in communities, because everyone converges on a community. Up on the Dampier Peninsula there is actually a community that has government-free days, because they are just sick of government turning up there all the time. There is benefit in that, in that you are actually engaging with community.

I want to go back to accountability. I have only been in the job for five weeks, but accountability is so important in this. If people are not accountable for their actions, nothing will change. Sending people to prison is making people accountable to a society, and there is nothing there. We have heard all the stories about how for our kids it is almost a rite of passage these days to go to prison. Think about being accountable to your community, going back to your community and saying, 'This is what I've done.' There is a community in Saskatchewan in Canada called Hollow Water that actually does not send child abusers to jail. When I first read about this I thought, and I can be as right wing as the next guy, 'That just doesn't compute; it messes with my head a bit,' until a woman who I respect said to me: 'Mick, it all depends what you want out of this. These are the things you have to think about: do you want victims to be healed, do you want victims to be safe, do you want communities to be safe, do you want

perpetrators to be fixed up, do you want perpetrators to be accountable or do you just want to punish people? If you just want to punish people, keep on building jails.'

So the accountability that happens in that community is that it is not available. It is generally men who plead not guilty, and they have got to plead guilty; they have got to be accountable. They have got to then go back to the community and say to the community what they have done. Anyone in that community can veto that person coming back to the community. It is all managed, it is not just throw the people out there in a mix and see what happens. And for people who think this is the easy option, the only dropouts they have out of that program are people saying, 'This is too tough, send me to jail.'

So I think this is not about a soft option; this is about an option that works and that makes people accountable at that local community level. It produces a conversation with communities. Like I said before, I do not think it would be suitable for every community in Australia because that means the community has got to be united; it has got to be together and have a consistent view on this. But when I look around at people like Shane—and I really congratulate you on the work you are doing, brother—and the work of other people who are doing this stuff—go to Darwin and look at David Cole at Balunu Foundation and what he is doing with the youth he takes into camp, or Ken and the fellas working at Gamarada here at the Block in Redfern—there are answers out there. If government went out with an open mind to say, 'We want to engage properly,' I think you would get people like that coming out of the woodwork.

I do not think I know of anyone who works in this area who does not want better outcomes for offenders, for victims and for communities. I think it is really important that we have this different conversation, and I hope with all my heart that this conversation we are having here today and the work you are doing on this committee actually produces some of those conversations at the highest level, and that is in parliament.

CHAIR—There are two kinds of things that we keep coming back to. You have just eloquently illustrated them. One is that our polity puts resources into prisons as a kind of default against anything else, and you are saying that we should work out ways over time to spend less on prisons and more on the kinds of services that will rebuild communities. I would be very grateful if people would talk about that more, and I know that Luke Grant from the New South Wales prison system wants to do so as well. Prison is a strange thing. Prisons have got lots of people in them who really want to help as well.

The other thing is that wherever we have gone so far, as I think I mentioned before morning tea, people talk to us about the fragmentary and uneven nature of the availability of services. It is partly because Aboriginal communities are themselves scattered, and people always oversimplify the different kinds of communities that exist. Hardly anyone knows that the biggest Aboriginal community in Australia is in Mount Druitt—hardly anyone. And hardly anyone understands that half of all Aboriginal people live in New South Wales and Queensland. People think they all live in the Northern Territory and so on. But somehow or other we have to do better and, ultimately, what my colleagues are interested in is what the Commonwealth government may do to better facilitate the coordination of services, whatever they are, to end this completely fragmentary kind of approach and to do better at having agencies and others break out of their silos—and to have fewer pilot programs.

Mr Gooda—Can I just give a couple of examples of where the system actually works against these things? It is not deliberate, but it just happens. I was doing work in Northbridge in WA, and they introduced this curfew. There was a group funded out of the welfare department about the drop-in centre—the safety centre—there in Northbridge. But the problem was that kids only got referred there by the juvenile justice group and police. So there had to be this contact with the police before they could go there. I do not see our kids in Northbridge going around and saying, ‘Excuse me, can you sort of refer me on there?’ It was just this horrible thing that works against the original intent of this program. Instead of encouraging kids to stay out of the juvenile justice system with the police—I am sure the police have got better things to do than just refer kids on—they have actually set it up like that. So I think we have to look at some of those issues. That has been fixed up—trust me—but, when I first came across it, I thought, ‘How stupid is this?’ I wondered who designed that system, and—

CHAIR—It happens because in so many circumstances somebody designs only a bit of the system. The police know perfectly well about the good sense of someone getting in the system. The Police Citizens Youth Clubs have been in existence for about a century. I am interested in the degree to which people can talk about administrative and organisational structures. I do not know, Edwina, whether you might have the odd thought about that. Edwina happens to be the manager of the strategic coordination unit in the Department of Aboriginal Affairs in New South Wales.

Ms Crawford—Actually, it is Juvenile Justice. I have changed hats.

CHAIR—You have changed departments since I last saw you?

Ms Crawford—Yes, I have—twice. It is a big challenge, and as an Aboriginal person in the public sector I find it very frustrating. I think that there are lots of incredibly valuable lessons about how Commonwealth and state agencies can work together in the Murdi Paaki trial that happened in the western region a couple of years back. There was a big investment. There were a lot of agencies that put people on the ground working specifically with those communities to address a couple of big problems. Their imprisonment rate at the time—in the early 2000s—was, I think, the highest in the state, and their child protection orders were also extremely high, so they did a lot of work with the communities, with specific workers on the ground going out and having conversations saying: ‘What do you think we could be doing here a little bit better? What services do you have? Where are the gaps?’ There were a lot of good outcomes for the western region. The western region/Murdi Paaki area had a couple of very prominent people who really facilitated—

CHAIR—My colleagues from other states should have Murdi Paaki defined for them.

Ms Crawford—It is the western region of New South Wales. Excuse me; I am not sure about the boundaries, but it is kind of Broken Hill all the way down to, I think, Dubbo. It is kind of central west, Riverina and far western New South Wales. It is essentially the largest part of the state. They did a major evaluation of that work, and the communities really got on board because people were out there having conversations and making people feel a part of it. One of the successful elements of that was giving Aboriginal communities a chance to be self-determining about what they wanted in their communities.

They had a lot of successful ingredients there. They had a lot of people in the community who had been part of the old ATSIC councils—Sam Jeffries was a big leader in that—who were able to have the conversation with government agencies and convince people about why agencies need to be investing in a particular way in the communities. That really facilitated that understanding, because we are all about outcomes, statistics and, ‘You’re not getting any money unless you can prove that your program works’, but I think having people on the ground articulating the community message to government about what needs to happen plays a really large role in government’s understanding a little bit better why investment needs to happen in certain ways.

Addressing some of our problems is not necessarily a matter of one plus two equals three; it is another mathematical equation. Solving some of the problems in communities for our people is not necessarily a simple matter because we have to look at our problems in a very holistic way. It is not just about dealing with one aspect of a particular problem that a family or a young person had; it is about dealing with the environment that they live in and the circumstances of their communities.

So I think there are a lot of lessons in that Murdi Paaki trial about agency collaboration and what the Commonwealth and states can do together. I am pretty sure that they have done an evaluation of it, and there are a lot of elements of that. We had workers in our department who were part of that trial and absolutely loved every minute of working on it because they could see that what they were doing in that role was helping the people in their communities get better access to services or get programs up and running. But that has kind of ended now—

CHAIR—And ending duplication.

Ms Crawford—Yes. I think one of the interesting parts was that communities did not care that I was from juvenile justice, that someone else was from the Department of Aboriginal Affairs or that someone else was from Health. We were all government and we should all have been singing the same tune. Obviously, that is not always the case. We all have different ministers that we work for and different objectives. Sometimes coming to a level ground on what we should all be doing together does not necessarily make the puzzle fit together. It is a little bit of a challenge. In some communities in New South Wales, and I am speaking specifically, the infrastructure is really good and you have good people who are running Aboriginal and Torres Strait Islander specific services—that is, you have a lot of skilled people and a lot of good partnerships. But in some other communities you do not have that infrastructure so it is a little bit more difficult to work with them. It is always a little bit hard to get an understanding of where you might want to start. Certain elements definitely need to be in place in communities before governments go in there and start having conversations about how they can fix things.

Mr Gooda—Thanks, Edwina, for raising that. I think Murdi Paaki is actually a great example of the community being funded to coordinate government services, and it does have great governance structures. It is possibly the last remnant of the ATSIC regional council structure, because there is basically the same structure as they had for the regional council. But it is a good example. They have been resourced over the years—haven’t they, Edwina?—to do this work.

Ms Crawford—Yes.

Mr Gooda—That is a really good example of going out and having a look at how Murdi Paaki works. Look at the results out there. Look at how they have been resourced to basically coordinate government services. The results are there to see, I think. They talk for themselves.

Mr Phillips—The overwhelming message is: proactive community resources. Let us coordinate the government departments to work together—whether it is on substance abuse or whether it is the departments of health or housing, coordinate whoever the kids or grown-ups are going to deal with. At the moment, for us around the area, trying to get everyone to work together for the same cause is crazy. It is territorial with the government departments. The cause is actually more important. We need to make sure that we are getting people within the communities—and they are out there—taking control. There are people in every community who are taking control, but they are not getting resourced properly. I am not talking about the big, structured organisations around the place. If there are two in some town—and I am not bagging any organisation—and one is a certain group that has a great big reputation and is non-Aboriginal and there is an Aboriginal organisation there that does not have all the submission writers, the first one gets it most of the time because they have hit all the right marks. But the second is more effective because they know how to engage.

CHAIR—You might think that is a problem specifically for Aboriginal people, but it is not. It is a problem for everybody.

Mr Phillips—That is right. I think that is what we are here for today. We know the stats have not changed. We are two per cent of the population, or whatever it is; we are still the same. Seventy per cent of our people are under 17, or it is something like that. We have to make the move now. I know I have said this before. It is really important that there are outcomes. I have said it before, and I am not trying to offend anyone: we cannot have any more talkfests. Things are happening. Out there in the community, in Redfern right now—and I am just talking about Redfern, I am sorry—kids are getting a diet of good news about their people. That is very important. Being instilled with pride in who your people are and why you should be moving on is so important to us.

CHAIR—One of my colleagues would like to ask you a question.

Mrs VALE—This question is not necessarily just for Shane. I have a general question, really, for the group. I think what we are hearing is what we hear everywhere we go—that is, examples of specific but really effective stand-alone programs and ideas that work. Then, on the other hand, you hear the criticism that things are not coordinated, that we have a bit of an ad hoc, disparate, fragmented approach to things.

Given that we are from the Commonwealth government and therefore have this sort of very high-level, broad-based responsibility, I would like to get your ideas about what sort of role we could play in allowing those specific and individual community ideas to emerge. I do not think it is ad hoc just because the system is badly organised; it is also because people have developed their own solutions to their particular community. I do not think you can ever take one program and say, ‘Gee, this works really well here, let us, as a Commonwealth, make this the standard across the country,’ because that will not work. You cannot have one size fits all. The other problem is that a lot of programs work not because they are necessarily the best designed program; it is because of the people. We all know that people make the biggest difference when

it comes to changing things. You cannot replicate that individual across the country, unfortunately—although in many cases we want to. I would like to get your ideas about what, realistically, we can do at that sort of broader Commonwealth level that maybe helps with the coordination or helps to facilitate those really good individual programs and community solutions without dampening people's creativity. It would just mean that we get a bit better organised than the fragmentation we have at the moment. That is what we really need to know about.

Mr Pritchard—I think this is really important. It ties in with what Shane was saying. At not only the Commonwealth level but also the state level there seems to be a propensity to fund large non-Aboriginal NGOs. Apparently—I am quoting Shane—they are now called 'BINGOs'—big international NGOs. We call them the 'usual suspects'. It used to be that the government would go into town and say, 'We're here from the government; we're here to help'—now it is 'We're here from the non-Aboriginal NGOs; we're here to help.' I am on the board of NCOSS and ACWA, and I see where all the funding for Aboriginal programs goes. It does not go to Aboriginal communities. If 10 per cent of the funding that was provided to these NGOs was diverted to Aboriginal capacity building, to develop services in Aboriginal communities, we could have these innovative programs. The communities would have the solutions at the grass roots level and they would be able to deliver the programs. What happens now is that they fund these big white NGOs and they say they are delivering the services but they are not. They are accounting by saying, 'Yes, we are doing it.' If you actually go out and talk to the people in the communities they will say, 'Well, we've never heard of them.'

In one Aboriginal community there is a big international NGO next door to an Aboriginal agency. They have funded the non-Aboriginal agency to deliver an early intervention program and the CEO says, 'I have never seen an Aboriginal person walk in the front door of that place.' How are these BINGOS held accountable for the services they are supposed to be delivering?

CHAIR—I think Shane wanted to say something.

Mr Phillips—I think you are right about that, Bill. People have got their aims and objectives in their organisations. They know their target group. Ours is pretty simple—it is juvenile justice. I do not know how we get the message out to everyone. They need to pull together for the cause. Down at the grassroots level people are saying 'This is more important than us; this is for the cause.' How do we coordinate that through government departments and have them want to own that and have a belief in it—because that is most important; we want them to be as passionate as the community people are about it, and to know that they are investing in a community? There will be low lying fruit in a few years from that. They will see the results of it. I keep saying 'proactive'—proactive resources within the community are need. Every community has someone who is the go-getter, who has time, who always does things for nothing, but gets burnt out. They can help set these little spot fires. Let us say they are getting paid to do some of that. They are going to encourage other people to do it. If they can get paid, in a generation or two you are going to see results. It is more important that we put money into investing in community solutions instead of that retention. We know the retention is always going to be there. If we can minimise that it will make a vast difference for us.

Mrs VALE—Is your program privately funded or is it funded by government?

Mr Phillips—We run a contract. Tribal Warrior is an Aboriginal maritime training company. It is a not-for-profit company. Basically it is there to try to target people who suffer from substance abuse or who are from disadvantaged families—black or white. We are an Aboriginal-owned business, and we have not been funded by government. The idea is that we contract training, whether it is maritime training or other training, and we work with Job Network. They target young offenders—it just sort of happened one day. Police, Juvenile Justice, we and Job Network discussed it and under the IEP framework we were able to do it. The hard part for us is that they tell us that we are going to get 100 per cent job retention. Some of these kids have come from some absolutely difficult backgrounds, so it is going to take a while for them to get into jobs. But the ones who are in jobs now are almost not needing their mentors at all. Once they gain that sense of belonging and that sense of worth, they are happy to run it themselves. They can see the light at the end of the tunnel; they can see their value. We could invite you out if you wanted to come and see what happens there. It is really simple. We do not have the be all and end all solution; we know that. But it is a simple little program that is having good results with kids.

Mrs VALE—And it is a hands-on community response, which is exactly what we keep hearing.

Mr Phillips—The community are involved in it. We take them around and show them all the things that we can. It is all about what you can do. For far too long we were reactive and everyone was trying to deal with things. We were looking at all the negative things. We are proactively telling kids what they can be and what they can do, and we tell them to look around and see what is happening. In return, there is a generation of kids right now who will know there are two Aboriginal cafes, there is an Aboriginal Centre of Indigenous Excellence, there is an Aboriginal radio station, there is an Aboriginal maritime training company, and there are Aboriginal football teams and sporting teams—they are going to have this diet of positive role models which is going to make them think they can be something.

Mrs VALE—Peter Cooley, is your program funded by government?

Mr Cooley—The one in the schools, the small engines program, that is privately funded. We have not received any kind of government funding for that. I might just add that I have been down the line of trying to attract government funds for some of the stuff I do, and the blunt answer back from government has been that I was a private business and they could not support me—even though we have been getting really good outcomes and community building and all that.

Mrs VALE—And it is a very pivotal time, it seems to me, because you are actually managing to re-engage young people in the school curriculum who are about to leave it.

Mr Cooley—The program is only targeting the at risk students –

Mrs VALE—So your program actually targets at risk students, and you manage to actually re-engage them again into the school community and the school curriculum?

Mr Cooley—Yes, and we manage to pick up their risk at school.

Mrs VALE—That is something that we hear often—the importance of the connection between education and keeping young people out of the criminal justice system. You are managing to do that at grassroots level.

Mr Cooley—If they disengage from school, who knows what the next step is.

Mrs VALE—And you still cannot attract any government funding; it is all done privately?

Mr Cooley—Yes, even though it does tie in with curriculum and things like that as well. It has been privately funded now for five years.

CHAIR—There are so many people who want to speak that I am not quite sure where to go. Perhaps Ms Babineau, who is connected with Corrections Health, might wish to say something. That might switch us back to another element of our discussions.

Ms Babineau—We are called Justice Health. We used to be Corrections Health until 2004; we changed to Justice Health because we are doing—and this is appropriate for this discussion—a lot more programs before people come into custody and when they are released into the community. Specifically on the young people—and I guess this answers the question a little bit—it is really hard to follow Shane’s passion, Peter’s passion and Edwina’s passion. Community investment is incredibly important, but I think another point that is important is community coordination. I think that is an area in which the government can help, as well as investing in the community. I think that one is not exclusive of the other.

I will quickly talk about a program that started in 2000. Peter alluded to it earlier, and Dr Matthews talked about early intervention as well as working with young people. In May 2008 we started a program called the Adolescent Community Integration Team. We did not want to re-invent the wheel, because there are so many programs out there, but we realised that if we hold the hand of a young person who is going to be released into the community we can help them not to come back into the correctional environment or the juvenile justice environment. I have a few statistics.

We coordinate people into child and adolescent mental health services, which will come as no surprise. That involves 14 per cent of the people that we have seen. Since the program started we have seen close to 500 people who are being released. They are usually referred by Juvenile Justice or staff in our Juvenile Justice centres, and people can self-refer as well. The fact that we have to coordinate is tells of the diversity of what exists out there. We coordinate the child and adolescent mental health services. We have provided mental health services to people—basically we made appointments with them and went with them to make sure not only that the appointment was made but that they went. We also worked with youth services. Hopefully that goes along with the programs that Shane was talking about and with other areas. We worked with general practitioners. So many people who had appointments did not go to them, so it is important. The same was true for other specialists, such as psychiatrists and psychologists, as well as non-government organisations, Aboriginal medical services and drug and alcohol services. Unfortunately, a small percentage of this group returned into custody.

Where I am going with this is that we have started this program in three different areas. We received funding very recently, and it was a huge investment, from the Commonwealth under the

Indigenous Partnership Agreement. We are now expanding this service with four Aboriginal people in seven different areas. We were not going to go in and re-invent the wheel. We have got a link with people like Shane. We have got a link with people like Peter who are in the community. We are going to areas where there is a high prevalence of young people who come into contact with the criminal justice system—Kempsey, Bourke, Orange, Broken Hill, Grafton, Penrith and Fairfield. By May this year we will be in all of these centres. It is only one person in the area who helps with that coordination of the reintegration of people back into the community. There are other services that we provide, but we think that is very important, and we are working a lot with Juvenile Justice on these programs.

Mr McKenzie—I would like to try to address the earlier question about the federal government's or the parliament's point of view on how to better coordinate the services, because it is an age-old problem and it has not been getting any better, and I think that is why we are all here today. I think the problem can be boiled down to this: it is a question of just how important it is, or what level of priority people and agencies are going to give the problem that we are dealing with—the problem of the young Aboriginal people ending up in contact with the criminal justice system.

It has been said by others here today that part of the problem, if you are dealing with governments or government agencies, is that there are different allegiances. There are allegiances to the program, there are allegiances to the minister and there are allegiances to the bureaucratic bosses within the agencies. The top priority is not an allegiance to the child or young person. I think the answer to the question is to really start looking at it in a different conceptual way. If you are going to have some coordination with a bit of a structure and the possibility of delivery right around the country, you need to be looking at people and agencies whose primary allegiance is to the welfare and the healing of the child. The allegiance should not be to any government accountability and not to any political consideration—the next election or in two elections' time—but to an ongoing, lengthy commitment to the child.

That leads me to say that, among other Aboriginal community based organisations, the Aboriginal Legal Service, being Aboriginal community based, does have a structure right around the country, not just in New South Wales. As the chair referred to just before morning tea, we are one of the organisations that is completely federally funded. That is brought home to us every time we go to a state government for any funding: they will not give it to us. We are a federal government creation as far as funding goes but not in inception. What I am suggesting is that, if you really want to crack this seemingly intractable problem, you need to look at agencies such as ALSs and Aboriginal medical services which are actually owned by the communities themselves and run for the communities, which do not have a party political or government political allegiance but have an allegiance right at the top to the child, to the family and to the parents.

It is good to have good ideas and good concepts but, as in all of these things, it is the implementation of the idea that really is the proof of the pudding. I will give a brief example in relation to a New South Wales specific situation. Deputy Commissioner David Owens mentioned earlier that one of the problems he sees is that getting kids into diversionary programs in the first place runs into problems about legal advice, with that legal advice being at times to not admit something when the full facts are not known. We in the Aboriginal Legal Service have already thought about and addressed this problem. Five years ago we went into a lengthy negotiation with the Aboriginal Policy Unit of the New South Wales Police Force and developed

an agreed protocol of what we call 'tag and release'. The way it is supposed to work for kids who immediately fall into this category is that, rather than the decision being made on the spot as to whether it will be diversion into the youth justice conferencing, which we think is really good and want to see more of our kids go into it, or the police charging the child and, thus, sending them into the criminal justice system, in order for them to get the real legal advice that they need so that they can with confidence and some satisfaction say, 'Yes, I did it; let's get on with the arrest of it,' the child is given a formal notice. The child has 14 days in which to go off and see the Aboriginal Legal Service lawyer, get the advice on the facts of the case as charged and, if they come back within the 14 days and say: 'I've got my legal advice. I admit the offence. Let's go into diversion,' that is the way in which this can work.

This again comes back to the implementation of good ideas. That was negotiated at a very senior level of the police service, but what we have found in the implementation over the last five years is that different area commands of the police around the state choose whether they will activate this protocol. So the implementation of it is incredibly patchy right across the state. There are a number of local area commands that do use it and do very well, but there is a majority of local area commands that do not use it. That is the way the police service runs. That is not to be critical of the police service. It is to make my point with emphasis if I can that you need what I would call brokerage type agencies, not necessarily to deliver the services that the child wants but who have a relationship of trust with the child or the young person, which a lawyer and client relationship gives if done properly, who have the interest of the young person or child at the very top level of their consideration and who, because they are community based and community run, can refer to all the wonderful community based organisations that might be in the different localities around the states, the territories and the country. It is one way in which the federal contribution towards Aboriginal people can be channelled in a really targeted way.

One point I will make in closing is this: it is incredibly obvious that the identifiable group in our society that most needs these services is Aboriginal people, especially the Aboriginal young people who come into contact with the criminal justice system. It is really very easy when you put it that way. What we need is to make use of that particular data and put in at the front end to stop them going in but also, more importantly for the kids already in the system, target the backend. This is where the justice reinvestment stuff can come in. What options do these kids have when they come out of detention? We have talked about education and health. There is housing. The justice reinvestment could target those localities these kids come from and start to provide better options for when they do come out, and, hopefully, it will stop them going in in the first place. But of very immediate concern is all of those kids, the problem that all of us around this table are talking about, have to be the top priority.

CHAIR—Luke, did you have some observations that flow from the idea of justice reinvestment from the perspective of the sector that is getting lots of investment at the moment?

Mr Grant—I suppose the obvious starting point is that for every person you can avoid incarcerating for a year, you are saving \$70,000 that you could spend in another way. There is a very clear set of community expectations around incarceration. For whatever reason, it is something for which there seems to be a massive appetite. People seem to think that, beyond the immediate incapacitation, there is some deterrent effect of incarceration—a general deterrence and a specific deterrence—but there is no good evidence around that whatsoever for juveniles or for adults. There is a dangerous group of people who absolutely should be in jail. There are a

reasonable number of those and there is no argument about that. And in this population that we are talking about today, Don's work has shown one of the reasons Aboriginal people are overrepresented in prison is because they are more likely to have committed a violent offence than a non-Aboriginal person. We should not immediately assume that there are a lot of people in jail who should not be there because they do not pose a risk to the community. But having said that, there are a lot of people in jail on whom we are spending a lot of money without getting very much return, other than the very expensive cost of retribution. People spend a lot of money for the satisfaction of having people locked up in jail. So the first thing is to have better engagement around the concept of incarceration and what it achieves.

There is lots of evidence that Don Weatherburn and others have provided in New South Wales around incarceration. When people look at community attitudes, there are certain assumptions that people who demand incarceration make about the primary and best justice intervention—it is certainly the most expensive one—and there needs to be some concerted strategy in the first instance to deal with community attitudes. Two years ago, Don did a study where they asked people in the Griffith community whether or not they thought sentences were long enough, and 60 or 70 per cent of people said sentences should be longer. That was the view in that community. When he drilled down in that population, he found that the people who had that view were people who did not know what sentences were anyway, who were poorly educated and received their information about sentencing and its outcomes from tabloid newspapers and sources like that, as opposed to the true source. The first thing is to challenge community expectations because there is this amazing appetite and governments seem to assume that they cannot do anything about changing this emphasis on incarceration.

While I do not know an enormous amount about grassroots community based alternatives, I am not disputing their value other than saying that we must not abandon the emphasis on evidence. And in the criminal justice world there are so many examples of common sense ideas that have come to nothing that have been a waste of money. In terms of post-release support services, there are already some big international evaluations that show that well-considered programs—ones that include things like employment, drug and alcohol, family support—have failed dismally, so we need to think really carefully about how we reinvest the money. We might know that incarceration is not producing results, but we do not want to throw it into some other strategy that is producing even worse result.

Prior to moving into the domain of funding community services, without saying that this is an alternative, there is an enormous amount of scope within the justice system to reinvest money within the justice system in places where you get better outcomes. We heard Don's earlier statement today where you could almost say with certainty that if you are a young Aboriginal boy in New South Wales who appears before the courts then you are going to end up as an adult in jail. Nearly all of that group are. If we know that to be true then shouldn't we be investing money in those people at the earliest possible stage? We have heard from juvenile justice about multi-systemic therapy—a tried and true international strategy. It has been tried in Western Australia; it has had very pleasing, positive initial results here. And yet I think we are spending maybe \$5 million in New South Wales—something like that; it has probably gone up—on a couple of small trials. We seem to focus on small pilots when we know there is a group of people that is certainly going to go to jail. That is where we should be putting in a big investment.

Having said that, there are a lot of people with such complex needs in jail that to meet their needs satisfactorily you probably need to spend more than the money spent on them in jail per year. There are some people with seriously profound mental health disability issues and so on that the \$70,000 a year is not enough to meet that person's need. And it is convenient in some respects to have those people in custody because their needs can be partially met and at least people know where they are.

Another area that we should really be looking at—and I am not sure how this relates to the criminal law codes in other states—is better access to pre-sentence options. In New South Wales you have the capacity, under section 11, to defer making a sentencing decision while you put someone on a community based rehabilitation program. But if the options are not there to use then people do not tend to use them.

We have recently introduced a program—it is in the New South Wales submission—at Tabulam. The program is based on an idea—I think you supported when you were in government in New South Wales—that came from a project we had at Yetta Dhinnakkal. It was a program for keeping young Aboriginal people out of mainstream prison.

We got some money to repeat that but, when we thought about it, it was obvious that that really was not a diversionary program. We were really just talking about having people incarcerated in a better place—maybe a better environment. It might have been more appropriate to Aboriginal cultural issues but it was not in the community. We were putting a lot of money into that project but it was not changing the community, and it was being done at the post-sentence stage. So we actually took that money and invested it in a strategy for having a community based program for men and women on the North Coast. It gave an opportunity for the local magistrates to put someone into a program where they could get access to culturally appropriate programs focusing on things like drugs and alcohol, employment and other things that are really important in addition to healing. That is a strategy, however, that is only available in one location in New South Wales for 70 people. That is the maximum number of people there.

CHAIR—I am not aware of a similar program being available anywhere else. Are you aware of one elsewhere in the country?

Mr Grant—Not a correctional program, as far as I know.

CHAIR—But the Tabulam correctional centre is something that deserves more attention.

Ms Hannam—I can really endorse everything that Luke says. There is the issue of the public perception. Obviously the media plays a very big role in shaping the public perception that locking people up rehabilitates them but somehow we have to disabuse people of that. I really also endorse what he just said about the small programs. We have, within the Children's Court, a problematic group of young people. They are DOCS clients. They are old fashioned wards of the state. There is a big difficulty with finding them accommodation when they come in contact with the criminal justice system. There has been a new project—a pilot project—that is supposed to be targeted to this difficult group. It is available for five young people! We would have five in a morning in court.

My experience in the youth drug court is that it has been proven to be working well but it still only available in the Sydney metropolitan area and it is only available for up to about 40 young people at one time. There are hundreds of young people that could come onto that program. So I would endorse what Luke says: the money should be reinvested, still within the justice system, but in those programs that we do know work.

Mr Grant—Also in other locations. There is a tendency to assume that we should be putting those in locations like Brewarrina and Tabulam, which is up near Casino, and we probably need those things in Mount Druitt. And they do not have to be run by a correctional agency. They should be, and could be, run by community agencies just as well. So by default we are providing those services but there are insufficient services. I think the courts are more comfortable, for some reason, with residential programs. They think that if they have to send someone to jail, sending someone to a group once a week is probably not as good as putting them into an intensive program. Intensive programs work better, generally, than ones that require a meeting a couple of days a week.

In addition to that, we are starting, in New South Wales, to look at alternatives to spending all this money on the remand population. So bringing people into custody, you might have a detox program that is quite effective, but a significant number of people who are in custody on remand are released at the time of sentence or before, into a community based order. So one day we are spending a couple of hundred of dollars a day on them and the next moment they are out in the community. So we need to reconsider the value we get from having such large remand numbers and whether there are alternatives for a smaller group of people so that we can reinvest that money. The significance of that is that, if we are not going to spend the money on this group, the money needs to be spent in other areas where there are programs that make a difference.

Without diminishing the effect of these things, like the healing programs and so on, there really is some fundamentally good evidence around the importance of education, employment, and drug and alcohol treatment as the three core areas. It emerged in Don's work. Alcohol and other drug treatment, education and employment are major targets for treatment for this group. It is really important to distinguish between prevention programs and postvention programs. If someone is in the system there are things that are very effective that we would know to be effective.

We have recently done some analysis of our data. We use an actuarial risk assessment instrument called the LSI-R. It is a North American instrument. People were dubious about its value for Aboriginal people but we have validated it now on an Aboriginal population in custody. We looked at 17,000 people, so it was a pretty big study, and we are fairly confident that it is fairly good and predictive for Aboriginal people. What it showed for Aboriginal men, in particular, was that the best correlates of the likelihood of reoffending were inadequately addressing education, employment, and alcohol and other drug issues. That was more important than personal and emotional issues in terms of this particular instrument at any rate. So I think it is absolutely important to put some concrete things in place in relation to those areas.

CHAIR—So you are saying, to be explicit about it, that you begin to understand that there are ways in which you may significantly reduce the risk of reoffending amongst people who are already in the prison system, and you would do that essentially through a new and actually cheaper form of incarceration?

Mr Grant—That is right. In addition to that, just another general point if I could make it is that people need to be realistic about success too. There is this incredible expectation for some reason in the domain of justice programs that if you are going to spend money or put someone in a program you need to get a 50 per cent or a 70 per cent success rate. If we compare that to medical treatment and the amount of money we invest in medical treatment, we get very, very significant returns but very small outcomes. Even with things like chemotherapy—strategies that are generally used and generally accepted—the outcomes of those types of treatment programs are not enormous but they are very significant because they might save someone's life or improve their health. In the justice domain we should be celebrating successful programs when you get a 30 per cent effect size and not write them off. We need to be very realistic about the dimensions of success in our programs and not set too high an expectation and to work incrementally on problems and not abandon things that are producing small gains.

CHAIR—In other words, when somebody says, 'Fifty per cent of the offenders in this program are going to be back in jail again,' you think 'fantastic'?

Mr Grant—It depends on the program and the nature of the offence. It could be a bad result or it could be good, depending on what the baseline was.

Ms Hannam—If you compare that to those who would have been incarcerated, the expectation would be for Aboriginal young people it is almost 100 per cent, once they have served time in custody.

Mr Grant—I think also if you look at the justice reinvestment literature there are major differences between North America and Australia. One of them is the scale of their problem. There is much stronger imperative when you have six or seven times the incarceration rate and investment in \$60 billion plus in incarceration to make changes. I think it is a ridiculously unrealistic expectation to think you can take all of the budget from a correctional agency and put it in the community. But really it is such a large budget that if you even think about a small group, if you could actually remove 400 or 500 people from jail in New South Wales next year out of the 10½ thousand people that are in jail now and you reinvested that in a good and sensible community based option, you could do that for half the price and then still have probably \$8 million or \$10 million that you could apply for other strategies that work.

The point I want to re-emphasise is that we should not, however, be moving money from one activity to another without seriously thinking about the success or otherwise. You need a good, solid theoretical foundation and good evidence before we throw money into community based options just because they seem good. As I said, corrections as the world's best centre for experimental treatment—we have all these ideas over time. The Quakers used to lock people up in jail in complete silence. They thought that was good for people. They did that for years and years. We have tried all of these things, with no great effect. Now we have got some sense of the things that do and do not work and they are the things that we should be focusing on.

In terms of reintegration programs the evidence is much thinner. We do not know what it is that works and what does not work. Employment programs have not been very successful. We should not assume that there is just some simple strategy that is going to produce a change and we need to do a lot more work on how to make those programs work before we put a lot of money into them.

Mr Zulumovski—Being from the oldest living culture in the world, I know our people existed for a very long time without a single prison and without a single mental health institution. I want to throw a suggestion to the question asked: how could the federal government support a rollout at grassroots level or, as Shane said, help fight the spot fires that are developing in the community? There should be an emphasis on supporting leaders in the communities. Like Shane said, there need to be young, passionate, motivated, capable individuals who understand the issues in the community quite well and who have developed successful alternatives that are yielding some results. We need to support the leaders who are initiating programs in the community. I agree that there is a section of society that should be put in prison because of their dangerous actions, but early intervention and prevention is the best outcome, particularly when we know that many people who go into prison without a mental illness come out with one. The emphasis should be placed back on the health department to ensure that adequate mental health services are provided to adolescents before they engage in cycles of crime and violence.

I also want to give you a leadership example at a grassroots level, the Gamarada program. The reason that program exists and continues to attract very good numbers of men and to keep some of them out of prison is the leaders that run the program. There are five leaders. Uncle Shane Phillips is one. David Leha is another one. The last time he was in prison he was imprisoned for six months in solitary. That was five years ago and he has not been back since. He has been elevated through the Gamarada structure to become one of the leaders, facilitators and directors. David Beaumont lost his mother to alcohol on the block and was fostered out. He went through a process of rebellion. His father was actually one of the longest-serving Federal Court judges. David came back to the community to give something back after learning about his culture and rediscovering his identity as an Aboriginal person. Then there is me, and I have a story. These are five men who are incredibly devoted, who do not sleep and who are obsessed with the cause.

The Gamarada program exemplifies many healing programs, but this program has existed for nearly three years without any funding at all. The men all work in key areas in community and they all contribute hundreds and hundreds of hours of voluntary time to establish what we have established today. Taking up the healing agenda is not easy, because it is something that people do not know a lot about. It is something that is a little bit difficult to understand, particularly if you are non-Indigenous, so we have that obstacle as well. But there are many successful healing programs around the country that have been running for quite some time. To research the outcomes of those programs might be an idea to support the idea of healing.

CHAIR—It is possibly worth saying that the psychological and emotional benefits are not entirely the same thing as the question of recidivism. These are not really opposing ideas. It is fair to say Luke is talking about what will work in terms of men going back to prison or not, but that is not the same thing, although it is related, to propositions about spiritual restoration.

Mr Zulumovski—Yes. The point was about how the government could help fight the spot fires that Shane was talking about and also help discourage the idea of waiting until we incarcerate our people before we initiate programs for them.

Mr Duffy—I want to pick up on Kerry's question before about what government can do to better coordinate services for our young people. The comment is on the coordination of service delivery, as I alluded to before, from my perspective as a peak service provider—I know it is in Queensland and I am on different country. The question is the alarming rate that Aboriginal and

Torres Strait Islander organisations are being defunded. The states', territories' and Commonwealth's focus on governance arrangements is quite concerning. I understand that there are inputs and we demand outputs. But what we see is a huge shift in resources, particularly funding resources, across to the reference we were talking up before, to the big international non-government organisations, the BINGOs, the church groups. These church groups are funded by respective state and territory governments. You made reference before about housing for our young people once they come out of the system or on a court order. We look at this Supported Assistance Accommodation Program and the Crisis Accommodation Program and trying to absorb those young people into that to get better outcomes. We continually see these organisations that I alluded to before being organisations that are not culturally competent, that fail to meet the basic necessity in understanding cultural protocol or cultural understanding in a very simple sense—in particular, in the way they deliver their services.

So there is a big shift. One, the coordination of service delivery is moving towards church groups. Two, Aboriginal and Torres Strait Islander services on the ground—and those are people who come from community, who understand community solutions to community challenges—are being defunded at an alarming rate. So that whole shift with that clear focus on governance poses another problem for our services on the ground.

I can talk about Aboriginal legal services. We are under threat. We have been around since 1972. We are fighting for our survival in this country, even though it is clear that we deliver the most cost-effective service in a big-picture environment. So those challenges are there. How do we get into talking about cultural competency in the way that the services are delivered to our people? No-one knows like ourselves—no-one. But we continually watch dollars, resources and programs fade into oblivion away from what we have already identified: programs should be delivered by Aboriginal and Torres Strait Islander people to Aboriginal and Torres Strait Islander people because it involves ownership and solutions based on their geographical area.

CHAIR—That is a big message. This issue of government welfare related human resource departments giving money to big NGOs is of relevance to Aboriginal people, as you have eloquently described. It is actually a phenomenon that happens across the board. In my own electorate I find small local organisations getting very pissed off. Mick, you wanted to say something. I am surprised to see that it is one o'clock, when we were programmed to stop. Can I ask you to make your contribution, and then I will ask if anybody else would like to say something. I need to ask whether my colleagues want to ask a question, too. This has been a most extraordinarily valuable information session for us.

Mr Gooda—I will be brief on the way forward. In our report last year there were some suggestions. I came in as Emily was talking about putting them in the COAG targets. If we are going to close the gap, I think it is valuable to start thinking about attention at the national level about the number of people incarcerated and how we can stop that. I have a comment on Luke and cancelling. I absolutely agree with Luke: we should be investing money in things that work. I have just worked for over five years in a research organisation, so I have to follow the evidence. I think we need to produce that evidence. I do not agree that the system is the only place, although I agree with Ken to say that we should be putting stuff in front to stop people going into the system.

On the way government works, the only thing I will say is, if you think the solutions are going to come out of Canberra, think again. Somehow you have to empower people at the local level to make decisions and find ways to make Canberra let go. It is not the centre of the universe.

CHAIR—People like Kerry and I are very sympathetic to that proposition.

Mr Grant—I thought you would be. It is actually about finding out the role of the federal government in this. We have been subject to it in Aboriginal affairs forever—you will try to write prescriptive solutions for every circumstance that exists in Australia out of Canberra and that just does not work; it cannot work. I agree that the local solution could be within the system, but it also a lot of times rests with community organisations. How do you empower people at the local level with the on-the-ground know-how to produce some of these things?

I have come to the conclusion recently that sometimes in Aboriginal affairs we make this too big. I will give you an example. I work with beyondblue, who just work on depression. They went and talked to some Aboriginal people about fixing up depression and I said, 'Before you fix up depression you've got to look at colonisation, housing, employment, everything.' They just walked away from that and said, 'It's just too big—we just do depression.' My advice is: do what you can do, start doing something and do not just sit back and wait because it is too big. Luke is doing stuff in the system. The stuff Ken is doing in Gamarada—do it. The government has to be an enabler here. It cannot be just a gatekeeper.

CHAIR—That is a very useful phrase from our point of view—an enabler, not a gatekeeper. There have been many useful phrases that I am remembering as best I can. I am going to plagiarise them and put them in the report! Your one about the government-free day has to be in the report.

Mr Grant—I was at a hearing the other day and someone talked about them as seagulls. They said they come in and shit on everyone and then go. That is what government people do. That community in the Dampier Peninsula said, 'We will have government-free days.'

CHAIR—Bill, what did you call big NGOs?

Mr Pritchard—BINGOS, big international NGOs.

CHAIR—Yes, but one of you gave them another name. Was it 'the usual suspects'?

Mr Pritchard—Yes. We welcome the funding of the child and family centres, which will hopefully get more children through to year 12 and bring down rates of incarceration. It is all connected. But what has happened in the haste of doing it is that there was not enough time to actually do service development. What happens is these big NGOs are the only ones capable of actually going through the tendering process. They can put project teams on submitting these tenders. The small Aboriginal NGOs have not got the opportunity to compete. When they see that they cannot compete, they do not tender and so it goes to one of these non-Aboriginal NGOs. It just happens all the time. It happened through Brighter Futures and the Out-Of-Home Care rollout. That is just a continual thing. Unless you build the capacity in the community and the community agencies, we will never be able to compete.

Mr Gooda—I want to go to one thing Shane raised. In my last job in the Cooperative Research Centre for Aboriginal Health we produced a report called *The overburden report*. It was about the overburden of administration for Aboriginal organisations, particularly medical services. I would recommend the committee have a read of that. When you compare the administration that Aboriginal organisations are subjected to compared to mainstream ones there is no comparison. This report is done by some of the best researchers in the country, so it is not just blackfellas having gut feelings about this. This is actually well-sourced evidence. So have a read of that. It is called *The overburden report*. You will find it on the CRC website. That will be instructive and will reinforce the point Shane made about the overadministration and the concentration on output and financial management rather than outcomes.

Ms Crawford—I just want to add that the Victorians have some very good strategies around investing in service development in Aboriginal and Torres Strait Islander organisations in Victoria. They focus on service delivery as well as operational matters. That might be something for the committee to explore.

CHAIR—Yes, we actually heard about them yesterday. Thank you all very much. It has been a most stimulating meeting. I thank Dave Owens and his colleagues for sitting here for hours while this conversation went on. I assure you that we in the committee are taking these matters very seriously indeed. We are well aware that people go around talking about the problem—everyone in this room has spent a lot of time talking about the problem—and only get some solutions. So far as I can see, you just have to keep learning from the evidence and trying again, and that is what we will do. Again, I thank you, especially for devoting a morning to us.

Ms Brown—Chair, could I just make a brief comment on something that has not been alluded to much. We have focused a lot on intervention and diversion programs. I think they are really key, but there is something that I would particularly love the police representatives to understand, as I am sure that they do, about the overpolicing, especially in terms of remand and breaches of bail. Kids are being arrested for breaches of bail that are very minor, like being 10 minutes late for a curfew because a bus was running late, and being put in remand. The more we can remove kids from being in remand or detention, the better, and that should be a key focus. I think something needs to be done about the way bail laws are looked at in New South Wales, and I am sure it is the same around the country. I think everyone here would agree with me. From a legal perspective, I think that all the diversion programs are important but that equally important is working on the law so that kids are not stuck in remand when there is nowhere else to go, put in jail for very minor breaches—which can then lead them into further contact with the justice system. We want to keep them out of jail as much as possible. I think that is something that needs to be focused on as well.

Mr Owens—Bail is an issue we raised before. Kids must have a home to go to and parental control.

Ms Brown—Certainly.

CHAIR—Thank you.

Resolved (on motion by **Ms Rea**):

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

Subcommittee adjourned at 1.07 pm