

LAW REFORM COMMITTEE
Warrant Powers and Procedures Subcommittee
Inquiry into warrant powers and procedures
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Members

Mr R. Dalla-Riva
Ms D. G. Hadden

Mr R. J. Hudson
Mr N. J. Maughan

Chair: Mr R. J. Hudson

Staff

Executive Officer: Ms M. Mason
Research Officer: Mr J. Cina

Witness

Mr M. Cuomo, legal director, Aboriginal Legal Service of Western Australia.

The CHAIR — Mark, welcome to the hearing of the Law Reform Committee of the Parliament of Victoria. We are governed by the Parliamentary Committees Act in Victoria, which means that our proceedings are subject to parliamentary privilege. That means that the evidence that people give us, at least when it is taken back to Victoria, is privileged. As you know, Hansard is recording the proceedings. You will have an opportunity to speak to us either on or off the record and to indicate which parts of your evidence you are happy to have made public and which parts you would prefer to remain in camera, and you will have an opportunity to correct the transcript. Aside from that, all of the evidence that we take, which is public, is published on our web site and is available to the community. We then utilise that evidence for our final report, and often quote what particular witnesses have said, but you will have the opportunity to review that. So thank you for taking the time to come to talk to us today. Given your areas of expertise, could you outline for us the particular issues that concern you and the Aboriginal Legal Service of Western Australia in relation to warrant powers and procedures? Then we might go into some detailed questions in each of those areas.

Mr CUOMO — Thank you, Chair. Firstly I apologise for Mr Dennis Eggington, who had hoped to be here today but who at the moment is on a slow plane back from Adelaide and unfortunately cannot be here this afternoon. My name is Mark Cuomo and I am the director of legal services at the Aboriginal Legal Service of Western Australia. We are an Aboriginal and Torres Strait Islander legal service. We service the whole of Western Australia, much the same as VALS services the whole of Victoria. We have an office in Perth and 17 offices throughout Western Australia, and we service the whole of the state, including some very remote places.

I have briefly looked at your discussion paper and had a quick discussion with our friends at VALS about the nature of the system in Victoria. There do seem to be some jurisdictional differences, which I am sure the committee has discovered in looking at the two jurisdictions of Western Australia and Victoria, and that leads to some differences in terminology. From what I have seen I can say that the areas that we would have some input into for the committee would be in relation to warrants from courts or non-appearances. We call them bench warrants in Western Australia. In your paper you talked about warrants enforcing judgments; I think in Western Australia we refer to that as fines enforcement, which has its own statutory scheme here. The other area that interested me from the discussion paper is search warrants. I would be very happy to talk about those areas. If there is anything else the committee would like to move me to, I will try to accommodate that discussion, but those are the areas I think I could probably assist you with.

The CHAIR — All right. Let us start first with bench warrants. Would you like to talk about the particular issues you have encountered with the Aboriginal community in relation to the application of those warrants?

Mr CUOMO — Yes, certainly. Bench warrants in Western Australia are largely a product of non-attendance in court. A defendant is bailed to a particular time and place, and for one reason or another they do not turn up. The practice in Western Australia as to the issue of these warrants varies considerably between courts and also varies considerably between judicial officers. It varies, too, quite a lot here between country and city courts, depending on the community. From what we observe representing Aboriginal defendants, within the city there is a practice that has grown up at the central law courts and almost invariably at the suburban law courts dotted around Perth that the magistrate will usually give defendants an amount of time to turn up. They will not issue a bench warrant immediately the matter is called, especially if counsel or duty counsel can indicate that they are looking for the defendant, or there is some explanation. The practice of the matter is to stand the matters down to the bottom of the list to give people time to attend, and our court officers and other staff will go and look for defendants. That seems to work reasonably well.

It is a fairly well known matter amongst people representing Aboriginal people that as a cultural issue time means different things to different people. Certainly some of our clients find it very hard to relate to specific times of the day to turn up, but people accept an obligation to turn up on a

day, and they generally will; they understand it is in the morning and they will generally turn up. In country areas the system gets a little bit more accommodating. Magistrates in Western Australia tend to be resident in their particular towns, so they get to know their communities very well, as indeed do the police. To use a movie phrase, the usual suspects get consideration and understanding with their usual habits and it is not a matter of any great difficulty. People are given a reasonable amount of liberty.

Another aspect where magistrates are very accommodating in Western Australia is in relation to defendants who are on law business. In remote and rural areas Aboriginal people in Western Australia lead very traditional lifestyles. Some communities have law time where basically either men or women will go to their law business and the community will generally shut down, and that will occur. Magistrates and district court judges will usually acknowledge that and will not enforce warrants whilst they know people are at law business, notwithstanding that there is not the usual set of explanations. It goes with knowledge of the local area in which the particular judicial officer serves. They are the arrangements in Western Australia.

A consistent theme of the problem is always in relation to policing styles. If the police have a particular interest in a person, and this often forms part of the armoury of methods they use to grab hold of a person if they need to, bench warrants tend to sit unenforced except in extreme cases. It varies a bit. In some cases the police can be very cooperative with us or with their own solicitors and try and get people to surrender and for things to happen in order. In some cases the police will go looking, and human nature being human nature, if they have to go looking for a long time and in difficult circumstances they will not be terribly pleased about it. That can lead to some arguments.

Another particular problem in Western Australia, which I am not sure you would have in your jurisdiction, is that defendants may be arrested in nearby country towns and brought to Perth. There is a single remand lock-up after hours in East Perth. Defendants will be brought from, say, Northam, which is an hour and a half drive away, processed in Perth, granted bail again in Perth, and will then be left at the steps of the lock-up with no means of returning home. That can be a particularly difficult situation. The problem is magnified in country areas — for example, defendants being brought from the lands into Kalgoorlie from the tri-state area at the Northern Territory, Western Australian, South Australian border, then being bailed or otherwise dealt with and then left at Kalgoorlie, which can be some days drive from where they want to be is a particular problem. The police are usually as helpful as they can be, but as they point out they are no taxi service, and there appear to be very few other services that are available to repatriate these people home.

The CHAIR — So you are saying that on bench warrants you are reasonably happy with the way in which they are issued by the bench and overall the way in which they are enforced? You are reasonably happy with the police except in those circumstances where perhaps they feel a bit aggrieved about the behaviour of a particular defendant?

Mr CUOMO — Like all of these things you cannot legislate for good behaviour at the end of the day. It is difficult if people are minded to be difficult. It is easier if people are minded to be easy. The experience of our organisation is that the vast majority of police are cooperative on these sorts of things. It is not a particularly corrosive issue between Aboriginal people and the police except in very specific circumstances where there are other problems as well. This tends to get thrown into the mix and can lead to some conflict where the policing style is particularly harsh. The one difference we see in this area and in others — and indeed I think it is more to the credit of the relationships in Victoria than here — but as a result of the royal commission into deaths in custody, there appears to be a practice that has grown up in Victoria where the police will notify VALS when people are in custody or where there are warrants outstanding. Here there is certainly no particular system for notifying our organisation of Aboriginal people in custody. It does not form part of usual police practice, and where it occurs it is quite sporadic and in very specific country areas where there is a close relationship.

In regard to warrants, the police will liaise with our local people and seek their assistance, again on an ad hoc rather than a systematic basis. Where that relationship exists and it is good, it works. Where there are difficulties, this is another area where there will be difficulties.

Ms HADDEN — Given the problems you have just told us about, why would an Aboriginal defendant be arrested in a remote area and be brought to Perth, given that they are going to be stranded with their bail on the steps and with nowhere to go?

Mr CUOMO — There were two examples. The remote areas from the tri-state area would go to Kalgoorlie, and northern would go to Perth. The reason for that is that they are the nearest facilities. One of the features of the criminal justice system in Western Australia is its centralisation. People will travel very long distances to lock-ups, to where trials will occur, to where the prisons are, because the vast distances can be quite remote. For example, I was talking about people coming from the lands into Kalgoorlie, and the Eastern Goldfields Regional Prison is the only remand facility within 1000 miles. It is just a function of sparse populations and very long distances, which is exacerbated in this state.

Ms HADDEN — You do not have Aboriginal liaison officers tied in with the police that you contact the community of the defendant?

Mr CUOMO — It can happen. Again, and it is on an ad hoc basis, there are a number of mechanisms that assist. The police have Aboriginal police liaison officers who work with the particular police stations who may have contacts back into the community. In the large towns we have a presence, and the relationship between our people and the police is usually very good, and the police will seek our assistance. The police have their own contacts back, too, where it works well. Where it does not work well, that is where there are conflicts and difficulties in the relationship.

The CHAIR — So once an Aboriginal person is arrested, in the ordinary course of events how would their rights, if you like, in relationship to either remaining silent or having a legal representative present be executed?

Mr CUOMO — In Western Australia we would not hear about them unless someone had raised it with us — family or someone from outside. We generally would not see people until they fronted court the next morning. We have no system of notification. Occasionally we will be asked by defendants to come and see them in the lockup, and very occasionally that request will be passed on by police but it is very much a rare situation. There are remand courts here at the lockup; there are courts that will sit, say, on Saturday morning to hear matters. The way we try and deal with it is to have a presence at each of those remand sittings. Our service has endeavoured to make sure that we are present at every sitting of a magistrate in Western Australia so that whenever anyone comes before a magistrate in court there will be a presence from the ALS. Unfortunately our funding has got to the stage in the last six months where there are some courts that we now cannot attend, and we are trying to prioritise where the work is, but that is the time when most of the information is given.

Mr MAUGHAN — Did I understand you to say that when an Aboriginal person is put into the lockup there is no mechanism to notify the Aboriginal community so that they can be — as they are in Victoria — discharged to the care of someone within that community as a result of the Aboriginal deaths in custody inquiry?

Mr CUOMO — Yes, that is exactly what I was saying. That was a recommendation that was picked up in Victoria, but it has not been acted on in Western Australia.

The CHAIR — Perhaps we can move on to the area of fines enforcement. Do you, Mark, want to give us an overview from your point of issues in relation to fines enforcement in Western Australia with the Aboriginal community?

Mr CUOMO — Certainly. I will make a few general comments because again this is a very jurisdiction-specific issue but I am sure the difficulties reflect issues across jurisdictions. Perhaps a starting point in looking at Western Australia is to note that it has a grossly disproportionate share of Aboriginal prisoners in custody. I have not the exact figures to hand but as a rule of thumb Aboriginal people are about 3 per cent of the population in Western Australia and usually one-third — I think about 36 per cent last time I looked — of the prison population, which argues a very large overrepresentation.

Mr MAUGHAN — That is interesting because when I asked that very specific question this morning I was given the figure of about 20 per cent.

Mr CUOMO — That is a gross underestimate in my understanding.

Mr MAUGHAN — I thought it was a bit low.

Mr CUOMO — When you look at particular groups of the population, in women it is far greater, it is in the 40s; for certain categories of juveniles it is into the high 70s, so it is a gross overrepresentation. Naturally there has been a concentration on that issue. The previous coalition government was not unmindful of that and the current Labor government has looked at it and brought in some specific legislative changes to try and deal with that.

The most recent move has been to abolish short sentences of less than six months duration. It was a very interesting exercise because the legislation, as legislation does, followed the announcement by some 12 months, but between the announcement and the legislation the number of short sentences rapidly decreased anyway. So it rather indicates that while these are important legislative considerations it is also a matter of judicial culture in this state. We do jail. We jail on all levels at a far greater amount than the rest of the country, and I think this overrepresentation is a function of that, which means that there is consequently a concentration on others means of punishment, like the range of various non-custodial sentences in which fines loom pretty large. Aboriginal people are less economically well off than the rest of the community on the whole.

Offenders that we see are largely unemployed, or on very restricted incomes and fines therefore have a disproportionately heavy effect on people in those circumstances. Work and development orders, which basically convert fines to community hours, which is a system I am sure the committee would be familiar with, is a feature of the enforcement regime here. It is pretty easy to access here, especially if the defendant has had some degree of legal advice either from us or from legal aid duty counsel. It is done by the clerks rather than in the court, and it is pretty well automatic.

Sitting on top of that is a fines enforcement regime in Western Australia that enforces by way of removal of drivers licences. This system is really quite problematic for a number of reasons. It is clear that a number of people are not aware that they are caught up in the system, specially if they have no fixed address or have a transient lifestyle. The correspondence really never catches up with them in the end, so they miss out on the notices, they do not know what situation they are in and they can very easily get into trouble for not acknowledging that they are not licensed to drive because of non-payment of fines. This has clogged the courts up with many applications for the removal of fine enforcements on that basis. It has also caused a particular problem for Aboriginal people because many of them have a number of convictions for driving without a licence or driving under suspension. It used to be the situation in Western Australia that on a second conviction for driving under suspension there was an automatic jail term, which led to a lot of concern among practitioners and particularly among the magistrates who had to enforce this — they saw it as quite unfair. That law was changed a few years ago and it is no longer automatic, but fines enforcement has definitely added to the number of those charges.

It is not unusual to get people to go into court with no other substantial criminal record other than some number of charges for driving under suspension. The magistrates deal with it in differing

ways. Some magistrates are quite lenient, specially in country areas; but speaking at as a practitioner, once you get to four or five or six charges it is very hard to keep people out of jail. It is one of those administrative offences where jail really is not the answer. I am sure it is effective — I do not have the statistics — but such a regime, if effective, is frankly, effective at a price, and that is the price.

The CHAIR — Are any statistics available on the percentage of Aboriginal people who initially failed to pay a fine, who had their drivers licence suspended then eventually ended up in jail; or have there been points of intervention in between which have resulted in less people who were put on that treadmill going to jail than otherwise have?

Mr CUOMO — There are no statistics. I am arguing from experience and anecdotally here. Objectively, many more people cut fines out in jail than would face jail under the current system — that is fairly clear. There was a tendency for the judiciary to regard it as a legitimate thing to do, and a real culture had built up that you would just go to jail to cut out your fines. It is good to see that go, because it was quite an undesirable part of the system and one that led to a massive overrepresentation of Aboriginal people in custody.

I suppose what I am saying is that the current system is not perfect, and it could be improved. One of the things I have argued for is for personal service of notice, so that at least people understand where they are because the paper is put into their hand. The police resist that and you can understand their reluctance because of the workload it would have. It is very hard to justify a system that can potentially lead to a loss of liberty where a person's knowledge is based on a very shaky postal system and an administrative system that cannot keep up with them. To give you an example, there are vast areas of this state around very substantial country towns where there is no postal system delivery of any nature. The district court has a problem here. We have had discussions with the judges of the district court in relation to their circuits in the Kimberley area of the state. The judge will sit in circuit. There are no resident judges outside of Perth. They will start in Broome and eventually work their way to Kununurra. These are the two most distant towns in the Kimberley, but it is due to the way defendants are bailed — to the first day of the sitting. We were left with a situation where there were two weeks between when the defendant was bailed and when they would actually be dealt with in some way by a judge. People coming from remote communities into Kununurra are usually young men of 18 or 19 years of age on burglary charges, and if they were not in trouble when they hit town, after two weeks with no money waiting for the judge they had more trouble than they knew what to do with. The court recognised it was wrong. We recognised that it was something to deal with. One of the remedies we looked at was perhaps trying to set different dates and trying to notify people. The thing we came up with is that there is no postal system that can get to these people effectively. It just does not exist. That is reflected all through the criminal justice system.

Mr MAUGHAN — Could the Aboriginal community itself be used to assist with delivering those notices, because clearly it is for the benefit of Aboriginal people to get that notice delivered so that the fines do not build on fines? Maybe the Aboriginal community itself can do something about facilitating delivery of those notices.

M CUOMO — They do their best, but again to go back to the Kununurra example, the defendants going to Kununurra may come from Balgo, which on any measure is a day and half's drive from Kununurra, and for six months of the year there is no possibility of getting in other than by charter aircraft because of the water. The communities themselves do their best. There is a single mail delivery point but you are dealing with mails that will come in most reliably once a week but usually the mail gets chucked off because it is the last in line, so everything conspires against it. In dealing with young defendants out of Kununurra, the community, the priest or anyone who can actually try and engage the system, does it for people. The logistics just do not work. The police and the licensing authorities have tried to be a bit creative I must say in their defence, and are trying to move out into these communities. Aside from anything else, no-one has a driver's licence and so the authorities are trying to move out there to actually give people

licences. The lawyers are a bit worried that that may lead to more enforcement as well but at least it indicates an intention to do something about it.

The CHAIR — In relation to your review of the FPINE act, a number of recommendations have been made about time-to-pay provisions; about direct debit; some suggestions of links with Centrelink in terms of social security payments; and even a suggestion under the CDEP program there is an additional amount paid individually to recipients that could be subject to direct debit provisions. Have you got any comments on the proposals that have arisen out of the review of the fine system in Western Australia and the recommendations in relation to the Aboriginal community and those types of proposals?

Mr CUOMO — We had input into that, and we agree with all of those things. Especially important is the ability for Centrelink and the CDEP organisations to direct money to fine enforcement. Another area — perhaps not fines enforcement — where some change is taking place, and we think it is a change for the good, is the enabling of work and development orders to be done within communities and putting the infrastructure into those communities to allow enforcement to take place there.

Perhaps to digress a bit, but to give you a flavour of what the issues are: the communities themselves want to look after their own young people. They want to keep control of them, and this is one of the mechanisms that allows the community to do that. The communities will take the view that they can do with a holiday from some people, and in those circumstances usually the magistrates get the message and the person will go to jail, usually for very good reasons. That is very much a rare situation. More often than not the community tries to keep control of them. The more mechanisms that go back and allow the community to do that the better, but you need the infrastructure there.

Bail is another issue. The communities would like to see people going back and for bail to be done. What they do not want to see is a situation where people just get dumped on them with no resources, with no ability to control, or for people who come from other areas just being dumped into an Aboriginal community because of some generic reason. Aboriginal people need to be dealt with by Aboriginal communities. The relationships are a lot more complex than that, and the community tends to want to look after its own people and not just be a dumping ground. Those are the sorts of changes that are there. Fines do not easily work in these situations, especially with youngsters. It is just unrealistic.

The CHAIR — In terms of direct debit arrangements, what is seen as a reasonable percentage of the income of the social security payment that can be deducted for purposes of paying off a fine, from the point of view of the community or the legal service?

Mr CUOMO — I am not sure that we have looked into the issue specifically. Where we advocate for people obviously depends on circumstances, but anecdotally our understanding is that these are not very large incomes so there is not a lot of discretionary expenditure within.

Mr MAUGHAN — Are there any figures on, or have you any anecdotal evidence about, the amount of recidivism between a group that goes to prison as compared to a group that is on the working development orders?

Mr CUOMO — I have spent some time studying criminology so I suppose I have a fairly orthodox view that prison is a university of crime, and that applies to all levels. I suppose where I would draw lessons is very much with the youngsters, the juveniles under 18. Once the community loses hold of them, then the picture changes incredibly.

To give you an idea, we have a system of mandatory sentencing for some form of burglary offences for juveniles. The vast bulk of juveniles caught up in that are called third strikers, an unpleasant American term, but it is the way this legislation is couched. The vast bulk of them come from regional areas and come from a long way from Perth, and if you get third striker in

Broome or Kununurra then they have to be brought to Perth to be dealt with, and they can be here for some time. The legislation is vague and difficult to construe and the criminal record system does not allow an easy assessment of whether the regulations apply, so they have to go back to original files. This takes time. In the meantime the kid has been sitting in remand in Perth for a month. If they have an order and they are taken back, they have been here a month. If they are not a third striker and are taken back they have still been here a month; if they are incarcerated under that legislation, they are here for the full 12 months.

You are dealing with kids who are then taken away from their communities and any form of community or parental-family control. They get back and the odd kid does not misbehave after that, but I have to say that they are the exception because the communities are telling us that once you start breaking that down they are losing the ability to exercise any control over these kids, as against if they were kept in the community on some form of structured regime where the community got the support from juvenile justice and where the kids were still in touch with family. We are dealing with kids who may have dysfunctional parents but if they are close by their aunties and uncles that is very important in the upbringing of Aboriginal children. You have grandmothers who do a sterling job of sustaining many of these kids, where that connection is broken the community has no chance.

Mr MAUGHAN — And that help would probably be a damn sight more economical than keeping them incarcerated anyway?

Mr CUOMO — We would think so. It is very hard to penetrate the system to work out the economics of it. Anecdotally, it is expensive. I was told by the sergeant at Kununurra — the senior sergeant who ran that particular station two or three years ago — that he had an annual budget of \$100 000 a year for transporting third strikers down to Perth, just to bring them down on remand. What could have been done in that town with \$100 000 by way of juvenile facilities does not bear thinking about. However, we also have an anecdote about Kununurra where they had a very good juvenile justice officer and one school holidays, much to the joy of everyone concerned — not the least our lawyers whose workload died — they did not have one child on an order in town. That was a splendid situation and a tribute to the work of the juvenile justice officer concerned. It is very much a function of what is on the ground as well. The communities desperately want to keep hold of these people. The more you remove them away from that, the worse it becomes.

The CHAIR — If we have finished questioning on that area we might move on to search warrants.

Mr CUOMO — Thank you, I will just briefly introduce that. We have been pretty happy with the other two issues but search warrants is a very corrosive issue. There is a view within Aboriginal people that this is part of the policing style that can cause a lot of conflict. They see it as a weapon which is occasionally used against them. This is entirely a matter of police procedure and handling. There is some allegation of misuse of the search warrants power. In Western Australia the application is to a lay justice of the peace. Anecdotally we understand that very few justices of the peace ask anything but the most rudimentary questions and that the granting of the search warrant is more or less automatic. Where the corrosive element comes in is how the search warrants are executed. There is a perception among Aboriginal people that in some cases the police act without regard to their rights, either their rights to occupation of the property or their rights to not have their property destroyed.

The police will occasionally use spectacular methods to effect the warrant — will break down doors and go through windows. In one recent case, doors, window and roof in one family. There are allegations that people are roughly handled within houses while search warrants are going. That is a particularly corrosive issue where women and children are roughly handled during the course of the execution of a search warrant. There is a perception, whether valid or not, that these are used as a policing tactic rather than just to gain the subject of the search warrant. That is the

view. Can I say our experience with complaints of this type being examined by the police or by the ombudsman and the police is that there is a willingness to investigate complaints which are made within Western Australia, and sometimes they are resolved. More often than not they cannot be resolved because you have two utterly conflicting stories with no independent way of doing so. People have their views one way or the other. Nevertheless, this is one area where the police and the community need to get together and to understand it a bit better. I am not sure what you can do to the substantive law to make it easier for that to occur. In Western Australia the issuing of search warrants is pretty automatic with only perfunctory questioning. Perhaps that is one area we could look at.

The CHAIR — It does not appear in the legislation or in the Criminal Code that there is much of a framework for the issuing and execution of warrants. I am just making a comparison with New South Wales, where they have quite an extensive warrants act. It seems fairly sparse in terms of its description of the legislative basis for the issuing and execution of warrants —

Mr MAUGHAN — And their monitoring.

The CHAIR — And their monitoring.

Mr DALLA-RIVA — Although I assume there would be extensive police procedures.

Mr CUOMO — Which are, it must be admitted, honoured in the breach. One of the things we do see is that the police will go in and trash a house and leave it that way. That does occur a fair bit in this state. Rectification of damage is rarely effected here.

The CHAIR — Have there been any proposals for reform?

Mr CUOMO — Ongoing discussions. I am not aware of any current proposals for reform. It is certainly not before the law reform commission and I am unaware of any government proposals to do much about it.

Mr MAUGHAN — Are there many Aboriginal police officers? If not, is there any proposal to extend the number, particular those used in these areas and operations?

Mr CUOMO — That is an interesting point. There are a number of Aboriginal police officers who are within the sworn system. There are a number of Aboriginal police liaison officers (APLOs) who have training and who operate with police but sit to the side. There is a lot of tension in the system as to their status and use at the moment. Those officers are very skilled in dealing with Aboriginal people, and where they are used and listened to often the results are a lot better. However, it must be said that it is very hard for those officers to deal with people within their own country and their own family, so occasionally that can be very difficult as well.

The police are trying to encourage liaison officers to make the transition to the mainstream force. We have had discussions with the president of the police union about that because he is of much the same view. There are some structural impediments in relation to educational qualifications, recognition of prior service on the change and a degree of cultural reluctance on the part of mainstream officers to accept APLOs as having a place and on the part of APLOs in wanting to engage that mainstream structure. Those things are slowly being worked on. I think you have put the finger on an issue — that is, if there are more Aboriginal police officers bringing their knowledge and sensitivities to the issue, I think there will be less of a problem with this sort of cultural clash. There is something to be said, I think, for a slightly gentler culture in how these warrants are executed. A practice has grown up in Western Australia of videotaping, too, which is providing a bit of an insight.

The CHAIR — Videotaping the execution of search warrants — all search warrants?

Mr CUOMO — Some search warrant searches, yes.

The CHAIR — Which ones are particularly identified for videotaping?

Mr CUOMO — Usually when they are looking for drugs, weapons or something like that which is of particular interest.

The CHAIR — So, a serious indictable offence?

Mr CUOMO — Yes, and I think that may part of the answer to a degree. By way of anecdote, if you look elsewhere in the system you will see we have gone to a situation in Western Australia now where almost every interview of suspects has been by video, and that has led to many of the allegations of untruthfulness against police disappearing from the system, because they have an objective record. Hopefully it will have the same effect in the execution of warrants, but you are dealing with a much more uncontrollable situation.

The CHAIR — To what extent have the courts in Western Australia used the sanction that the evidence obtained as a result of an unauthorised search would be excluded as inadmissible? Has that had any tempering effect on the way in which searches are authorised and conducted?

Mr CUOMO — I think it has. Our experience with that is rather limited, because where you get to that level of judgment is usually in drug cases. That is not a class of offence that Aboriginal people are particularly engaged in. We do not do a lot of drug cases in the course of our criminal practice, so we do not see so much of that. But we do fight from time to time. The courts apply the law here, and you win some and you lose some. I think the police keep an eye on it. I must say that the judges have a tendency these days to be a lot more explicit in their reasons to provide some guidance down the system. Again, that is just an anecdotal thing.

The CHAIR — I am just wondering about telephone warrants, particularly given the remoteness of Western Australia. There does not appear to be any aspect of the legislation that governs the circumstances in which a telephone warrant, as distinct from a properly or formally executed warrant, would be granted. Is that an issue in this state?

Mr CUOMO — Not one that I have come across. It is not part of my day-to-day experience. I am not sure I can assist you there. The justices of the peace are an integral part of that system. There is a great deal of difficulty in getting JPs in remote areas, although they remain a pretty strong feature of the Western Australian system. Where you have magistrates moving from town to town, in some towns they would get there once or twice a month. The JPs would sit twice a week and would dispose of many matters. So you would have a lot of them available at random; police would have ready access to them.

The CHAIR — Do the courts have what they would see as a reasonable time frame within which a search warrant should be executed once granted? For example, in New South Wales ordinarily a search warrant should be executed within 72 hours of being granted.

Mr CUOMO — Again, that is not something I am particularly aware of.

The CHAIR — So a search warrant could be executed at any point? Is there no limit on the time in which it must be executed?

Mr CUOMO — I think there is a time limit on the face of most search warrants in Western Australia, but I do not have one in front of me so I cannot say.

Mr MAUGHAN — Is there any time limit on hours, like 6.00 a.m. until 9.00 p.m., or can it be executed around the clock?

Mr CUOMO — Again, I think it is on the face of the warrant. The police in Western Australia have a particular fondness for the early morning, I must admit. I am not sure if you strike that.

Ms HADDEN — Given the problems that you have just been telling the committee about, and in the context of the remoteness of the communities in Western Australia, are you consulted formally by the government as to these issues? I mean, in 2004 surely some of these logistical problems could be addressed in a better way for Aboriginal people.

Mr CUOMO — Yes, we have a very reasonable system of consultation with government and the police. Law reform in Western Australia can be difficult in some areas; there are vast amounts of the law in Western Australia that have not had the same attention as in the other jurisdictions. In that law reform task we have been consulted. We have a very good relationship with the current Attorney-General, who will talk to us regarding propositions and we will take them out. It must be said that we had a good relationship with the previous Attorney-General, who would also talk to us. It has led to things such as the reference to the Law Reform Commission for looking into customary law in Western Australia and the formal incorporation of that within legislation and a recognition within the system. That was an initiative of the current Attorney-General, but it was very much a project of the previous Attorney-General.

Ms HADDEN — Has that happened, or is it hoped to happen?

Mr CUOMO — The reference is currently before the Law Reform Commission, and we are hoping there will be a report in the near future. So there is something there. We have mechanisms for consultation with the police. As always, the senior police are very willing to talk, and that is done on a regular basis. But the task is a lot greater. You are dealing with a difficult culture. It takes time to shift, and a lot also depends upon local relationships. The key players in rural policing are very much the sergeants and senior sergeants that have hold of the large stations. Where you have a good officer who will consult locally, you can establish good relationships. Where you have someone who lacks those skills and they are still a part of the system, the relationship can be quite fraught with difficulty. It is a combination of all of those things.

Ms HADDEN — I was just going to ask you about your service. Do you have women lawyers as well?

Mr CUOMO — Women lawyers? Yes, we have lots of them. We are a bit different from most Aboriginal and Torres Strait Islander legal services (ATSILS). In the Kimberley we have three lawyers; one position is unfilled and the other two are held by women. In the Pilbara we have one lawyer; the position is currently filled by a woman. She is about to move to our one position in Geraldton, and we are currently filling the position she is leaving. In Kalgoorlie we have two lawyers, both of whom are men, and I think there are men in the south-west. The percentage of women lawyers we have in Perth would probably run at 40 per cent or 50 per cent.

Ms HADDEN — So how many solicitors are with your service?

Mr CUOMO — We have about 30 positions.

Ms HADDEN — Do you have a high turnover?

Mr CUOMO — No, we do not. It depends on the position. In some remote areas recruitment can be a bit difficult, but people will tend to stay for two or three years. The pressure is on us from the community to try to keep it as stable as possible. We try to honour that, but times are harsh. Our solicitors are very badly paid in comparison with those in Legal Aid and the private profession. Legal Aid tends to poach many of our staff because it can pay them more.

The CHAIR — The rising stars?

Mr CUOMO — Yes. They get a bargain. We have a fused profession in Western Australia. We tend to be a training level for advocates who want to specialise in criminal law. They will stay with us for little money and then go on to the bar or into private practice on their own account.

The CHAIR — In view of the time, we might have to conclude there, Mark. Thank you very much for coming to speak to the committee and giving us the benefit of your wisdom, particularly in this difficult area of working with the Aboriginal community in the legal system.

Mr CUOMO — Thank you.

Witness withdrew.