LAW REFORM COMMITTEE

Inquiry into warrant powers and procedures

Melbourne – 5 November 2004

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Ms J. Griffith, Executive Director, Community Operations and Strategy
Mr A. Crawshaw, Senior Legal Policy Officer, Enforcement Management Unit
Mr R. Cahir, Regional Operations Manager - Department of Justice

The CHAIR – Let's do some introductions then I'll do our introduction.

Mr CRAWSHAW – Certainly. I'm Andrew Crawshaw. I'm a Senior Legal Policy Officer at Enforcement Management, which is a unit within the Department of Justice. We look up to Julia Griffith, who is our Executive Director, who heads up a global unit of Community Operations and Strategy. With me I have Bob Cahir, who is a Regional Operations Manager. My role today as I see it will be to explain how we believe the law applies to operations and the effect of that application. Bob will be talking about the practicalities of carrying out operations as a Sheriff's Officer.

THE CHAIR – OK.

Ms GRIFFITH – The Department is preparing a submission which I think some of you are aware of and we did receive some questions that you're interested in responding to and we've talked that through and looked at the nature of those and formed a view that some of them I think we can respond to today but I think the majority are probably come back as part of the written submission, which therefore on balance we'll seek to finalise next week but then we just have to get that through, as I'm sure you would understand, our approval processes.

THE CHAIR – Just before you kick off, I think you've met all members of the Committee. As a Committee, we're all governed by the Parliamentary Committees Act. That means that your evidence today is governed by parliamentary privilege and as such your evidence that you give to us today, we have a presumption that its going to go on the public record, unless of course you indicate to us that you might like particular aspects of your evidence to be in camera. Once we've taken the evidence, you'll get a transcript back and you'll get an opportunity to correct your evidence and once that's occurred, we then do put that on our website. It's available to the public to see what submissions have been made, and of course we'll want to use your evidence, both oral and written, in our deliberations and in making the recommendations that we will as a Committee to government. Perhaps if you'd like to talk to your submission –I'm not sure who's going first- and then we'll ask some questions.

Mr. CRAWSHAW – Certainly.

THE CHAIR – Are you going to kick off Andrew?

Mr. CRAWSHAW – Yes, I will, Mr Hudson. Just to back up what Julia said. Since we received the specific questions yesterday we have endeavoured to get as much information to respond to them as we can so we should be able to provide some of that information today. We did want to be meaningful, helpful and accurate in our responses. It will be a mixture of what we can provide today plus the full story, which we will endeavour to get to you as soon as possible. We may take this opportunity to clarify the scope of some of those questions if that would be appropriate today.

THE CHAIR – Sure

Mr. CRAWSHAW – Would it be suitable then to run through those 11 questions?

THE CHAIR - OK

Mr. CRAWSHAW – We have set out answers to the them so far as we've been able to do so. The final two questions are fairly open ended and we would like to use those to express some sort of material that we prepared beforehand.

OK. The first question you've asked us is what data are recorded concerning penalty enforcement warrants. Now, I may just pass you over to Bob at this stage who will be able to explain the data that he has collected.

Mr CAHIR – Thank you. We do collect extensive data on the actions taken on warrant that come from the courts and from the PERIN area. Concerning penalty law enforcement warrants themselves, we do not differentiate between the penalty enforcement warrant and what we classify as open court warrants, the ones where they have been before a Magistrate but we know that about 85 per cent to 90 per cent of our work is penalty enforcement so at any given time of the action warrants that from the data we have, about 90 per cent of that would be penalty enforcement warrants. We do have that data over the period 2003-2004 fairly well laid out.

Mr CRAWSHAW - And we are happy to tender that today with the breakdown of these figures. In our written submission we will put some information that will explain those figures more fully.

That leads on to the second part of the question, which was how many were executed by arrest/seizure of property? I understand we do have that information.

The CHAIR – Are you able to talk to this, give us an overview of what it means? What does the data say to you?

Mr CAHIR – The data is broken down monthly over that period of 12 months for that financial year. The figure at the top which is the total for the whole year tells me that we actioned 478,000-odd criminal warrants for that period of time which was 93,955 defendants. They are then broken down into categories of the results of those warrants out in the field. The very top one, where it's got 18,225, they are warrants that are paid in full. That is nearly 6,500 defendants. The arrests, which are the in-custody, would be 29,748. Over that period we have placed into custody 1388 individuals on 29,748 warrants. The seizure component is the 2988 for the 91 defendants. In terms of the seizure, they are the actual ones that went through to sale at public auction. There would be a lot more seizures made from that where we seize the articles and leave them with the individual name on the warrant and they do something about the warrant by way of payment so the necessity of relieving the goods and selling them does not go through. Therefore it is not recorded as a seizure and would be recorded as a payment or in some other action because we didn't actually remove the goods but we did make a seizure.

Mr LUPTON – If I take that statistic correctly, you have got almost 10 warrants per defendant?

Mr CAHIR – No, I think it works out to be about five.

Mr LUPTON – I think you mentioned about 50,000 defendants but nearly 500,000 warrants.

Mr CAHIR – It is 478,000 warrants for 93,955 defendants.

Mr CRAWSHAW – Just to recap, when we put this information into the submission, would it be acceptable for you to have the figures from the last financial year? Would that be useful to you?

The CHAIR – Sure.

Mr LUPTON – Yes, with any trends you have noticed over that period of time.

The CHAIR – Any breakdown on the figures with criminal and civil and the reasons for them and any conclusions you think can safely be drawn from the data would be helpful.

Mr CRAWSHAW – Certainly. Or if there any spikes in that or any trends we can confidently put a reason to, we should alert you to. Certainly.

The CHAIR – That tells you a little bit about the aggregate numbers, are you able to talk about the trends in this area, are you able to say something about what you draw from this disaggregated data?

Mr CAHIR – I would prefer to put that in the submission and analyse it properly.

Mr CRAWSHAW – There are many reasons why the figures are the way they are in as much as there is no real paradigm example to give with the execution of a warrant because they can go off in many different ways to produce many different figures.

Referring to the second question about how the capacity of the PERIN system compares to the workload, we will be speaking to the Registrar of the PERIN court and getting his information about this. The sort of information we would like to give you would be some sort of statistical information about the workload that comes in, the number of matters that are dealt with in a very efficient manner compared to the matters that seem to take up an undue amount of time. We would like to compare that to the resources available to the PERIN court at the moment. Would that be an accurate response to the question?

The CHAIR – Sure.

The third question: roughly what proportion of the Sheriff's work relates to PERIN matters. On current estimates we understand that it is between about 85 per cent and 90 per cent of matters dealt with by the Sheriff's office, which come from PERIN. That would be the execution of penalty enforcement warrants. The remaining warrants come from different courts, from open court matters in the Magistrates Court as well as from the County Court and the Supreme Court. The bread and butter of the work that is undertaken by the Sheriff's office is, and remains, around 85 per cent to 90 per cent of the matters come from PERIN.

Fourthly, you have asked about the impact of the Enforcement Review Program. I might just explain what that program is. That program is one which is used through the PERIN court to identify as soon as possible, a person who has an outstanding infringement but who suffers from some mental disability or mental illness and who therefore is not truly a suitable candidate to go through an automatic and administratively efficient system. The basis of the program is to identify these people, to then flip them out of the automated PERIN system and into an open court where they can be assessed in such a way that the PERIN court cannot do and is not designed to do. That system operates whereby somebody, maybe the person themselves or maybe because of the illness they suffer it may not be them, but it could be a carer, a doctor, a social worker, will alert us to the fact that this person is not suitable to go through the PERIN system. If that is the case, the Registrar will refer that person and all the outstanding infringements the person has to what is known as the Specials List. That list takes place once a month in the Magistrates Court and is presided over by a Magistrate who is familiar with the difficulties that these people suffer and is able to analyse them on an individual basis, possibly with oral evidence brought forward to explain why the person offends, why they continue to offend and what programs or services might be suitable for them to undertake. We have some people who like to ride on the public transport system day in and day out but they don't understand that they have to buy a ticket. Again and again and again they are given infringement notices because that is what the officers are trained to do. It may be that it is only at the PERIN court stage that this sort of matter will come to light and we try to get them out of the system and into a place whereby they can be analysed individually.

Mr KOCH – Is that only a small part of the activity? What proportion do those offenders make up?

Mr CRAWSHAW – I can't give you a figure on it, but I believe it is fairly small and the criteria that is used does revolve around some sort of mental disability. It does have to be demonstrated. I'm guessing here so please don't hold me to it.

Ms GRIFFITH – Don't guess, Andrew. We'll take it on notice and get back to you.

Mr CRAWSHAW - We will be able to give you the percentage of that.

Ms GRIFFITH – It is small.

Mr LUPTON – Are you able to comment now or if not, if you're able to take it on notice, whether or not there is any process where once someone has been identified in that category, of making sure that any future infringement notices also bypass the PERIN system and get into this category?

Mr CRAWSHAW – My understanding is that they are noted on the database so that if their name does appear in the future, then the system will alert the user that the person has previously been in the Specials List. However that of course will relate to the stage where they get to the PERIN system. Earlier down the track we are powerless to intervene.

Mr DALLA-RIVA – I note that there is going to be a paper submitted.

Mr CRAWSHAW – Yes. That is correct.

Mr DALLA-RIVA – And that is submitted today?

Mr CRAWSHAW – Not today. We're using today to present all the evidence that we're confident to present and to ensure that we understand all the information that you would like.

Mr DALLA-RIVA – Is that going to be going through the Attorney-General for viewing before it comes to this committee?

Mr CRAWSHAW – Yes it will.

Ms GRIFFITH – We can look at the answer in terms of the proportions that the data tells us.

Mr CRAWSHAW – You may have also noted in the Department's Annual Report that currently the department is investigating a possible expansion of this system so that it will capture not merely those people who suffer from a mental illness, but possibly other disadvantaged people in the community.

Fifthly, you have asked what reforms to the PERIN system are indicated by the experiences of the Enforcement Management Unit. That's a very wide question to answer. I can say that we are regularly reviewing the system that we work in and a number of people have a number of ideas of how it can be improved. However it is fairly legislatively based so any new changes do require a change to the law and we do what we can within the law to improve the efficiencies and the beneficial applications of the system. That again will be something that we will have to get back to you with.

There are four matters which we would like to present to you today which we will get to further down the track. They are the ones we have identified and that we believe would be suitable to present to you.

The CHAIR – The Special Circumstances List, in terms of the workload for that before the court, we had some evidence given to us last week that that workload has been increasing and creating some difficulties for the handling of that list. Do you have any evidence or information about that that you would like to comment on?

Mr CRAWSHAW – My understanding is that the number of people that the list is handling is increasing. I am not able to say today whether the increase is pushing the boundaries of the resources available to deal with it, but we are in constant contact with all players, including the dedicated officer that we have at the Magistrates Court. She would alert us to any signs that may indicate that the system can no longer work properly. It is difficult to say because the figures are increasing that the system is under pressure or needs to be improved. It may well be that is an indication that with greater awareness of it, greater application of it, more people who ought to have been part of the system from the early days are now coming within it. It may be a positive trend rather than one to be seen in negative terms.

Ms GRIFFITH - Do you want that clarified as part of the submission?

The CHAIR - Yes, that would be helpful.

Mr CRAWSHAW – Sixthly you have asked, "the Committee has received submissions that the Sheriff's Office has insufficient resources to execute civil warrants against judgements debtors. Does the Sheriff's Office have any comments on this?" Again we will be happy to develop and provide you with statistical evidence on the number of civil warrants that the Office handles and the resources that are used to have them executed. As a general comment, however, it may not be accurate simply to suggest that it is the civil side of business that Enforcement Management lack resources on. It is an internal matter within the organization where the resources are placed. Within the finite resources we have it may be that it is not simply the civil warrants that could be suffering but the criminal ones as well. As far as I am aware and having spoken to people within the office, they have not given me any notion that it is the civil side that is suffering at the moment because of resources. There are other impacts upon the ability of the Sheriff to execute civil warrants which we will get to in a minute or two. However we do not believe it is a resources issue, we believe that other impacts are responsible for that.

The CHAIR – Are you able to make any comments about the operations and the relationship between the PERIN court and Tenix Solutions, which is contracted to do a lot of the administrative work, perhaps to the PERIN court. We had some evidence given to us last week that indicated that because a lot of that is subject to commercial in confidence it was very difficult for people who are dealing with Tenix Solutions to be able to know what the nature of the relationship was and what the lines of accountability were. Certainly this witness from a West Heidelberg Community Legal Service expressed some frustration that it wasn't as open and transparent as you would normally expect it to be if it had been a public agency and how the different arms relate to each other. Do you have any comment on that?

Mr CRAWSHAW – Yes, I do. I have been with Enforcement Management for about two years now and I have dealt with officers from Tenix and officers from the PERIN court. From my observations, the relations between the two are open and are cordial. So far as the contractual arrangements between the two, they, like many aspects of government at the moment, are subject to commercial in confidence arrangements. I have not seen where that has brought either side into conflict, however of course I am working within the system and am not an outsider to it, but from what I have seen the relationship works well and there is good information that passes between the two bodies.

Mr LUPTON – My recollection of the evidence that was referred to went more to the question of outside people, practitioners essentially, not being able to easily identify who was responsible for what, rather than the relationship between the two.

Ms GRIFFITH – The system is quite complex and so the end to end system from the issuing of the infringement right through to moving through the PERIN court and then getting to the execution of warrants is quite an involved system and so it might be difficult depending on what the issues are that the person is trying to resolve. I would have thought if most people contact the PERIN court or if they contact the Tenix information line that they would be directed to the correct point. We are not really aware of any complaints particularly about this issues, are we?

Mr CRAWSHAW – No. I'm not.

Mr LUTPON – If you're not aware of it and you can't comment on it, that's fine. IT was raised by a witness, that's all.

Mr CRAWSHAW - I think that someone calling up would have to identify themselves fairly specifically to a particular matter in order to get information on that matter. To ring up to get general statistical information or an overall view of how things are working and who is responsible for certain matters either between the two, they may well be subject to a more closed door approach. I am only speculating as to why that person who gave evidence may have faced that situation.

Seventhly, you've asked what factors led to the 107 per cent increase in the warrants processed by the Sheriff's Office between the years 2001-2002 and 2002-2003? We quickly jotted down this morning our views on why this did increase and I'll get Bob to talk about these in slightly greater detail but in essence they relate to the recruitment of a lot more Sheriff's Officers, new methods that were adopted by the Sheriff's Office in executing warrants, the employment of certain client service officers which have freed up existing Sheriff's Officers to do what they were supposed to do, that is execute warrants, and certain IT enhancements to the system. These are the reasons we believe would have led to this increase in productivity.

Mr CAHIR – Over the period of time in question we had an extensive recruiting program and took on an extra 45 Sheriff's Officers. We only had about 100 to start with so that was a very big increase in the resources we had in the field to execute warrants over that period. We got them out into the field executing warrants. As Andrew alluded to, at that point in time, upgrades to the IT systems we work with through Tenix gave us a better capacity to order warrants in different ways so we could be more selective in ordering the warrants and we then got a better product. They improved the IT system in terms of linking people who had multiple warrants so that if we wanted to call on one person we had all their warrants at the one time instead of having to go backwards and forwards if they weren't linked properly. We put in place, regionally and in the metropolitan area, but it worked a lot better regionally, what we call client service officers which gave us a focal point for the public in Ballarat, Bendigo, Geelong, Wangaratta and those sorts of places, to come in and make payments. We found that country people are a little reticent to ring up the city whereas they will go to a local office more easily. We put some client services officers in place that handle that sort of thing and released the Sheriff's Officer of that end of the field to do what he or she was supposed to be doing. That proved very beneficial regionally. All of those things combined and a better way of targeting areas increased that workload. I'm not quite sure whether it was 107% but we will look at that.

Mr DALLA-RIVA – We had a witness who gave information to say that a number of their clients had, for example, a $100 fine and by the time it went through the PERIN court they were in a situation where they had a $178 fine and that there was no capacity for that client to actually have some process of payment. You are saying that you work with a particular person to actually work out a payment process.

Mr CAHIR - Most definitely.

Mr DALLA-RIVA – That is not what we are hearing from others.

Mr LUPTON – Is this at the warrant enforcement stage?

Mr CAHIR – They can do that at the PERIN stage as well. There is what we call an IPP or an instalment payment plan where they can pay it off in their own capacity.

Mr DALLA-RIVA – If they don't, it then goes back to the Magistrates Court?

Ms GRIFFITH – I was just going to ask Andrew if he can clarify at what point do people have an option of withdrawing the part payment?

Mr DALLA-RIVA – We were led to believe that there was no capacity for partial payment.

Mr CRAWSHAW – I don't believe that is true. My understanding is that there is a capacity for partial payment, that is payment over time or a time to pay arrangement at any stage up until the warrant starts to be executed. That means that if we take an example of an infringement which is put out by a local council, then at that stage the person would have the ability to negotiate with the council, possibly to withdraw the infringement as a whole or to enter into a time to pay arrangement.

Mr LUPTON – Does that operate under the good grace of the agency involved?

Mr CRAWSHAW – Yes, often it does.

The CHAIR – To what extent is it mandated in the legislation?

Mr CRAWSHAW – It is mandated in the legislation at the PERIN stage. That is, if no payment is made or no arrangements is entered into between the offender and the council, then the council will register it with PERIN. At PERIN the Registrar will have the ability to do a number of things and included in those things would be the ability to enter into a time to pay arrangement with the offender.

Mr DALLA-RIVA – Or an IPP?

Mr CRAWSHAW - Yes. That happens quite regularly at PERIN. Someone can call and they will be sent information on what sort of evidence they would need to bring, possibly about their financial circumstances, in order to make those arrangements.

Mr DALLA-RIVA – If someone on a pension can demonstrate that they are receiving only $280 a week and they have outstanding fines of, say, $1000, there is clearly no way that they will be able to pay the fines within the timeframe allotted and so they would go to the PERIN court, or their legal advisor could, and negotiate what they could manage to pay.

Mr CRAWSHAW – Yes, and that regularly happens. There are brochures that we put out to advise people of their rights to do so. When the Sheriff's Officer turns up at the door, the Sheriff's Officer has to have-

Mr DALLA-RIVA – No, before it goes to the Sheriff's Office. It has gone from the fine where it is negotiated between, say, the council and the individual, it hasn't worked and so it goes to the PERIN court and then there is some negotiation there for the part payment. Clearly that has failed and then there is a warrant issued because they have failed to maintain their partial payments and so it goes to the Sheriff. On the execution they are then able to enter into a payment system.

Mr CAHIR – Yes, they can but not with me. They have to go back to the PERIN court, but they still have the capacity to do it. In the statistics we gave you there is a category that talks about recalling to head office. That is where the Sheriff has been holding a warrant and those people have entered into an IPP and the PERIN court has called the warrant back because they have signed a document that they are making payments. Therefore I don't execute the warrant any more.

Mr DALLA-RIVA – So the payment relationships stay with the PERIN court.

Mr CAHIR – Yes, the PERIN court recalls it back from the Sheriff.

Mr DALLA-RIVA – You indicated that the part payment program is actually associated with the PERIN court. So the threat of the uniform probably persuades them to enter into a program.

Mr CAHIR – Through the process they will approach the PERIN court, get a form, fill it out, and the PERIN court will recall the warrants back from me and the person will make the payments and the warrant will not come out again.

Mr DALLA-RIVA – There are plenty of opportunities down the line for a particular person to make at some points partial payments or to go through this process?

The CHAIR – It is not actually indicated on the form. It is not on the documentation you receive. One of the issues we dealt with last week was the fact that someone might be homeless or have a drug dependency, gets fined and they can't afford to pay and they can't deal with the process. One of the issues that was raised with us was that they are likely to do nothing, they will ignore the notice because they don't know how to deal with it and they can't afford to pay it. That was one of the criticisms that was being made. For example, a public transport fine where the first step after you haven't paid it is a courtesy letter and the courtesy letter states you have to pay the penalty and the costs or the matter will be dealt with by court. If no action is taken you may be prosecuted and you will then have to pay more costs. It doesn't say anything at all about paying by instalments if you are having difficulty paying. The question is, how does someone who is dealing with bits of paper coming to them become informed about that option?

Mr CAHIR – I would have to go back and look but I am fairly certain that the document you are talking of is the courtesy letter from the agency. In the letter they receive from the PERIN court it does define the capacity to part pay.

Mr LUPTON – It has gone through many stages of process by that time. I understand there have been more costs incurred by that time and often it can be virtually double what the original fine was worth. Yet there has really been no enforceable way of trying to get people out of the system and into some kind of payment agreement.

Ms GRIFFITH – I think we need to clarify what the access is to people of the part payment plan: at what point in the process are they able to access it and at what point are they then informed and how they are informed about it. Clarifying that, as Bob said, on the court order that comes out of the PERIN court that there are these options if you are unable to contact it. That's what we need to clarify for you.

Mr CAHIR – Prior to it being lodged with the PERIN court, it is the agency that needs to inform those people that they have the capacity to part pay.

Mr LUPTON – As far as you are aware, there is no legal obligation placed upon any agency to advise people of those sorts of possibilities?

Mr CAHIR – No.

The CHAIR – I think the other difficulty is when people start getting these letters and they believe they are in real strife, that they have more money to pay or they will go before a court, and so they go to someone for help, one of the issues that was raised with us was that if someone seeks to ring up on their behalf to talk to Specific Compliance or to talk to the Sheriff's Office, it is quite difficult to be able to get the process stopped while you are seeking to deal with the circumstances of that particular person. There is a certain automation that is attached to it and it is very difficult to find the right person to talk to in order to be able to actually then stay the process and to begin negotiations on behalf of that person. There was a particular piece of information that came to us from PILCH where they sought to negotiate on behalf of a particular client and they were told that before they were able to assist they had to have an authority from the person and they were only able to give a very limited amount of information on the phone in relationship to what could be done in order to stop the process and in order to negotiate on behalf of that person. This is something we are interested in, about how you can actually intervene in a very automated process and what the transparency of that is for people who are involved in it.

Mr DALLA-RIVA – This is certainly not a criticism, we just are trying to understand it.

Mr CRAWSHAW - Of course. We are bound by the law like -

The CHAIR – The other issue that was raised was where someone might have several matters, you can ring up about an individual matter but you cannot actually get all of the matters that that person may have accumulated. It seems to be a bit hard to get them all aggregated so that they can be dealt with on behalf of that person in a block.

Ms GRIFFITH – And they are at different stages in the system.

Mr CRAWSHAW – We are very aware of this problem and an internal project is looking at this and many other ways whereby, for instance, a person with many outstanding infringements could aggregate them and then enter into an instalment payment plan, related to all of them rather than the current system which requires you to enter into individual plans for each matter. That, like other things that we believe would make the system fairer and more efficient, does require certain tweaking to the legislation. We are certainly aware of these things and we do do what we can to put them through. As for the other issue of the difficulties that were faced by this person trying to intervene into the process, and at least stay it while certain negotiations take place, my understanding is that it is simply the difficulty of the automated system. It was designed in such a way for procedural efficiency. Whoever they manage to get on the phone I doubt would have the power to suddenly halt the system. All that the system allows at the moment is to be flipped out of the automated system and into open court to argue the matter before a magistrate. Whether or not that is a suitable answer in all circumstances, I make no comment on, but there may be other ways in which such a person's needs could be met without it suddenly going back to the tried way.

Mr LUPTON – Are there any advantages that you see in freeing up the process of getting matters and getting them into open court?

Mr CRAWSHAW – To make it easier? Any advantages? You certainly are getting individualised service when talking to people about whatever grounds they may have and the circumstances in which you may have committed the offence and you are able to raise defence to it. You can then explain your current circumstances, which the automated system is not designed to do. It was designed to get matters out of open court and to free up the resources of Magistrates. There is a balance between those two; to get more matters back into the Magistrates Court may go against the general philosophy of the system.

Mr KOCH – I was interested in your response in relation to your provincial officers, or regional officers. Do non-metropolitan offenders have access to 1800 or 1300 numbers at your office?

Mr CAHIR – Yes, there is a 1800 number. From the experience I've had, and I've had a lot of regional experience, I have found that people don't believe it is a free call. They still think they are getting charged for it.

Mr DALLA-RIVA – How many actually end up in jail as a result of a PERIN court issue warrant?

Mr CRAWSHAW – We will have to get you statistics on that but it is very low.

Mr CAHIR – It is very low because once we actually arrest an individual, we then have the capacity through Corrections to give them a community based order or community work and if they are not eligible for community work then we put them before a Magistrate and it is the Magistrate who determines whether they do actually serve time.

Mr DALLA-RIVA – So even before imprisonment there is the opportunity for CBAs?

Mr CAHIR – At the stage of arrest there is an opportunity for what they call a CCP or a Community Custodial Permit which is community work. We have to arrest them first and then release them to do the community work.

Mr DALLA-RIVA – I was under the illusion that they go through the system and the system crunches them and then they are in jail. I think what I am hearing is that we have a number of significant steps before they even set foot into our prison system. Thank you for clarifying that in my mind. We need to be very careful. Certainly there are some issues you have identified but the number of people who go to gaol because of the enforcement process is very few. I would actually like to know exactly how many go to gaol as a result.

Ms GRIFFITH – We can clarify the options at the point of the Sheriff's contact and where people might go from there.

Mr CAHIR – There are very few who actually serve out their default time.

Mr LUPTON – I would also appreciate information on what kinds of restrictions there are on your ability to give an alternative to imprisonment, such as a community order.

Mr CRAWSHAW – In practice the default is a community order, as we say it is very rare that a person would not be granted a community order. The limitations on it being granted are firstly if the persons themselves do not agree to it and they do not sign the document saying they will abide by the conditions that will apply to them during the community order or, secondly, if it is determined that they are not suitable to carry one out. That might be that they have been on community orders before and they have regularly breached them. If one is not granted for any particular reason, then they must go before a Magistrate who will determine whether and for how long the person should be incarcerated.

Mr LUPTON – Does the Sheriff's Office make that decision about whether the person is suitable for a community order?

Mr CAHIR – No, the Department of Corrections make that decision.

Ms GRIFFITH – Corrections Victoria, which is part of the Department of Justice. Bob, you're clarifying that the Sheriff's Office does not make that decision?

Mr CAHIR – No. We arrest the person and then tell them we have this person under arrest and ask if he or she is eligible for a CCP.

Mr LUPTON – If they say the person is not eligible or suitable, what limitations does that place on the magistrate?

Mr CRAWSHAW – I don't think it places any limitations on the Magistrate. It just means that the person will appear before the Magistrate and at that stage the Magistrate will have the ability to test whether the person suffers from dementia or from mental illness or something along those lines. The Magistrate has the power to halt proceedings for up to six months in order to gather evidence. If the Magistrate does believe that the person is suffering from such a disease and that has impacted upon why the person committed the offence in the first place or their ability to pay the fine, the Magistrate can dismiss the action completely and set the person free. If the Magistrate believes that there is no such evidence of a mental illness, he can waive up to two thirds of the time that the person will spend in prison. There can be special circumstances that come into play.

Mr LUPTON – At that point is the full range of sentencing options that would normally be open to a Magistrate if the matter had come before that Magistrate in open court available to that Magistrate?

Mr CRAWSHAW – No, no they're not.

Mr DALLA-RIVA – Some of them were because magistrates ordinarily had the opportunity to send someone on a CBO. The opportunity to do CBOs could be done earlier than before the Magistrate. The assessment is done by Corrections Victoria in that process as it would be in the open court with a Magistrate.

Mr CRAWSHAW – That's correct. Just to clarify, Mr Lupton, the Magistrate is now more limited in what he or she can do with that person than would be the case if the person had earlier flipped into open court.

Mr HUDSON – With the time left we should cover the remaining questions. Bob, I wonder if you could go to question 8 and give us your views on the proposals to create a power of entry to debtors' homes to enforce civil warrants.

Mr CRAWSHAW – I'm happy to speak about that at the moment, if I may. Just to clarify that the guidelines at the moment mean that we are unable to express a view on what the current law is or what the law should become. But we're very happy to talk about what the law is an how it impinges on our operations.

The law at the moment that applies to civil warrants is different to that which applies to criminal warrants. So far as the forcible entry into premises is concerned, under a penalty enforcement warrant for instance, there is a legislative power for the Sheriff to knock the door down if he or she is refused. No such power exists for civil warrants. That law comes from Semayne's case which was decided in 1604 and talks about a private suit and a suit on behalf of the King. This can have some impact upon the Sheriff's operations when they go to execute civil warrants.

I might just go through some of the effects that that would have. Firstly, the law means that the Sheriff can be prevented from carrying out his or her primary function, that is to enforce a court order by a person who simply refuses entry to a Sheriff's Officer who knocks on the door. We have certain anecdotal evidence that a defendant may simply close the door in the Sheriff's face and therefore make the warrant unexecutable. This does lead to certain difficulties whereby we often have to tell plaintiffs that while we have tried to execute their warrant, we have been unable to do so because of this. It does put us in a situation where you have to say that if you had a $50 littering fine we would be able to knock down your door, but if you had a judgment in your favour then we could not go to the defendant's house and knock down the door- they can close the door in our face. We had to tell a woman recently that she was unable to recover $11,000 in unpaid wages from her previous employer because they did this.

This can also lead to confusion when the Sheriff goes to execute a mixed bag of warrants, that is, against the same person with some civil warrants outstanding as well as some criminal warrants outstanding. Because the powers that are attached to warrants are very strict and they are construed against our interest, if we were to gain entry into the house forcefully, pursuant to the existing power to do so under the criminal warrant, once in there we do not believe that we would be able to execute the civil warrant because the power we used to get into the house related only to the criminal warrant and not to the civil warrant.

Finally, the language of the case uses the King and it is difficult, we believe, in a modern context to determine exactly what the King means. In times of privatised and semi-privatised government organizations, it is difficult to say whether they are the King and it maybe also difficult to say whereby obviously if it is a criminal matter then it is the King because they represent the state. Let us say the government was suing on a civil contract, would the law apply and we believe there is some difficulty in the application of that. That's how we see matters.

The CHAIR – Is that the same in other jurisdictions? Are you aware of any changes to improve these things in other jurisdictions?

Mr CRAWSHAW – We understand in Western Australia that they have been examining the same law and they got to a certain stage of changing the law in order to allow the Sheriff to make forcible entry on civil warrants. My understanding is that in other Australian jurisdictions the law remains the same.

The CHAIR – Thank you for that. On question 9, your view of Sheriff's powers of seizure of real property to satisfy a judgement creditor?

Mr CRAWSHAW – As you will be aware, on a civil judgment in the Magistrates Court, section 111 says that a warrant can be issued and it can be enforced but that warrant can only be used to take away personal property and not real property that may be in the ownership of the person. There is a limitation on that, however in practice this limitation doesn't apply to a great extent in as much as what will happen is that the Sheriff's Officer will go and ascertain that there are no goods to be taken away in which case we would then inform the plaintiff's solicitor of that. The plaintiff's solicitor may say they have evidence to say that this person does own real estate that could be used to pay the debt in which case the Sheriff will return and do an admission on title. That is getting an admission from the person that you are the person who has this outstanding debt and are the same person that appears on the title of this land. If that does indeed prove to be the case then the judgment obtained under the Magistrates Court can then be upgraded into a Supreme Court judgment that can be enforced and the land can then be sold. That is how those limitations in section 111 are overcome. I don't want to present any view as to section 111, except to say that there is a process, cumbersome as it may be, of getting around this section.

The CHAIR – Is there any other jurisdiction that gives the Sheriff powers to seize real property?

Mr CRAWSHAW – In Victoria there is the Supreme Court obviously, as we have just explained, and the County Court follows that rule.

The CHAIR – Are there any other issues you want to raise with us at this point?

Mr CRAWSHAW - Yes there are. One is about the priority of the execution of warrants. The law that stands at the moment is that if the Sheriff is executing a number of warrants against the same debtor, then the proceeds that may be realised from the execution of those warrants must be applied to the creditors in strict order that the Sheriff receives those warrants. However, that order is disrupted in favour of the Crown so that if the Crown comes along later in time with a warrant then the Crown is elevated up to the top of the queue. That is known as Crown priority in those circumstances.

This can impact upon the operations of the Sheriff in the following ways. Firstly that non-Crown warrants may have to be repeatedly executed because they are pushed down the line when the Crown comes along. Secondly, penalty enforcement warrants may have a different order of execution according to the agency that has issued them. For instance, the traffic camera office for this purpose is considered to be Crown but the local council is not considered to be Crown. There may be circumstances in which the infringements relate to exactly the same things. There appears to be no policy reasons why this should be disrupted in this way.

Thirdly, again it is difficult a modern context to know exactly who is and who is not the Crown for these purposes. Fourthly, there is a rather confusing effect of Crown priority that can come about. In an assault case, for instance, a court can impose a fine against the offender as well as a compensation order in favour of the person that they assaulted. If the offender doesn't have enough money to pay both then the Sentencing Act says that priority must be given to the compensation order over the fine. However the court can put both which later on could come to some difficulty at enforcement stage in as much as the compensation order is a civil matter between the parties whereas the fine is a matter between the state and the offender.. Because the state has priority then all of a sudden it is switched over, despite what the legislation says in giving priority to the compensation order. That is the way we believe this can impact upon our operations.

Finally, there are two simple matters we would like to bring to your attention. Firstly there is no legislative definition of execution of a warrant and existing provisions in the law extinguish rights of certain people once a warrant has been executed. Therefore it can cause confusion in as much as it is not made legally clear as to when a warrant has been finally executed. Secondly, there is no definition of the lodgement of a warrant with the Sheriff's Office in as much as that if a warrant is lodged on Monday but not paid for, that is any fees that have to be paid on the lodgement of the warrant is not paid until the Thursday and then someone lodges a warrant on Tuesday and pays for it then, who has priority in those circumstances? We need to know how we operate in the absence of the legislative definitions in those two matters. That's what we'd like to say.

Just to wrap up, we have an understanding of the sort of information that you require and we'll endeavour to get that to you as soon as we can.

The CHAIR– Thank you. We appreciate you coming here today and for giving us your time and expertise. We look forward to receiving a written submission from the Department of Justice.

Witnesses withdrew