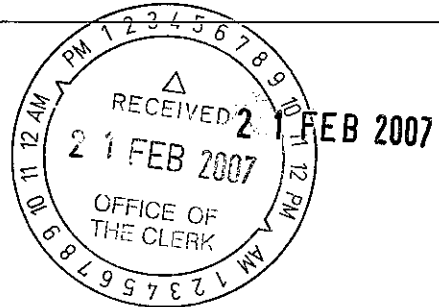




New South Wales

The Hon Tony Kelly MLC  
Minister for Justice  
Minister for Juvenile Justice  
Minister for Emergency Services  
Minister for Lands  
Minister for Rural Affairs  
Minister for Volunteering  
Leader of the House - Legislative Council



Ms Lynn Lovelock  
Acting Clerk of the Legislative Council and  
Acting Clerk of the Parliaments  
Parliament House, Macquarie Street  
SYDNEY NSW 2000

Dear Ms Lovelock

**Re: Legislative Council Inquiry – Community based sentencing options for rural and remote areas and disadvantaged populations**

Please find enclosed the Government response to the above Inquiry. I would appreciate if the response was tabled out of session as soon as possible.

Yours sincerely

**Tony Kelly MLC**  
**Minister for Justice**

*Received at 4 pm  
Wednesday 21 February 2007  
by me (DAVID BLUNT) for the  
Clerk of the Parliaments*

**Legislative Council Inquiry – Community based sentencing options for rural and remote areas and disadvantaged populations – Recommendations – Government response**

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**Recommendation No 1 – That the Minister for Justice examines ways in which relevant community organisations could be assisted to inform their members and the public about the code and nature of community based sentencing.**

The Government supports this recommendation. Informing the public and community organisations of the scope and nature of community based sentences will assist the community to recognise its role as a partner and create a positive impetus for increased government-community co-operation.

Among the strategies currently utilised by the Department of Corrective Services are:

- Positive news releases in local media
- Community Offender Services (COS) District Managers liaise with local community organisations such as Lions Clubs, Rotary Clubs, Apex Clubs, Chambers of Commerce etc to attract community agencies to the community service scheme
- COS District Managers and delegated senior staff attend local meetings of other government and non-government agencies.

**Recommendation No 2 - That the Government make community based sentencing, particularly in relation to the disadvantaged groups examined by the Committee, a priority within its sentencing and criminal justice policies and that, where it may be practically implemented, all community based sentencing options should be made available throughout New South Wales.**

Improvement and innovation within community based sentencing is already a priority within the Government's policy of a balanced sentencing framework, evidenced by a wide range of initiatives in recent years:

- Introduction and expansion of home detention program
- Establishment of the Drug Court and MERIT
- Introduction of Circle Sentencing
- Introduction of the Community Conferencing Program
- Implementation of the Department of Corrective Services' Throughcare Strategic Framework to ensure a continuum of program provision for offenders in custody and in the community
- Expansion of offence-related therapeutic programs to community-based offenders (eg the Sober Drivers Program)

The Government acknowledges the report's strong support<sup>1</sup> for community based sentencing options as a means of both punishment and rehabilitation for appropriate offenders; and agrees that the benefits of community based sentencing include cost effectiveness and reduced recidivism as well as benefits to the offender, the offender's family and the community – particularly offenders from disadvantaged groups. The Government also acknowledges that overwhelming support was expressed by a broad cross-section of inquiry participants for expanding community based sentences throughout NSW.

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<sup>1</sup> Paragraph 3.50

Significant inroads have been made in recent months by the Commissioner of Corrective Services' push to upgrade staffing levels and improve service delivery across the State<sup>2</sup>. Additionally, with the Department's current review of the Intensive Supervision Program, Periodic Detention Program, community service program and the Blacktown shift-work project (under which Probation and Parole Service field officers work evening and weekend shifts), the Department is attaining an innate flexibility that will enable further community based sentencing options to be trialled and implemented accommodating local circumstances, including in rural and remote areas<sup>3</sup>.

**Recommendation No 3 - That the Minister for Justice undertake research to establish the level of demand for community based sentencing options in rural and remote areas of New South Wales.**

In June 2005, the Judicial Commission of NSW and the Department of Corrective Services jointly published a research paper "Successful Completion Rates for Supervised Sentencing Options," which is available on the Department's website [www.dcs.nsw.gov.au/information/research\\_and\\_statistics/index.asp](http://www.dcs.nsw.gov.au/information/research_and_statistics/index.asp). The study's main aim was to report on the success and failure rates of community-based sentencing options. Among other criteria, the study analysed data by reference to location, comparing metropolitan and country supervising office regions, of offenders. The study found that 85.3% of orders supervised by country District Offices were successfully completed compared with 83.7% of orders supervised by metropolitan District Offices. However, the study did not address the "level of demand" for community based sentencing options.

The 2005-2006 Department of Corrective Services Research Program includes an ongoing Departmental project "Developing a NSW Community Offender Service Census." The aim of this project is to determine the parameters to develop a Community Offender Service census similar to the Department's existing inmate census, which has been published annually since 1995.

Other relevant Departmental projects in the 2005-2006 Research Program include:

- "Characteristics of community based offenders." The aim of this project is to examine the criminogenic characteristics of community based offenders in NSW.
- "Predicting Community Based Offender Populations". The aim of this project is to examine the current trends in the numbers of sentenced offenders serving a community based sentence using a computerised model to estimate offender populations if trends continue.

These three research programs, combined, will aid the Department's understanding of the level of demand for community-based sentencing in rural and regional areas.

The Department collaborates with the Bureau of Crime Statistics and Research (BOCSAR), the Department of Juvenile Justice, the Attorney General's Department and other criminal justice agencies who together form a Criminal Justice Research Network (CJRN), whose goal is to progress the field of criminal justice research in

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<sup>2</sup> See response to Recommendation No 4 for additional staffing positions approved by the Commissioner of Corrective Services

<sup>3</sup> Eg, Kempsey Intensive Supervision proposal, Lower Hunter Intensive Supervision proposal – other Area Managers could be tasked with creatively looking at means of adapting/implementing similar trial projects in their areas.

NSW in order to develop a comprehensive evidence-based body of knowledge regarding criminal justice. The Network aims to identify gaps in evidence-based research, eliminate research duplication and promote collaboration on projects with cross-agency significance. This Recommendation is a suitable project for referral to the CJRN.

**Recommendation No 4 - That the Government dedicate more financial and other resources to the Community Offender Services division of the Department of Corrective Services to adequately fund community based sentencing programs in New South Wales, including new initiatives and the extension of programs set out in the Committee's other recommendations**

In late 2005, following a program of visits to COS District Offices throughout the State, the Commissioner approved the creation of thirty-nine (39) additional COS positions, mostly in regional New South Wales. Five positions were allocated to Regional Executive Directors to relieve staff on leave; and additional Probation and Parole officer and liaison officer positions at were approved at Bathurst, Cessnock, Dubbo, Fairfield, Grafton, Kempsey, Muswellbrook, Mount Druitt, Orange, Newtown, Silverwater, Wollongong, Parramatta, Junee, Glen Innes, Narrabri, Bateman's Bay, Young, Wyong and Tamworth. The Commissioner also approved five psychologist positions at Grafton, Wagga Wagga, Bateman's Bay, Tamworth and Orange, and additional clerical support at Newcastle, Glen Innes, Armidale, Gunnedah, Narrabri, Inverell, Bateman's Bay, Bega, Lithgow, Tumut, Deniliquin and Griffith<sup>4</sup>, and the provision of additional resources including satellite telephones, computers, printers, and motor vehicles (including an 8 seat mini-bus at Bateman's Bay.)

The Department's education provider AEVTI (Adult Education and Vocational Training Institute) has developed a proposal for an Aboriginal Intensive Learning Centre, based on the successful intensive learning centre for young adult male offenders at John Morony Correctional Centre. The proposal is currently under consideration. Currently AEVTI is resourced to manage and deliver education and training programs and services to offenders in custody and the post-release continuation of education and employment training.

**Recommendation No 5 - That the Government adopt a whole of government approach to improve the provision of services and programs to support offenders on community based sentences in rural and remote New South Wales.**

The Government supports this Recommendation, and will progress it through appropriate projects of the Justice Cluster and Human Services Cluster Chief Executive Officers Standing Committees.

**Recommendation No 6 - That the Government consider establishing new correctional centre based on the successful Yetta Dhinnakkal Centre Model.**

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<sup>4</sup> The additional clerical support will ensure that 35 hours per week of clerical support is available at each of these Offices. The additional support totals 131 hours per week, or 3 Full Time Effective positions – Commissioner's Memoranda Nos 2005/44, 2005/49, 2005/51 and 2005/58.

The Government welcomes the Report's positive comments on Brewarrina (Yetta Dhinnakkal) Centre, and is already progressing initiatives based on the Yetta Dhinnakkal model.

A 534 hectare property on the North Coast at Tabulam was purchased in November 2004, and construction of the Tabulam Second Chance Project is currently underway, with completion of construction anticipated in mid-2007. The Tabulam Project will provide accommodation for 50 offenders; plus an additional 20 transitional centre beds for male inmates approaching release.

The Department of Corrective Services has co-opted some Yetta Dhinnakkal staff to the Probation and Parole Service for outreach camps. Dubbo District Office and Brewarrina Yetta Dhinnakkal Centre maintain a collaborative approach to community work, with a joint Service Order and Mobile Outreach Prison work program. Other camps have operated at Wellington and Enngonia.

**Recommendation No 7 - That the Minister for Justice expand the NSW Statewide Community and Court liaison Service through the use of 'telehealth', 'webcam' technology, or other means, to additional courts in rural and remote New South Wales.**

The Government supports this recommendation in principle, but notes that it should be directed towards the Minister for Health rather than the Minister for Justice.

The Justice Health Annual Report 2004-2005 notes that the Community and Court Liaison Service now operates at 19 sites Statewide – an increase from the stated number in the Committee's Report (17), and an indicator of the Government's support for this service. That Annual Report states as a Future Initiative "(to) consult with the NSW Chief Magistrate to consider future expansion of the Court Liaison Service, including the provision of telepsychiatry services to some courts."<sup>5</sup>

**Recommendation No 8 - That the Government examine ways that a multi-agency approach could assist disadvantaged offenders to access community based sentencing options and to maximise the successful completion of such sentences and the rehabilitation of the offender.**

The Government supports this Recommendation, and will progress it through the Justice Cluster and Human Services Cluster Chief Executive Officers Standing Committees.

A high percentage of Corrective Services offender-clients are also clients of other Government services, and the Probation and Parole Service regularly liaises with other Departments when supervising a common client. Offender case plans are constructed from an assessment of needs, including an assessment of social needs within the scope of other Departments, and services provided by other Departments are included in case plans where appropriate.

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<sup>5</sup> Justice Health Annual Report 2004-2005, p.11. An appendix on p.74 lists the Court Liaison Service sites staffed by Justice Health as: Blacktown, Burwood, Campbelltown, Coffs Harbour, Dubbo, Gosford, Lismore, Liverpool, Manly, Nowra, Parramatta, Penrith, Sutherland, Sydney Central, Tamworth, and Wyong. At 3 further court sites (not identified) the service is provided by professional staff from local Area Health Services.

In some rural and remote areas, inter-departmental collaboration could eventually extend to possible initiatives such as “one-stop shops” or agencies coordinating / sharing their visits to common remote clients, so that (for instance) an officer of one Department could visit a remote client on behalf of several Departments.

**Recommendation No 9 - That the Minister for Justice examine the adequacy of knowledge within the Community Offender Services division of the Department of Corrective Services regarding the needs of disadvantaged offenders, particularly offenders with intellectual disabilities or mental health issues, and give consideration to employing specialist officers and the delivery of special training to its officers to meet this area of need.**

The Department of Corrective Services has already examined the level of knowledge within COS regarding the needs of disadvantaged offenders, particularly offenders with intellectual disabilities or mental health issues, in response to this recommendation; and will ensure that on-going education and training is provided to appropriate departmental officers to maintain a high standard of such knowledge.

COS staff receive integrated training with regard to the management of intellectually disabled offenders as part of normal training. New COS trainees are provided with two days training on Mental Health First Aid<sup>6</sup> including depression, anxiety disorders, psychosis and substance abuse disorders. Trainees also spend two training sessions on special needs of certain groups including intellectually disabled offenders.

Additional training is available as an elective subject, specifically designed for COS staff managing offenders with intellectual, physical and sensory disabilities. This training includes the Mental Health First Aid course provided to trainees (which is provided regularly at both the Corrective Services Academy and regional locations) and a one-day Suicide Awareness Training course, which focuses on enabling staff to identify offenders who are at risk of suicide and to provide skills and knowledge to manage the offender and appropriate mental health referral points. This training has also been provided within correctional centres.

COS staff frequently contact the Department’s Disability Services Unit seeking advice about specific cases. That advice is either provided directly, or the officer is referred to an appropriate organisation.

The Department notes that this Recommendation is closely linked to Recommendation No 5 (adoption of a Whole-of-Government approach).

**Recommendation No 10 - That future initiatives in community based sentencing be accompanied by a comprehensive communication strategy, which includes a range of information channels accessed by people from language backgrounds other than English living in rural and remote areas. That future community based sentencing initiatives in remote areas should be implemented in a way that gives due consideration to the linguistic, cultural and religious background of offenders.**

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<sup>6</sup> Details on Mental Health First Aid course may be found on the website: [www.mhfa.com.au](http://www.mhfa.com.au)

When legislative sentencing initiatives are about to be implemented, they are usually considered by a range of inter-agency committees, the most important of which is the Justice Cluster Chief Executive Officers Steering Committee. This Committee includes the heads of the relevant Justice Departments, as well as important agencies such as the Office of the Director of Public Prosecutions, the NSW Legal Aid Commission and of particular note in the context of this recommendation, the Community Relations Commission.

In response to the Ombudsman's review of the *Crimes (Administration of Sentences) Amendment Act 2002*, the Department of Corrective Services supported a Recommendation that the Department develop guidelines concerning searches of clothing and items of cultural or religious significance in consultation with the Community Relations Commission and ethnic communities likely to be affected by the guidelines. Similar consultation could be appropriate in the implementation of this recommendation.

The Department of Corrective Services has a range of brochures available in COS District Offices that explain offenders' obligations under community based sentences.

The Department believes that a comprehensive culturally appropriate communication strategy for people from language backgrounds other than English requires more than simply a translation of a brochure written in English. It is mindful that many Aboriginal people may be more receptive to diagrams and pictures than written explanations and that the use of plain simple language is more important than a word-perfect translation. 'Plain English' is also better than inappropriately attempting "Koori-speak", which can be interpreted as patronising.

The Department of Corrective Services employs ten (10) Aboriginal Community Support Officers (ACSOs). The Department will investigate the possible production of brochures for Aboriginal offenders featuring pictures and the phone numbers of these ACSOs and the Department's Aboriginal Support and Planning Unit, which could monitor the range of calls received and train staff in any identified areas of need.

**Recommendation No 11 - That the Department of Corrective Services develop a strategy to identify and cater for the needs of the growing elderly population in relation to access to and support to undertake community based sentences.**

The Government supports this Recommendation and the Department of Corrective Services is already implementing it. As noted by the Report, the Department already specifically identifies elderly offenders as a disadvantaged group.

One example of catering to the needs of elderly and disabled community-based offenders is the common practice within the Probation and Parole Service of making regular home visits to these clients instead of requiring them to report to a District Office. Alternatively, appointment times are aligned with other appointments the offender may have (eg medical appointments). Each District Office attempts to develop relationships with a variety of community work providers to make the range and scope of community service work as wide as possible.

According to the 2005 DCS Inmate Census, on 30 June 2005 there were 94 inmates (88 male, 6 female) aged over 65 years of age in correctional centres, representing 1.0% of the inmate population. A further 140 inmates (132 male, 8 female) were aged 60-64 years, representing 1.4% of all inmates.

In the month of June 2006, there were a total of 696 community-based offenders aged over fifty-five years, representing 3.5% of the total community-based population<sup>7</sup>. Of these, 17 were subject to a home detention order (7.4% of all home detainees), 122 were subject to a community service order (2.4%), 1 was a fine default offender (1.1%), 223 were subject to a supervised bond (2.6%), 9 were subject to bail supervision (3.3%), 1 was subject to a Drug Court Order (0.5%), 102 were subject to a suspended sentence (3.3%), 176 were subject to a parole order issued by the State Parole Authority (10.0%) and 77 were subject to court-based parole (3.0%). The highest percentages of community service orders for this age group were found in the catchments of Port Macquarie, Lismore, Tumut, Armidale and Bega District Offices – though the low sample numbers of some regional District Offices may skew the data.

The proposed Community Offender Service Census<sup>8</sup> will identify the percentage of community-based offenders in more distinct age bands, and thereby assist future initiatives to cater specifically for this sector of the population.

**Recommendation No 12 - That the Department of Corrective Services work with the Department of Local Government and WorkCover to identify ways to assist community and other non-government organisations in rural and remote NSW to achieve compliance with occupational health and safety requirements, with a view to increasing the number of Community Service Order work placements.**

The Government supports this Recommendation.

The Department of Corrective Services is currently taking positive strategic steps to enhance site safety for community service workers.

The periodic detention program has established links with many metropolitan councils and has had success in maintaining ongoing community projects over a long period. A model of safe work practices on community sites exists here, and can be duplicated to suit country areas. To date the periodic detention program has not had to involve WorkCover since each project is negotiated on a work-specific and site-specific basis. WorkCover can provide information and advice to employers, including the Department of Corrective Services and the host agency of a person undertaking work under a Community Service Order, to meet their workplace obligations.

The Department's experience is that the involvement of local government provides leadership that encourages community organisations to participate in the CSO scheme. The "imprimatur" of WorkCover involvement could be expected to provide similar encouragement, and give credence to the Department's efforts to promote safe work practices. With the current push by the Department to create new opportunities for community service work placements using the 'work gang' approach (and more recently mobile work gangs), local councils are being offered a generous opportunity to come on board.

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<sup>7</sup> Note that the age groups quoted are different: for inmates, 65+ and 60-64, and for community based offenders 55+. Therefore the community-based population was not entirely "elderly", and had a different overall age demographic to the inmate population.

<sup>8</sup> See response to recommendation No 3



As noted by the Committee, local councils can play a role in implementing this recommendation. However, the capacity of councils in rural and remote areas to provide the necessary resources may be limited. In this regard, participation should be at the discretion of individual local government bodies, and in the spirit of the 2006 *Inter-Governmental Agreement Establishing Principles Guiding Inter-Governmental Relations on Local Government Matters*<sup>9</sup> between the Commonwealth Government, the Governments of the States and territories and the Local Government and Shires Associations (on behalf of councils).

In the spirit of this Agreement, the Government considers that the Local Government and Shires Associations should be invited to work on implementing this recommendation.

**Recommendation No 13 - That the Department of Corrective Services review its current information concerning Community Service Order placements and public liability insurance and the dissemination of that information with a view to dispelling concerns about public liability insurance. A program for making the information accessible to current and prospective Community Service Order placement organisations should be developed. Consideration should also be given to identifying an information contact officer to clarify any queries held by current or prospective Community Service Order placement organisations.**

The Government supports this Recommendation, and the Department of Corrective Services is well advanced in implementing it, including disseminating information that public liability is assumed by the Crown under the *Crimes (Administration of Sentences) Act* (ss 121 and 122) .

The Department is currently conducting a review of the operation and management of community service orders, covering: the process of agency accreditation; ongoing maintenance of agency accreditation; the ongoing management of offenders assigned to agencies; the ongoing management of community service orders, including the recording of work done and the scheduling of an offender's work timetable; worksite safety assessments; a process for mandated site visits by COS; and breach procedures for offenders who fail to attend or perform work. The review also covers the training process for CSO organisers and administrative assistants, including re-training and refresher courses.

**Recommendation No 14 - That the Department of Corrective Services continue to investigate and implement ways of providing or arranging transport to work placements for offenders in rural and remote areas as a way of improving access to the Community Service Order scheme.**

The Government supports this Recommendation, and the Department of Corrective Services is endeavouring to resource COS District Offices with an appropriate range of equipment including transport. As noted in the response to Recommendation No 4, the Commissioner has approved the acquisition of an 8 seat mini-bus at Bateman's Bay.

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<sup>9</sup> This document is available at the Australian Local Government Association website [www.alga.asn.au](http://www.alga.asn.au)

The Department is also investigating arrangements for the shared use of transport vehicles belonging to other agencies such as local councils and Community Development Employment Projects (CDEPs). These vehicles could also be used to transport supervised offenders to innovative programs such as mobile camps or outreach programs.

**Recommendation No 15 - That the Department of Corrective Services' *Linking Together Program* and any other pilot programs or initiatives such as mobile camps, which are shown to increase access to Community Service Orders for offenders in rural and remote areas, should be extended to other parts of the State.**

The Government supports this Recommendation in principle and notes that Recommendation No 21 is closely related to it. The recommendation confirms the agenda that has already been launched by the Commissioner of Corrective Services, and encourages the reform of current programs that has already commenced.

The Pilot Projects have shown that the success of community service work placements depends to a very large degree on having suitable persons with the capacity to provide supervision of work projects and the capacity to operate objectively within their community. When the supervisor has the respect of both the community and the offenders performing community service work, and the judgement to exercise latitude in appropriate situations, significant completion occurs and the scheme gains community recognition. This is particularly so where the supervisor can provide work skills to assist the participants. Each community is different - not all communities can provide such suitable supervisors.

The Linking Together Program was a trial established to address the issue of service delivery to remote areas where COS staff do not have a regular presence, particularly remote high risk communities. A local community member was employed on a casual basis as a conduit between the community and the Department, based on a successful ad hoc model trialled at Toomelah, an Aboriginal community north of Moree. The position demands that the local person does not play an authoritarian role, but is rather a contact person for the community and the Department, who can provide culturally appropriate feedback about individuals and is also in a position to organise community service work.

This trial was short term due to regional financial limitations but indicated that such a method of community responsibility could be effective in improving service delivery. The concept would be enhanced if the community position holder was the conduit for a number of agencies since there is anecdotal evidence that a "Public Sector" representative often carries a community expectation that they will respond and follow up issues, irrespective of agency boundaries.

A challenge in operating such a Scheme in remote areas can occur where there is a limited availability of work and a community agency has had a prior bad experience of a particular offender or has prior knowledge of an offender, and may not be prepared to take that person into their agency, so that a work placement of that offender becomes problematical.

For some time, areas of the Bourke-Brewarrina region have established an effective working relationship with mobile camps operating from Yetta Dhinnakkal. This has been successful operating from Wellington, Dubbo Zoo, and to a limited degree at Enngonia.

The additional COS staff approved by the Commissioner<sup>10</sup> includes one full time Aboriginal Client Service Officer.

**Recommendation No 16 - That the Department of Corrective Services assist organisations in rural and remote areas with the cost of purchasing additional equipment for Community Service Order placements either through the provision of financial assistance or seeking assistance from the local business community with a view to expanding the availability of Community Service Order work placements in such areas.**

The Government supports this Recommendation in principle. Subject to financial constraints, the Department of Corrective Services will endeavour to assist community organisations in rural and remote areas with the cost of equipment purchases as recommended, as and where it can, in its role as a responsible and sharing partner with all collaborating community organisations who deliver the community service work program.

It may be feasible to apply aspects of the Department's Community Funding Program to equipment purchases, by calling for expressions of interest from community organisations at regular intervals.

**Recommendation No 17 - That the Department of Local Government identify ways in which it can encourage or assist local councils to participate in the Community Service Order scheme, either by taking Community Service Order placements or providing support for community groups to do so.**

The Government supports this recommendation in principle. Whilst the Government agrees with the Committee that local councils have the potential to play a role in implementing the recommendation, it must again be noted that the capacity of councils in rural and remote areas to provide the necessary resources to implement the recommendation is likely to be very limited. Again, participation should be at the discretion of individual local government bodies and, in the spirit of the *Inter-Governmental Agreement Establishing Principles to Guide Inter-Governmental Relations in Local Government Matters*, the Local Government and Shires Associations should be invited to work on implementing this recommendation.

Historically, Community Offender Services District Offices have established relationships with individual councils rather than Corrective Services establishing a relationship with the Department of Local Government.

**Recommendation No 18: That the Department of Corrective Services:**

- **Undertake a community education program about the Community Service Order scheme, including information about public liability and the benefits of the program.**
- **Develop an initiative that recognizes and encourages the work undertaken by Community Offender Services in partnership with local councils and other community organisations, as a means of increasing the number of work placements available to offenders.**

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<sup>10</sup> See response to recommendation No 4

The Government supports this Recommendation.

Community education programs developed by the Department of Corrective Services would need to ensure that the level of assistance sought from community groups matched the availability of offenders sentenced to perform community service work. Community organisations would quickly lose enthusiasm if there was a level of community education and encouragement for placements, but no or few offenders available for allocation. The matching of needs and availability would best be done at a local level.

Already at a local level, the Department conducts Community Justice Information Forums in areas with large populations of Aboriginal offenders. Many District Managers use special occasions (such as end-of-year functions) to invite local community agencies to functions in order to inform them of the CSO scheme and congratulate responsive agencies. Particularly in rural areas, local media are invited to attend such functions.

The Department's current review of the operation and management of community service orders (referred to in the discussion of Recommendation 13 above) addresses the issue of a community education program about the CSO scheme.

**Recommendation No 19 - That the Department of Corrective Services investigate ways of increasing the involvement of private business in the Community Service Order scheme in rural and remote areas, including seeking consultations with Australian Business Limited and local Chambers of Commerce.**

The Government supports this Recommendation.

Corrective Services Industries (CSI - an organisational unit of the Department of Corrective Services) deals with Australian Business Ltd (ABL) and Unions NSW through the Correctional Industries Consultative Council. Both ABL and Unions NSW have been very supportive of initiatives which secure employment for offenders upon their release. Unions NSW has also suggested to the Department that CSI become more actively engaged in co-opting business partners and suppliers to take on released offenders, particularly those who have worked in allied industries during their incarceration.

Unions NSW and ABL have both supported traineeships and work opportunities which address trade skill deficits in the community. For some time, CSI has been promoting more traineeship opportunities for offenders in a number of correctional centres.

Implementation of this Recommendation would extend the existing involvement of ABL and Unions NSW in custodial initiatives into involvement in community-based initiatives. The suggested involvement of local Chambers of Commerce is sensible for a community environment, particularly with regard to the identification of suitable local projects which affect the business community but are not commercially driven (such as graffiti removal, town clean-ups etc).

**Recommendation No 20 - That the Department of Corrective Services investigate ways to expand the availability of vocational or skills based**

**programs for offenders undertaking Community Service Orders in rural and remote New South Wales.**

The Government supports this recommendation and the Department of Corrective Services will investigate ways to expand the availability of vocational/skills based programs for offenders undertaking CSOs in rural and regional NSW. Measures that could be considered include: expanding the role of AVETI, and considering whether Corrective Services Industries, TAFE and Community Development Employment Projects (CDEPs) could become partners or participants in the CSO scheme.

**Recommendation No 21 - That the Department of Corrective Services examine ways of increasing access by Aboriginal offenders to culturally appropriate Community Service Order work placements in rural and remote areas including seeking consultations with the Federal Government to examine how the Community Development Employment Projects (CDEP) program can be utilised to create more Community Service Order work placements in rural and remote areas.**

CSO clients of the Department of Corrective Services are often referred to CDEPs for work placements, though such placements have not always been successful – depending on how well the offenders have been supervised by the CDEP. Nevertheless, mutually beneficial relationships already exist with some CDEPs, and consultation with the Commonwealth Government at appropriate levels and with individual CDEPs will be undertaken in order to see whether additional culturally appropriate placements are possible.

Care needs to be taken, however, to distinguish work done on a CSO from work done by an offender under a CDEP independently of CSO work, since both schemes have access to members of the same workforce. CSO work still needs to be identified as work imposed as the result of a court sanction, separate from and in addition to work that a person may perform under a CDEP, otherwise a court sanction would be meaningless. To this end, the Department notes that some CDEPs are already participants in the community service scheme. Where this occurs<sup>11</sup>, offenders work two days per week as paid CDEP participants, and one or two days per week as unpaid CSO workers.

**Recommendation No 22 - That the Department of Corrective Services undertake a specific project to examine the barriers preventing offenders with disabilities being assessed as suitable for a Community Service Order or for suitable work placements to be identified. The provision of assistance and support to enable offenders with disabilities to undertake a Community Service Order should be examined.**

The Department of Corrective Services will undertake a project as recommended which will be an opportunity to identify best practice and gaps in service delivery; identify what works; package successful products and spread them to other areas.

**Recommendation No 23 - That the Department of Corrective Services:**

- **identify the areas of New South Wales where supervised bonds are unavailable due to a lack of Probation and Parole Service resources**

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<sup>11</sup> Eg, at Bourke

- take steps to extend supervision, or a modified form of supervision, to all areas of New South Wales
- work with government and non-government agencies to extend the availability of appropriate and accessible programs to meet offenders' needs in rural and remote areas. In particular, consideration should be given to programs addressing domestic violence, drug and alcohol and driving related offending behaviour
- work with both government and non-government agencies in the disability services field to identify and develop ways to improve support services to assist offenders with an intellectual disability or a mental illness to comply with the conditions of supervised bonds.

The Government notes that there are no areas of NSW where supervised bonds are unavailable due to a lack of Probation and Parole resources, since every part of NSW is serviced by a COS District Office, and the accessibility and quality of supervision is continually monitored within the Department of Corrective Services.

The more relevant issue is that *not all programs are available from all District Offices*, and sometimes an offender may not receive a supervised bond because a particular program essential to the supervision of that offender is unavailable in his or her home area – a challenge that is not necessarily restricted to rural and remote communities.

There may also be some rural and remote areas where the availability of supervision may be reduced due to time, distance, workload and scattered population; nevertheless some supervision is provided to all areas of the State. The Department seeks to deliver an equitable level of service to all its clients and potential clients; however it would simply be uneconomical to attempt to provide all programs at all District Offices, or supervise all clients to an equal level. The Department nevertheless constantly seeks to identify innovative ways to improve the services that it provides and to work with government and non-government agencies in improving services.

**Recommendation No 24 - That, as part of the review of the *Crimes (Sentencing Procedure) Act 1999 (NSW)* currently being undertaken by the Attorney General's Department, the following issues in relation to s.12 of the Act be considered:**

- providing greater discretion to the courts to address a breach of suspended sentence
- restoring the power of the courts to partially suspend prison sentences
- granting power of the court to order periods of supervision longer than the term of imprisonment on breach
- amending the legislation to provide clarification on the consequences of a breach of s.12 and in particular the setting of parole and non-parole periods.

All of the issues raised are being considered as part of the review mentioned in the Recommendation.

**Recommendation No 25 - That the Government undertake research to ascertain the outcomes for families and communities subject to intensive policing, with reference to the evidence presented to the Committee regarding the impact of**

**intensive policing on offenders serving supervised bonds in rural and remote areas of New South Wales.**

The evidence the Committee referred to in this recommendation focuses on the possibility of particularly serious consequences for some offenders who may be the subject of intensive policing, particularly those on suspended sentences, where a relatively minor infringement may well trigger revocation of their bond and activation of a lengthy period of imprisonment.

As a first step before determining the utility and scope of such research, the Government intends awaiting the outcome of the present review of the *Crimes (Sentencing Procedure) Act 1999*, particularly those provisions relating to suspended sentences. Any reform of those provisions may well have a significant impact on the types of concerns raised by the recommendation.

**Recommendation No 26 - That the Attorney General and Minister for Justice review the process within their areas of responsibility regarding the provision of information to offenders about their obligations under a bond. The provision of information about bonds and common conditions in plain English and community languages should also be reviewed. Where improvements can be identified these should be undertaken. Consideration should be given to the feasibility of requiring offenders to attend court or a Probation and Parole Office for a follow up explanation of the requirements of a bond a week after sentencing.**

The basis for the present process includes the statutory requirement under section 96 of the *Crimes (Sentencing Procedure) Act 1999* for a court making such an order to ensure that all reasonable steps are taken to explain to the offender (in language that the offender can readily understand) the offender's obligations under the good behaviour bond, as referred to in section 95, and the consequences that may follow if the offender fails to comply with those obligations. There does not appear to be any suggestion that courts are not complying with this important requirement.

Rather, the Report notes that one of the main reasons offenders fail to understand the terms and conditions of a community-based sentence is the emotional strain placed on them by court proceedings, with the result that they have "switched off" by the time that the effect of their sentence is explained to them by court staff.

Evidence to the Committee<sup>12</sup> suggested that where the Probation and Parole Service is involved in imparting details of an offender's obligations to them at their first appointment, their obligations are properly impressed upon them.

There is an argument that it may therefore be beneficial for all offenders sentenced to a community based sentence other than a fine (whether supervised or not) to be required to attend the Probation and Parole Service several days after their court attendance for a compulsory briefing on their obligations under the sentence, as suggested in the final sentence of this Recommendation. The attendance of family and significant others (eg mentors) could be encouraged at such "sentence explanation" appointments, in order to assist the offender to understand the full requirements of their sentence and the consequences of breach of sentence conditions. An appropriate brochure could be provided<sup>13</sup>.

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<sup>12</sup> Reported at paragraph 5.160, page 139

<sup>13</sup> See comments on Recommendation No 10, especially with regard to culturally sensitive material.

Based on the numbers in Table 5.1 of the Committee's Report<sup>14</sup>, an additional minimum of 13,341 per year<sup>15</sup> offenders would be required to attend a Probation and Parole District Office if this Recommendation were implemented. The numbers of supervised and unsupervised bonds without conviction are unclear from Table 5.1, but given the total of 10,953 bonds without conviction and the ratio of 1.8:1 between bonds without supervision (10,773) and bonds with supervision (5,996), it would not be surprising if there were over 6,000 unsupervised bonds without conviction, giving a total of nearly 20,000 additional offenders per year required to attend the Probation and Parole Service for sentence explanation.

Significant change to the present process, such as requiring all offenders on community-based orders to report on a subsequent date will have significant cost implications that will need to be factored into the further review of this matter by the relevant Ministers. The Government is also mindful that creating an obligation to report for those offenders who would not otherwise have to do so may unnecessarily increase the rates of breaching such a requirement, and it needs to further consider this possibility before creating such a requirement.

**Recommendation No 27 - That the Department of Corrective Services:**

- **undertake a review of the joint periodic detention / Community Service Order worksites with a view to expanding this model across the State, where viable. The review should be undertaken no later than two years after Community Offender Services has taken responsibility for Stage 2 periodic detention.**
- **research alternative, innovative approaches, to providing community service work for Stage 2 periodic detainees in rural areas**

The Government supports this Recommendation, and notes that a review by the Department of Corrective Services is already underway. The Department welcomes the Committee's support<sup>16</sup> for the Department's move towards Stage 1 and Stage 2 periodic detainees participating in community work under the supervision of Community Offender Services at joint periodic detention / CSO worksites.

This Recommendation supports the Department's current approach of researching and documenting innovative approaches to worksite management.

**Recommendation No 28 - That the Attorney General, as part of the review of the *Crimes (Sentencing Procedure) Act 1999 (NSW)*, consider an amendment to give discretion to the courts to order programs designed to reduce the likelihood of recidivism for offenders serving periodic detention orders.**

The Attorney General's Department will consider such an amendment as part of the review. To help facilitate this process, the Department of Corrective Services has indicated that it will co-operate by providing full details of programs that may be provided to offenders in satisfaction of the recommendation.

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<sup>14</sup> Paragraph 5.13, page 108 – NSW Criminal Court statistics 2004, Local Court penalties for principal offences

<sup>15</sup> Based on 10,773 bonds without supervision and 2,568 suspended sentences without supervision – those sentences with a supervision component are already required to attend Probation and Parole District Offices within 7 days as part of their sentence

<sup>16</sup> Paragraph 6.43, page 150



**Recommendation No 29 - That the Minister for Justice examine the feasibility of creating periodic detention beds in all correctional centres in order to meet the needs of both the male and female offender population.**

The Government does not support this Recommendation. As noted in the Report<sup>17</sup>, the Department of Corrective Services advised the Committee that the conversion of existing full-time beds in correctional centres for use by periodic detainees would result in the need for replacement full-time correctional centre beds elsewhere, which represents a significant capital cost. Due to the need to keep inmates and detainees separate, it would be necessary to quarantine a separate discrete portion of each correctional centre for periodic detainees based on maximum potential usage, not merely sufficient beds to cover current usage. This is not considered practical at the present time.

**Recommendation No 30 - That the Minister for Justice examines methods of improving transport services for offenders to increase access to periodic detention as a sentencing option for offenders in rural and remote areas.**

The Minister has examined the question of transport services and concluded that services are viable in limited situations. The Department of Corrective Services provides a bus for periodic detainees to travel between Bateman's Bay and Wollongong PDC. This bus commences its journey at Bateman's Bay at 3pm, arriving at Wollongong PDC at 7 pm after a journey of 185 kms. This bus service serves that part of the Wollongong PDC catchment area that is not well served by public transport; it is feasible because all the feeder locations are geographically in a straight line along one major road. For other regional PDCs, the catchment area falls on several main roads radiating out 360 degrees from the PDC, and 3 or 4 bus services would be necessary to service all the approach roads – an unrealistic and financially unviable proposal.

**Recommendation No 31 - That the Minister for Justice examines the deduction of Centrelink payments for offenders serving periodic detention in New South Wales, including:**

- **how the deductions impact on periodic detainees, particularly those in rural and remote areas.**
- **the extent to which the deductions could render an offender unsuitable for periodic detention and**
- **whether an exemption should be sought.**

The Government recognises the financial difficulty faced by disadvantaged periodic detainees who face a deduction in Centrelink benefits as a result of serving a sentence of periodic detention.

The Department of Corrective Services signed a Program Protocol Agreement with Centrelink on 28 November 2003, which provides standardised processes at offender reception and release. The Agreement provides for direct notification between Corrective Services and Centrelink of an inmate's reception and release, saving Centrelink millions of dollars in overpayments and saving inmates from repayment

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<sup>17</sup> Paragraph 6.73, page 156

liability upon release whilst ensuring inmates receive timely Centrelink payments and services upon release to re-establish them in the community.

This agreement was reviewed in 2005 and updated in April 2006, and the updated edition addresses issues for people on legal orders in the community. It has two Implementation Packs supporting the agreement – one custodial, and one community-based. The updated agreement is serving as a model for other States and Territories.

Some issues relevant to periodic detention arose during the review, especially as a result of focus groups held by the Department with COS staff, and some improvement has been made, though full resolution has not yet occurred since legislative amendment at a Federal level will be necessary. Corrective Services and Centrelink have prepared a submission and lodged it with the Department of Employment and Workplace Relations, and are awaiting a response.

Following the review, COS staff now inform offenders subject to suitability assessment for periodic detention that Centrelink benefits are affected by periodic detention, allowing them the opportunity to withdraw consent for assessment for this sentencing option.

The Government considers this review process to have fully implemented the Committee's recommendation

**Recommendation No 32 – That the Attorney General, as part of the review of the *Crimes (Sentencing Procedure) Act 1999* (NSW), examine the operation s.65A of the Act with particular regard to its impact on Aboriginal offenders, with a view to:**

- enabling offenders who have previously served imprisonment for more than six months by way of full-time detention in relation to any one sentence of imprisonment to be considered for periodic detention
- allowing consideration of an offender's compliance record with previous orders of the court when assessing suitability for periodic detention.

The Government notes that the Attorney General's Department is considering the operation of section 65A as part of the review.

In relation to the second point, there is nothing precluding a Court from taking account of an offender's compliance record with previous orders when assessing suitability for periodic detention, and one might expect this to be done in the context of a suitability assessment report being considered by the Court under section 66 of the Act.

**Recommendation No 33 - That the Minister for Justice examine the reasons why female participation in periodic detention in New South Wales remains low and identify any measures that could be taken, whether administrative or legislative, to increase the participation of female offenders.**

The Government supports this Recommendation. The three research projects<sup>18</sup> referred to in response to Recommendation No 3 (above) are relevant avenues for research into female participation in the periodic detention scheme.

**Recommendation No 34 - That the Government, as a matter of priority, extend the availability of home detention to as to many areas of New South Wales as possible, taking into account the following:**

- an analysis of the areas of greatest demand should be undertaken and home detention extended first to those areas with the greatest need.
- creative options for extending home detention, or a modified form of home detention, to rural and remote communities should be explored with reference to the experience of other jurisdictions such as the Northern Territory.
- the Department of Corrective Services should consult widely on any proposal for modifying the existing home detention requirements such as introducing intensive supervision in conjunction with a bond.
- the need for an increase in the resources of the Probation and Parole Service for effective implementation of home detention in rural and remote areas.

The analysis recommended in the first dot point can be undertaken in the existing research programs referred to in response to Recommendations 3 and 33 (above).

The Report acknowledges<sup>19</sup> the Department of Corrective Services' advice that it is currently investigating models presently operating in other states and countries. Although the Department recognises the value of benchmarking with similar authorities, it sees remote Aboriginal communities in the Northern Territory as being different from remote Aboriginal communities in NSW, and does not believe that the Northern Territory remote community home detention program could be imported effectively into NSW. Nonetheless aspects of the Northern Territory model will be investigated to see if they could reasonably be imported into, and adapted for, New South Wales Aboriginal communities.

The Department already consults widely on any proposal for modifying or extending an existing program; in this respect the home detention program is no different, and the Department will consult widely on any proposal for modifying it.

**Recommendation No 35 - That the Department of Corrective Services examine ways of increasing the participation of Aboriginal offenders in home detention including:**

- accommodating cultural differences to provide greater access to home detention for Aboriginal offenders
- developing information about the nature of home detention and its place as an alternative to full-time custody to increase the level of understanding among Aboriginal communities about this sentencing option.

The Government notes that increasing the rate of participation by Aboriginal people in home detention will require action beyond the scope of the Department of Corrective Services alone. The Department notes that most of the evidence

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<sup>18</sup> "Developing a NSW Community Offender Service Census", "Characteristics of Community Based Offenders", "Predicting Community Based Offender Populations".

<sup>19</sup> Paragraph 7.102, page 194

questioning the appropriateness of home detention for Aboriginal offenders came from Aboriginal people and Aboriginal support organisations<sup>20</sup>. The Department also notes that it does not determine the participation of Aboriginal people in home detention; it merely advises a court whether an offender is suitable. In this context the Department will endeavour to ensure that in assessing suitability of Aboriginal offenders for home detention its officers are aware of the relevance of any cultural differences in making such assessments.

The Department notes the specific measures targeted towards Aboriginal offenders referred to in response to Recommendation No 10. These resources can be harnessed to provide specific information concerning home detention to Aboriginal offenders and their communities.

**Recommendation No 36 - that the Department of Corrective Services undertake a thorough examination of the eligibility criteria for home detention to determine the extent to which the criteria unfairly limits the availability of home detention for Aboriginal offenders compared with non-Aboriginal offenders and whether the criteria should be modified so as to not disadvantage Aboriginal offenders.**

The Government welcomes the Committee's encouragement of the examination by the Department of Corrective Services of the eligibility criteria for home detention in the context of the Kempsey pilot, to determine whether the criteria can be modified so as not to further disadvantage Aboriginal offenders<sup>21</sup>.

As noted in evidence to the Inquiry<sup>22</sup>, part of the regional pilot at Kempsey is to examine the effect of the eligibility criteria on Indigenous offenders. Any change in those criteria, however, will be a whole-of-government decision. It can be argued that home detention is currently made available to predominantly low-needs, low-risk offenders; and that more 'difficult' offenders would gain greater rehabilitative benefit if home detention was available to them.

It should be noted that even in areas where home detention operates, many offenders are excluded due to the eligibility criteria – both Indigenous and non-Indigenous. The Department's examination with respect to Indigenous offenders in Kempsey will attempt to address what *extra* effect the eligibility criteria have on Indigenous offenders in rural and remote areas.

The comments of COALS<sup>23</sup> are apposite and outline impediments for many Aboriginal offenders: that although Aboriginal offenders have a high rate of conviction for some 'disqualifying' offences (such as assault or domestic violence offences), personal relationships among Aboriginal extended families are complex and can change significantly over time – perhaps more so than for non-Indigenous people.

The Government is mindful, however, of the fundamental need to ensure community safety and the safety of those living with offenders on home detention orders. For this reason the Government does not presently intend amending the home detention criteria contained in sections 76 and 77 of the *Crimes (Sentencing Procedure) Act*

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<sup>20</sup> Eg Western Aboriginal Legal Service (paragraph 7.130) – although COALS (Coalition of Aboriginal Legal Services) disagreed (paragraph 7.132)

<sup>21</sup> Paragraph 7.151, page 207

<sup>22</sup> Paragraph 7.150, page 206, quoting Ms Rusis

<sup>23</sup> Paragraph 7.144, page 205

1999. Any results of the Kempsey pilot in this regard will, however, be carefully considered.

**Recommendation No 37 - that the Department of Corrective Services examine ways in which assistance could be provided to disadvantaged offenders to enable them to meet the criteria of a suitable residence. The input of other relevant Government agencies, including in the portfolio areas of health and housing, should be sought.**

The Government notes this Recommendation, and also notes it has a range of implications not fully examined in the report which would require careful consideration.

As noted in the Report<sup>24</sup>, Probation and Parole officers have a legislative obligation<sup>25</sup> to make all reasonable efforts to find suitable accommodation in consultation with the offender – ie, for offenders who are homeless. It is not the Department's role or responsibility, however, to provide housing or to upgrade sub-standard housing for offenders who are not homeless.

One issue that the Report does not address is: if supported housing were provided to disadvantaged offenders to enable them to meet the criteria of a suitable residence, what happens after the sentence is completed? For instance, if accommodation were found at a hostel<sup>26</sup> for a disadvantaged offender, would that person be evicted from the hostel upon completion of the sentence in order to provide suitable accommodation for another potential home detainee?

This question of after-accommodation has arisen in the context of bail hostels in the United Kingdom: significant numbers of persons have been reluctant to leave a designated bail hostel upon finalisation of their matter, on the grounds they would again be homeless – the provision of bail hostel accommodation discouraged them from seeking appropriate independent accommodation during their bailment. It would be inequitable and counter-productive to provide supported accommodation without including an 'exit strategy' upon completion of an offender's sentence.

**Recommendation No 38 - that the Department of Corrective Services examine ways in which offenders with mental health issues or intellectual disabilities can be supported adequately, such as through the provision of supported accommodation, to enable them to be considered for home detention.**

The provision of supported accommodation for offenders with mental health issues or intellectual disabilities in the context of home detention would require a multi-agency approach involving the Department of Health and the Department of Ageing, Disability and Home Care. The Department of Corrective Services will liaise further with those Departments in order to examine how the operation of the home detention scheme within a supported accommodation framework for offenders with mental health issues or intellectual disabilities might be further advanced.

The issue of after-accommodation for this group of offenders is particularly important, since they will require any supported accommodation to continue after completion of

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<sup>24</sup> Paragraph 7.155, page 208

<sup>25</sup> *Crimes (Sentencing Procedure) Act 1999*, s.81(3)(b).

<sup>26</sup> Paragraph 7.159, page 209

a home detention order. The scope of the Recommendation therefore extends more widely than community-based sentencing options.

**Recommendation No 39 - that the Department of Corrective Services examine the uptake of home detention orders by female offenders to establish the demand for home detention among female offenders in rural and remote areas and metropolitan areas. The examination should seek to identify any barriers faced by female offenders in assessing home detention, such as lack of family or social support, and identify ways to overcome those barriers.**

The Government notes that, as the Department of Corrective Services advised the Inquiry in its submission (at paragraph 23), its Corporate Research, Evaluation and Statistics Unit is currently undertaking a follow-up Review of the Home Detention Scheme. This review is a follow-up to the *Review of the NSW Home Detention Scheme*<sup>27</sup> (Heggie, 1999) quoted in the Committee's Report. The uptake of home detention orders by female offenders is one component of this follow-up review and its findings should form an appropriate basis for addressing this recommendation.

**Recommendation No 40 –**

- **That the Government introduce a back-end home detention scheme without compromising the principle of truth-in-sentencing.**
- **That a pilot scheme involving a small number of offenders should first be conducted by the Department of Corrective Services and evaluated by the Bureau of Crime Statistics and Research.**
- **That the results of the evaluation should be used to develop the most effective model for a back-end home detention scheme to be implemented across the State.**

The Government notes the Recommendation and the valuable contribution that the Committee's consideration of back-end home detention provides for the further evaluation of the advantages and disadvantages of such a scheme and the means by which the goals of back-end home detention can best be achieved.

The Government agrees in principle with those aims, namely the staged re-integration of offenders back into the community, and in fact the Government has introduced a de facto form of home detention in the Compulsory Drug Treatment Correctional Centre program which commenced with the opening of the Compulsory Drug Treatment Correctional Centre on 22 August 2006. This aspect of the program occurs in Stage 3 of the program "Community Custody"<sup>28</sup>, though as yet no program participants have progressed to stage 3.

The Government is mindful that the Committee has expressed the view that a pilot scheme first be implemented and that the results of the evaluation of the pilot scheme should be used to develop the most effective model for a back-end home detention scheme to be implemented across the State. This appears to be reflective of the fact that the best means by which to implement back-end home detention are far from clear at the present time. It should be borne in mind when considering those recommendations that posit a preferred model for a back end home detention scheme (eg Recommendations 44 and 45).

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<sup>27</sup> Department of Corrective Services Research Publication No 41, May 1999, ISSN 0813 5800

<sup>28</sup> See section 106D(1) and (4) of the *Crimes (Administration of Sentences) Act 1999*, inserted by the *Compulsory Drug Treatment Correctional Centre Act 2004*.

It is also noted that the Department of Corrective Services submission argued for an alternative system that in practical respects closely resembles back-end home detention, but which can be implemented by the less radical means of extending existing leave programs.

The Government therefore considers that it is worth reviewing the operation of Compulsory Drug Treatment Correctional Centre Stage 3 Community Custody, and exploring the range of alternatives before deciding to commit to a wider introduction of back-end home detention.

**Recommendation No 41 - that, when planning the introduction of a back-end home detention scheme, the Government explore ways of ensuring that the public is provided with sufficient information about the nature of home detention so as to minimise the perception that back-end home detention is a 'soft option' or poses danger to the community.**

The Department of Corrective Services endeavours to ensure the public is provided with sufficient information about all community based sentences to minimise the perception that such sentences are a soft option or pose a danger to the community. If a back-end home detention scheme is introduced, the Department will similarly endeavour to educate the public about the intent and operation of the scheme.

**Recommendation No 42 - that the introduction of a new back-end home detention scheme be accompanied by a comprehensive communication strategy, which includes a range of information channels accessible by people from language backgrounds other than English and those living in rural and remote areas.**

The Government notes this Recommendation.

The Department of Corrective Services will treat any new scheme as part of its overall communication strategy to persons serving community based sentences, which includes a full induction and explanation session with the assistance of interpreters if required.

**Recommendation No 43 - that the expansion of the front-end home detention scheme and the introduction of a back-end scheme, as recommended by the Committee, should occur concurrently and that the Government should provide sufficient resources for the introduction of a back-end scheme so as not to divert resources from the current front-end scheme or impede its expansion.**

The Department of Corrective Services advises that if the front-end home detention scheme is expanded and a back end home detention scheme is introduced, it is expected that both schemes would be introduced in stages, possibly region-based. Both schemes would need to be tempered and monitored closely to address any emerging issues.

**Recommendation No 44 - that the decision whether an offender is eligible for back-end home detention should be made by the court at the time of**

sentencing. The court should also determine the portion of an offender's sentence to be served on home detention. As with front-end home detention the court should be assisted in this regard by an assessment by the Probation and Parole Service.

That when the first portion of an offender's sentence is due to be completed the decision whether the offender should proceed to back-end home detention should be referred back to the court to be confirmed. At this stage the court can examine the offender's current circumstances, including behaviour whilst in custody and home arrangements, to ensure that the offender is still suitable for home detention.

That consideration should be given to using the current classification system used for assessing an offender's eligibility for external leave programs into the back-end home detention scheme.

The Government is of the view that if back-end home detention is to be introduced, this recommendation requires further scrutiny.

The Report recommends that decisions relating to back-end home detention should be entirely the province of the judiciary – both at time of sentencing (eligibility) and at time of participation. This would need to be carefully considered against other models which may well have advantages. None of the other jurisdictions considered by the Report have a decision-making process that is entirely judicial.

It would appear, from the jurisdictions listed in Table 8.1 of the Report<sup>29</sup>, that only New Zealand requires the sentencing court to be involved in the determination of a back-end home detention order (jointly with the Parole Board). All the other jurisdictions listed require either the relevant Corrections Department, Community Corrections Board or Parole Board to fulfil this function. Nowhere is the decision entirely the function of the judiciary. In New Zealand it is judicial and quasi-judicial; in Victoria it is quasi-judicial; and in Queensland, South Australia, Western Australia and the United Kingdom the decision is entirely the realm of the Executive Government.

**Recommendation No 45 - that the restrictions on the powers of a sentencing court to make a home detention order for certain offences and offenders with a certain criminal history of the kind contained in Division 2 of the *Crimes (Sentencing Procedure) Act 1999 (NSW)* should not be included as an element of a back-end home detention scheme.**

The Government notes this recommendation which will be considered further when any back-end home detention scheme is considered.

**Recommendation No 46 - that conditions attached to back-end home detention orders be as consistent as possible with the conditions that apply to front-end home detention orders, including provisions for electronic monitoring.**

The Government notes this recommendation which will be considered further when any back-end home detention scheme is considered.

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<sup>29</sup> Page 235



The Department of Corrective Services noted in its submission that inmates on work release leave, education leave, day leave and weekend leave may be required to wear an electronic bracelet and (for day and weekend leave) must be in the company of their sponsor at all times. Inmates on external leave are subject to routine breath testing and random urinalysis on return to custody and may also be tested for drugs and alcohol by a field officer whilst on leave. The types of conditions that apply to home detention are broadly consistent with these measures, although the background checks on employers and sponsors of inmates on external leave provide an extra layer of security that is not necessarily present in the home detention scheme.

**Recommendation No 47 - that the Attorney General examines the feasibility of including the Probation and Parole Service in the Circle Sentencing process.**

The Government notes that the Probation and Parole Service is already involved in the circle sentencing process to a significant extent. Paragraph 9.15 of the report notes that "the links between Circle Sentencing and community based sentencing options are many. Not only are community based sentences the most frequent sentences handed down by a Sentencing Circle, but the purpose of the Circle process and the goals of community based sentencing are similar."

The Probation and Parole Service provides pre-sentence reports and attends Circles when requested. The Service is also involved in administering sentences that are developed by Circle Courts. In evidence to the Committee, the Area Coordinator of Community Offender Services in Dubbo advised the Committee<sup>30</sup> that "Probation and parole officers who appear before the Circle do that in a court duty capacity, so our role at the Circle is to provide alternatives that the Circle may need to take into consideration. Rather than just tendering our pre-sentencing report as we would do at the Local Court, we actually speak to that report. We read the report out so that all Circle members can ask us questions if they would like to."

The Department of Corrective Services also advises that some intersection of the roles and responsibilities of the Probation and Parole Service (PPS) and the Sentencing Circle will occur where an offender is concurrently supervised by the PPS and referred to a Sentencing Circle, whatever the outcome of the Circle may be.

Consequently, the PPS already appears to be engaged in the circle sentencing process to a more significant extent than the Committee perhaps envisaged, and any further opportunities for increased participation by the PPS will be encouraged should opportunities to do so be identified.

**Recommendation No 48 - that the Attorney General conduct a trial of the New South Wales Drug Court in a suitable major regional New South Wales town with such amendments to the program as are necessary in a regional setting. The Department should ensure that readily available and accessible programs and support services, such as drug and alcohol services and other health services, are available to maximise the success of offenders undertaking the program.**

The Government notes that the Drug Court of NSW is a specialised, resource-intensive program that is highly effective in dealing with a very particular client group

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<sup>30</sup> Hearing at Bourke on 15 June 2005

of predominantly opiate dependent property offenders facing significant custodial sentences. The specialised nature of its client group and the resources needed to support it restricts its applicability outside metropolitan NSW.

The Government notes the Committee's concern to extend the Drug Court program to enhance access to treatment for offenders with drug dependence in a regional area. In this context it should be noted that:

- the primary diversion program in NSW, the Magistrates Early Referral into Treatment (MERIT) Program is now in 60 local courts across the State representing over 80% of the local court case load. As at 30 September 2006, 6,963 offenders had entered the program with 3,673 successfully graduating;
- the Drug Court is only one of a continuum of diversion programs established by the Government to link to drug treatment a range of offenders from minor to more serious. Other programs include the MERIT Program, Cannabis Cautioning Scheme, Rural Alcohol Diversion pilot, Youth Drug and Alcohol Court and Young Offenders Act diversions.

The expansion of the Drug Court to another location is not currently under consideration by the Government. Instead, the program's focus for the current time is to consolidate its crucial role in the operation of the Government's new Compulsory Drug Treatment Correctional Centre which commenced in September 2006.

Drug and alcohol services supporting the Government's drug diversion programs have been significantly expanded over the past six years since the 1999 Drug Summit, and as a result of the joint Commonwealth and NSW Agreement Relating to the Illicit Drug Diversion Initiative. The Government will continue to work to ensure there are equitable and effective clinical services across NSW to assist people with drug and alcohol problems, including offenders, under the directions set in the NSW Health Drug and Alcohol Plan 2006-2010 and the NSW Government's State Plan, *A New Direction for NSW*.

**Recommendation No 49 - that the Government undertake a multi-agency project to examine the issues relating to fine default and driver's licences brought before the Committee during this enquiry and described in this report.**

The Government notes this Recommendation and acknowledges that these issues should be further examined. The Attorney General has sought advice from the Sentencing Council on the same issue and the Government will further consider the appropriateness of such a project once that advice has been received.

### **Concluding statement**

The report proposes a number of changes to the delivery of community based sentencing services. The Government has made significant achievements in these areas as detailed in the Department of Corrective Services and the Attorney General's Department submissions to the Inquiry and in the above responses. Any further initiatives in this area will be assessed according to how the outcomes will contribute to the State Plan and how resources can be reallocated to support that priority.