

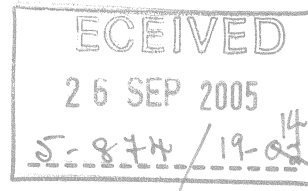
people with disability

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21 September 2005

The Hon. Christine Robertson, MLC  
Chairperson  
Standing Committee on Law and Justice  
NSW Legislative Council  
Parliament House,  
Macquarie Street  
SYDNEY NSW 2000



Dear Ms Robertson

**Inquiry into community based sentencing options for rural and remote areas and disadvantaged populations - question on notice**

I write in response to the above Inquiry and to the question on notice directed to me at the Inquiry's hearing on Tuesday 30 August 2005 at Sydney.

In relation to the hearing, I confirm that the transcript provided to me under cover of letter dated 8 September 2005 is a true and accurate record of my evidence.

The question on notice relates to PWD's submission to the above Inquiry dated 29 March 2005 to the following effect:

**"5. Imprisonment as the last resort**

PWD fully supports the presumption, applied by the courts when sentencing, that imprisonment is a last resort, and that therefore community based sentencing options should always be considered first.

PWD believes that reasons ought to be given, whenever a custodial sentence is imposed, why other sentencing options other than the imposition of a custodial sentence are not appropriate in the circumstances. Currently the *Crimes (Sentencing Procedure) Act 1999* (NSW) s 5(2) provides:

*A court that sentences an offender to imprisonment for 6 months or less must indicate to the offender and make a record of, its reasons for doing so, including:*

*(a) its reasons for deciding that no penalty other than imprisonment is appropriate...*

PWD considers that the provision should be extended to refer to sentences of greater than 6 months duration and to require reasons to be given and recorded *whenever an offender has been identified in proceedings as being a minor or as having a disability* (emphasis added). Consequential amendments to the sentencing laws applying to juvenile offenders may have to be made. We call upon this Inquiry to make a recommendation to this effect.

**Recommendation:** The *Crimes (Sentencing Procedure) Act 1999* (NSW) s 5(2) should be amended to refer to sentences of greater than 6 months duration and to require reasons to be given and recorded whenever an offender has been identified in proceedings as a minor or as having a disability.

It is envisaged that courts placed under such an obligation would record their reasons for not applying a community based sentencing option, and that where, as for many juvenile offenders and offenders with disability, the inappropriateness of a community based option is related to the unavailability of community resources to support that option, that the court would make specific reference to that fact. In this way it is anticipated that the issue of the unmet need for appropriate resources in rural and remote areas, and for these disadvantaged populations, would be highlighted on a daily basis in our courts, and that governmental action to address the need for such resources would follow.

For courts to be in a position to so state their reasons, they would need, however, to be in receipt of appropriate information at the pre-sentencing phase of proceedings. The NSW Law Reform Commission has previously made recommendations in this regard. It is our understanding that those recommendations have not been implemented in full or across the state. With this in mind, we call upon this Inquiry to invite verbal or other testimony addressing the issue of implementation of the NSW Law Reform Commission's recommendations numbered 36 and 37, dealing with pre-sentence reports and information that a court is able to request of government departments regarding services for offenders with disability (NSW Law Reform Commission Report 80 *People with an Intellectual Disability and the Criminal Justice System 1996*, pp 309-315"

I answer your question on notice as follows.

For the reasons given by the NSW Law Reform Commission at pages 309-310 of Report 80, cognitive disability in all its forms is relevant to sentencing determinations. PWD's proposal for reform (above) is contingent on *an offender's disability having already been identified in the proceedings,*