

**INQUIRY INTO COMMUNITY BASED SENTENCING
OPTIONS FOR RURAL AND REMOTE AREAS AND
DISADVANTAGED POPULATIONS**

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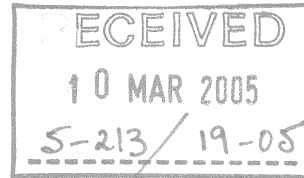
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Director
Standing Committee on Law and Justice
NSW Legislative Council
Parliament House
Macquarie Street
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Dear Madam/Sir

Inquiry into community based sentencing options for rural and remote areas and disadvantaged populations

NCOSS welcomes the opportunity to make a brief submission to the *Inquiry into community based sentencing options for rural and remote areas and disadvantaged populations*. As the peak body for the non-government human services sector in NSW we have a strong interest in law and justice issues. We are concerned that sentencing policy and practice should ensure that people from rural and remote areas, and other disadvantaged population groups have equal access to positive sentencing options that can contribute to effective rehabilitation.

The benefits of community based sentencing

NCOSS supports the principle of non custodial sentencing and community based sentencing options as a means of promoting effective rehabilitation, maintaining family and community links, minimizing disruption to offender's families, maintaining continuity in employment or education and minimizing the costs to the state of incarcerating offenders.

However, we note that all forms of community based sentencing have been considered together in the discussion paper and in the terms of reference for the Inquiry. NCOSS has serious concerns about home detention as a community based option and considers that the Inquiry should seek to identify and consider each option separately. Our concerns regarding home detention (either front end or back end) are detailed later in this submission.

NCOSS recognises that community based sentencing options are punishments in their own right and are effective sanctions, rather than simple cost saving alternatives to

imprisonment.¹ It is important to place value upon the social benefits of community sentencing options. In this regard non-custodial options deliver added value. They stand on their own merits, as proportionate to the offence, may be potentially more effective in terms of rehabilitation and re-integration with community, as well as potentially delivering a cost benefit to the state.

NCOSS considers that an important component of non-custodial sentencing should be mentoring for offenders and we note the work of *Justice Action* in this area. Mentoring could be developed as a distinct community based sentencing option. Mentoring, if properly resourced could 'act as an innovative and alternative crime-fighting option, which could be, in particular circumstances, more successful and efficient than re-imprisoning offenders'.²

NCOSS also notes the positive reports on the Youth Alcohol and Drug Court Scheme now operating in Broken Hill.

Locational disadvantage

For the full range of benefits of community based sentencing options to be realized by the offender, their family and society at large, these sentencing options must be effectively resourced across the state, including rural and regional locations.

The discussion paper highlights that some non-custodial options including Community Service Orders (CSO), administered by the Probation and Parole Service and Drug Court, Youth Drug and Alcohol Court and periodic detention are not available in some parts of NSW. NCOSS would recommend that resources be allocated to extend this provision across NSW.

NCOSS does not consider it equitable that people living in rural and remote NSW, including Indigenous people be disadvantaged because of locational factors. People should not be put in prison simply because of their geographical isolation.

It can be assumed that resources currently being spent on putting rural people into full time custody could be diverted to community service order and drug court options. Given that the current cost of a full time prisoner is higher than the associated cost of community based options this could have delivered both cost savings in the Corrective Services budget and alleviate prison overcrowding.

Note however that the principle means of reducing the prison population is to focus on crime prevention, rehabilitation and social equity programs to tackle the causes of crime, rather than continue to arrest and imprison at ever increasing rates.

With more than 9,000 people in jail, NSW has witnessed an increase of 50 percent in its prison population at a cost of at least \$500 million per year. A further \$1 billion has been spent on expanding and building new jails in the last decade

NCOSS notes that NSW has the third highest spending rate per person on corrective services in Australia and that this has increased in each of the four years since 1999-2000. NSW has the second highest cost per person per day and the second highest

¹ Law Reform Commission of NSW, 1996, Sentencing Discussion Paper 33 (1996), at <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/DP33CHP9>, accessed 2 March 2005

² Justice Action, 2004, *Mentor's Handbook*, p5.

real recurrent costs per day. We also have the second worst recidivism rate (to prison) in the country. We also note that NSW has the sixth lowest use of community-based corrections, but the third highest rate of successful completion of community corrections orders.³

Community based sentencing and population groups

Aboriginal people continue to be grossly over-represented in our jails with an imprisonment rate 13 times higher than for non-Aboriginal people.⁴ Aboriginal people are almost twice as likely to be sentenced to prison.⁵ Aboriginal women are even more over represented, at a rate of approximately 15.5 times that of non-Aboriginal people.

NCOSS notes the general comments made by the Law Reform Commission in its *Report on Sentencing Aboriginal Offenders*:

- 'An understanding of the special needs of Aboriginal offenders, and an awareness of what is culturally appropriate in an individual case, are essential prerequisites for more effective programs, services and options directed to achieving rehabilitation.
- Aboriginal people do not comprise one, undifferentiated category. For programs and services to be effective, there must be an understanding of Aboriginal diversity and an appropriate range of non-custodial sentencing options should be made available.
- It is important that those preparing pre-sentence reports, and members of the judiciary deciding upon an appropriate sentence, be fully conversant with all the available options.
- There is a need to address language and communication issues which may impact on the ability of Aboriginal offenders and their families to understand the sentencing process, the outcome of the hearing and any obligations to comply with conditions attached to a sentence.
- The Aboriginal community should be involved in the sentencing process and in the design and delivery of sentencing options.
- As alcohol and drugs are implicated, either directly or indirectly, in so much of Aboriginal crime, both custodial and non-custodial sentences need to include, as a priority for the majority of Aboriginal offenders, programs addressing alcohol and substance abuse, staffed by suitably trained workers, particularly Aboriginal workers.
- In order to overcome the practical difficulties of delivering sentencing options to Aboriginal offenders in remote rural regions, creative alternatives to conventional options, which nonetheless achieve the same sentencing objectives, must be available.
- Statistical and other information must be recorded to enable an understanding of Aboriginal rates of recidivism and the effectiveness of

³ SCRGSP (Steering Committee for the Review of Government Service Provision) 2005, *Report on Government Services 2005*, Productivity Commission, Canberra, 7.11:7.31

⁴ Pelly M, "Tough line on crime fills jails" *Sydney Morning Herald*, 4 March 2005, p3.

⁵ Aboriginal Justice Advisory Committee, *Diverting Aboriginal Adults from the Criminal Justice System* at

[http://www.lawlink.nsw.gov.au/ajac.nsf/51bf77d7793e43184a2565e800280584/53ae9085aa38d49bca256d190012f0c7/\\$FILE/diversion%20paper.pdf](http://www.lawlink.nsw.gov.au/ajac.nsf/51bf77d7793e43184a2565e800280584/53ae9085aa38d49bca256d190012f0c7/$FILE/diversion%20paper.pdf), accessed 4 March 2005.

sentencing options and parole, and for devising strategies for the rehabilitation of offenders⁶

NCOSS considers that any community based sentencing option needs to be culturally relevant, accessible to remote communities and aligned with other policy initiatives to prevent crime, in particular anti poverty strategies. Options should also consider the intersectionality between Indigenous status and gender, disability etc.

NCOSS also notes the importance of Community Service Order placements being culturally appropriate. This may include placement with an Indigenous organisation or it may not depending on the needs of the offender and the community.

NCOSS is very concerned as to the impacts of prison upon women, and in particular Aboriginal women. The *Speak Out Speak Strong Project* found that

- Aboriginal women in prison are predominantly young, with an average age of 25;
- That they largely have low levels of educational attainment and high levels of unemployment;
- Most of are single mothers with between two and four children; and
- That they are also responsible for the care of children other than their own biological children, and that many were also responsible for the care of older family members such as parents, uncles or aunts;
- 70% of the women surveyed said that they had been sexually assaulted as children;
- 78% of the women stated that they had been victims of violence as adults and 44% of the said they had been sexually assaulted as adults

Most of the women surveyed in the *Speak Out Speak Out Strong* project had long histories of involvement with the criminal justice system. 60 percent had been convicted of a criminal offence while still juveniles, with 36 percent receiving their first conviction between 11 and 12 years of age.⁷

Given this background it is disturbing to note that women prisoners, as mothers, carers and victims of violence and abuse are the fastest growing population group in NSW prisons. This raises questions not only about sentencing options, but more fundamentally why it is that Aboriginal women are having such high rates of contact with the criminal justice system in the first place. These arguments have been well canvassed in previous reports to Government and have been clearly stated by Aboriginal women and communities themselves. Unfortunately the necessary shift in policy and practice has yet to be realized and NSW continues its shameful history of incarcerating Aboriginal women at an unacceptable rate.

Clearly it makes sense to provide a range of community based sentencing options to reduce the number of Aboriginal women in prison and ensure that kinship and family connections in Aboriginal communities can be maintained. NCOSS supports the views expressed by the NSW Aboriginal Justice Advisory Council that strategies to support Aboriginal women serving sentences in the community must specifically cater for the family, and other needs of Aboriginal women. These needs may include including support

⁶ Law Reform Commission of NSW, 2000, Report 96 (2000) Sentencing Aboriginal Offenders, at <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/r96chp5>, accessed 3 March 2005.

[http://www.lawlink.nsw.gov.au/ajac.nsf/51bf77d7793e43184a2565e800280584/5456562c82f0e90aca256d190012c3ed/\\$FILE/speak%20out%20speak%20strong.pdf](http://www.lawlink.nsw.gov.au/ajac.nsf/51bf77d7793e43184a2565e800280584/5456562c82f0e90aca256d190012c3ed/$FILE/speak%20out%20speak%20strong.pdf), accessed 4 March 2005.

in managing substance misuse, recovering from trauma associated with domestic and family violence and counselling following sexual assault.

People with intellectual disability

NCOSS acknowledges the difficulties in gaining an accurate picture of the numbers of people with an intellectual disability involved in the criminal justice system, however it is well accepted and understood that a significant proportion of NSW prisoners have an intellectual disability. According to the NSW Law Reform Commission, people with intellectual disability are incarcerated at a rate four times greater than that of the general population.⁸

NCOSS endorses the campaign currently being undertaken by the NSW Council for Intellectual Disability and the Intellectual Disability Rights Service to influence law and justice policy in regards to people with intellectual disability. NCOSS agrees that the NSW policy and practice must be improved by supporting people with intellectual disability in a way that promotes and supports lawful conduct and by seeking alternatives to the criminal justice system for people with intellectual disability if possible.⁹

People with mental health disability

NSW Corrections Health reports that 'The twelve-month prevalence of 'any psychiatric disorder' (psychosis, anxiety disorder, affective disorder, substance use disorder, personality disorder, or neurasthenia) identified in the NSW inmate population is substantially higher than in the general community (74 percent versus 22 percent)'.¹⁰

They also report that over one-third of sentenced prisoners had suffered a mental disorder in the previous twelve months, female prisoners having a higher prevalence of psychiatric disorder than male prisoners.

Of particular importance is the contribution of mental illness to offending behaviour and the role of community mental health services in keeping the mentally ill out of custody. It is well understood that systems failures in mental health and drug and alcohol human service systems are contributing to unacceptable numbers of people with mental illness and/or dual diagnosis ending up in NSW prisons. A recent opinion piece in the *Sydney Morning Herald* by Professor Eileen Baldry highlighted that 'hardened criminals are not filling NSW's prisons - the mentally ill and socially disadvantaged are'.¹¹

For the full benefits of community based sentencing options to be realized for individuals, families and society at large significant resources need to be put into associated mental health services in the community. These resources are needed at both acute and rehabilitation ends of the service spectrum. There is an urgent need for additional mental health resources both in metropolitan and rural NSW if the over-representation of people with mental illness in our prisons is to be effectively tackled.

⁸ NSW Council for Intellectual Disability (CID), Position Papers – Criminal Justice System No 1, at <http://www.nswcid.org.au/systemic/position/justice.one.html>, accessed 4 March 2005.

⁹ NSW Council for Intellectual Disability (CID), Position Papers – Criminal Justice System No 1, at <http://www.nswcid.org.au/systemic/position/justice.one.html>, accessed 4 March 2005.

¹⁰ Butler T, Allnutt S. *Mental Illness Among New South Wales' Prisoners*. NSW Corrections Health Service, 2003. p8.

¹¹ Baldry E, 'Hardened criminals are not filling NSW's prisons - the mentally ill and socially disadvantaged are' *Sydney Morning Herald*, 18 January 2005.

In order for people with mental illness to successfully complete community based sentences, the necessary policy and fiscal alignments also need to be made across government. This is particularly the case for rural communities where existing mental health service provision is patchy at best.

Young People

Governments are under an international human rights obligation to only use custody as a last resort for juvenile offenders. Under the *International Convention on the Rights of the Child (CROC)*, the best interests of the child shall be a primary consideration. Further, the detention or imprisonment of a child ...'shall be used only as a measure of last resort and for the shortest appropriate period of time'.¹²

Although Australia maintains a reservation to the provisions of Article 37 C above this relates to the geographic considerations rather than to a disregard of the 'bests interest of the child' principle. This reservation does not preclude the NSW government from improving the juvenile justice system to gain better outcomes for young offenders and the community at large.

In this regard NCOSS welcomes the national trend away from custodial detention of juvenile offenders that has occurred over the last few years. NSW followed this downward trend with the daily average number of children in detention falling from 285 in 1998.99, to a low of 217 in 2001.02. This rose slightly to 220 in 2002.03.¹³

However we note that whilst 80 percent of NSW Juvenile Justice clients (10 to 17 years) were supervised in the community, with the remaining 20 per cent in detention, this is still a slightly higher detention rate than the national average.¹⁴

We maintain our concern that young Aboriginal people continue to be vastly over-represented in juvenile detention centres. Of the NSW average daily population of 220 young people in detention, 98 are Indigenous. Aboriginal young people between 10 and 17 years are ten times as likely to be detained in corrections facilities in NSW.¹⁵

NCOSS notes the success of youth justice conferencing at the diversion stage of the criminal justice process. In a 2002 study comparing re-offending by young people who participated in a conference with re-offending by young people who attended Court, it was found that conferencing produced a reduction of up to 15 to 20 percent in re-offending across different offence types, regardless of the gender, criminal history, age and Aboriginality of the offenders.¹⁶

These results point to the value of diverting people from the criminal justice system, investing in strategies that focus on restorative outcomes and minimizing custodial responses to juvenile crime.

¹²Article 37, International Convention on the Rights of the Child.

¹³ SCRGSP (Steering Committee for the Review of Government Service Provision) 2005, *Report on Government Services 2005*, Productivity Commission, Canberra, F9.

¹⁴ SCRGSP (Steering Committee for the Review of Government Service Provision) 2005, *Report on Government Services 2005*, Productivity Commission, Canberra, F7.

¹⁵ SCRGSP (Steering Committee for the Review of Government Service Provision) 2005, *Report on Government Services 2005*, Productivity Commission, Canberra, F11.

¹⁶ Garth Luke and Bronwyn Lind, 2002, 'Reducing Juvenile Crime: Conferencing versus Court', *Crime and Justice Bulletin No 69 April 2002*, NSW Bureau of Crime Statistics and Research, p1.

Concerns regarding home detention

Although NCOSS is broadly supportive of community based sentencing options, we do have reservations regarding the use of home detention. NCOSS considers that the net widening impacts of home detention outweigh the cost benefits of this form of community sentencing.

In particular NCOSS is concerned about the impacts of home detention upon the families of people so detained. The use of the home as prison inevitably draws in family members into the culture of surveillance and control associated with the criminal justice system.

In this way family members are imprisoned too as 'one of the consequences of home prisons is that new layers of criminality are introduced into the home by virtue of home detention'¹⁷ and that family members (usually women) are forced to provide unpaid domestic services that professional prison officers and social workers provide in traditional prisons.

New Zealand research by King and Gibbs indicates that when women agreed to home detention most indicated an obligation to consent because they were keen to get their partner out of prison. Further, the 'women felt they had to sacrifice their routines, time, money and energy to support the detainee... another impact is that families may feel responsible and to blame if the home detainee re-offends.'¹⁸

Further, given the dynamics of the home as prison, there are legitimate fears that forcing women into the role of prison guard could leave them at risk of violence. This creates a double bind for the woman as reporting violence will necessarily lead to their partner being sent to mainstream prison.

Women are also affected by home detention as offenders themselves. It is this area that the prospect of net widening through home detention has become most obvious. The 1999 Review of Home Detention found that 24 percent of women were given home detention compared to 7 percent of men and that the most common offence for which home detention was ordered was shoplifting.¹⁹

NCOSS also notes the findings of research into home detention in Queensland that identified a number of cultural and social factors amongst Aboriginal people that may make home detention culturally inappropriate. The Law Reform Commission also 'a concern with home detention as it affects Aboriginal peoples is that they are more culturally vulnerable to suffer from isolation than are non-Aboriginal people'.²⁰

Conclusions

NCOSS supports the principle of community based sentencing options. However we have serious concerns regarding the net widening capacity of home detention.

¹⁷ George A, *Electronic home detention – a woman's work is never done* (unpublished)

¹⁸ King and Gibbs, 2003, quoted in George A, *Electronic home detention – a woman's work is never done* (unpublished)

¹⁹ George A, *Electronic home detention – a woman's work is never done* (unpublished)

²⁰ Law Reform Commission of NSW, 2000, Report 96 (2000) Sentencing Aboriginal Offenders, at <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/r96chp5>, accessed 3 March 2005.

We consider that non-custodial options, if properly resourced, have the capacity to promote rehabilitation, facilitate continuity in employment/education and better maintain family and community links. Community based sentencing options are punishments in their own right and are effective sanctions, rather than simple cost saving alternatives to imprisonment.

NCOSS does not consider it equitable that non-custodial options be denied to people living in rural and remote NSW for purely locational reasons. Therefore, additional resources, potentially found through cost savings associated with fewer full time custodial sentences, will be needed to effectively resource community based options in rural NSW.

NCOSS considers that any community based sentencing option needs to be culturally relevant, accessible to remote communities and aligned with other policy initiatives to prevent crime, in particular anti poverty strategies.

NCOSS notes the specific disadvantages facing Aboriginal people, women, young people, people with disability, including mental illness and low-income earners in both metropolitan and rural NSW. An effective law and justice strategy needs to focus upon the human service needs of these groups in order to avoid criminalization by virtue of poverty and disadvantage. The significant over-representation of Aboriginal people, including Aboriginal women and people with intellectual disability and mental illness in NSW prisons indicates we have a very long way to go to reach that aim.

Non-custodial sentencing, **excluding** home detention, is a useful tool. Better targeting the particular circumstances of people in rural and remote NSW, and disadvantaged populations would enhance its effectiveness.

Further policy and fiscal alignments will also need to be made across government to maximize the outcomes of community based sentencing, and as importantly to reduce the incidence of disadvantaged people coming into contact with the criminal justice system in the first place.

Thank you for the opportunity to make a submission to the Inquiry, If you have enquiries regarding this submission, please contact Gary Moore, Director on 9211 2599 ext 107 or by email to gary@ncoss.org.au

Yours faithfully



Gary Moore
Director.