

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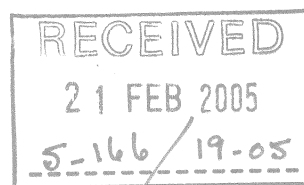
**INQUIRY INTO COMMUNITY BASED SENTENCING
OPTIONS FOR RURAL AND REMOTE AREAS AND
DISADVANTAGED POPULATIONS**

Organisation: NSW Law Reform Commission
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Date Received: 21/02/2005

Theme:

Summary:

16 February 2005



The Director
 Standing Committee on Law and Justice
 Legislative Council
 Parliament House
 Macquarie Street
 SYDNEY NSW 2000

Dear Director

INQUIRY INTO COMMUNITY-BASED SENTENCING OPTIONS FOR RURAL AND REMOTE AREAS, AND SPECIAL NEEDS/DISADVANTAGED POPULATIONS

I refer to your letter dated 28 January 2005 inviting the Law Reform Commission to make a submission to the inquiry into community-based sentencing options. Since 1996, the Commission has undertaken a major project into aspects of the law of sentencing in New South Wales. The Commission has published the following consultation papers and Reports:

- Discussion Paper 33, *Sentencing* (April 1996)
- Report 79, *Sentencing* (December 1996)
- Report 96, *Sentencing: Aboriginal Offenders* (October 2000)
- Issues Paper 19, *Sentencing: Young Offenders* (July 2001)
- Issues Paper 20, *Sentencing: Corporate Offenders* (December 2001)
- Report 102, *Sentencing: Corporate Offenders* (June 2003)

The Commission's work on the sentencing of Aboriginal offenders is perhaps the most directly relevant to the issue of community-based sentencing options for rural and remote areas. I enclose a copy of Report 96. As the Commission noted in Report 96, "At every critical point in the exercise and administration of justice, the rights, responsibilities and interests of the victim, offender and the community, must be considered. Increasing levels of over-representation before the courts and in prison, and higher than average

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recidivism rates among Aboriginal offenders, indicate that the justice system is inadequately serving the interests of Aboriginal people” (Report 96, p 108-9). The Commission went on to point out that “The only practical way to achieve cultural relevance in the criminal justice system is to involve Aboriginal people in the design and delivery of sentencing options. Participation by Aboriginal communities in sentencing strategies may also be an effective means of empowering communities where the traditional Indigenous authority structures and social cohesion may have broken down, and may ultimately reduce offending. It must be acknowledged that this objective is difficult to achieve and will become more difficult with changing social and economic conditions. However, without a substantial increase in the involvement of Aboriginal communities in the process of dealing with offenders, no improvement is likely” (Report 96, p 114).

I draw to your attention the following community-based initiatives that the Commission noted in its work.

- In Victoria, community justice panels, comprising volunteers selected by Aboriginal communities, works with criminal justice agencies. The Koori Justice Program, operated in Victoria by local Aboriginal co-operatives, employs a Koori justice worker to provide supervision and support for young Aboriginal people in contact with the criminal justice system. Communities receive funding to assist in managing young offenders within their own community (Report 96, p 114-115).
- In Queensland, a local justice initiatives program has been in operation for a number of years. This program, aimed at seeking local solutions for local problems, was originally piloted in the remote communities of Palm Island and Koyanyama, and then expanded into other Aboriginal communities throughout Queensland. The program aims to facilitate consultation between local Aboriginal communities and justice agencies, including the judiciary, the police and local councils. In some communities, this has extended to providing advice to courts about culturally sensitive sentencing matters (Report 96, p 114).
- In New South Wales, circle sentencing (based on a Canadian model) was initially introduced on a trial basis, and has since been extended to several additional Aboriginal communities (Report 96, p 124-126).

The Commission’s Report on sentencing of Aboriginal offenders also considered specifically the particular problems faced by Aboriginal female offenders. This material is contained in Chapter 6 of the Commission’s Report, and notes a number of initiatives developed in Canada. Particular disadvantages faced by Aboriginal women in rural communities are noted in the Report.

The Commission will shortly be publishing a Report dealing with the sentencing of young offenders. It will examine various diversionary options, in particular youth conferencing under the *Young Offenders Act 1997* (NSW).

Please do not hesitate to contact me if you would like to discuss any further aspects of the Commission's work on sentencing.

Yours sincerely

A handwritten signature in black ink, appearing to read "Peter Hennessy". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Peter Hennessy
Executive Director

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