

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

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Theme:

Summary:



Department of Corrective Services



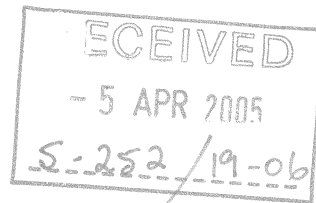
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Our Reference:

Your Reference:

The Hon Christine Robertson MLC
Committee Chair
Legislative Council Standing Committee
On Law and Justice
Parliament House
Macquarie Street
SYDNEY 2000



Dear Ms Robertson

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

I refer to your invitation to me to lodge a submission to the inquiry on the issues raised by the inquiry's terms of reference.

Please find attached a submission paper prepared by the Department of Corrective Services.

Ms Catriona McComish, Senior Assistant Commissioner Community Offender Services, will be available, on behalf of the Department, to answer any questions the Committee may have which relate to the terms of reference, the attached submission or the enforcement and supervision of community-based sentences.

Yours faithfully


RON WOODHAM
Commissioner

31 March 2005

Department of Corrective Services – Submission – Legislative Council Standing Committee on Law and Justice – Inquiry into community-based sentencing options for rural and remote areas and disadvantaged populations.

PART 1 – COMMENTS ON THE COMMITTEE’S TERMS OF REFERENCE (TORs)

1 That the Standing Committee on Law and Justice inquire into and report on whether it is appropriate and in the public interest to tailor community-based sentencing options for rural and remote areas in NSW and for special need / disadvantaged populations, including:

(a) the perceived benefits and disadvantages of community-based sentencing options including periodic detention, intensive supervision programs (home detention eg. Drug Court), Community Supervision Orders.

1. Periodic detention and home detention are generally considered to be community-based sentences, even though strictly speaking they are custodial sentences¹. The *Crimes (Sentencing Procedure) Act 1999* describes them (in the heading to Division 2 of Part 2) as “alternatives to full-time detention”, as distinct from Division 3 of Part 2 “non-custodial alternatives.” Revocation of a periodic detention order or a home detention order results in full-time imprisonment, although each order may subsequently be re-instated by the Parole Board after at least 3 months imprisonment². A revoked periodic detention order may also be re-instated as a home detention order instead of a periodic detention order, if the offender is eligible and assessed as suitable³.
2. The 1978 Nagle Report recommended that “alternatives to imprisonment should be used as extensively as possible, and prisons should be used only as a last resort.”⁴ This principle is now an accepted part of sentencing in NSW.⁵
3. Imprisonment by way of periodic detention was introduced in New South Wales in 1971 under the *Periodic Detention of Prisoners Act 1970*, which was amended a number of times before being replaced by the *Periodic Detention of Prisoners Act 1981*. The latter Act was repealed on 3 April 2000, when the *Crimes (Sentencing Procedure) Act 1999* and *Crimes (Administration of Sentences) Act 1999* commenced.
4. Imprisonment by way of home detention was introduced in New South Wales in 1996 under the *Home Detention Act 1996*, which was also repealed on 3 April 2000. Section 4(2) of this Act stated
It is not the object of this Act to divert to home detention offenders who might be appropriately dealt with by way of periodic detention or by a non-custodial form of sentence.

¹ See Part 3 *Crimes (Administration of Sentences) Act 1999* “Imprisonment by way of periodic detention”, Part 4 *Crimes (Administration of Sentences) Act 1999* “Imprisonment by way of home detention”,

² S. 164A, s. 168A *Crimes (Administration of Sentences) Act 1999*

³ S. 165 *Crimes (Administration of Sentences) Act 1999*

⁴ Nagle, 1978, p.729

⁵ S.5(1) *Crimes (Sentencing Procedure) Act 1999*: A court must not sentence an offender to imprisonment unless it is satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate.

5. The NSW Law Reform Commission, in *Discussion Paper 33: Sentencing* (April 1996), noted:

Periodic detention is designed to meet the community's demand for custodial punishment which provides a deterrent not only to the offender but to others who might be tempted to offend. It provides the court with a sentencing option which, while rigorous, is not as drastic as full-time imprisonment. The advantages of periodic detention are that:

- *it registers disapproval of the offender's activities without all of the negative effects of full-time imprisonment;*
- *the offender's debt to the community can still be paid without he or she having to give up employment;*
- *domestic relations can largely be maintained; and*
- *it is less costly to the community than full-time imprisonment.*

6. The Department of Corrective Services concurs with the Law Reform Commission's views on the benefits of the periodic detention scheme, but notes that the profile of the offender population has changed significantly, and now very few of the offenders concerned have full-time employment. Additionally, periodic detention does not currently allow for rehabilitation programs aimed at reducing the likelihood of further offending, whereas home detention combines close surveillance, extensive case management and participation in targeted group-work programs.
7. When first introduced, imprisonment by way of periodic detention was restricted to males aged 18 years or over who had not previously served a continuous term of imprisonment of over 1 month. In 1977 periodic detention was extended to females. The 1981 Act expanded the availability of periodic detention to persons who had not served a term of imprisonment of more than 6 months in the past 7 years. From 1986 until 2002 there was no limitation on periodic detention based on a person's antecedents. Currently, section 65A of the *Crimes (Sentencing Procedure) Act 1999* provides that periodic detention is not available for offenders who have served a sentence of more than six months full time imprisonment, while section 65B of the same Act provides that periodic detention is not available to persons who have been convicted of certain sexual offences.
8. Section 6(1) of the *Crimes (Sentencing Procedure) Act 1999* provides that a court that has sentenced an offender to imprisonment for not more than 3 years may make a periodic detention order directing that the sentence is to be served by way of periodic detention. Section 6(2) of that Act provides that this section is subject to the provisions of Part 5 of the Act. Persons are generally only given a periodic detention order after they have been assessed for suitability for that sentence by the Probation and Parole Service⁶ and, if a court departs from the recommendations in a suitability assessment report (either by sentencing the offender to periodic detention or declining to do so), the court must record its reasons⁷.
9. A typical periodic detainee attends periodic detention on Friday evenings and remains on periodic detention until Sunday evenings, when they may return home⁸. A detainee must repeat this process every week until he or she has completed their sentence (or, if the sentence is more than 6 months, the non-parole period of their sentence⁹), or until the

⁶ S. 68 *Crimes (Sentencing Procedure) Act 1999* states a court may refer an offender for assessment for suitability for periodic detention before imposing a sentence of imprisonment on the offender

⁷ S. 66(4) *Crimes (Sentencing Procedure) Act 1999*

⁸ Mid-week periodic detention is available at Silverwater PDC (males) and Norma Parker PDC (females).

⁹ See s. 46 *Crimes (Sentencing Procedure) Act 1999*

detainee has earned “promotion” to stage 2 periodic detention¹⁰. Under stage 2, a periodic detainee does not remain at a periodic detention centre overnight but performs two 8-hour periods of supervised community service work each week¹¹. (Stage 1 periodic detainees may also perform community service work – they are transported between a periodic detention centre and worksites during their period of incarceration.)

10. Section 7 (1) of the *Crimes (Sentencing Procedure) Act 1999* provides that a court that has sentenced an offender to imprisonment for not more than 18 months may make a home detention order directing that the sentence be served by way of home detention. Section 7(2) of that Act provides that this section is subject to the provisions of Part 6 of the Act. A court may only make a home detention order if an assessment report finds the offender suitable for home detention¹²; and, if declining to make a home detention order when an assessment report finds the offender suitable, must record its reasons¹³.
11. Community Service Orders are issued under section 8 of the *Crimes (Sentencing Procedure) Act 1999*, subject to Part 7 of the Act. A person who is subject to a community service order must perform community service work and may also be ordered to attend education, training or offence-focussed group-work programs for the number of hours specified in the sentence¹⁴. The maximum number of hours specified in a community service order (or cumulative community service orders) is 500¹⁵. Offenders may only be sentenced to community service orders if they are first assessed as suitable by the Probation and Parole Service.¹⁶ The Probation and Parole Service supervise the offender’s compliance with a community service order.
12. Good behaviour bonds are issued under sections 9–12 and Part 8 of the *Crimes (Sentencing Procedure) Act 1999*. A court may not, in relation to the same offence, make both a community service order and an order that a person be subject to a good behaviour bond¹⁷.
13. A “section 9” bond may be issued “instead of sentencing the offender to prison”, and has a maximum length of 5 years. A “section 10” bond may be issued when a court finds an offence proved but does not record a conviction provided the person enters a good behaviour bond, and has a maximum length of 2 years. A “section 11” order (also known as a *Griffiths Remand or Griffiths Bond*) allows a court to grant an offender bail, post-conviction but pre-sentence, for a maximum of 12 months, for a number of purposes including for the court to assess the offender’s prospects for rehabilitation, for the offender to participate in an interventions program, or for the offender to demonstrate that rehabilitation has taken place. A “section 12” bond may be issued as a condition of a

¹⁰ Stage 2 periodic detention is a privilege which must be earned. Detainees are expected to have had three months of consecutive attendances before being considered for stage 2. Detainees who have incurred any absences without leave (AWOLs) usually are not approved for stage 2 (but may be approved if a satisfactory attendance pattern has been established since the last AWOL.) Stage 2 detainees must also have a proven record of conduct and work performance, and must have demonstrated a capacity to function with minimum supervision

¹¹ At 27 February 2005, 28.1% of periodic detainees were Stage 2 detainees: 175 stage 2 from 623 overall.

¹² S. 78(4) *Crimes (Sentencing Procedure) Act 1999*

¹³ S. 78(7) *Crimes (Sentencing Procedure) Act 1999*

¹⁴ Section 3(1) of the *Crimes (Administration of Sentences) Act 1999* provides that community service work means any service or activity approved by the Minister, and includes participation in personal development, educational or other programs.

¹⁵ S. 8(2), s.87(1) *Crimes (Sentencing Procedure) Act 1999*.

¹⁶ S. 86 and Division 3 of Part 7 *Crimes (Sentencing Procedure) Act 1999*.

¹⁷ S. 13 *Crimes (Sentencing Procedure) Act 1999*

suspended sentence of imprisonment of not more than two years, and may only be made for a term not exceeding the term of the sentence.

14. A good behaviour bond, regardless of the section under which it is issued, *must* contain conditions that the offender will appear before the court if called upon to do so at any time during the period of the bond, and that the offender will be of good behaviour for the duration of the bond. It *may* contain any other conditions imposed by the court, except conditions that the offender is to perform community service work or pay reparations¹⁸. None of the bonds, however, contain conditions relating to monitoring, other supervision or (except for section 11 bonds) rehabilitation programs – they may all be supervised or unsupervised. The range of conditions that may be attached to a good behaviour bond is limitless, and depend on the particular circumstances of the matter; but in practice, where conditions are imposed, supervision is nearly always a condition. Probation and Parole officers, in writing pre-sentence reports, may recommend conditions to be attached to a bond in the event that a good behaviour bond is ordered.
15. Whilst community-based sentencing options help sustain the relationship between offenders and their communities, full time imprisonment can break down those relationships by removing the offender to a distant location and by making visits by families and friends a difficult task, especially for those who are financially disadvantaged. It should be acknowledged, however, that at times the removal of an offender is beneficial to his/her family and community.
16. Community service work programs can also be of social and economic benefit to the community by the undertaking of community projects that enhance the local environment, and by providing the opportunity for offenders to make reparation to the community.

T.O.R 1(b) The relationship between different Intensive Supervision Programs – Home Detention and Periodic Detention (Stage 1 and 2)

17. Periodic detention is NOT an intensive supervision program. An offender subject to a periodic detention order is required to attend periodic detention each week, and otherwise receives no supervision during periods of non-attendance (unless also subject to supervision under a separate sentence).
18. Intensive Supervision refers to a way of delivering intensive case management, monitoring, services and programs. The only two orders under the Intensive Supervision Program are home detention orders and Drug Court orders. However, there is nothing to stop a court imposing intensive supervision as a condition of a good behaviour bond.
19. Home detention and periodic detention are not alternatives for each other¹⁹. As currently administered, periodic detention provides the opportunity for offenders to complete community projects under supervision, but does not provide programs to reduce the likelihood of recidivism. By contrast, home detention provides an opportunity, through intensive supervision and controlled work and leisure options, to require attendance at evidence-based group-work programs targeted to reduce re-offending.

¹⁸ *Crimes (Sentencing Procedure) Act 1999* s. 95

¹⁹ S. 80(1A) *Crimes (Sentencing Procedure) Act 1999* provides that a court is not to refer an offender for simultaneous assessment for periodic detention and home detention.

20. Neither periodic detention nor home detention is a “soft option.” They are both forms of imprisonment that demand a high level of self-discipline from offenders for the entire length of their sentence. The intent behind a sentence of imprisonment by way of periodic detention is that the person *must* attend, each week, for 45.5 hours of imprisonment. Despite section 66(1)(f) of the *Crimes (Sentencing Procedure) Act 1999*²⁰, there is no voluntary aspect to attendance: attendance is mandatory. Reporting to a periodic detention centre at the same time every week, however, places a tremendous strain on detainees, which is increased the longer a detainee is subject to a sentence. There have even been claims by some detainees that they deliberately breached their attendance requirements in order to be committed to full-time imprisonment rather than maintain the necessary discipline of weekly attendance.
21. The home detention scheme also requires significant self-discipline from offenders. Home detention imposes substantially greater constraints on an offender’s liberty and behaviour than periodic detention, and is a more demanding and rigorous program, since it operates and constrains the offender full-time rather than two days per week. Home detention orders contain conditions on a detainee’s behaviour (eg abstinence from alcohol) which only apply to periodic detainees during their detention periods. Home detainees may be tested for the presence of alcohol and illegal drugs at any time. There is considerable potential for stress if other household members regularly consume alcohol in the presence of a home detainee. Also, whilst home detainees are permitted regular scheduled periods away from home for employment or necessary shopping, they are not permitted a shopping trip just because they have run out of bread, milk or cigarettes: such items must be purchased during scheduled absences from the home.
22. Notwithstanding that home detention is generally more onerous than periodic detention, there are nevertheless offenders who are suitable for home detention and unsuitable for periodic detention, such as offenders at risk of assault by other detainees, or offenders with sole permanent responsibility for young children. Offenders who require therapeutic programs to address their offending behaviour are also currently far more suited to home detention than periodic detention.
23. Following interviews with home detainees and their families, the *Review of the NSW Home Detention Scheme*²¹ (Heggie, 1999) found that the scheme’s “success or failure depends on its ability to remain flexible enough to impose court ordered penalties without imposing undue strain on the families and friends of offenders living with home detention” (p. 85). It also found that “home detention neither increases nor aggravates the incidences of domestic violence within families living under the imposition of a home detention order” (p. x) but noted that the suitability assessment for the program requires an assessment of the potential for domestic violence. The Department of Corrective Services Corporate Research, Evaluation and Statistics Unit is currently undertaking a follow-up Review of the Home Detention Scheme.
24. Under the current restrictions of the home detention legislation, it would be difficult to extend the home detention scheme to remote areas where the case load (given the strict criteria for eligibility) would be scanty and the monitoring systems (electronic) would be unreliable.

²⁰ “A periodic detention order may not be made with respect to an offender’s section of imprisonment unless the court is satisfied... (f) that the offender has signed an undertaking to comply with the offender’s obligations under the periodic detention order.”

²¹ Department of Corrective Services Research Publication No 41, May 1999, ISSN 0813 5800

25. One aspect of inconsistency between periodic detention and home detention is the maximum sentence available under each scheme. The maximum sentence of periodic detention is 3 years²², while the maximum sentence of home detention is 18 months²³.
26. Section 165 of the *Crimes (Administration of Sentences) Act 1999* enables the Parole Board to “convert” a periodic detention order into a home detention order upon revocation of the periodic detention order – but only where the offender meets the legislative eligibility and suitability criteria and the periodic detention order has 18 months or less to run. Thus some periodic detainees may have their order “converted” to home detention, while others may not, by virtue of the time remaining for the sentence to run, which may be dependant on the length of the original sentence. It may be worthwhile to standardise the maximum sentence of both periodic detention and home detention. If such standardisation were to occur, the Department of Corrective Services would prefer a maximum sentence of 18 months for each option²⁴.

T.O.R 1(c) The impact of the availability of Intensive Supervision Programs upon rural and remote communities

27. As noted under T.O.R. 1(b), Intensive Supervision Programs (ie home detention and Drug Court orders) are widely unavailable in rural and remote NSW communities with the result that country-based offenders have fewer non-custodial options available to them. Home detention is currently available in the Sydney, Central Coast, Hunter and Illawarra areas, while the Drug Court operates in western Sydney²⁵.
28. The *Review of the NSW Home Detention Scheme* (Heggie, 1999) found that Aboriginal offenders were underrepresented in the scheme, with Aboriginal women constituting 9% of all the women in the program and Aboriginal males constituting 5% of the male group population (p. 14).
29. Where intensive supervision is not available, offenders in rural and remote areas may be subjected to imprisonment at a distance from their homes. Their experience of custody is likely to be made more difficult by issues related to distance from family members and resultant relative infrequency of visits. This remoteness could be exacerbated for those offenders who are functionally illiterate, for whom the option of maintaining family contact via letters is unlikely to achieve success. This Department is seeking to alleviate this problem in a pilot “video visits” project through which inmates and their families can “visit” via a video link. Additionally, the prospects of a successful transition back into the community from prison is much more difficult when the offender has been located far from community-based resources and programs.

²² Section 6(1) *Crimes (Sentencing Procedure) Act 1999*. The *Periodic Detention of Prisoners Act 1970* imposed a maximum sentence of 12 months imprisonment by way of periodic detention. The *Periodic Detention of Prisoners Act 1981* increased the maximum term to 18 months. In 1990, the maximum term was increased to 3 years. Offenders sentenced to longer rather than shorter periods of imprisonment by way of periodic detention tend to pose greater security and management issues.

²³ Section 7(1) *Crimes (Sentencing Procedure) Act 1999*

²⁴ The DCS *NSW Inmate Census 2003* shows that 22.4% of periodic detainees at 30 June 2003 were serving periodic detention orders of 2 years or more (126 detainees from 787). The Census does not give statistics based on orders greater than 18 months.

²⁵ Cl. 6 *Drug Court Regulation 1999*

TOR 1(d) The place of Periodic Detention within a spectrum of community-based sentencing options utilising intensive supervision

30. As previously stated (paragraph 17), periodic detention is not an intensive supervision program: being only two days per week, it does not lend itself to intensive supervision. This section of the submission considers the place of periodic detention within the spectrum of community-based sentencing options.
31. Periodic detention centres are located at Bathurst, Campbelltown, Grafton, Mannus (Tumbarumba), Parklea, Parramatta (Norma Parker), Silverwater, Tamworth, Tomago and Wollongong. Five centres cater for males only (Campbelltown, Grafton, Parklea, Silverwater and Tamworth), one centre caters for females only (Norma Parker), while four centres cater for both males and females (Bathurst, Mannus, Tomago and Wollongong).
32. Periodic detention has the potential for broad geographical spread across the State, including rural areas – but only where infrastructure exists. Not all correctional complexes contain periodic detention centres; and any conversion of full-time beds in correctional centres for use by periodic detainees will result in the need for replacement full-time correctional centre beds elsewhere.
33. Capital costs are likely to act against the construction of additional purpose-built periodic detention centres, and in any case it is not Departmental policy to build any more “stand-alone” periodic detention centres. For staffing and operational reasons, periodic detention centres should be attached to a correctional centre²⁶.
34. Section 66 of the *Crimes (Sentencing Procedure) Act 1999* is headed “Suitability of offender for periodic detention”. Section 66(1) provides:
- “A periodic detention order may not be made with respect to an offender’s sentence of imprisonment unless the court is satisfied: (.....)*
- (d) that there is accommodation available at a periodic detention centre for the offender to serve the sentence by way of periodic detention, and*
- (e) that transport arrangements are available for travel by the offender, to and from the periodic detention centre, for the purpose of serving the sentence by way of periodic detention, being arrangements that will not impose undue inconvenience, strain or hardship on the offender....”*
35. The most significant issue in relation to periodic detention in rural and regional areas is the ability of the offender to attend periodic detention *each week*, consistently, over the period of his/her sentence. Consistent attendance requires personal transport or public transport, financial resources to afford such travel, and a degree of good health.
36. Any illness or disability requiring daily treatment needs to be catered for during an offender’s period of incarceration. The level of medical care, and the dispensing of medication, must be identical to that received by the offender in the community during the week. It would be a very costly exercise to install a specialised infrastructure to cater for a single person on periodic detention, particularly when the same illness or condition can be catered for if the person were to receive a sentence of full-time imprisonment.

²⁶ Section 226(3) of the *Crimes (Administration of Sentences) Act 1999* provides that “A proclamation by which a correctional centre is declared to be a periodic detention centre must identify some other correctional centre (not being a periodic detention centre) whose governor is to be responsible for the periodic detention centre.”

37. Even without the legislative restrictions of section 66 (above), periodic detainees from rural and remote areas would have difficulty accessing periodic detention centres in other locations, as they are frequently unlicensed or do not own reliable vehicles. The provision of bus services or subsidising current bus services could assist in making the current centres more accessible – but bus timetables would need to have suitable drop-off and collection times to match reception and discharge times at periodic detention centres.
38. Any alternative methods of serving periodic detention would need to be carefully evaluated to ensure that compliance with periodic detention orders was maintained. The compliance rate of periodic detainees has increased since the *Crimes Legislation Amendment (Periodic and Home Detention) Act 2002* tightened up compliance with periodic detention orders by requiring detainees to advise unavoidable absences from periodic detention before the commencement of the relevant reporting period; instituting mandatory revocation of a periodic detention order for 3 consecutive unauthorised absences; and mandatory revocation of a periodic detention order for 3 unauthorised non-consecutive absences on the application of the Commissioner of Corrective Services. Earlier, the compliance rate increased when the *Crimes (Administration of Sentences) Act 1999* replaced the *Periodic Detention of Prisoners Act 1981*, and the revocation of periodic detention orders became the responsibility of the Parole Board instead of a court.²⁷

T.O.R 1(e) The criteria for eligibility for community based sentencing options

39. Periodic detention and home detention are subject to eligibility criteria specified by the *Crimes (Sentencing Procedure) Act 1999*.²⁸ There are no eligibility criteria for community service orders or good behaviour bonds in the legislation. Eligibility is to be distinguished from *suitability*, for which the Act also prescribes criteria in respect of periodic detention, home detention and community service orders.²⁹
40. Under section 65A of the *Crimes (Sentencing Procedure) Act 1999*, a periodic detention order may not be made for an offender who has previously served imprisonment for more than 6 months by way of full-time detention in relation to any one sentence of imprisonment, whether in New South Wales or elsewhere. This section was inserted by the *Crimes Legislation Amendment (Periodic and Home Detention) Act 2002*, which commenced on 2 December 2002. The intention behind the amending Act was to rectify the growth of a “gaol culture” within periodic detainees caused by offenders who had served lengthy periods of imprisonment subsequently being sentenced to imprisonment by way of periodic detention – offenders whose completion rate of periodic detention orders was considerably less than average.
41. However, an unintended consequence of section 65A is that offenders ineligible for periodic detention are eligible for community service orders, which courts are imposing in lieu of periodic detention orders, notwithstanding arguable unsuitability.
42. The blanket prohibition imposed by section 65A may benefit by being revised. A “gaol culture” is attributable not so much to the length of time an offender has been imprisoned,

²⁷ At 27 February 2005, the attendance rate was 82.2% (656 attendees out of 798 detainees). For stage 2 detainees the compliance rate was 95.6% (65 attendees from 68 detainees). By comparison, for the weekend of 3 February 2002, the attendance rate was 75.0% (686 attendees out of 915 detainees). – source: Department of Corrective Services Weekly States. Prior to 1995 the attendance rate was frequently less than 60%.

²⁸ Sections 65A and 65B (periodic detention), 76 and 77 (home detention).

²⁹ Sections 66 (periodic detention), 78 (home detention) and 86 (community service orders).

but in the way the offender has served their sentence. It may be more relevant, instead of a blanket prohibition, to require a suitability assessment report to consider an offender's disciplinary record whilst imprisoned, as well as previous compliance with periodic detention orders, home detention orders and community service orders, and make recommendations to the sentencing court in light of both the offender's imprisonment record and his or her compliance in serving past sentences.

43. The eligibility and suitability criteria for sentences of *home detention* are quite restrictive. They include offence type, sentence length, stability of accommodation, a suitable domestic environment and the availability of a telephone.
44. These home detention criteria effectively exclude home detention as a sentencing option for many offenders, particularly offenders from rural/remote Aboriginal communities, because of the prevalence of domestic violence and alcohol and solvent abuse in those communities. A whole-of-government approach is required to address the totality of these factors.
45. It is arguable that offenders assessed as unsuitable for periodic detention should be sentenced to full-time imprisonment, not to the lesser penalty of a community service order. This is particularly so given that, in ordering a suitability assessment, a sentencing court should already have decided that "no penalty other than imprisonment is appropriate"³⁰ and the only issue that the court should then be considering is the method of serving that sentence of imprisonment.

T.O.R. 1(f) The experience of other jurisdictions in implementing community-based sentencing options.

46. Victoria and other Australian States have developed strategies to greatly strengthen their community corrections operations in order to reduce incarceration and lessen the rates of recidivism of offenders. It should also be noted that in expanding the use of community options and significantly reducing the rate of imprisonment, the Victorian government has adopted a "whole of government" approach.
47. Expansion of restorative justice strategies such as circle sentencing and victim-offender conferencing could reduce the rate of incarceration whilst contributing to the overall welfare and stability of rural and remote areas. Currently circle sentencing is being conducted in five NSW local court jurisdictions. Restorative Justice has largely been successfully applied to juvenile offenders in many Australian jurisdictions (including New South Wales) and also in New Zealand. The NSW Department of Corrective Services conducts a successful adult post-sentence restorative justice scheme. A pilot scheme to introduce pre-sentence restorative justice to adult offenders in New South Wales is also proposed by the Attorney General's Department.
48. If more offenders are to be sentenced to conditional liberty in the community, community corrections resources will need to be increased to provide services, targeted programs and develop the necessary partnerships with other community-based agencies and non-government organisations (NGOs).

³⁰ Section 5(1) *Crimes (Sentencing Procedure) Act 1999*

PART 2 – SPECIFIC QUESTIONS IN THE COMMITTEE’S DISCUSSION PAPER.

WHAT IS COMMUNITY-BASED SENTENCING?

Questions:

1. **Apart from those identified above, what other community-based sentences are available in NSW or in other Australian or overseas jurisdictions?**
 - 1.1 Please see the attached charts (Attachment A) detailing restricted movement, reparation and supervision programs in all Australian jurisdictions and the UK, Finland, Germany, the Netherlands and the USA.
2. **Do you consider some/all community-based sentencing options to be ‘lighter’ forms of punishment than imprisonment?**
 - 2.1 Full time imprisonment, which removes people from the community into institutions, is for most people the harshest form of punishment, and is legislatively prescribed as the sentencing option of last resort³¹.
 - 2.2 There is nevertheless a continuum of restriction, surveillance and intervention available within community-based sentencing options that can be argued as offering an appropriate range of punishment along with necessary supervision levels for community protection. The major issue is that, in this sentencing option, there must be a focus on addressing community safety. As part of that goal, justice must be done and must also be seen to be done.
 - 2.3 The community may perceive community-based sentencing options to be a ‘lighter’ form of punishment than imprisonment and therefore an unjust response to the crime. This perception exists because there is a lack of awareness and understanding of what is involved in a community-based order and also of the role and responsibilities of community-based correctional services – in NSW Community Offender Services (COS) – which includes Intensive Supervision Programs. Generally, corrections are perceived to only be responsible for prisons, and so any community-based order is seen as “getting off with a smack on the wrist”. Raising the profile of COS in the general community and increasing awareness of the rigours of community-based sentencing would address this issue.
 - 2.4 Interestingly, despite possible community perception of community-based sentencing options as being a ‘lighter’ form of punishment, it has been reported by some offenders that intensive supervision programs in the community are as punitive, if not more so, than a custodial term³².
 - 2.5 There is judicial opinion that periodic detention is a “lighter” form of punishment than full-time imprisonment. For instance, the judgement of Hunt J in *R v Hallocoglu* (1992) 29 NSWLR 67 is frequently repeated: “Periodic detention is less severe in its denunciation of crime than full-time imprisonment, having regard to the way in which it is administered.”

³¹ Section 5(1) *Crimes (Sentencing Procedure) Act 1999* – “A court must not sentence an offender to imprisonment unless it is satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate.”

³² Petersilia, J. (1990). When probation becomes more dreaded than prison. *Federal Probation*, 54, 1, 14-28.

- 2.6 James J (Sheller JA and Dowd J agreeing), in *R v Berry* [2000] NSWCCA 451 at 30, held “A sentence to be served by way of periodic detention is substantially more lenient than a sentence of imprisonment for the same period to be served by way of full-time custody - *R v Hallocoglu* (1992) 29 NSWLR 67 at 74.”
- 2.7 In *R v Dunlop* [2001] NSWCCA 435 Wood CJ at CL held (at para 43-44): “I am persuaded that the trend of authority, and the consistency of sentencing called for in *Juriscic*, require the conclusion that a sentence of periodic detention in this case was not properly available, by reason of the leniency which is built into such a sentence.”
- 2.8 Prior to amendments introduced by the *Periodic Detention of Prisoners Amendment Act 1998* on 1 February 1999, it was open to a sentencing court to take into account its intention to make a periodic detention order and to extend the length of the sentence to take account of the fact that it would be served by periodic detention: *R v Sadebath* (CCA 14/05/92 unreported), *R v Bang* (CCA 1/09/92 unreported). Section 6(1) of the *Crimes (Sentencing Procedure) Act 1999* now precludes this consideration; nevertheless *Hallocoglu* is still frequently cited with respect to periodic detention³³.
- 2.9 The view that a sentence of periodic detention is a “discounted” gaol sentence arises from an assumption that a sentence of periodic detention is “equivalent” to a shorter period of imprisonment than the sentence actually prescribes - for instance, that because a person sentenced to 12 months periodic detention will nominally serve 104 nights in a detention centre (2 nights x 52 weekends), their sentence is equivalent to 104 days’ imprisonment rather than 365.
- 2.10 There is also a widespread view that courts either do or should increase a sentence of imprisonment to allow for the fact that it will be served by way of periodic detention - for instance, that instead of sentencing an offender to (say) 5 months full-time imprisonment (nominally 152 or 153 days custody), the court instead should “inflate” the sentence to 18 months imprisonment by way of periodic detention, on the basis the offender will then spend 156 nights in custody.
- 2.11 This misconception of “equivalence” is commonly voiced by detainees when advised the consequence of revocation of their periodic detention order for non-attendance, namely full-time incarceration for at least 3 months and possibly for the full unserved portion of their sentence. It is common, however, for detainees to expect that they would only have to serve (in the first example) 104 days imprisonment, effectively compressing their expected custody into one episode. It is often a salutary shock to detainees when they realise that revocation of their periodic detention order can result in such a lengthy period of full-time imprisonment.

³³ See for instance *Regina v Rivkin* [2004] NSWCCA 7 at 433, *R v Mucenski* [2004] NSWCCA 299 at 18, and particularly *R v Lenthall* [2004] NSWCCA 248 at 33, which held “It is the case that while periodic detention is not an entirely soft option, it is nevertheless considerably less arduous than full time custody, since it only requires detention for part of the week and converts to community service before its completion” (emphasis added).

- 2.12 Any reasoning which holds that periodic detention is “more lenient” than full-time imprisonment is flawed because it assumes that every offender sentenced to imprisonment by periodic detention will in fact serve the sentence in that fashion, and will not have his or her periodic detention order revoked and be required to serve the sentence by way of full-time imprisonment. In fact, a significant number of periodic detention orders are revoked each year³⁴. To continue the second example above, a court may well consider that a sentence necessitating 5 months imprisonment is appropriate, but to instead sentence the offender to 18 months periodic detention in the expectation that this sentence will only confine the offender for 156 days detention ignores the real possibility that the offender may in fact serve the full 18 months in full-time imprisonment if he or she breaches the periodic detention order, where an original sentence of 18 months full-time imprisonment could be held to be manifestly excessive.
3. **What do you see as the advantages and disadvantages of community-based sentences in general compared to imprisonment?**
- 3.1 In general, sentences served in the community require the offender to work, abide by limits and curfews, desist from drugs and alcohol and proscribed associations, participate in programs and maintain behaviour change in his/her own environment.
- 3.2 In terms of rehabilitation, interventions delivered in the community can be more effective in reducing recidivism than interventions delivered in a custodial setting³⁵.
4. **Community-based sentences are generally more economical than full-time imprisonment. Should economic reasons be a basis for imposing a community-based sentence or making them more widely available?**
- 4.1 Courts impose sentences based on the objective nature of the offence and the subjective features of the offender. Relative costs do not feature in either consideration.
- 4.2 In NSW in 2003-04 the real recurrent cost of managing an offender in the community was \$9.70 per day³⁶ compared with the real recurrent cost per prisoner per day (including Periodic Detention) of \$173.30³⁷.
- 4.3 Economic considerations should be considered on different levels, including the cost to the State of enforcing a sentence and the cost of the social and community disruption caused by the enforcement of a sentence. Not all such costs can be quantified.

³⁴ The Parole Board’s Annual Report for 2003 shows that the Board considered 1,028 submissions from Periodic Detention Administration concerning offenders on periodic detention orders, revoked 611 periodic detention orders and, after reviewing its decision to revoke an order, the Board rescinded 86 of its cancellations.

³⁵ Andrews, D.A., Zinger, I., Hoge, R.D., Bonta, J., Gendreau, P. & Cullen, F.T. (1990) – *Does Correctional Treatment Work? A Psychologically Informed Meta-Analysis*. (Criminology, 28, 369-404).

³⁶ Report on Government Services 2005, Attachment 7A, Table 7A.31

³⁷ Report on Government Services 2005, Attachment 7A, Table 7A.6

5. Can various community-based sentencing options be linked in order to tailor them to rural and remote areas or disadvantaged groups?

5.1 The Department has no comment on this question.

6. Do you have any other issues you wish to discuss about the range of community-based sentencing options available in NSW?

6.1 COS Probation and Parole Service provides advice to sentencing authorities based upon a risk/needs assessment that focuses on the risk an offender poses to the community, and provides advice as to which interventions and programs the Service can provide to manage and reduce that risk. This assessment is also the basis for the level of monitoring, supervision and program intervention provided in supervising community-based orders.

6.2 It has been consistently identified in research literature on what is effective in reducing re-offending, that the most intensive resources should be applied to those at highest risk of re-offending. Currently, due to legislative restrictions, the most intensive community-based order (Home Detention) and the most expensive community-based option (Periodic Detention) do not take the highest risk offenders; and neither of these options is available to most of rural and remote New South Wales.

6.3 If community-based sentencing options are to be better utilised and consistently available around the State, there would need to be an allocation of resources to ensure that the level of supervision and intervention is commensurate with the level of risk.

RURAL AND REMOTE AREAS IN NSW

Questions:

1. Do you think it is in the public interest to tailor community-based sentencing for rural and remote areas in NSW? Why/why not?

RRA 1.1 It is always in the public interest to tailor any sentencing option to make the option more effective, and to redress imbalances that disadvantage particular communities. In doing so, the benefits sought must be balanced against the resources available.

RRA 1.2 The range of community-based sentencing options in some rural and remote areas is limited. Consequently, a custodial term is likely to occur sooner for a rural offender than for a comparable offender in an urban or metropolitan area.

RRA 1.3 Data presented in the table below from the Bureau of Crime Statistics and Research (NSW Local Criminal Courts Statistics 2003) shows a breakdown of penalties by metropolitan and country locations.

RRA 1.4 The table calculates penalties issued by courts to offenders as a percentage of the number of penalised persons resident in metropolitan (61,931) and country (37,656) locations. Example: 5.7% of persons resident in a

metropolitan location found guilty in Local Court appearances received a term of imprisonment compared with 6.7% of country residents.

Persons by location and penalty received	Metropolitan ¹		Country	
	#	%	#	%
Imprisonment	3506	5.7	2534	6.7
Home detention	304	0.5	19	0.05
Periodic Detention	807	1.3	226	0.6
Suspended sentence	2617	4.2	2378	6.3
Community Service Order	2733	4.4	1661	4.4
Bond with supervision	3080	5.0	2480	6.6
Bond without supervision	5880	9.5	3930	10.4
Bond without conviction	7185	11.6	4746	12.6
Fine	31087	50.2	16853	44.8
Licence disqualification	33	0.05	18	0.05
Compensation order made	99	0.2	96	0.3
Rising of the court	212	0.3	141	0.4
No conviction recorded	4388	7.1	2574	6.8
Total	61931	100.0	37656	100.0

Notes:

1. Sydney Statistical Division plus Newcastle and Wollongong

RRA 1.5 The above table highlights that offenders sentenced in country locations are more likely to receive a custodial sentence compared with offenders in the metropolitan area. Where alternatives to imprisonment, such as suspended sentences and bonds, are available in the country areas courts do utilise them. Alternatives such as home detention and periodic detention are not available to the same extent in the country and this could explain the higher rate of imprisonment of country offenders – the rate of country home detention is one-tenth the rate of metropolitan home detention, and the rate of country periodic detention is less than half the rate of metropolitan periodic detention.

RRA 1.6 It is clear from the above table that courts will utilise alternatives to imprisonment if alternatives are provided. For example, in the roll out of the ‘Sober Driver’ program for offenders sentenced to a community-based order, metropolitan courts have referred 23% of offenders whilst country courts have referred 19%. It is anticipated that these numbers will increase as Community Offender Services rolls out the program to remote areas.

2. In which rural and remote areas in NSW is access to community-based sentencing options a problem? Why is accessibility a problem and how can it be overcome?

RRA 2.1 Most rural and remote areas in NSW do not have the full range of community-sentencing options available. Particularly on the North Coast, in North Western NSW and on the South Coast, courts have complained about the lack of alternatives to prison – specifically the lack of Community Service Order opportunities, the absence of Home Detention and the impracticality of distant Periodic Detention Centres.

RRA 2.2 In response to these concerns, the Department has announced its intention to introduce a limited home detention program in the Kempsey area in 2005-06.

RRA 2.3 Accessibility is a problem because of:

- Lack of periodic detention resources
- Lack of participant community agencies in the community service scheme
- Cultural issues
- Lack of treatment providers to disadvantaged groups (eg mentally ill, intellectually disabled)
- Lack of public transport.

In all cases, accessibility could be overcome by additional resources. As previously noted, there needs to be a balance between the benefit sought and the resources applied.

3. Which rural or remote areas in NSW would benefit from increased availability of community-based sentencing options?

RRA 3.1 All rural and remote areas in NSW would benefit from the increased availability of community-based sentencing options; however, as noted above, such benefits must be balanced by the resources required to supervise and enforce community-based sentences.

4. Which community-based sentences currently available in NSW should be available in these areas? Are there any other types of community-based sentences, perhaps used in other jurisdictions that are particularly suitable to rural and remote areas?

RRA 4.1 In a situation of full social equity, all community-based sentencing options would be available in all areas of NSW. In reality, however, this would be costly, and a whole-of-government approach would be required.

5. What cost considerations are involved in expanding the availability of community-based sentencing options, or tailoring them, to rural and remote areas?

RRA 5.1 At the time of writing, the estimated costs of community-based sentencing options are:

Daily cost per offender:	
Intensive supervision	\$64.42
Community work	\$15.70

Compared with the daily cost per prisoner:	
Secure Custody	\$189.05
Minimum security	\$155.87 ³⁸

³⁸ Department of Corrective Services Annual Report 2003-04. Appendix 40.

6. What disadvantages or advantages of community-based sentencing options are particularly relevant to rural and remote areas?

RRA 6.1 The Department has no comment on this question.

7. Do you have any other issues to raise in relation to tailoring community-based sentencing options for rural and remote areas in NSW?

RRA 7.1 Partnerships within the Justice agencies, between Justice and Human Service agencies and between government agencies and non-government agencies and community groups are critical to the success of community-based sentencing options.

DISADVANTAGED POPULATIONS

Questions:

1. Which disadvantaged groups should the Committee consider as part of its review? What difficulties do they face accessing community-based sentencing options and why?

DP 1.1 *ATSI offenders* should be considered as part of the Committee's review because of cultural factors which impact upon interventions, and also because of the larger, and disproportionate, number of Aboriginal offenders in rural and remote areas of NSW where resources are limited. Aboriginal offenders are more likely to have been previously incarcerated, and so will have less opportunity to participate in community-based rehabilitation programs.

DP 1.2 *Female offenders* should be considered part of the review. Many female offenders have difficulties accessing community-based sentencing options because of childcare responsibilities, emotional disturbance and other mental health issues, which characterise a large proportion of the female offending population. In particular, female offenders have difficulty accessing community-based mental health treatment services or any residential rehabilitation program.

DP 1.3 Offenders with *mental health* issues have difficulty accessing community-based sentencing options due to lack of mental health treatment facilities and, particularly, due to reluctance of mental health treatment providers to allow offenders to access services. In addition, such offenders have difficulty accessing stable accommodation and stable supported accommodation, which hinders assessments for eligibility for community-based sentencing options.

DP 1.4 *Intellectually disabled* offenders have difficulty accessing community-based sentencing options due a major shortage of interventions to meet the criminogenic needs of such offenders. In addition, such offenders have difficulty accessing stable accommodation and stable supported accommodation, which hinders assessments for eligibility for community-

based sentencing options. This sub-population is particularly needy in terms of resources to meet offending needs.

DP 1.5 Culturally and linguistically diverse offenders may experience problems with accessing appropriate interventions in some areas of NSW.

DP 1.6 Community-based young offenders under the age of 18 are not the responsibility of this Department.

DP 1.7 Older/elderly offenders are at times sent to prison because of the difficulty in finding appropriate community service order work for someone who is physically frail, for whom transport can be a problem and, if from a remote area, for whom home detention is not available. These offenders are few in number but with the ageing of the general population, numbers in this group are expected to increase and certainly would be much better managed in the community under an appropriate level of supervision than taking up beds in a prison hospital.

2. Do you think it is in the public interest to tailor community-based sentencing for disadvantaged populations in NSW? Why/why not?

DP 2.1 Yes. Community-based sentencing options have the following benefits:

- Specialist services are potentially available including mental health treatment services,
- Culturally specific interventions are potentially available, developed by the community and within the community for which they are applicable,
- Community supports can be developed which can be utilised after the expiry of the community-based sentencing option to maintain long-term stability,
- Rehabilitation interventions have improved outcomes when delivered in a community-based setting,
- A community-based setting provides an offender with the opportunity to practice newly learned skills immediately,
- The expense and upheaval of reintegration following release from custody is avoided,
- For female offenders, child care responsibilities are not disrupted when community-based sanctions are applied.

3. Which community-based sentencing options currently available in NSW should be made more available for these groups?

DP 3.1 Under existing legislation, greater access to community-based options other than good behaviour bonds is unlikely. For example, intellectually disabled offenders are vulnerable in periodic detention and are therefore likely to be assessed as unsuitable for this option. Similarly, mental illness is a barrier to successful completion of a community service order; and childcare responsibilities may also compromise the successful completion of a community service order.

4. Are there any other types of community-based sentences perhaps used in other jurisdictions that are particularly suitable for various disadvantaged groups?

DP 4.1 The Northern Territory provides services to remote areas through the recruitment of community members to provide monitoring. In Western Australia the monitoring of offenders in remote locations is managed by way of contracted agreements with the local community. The Department has not considered the effectiveness of either of these schemes.

5. Are some community-based sentencing options inappropriate for particular disadvantaged groups?

DP 5.1 Yes, as indicated above, offenders with mental health issues are unsuitable for periodic detention, and ATSI offenders may be less likely to be suitable for this option due to cultural factors. In addition, community service orders are restricted to those who can be reasonably expected to successfully complete an order within the prescribed time limit at an appropriate agency.

6. What cost considerations are involved in expanding the availability of community-based sentencing options, or tailoring them, for disadvantaged groups?

DP 6.1 See paragraph RRA 5.1.

7. Which of the disadvantages or advantages of the community-based sentencing options are particularly relevant to disadvantaged groups?

DP 7.1 See the comments in answer to Question 5 in this section, above.

8. Do you have any other issues you wish to raise in relation to disadvantaged groups?

DP 8.1 No.

ELIGIBILITY FOR COMMUNITY-BASED SENTENCES

Questions

1. Do the eligibility criteria for the various community-based sentencing options unfairly exclude some offenders from disadvantaged groups?

E 1.1 *Eligibility* needs to be distinguished from *suitability*. Eligibility, where legislatively prescribed, is related objectively to the offence or past offences, while suitability is related subjectively to the offender and the availability of the sentencing option.

E 1.2 Aboriginal offenders are more likely to have offending profiles (violence, domestic and sexual violence) that legislatively preclude them from Home

Detention³⁹. Aboriginal people are also more likely to be refused bail due to past absconds and offence history. In addition, many offenders with mental health issues are excluded from community-based sentencing options because of a lack of mental health treatment providers in the community who are willing to assist offenders, and lack of stable accommodation.

2. Existing criteria for eligibility are ‘negative’ or better described as criteria of exclusion. What are some positive criteria that might be used in relation to disadvantaged groups?

E 2.1 Positive criteria for eligibility for community-based options, including periodic detention and home detention, could include previous successful completion of orders and compliance with prison regime. See also paragraph 42 in Part 1 of this submission.

3. Should ‘disadvantage’ be taken into account by the courts as a factor when determining whether an offender is eligible for a community-based sentence?

E 3.1 The Department has no comment on this question.

4. Do eligibility criteria need to be tailored to make the various forms of community-based sentencing more accessible in rural and remote areas? If so, how?

E 4.1 Eligibility criteria, being based on excluded offences, cannot be re-written to include geographical considerations in the way anticipated by this question. The existing eligibility criteria in relation to home detention and periodic detention, for example, are likely to disadvantage aboriginal offenders and result in this group being assessed as ineligible for such sentences.

E 4.2 Suitability criteria, however, could be so tailored.

5. Do you have any other comments in relation to eligibility criteria for community-based sentences?

E 5.1 As noted in paragraph 39 of Part 1 of this submission, there are legislative prescriptions of eligibility for periodic detention and home detention, but none for other community-based sentences such as community service orders or good behaviour bonds.

³⁹ S.76, 77 *Crimes (Sentencing Procedure) Act 1999*

TYPES OF COMMUNITY-BASED SENTENCES

6a GOOD BEHAVIOUR BONDS

Questions:

1. **Can you comment on the availability of good behaviour bonds in rural and remote areas in NSW?**

GBB 1 Data received from the Bureau of Crime Statistics and Research (see Table in paragraph RRA 1.5) indicates that 6.6% of individuals residing in the country found guilty in Local Court appearances (2003) received a Bond with supervision compared with 5% of metropolitan residents.

2. **What obstacles exist to utilising good behaviour bonds in rural and remote areas? What can be done to overcome these obstacles?**

GBB 2.1 Effective management of offenders in country and remote areas is limited by the following factors:

- Lack of services to address special needs eg mental health
- Lack of transport to get offenders to group-work which will address offending behaviour
- Demands on COS staffing to ensure regular groups addressing high risk behaviours
- Poor technology to remote communities, which can lead to poor communication and supervision.

These factors could overcome by the provision of adequate resources, but again, such provision would need to balance the benefits sought.

3. **Can you comment on the use of good behaviour bonds in relation to disadvantaged groups?**

GBB 3.1 Aboriginal offenders may be less likely to receive good behaviour bonds since on average they start to offend earlier⁴⁰ and so are less likely to be considered for a community-based option in adulthood, the 'sentencing hierarchy' having been exhausted by this time. Additionally, stable accommodation is critical in providing reliability for contact and reporting and many disadvantaged groups do not have this base.

4. **Should good behaviour bonds be tailored to the requirements of disadvantaged groups so as to increase their use or make them more effective? How can this be achieved?**

GBB 4.1 Yes. Good behaviour bonds may either be supervised by COS Probation and Parole Service or unsupervised. Supervision plans incorporate both monitoring and targeted offence-related programs (eg drug and alcohol) and services (eg mental health). Access to appropriate programs and services can be difficult in remote areas due to gaps in service delivery, so

⁴⁰ Putt, Payne & Milner, *ibid*

a good behaviour bond needs to reflect the reality of resources available in the area.

5. **Are any of the advantages and disadvantages of good behaviour bonds particularly relevant to offenders from rural and remote areas or offenders from disadvantaged groups?**

GBB 5.1 See 4 above.

6. **Do you have any other issues you wish to raise in relation to good behaviour bonds?**

GBB 6.1 No.

6b.COMMUNITY SERVICE ORDERS

Questions

1. **Can you comment on the availability of CSOs in rural and remote areas?**

CSO 1.1 Community agencies that provide community service work are limited in many rural and remote areas of the State. This is often due to the lack of resources to provide adequate supervision of offenders performing community service work, and also inherent suspicion in small communities about the reliability and risk to community safety of well-known local offenders. Additionally there are often major transport issues.

2. **What needs to be done to increase the availability of CSOs in rural and remote areas?**

CSO 2.1 The Department of Corrective Services proposes to join the periodic detention stage 2 and CSO work programs to ensure a consistent and resourceful approach to the supervision of offenders performing community service work in the community.

CSO 2.2 In more remote areas COS has employed, on a pilot basis, a CSO field officer based in the community who develops partnerships with agencies and community groups, and is then also available to supervise offenders completing CSOs.

3. **Can you comment on the availability and appropriateness of CSOs for offenders from disadvantaged groups?**

CSO 3.1 Under existing legislation, and with the provision of the necessary resources, the employment of CSO field officers could be extended to offenders from some disadvantaged groups – eg the employment of local Aboriginal people as links between Aboriginal communities and CSO agencies (as occurs in the Northern Territory).

4. **Can you comment on the courts use of CSOs in relation to offenders from disadvantaged groups?**

CSO 4.1 See above

5. Do CSOs need to be tailored to meet the needs of disadvantaged groups? If so, how?

CSO 5.1 See above

6. Are any of the advantages and disadvantages of community service orders particularly relevant to rural and remote areas or offenders from disadvantaged groups?

CSO 6.1 See above

7. Do you have any other issues you wish to raise in relation to CSOs?

CSO 7.1 No.

6d. PERIODIC DETENTION

Questions:

1. Can you comment on the availability of periodic detention in rural and remote areas in NSW?

PD 1.1 The following beds are available for periodic detention (stage 1) in NSW:

- Bathurst: 30 male, 10 female weekend only
- Campbelltown: 52 male weekend only
- Grafton: 32 male weekend only
- Mannus: 24 male, 6 female weekend only
- Norma Parker: 60 female weekend and midweek⁴¹
- Parklea: 78 male weekend only
- Silverwater: 150 male weekend and midweek⁴²
- Tamworth: 18 male weekend only
- Tomago: 100 male, 20 female weekend only
- Wollongong: 72 male, 10 female weekend only.

PD 1.2 The Department will soon link periodic detention Stage 2 (work with supervision) with work performed by offenders serving community service orders⁴³. This will increase the flexibility of supervision of offenders available for community work. However, periodic detention is generally limited in most rural and remote areas, in part due to the capital costs of

⁴¹ 60 beds weekend plus 60 beds midweek equals a total capacity of 120 beds

⁴² 150 beds weekend plus 150 beds midweek equals a total capacity of 300 beds

⁴³ Stage 2 periodic detainees must attend community worksites for 8 hours per day for every weekend of their sentence – an unauthorised absence can lead to reversion to stage 1 or revocation of the periodic detention order. Persons subject to a community service order must complete a set number of hours of work within a maximum allowable time: 12 months for sentences less than 300 hours, 18 months for sentences between 300 hours and 500 hours – s.107 *Crimes (Administration of Sentences) Act 1999*. Consequently, persons subject to community service orders have much more flexibility than stage 2 periodic detainees in scheduling their attendance for community service work – Stage 2 periodic detainees have no such flexibility.

building secure residential facilities attached to prisons and limited public transport options.

2. How significant is the generally higher level of unemployment in rural and remote areas for the availability or success of periodic detention in such places?

PD 2.1 Employment is not related to availability/eligibility or success of Periodic Detention. The assumption, generally, is that a person who is unemployed will be able to attend weekend detention and be expected to use Monday-Friday to seek employment. Midweek detention (where available – ie, in the metropolitan area) is appropriate for offenders who are employed at weekends or are unemployed but have responsibility for children at weekends.

3. What would be the impact of the availability of periodic detention upon rural and remote areas?

PD 3.1 The availability of periodic detention facilities in rural and remote areas would divert some offenders from full-time custody – see the commentary attached to the BOCSAR table comparing metropolitan and country sentencing at paragraph RRA 1.5 of this submission.

4. Can the requirements of periodic detention be tailored for rural and remote areas? Eg., how near to a detainee’s home should a periodic detention centre be for a PDO to be considered appropriate?

PD 4.1 Proximity to an offender’s residence is only one aspect of access to a periodic detention centre; other aspects include the offender’s transportation needs and (if the offender does not have a vehicle or a driver’s licence) the availability of other transport options including public transport – a “kilometre radius” in legislation would be inappropriate: if an offender does not have the means of transportation, the significance of any ‘radius’ or zone is irrelevant.

5. What services need to be available to support periodic detention in rural and remote areas?

PD 5.1 The following need to be available to support periodic detention in rural and remote areas:

- A gazetted periodic detention centre
- Attachment of the periodic detention centre to a correctional centre⁴⁴
- Reliable transport services
- Links to local groups for the provision of community service work
- Links to and the provision of services by local medical authorities (or Justice Health).

6. Can you comment on the appropriateness of periodic detention for disadvantaged groups?

⁴⁴ Other than for existing “stand-alone” periodic detention centres at Tomago, Wollongong and Campbelltown, whose Proclamations stipulate that, respectively, the governors of Cessnock Correctional Centre, Berrima Correctional Centre and Silverwater Correctional Centre have responsibility for those periodic detention centres.

- PD 6.1 As the periodic detention scheme now operates, it is not appropriate for most disadvantaged groups eg mental health.
- PD 6.2 For *Aboriginal and Torres Strait Islanders* in remote areas, travel arrangements and distance between the residence and the periodic detention centre make periodic detention inappropriate – see paragraph PD 10.1 below.
- PD 6.3 *Culturally and linguistically diverse offenders* do not pose any overt problems – apart from travel and health, the only issue is that such people must clearly understand their obligations and sanctions for failing to attend or misbehaving whilst attending.
- PD 6.4 *Older offenders* – Periodic detention may well be a better option for older offenders than imprisonment: provided they are able to travel (or be driven) and are reasonably “stable” medically, their suitability is not generally a major issue. Certainly, they will be less at risk from assault or standovers than in full-time imprisonment.
- PD 6.5 *Female offenders* – Periodic detention is not suitable for women who have carer responsibilities. Even though periodic detention for women is available in Sydney and four of six regional areas serviced by a periodic detention centre, the number of females sentenced to periodic detention is quite low⁴⁵, both in actual numbers and in comparison to the number of places available.
- PD 6.6 *Offenders with a disability* – A physical disability may be catered for with minor alterations to steps, toilets etc, however for offenders with a mental disability, the proper care, safety and completion of a sentence of periodic detention is generally not possible.
- 7. Can the eligibility criteria for periodic detention be tailored for disadvantaged groups?**
- PD 7.1 See response to question 3 above.
- 8. What services need to be available to support periodic detention in indigenous communities?**
- PD 8.1 Wide community infrastructure support must be established to ensure any Indigenous offender complies with periodic detention in rural or remote areas. This infrastructure must include:
- Community workers
 - Elders and support groups
 - Travel arrangements
 - Continuation of any rehabilitation programs
 - Health (in relation to ability to attend)

⁴⁵ For instance, for the week ending 27 February 2005, the “bed-occupancy” rate of females subject to Stage 1 periodic detention orders was 33.1% (55 detainees and 166 beds), whereas the equivalent rate for males was 81.4% (568 detainees and 698 beds). These figures are for persons subject to periodic detention orders, not attendance figures. The former Grafton Female Periodic Detention Centre was de-proclaimed on 20 June 2003.

- Location of periodic detention centres
- Trained staff (Department of Corrective Services)
- Support from the local judiciary.

9. What needs to be done to make periodic detention appropriate for disadvantaged offenders?

PD 9.1 The Department has no further response to this question. See the various comments in relation to each of the identified disadvantaged groups.

10. Do you have any other issues you wish to raise in relation to periodic detention?

PD 10.1 The Committee's Discussion Paper lists Broken Hill Periodic Detention Centre as a rural / remote area periodic detention centre (page 9). Broken Hill Periodic Detention Centre (which had a capacity of 18 male and 2 female beds) has been closed, primarily due to the general unsuitability of local indigenous offenders due to a lack of transport and other factors such as alcoholism. The last Broken Hill periodic detainee finished his sentence on 25 January 2004. The former periodic detention centre has been incorporated into Broken Hill Correctional Centre.

6e. HOME DETENTION

Questions

1. Can you comment on the availability and use of home detention for offenders from rural and remote areas?

HD 1.1 Currently, home detention is not available outside the Sydney, Central Coast, Hunter and Illawarra areas. However, expansion is proposed in the mid-north coast area.

2. Is home detention a viable community-based sentencing option for rural and remote areas?

HD 2.1 Home Detention, if expanded as proposed above, will be a viable community-based sentencing option for some rural and remote areas.

3. What would be the impact of the availability of home detention upon rural and remote areas?

HD 3.1 This may divert some offenders from custody – see the comments following the BOCSAR table comparing sentencing in metropolitan and country courts at paragraph RRA 1.5.

4. What modifications could be made to the existing home detention scheme to make it more suitable for rural and remote areas?

HD 4.1 The Department has no further response to this question. See the various comments in relation to each of the identified disadvantaged groups.

5. What are the infrastructure needs for home detention in rural and remote areas?

HD 5.1 The following need to be available to support home detention in rural and remote areas:

- Probation and Parole officers trained in home detention supervision, attached to a Probation and Parole Service District Office
- Reliable electronic monitoring equipment that can operate in a remote area
- Reliable telecommunication services
- A sufficiently large population of eligible and suitable offenders with adequate housing
- Supervisors' vehicles and urinalysis/breath testing equipment
- Therapeutic program availability.

6. Is home detention a suitable community-based sentencing option for the various disadvantaged groups?

HD 6.1 Not as currently prescribed in the legislation's eligibility/suitability criteria.

7. Can home detention be modified to suit the needs of the various disadvantaged groups without compromising the punitive element of the sentence?

HD 7.1 The Department has no further response to this question. See the various comments in relation to each of the identified disadvantaged groups.

8. Can home detention be adapted for people who have no stable residence at the time of sentencing?

HD 8.1 A stable residence is the most important criteria in considering suitability for home detention. It would be extremely difficult to adapt home detention for persons with no stable residence without considerable additional resources.

9. Are any of the advantages and disadvantages of home detention particularly relevant to rural and remote areas or offenders from disadvantaged groups?

HD 9.1 The Department has no further response to this question. See the various comments in relation to each of the identified disadvantaged groups.

10. Do you have any other issues you wish to raise in relation to home detention?

HD 10.1 No.

COMMUNITY BASED SENTENCING OPTIONS IN OTHER JURISDICTIONS

Questions:

1. Have you had any experience with community-based sentences in other Australian states or overseas? If so, how might these be adapted for NSW?

OJ 1.1 See Attachment "A".

2. **How have the special needs of offenders from disadvantaged groups been catered for in relation to community-based sentences in other jurisdictions?**

OJ 2.1 Not known.

3. **How are community-based sentences in other jurisdictions tailored for rural and remote areas?**

OJ 3.1 Not known.

