

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

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**COUNTRY WOMEN'S ASSOCIATION OF NEW SOUTH
WALES**



**SUBMISSION TO THE
STANDING COMMITTEE ON LAW AND JUSTICE
INQUIRY INTO COMMUNITY BASED SENTENCING
OPTIONS FOR RURAL AND REMOTE AREAS
AND DISADVANTAGED POPULATIONS**

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While custodial sentences for violent and vicious criminals and for long-term repeat offenders and recidivists are imperative for the safety and well-being of society in general. Incarceration is costly and does little, if anything, to rehabilitate the "lesser" wrong doer. Many of those in gaol for the first time appear to have learned more there, in the negative sense, than they knew before undergoing their sentence. Those whose crimes are not violent or repetitive or of a sexual nature, should have the option of a non-custodial sentence, providing that built into it are education and training in relevant life skills, the opportunity to develop a sense of self worth and a recognition of responsibility for self and obligation to one's community.

As governments in Australia, urged on by a vociferous media, have introduced their "Get tough on crime" campaigns over the past 2 decades, the gaol population in NSW has grown, disproportionately to the general population increase. Earlier this month (March), the Australian Institute of Criminology reported that the number of inmates had risen by an average 5% a year since 1984. One is reminded of the English Governments of 18th and 19th Centuries, desperately filling gaols, hulks and eventually far-off colonies with criminals created by ever increasing lists of criminal offences.

One of the saddest aspects of the current prison population is that so many of them are not criminals first and foremost, but addicts of alcohol and/or drugs or the victims of mental illness or disabilities. Mental health has become such an under-funded area of our society, especially with the reduction or disestablishment of "half-way" houses, as a result of the so-called reforms of the Richmond Report, that magistrates often have no option but to refer those so suffering to a period of incarceration. One imagines the treatment they then receive is hardly conducive to their well being. If mental health facilities and resources in this country were properly funded, the prison population would fall dramatically. So too, with resources and support for drug and alcohol addicts, although there are some small steps being made in those areas.

According to a report in the Sydney Morning Herald on 5th March, "Tough line on crime fills our jails", it costs our state at east half a billion dollars a year to house our current prison population and, in the last 10 years, more than \$1billion has been spent expanding existing gaols and building new ones. The same article spells out some better news about juvenile offenders – their rates of incarceration have declined by 57%, one hopes at least partly as an effect of the diversionary options courts and police have been given in dealing with the young.

In all the statistics though, for adult and juvenile offenders, Indigenous Australians remain grossly over represented in our prison system. Among adults, the figures are 1710 per 100,000 for indigenous prisoners compared to 16 per 100,000 among the non-indigenous population; for juveniles the disproportion is even greater – 321 indigenous compared to 124 non-indigenous per 100,000. So little seems to have been learned from the Inquiries into Black Deaths in Custody and the Recommendations flowing from them.

Throughout NSW, it would be neither practicable or affordable to offer all the alternatives to a custodial sentence; resources in the form of trained and willing personnel, time, skills, money are simply not available for the universal availability of home detention, periodic detention, even community service orders. Our modern

governments, possibly because of the adversarial nature of our parliamentary system, do not have a history of investment in long-term, bipartisan, holistic, social programmes. After all, someone gainfully employed, with a supportive family and community, seldom becomes a law breaker, engaging in criminal behaviour. Such holistic solutions seem far too idealistic, unreal and impossible for our political representatives to envisage, let alone to instigate, in spite of the money, time, resources allocated to the 1999 Inquiry into Crime Prevention through Social Support, convened by the very Standing Committee holding this inquiry.

Community Service Orders, Bonds and Home Detention should obviously not be an option for those who have been found guilty of domestic violence, “offences against the person”, or serious crimes of a sexual nature. Careful vetting or a review of others living in the neighbourhood of the offender’s home would have to be undertaken; safeguards against mixing with other known criminals in the area would be necessary. Are there special bail conditions for Home Detainees, offering protection to witnesses? A detainee not in prison necessarily has greater access to the internet, the telephone, etc. The detainee, if his/her home especially is in a small community, may need protection from the victim, the victim’s family and/or supporters. In fact, if the offence took place in a small, tight-knit community, home detention, community service or periodic detention might not be best options for either the offender (and his/her family) or the victim (and his/her family).

All three options seem to have a much greater chance of effecting reform in a person than incarceration does, yet all could have a devastating effect on the offender’s family; sometimes community service or a bond, especially, appear soft options particularly to people close to the victim, as is likely in small, rural and/or remote communities. Outrage could be expressed not only at the offender, but worse, at his/her children. The media, particularly its current affairs face, can be party to inflaming such divisiveness.

While we have argued that the raft of alternatives to custody would be costly if made available generally, this would be a short-term cost for long-term social gain. What government though is going to fund magistrates, rehabilitation centres, all the resources needed to make the diversionary options effective? And in more sparsely populated communities, with fewer voters? There would have to be a reversal of the policy of closing down or limiting the hours of local community police stations if periodic detention were to be available in smaller rural or remote communities; and we cannot see that happening. Even many larger regional centres do not have this option available, according to the Discussion Paper itself. Where it is available, huge support is needed – public transport perhaps, strong family/community support, appropriate space and personnel. Sounds too hard.

An interesting sidelight coming from the research into this Inquiry was a comment made some years ago, and still ringing true, about the incarceration of indigenous Australians: “If [Aboriginals] have to go to gaol, don’t put them in 4 walls with a roof; lock them up in a yard, with shelter from the rain, but let them be able to see the sky, the stars, and so on.” Is that an alternative to our traditional gaols in NSW? It seems so little to ask and is surely worth consideration.

Another reflection was the general perception that white collar crime, even serious crime, too often results in one of these alternatives, a good behaviour bond, a fine not commensurate with the seriousness of the offence, periodic detention or community service, while a less socially advantaged criminal receives so often a custodial sentence. A physical assault generally brings a time in gaol, rightly; but a

con man who fleeces dozens of people out of their life's savings and even their home, is not given gaol.

In the case of women offenders, depending on the severity of the offence of course, any of the alternative sentences would surely be more beneficial to a family as well as to the individual concerned, especially if she is still in a nurturing role. A custodial sentence for women living in rural or remote areas often means the splitting of the family and sometimes even the children becoming dependent on DOCS. The long-term prognosis for such children and society is not a positive one, based on past history.

In summary, diversionary paths away from custodial sentences seem much more attractive options for society as a whole as well as for the offender (always remembering some crimes should carry incarceration as a punishment). Incarceration does not appear to effect a change for the better or the rehabilitation of the offender; but neither will any alternative sentence unless it is carefully put in place, resourced fully and monitored effectively.