

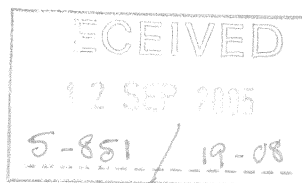
**INQUIRY INTO COMMUNITY BASED SENTENCING
OPTIONS FOR RURAL AND REMOTE AREAS AND
DISADVANTAGED POPULATIONS**

Organisation: Minister for Women
Name: The Hon Sandra Nori
Position: Minister
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Date Received: 12/09/2005

Theme:

Summary:

The Hon Sandra Nori MP
Minister for Tourism and Sport and Recreation
Minister for Women



RML No: B20081

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

Dear Ms Robertson

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

I refer to your letter of 13 April 2005, requesting a submission to the Committee's inquiry into community based sentencing options for rural and remote areas and disadvantaged populations.

The Office for Women has advised me of concerns about the increase in the number of women receiving custodial sentences and the disproportionate rate at which the female prison population is increasing. In response, and in broad terms, the use of community based sentencing options, where possible and appropriate, is supported. Their genuine availability to women offenders, however, will require creative approaches as currently women are often effectively denied access to community service orders or periodic detention orders because suitable work is not available, or appropriate childcare arrangements cannot be found.

In particular, the even more disproportionate rate of arrest and incarceration of Aboriginal women is a matter of serious concern. Far greater and more flexible use of community based sentencing options needs to be urgently considered for this population.

A number of systemic issues underpin the relationship of women, particularly Aboriginal women, to the criminal justice system, including high rates of exposure to domestic violence and sexual assault, both as adults and as children, high rates of drug abuse, mental health issues and low levels of educational achievement. These will need to be addressed if any change is to be affected for this population. A whole of government approach is recommended.

The attached paper prepared by the Office for Women provides a broad overview of the number of gender equity issues arising in relation to women prisoners and women partners of offenders. I would encourage the Committee to refer to specialist agencies which may provide it with advice specific to its terms of reference.

The Office for Women endorses a number of submissions received by the Committee from other agencies, notably the Attorney General's Department, the Department of Corrective Services and the Department of Juvenile Justice. The views of the Department of Aboriginal Affairs and the Aboriginal Justice Advisory Council may be instructive in this regard.

Secondly, the Office for Women supports programs which divert women offenders into drug and alcohol programs and those which provide for the continuity and maintenance of healthy family relationships, the increased opportunity for paid employment and skills development and acquisition.

The Office for Women also refers the Committee to the large body of work which already exists in relation to women, including Aboriginal women, offenders and victims of crime. These include (but are not exclusive to):

- The report of the Royal Commission into Aboriginal Deaths in Custody;
- Human Rights and Equal Opportunity Commission *Bringing Them Home. The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997;
- Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report*, 2002, notably Chapter 5, "Indigenous women and corrections – A landscape of risk";
- NSW Law Reform Commission *Report 96, Sentencing: Aboriginal Offenders*, 2000, notably Chapter 6, "Aboriginal women offenders";
- NSW Aboriginal Justice Advisory Council. *Speak Out, Speak Strong: Researching the Needs of Aboriginal Women in Custody*, 2002;
- The Legislative Council Select Committee on the Increase in Prisoner Population, *Interim Report: Issues Relating to Women*, 2000; and
- Various reports of the Australian Institute of Criminology; the NSW Bureau of Crime Statistics and Research and the NSW Institute of Criminology.

Thank you for the opportunity to provide the Committee with the Office's perspective.

Yours sincerely



SANDRA NORI MP
Minister for Tourism and Sport and Recreation
Minister for Women

08 SEP 2005

Submission to Legislative Council Inquiry into Community Based Sentencing Options for Rural and Remote Areas and Disadvantaged Populations

Introduction

The Office for Women is pleased to provide a submission to the Legislative Council Law and Justice Committee's inquiry into community based sentencing options for rural and remote areas and disadvantaged populations.

The international human rights instruments¹ which underpin the general policy approach of the use of incarceration as a last resort is wholly supported by the Office of Women.

The Office for Women provides this submission to highlight the broad range of equity issues facing women who come into contact with the criminal justice system – whether as offenders or as victims of crime. Of concern is the increase in the number of women prisoners in recent years and at a rate disproportionate to their male counterparts. Of particular concern to the Office for Women is the representation and treatment of Aboriginal women within the criminal justice system.

The relationship between experience of violence and abuse and criminal activity resulting in imprisonment is significant. The Legislative Council Select Committee on the Increase in Prisoner Population, in its *Interim Report: Issues Relating to Women*, cited a study by the Department of Corrective Services (DCS) into the prevalence of violence and abuse experienced by women prisoners, which found that:

- 42.4% of the sample group had experienced physical violence as a child; 69.5% had experienced physical violence as an adult;
- 33.5% had experienced sexual violence as a child and 28.6% as an adult; and
- 51.7% had experienced emotional violence as a child and 70% as an adult².

For Aboriginal women inmates, the correlation is even more striking, as demonstrated research into Aboriginal women in custody conducted by the Aboriginal Justice Advisory Council:

- 61% had experienced physical violence as a child;
- 78% had been adult victims of domestic and family violence;

¹ Including the International Covenant on Civil and Political Rights; the Universal Declaration of Human Rights; and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

² Department of Corrective Services *Census of Women in Custody in NSW, 1998*, cited Legislative Council, Select Committee on the Increase in Prisoner Population (2000) *Interim Report: Issues relating to women* p25

- 70% had been sexually assaulted as children; 44% had been sexually assaulted as adults;
- 58% had experienced mental abuse as a child and 75% as an adult;
- 58% had experienced emotional abuse as a child and 86% as an adult³.

Furthermore, there is a significant correlation between women's drug use, criminal activity leading to imprisonment and a history of physical and sexual abuse:

- 51.7% of women inmates perceived a link between abuse and being in gaol⁴;
- 62% of inmates reported being under the influence of a drug at the time of their most serious offence⁵;
- 72% perceived there to be a relationship between their drug use and subsequent imprisonment⁶;
- 48% of self-identified drug users reported having experienced physical and/or sexual abuse as a child and/or adult⁷;
- 71% of Aboriginal women prisoners who had been abused as children identified as having a drug problem⁸;
- 72% of Aboriginal heroin users were victims of child sexual assault⁹;
- 98% of victims of child sexual assault who have a drug problem were also victims of violent abuse as adults¹⁰.

In addition, while research into mental illness among women prisoners is limited, a former visiting forensic psychiatrist at Mulawa provided evidence that during early 1999, out of a total population of 240 inmates, 23 (9.6 per cent) presented with schizophrenia or delusional disorders, 26 (10.8 per cent) with affective disorders and 34 (14.2 per cent) with severe personality disorders, some with dual or triple diagnoses¹¹.

Further, Aboriginal women inmates in particular have generally received limited education, with 70 per cent having left high school before completing the year 10 school certificate and two per cent never having attended school at all¹².

Given the strong correlation between women's criminal behaviour and prior victimisation and disadvantage, the Office for Women considers that imprisonment may contribute to further victimisation of women offenders and of their children. The Department of Corrective Services found that 71.3 per

³ Aboriginal Justice Advisory Council (2003) *Speak Out Speak Strong: Researching the needs of Aboriginal women in custody* pp 51, 54

⁴ *Interim Report: Issues relating to women* p25

⁵ Department of Corrective Services (1995) *Women in Prison with Drug-related Problems* p17

⁶ *Women in Prison with Drug-related Problems* p17

⁷ *Women in Prison with Drug-related Problems* p14

⁸ *Speak Out Speak Strong* p53

⁹ *Speak Out Speak Strong* p53

¹⁰ *Speak Out Speak Strong* p54

¹¹ *Interim Report: Issues relating to women* p51

¹² *Speak Out Speak Strong* p25

cent of women inmates ordinarily had care of their own or another person's children, but that only 41 per cent were satisfied with care arrangements while they were imprisoned¹³. The Aboriginal Justice Advisory Council found that 86 per cent of Aboriginal women in custody have dependent children¹⁴; 46 per cent are the primary carer and 37 per cent shared parenting with their husbands or partners¹⁵.

The Office for Women therefore strongly supports community based sentencing options, particularly since this will assist women offenders with child care and other family caring responsibilities. However, the Office supports the continued exclusion of certain categories of offender having access to community based sentencing options, such as those convicted of serious violent crimes, including domestic violence, sexual assault and offences against children.

The availability of community based sentencing options to women offenders, however, may require creative approaches as currently women are sometimes effectively denied access to community service orders and periodic detention orders because appropriate childcare arrangements cannot be found or no suitable work is available¹⁶. Greater consideration also needs to be given to women's involvement in their communities more broadly.

The Office for Women believes that under some circumstances it might be useful to tailor community based sentencing options for rural and regional communities, where the tailoring of services takes into consideration particular forms of social and economic disadvantage, and where the tailoring of services provides a more flexible allocation of scarce resources.

The Office for Women supports the abolition of custodial sentences of six months or less, given the number of Aboriginal women subject to such sentences and the impact that removal (to prison) has on Aboriginal women and on their families and their communities. The replacement of short custodial sentences with community based sentencing options will also fulfil community expectations that sanctions be imposed against those who engage in criminal behaviour.

Community based sentencing options

Periodic Detention

As the Committee's paper outlines, terms of imprisonment of three years or less may be served through periodic detention. Periodic detention requires the offender to spend two days a week in custody, usually from a Friday to

¹³ Department of Corrective Services (1998 unpublished) p18

¹⁴ *Speak Out Speak Strong* p20

¹⁵ *Speak Out Speak Strong* p21

¹⁶ Information provided by officers from the Probation and Parole Service, Hurstville, Dubbo, Newtown and Blacktown

Sunday afternoon. Some prison facilities provide for mid week detention, usually from Wednesday to Friday. Periodic detention is available only to adult offenders who have not previously received a full time custodial sentence of more than six months, or those who have committed a sexual offence. Periodic detention is not available in all correctional centres.

The Office for Women supports the extended use of periodic detention to women in receipt of a custodial sentence, particularly for women who receive a sentence of six months' imprisonment or less, and considers that periodic detention should be available at all correctional centres which house women prisoners. The Committee should also consider how the scheme can ensure that women are not prevented from accessing periodic detention because of a lack of appropriate child care arrangements. The Committee, for example, might recommend that periodic detention centres be required to establish cooperative relationships with local child care providers in order to develop practical solutions to assist women subject to periodic detention orders who are unable to establish alternative child care arrangements. Greater use of mid-week periodic detention may be of benefit to women in some circumstances and ought to be further considered.

Home Detention

As the Committee paper outlines, home detention allows offenders to serve their sentence in their home rather than within a correctional centre. The offender may also be required to perform community service, undertake a treatment program, or seek or maintain employment. Certain categories of offenders are not eligible for home detention and it is only available where a custodial sentence has already been imposed. It currently operates in Sydney, Illawarra and Newcastle.

The current follow-up review by the Department of Corrective Services is noted and will undoubtedly be a useful inclusion for the Committee's inquiry into community based sentencing options.

The Office for Women supports a wider availability of home detention for women and an extension to rural and remote areas, particularly where women have difficulty in making alternative child care arrangements.

The Office for Women is cautious, however, about the use of home detention for male offenders, without the adherence to strict eligibility criteria. Home detention is not appropriate for families affected by domestic violence, or where the home detention sentence will place undue stress on the family and friends of the offender, for example where the man's partner may be required to provide undertakings in relation to monitoring and surveillance of the offender. Careful assessment of offenders to home detention will be required, to ensure that the offender's partner and/or family is not at risk of domestic

violence, particularly where the offender has not been charged with a domestic violence related offence.

The Office has additional concerns in relation to the use of home as a prison. Given the importance of the family home to regularising the conduct of immediate and extended familial relationships, home detention may not be suitable under certain circumstances, for example where people are likely to suffer from social isolation, and may be culturally inappropriate in Aboriginal or other communities.

Good Behaviour Bonds

As the Committee report states, a good behaviour bond requires an offender to undertake not to commit an offence for a certain period of time. Other conditions may be applied to a good behaviour bond, including a requirement to attend rehabilitation and or treatment programs. Supervision may be a further condition imposed through a good behaviour bond.

The Office for Women supports the good behaviour bond scheme and believes that this scheme may be extended or more flexibly applied. Any extension to the scheme may require the allocation of additional resources and an increase or support services in certain areas. Supervision and access to support services is particularly difficult in rural and remote areas. For women offenders, good behaviour bonds may help sustain family relationships and provide the opportunity for women to gain and/or sustain employment and skills development and acquisition.

Community Service Orders

Rather than a period of time in incarceration, an offender may be sentenced to a community service order, whereby an offender is allocated unpaid work for the local council or at a charitable or not-for profit organisation and is supervised by the Probation and Parole Service.

The Office for Women supports community service orders as an alternative to incarceration. However, for some women, appropriate work may not be available – especially in regional and rural centres where access to not-for-profit agencies is limited. In some instances, and in some locations, work suitable for women may not be available at all. While acknowledging that solutions will not be easy, and may require additional resources, the Office for Women recommends that the local Probation and Parole Service work with the local council and other government and non-government agencies at the local level, to commence dialogue to ensure that suitable work can be found for all offenders sentenced to community service orders.

Availability of appropriate child care or other family care arrangements may also be problematic, especially if a regular arrangement falls through at the

last minute. Further, a lack of access to private or public transport may also impact on women's ability to satisfy, or be considered for, community service orders. Access to other programs required by the order – education and training courses or rehabilitation or other programs – may also highlight difficulties for women offenders in regional and rural communities. These issues must be taken into account and addressed to ensure that women are not precluded from community service orders by default. Programs and work must also be culturally sensitive and appropriate.

In some areas, where the availability of work may be limited, the length of a community service order may be prohibitive. For example, if a community service order is made for 300 hours, and the offender has only two hours of work per week made available, the order lasts for nearly three years. The provision of an order may need to take into consideration the number of hours of work available, and be adjusted accordingly. It might be noted that the maximum period allowable, under the *Crimes (Sentencing Procedure) Act 1999* for periodic detention is three years. Some consistency across the community based options might be considered.

For some women, issues of supervision and compliance over a sustained period may be extremely arduous.

The Committee may also wish to consider the way in which a community service order may be applied, taking into consideration the number of matters raised above. Time requirements for face to face work, for example, may be differently applied to women offenders in different geographical locations, depending on their personal circumstances and the work available.

Intensive supervision programs linked to the Drug Court of NSW

The Drug Court provides an opportunity for offenders with substance abuse problems to be diverted into treatment programs rather than serving a custodial sentence. The Drug Court is available only to offenders appearing in the Parramatta Court Complex and who reside in western Sydney. There are also exemptions to the program in terms of offence categories, residential restrictions, mental illness issues, and willingness to participate and drug dependency.

The Office for Women notes that the Bureau of Crime Statistics and Research (BoCSaR) published a final evaluation of the Drug Court in 2002 and found it to perform well as a non-custodial sentencing option. However, BoCSaR also found that reform was needed to clarify the legal provisions prohibiting violent offenders from entering the program and the need for improved support services for women, Aboriginal offenders and those with a concurrent psychiatric problem¹⁷.

¹⁷ Bureau of Crime Statistics and Research (with the Centre for Health Economics Research and Evaluation (2002) *NSW Drug Court Evaluation: Cost Effectiveness*.

Given these findings, consideration might be given to extending the Drug Court to other Court Complexes throughout NSW.

The Drug Court assists rehabilitation and may provide options for skills development and training. Further, the Drug Court has the potential to keep families intact and may be particularly suitable for women whose child/ren might otherwise be removed from their primary care by the Department of Community Services.

Intensive supervision programs linked to the Youth Drug and Alcohol Court

The Youth Drug and Alcohol Court, covering eastern and western areas of Sydney, offers juvenile offenders similar opportunities that the Drug Court offers adult offenders. Intensive rehabilitation programs underpin the Youth Drug and Alcohol Court.

The Office for Women supports the extension of diversionary programs to young people and particularly to young women, where those programs provide other support services, including opportunities for the treatment of drug and alcohol dependency; opportunities for finding employment and sustaining that employment; skills development and acquisition.

Rural and Remote Populations

Limited resources within rural and regional communities impacts on the opportunities for offenders to access non-custodial or community based sentencing options – particularly for those offenders seeking access to services which underpin community based sentencing options, including counselling and treatment services; education and training programs; child care and transport.

The Office for Women acknowledges that a whole of Government approach to addressing the issues of social and economic disadvantage confronting rural and regional communities may require additional resources. Additionally, these issues may need to be addressed at a Commonwealth level.

Disadvantaged Populations

Women offenders in general are a disadvantaged population. The Office for Women is concerned about the increases in the number of women prisoners, and the rate at which women are being incarcerated¹⁸.

It is important that the characteristics of women prisoners be taken into account in consideration of community based sentencing options. Most women commit non-violent offences, generally drug-related, including

¹⁸ The Department of Corrective Services reported a 41.6 percent increase in the proportion of women inmates between 1995 and 2000, cited Select Committee on the Increase in Prisoner Population p10

property crimes committed to support drug addiction¹⁹. A significant proportion have mental health issues and are in need of specialist treatment and support and, as outlined above, there is a direct correlation between women's history of physical and sexual abuse, drug use and criminal activity. Yet the availability of community based sentencing options may be effectively denied to women because of an absence of suitable work, alternative child care arrangements are not available, or public transport is inaccessible.

Aboriginal women

The intersections of racism and gender discrimination are crucial to understanding the issues impacting on Indigenous women and their presentation in the criminal justice system. High levels of domestic and family violence, over-policing for certain offences, ill health, poor education, poverty and unemployment, and the trauma of colonisation and dispossession are all contributing factors. The Office for Women strongly recommends that these factors be taken into consideration in the sentencing options for Indigenous women, particularly for those in rural and remote communities.

The Office for Women refers the Committee to a number of government and academic reports related to the incarceration of Aboriginal women²⁰, which highlight a range of important issues and recommendations for future policy proposals. Most of these will require a whole of government approach and in some instance, greater Commonwealth and state co-operation.

CALD women

As with Aboriginal women, race and gender discrimination intersect, affecting ethnic communities and their interaction with the criminal justice system. The Office for Women is concerned that there may be little understanding of the availability of community based sentencing options amongst communities which are culturally and linguistically diverse. For women of culturally and linguistically diverse backgrounds, difficulties may be exacerbated if they cannot understand their rights or obligations in seeking support services, whether as victims of crime or as offenders.

Further, support services may not be available or may not be delivered in ways which are culturally and linguistically appropriate. Issues for migrant and refugee women, particularly those already suffering from torture or trauma, need to be taken into consideration in the extension of community based sentencing options.

The Office for Women supports the submission of the Community Relations Commission to the Inquiry.

¹⁹ NSW Department of Corrective Services (2005) *NSW Inmate Census 2004: Summary of characteristics*, p6; available at <http://www.dcs.nsw.gov.au/Documents/index.asp>

²⁰ See particularly *Speak Out Speak Strong* and Aboriginal and Torres Strait Islander Social Justice Commissioner *Social Justice Report: 2002*, chapter 5

Young women

The Office for Women supports programs which divert young offenders from incarceration.

All community based sentencing options should be made available to young women and to young Aboriginal women in particular. These include good behaviour bonds; circle sentencing; youth conferencing; community service orders; other court supervised programs. Diversionary programs and related services need to take into consideration young women who are at risk of violence, or where the risk of harm within the family home is a contributing factor to their criminal behaviour.

Older women

Older women, including those with a lengthy criminal history of summary offences or non-violent crimes, should be able to access non-custodial sentences. As outlined above, a lengthy criminal history is commonly associated with alcohol and/or drug dependency and a high prevalence of domestic violence and/or sexual assault. Community based sentencing options providing greater access to therapeutic programs, need consideration.

Women with disabilities

While the number of people in prison who also suffer from a disability or an intellectual disability is not known, it is generally accepted that a number of offenders and prisoners suffer from an intellectual disability.

The Office for Women believes that policies and programs in support of people with intellectual disabilities need to be extended. Of increasing concern is the number of young Aboriginal people developing an intellectual disability through solvent sniffing, who may subsequently end up within the criminal justice system. Greater use of interventionist health and education strategies may be appropriate.

Women with mental illnesses

Women prisoners suffering from a mental illness are incarcerated at a higher rate than their male counterparts. The contribution of mental illness to offending behaviour requires policies and programs of intervention prior to a person's contact with the criminal justice system and diversionary programs where appropriate.

Safe and available supported accommodation for mentally ill persons is required.