

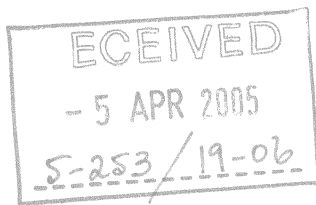
**INQUIRY INTO COMMUNITY BASED SENTENCING  
OPTIONS FOR RURAL AND REMOTE AREAS AND FOR  
DISADVANTAGED POPULATIONS**

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**Theme:**

**Summary:**



Discussion Paper  
30 March 2005

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

Submission on Behalf of  
the Legal Aid Commission of New South Wales  
to the  
Standing Committee on Law and Justice, Legislative Council

The Legal Aid Commission of New South Wales (Legal Aid NSW) is established under the *Legal Aid Commission Act 1979 (NSW)* and is an independent statutory body. It provides legal services to socially and economically disadvantaged people. Legal services include representing them in federal and state courts and tribunals. It also works in partnership with private lawyers in representing legally aided people.

The Legal Aid NSW appreciates the opportunity to make a submission on this matter to the Standing Committee on Law and Justice.

#### Summary of the Legal Aid NSW submission

Legal Aid NSW is concerned about inconsistency of having sentencing options determined arbitrarily by the geographical location of the offender within a properly functioning legal system. While this is acceptable temporarily during the initial period of pilot programs, once the efficacy of specific sentencing options has been established, access to these options should be available across the whole of New South Wales, supported by adequate funding for staffing resources and physical infrastructure. Also, in some cases,

legislative changes are required to ensure the eligibility of suitable offenders for certain sentencing options.

The following comments relate to certain important issues raised in the Standing Committee's discussion paper.

### What is community based sentencing?

While the discussion paper has mentioned numerous kinds of community based sentencing, it has not mentioned Circle Sentencing, an alternative method of sentencing indigenous offenders which has been generally well received by communities where it operates. The NSW Aboriginal Justice Advisory Council has published a report on its progress<sup>1</sup>.

Legal Aid NSW is aware of other community based sentencing choices available in New South Wales including a variation on the MERIT scheme called Options. Its focus includes abuse of alcohol. It is currently being trialled at Wellington Court. The Rural Alcohol Diversion Program is being trialled at Orange Court, and Traffic Offenders Programs are available at a number of courts.

A pilot Community Conferencing Program for Young Adult Offenders (aged between 18 and 24) will commence in 2005 at Liverpool Local Court and Tweed Heads Local Court. This program is based on the successful Youth Justice Conference program introduced under the *Young Offenders Act* 1997(NSW). The *Young Offenders Act* 1997(NSW) is a court diversion scheme for children, which also provides the Children's Court of New South Wales with additional sentencing options. Community Conferencing for Young Adult Offenders will provide Local Courts with an additional intervention program that can be incorporated in sentencing options. The program is aimed at offenders who would otherwise be subject to a custodial sentence.

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<sup>1</sup> NSW Aboriginal Justice Advisory Council, *Circle Sentencing in New South Wales, A review and evaluation* (Sydney: Judicial Commission of New South Wales, 2003).

Youth Justice Conferences are available throughout New South Wales, including in rural and remote areas. Legal Aid NSW would support the Community Conference Program for Adult Offenders becoming available throughout New South Wales, following the pilot.

In the view of Legal Aid NSW, community based sentencing options are not necessarily 'lighter' forms of punishment than imprisonment. Some programs such as the Drug Court and MERIT require strict adherence to conditions, thereby requiring degrees of discipline and commitment on behalf of the offender which they would not be required to display if undergoing imprisonment. The main advantages of community based options are that they potentially reduce unnecessary hardship for offenders and their families, and promote rehabilitation and lower recidivism rather than focussing primarily on punishment as full-time imprisonment invariably does.

#### Rural and remote areas in NSW

Limited correctional and health services, combined with large distances between towns, means that rural and remote areas are poorly served in relation to community based sentencing options. Several of the community based sentences mentioned in the discussion paper (home detention, community service orders, bonds with supervision) require the involvement of officers of the Probation and Parole Service, New South Wales Department of Corrective Services. In the opinion of Legal Aid NSW, in expanding the availability of these options it will be crucial to provide adequate resources.

For example, any new correctional facility (such as the prison currently being built at Wellington) should include periodic detention facilities for both men and women, unless there are existing periodic detention facilities in the area which are adequate to meet demand, both current and for the foreseeable future.

It is certainly in the public interest to tailor community based sentencing for rural and remote areas in New South Wales, as people in these areas have a

right to the same access to justice available to people in cities. As Legal Aid NSW has a number of regional offices, it is acutely aware of the unfairness caused to offenders in rural and remote areas where the unavailability of several community based sentencing options greatly reduces the choices available to a court. For example, unavailability of periodic detention may result in full-time imprisonment being imposed instead. As a result the convicted person could lose their job instead of being able to keep it. The person's family suffers, not only from the absence of the person and the trauma involved in their incarceration, but also from the loss of the income brought in by the person. In rural and remote areas employment options are very often scarce, as are some of the support services required by families coping with the loss of their main income earner. Where the convicted person is a sole parent the effects on families are even more serious. The detrimental effects on rural and remote communities cannot be underestimated, so tailoring of sentences to avoid unnecessary hardship is very important.

Other issues raised in relation to tailoring community based sentencing options for rural and remote areas include:

- The inclusion of a Drug Court in these areas would mean that offenders are allowed access to a program which would have a great bearing on their health, as well as giving them an opportunity to keep their liberty instead of going to prison;
- The imposition of community service orders instead of gaol sentences is dependent on a number of things, including availability of suitable work. One possible way to increase the amount of work available would be to involve government agencies and other employers in providing community service order placements for work which has an appropriate community component but which would not take the place of a permanent employee (and therefore not breach existing legislation). Financial incentives to cover an employer's necessary training costs, where applicable, should also be considered - this might be particularly

relevant if the person performing the community service work has particular training needs due to a disability;

- Government agencies should be enabled and encouraged to become involved in Youth Justice Conferences when they are the victim. By not authorising government attendance at this type of conference, an opportunity for restorative justice is lost;
- Provision of public transport (for example a minibus) should be considered to enable periodic detainees to attend prison in towns other than where they live. Many rural and remote areas are notoriously poorly served by public transport. Another option is to allow periodic detainees to be transported by prison truck to gaols in areas where regular runs are already made from other towns, for example, between Dubbo police station and Bathurst Gaol.

As part of its inquiry it may be useful to the Standing Committee to conduct an audit of all community based sentencing options available throughout New South Wales to ensure that the information it has is both current and accurate.

#### Disadvantaged populations

Providing community based sentencing options as a real alternative to imprisonment has great potential to reduce the number of deaths of indigenous people in custody, which remains a social justice problem of great concern despite the many years since the Royal Commission into Aboriginal Deaths in Custody and the action which resulted.

Older offenders and offenders with a disability may not be considered suitable for community service orders if appropriate work is not available in their area. A suggestion for increasing the amount of work available to be performed under community service orders was made above.

Fewer correctional facilities exist for female offenders compared to male offenders. A need exists for expansion of facilities such as periodic detention for female offenders in more parts of New South Wales. Consideration should be given to establishing periodic detention facilities for women in existing prisons which otherwise deal with male offenders, if this is a cost effective way of meeting this need. Expansion of home detention beyond the coastal strip from Wollongong to Newcastle to where it is currently confined may also help women with young children whose families' lives would be severely affected by imposition of full-time imprisonment.

### Eligibility for community based sentences

It is suggested that the conditions of eligibility for the various community based sentencing options be reviewed. Some conditions, particularly in respect of options that have been available for several years, may no longer be relevant or useful. For example, home detention is not currently available for offenders who have been convicted of stalking, at any time in the past. If the offence for which they would now otherwise be eligible for home detention is of a different kind entirely, for example fraud, it is very difficult to see how a past conviction for stalking is relevant to their suitability. Another example is the unavailability of periodic detention to someone who has previously served full-time imprisonment of more than six months. This should not necessarily prevent them from serving periodic detention, particularly if the full-time imprisonment was followed by many years of good behaviour without further offences.

### Conclusion

Legal Aid NSW is grateful both for the opportunity to make submissions on the Inquiry into community based sentencing options for rural and remote areas and special need/disadvantaged populations and for the extension of time granted to lodge them.

It is hoped that those areas where Legal Aid NSW has expressed concern will be closely considered by the Standing Committee on Law and Justice in its continuing deliberations.