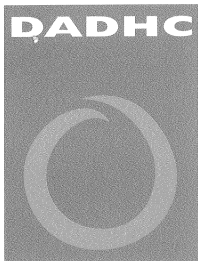


**INQUIRY INTO COMMUNITY BASED SENTENCING
OPTIONS FOR RURAL AND REMOTE AREAS AND
DISADVANTAGED POPULATIONS**

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Date Received: 23/05/2005

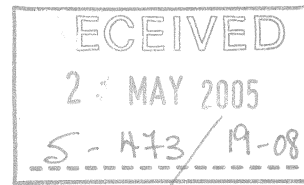
Theme:

Summary:



**Department
of Ageing,
Disability &
Home Care**

**Office of
the Director-
General**



Ms Rachel Simpson
Acting Committee Director
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

20 MAY 2005

D05/4103

Dear Ms Simpson

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

I refer to your correspondence inviting a submission from the Department of Ageing, Disability and Home Care (DADHC) to the Standing Committee on Law and Justice.

Please find a submission attached from the Department with a focus on people with a disability, including intellectual disability, and the Indigenous population.

Should you have any queries please contact Ms Liz Knight, Senior Manager, Prevention and Early Intervention, on (02) 8270 2185.

Yours sincerely

**Brendan O'Reilly
Director-General**

Encl.

DEPARTMENT OF AGEING, DISABILITY AND HOME CARE

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

The Department of Ageing, Disability and Home Care

The Department of Ageing, Disability and Home Care (DADHC) is responsible for delivering services and providing opportunities for older people, people with a disability and their carers to assist them to participate fully in community life. Within this role the Department provides limited services to people with an intellectual disability who engage in offending behaviour such as case work and behaviour management programs. However, the Department does not provide offender specific community programs or supervise court ordered community based sentences.

The Department welcomes the opportunity to explore more effective strategies for service provision for people with an intellectual disability within the criminal justice system.

The focus of this submission is, therefore, people with an intellectual disability.

Population

People with an intellectual disability are vulnerable within the prison system. Such individuals often lose adaptive functioning, are socially vulnerable within the prison system due to their social naivety, and subject to depression and trauma that can lead to severe loss of communication skills, social skills, and in extreme cases the loss of bodily functions over extended periods of time. Consequently, the prognosis for these people for successful reintegration into the community is often poor.

It is important for people with an intellectual disability who have offended to have options available that recognise their vulnerability and range of support needs.

With support from specialist services there are improved prospects for the safety, well-being and community integration of offenders with an intellectual disability. Appropriate assessment and support is also likely to reduce recidivism. There is a view among clinicians in rural and remote areas that diversionary approaches are significantly more appropriate for people with an intellectual disability than incarceration.

The use of community based options should be viewed as a more effective strategy for people with an intellectual disability rather than a less severe or lighter option. The concept of a lighter sentence is not accurate as the impact is more severe on these individuals as a result of the unintentional and detrimental effect of prison.

Strategies

The provision of diversionary services to rural and remote communities is often difficult. In these communities, the options that involve community training of

mentors, collaboration across services (Police, Health, Aboriginal Services, Housing, Mental Health, Corrections, DADHC and the non-government sector) would appear to offer the most effective approach that will allow these people to remain in their community and gain support. Along with this is the development of diversionary programs that are multi faceted and flexible and based on the resources of the individual community. The provision of such services is a whole of government responsibility, however, capacity to do this well is often constrained by limited resources.

In addition, remand periods in custody are often not used to maintain or establish community supports. People with an intellectual disability before the court are often detained in prison on remand, resulting in deterioration in their general well-being and capacity to achieve independence in the community.

Aboriginal and Torres Strait Islanders

Approximately 135,000 people identifying as Aboriginal or Torres Strait Islanders live in NSW, making up just over 2% of the total population. NSW has the greatest number of Aboriginal or Torres Strait Islander people of any Australian state or territory (Australian Institute of Health and Welfare, 2003).

Among Indigenous people aged 15 years and over in 2002, just over one third reported a disability or long-term health condition. The disability rate among Indigenous people was 1.4 times higher than among the non-Indigenous population (57% compared with 40%) (Australian Bureau of Statistics, 2002).

A significant share of the Aboriginal and Torres Strait Islander population (69%) lives outside the major urban centres. In 2001, around one in four Aboriginal Australians lived in remote areas compared with only one in fifty non-Aboriginal Australians. NSW (29%) and Queensland (27%) totalled over half the Aboriginal and Torres Strait Islander population of Australia (Australian Bureau of Statistics, 2002)

Due to these statistics, it is imperative to understand the importance of how a custodial sentence affects a range of Aboriginal people and their community, and not just the person being sentenced to a custodial order, when compared with a community based sentencing option.

NSW currently provides a range of custodial sentencing options available in rural and remote areas of NSW that address a wide set of issues for inmates from Far Western NSW. While these custodial centres help to keep Aboriginal people closer to their homelands or relatives, a preferred option would be the greater availability of community based sentencing options.

Community based sentencing options are usually limited to major towns or population centres that deny the majority of Aboriginal people the ability to undertake or participate in these sentencing options. The development and delivery of community based sentencing options in rural and remote areas would have a significant impact in reducing the number of Aboriginal people in custody.

The provision of community based sentencing options would help to alleviate the trauma for Aboriginal people when removed from family, community and their homelands and extended family. This can also have a significant financial impact for the family.

Community based sentencing options can also impact on the higher level of risk that is associated with the incarceration of an Aboriginal person, even for short periods, when the issue of how the offender's family may access the facility to visit and provide support is not considered.

The provision of community based sentencing options in rural and remote communities would allow offenders of Aboriginal descent to remain in the community but more importantly closer to family and homelands, which helps reduce the risk of self harm and suicide.

Some of the issues that can affect an Aboriginal person's capacity to participate in community based sentencing options include the person's ability to access transport to and from the facility or service. The person's lack of understanding of how to comply with the community-based order can result in a custodial sentence.

Community based sentencing options may be of limited use for some people with an intellectual disability in some circumstances as they may not understand the conditions and may lack the resources and capacity to comply with them. For community based options to be effective for these people realistic and meaningful conditions need to be available to the courts.

Tailoring community based sentencing options

Combining some community based options such as a good behaviour bond with a community service order, or a community service order with attendance at living and work skills programs may be more effective for a person with an intellectual disability.

To increase the success of a community based sentencing option a person with an intellectual disability may require additional supervision and support, assistance with accommodation, and access to behaviour intervention services to deal with challenging behaviours or other needs. These issues have budget implications and would require additional resourcing for the Department of Corrective Services.

Community Service Orders

Community Service Orders (CSO) may be beneficial to a person with an intellectual disability as it may increase their self-esteem through participation in the work program. The work may increase social and vocational skills. A CSO may be a more meaningful consequence than other options. However, the work offered needs to be appropriate to a person with an intellectual disability.

People who have an intellectual disability who have come in contact with the criminal justice system do not appear to be considered for the option of a CSO as a community based sentencing options as the level of adequate supervision required is not available in the current CSO programs. In order for this option to be available

to a person with an intellectual disability the programs would need to be tailored to suit their needs.

For CSO to be offered for Aboriginal people in any area a suitable organisation needs to be identified and trained to undertake this role. Within rural or regional areas there is usually a lack of a suitable community organisation to effectively supervise offenders and to manage this scheme. Therefore, while the concept is worthwhile it may not be possible to implement as there is limited capacity to resource or administer the scheme.

Drug Courts

People who have an intellectual disability who have come in contact with the criminal justice system do not appear to be considered for this sentencing option. Often the individual with an intellectual disability does not have the capacity to understand the process involved and community support for this option is limited.

Periodic Detention

People who have an intellectual disability who have come in contact with the criminal justice system may not be considered for the option of periodic detention due to the levels of support required in assisting the individual attending detention and the support that they may require whilst in detention. In addition, medical support needs cannot be catered for in the periodic detention environment, which prevents a percentage of people with an intellectual disability from participating.

Periodic Detention Centres referred to in the Discussion Paper are located in a range of areas across NSW, however, there are none located between Mannus/ Tumbarumba and Broken Hill, or from Grafton to Broken Hill, where there are high concentrations of Aboriginal people.

While this option has clear limitations in rural areas for all populations it is one which could be considered for people with an intellectual disability in combination with other undertakings. As noted earlier, a number of people with an intellectual disability have very poor adjustment to prison and become acutely distressed. For such individuals repeated exposure may increase the level of distress and result in physical and mental breakdowns that adversely affect the person's capacity to function in the community for the remaining days.

Home Detention

The suitability of home detention as a community based sentencing option depends on the individual case and the accommodation options available to the particular individual with an intellectual disability.

Home detention for individuals with an intellectual disability at this time would seem to have limited options because of the high level of self control required by the detainee. However, it does offer an avenue to explore for those people in prison with an intellectual disability as a 'back end' of their sentence option, where they can be reintegrated into the community prior to the expiration of their sentence. There would need to be recognition by the individual of the need to comply with this program.

Given the locations where this program operates, there is very limited access for people with an intellectual disability in many rural settings.

It has been the experience of the Department that this sentencing option is rarely utilised by the court.

Opportunities for home detention for many Aboriginal people are limited due to the availability in metropolitan centres only.

Resource Implications

To provide greater community based options to rural and remote areas and to vulnerable populations will require significant resources for a wide range of government agencies. In the case of DADHC there is very limited capacity to provide any additional support to people with a disability who may be eligible for such services. The gap is not merely in funding, although this should not be underplayed as it is a critical issue. There is also a significant skill gap in many areas that means without considerable capacity building there is only a limited likelihood of initiatives being able to be implemented.

In summary, therefore, DADHC believes that the principles and concepts that underpin community based sentencing have merit for people with an intellectual disability or other cognitive impairment, but could not support any expansion without considerable additional resources being made available.