

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

**Organisation:** Institute for Rural Futures  
**Name:** Prof Russell Hogg  
**Position:** Adjunct Professor of Criminology  
**Telephone:** 02 6773 5142  
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**Theme:**

**Summary:**

## SUBMISSION

### LEGISLATIVE COUNCIL LAW AND JUSTICE COMMITTEE

#### INQUIRY ON COMMUNITY BASED SENTENCING OPTIONS FOR RURAL AND REMOTE AREAS AND FOR DISADVANTAGED POPULATIONS

1. The terms of reference and the Discussion Paper raise a wide range of important and complex issues. This submission addresses only a few of them and only rather briefly. Unfortunately there was not time to consider specific penalties and measures in detail. My primary focus will be upon issues as they arise in the rural and remote context rather than in relation to other disadvantaged offender groups. Having undertaken a considerable amount of research on crime in rural NSW over the last eight years I am aware of how pressing these issues are in many communities and thus of the importance of the Committee's work on this reference.

#### Crime in Rural NSW

2. Our analysis<sup>1</sup> of recorded crime rates in rural NSW shows that rates for *all* types of crime<sup>2</sup> other than property crime are higher in rural and regional NSW than in the Sydney metropolitan area. In general locality crime rates increased as area population got smaller and more distant from urban centres. In many rural communities crime rates are dramatically higher than the state average. In others crime levels are, on a per capita basis, similar or greater than in the coastal cities.

3. We found that there were high levels of 'offences against justice procedures' i.e. for breach of conditional court orders, most commonly apprehended violence orders, but also bail, good behaviour bonds, etc. Such offences are by definition serious and often lead to imprisonment. The findings are relevant to any consideration of the role of community penalties for they raise questions about the effectiveness of court orders and supervision in these settings.

4. Many rural communities are thriving. Many others are struggling with the impact of long term population decline, a shrinking employment base, high levels of poverty and serious disadvantage (especially in Indigenous communities, but not confined to them by any means), disappearing services, racial tensions, reduced opportunities for young people, and an array of related problems (family stress, alcohol abuse, mental health problems, suicide and so on). Many of those disadvantaged populations referred to in the Discussion Paper – in particular, Aboriginal and Torres Strait Islanders, young people and people with a disability - are found in significant numbers in rural communities.

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<sup>1</sup> This research was undertaken as part of an Australian Research Council Discovery Grant, 1998-2000. The statistical analysis upon which the following general conclusions are based was undertaken by my co-researcher, Professor Kerry Carrington, School of Social Science, UNE.

<sup>2</sup> That is: Violent offences, Offences against Public Order, Drug Offences, Serious Motoring Offences and Offences against Justice Procedures. A much fuller empirical picture can be provided if the Committee is interested.

Existing disadvantages are compounded by the disadvantages produced by distance and many of these are increasing in smaller, more remote communities as services relocate to larger regional centres.

5. A general snapshot is afforded by a research study undertaken by the NSW Law Reform Commission of two rural courts in 1995 as part of its reference on People with an Intellectual Disability and the Criminal Justice System.<sup>3</sup> A total of 88 persons participated in the study being persons aged 18 years or older who appeared at the two local courts in July 1995 (a 98% response rate). At least three quarters were Indigenous. The study found that more than a third (36%) were intellectually disabled and a further 20% had a borderline intellectual disability. More than half therefore would have serious difficulties with courtroom processes. The summary observed –

‘The Aboriginal population, in particular, appears at a disadvantage in court proceedings. Although every effort was made in test selection and administration to reduce cultural bias, even if the results of the assessments were culturally biased, the results nevertheless indicate that many Aborigines would find it difficult to comprehend the non-Aboriginal sub-culture prevailing in the criminal justice system.’

Other notable characteristics of participants in the study were –

- 8% had completed year 12
- 62.5% were unemployed
- 46.9% were before the court for offences against the person, 21.1% for break and enter and 22.6% for offences against good order
- almost 80% indicated a history of previous offences and of those answering the question on the number of previous offences 50% had more than six previous offences
- 80% indicated that they were intoxicated at the time of the offence, with in most cases very large quantities of alcohol having been consumed on the day

6. The scale of crime problems and the complex factors that lie behind them present significant challenges for local communities, for courts, police and correctional agencies, and for all levels of government. They are associated, both as effect and cause, with the declining fortunes of many rural communities. There are no magic solutions to be found in community sentencing options, but they have to form an important part of any feasible strategy to address the issues.

7. Questions of access to services in many rural communities are of critical importance if community-based sentencing options are to be effective. Governments and communities of course wrestle with delivering basic services, like medical and other health care services, in many rural settings, let alone specialist drug and alcohol treatment

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<sup>3</sup> NSW Law Reform Commission *Research Report 5 (1996) – People with an Intellectual Disability and the Criminal Justice System: Two Rural Courts.*

programmes, mental health services and so on. Service delivery issues require as much attention as the legal framework of community penalties. It may also be necessary to consider whether the structure of the Probation and Parole Service, the Department of Juvenile Justice and other agencies involved in the supervision of community penalties is appropriate to the needs of rural and remote communities.

### **Prison as a Last Resort and Community Penalties**

8. The 'prison as a last resort' principle is enshrined in the *Crimes (Sentencing Procedure) Act 1999* s5. The impact of the principle depends on the availability of credible, effective alternatives to incarceration, whether in rural or metropolitan settings. If accepted and endorsed the principle answers some of the fundamental general questions posed in the Discussion Paper: such as whether it is in the public interest to tailor community penalties to the needs of rural and remote communities. Quite apart from the desirability of ensuring that penalties are effective, courts in rural and remote settings should as nearly as possible have available to them the same range of penalties as metropolitan courts as a matter of equal justice. As it stands those sentenced to imprisonment by rural courts are probably more likely than their urban counterparts to be incarcerated at some distance from family and social networks. This can amount to an additional penalty in itself, quite apart from its baleful effects on rehabilitation prospects. Such offenders are dealt a double blow if their prison sentence arises from the want of accessible alternative penalties in their locality.

9. Resources, infrastructure and community education and understanding are vital if community penalties are to be meaningful, credible and effective. Arguably this is a general problem in relation to many community penalties throughout the state. Where caseloads are massive and supervision unreliable or nominal, such penalties are likely to enjoy little credibility with the courts and less with the community. The great problem is that such penalties are often perceived in the community as 'getting off'.

### **Community Penalties in Rural and Remote Communities**

10. Problems are greater in many rural communities for a number of reasons. The public resources, infrastructure and staff to ensure intensive supervision, the administration of community service and the like are likely to be even more stretched as are necessary support services. The problems of credibility, at least with the community, are often greater. Generally speaking sentencing is subject to more intense community scrutiny, including in the local press. In the far more personalized setting of a small community the decision of a court to return an offender to the community, rather than send them off to prison, is often more visible and alarming. The offender cannot melt into the anonymity of a city. They will often be encountered by their victims and others affected by the offence almost as a matter of course in daily life. The particular issues affecting victims in the rural context require special attention in the context of reforms affecting community-based sentences.

11. It is noteworthy in this context that organised law and order campaigns protesting the leniency of courts have been common in many parts of rural NSW for 20 years or more now. There have been marches on court houses in some localities. In others local authorities have sought to have magistrates directly answer to local dissatisfaction with their sentencing practices.<sup>4</sup> However the propriety of specific activities of this sort is to be judged, the reality is that questions of community accountability and pressure tend to be much more pressing. If community penalties are to be effective and credible in rural communities attention must be given to these issues. There is a greater requirement for community understanding, participation and ownership without eroding judicial authority or independence.

### **Restorative Justice and Problem-Solving Approaches**

12. There is the potential to promote many of these goals and partially surmount the resource problems if ways can be found to more effectively enhance and harness community resources themselves rather than relying solely on the professional or bureaucratic delivery of programs. Of course, the latter cannot be entirely dispensed with as access to specialist mental health services, drug treatment programs, etc. are essential if community penalties are to be effective.

13. Possibilities for incorporating restorative justice (RJ) principles into the *administration* phase of the penal process might be explored. Group conferencing in its various forms is concerned with the *dispositional* phase and where introduced has shown considerable promise. The circle sentencing programme piloted on the south coast and now being introduced in many rural areas in NSW is a particularly good example of what can be achieved by way of the introduction of constructive alternatives to incarceration that address the needs of both offender and victim, that are not perceived as 'soft' by any party and that involve the community in the process. My impression from the evaluation of the program<sup>5</sup> and from speaking at length to some of those involved is that it has served to genuinely strengthen the authority of Indigenous communities and elders and empowered them to take on other projects which improve community well-being. It also took on difficult cases with results that at least to date are impressive. Success is perhaps the surest way of gaining community confidence. This experience, although not straightforwardly translatable into other settings carries lessons for any effort to tailor community penalties to the needs and circumstances of rural and remote communities.

14. Circle sentencing and other RJ initiatives are part of a broader evolving trend for courts to adopt *problem-solving* approaches to their work<sup>6</sup>. This is apparent in the advent of new specialist courts, like drug courts, but also in courts of general jurisdiction (like local courts). Magistrates are the most common point of contact with the judicial system

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<sup>4</sup> See for example ABC Radio, Law Report, 1/10/2002, "Sentencing, Shire Councils and the Separation of Powers".

<sup>5</sup> Judicial Commission of NSW *Circle Sentencing in NSW – a Review and Evaluation* Monograph 22, 2003. Also see E. Marchetti and K. Daly *Indigenous Courts and Justice Practices in Australia* Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice, No. 277, May, 2004.

<sup>6</sup> See S. Jeffries "Transforming the Criminal Courts: Politics, Managerialism, Consumerism, Therapeutic Justice and Change", Criminology Research Council, 2002 (available from the CRC website).

for the vast majority of citizens. A vast array of social and personal problems lie behind the ostensible reasons why people end up before local courts, as the NSW Law Reform Commission study referred to in paragraph 5 suggests. Administering justice rather than just enforcing the law requires that courts grapple as best they can with some of these problems. Such approaches require more creativity, more local knowledge and more attention to the particularities of individual, family and community. They also necessitate multi-agency responses so that the court uses its authority to catalyse intervention by other agencies with relevant expertise or capacity. The exigencies of justice delivery in rural and remote communities probably necessitate the further conscious cultivation of such problem-solving approaches through judicial education, court resourcing, continuing legal education for rural legal practitioners, and prosecutor and police training.

15. On the community side Aboriginal Community Justice Groups might provide a model that could be extended to non-Indigenous communities or have representatives from all relevant constituent groups within a local community. Like ACJGs such groups might work on a range of community-based solutions to local crime problems in consultation with other agencies, including in respect of community penalties. The form and content of community penalties, the locus of responsibility for their administration and the manner of their enforcement can be flexible and responsive to local circumstances as long as there is some ultimate accountability to the court. Within the existing or modified legal frameworks local justice groups could play an important role in devising and administering such penalties in ways appropriate to local needs and resources.

### **The Economics and Effectiveness of Punishment: Prison vs Community**

16. Resources are a perennial problem in the administration of justice as well as the delivery of government services more generally. Community penalties are of course much cheaper to deliver than full-time imprisonment. At present almost 70% of offenders under correctional supervision are in the community (on bonds, community service orders, parole, etc), the balance being in prison. Expenditure per offender per day averages \$10 for those under community supervision and \$159 for those in prison. The cost of imprisonment is therefore almost 16 times that for community supervision. Staff/offender ratios are about 1:2 in prison and about 1:33 in the community. The financial attractions of community penalties are not in doubt.

17. There are also advantages to community penalties from the point of view of penal effectiveness. The major factors that inhibit crime or lead to its desistance by former offenders revolve around an individual's social connections with family, secure employment, stable housing and so on. At the least, supervising an offender in the community keeps open the possibility that such connections can be maintained where they do exist or enlivened or cultivated where they are weak or non-existent. Probation officers or others who supervise offenders in the community cannot make this happen, but with time, resources and networks of other social agencies for referral purposes they can facilitate it. Prison on the other hand places an offender's relationships with conventional institutions and lifestyles under enormous stress, both during the period of

incarceration and often after release. This is borne out by the high recidivism rates for those incarcerated.

18. There is a case therefore for putting many more resources into a stronger, more effective system of community corrections with state-wide coverage. If this meant that community penalties were enhanced as a credible alternative to prison and functioned as such to a greater extent than at present, it might even be possible to save money in the correctional budget whilst reducing recidivism. The reality though is that there is no cheap fix. On the other hand, the cycle of offenders returning to crime and thence to prison over and over is highly costly for the community in social terms and for governments in financial terms.

### **Young Offenders**

19. Offences by young people and in particular young Indigenous people are a major issue in many rural and remote communities. This is where the pattern of recidivist offending is perhaps most likely to be set or interrupted. Recent research in Queensland shows this very clearly.<sup>7</sup> Of the cohort of juveniles given a supervision order by Queensland childrens' courts in the mid 1990s almost 80% had progressed to the adult correctional system within seven years and almost 50% had served a term of imprisonment. Nearly 90% of Indigenous males progressed to the adult system and 71% entered the adult prison system. Ninety one per cent of those given a care and protection order as well as a supervision order had entered the adult system and two thirds had served at least one term of imprisonment. These statistics afford a stark lesson in the importance of early, effective intervention with respect to young, repeat offenders. Again the investment of substantial needed resources at an earlier phase may save resources that will simply be later devoured in the costly and futile recycling of offenders through the prison system, into the community and back into prison; quite apart from the social and economic costs of their offending behaviour.

20. This is to emphasise that in considering the future role of community penalties in rural communities special attention needs to be given to young offenders who are often the most disadvantaged and disaffected, the most criminally active, the most feared and despised in the community and the most vulnerable to subsequently embarking on a criminal career if simply incarcerated with others of their kind.

### **Concluding Comments**

21. The above comments only skate over some of the general issues raised by the terms of reference. I hope at least they afford some further evidence and encouragement in support of those stressing the importance of the inquiry and the need for reform.

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<sup>7</sup> M. Lynch, J. Buckman and L. Krenske *Youth Justice: Criminal Trajectories* Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice, No. 265, September, 2003.

22. I would be pleased to provide further assistance to the Committee if requested.

Russell Hogg,  
Adjunct Professor of Criminology,  
Institute for Rural Futures,  
University of New England,  
Armidale 2351

Ph 02 6773 5142

[russell.hogg@une.edu.au](mailto:russell.hogg@une.edu.au)