

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

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**Theme:**

**Summary:**



**Judy Spence MP**  
Member for Mount Gravatt

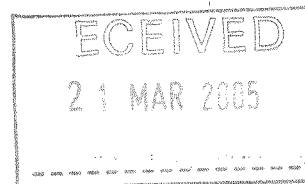


**Queensland  
Government**

Office of the  
**Minister for Police and  
Corrective Services**

14 MAR 2005

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



Dear Christine

Thank you for your letter of 14 February 2005 regarding the standing committee's inquiry into community based sentencing options for rural and regional areas and disadvantaged populations.

Please find attached Queensland's response to the discussion paper.

Queensland is exploring options whereby current projections for prisoner growth may be mitigated by having enhanced community supervision and programs for all offenders thus providing the judiciary with a real sentencing alternative for low risk, non-violent offenders. I would be interested to read the conclusions arising from the committee's inquiry.

Thank you again for the opportunity to provide Queensland's perspective to the inquiry.

Yours sincerely

**Judy Spence MP**  
Minister for Police and Corrective Services

\*Encl

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## ATTACHMENT

**Queensland Response to the Discussion Paper of the  
Standing Committee on Law and Justice, New South Wales Legislative Council  
regarding its Inquiry into community based sentencing options for rural and  
remote areas and disadvantaged populations**

What is community based sentencing? – pages 2 and 3 of paper

In Queensland, offender sentencing is undertaken in accordance with the *Penalties and Sentences Act 1992* (PS Act).<sup>1</sup> Section 9 of the PS Act provides sentencing guidelines to assist courts in this regard. While one of the guiding principles is that a sentence of imprisonment should only be imposed as a last resort and that a sentence which allows an offender to stay in the community is preferable, there are some exceptions. For instance, the PS Act provides that this principle does not apply to the sentencing of an offender for any offence that—

- involved the use of, or counselling or procuring the use of, or attempting or conspiring to use, violence against another person; or
- resulted in physical harm to another person.

Also, the principle does not apply to the sentencing of an offender for any offence of a sexual nature committed in relation to a child under 16 years.

A range of community based sentencing options are available to courts in Queensland under the PS Act: recognisance orders, community service orders, fine option orders, intensive corrections orders, probation orders, and prison/probation orders.<sup>2</sup> For example, under section 19 of the PS Act a court may include a drug diversion condition on a recognisance order imposed on an eligible drug offender.

The *Drug Rehabilitation (Court Diversion) Act 2000* provides for the operation of Drug Courts in Queensland.<sup>3</sup> The intensive drug rehabilitation order is a community based sentence that can be imposed under Part 5 of this legislation. The websites listed in the footnote provide further information on the operation of the Drug Courts in Queensland.<sup>4</sup>

Unlike New South Wales, Queensland does not provide for periodic detention. During the 1970s courts were empowered to impose sentences of weekend detention in appropriate cases under the *Weekend Detention Act 1970*. Offenders were required to report to the prisons located in Brisbane, Rockhampton and Townsville in order to undertake their sentences. However, a 1974 Report on the Queensland Prison System found that weekend detention was highly problematic because of operational, security and personal safety considerations. It was

<sup>1</sup> Source: <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PenaltASenA92.pdf>

<sup>2</sup> The sentencing options available to the Queensland judiciary is summarised in <http://www.justice.qld.gov.au/courts/about/sentencing.htm>

<sup>3</sup> Source: <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/D/DrugRehabA00.pdf>

<sup>4</sup> Sources: [http://www.justice.qld.gov.au/courts/pdfs/qc\\_fact3.pdf](http://www.justice.qld.gov.au/courts/pdfs/qc_fact3.pdf);  
[http://www.justice.qld.gov.au/courts/factsht/qc\\_fact3.htm](http://www.justice.qld.gov.au/courts/factsht/qc_fact3.htm); and  
[http://www.justice.qld.gov.au/courts/factsht/qc\\_fact4.htm](http://www.justice.qld.gov.au/courts/factsht/qc_fact4.htm)

recommended that the concept be abolished. In 1984 an amendment was made to the *Weekend Detention Act 1970* which prohibited further weekend detention sentences being imposed. The legislation was finally repealed in 1993.<sup>5</sup>

Under Queensland's *Corrective Services Act 2000*,<sup>6</sup> home detention is a post-prison community based release option for prisoners once they attain eligibility. Decisions relating to home detention are made by relevant community corrections boards. Home detention is not a court imposed (front-end) sentencing option in Queensland.

Community corrections staff of the Department of Corrective Services supervise offenders who are subject to community based orders imposed by courts.<sup>7</sup> The PS Act provides for sanctions to be imposed for any breaches of orders by offenders. The websites listed in the footnote provide further information on the operation of community based sentencing options in Queensland and the involvement of correctional staff in the supervision of offenders undergoing such options.<sup>8</sup>

In Queensland's experience, community based sentencing options are more economical than full-time imprisonment.<sup>9</sup> However, economic grounds alone should not be used as the basis for the imposition of community based sentences or making them more widely available. There are some offenders who due to the nature of their offending cannot be considered for such options. On the other hand, prison can be a very threatening environment and for first-time, non-violent or low risk offenders a community based sentence could be more appropriate. Thus, decisions on sentencing should be taken on the merits of each case.

#### Rural and remote areas in NSW – pages 3 and 4 of paper

Queensland seeks to pursue the principle of equity of access by placing community corrections staff in strategic locations across the State. Accordingly, community corrections area offices are dispersed throughout the State although, due to the constraints of distance, there are some limitations in terms of full equity of access in the Far North (on the Cape and Gulf). To remedy this situation the Department of Corrective Services is currently developing a Rural and Remote Strategy and one of its future intentions is to increase its community corrections presence in Far North Queensland.

In Queensland's experience, the cost considerations involved in expanding the availability of community based sentencing options to rural and remote areas arise from needing to provide and meet infrastructure and staff and associated resourcing costs.

<sup>5</sup> In accordance with the *Statute Law (Miscellaneous Provisions) Act 1993*. Source: <http://www.legislation.qld.gov.au/LEGISLTN/ACTS/1993/93AC032.pdf>

<sup>6</sup> Source: <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CorServA00.pdf>

<sup>7</sup> Queensland community corrections staff supervise approximately 11 460 offenders subject to over 15 900 community based orders on any given day across four regions and 33 area offices.

<sup>8</sup> Sources: [http://www.dcs.qld.gov.au/communityinfo/backontrack/BackOnTrack\\_web.pdf](http://www.dcs.qld.gov.au/communityinfo/backontrack/BackOnTrack_web.pdf); and <http://www.dcs.qld.gov.au/communityinfo/csprojects/CSProjectsBrochure.pdf>

<sup>9</sup> Productivity Commission Report on Government Services 2005, p. 7.28. Source: <http://www.pc.gov.au/gsp/reports/roqs/2005/chapter07.pdf>

### Disadvantaged populations – page 4 of paper

In Queensland's view, the term "disadvantaged group" is open to misinterpretation since it does not take account of the circumstances of individuals within such groups. While some individuals may experience disadvantage, there may be others who do not. For this reason it is important for consideration to be given to the particular circumstances of each case. Accordingly, Queensland's *Corrective Services Act 2000* makes provision for the "special needs" of offenders to be taken account in correctional decision making. The term "special needs" is defined in the legislation to mean a need an offender has, compared to the general offender population, because of the offender's—

- age; or
- disability; or
- gender; or
- race.

An example of a special need is the culturally specific needs of Aboriginal and Torres Strait Islander offenders.<sup>10</sup> Recognition of cultural special needs also extends to sentencing. Section 9(2)(o) of the PS Act provides that if an offender is an Aboriginal or Torres Strait Islander person a court must have regard to any submissions made by a representative of the community justice group in the offender's community that are relevant to sentencing the offender, including, for example—

- the offender's relationship to the offender's community; or
- any cultural considerations; or
- any considerations relating to programs and services established for offenders in which the community justice group participates.<sup>11</sup>

As to whether there are any community based sentencing options that may be inappropriate for particular "disadvantaged groups", Queensland's view again is that the option which best accommodates an individual's circumstances should be selected as a matter of principle.

### Eligibility for community based sentences – page 5 of paper

As mentioned previously, in Queensland the principle of imprisonment as the last resort does not apply to the sentencing of an offender for any offence that—

- involved the use of, or counselling or procuring the use of, or attempting or conspiring to use, violence against another person; or
- resulted in physical harm to another person.

Also, the principle does not apply to the sentencing of an offender for any offence of a sexual nature committed in relation to a child under 16 years.<sup>12</sup> In Queensland's view, such exclusions from the principle are not unreasonable given the community's

<sup>10</sup> Schedule 3 of the *Corrective Services Act 2000*, definition of "special need".

<sup>11</sup> The terms "community justice group" and "offender's community" are defined in the PS Act, s 9(8).

<sup>12</sup> PS Act, s-s 9(3), (5)

concern about sexual and violent offending generally and sexual offending against children in particular. The community has a right to expect that the law will protect vulnerable groups within its midst, such as children and women, from those who pose a direct risk to their safety and welfare.

However, for other forms of offending objective measures such as the nature and severity of an offence as well as the criminal history of the offender should be considered when deliberating community based sentencing options. On this basis community based sentencing options should be considered and decided on the merits of a case. Given the subjectivity likely to be involved, "disadvantage" should not be used as a factor when determining whether an offender is eligible for a community based sentence.

Community service orders – page 7 of paper

Regarding the availability of community service orders in rural and remote areas, in Queensland the availability of CSOs in such areas has been impacted upon by public liability issues. Increased public liability costs have made some community service projects untenable. This has affected rural and remote areas more so than metropolitan areas given the latter's greater population mass and greater scope for projects.

Drug Court of NSW and the Youth Drug and Alcohol Court – page 8 of paper

This response has previously outlined Queensland's arrangements with respect to its drug courts. As far as the drug court being beneficial in rural and remote areas in NSW the issues would be, based on Queensland's experience, the availability of treatment and the number of available beds in rural and remote communities.

Periodic detention – page 9 of paper

This response has previously outlined Queensland's experience with weekend detention.

Home detention – pages 10 and 11 of paper

As previously mentioned, home detention in Queensland is a post-prison community based release option for prisoners once they attain eligibility. Decisions relating to home detention are made by relevant community corrections boards. Home detention is not a court imposed (front-end) sentencing option in Queensland.

Home detention in Queensland is available statewide. In areas where there is no immediate access to a community corrections area office the Department employs casual staff to provide surveillance in the community where the offender resides. The Home Detention program is operated out of individual area offices rather than being centralised. Thus, staff are able to have direct knowledge of an offender in the community in which they live.

As to whether home detention is a suitable community based sentencing option for the various "disadvantaged groups", front-end (court imposed) home detention would

be a more viable option for suitable offenders who were the "breadwinners" of their families because they would be able to continue to financially support their families without them needing to avail themselves of government welfare.

As to whether home detention can be adapted for people who have no stable residence at the time of sentencing, Queensland is currently considering the option of providing supported accommodation to prisoners approved for home detention by community corrections boards who do not have a suitable residential address.

Community based sentencing options in other jurisdictions – page 11 of paper

Under Part 6 of Queensland's PS Act a person who has received a sentence of up to 12 months' imprisonment may receive an intensive correction order (ICO); that is, the magistrate or judge orders the offender to serve the time in the community, doing community service and under probation. - ICOs are a direct diversion from court rather than being sent to prison. The committee may wish to consider whether the ICO concept could be adapted for New South Wales.