

Submission  
No 5

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

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**Theme:**

**Summary:**

# **SUBMISSION TO THE LEGISLATIVE COUNCIL ON LAW & JUSTICE FOR THE INQUIRY INTO COMMUNITY BASED SENTENCING OPTIONS FOR RURAL & REMOTE AREAS AND DISADVANTAGED PEOPLE**

**BY Magistrate Fiona G. Toose 27 February 2005**

I have written this submission having had regard to the discussion paper issued by the abovementioned Standing Committee dated January 2005, my own research and my experience over the last 12 months sitting as a Magistrate in Walgett and Lightning Ridge in the far North West of New South Wales.

- 1 The Community Based Sentencing Options upon conviction available in New South Wales Generally for the Local Court jurisdiction

The following options are available for adult offenders and also juvenile offenders under separate legislation throughout New South Wales. For adult offenders the relevant legislation is the Crimes Sentencing Procedure Act and for juvenile offenders the relevant legislation is the Childrens (Criminal Proceedings) Act

- Fines
- Good behaviour bonds without supervision
- Good behaviour bonds with supervision
- Good behaviour bond plus fine (with or without supervision on the bond)
- Community Service Orders
- Suspended Sentence (there is no provision for a partial suspended sentence as suggested in the Discussion Paper)
- Suspended Sentence with good behaviour bond without supervision
- Suspended Sentence with good behaviour bond with supervision

The following options are available for adult offenders only and for those offenders only in the Metropolitan areas of major cities or large regional Centres:

- Periodic Detention
- Home Detention

Neither periodic detention nor home detention are available to juveniles at all in NSW and these options are not available to adult offenders living in the Castlereagh Local Area Command being the area including towns and rural areas in and around Coonamble, Gulargambone, Carinda, Walgett, Burren Junction, Collarenebri, Lightning Ridge and Goodooga.

## 1.2 Assessment as suitability for Community Based Options (other than Fines).

An adult offender is assessed by an officer of the Probation and Parole service (part of NSW Corrective Services Department) as to their suitability for a community based option upon referral by the presiding magistrate. For juvenile offenders the assessment is done by an officer of the Juvenile Justice Department.

To be suitable for supervision, community service and/or periodic detention an adult offender must be assessed as such by the Probation and Parole Service. . For all options other than home detention this assessment is done prior to the magistrate determining what the sentence will be.

The assessment for options other than home detention) is done either by a duty probation and parole officer at court who provides the Court with a short pre sentence report on the day of sentencing or away from the Court at a time to be arranged by the Probation & Parole Office for the relevant geographical area (to where the adult Offender resides) with the offender; the latter option is generally referred to as a “Full pre sentence report” or a “background report”.

The full pre sentence report or background report is done after an assessment takes place (prior to the sentencing date) either when there is no duty officer available at Court on the sentencing day or it is determined by the magistrate that a more detailed report as to the offender’s background is needed prior to sentencing. These more detailed reports usually take 6 weeks to be done in the metropolitan areas and 6 to 8 weeks in remote rural areas.

Assessments for adult offenders for Home Detention can only be done by Probation and Parole after the sentencing Magistrate has sentenced an adult offender to a term of imprisonment and upon that Magistrate determining that the adult offender may be suitable (and having regard to the Home Detention availability guidelines) and then directing that such assessment take place. The assessment usually takes 6 weeks, during which time the adult offender may be on bail for that assessment to take place in the community (which is the preferred option of probation and parole officers) or in custody..

Assessments for Juveniles for supervision and or community service are not done at court on the day of sentencing, such matters are adjourned for a full Juvenile Justice report to be presented to the court at a later sentencing date following an assessment by a juvenile justice officer of the juvenile away from the Court. The time for preparation of such a report is usually 6 weeks in the metropolitan area and 6 to 8 weeks in remote rural areas.

## 2. Problems with Community Based Sentencing Options that are available in remote rural Areas.

### 2.1 Assessments

There is a distinct shortage of staff for both the Probation and Parole office and the Juvenile Justice Office to do assessments at Court which appears to be due to high turnover of staff in those areas, and over commitment of duties for the staff of those agencies. In remote areas the officers of the relevant agencies appear to be dealing with inadequate administrative back up by way of support staff and effective and efficient IT systems. This is in no way a criticism of the dedicated staff from those agencies who try to do their best with the strained and limited resources that they have.

The Probation and Parole Staff need to be able to access their data in relation to repeat offenders at court online as well as be able to enter fresh data (be it for former or new clients of that service) directly into their system from court. Further, they need to be able to scan relevant court documents and other relevant reports such as psych reports or other medical reports into their system. They need to have the ability to produce a report from their system whilst at Court. In remote areas they do not seem to be able to do this.

For instance, Walgett and Lightning Ridge Courts (which covers areas in and around Walgett, Collarenebri, Burren Junction, Lightning Ridge and Goodooga) is serviced by Coonamble Probation and Parole Office. That Office also has responsibility for area covered by Coonamble Local and District Courts. A duty officer from that Probation and Parole Office attends Walgett on a list day (2 Tuesdays per month) and on Wednesday (2 Wednesdays per month). It is not unusual for their to be a need for about 10 duty reports to be done for each duty.

Duty reports are preferable at those sittings due to the extreme difficulty that the probation and parole office have of locating the adult offenders away from the court to do the assessments. Those difficulties arise due to few offenders having access to telephones, as well as there being issues regarding transport, remote residences and itinerant lifestyle. This presents problems not only for the offenders but place a strain on the probation and parole officers in the field.

At present there is a need for additional office /room at each court house to enable the probation and parole staff to do their assessments without having to share the office space with the legal practitioners who of course need their own area to take appropriate instructions from their clients at court.

A location away from the court house for either the lawyers or probation and Parole does not work as their clients wander off; it has been tried.

The additional room referred to needs to have an access point for their duty officer to be able to plug in a laptop computer to access their system. At present the officer only has access to their information on former clients if they have their file with them or if they have it faxed from the Coonamble headquarters upon becoming aware that they need it. The latter option is only available if there is a person available to fax the documents and in any event ties up that person's time as well as the officer who awaits the file. With the appropriate IT system in place within that office, and access to it, the need for this is negated.

At present the duty officer has to photocopy any relevant court papers, criminal histories, medicals etc. another time consuming process. This cannot be done by Court staff who are either in court or in the registry typing up orders, bonds, bails, warrants. If the duty officer had the facility to scan these documents onto their system the need to attend to the time consuming photocopying task would be negated.

A typed report generated by that duty officer from their laptop would replace the present handwritten report, which I understand at present the officer has to re-enter into their system on return to the headquarters.

To speed up the process would mean that more duty reports could be done on list days and matters finalised. This would free up the time of the duty officer who also shares the task with another 1.5 persons of having to monitor supervision of those offenders already placed upon it, run programs, liaise with other agencies, monitor community service and interact with parolees over a vast area.

As for Juvenile Justice, at present there is no Juvenile Justice Officer for Walgett/ Lightning Ridge Areas to do assessments; it is being run from Dubbo. There needs to be more Juvenile Justice staff on the ground there to effectively be involved in the assessments process. A system whereby a duty officer could be available for short update reports would also greatly enhance the process.

### 3. Problems with Community Based Options that are available in Remote Rural Areas

#### 3.1 Supervision

At present there are insufficient full time people on the ground providing programs for offenders.

There are a number of agencies in both Walgett and Lightning Ridge that provide programs on anger management and domestic violence. They are not held regularly and there seem to be no effective cohesion between the various agencies to provide a system that probation and parole can link their clients into. Other intervention programs such as Traffic Offender Program are not available at all in this rural area.

As for the offenders in Goodooga and Collarenebri, there is virtually nothing. For them to access program at either Lightning Ridge or Walgett is difficult, as the only means of “public” transport is the school bus, which may not be running when the programs are, and in any event does not run during school holidays.

Probation and parole at Coonamble simply do not have the staff to run regular programs themselves given their broad range of responsibilities over a vast geographical area.. They are assisted by Moree Office of Probation in relation to Collarenebri, but this has not resulted in any additional programs being available, which is not surprising given the distance form Moree to Collarenebri..

Programs involving anger management, domestic violence, lifestyle skills, drug and alcohol, sober driver need to be run regularly and need to be taken out to each of the towns in these remote areas, otherwise an order for supervision on a bond really results in no supervision at all and therefore any rehabilitation value of supervision negligible.

### 3.2 Community Service

This is an option that is a really worthwhile alternative in the remote areas for a variety of reasons:

- Community service enable an offender to contribute something back into the community which they have hurt
- It enhances the self worth of the offender by doing the work
- It occupies the offender who may otherwise be idle
- There is real evidence in the Lightning Ridge Areas of persons on community service work ultimately gaining paid employment as a result of that work
- There is real evidence of juveniles ceasing to reoffend in Walgett where they have performed community service work.

What is needed is more Community Service Providers in Walgett , Collarenbri and Goodooga. At present there is no community service available for Goodooga unless participants can get to Lightning Ridge on the school bus. That access for most is not available when the school bus is not running of after heavy rains as the road becomes impassable.

The Administrators of Walgett Shire Council, in late 2004, agreed to take on Community Service for areas covered by that Shire which is greatly encouraging as this support was not available from the former council. Goodooga however is not within Walgett Shire, it is within Brewarrina Shire, which has been reluctant to deal with the issue.

Fortunately there are a number of community based not for profit programs and agencies in Lightning Ridge that have traditionally provided work for community service workers and continue to do so.

Other areas really do need the support of their local council for there to be work available. The issues with many councils in remote areas is that they perceive it to be “not their problem” and or argue that to make such work available would displace paid employees or take away work from the CDEP (“work for the dole”). One only has to look at the need for some planting, gardening, painting, rubbish removal etc in these remote towns to know the work can be made available without disruption to paid employment or CDEP.

For Community Service to be a realistic option there needs to be a lot more work made available, and there needs to be a full time Community Service co-ordinator with probation and parole to continue to encourage service providers to make the work available, support the present providers and be there to monitor the workers and action any breaches.

Juvenile Justice appear to be also running this from Dubbo at present; there needs to be Juvenile Justice Officers on the ground in the area, full-time co-

ordinating and supervising juveniles doing community service and actively engaging new providers and supporting the existing providers.

### 3.3 Periodic detention

For offenders residing in the Castlereagh Local Area Command (LAC) periodic detention is not a realistic option. For male adult offenders they would have to be able to get to Bathurst or Tamworth each Friday, and Females would have to get to Tamworth each Friday.

Whilst many are assessed as suitable for periodic detention, they cannot get there. It is a distance, transport and money issue. Very few people have a drivers licence

For this to be a realistic option, there needs to be a periodic detention facility built up in that area. This would need to be available for mid week as well as weekend detention. It would need to be available for adult men as well as adult women. There would need to be a corrective service bus to escort them to and from their remote town area and the correctional services centre., otherwise transport will still be an issue.

Walgett seems to be the central location within the Castlereagh LAC, perhaps in a rural setting rather than in the town would afford broader training opportunities to the detainees

Clearly such a facility comes at a cost, but over time the benefit would outweigh the cost of full-time incarceration and provide a true alternative to full-time custody for a large number of offenders. Broadly speaking it would also provide much additional employment in the area.

Whilst in periodic detention the detainees should undertake programs such as the anger management, domestic violence, lifestyle, drug and alcohol and cultural awareness courses. There should also be work skills, numeracy and literacy course required to be undertaken. That is make it an effective interactive process rather than simply incarcerating them.

### 3.4 Home Detention

This is not available in remote rural NSW for a wide range of reasons:-

- IT issues, the tags do not work out there;
- Very few people have a telephone;
- Many people are itinerant;
- Lack of probation & parole staff to supervise the home detention;
- The domestic nature of many of the violent crimes would preclude many from being considered eligible in the first.



Home detention to be successful, requires intensive monitoring and supervision, the resources are not there to make it work even if a tag system could be implemented that did work out there.

I think if people were to be left in the community with the tag and without the support, it is unlikely to prevent them re offending as it is not addressing the necessary issues . It may make the person easier to locate on re offending but that will be cold comfort to any victim

### 3.5 Fines

These are clearly a community based sentencing option which were not referred to in the Discussion Paper.

In remote areas, the deterrent factor of a fine is minimal for many as they cannot pay it and seldom do. If they have a drivers licence that will ultimately be suspended for non-payment which inevitably leads to further offences of a driving nature for a large number of them. For those who do not have a drivers licence, they simply let their fines accumulate which makes their obtaining a drivers licence at any stage an impossibility; they also would have little or nothing to satisfy any enforcement of the debt by the State Recovery Office by civil means.

For these people community service would be a better option, but community service is only available where there is a maximum penalty involving a prison sentence, given that community service is an alternative to prison. The legislation needs to be amended to make community service an alternative to offences where otherwise a fine only applies.

### 4. Drug Court, Youth Drug Court, Merit

These options to me are rather an additional stream rather than a non-custodial option. Persons referred to these schemes may not ultimately escape a custodial sentence.

In any event these are not available in remote rural New South Wales at this time. If any of these systems were to work they would need to be available locally, not through Parramatta or even Dubbo, unless they remain in custody.

There would need to be a considerable numbers of full-time workers placed throughout the areas within Castlereagh LAC with the appropriate support to implement any sort of rehabilitation program if done along the style of other MERIT type programs. Given the complexities of the issues surrounding the people that do offend and re offend in the remote areas, the criteria for selection would need to be significantly expanded, and include alcohol as well as drugs and embrace mental health factors for any intervention to be effective.

Perhaps a MERIT style approach together with a secure drug and alcohol facility is the solution. Many offenders come to court wanting to be referred an effective residential rehabilitation facility from which they cannot just walk out; at this point in time this is not an option for the offenders in remote rural NSW.

## 5. Overseas Options

In the United states there are the same community based options that are mentioned above although through my research I have found that they have additional options:-

- "Shock probation" - These are essentially a split sentence, that is a term of incarceration is set a period is served in detention and then the rest is suspended. This used to be available in NSW but this was changed, if I recall correctly, due to corrective service finding that the period in incarceration did not allow these inmates to participate in any programs and therefore had little rehabilitative effect.
- \* "Scared Straight" - This is directed at young offenders or at risk juveniles from committing offences. Essentially they get taken to maximum security prisons where the seasoned inmates tell them about their life, crimes sadness etc as a disincentive for re offending.

— For this to work in the remote areas the offenders would have to be taken to the prisons, a transport issue. For this to be effective there would have to be serious and continued interaction by Juvenile Justice Officers and the relevant juveniles afterwards. At present there are not the resources to do this.

- \* "Boot Camps" - There are separate ones for juveniles and adults based on structure, discipline and challenge combined with counselling programs. The programs continue after release from the camps. These may have some success but would need to be located in a remote setting with appropriate programs to address the reoffending together with programs that offered some lifestyle skills and relevant cultural programs. There would also need to be sufficient support by way of continuing programs upon release. There would need to be camps for female offenders.
- "Wilderness Programs" - These seem to be for the juvenile offenders or at risk offenders. The principles of structure, discipline and challenge seem to be the same ideology as the boot camps, without the counselling programs. There are programs offered through the

police along these lines at Walgett at present and are offered to all youth whether they have offended or not or whether regarded as “at risk”. These have fostered better relations with the police. Whether they are effective long term in relation to offending rates or recidivism generally will be known in the fullness of time. The risk of running wilderness programs only for the offenders or those likely to, is then a perception amongst the youth in remote areas that only the “bad kids” get to go on the wilderness programs, which is in turn an incentive to be a “bad kid.”

## 6. Conclusion

The criteria for sentencing taken into account by courts cannot be lost sight of in the overall consideration or review of options available. However, it is important that more of the community based options, readily available, in the cities be accessible to those offenders in remote rural areas if rehabilitation is to be effective with any form of appropriate punishment and deterrent effect.

Resources seem to be the key issue.

The Walgett Community is very positive about the prospect of Circle Sentencing commencing in the near future. It would be encouraging for the Circle to be able to look at an effective and available range of community based options when considering all the sentencing options applicable.

Magistrate Fiona G Toose