

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

Organisation:

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Theme: Submission to Community based sentencing options for rural and remote areas and disadvantaged populations lodged by PETER MARSHALL

Summary:

SUBMISSION ON COMMUNITY BASED SENTENCING IN RURAL AND REMOTE AREAS

What is community based sentencing?

Questions

1. Apart from those identified above, what other community based sentences are available in NSW or in other Australian or overseas jurisdictions?

The Committee should probably consider the availability of specialist programmes, such as for driving offences, sexual offences, violent offences etc.

2. Do you consider some/all community based sentencing options to be 'lighter' forms of punishment than imprisonment?

No. This proposition is clearly absurd to any informed person. Many offenders would rather serve a short prison sentence with no post-release supervision than be under the supervision of a probation officer for, say, 12 or 24 months.

Home detention in particular is onerous not only for the offender but for his or her family who must tolerate them being confined to the home for longer periods of time, especially if they do not work. Ideally HD should be combined with programmes and community work which get the offender out of the house during normal working hours, and also allow him/her to attend to domestic activities during weekend daytimes (e.g. shopping, taking the kids to sports etc.).

Periodic detention is also much more onerous than the equivalent prison sentence, as it requires the offender to exert some self-control, whereas little is required in prison.

3. What do you see as the advantages and disadvantages of community based sentences in general compared to imprisonment?

Advantages: Maintaining ties to family; maintaining continuity of employment, education or training which might otherwise be interrupted and/or lost; maintaining housing that might otherwise be lost; reducing impact on families of having to visit offender in distant prisons; some of these advantages are undermined if the offender has already spent time on remand in custody; reduced cost to the community, because of the high direct and indirect cost of imprisonment.

Disadvantages: reduced access to, or ability to access, specialist programmes (it's much easier when the offenders are all concentrated in the one place, a prison); loss of incapacitation effect of imprisonment.

4. Community based sentences are generally more economical than full-time imprisonment. Should economic reasons be a basis for imposing a community based sentence or making them more widely available?

No. Value for money, i.e. cost-effectiveness, should be the reason. As evidence suggests there is no or little difference in the effectiveness of community from custodial sentences, then clearly they are more cost-effective. Unfortunately NSW Dept of Corrective Services, as with their peers in other States and Territories and in Juvenile Justice, do not publish meaningful statistics on the effectiveness of prison, community penalties or specialist programmes. This is unforgivable.

5. Can various community based sentencing options be linked in order to tailor them to rural and remote areas or disadvantaged groups?

Only if this does not disadvantage the offender by overburdening them compared with what would be required of them if they lived in an urban area. Realistically, I would have thought the problem in R&R areas of NSW is the absence of access to some community penalties, such as HD, PD and specialist programmes.

However, as noted above I think it makes sense to combine HD with community work or programmes, for example, but not just in R&R areas but state-wide.

6. Do you have any other issues you wish to discuss about the range of community based sentencing options available in NSW?

As noted above, I believe that residents of R&R areas are disadvantaged by the absence of PD< HD and specialist treatment programmes for offenders. Not only are the offenders disadvantaged, but the community is disadvantaged through less appropriate sentencing than occurs in urban areas where all options are available.

The situation is compounded for women, who generally are not put into groups with men, thus their access to penalties and programmes is even greater reduced. This is compounded by their under-representation in the criminal justice system compared to men.

Indigenous people are indirectly disadvantaged because they are disproportionately in R&R areas, where access to penalties and programmes is more limited than in urban areas. No doubt this is partially compensated for by their over-representation in the criminal justice system compared to non-indigenous people, and most or all identifiable ethnic and cultural groups within the non-indigenous population (e.g. Anglo-Australians).

I believe that cross-border cooperation could reduce the disadvantage to people living in many R&R areas of NSW. Offenders living in the Canberra region, for example, should be accessing ACT penalties and programmes. ACT is the only other Australian jurisdiction to have PD, it also has HD, and it has a broad range of specialist programmes for offenders serving community penalties. These occasionally become temporarily unviable through lack of numbers, a problem which could be offset if offenders in nearby NSW were accessing them. Because of the ACT's low prison population (Australia's lowest), and high community corrections population, it offers a much broader range of specialist programmes and community sentences than one might expect given its population.

Similarly, cross-border cooperation with Victorian, Queensland and South Australian corrections departments could reduce disadvantage for offenders in many parts of NSW. There will inevitably remain some parts of NSW which remain disadvantaged. Overlap with Juvenile Justice sentences and programmes is an option which may help in those areas, so long as there is no detrimental effect on the young people.

For some specialist programmes, offering them to the broader community (i.e. non-mandated clients) has the potential to make them viable when they otherwise would not be. As most sexual offenders are not prosecuted or convicted, and many violent offenders are also not prosecuted or convicted, there is a substantial pool of people who might access (and even pay for) these programmes. Similarly, programmes for driving offenders might be accessed by people not (yet) convicted of such offences. I understand this arrangement is the case in Queensland for the Anger Management and Sober Driver programmes.

Rural and remote areas in NSW

Questions

- 1. Do you think it is in the public interest to tailor community based sentencing for rural and remote areas in NSW? Why/why not?*
- 2. In which rural and remote areas in NSW is access to community based sentencing options a problem? Why is accessibility a problem and how can it be overcome?*
- 3. Which rural or remote areas in NSW would benefit from increased availability of community based sentencing options?*
- 4. Which community based sentences currently available in NSW should be available in these areas? Are there any other types of community based sentences, perhaps used in other jurisdictions, that are particularly suitable to rural and remote areas?*
- 5. What cost considerations are involved in expanding the availability of community based sentencing options, or tailoring them, to rural and remote areas?*
- 6. What disadvantages or advantages of community based sentencing options are particularly relevant to rural and remote areas?*

7. Do you have any other issues to raise in relation to tailoring community based sentencing options for rural and remote areas in NSW?

In the interests of equity, sentences available in R&R NSW should be exactly the same as those in urban areas. They should not be tailored.

Disadvantaged populations

Questions

- 1. Which disadvantaged groups should the Committee consider as part of its review? What difficulties do they face accessing community based sentencing options and why?*
- 2. Do you think it is in the public interest to tailor community based sentencing for disadvantaged populations in NSW? Why/why not?*
- 3. Which community based sentencing options currently available in NSW should be made more available for these groups?*
- 4. Are there any other types of community based sentences, perhaps used in other jurisdictions, that are particularly suitable for various disadvantaged groups?*
- 5. Are some community based sentencing options inappropriate for particular disadvantaged groups?*
- 6. What cost considerations are involved in expanding the availability of community based sentencing options, or tailoring them, for disadvantaged groups?*
- 7. Which of the disadvantages or advantages of the community based sentencing options are particularly relevant to disadvantaged groups?*
- 8. Do you have any other issues you wish to raise in relation to disadvantaged groups?*

As stated above, equity requires that people living in R&R NSW should have equal access to programmes. For some disadvantaged groups this may require tailoring of programmes, but this should only be so as to redress some indirect disadvantage. For example, specialist treatment programmes designed and developed in the USA and Canada may not be as effective with indigenous Australians as they are with non-indigenous Australians (or more specifically Anglo-Australians), and may require adaptation and separate delivery to indigenous people. If there are other ethnic or cultural groups who are over-represented, or otherwise disadvantaged, in R&R NSW then they may require similar attention to ensure equality of treatment. Because of the small numbers, this may mean that all those groups listed in the discussion paper require special attention.

Eligibility for community based sentences

Questions

- 1. Do the eligibility criteria for the various community based sentencing options unfairly exclude some offenders from disadvantaged groups?*
- 2. Existing criteria for eligibility are 'negative' or better described as criteria of exclusion. What are some positive criteria that might be used in relation to disadvantaged groups?*
- 3. Should 'disadvantage' be taken into account by the courts as a factor when determining whether an offender is eligible for a community based sentence?*
- 4. Do eligibility criteria need to be tailored to make the various forms of community based sentencing more accessible in rural and remote areas? If so, how?*
- 5. Do you have any other comments in relation to eligibility criteria for community based sentences?*

I have insufficient knowledge of eligibility criteria to comment. In general there should probably be no exclusion criteria, e.g. the exclusion from eligibility for PD of offenders with a previous prison sentence of 6 months or more undermines the principles of sentencing in that s/he is now being sentenced based on their criminal history rather than for the offence they have just been convicted of. It would be absurd if, say, an ex-prisoner who had stayed out of trouble for 20 years was denied PD after being convicted for a new offence.

Community based sentencing options in other jurisdictions

Generally, I think the range of options in NSW covers the range available elsewhere. While there may be jurisdictions which appear to have alternatives, the differences are probably only subtle or non-existent.

