

INQUIRY INTO OVERCOMING INDIGENOUS DISADVANTAGE

Organisation: NSW Local Court
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The Chief Magistrate of the Local Court

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The Director
Standing Committee on Social Issues
Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Director

Re: Inquiry into closing the gap – overcoming Indigenous disadvantage

Thank-you for your letter dated 5 October 2007 requesting submissions in relation to your inquiry "*closing the gap – overcoming indigenous disadvantage*."

I note that your terms of reference relate to the life expectancy gap between Aboriginal people and non-Aboriginal people. To the extent that incarceration and the criminal justice system is a factor that contributes to the current lifetime expectancy gap, I have provided some observations below.

Incarceration rates

It is well documented that Aboriginal and Torres Strait Islander (ATSI) people are overrepresented in the criminal justice system and remain greatly over-represented among prisons in New South Wales.

According to the New South Wales Bureau of Crime Statistics, in New South Wales ATSI defendants appear in court on criminal charges at a rate that is 13 times higher than that of non-indigenous defendants.¹ As at 30 June 2006, ATSI inmates accounted for 19.9% of all inmates in New South Wales.² Despite continuing commitments at State and Federal levels since the Royal Commission into Aboriginal Deaths in Custody to reduce this disproportion, the percentage has increased consistently since that time.³

¹ NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin Number 99 September 2006 "*Indigenous over-representation in prison*"

² NSW Inmate Census 2006, Statistical Publication No. 28 December 2006, NSW Department of Corrective Services at page 75 www.dcs.nsw.gov.au

³ Note 2, at page 72

There can be no doubt that incarceration is detrimental to an individual's physical and mental health. However, the incarceration of an individual also has an impact on the community from which that individual is removed. Families of offenders sentenced to imprisonment lose the presence of that family member, their income is reduced if that family member is the main income earner and they may have to travel great distances to visit the offender. It perpetuates social disadvantage, an underlying cause of crime itself, and exacerbates the poor health and social conditions of future generations.

Reducing incarceration rates and addressing the causes of crime

The New South Wales Local Court has supported (and supports) the use of community based sentencing options as alternatives to full-time incarceration where appropriate. The Court has also implemented a number of diversionary programmes and specialist Court models as alternatives to full-time incarceration. Formal evaluation of these programmes has shown they have the capacity to address some of the underlying causes of crimes (for example drug and alcohol abuse) and to reduce rates of re-offending.

Following the recommendations of the *Aboriginal Child Sexual Assault Taskforce Breaking the Silence: Creating the Future* the Local Court has invited the Court Appointed Aboriginal project officers who liaise with Aboriginal Community Justice Groups to attend the Court's regional conferences next year⁴. This is part of an effort to involve Aboriginal Community Justice Groups more comprehensively in the sentencing process, both in terms of making cultural advice and possible alternative sentencing options available to Magistrates and in terms of enhancing the community justice groups' understanding of the sentencing process.

Economic and social disadvantage play a large role in causing crime and the social and economic context of Indigenous offending should not be ignored. Until we address social and cultural root causes for offending we are applying the most basic sentencing tool (imprisonment) with little prospect for long-term change. In my view, better use can be made of the expertise in Aboriginal communities to provide assistance to the Court. This might occur by way of "expert evidence" from community justice groups regarding cultural perceptions of particular offending. Alternatively, cultural input or information about an offenders' background and what matters might be able to be addressed in a social context for that particular offender could be provided to probation and parole to assist in the preparation of pre-sentence reports. It should be recognised that capacity building over time is a long-term positive effect of this kind of involvement, even if re-offending rates do not immediately decline.

⁴ Specifically, recommendation 86 that Aboriginal Community Justice Groups make cultural advice available to judicial officers.

A further issue that causes the Court some concern, is the fact that alternatives to full time imprisonment such as community based sentencing options and specialist court initiated treatment and diversionary programmes are not available across the entire State and are especially not available to Aboriginal offenders, because of the associated disadvantage of residing in rural and regional areas.

Lack of alternative sentencing options

As you would be aware the NSW Parliament Standing Committee on Law and Justice released in March 2006 their reported into "*Community based sentencing options for rural and remote areas and disadvantage populations*" which highlighted the fact that the full range of sentencing options are only available in the Sydney metropolitan area and a small number of large regional centres.⁵

Home detention is only available in Sydney, the Hunter and parts of the Illawarra region, periodic detention is available in only a few additional locations and there are less community service placements in regional areas.

In comparison to city Courts a larger proportion of Aboriginal and young Aboriginal people appear before Courts in rural communities. As such, Aboriginal offenders participate to a much smaller extent, in community based sentencing options such as home detention, periodic detention and community service.

To that end, recommendation 2 of the report was:

*"That the Government make community based sentencing, particularly in relation to the disadvantaged groups examined by the Committee, a priority within its sentencing and criminal justice policies and that, where it may be practically implemented, all community based sentencing options should be made available throughout New South Wales."*⁶

Aboriginal offenders were identified as a disadvantaged group in that report; however, 13 months on from its release there has been no expansion to any of the alternative community based sentencing options such as home detention or periodic detention.

As the Report noted, the recidivism rate for those discharged from home detention is approximately 12% as compared to an overall re-offending rate for all prisoners of over 50%.⁷ This is a significant reduction in the recidivism rate for offenders who have participated in Home Detention as opposed to full time incarceration. The Committee noted, however, that at that time, ATSI Offenders made up only 5% of all males on Home detention and only 13% of all Indigenous offenders who might have been eligible for home detention were placed on home detention.⁸

⁵ The NSW Parliament Standing Committee on Law and Justice "*Community based sentencing options for rural and remote areas and disadvantage populations*" March 2006 at page 32

⁶ Note 5, page 45

⁷ Note 5, page 198

⁸ Note 5, page 200

Similarly, ATSI Offenders made up only 6.9% of offenders in Periodic Detention facilities. This is in comparison to accounting for (at that time) 17.1% of all offenders in correctional centres (currently 19.9% as noted above).

There may be a number of possible reasons for the under representation of Aboriginal people in community based sentencing options such as Home Detention and Periodic Detention. Sentencing takes account of the individual circumstances of an offender including for example, their criminal history and prospects of rehabilitation and the particular facts and circumstances of the offence. There is no doubt, however, that there is also a lack of community based sentencing options as alternatives to imprisonment that available in the areas in which Aboriginal people are predominantly appearing before the Court. Since they are alternatives to full-time imprisonment, if home detention and periodic detention are not available in a particular location, the only option for the court is to impose a prison term. I attach a table in Appendix 2 which sets out the availability of community based sentencing options across NSW.

Similarly, since the release of the above-mentioned report the only extension to the Magistrates Early Referral Into Treatment (MERIT) programme has been to additional locations in Sydney and the Rural Alcohol Diversion (RAD) programme has not extended beyond the two original pilot locations. This is despite a high proportion of crimes which involve Aboriginal defendants being alcohol related.⁹ NSW Bureau of Crime Statistics data shows that in urban areas of NSW during 2004-05 of police recorded crimes involving ATSI accused, 45% of domestic assaults, 45% of non-domestic assaults and 33% of sexual assaults were alcohol related. In rural areas the corresponding figures were even higher – 60%, 51% and 56% respectively.¹⁰

Other programmes have suffered from a lack of funding. The Intensive Court Supervision programme, which operated as a pilot programme in Brewarrina and Bourke, has been abandoned entirely. In some locations, delays have been experienced in the employment of government appointed project officers to run Circle Sentencing and lengthy delays have been experienced in replacing project officers who have resigned.

In the attached Appendix 1 I have included an overview of the alternative court models and diversionary programmes in which the court is involved along with the locations at which these programmes are available across the State. Currently, the majority of these largely successful programmes are only available in limited locations.

⁹ Note 1 at page 15

¹⁰ Note 1 at pages 15 and 17

Conclusion

The flexibility of community based sentencing options and their ability to address some of the causes of offending means they are particularly useful for disadvantaged groups such as Aboriginal offenders. Home detention and periodic detention allow an offender to maintain family and community ties, whilst community service provides meaningful activity and an opportunity to acquire vocational skills. Whilst many rural and regional areas technically have community service available as a sentencing option, in practice many of these areas find it difficult to place offenders due to a lack of resources, participating organisations and programmes.

I recognise that indigenous disadvantage is a complex problem of which the criminal justice system is only one part, however, to the extent that it delivers outcomes for Aboriginal offenders, we must ensure that the most effective sentencing options, alternative court models and diversionary programmes are available in the locations where Aboriginal people are appearing before the Court.

Having the full complement of sentencing options and therapeutic justice programmes available only in Sydney, means that in many locations the Court is left with only the choice of full-time incarceration when sentencing an offender.

If you would like to discuss any of the above, please contact me.

Yours sincerely



Graeme Henson
Chief Magistrate

Appendix 1

Magistrate's Early Referral into Treatment (MERIT)

The Magistrate's Early Referral into Treatment programme (**MERIT**) is a Commonwealth and State initiative funded by the National Illicit Drug Strategy. Based in the Local Court, MERIT provides adult defendants an opportunity to break the drug crime related cycle by entering into a three month drug treatment and rehabilitation programme which allows defendants to focus on treating drug problems independently from their legal matters.

Defendants are closely case-managed by the MERIT Team throughout the programme and the Magistrate receives regular reports on the participant. The final hearing and/or sentence proceedings generally coincide with the completion of the MERIT programme. Magistrates are then able to consider the defendant's progress in treatment as part of final sentencing.

The final evaluation of the Lismore pilot programme indicated a positive effect on recidivism rates (i.e. a reduction in re-offending), an improvement in social function and significant improvements in the health and psychological health of participants.

MERIT is currently **not** available throughout NSW. In particular it is **not** available at Walgett, Lightning Ridge, Albury, Coffs Harbour, Bourke, Brewarrina, Armidale, Bega, Goulburn, Griffith, Moree, Taree or Woy Woy to name a few.

Rural Alcohol Diversion (RAD)

The Rural Alcohol Diversion (RAD) Programme is founded on the operating model of the MERIT programme and provides adult defendants with alcohol abuse or dependence problems the opportunity of rehabilitation as part of the bail process. The Rural Alcohol Diversion Programme is currently a pilot programme and has operated at Orange since December 2004 and Bathurst since May 2005.

Subject to a positive formal evaluation of the programme and additional funding, there is no reason why the programme cannot be expanded, in particular to areas of identified Aboriginal need.

Circle Sentencing

Circle Sentencing is an alternative sentencing Court for identified adult Aboriginal offenders. Circle Courts are designed for more serious repeat Aboriginal offenders and are aimed at achieving full community involvement in the sentencing process. Circle Sentencing is a genuine partnership between the Aboriginal community in the particular location and the Local Court. It empowers Aboriginal people to address criminal behaviour within their local communities by directly involving them in the sentencing process.

The programme currently operates in NSW in the Local Courts in Nowra, Dubbo, Walgett, Brewarrina, Bourke, Lismore, Armidale, Kempsey and Mt Druitt.

Domestic Violence Intervention Court Model

The Domestic Violence Intervention Court Model (**DVICM**) operates at Wagga Wagga and Campbelltown. The DVICM deals with criminal domestic violence matters and is an integrated criminal justice and community social/welfare response to domestic violence. It relies on the inter-agency cooperation between the New South Wales Attorney General's Department, New South Wales Police, Department of Corrective Services, Legal Aid and Department of Community Services.

DVICM aims to bring about proactive responses from police, improved evidence collection, and better support for victims. The DVICM focuses on increasing accountability for perpetrators of domestic violence whilst providing greater support and safety for victims from the time domestic violence is reported until finalisation of associated Court proceedings.

Whilst the pilot DVICM has not been formally evaluated, preliminary indicators suggest that its holistic and coordinated response has the capacity to address family violence in the community in a superior way to a conventional court setting.

Community Conferencing for Young Adults (CCYA)

Community Conferencing for Young Adults (CCYA) is a post-plea programme for 18-24 year olds, aimed at serious offenders or those for whom a custodial sentence is being contemplated. It is currently available at Tweed Heads and Liverpool.

CCYAP brings an offender and victim (and support people) together with a facilitator, police (if available) and other community members to discuss the harm caused by an offence and prepare an "intervention plan" for an offender.

Formal evaluation of the programme has been positive. Subject to additional funding therefore, there is no reason why the programme cannot be expanded, in particular to areas of identified Aboriginal need.

Location	MERIT	RAD	Circle Sentencing	DVCIM	Young Adult conferencing	Youth Drug Court	Mental Health Liaison
Albion Park	✓						
Albury							
Armidale			✓				
Ballina	✓						
Balmain							
Balranald							
Bankstown	✓						
Batemans Bay							
Bathurst	✓	✓					
Bega							
Bellingen							
Belmont							
Blacktown	✓						✓
Blayney	✓						
Boggabilla							
Bombala							
Bourke			✓				
Brewarrina			✓				
Broken Hill	✓						
Burwood	✓						✓
Byron Bay	✓						
Camden	✓						
Campbelltown	✓			✓			✓
Casino	✓						
Central	✓						✓
Cessnock	✓						
Cobar							
Coffs Harbour							✓
Condobolin							
Cooma	✓						
Coonabarabran							
Coonamble							
Cootamundra							
Corowa							
Cowra							
Crookwell							
Deniliquin							
Downing Centre	✓						
Dubbo	✓		✓				✓
Dunedoo							
Dungog							
Eden							
Fairfield	✓						

Location	MERIT	RAD	Circle Sentencing	DVCIM	Young Adult conferencing	Youth Drug Court	Mental Health Liaison
Finley							
Forbes	✓						
Forster							
Gilgandra							
Glen Innes							
Gloucester							
Gosford	✓						✓
Goulburn							
Grafton	✓						
Grenfell							
Griffith							
Gulgong							
Gundagai							
Gunnedah							
Hay							
Hillston							
Holbrook							
Hornsby	✓						
Inverell							
Junee	✓						
Katoomba	✓						
Kempsey	✓		✓				
Kiama	✓						
Kogarah	✓						
Kurri-Kurri							
Kyogle	✓						
L Cargelligo							
Leeton							
Lidcombe							
Lightning Ridge							
Lismore	✓		✓				✓
Lithgow							
Liverpool	✓				✓		✓
Lockhart							
Macksville							
Maclean	✓						
Maitland	✓						
Manly	✓						✓
Milton	✓						
Moama							
Moree							
Moruya							
Moss Vale							
Moulamein							
Mt Druitt	✓		✓				
Mudgee							

Location	MERIT	RAD	Circle Sentencing	DVCIM	Young Adult conferencing	Youth Drug Court	Mental Health Liaison
Mullumbimby	✓						
Mungindi							
Murwillumbah	✓						
Muswellbrook	✓						
Narooma							
Narrabri							
Narrandera							
Narromine							
Newcastle	✓						
Newtown	✓						
North Sydney	✓						
Nowra	✓		✓				✓
Nyngan							
Oberon	✓						
Orange	✓	✓					
Parkes	✓						
Parramatta	✓						✓
Parramatta CC						✓	.
Peak Hill							
Penrith	✓						✓
Picton							
Port Kembla	✓						
Port Macquarie	✓						
Queanbeyan	✓						
Quirindi							
Raymond Terrace	✓						
Ryde							
Rylstone							
Scone							
Singleton	✓						
Sutherland	✓						✓
Tamworth	✓						✓
Taree							
Temora							
Tenterfield							
Toronto	✓						
Tumbarumba							
Tumut							
Tweed Heads	✓				✓		
Wagga Wagga	✓			✓			✓
Walcha							
Walgett			✓				
Warialda							
Warren							

Location	MERIT	RAD	Circle Sentencing	DVCIM	Young Adult conferencing	Youth Drug Court	Mental Health Liaison
Wauchope	✓						
Waverley	✓						
Wee Waa							
Wellington	✓						
Wentworth							
West Wyalong							
Wilcannia	✓						
Windsor							
Wollongong	✓						
Woy Woy							
Wyong	✓						✓
Yass							
Young							
Bidura CC							
Broadmeadow							

Appendix 2

Circuit	Periodic Detention		Home Detention	Community Service
	Females	Males		
Far North Coast	No	Yes but distant	No	Yes
Upper Hunter	No (travel to Sydney?)	Yes	Yes (Limited depending on where in circuit)	Yes
Central Coast	No (travel to Sydney?)	Yes	Yes	Yes (Delays up to 3 mths)
Moss Vale	Yes	Yes	No	Yes
Goulbourn	Yes but distant (Sydney)	Yes but distant (Sydney)	No	Limited
Wentworth	No	No	No	Yes
Grafton	No	Yes	No	Limited
Dubbo	No	No	No	Yes
Bourke/Brewarrinna	No	No	No	Limited
Albury	Yes	Yes but distant	No	Limited
Bathurst	Yes (private transport required)	Yes (private transport required)	No	Yes
Bateman's Bay	Yes (200km distance)	Yes (200km distance)	No	Yes
Broken Hill	No	No	No	Limited
Tamworth	No	Yes	No	Yes
Armidale	No	Yes (Rare distance a problem)	No	Yes
Nowra	Yes	Yes (Bus)	No	Yes
Queanbeyan	Yes (not often used) Public Transport to Sydney or Wollongong	Yes (not often used) Public Transport to Sydney or Wollongong	No	Yes
Wollongong	Yes	Yes	Yes	Yes
Coffs Harbour	No	Yes (Limited due to transport)	No	Yes
Gunnedah	No	Yes (but rare transport a problem)	No	Yes
Parkes	Yes	Yes (but rare - Buses rare)	No	Limited
Moree	No	No	No	Limited
Wagga Wagga	Yes (Bus Service - Not entirely satisfactory times a problem)	Yes (Bus Service - Not entirely satisfactory times a problem)	No	Limited