

# Transforming Criminal Justice - Better Sentencing Options

## Key Partners Workshop Report August 2015

*“What needs to be considered and done to successfully supervise and rehabilitate offenders outside prison to reduce reoffending and enhance community safety?”*

## Context

To support the current reform program underway, Transforming Criminal Justice, the Attorney General's Department convened a two-step deliberative discussion process.

The first discussion, the Community Advisory Panel, included 19 randomly selected participants from South Australia. This was held over two consecutive evenings and participants were given the opportunity to learn about the system and then suggest considerations for the Attorney General's Department and Department for Correctional Services. The second discussion was with partners – those people who form the system of criminal justice support in South Australia, and was run in a similar style to the community panel.

To support the process, the Attorney General's Department engaged the services of democracyCo – a South Australian firm who specialise in deliberative democracy.

The key partner workshop was made up of 30 significant contributors including non-government organisations (NGOs), business, churches and the legal sector. The group was asked to consider the question ...

***“What needs to be considered and done to successfully supervise and rehabilitate offenders outside prison to reduce reoffending and enhance community safety?”***

This report reflects their **discussions** and the **ideas** raised. Where there was tension or disagreement between participants (and this was evident from the discussion) this is highlighted in the report. This group were not expected to make firm recommendations – instead this workshop was designed to harness their collective advice on the reforms around better sentencing options.

This report details specifics around certain significant considerations, and begins by outlining the groups' position on the reforms at large.

## Overarching concepts

There was strong support from the group for community based sentencing of offenders as long as **appropriate levels of support are provided in the community for both the offender and the victim**<sup>1</sup>.

*I am energised by the fact ....“that we are finally focussing on addressing the stigma, and finding pathways for people into community”- participant*

The group discussed that one of the risks to community based sentencing is that if just one thing goes wrong the whole system could be put at jeopardy. As a consequence it is vital to ensure that the system is established

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<sup>1</sup> As defined section 4, Victims of Crime Act 2001

appropriately from the beginning (and invested in sufficiently) to prevent problems occurring in the future (as much as is possible).

The group also highlighted that they don't want a revisit of issues created by the **de-institutionalisation of mental health patients**. They commented that it will be necessary to invest appropriately in support systems for those serving their sentences in the community to make this system work effectively.

The suggestions and ideas outlined by the group and contained in this report seek to militate against these issues and associated risks.

The group discussed a number of high level strategic considerations needed to ensure the successful and sustainable implementation of the reforms. In particular they discussed the following;

- **Media strategy** – a comprehensive media strategy is required focused on building understanding by the media of the reforms. Participants noted that perhaps we need to find new ways ('transformational language') to talk about offenders and crime in order to get community buy in.
- **Role of NGOs** – The group discussed the important role that NGOs play in the justice eco-system. Working with NGOs and community groups provides an opportunity to deliver flexible and responsive services. The value (capabilities, information etc) that the NGO sector offers are critical as it was felt that agencies and government can't do it on their own.
- **Broader engagement** – there was discussion by the group about the need to involve victims and offenders to seek their views in the shaping of the reforms. One participant noted – *'we should be allowing people who have been impacted, affected by the system to genuinely be part of it.'* The need to more broadly engage business in the 'employment' of offenders was also raised.
- **Sequencing** – the reforms and effort should be carefully sequenced and we should seek to move beyond pilots by implementing trials that have 'scalability'. Also make sure that while we continue to protect the rights of the accused and offenders, we do not negatively impact on the rights of victims.

It was noted that **Aboriginal communities and offenders** should be a strong focus of the reforms, because Aboriginal people make up such a high proportion of those in jail. It was noted that this situation is a *"major human rights issue and if we get it right for Aboriginal people we get it right for others."*

There was some debate in the group about what is most important in how we **prioritise community safety and rehabilitation.**

Some held the view that rehabilitation comes first and is the way to achieve an increase in community safety as it addresses individual recidivism and also guards against reoffending.

Others held the view that community safety must be prioritised at all times. If we take our eye off it and get it wrong (for example make the wrong decision about an offender regarding their suitability for rehabilitation) the consequences could be catastrophic.

Facilitator insight: Whilst this issue remained unresolved by the group, the debate didn't seem to impact on the practical, 'on ground' measures suggested for implementation. This is probably because no matter which way participants came at the issue – **community safety was considered central.**

The group developed the following themes / ideas and approaches as important considerations to the central question – *'What needs to be considered and done to successfully supervise and rehabilitate offenders outside prison to reduce reoffending and enhance community safety?'*;

- Flexible sentencing to enable judges to keep people out of jail and reduce reoffending
- Structure and support transitions of offenders
- Building social capital – employment is critical
- Social Inclusion
- Efficient use of resources and extended service provision
- Equalise victim support with that being offered to offenders
- Generational Prevention

### **Flexible sentencing to enable judges to keep people out of jail and reduce reoffending**

The group agreed on the need to give judges flexibility to consider community based sentencing options, including giving judges pre-sentencing flexibility. The group was clear about the benefits of community based sentencing - *"if we can do this for those in and outside the system we have a great chance of rehabilitation which will stop reoffending."* It was also suggested that the possibility of this type of scheme gives 'hope' to the offender and incentive.

The point was made that offenders eligible for community based sentencing need to be carefully chosen in order to minimise harm and reduce risks to the community.

It was suggested that sentencing be 'tailored' - that there should be no cookie cutter model because flexibility is key. The term '**individualised justice**' was used. This individualised approach would best be achieved by ensuring that the judge or magistrate has the maximum possible information available to them during sentencing. There may be the opportunity for NGO's involved in offender rehabilitation or support to assist in this process.

The importance of victim involvement in the decision about how sentences are served was also discussed. There was a general discussion about the need to involve victims in the process to ensure that they feel like appropriate justice is served.

The importance of rehabilitation as a key factor to be considered during the sentencing process was discussed, including prior to sentencing. As per the Griffiths Remand model, it was suggested that courts should be allowed to consider delaying sentence to allow for rehabilitation prior to sentencing. Progress towards rehabilitation would then be taken into account at sentencing.

The group highlighted the need to be realistic about how success of community based sentencing is measured. Expecting all future offending to be eradicated is probably unrealistic –*"the best outcome we can hope for out of community based sentence arrangements is that the period of non-offending is extended (longer) than what we might expect from those coming out of jail."*

As in the Community Advisory Panel the group discussed and supported the possibility of having a periodic review of where sentences are served based on demonstration of progress of the individual. This enables a change of course and provides hope and incentives to offenders to 'do better'.

There was some discussion about community justice models and problem solving courts that aim to provide new responses to criminal activity by addressing the behaviour underlying many criminal offences affording offenders opportunities to accept responsibility for their offences and resultant harm..

### **Structure and support transition of offenders**

The importance of offenders serving their sentence in the community and/or offenders being released into the community post detention NOT being set up to fail was deemed as an important consideration by the group.

Whilst it was agreed that the precise needs of the offender will differ and individualised responses would be necessary, in general terms it was felt that all offenders would require support. In particular, the following forms of support were discussed;

- Housing
- Meaningful activity

- Structure / routine
- Centralised services - 'reporting house'

### Housing

Whilst 'prioritisation' by the group didn't occur – **the most participants raised housing as their top priority** for ensuring that offenders that are rehabilitated outside prison don't offend again and that the safety of the community is maximised.

Appropriate housing is equally critical for; those on bail, offenders who have served their terms in jail and those serving their sentences in the community.

It was commented that housing is THE most important issue because offending is linked closely to the social circumstances of the person. Having access to safe and stable housing (if only short term housing) takes them off the street and gives them a base from which to start again. Step-down interim accommodation schemes which support people out of prison help to facilitate a sense of 'hope'.

One participant spoke of his own personal experience in providing accommodation to ex-offenders. He remarked that this support had resulted in a huge improvement in the offenders and had given them a chance for a new start.

When considering housing arrangements it will be important to avoid the establishment of ghettos. It is important to recognise that an offender's home may not be necessarily the best place if there is a concentration of 'offender types' in that area.

Step down housing options would need to be combined with other supports (as below).

### Meaningful activity

It was highlighted that 'meaningful activity' is essential to successful rehabilitation. Having a sense of purpose and direction can make or break an offenders' chance at rehabilitation. The form of activity will vary depending on the offender, however employment is obviously one of those. (as outlined in the next section) Education is also another important opportunity that needs consideration.

### Structure / routine

It was noted that when being released from jail, offenders can suffer as a consequence of the lost routine from their lives. Having some arrangements in place to assist with the transition to a less structured life are important.

## Preparing offenders released into the community

Participants noted that drug treatment in prisons is essential for reducing reoffending given that substance dependence is a significant contributor to offending and reoffending.

### Centralised services

A range of centralised services that provide offenders with support were suggested.

Participants pointed to The Stepping Stones Alcohol and Other Drugs day centre Ceduna as a good example. Run by the Aboriginal Drug and Alcohol Council (ADAC), the centre provides free confidential treatment, counselling and referral services for Aboriginal people concerned about alcohol, tobacco and other drug issues. Clients can visit the centre to access services or be referred by other agencies such as health, legal and accommodation services.

A trial of a "reporting house" to work with difficult offenders was suggested where services are in one place. This should have a built in review period.

*"...individualised rehabilitation program which runs a life course. People are supported throughout their lives."*- Participant

### Social capital – Employment is critical

*"Community that promotes a second chance"* - participant

Employment was seen by the group as a critical part of rehabilitation and to ensuring community safety. Employment provides meaningful productive activity that improves self-esteem and plays a significant role in reducing reoffending.

The Toll employment model was discussed where offenders employed by Toll receive the added support of a Chaplain as well as by a NGO / service provider.

The group talked about the importance of supporting businesses that employ offenders and support the work of the criminal justice system. The need to create a 'value proposition' for the employer was raised.

It was suggested that a website which brought together offenders and potential/interested employers to fill employment positions could be established.

## **Social inclusion**

It is important to ensure that offenders serving their sentence in the community are not alienated from the community. Community acceptance and support were identified as central to success of community based sentencing options.

It was noted that one of the issues with community sentencing options is that it can create issues and risk for offenders due to the stigma involved.

To help overcome these issues it was proposed that a mentoring program be established which enables the community to get involved and assist the offender to integrate into the community.

The program Family by Family was identified as a good example of an initiative that may be appropriate.

An inclusive society (comprising government and civil society, such as NGOs) would also cater properly for victims' needs

## **Efficient use of resources and extend service provision – 'place based design'**

Unfortunately the circumstances that many offenders are in, coming out of prison, make it near impossible for them to rehabilitate on their own. Employment, accommodation, drugs, alcohol, mental health and education, just to name a few are issues that often keep people in the cycle of recidivism.

To support the 'individualised' approach to offender sentencing and rehabilitation, it was suggested that government agencies and NGOs work together in a multiagency approach similar to the SA Government Multi-Agency Protection Services (MAPS)s to provide individualised rehabilitation programs which "run a life course". This will ensure that offenders have the correct wrap around services.

Information about the offender and their progress should be shared between agencies – "one offender one file."

There may be the need to increase capacity to manage offenders and where possible, the partner group suggested it should be 'place based'.

A number of NGO's currently provide practical help to offenders to help address these issues with limited funding (often not recurrent), the system needs this assistance.

## Parallel Justice

Victims, as well as offenders, should have rights to be protected, engaged and rehabilitated. If we achieve this we have a just, fair and equitable system for all people.

The group highlighted the need to support victims' recovery alongside offender recovery as they each live their lives in parallel, often for a very long time. There should be a model of rehabilitation for victims and offenders – to support families that are offered in an integrated way – wrap around services to the community.

It was noted that as a State we may alleviate the societal perceptions of safety if we rehabilitate offenders and victims equally.

## Generational Prevention

Crime prevention through early intervention is essential. We need to stem the flow and minimise victimisation before we have an even bigger problem to address.

As a critical prelude it was suggested that the system could focus on the kids of parent's already in the criminal justice system because they are at high risk of entering the system themselves down the track. A 'family based' approach to the criminal justice system would reduce the number of children entering the criminal justice system. To achieve this it was suggested that a register of offenders' children be kept and shared.

## Summary

To wrap up the Key Partner workshop, participants were asked to reflect on their number one priority.

- *IT – information sharing / streamlining – one offender one file – accessible (but secure) to government and NGOs etc.*
- *Adopt a public health informed approach to justice*
- *An individualised rehabilitation program that is founded in behavioural change and resilience that runs a 'light' course not just by incident*
- *Generational prevention*
- *Opioid substitution therapy / police drug diversion – moving people to opportunities to address their substance misuse*
- *Information sharing between departments and community organisations. Parallel developments between victim recovery and offender recovery.*
- *Flexibility in sentencing*
- *Rehabilitation*

- *Individualised justice*
- *Information sharing to inform assessment no supervision – tailored wrap around services*
- *“Place based models’ for aboriginal communities*
- *Community based sentencing that is resourced and that NGOs have ongoing involvement in decision making for the overall community involvement*
- *Sophisticated community engagement strategy*
- *Mid way / step down houses – Alternative to prison, Isolate (to a degree) from social environment that encouraged offending, Monitor – support.*
- *Step down interim accommodation*
- *Victims’ right – to be safe, to be protected, to be informed, to be consulted, to be engaged to be rehabilitated. That is parallel justice for just and equitable for ALL.*
- *Early intervention using evidence based proven cultural sensitive community programs*
- *Family unit and supporting them, in particular the children prevention is the key. More access to support services/ financial assistance and employment and counselling.*
- *Powers to courts to offer alternative sentencing options. Everything we do should be tailored around the rehabilitation of offenders. We get this right with the support and programs and sentencing reforms we have a chance at keeping offenders out of the system. This is ultimately a win win.*
- *Correction driven / Offender driven – Periodic review of sentencing following review of progress, motivation, change. Provide hope and motivation. Respect to progress.*
- *Social capital – social inclusion (with the risk lens) – MAPS stuff*
- *Supporting families*
- *Better planning, specialised tribunals with responsive and sophisticated planning before release, Build support multi team approach.*
- *Community based supervised accommodation providing mentoring support and guidance.*
- *Parallel Justice – a parallel model of rehabilitation for victims of crime and offenders. This will promote a holistic and healing approach to the whole of the community and encourage everyone to take responsibility to address the impact of crime and act to reduce recidivism. It also takes the focus and label off individuals and promotes a multiagency coordinated approach for families and individuals that is tailored to risk and need.*

- Transition programs that support gradual progression from highly structural prison environments to less formal environments with XXXX (illegible) activity
- Trialling a reporting centre for the vulnerable group of offenders who have experienced prison on numerous occasions and who have failed with community supervision orders. Service can be brought into the centre – drug, health, legal, Aboriginal service. Aim – to address needs of offenders, assist in motivation and reduce risk to reoffending. Perhaps a review of offender's participation could be built in with courts. This program would be very appropriate for Aboriginal offenders.
- “Mentor Programs” – t help prosocial development.

**Greg Mead SC was unable to attend the afternoon session but forwarded these comments in relation the above report.**

*... I would write to indicate support for various conclusions reached by the group. In particular it is very important that new initiatives have sufficient investment to ensure success. For example a decision to allow judges to sentence people to home detention, to be effective, will require some additional investment in affordable housing to enable defendants to obtain the rehabilitative benefits of such sentences.*

*I strongly support the view that Aboriginal communities and offenders should be a focus of any reforms. The Aboriginal incarceration rate is indeed a human rights issue.*

*I think all of the other themes and approaches mentioned are very important and in particular the provision of housing and meaningful activity are essential in order to prevent further offending and ensure that defendants are able to become contributing members of the community.*

*Thank you for the opportunity to comment on the draft.*

*Yours faithfully.*

GREG MEAD SC  
Chief Counsel

## APPENDIX A – Participating Organisations

Julian Roffe	CE, Victim Support Service (VSS) SA
Rocky Perotta	President - Law Society
Annie Bachmann	Special Advisor to the Adelaide Women's Prison
Helen Glandville	Second Chances
Tony Roach	St Vincent de Paul
Leigh Garrett	CEO of OARS Community Transitions
Philip Newitt	Assistant Commissioner, SAPOL
Anna Kemp	Seeds of Affinity
Dot Stagg	General Manager Services, OARS
Jane Booth,	Australian Red Cross
Craig Bossie	Executive Officer of Chaplaincy Services SA
Dr Anthea Krieg	
Greg Mead	Legal Services Commission
Ian Schneider	Head of Chaplaincy Services DCS
	VSS Board Member, Executive/Research Officer for the
Katherine McLachlan	Crime and Public Integrity Policy Committee
Marina Bowshall	Deputy State Director, Drug and Alcohol Services SA
Michael White	Executive Officer, SANDAS
Michael O'Connell	Commissioner for Victims Rights
Brian Keane	Toll Group, Second Step Program, SA Chaplain
Kylie Agnew	Operation Flinders
Psychology Student	Operation Flinders
Anne Sibree,	Attending with Law Society
Kate McGarry	Anglicare, Senior Manager Community Services
Patrick Nicholas	Criminal Practice Manager, ALRM
Hayley Argent	Webster's Lawyers
Julienne Murray	Murray Legal
Christine Guy	Lawyer at Central Community Legal Service