



Submission No 2005/003

Inquiry into Sentencing in the Criminal Jurisdiction in the ACT

The **Australian Institute of Criminology** (AIC) has a long history of research into many aspects of sentencing in Australian jurisdictions. This research has been published, either by the Australian Institute of Criminology, or as a consultancy report for another agency. The AIC has also developed sections of their website (www.aic.gov.au) which focus exclusively on corrections and sentencing. Further details on where to find out more information, on the AIC website, relating to these topics is provided at the end of the submission.

The following submission provides an overview of relevant AIC research and publications, and of research funded by the Criminology Research Council. The Council is an integral part of state, territory and Australian government-funded approach to research in criminology issues today. Research reports for the Council are also found on the AIC website.

The references to relevant material are listed under the following headings:

- ACT specific research
- Sentencing outcomes
- Sentencing options
- Restorative justice

ACT specific research

Research conducted by the Australian Institute of Criminology has shown that by targeting recidivist offenders and increasing their *sentencing period*, a substantial reduction in burglary rates can be achieved. The most recent 2002 Crime and Safety survey of victims of crime in Australia confirms that burglary is of major concern to the Australian community. Research has shown that the majority of burglary victims reported both financial and emotional impacts. Victims' attitudes towards *sentencing* indicated that around one-third favoured imprisonment. Of those who did not, the majority favoured community service or a suspended sentence.

Relevant publications are:

- Makkai, T., Jerry Ratcliffe, Keenan Veraar and Lisa Collins, 2004. *ACT recidivist offenders*, Research and public policy series no 54, Australian Institute of Criminology, Canberra. (<http://www.aic.gov.au/publications/rpp/54/index.html>).

This report was commissioned by the ACT Government to evaluate a burglary reduction program, Operation Anchorage, undertaken by the Australian Federal Police (AFP) in Canberra in 2001. The report examines the long-term effect of the heroin drought and *judicial sentencing practices* as well as changes the ACT Bail Act had upon recidivist offenders. Empirical data on the characteristics of recidivist property offenders in the ACT is used in this report. Issues surrounding Operation Anchorage are also discussed. The report concludes that the AFP were successful in reducing levels of burglary in the ACT by a significant amount.

Of the offences that were tracked through to sentencing, the research found that:

- 29 per cent of offenders were placed on a probation order;
- 20 per cent were released under a bond;
- 14 per cent had their charges dismissed without further penalty;
- 14 per cent had not yet been finalised; and
- 11 per cent were imprisoned.

There was a significant negative correlation between the average number of weekly incapacitation days (both remand and prison) and the weekly burglary rate – as remand and prison sentences go up, burglary rates go down.

The increase in remand and prison time in the six months post Operation Anchorage amounted to the effective removal of at least 15 of the 119 recidivist offending population.

- Holder, R., Toni Makkai and Jason Payne, 2004. *Crime victims and the prevention of residential burglary: report of the ACT burglary victims response project 2004*, ACT Department of Justice and Community Safety, Canberra.
(<http://www.aic.gov.au/publications/reports/2004-02-burglary.html>).

This project, funded by the ACT Department of Justice and Community Safety, studied victims of residential burglary in the ACT. The research focused on the types of actions taken by victims to mitigate the possibility of becoming a repeat victim and what influenced these actions. The study also examined *attitudes to the sentencing of burglars* and the effect of the burglary on the victim and their household.

Sentencing outcomes

Over the last decade, there has been a trend to impose longer *imprisonment sentences* on convicted offenders. However, there has also been a concurrent increase in the range of *community based sentencing* options. *Sentencing options* available at each court level include: fine; good behaviour bond; probation order; suspended sentence; community supervision; community custody; reparation order, home detention; periodic detention; and imprisonment. Detailed sentencing data are not currently available uniformly across the states and territories in Australia. The Australian Bureau of Statistics (ABS) is working towards a detailed sentencing collection on higher courts and magistrates' courts.

Research has examined specific offence types and specific offender groups as well as sentencing trends and outcomes. Recent examples of this are:

- Morgan, N., 2002. Sentencing trends for violent offenders.
(<http://www.aic.gov.au/crc/reports/2002-Morgan.html>)

This study seeks to identify factors which influence sentencing trends for violent offenders in Australia. The study is based on analysis of data from each state and the Northern Territory, and also examines the relationship between the incidence of violent crime and the penalties imposed; whether there any specific factors with respect to Indigenous offenders; and the policy and research implications of the findings. The study finds, among other things, that contrary to general media and public perceptions, the sentencing of violent offenders is becoming tougher in all jurisdictions.

- Krone, T., 2005. *Child pornography sentencing in New South Wales*, Australian Institute of Criminology, Canberra.
(<http://www.aic.gov.au/publications/htcb/htcb008.html>).

This research has been conducted in conjunction with the Australian High Tech Crime Centre. It examines sentences imposed in New South Wales for the offences of possessing child pornography under s 578B(2) *Crimes Act 1900* (NSW) and publishing child pornography under s 578C(2A) *Crimes Act 1900* (NSW). The maximum penalty for the possession offence is the equivalent of \$11,000 or two years imprisonment, or both, and for the publishing offence it is \$110,000 or five years imprisonment or both.

- Australian Institute of Criminology, *Sentencing of drink drivers in NSW*, Crime Facts Info No 81, Australian Institute of Criminology, Canberra (<http://www.aic.gov.au/publications/cfi/cfi081.html>).

This is a one-sheet fact sheet published in the Crime Facts Info series at the Australian Institute of Criminology. It summarises a recent study by the NSW Bureau of Crime Statistics and Research which examined sentencing outcomes of offenders charged with drink driving.

Sentencing options

Recent developments in *sentencing options* have included the introduction of specialty courts. These are designed to deal with specified offender groups and include: drug courts, mental impairment courts; family violence courts and Indigenous courts. While, there are no specialty courts for high tech offenders, *sentencing processes* in this area include the use of various types of sanctions. Two key *sentencing trends* which have been introduced are truth in sentencing and alternative justice processes.

Relevant AIC publications include the following:

- Smith, R., 2004. *Criminal forfeiture and restriction-of-use orders in sentencing high tech offenders*, Trends and issues in crime and criminal justice no 289, Australian Institute of Criminology, Canberra, ACT (<http://www.aic.gov.au/publications/tandi2/tandi286.html>).

Courts in the United States, Europe and Australia have in recent years experimented with sanctions which require that the computer of an offender convicted of high tech crimes be forfeited, or which seek to prohibit the offender from undertaking certain, or all, computer-related activities such as possessing or using computers or gaining access to the internet. Some courts have also imposed requirements that the offender's computer activities be monitored by a probation officer or that the offender's computer have filtering software installed to prevent access to certain types of content. This paper considers whether such orders are legally and practically justifiable as appropriate judicial punishments.

- Lovegrove, A., 2004. *Sentencing the multiple offender: judicial practice and legal principal*. Research and public policy series no 59, Australian Institute of Criminology, Canberra, ACT. (<http://www.aic.gov.au/publications/rpp/59/>).

This study examines the approach of Victorian judges to the determination of sentences for offenders convicted of multiple offences. Given that a substantial percentage of criminal cases involve a multiple offender and that the majority of offences are committed by repeat offenders, the sentencing of such offenders is a matter of significant public policy interest.

- Indigenous courts and justice practices (<http://www.aic.gov.au/publications/tandi2/tandi277.html>).

This research examines Indigenous participation in sentencing procedures which has been occurring informally in remote communities for some time. During the late 1990s, formalisation of this practice began in urban areas with the advent of Indigenous sentencing and Circle Courts. Formalisation has also occurred in remote areas. The aim has been to make court processes more culturally appropriate, to engender greater trust between

Indigenous communities and judicial officers, and to permit a more informal and open exchange of information about defendants and their cases.

- Sarre, R., and D. Wilson (eds), 1997. *Proceedings of roundtable on sentencing and Indigenous peoples convened by the Australian Institute of Criminology and University of South Australia*, Research and public policy series no 16, Australian Institute of Criminology, Canberra. (<http://www.aic.gov.au/publications/rpp/16/>).

This roundtable was developed from the need to review sentencing practices in relation to Indigenous people, and in particular to revisit the processes which led to Indigenous people being incarcerated at a much higher rate than non-Indigenous people. The papers discuss the adequacy of consideration being given to non-custodial sentences; the place of customary law in sentencing; the need for better coordination of services to Indigenous peoples; and the training of professionals in the criminal justice system in cross culture communication.

- Mugford, J., 1997. *Bibliography on sentencing and Indigenous peoples: commentary on a literature search*. Research and public policy series no 16, Australian Institute of Criminology, Canberra. (<http://www.aic.gov.au/publications/rpp/16/ch1.html>).

This report highlights recurring themes from a bibliography which has been compiled on the topic of the sentencing of Indigenous peoples. Reports from the Royal Commission into Aboriginal Deaths in Custody and responses to the Royal Commission were found in the literature search. The bibliography contains many items on keeping offenders out of prison and recidivism issues, the use of diversionary and other non-custodial sentencing options, and the use of traditional justice or customary law options. There is a strong focus on intervention with youth, through the use of various juvenile justice options.

- Roche, D., 1999. *Mandatory sentencing*. Trend and Issues in Crime and Criminal Justice No 138, Australian Institute of Criminology, Canberra. (<http://www.aic.gov.au/publications/tandi/tandi138.html>).

In this paper, the evidence for and against mandatory sentencing is examined. The main claims made by advocates of mandatory sentencing are that it prevents crime, it provides consistency in sentencing, and is a democratic response to widespread public concern about crime.

Restorative Justice

Restorative Justice is a term often used to describe many different practices that occur at various stages of the criminal justice system including:

- diversion from court prosecution (to a separate process for determining justice)
- actions taken in parallel with court decisions (referral to health, education and employment assessment etc); and
- meeting between victims and offenders at any stage of the criminal process (arrest, pre-sentence and prison release).

Overall, restorative justice approaches have three major characteristics that distinguish them from traditional court based approaches. These are: a greater emphasis on the role and experience of victims, lay and legal participants having decision-making authority, and a setting where there is more interaction and discussion between all of the parties involved.

AIC publications relevant to restorative justice include:

- Restorative justice as a crime prevention measure (<http://www.aic.gov.au/publications/crm/crm020.html>).

- Restorative justice and conferencing in Australia (<http://www.aic.gov.au/publications/crm/crm020.html>).
- Family conferencing and juvenile justice: the way forward or misplaced optimism (<http://www.aic.gov.au/publications/lcj/family/index.html>).

The Criminology Research Council has also funded research on restorative justice. Key publications include the following:

- Strang, H., 2001. Restorative justice programs in Australia: a report to the Criminology Research Council. (<http://www.aic.gov.au/crc/reports/strang/>).

This report provides an overview of restorative justice programs in Australia. While a wide range of programs may be broadly labelled 'restorative', the report mainly focuses on programs involving meetings of victims, offenders and communities to discuss and resolve an offence. On a state by state basis, programs are described in terms of their characteristics, implementation and administration, evaluation and relevant publications. While restorative justice programs are generally seen as being most suitable for juvenile offenders, the report also describes the use of conferencing programs for adult offenders in Queensland, Western Australia and the Australian Capital Territory. Other topics covered include the use of restorative programs in the school setting and in the care and protection setting; problems and some solutions in devising and implementing programs, including the question of restorative justice programs in Indigenous communities and ethnic communities; and the effective extension of restorative justice programs.

- Moore, D. and Forsythe, L., with the assistance of Terry O'Connell, 1995. A new approach to juvenile justice: an evaluation of family conferencing in Wagga Wagga (<http://www.aic.gov.au/crc/reports/moore/index.html>).

This project presents findings from consultation with relevant members of the community, together with analyses of the conference process and statistical analyses of recidivism. A theoretical model of conferencing is offered, and a range of recommendations are made concerning the implementation of a conferencing model.

Further information

Further information can be found on the AIC website as follows:

- <http://www.aic.gov.au/research/corrections/>.
- <http://www.aic.gov.au/research/corrections/sentence.html>.
- <http://www.aic.gov.au/research/justice/sentencing/>.
- <http://www.aic.gov.au/topics/indigenous/interventions/alternatives/circle.html>.

Contact Officer:

Dr Judy Putt
Research Manager
Australian Institute of Criminology
Tel: (02) 6260 9231
Email: Judy.Putt@aic.gov.au