

Hidden Factors in the Assessment of Offenders for Community Service Orders in Tasmania

TERESE HENNING*

This paper presents part of the findings of a study undertaken in Tasmania which aimed to provide some insights into the process by which offenders are selected for the community service order sanction. The broad aim of the study was to appraise the administration of the Tasmanian community service order scheme in terms of its internal objectives for the assessment and selection of offenders for community service. In particular, it investigated the extent to which the factors identified as modelling the assessment outcome in practice match the theoretical selection criteria set by legislative and administrative guidelines for the operation of the scheme. That is, to what extent is the theory of selection realised in practice? The study also examined the related issue of whether there are any constraints upon the selection of offenders within the scheme that do not match those guidelines and which operate to limit the application of this sentencing option for identifiable categories of offender in opposition to those guidelines. In this regard, the study focused particularly upon the question whether the type of work approved for the community service order scheme has a limiting effect upon the application of this sentence for those with health problems, for women, for those with family commitments, for the aged and for those living in remote or rural locations.¹

The questions investigated in this study were prompted partly by concerns expressed by Tasmanian Corrective Services Department personnel about inequities that they perceived to be inherent in the operation of the scheme. In particular, there was anecdotal evidence of regional variations in the operation of the scheme and of constraints imposed upon the selection of offenders by organisational pressures that ran counter to the stated aims for the administration of the scheme (see *Standard Guidelines for Corrections in Tasmania*). The research agenda was also set, to some extent, by studies undertaken elsewhere which left unexplored the particular matters investigated by this study and, more broadly, by the

* Lecturer in Law, University of Tasmania.

1 The study also constructed a descriptive statistical profile of all offenders who were sentenced to community service during the period covered by the study. However, because the findings in relation to that matter were largely uncontroversial in the sense that they generally conformed to the findings of other research in the area, they are not reported here. The study also explored the question whether there were any identifiable upward or downward sentencing trends for offenders for whom no suitable community service activity was found to be available who did not receive a community service order. In this regard it was found that an absence of available work was associated with an increased likelihood of a custodial sentence being imposed. The complete findings of the study are contained in *Constraints on the Operation of Community Service Orders in Tasmania*, unpublished Report for the Department of Corrective Services of Tasmania, University of Tasmania, 1996.

desirability for ongoing monitoring of community service order schemes which has been alluded to frequently by researchers and policy makers alike (see, for example, Pease and McWilliams 1980; Mackay and Rook 1976; Oxley 1984; Bray and Chan 1991; Houghton 1991; Miner 1983; Leiversley 1983; Hoggarth 1991; Morris and Tonry 1990; Wilkie 1993).

Research relating to community service order schemes in the past has tended to evaluate the success of their operation in terms of their outcomes, concentrating particularly on their effectiveness in reducing recidivism or imprisonment rates for offenders or in influencing offenders' attitudes towards future offending (Oxley 1984; MacKay and Rooke 1976; Varne 1976; Rooke 1978; Home Office 1983; ALRC 1987; Zdenkowski and Chan 1986a; Zdenkowski and Chan 1986b; Thorvaldsen 1978; Wax 1977). Research on community service order outcomes has also focused upon the potential net-widening effect of this sanction (Zdenkowski and Chan 1986b; ALRC 1987). Other research has measured the success of these schemes in terms of inter- and intra-jurisdictional disparities in their operation, including disparities in levels of imposition and enforcement and in the type of community service order work provided for offenders (Young 1979; Roberts and Roberts 1982; Pease 1985; Vass 1986:25, 100-111; Miner and Seth 1983). Investigations of their internal operation have focused on the attitudes and perceptions of sentencers and the administrators of the schemes in order to highlight potential internal constraints upon their operation from this source (Oxley 1984; Bray and Chan 1991; Houghton 1991; Hoggarth 1991). However, the influence of other organisational or structural factors upon the achievement of internal procedural and policy objectives has tended to be overlooked by the research to date. It is this aspect of the operation of community service orders which this project seeks to explore.

Assessments of the type undertaken here are important in the interests of the fair and equal application of the law. If constraints within the scheme operate to limit the applicability of this sentence for particular categories of offender in ways not related to general sentencing principles or the established policies of those administering the scheme, this may result in injustice for offenders within those categories should they receive a harsher penalty than a community service order. Given that there has been little previous research of the kind undertaken in this study, those responsible for administering community service order schemes have been largely operating in the dark with respect to the equity issues explored here. This research provides objective information in light of which they can assess current policies and practices and plan future developments.

The component of the research detailed here is the descriptive statistical model it constructed of the factors actually influencing probation officers' assessment of offenders' suitability for community service. In this regard, it identified the salient variables relevant to this assessment, that is those variables which statistically best model the probability of an offender being assessed as suitable for a community service order. This model enabled the research to evaluate the extent to which the practice of suitability assessment matches the theory of assessment as identified by reference to Department of Corrective Services' policy statements and practice guidelines. At the same time it enabled the identification of any variables that influence assessment outcomes which may properly be regarded as extraneous in terms of the policy statements and guidelines. The type of statistical analysis employed in this study enabled hidden factors in the assessment process to be identified. In this regard, it marks a departure from previous evaluations of the offender assessment process because, in contrast to those evaluations, it does not rely upon interview or questionnaire data (see Bray and Chan 1991; Houghton 1991) nor upon data derived from experiments involving community service order administrators (see Hoggarth 1991). While studies which do rely upon such analyses are invaluable in revealing administrators' attitudes and aspirations with respect to the operation of community service order schemes,

they do not provide a complete picture of the assessment process in practice. By exploring non-explicit factors in the assessment process and by relying upon data obtained from actual cases rather than experimental models,² the present study casts additional light on areas of the suitability assessment process left unexplored by this earlier research.

Structure of this paper

Part 1 of this paper sets the context for the present study by summarising the key features of the community service order scheme in Tasmania relevant to the present study. Part 2 presents the research design and methodology of the study and summarises its key numerical findings. Discussion of those findings and the conclusions and recommendations arising from them are contained in Part 3.

Part 1 Community service orders in Tasmania

Community Service Orders are available as a sentencing option in Tasmania under Part IV *Probation of Offenders Act 1973* (Tas) for all offences. Because community service orders are available in Tasmania as a sentence in their own right as opposed to being a direct alternative to sentences of imprisonment, the range of offenders for whom this sanction may be utilised is potentially unlimited.

The community service order scheme is administered by the Department of Corrective Services, Community Corrections Division. It is the responsibility of the Community Corrections Division to arrange the approval of community service order projects in accordance with the governing legislation and to allocate recipients of such orders to particular projects, but community service officers have the day-to-day responsibility for operating the scheme. To ensure that any work approved will not encroach upon paid employment opportunities within the community, only work that has been approved by a community service order committee appointed by the Minister (*Probation of Offenders Act 1973* (Tas) section 16) can be undertaken by an offender (*Probation of Offenders Act 1973* (Tas) section 12 (7)(a)). In addition, community service order committees are required to contain at least one member nominated by the Tasmanian Trades and Labour Council (*Probation of Offenders Act 1973* (Tas) section 16(2)).

All community service projects approved under the scheme are required to satisfy established criteria. These criteria require projects to be community based; be performed for non-profit organisations; not take paid employment from the community; provide reparation to the community through the completion of useful tasks; improve offenders' social attitudes and skills; provide a safe working environment (*Standard Guidelines for Corrections in Tasmania*:21). National guidelines also specify that unpaid community work should maximise contact between offenders and members of the public, subject to considerations of public safety, and that work placements should apply equal opportunity and anti-discrimination standards (*Standard Guidelines for Corrections in Tasmania*, sections 4.19 and 4.20).

2 In the context of sentencing research, the weaknesses of experimental models such as that employed by E Hoggarth (1991) in her analysis of the selection of offenders for community service orders in the United Kingdom, are their inability to replicate the actual process under investigation and the bias inevitably introduced by subject consciousness of the experiment

In the early years of the scheme most of the approved work took the form of group projects which typically provided work for several employees at charitable institutions, including homes for the aged, children's homes and community centres. Subsequently, greater emphasis was placed upon assigning offenders to individual pensioners and other individuals in need of assistance in the community (Barnes 1983:79). While the *Probation of Offenders Act 1973* (Tas) has always permitted activities other than community work to be assigned to offenders under the scheme (section 12(6)), it is only relatively recently that programs involving personal development and education have been developed. The primary purpose of these programs is to increase offenders' employment skills and consequently their means of achieving rehabilitation and social reintegration. A community service order employee may now spend up to 25 per cent of any given community service order at an approved educational or personal development program assigned by the Department of Corrective Services. Recent educational programs have provided training in craft-work, carpentry and furniture and building restoration. Nevertheless, the emphasis in the approval of projects remains on the provision of work. Further, because the guidelines preclude work being undertaken which requires specialist training or skills (*Standard Guidelines for Corrections in Tasmania*:23), the work provided is generally of a manual nature such as gardening, outdoor labouring, sorting second-hand clothes, cleaning, minor repair and house maintenance.

Legislative selection criteria

While the range of offenders for whom this sanction may be deployed is potentially very extensive, there is little statutory guidance concerning the offenders for whom it is most appropriate. Basically, a community service order may be imposed upon any offender who is 16 years or older (*Probation of Offenders Act 1973* (Tas) section 10³) and who has been convicted of a summary or indictable offence. The principal statutory limitations at the time of the study upon the court's power to select an offender for community service were, first, the requirement that the court be satisfied that 'provision has been or will be made for the doing of community service' by the offender (*Probation of Offenders Act 1973* (Tas) section 11(3)); and, second, the necessity for the offender to consent to the order being made.⁴ The first requirement (which continues to apply) means that a community service order can only be made if there is a placement available for the particular offender in question. Accordingly, the starting point for this study's investigation was the extent to which the requirement of work availability determines offender selection for community service.

A further limitation upon the court's power to impose a community service order is constituted by the statutory restrictions upon the number of hours and aggregate hours which an offender can be required to work. These cannot exceed 240 hours (*Probation of*

3 Since the commencement of the study, legislation has been enacted enabling community service orders to be imposed for fine default: *Justices Act 959* (Tas), s80 as amended by the *Justices Amendment (Fine Defaulters) Act 1993* (Tas) (Act No 10 of 1993). These amendments came into operation after the period of the study. However, apart from the deletion of the requirement from s11(1) *Probation of Offenders Act 1973* (Tas), that the offender consent to any community service order imposed, the legislative criteria for community service orders remain unchanged.

4 The consent requirement, which applied at the time of data collection, has since been deleted: *Justices Amendment (Fine Defaulters) Act 1993* (Tas) s9. Because it is no longer a statutory pre-condition to the imposition of a community service order, this factor is not investigated in the present study.

Offenders Act 1973 (Tas) section 11(1A) and (1B)) unless the order is made in default of payment of a fine previously imposed upon the offender (*Justices Act 1959* (Tas) section 83(4)).

While the *Probation of Offenders Act 1973* (Tas) grants courts a very wide discretion in determining who gets a community service order, the decided cases have placed further practical limitations upon the breadth of the courts' discretion. In this regard, it has been held that courts must ascertain formally that provision can be made for the particular offender (*Smith v Woolley*). It is not sufficient for the court to rely upon a blanket assurance from Department of Corrective Services officers that work is available generally. Nor can the court rely upon its own past experience in this regard (*Smith v Woolley*). The court must additionally be satisfied that suitable work for the particular offender in question can be found, that is, work within that offender's capabilities (*Smith v Woolley*). Accordingly, a court that is considering whether or not to impose a community service order normally obtains a written or oral pre-sentence report or statement from the Department of Corrective Services.⁵ In practice, therefore, it is necessary that some form of assessment of offenders be conducted by the Department of Corrective Services, although there is no legislative requirement in this regard. As a result, the Department has developed policies, guidelines and criteria to assist corrective services officers in assessing offenders which, in comparison with the legislation, provide clear guidance as to which offenders are suitable candidates for a community service order. It is clear from the foregoing that community corrections officers can play a pivotal role in the operation of this sentence. An understanding of the factors that influence their assessment of offenders' suitability for community service is therefore crucial to any understanding of this sanction's operation.

Theoretical administrative selection criteria

The criteria established by the Department are linked to the general policy aims of the Department with respect to the community service order scheme and to general principles relating to the purpose and philosophy behind the scheme, all of which are detailed in the Department's Practice Manual and Standard Guidelines. These have been translated into a working document for use by officers in assessing offenders for community service, the Suitability/Assessment/Proforma (see *Standard Guidelines for Corrections in Tasmania*). Accordingly, the Department has developed a clear theoretical and philosophical basis for the discharge of its responsibilities in relation to the community service order scheme, and also has contrived a practical device, the proforma assessment form, for the realisation of that philosophy.

The stated policy of the Department is to provide projects for all offenders, and where there is no suitable existing project, the policy is to develop a project to accommodate the offender, including offenders with disabilities and those living in remote locations (*Standard Guidelines for Corrections in Tasmania*:20). Further, the national guidelines specify that equal opportunity and anti-discrimination standards apply to work placements. This means that factors such as gender should not influence the suitability assessment of offenders. The Department places an initial significant caveat upon its policy of general work availability by making it subject to an offender's performance of any previously imposed community service order (*Standard Guidelines for Corrections in Tasmania*:20). Accordingly, the first major indicator of suitability identified by Departmental policy guidelines is the offender's prior community service order performance and this factor

5 Power to do this is provided by the *Probation of Offenders Act 1973* (Tas) s5(1).

constitutes the first item on the suitability assessment proforma. According to general sentencing principles, the fact that an offender had previously received a community service order may be contra-indicative of suitability, regardless of whether that prior performance was satisfactory or not, because it suggests that the offender has not taken advantage of the previous sentence to reform and so warrants a harsher penalty (Warner 1991:273). However, from the vantage point of those operating the scheme on a day-to-day basis, the focus tends to be on practical administrative considerations such as whether the offender is likely to complete the order successfully with a minimum of supervision or to require disciplinary intervention for non-attendance or failure to perform the order satisfactorily (Hoggarth 1983; Oxley 1984:31; Griffiths 1976b:194; Houghton 1991:23; Hoggarth 1991:100; Bray and Chan 1991:19). Accordingly, from this perspective, satisfactory past performance of a community service order would tend to be a positive indication of suitability. Unsatisfactory past performance, on the other hand, is contra-indicative of suitability both from the viewpoint of general sentencing principles and by reason of administrative considerations. Past community service order performance is, of course, also relevant for a further reason. If the offender has outstanding 240 hours service under previous court orders, he or she is not eligible for a further order by virtue of section 11(1B) of the *Probation of Offenders Act 1973* (Tas), unless the order is imposed in respect of a fine default, in which case the statutory limit may be exceeded (*Justices Act 1959* (Tas) section 83(4)).⁶

The other indicia of suitability listed in the standard guidelines are the offender's present offence(s) and prior criminal record; his or her personal details, including social stability, family and social relationships, employment commitments, transport and health; and, finally, the offender's attitude to community service orders. On the suitability assessment proforma, the information sought in relation to offenders' current offences and criminal history specifies sexual offences, offences involving violence, repeated burglary and stealing offences and offences that could 'give rise to community concern' should the offender be placed on a community service order. Offences in this last category are considered to include serious drug offences, offences involving damage to property, offensive behaviour, unlawful possession of weapons and other offences against good order (Houghton 1991:23; Oxley 1984:31, 37, 47-48; Bray and Chan 1991:14, 19). The offender's criminal conduct is regarded as a justifiable selection criterion because community service orders are served in the community and are, therefore, considered inappropriate for offenders who might be, or who might be perceived to be a danger to the community or a source of anxiety for members of the public. In addition, the nature of an offender's criminal history is seen as providing an indication of his or her motivation towards rehabilitation and, consequently, of any potential enforcement problems (Oxley 1984:31, 37, 47; Bray and Chan 1991:21). Finally, the interests of the community agencies providing approved work placements are also taken into account. Offenders whose criminal history or current crimes indicate that they might be unreliable or disruptive workers are generally considered unsuitable on this basis as possibly jeopardising continued agency confidence in and support for the scheme (Bray and Chan 1991:18-19; Houghton 1991:23-24; Oxley 1984:47). Violent offenders, property offenders and offenders whose criminal conduct was precipitated by drug dependency or persistent alcohol abuse are particularly perceived to pose potential risks in this regard (Houghton 1991:23-24; Oxley 1984:31, 47; Bray and Chan:18) — the violent offender because he or she may persist in violent or disruptive

6 Legislation relating to the fine default system had not been enacted at the time of data collection for this study. The considerations it raises are, in any event, not relevant to the present investigation.

conduct towards other agency employees; the property offender because he or she may steal or damage agency property. With regard to drug or alcohol related offending, the assumption is that the offenders concerned are inevitably unstable and crime prone unless the alcohol or drug problem has been overcome (Oxley 1984:31, 47; Wilkie 1993:41–42). For this group, there is also the perception that it would be difficult to ‘impose the regular discipline of work appointments’ (Pease 1985:76).

The social stability criterion is assessed on the basis of the nature, location and permanence of offenders’ accommodation and their family and social ties including the number of their dependants and their employment commitments. This criterion is generally justified by those responsible for operating the scheme on administrative grounds. Offenders who demonstrate greater stability may be considered less likely to prove troublesome in administrative terms, more likely to complete the order successfully, and less likely to pose a threat to the community (Hoggarth 1983, 1991; Houghton 1991; Pease 1985; McWilliams 1980). In addition, stability in other areas of offenders’ lives suggests that they may be motivated to change the offending aspects of their lives, and therefore, gain maximum benefit from the rehabilitative component of the scheme (Hoggarth 1991:103–131; Oxley 1984:31, 47; Bray and Chan 1991:16). On the other hand, family, social and employment commitments may indicate the possibility of future conflict between those commitments and the discharge of community service obligations (Houghton 1991:24; Oxley 1984:32). Accordingly, these indicia of stability can operate both negatively and positively for offenders. Indicators of an offender’s possible instability are considered to include drug or alcohol dependence, involvement in drug related offences, a history of offensive behaviour or criminal behaviour in general, a nomadic lifestyle, a patchy employment record and an absence of or vagaries in personal relationships (Oxley 1984:47; Wilkie 1993:42; Houghton 1991:23–24; Bray and Chan 1991:14–19; Hoggarth 1983:85).

Transport is listed as a criterion in spite of the fact that the *Probation of Offenders Act* 1973 (Tas) renders it lawful for community service order recipients to travel on departmental transport. Clearly, the legislation envisages that transport difficulties should not constitute a bar to eligibility for community service. This is reproduced in the standard guidelines which state that it is the aim of Community Corrections to provide or develop projects that can accommodate offenders living in remote locations. Nevertheless, at a practical level the offender’s lack of access to transport may pose administrative difficulties for supervising officers in achieving actual implementation of any order for offenders who cannot get to the work site (see also Houghton 1991:24). Similar considerations lie behind the Department’s specification of health factors as one of the suitability criteria on the assessment proforma. While the Department’s stated policy is to make every effort to accommodate offenders with disabilities, the reality is that health considerations may also raise practical obstacles to the provision of activities and work within the offender’s capabilities (see also Oxley 1984:31; Houghton 1991:24). Severe mental disturbance is also contra-indicative of suitability if it produces behaviour that might constitute a threat to the safety of others or to the operation of the scheme. The standard guidelines acknowledge the difficulties posed for the scheme by offenders with mental disorders and therefore cautions assessors to undertake a thorough assessment of placements before advising the court in relation to community service for such offenders.

The offender’s attitude to community service is also specified as a relevant selection criterion. This factor may be indicative of his or her motivation to succeed and to benefit from the rehabilitative component of this sentence and, additionally, may suggest whether the offender will be likely to require interventionist action or other forms of support during the term of any order. Accordingly, while the offender’s consent is no longer a statutory pre-condition to the imposition of a community service order (*Justices Amendment (Fine*

Defaulters) Act 1993 (Tas)), nevertheless, his or her attitude remains a relevant consideration for those administering the scheme (Oxley 1984:32).

In summary, although the statutory criteria for this sentence are very broad, it is clear that the administrators of the scheme have introduced further significant qualifications on its application to particular offenders. As Prue Oxley (1984:30) notes in her assessment of the South Australian community service order scheme, the development of controlling guidelines for administrators is justifiable on a number of grounds. These include the need to maintain a consistency of approach within the department, the need to maintain community confidence in the scheme and the need to meet the rehabilitative and educational objectives of the scheme as well as its punitive aims. The guidelines developed, therefore, are based equally on pragmatic and on theoretical grounds. Primarily they are aimed at eliminating offenders from this sentence who might prove a threat to the community or pose management difficulties for the administrators of the scheme. However, they are also aimed at selecting offenders who might derive maximum benefit from the scheme, in terms of its educative and rehabilitative capabilities.

Part 2 Research design and methodology

The issues raised in this study tend to escape elucidation through simple investigative techniques. To investigate the factors that actually influence the assessment of offenders' suitability for community service, a data file was constructed derived from records of all the offenders for whom a pre-sentence report was prepared at the request of the court from 1 July 1992 to 31 January 1993. Some of these offenders received a community service order while others did not. This data set enabled a statistical model to be constructed which identified the statistically significant variables in the assessment process, that is, those variables which best model the probability of an offender being assessed as suitable or unsuitable for a community service order by corrective services personnel. The same data set was also used to investigate which further factors affect those primary variables and whether, in those cases where a community service order was not imposed, particular factors are associated with an upward or downward sentencing trend.

Data from the files of offenders for whom pre-sentence reports or statements had been prepared was utilised in conducting these analyses because of the reliance that the courts are required, in practice, to place upon the Department's assessment of an offender's suitability for a community service order. Courts request pre-sentence reports in cases other than those where they are contemplating making a community service order. However, pre-sentence reports generally contain an indication concerning community service whether or not that is the specific reason for its preparation. As a preliminary point it should be noted that the pre-sentence reports from which the data detailed in the succeeding analysis was obtained rarely made an explicit recommendation for a particular sentence. It is the view of both Corrective Services Department officers and sentencers that the selection of sentence is the responsibility of the court, and that pre-sentence reports should not be seen to impose upon the courts' discretion in this regard (*Lahey v Sander-son*). Nevertheless, while express arguments in favour of or against a particular penalty may not be included, reports should and do address offenders' suitability for particular dispositions as well as considering the comparative advantages of those dispositions. In addition, the statutory requirement applying to community service orders that the court must be satisfied that suitable work or other activity can be provided for the particular offender, can be utilised by Corrective Services' Division officers to screen out any offender who is regarded as presenting an unacceptable risk to the scheme. Evidence from studies elsewhere has shown a high correlation between pre-sentence report recommendation and

the sentencing outcome (Pease 1975; McWilliams 1991; Hine et al 1978; Young 1979; Wilkie 1993). Accordingly, the characteristics of those getting community service versus those who do not, for whom pre-sentence reports were prepared, is also likely to be strongly probative of the matters that influence the assessment of suitability and unsuitability.

The large volume of cases potentially involved in the study, required that limitations be placed upon it. In 1990–91 alone, 1006 cases were dealt with by the courts by way of community service orders (Department of Corrective Services *Annual Report 1990–1991*:59). Accordingly it was decided to restrict the study to cases determined in the seven month period immediately preceding the commencement of the study. This provided a manageable and workable body of material which was, nevertheless, sufficiently large to enable general conclusions to be drawn. It was decided to conduct the study on a retrospective basis for two reasons. First, this enabled data to be collected more efficiently and quickly than would have been possible with a prospective study. Second, it eliminated any distortions in the data which may otherwise have resulted from an awareness on the part of those operating the scheme, that the study was being conducted.

The data for the study was obtained from the files of offenders held by the Department of Corrective Services and the Justice Department which identified those offenders in respect of whom a pre-sentence report had been prepared for the court during the period of the study. In total, 445 files and written pre-sentence reports were examined for this period. From those records basic offence/offender information was extracted. In addition, data were also recorded for each offender who received a community service order on the length of their sentence and the projects to which they were assigned.

The data obtained were then used to construct a profile of those offenders who did and those who did not receive a community service order. The data were subjected to statistical analysis to determine whether and to what extent the variables investigated influenced the community service order assessment. The reasons expressly given in the pre-sentence reports for a negative or positive assessment of the offender for a community service order were also recorded. These reasons were subsequently assigned to several broad categories for the purposes of quantification and analysis. However, the study does not concentrate on these explicit reasons when assessing the factors that influence the assessment process. A considerable body of research has shown that people's express reasons for arriving at particular conclusions are often not the real reasons for their decision and that the truly influential factors may be masked or hidden by the express reasons given (Shapland 1987; Pease 1987; Kapardis 1985; Kapardis and Farrington 1981; Van Duyn 1987). Accordingly, the analysis concentrates on the influence of the specified variables investigated.

A generalised linear model (glm) was used to investigate the statistical relationships between the particular outcomes investigated — community service order suitability or not and availability of community service order project or not — and the various predictor variables available. The properties of such models are well known. Such models are to be preferred to simpler approaches (cross tabulations and chi-square tests) when drawing formal conclusions, because those simpler approaches are limited by their one-dimensional character which often results in 'trends' which may, in fact, be the result of variables other than the ones represented in the table. The model was developed in the standard way using stepwise regression. In the first stage, the major single variables influencing the community service order outcome were identified by reducing the initial variables to four significant variables. The initial variables were work availability + sex + age + marital status + dependants + employment status + drug problem + health problem + invalid + prior convictions + rural + region + offence category. In the second stage, interactions were examined between those variables and significant interactions were incorporated into the model.

Finally, other interactions were examined which were considered to be potentially important in terms of the objectives of the study. It should be noted at this point, that while the study does sometimes employ cross tabulations and chi-square tests as useful summaries and to indicate simple relationships, the interpretation of the effects of variables on the assessment outcome is limited to their appearance in generalised linear models which are capable of analysing many variables simultaneously and which are, therefore, more comprehensive in nature.⁷

Finally, it should also be noted that in order to check that the data collection process had not resulted in the selection of a biased sample, the sample data from the study were compared with statistics obtained from the Australian Bureau of Statistics covering the same period as the study on a number of demographic points. In this respect it was found that on the major demographic variables age, gender and residential location, a representative sample was included in the data files.

Summary of key numerical findings

Factors modelling the assessment of suitability for a community service order

1. In 55.5 per cent of all cases where a report was prepared for the court, a community service order was imposed. This reduced to about 45 per cent for women offenders and there is some evidence, though not strong, of a relationship between gender and a community service order assessment outcome (see Table 1).

Table 1 Gender CSO:NON CSO

CSO sentence	Female	Male	Total
No	34	164	198
Yes	28	219	247
Total	62	383	445

2. There is an extremely strong association between the assessment of suitability for a community service order in the pre-sentence reports and the court's decision ($p=0.0$). Of those offenders who received a community service order, 96 per cent had received a positive assessment of suitability; 90 per cent of those who were assessed negatively did not receive a community service order (see Table 2).

7 The description in this paragraph of the statistical method used was provided by Stuart Young who undertook the actual statistical analysis for the project.

Table 2 Suitability Assessment for CSO

CSO sentence	Not suitable	Suitable	Total
No	92	77	169
Yes	10	266	276
Total	102	343	445

3. The generalised linear model reveals that the major initial variables influencing the community service order suitability assessment in order of importance are: the availability of suitable work; whether the offender is a drug user; whether the offender has been convicted of an offence against the person; and, the weaker factor, whether the offender has been convicted of a good order offence. Of these, work availability has by far the strongest explanatory power. In 99 per cent of cases where a community service order was imposed the pre-sentence report indicated that suitable work was available (see Tables 3 and 4 which show the computer output for the model and the analysis of variance. Tables 5 to 8 summarise the numerical data for the significant factors).

Table 3 Computer Output:Modelling CSO

<code>>glm* (formula = cso ~ (WK. avail == TRUE) + (drug == "Y") + off100 + off500, family = binomial (link = logit), data = prb.df, na.action = na.omit)</code>				
Coefficients:				
(Intercept)	WK. avail == TRUE	drug == "Y"	off100	off500
-1.867647	2.333328	-0.3230614	-0.41441142	-0.2634725
Degrees of Freedom:			432 Total	427 Residual
Residual Deviance:				368.7068

* This is the S-Plus command which computes the fitted glm model. The variable CSO is modelled by a linear equation using the variables additively where the + sign is used and with interaction variables indicated by the colon :. The syntax of the formula is discussed fully in the S-Plus manuals.

Table 4 The Analysis of Variance:>anova(cso.glm,test+'chi')

Analysis of Deviance Table; Binomial model; Response:cso					
Terms added sequentially (first to last)					
	Df	Dev Resid.	Df	Resid. Dev	Pr (Chi)
	Null		431	589.9502	
WK. avial == TRUE	1	208.6641	430	381.2861	0.000000<important factor
drug == "Y"	1	5.1809	429	376.1052	0.0228368<important factor
off100	1	5.0291	428	371.0761	0.0249247<important factor
off500	1	2.3693	427	368.7068	0.1237427<-weaker factor

Table 5 Work Available

CSO	WK not avail	%	Wk avail	%	Total	%
No	109	56	87	44	196	100
Yes	3	1	244	99	247	100
Total	112	25	331	75	443	100

Table 6 Drug

CSO sentence	Non-drug user	Drug user	Total
No	130	67	197
Yes	211	36	247
Total	341	103	444

Table 7 Offences Against the Person:Offence 100

CSO sentence	No	Yes	Total
No	173	25	198
Yes	229	18	247
Total	402	43	445

Table 8 Offences Against Good Order:Offence 500

CSO sentence	No	Yes	Total
No	151	47	198
Yes	215	32	247
Total	366	79	445

- Stepwise refinement applied to the availability of suitable work reveals that work is less likely to be available if the offender is a drug user, has a health problem, is an invalid, is female or has dependants. Tables 9 and 10 show the computer output modelling work availability and the analysis of variance for work availability.

Table 9 Computer Output:Modelling Work Availability:The Model >Wk.avail4.glm

glm (formula = (WK. avail == T) ~ sex + marital + drug + health + invalid + priors + off100 = depTF + martial:off100 + invalid:priors + off100:depTF, family = binomila, data = prb.df, na.action = na.omit)			
Coefficients:			
(Intercept)	sex	marital 1	marital 2
-1.651009	0.4977392	1.123561	0.1824709
marital 3	drug	health	invalid
0.2356464	-0.5947253	-0.5955533	-3.214634
priors	off100	depTF	marital 1 off100
1.154889	-0.248878	-0.9905804	0.6832881
marital 2 off100	marital 3 off100	invalid:priors	off100:depTF
-0.6150192	0.2453171	2.090475	-0.5514607
Degrees of Freedom:		416 Total	400 Residual
Residual Deviance:			353.922

Table 10 Analysis of Variance:Wk.avail4.glm; >anova(wk.avail4.glm,test+'chi')

Analysis of Deviance Table; Binomial Model; Response:(Wk.avail == T) Terms added sequentially (first to last)					
	Df	Dev. Resid.	Df	Resid. Dev.	Pr(chi)
	Null		415	470.0473	
sex	1	3.39450	414	466.6528	0.0654141<-important factor
marital	3	5.82761	411	460.8252	0.1203054
drug	1	26.55081	410	434.2743	0.0000003<-important factor
health	1	28.57571	409	405.6986	0.0000001<-important factor
invalid	1	14.90583	408	390.7928	0.0001130<-important factor
off100	1	2.40624	406	377.3983	0.1208523
depTF	1	8.43062	405	368.9677	0.0036895<-important factor
prior	1	2.84025	404	366.1274	0.0919299
depTFoff100	1	2.87313	403	363.2543	0.0900693
marital off100	3	9.33202	400	353.9223	0.0251872

5. The data in Table 11 suggest that women are approximately half as likely as men to have suitable work available to them under the community service order scheme. The connection between gender and work availability is also supported by the one dimensional chi-squared test (p-value = 0.0765). However, while the generalised linear model also shows that gender is a factor in the availability of suitable work it reveals that the explanatory power of this variable is relatively weak in comparison with other factors.

Table 11 Work Available by Gender

Work Avail	Female	%	Male	%
No	25	40	99	26
Yes	37	60	284	74
Total	62	100	383	100

6. From Table 12, it appears that a community service order is a more likely outcome for a person in the age group 21–30 (64 per cent) than for any other age group, and that the likelihood of a community service order decreases with increased age. This holds true when men and women are examined separately (see Tables 13 and 14).⁸

⁸ The age group 41–50 does not follow this trend when men and women are examined separately. However,

The ratio of community service order to non-community service order in the age group 21–30 is approximately 2:1 (64–36 per cent), while in all other age groups it is closer to 1:1 (45–55 per cent). Where availability of suitable work is concerned, Table 16 suggests that older age groups may be disadvantaged by a scarcity of suitable work. For nearly half the offenders over 40 there was no suitable work available, compared to 20–30 per cent in the lower age groups. The chi-square test also shows a significant relationship between age and work availability.⁹ However, this is not borne out by the generalised linear model which indicates that, in fact, age is being confounded by other variables, such as prior convictions and number of dependants, reducing its intrinsic explanatory power.

Table 12 Percentage of Age Groups Getting/Not Getting a CSO

Age	0–20	%	21–30	%	31–40	%	41+	%	Total	%
Non-CSO	71	45	68	36	30	45	17	55	186	42
CSO	86	55	122	64	36	55	14	45	258	58
Total	157	100	190	100	66	100	31	100	444	100

Table 13 Percentage of Males by Age Group Getting/Not Getting a CSO

Age	0–20	%	21–30	%	31–40	%	41+	%	Total
Non-CSO	65	45	57	35	23	46	16	62	161
CSO	79	55	105	65	27	54	10	38	221
Total	144	100	162	100	50	100	26	100	382

Table 14 Percentage of Females by Age Group Getting/Not Getting a CSO

Age	0–20	%	21–30	%	31–40	%	40+	%	Total
Non-CSO	6	46	11	39	7	44	1	20	25
CSO	7	54	17	61	9	56	4	80	37
Total	13	100	28	100	16	100	5	100	62

the numbers here, particularly for women, are too small for this deviation to be of significance.

9 X-squared = 12.5281, df = 3, p-value = 0.0058 (highly significant).

Table 15 Age by Work Availability

Work Avail	0-20	21-30	31-40	41+	Total
No	32	57	13	14	116
Yes	125	133	53	17	328
Total	157	190	66	31	444

7. The study found no evidence that offenders living in rural environments were disadvantaged in the assessment process by a lack of available work. The variables rural and employment status were the first to be eliminated under stepwise refinement. Table 16 summarises the data for offenders' urban or rural residential location by community service order outcome. Further, when the broad regional sentencing locations, north, north-west and south were examined, no evidence was found of any regional bias in relation to work availability generally nor in relation to overall suitability assessment. While the proportion of those in respect of whom a pre-sentence report was requested who received a community service order is higher in the north than in the north-west or the south (see Table 17), nevertheless the variable 'region' shows only marginal importance on the one-dimensional chi-square test ($p=0.21$) and, more importantly, it was among the first variables to be eliminated under stepwise refinement. Region has a p -value of 0.508, quite insignificant as a proposed new variable.

Table 16 Residential Location

CSO sent.	Rural	%	Urban	%	Total	%
No	35	18	162	82	197	100
Yes	53	21	194	79	247	100
Total	88	20	356	80	444	100

Table 17 Region

Region	North (%)	North-West (%)	South (%)	Total
Non-CSO	57 (36.5)	44 (46)	86 (45)	187
CSO	99 (63.5)	52 (54)	106 (54)	257
Total	156 (100.0)	96 (100)	100 (100)	444

8. Neither employment status nor marital status emerged as factors influencing the community service order suitability assessment or the work availability assessment (see Tables 3, 4, 9 and 10). While initial analysis did suggest that these factors were of some significance (see Tables 18 and 19), the generalised linear model revealed that these findings were misleading and resulted from the fact that these variables were confounded with others. Prior offences and prior community service orders

were also found to have no real explanatory power in relation to community service order suitability assessment or work availability (see Table 20).

Table 18 Employment Status

Emp. status*	1	2	3	4	5	6	7	Total
Non-CSO	30	5	105	6	3	34	4	187
CSO	43	5	170	9	4	13	13	258
Total	73	10	276	15	7	47	17	445

*Key to Employment Status:

- 1 Employed
- 2 Self-employed
- 3 Unemployed
- 4 Home duties
- 5 Student
- 6 Other (eg pensioner)
- 7 Casual work

Table 19 Personal Relationships

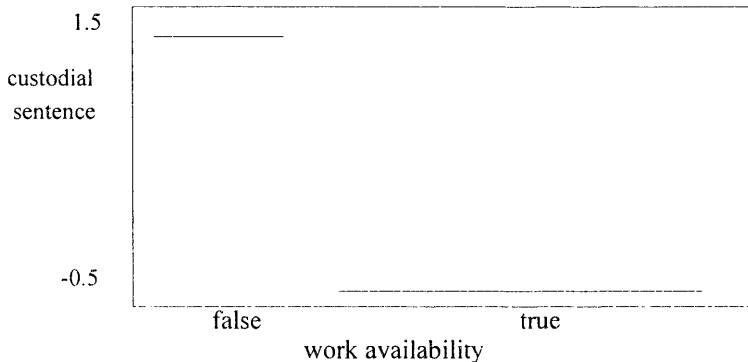
Relation-ship	Never Married	Married	Separated/ Divorced	Defacto	Sole parent	Total
Non-CSO	103	20	32	29	3	187
CSO	149	25	27	49	8	258
Total	252	45	59	78	11	445

Table 20 Prior Convictions

Priors	No	%	Yes	%	Total	%
Wk not avail	24	13	163	87	187	100
Wk avail	34	13	224	87	258	100
Total	58	13	387	87	445	100

9. An absence of available work was found to be associated with an increased likelihood of a custodial sentence being imposed (Figure 1 graphs this result). This result is of concern in view of the finding that the non-availability of suitable work is associated with offender characteristics other than offence type and offence history. It clearly raises the possibility that certain categories of offender are at greater risk of receiving a custodial penalty for reasons extraneous to their criminality and by virtue of personal characteristics such as health, gender and the need to care for dependants.¹⁰

Figure 1*



*When interpreting this graph, note that a higher (more positive) part of the graph (curve or horizontal bar) indicates an increase in the likelihood of a custodial sentence, whilst a negative or lower value represents a decreased likelihood of a custodial sentence. The length of the bar symbolises the number of observations it represents. So, a shorter bar represents fewer people than a longer bar.

10. The vast majority of offenders in receipt of community service orders were assigned to work projects, either pensioner assistance projects or group projects (see Table 22). Only 3.34 per cent of the projects assigned consisted of personal development or education activities. There was also a gender differential in the type of work assigned to men and women. For men, the work assigned was almost equally divided between pensioner assistance and group projects (47.5 per cent and 43 per cent respectively), while for women, the work was principally in the group project category (58 per cent compared to 28 per cent pensioner assistance). A slightly higher percentage of the activities assigned to women were in the nature of personal development or education programs than appeared for men (8 per cent compared to 2.78 per cent). However, the numbers for these categories may be too small to make useful comparisons.

10 The study did undertake preliminary statistical analysis to determine whether these factors in themselves were associated with an increased likelihood of a custodial sentence being imposed. However, apart from the finding concerning the association of non-availability of cso work with an increased likelihood of a custodial sentence, the findings from this analysis remained tentative and were not finally concluded for the report.

Table 21 Projects Assigned to Offenders

Projects	Pensioner	Group	Personal Devel.,		Total
			Education	Not Started	
Men	359	325	21	50	755
Women	23	48	7	5	83
Total	382	373	28	55	838

Part 3 Discussion

The assessment of offenders' suitability for community service

Predictably, the evidence from the present study is that pre-sentence reports do exert a strong influence upon the sentencing outcome, with 96 per cent of those who received a community service order having been assessed as suitable in the pre-sentence report and 90 per cent of those assessed as unsuitable not receiving this sentence (see Table 2). These findings accord with those of studies elsewhere (Pease et al 1975; McWilliams 1991; Hine et al 1978; Young 1979) and substantiate the significance of the assessment of offenders by Corrective Services Division personnel for the operation of the community service order sanction. Probation officers are clearly the gate-keepers for this sentence so that understanding the factors which influence their assessment of offenders' suitability for community service is fundamental to any understanding of the administration of this sanction.

As summarised above, the application of stepwise regression to the information obtained from the pre-sentence reports reveals that the initial significant variables influencing the community service order assessment outcome are the availability of suitable work, whether the offender is a drug user, whether the offender has been convicted of an offence against the person, and, at a more minor level of influence, whether the offender has been convicted of an offence against good order. Because work availability is such a strong explanatory factor, and because it is, in any event, a legal precondition to the imposition of a community service order, it is also important to identify the significant variables that impact upon that factor. The matters that bear upon work availability are of paramount significance in appraising whether the practice of assessing offenders for community service accords with assessment policy. In this regard, stepwise regression shows that the significant variables influencing the assessment of work availability for an offender are whether the offender is a drug user, has a health problem, is an invalid, is a female or has dependants. The presence of any of these factors makes the availability of community service work or activity less likely for the offender.

The next question that must be answered is how the identified significant variables relate to the legal and administrative selection criteria and whether they indicate the existence of any difference between practice and policy.

Statutory criteria

It is clear from the findings of this study that in the vast majority of cases the principal legal limitation upon the imposition of community service — the availability of community service work or activity — is observed in practice. In only 1 per cent of cases (three cases) was a community service order imposed in spite of the fact that the pre-sentence report indicated that work was not available, and, in one of these cases, the pre-sentence report was

not entirely inflexible in this regard. While it stressed that the offender's particular disabilities presently precluded the provision of work under the scheme, it also stated that if the only alternative were a custodial sentence, then an attempt would be made to devise an individual project for the offender. In the remaining two cases, it is unclear why the court imposed a community service order contrary to the pre-sentence report indications relating to work availability.

Administrative criteria

The administrative selection criteria developed in response to the statutory criteria and judicial statements of principle, emphasise features in offenders' present and past criminal conduct and in their social and personal circumstances as indicators of suitability and unsuitability. Of particular concern to supervising agencies is the need to exclude offenders whose criminal conduct might pose an ongoing threat to the safety of others, to the successful completion of any order made or to the overall credibility of the scheme in the eyes of the public. On this basis, the finding that drug use, offences against the person and offences against good order are significant factors opposing a community service order outcome clearly accords with Departmental policy and the standard guidelines.

Persistent drug use is seen as unproblematically contra-indicative of suitability on a number of grounds. It arouses high levels of public disapproval, is perceived to increase the risks of future offending and poses purely practical difficulties for those administering the scheme. Drug abuse is considered to be a negative indicator of reliability and social stability and, consequently, of the likelihood that the offender will successfully complete the order. In addition, the levels of supervision and intervention that may be required for drug users inevitably limit the applicability of this sanction for them in the eyes of those responsible for administering the scheme. Community concern about drug abuse also means that the placement of drug users on community service projects is regarded as potentially damaging to the credibility of the scheme in the eyes of the public. Offenders who are drug or alcohol dependent are also perceived to pose unacceptable risks to the community because they may commit further offences while undertaking community service in order to support their drug habit or because they may behave in a violent, offensive or abusive manner while drug or alcohol affected.

Similarly, convictions for offences of personal violence, while not inevitably excluding this sanction, must weigh heavily against a positive suitability assessment because they involve perceptions of risk to community safety. Offences against good order, on the other hand, are not so unequivocally contra-indicative. This is reflected in the fact that they have substantially weaker explanatory power than the other significant variables identified. These offences are not generally of a very serious nature, nor do they usually involve major risks to community safety. These points would weigh in favour of a community service order disposition. Most often offences against good order involve behaviour amounting to a public nuisance or disturbance which may be indicative of negative attitudes towards authority or of a lack of social responsibility or reliability. In such cases, the offenders might be considered to have low levels of motivation and work reliability, which could cause administrative headaches for the supervising authority as well as practical problems at the work site. However, the most plausible explanation for the contra-indicative nature of these offences is that they rarely warrant as severe a penalty as a community service order and can be disposed of most appropriately by means of a less interventionist sanction. On this analysis, the findings with respect to this category of offence accord not only with the philosophical and theoretical consideration relating to this sanction, but also with general sentencing principles.

In contrast to the initial significant variables identified, the factors detected by the generalised linear model as having a significant impact upon the availability of community service work or activity, showed little congruence with the theoretical selection criteria. The only variable of those identified as significant that matches the standard selection considerations is drug use, and it is notable that this factor exerts a dual influence on the community service order outcome. As well as being an important initial predictor of the community service order assessment outcome, it also exerts a secondary influence on that outcome via its impact on work availability. Work availability is, of course, the major initial predictor of a community service assessment outcome. In both contexts, drug use has a predictably negative influence. The reasons for this in terms of the formulated selection criteria have already been considered, but in relation to work availability, it is the pragmatic concerns about the offender's reliability and how he or she will work which are likely to dominate (for similar findings in New South Wales see Houghton 1991:23; and Bray and Chan 1991:18-19; and for South Australia see Oxley 1984:3). An interesting fact to emerge from the data analysis is that, whereas the generalised linear model pinpointed drug use as having a marked impact in the assessment process, it was explicitly relied upon relatively infrequently by community corrections officers when assessing offenders' suitability for community service (24 cases). This tends to substantiate the results of those studies referred to earlier which have found that, often, material influences upon decision making processes remain hidden and may be filtered out by other considerations.

The influence of the remaining significant variables appears to constitute an infringement of the policy and standard guidelines relating to community service order assessment. That policy seeks to provide projects for all offenders including people with disabilities. Additionally, it aims to ensure the application of gender equity and anti-discrimination standards to offenders. Nevertheless, with regard to the health of offenders, the guidelines are not inflexible and do acknowledge that offenders with intellectual disabilities or severe psychiatric disorders can be potentially difficult to place and that, consequently, a thorough assessment of project placements should be undertaken before the court is advised in relation to a community service order. Further, the proforma assessment form links health issues to community service order suitability, directing the assessor's attention to health problems that may affect an offender's suitability for this sentence. Given that the majority of the community service projects involve manual labour of some kind, there may be logistical obstacles in providing work of a kind that offenders with physical or mental infirmities can actually perform and the consequent doubts about the ability of those with health problems to carry out the work normally provided will inevitably inform the assessment process for such offenders. The solution to this problem lies in providing a greater variety of work under the scheme.

In relation to offenders in receipt of an invalid pension, there are also difficulties associated with the fact that ordering them to undertake work may contravene conditions of those pensions. Only four of the 21 offenders in receipt of an invalid benefit for whom a pre-sentence report had been prepared, were assessed as suitable for a community service order. While the standard guidelines do permit some flexibility to be exercised in relation to offenders with health problems, they also appear to envisage that that discretion should largely be restricted to the most severe cases of infirmity and, in particular, to cases involving more severe psychological problems. The findings of the present study, however, are that a much broader spectrum of health difficulties tends to limit the availability of suitable work. They range from more minor complaints like back problems, wrist, arm, shoulder and leg injuries, dizziness, asthma, arthritis, high blood pressure, deafness, minor heart problems, migraines and epilepsy, to major problems like blindness, congenital heart conditions requiring surgery, spina bifida, brain damage, cancer, polio related disabilities,

personality disorder and clinical depression, and this is a mere smattering of the type of complaints encountered. Health problems, in fact, constituted the reason most frequently expressly relied upon in the pre-sentence reports to support a negative assessment of suitability (29 per cent of reasons). While it is stressed that the present study does not base its conclusions concerning the effects of variables on the community service order outcome upon express reasons contained in the pre-sentence reports, these reasons do provide some insight into the types of ill-health which are perceived to erect logistical obstacles to the availability of this order. In any event, it is clear from the statistical modelling that logistical considerations pertaining to work availability do preclude the application of this sentence for offenders with a broad spectrum of health problems. It is also apparent that this conflicts with the broad aims of those administering the community service program.

Offenders with dependants may similarly be anticipated to pose logistical problems for community service organisers because of potential difficulties that they may experience in accommodating those dependants at times when community service work is required to be done. Additionally, offenders with dependants are perceived to be at greater risk of breaching community service orders because of possible conflicts which may arise between their personal responsibilities and their community service obligations. The restrictions imposed upon a person's time by personal commitments of this kind are often inflexible. Unlike employment commitments, responsibilities for dependants are not usually restricted to a finite number of hours per day or days per week. There may be no more time available at weekends for the performance of community service work than at any other time during the week. Consequently, the fact that an offender has dependants can clearly constitute a major obstacle to the successful completion of a community service order. Notwithstanding the pragmatic justifications that may be mounted for the negative influence of this factor, that influence clearly runs counter to the theoretical assessment criteria promulgated for the scheme. This fact is underlined by the proforma assessment form which lists dependants among the indicia of social stability, giving them a positive rather than a negative connotation in relation to community service order suitability. Nevertheless, as foreshadowed earlier in this report, there is an aspect of inevitability to the finding that this particular factor operates Janus-like in the community service order assessment context and produces practical consequences in opposition to its theoretical function. There has been limited provision of child-care facilities for a minority of offenders sentenced to community service in New South Wales. However, on financial and administrative grounds, this is generally not regarded as a feasible solution to the obstacles posed for the application of this sentence to offenders with dependants. An alternative solution, may again lie in broadening the type of work projects available under the community service order scheme. To overcome the difficulties associated with combining community service order and dependant care responsibilities, thought might even be given to providing community service order activities within the offender's own home. In other words, the work might be taken to the offender, rather than taking the offender to the work.

Despite the fact that the generalised linear model shows the existence of dependants to have a demonstrable effect upon work availability, it was, like drug use, infrequently expressly relied upon by corrective services personnel when advising the court in relation to the community service order option (14 cases). However, the comments that were made in the pre-sentence reports divulge the practical concerns driving its influence. For example, it was noted in one report that the offender's parental responsibilities meant that she could only work outside the home for a limited number of hours each day. In another report, it was noted that the offender would have little time to perform community service because he had the sole care not only of his own but also of a relative's children. In another typical case, it was stated that the offender had no access to child minding facilities, and could

only perform community service at restricted times. In yet another case, a negative assessment based on the offender's responsibilities for an invalid wife and young daughter were altered to a positive assessment when the court made it clear that in the absence of community service availability the only alternative would be imprisonment. This last case shows how problematic concerns occasioned by an offender's familial responsibilities can be. On the one hand, corrective services officers may wish to avert the imposition of a custodial sentence upon a primary care giver in order to avoid the harm and hardship that would result for his or her dependants from the consequent disruption of family life. On the other hand, it is precisely the offender's responsibilities in this regard which may render a community service order impracticable. The end result may be an even less punitive but possibly also less appropriate disposition. Again, the problems discussed here are largely occasioned by operational features of the community service sanction itself. Specifically, organisational and work constraints limit its practical application in relation to offenders with dependants.

The fact that community service work is less likely to be available for women offenders appears to be partly attributable, at least, to the fact that there are comparatively few offenders overall who are women. The result is that the majority of approved projects tend to be oriented towards male offenders. When coupled with the fact that community corrections officers are generally reluctant to place women on predominantly male work groups, this produces an exclusionary effect for women. Discussions with community corrections personnel revealed that this problem is compounded by the fact that some officers' decisions about work availability for women offenders are inhibited by their gendered assumptions concerning the type of work that is appropriate for women. For example, they tend to view activities with traditionally masculine associations such as heavy labouring work or carpentry education as inappropriate and, therefore, unavailable for women. They are also inclined to regard certain other projects as being almost exclusively suitable for women. This view may result in a negative assessment of suitability being made for a woman who is under consideration for a community service order if no placement on such a project is available for her. The types of projects that community corrections officers themselves identify as being particularly appropriate for women are those involving servicing work such as child-care assistance or the provision of help for disabled members of the community at community centres for the handicapped. The physical labour they nominate as particularly suitable for women offenders is generally in the nature of light tasks such as ironing and sorting second hand clothes, or domestic cleaning. Projects which offer this sort of activity are in a minority. The present study found that less than 20 per cent of the projects could confidently be classified as falling into this category.

Interstate and overseas research (Dominelli 1983; Bray and Chan 1991; Hoggarth 1991) has suggested that the negative impact of gender upon the assessment of women's suitability for community service is partly attributable to the view that women's child-care responsibilities may reduce their ability to complete the order successfully. However, these findings are not confirmed by the results of the present study. The statistical analysis here found no correlation between gender and dependants in relation to work availability.¹¹ Instead, it is clear that the factors gender and dependants independently influence work availability. Consequently, it would appear that the fact that an offender has responsibility

11 depTF:sex has a p-value of 0.5653602, which is insignificant as a proposed variable.

for dependants affects the availability of community service order work irrespective of the offender's gender.

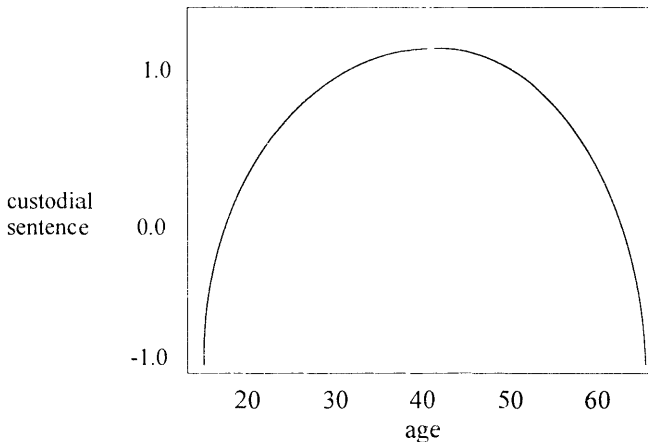
It is also clear that there is no deliberate discrimination against women offenders in the assessment process. None of the pre-sentence reports examined mention gender or considerations associated with the gender in the assessment of offenders' suitability for community service. Accordingly, the impact of offenders' gender on work availability appears to arise principally from systemic factors and also partly from prevailing, orthodox, views about the type of work suitable for women. This conclusion also tends to be supported by the finding that there is a differential in the type of projects assigned to men and women community service order recipients. For men, the projects are divided almost equally between group projects (43 per cent) and pensioner projects (47.5 per cent). For women, by far the largest proportion of projects to which they are assigned are group projects (58 per cent). This differential reflects the fact that the pensioner projects involve 95 per cent outside labouring (chopping wood, gardening etc.) and 5 per cent inside cleaning. The group projects offer a much wider range of activity.

Whatever the source of the negative influence of gender on work availability, its existence creates a definite disparity between practice and policy. The national guidelines relating to unpaid community work require that in the provision of work, equal opportunity and anti-discrimination standards must be applied. The results of the present study suggest that this aim is still to be achieved.

In relation to the other variables specifically investigated by the present study as potential sources of inequity in the operation of the community service order scheme — that is, age and residential location — no evidence was found to support the anecdotal fears of community corrections personnel concerning their likely discriminatory influence on the community service order assessment outcome. Neither age nor residential location emerged on the generalised linear model as significant initial variables or as factors affecting the availability of community service order work. Accordingly, while the majority of community service order recipients are in the younger age groups, this does not appear, on the present analysis, to be caused by age-based discrimination in the assessment process. Additional statistical analysis¹² revealed that age has a marked impact upon the decision whether or not to incarcerate offenders, with non-custodial sentencing options being distinctly favoured for younger offenders (Figure 2 graphs this result). However, age does not operate to direct offenders towards or away from *particular* non-custodial sentences. In other words, age is principally influential in keeping younger offenders out of prison. Thereafter, its influence as a significant variable in the sentencing outcome dissipates, so that it is not a predictor of the particular type of non-custodial sentence that will be imposed.

12 Preliminary investigation suggested a non-linear relationship for the variable, age. Subsequent analysis gave a satisfactory model using a quadratic function on this variable.

Figure 2



Similarly, although the majority of community service order recipients are city dwellers, the present analysis found no statistical evidence of discrimination in the assessment process against rural residents. This finding suggests that the aim to accommodate all offenders within the community service order scheme, even those living in remote locations, is meeting with success in practice. It is important to note, however, that while residential location is statistically insignificant both as an initial influential variable and at the secondary stage, as a factor influencing work availability, in individual cases, transport problems may limit the accessibility of work for particular offenders. In 14 pre-sentence reports, transport problems were said to constitute a real barrier to the applicability of a community service order. However, these problems were not confined to offenders living in rural locations. They were also linked to health problems which made travel on public transport difficult, to financial problems, to drug dependency and even, in one case, to personal commitments. This suggests that the quantitative analysis conducted in this study is not able to expose more subtle restraints acting upon the operation of the community service order scheme and that greater depth to the present analysis might be provided by a complementary qualitative study.

In relation to the anecdotal evidence from community corrections officers that the selection of offenders operates differently in different regions of the State, the present study found no statistical evidence of this. Region did not emerge on the generalised linear model as an initial factor affecting the assessment of offenders' suitability for community service, nor as a factor affecting the assessment of work availability. However, there is evidence that a more limited range of projects is available in some regions, notably, the north and some parts of the north-west, where there is a scarcity of personal development projects. Additionally, deficiencies in the availability of group projects are also apparent in some parts of the north-west. Given the fact that personal development and group projects are the source of the greatest variety of work in the community service order scheme, their low representation in some regions should be a cause for concern. This concern is particularly pertinent in view of the fact that a lack of variety in the work available appears to be a principal source for inequities in the operation of the scheme found by the present study with respect to certain categories of offender, namely women and those with health problems or dependants.

Also relevant in estimating the effectiveness of the formulated policy and selection guidelines is the extent to which the factors they nominate as most germane to the assessment process actually influence that process in practice. In this regard, the present study shows that there are major indicia of suitability propounded by the selection criteria which have little actual impact on the assessment of offenders for community service orders. Specifically, prior community service order performance and indicia of social stability like employment and marital status were found to be statistically insignificant as factors influencing community service order assessment. Particular prominence is given by the guidelines to offenders' prior performance of community service orders, with a previously unsatisfactory performance being cited as a strong indicator of non-suitability. Of course, the converse may not necessarily be true and the inferences drawn from a satisfactory prior performance may also be negative. The fact that the offender has re-offended may be viewed as evidence that he or she has not taken advantage of the rehabilitative aspects of community service orders and now warrants a harsher penalty. In spite of the prominence given to prior community service performance in the standard guidelines, this variable did not appear on the generalised linear model to have any explanatory power with regard to the community service outcome. Further, prior performance of community service orders is given less prominence in the pre-sentence reports as an explicit ground of assessment than might be expected given its apparent theoretical weight. While past unsatisfactory performance of a community service order was found to be the second most frequently cited reason in the pre-sentence reports for a negative assessment of offenders' suitability for a community service order (17 per cent of negative reasons), it nevertheless ranks behind health problems which constitute 29 per cent of the reasons given for a negative assessment. Moreover, where poor prior community service order performance was commented upon in the pre-sentence reports, this did not necessarily result in a negative assessment of suitability. In 30 per cent of cases of poor prior community service performance, the assessment of suitability for this sentence was nevertheless positive. This suggests, that this variable is mitigated by others in the assessment process. In addition, satisfactory past community service order performance constitutes only 12.5 per cent of the reasons given for a positive assessment of suitability. Of the total reasons relied upon in the reports, only 16 per cent relate to prior performance of community service orders, which seems somewhat low in view of the fact that 37 per cent of the community service order recipients during the period of the study had previously been sentenced to community service.

With respect to the indicia of social stability pinpointed in the standard guidelines and selection criteria, statistical modelling shows that only the existence of dependants has any explanatory power in this context. Other life-style factors such as marital and employment status do not appear to have any practical bearing upon the assessment process. The discussion earlier in this paper foreshadowed that a possible explanation for this lies in the apparently contradictory concerns that factors like employment status can inject into the assessment of offenders' suitability for a community service order. These factors were also infrequently expressly relied upon in the pre-sentence reports to justify either a negative or positive assessment. Offenders' accommodation was expressly relied upon in only eight cases, and employment commitments were referred to as contra-indicative of suitability in six cases and as indicative of social stability in 17. The offender's personal relationships with people other than dependants was not relied upon in any of the pre-sentence reports examined as a basis for either a negative or positive assessment of suitability for community service.

Conclusions and recommendations

It is clear from the statistical analysis that the theory of offender selection for community service orders is matched only partially by the practice of selection. While the principal legislative criterion for community service order imposition, the availability of community service work or activity, is observed in the majority of cases, the influence of the standard administrative criteria is more patchy. On one hand, the primary criterion of the nature of the offenders' criminal conduct does exert a significant influence on suitability assessment. On the other, criteria relating to the offenders' personal circumstances and discharge of prior community service orders do not have an observable operational influence on the assessment of offenders. The significant influence found for the nature of offence and for drug use are manifestly in agreement with the policy to exclude offenders who might prove a threat to the scheme or to members of the community.

At the same time, it is clear that a number of extraneous factors also affect the assessment process and that their influence is contrary to Departmental policy and standard guidelines. Specifically, the variables gender, dependants and health status influence the assessment outcome because of their negative impact upon the variable work availability. The result is that because community service order work is less likely to be available for women offenders, offenders with health problems and offenders with dependants, the community service order sanction itself is likely to have more limited availability for these groups of offenders. Although these categories of offender are not excluded entirely from the community service order sanction, this finding is of concern on a number of grounds. First, it indicates that Corrective Services' policy to provide community service activity for all offenders and to observe anti-discrimination standards in the provision of such activity is not achieving the desired level of implementation. While the practical difficulties involved in providing work for offenders with serious health problems is acknowledged in Departmental policy statements, there is, nevertheless, a clear policy commitment to overcoming those problems. Further, the influence of the variables gender and whether or not an offender has dependants, is in clear breach of the standard guidelines and policy statements.

The second ground for concern arises from the study's additional finding that where community service work is not available, there is an increased likelihood that the offender will receive a custodial sanction. This raises the spectre of differential sentencing for those categories of offender for whom community service work is less likely to be found on grounds unrelated to the central issues of their offence and offending history. The implications of this finding for the fair and equal application of sentences are obviously disquieting. Clearly, there is a need to broaden the scope of community service activities provided under the scheme and, in particular, to increase the number of projects which either do not involve manual labour, or which include a range of manual tasks. On the basis of the finding that dependants exert a negative influence on work availability, there is also an argument for rethinking the nature of the projects provided in other ways. For example, it may be appropriate to design projects which can be accomplished by offenders in their own homes, or which can be undertaken in circumstances where offenders can continue to discharge their responsibilities to dependants. Projects of this type might involve a shift in administrative and monitoring arrangements, but given the large number of individual pensioner projects already provided under the scheme, the administrative arrangements necessary to accommodate the suggested developments would be likely to involve extensions to existing arrangements rather than major modifications or additions to them. It is recognised that attempts have been and continue to be made by the Division of Community Corrections to provide a broader range of projects within the community service order scheme and that those attempts have occurred in an environment of ever-tightening fiscal

constraints. The results of this study demonstrate the importance of continuing those developments. This follows particularly from the finding that non-availability of community service order activity for an offender is associated with an increased likelihood of a custodial sentence being imposed. The study also illuminates the categories of offenders who are at risk should such developments be abandoned or discontinued.

With respect to the standard selection criteria themselves, the finding that only the type of offence and drug use exert a significant impact upon the assessment process suggests that some of the current selection criteria may need to be re-assessed. It appears that the usefulness of a number of matters is limited by the potentially contradictory considerations that they raise. A number of the indicia of social stability appear to be particularly prone to problems in this regard. In relation to these matters, it may be appropriate to provide additional guidance concerning their relevance to the offender's suitability for a community service order. A checklist weighting the countervailing considerations that they import into the assessment decision may be useful in this regard. It may also be useful to ascribe a negative or positive value to the prescribed criteria with variation indicated for particular exceptional circumstances. Alternatively it may be appropriate to jettison some of those selection criteria altogether. With the exception of offence type and criminal record, the majority of the administrative selection criteria comprise a checklist of factors generally considered to be predictive of offenders' satisfactory community service order completion. However, as has been pointed out elsewhere, checklists like these are based upon 'precautionary prudence, not evidence' (Pease 1985:76). While it was beyond the scope of this study to examine the efficacy of the selection criteria in predicting offender suitability for community service, it is nevertheless important to remember that research elsewhere has identified with certainty very few factors that are associated with likely order completion (Pease et al 1974 found that criminal record is one such factor; and see Pease 1985 for a summary of early research findings in this regard). The findings of such research could provide a useful basis upon which to conduct any reassessment of current selection criteria, particularly of those criteria found by this study to have minimal practical impact upon the assessment outcome.

In relation to the influence of other variables specifically investigated by this study, the results are more positive. Neither age nor rural residential location appear to exert a discriminatory influence upon the assessment of offenders' suitability for community service orders, either as initial considerations or via work availability. Similarly, the statistical analysis here does not reveal any regional bias in the assessment of offenders for community service. However, it did find regional differences in the type of activity provided under the community service order scheme. In this regard, then, there is some substance to the concerns of Corrective Services' officers that there are distinct schemes operating in different regions of the State. It is also relevant to the finding of the present study that a lack of variety in the community service activities provided under the scheme affects its availability for particular categories of offender. Accordingly, while region by itself is not a significant variable as far as the assessment of offenders is concerned, its potential to affect the equitable operation of the community service order scheme cannot be discounted altogether in view of the fact that work availability is the principal significant variable and the variety of work available is different in the different regions. Therefore, any administrative review of community service order projects should also be directed at achieving a uniformity of variety in the different corrective services regions.

List of Cases

Smith v Woolley Tas Unreported Serial No 52/1972 at p2; [1972] Tas SR (NC 15).

Lahey v Sanderson [1959] Tas. S.R. 17.

REFERENCES

ALRC (1987) *Sentencing: Penalties*, Discussion Paper No 30, AGPS, Canberra.

ALRC (1988) *Sentencing*, AGPS, Canberra.

Barnes, E (1983) 'Community Service Orders in Tasmania' in *Community Service Orders in Australia and New Zealand; Report of AIC Seminar Report and Proceedings*, Australian Institute of Criminology, Canberra.

Bray, R and Chan, J (1991) *Community Service Orders and Periodic Detention as Sentencing Options*, Judicial Commission of NSW, Sydney.

Dominelli, L (1983) *Women in Focus: Community Service Orders and the Female Offender*, Warwick University, Warwick.

Griffiths, R (1976a) 'Community Service by Offenders', *New Law Journal*, February 12, pp 169–171.

Griffiths, R (1976b) 'Community Service by Offenders — II', *New Law Journal*, February 19, pp 193–195.

Hine, J, McWilliams, W and Pease, K (1978) 'Recommendations, Social Information and Sentencing', *Howard Journal*, vol 17.

Hoggarth, E (1983) *Strategies and Pressures in the Selection Process for Community Service Orders*, Birmingham Polytechnic School of Social Work, Birmingham.

Hoggarth, E (1991) *Selection for Community Service*, Avebury, Aldershot.

Home Office (1983) 'Reconvictions of Those Given Community Service Orders', *Home Office Statistical Bulletin 18/83*, HMSO, London.

Houghton, G (1991) *Community Service Orders; Views of Organisers in NSW*, Judicial Commission of NSW, Sydney.

Kapardis, A (1985) *Sentencing by English Magistrates as a Human Process*, Asselia Publishers, Nicosia.

Kapardis, A and Farrington, D (1981) 'An Experimental Study of Sentencing by Magistrates', *Law and Human Behaviour*, vol 5, pp 197–121.

Leiversley, S (1983) *Community Service Order Evaluation in Queensland*, Department of Welfare Services, Brisbane.

MacKay, J G and Rooke, M K (1976) *The Work Order Scheme: An Evaluation of Tasmania's Work Order Scheme*, The Australian Institute of Criminology, Canberra.

McWilliams, W (1980) 'Selection Policies for Community Service: Practice and Theory' in Pease, K and McWilliams, W (eds) *Community Service by Order*, Scottish Academic Press, Edinburgh.

McWilliams, W (1991) *Recommendations and Community Service (Research Bulletin No 1)*, Sheffield: South Yorkshire Probation and After Care (mimeo) cited in Hoggarth, E, *Selection for Co Community Service*, Avebury, Aldershot.

- Miner, M and Seth, N (1983) *Community Service Orders in NSW*, NSW Dept Corrective Services, Sydney.
- Morris, N and Tonry, M (1990) *Between Prison and Probation*, OUP, Oxford.
- Oxley, P (1984) *Evaluating Rehabilitation: Community Service Orders in South Australia, Research Report No. 2*, Office of Crime Statistics, Adelaide.
- Pease, K (1985) 'Community Service Orders' in Tonry, M and Morris, N (eds) *Crime and Justice: An Annual Review of Research, Volume 6*, University of Chicago Press, Chicago.
- Pease, K (1987) 'Psychology and Sentencing' in Pennington, D and Lloyd-Bostock, S *The Psychology of Sentencing: Approaches to Consistency and Disparity*, Centre for Socio-Legal Studies, Oxford.
- Pease, K and McWilliams, W (eds) (1980) *Community Service by Order*, Scottish Academic Press, Edinburgh.
- Pease, K, Durkin, P, Earnshaw I, Payne, D and Thorpe, J (1974) *Community Service Orders: The Suitability of Offenders and Local Administration*, Home Office Unit (mimeographed), Manchester.
- Roberts, J and Roberts, C (1982) 'Social Enquiry Reports and Sentencing', *Howard Journal*, vol 21, pp 76-93.
- Rooke, M K (1978) 'Tasmania's Work Order Scheme; A Reply to Varne', *ANZJ Crim*, vol 11, p 81.
- Shapland J, (1987) 'Who Controls Sentencing?' in Pennington, D and Lloyd-Bostock, S *The Psychology of Sentencing: Approaches to Consistency and Disparity*, Centre for Socio Legal Studies, Oxford.
- Thorvaldsen, S (1978) *The Effects of Community Service on the Attitudes of Offenders*, PhD Thesis, Cambridge University, Cambridge.
- Van Duyn, P (1987) 'Simple Decision Making' in Pennington, D and Lloyd-Bostock, S *The Psychology of Sentencing: Approaches to Consistency and Disparity*, Centre for Socio-Legal Studies, Oxford.
- Varne, S (1976) 'Saturday Work, a Real Alternative?', *ANZJ Crim*, vol 9, p 95.
- Vass, A (1986) 'Community Service: Areas of Concern and Suggestions for Change', *Howard Journal of Criminal Justice*, vol 25, pp 100-111.
- Walker, J (1987) *Australian Community Based Corrections 1985-86: Report of the National Census of Community Based Corrections*, AIC, Canberra.
- Warner, K, *Restitution in Criminal Law*, Max Planck Institute, forthcoming.
- Warner, K (1991) *Sentencing in Tasmania*, Federation Press, Annandale.
- Wax, M L (1977) *Effects of Symbolic Restitution and Presence of Victim on Delinquent Shoplifters*, PhD Dissertation, Washington State University.
- Wilkie, M (1993) *Sentencing Women: Pre-Sentence Reports and Constructions of Female Offenders*, Crime Research Centre, University of WA, Nedlands.
- Young, W (1979) *Community Service Orders*, Heinemann, London.
- Zdenkowski, G and Chan, J (1986a) 'Just Alternatives — Part I', 19 *ANZJ Crim* 67.
- Zdenkowski, G and Chan, J (1986b) 'Just Alternatives — Part II', 19 *ANZJ Crim* 131.