

THE ROLE OF THE COMMUNITY JUSTICE GROUPS IN PRESENTING SUBMISSIONS TO THE DISTRICT COURT ON SENTENCING

(A paper presented by His Honour Judge Forde to a seminar for Community Justice Groups in Mount Isa, 10 February 2003)

Introduction

1. This part of today's seminar is related to the role of the Community Justice Groups (CJG) in the sentencing process in the Courts. This is but a small part of the overall responsibilities of the CJG which include the prevention of crime by educating indigenous people and dealing with social issues such as youth unemployment, alcohol abuse and domestic violence in the communities. The Department of Aboriginal and Torres Strait Islander Policy (DATSIP) is involved in those areas. Other speakers will deal with those issues. The State legal system in the last few years has changed to give indigenous people a much greater say in administering justice to their communities. I am aware of the educational programme for Justice of the Peace appointees. The Department of Justice and Attorney General has administered that programme.
2. If the offender pleads not guilty then the CJG has no formal role to play thereafter. This part of the talk is related to when a person pleads guilty or has indicated that he or she intends to plead guilty in the District Court. It is intended to talk about the role of the CJG from that point in time and how the CJG can assist not only the Court in arriving at a fair sentence but also the offender in understanding the process and having all the relevant matters put to the Court on his or her behalf. A Sentencing Manual has been prepared to

allow the co-ordinators to have a permanent reference to what I intend to talk about today. It also has a glossary of terms which define the many technical or unusual words which are used by those involved in the justice system. After you leave here today, each CJG will have a Sentencing Manual for future reference. It sets out in a step by step manner the role of the CJG in its dealings with the District Court.

Legislative basis for involvement of the CJG

3. Both the Penalties and Sentences Act 1992¹ and the Juvenile Justice Act² make provision for the involvement of the CJG in the sentencing of offenders.

The CJG is defined as:

“a group of persons made up of the following-

- (a) an entity within the offenders (or child’s) community, other than a department of government, that is involved in the provision of any of the following -

- (i) information to a court about Aboriginal or Torres Strait Islander offenders;
- (ii) diversionary, interventionist or rehabilitation activities relating to Aboriginal and Torres Strait Islander offenders;
- (iii) other activities relating to local justice issues:

- (b) elder or other respected persons of the offender’s (child’s) community”

¹ Section 9(2)(o)

² Section 109(1)(g)

4. This legislation governs the main requirements of sentencing offenders in Queensland courts. They indicate the nature of the orders and the circumstances when certain orders are appropriate or necessary. It is the role of the judge to decide what order should be made. The prosecutor and the defence counsel submit what they believe to be appropriate punishment. The CJG put before the Court the facts which it believes would assist the judge in deciding what the appropriate order should be. The final decision lies with the judge. He may not accept the suggestions of any one of those parties. The judge must weight up all of the matters required to be considered under the relevant legislation.
5. As a member of the CJG, you have an extremely important role to play in the court process. It is a role that the judge values and takes very seriously. This contribution assists the judge and as a member of the CJG your efforts will be appreciated by not only the court but your community.
6. Your submissions to the court may be in writing but if that is not practicable then oral submissions can be made to the court by a member or members of the CJG. Submissions may relate to:
 - offenders work history
 - family support
 - whether the relationship between the offender and the complainant or victim has been maintained
 - cultural considerations
 - offenders past performance of court orders and their suitability for other orders or programs
 - indications of remorse

- cooperation with the CJG
- willingness to make restitution
- the type of supervision available in a particular community for community based orders

Video

7. In order to allow you to appreciate the nature of the court proceedings and the type of submissions to be made, it is now an appropriate time to show you a training video. This video was made by me with the assistance of judges' associates and registry staff in Brisbane. They willingly gave their time to prepare this case. Their involvement and enthusiasm reflects the desire of different people in the justice system who wish to help the CJG perform their role in the most efficient and effective way. After watching about half of this tape, it is intended to divide you into groups so that you can prepare a submission about the case after you hear what the prosecutor and defence counsel say on the video. You can make up some of the facts to show that you appreciate the type of submission which a CJG ought to make. (Video Shown to the stage of the end of defence counsel submissions)
8. In preparing your submission, you might like to consider that you have met with the accused, the complainant or victim of the crime, the victim's family, the offender's family. The types of issues which you might address could include:
 - background to the incident
 - any previous convictions for similar offences-injuries sustained by the victim

- whether property has been stolen and if it has been returned
- whether any tribal punishment has been inflicted as a result of the incident
- looking at the various sentencing options facing the offender
- explaining what the particular orders entail, eg probation, community service or intensive correction or immediate release where a juvenile is concerned
- what proactive steps can be taken to curb or reduce such offending behaviour
- whether there needs to be a direction for the offender from the judge to order the offender to attend counselling
- whether there is a need for the offender and the victim to attend counselling together.
- victim support
- should the offender regularly appear before the CJG in order to counsel the offender from engaging in anti social behaviour
- option of going to a homeland or outstation during probation
- highlight the potential which the offender has to be an effective member of the community
- what support can the CJG members offer
- if the offender is a juvenile, consultation with the Department of Families, Youth and Community Care about an appropriate and effective sentence is essential
- alcohol consumption considerations
- has the offender breached any order previously made by the court.

Note: Groups retire to consider the facts in the video relating to the particular case – copies of the transcript to be given to each group in relation to submissions of prosecution and defence only

The spokesperson for each group to comment hypothetically on what their respective groups have decided to say about the offender

Video – show the submissions of the CJG on the video and comment thereafter on what has been said.

Conclusions

A. The steps which are involved in preparing the submission are:

1. Contact the Associate or the DPP indigenous liaison officer. The Associate should be able to give you the contact numbers of the prosecutor or defence counsel involved in the sittings.
2. Upon receipt of the details of the matters from the Associate or the DPP, contact the your local police officer to see if it is appropriate to get an outline of the case to be presented in court. If this is not possible contact the indigenous liaison officer or the prosecutor who is involved in the sittings

3. The Coordinator of the CJG should convene a meeting of the CJG to discuss which matters they wish to make sentencing submissions on.
4. Fill in the assessment document (Appendix 3)
5. Call a final meeting to approve the written submission. If there is not sufficient time for a written submission then a spokesperson should be appointed and that person should get the approval of the CJG as to what to say.
6. Fax any written submissions to the Judges Associate, the Prosecutor at DPP and the Legal Aid officer involved in the sittings.
7. Attend court to assist the Judge with further oral submissions if necessary

B. It is important that if the offender is related to any member of the CJG that the court be informed. It is also important that the CJG be aware of the types of community programmes available in the community which are relevant for rehabilitation.

C. The CJG is not obliged to recommend the nature of the sentence to be imposed, for example probation or imprisonment or fine. The CJG provides information to the court. The court then after considering submissions from the Crown Prosecutor, the Defence Counsel and the CJG what an appropriate punishment should be. The Judge must have regard to all of the submissions not just the CJG.

D. Confidentially: It is important that the information which you learn of whilst serving on the CJG not be misused. Special considerations apply to children and victims of sexual attacks. You must not, therefore, disclose any information obtained by CJG members and tell other persons in the community or relatives of details of those matters. The information must only be discussed with your fellow members of the CJG in deciding what to present to the court as part of your duties. Copies of any written reports should be locked away by your coordinator.

I trust that the matters raised will assist you to play your role in the administration of justice. The CJG are assuming a greater responsibility in their communities. Their duties are not confined to presenting reports to the courts. It is a wide duty to educate and help their communities to take greater responsibility for their own welfare. I wish you well.