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Community Service Orders
Views of Organisers in NSW



Judicial Commission of New South Wales

Community Service Orders

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EXECUTIVE SUMMARY

Introduction

This report is based on information gathered from interviews of nineteen NSW Probation and Parole Officers involved in the operation of the Community Service Orders (CSOs) Scheme. These officers are known as Community Service Organisers. The interviews took place over a six week period in November-December, 1989.

The aim of this research is to provide judicial officers with some feedback on the functioning of the CSO scheme, and to highlight some of the difficulties, as well as the perceptions, of organisers who are responsible for administering this program.

Because judicial officers must decide upon the suitability of offenders for CSOs, the role played by organisers in providing assessments (in pre-sentence reports) is an integral part of the program.

Consequently, this research focuses on the problems of assessing offenders and the practical administration of the program itself.

Objectives of the scheme

When questioned about the overall objectives of the scheme all organisers said that keeping people out of prison was of prime importance. However, only fifty-eight percent of organisers saw this objective being met. They believed that this was, in part, because some sentencers were not using CSOs as an alternative to prison, but as a further option in the penalty range. The secondary objectives of the scheme were seen to be community benefit, rehabilitation, recompense and cheaper punishment.

Among the remedies for improving the effectiveness of the scheme which organisers listed were: clarification of the aims of the CSO scheme, a more active role for sentencers, education of the public on such matters, and better resources.

Assessment of offenders

Most organisers felt that the wide discretion afforded them in the areas of assessment, placement and breach of offenders was essential to the smooth running of the scheme. However, they felt that the responsibilities attached to this discretion were generally under-estimated by the judiciary. Some expressed a desire for more support from the court in breach proceedings and in considering the limits to suitability of offenders imposed by logistical problems.

Thirty seven percent of organisers expressed the view that the most important criterion for suitability for a CSO was the client's likelihood of receiving a gaol sentence. The offender's reliability and motivation were also important. Drug and alcohol related offences did not automatically exclude one from being recommended for the scheme, but made placement more difficult. Those convicted of violent or sex offences had to be placed very selectively, but were also not automatically excluded. Other practical criteria, such as lack of transport, physical disability, single parent status, and full-time employment had to be considered as such factors sometimes made individuals unsuitable.

Agencies

Agencies which participated in the scheme were expected to ensure certain conditions which included some form of reliable supervision, meaningful safe and continuous work, and weekend and after hours access.

Organisers felt that participating agencies expected responsible workers, on-call policing, and immediate support in disciplinary incidents.

Agencies preferred long-term as opposed to short-term workers. Organisers felt that their relationships with agencies were threatened by the CSO (Fine-default) legislation which forced them to place on a short-term basis, workers who had not been assessed in terms of suitability for the scheme.

Resources

Most organisers mentioned that the CSO program was under-resourced. They wanted more clerical staff to cope with increased volume of administrative work, as well as sessional supervisors to provide more intensive supervision of clients at the worksite. They saw these resources as essential, in order to free their time, and allow them to devote more time to casework including more thorough interviewing of clients, more careful assessments and more frequent home visits.

Organisers believed existing ancillary programs such as Attendance Centres (and programs external to the Probation and Parole Service, such as Skillshare and Alcoholics Anonymous) could be better utilised.

Some organisers suggested that funding should be provided for equipment and staffing of weekend labour groups.

Fine default

Ninety five percent of organisers mentioned that the volume of fine-default orders had had a significant impact on the clerical and organisational aspects of their work.

Many organisers expressed concern over the lack of assessment associated with fine-defaulters and the consequent unduly high risk of danger to agencies, the community and the scheme. They expressed the view that this threatened public perception of the integrity of the scheme. Other detrimental effects included increased personal pressure on organisers, lowered morale, and a drain on resources.

Policy Issues

The survey has drawn attention to a number of policy issues which may be conducive to further discussion. These include the following:

- (i) whether, in order to promote consistency of approach in sentencing, sentencers should adopt one clear policy, namely either,
 - (a) strictly apply the legislative policy of using CSOs as an alternative to imprisonment, or,
 - (b) seek to have the law amended in order to allow CSO to be treated as a sanction in its own right and not tied to imprisonment.
- (ii) whether a body of sentencing case law (together with a typology of offence and offender characteristics) should be developed with regard to non-custodial sanctions in order to assist sentencers in making confident, consistent and informed decisions.

- (iii) whether, in order to enhance the credibility of CSOs and support the authority of CSO organisers, courts should generally sentence to imprisonment those who breach their orders.

- (iv) whether the Department of Corrective Services should,
 - (a) adopt the use of statewide minimum operating standards to establish caseload limits, minimum staff levels, training requirements, standard breach procedures and types of suitable work for offenders, and,
 - (b) ensure that adequate resources are available to maintain these standards.

Ivan Potas
Research Director
March 91

1. INTRODUCTION

In 1979 the New South Wales Parliament passed the *Community Service Orders Act*, adding a radically new sanction to the range of sentencing options available to the courts. Section 4(1) of the Act states that:

'Where a person -

- (a) who has committed an offence punishable by imprisonment (whether or not it is also punishable by a fine)...is before a court for sentencing after being convicted of the offence, the court may, instead of imposing a penalty of imprisonment...make an order requiring the person to perform community service work...'

Among the aims of Community Service Orders is the diversion of offenders from NSW gaols, particularly those whose liberty poses minimal threat to the safety of the community. The Act itself was a response to recommendations of the Royal Commission into NSW Prisons and involves two central precepts:

- (1) that in order to minimise the detrimental effects of prison life, the penalty of imprisonment should only be used as a last resort (Report of the Royal Commission into NSW Prisons 1978, p.362), and,
- (2) that consideration should be given to achieving the objectives of incarceration by less expensive and more humanitarian means (NSW Parliamentary Debates (Hansard) 1979, vol. 152, p. 4257).

Community Service Orders, like some other alternative sanctions to imprisonment, are politically popular because they offer the potential for cost-savings - keeping offenders in the community is estimated to cost some 12 to 13 times less than custodial penalties (Potas et al, 1990, pp. 57-8). Further, they retain the punitive element of sentencing assumed to be necessary to appease the electorate's sense of justice (see replies to second reading speech in NSW Hansard pp. 4262-64; Chan & Zdenkowski 1986, pp. 133-4).

When compared with periodic detention, Community Service Orders have distinct advantages. They require no detention facilities and are cheaper to administer, yet can provide a wide range of benefits to society. These arise from the notion that offenders are given the opportunity to make restitution for their transgressions by contributing a certain amount of unpaid labour to the community. This may include the provision of services to pensioners, schools and community groups in the form of general maintenance work (cleaning, painting, repairing, building) or by working for local voluntary organisations, such as charities and youth groups.

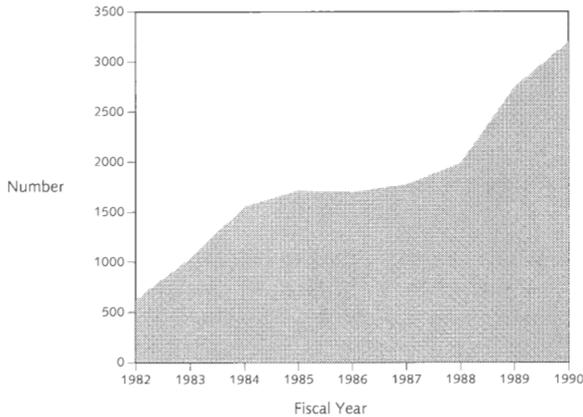
While the costs associated with CSOs suggest that a far greater number of offenders can be accommodated within the program and thus diverted from gaol, there is some concern that the use of Community Service Orders is not reducing the prison population.

Indeed, a recent study published by the Judicial Commission of NSW indicates that despite the increased use of CSOs, much of the diversionary impact of the sanction has been lost because of "netwidening" (Bray, 1990). That is, instead of being used exclusively as an alternative to imprisonment, Community Service Orders are often used as an alternative to other non-custodial sanctions.

Growth in the use of the Community Service Orders.

Figures from the 1988/89 *Annual Report* of the Department of Corrective Services indicate a steady increase in the number of 'active' CSO cases since the introduction of the CSO Scheme¹.

Fig. 1: Number of court-ordered Community Service Orders.



Source: NSW Dept of Community Services, *Annual Report, 1989-90*. (p 94)

Indeed, since 1982 there has been a 357% increase in the number of offenders working in the community. It should be noted that these data refer only to court-ordered Community Service Orders and do not include those that resulted from fine-default legislation which, as explained below, occurred in exceptionally large numbers during 1989.

Fine Default and Community Service Orders

After the near-fatal assault upon fine-defaulter Jamie Partlic in Long Bay Goal, the *Community Services Orders (Fine Default) Amendment Act 1987* was introduced. The purpose of this Act was to prevent those who default on fines from being incarcerated.

The Act provided for the automatic cancellation of driving licences and car registrations for non-payment of parking and traffic fines. For other fines (or where cancellation was not possible) the Act provided for the automatic issue of an order to report for community service work (NSW Parliamentary Debates (Hansard) 1989, vol. 31, pp. 13562-66).

Section 26C of the Act specifies the method for calculating the number of hours of community service work. Eight hours work is equivalent to the fine value of 2 units of \$50. That is, for each \$100 of a fine, eight hours of community service is to be ordered.

During 1988/89 more than 51,000 CSOs were generated as a result of this legislation (Department of Corrective Services 1989, p.28). However, fewer than 6000 of these orders were activated.

Offenders were evading both payment of fines and community work largely because enforcement procedures were inadequate (NSW Parliamentary Debates (Hansard) 1989 vol 31 p.13563). In addition, the anticipated increase in fine revenue had not been realised. Nor had there been the anticipated increase in hours of community service work. This was because the CSOs which were activated were very short, and their occurrence in such large numbers was a short-lived aberration.

1. The term 'Active' refers to cases where offenders have actually registered for, and are being supervised in, CSO work placement (see Figure 1).

The government, in early 1990, under the *Fine Enforcement Legislation (Amendment) Act 1989*, effectively removed unnecessarily complex procedures and returned imprisonment as a possible sanction for fine-default. Figures regarding the impact of these changes are not yet available².

Fine-default CSOs are not included in general CSO caseload figures. However, the impact of the fine-default legislation on the CSO scheme was significant, and is discussed more fully below (Chapter 3.5).

Further growth

The continued growth in the number of CSOs seems assured. The Federal and State Attorney-General's Departments have now settled negotiations which make CSOs available to offenders convicted under Commonwealth Law in NSW courts (see s.20AB *Crimes Act 1914 (Cth)*). Once in place these changes are expected to add to the number of CSOs issued. For example, s.112 AG of the *Family Law Amendment Act 1989(Cth)* provides for the availability of sentences otherwise available under State law.

Another source for CSOs is s.65C(1) of the *Victims Compensation Act (Amendment) 1989 (NSW)* under which a person convicted of either a summary or indictable offence is liable to pay the Crown a levy (\$20 for summary and \$50 for indictable offences) into a Victims Compensation Fund. Part 6A s.65D(2)(b) of the same act provides for the imposition of CSOs on those who default on payment of this levy.

In addition, the *Community Service Orders (Amendment) Act 1989*, recently increased the maximum length of CSO from 300 hours to 500 hours. This is likely to bring more offenders into the program for longer periods.

While attempts are being made to rationalise staffing and other resources in order to cope with the increasing numbers of CSOs, it is clear that more will need to be done in order to maintain the efficacy of the program.

Purpose of this study

The intention of using alternatives to imprisonment is to reduce "the justice system's dependence on incarceration while at the same time ensuring credible punishment" (Freed & Mahoney 1990, p.8). It is important to ascertain what constraints there may be to achieving these aims through the use of Community Service Orders in NSW. To this end, the study examines Probation and Parole Officers' insights into the administration of the CSO program. It is hoped that identifying potential weaknesses in the practical application of the CSO scheme will not only serve an educative function, but may also inform policy development in the area of community-based corrections.

2. For a full discussion of the impact of this legislation see Gorta, A., 1990, 'Monitoring NSW Community Service Orders (Fine Default) Amendment Act, 1987: Weighing the consequences', Paper presented at the Sixth Annual Conference of the Australia and New Zealand Society of Criminology. Sydney, 24-26 September.

2. ADMINISTRATION OF THE COMMUNITY SERVICE ORDERS SCHEME

Introduction

Administrative responsibility for the Community Service Orders Scheme has been with the Probation and Parole Service within the NSW Department of Corrective Services since the passage of the *Community Service Orders Act* in 1979. By 1983 the scheme was available to offenders in 47 districts (Griffin 1983, p.17) and it is now administered by Probation and Parole Officers in district offices throughout the state.

Probation and Parole Officers have recourse to the *CSO Manual* which sets out procedures for the operation of CSOs. The manual states that the foremost aim of the Community Service Orders Scheme is to provide an alternative to imprisonment. In addition, however, the scheme is to provide “tangible benefits” to the community (Department of Corrective Services, Probation and Parole Service, 1983, part 1). These benefits are assumed to arise from the value of the work performed.

Another, less measurable, aim of the scheme is to achieve some “positive effect on the life of the offender” (*id*). Subsumed under this aim are the notions of rehabilitation and character building. These are expected to result from the offender’s contact with volunteers, and from opportunities for the offender to develop work and social skills and gain a measure of self-esteem through achievement (Griffin 1983, p.18).

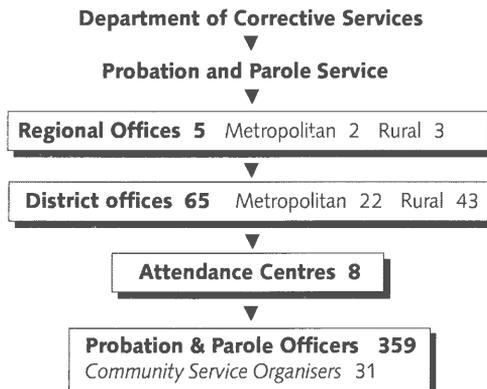
Structure of the Probation and Parole Service

At present, the Probation and Parole Service operates out of 65 district offices and eight Attendance Centres under the direction of five Regional offices (see figure 2). The Service has 359 Probation and Parole Officers. Thirty-one of these officers are directly involved in the CSO scheme. They have operational responsibility for the scheme and, consequently, have restricted regular supervision caseloads.

There are usually one or two of these Community Service Organisers in each district office. In this report they will be referred to as ‘Community Service Organisers’ or as ‘organisers’.

Of the 65 District Offices, 22 serve the Sydney Metropolitan area. These offices carry the largest workload and, typically, have 8 to 15 Probation and Parole Officers each. In offices with more than eight Probation and Parole Officers, a senior Probation and Parole Officer is appointed. These 22 district offices are directed by two regional offices.

Fig.2: NSW Distribution of Probation and Parole Officers organising the CSO scheme - Community Service Organisers



There are 43 offices outside the metropolitan area. They are directed by three regional offices in Northern, Southern and Western New South Wales. These are served by only one or two Probation and Parole Officers each. The department staffing policy operates on the assumption that these CSO caseloads are not sufficient to warrant the CSO specialisation seen in larger offices and, consequently, these officers incorporate responsibility for the scheme into their overall workload.

The Role of Community Service Organisers

Community Service Organisers are the linchpin of the Community Service Orders scheme. They are the link between the court and the offender, and the offender and the community.

The duties of these organisers include obtaining suitable work which can be undertaken by offenders in the community, assessing offenders for their suitability for the scheme, overseeing their placement and supervision in the community, and initiating the relevant disciplinary action if orders are breached (Griffin 1983, p.19).

However, in the course of administering this CSO caseload, organisers also maintain a computerised case management system and ongoing statistical collection, and perform general office administration duties.

Some organisers also manage conventional probation and parole caseloads - with associated counselling and surveillance responsibilities - and perform the usual court-related duties of Probation and Parole Officers.

Differences between Rural and Metropolitan Workloads

There are differences between rural and metropolitan offices in both the staff composition and the work undertaken. Metropolitan officers can specialise in organising CSOs and be freed from certain administrative tasks because there are more staff to do this work. However, in the country offices, (where the officer may be the only full-time staff person) administrative needs may be less time-consuming (for example, there is less clerical work) but supervision demands are heavy because of the travelling time and other logistical problems. These aspects are discussed in chapter 3.4.

Other Staff

In addition to clerical staff, the other single largest group of Probation and Parole Service staff involved in the CSO scheme are the locally recruited Sessional Supervisors. As of August 1990, there were 89 'sessionals' employed throughout the state. However, their numbers fluctuate in response to demand with most being employed on a temporary part-time basis.

Sessional Supervisors travel to the worksites in the community to provide liaison between the Probation and Parole Service, the client and the community volunteers, and to monitor and report on offenders' progress. It is with these officers that the offender will have most contact in terms of departmental supervision, when working through an order satisfactorily.

The role of Community Volunteers

The supervisory role of Probation and Parole Service staff is complemented in the community by volunteer staff from a wide range of welfare organizations such as the St. Vincent De Paul Society, Dalwood Children's Home, State Emergency Services, local community centres, refuges, sports clubs and church groups. These staff supervise offenders on a daily basis and maintain

attendance records which are collated by Sessional Supervisors.

Their contribution to the CSO Scheme is invaluable. By 1988 more than 1800 such volunteers were involved in the supervision of offenders in the community (Dept of Corrective Services 1988 p.15).

The voluntary aspect of the scheme is promoted in the community by the Probation and Parole Service via public meetings, media interviews and distribution of various publicity material from the department.

Work placement

A major factor in the choice of work is the Service's objective to "get people through"- that is, to complete the order (Griffin 1983, p.21). Therefore, ideally, the work should be able to be performed continuously and should not adversely affect the client's motivation.

The *CSO Manual* recommends that the offender complete at least eight hours work per week. There is an upper limit of three days work per week and this is only permissible if the client is unemployed and it does not interfere with opportunities to obtain employment (part 4).

Implicit in the aims of the Community Service Order is the notion that the sanction's punitive element is wholly satisfied by the deprivation of leisure time and the work involved, and that offenders should not be subjected to a further penalty in the form of degrading or meaningless work (Griffin 1983, p.22).

Under s.15 of the *Community Service Orders Act 1979* the work must not be that which would otherwise be performed by a paid employee, and must not conflict with the client's religious beliefs. Nor can it interfere with employment or school schedules. Where possible it should not disrupt any other opportunities for self-development in which the client is engaged.

To this end, specialist skills (such as building, carpentry or teaching) are sought and utilised where possible. Some Community Service Organisers have lists of individuals - usually pensioners - who regularly require household tasks performed, such as painting gardening or lawn-mowing. (A list of the different types of work mentioned by interviewed Community Service Organisers is included as Appendix 2.)

Liaison with a wide variety of community organisations and contacts is vital to matching suitable work placements to offenders' skills and the conditions of the order. Apart from meeting the above-mentioned requirements, organisers must ensure that agencies can provide safe and non-exploitative tasks.

The community agencies also have requirements which include the cooperation of the offender and the guaranteed safety of other workers and of the worksite. For this reason careful assessment of the suitability of offenders is a major component of the organiser's workload.

Pre-sentence Reports and Assessment Criteria

Under s.6(2) of the *Community Service Orders Act*, sentencers must be advised of the suitability of offenders and the availability of work before making an order for community service. This assessment is made by Community Service Organisers and presented at court in a verbal or written Pre-sentence report.

The *CSO Manual* provides organisers with general suitability criteria with which to select appropriate candidates for the scheme (part 3). There are three levels of assessment and initially offenders must have met five legal requirements, before a Community Service Order can be made. The pre-conditions, contained in sections 4 to 6 of the Act, provide that:

- the offender must be at least 18 years old at the time of sentencing;
- the offence must be one for which the legal penalty is imprisonment;

- the offender must consent to the order;
- the offender must live in an area under the supervision of the scheme;
- the court must be satisfied that the offender is suitable and that work is available.

The other levels of assessment involve criteria which are, "largely a matter of common sense" (*CSO Manual*, part 3). The manual suggests that developing more precise selection criteria is part of an ongoing process and, initially at least, determining the suitability of offenders will be, "a matter of conjecture informed by experience" (*id*). Notwithstanding the inevitably subjective nature of these criteria, some minimum requirements can be outlined. It should be noted that while these considerations do not automatically exclude a candidate from the scheme, the implications of a failure associated with the presence of one or more of these features must be carefully weighed against the offender's likelihood of success. These considerations include:

- doubts about the nature of consent;
- indications of mental instability;
- presence of a physical disability;
- addiction to any substance or gambling to the extent that it impairs social functioning;
- the offence, or prior offences, are of a violent or sexual nature to the extent that placement entails an unacceptable risk;
- incapacitating financial burdens so that the offender's time must be spent in paid employment;
- a work record which indicates gross unreliability;
- need for a counselling programme rather than CSO.

The *CSO Manual* outlines some additional considerations which organisers should make in order to maximise the offender's likelihood of success. They include:

- the necessity of gaining the client's cooperation;
- enhancing the client's level of motivation;
- the safety of offenders in the workplace, (each offender is covered by Personal Accident Insurance while at work and while travelling to and from work);
- sensitivity to a client's special needs (for example, single parent status, non anglo-saxon background, illiteracy).

Operational outline

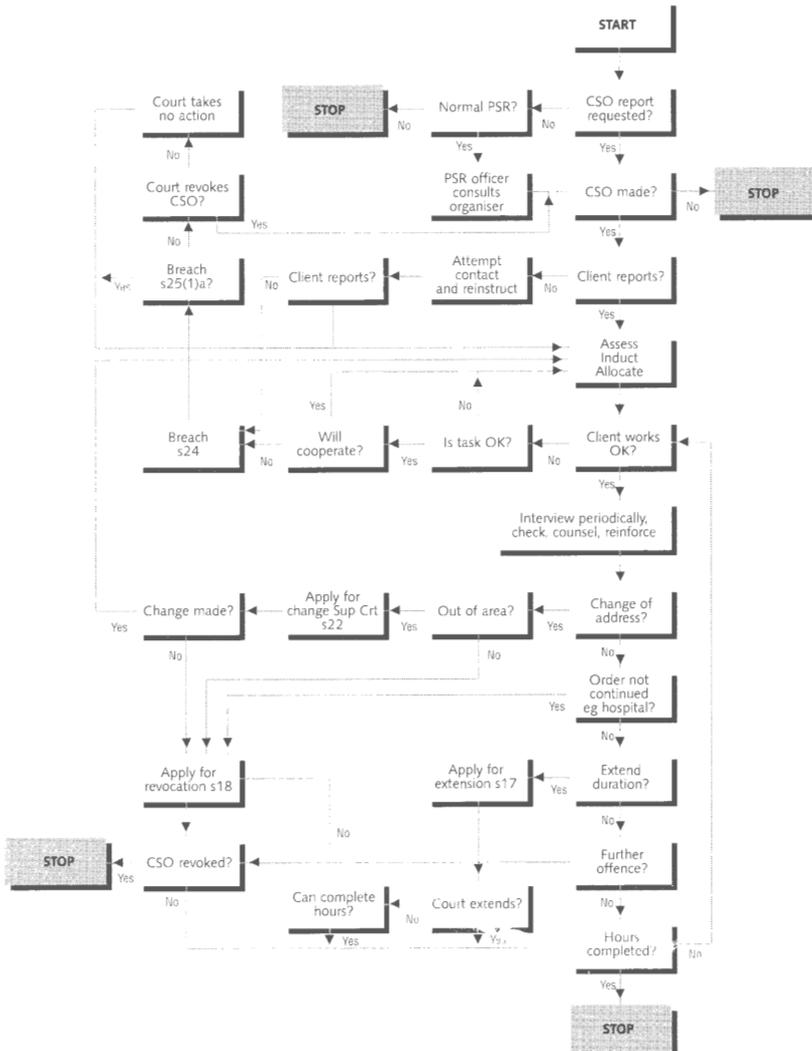
The *CSO Manual* provides a 'General Description of Operations' from which the following summary and flowchart (see Figure 3) have been extracted (part 3).

Summary

1. Upon conviction, a Pre-sentence report is requested by a sentencer considering imposing a CSO.
2. The Pre-sentence report is made to the court.
3. After the Order is made, the Probation and Parole Service obtains a copy from the court and the case is registered.
4. The offender is interviewed and assessed in order to assign appropriate work.

5. The offender is given specific work instructions regarding time and place of work and assigned to work.
6. A sessional supervisor is assigned and briefed on the case.
7. The supervisor visits the worksite and reports back to the Community Service Organiser, discussing any special aspects of the placement.
8. Upon completion of the order, a Completion Report is forwarded to the sentencing court, and a form letter sent to the Police.
9. If the offender fails to comply with the order, breach proceedings are initiated.
10. If the offender changes address out of the area application can be made to change the supervising court if work is available in the new area.
11. If the order cannot be completed within a year, application can be made to the supervising court for an extension of the period within which the order is to be completed.

Fig. 3: Community Service Orders - Operational Flowchart



3. RESEARCH DESIGN

Method

This report is based on information gathered from interviews with 20 Community Service Organisers for whom the local organisation of the Community Service Orders Scheme was a major part of their workload. The interviews were structured so as to obtain an appreciation of their views on the operation of the scheme, and to allow them to elaborate on certain topics they felt were significant.

The interviews were recorded over a six week period in November and December, 1989. The names of Officers in Charge were supplied by Brenda Smith, Executive Director, Community Corrections, and all participating Community Service Organisers were randomly selected.

Initially, five interviews were conducted at five Sydney Metropolitan offices of the Probation and Parole Service. A further five interviews were carried out within the metropolitan area and then 10 in country areas. Department of Corrective Services administrative boundaries were adhered to when determining whether offices were in metropolitan or country areas.

Sample

The participants were 18 male and two female Community Service Organisers whose average length of service with the Department was seven years. The range of this service was between one and fifteen years. Additional comments were welcomed from Officers in Charge and other colleagues involved with the scheme itself or with its offenders.

All interviews except one were recorded at each organiser's workplace, and the length of each interview ranged from 40 to 90 minutes. The last interview was conducted by telephone, to save time and costs. Recorded interviews were then transcribed and responses codified. One interview was excluded from the study due to inadequate recording quality.

The Study

The emphasis of this study will be on qualitative rather than quantitative analysis. It is concerned with investigating whether those who have responsibility for administering the CSO scheme in NSW consider that the theoretical assumptions underlying community-based corrections are being met in practice.

The questionnaire which formed the basis of this study is set out in Appendix 1 of this report. Organisers were asked 25 questions and, in general, the topics canvassed include their perceptions of the following:

- the objectives of the Community Service Order Scheme and whether those objectives were being met;
- how sentencers were using the sanction in their districts, that is, were CSOs being used as an alternative to gaol?
- assessment and Pre-sentence reports;
- breach circumstances;
- relationships with agencies and community;
- impact of the *Community Service Orders (Fine default) Amendment Act 1987*.

4. DISCUSSION

Community Service Organisers were asked a series of questions in order to ascertain their personal assessment of the operation of the CSO scheme.

The questions addressed five issues concerned with the operation of the scheme:

- its objectives,
- assessment of offenders,
- agencies,
- resources, and,
- Fine Default CSOs.

4.1 Community Service Organisers Views of the Objectives of the CSO Scheme

When Community Service Organisers were asked to comment on the main objectives of the CSO scheme, all 19 organisers specifically referred to keeping people out of prison as being of prime importance (see table 1).

Table 1: Organisers perspectives of objectives of CSOs

Objective	mentioned		not mentioned	
	%	(n)	%	(n)
Keep out of prison	100	(19)	0	(00)
Community benefit	63	(12)	37	(07)
Rehabilitation	42	(08)	58	(11)
Recompense	26	(05)	74	(14)
Cheaper punishment	16	(03)	84	(16)

Note: Percentages do not add up to 100% because multiple responses are coded

Most organisers mentioned more than one objective. For example,

...the objective of the CSO program is to keep people out of gaol...and then it's getting the offender to put something back into the community...I explain to offenders that this is what it's all about. Instead of going to gaol, at great expense to the tax-payer, they put something back into the community for the harm that they've done to the community. The real objective that I see is to reduce the cost to the community and get them to do something positive, constructive.

There was less consensus among organisers about whether these objectives were being met (see figure 4). For example, one organiser doubted the capacity of the CSO to do anything more than keep people out of gaol:

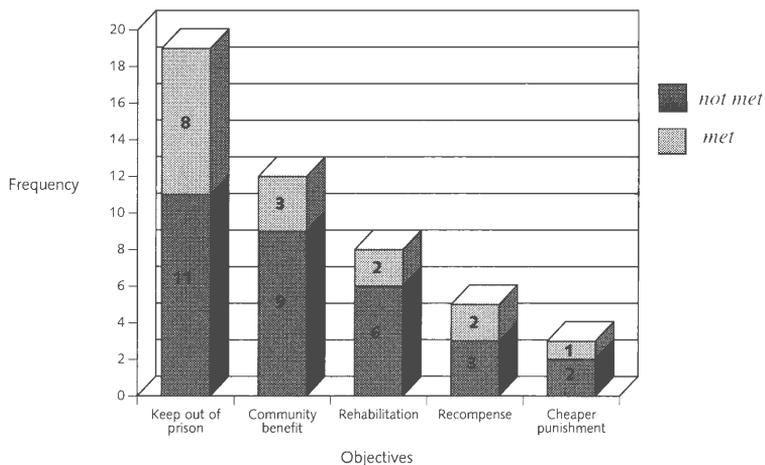
...if you just see the CSO program as a sentencing alternative, sure it meets its objectives. If you have any more metaphysical, or sociological objective than that I'm not sure that you can measure whether you meet it or not.

However, another organiser said,

...I think that even with the scheme running at its best we could probably say that only half the people on CSOs would have been prison bound. I would say here it is even less than that, because the magistrate does not take the view that community service should be supplied to prison bound people.

This organiser explained that in his view the magistrate used CSOs in cases where punishment is needed, but fines were unfair and bonds didn't have sufficient punitive value. That is, he was using CSO as another option in a range of non-custodial penalties rather than as an alternative to imprisonment.

Fig. 4: Organisers perspectives of objectives of CSOs and whether objectives are being met



In fact, 11 of the 19 organisers indicated that they believed that sentencers were not using CSOs as an alternative to imprisonment. One organiser saw the scheme as successfully providing a community-based punishment - but not necessarily as an alternative to prison,

...it is not providing an alternative to imprisonment, it is just providing another sentencing alternative. So we are getting people now...that in the past would have been more likely to get fines, bonds, perhaps probation and supervision; perhaps imprisonment, but not in many cases.

Another organiser suggested that the secondary objectives of the scheme, such as rehabilitation and community benefit, were better met than that of keeping people out of prison. He said,

...I think that if it [CSO] is paraded as providing a community based punishment and that is a clear objective - if that's the primary objective - that's okay. If it's saying that it is designed to be a diversionary program for people, from imprisonment, it's only partially meeting that objective.

One organiser commented that although a CSO cannot be given to anybody who is not eligible for a prison sentence, almost any offence can attract a prison sentence, and so almost any offence could attract a CSO, and did.

All organisers mentioned secondary objectives of the scheme. Around two-thirds of the organisers identified benefits to the community and to individuals in the community, particularly those without access to many services, as being important. This objective is linked to the notion of recompense, which was mentioned by 26% of the sample. One organiser said,

...the objective is clear enough. It's payback to the community...

All organisers cited cases of pensioners who received help with household maintenance and local public schools, community groups and charities which had also benefitted (see Appendix 2 for types of work performed).

However, of the five organisers who regarded recompense as an objective, only three believed that this objective was being met and of the 12 organisers who mentioned community benefit as an objective of the CSO scheme, nine (75%) said that they thought that this objective was being met.

The rehabilitative aspect of CSOs was mentioned by eight organisers, who believed that elements of achievement and self-esteem are important in the rehabilitation process:

There's an element of rehabilitation also. Their involvement in worthwhile and productive work can be of benefit in terms of their own rehabilitation as individuals.

Six of these eight organisers said that the objective of rehabilitation was being met by the CSO scheme. Two organisers cited cases of chronically unemployed offenders who, while on CSOs, worked so well that they were either offered employment with the agency when their orders were completed, or enjoyed some kind of ongoing involvement with the agency. One organiser said,

...and that's happened with many people that I'm aware of. So that element of rehabilitation certainly works with some offenders - not for all.

Despite this, another organiser warned against over-rating these "success stories", saying that if this occurred it was just an added bonus and should not be considered amongst the aims of the scheme.

Three organisers talked about the respective costs of prison and community-based corrections. Two organisers listed the cost-savings of the CSO scheme, if people are diverted from prison, as another benefit to the community. The two felt that this objective was being met by the scheme, with one organiser saying,

It keeps them out of gaol. It saves the government a lot of money in that sense. They're doing it very cheaply and I think it's working well.

Organisers' views on improving the effectiveness of the CSO Scheme

Around one third (32%) of organisers said that the most important improvement needed to achieve these objectives of the CSO scheme was for the aims of the scheme to be clarified (see table 2).

Table 2: What organisers feel may improve the effectiveness of the CSO scheme

Ways to improve scheme	mentioned		not mentioned	
	%	(n)	%	(n)
Clarify aims	32	(06)	68	(13)
More active role	27	(05)	73	(14)
Public profile	37	(07)	53	(10)
Resources	42	(08)	42	(08)

Note: Percentages do not add up to 100% because multiple responses are coded

These organisers felt that there was a lack of understanding amongst magistrates and judges as to the aim of the CSO legislation, or at least, the role that they could play in achieving that aim. One said,

I think sentencers need greater clarification as to ...why it [the CSO option] exists in the sentencing spectrum because there is a variety [of views]. The variety includes sentencers that only see it as a last stage sentencing option applied short of imprisonment, and there are others...[who are] using it simply as a community based punishment...

These organisers believed that there needed to be more ongoing education of all organisers and legal professionals involved in the scheme, so that all could be seen to be acting within the framework of common objectives. One stated,

...there needs to be ongoing education of Probation and Parole Officers, the judicial officers, judges and magistrates but perhaps also solicitors and barristers as well, about the overall aims of the scheme, that it ought to be kept as an alternative for imprisonment...

Another said,

...the legal people feel upset if their client doesn't get a CSO - without realising the need to select people for the scheme very carefully.

However, three organisers also believed that sentencers were inconsistent in their use of CSOs. For example,

...I found that judges use the overall equation more responsibly than magistrates. It's surprising what offences in the District Court attract 150 hours versus offences that attract 300 hours in the Local Court.

Five organisers interviewed believed that for Community Service Organisers to be able to maximize the impact of the scheme, (that meant enabling offenders to complete their orders successfully) sentencers had to take a more active role in the selection of suitable offenders.

One organiser said that sometimes the scheme was used as a “dumping ground” and continued,

I think the judicial officers...should consider more or less the person's suitability...and not merely make up their mind that they don't want to gaol someone and then try to justify themselves by seeking those other alternatives...

Another organiser indicated that taking an active role was necessary for everyone involved in the scheme, including the Probation and Parole Service,

I think that community service orders really depend on high levels of energy and imagination by the organiser...we probably need more leadership [from] the organisers, rather than just presuming everything can run according to their own enthusiasm and competency...

One Community Service Organiser was critical of a magistrate whom he believed held intractable views on the scheme and refused to use it at all. The organiser concerned expressed his disappointment that a most needy sector of the community (mainly pensioners and disabled people) was being deprived of various benefits and said,

He [the magistrate] knows about the program, we've informed him, but he's made a very clear statement that he does not intend to use it. He doesn't consider it to be a successful program...he's talking in terms of success at this stage and not looking at the overall benefits to the community and, in fact, he's penalising the area.

Seven (37%) organisers who mentioned public education as being of value in helping to improve the effectiveness of the CSO scheme said that to encourage sentencers to use the sanction, the CSO scheme also had to be seen to be effective by the community at large. A more positive public profile was needed to provide the security of community support for sentencers' decisions. One way that the Department could achieve this is to be more active in promoting the scheme through the media.

One organiser noted a then recent newspaper article which sensationalised the findings of a report on the CSO (Fine-default) Amendment legislation. The headline read “THOUSANDS IGNORE COURTS” and went on to describe how offenders were defying work orders, and how the system was in chaos (*Daily Mirror*, 20.11.89).

The article gave the misleading impression that court-ordered CSOs were being ignored, which was not the case. One organiser said,

...that's when the press is really posing a problem, even before the article last week. They've just got this attitude that all they've [the offenders] got to do is turn up [for work]...

Another organiser said,

...the way the press pointed it out is as if Corrective Services takes no action. But really...the problem is with the courts, not Corrective Services.

This respondent was also concerned that the press article gave a very negative message to community organisations about the scheme. It raised doubts about the security and the effectiveness

of non-custodial sanctions. Indeed as the community in general lost enthusiasm he feared that some agencies might lose interest in participating in the scheme.

He felt it also had a negative impact on others involved in the legal profession:

...it's very morale-shattering for us in the office here. And getting comments from solicitors saying, "I don't know why I'm recommending a CSO to the magistrate - I hear your scheme's in utter chaos anyway"...

These organisers believed that such 'bad publicity' eroded sentencers' confidence in the sanction and consequently made some either reluctant to use it or uncertain as to when to use it. A more positive public image of the scheme could overcome this.

One organiser suggested avoiding the use of the phrase 'alternative to prison' which, he considered, tended to see those suitable for CSOs as different to those suitable for imprisonment. That is, the phrase itself did not impart to sentencers the intention of the Act to use the penalty for the very same cases that would have previously attracted imprisonment. It did not encourage them to use CSO instead of prison. He suggested,

...while we maintain that phrase, 'alternatives to prison' we preserve the notion that a gaol is the only place for punishment. But if we drop that phrase we can admit other punitive programs that are short of imprisonment, but are clearly punishments in their own right.

That is, the general public would support sentencers' decisions, and the CSO scheme, if they understood it to be a 'legitimate' penalty.

Furthermore, over half of the organisers interviewed considered that the provision of adequate and pertinent resources was an important factor in enhancing the effectiveness of the scheme. This will be discussed more fully below (Chapter 3.4).

Implications of breach of CSOs

Offenders who don't comply with their orders for various reasons are charged with 'breach of CSO' before a previously nominated supervising court. This is a separate offence requiring a further court appearance.

Two organisers expressed concern that sentencers should take responsibility for imposing the 'alternative' - imprisonment - when offenders breached the conditions of a CSO issued by the court. They said that 'tightening-up' was required so that offenders and the general public do not get the impression that CSOs are a 'soft option'.

One organiser said that this lack of rigour on the part of sentencers had led to discipline problems:

Well the initial objectives were for the magistrates and judges to be able to place someone on a CSO in lieu of sending them to gaol. Now, one would assume from that if the person doesn't comply with the CSO, they should automatically receive a gaol sentence. That doesn't always happen. In fact often, judges in particular, are very reluctant to send someone to gaol after they've breached the CSO. This creates a lot of problems in terms of our consistency in getting people to work to a reasonable standard when you might breach them for failure to work to a reasonable standard and a judge virtually directs us to take them back and start them working again - that's a real problem.

Another organiser spoke of the impact on offenders who are working in the community when

someone goes to gaol for breaching their CSO,

...it's amazing; if one gets breached it has an enormous ricochet right through the workforce and their supervisors will come back and say, "they all worked particularly well today - what happened?"

The *CSO Manual* provides Community Service Organisers with some discretion in determining how many chances an offender gets before breach proceedings are initiated. Generally, organisers felt that without this discretion many offenders otherwise assessed as suitable for CSOs would fail to complete the orders. One put forward this view,

I'm probably seen by some people in the service as a hardliner in that I'll give everyone two or three chances and if it becomes obvious that they're just abusing that, then I take them back to court. They [some sentencers] say, "that's a bit harsh, why don't you give them a few more chances?". But the current workload we're subjected to...you just haven't got the time for that kind of luxury and, if you don't follow through, the scheme loses a bit of credibility.

All but four organisers interviewed felt that the rate of breaches did not exceed about 10% of all court-ordered CSOs. This impression is confirmed by Department of Corrective Services figures which indicate an average breach rate of 8.7% over the last three years (see table 3).

Table 3: Number of CSOs granted and number of CSOs breached (1987/88 to 1989/90)

Fiscal year	CSOs granted	CSOs breached	
	n	n	(%)
1988	3353	216	(6.4)
1989	3935	390	(9.9)
1990	4729	441	(9.3)
TOTAL	12017	1047	(8.7)

Source: Department of Corrective Services Annual Reports 1987/8 to 1989/90.

Ninety-five percent of organisers cited 'failure to turn up to work' as the most common circumstances of breach. Only 11% of organisers said that they had initiated breach proceedings because of unsatisfactory work performance, and only one organiser mentioned breaching because of accident or ill-health.

When offenders failed to report for work as ordered, organisers were reluctant to automatically start breach procedures. Seventy-four percent of organisers said that at least three written warnings were given in an attempt to reconcile the client before breach proceedings were commenced. This is a procedural requisite specified in the *CSO Manual* guidelines. Written warnings were usually preceded by several verbal warnings depending upon the level of cooperation of the individual and how easily the offender could be contacted. One organiser said,

I think it [the CSO scheme] has to maintain high expectations, and here at [location] we have very deliberate ways of responding to non-compliance. One of them is to pull

people off work and into the office where a 'recontracting' is made, and no second chances are offered.

Community Service Organisers felt that sentencing consistency was of paramount importance when breach proceedings were unavoidable.

That is, when a sentencer uses a CSO as an alternative to a prison sentence, upon breach of that order the offender should be sent to gaol. Organisers felt that this served to reinforce their own decisions and enhanced their authority. One Community Service Organiser described how it should work,

The scheme becomes very effective - you recommend someone for a CSO and the magistrate goes along with that. If they don't 'shape up' I think there's got to be that reinforcing element...[reinforcement occurs] once the magistrate follows through and imposes a gaol sentence, or lets the offender know it wasn't a soft alternative...

However, another organiser said that, in order to impose the gaol sanction upon breach, sentencers had to be consistent in that they had to use the same penalties for the same offences initially. He cited the case where an offender received a CSO at a local court and the order was subsequently breached by the offender but the breach case was not heard by the same magistrate. The second magistrate privately expressed his surprise saying that he would not initially have given a CSO for this case. By that time of course, he had only two choices: to hand down another non-custodial penalty for breaching the CSO, or send the person to prison, which he felt in this case was inappropriate. The offender was fined for the breach and had to complete the original CSO, and the threat of a gaol sentence was rendered ineffectual.

Another organiser described a similar experience in the following way:

[we have the situation]...where the previous magistrate here set up the problem of giving CSOs where gaol wasn't seriously considered. So if a person breached the CSO the court had nowhere to go... but to fine them, or [give them a] bond or whatever. [Consequently] the last magistrate here left us with a bit of a legacy of these breaches...because the original sentence - most magistrates wouldn't have even considered gaol. The machinery doesn't take into account that if a person breaches, where do you go from there? Just slap them on the wrist?

The organiser pointed out that this type of inconsistency undermined the potential impact of the scheme. He felt that his own authority as a Probation and Parole Officer was severely compromised by what appeared to be a lack of support from the court. When his authority was not backed up, CSOs were seen to be a 'soft option'. This was because the organisers' last resort to gain the cooperation of offenders was the assurance of some meaningful consequences if they failed to comply with their orders.

Research by the Judicial Commission of NSW has shown that breaches of CSOs are more likely to result in a gaol sentence than breach of other non-custodial penalties. However, the imprisonment rate for breaching CSOs in 1988 was low, with some 60% of such breaches not resulting in imprisonment (Bray 1990, p.2). This may confirm organisers' fears that CSOs are seen as a 'soft option'.

4.2 ASSESSMENT

Pre-sentence Reports

Convicted offenders are assessed for suitability for the CSO scheme prior to sentencing. Assessments are made by Community Service Organisers and presented to the court in written Pre-sentence reports or verbal 'short reports'.

Overall, organisers felt that people were suitable if they were likely to complete the order successfully. The task of the Community Service Organiser is to evaluate each individual's likelihood of success. Despite the provision of departmental guidelines in this context, most organisers found that they had to use more specific selection criteria and assess each offender individually. For example, the offender's attitude to a CSO may be more important than his or her prior record.

Most organisers held the view that sentencers generally appreciated the work that was involved in the preparation of Pre-sentence reports and were willing to heed recommendations made by Community Service Organisers.

When the organisers were asked about the objectives of the Pre-sentence report, they replied that it was 'to assist the courts'. Ten (59%) of them spontaneously said that the main objective of the Pre-sentence report was to inform the sentencer as to the suitability of the offender for community work.

Some felt that organisers were the 'failsafe' for sentencer's decisions - sentencers treated assessments as recommendations and held organisers responsible for mistakes.

Three organisers thought that although they assessed the suitability of offenders, it was the sentencer who ultimately issued the order for the offender to undertake community work, and so it was the sentencer who was ultimately responsible for placing the offender in the community. This was despite 13 organisers (72%) acknowledging that they believed their pre-sentence assessments had a 'great deal of influence' on the sentencer. For example, one organiser said,

Our function is not to influence the magistrate or judge as to what sentence they should give but to give them a clear understanding of what the offender is like, and what his background is, and what the sentencing options are that would be suitable for that man. It's not our function at all to dictate to them what they should do.

A further four organisers interviewed indicated that Pre-sentence reports could exert only a limited influence on sentencers. This group believed that, in most cases, the sentencer merely sought confirmation of suitability and had already decided to make a CSO.

One organiser believed that sentencers often totally relied upon Community Service Organisers' assessments and that the manner in which the Pre-sentence report was completed could be very influential. For example, if the Pre-sentence report only refers to the imposition of 'supervision' in the case of an offensive language charge, the sentencer may not even consider a CSO. He said,

If you made reference to it [CSO] on every Pre-sentence report, even on the most minor matter, it can be a sentencing distorter. It can attract the sentencer to impose community service work. So we try to exercise some discretion where we make reference to supervision and reserve CSO for the more serious matters.

Although all but one of the organisers indicated that they believed their assessments had some degree of influence, the way they answered other questions regarding their relationship with the courts, suggests that most organisers did not perceive their role as active in determining sentence.

In larger offices, a Community Service Organiser will be available at the court on a particular day to do short assessment reports upon request. Organisers felt that these 'on the spot' assessments were usually requested when a sentencer had already decided on a CSO but needed to comply with s.6(2) of the Act.

These reports were considered inadequate by one organiser who complained that they gave him no time to investigate the offender's background thoroughly,

You can't do it in thirty minutes interview, especially up at the District Court, where you just talk to them behind bars. I mean, it doesn't work and the judge, two hours later, expects you to give him a report about this person and honestly be assessing that person objectively. It's ridiculous.

On the other hand, another organiser felt that this arrangement allowed for 'fast-tracking' of straightforward cases and was very useful.

Selection criteria

When assessing people, many organisers conceded that an important criterion for suitability was the client's likelihood of receiving a gaol sentence. Indeed, seven organisers (37%) felt that this was the most important criterion. Other, more individual, characteristics were also seen to be important, especially where they affected the reliability and motivation of the client. One organiser said,

I start with the premise that everybody is suitable and then I look at a number of areas
- reliability is quite a major area.

Offenders who have proven unreliable under supervision or during assessment were considered a bad risk,

...then I would be having doubts about their suitability because if they are not going to make it to see us, certainly prior to court, they are going to be less likely to turn up to work afterwards.

Although people with addiction problems were felt to be potentially unreliable - 12 organisers (63%) said that they considered such offenders unsuitable for CSOs - all organisers were prepared to evaluate each offender's circumstances and accept certain indications of cooperation. One organiser explained,

Our guidelines exclude persistent drug users. That doesn't mean though that if there is a drug problem in the background a person is unsuitable. [For example] if a person's on the Methadone program, we require at least three months of clear results before we consider that person for a CSO.

Another said that she would,

...exclude somebody if they were abusing drugs and alcohol and they really required intensive supervision. If they were using drugs heavily at present or they were dependent on alcohol, I would regard them as a risk to the agency.

Similarly, convictions for violent offences did not automatically exclude an offender from the program. The *CSO Manual* guidelines require organisers to assess each case involving an offence of violence weighing the likelihood of success against the risk to the community (part 3).

The risk of violence at the workplace is offset by ensuring rigorous supervision and sensitive placement. For example, offenders can be placed to work alone or in a restricted area with constant supervision. One organiser said,

Basically I have to look to see where I could place that offender and because they'd be working beside volunteers at the agencies, especially hospitals and schools. [I] couldn't place them there. I wouldn't want to put any agency at risk.

Logistical limitations

At times, Community Service Organisers anticipated logistical obstacles to an offender completing their order and this affected the offender's likelihood of being assessed as suitable for a CSO. These obstacles included location, physical and/or mental infirmity, dependents, and even full-time employment.

One organiser expressed concern that it is possible that an offender who lives in an area with little public transport may have to be assessed as unsuitable because they cannot get to the worksite.

Alternatively, a person who can only work at weekends because of full-time employment may have to be excluded from the scheme in an area which cannot offer weekend work.

Five organisers in the metropolitan Sydney area mentioned logistical problems as an obstacle to suitability but none said that they had experienced the problem of the supply of work being exhausted.

Offenders undertaking concomitant drug dependency treatments could present a logistical problem in that daily pick-ups of methadone were time-consuming and 'got in the way' of community service work. As one organiser pointed out,

Some clients on [the] methadone [program] are working and are fine. Others make it a whole days career just [to get] the methadone and they can't fit anything else in...well, some people are travelling 20 to 30 kilometres a day to get methadone.

People receiving Department of Social Security Invalid Pensions or awaiting compensation claim decisions might also be considered unsuitable for the scheme. Two organisers said that in some circumstances ordering these people to work could contravene some conditions of their pensions or potential payments.

On the other hand, those on sickness benefits may be suitable for specific work, for example, medically specified 'light duties'. Considerations such as these impose a further level of investigation upon the organiser's time.

One organiser explained that the client must have free time available in which to perform community work. This seems obvious, except that it often excludes those who are employed full-time, and are not prepared to give up part of every weekend.

Offenders had been known to take their annual leave in order to complete their total hours of community service in one block. This was not generally desirable, but organisers were loath to refuse such a request if the offender was otherwise facing imprisonment. Occasionally, a client will prefer to go to gaol for a short period, rather than have the extended obligation of community work.

Limitations in Rural Areas

Five out of ten of the rural-based organisers said that they had experience some difficulty organising workers simply because work was unavailable.

In rural areas, not only are there fewer agencies, but weekend work may not be available simply because the existing agencies do not operate on weekends.

Two organisers claimed that they worked weekends themselves in order to provide some supervision. One said,

I'd say half the people at least have jobs during the week and so work has to be organised on the weekend. [This] requires more work from me - to make sure that things are done or tools are delivered or picked up. In the city it didn't seem to be such a problem, but here I've found there's no way I can avoid putting in some hours on the weekend.

In the heat of summer months in some areas, outdoor work had to be replaced by work indoors, restricting the type of work available even further.

Three organisers have access to occasional work projects which require the client to be physically fit as well as mobile enough to transport themselves to sometimes remote sites. For example, several north-coast bushland regeneration projects utilise community service workers. Offenders with drug or alcohol-related problems are often physically unable to do this type of work.

Of course, CSOs were ruled out for a large number of traffic offenders whose licences had been suspended or cancelled and so could not drive themselves to work. This was a serious limitation because local public transport is virtually non-existent on weekends in rural NSW.

Restrictions on work availability were such that in one town daylight saving had become a factor in work availability so that in the summer months, a few hours work could be made available for offenders in the evenings, after their normal days work. This made completing long orders, say 200-300 hours, unfairly arduous.

Special Needs

Cultural differences were mentioned by organisers in rural areas who said that a more realistic attitude is required when dealing with Aborigines on CSOs. Although CSOs were a preferable sanction over imprisonment, they were often a heavy burden for Aborigines, and consequently for the organiser responsible for supervising them.

Organisers worked on the premise that in all assessments, CSOs should not be recommended if it was felt that the special needs of individuals could be better served by some alternative treatment.

The cultural differences of Aborigines often constitute such special needs but there were few suitable alternatives available.

For example, an organiser in a coastal NSW centre has been able, with the cooperation of the court, to divert appropriate Aboriginal offenders into a very specific project - a residential program for treatment of alcoholism. This program is partly-funded by the Welfare Services Division of the department and it has been very successful because it is run for Aborigines, by Aborigines, and accommodates their specific needs. Unfortunately such programs are not common.

Community Service Organisers often encountered offenders whose problems limited their suitability for CSOs unless some kind of support system was developed, or integrated with, say, the Departments of Family And Community Services or Social Security. It was commonly felt that a punitive approach was not appropriate in these instances.

For example, besides drug and alcohol addicts and chronically unemployed people, organisers felt that there had also been an increase in numbers of offenders who had debilitating mental disorders. Presumably, they had been recommended for CSOs because the other sanctions were

even less appropriate. It was suggested that most have no money to pay fines, and have prior convictions.

Single parents may not be selected for CSOs because of the difficulties experienced in accommodating their children. Whereas, occasionally an organiser can accommodate these needs, more often the offender is sentenced to some other kind of supervision and their specific problems are never addressed. Organisers expressed concern at the likelihood of recidivism in such cases.

4.3 AGENCIES

Type of work

Local community welfare organizations are the agencies through which community service work is mostly performed. Such agencies are involved in a wide variety of activities in the community. For example, the clothes-sorting depots of the St.Vincent DePaul Society are dependent on volunteers to collect, sort, clean and deliver large amounts of clothing to their many shops. Likewise, Dalwood Children's Home relies on volunteers for maintenance of their buildings and amenities. In addition, private schools require volunteer ground-staff, and local sports groups need occasional help. (A list of types of work utilized by organisers interviewed is included in Appendix 2.)

All organisers interviewed said that they devoted considerable time to maintaining good relationships with agencies either directly, or with the assistance of sessional supervisors who make regular contact with the agencies in order to monitor each worker's progress. Several organisers were concerned to be seen to be accessible and responsive to the needs of these organizations. One said,

Agencies are like gardens, they have to be tended carefully all the time. You can't leave a person at an agency and not have any contact with them. They've got access to me immediately any time. I remove people [offenders] on request - I don't argue with them...

Several organisers stressed that they spent time protecting this relationship too. One organiser explained,

Given that we are relying entirely on voluntary organisations in the community, we have to protect those organisations. Most of them....are not trying to deal with our type of clientele, not trying to do counselling or perhaps do not have the patience to deal with whatever needs our people have.

What agencies need

Agencies want to participate in the CSO scheme in order to benefit from the additional assistance of CSO workers, but also to contribute to the possible rehabilitation of offenders.

All organisers recognised that agencies expect to be provided with responsible workers. This made the assessment process crucial. Agencies also require immediate response from Community Service Organisers when things go wrong, and as little disruption to the work routine of their regular volunteers as possible. In this context, Community Service Organisers were highly critical of incorporating fine-defaulters into the scheme, because, as will be explained later, they could not guarantee the responsible behaviour of these workers.

Agencies and Breach Proceedings

When offenders failed, the results often had a detrimental effect upon the agencies. In breach cases, where the case is defended, agency staff may be required to give evidence in court. Community Service Organisers felt that this was an unreasonable imposition on agency staff because it was often an uncomfortable experience and one which made them reluctant to accept further workers from the scheme, however genuine they appeared.

Two organisers mentioned incidents of theft and vandalism at agencies which also jeopardised agencies' continued participation in the program. In one case, two offenders caused damage and stole property to the value of \$18,000 on premises where they were carrying out CSOs.

The organisers insisted that such instances are a rare occurrence but one which underlined the sensitivity and care required in the placement of offenders with agencies. One of the organisers involved said that there was always some risk when placing offenders. He said,

...we couldn't have predicted in these cases because they'd been working at the agency for quite a while. There's a repair job to be done [on the CSO scheme] after something like that happens.

Consequently, accurate assessment for Pre-sentence reports is crucial in order to avoid any risk to the agency (whether to staff or to property or to their willingness to continue providing work) from placement of unsatisfactory workers.

The threat of a custodial sentence upon breach of orders is often the most useful management tool organisers have for protecting their relationships with the agencies. For this to be effective, the support of the courts is essential. As one organiser explained,

[I've had] an extremely good result...if things have gone wrong [and breach proceedings are initiated] they [sentencers] back me up and they maintain the meaning 'an order made in place of gaol'. It's amazing how fast the news travelled through the community. [It is] because they know that the magistrate or judge meant it when he said it.

Other organisers spoke of the need for firmness, but said they were sometimes let down in court when the sentencer did not share the same rigorous approach. When the authority of the Community Service Organiser is not supported in court, the organiser loses credibility and so does the CSO scheme.

What the scheme needs from agencies

When organisers were questioned about selection criteria for suitable agencies, 76% noted that some form of direct supervision was essential to a successful placement.

Another requirement concerned the agency's attitude to offenders. Incidents of exploitation have occurred in the past and have been detrimental to the success of both individual offenders and the scheme. Organisers required agency staff to understand the objectives of the scheme and accordingly provide support and encouragement for offenders performing CSOs within their agency.

Other criteria included the provision of meaningful work and the availability of continuous work. Weekend and after-hours work were also highly prized.

Most orders (87%) made in the Local Court in 1989 were for periods of between 50 and 200 hours (see table 4) and this work is, of course, more manageable if the offender is not required to report to different sites each weekend. For example, most offenders are only able to work one day each weekend and consequently would take about three months to complete an order of

100 hours. Organisers believed that returning to the one site each week for this length of time often enabled offenders to develop the kind of social discipline it was felt that they lacked. The 'routine' element was considered very important by most Community Service Organisers, especially those who had access to Attendance Centre programs.

Table 4: Number and length of CSOs issued by NSW Local Courts in 1989

No. of hours	No. of orders	% of total
1 to 50	242	7
51 to 100	1749	51
101 to 200	1220	36
201 to 300	202	6
TOTAL	3413	100

Source: Bureau of Crime Statistics and Research. Justice Information System.

4.4 RESOURCES

Organisers were concerned that in some cases, when resources are limited, some people may go to gaol regardless of their offence because they live in an area with few community work opportunities.

All organisers interviewed indicated that they believed that the CSO program was under-resourced.

They indicated that more clerical staff were needed to cope with the increased volume of administrative work. Also, being able to hire more sessional supervisors to provide more intensive supervision of offenders at agencies was viewed as essential for freeing up organisers' time for casework (that is, more thorough interviewing of offenders, and more time for assessments and home visits).

In addition, organisers believed that the use of existing ancillary programs, such as Attendance Centres and external programs such as Skillshare and Alcoholics Anonymous, should be expanded.

Over half the Community Service Organisers interviewed said they experienced some degree of difficulty keeping a constant supply of work places available. Many suggested that one way of overcoming this problem was for the Department to provide funding for equipment - such as basic gardening implements and lawn-mowers - and for staff to supervise weekend labour groups. These organisers believed that being able to provide suitable work for unreliable and short-term offenders could allow them to avoid risking the disaffection of agencies. It could also reduce breach proceedings which would lead to a saving of court time.

An offender 'working off' a 300 hour order could consume the available support of an agency for up to a year. The majority (92%) of organisers questioned had caseloads of over 40 offenders at any time, but none had that many agencies. Even allowing for a relatively high turnover of short orders (58% are 100 hours or less - see table 4) offenders sometimes have to be 'queued' until a vacancy arises. Many organisers commented that this was not an ideal situation because of the increased likelihood of breach of CSO and resultant imprisonment.

They considered that both the diversionary and rehabilitative impacts of the scheme are lost if the immediacy of the situation is not utilized. If offenders are 'put on hold' for weeks or months before they begin to serve their sentence, the impact of appearing in court - the reprimand as well as the threat of imprisonment - is lost. The offender may become unmotivated and must then be coaxed through the sentence, consuming the valuable time and limited resources of the

organiser. Some may even abscond or fail to complete the order and, thus, be subject to breach proceedings entailing a further wasteful use of the court's and the organiser's time.

Most importantly, delays leading to breach of orders may also result in the offender going to gaol. A report published this year by the Judicial Commission has shown that in 1988 in the NSW Local Courts, 40.2% of proceedings for breach of CSO resulted in full-time custodial sentences compared to 23% of those for breach of recognizance. It also shows that in nearly 47% of these latter proceedings sentences were withdrawn and dismissed compared to only 25% of those for CSO (Bray, 1990, p.2).

In the current study, 95% of organisers cited the offender's failure to turn up as the most common reason for initiating breach proceedings. They expressed concern that this was exacerbated by having to 'queue' people because of lack of workplaces.

In addition, people sometimes failed to turn up at the worksite because of difficulties with transport. Public transport was often inadequate - especially on weekends. Offenders often had no independent means of transport, and sometimes could not afford to pay for public transport. Organisers felt that for the CSO scheme to operate effectively, the need for adequate transport to and from the worksite must be addressed. For example, one of the busiest organisers interviewed, from a western Sydney district, said,

Up to two or three years ago we had travel vouchers. Every officer had travel vouchers. We used to write out a weekly ticket - some people really do have to live on \$120 or \$130 a week, paying the rent...it's not uncommon for people to come to the end of the fortnight with not one cent left in their pocket.

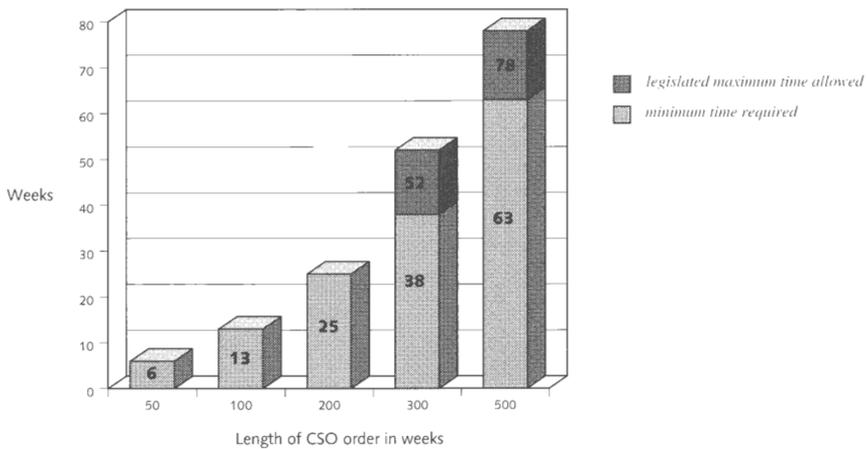
However, each organiser dealt with these problems in their own way:

I just have to allow that that sort of thing happens and just close my eyes when the person doesn't report for work because they come around and say, "I've got no money to go there"...

The organisers felt that the provision of transport, or of a travel voucher system, would enhance the effectiveness of the scheme by ensuring that offenders travel to and from the worksite and thus reliably perform their community service.

Organisers were also asked to comment on the (then) proposed increase in the maximum length of CSO from 300 hours to 500 hours, which would result from the passage of the *Community Service Orders (Amendment) Bill 1989*. This legislation also set a maximum period of 18 months for the completion of these longer orders.

Thirteen organisers (68%) mentioned that they thought 500 hours was an unreasonable loading to place on offenders. They were concerned about the difficulty of motivating the offender to continue working for an extended period of up to 18 months. Working eight hours per day, the minimum number of days in which an order of 500 hours could be completed is 63 days. Given the shortage of weekend work mentioned above, and the unavailability of work on Sundays, it is likely that an offender who is in paid employment during the week may only work for one day per weekend. That is, the shortest time it would take to complete a 500 hour order is 63 weeks, or in other words, 16 months (see figure 5). This gives only a two month leeway before the order would be legally viewed as being breached.

Fig. 5: Minimum and maximum number of weeks to complete CSO order

Eight organisers (42%) felt that 500 hour orders would present administrative problems. They believed that a backlog could arise if sentencers imposed the 500 hour maximum frequently. Further, as discussed earlier, the backlog could result in more offenders breaching their orders.

Attendance Centres

Attendance centre programs were viewed very favourably by those organisers who had access to them (then only 6, or 32%, and all in the metropolitan area) with a more effective integration of these programs with the justice system being recommended.

It was felt that an even wider range of offenders could be accommodated if specific programs were available. They especially mentioned programs dealing with alcohol and drug abuse, illiteracy, shoplifting and life-skills problems. These problems could often be dealt with by personal development courses.

Staffing

The Attendance Centre program is currently being expanded by the Department of Corrective Services, (*Annual Report*, 1988-9 p.29) but most organisers felt that there was a reluctance to increase staffing levels. For example, the Department's *Annual Reports* show that the number of CSOs granted has risen each year since 1982 (with the exception of 1985/86). In 1989 it was 17% higher than the previous year (see table 3). For the year ending June, 1990, it had risen by 20%.

In contrast, the staffing level of non-custodial services was last raised in 1986-7, when it rose by 3%. In 1988-9 it was reduced by nearly 4% (see table 5).

Despite the Department's acknowledgement (*Annual Report*, 1988-9, pp.26-8) of the likely expansion of community programs, most of this was being sought by rationalising existing resources. Probation and Parole staff levels have dropped while the number of Prison Officers has increased (albeit only slightly - see table 5) Consequently, organisers doubted the Department's commitment to expanding the non-custodial program.

Organisers felt that resources were urgently needed in the form of ancillary staff, the removal of budget restrictions on overtime, and the hiring of sessional supervisors.

They felt that resources should also be available to train existing organisers in court procedure, or to train specialists in that area and remove the responsibility from organisers altogether.

Table 5: Comparative staffing levels of the Department of Corrective Services (1986/87 to 1988/89)

Program area	1986/87	1987/88	1988/89
Pre-sentence assessment	123	129	102
Supervision of offenders	269	279	301
Post-custodial services	110	109	94
TOTAL NON-CUSTODIAL	502	517	497
Managing Offenders in Prison	2503	2559	2564
Managing the Organization	362	371	468

Source: Adapted from Department of Corrective Service Annual Report, 1988/9 p.24

4.5 FINE DEFAULT

As discussed earlier, the introduction of the *Community Service Orders (Fine Default) Amendment Act 1987* had an enormous impact upon the CSO scheme. The concerns of Community Service Organisers regarding fine-defaulters lay in two main areas:

1. operational difficulties which arose from the short duration of the orders, lack of assessment of offenders and the large volume of orders to be dealt with, and,
2. that the principles underlying s.4. of the Community Service Orders Act are overridden with regard to the need for the consent of the offender, assessment of offenders' suitability for work and pre-requisite imprisonable offences.

These concerns were surveyed in 1989 when a Fine Default Committee was formed by Probation and Parole Officers to examine the Department's policy on the Fine Default Scheme. In summary, the committee's report, entitled *Fine Default Programme: Recommendations for Change*, found that

...the basic reason for the imposition of a fine needs to be re-assessed. If the purpose is to gain revenue, it is totally unsuccessful. If the notion of fine is to punish, this has been equally unsuccessful (p.3).

Operational difficulties discussed in the report were also voiced by Community Service Organisers in the current study who were asked to comment on the overall impact of the fine-default legislation on the CSO scheme.

Table 6: Organisers' perceptions of the impact of the Community Service Orders (Fine Default) Amendment Act 1987

Aspect of work affected	mentioned		not mentioned	
	n	(%)	n	(%)
Clerical	19	(100)	0	(00)
Organisation	13	(68)	6	(32)
Agencies	8	(42)	11	(58)
Resources	7	(37)	12	(63)
Pressure	5	(26)	14	(74)
Morale	4	(21)	15	(79)

Note: Percentages do not add up to 100% because multiple responses are coded

All organisers emphasised that there had been a significant increase in the volume of clerical work associated with the CSO scheme. More than two-thirds of organisers also identified an adverse impact on the level of organisation at which they were accustomed to working. These organisers resented being diverted from what they considered to be their most important role - supervising their caseload - by the "mountains of unnecessary paperwork" resulting from fine-default orders. One organiser said,

We just don't see that it's our job to recoup money for the government. It's not what we're trained to do - it's not our job.

Other aspects of their work affected were: increased personal pressure (mentioned by 5 organisers); lowered morale (4); and drain on resources (7). Eight organisers said that agency relations had been strained by problems with fine-defaulters serving CSOs.

The comments of one organiser, in relation to paperwork, were typical:

There's a lot of duplication. A lot of time being spent by...other staff and Community Service Organisers, such as myself, who are tied up with a lot of paperwork which doesn't produce any work for the community. A lot of time is being spent on breach action, things going backwards and forwards totally unnecessarily. It's a very poorly structured system as it stands.

There were operational difficulties which affected the relationship with the agencies and consumed the supply of work available to other offenders. For example, in accordance with s.4 of the *Community Service Orders Act*, offenders with court-ordered CSOs have been assessed as suitable before sentencing and further, had agreed to the undertaking. Fine-defaulters were not subject to any formal assessment as to their suitability for work, nor was their consent required. Organisers likened this situation to a lack of 'quality control' over the offenders they assign to agencies.

This 'quality control' is crucial to agency relations. The drug, alcohol or violence-related problems of some fine-default offenders can go undetected, and organisers cannot guarantee to the agency that the offender will be cooperative in the workplace.

Organisers felt that fine-defaulters were also unreliable because of the short duration of most of the Fine-default CSOs compared to court-ordered CSOs. Longer term workers got into a routine and developed a more cooperative attitude which turned out to be more productive for everybody.

All organisers said that at various times this predicament had threatened the viability of the scheme. One organiser said,

I've lost a lot of agencies...through lack of assessment, unsuitable people, unmotivated people. Fine-default orders of eight hours - people just won't work for eight hours! I mean they're cutting out fines at \$100 a day - I guess the average would be about 16 hours. Turn up at work for two days but don't do any work...it's ruined our agency relations.

Several organisers said that placing fine-defaulters reduced opportunities for the 'preferred offenders', those with court-ordered CSOs, who had been assessed as suitable, had consented to the order, and whose only "alternative" was imprisonment.

The problem of interpretation of the aims of the Act was also of concern to organisers when asked to comment on the incorporation of fine-defaulters into the CSO scheme. One organiser commented that CSOs were meant to replace prison sentences, not monetary penalties, and to issue them to people who had defaulted on payment of fines was legally inappropriate. It was also felt that since a fine is not meant as a rehabilitative sanction, fine-defaulters are not the type of offenders for whom such a program is suited.

Legislation passed in February 1990 has done much to overcome these difficulties. It has led to a reduction in the volume of fine-default orders and effectively reinstated the assessment procedure.

5. CONCLUSION

Community Service Organisers have clearly identified two aspects of the operation of the Community Service Orders Scheme in NSW which bear on the scheme's effectiveness. One is the response by sentencers to breaches of the sanction. The other is the adequate provision of resources to run such a scheme.

As discussed earlier, Community Service Orders have been available in NSW for the last decade. For many other Australian and overseas jurisdictions growth in the use of community sanctions as an alternative to imprisonment has been accompanied by netwidening. Therefore, we should not be surprised that it occurs in this state also in relation to court ordered CSOs.³

With regard to sentencing behaviour, which is a major factor in the occurrence of netwidening, the problems that most affect the operation of the Community Service Orders scheme in NSW are those that relate to an apparent gap between policy and practice.

For example, a gap occurs in the area of responsibility for selecting suitable offenders for the CSO scheme. There is confusion as to how much of this responsibility falls to the organiser and how much to the sentencer and this confusion frustrates the attainment of the objectives of the scheme.

The prevailing attitude amongst organisers is that in the course of compiling Pre-sentence reports they assess the offender's suitability for each penalty but they do not indicate a preference. Selection of the sentence is seen to be the responsibility of the sentencer.

3. See Bray, 1990 for NSW, and see Eichfuss 1978 for WA, Oxley 1984 for SA, Fox and Challinger 1985 for Victorian Attendance Centre Orders, Curran 1988 for USA, Vass and Weston 1990 for UK and Vass and Menzies, 1989, for UK/Canada comparison.

In fact, it is well established in sentencing practice that Pre-sentence reports should not contain express recommendations as to the sentence that should be imposed. This does not preclude the organiser from mentioning the comparative advantages of particular dispositions, but only to the extent that it is not seen to impose upon the discretion of the court.⁴

However, a forthcoming report from the Judicial Commission indicates that sentencers rely on these assessments to justify their sentences, suggesting that some sentencers may be abdicating their responsibilities to the community service organiser (Bray and Chan, 1991).

Organisers feel that if their assessments are reliable enough to be acted upon in the initial sentencing decision, then their decision to initiate breach proceedings should also be supported by the court. Too often, this does not happen. This is because the original CSO was not imposed as an alternative to imprisonment and so imposing a gaol sentence for breaching the order seems too severe.

Consequently, when subsequent breaches occur, and organisers are powerless to discipline the offender without recourse to the courts again, they are loath to do this because they believe that sentencers do not reinforce their decisions.

This perception has some substance when it is considered that in 1988, almost 60% of proceedings for breach of CSOs in the Local Court did not result in custodial sentences (Bray, 1990 p.2).

Further, because of this perceived reticence on the part of judicial officers to imprison those who breach their orders, some organisers seek to minimise the risk of ever having to deal with breaches by using selection criteria which will fit an offender who will successfully complete the order rather than one who meets the philosophical requirements. This compromises their understanding of the objective of CSOs which is to provide the opportunity for suitable offenders facing a gaol sentence to serve their sentence by community service instead.

Thus, sentencers and Community Service Organisers appear to use different criteria in their selection of offenders.

Although both sentencers and organisers recognise the eligibility to the program of an offender who is facing a gaol sentence, organisers must also consider other, more pragmatic, criteria such as the real attitude or motivation of the offender or how the offender will get to work. According to those interviewed such criteria are rarely considered relevant by sentencers who merely wish to use it as a sanction of last resort.

Views expressed by organisers in this report suggest that the credibility of the scheme is of utmost importance. In the United States, Freed and Mahoney have examined some of the problems with the use of alternatives to imprisonment (1990, p.7) and one problem mentioned by them, the "lack of credible backup sanctions" was also highlighted by NSW organisers.

In the United States sentencers do not believe that the offender's performance on the alternative program will be monitored satisfactorily. Freed and Mahoney discuss the lack of sentencing standardization and suggest the need for a body of precedents or sentencing guidelines which offer,

...guidance on how to craft appropriate sentences in specific cases - especially cases in which imprisonment could be avoided if other sanctions were available (p.8).

In NSW, community service work can achieve some sentencing goals in common with incarceration, that is to punish and, where possible, rehabilitate. However, sentencers need to be confident that it will achieve those goals. To be confident they must get constant feedback, and one way of achieving this is to develop a body of sentencing case law - a typology of matching crimes, offenders and sentences (Freed & Mahoney.p.42).

4. Lahey v Sanderson (1959) Tas. S.R. 17; Smith (1975) 12 SASR. 8.

Other, complementary, types of feedback are also needed. The analysis of the opinions of Community Service Organisers in NSW suggests that they believe that there is amongst sentencers a lack of confidence in the efficacy of community service work as a sanction. More specifically, their perception is that sentencers are reluctant to use CSOs for prison-bound offenders because the seriousness of their offences warrants stricter supervision than that which is provided by the NSW Community Service Order Scheme.

In order to overcome some of these problems, minimum standards could be established for effective operation of the scheme. In the United Kingdom in 1989, for example, *National Standards* were developed through consultation with probation organisers, judges and magistrates, and court clerks. These standards are meant,

[firstly]...to introduce more consistency in the operation of local CS schemes, without imposing a rigid straight-jacket on necessary management discretion. To a large extent they are based on the good practice which already existed in the best areas. Secondly, the Standards are meant to reinforce the credibility of CSO as a sentence with the courts and the public. (Thomas 1990, p.13)

Similar standards could be developed by the Department of Corrective Services, utilising the ten years of operating experience of Community Service Organisers throughout NSW. Such standards could be monitored and updated regularly. They could define such things as upper caseload limits, minimum staff required to service those limits, training requirements, appropriate work for offenders, breach procedures and, importantly, adequate resources.

Indeed, organisers reported that a major cause of the perceived laxness of community-based programs was the constant debilitating lack of resources.

Accordingly, it seems inescapable that those responsible for budgetting should provide an appropriate level of funding for an expanding system.

Finally, the cyclic nature in public attitudes towards crime and punishment tends to reinforce the way sentencers use the sanction. Where the community does not support it, sentencers are less inclined to use it. CSOs must, therefore, be strenuously promoted in order to encourage public participation in community-based corrections.

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APPENDIX 1**Questions for probation and parole officers.**

1. Could you describe your workload and estimate the proportion of time you spend on distinct tasks? eg.administration, liason, interviews?

Objectives of CSO program

2. What do you consider to be the objectives of CSO as a sentencing option?
3. Does the overall program meet these objectives?
4. What type of offender do you consider is suitable for CSO?
5. Would you comment on CSOs as an alternative to prison? ie how are sentencers using CSOs?
6. Can you estimate the percentage of offenders you have found suitable for CSOs compared to that unsuitable?
7. In what ways could the CSO system be improved?

Work

8. How often have you been unable to recommend CSO because of the unavailability of work?
9. How often have you been unable to recommend because of logistical problems eg.transport, age, family demands, financial?
10. How do you assess suitability of work sponsor/agent?
11. How/do you evaluate whether or not the work has been done satisfactorily?
12. How long does it take offenders to complete the number of hours of work required by the order?

Assessment

13. What are the objectives of the Pre-sentence report?
14. How much influence do you think Pre-sentence reports have on the sentencer?
15. Is the offender involved in the decision? If so, how-at what stage?

Breach

16. How many placements are ended prematurely? By whom (excluding technical breaches)?
17. How many CSOs are breached?
18. What are the most common circumstances of breach?
19. How serious must a breach of regulations be before breach proceedings are initiated?
20. Are sentencers informed of breaches? Do you think they could use this information?

Procedure

21. How soon after sentencing does the order arrive at this office?
- 21a. What happens if the offender does not show up?

Attendance Centres

22. What kind of offenders do you consider suitable for programs at Attendance centres?
23. Where is your nearest Attendance Centre and are you satisfied with what it has to offer?

Fine Default Amendment

24. Has the Community Service Orders(Fine Default) Amendment Act 1987 had any impact on your work? If so, in what ways?
25. The possible number of hours of CSO sentence has been raised to 500 hours, and Periodic Detention to 3 years. What impact do you expect this to have on your workload, and on the capacity to meet the overall objectives of the program?

APPENDIX 2**Community service work performed by offenders on Community Service orders.**

- dispensing medicine at a local nursing home
- washing police cars at local station
- assisting with maintenance of Fire Museum
- garden and household maintenance for pensioners
- collecting and sorting clothing for the St.Vincent de Paul Society.
- developing an AIDS counselling program
- grounds maintenance at a local primary school
- renovating cemetery grounds
- staffing Aluminium Can Recycling points
- assembling 'Vials of Life'
- writing and producing a play at a children's home
- word processing for charity organisation
- assisting Sports Club activities: Police Boys clubs, Scouts, Boys Brigade etc.,
- staffing radio base for State Emergency Services
- assisting with volunteer Bush Regeneration Project
- supervising and building extension at children's home
- participate in the Cook's River Project to clean up river
- driver for Meals-on-Wheels
- drive bus for children's home