

Select Committee on the Increase in Prisoner Population

Interim Report:

Issues Relating to Women

Ordered to be printed July 2000
according to resolution of the House

New South Wales Legislative Council

Select Committee on the Increase in Prisoner Population

Interim report on inquiry into the increase in prisoner population: issues relating to women

ISBN: 0-7313-9739-8

1. Women prisoners—New South Wales.

I. Title

II. Ryan, John.

III. Series: New South Wales. Parliament. Legislative Council. Select Committee on the Increase in Prisoner Population. Report ; no. 1

365.6 (DDC21)

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Terms of Reference

1. That a Select Committee be appointed to inquire into and report on:
 - (a) the factors responsible for, and the consequences of, the increase in prisoner population since 1995 (being 40% in females and 20% in males),
 - (b) issues relating to incarceration, including but not limited to the matters in paragraphs 2 and 3.
2. That, in relation to women, the Committee consider:
 - (a) the effectiveness of imprisonment as a response to all women who are currently sentenced, including those with special needs, such as women with intellectual, physical and psychiatric disabilities,
 - (b) the effectiveness of imprisonment as a response to Aboriginal women who are sentenced,
 - (c) the effectiveness of imprisonment as a response to women with non English speaking backgrounds who are sentenced,
 - (d) the effectiveness of using the prison to house all women who are remanded in custody, and using the key indicators of recidivism and cost effectiveness,
 - (e) the adequacy or otherwise of building a new women's prison as the most effective method of addressing the problems of increasing numbers of women in prison and the adequacy or otherwise of the plans, terms and conditions of any contract entered into or proposed to be entered into in relation to a new women's prison,
 - (f) the adequacy or otherwise of alternatives to incarceration, including those currently utilised in New South Wales and those trialed in other jurisdictions, which purport to deal effectively with female criminality,
 - (g) the wider social implications of incarcerating women in New South Wales,
 - (h) the factors responsible for the dramatic increase in the female prisoner population in the last four years,
 - (i) alternatives to incarceration and their adequacy or otherwise, including those currently utilised in New South Wales and those trialed in other jurisdictions, which purport to deal effectively with criminality,
 - (j) the effectiveness or otherwise of post release policies of the Department of Corrective Services and co-ordinating of integrated assistance to inmates by Government Departments, including Housing, Health and Community Services, with a view to reducing recidivism.

3. That, in relation to men, the Committee consider each of the matters set out in paragraph 2 (a) to (j), substituting the word “men” for “women” wherever occurring and “male” for “female” wherever occurring.
4. That the Committee present an interim report dealing with the matters in paragraph 2 (a) to (j), in relation to women, by 1 May 2000 and a final report dealing with the remaining matters by 1 October 2000.
5. That, notwithstanding anything to the contrary in the Standing Orders, the Committee consist of the following members:
 - (a) 3 Government members nominated in writing to the Clerk of the House by the Leader of the Government,
 - (b) 2 Opposition members nominated in writing to the Clerk of the House by the Leader of the Opposition,
 - (c) Dr Chesterfield-Evans and Ms Rhiannon.
6. That the Committee have leave to sit during any adjournment of the House to adjourn from place to place, to make visits of inspection within New South Wales, and other States and Territories of Australia with the approval of the President, and have power to take evidence and to send for persons, papers, records and things, and to report from time to time.
7. That should the House stand adjourned and the Committee agree to any report before the House resumes sitting:
 - (a) the Committee have leave to send any such report, minutes of proceedings and evidence taken before it to the Clerk of the House,
 - (b) the document be printed and published and the Clerk forthwith take such action as is necessary to give effect to the order of the House,
 - (c) the document be laid on the Table of the House as its next sitting.
8. That on receipt of a request from the Committee for funding, the Government immediately provide the Legislative Council with such additional funds that the Committee considers necessary for the conduct of its inquiry.
9. That this House requests the Government to impose a moratorium on the building of a new prison for women at Windsor until the Government has considered the Committee’s interim report to be presented in May 2000.

Resolved by the Legislative Council 17 November 1999, 2nd Session, Minutes No 23, item 4.

That the reporting date for the interim report of the Select Committee on the Increase in Prisoner Population be extended from 1 May 2000 to 9 June 2000.

Resolved by the Legislative Council 12 April 2000, 2nd Session, Minutes No 34, item 3.

That the reporting date for the interim report of the Select Committee on the Increase in Prisoner Population be extended from 9 June to 28 July 2000.

Resolved by the Legislative Council 31 May 2000, 2nd Session, Minutes No 34, item 2.

Committee Membership

The Hon John Ryan, MLC (Chair)

Ms Lee Rhiannon, MLC (Deputy Chair)

The Hon Janice Burnswoods, MLC

The Hon Dr Arthur Chesterfield-Evans, MLC

The Hon Jennifer Gardiner, MLC

The Hon Peter Primrose, MLC

The Hon Janelle Saffin, MLC

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Chair's Foreword

This report represents the first part of an inquiry examining the reasons for the increase in the number of prisoners in New South Wales Correctional Centres. In November 1999, the Legislative Council established the Select Committee to look at issues that impact upon prisoners and, in particular, the causes of the rise in inmate numbers. Since the rise has been most pronounced among women prisoners, the Select Committee has been required to look at this group in the first instance.

Women inmates make up only a small proportion of the overall prison population although their rise in numbers has been dramatic — 40 per cent over the last five years. The number of women both on remand and serving sentences has grown at a greater rate than men. The report identifies a number of possible reasons for this.

The Committee heard that women inmates are generally in prison for non-violent offences and that their criminal activity is largely related to drug addiction. They have a high recidivism rate, often because they are unable to manage their drug problem when they are released and because they have limited access to supports to help them cope with life outside.

Overseas research has shown that women offenders who are subject to intensive supervision in the community have a greater chance of rehabilitation than those who are imprisoned. Local experience shows that, as a means of rehabilitation, prison is largely a failure. For some women, particularly violent offenders who pose a serious threat to the community, prison is the only realistic sentencing option. However, for the majority of women currently in prison, better outcomes can be achieved in terms of rehabilitation, community welfare and safety, and cost by them serving community based sentences.

This report suggests some sentencing options which may be pursued. More fundamentally, it highlights the need for us to put resources into developing smarter ways of punishing offenders. The establishment of the Drug Court program was a clear example that the community was ready to try alternatives to prison for dealing with drug addicted offenders. I believe that the community is also ready for innovative yet appropriate options to be developed for women offenders.

The Members who make up this Select Committee represent five different political parties and reflect a broad spectrum of views and ideologies. In spite of this, unanimity in the recommendations has been achieved. I consider that this reflects both their commitment to improving our correctional system and the compelling nature of the evidence we received. I thank my colleagues for their insightful contributions and for the considerable time and effort they gave to the inquiry.

I would also like to thank the staff of the Committee for their diligence and their ability to advise Members on relevant issues with insight and clarity. Russell Keith, Clerk to the Committee, oversaw the direction of a very complex and often sensitive inquiry with much competence. Alexandra Shehadie, Senior Project Officer gathered all the research and prepared what I believe to be a significant and valuable report. My thanks also go to Elizabeth Robertson and Ashley Nguyen who provided invaluable administrative support.

I commend this report to the House.

The Hon John Ryan MLC
Chair

Summary of Recommendations

Chapter 1 Introduction

Chapter 2 Literature Review

Chapter 3 The Statistics

- 3.74 That the NSW Government continue to develop, support and evaluate programs and services that have as their focus crime prevention through early intervention. As one means of achieving this the Premier should ensure that the recommendations of the Standing Committee on Law and Justice's first report into Crime Prevention Through Social Support (1999), are implemented as soon as possible.

Chapter 4 Factors Contributing to the Increase in the Women's Prisoner Population

- 4.16 That, given the connection between drug addiction and crime, the Government continue to promote the prevention of drug abuse through targeted strategies such as those recommended by the Drug Summit.
- 4.23 That the Attorney General instruct the NSW Bureau of Crime Statistics and Research to undertake research into the patterns of offending of women, particularly in relation to violent offence charges. That research should investigate, among other things, the rate at which women are the principal or secondary offenders in crimes of violence.
- 4.61 That the Minister for Corrective Services review the *Periodic Detention of Prisoners (Amendment) Act* with a view to enabling persons who have had a periodic detention order revoked to apply to a court to have the revocation suspended pending review by the Parole Board.
- 4.88 That, as a matter of urgency, the Attorney General direct the Judicial Commission to provide ongoing education and training to judicial officers about the location, purpose and process of entry into the Department of Corrective Services Mother's and Children's program. That education should emphasise that irrespective of the existence of the program, a woman with dependent children and a woman who is pregnant, should only ever be imprisoned as a matter of last resort.
- 4.94 That the Attorney General direct the Judicial Commission to provide appropriate ongoing training to judicial officers about the range and purpose of non-custodial sentencing options available in New South Wales. Such training should be undertaken as soon as possible to ensure that s 5 of the *Crimes (Sentencing Procedure) Act 1999*, which requires that imprisonment only be imposed after consideration of all possible alternatives, is properly

implemented. The Judicial Commission should also liaise with the Department of Corrective Services in relation to the delivery of the training.

Chapter 5 Imprisonment

- 5.52 That the Minister for Corrective Services implement the revised model of case management based on the report of the Independent Commission Against Corruption, *Case Management in NSW Correctional Centres*, as a matter of urgency.
- 5.53 That the Minister for Corrective Services ensure that each new inmate is assessed with a case management plan that addresses any issues that are likely to impact on the likelihood of the inmate re-offending upon release from prison.
- 5.79 That the Minister for Corrective Services, together with the Minister for Health, use some of the resources earmarked for the expansion of the detoxification unit at Mulawa to increase the bed capacity of that unit to a more realistic level that is commensurate with the needs of the inmates.
- 5.80 That, as a matter of urgency, the Minister for Corrective Services employ at least 2 additional full-time drug and alcohol counsellors at Mulawa Correctional Centre. At least one of those positions should be a designated Indigenous position.
- 5.81 That the Minister for Corrective Services establish a designated drug free wing at Mulawa Correctional Centre as soon as possible.
- 5.82 That the Minister for Corrective Services ensure women inmates are given priority according to need in allocation of funding for drug and alcohol services and programs, including any treatment trials.
- 5.95 That the Minister for Corrective Services ensure that there is parity of wages between inmates undertaking full-time work and those undertaking full-time study.
- 5.96 That the Minister for Corrective Services ensure that women have the same choice and access to programs as male inmates.
- 5.97 That the Minister for Corrective Services create two additional teaching positions at Mulawa Correctional Centre.
- 5.111 That, in recognition of the great needs of women who enter the prison system with a serious psychiatric illness, the Minister for Health expand the number of forensic beds that are allocated to women inmates outside correctional centres as a matter of urgency.
- 5.120 That the Minister for Corrective Services ensure that telehealth conferencing is used in all appropriate cases in correctional centres when access to a specialist health professional is not readily provided.

- 5.127 That the Minister for Health and the Minister for Corrective Services undertake a review of the conditions of the Mum Shirl Unit with a view to improving the quality of the conditions for women who are admitted there.
- 5.166 That the Minister for Corrective Services ensure that Aboriginal women are participating in the Mothers' and Children's Program at a rate at least proportionate to that of non-Aboriginal women.
- 5.169 That the Minister for Corrective Services find means whereby women in custody who are on remand can access the Mothers' and Children's program.
- 5.171 That the Minister for Corrective Services expand the Mothers' and Children's Program to rural correctional centres so that women imprisoned in these centres have greater access to their children.
- 5.178 That the Minister for Corrective Services develop services for women in rural and regional areas similar to those offered by the Parramatta Transitional Centre. The purpose of these services is to enable more women in rural areas to access the option of conditional release near to their communities.
- 5.179 That the Minister for Corrective Services ensure that any Transitional Centre or similar service be physically and administratively separate from a prison facility.

Chapter 6 Community Based Corrections

- 6.49 That the Government fund two bail hostels in New South Wales for women. One of those hostels should be specifically for Indigenous women. No more than 10 adult residents should be accommodated in each bail hostel.
- 6.50 That the bail hostels be subject to a pilot period of two years after which time the Government fund independent research to evaluate their effectiveness. Issues to be considered in the evaluation shall include, but not be limited to, netwidening and referral to the hostels by the judiciary, the response of the residents to the services provided by the bail hostel and the effect on the women's prison remand population.
- 6.51 That liaison between relevant Departments and community agencies be established so that the residents of the bail hostels have access to appropriate services and treatment where needed. The hostels should be adequately resourced, have specialised staff and be equipped to accommodate dependent children of the residents.
- 6.52 That the Government establish an Interdepartmental Committee which includes representation from relevant community agencies to oversee the operation of the bail hostels.
- 6.53 That the Attorney General provide appropriate and ongoing training to judicial officers about the women's bail hostels. Appropriate and strict guidelines should be developed which emphasise that remand to a bail hostel is the last resort before remand in custody.

The bail hostels should never be used as an alternative to unconditional bail or other orders of bail allowing a defendant to remain in her community.

- 6.76 That the Minister for Corrective Services and the Minister for Housing establish three probation hostels in New South Wales for women. One of those hostels should be specifically for Indigenous women. The hostels should provide intensive and appropriate supervision to women serving their sentences there.
- 6.77 The probation hostels shall be subject to a pilot period of two years after which time the Department of Corrective Services will fund independent research to evaluate their effectiveness. Issues to be considered in the evaluation shall include, but not be limited to, netwidening and referral to the hostels by the judiciary, the response of the residents to the services provided by the probation hostel and the effect on the women's prison population.
- 6.78 Liaison with relevant Departments and community agencies should be established so that the residents of the probation hostels have access to appropriate services and treatment where needed. The hostels should be adequately resourced and staffed and should be equipped to accommodate children of the residents.
- 6.79 That the Attorney General instruct the Judicial Commission to provide appropriate and ongoing training to judicial officers about the women's probation hostels.
- 6.94 That the Attorney General direct the Judicial Commission to undertake urgent research into the reasons for the decrease into periodic detention among women.
- 6.95 That the Minister for Corrective Services investigate the reasons for the increase in the cancellations of periodic detention orders, particularly among women, and develop measures to address this issue.
- 6.96 That the Minister for Corrective Services consider the option of women offenders serving their periodic detention order in a rehabilitation or other suitable facility.
- 6.110 That the Minister for Corrective Services expedite the expansion of the Home Detention Scheme to ensure that the program is available as an alternative to full-time imprisonment to more offenders in New South Wales.
- 6.111 That the Minister for Corrective Services develop strategies to enable women who are homeless and who would otherwise be sentenced to prison for an offence to access the Home Detention Scheme.
- 6.112 That the Attorney General and the Minister for Corrective Services develop guidelines to assist judicial officers in determining the appropriateness of granting eligible offenders a home detention assessment.
- 6.113 That the Minister for Corrective Services develop a scheme of defined intensive probation for use as an additional alternative means of serving a custodial sentence under similar circumstances to the Home Detention Scheme.

- 6.120 That the Minister for Corrective Services develop, as a matter of urgency, strategies which maximise the opportunities of rural women offenders to access appropriate community service based sentences. Liaison should be undertaken with relevant government and non-government agencies to ensure that Probation and Parole officers who are supervising a women offender in the community can draw on assistance from a wide range of suitable programs. Those community organisations offering relevant services should be provided with adequate funding so that co-operative service delivery between the government and non-government sector can be fostered.
- 6.129 That, as a matter of urgency, the Minister for Corrective Services develop strategies to ensure that home detention is available to Aboriginal offenders as an alternative to full-time imprisonment at a greater rate than it is at present.
- 6.130 That the Minister for Corrective Services, the Minister for Women and representatives from the Aboriginal Justice Advisory Council develop alternatives to home detention for woman who are unable to serve a sentence in the home because of abusive and violent domestic circumstances.
- 6.139 That, as a matter of urgency, the Minister for Corrective Services, in consultation with the Aboriginal Justice Advisory Council, develop strategies to maximise the opportunities of Indigenous people to access community-based sentences.
- 6.140 That the Minister for Corrective Services ensure that when an Indigenous person is sentenced to a community-based sentence, that sentence is delivered in a culturally sensitive way.
- 6.141 That the Attorney General, the Minister for Police and the Minister for Corrective Services implement a three year trial period of Circle Sentencing to be operative in three Aboriginal communities as soon as possible. The Circle Sentencing model should be based on the proposal of the working party on Circle Sentencing and comprise members from the Aboriginal Justice Advisory Council, NSW Police Service, Ministry of Police, Attorney General's Department, Department of Corrective Services, Department of Juvenile Justice, Office of the Director of Public Prosecutions and the NSW Judicial Commission.
- 6.162 That the Attorney General ensure that the NSW Bureau of Crime Statistics and Research include in its evaluations of the NSW Drug Court Program the following:
- the success or otherwise of the outcomes of women who participate in the program;
 - the success or otherwise of the outcomes of Indigenous people who participate in the program;
 - the participation rate of people with an intellectual disability and their success or otherwise in the program;
 - the effect that the "bail refused" and incarceration period has on a female Drug Court participant and any of her dependent children; and

- the adequacy or otherwise of the number of residential treatment centres that can accept drug court participants and the impact these participants have on the accessibility of these centres by drug users within the community.

6.164 That the Special Minister of State ensure that any drug and alcohol programs and services in the community that are allocated money from the Drug Summit be available for women offenders with drug and alcohol problems who are sentenced to community-based sentences. Such services and programs should offer a range of treatment options including long-term rehabilitation to women to enable them to overcome their addictions and address their offending behaviour. Day programs should be available to women with children.

6.182 That the Minister for Corrective Services undertake an audit or study to determine whether the Probation and Parole Service is working effectively and has an appropriate level of supervision of offenders and post-release programs throughout New South Wales. Issues to be considered should include:

- level of contact with a client;
- availability and accessibility of programs;
- culturally appropriate support and programs; and
- rate of recidivism.

6.192 That the Minister for Corrective Services ensure that any issues relating to an inmate requiring identification when released from prison, such as for Medicare, Centrelink and the opening of back accounts, are part of the inmate's case management plan and are resolved prior to release. This should occur in all prisons.

6.200 That the Minister for Corrective Services, the Minister for Housing, the Minister for Health and the Minister for Community Services collaboratively fund, as a matter of urgency, at least three additional supported accommodation/halfway houses for women prisoners to access when they are released from custody. These facilities should be established in Sydney, the North Coast and the Far-West regions of New South Wales and offer women access to appropriate programs and services to assist in their reintegration into the community.

6.201 That as part of a prisoners case management and pre-release plan, the Minister for Corrective Services ensure that all inmates and, particularly those with children, have adequate accommodation upon their release.

Chapter 7 The Building of the New Women's Prison

7.34 That the Minister for Corrective Services commission research to determine whether the diversionary measures which have successfully reduced the numbers of young people held in custody may be applied to bring about a reduction in the number of women in custody.

- 7.40 In order that the rehabilitation of offenders, particularly through community-based options is given a higher priority, the Minister for Corrective Services should establish a Community Corrections Division within the Department of Corrective Services. The Division should be headed by a Deputy Commissioner who is directly responsible to the Commissioner.
- 7.41 That the Minister for Corrective Services develop appropriate responsibilities for the Community Corrections Division. Those responsibilities should include the management of offenders serving community-based sentences that require supervision.
- 7.46 That the Minister for Corrective Services undertake a cost-benefit analysis of the proposal to build the new women's correctional facility at South Windsor and of the alternative community based measures recommended in this Report. The cost-benefit analysis should be completed no later than the first sitting week in October 2000 of the NSW Parliament. Results of that analysis should be published.
- 7.47 That the Minister for Corrective Services review the decision to build the new women's correctional facility at South Windsor in light of the results of that analysis. The review process shall include seeking independent advice from the Inspector General for Prisons, representatives of Treasury, groups representing women and at least one academic with research experience in the field of corrections and community services.
- 7.51 That to help ensure the proper targeting of resources at the reduction of imprisonment numbers and the utilisation of alternatives to imprisonment, the Minister for Corrective Services impose a moratorium on the total number of prison beds for women in New South Wales. Any new gaol proposed and/or established shall replace existing prisoner accommodation numbers only so that the total number of women in prison does not exceed current levels.

Chapter 8 Future Work

Executive Summary

This is the first report of the Committee's inquiry into aspects of the New South Wales prison population. In this report the Committee examines issues specifically relating to women inmates, and in particular, the factors contributing to the considerable increase in that population since 1994. The report also looks at such matters as the effectiveness of imprisonment as a punishment for women offenders and examines the appropriateness of community-based sentences as custodial alternatives. The final section of the report deals with the controversial issue of the construction of a new 200 bed prison for women at South Windsor.

In the introduction to the report the Committee puts forth its position that underlines most of the recommendations, namely, that based on all the evidence it has received the Committee considers that imprisonment should always be used as an option of last resort. The Committee recognises that for some offenders, imprisonment is the only realistic sentencing option. However, for others, and women who commit non-violent offences in particular, it considers that community-based alternatives can be more effective in allowing a women offender to address and manage her behaviour and to cease offending.

Chapter Two of the report provides a review of some of the relevant literature that has examined women and imprisonment issues. Among the reports and studies discussed are the report of the *Nagle Royal Commission* (1978), the *NSW Women in Prison Taskforce* report (1985), the NSW Ombudsman's *Mulawa report* (1997), and the Standing Committee on Social Issues reports, *Children of Imprisoned Parent* (1997) and *Hepatitis C — the Neglected Epidemic*. Since the release of those reports there has been a number of major changes and reforms for women in the prison system, particularly, the establishment of the mothers and children program. Nevertheless, the Committee considers that further reforms are required, not merely to the prison system but to the patterns of sentencing as well.

In Chapter Three, the report details the rise in the inmate population since 1994. That chapter shows that the women prisoner numbers have increased by 40 per cent since that time. This increase is evident in both the remand and sentenced population. National statistics show that the increase is an Australia-wide phenomenon. The rate of imprisonment among Indigenous women has also increased. Since 1994, the proportion of Aboriginal women coming into custody has increased by 14 per cent.

That chapter also examines the characteristics of female prisoners. Most of these inmates come from backgrounds of extreme poverty and disadvantage, have experienced violence and abuse as children and as adults, suffer mental health problems, and have long standing drug and alcohol addictions. Many were the primary carers of children before entering prison. Aboriginal women make up between 25 and 31 per cent of female prisoners at any one time. Many of these women have survived sexual, domestic, family, systemic, emotional and social abuse and the traumas of dispossession and colonisation and of being removed from their families as children. A significant proportion have also been state wards. Although there has been some increase in the rate of armed robberies, most women commit non-violent, property offences, often as a direct result of their drug addiction.

The Committee, in recognising the importance of prevention and early intervention, endorses the recommendations of the first report of the Standing Committee Law and Justice's Inquiry, *Crime Prevention Through Social Support*.

In Chapter Four, the factors that have contributed to the rise in the female inmate population are examined. A range of factors were put to the Committee as having contributed to this increase, including:

- patterns of offending, including the increasing role of heroin addictions;
- policing practices;
- legislative and policy changes;
- sentencing patterns, including guideline judgements;
- increased disadvantage, poverty and homelessness;
- drugs and alcohol;
- gambling;
- the impact of the criminal justice system on Aboriginal communities;
- mental illness and the contraction of services in the community;
- intellectual disability and the contraction of services in the community;
- the 'law and order' debate.

Chapter Five examines the issue of women and imprisonment. It looks at a number of arguments which contend that imprisonment has little or no impact on rehabilitation or recidivism. The Committee understands that the area of recidivism is complex and it is an area which requires further analysis. Nevertheless, the Committee understands that recidivism among women was highest among property offenders. Generally, more than half the women in custody have had a prior episode in prison. For all inmates, New South Wales and Western Australia reported the highest recidivism rate (40%), though the Committee recognises that there are difficulties in comparing jurisdictions.

The Chapter also examines the Parramatta Transitional Centre which is a kind of half-way house for prisoners between gaol and the community. The Committee was particularly impressed by the figures from the Transitional Centre which showed that since its opening in 1996, only one women out of the 84 who have been through the Centre has returned to custody.

The cost of imprisonment is high. Figures for 1998/99 show that for maximum security prisoners it is \$64,762 per year or \$177.43 per day; for medium security prisoners, \$58,893 per year or \$161.35 per day and for minimum security prisoners it is \$47,118 per year or \$121.09 per day.

Chapter Five also looks at the programs and services offered to women in prison. The Committee accepts that the prison environment, particularly large prisons, does not

generally foster lasting rehabilitation of inmates. However, as long as it is necessary to sentence people to prison, the Department of Corrective Services should do what it can to make positive change within that environment possible. Programs offered to women inmates include psychological services, welfare services, alcohol and other drug services, education and industry and the chaplaincy. The Department also offers the mothers and children's program which allows children under five to reside full time with their mother and other children to spend holidays with their mother. This program operates from Emu Plains Correctional Centre. The Committee proposes that the program be extended to include women in rural correctional centres.

Irrespective of the existence of the mothers' and children program the Committee considers that imprisonment should always be used as a last resort. It is concerned that some recent cases before the Court of Criminal Appeal have not adopted this approach. The Committee therefore strongly recommends that judicial officers receive ongoing education and training about the mothers' and children's program including the fact that imprisonment should be an option of last resort irrespective of the existence of that program.

The Committee anticipates investigating in greater detail programs and services to inmates, in Part II of the inquiry. However, in relation to alcohol and other drug services the Committee found them to be inadequately resourced and staffed. It recommended that as a matter of urgency the Minister for Corrective Services employ at least 2 additional full time drug and alcohol counsellors at Mulawa, one of whom should be Indigenous. The Committee also recommends in relation to education and industry that there be a parity of wages. Currently, women who undertake full time study are paid less than those who elect full time work.

The issue of mental illness among inmates is also discussed in Chapter Five. Evidence received to date shows that mental illness is particularly high among the female inmate population. The Committee has recommended the expansion of the number of designated forensic beds for women as a matter of urgency. It also urges the Minister for Corrective Services to ensure that telehealth conferencing is available to women inmates when access to a specialist health professional is not readily provided.

Recommendations are also made for the development of services in rural New South Wales similar to those offered at the Parramatta Transitional Centre.

In Chapter Six the Committee looks at community based alternatives for women on remand and to those who would otherwise receive a custodial sentence. For women on remand the Committee considers that a significant number could serve their remand period in a community-based bail hostel. The hostel would be strictly supervised and would offer a range of relevant services and programs to residents. The Committee recommends that two bail hostels be established for a pilot period of two years, after which time there is an independent evaluation. The hostels appear to be more cost-effective than housing a remand prisoner in either maximum or minimum security. Alternatives to a sentence of imprisonment are also examined.

The Committee reports information that shows that the cost of a community-based sentence is far less than the cost of imprisoning an offender. Further, the Department of Corrective Services reports that during 1998/99 about 87 per cent of supervision orders, both probation and parole, were completed. In addition, figures from the inmate census, 30 June 1999, show that out of the total female prison population, only 1.1 per cent were C4 classification, which is the category requiring continuous supervision; 5.2 per cent were C3 classification, requiring general supervision; 51.2 per cent were C2 classification requiring minimum supervision and 5.9 per cent, C1 Classification, those who only require monitoring and need not be confined by a physical barrier at all times and who need not be supervised.

In recognition of these factors and of evidence which shows that women offenders respond more positively to intensive supervision in the community than prison, the Committee recommends the establishment of three probation hostels for a pilot period of two years. One of those hostels should be specifically for Indigenous women. Like the bail hostels the probation hostels should be independently evaluated after the pilot period. The hostels would be strictly supervised and offer a range of relevant services and programs to residents, the aims of which would be to prevent further offending.

Periodic and home detention and community service orders are also investigated in Chapter Six. The Committee is concerned that there has been an increase in the number of cancellations of periodic detention orders and recommends that the Minister for Corrective Services examine this issue. It also recommends that the Minister consider the option of women offenders serving their periodic detention order in a rehabilitation or other suitable facility. The Committee also raises the option of completing prison sentences with a transitional period of home detention for further investigation in Part II.

Home detention is currently only available to offenders in Sydney, the Illawarra, the Central Coast and lower Hunter regions. Consequently, a significant proportion of offenders are not afforded this sentencing option and are often imprisoned. The Committee therefore calls on the Minister for Corrective Services to expand the home detention scheme as soon as possible. The Committee is also concerned that homeless women are often imprisoned because they are ineligible for a home detention order. It recommends that strategies be developed to address this inequity.

Evidence was presented which suggested that women in rural areas may not be able to access the range of community based options that are available to women in metropolitan centres. The Committee therefore recommends that the Minister for Corrective Services develop strategies which help to maximise rural women offenders' access to the range of community service based sentences.

The Committee found that Indigenous people are under-represented in community based sentencing options. A number of reasons were put forward for this, including the nature of offences that are committed by Aboriginal offenders, lack of flexibility in assessment of Aboriginal people for these community based options, and poverty and disadvantage. To this end, the Committee recommends that the Minister for Corrective Services, in consultation with the Aboriginal Justice Advisory Council, develop strategies to maximise the opportunities of Indigenous people to access community based sentences which are

also culturally sensitive. Further, the Committee supports a trial period of a circle sentencing scheme as currently exists in Canada for Indigenous people.

Post-release is a crucial time for an inmate released from prison. The first three months of release are the most common time for an offender to return to drug use and to re-offend. Support during this time is therefore critical. However, the Committee found that ex-prisoners are often released unsupported, both financially and emotionally. The most pressing problems for women who are released from prison include accommodation, especially for women with children; work or financial support; re-establishing the family; managing drug and alcohol addictions; and feeling part of society. Further, the stigma of being an ex-inmate can be considerable. The Committee therefore recommends that the Minister for Corrective Services, the Minister for Housing, the Minister for Health and the Minister for Community Services collaboratively fund, as a matter of urgency, at least three additional supported accommodation/halfway houses for women prisoners to access when they are released from custody. These facilities should be established in Sydney, the North Coast and the Far-West regions of New South Wales and offer women access to appropriate programs and services to assist in their reintegration into the community.

Probation and Parole officers are responsible for prisoners when they are released however, there are no designated officers who deal specifically with women. The Committee recognises that there are many effective Probation and Parole district offices and officers throughout the state. It is concerned however, that the adequacy of services is inconsistent. It therefore recommends that the Minister for Corrective Services undertake an audit to determine whether the Probation and Parole Service is working effectively and has an appropriate level of supervision of offenders and post-release programs throughout New South Wales. Issues to be considered should include, level of contact with a client; availability and accessibility of programs; culturally appropriate support and programs and rate of recidivism.

Chapter Seven deals with the Department of Corrective Services' decision to build a new 200 bed women's prison at South Windsor. The estimated cost of building the prison is \$34 million. The Department of Corrective Services argues that the reasons for building the prison are that Mulawa is unacceptably overcrowded, resulting in the delivery of services and programs being compromised, and that the new prison will be a purpose-built facility for women. The new prison will assist the Department to improve the quality, and increase the number, of inmate programs available to female inmates. It will also enable Mulawa to be used primarily as a reception, remand and special program centre.

However, there has been much community objection to the building of the prison at South Windsor. Among the reasons advanced were: that the Department had not explored options other than a new prison; that consultation with stakeholders took place after the decision to build the prison had taken place; and that the establishment of a new correctional centre will further intensify the current rates of incarceration of Aboriginal women.

The Committee is concerned that the Department of Corrective Services has not done a thorough analysis of projected prisoner numbers in order to properly determine whether the numbers of female prisoners are likely to increase further, decrease, or plateau. It

appeared that the numbers of women in custody plateaued at the end of 1999. Further, it is the Committee's view that there are a number of issues that the Department has yet to resolve before it should proceed with the construction of the new prison at South Windsor. These are:

- how likely is it that the female imprisonment rate will continue to rise, especially in light of the new *Crimes (Administration of Sentences) Act 1999* which requires that prison sentences only be imposed when no other sentence is appropriate and reasons be given for sentences of six months or less?
- to what extent would increased promotion and development of community based sentencing options reduce the prisoner population?
- to what extent could a number of small new correctional centres closer to a range of significant and currently unserved population areas relieve the population stress of women's prisons?
- to what extent can effective alternatives be developed for those prisoners currently on remand?
- what will be the impact of the new women's prison on other criminal justice and human services agencies?

The Committee recommends that, in light of recent results of the Drug Court Program, the likely impact of the *Crimes (Sentencing Procedure) Act 1999* and other relevant matters, the Minister for Corrective Services undertake a cost-benefit analysis of the proposal to build the new women's correctional facility at South Windsor and of the alternative community based measures recommended in this Report. The cost-benefit analysis should be completed no later than the first sitting week of the Legislative Council in October 2000. Results of that analysis should be published.

Further, it recommends that the Minister for Corrective Services review the decision to build the new women's correctional facility at South Windsor in light of the results of that analysis. The review process shall include seeking independent advice from the Inspector General for Prisons, representatives of Treasury, groups representing women and at least one academic with research experience in the field of corrections and community services.

Evidence and submissions presented to this Inquiry reveal that the perception by the community and the self-image of the Department of Corrective Services is that of gaoler. The Committee considers that the Department should give a higher priority to corrective services' rehabilitative role and allocate more resources to community based sentences. While very significant improvements to the New South Wales prison system have occurred in recent times, the rate of improvement appears to be hampered by the slow rate of cultural change within the department. To help raise the status of community based corrections within the department and free it from the prison dominated culture that appears to exist, the Committee proposes that a Community Corrections Division be established within the Department of Corrective Services, which should be headed by a Deputy Commissioner who is directly responsible to the Commissioner.

In the final chapter the Committee highlights some of the issues it will investigate further in Part II of the inquiry. These include:

- Aboriginal women and the criminal justice and penal systems;
- Women from a non-English speaking background and the criminal justice and penal systems;
- Intellectually disabled women and the criminal justice and penal systems;
- State wards and people who have been in the care of the state and the criminal justice and penal systems;
- Policing;
- Drug and alcohol services in prisons;
- Issues relating to gambling and imprisonment;
- Programs in prison for women with special needs;
- The prison welfare system;
- Pre-release options for Indigenous, non-English speaking background, intellectually disabled, and mentally ill women;
- Post-release options for Indigenous, non-English speaking background, intellectually disabled, and mentally ill women;
- Case Management;
- The Classification system;
- Home Detention as an option to be served towards the end of a full time custody sentence;
- Remissions;
- Data collection;
- The possible strategies that can be adopted from the Department of Juvenile Justice which has seen a fall in the number of young people in custody; and
- Criminal justice impact statements.

The Committee recognises that this list may not be exhaustive and welcomes further submissions on any of the factors raised above or any other issue relevant to women and imprisonment.

Chapter 1 Introduction

- 1.1 This is the first report of a two stage inquiry process into the increase in the prisoner population in New South Wales. The Committee is to examine:
- the factors responsible for, and the consequences of the increase in the prisoner population since 1995 and, using the key indicators of recidivism and cost effectiveness,
 - the adequacy of incarceration and its alternatives, and
 - the adequacy of building a new women's prison as a means of dealing with the increased prisoner population.
- 1.2 The terms of reference for the Committee dictate that this be an interim report on matters specifically in relation to women. The reason for the Committee being directed to report in the first instance on women is not only to focus on their unique needs as inmates but also to assess the appropriateness of the Government's plan to build a new 200 bed women's prison at South Windsor. This has required the Committee working to a tighter time frame than the complexity of a number of the issues involved warrants and, consequently, many of the issues in this report are raised for further consideration and investigation at a later stage.
- 1.3 There has been strong interest in the inquiry from the outset. The Committee received 138 submissions from a range of people and organisations. Government Departments, academics, community organisations, legal and medical practitioners, members of the public and inmates provided the Committee with a wealth of information and opinion regarding the New South Wales prison system. In addition, evidence was taken from 89 witnesses. The Committee took evidence at Parliament House as well as at Mulawa, Emu Plains and Grafton Correctional Centres. The Chair, Deputy Chair and Committee Clerk also made site visits to Parramatta Transitional Centre and the site of the proposed women's correctional centre at South Windsor.
- 1.4 The Committee received considerable material from the Department of Corrective Services. The Committee wishes to place on record its appreciation to the Department for the substantial information it provided on request, often at short notice.
- 1.5 Women make up six per cent of the New South Wales prison population. Although their numbers are relatively small, there has been a substantial increase in their numbers since 1994. Further, their needs are considerable. Overwhelmingly, the evidence received by the Committee showed that offending behaviour by women is a complex issue. The motivations and reasons for offending by this group can differ markedly from men. Most women offenders, particularly those who are imprisoned, come from backgrounds of social and economic disadvantage, family dysfunction, violence and abuse (often both as children and as adults). They experience high levels of mental illness, usually have dependent children, and most have serious and long-standing drug and alcohol addictions. In the majority of cases, women's criminal acts are linked to supporting a drug addiction and are often committed when the women is under the influence of drugs and/or alcohol. In

relation to Indigenous women, who make up between 25 and 31 per cent of the women's prison population at any one time, these issues are compounded by the experiences of dispossession, discrimination and for many, being part of the stolen generation.

- 1.6 Because so many issues can be involved in a woman's criminality, it has been queried whether prison is the most appropriate arena for a woman to learn to manage her offending behaviour. In acknowledging the complexities of offending behaviour among women, the Committee is in no way advocating that women offenders should not be held accountable for their actions nor go unpunished. Rather, it is trying to determine what is the most effective way that a woman offender can address the issues that may have led her into contact with the criminal justice system and to cease offending. The Committee recognises that prevention and early intervention is ultimately the best means to achieve a reduction in criminal behaviour and to this end, supports the findings and recommendations of the First Report of the Inquiry into *Crime Prevention Through Social Support* by the Standing Committee on Law and Justice.
- 1.7 This report commences with a statistical discussion of the increase in the prisoner population and then presents the key factors presented to the Committee that have contributed to this increase. It then looks at imprisonment issues for women, followed by an examination of community based sentencing options. It later explores options for improving the prison system and developing alternatives where appropriate. The Report concludes with an examination of the direction of the Department of Corrective Services in New South Wales and examines the proposal for a new women's prison.
- 1.8 Underlying much of the analysis in the Report is the Committee's firm belief that **imprisonment should only be used as a sanction of last resort.**

Chapter 2 Literature Review

Introduction

- 2.1 Over the last two decades or so there has been a steady stream of literature and research produced in relation to prisoners in New South Wales. Some of this body of work has included an examination of issues surrounding the imprisonment of women. Prior to that time, women inmates were not generally considered separately from male inmates. They were not considered to have separate needs nor was it considered that certain issues effected them specifically.

The Nagle Royal Commission, 1978

- 2.2 In 1978, the Royal Commission into New South Wales Prisons, headed by the Honourable Mr Justice Nagle, handed down a range of recommendations that included major reform to the prison system. Some of these recommendations dealt specifically with women prisoners. One of the major recommendations to come out of the report was that prison should only be used as a punishment of last resort and that alternatives to imprisonment should be used as extensively as possible (Royal Commission into New South Wales Prisons, 1978:729).

The NSW Women in Prison Task Force, 1985

- 2.3 The NSW Women in Prison Task Force released its report in 1985. That Task Force was set up by the government to examine, among other things, the appropriateness and adequacy of custodial facilities for women in New South Wales, to review and make recommendations to the New South Wales Government regarding options available to the correctional services for the placement of women sentenced to terms of imprisonment and to coordinate research, conduct community consultation and make recommendations on policy in the areas of diversion, accommodation, drug dependence, remand prisoners and prison conditions. That report made 287 recommendations dealing with issues affecting women on remand and sentenced to imprisonment.
- 2.4 The report reaffirmed the recommendation first put forth in the Nagle report that prison should only be used as a sanction of last resort.
- 2.5 Although that report was released some 15 years ago, many of the findings are still pertinent today. The demographic profile of women inmates surveyed during the research period of the task force are strikingly similar to the profile of women inmates today. For instance, most women were young, (between 19-30 years), single, had dependent children, had limited education, were unemployed at the time of their arrest and depended on social security as their main source of income. Further, the task force reported,

seventy-eight per cent of the women stated they were drug or alcohol addicted (heroin being the most commonly used); and eighty-four per cent had been previously imprisoned (NSW Women in Prison Task Force, 1985:44).

2.6 A comparison with the situation in Victoria revealed that NSW imprisoned women during that time at more than twice the rate of the southern state. The Task Force also observed that compared to women prisoners in other States, women prisoners in NSW were far more likely to:

- be held in prison on remand;
- be held in prison on remand for periods longer than 3 months;
- receive longer sentences; and
- be imprisoned for drug possession/use.

2.7 The Task Force stated,

the major recommendations of this report, having paid regard to the nature of offences for which women are imprisoned (i.e. non-violent offences) the number of women in prison on remand and the significance of drug use as a factor in imprisonment, urges on the Government immediate action to reduce the imprisonment rate of women in this State (NSW Women in Prison Task Force, 1985:40).

The Women's Action Plan, 1994

2.8 The Department of Corrective Services released the Women's Action Plan in 1994. Among the recommendations of the Women's Action Plan were:

- the creation of a minimum security facility (now established at the former male prison farm at Emu Plains)
- the establishment of between one to three transitional centres for female inmates in the Sydney metropolitan area (the Parramatta Transitional Centre was established in 1997).
- the creation of a Women's Services Unit within the Department of Corrective Services;
- the establishment of a mothers and children's program for selected inmates and their preschool age children (this program commenced operation –e in 1997).

2.9 The Department of Corrective Services is currently developing Phase 2 of the Women's Action Plan.

The Mulawa Report, NSW Ombudsman, 1997

2.10 In April 1997, the NSW Ombudsman handed down her report of the investigation into the care and protection of women inmates at Mulawa Correctional Centre and the response to, and prevention of, self mutilation by women at that gaol. The investigation focused on conditions at Mulawa during the 1993-94 period. According to that report,

many of the problems identified at this time have now been rectified. The period under investigation, and the years following, have seen a radical shift in the treatment of female inmates by the Department of Corrective Services. The Women's Action Plan which was published in 1994, set the department's blueprint for change - change which had been identified as essential by the Women in Prison Task Force a decade earlier but not acted upon. Other departmental initiatives, for example the development of "safe cells" and a Risk Intervention Policy, have also affected conditions at Mulawa. Significant improvements in the provision of medical care to inmates by the Corrections Health Service have also taken place (NSW Ombudsman, 1997:i).

Children of Imprisoned Parents Report, Standing Committee on Social Issues, 1997

- 2.11 The Standing Committee on Social Issues released its report, *Children of Imprisoned Parents* in 1997. Although the main focus of the report was children, many of the recommendations related to the imprisonment of mothers. At the core of the report was the principle of the best interests of the child and to this end, the Committee unanimously recommended that the imprisonment of a mother should only occur when all other appropriate sentencing options have been exhausted; that is, only as last resort. This principle was to be upheld irrespective of the existence of the mothers' and children's facility at Emu Plains Correctional Centre.
- 2.12 Since the release of that report, a number of recommendations have been fully or partially implemented by the Government. Of the ninety-seven recommendations in the report, thirty-nine directly related to the Department of Corrective Services.
- 2.13 This Committee particularly commends the Government for the establishment of Jacaranda Cottages – the Mothers and Children's unit at Emu Plains Correctional facilities and the programs and services offered to women inmates who are resident at the unit. It notes also that, pursuant to recommendation 62 of the *Children of Imprisoned Parents* report, the Department is considering expanding the Mothers and Children's program to include female remand inmates. Proposals being considered include long-term remand inmates being included into the program in Kempsey, as well as allowing similar remand inmates into Emu Plains Correctional Centre to allow them access to the program (Department of Corrective Services Progress Report, 1997:13).
- 2.14 This Committee is particularly concerned that in two recent cases the Court of Criminal Appeal has used the existence of the Mothers' and Children's program at Emu Plains as one justification for imprisoning a mother *R v Robinson* 1999 NSWCCA 468 and *R v Everett*, 2000 NSWCCA). This is in contravention of the *Children of Imprisoned Parents* report which, as noted above, specifically recommends that prison be used as a last resort despite the establishment of the Mothers and Children's program. This issue dealt with later in the report.

Hepatitis C- The Neglected Epidemic, Standing Committee on Social Issues, 1998

- 2.15 In 1998, the Standing Committee on Social Issues tabled its report, *Hepatitis C- the Neglected Epidemic*. A number of submissions to the Inquiry were from prisoners who were infected

with Hepatitis C and the Committee examined in detail the prevalence of the virus among inmates and the process of treating and managing them. Among the findings of the report were that the prison population faces an “unacceptably high risk of contracting Hepatitis C and, on release, these people pose a serious danger of transmitting the virus to the wider community”. The Committee concluded that these circumstances warrant radical policies to reduce prisoner’s exposure to Hepatitis C in correction centres.

2.16 The issue of Hepatitis C was raised frequently during this Inquiry. The prevalence of the disease remains considerably high in prisons, including within women’s prisons. The Committee examines the issue further in the Report and it will be specifically addressed in Part II of the Inquiry.

Prisoner Numbers in Queensland: An examination of population trends in Queensland’s correctional institutions – Queensland Criminal Justice Commission, 2000

2.17 The Queensland Criminal Justice Commission recently released its report, *Prisoner Numbers in Queensland: An examination of population trends in Queensland’s correctional institutions*. The report addresses three fundamental questions, namely:

- why has the Queensland prisoner population risen so rapidly since 1993?
- how likely is it that the prisoner population will continue to grow (assuming that there is no policy intervention by government)?
- which changes to practices and policies have the greatest potential to reduce the prisoner population?

2.18 The report found that no single factor has been responsible for the dramatic growth in the prisoner population. Possible contributing factors included:

- changes in police practices;
- legislative changes;
- court practices;
- declining use of community-based orders;
- increase in the number of fine defaulters;
- increased recidivism;
- increasing number of short-term prisoners and the ‘stretching’ of longer sentences.

Other Literature

2.19 Women as offenders and prisoners have been the subject of a number of studies by academics and those with experience in the criminal justice and penal systems for a number of years. The common themes throughout those studies is that women offenders and inmates essentially commit non-violent crimes, are generally young and single or in a de facto relationship, have experienced abuse and violence, are drug and/or alcohol addicted,

come from a dysfunctional family background, are socially and economically disadvantaged and often have dependent children.

2.20 In her study, Alder (1992) maintained that a principal contributing factor for a woman's imprisonment is poverty – economic, social and political marginality. She also argues that,

the women we imprison as offenders are ... disproportionately the victims of crime, particularly violent crimes (and) between 70 and 80 per cent of women prisoners are survivors of incest and sexual abuse (Alder, 1992:143).

2.21 Further research also indicates that women generally serve relatively short sentences, ie less than twelve months, and often six months (Farrell, 1995).

2.22 A number of studies have shown that women offenders and prisoners have traditionally been perceived to be, in some way, "more deviant" than male prisoners. According to Beckerman,

The female felon offends society's idealised vision of women as all-caring, nurturing, and attentive to their children. She therefore poses a threat to the established social order unlike that presumably posed by male felons. The female felon's criminal activities raise concerns about her ability to be a "good" mother. A bipolar standard of expected behaviour for women stipulates that she either follow societal norms or fall into a state of disgrace. Often, punishments given to female offenders have therefore been harsh, reflecting attempts to bring their behaviour in line with societal norms and expectations (Beckerman, 1991:172).

2.23 There is some debate about whether women in New South Wales are treated differently from men when sentenced for the same offences. Evidence presented to the Committee did not suggest that women receive harsher penalties and terms of imprisonment than men. However, in evidence to the Children of Imprisoned Parents Inquiry, Professor George Zdenkowski explained that,

overseas, in particular in England, a number of academics have conducted studies which show that you cannot take monolithic approach...Courts will treat more leniently mothers, women offenders who are perceived to be conforming to traditional stereotypes of nurturing caring middle-class mothers who went astray for some reason, and therefore for whom custody would be inappropriate. On the other hand, it is argued that women who are for example, poor, perhaps drug-addicted, sex workers engaging in petty property crime, who are regarded as failures, neglectful women and mothers in terms of society stereotypes, are treated more harshly than their male counterparts – in other words, poor, drug-addicted, deviant males committing the same offences (Standing Committee on Social Issues, 1997:36).

2.24 In her comprehensive book, *Prisons and Women* (1993), former inmate Blanche Hampton details the experiences of women going through the New South Wales prison system. The work, based on her own personal knowledge and the interviews of other inmates, documents the experience of custody from arrest to sentence. Her interviews were conducted in 1991, and the women in the book, included herself, were incarcerated at some stage during the years 1986 to 1991. Hampton's book is largely critical of the NSW prison system claiming,

that Corrective Services policies affecting women are often inappropriate is bad enough, but even when the policies are superficially in order, the spirit of the law is often lost when they are applied in ways which result in injustice, great inefficiency and unjustifiable cost to both community and prisoner. (In this book) I have sought to shed light on these often confusing gaps between theory and practice by comparing policy with our experiences of it (Hampton, 1993:xiv).

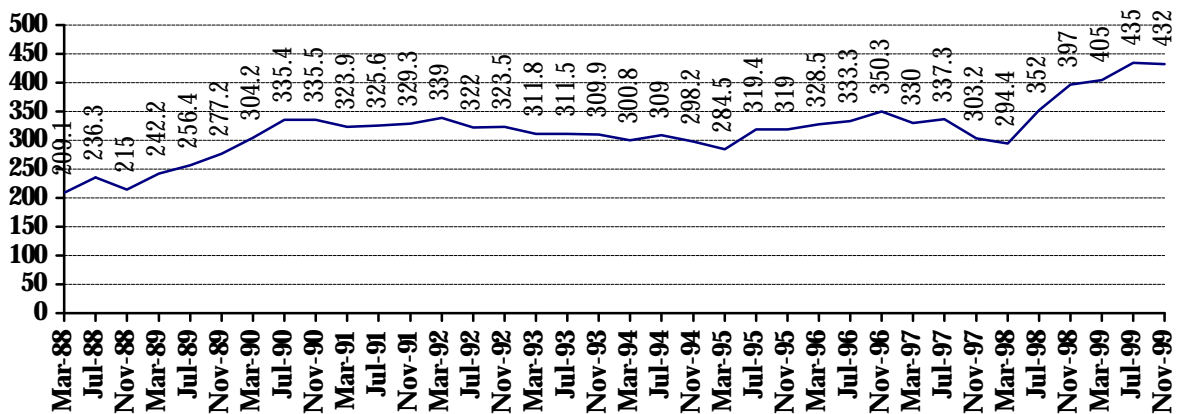
- 2.25 The Committee considers that since the release of Hampton's book there has been some major and positive changes made to the women's prison system. Among these are the opening of the Mother's and Children's facility at Emu Plains Correctional Centre, the establishment of the transitional centre at Parramatta, expanded services and programs for Indigenous women and the option of the Drug Court.
- 2.26 However, evidence and submissions to this Inquiry contend that there are still matters that require review and reform. Those matters will be highlighted throughout the report.

Chapter 3 The Statistics

The Increase

- 3.1 Women comprise six per cent of the total prisoner population. Although this proportion is small in comparison to male inmates, the rate of female incarceration has increased dramatically, particularly during the period July 1994 to June 1999. The increase is reflected in both the remand and sentenced population. The Committee received extensive testimony on this issue and on the factors that may have contributed to the increase.

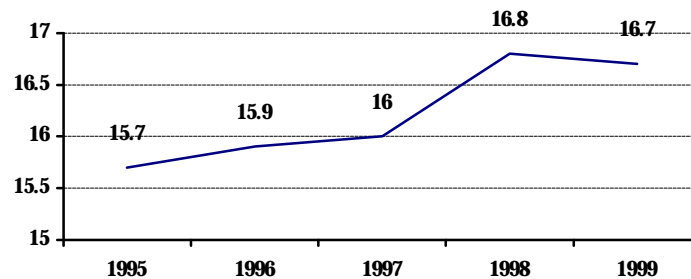
Daily average number of female inmates in New South Wales 1988-1999.



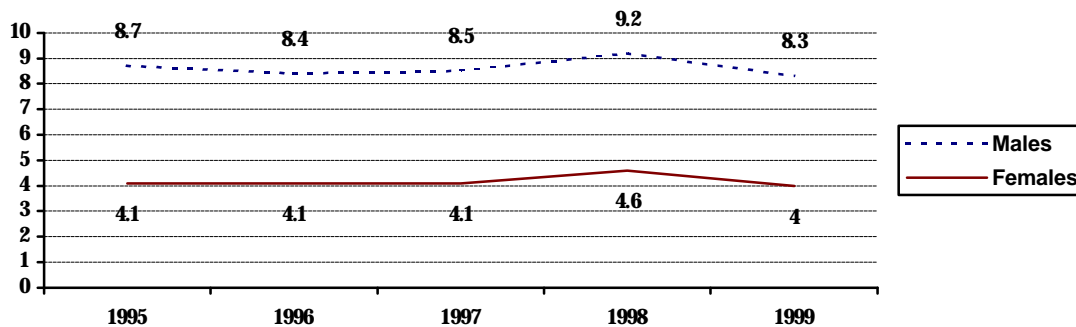
(Submission 55, p 79)

- 3.2 Submissions, witnesses and relevant literature all acknowledge that the official statistics show a dramatic rise in the number of female inmates during the period under consideration. However, there is a significant difference in how some commentators interpret these statistics. Consequently, there is divergence of opinion on what factors are considered responsible for the increase.
- 3.3 The Committee understands that during the period of the increase in the prisoner population, the general population has increased also. This factor is relevant to the overall increase in inmate numbers.
- 3.4 While there have been significant increases in the male prisoner population the most substantial rises have been among female inmates. This is a result of an increased percentage of the total sentenced population being women.

Percentage of the total sentenced population who are female



Percentage of sentenced males and females receiving full time imprisonment



(Sentencing Female Offenders in New South Wales, Sentencing Trends: An Analysis of New South Wales Sentencing Statistics, Patrizia Poletti, Judicial Commission of New South Wales)

3.5 The submission from the Department of Corrective Services provides the following data in relation to the increase in the female prison population:

between January 1995 and 16 January 2000...the female inmate population rose from a daily average of 291 to 412, a rise of 121 (41.6%)...between November 1995 and November 1999 (ie. during the past four years, taking the end of date as November 1999, the month in which the Committee's terms of reference were written) ...the female inmate population rose from a daily average of 319 to 432, a rise of 113 (35.4%) (Submission 55, p. 8).

3.6 The NSW Bureau of Crime Statistics and Research also reports an increase in the number of women in prison over the last 5 years, with a sharp increase evident from early 1998. On a court by court basis, Fitzgerald from the Bureau provides the following information:

In 1994, only 3.4 per cent of women convicted in the Local Court were sentenced to prison, whereas by 1998 the proportion had risen to 3.9 per cent. Overall, in 1998 there were 179 more women sentenced to prison than 1994...In 1994, there were 87 women sentenced to prison from the Higher Courts (ie District and Supreme Courts-24.5% of convicted women). In 1998, the number of guilty women receiving a prison

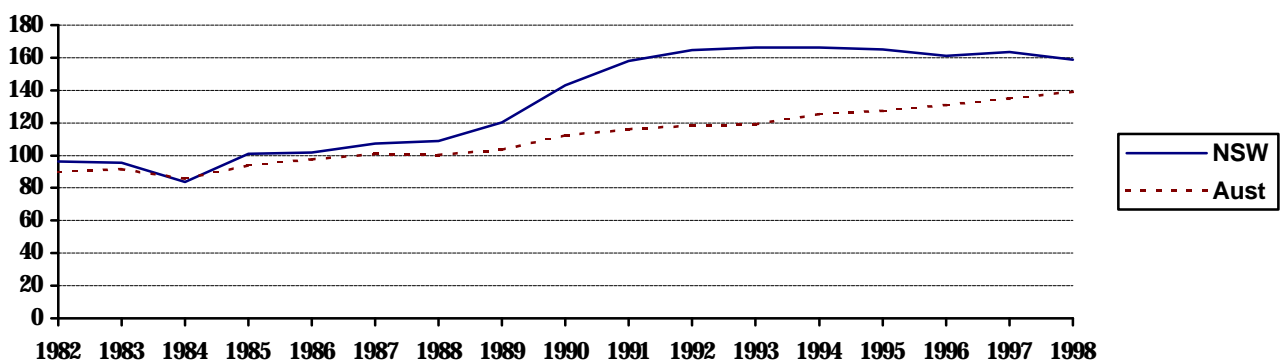
sentence had risen to 117 despite the overall drop in convictions (48.1%) (Fitzgerald, 1999:1,2).

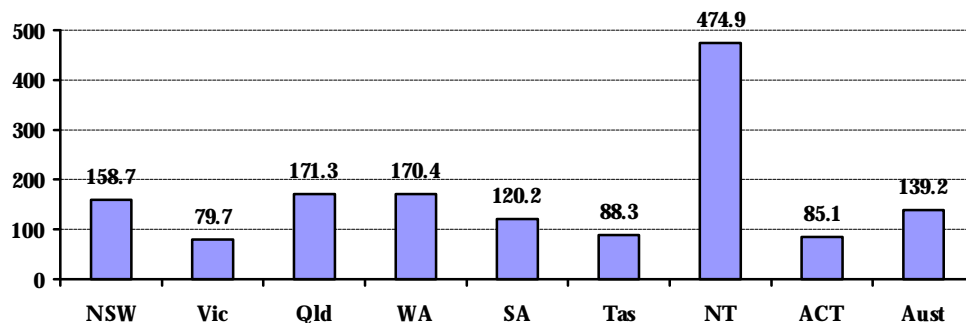
3.7 The Australian Institute of Criminology reports that rises in the prison populations is a national trend. Increases can be observed across all Australian jurisdictions since 1982. Some of the data from the Institute for the period 1982-1998 can be summarised as follows:

- Among the States, the largest relative increase in the size of the prison population was observed in Queensland, where the number of prisoners has grown by an average of 6.1% per year – from 1638 in 1982 to 4466 in 1998;
- New South Wales recorded the second highest growth in prison population – from 3719 in 1982 to 7697 in 1997 (4.4% per year);
- Both Territories have experienced a relatively high growth in prison population during the 17 year period;
- South Australia and Western Australia show a trend toward a deceleration in their imprisonment rates;
- Rates of imprisonment have remained relatively stable in Tasmania and Victoria;
- New South Wales, Western Australia and the Northern Territory have had imprisonment rates consistently above the national average;
- the rates for Victoria, South Australia, Tasmania and the ACT have always been below the national average (however, the ACT is tending to approach the national average).

(Carcach and Grant, 1999: 3 and 4).

Imprisonment rate per 100,000 Population of Imprisonable Age (Carcach and Grant, 1999)



1998 rate per 100,000 population of imprisonable age by States and Territories

3.8 Although the Institute's data does not distinguish between male and female inmates, additional information from the Department of Corrective Services reports that the rise in numbers of women prisoners is indeed an Australia-wide and international phenomenon (Submission 55, p. 9).

3.9 Corrective Services staff and inmates confirmed that there had been an dramatic increase in the number of inmates received into Correctional Centres. They reported that this had significant implications for the prison environment. Among these were:

- overcrowding;
- increased crisis intervention by staff; and
- a compromised delivery of specialised services and programs.

Indigenous Inmates

3.10 As numerous reports have demonstrated Indigenous Australians are overrepresented at all stages of the criminal justice system and, most particularly, in the prison population. Research from the Australian Institute of Criminology has made the following findings in relation to Aboriginal people:

- Indigenous prison populations are increasing faster than non-Indigenous prison populations;
- in general, the Aboriginal and Torres Strait Islander population is much younger than the non-Indigenous population;
- Indigenous prisoners have experienced lower reductions, in both sentence length and expected time to serve, than non-Indigenous prisoners;
- Nationally, the number of Indigenous prisoners has increased by 107 per cent, from 1,809 in 1988 to 3,750 in 1998.

(Carcach, Grant and Conroy, 1998: 2 and 6).

3.11 The following table highlighting jurisdictional comparisons of Indigenous imprisonment is provided by the Institute of Criminology (Carcach, Grant and Conroy, 1999:2).

Australia, States and Territories 1988-98
Number of Indigenous Prisoners Aged 18 Years and Over

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUST
1988	384	65	431	528	114	10	276	1	1809
1989	415	86	412	558	102	9	243	0	1825
1990	579	88	367	585	124	12	286	0	2041
1991	662	91	346	577	150	10	328	2	2166
1992	648	106	370	574	187	13	322	3	2223
1993	725	105	427	637	185	14	319	4	2416
1994	827	141	554	688	231	26	331	2	2800
1995	888	128	638	714	258	14	342	3	2985
1996	952	110	809	751	259	28	360	4	3273
1997	1003	132	942	750	269	34	439	11	3580
1998	1090	126	1033	758	243	28	461	11	3750

**Australia, States and Territories
Indigenous Imprisonment Rates per 100,000 Population Aged 18 Years and Over**

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUST
1988	987.4	677.4	1130.9	2324.0	1249.5	220.5	1212.9	125.2	1233.9
1989	1032.0	869.6	1046.0	2387.2	1085.9	190.1	1031.9	0.0	1204.7
1990	1396.2	865.3	903.2	2439.0	1287.2	243.2	1182.6	0.0	1308.4
1991	1208.6	767.9	672.0	2027.5	1334.6	135.9	1244.0	144.2	1122.1
1992	1143.8	871.1	692.4	1955.4	1618.9	170.2	1175.5	205.5	1112.9
1993	1253.2	846.9	780.9	2125.9	1567.9	178.9	1135.9	263.3	1183.0
1994	1399.8	1115.9	990.2	2249.0	1916.1	324.0	1149.7	126.4	1340.8
1995	1473.3	994.6	1115.4	2287.8	2095.8	170.2	1159.9	181.9	1399.2
1996	1568.4	845.2	1397.1	2383.9	2072.5	336.0	1205.3	232.4	1517.7
1997	1541.5	977.1	1535.9	2288.5	2072.4	369.5	1424.8	576.2	1572.2
1998	1560.2	897.7	1590.2	2221.0	1796.9	274.9	1452.2	515.9	1557.9

3.12 The Australian Institute of Criminology also provided a submission to the Inquiry which provides information regarding Indigenous women prisoners. Among the data are the following facts:

- nationally, the number of Indigenous women prisoners has increased by 148% from 105 in 1988 to 261 in 1998;
- the rate of Indigenous women's imprisonment has increased from 162.8 per 100,000 population in 1988 to 223 per 100,000 population in 1998 – an increase of 36.9%.

3.13 On 4 June 2000, there were 109 women in full-time custody identifying as Aboriginal/Torres Strait Islander inmates. Indigenous women make up between 25-31 per cent of the female prisoner population yet comprise only 2 per cent of the general population.

3.14 Carach, Grant and Conroy (1999) for the Australian Institute of Criminology found that Indigenous prison populations are increasing faster than non-Indigenous prison populations. However, Vinson's research (1998) has shown that for New South Wales, there did not appear to be any difference in the length of custodial sentences of Indigenous

or non-Indigenous offenders once the variables of age and seriousness of offences were taken into account. Professor Vinson argued:

the present shameful rate of imprisonment of Indigenous people is not due to discriminatory sentencing practices but rather, is linked to marked social disadvantage which affects non-Indigenous people in a similar way.

- 3.15 Evidence from representatives of the Aboriginal Justice Advisory Council confirmed the increase in Aboriginal people in New South Wales prisons since 1995. In raw numbers Ms Winsome Matthews, Chairperson of the Aboriginal Justice Advisory Council advised that, as at 14 February 2000, there had been an increase of 363 Aboriginal people since 1995. According to Matthews,

the proportion of the total New South Wales prison population which is Aboriginal has also increased. Currently, Aboriginal people constitute 16 per cent of all prisoners in New South Wales. Aboriginal men constitute 18 per cent of all male prisoners, and Aboriginal women constitute 31 per cent of all female prisoners. Since 1995, the proportion of Aboriginal men has increased by 4 per cent, the increase in women being 14 per cent (Evidence, Winsome Matthews, 14 February 2000).

- 3.16 The Committee received a number of submissions from Indigenous organisations which confirmed the disturbing rise in Aboriginal inmates, particularly women. Evidence was also provided by Aboriginal people and groups advocating on behalf of Aboriginal people, that detailed the increase in the Indigenous prison population. Factors contributing to this increase are discussed in Chapter Four.

Inmates from non-English Speaking Backgrounds

- 3.17 The Department of Corrective Services was unable to provide an accurate figure on the number of women in custody from a non-English speaking background. However, the NSW Inmate Census 1999, reports that 60 women inmates were born in a country that is not identified as a primary English speaking country. To date, little evidence has been received regarding the experiences of women prisoners from a non-English speaking background and whether the numbers among this group have increased. The Committee recognises that there are significant issues surrounding inmates of a non-English speaking background and proposes to investigate them in greater detail in Part II of the report.

Inmates with an Intellectual Disability and/or a Mental Illness

- 3.18 Inmates with an intellectual disability and/or a mental illness, make up a significant proportion of the prison population, including the women's prison population. Intellectual disability is defined as,

substantial limitations in present functioning, characterised by significantly sub-average intellectual functioning, (i.e someone with an IQ of less than 70) existing concurrently with related limitations in two or more adaptive skill areas such as communication, self-care, home living, social skills, community use, self-direction, health and safety, functional literacy, leisure, and work (American Association on

Mental Retardation, 1992, Mental Retardation, Definition, Classification and systems of Support, 9th edition, Washington: AAMR, cited in Hayes tabled evidence 27 March 2000).

3.19 In its submission to the Inquiry, the Department of Corrective Services reported that in the overall prison population:

- 13 per cent have an intellectual disability;
- 21 per cent have attempted suicide; and 40 per cent meet the diagnosis of Personality Disorder.

3.20 In the female population,

- 39 per cent previously attempted suicide;
- 23 per cent are on psychiatric medication; and
- 73 per cent have been admitted to psychiatric or mental health units.

3.21 Further, evidence provided by Ms Colleen Subir, Acting Senior Policy and Project Officer, Women's Services Unit, Department of Corrective Services, indicated that as at 25 February 2000, 10 female inmates had been identified as having an intellectual disability.

3.22 In her evidence to the Committee Associate Professor Susan Hayes, head of the Department of Behavioural Sciences in Medicine, at the University of Sydney, contradicted the figures provided by the Department of Corrective Services in relation to intellectual disability and instead stated,

looking only at adult prisoners, a group which has been studied in 1988, 1998, and again in 1999, the prevalence has risen from 12.5% to 17.5%, and then within a year or so, to 19.3% (Hayes tabled evidence 27 March 2000).

3.23 In relation to women, specifically, Associate Professor Hayes explained,

the proportion of women (with an intellectual disability) does not seem to have risen quite as much as the men. They have remained relatively stable at about 12 per cent for both adults or juveniles or intelligence tests. Their adaptive behaviour test performance is worse. About 19 per cent of them have deficits in adaptive behaviour... Adaptive behaviour is the second prong of the definition which includes communication skills, ability to have friendships, appropriate recreational and social activities, to work, to manage finances and to run a house (Hayes evidence, 27 March 2000).

3.24 In his evidence to General Purpose Standing Committee No.5, the Commissioner for Corrective Services, Dr Leo Keliher disputed Associate Professor Hayes results. He stated,

Using different criteria, and what are now very efficient screening processes, the Department itself, using a rather more stringent test, I guess, of disability, has drawn the conclusion that there is more likely 2% or 3% of inmates within the system who should so be classified (Keliher evidence to General Purpose Standing Committee no.5, 6 June 2000).

- 3.25 The Committee acknowledges the wide discrepancy in the calculations of the Hayes and those of the Department of Corrective Services. It also recognises that this may be due to definitional difficulties. The Committee believes that this is a matter for further investigation and will re-examine the issues in Part II of the Report.
- 3.26 The Committee heard that more women than male prisoners have a dual diagnosis, that is, they have an intellectual disability and an additional mental health problem such as a psychiatric diagnosis.
- 3.27 Associate Professor Hayes provided the Committee with the following data in relation to the proportion of Aboriginal and Torres Strait Islander people in prison with an intellectual disability:
- 26 per cent have a standard score of less than 70 of intelligent tests;
 - 40 per cent are less than 70 on tests of adaptive behaviour;
 - for Indigenous women, 29 per cent were below 70 on both an intelligence test, an a test of adaptive behaviour (Hayes, tabled evidence 27 March 2000).
- 3.28 There is no conclusive data comparing the proportion of accused people with an intellectual disability who are remanded in custody with accused non-disabled people. However Hayes reports,
- in my clinical experience...I often encounter an accused with ID who is remanded in custody while the co-accused is not. Furthermore, overseas research indicates that accused persons with ID are remanded in custody more often than non-disabled people (Hayes, tabled evidence, 27 March 2000).
- 3.29 Information provided to the Committee suggests that the numbers of people who have experienced brain injury and subsequently become involved in the criminal justice system is increasing. In its submission the Brain Injury Association advised that Simpson and Strettles (1993) research reveals that
- there was an increase in the number of charges incurred for petty offences committed by people who have had a traumatic brain injury...(Submission 95, p. 3).
- That submission also reports that in the opinion of the Public Guardian, people with a brain injury, particularly those with alcohol-related brain injury are marginalised within the community and are at higher risk of being incarcerated even on minor charges (Submission 95, p.3).

The Remand Population – Unsentenced Receptions

- 3.30 Significant rises in the number of remanded inmates or unsentenced receptions have had a major effect on the overall increase in the female prison population.
- 3.31 Marilyn Chilvers of the NSW Bureau of Crime Statistics and Research told the Committee that for the period July 1994 to June 1999,

The average monthly remand population for females almost doubled...It has gone from 40 in 1994-95 up to 87 in 1998-99 (Chilvers evidence 14 February 2000).

3.32 Commenting on the increase in remanded women the submission from the Department of Corrective Services observes,

the number of unsentenced female receptions grew somewhat between 1996-97 and 1997-98, but that number jumped substantially between 1997-98 and 1998-99, especially the number of female inmates spending fewer than 30 days on remand. The conclusion which can be reached ...is that the length of time spent by inmates on remand has been a significant driving force behind the rise in the (female) prison population (Submission 55, pp13-14).

3.33 As at 12 March 2000, there were 119 women on remand, 25 of whom were Aboriginal.

3.34 Remandees can include those awaiting trial or sentence and those awaiting appeal. Mulawa is the main reception gaol for women in New South Wales. Emu Plains, Grafton and Broken Hill Correctional Centres may take some unsentenced female prisoners.

3.35 According to the Australian Institute of Criminology there is a greater risk of custodial deaths among remandees compared with sentenced prisoners, with the proportion of deaths among remand prisoners being almost three times what could be expected from their proportion in the general prison population (Submission 59, p.9).

3.36 This is reinforced by information from the Department of Corrective Services which advises that a typical inmate on remand is,

usually young, a poly drug user in detox, at risk of suicide or self harm and has either committed an offence for which bail has been denied or cannot raise bail or cannot get any one to sign for signature bail (Submission 55, p.37).

3.37 Seventy-seven per cent of unsentenced female receptions stay on remand less than one month. The substantial rise in this part of the population can be seen from the following table:

Unsentenced female receptions shown by time spent on remand

Time on Remand	1996-97	1997-98	1998-99
30 or fewer days	553	618	829
More than 30 days	161	170	251
Total	714	788	1080

(Source: NSW Department of Corrective Services, Research and Statistics Unit)

- 3.38 Moreover, in her report on Mulawa, the Ombudsman determined that just under half of the remanded population are likely to be in custody for the first time (NSW Ombudsman, Mulawa Report, 1997:37).
- 3.39 According to the Department of Corrective Services, a high number of inmates on remand places intense demand on the Departmental resources and staff. The submission states,
- a high number of remandees means a high number of inmate movements, both to and from court and between correctional centres. It also means that there are more inmates on protection and more inmates who are unable to associate with other nominated inmates in the correctional system. The higher the number of these inmates, the greater the challenges in terms of placing inmates in suitable accommodation. Remandees are, generally speaking, much more unsettled than convicted inmates who largely accept their situation and try to adapt to prison life (Submission 55, p. 11).
- 3.40 In acknowledging the vulnerable status of remand prisoners the Department of Corrective Services has established an extensive reception screening and induction program. The aims of the program are to:
- ensure an inmate's health, safety and welfare by gathering relevant information and assessing potential risk upon entry into a correctional environment;
 - reduce anxiety and agitation through the provision of appropriate support;
 - provide information about the correctional system to assist the inmate to adjust to imprisonment;
 - develop a profile of an inmate's social, educational, alcohol and other drug use, physical and mental health background and status to facilitate initial case planning.
- 3.41 The Department advises that the,
- Reception screening and Induction process starts at the Court where officers collect basic demographic data and flag inmates who may be unstable. When inmates are then received at a correctional centre, they are screened by health and welfare staff who put into place initial stabilisation strategies if required. If inmates are suicidal or threaten self harm, the Risk Assessment Intervention Team (RAITO), consisting of Inmate Development Staff and Corrections Health staff apply specific crisis intervention strategies. Approximately 36-48 hours after the inmate has been received a more detailed screening is conducted and referrals made to appropriate staff such as psychology or ADO. The results of these referrals contribute to the case planning process (Submission 55, p, 36).
- 3.42 Remand prisoners are classified by the Department of Corrective Services as maximum security prisoners. The Positive Justice Centre argues that,
- this results in higher levels of security, restrictions on personal property, visits entitlements and other privileges for people who have yet to be found guilty of any offence (Submission 97, p.11).

- 3.43 Further, the Committee understands that remanded inmates have limited access to the programs offered at the correctional centres.
- 3.44 The Committee heard that some of the defendants comprising the remand population may have been actually granted bail but are remanded because they have been unable to meet the conditions set by the court. Such conditions are usually financial or related to accommodation. This was borne out by a number of submissions and in evidence to the Committee. In her evidence Ms Anne Webb, Coordinator of Guthrie House, stated,
- I have personally encountered women in prison who...were granted bail but they cannot raise the bail money. In my view that is to do with poverty, not to do with criminality (Webb evidence 23 February 2000).
- 3.45 This issue is particularly pertinent for Aboriginal defendants. The submission from the Sydney Regional Aboriginal Corporation Legal Service states that,
- there are practical impediments to our clients obtaining bail such as the need to obtain appropriate accommodation. Further, despite being granted bail Indigenous people can remain in gaol because of their inability to satisfy bail conditions...Aboriginal people are the most financially disadvantaged group in Australia and it is a source of ongoing problems for our client group that they do not have the funds to meet bail sureties or family members with sufficient assets (Submission 78, p. 3).
- 3.46 Similarly, Ms Sarah Hopkins, principal solicitor with the Aboriginal Legal Service stated in evidence,
- increasingly, with Aboriginal clients financial conditions (attached to bail) cannot be met... Even though the Local Court magistrate has been advised that (there is no money available and) even though (the magistrate is) prepared to grant bail, they will impose a financial condition, which means that there are a number of Indigenous people in the prison population who have been granted bail but they cannot meet their bail. They cannot get their mother to find \$500 or \$100, or sometimes \$50. Any money to an Aboriginal person, our client base, can be a great deal of money and can be impossible to meet (Hopkins evidence 23 February 2000).
- 3.47 In her testimony, Assistant Commissioner, Catriona McComish, maintained that whilst there are a large number of women in prison who are on remand,
- in the vast majority of cases they are unsentenced, bail refused. A very small number actually are unsentenced with bail not met and are in prison. If you look at that table, it shows a total of nine out of 281 women at Mulawa, or approximately 470 in the system who have been unable to meet their bail conditions. The other point to make about that is that, of that nine, most stay in prison less than three days. Therefore, the department certainly does not consider it accurate to state that there are large numbers of women who are put into prison because they are unable to meet bail conditions (McComish evidence, 28 March 2000).
- 3.48 At that time, she reported that there were nine women inmates on remand because of an inability to meet bail conditions. Whilst that number might be relatively small, the

Committee nevertheless considers it to be unacceptable. This issue will be addressed later in the report.

The Sentenced Population

3.49 The increase in the number of women sent to prison has occurred in both the Local Courts and the Higher Courts. Submissions to the inquiry from groups working in criminal justice areas have all commented with concern on the recent increase in imprisonment sentences for their clients. A number of these submissions further noted that clients were serving longer periods in custody.

3.50 Drawing from the official data, Marilyn Chilvers, of the NSW Bureau of Crime Statistics and Research detailed the increase among sentenced women in her evidence,

- For women in the **Local Courts** there was a substantial increase in the number of women convicted from 13,077 in 1994 up to 16, 145 in 1998. That is an increase of 28 per cent.
- The number of women receiving a prison sentence also rose from 451 in 1994 to 630 in 1998, and that is an increase of 40 per cent.
- In the **higher courts** the number of women convicted actually dropped, and that is because there has been a decrease in the number of finalisations overall in the District Court over that time but there has been an increase in the number of women sent to prison – from 87 in 1994 to 117 in 1998, an increase of 34 per cent.

The proportion of women receiving a prison sentence has almost doubled, from 25 per cent of convicted women in 1994 up to 48 per cent in 1998 (Chilvers evidence 14 February 2000).

3.51 The following tables identify the conviction and sentencing trends in the Local and Higher Courts. They are reproduced from Fitzgerald, J, “Women in Prison: The Criminal Court Perspective”, *Crime and Justice Statistics*, NSW Bureau of Crime Statistics and Research, 1999.

Trends in female convictions and sentences in the NSW Local Courts: 1994 – 1998

	1994	1995	1996	1997	1998
Number of women convicted	13077	13824	15013	14849	16145
Number of women imprisoned	451	509	539	537	630
Percentage of women imprisoned (%)	3.4	3.7	3.6	3.6	3.9
Average sentence length (mths)	3.7	3.6	3.8	3.8	3.9

Trends in female convictions and sentences in NSW Higher Courts, 1994 – 1998

	1994	1995	1996	1997	1998
Number of women convicted	355	274	235	209	243
Number of women imprisoned	87	75	86	76	117
Percentage of women imprisoned (%)	24.5	27.4	36.6	36.4	48.1
Average sentence length (mths)	25.9	19.4	18.5	25.1	19.8

- 3.52 In his evidence to the Committee, Mr Ivan Potas of the Judicial Commission explained that 54.6 per cent of women who are sentenced to prison are first offenders compared with 35.7 per cent of males (Potas evidence, 14 February 2000).
- 3.53 Evidence given to the Committee was that most of the women who are in gaol are incarcerated for non-violent offences and serve relatively short sentences of less than six months (see also *Mulawa Report*, NSW Ombudsman, 1997). They have experienced abuse and violence, are usually drug addicted (a factor which frequently played a part in their offending behaviour), have dependent children and are generally socially and economically disadvantaged. About 20 per cent have an intellectual disability.
- 3.54 Further data provided by the Department of Corrective Services reveals that 25 per cent are Aboriginal or Torres Strait Islander; 39 per cent previously attempted suicide; 23 per cent are on psychiatric medication and 73 per cent have been admitted to psychiatric or mental health units. The submission reports that,
- women have significantly higher levels of illicit drug use, Hepatitis C, depression and sexual abuse than men (Submission 55, p. 36).
- Highlighting these issues in its submission for example, the Positive Justice Centre, argues that there has been an ongoing failure of agents of the criminal justice system to understand the circumstances in which a woman offends and is imprisoned, including her life experiences and the social reality behind her actions. Not only are these factors overlooked when a woman is imprisoned, but the fact of imprisonment can actually exacerbate them (Sherrin: 1996, p.6).
- 3.55 Similarly, the submission from CRC Justice Support states,
- women make up only 6% of the inmate population in NSW, and as such their gender specific needs are often at risk of being overlooked...recidivism is high, prisons do not deter, women are not rehabilitated from drug addictions, families are irreparably damaged and the costs to the community, the women and their families are enormous (Submission 56, p.9,10).

The Characteristics of Female Inmates

- 3.56 The demographic information of female inmates overwhelmingly reveals backgrounds of serious economic and social disadvantage, mental health problems, violence and abuse and chronic drug and/or alcohol abuse. Many female inmates were also the primary carer's of children prior to their incarceration. The submission from the Department of Corrective Services further reveals that women prisoners,
- have significantly higher levels of illicit drug use, Hepatitis C, depression and sexual abuse than men (Submission 55, p. 36).
- 3.57 As noted above, 25 to 31 per cent of female inmates are Indigenous at any one time.
- 3.58 Many inmates have also had contact with the Department of Community Services, with a high proportion of those being state wards. Numerous reports have demonstrated that

state wards have a very high chance of being involved in the juvenile and criminal justice systems. The background of many wards reveals experiences of considerable trauma resulting from family loss, perceived or actual abandonment, and physical, sexual, emotional and systems abuse. These traumas, together with their marginalised status, have left many wards vulnerable to anti-social and destructive behaviour.

3.59 The issues of poverty and disadvantage were raised frequently during the Committee's hearings and in the submissions.

3.60 The submission from CRC Justice Support states,

we know that the majority of people in prison in NSW (and in fact around the world) are poor. We know that most have been in some sense, economically and/or socially marginalised...A number of authors have suggested that the crimes women commit are frequently the result of extreme poverty and/or extreme drug dependence and the prison system fails to deal appropriately with these issues and other such 'causes' of female crime (Submission 56, p. 5).

3.61 Further, Committee witness Anne Webb, coordinator of Guthrie House told the Committee in evidence,

I have personally encountered women in prison who are there because of poverty (Anne Webb evidence, 23 February 2000).

3.62 Recent research undertaken by Professor Tony Vinson, former head of the NSW Department of Corrective Services and witness to the Committee, has found that just three Sydney suburbs account for 30 per cent of the Sydney-based women prisoners. These suburbs are also disadvantaged. According to Professor Vinson,

study after study shows that the suburbs in question have long-term unemployment, lack of work skills, lack of education, family stress and similar problems (Vinson, Sydney Morning Herald, 7 July 1999).

3.63 The Committee heard that many female inmates experience homelessness or uncertain accommodation arrangements prior to their incarceration and when they are released from prison. The submission from the Women and Girls Emergency Centre stated,

women who have experienced incarceration make up a large proportion of our clients who are chronically homeless...Women who are homeless are less likely to be able to meet the criteria of alternative sentencing options. This means they may be unfairly sentenced to incarceration in the absence of other sentencing options, which would be available to women in housing (Submission 66, p.2).

3.64 Many submissions and accompanying documentation identified the high level of violence and childhood abuse experienced by women prisoners. In a self-select survey undertaken by the Department of Corrective Services for its *Census of Women in Custody in NSW, 1998*, the prevalence of violence and abuse among inmates was confirmed. The following information is taken from the Interim Results of that survey. Of a sample group of 203 female inmates:

- 42.4% experienced physical violence as a child (3 inmates or 1.5% refused to answer);
- 33.5% experienced sexual violence as a child (5 inmates or 2.5% refused to answer);
- 51.7% experienced emotional violence as a child (4 inmates or 2.0% refused to answer);
- 69.5% experienced physical violence as an adult (3 inmates or 1.5% refused to answer);
- 28.6% experienced sexual violence as an adult (3 inmates or 1.5% refused to answer);
- 70.0% experienced emotional violence as an adult (2 inmates or 1.0% refused to answer);
- 63.1% considered that the experience of abuse had an impact on them now (6 inmates or 3.0% were unsure, 3 or 1.5% refused to answer);
- 51.7% perceived a link between abuse and being in gaol (4 inmates or 2.0% were unsure, 2 or 1.0% refused to answer) (Hastings 1999:12-17).

3.65 Other research has put the percentage of women inmates who are survivors of sexual abuse or incest at 85 per cent (Positive Justice Centre Submission 97).

3.66 Evidence also shows that a significant proportion of women inmates have had some prior contact with the Department of Community Services, often as wards. Thirty percent of women have reported to the Department of Corrective Services that they were removed from their families as children. The Committee notes that the Standing Committee on Law and Justice is currently examining the experiences of wards in Part II of its inquiry, *Crime Prevention Through Social Support*. The report of that inquiry is due to be tabled later this year and this Committee anticipates that there will be constructive recommendations about how to prevent wards entering the juvenile and criminal justice systems and ultimately the prison system.

3.67 It is argued that these issues “are often overlooked and frequently intensified when women are incarcerated”. The submission from CRC Justice Support observes that,

it has been suggested by some authors that whilst it is acknowledged that women in prison have committed crime, it needs also to be acknowledged that these women are themselves victims of crime often in the form of male violence (Submission 56, p.6).

3.68 Kevin, for the Department of Corrective Services found that of a sample of 130 women in prison with drug problems,

48% reported that they had been either physically or sexually abused in the past. It is likely that due to the personal and distressing nature of this experience this figure is an under-representation of the prevalence of prior abuse against the women (Kevin, 1995:13).

- 3.69 Although the periods are increasing, women tend to serve relatively short prison sentences. Some commentators question whether those women serving short sentences should in fact be in prison at all. Rather, they should serve their sentence in the community (discussed further below).
- 3.70 Little research has been documented regarding the experiences of Aboriginal women specifically and the criminal justice and penal systems. However, the submission from the Aboriginal Justice Advisory Council (AJAC) reports that,
- Aboriginal women experience at various levels of interaction with the criminal justice system, racism compounded by gender discrimination. Aboriginal women are much more likely to come into contact with the criminal justice system at a much younger age (than non-Aboriginal women) making up at least 70% of the female juvenile justice population. A significant number of women in custody have experienced sexual, domestic, family, systemic, emotional and social abuse (Submission 120 p. 5).
- 3.71 AJAC further submits that the experiences of dispossession, colonisation and assimilation has been, whilst impacting on Aboriginal people systemically, different for Aboriginal women and men. The submission states,
- Aboriginal women have experienced their children being forcibly removed from them, have lost many traditional roles and customs, have been raped and physically tortured, have been and died in custody, all under the apparent sanction of the law. The removal of Aboriginal women into custody and the criminal justice system at such disproportionate young age, has serious consequences for the future. Aboriginal women, as the bearers and educators of children, are being removed from their roles as mothers, which has major repercussions for both the survival of the race of Aboriginal people, and also a significant number of Aboriginal people growing up without (or at least periodically) their natural mothers (Submission 120, p. 5).
- 3.72 In its first report for the inquiry, *Crime Prevention Through Social Support*, the Standing Committee on Law and Justice examined the issue of the demographic characteristics of offenders including women, in detail. The Committee identified a range of risk factors that can lead to a person becoming involved in the criminal justices system. Among these were family risk factors, socio-economic risk factors and education issues. Drawing from a range of research studies and statistical analyses, the Committee found that the development of resilience and coping mechanisms (protective factors) are the most effective means of preventing criminal activity.
- 3.73 The Committee made a range of recommendations in relation to these and other risk factors that were aimed at preventing offending behaviour through early intervention. Among these were the endorsement and continued resourcing of the State Government's Families First project which is anticipated to have the effect of both supporting vulnerable families and reducing crime. Many of the recommendations of the Law and Justice Committee's first crime prevention report are relevant to the issues which this Committee is examining. The Committee believes that once these recommendations are implemented, there should eventually be a reduction in the numbers of people, including women, being imprisoned. At this point in our inquiry, the Committee recommends that the

Recommendations of the Standing Committee on Law and Justice, first report into *Crime Prevention Through Social Support*, be implemented as soon as possible.

RECOMMENDATION

- 3.74 That the NSW Government continue to develop, support and evaluate programs and services that have as their focus crime prevention through early intervention. As one means of achieving this the Premier should ensure that the recommendations of the Standing Committee on Law and Justice's first report into *Crime Prevention Through Social Support* (1999), are implemented as soon as possible.

Data Collection

- 3.75 The Committee is concerned about the lack of data available to determine the success or otherwise of the range of sentencing options delivered by the Department of Corrective Services. Although we know that the majority of women in gaol have been in the custody or under the supervision of the Department on previous occasions, there is little data to indicate why these women re-offended and the effectiveness of the different sentencing options in reducing offending behaviour. The Committee did not receive a great deal of evidence on the issue of data collection and recidivism. It therefore proposes to investigate the issue of data collection further in Part II of the Inquiry including privacy issues, the access to different databases in the collection of statistics, the ability to compare treatment modalities and protocols and the possibility of undertaking cohort studies by independent agencies.

Chapter 4 Factors Contributing to the Increase in the Women's Prisoner Population

Introduction

- 4.1 The size of the prison population is a result of the rate of incarceration and the length of sentence. Throughout the Inquiry the Committee was presented with a range of factors said to have contributed to the rise in the female prisoner population. Patterns of offending behaviour, policing practices, legislative changes, tougher sentences, "guideline judgements", increased drug abuse, particularly heroin, increasing poverty and disadvantage and extent of the availability and accessibility of services for the intellectually disabled and the mentally ill were all put forth as possible reasons for the increase.
- 4.2 The Committee agrees with the view of the Senior Public Defender, Mr John Nicholson, SC who argues that there is no single answer as to why there has been an increase in the number of women being incarcerated — it is an interaction of a matrix of factors. Nevertheless, certain factors have had a greater influence in the dramatic rise than others.
- 4.3 The following discussion proposes to deal with factors raised in the submissions and evidence and will identify those factors considered to have had the greatest impact. In a number of instances, an analysis of the rise in the general prison population will be made where certain factors have impacted on both the male and female prisoner population.

Patterns of Offending

- 4.4 A number of submissions, as well as oral testimony, indicated that a major reason for the rise in the female prisoner population was the changing pattern of offending behaviour by women over the last five years or so. Traditionally, women's offences have essentially been non-violent. Some evidence presented to the Committee argues that this is no longer the case with more women appearing before the courts and being imprisoned for violent offences, particularly robbery. However, whilst acknowledging that increase, some witnesses dispute its extent and whether it is in fact enough to be considered a major contributing factor to the dramatic rise in the female prisoner population.
- 4.5 In her evidence, Ms Marilyn Chilvers from the NSW Bureau of Crime Statistics and Research stated in relation to the Local Court,
- women are more often appearing in the Local Courts for offences that are likely to incur a prison penalty...(such as) offences against the person, and there was a 52 per cent increase in the number of women convicted of those offences between 1994 and 1998, and for "against justice" procedures (which) was up by 61 per cent in that time (Chilvers evidence 14 February 2000).
- 4.6 In relation to women appearing in the higher courts, Chilvers told the Committee,

(between 1994 and 1998 there has been) an increase in the number of women appearing for ...robbery. That is an offence with a very high imprisonment rate, and there are more women coming through for robbery...the numbers look small but percentage-wise it is quite a big increase, from 25 women in 1994 to 45 in 1998 (Chilvers evidence 14 February 2000).

- 4.7 In her study for the NSW Bureau of Crime Statistics and Research, Fitzgerald confirms these findings. She found that there has been a substantial increase in the numbers of women appearing for offences which are likely to attract prison penalties. She reports that in relation to the Local Courts,

specifically, increases have been seen in the number of females convicted of offences **against the person** (up 51.4% from 1,192 in 1994, to 1,805 in 1998) and **against justice procedures** (up 61.3% from 724 in 1994, to 1,168 in 1998) (emphasis hers) (Fitzgerald, 1999:1).

- 4.8 In relation to the higher courts, Fitzgerald found,

This increase (in the number of women being imprisoned) can be partly accounted for by an increase in convictions for robbery. The number of women found guilty of this offence rose from 25 in 1994, to 45 in 1998 (Fitzgerald, 1999:2).

- 4.9 The increase in convictions for robbery has been attributed to the increased use of heroin, particularly among women. To quote further from Fitzgerald,

Recent household survey results show a substantial rise in the number of women reporting recent heroin use. In 1995, 0.2 per cent of Australian women reported using heroin in the past 12 months. By 1998, the proportion of the female population reporting recent heroin use had risen to 0.5 per cent. This equates to 39,100 recent female users in 1998.

- 4.10 The submission from the Australian Institute of Criminology reports that there has been an increased use of drugs among offending women.

- 4.11 Alarming, heroin use among Aboriginal women in particular, appears to have increased. The submission from Central-Southern Aboriginal Corporation explains that,

a very large proportion of Aboriginal women being sentenced to gaol in our area are heroin addicts (Submission 36).

- 4.12 Evidence presented to the Committee from the Senior Public Defender indicated a shift in the offences being committed by women. Basing his reasons on the increase in heroin use he explained:

In years past, women seriously abusing drugs, it would seem, used to gravitate to prostitution, theft, break, enter and steal, social security fraud and what is commonly called fencing of goods.

Public Defenders have noticed a trend for women seriously addicted to heroin and other hard drugs to consider bag snatching and even armed robbery. Given that there

is now better security at banks and/or financial institutions, these offences are likely to be committed in circumstances where there is a greater likelihood of capture (Nicholson Evidence, 27 March 2000).

- 4.13 The Committee recognises that the issue of drug use generally is particularly complex. That the law regards drug users as criminals and not as people with particular health needs was raised in a number of submissions as a reason for the considerable amount of drug-related crime. Indeed, the Drug Summit (1999), drawing on the connection between crime and drug use, recommended that self-administration of drugs be removed from the criminal statutes. Self-administration is not an offence in Queensland.
- 4.14 Some of the members of the Committee supported the decriminalisation of self-administration of drugs particularly heroin, and the need for a heroin prescription trial given the strong relationship between such drug use and addiction and, offending behaviour, especially among women.
- 4.15 The Committee, as a whole, notes the need for the prevention of drug abuse through targeted strategies such as those recommended by the Drug Summit.

RECOMMENDATION

- 4.16 That, given the connection between drug addiction and crime, the Government continue to promote the prevention of drug abuse through targeted strategies such as those recommended by the Drug Summit.

- 4.17 Although most witnesses acknowledged that there has been an increase in certain violent offences being committed by women there was some conflicting evidence regarding the extent of that increase.
- 4.18 In his evidence to the Committee, Professor Tony Vinson argued,

It was said that the increase in the women's prison population was due to the increase in violent crime, amongst other things.

I very carefully scrutinised the data, and what I found was quite extraordinary: that in some instances it seemed the generalisation was being based on a selected view of what constitutes violence, so much so that it left out murder, manslaughter and robbery.

Now, when I recalculated the statistics, including those things, I found the following. Compare 1995 to 1999 in the department's way - it actually says "their way" - and the increase in the percentage of violent offenders increases a dramatic 1.7 times. Take account of the wider range of violent offences and the increase is of the order of 1.2 times, which is much more moderate, so I am inclined to go along with the view that there is more, but it is nowhere near as much as might be being projected in other forums on discussion of this matter.

4.19 Moreover, it was not made clear in the evidence whether the women sentenced for committing violent offences were the principal offenders or accessories, which carries the same charge and penalty as the principal. In his evidence to the Committee, Ivan Potas stated that women,

often commit offences as accessories rather than as principals in serious cases (Potas evidence, 14 February 2000).

4.20 Further, in their study, *Gender and Crime: Toward a Gendered Theory of Female Offending*, Steffensmeier and Allen argue that,

drug dependency amplifies income-generating crimes of both sexes, but more so for women because they face greater constraints against crime and need a greater motivational push to deviate... Female involvement in burglary and robbery, in particular, typically occurs after addiction and is likely to be abandoned when drug use ceases... Drug use is also more likely to initiate females into the underworld and criminal subcultures and to connect them to drug-dependent males who use them as crime accomplices or exploit them as “old ladies” to support their addiction (Steffensmeier and Allan, 1996:471).

4.21 The evidence from Ms Winsome Matthews, Chairperson of the Aboriginal Justice Advisory Council, suggests that Indigenous women offenders are often accomplices to a male partner, rather than being the principal offender. She stated,

some early studies that we have done...highlight that women are often not the primary offenders, that they are co-offenders and that often the primary offender is a male...the offence may be assault occasioning actual bodily harm which may involve one, two, three perpetrators and more often than not the female is playing a secondary role or is the secondary offender in those circumstances. That characterises Indigenous offending as well.

4.22 The issue of women as the secondary offenders in crimes needs to be further researched before categorical findings can be made that women are committing more violent offences.

RECOMMENDATION

4.23 That the Attorney General instruct the NSW Bureau of Crime Statistics and Research to undertake research into the patterns of offending of women, particularly in relation to violent offence charges. That research should investigate, among other things, the rate at which women are the principal or secondary offenders in crimes of violence.

Policing Practices

4.24 The Committee heard during the Inquiry that an increase in arrest rates generally, has contributed to the burgeoning female prison population. Evidence presented to the Committee revealed that in relation to the general offender population,

the total number of persons arrested each year by New South Wales Police has increased by 37 per cent...from 8,800 a month in 1994-95 to just over 12,000 a month in 1998-99 (Chilvers evidence 14 February 2000).

4.25 Explaining the reason for this increase Commander Christopher Evans of the New South Wales Police Service told the Committee in evidence,

(The Police Service) use targeted integrated and intelligence-based policing, which effectively means proactive policing. ... Local commanders tend to use as many proactive police as they can. They currently focus on three things: hot spots, that is, locations of crime where a crime has been committed at least three times in the past 12 months; repeat offenders, where a person has been arrested on three or more separate occasions in the past 12 months; and high risk victims, with again the same scenario where victims have been the victims of three different crimes over the last 12 months. The Police Service continues to have a pro-arrest policy for offences involving domestic violence... We have new policies such as the Crimes Legislation Amendment (Police and Public Safety) Act and the Police Powers (Vehicles) Act 1998. Whilst neither of those specifically account for greater increases of people in custody, they certainly allow more face-to-face meetings with individuals, particularly those who might be wanted for outstanding warrants. Most local area commands now have fingerprint gatherers, that is, police who are trained in gathering and photographing fingerprints at the scenes of crimes. Whilst it is only relatively new, there is plenty of evidence to suggest that we are having more success in clearing up property crimes, in particular, stolen motor vehicles and beak, enter and steal, by identifying fingerprints at the scene. The police in charge of those investigations are notified that certain offenders are wanted by virtue of those fingerprints. That increases the number of people that we are arresting. We have a much better capacity now to form strike forces looking at particular crimes or particular areas of crimes.

By establishing proper terms of reference for those strike forces they tend not to be going off at a tangent; they tend to be continually targeting the people they are looking for or targeting the crimes that they are investigating. We have a particular focus on executing outstanding first instance warrants. I think that, as of today, there are about 62,000 outstanding first instance warrants in New South Wales. Whilst I cannot tell you the number of people that equates to, I noticed this morning that the amount of warrants that have been executed this year and the amount of offenders equals about three warrants per person. So, using that analogy, about 20,000 people in New South Wales are wanted for outstanding warrants (Evans evidence, 28 March 2000).

4.26 Evidence was not provided to the Committee on arrest trends in relation to women specifically since 1994. Most of the evidence related to the general (male and female) defendant population. According to Commander Evans,

There are a variety of reasons why we would suggest that more people are in custody. As to why there are more women, I cannot tell you. Our Computerised Operational Policing System, or COPS, was developed some years ago as a crime reporting mechanism. It was not developed to give us information that we now find that we do need. However, recently we developed an enterprise data warehouse, or EDW, which we hope with more refinement in the not-to-distant future will be able to pull out those sort of statistics that you are looking for (Evans evidence, 28 March 2000).

4.27 The Committee received submissions and heard testimony which argued that in some communities these practices constituted over-policing and that police were not making full use of alternatives to arrest such as cautioning or Field Court Attendance Notices which dispense with the issues of charging and bail. It was submitted that this was particularly the case in Aboriginal communities who have a very high arrest and re-arrest rate. Ms Winsome Matthews, Chairperson of the Aboriginal Justice Advisory Council told the Committee that research completed for the Australian Criminology Research Council found that,

If Aborigines are arrested once, the likelihood of re-arrest is 92 per cent. If they go on to a second arrest, the likelihood of a third arrest is 94 per cent. You get to the point of virtual certainty. These people are living in the criminal justice system once the sequence that is set is under way (Matthews evidence, 14 February 2000).

4.28 Commander Evans told the Committee that in 1998-99 for the offence of offensive language 60 per cent of non-Aboriginal offenders were dealt with by way of Field Court Attendance Notices:

At the same time 50 per cent of Aboriginal offenders were dealt with. So, there is still a 10 per cent difference but I suspect four years ago there would have been a far greater difference (Evans evidence, 27 March 2000).

4.29 In its submission, the Sydney Regional Aboriginal Corporation (SRACLS) commented on what it perceived to be the over policing of Aboriginal communities. The submission stated,

The Royal Commission into Aboriginal Deaths in Custody (RCIADC) recommended a number of strategies to divert Aboriginal and Torres Strait Islanders away from prison. These strategies were to be achieved through changes in sentencing legislation and policing practices... Despite explicit instructions in the NSW Police Service Handbook 1999 directing that arrest should only be used as a last resort when dealing with offenders, SRACLS has numerous matters in which clients have been arrested for minor offences such as offensive language. This contact directly results in increased involvement with police and commonly the laying of additional charges including resist arrest and assault police. We have seen no improvement in police practices in this regard (Submission 78, p. 1).

4.30 Vinson's report, *Comparison of The Sentencing of Indigenous and Non-Indigenous Prisoners in New South Wales* observes that one of the factors contributing to the over-representation of Aboriginal people in the prison system is that they are more likely to be arrested than receive a summons than non-Aboriginal people. This is particularly the case for young people. He writes,

The practice of targeting offences and particular offenders, the nature of the charge laid, and arrest and bail practices are, as Cunneen (1993) has argued, all matters which "impact on the crucial question of why Aboriginal people appear in court in the first place"... If this were so, it could result in the accumulation of legal 'demerits' which sentencers might then feel obliged to take into account in determining the scale of penalties for adult offences (Vinson, 1998:9, 51).

- 4.31 The removal of the offence of offensive language from criminal legislation (*Summary Offences Act, 1988, s.4A*) was recommended to the Committee in a number of submissions. It was considered that the offence discriminates against Aboriginal people in particular, and invariably leads to the “trifecta” charge: offensive language resist arrest and assault police. The Committee considers that charges of, or even summonses for, the offence of offensive language can invariably result in a person having ongoing contact with the criminal justice system and inevitably lead to a prison sentence. The Aboriginal Justice Advisory Council stated in a recent study,

sometimes prosecutions for offensive language and conduct matters are dismissed as being trivial offences, however research now clearly shows that these offences increases the likelihood of rearrest and a long involvement with the criminal justice system. Research also shows that convictions for these offences has a direct impact on the employment prospects of Aboriginal people and a continued effect on the social and economic marginalisation of Aboriginal people. There is no real evidence that offensive language and conduct statutes in any way increase the general safety of the community, indeed all evidence shows that their greatest impact is to maintain Aboriginal disadvantage (AJAC, 1999:11).

- 4.32 The issue of public order offences and their impact on imprisonment rates is one which the Committee considers requires further investigation and plans on taking further evidence in Part II of the Inquiry.

- 4.33 In a supplementary submission to the Inquiry the Senior Public Defender claimed that the population of remand prisoners is particularly subject to the influence of a police tendency to overcharge. He stated,

[unlike summary charges] there has never been any time limit on charges dealt with by way of indictment. However, the practice of laying the most serious charge which may possibly apply to any given fact or situation has become normal police procedure. The common experience of Public Defenders is that by the time many serious charges make their way to the District of Supreme Courts, the prosecution is willing to deal with them by way of pleas to less serious charge at trial... The population of remand prisoners is particularly subject to the influence of this tendency to overcharge... [Further], even though an accused person on indictment usually will eventually be required to plead to an appropriate charge, the practice of overcharging leads to heightened rates of imprisonment. An offender who appears before the court already in custody is more likely to receive a full-time custodial sentence than a similar offender being dealt with on bail. An accused who has remained in the community up to the time of sentence will normally be able to place more favourable subjective features before the court (Supplementary Submission 3 p. 1).

- 4.34 Further information provided by the Senior Public Defender argues that one form of overcharging, particularly in the Aboriginal community, is what became known as the “trifecta” (discussed above). When imprisonment as a penalty for offensive language was removed from the statute books, a new offence of intimidation was introduced. The submission reports,

situations which in the past led to people being charged with offensive language, normally involving street confrontations with police, are now resulting in having

charges of intimidation laid. This produces a graphic example of the way overcharging can lead to an increase in the remand prison population. A person charged with offensive language must receive bail since they cannot be sentenced to the custodial term. A person charged with intimidation faces a potential custodial term and often will be refused bail by the police and subsequently by a magistrate. Quite often the bulk of any sentence these people receive, even if they are ultimately dealt with for intimidation, is served on remand waiting for the matter to be determined. Public Defenders working in country New South Wales have become aware of such a practice which has developed in relation to police charges against Aboriginal people. Intimidation charges are frequently replacing offensive language charges in Western New South Wales and the North Coast (Supplementary Submission 3 p. 3).

4.35 The Committee is particularly concerned about overcharging and is interested in receiving further evidence on the issue in Part II of the Inquiry.

4.36 Evidence was presented to the Committee that revealed that at times, Aboriginal women who contact the police in relation to a domestic violence incident have been arrested themselves for outstanding warrants. Rachael Martin, Principal Solicitor with Warringa Baya Aboriginal Women's Legal Resource Centre, informed the Committee in her evidence,

I have had clients where there has been a domestic violence incident, they have called the police, the police have attended the home or the incident, they have got her name, she is either known to the police or they have called her name in the station and she has become known because of a number of outstanding warrants and rather than dealing with the domestic violence incident in terms of dealing with him or the children, she has been taken down to the police station and has been arrested. That is quite a common thing (Martin evidence, 23 February 2000).

4.37 Further, Winsome Matthews, Chair of the Aboriginal Justice Advisory Council stated in evidence,

In many situations where women have called on police for assistance in relation to violence, it has been in many circumstances where the initial victim has been charged and taken away for outstanding warrants...(Matthews evidence, 14 February 2000).

4.38 In response to being asked for an explanation for the increase in convictions in the major assaults category of offences for Aboriginal people, Matthews further explained,

...whilst being an initial victim (women) have become a secondary perpetrator by which on the original assault the woman may have fought back, therefore, on police arriving they witness the assault and women are being charged for assault in that way. These are the stories we are hearing from the community (Matthews evidence, 14 February 2000).

4.39 The Legal Aid Commission submitted to the Committee that there appears to be a growing trend for warrants to be executed on prisoners due for release during the last few weeks of their sentence. The submission further reports that, in other instances, police, who are aware of outstanding matters, wait until a few weeks prior to a person's release to make "further enquiries" which often result in further charges. According to the Commission,

depending on the type of matter involved and the sentence the person has been serving, the prisoner may remain in custody "bail refused", or, in some cases, may receive a sentence extending their release date (Submission 74, p. 4).

Legislative and Policy Changes

- 4.40 Evidence presented to the Committee suggested that legislative and policy changes since 1989 have contributed substantially to the increased female prisoner population. Carcach and Grant for the Australian Institute of Criminology state in their report, *Australian Corrections: Main Demographic Characteristics of Prison Populations* that,
- changes in the size of prison populations are the result of factors such as legislative and policy changes favouring imprisonment for offences that could otherwise be sanctioned with alternative forms of punishment, and that affect the length of sentence and the time prisoners spend under incarceration (Carcach and Grant, 2000:1).
- 4.41 Among the legislative changes of the last 10 years or so are the introduction of the *Sentencing Act 1989* and the *Criminal Procedure Amendment (Indictable Offences) Act 1995*, and amendments to the *Bail Act* and the *Traffic Act*. As the legislative changes do not discriminate between male and female offenders and there has been no research to date on their effect on women only, the following discussion will include the general prison population. Where possible, reference to the female population will be made.
- 4.42 The *Sentencing Act 1989* has had a significant effect on the numbers of inmates sentenced to imprisonment. That Act sought to establish "truth in sentencing" through the abolition of remissions and the requirement that the court set a minimum term which must be served by an offender. For sentences six months or more, an additional term can be set which an offender may serve as parole. That additional term must not exceed one-third of the minimum term. All sentences under six months are for fixed terms and must be served in full.
- 4.43 Figures produced by the Research Unit of the Department of Corrective Services show that since the introduction of the *Sentencing Act*, the New South Wales prison population has increased from 4,358 in 1989 to 7,240 in 1999.
- 4.44 Previously, most prisoners received at least one-third remissions on sentence, although some repeat offenders only received one quarter remissions on sentence (Public Defenders submission 90, p. 4).
- 4.45 A number of submissions and witnesses to the Inquiry argued that the abolition of remissions under the *Sentencing Act 1989* has been one of the greatest contributors to the increase in the prison population. (Public Defenders, NSW Law Society, the Hon Kep Enderby evidence, 20 April 2000. The submission from Justice Action for instance, refers to the period following the introduction of the Sentencing Act, as resulting in:

the most spectacular rise in the NSW prison population (and) had the effect on the prison population predicted by all except the original framers of the bill (Submission 77, p. 7).

4.46 Further, the submission from the NSW Law Society argued that:

the abolition of remissions and the limitation of the court's flexibility in setting the non-parole and parole periods of a sentence, which has operated as an arbitrary and artificial constraint upon the judiciary, have been criticised as causing people to serve longer terms of imprisonment and being contributing factors to the rapid and massive increase in the New South Wales prison population (Submission 93, p. 2).

4.47 According to former head of the Serious Offenders Review Board, the Honourable Kep Enderby, this increase has occurred in spite of the fact that:

Mr Yabsley, (the Minister at the time of the introduction of the *Sentencing Act*) made a strong case when he said that it was not his intention to increase sentences or cause people to stay in gaol longer. He just wanted to introduce truth in sentencing. It was an honesty question. No-one could complain about that, and no-one does complain about it. However, the result was that within a couple of years people were spending one-third longer in gaol than they had served before (Enderby, evidence, 19 April 2000).

4.48 Despite the Minister saying in his second reading speech for the Act that, "By this bill the Government is not seeking to make sentences longer" (PD (LA) 10 May 1989 p 7907), the Courts have interpreted the Sentencing Act without reference to the earlier existence of remissions. In *R v Macleay* (1990) 19 NSWLR 112, the Court of Criminal Appeal held:

when fixing a minimum term under the *Sentencing Act 1989*, a sentencing judge should not, in effect, work out the non-parole period that would have been specified prior to the new legislation, deduct from that the remissions that would have been given against the non-parole period, and fix a minimum term approximately equivalent to the balance... It is not their primary function to do their best to replicate what they have done under the old system (at 112).

4.49 The issue of remissions will be raised later in the report.

4.50 The increase in the prison population has also been attributed in part to the effects of the *Criminal Procedure (Indictable Offences) Act 1995*. A report by Ellison and Poletti for the Judicial Commission of New South Wales explains the reasons behind the introduction of the *Criminal Procedure (Indictable Offences) Act 1995* as follows:

In response to a 1992 Bureau of Crime Statistics and Research Report, and in an effort to provide for the more efficient use of District Court time, the Criminal Procedure (Indictable Offences) Act 1995...revised the procedures under which certain indictable offences were to be dealt with summarily by the Local Courts (Ellison and Poletti, 2000:1).

4.51 Contained in the *Criminal Procedure (Indictable Offences) Act* are a list of indictable offences which are to be dealt with summarily unless certain conditions are fulfilled. A major effect

of the Act was to expand the jurisdiction of the local court by giving it determining power over offences that were once the domain of higher courts. Among the offences with which the Local Courts can now deal are:

- certain offences against the person;
- larceny, including those offences which exceed \$5,000;
- break and enter offences;
- certain other property offences;
- offences relating to public order;
- offences relating to transport services;
- corrupt practices;
- false instrument offences;
- offences relating to computers;
- public justice offences;
- escape from lawful custody;
- offences under certain other Acts;
- attempts, accessories and abettors;
- certain offences under the Drug Misuse and Trafficking Act 1985;
- stalking and intimidation;
- taking conveyance without the consent of the owner; and
- offences relating to firearms and dangerous weapons.

4.52 One of the effects of the legislation is that the local court's share of sentencing matters has increased from 96.5 per cent in 1995 to 98 per cent in 1999 (Potas evidence, 14 February 2000). Ivan Potas of the Judicial Commission of New South Wales, explained the effect of the Criminal Procedure (Indictable Offences) Act on imprisonment rates in his evidence:

...the higher courts are dealing with more serious cases and they are sentencing but also it may explain an increase in the sentences in 1996, the year following the introduction of the Criminal Procedure Act because there would have been a backlog of cases and the magistrates courts obviously deal with cases more quickly. I would think that part of the increase during that year may be attributable to the fact that they are dealing with more cases more quickly (Potas evidence 14 February 2000).

4.53 Fitzgerald's article, "Women in Prison: The Criminal Court Perspective" (1999), for the NSW Bureau of Crime Statistics and Research, does not attribute the *Criminal Procedure (Indictable Offences) Act* to the increase in the number of women being sent to prison. Rather, she found that,

the increase in female imprisonment is likely to be due to both harsher penalties handed down by the courts, and a shift in the types of offences being committed by women towards those more likely to receive prison sentences (Fitzgerald, 1999:3).

4.54 The issue of court sentences will be discussed in further detail below.

4.55 Increases in legislative penalties, which have the result of requiring offenders to serve longer custodial sentences than was once the case, have been presented to the Committee as having a significant impact on the prison population. Among these are:

- increases in the maximum penalties for culpable driving; robbery; break enter and steal and sexual assault offences (Public Defenders submission 90);
- the creation within an existing offence of an “aggravated” form of the offence which carries a new and greater maximum: eg “aggravated dangerous driving causing death” maximum penalty, 14 years; “aggravated break enter and steal”, maximum penalty, 20 years (previously this offence did not exist); specially aggravated break enter and steal maximum penalty, 25 years (Public Defenders submission 90);
- the introduction of the Traffic Amendment (Penalties and Disqualification) Bill 1998 which increases the maximum fines, imposes or doubles the minimum periods of licence disqualification and increases the periods of imprisonment (South Eastern Aboriginal Legal Service submission 37).
- changes to the domestic violence laws and, in particular to breaches of Apprehended Violence Orders (Public Defenders submission 90; South Eastern Aboriginal Legal Service submission 37).

4.56 The Committee was told that these changes have particularly affected Aboriginal people. In relation to the amendments to domestic violence laws the South Eastern Aboriginal Legal Service stated,

with the increased emphasis on penalties and strict bail conditions many defendants are going to gaol for breaching AVOs or on remand. We do not condone breaches of AVOs with violence nor do we condone physical assaults on female partners, but a program of relationship counselling, financial arrangements, anger management and drug and alcohol counselling will provide a far better alternative to gaol. Mostly, neither of the parties want the offender to go to gaol. They generally want the behaviour that caused the problem...to be changed and not the defendant gaoled (South Eastern Aboriginal Legal Service, submission 37, p. 5).

4.57 The Committee also heard that the changes to the *Traffic Act* were also seriously impacting on Aboriginal communities. To quote further from the submission of the South Eastern Aboriginal Legal Service,

the very heavy increase in penalties for traffic offences...in conjunction with the changes introduced by the *Fines Act 1996*, will result in aboriginal people being imprisoned for traffic offences... Already 11.9% of people in prison for traffic offences in 1998 were aboriginal...there is an increased probability that aboriginal people will not have a licence...because of literacy problems, costs of obtaining and

keeping a licence, often there is no need for a licence or more probably they have lost their license through debts to the State Debt Recovery Office (Submission 37, p.6).

4.58 Further, the submission from the Wiradjuri Aboriginal Legal Service, Wagga Wagga states that,

we have noted a general increase in the number and length of prison sentences handed down in recent years. This is partly due to the increase in statutory penalties for many offences and partly due to the NSW Court of Criminal Appeal's guideline judgements and general sentencing comments regarding serious traffic offences, armed robbery and break, enter and steal matters. Aboriginal people, (and non-Aboriginal people), are now regularly being sentenced to terms of imprisonment in excess of 12 months for merely driving whilst disqualified or cancelled, (the maximum penalty having been in recent years increased from 6 months to 2 years. In many cases, the offender's licence was cancelled because of their inability to pay a fine and the offender continued to drive as there was no available or practical public transport in their own rural locality (Submission 36, p. 3).

4.59 Submissions from the NSW Law Society and the Legal Aid Commission were concerned at the impact on prisoner numbers of amendments to the *Periodic Detention Act*, which commenced on 1 February 1999. According to the Legal Aid Commission that Act,

transferred jurisdiction over cancellation of periodic detention from all courts to the Parole Board. This legislative change has had a dramatic impact on prisoner numbers. The Parole Board cancels the periodic detention based upon a written application without a hearing, and then issues a warrant for the person's imprisonment. Once the warrant is executed, the person is entitled to appear 28 days later before the Board on a review hearing of the cancellation. The Board holds these review hearings every Wednesday and is averaging around 20 cases each week. This means that 20 people are being arrested and incarcerated per week (1000 per year) (Submission 74, p. 2).

4.60 The Law Society also submitted:

the Law Society is concerned because the cancellation procedures under which the Parole Board is currently required to operate provide no facility for people to be granted bail. This means that people, who may be able to satisfy the Board that their orders should not have been cancelled, can spend considerable time in custody before they have the opportunity to present their case to the Board. This could happen, for example:

- in the case of administrative error where an application for leave has been made but not considered by the Department; or
- where there is good reason for the absences — if the detainee is hospitalised (especially in a mental hospital).

In relation to the latter example, the Parole Board did not have the power to rescind cancellation because there had been a failure to report for 3 or more detention periods. The Board was compelled to adjourn proceedings to enable the detainee to make a retrospective application to the Department. While this procedure was being undertaken, the detainee stayed unnecessarily in custody.

RECOMMENDATION

4.61 That the Minister for Corrective Services review the *Periodic Detention of Prisoners (Amendment) Act* with a view to enabling persons who have had a periodic detention order revoked to apply to a court to have the revocation suspended pending review by the Parole Board.

4.62 **Amendments to the *Bail Act*** have been cited as being particularly significant to the increase in the remand population. A determination of bail is made once a person is charged with a criminal offence. The Public Defender writes,

the question of the courts' approach to bail is determined by the most serious charge the alleged offender is facing. If there is a case of over-charging by the police, then the offender is automatically prejudiced before he arrives in court (Submission 90, p. 7).

4.63 The Committee is concerned at the Public Defender's allegation of over-charging (discussed in Chapter Three) by the police and plans on investigating the matter further in Part II of the Inquiry.

4.64 At common law there was a presumption in favour of bail, particularly where an accused entered a plea of not guilty. However, a number of amendments to section 9 of the *Bail Act* took away the presumption in favour of bail in relation to a number of offences. The most recent amendments were made to the *Bail Act* in 1998,

following criticism about failures to monitor people's compliance with bail conditions and attending periodic detention, together with criticism that the various arms of the justice system fail to properly maintain and share records and information (Law Society submission 93, p.12).

4.65 As a consequence of the amendments to the *Bail Act* the general remand population has risen from 1,050 in June 1998 to 1,408 by 16 January 2000, an increase of 34% in less than 2 years.

4.66 A number of submissions were critical of what they perceived to be the erosion of the presumption in favour of bail since the introduction of the section 9 amendments, particularly in relation to defendants who have pleaded not guilty to charges. According to the NSW Law Society,

at the current time, nearly 20% of prisoners in New South Wales prisons are unconvicted. These people may well be found not guilty at trial. Of those found guilty, many will not be sentenced to custodial sentences. For them, there is no compensation. This situation is exacerbated when the length of time people on remand remain in prison before their cases are dealt with by the courts are taken into account (Submission 93, p.13).

4.67 As discussed further in the report, the Committee is concerned at the number of unsentenced women being held in New South Wales prisons.

The Court's Role

4.68 Witnesses and submissions to the Inquiry observed that in recent times the courts, particularly the Local Courts, have been inclined to hand down harsher sentences to female offenders and to refuse bail at a greater rate than was previously the case. This has had the effect of increasing the female prisoner population. Contrary to some media and public perceptions research has shown that the courts are not in fact becoming more lenient in the sentences they deliver. Commenting on the general offender population, Joanne Baker for the NSW Bureau of Crime Statistics and Research states,

the penalties imposed by the NSW Higher and Local Courts have not become any lighter in the period between 1990 and 1997. The percentage imprisoned, in both jurisdictions, has remained stable or increased for each of the selected offences in the period between 1990 and 1997 (Baker, 1998:9).

4.69 The issue of **guideline judgements** and their impact on the prisoner population was raised throughout the Inquiry. Guideline judgements are decisions of the Court of Criminal Appeal in which the court has sought to establish guidelines in respect of the sentencing of defendants for certain offences. The first guideline judgement was *R v Jurisic* (1998) 45 NSWLR 209 where the Court of Criminal Appeal established guidelines for the sentencing of culpable driving offenders. In *R v Henry* (1999) NSWCCA 111, the second guideline judgement published by the Court of Criminal Appeal, set the sentencing range for certain types of armed robbery offences (NSW Public Defenders, submission 90, p. 11).

4.70 In his analysis of guideline judgements, Senior Counsel, Paul Byrne comments that there are two likely outcomes with this type of sentencing,

First, guideline sentencing will increase the number of people who are sent to gaol by restricting the previously existing judicial discretion to not impose gaol sentences. Second, those people who are sent to gaol will be sent to gaol for longer because the guidelines establish a level of sentencing which is significantly higher than the sentences that were imposed for the offences that have so far been dealt with (Byrne, 1999: 1).

4.71 Byrne further observes that from a defence lawyers perspective guideline sentencing appears to undermine one of the fundamental principles of sentencing namely,

that imprisonment is a sentence of last resort and that the shortest possible sentence should be imposed. At least for most cases so far considered, full time imprisonment is now a sentence of conventional resort and the sentences are not necessarily short... Leaving aside cases of grave criminality, in most cases there seemed, in days gone by, to be real issue as to whether imprisonment should be used. That position has changed. The question that is confronted by contemporary criminal lawyers seems, in most cases, not to be whether the person should be imprisoned, but for how long (Byrne, 1999:1).

4.72 Byrne submits that guideline judgments may encourage the trend towards greater use of imprisonment as a form of punishment and that it is likely that more people will be sent to gaol and for longer periods (Byrne, 1999:1).

4.73 It was submitted to the Committee that the removal of a judge's discretion in relation to offences covered by guideline judgements is a matter of concern for Aboriginal communities. According to the submission from the South Eastern Aboriginal Legal Service,

we feel that (guideline judgements) are a very poor reaction by the Government and the Supreme Court to the uninformed chorus of the Laws/Jones/Daily Telegraph. What they do is take away to a large extent the importance of the subjective features and the focus of the penalty on the individual. These features are very important for Aboriginal people who have issues that should be considered (Submission 37, p. 2).

4.74 Moreover, the submission from the Legal Aid Commission stated that it is concerned that,

guideline judgements have the potential to increase average sentences, particularly for women, as the guidelines are unlikely to cover the full range of subjective factors that are relevant in sentencing (Submission 74, p.5).

4.75 Section 37 of the *Crimes (Sentencing Procedure) Act 1999* now allows for the Attorney General to apply for a sentencing guideline in relation to any offence or category of offences (Haesler, 2000:54).

4.76 In her analysis of women in prison, Fitzgerald maintains that changing patterns in the NSW Criminal Courts, including the delivery of harsher sentences, have contributed to the rise in female prisoners. In relation to the Local Courts she argues,

bureau research has...shown that the percentage of convicted offenders sentenced to imprisonment has been rising within certain offence categories. While this research did not consider women separately, it strongly suggests that the Local Courts are increasingly inclined to hand down custodial penalties (Fitzgerald, 1999:2).

4.77 And further, she later maintains that one reason for the increase in the number of women in prison are,

the increased popularity of prison as a penalty for some offences dealt with in Local Courts (Fitzgerald, 1999:3).

4.78 In her evidence, Chilvers also points to a tendency for the Local Courts to hand down harsher penalties to women in recent times. Commenting on the increased rate of robbery offences for which women are appearing before the Local Courts she stated,

besides an increased number of women coming through for robbery offences, they are actually more likely to attract a sentence of imprisonment in the latter part of the series. In fact, in 1998, 69 per cent of offenders were in prison compared with 52 per cent in 1994. That went from 13 women up to 32 (Chilvers evidence, 14 February 2000).

4.79 Similarly, Potas advised the Committee in his evidence that,

both the numbers (of female offenders) and the overall length of sentences have been increasing (Potas evidence, 14 February 2000).

- 4.80 In relation to the Higher Courts, Fitzgerald found that the overall number of women sent to prison from these courts has increased over the past five years, despite the number of convictions dropping by 31.5 per cent. She further determined that as well as the number of convictions for robbery (for which prison is a common penalty) nearly doubling over the past five years,
- the proportion of female offenders receiving prison terms for robbery, property crimes, and drug offences has increased over the past five years (Fitzgerald, 1999: 3).
- 4.81 Fitzgerald concludes that the increase in female imprisonment is likely to be due to both,
- harsher penalties handed down by the courts, and a shift in the types of offences being committed by women towards those more likely to receive prison penalties (Fitzgerald, 1999: 3).
- 4.82 In its submission, the NSW Legal Aid Commission observed that one of the reasons for the increase in prisoners on remand is that there is,
- an increasing number of defendants who are given unreachable bail conditions for offences which may not necessarily result in a custodial sentence. Many offenders are indigent and cannot raise cash bail. In other cases the defendant offers a person as a surety who is impecunious and unable to show an ability to forfeit money if called upon (Submission 74, p. 2).
- 4.83 Recent cases from the NSW Court of Criminal Appeal reveals that the court is more inclined to sentence women with children to prison *because of* the existence of the mothers and children's program (*R v Robinson* 1999 NSWCCA 468 and *R v Everett*, 2000 NSWCCA). This is in marked contradiction to the recommendations of the Legislative Council Standing Committee on Social Issues' report, *Children Of Imprisoned Parents* (1997) which expressly stated that prison should always be used as a last resort as a sentence for a mother of dependent children irrespective of the existence of gaol based mothers and children facilities (see recommendation 47 of that report). In *R v Everett*, Carruthers JA stated that there were certain factors which would lessen the impact of the defendant's imprisonment on her child. Among them were that,
- (the Crown drew the Court's attention) to what is known as the Occasional Residential Programme existing at such centres as Mulawa under which children under 14 may have limited residential rights to be with their mother (Carruthers AJ at 7).
- 4.84 Apart from the fact that the program for inmate mothers is being used as one reason to justify imprisonment, the Committee is concerned that the Court is also relying on incorrect information. The Mothers and Children's residential programme operates from Emu Plains Correctional Centre **not** Mulawa. To be eligible for the programme an inmate would have to reach a minimum classification level which is only achieved *after* spending at least some time at Mulawa. There is no automatic right for an inmate to be with her child in prison, as the Crown and the Court in *R v Everett* appeared to assume.
- 4.85 In *R v Robinson*, the main ground for appeal was:

whether sufficient ground was given to the hardship imposed upon the applicant's immediate family, particularly the children, by the impositions of the full-time custodial sentence, particularly bearing in mind that it will be necessary, to maintain their father's employment, for the family to remain in Western Australia whilst the applicant serves her sentence (in New South Wales) (Carruthers AJ at 7).

- 4.86 Carruthers AJ for the Court referred again to the Mothers and Children residential program and noted that the applicant's youngest child resided with her at the program. Citing the option of an application for transfer under the *Prisoners (Interstate Transfer) Act*, the option of early release under then s. 29 (currently s. 26) of the *Correctional Centres Act* **and** the existence of the Mothers and Children program as being reasons for dismissing the appeal against the applicant's imprisonment sentence.
- 4.87 It is the Committee's view that these cases demonstrate that prison is not being treated as a last resort. Further, a sentencing judge can only sentence a mother to prison, not to the Mothers and Children program, and the availability of the program for an inmate is dependent upon the discretion of the Department of Corrective Services which is influenced by its own eligibility criteria and the availability of beds.

RECOMMENDATION

- 4.88 That, as a matter of urgency, the Attorney General direct the Judicial Commission to provide ongoing education and training to judicial officers about the location, purpose and process of entry into the Department of Corrective Services Mother's and Children's program. That education should emphasise that irrespective of the existence of the program, a woman with dependent children and a woman who is pregnant, should only ever be imprisoned as a matter of last resort.

- 4.89 Evidence based on research from the NSW Bureau of Crime Statistics and Research and presented from Marilyn Chilvers, revealed that community-based sentences for women decreased during the period that prison sentences have risen. Explaining this decrease, Doak for the NSW Bureau of Crime Statistics and Research, stated in a recent study,

since July 1997, there was a statistically significant downward trend in the total population of persons under community-based correctional orders... The decrease is due to the lack of persons with fine substitution orders after the introduction of the *Fines Act 1996* in January 1998. However, there was a statistically significant upward trend...over the (July 1994 to June 1999) period...with a 2.3 per cent increase in the total population between 1994-95 and 1998-99 (Boak, 2000:104).

- 4.90 In other evidence however, the Committee heard that there is some reluctance by the courts to order community-based sentences. Public Defender, John Nicholson, SC argued,

home detention and community service orders are often perceived as the soft option. Both these sentencing dispositions require supervision by Probation and Parole. Judicial officers are aware that Probation and Parole are grossly under-resourced. Probation Officers are carrying excessive case-loads... It is quite possible that some

judicial officers are bypassing the home detention or CSO option because they recognise that without proper resourcing of Probation and Parole the instant case before them will fail (Submission 90, p.16).

4.91 Further, the submission from the Legal Aid Commission states,

contributing to unnecessarily high rates of imprisonment is the failure by courts to consider alternatives to full-time gaol. For example, home detention has been read down by the courts. It was intended as an alternative to a full-time gaol sentence, but has been seen by the courts as a less severe penalty than prison (Submission 74, p. 5).

4.92 And finally, as one female inmate observed,

Gone are the days of girls not getting a long term in gaol. They are starting to get longer and longer sentences for less crime (Evidence 29 March 2000).

4.93 These issues will be examined further in the Chapter Six dealing with alternatives to incarceration.

RECOMMENDATION

4.94 That the Attorney General direct the Judicial Commission to provide appropriate ongoing training to judicial officers about the range and purpose of non-custodial sentencing options available in New South Wales. Such training should be undertaken as soon as possible to ensure that s 5 of the *Crimes (Sentencing Procedure) Act 1999*, which requires that imprisonment only be imposed after consideration of all possible alternatives, is properly implemented. The Judicial Commission should also liaise with the Department of Corrective Services in relation to the delivery of the training.

Poverty, Disadvantage and Homelessness

4.95 Numerous reports and studies have documented that people who experience poverty and disadvantage can be more vulnerable than others to entering into the criminal justice system. This vulnerability is exacerbated when there is family breakdown, including when a child is subjected to neglect and abuse. It has been argued that children who have been neglected are more likely to engage in offending behaviour than those who have experienced a more stable and nurturing environment.

4.96 It has been suggested that the increasing divide between the rich and the poor has meant that there has been an increase in anti-social and criminal activity and ultimately imprisonment. For women, it has been submitted, greater abuse of drugs, particularly heroin, and increased homelessness are the legacies of an expanding underclass, due to poverty, disadvantage and the contraction of services. In her testimony, Fiona Power, Coordinator of the Women and Girls Emergency Centre, whose client base are homeless women and girls and women and girls with a mental illness, told the Committee,

There has been an increase in the number of clients with a history of incarceration... [O]ur clients are particularly vulnerable to incarceration. Because they are homeless their activities are more visible to law enforcement and they are more likely to get a custodial sentence. The sorts of offences that they commit tend to be reasonably minor offences but they do tend to be repeat offenders and because of their homeless status, they are less likely to be offered alternatives. They are more likely to come to the attention of the police and they are more likely to be charged rather than cautioned and because they have a history of repeat offences, they are more likely to receive custodial sentences... (Our clients) remain homeless for quite long periods of time and do not have access to any kind of housing. This has an impact on their ability to survive. Most of them are on benefits or if they cannot produce suitable forms of identification, **they are living in severe poverty and obviously are more likely to be tempted to commit crimes, particularly property crimes, theft and other break and enter type crimes. Their poverty and homelessness have a direct impact on whether or not they choose to commit crime** (emphasis supplied) (Power evidence, 28 March 2000).

4.97 In its report, *Crime Prevention Through Social Support, Part I*, The Standing Committee on Law and Justice identified poverty, disadvantage and homelessness as socio-economic risk factors to offending behaviour. In attaching considerable weight to the importance of these factors to crime, that report stated,

it is no coincidence that official statistics consistently show that most offenders are drawn from society's most disadvantaged communities...families which experience economic deprivation and social disadvantage are subject to stresses which can cause disruptions to the parenting, thereby placing the children at risk of juvenile offending (Standing Committee on Law and Justice, 1999: 34).

4.98 This Committee concurs with the view of the Standing Committee on Law and Justice that no single program can alleviate poverty and disadvantage but that there are certain measures which can be taken to which can compensate for these circumstances. To this end it supports the recommendations of that Committee's report and noted in Recommendation One of this report.

Aboriginality and the Criminal Justice System

4.99 There have been a plethora of reports that have demonstrated that Aboriginal people are over-represented at all stages of the criminal justice process, and particularly within the prison system. As the Royal Commission into Aboriginal Deaths in Custody found the alarming levels of custodial deaths of Aboriginal people was a consequence of their disproportionate levels of incarceration, which was a consequence of a number of factors including:

- different levels and patterns of offending;
- different patterns of policing and the operation of the courts;
- lifestyles characterised by abject poverty and disadvantage;
- systemic discrimination;

- dispossession of land; and
- various policies of forced removal and integration.

4.100 Despite the enormous range of recommendations put forth to try to address the disproportionate number of Indigenous people involved in the criminal justice system, their overrepresentation remains. It has been submitted that unless the issues identified above are addressed Aboriginal people will continue to be processed through the criminal justice and penal systems at a greater rate than non-Aboriginal people.

4.101 The Aboriginal Justice Advisory Council (AJAC) reports that,

Currently, there is a total of 1182 Indigenous people in NSW prisons, approximately 1076 men and 106 women respectively. This shows a dramatic increase of 363 people since 1995... Since 1995, the proportion of Aboriginal men has increased by 4% and Aboriginal women has increased by 14% respectively (Submission 120, 3).

4.102 AJAC further advises that much of these increases are isolated to certain categories of offences. The submission states:

since 1995, there appears to be a significant increase in the number of Aboriginal men in prison for principle offence of robbery/major assault (44% increase), major assault (29% increase) and break, enter and steal (28% increase)... The number of Aboriginal women in prison for the offences of major assault and other assault increased dramatically, 89% and 92% respectively (Submission 120, p. 4).

4.103 In addition, Aboriginal people continue to remain overrepresented for minor offences, such as offensive language and conduct. A recent study by AJAC reports that on a statewide basis, Aboriginal people are 15 times more likely to be prosecuted for these offences, and in some Local Government Areas, Aboriginal people are more than 80 times more likely to be prosecuted (Submission 120, p. 4).

4.104 The issue of Aboriginal people, and women in particular, who are imprisoned will be investigated throughout this report as well as in Part II of the Inquiry.

Drugs and Alcohol and Gambling

4.105 Considerable evidence was presented to the Committee that the increased rate of drug and alcohol abuse by women, and particularly heroin, has had a marked effect on the increase in the female prisoner population in recent times. Numerous studies have shown that underlying the majority of offences for which women are incarcerated is a drug and/or alcohol addiction. Dr Ann Sefton, Director of Women's Health, Corrections Health told the Committee in evidence that,

probably something over 80 per cent of women who come into custody have a drug and alcohol problem... and are withdrawing from drugs when they come into custody and that would be usually poly-drug abuse. It is fairly unusual for us to see the single use of any particular substance. Alcohol is very common, but our main problem

would be heroin with cocaine and benzodiazepines: abuse of pills (Sefton evidence, 15 February 2000).

4.106 Research conducted by Kevin for the Department of Corrective Services, in relation to 130 female inmates found the following:

- of the total sample, 62% reported being under the influences of a drug at the time of their most serious offence: 46% of the total sample had consumed drugs (excluding alcohol); 5% had consumed alcohol only; and 11% had consumed both alcohol and other drugs;
- 45% of those who were intoxicated by drugs at the time of their most serious offence had consumed more than one type of drug and 20% had consumed a cocktail of at least three drugs;
- of those who were intoxicated by drugs at the time of their most serious offence, the majority had consumed heroin (64%);
- the majority (63%) of those who were convicted of a property crime as their most serious offence reported being under the influence of drugs (excluding alcohol) at the time of the offence;
- 72% of the sample perceived there to be a relationship between their drug use and subsequent imprisonment. The most common type of relationship identified by this group was money to purchase drugs (50%) (Kevin, 1995:vi).

4.107 As noted above, one of the conclusions drawn by Fitzgerald, from the NSW Bureau of Crime Statistics and Research, in relation to the increase in the female prisoner population is that there has been an increase in robbery offences by women, largely as a result of the growing use of heroin. From the information contained in submissions, heroin appears to be a particular problem among Aboriginal people and women particularly. The Senior Public Defender writes,

the Public Defender's now believe that in many Aboriginal communities, hard drugs have or are replacing alcohol and gunjee (marijuana). Drugs have moved from the city communities (particularly Redfern and Blacktown) to the country regions. Most country towns now have heroin available and Indigenous young men and women are increasingly succumbing to the heroin epidemic (Submission 120, p. 15).

4.108 Some evidence provided to the Committee indicated that a number of women are incarcerated for offences relating to their gambling addiction. Most of these women are convicted for non-violent offences such as fraud, as a means to fund their habit. The Australian Medical Association has found that problem gambling:

- often co-exists with substance abuse and dependence;
- often leads to financial burdens, domestic violence, criminal activity, employment disruptions, family breakdown and social isolation; and
- is associated with moderate to high levels of depressions and/or anxiety, often resulting in ill-health (AMA Submission to the Standing Committee on Law and Justice, 1999).

4.109 Further, the Australian Institute for Gambling Research (AIGR) survey found that among the general inmate population:

- 31.1% of adults in a correctional centre had gambling-related personal or financial difficulties;
- 23% had spent more than they could afford on gambling machines;
- 5.4% had stolen money for machine playing;
- 5.4% had been in trouble with the police due to machine playing; and
- 6.8% had declared that playing poker machines had caused them to be in gaol (AIGR, 1996a).

4.110 The Committee proposes to investigate this issue further in Part II of the Inquiry.

Mental Illness

4.111 It was presented to the Committee that the limited availability and accessibility of appropriate services to people with a mental illness has resulted in many of these people drifting into the criminal justice and penal systems, particularly in recent times. According to John Nicholson, SC,

since the implementation of some of the recommendations of the Richmond Report, there has been a higher profile of mentally disturbed persons and mentally distressed persons in the community. There are a number of centres where they can be seen — Hyde Park, Parramatta Mall, Stanmore/Leichhardt. Many live in boarding houses in the Auburn-Parramatta regions and in Stanmore/Leichhardt. They are unsupported and unsupervised regarding their medical needs and, in particular, whether they are taking regularly any necessary medication. There are also a number of drug abusers who are experiencing drug-induced psychoses. A number of the Public Defenders can recount stories of clients attending hospitals or medical centres unsuccessfully seeking assistance before launching into a murder attack. Several of the boarding houses located in the centres mentioned above have been the scenes of violence by mentally disturbed boarders (Submission 120, p. 10).

4.112 Despite the limited research on women with a psychiatric disability in NSW prisons, anecdotal evidence suggests that mental illness is particularly high among women inmates. A survey of the general inmate population about health issues conducted by Corrections Health in 1997 found that, of the forty per cent of the then female prisoner population who took part in the survey, 15.9 per cent had been diagnosed by a doctor as suffering from depression. Further, 2.3 per cent of the women surveyed reported that they had been diagnosed by a doctor as suffering from schizophrenia (Corrections Health Service, 1997: 3). The submission from The Disability Council of NSW observes that the,

lack of research on women inmates has made it difficult to accurately ascertain the number of women with a psychiatric disability within the prison system. However, it has been estimated some 40% of women inmates have a psychiatric disability (Submission 87, p.8).

4.113 In his evidence to the Committee, Dr Michael Giuffrida, Forensic Psychiatrist at Cumberland Hospital and visiting forensic psychiatrist at Mulawa, confirmed that the prevalence of mental illness among female prisoners was high. He explained that during January and February 1999 there were 102 psychiatric consultations provided, out of a total female inmate population of 240:

Of those 102 patients, 23 had schizophrenia or delusional disorders, 26 had affective disorders, 29 had psycho-active substance abuse, 34 had severe personality disorders. There was a total of 157 different diagnoses, which indicates that there were a number of people with dual and triple diagnoses... (Giuffrida evidence, 15 February 2000).

4.114 Based on information from the Department of Corrective Services, The Disability Council provides a current profile of women inmates with a psychiatric disability in Mulawa. These women are:

- young with an average age of 33;
- have had a diagnosed psychiatric disability since their early 20s;
- have younger and higher mortality rates than the general population;
- have a high rate of drug dependency;
- have a high rate of methadone dependency.

4.115 They come from backgrounds which includes:

- experience of early childhood trauma, often sexual or physical abuse;
- a history of abuse and neglect;
- a breakdown in family relations (Submission 87, p. 9).

4.116 Evidence given to the Committee indicated that many female prisoners present with dual diagnoses — mental illness and drug and alcohol addiction. According to Dr Richard Matthews, Acting Chief Executive of the Corrections Health Service,

it is now almost a rarity to have a reception who is suffering from a mental illness who is not also using and abusing substances, licit and illicit... I think it is an increasing trend in line with the generally increasing trend of use of a variety of illicit drugs in the community amongst the general population. But it also includes a significant incidence of abuse of licit drugs, both those prescribed, like benzodiazepines, and those which are freely available, like alcohol (Matthews evidence, 15 February 2000).

4.117 A number of witnesses and submissions reported to the Committee that a history of abuse and violence as a child and/or family violence as an adult was a common precursor to a female inmate's mental illness, drug and alcohol abuse and ultimate prison sentence.

4.118 Dr Ann Sefton stated that,

the Department of Corrective Services has statistics on abuse and certainly about 80 per cent of women in custody are estimated to have experienced some form of abuse on the past, either sexual, domestic or other types of abuse...

- 4.119 Mental illness and the subsequent abuse of drugs and alcohol was raised in submissions and evidence as being a concern for Aboriginal communities and as contributing to imprisonment. According to Mr Trevor Christian, General Manager of the Aboriginal Legal Service in Sydney,

amongst the Aboriginal people (who we deal with at the Aboriginal Legal Services) we have a lot of mental problems...and they are not being catered for - well, they are being catered for in the prison system as offenders in the prison but not as mental patients. They should be going to psychiatric centres and mental institutions and they are going to gaol for it (Christian evidence, 23 February 2000).

- 4.120 Further, according to the submission from the South Eastern Aboriginal Legal Service,

A number of clients have diagnosed and undiagnosed psychiatric problems... [There is] no halfway houses [or other] housing for [people with] mental health problems (Submission 37, p. 4).

- 4.121 The submission from the Central-Southern Aboriginal Corporation reported that,

Feedback from our Solicitors and Field Officers suggests that a very large proportion of Aboriginal women are being sentenced to gaol in our area are heroin addicts. The only (so called) rehabilitation option open to these women is methadone. These women often have deep psychological problems and social problems as a result of them being victims of physical and sexual abuse (Submission 37, p. 2).

- 4.122 The accessibility of appropriate mental health facilities for people with a psychiatric disability was raised in the Inquiry as contributing to the rise in the female inmate population. For instance the submission from the Sydney Regional Aboriginal Corporation Legal Service states,

A large proportion of our client base have mental health issues and the closure of community health facilities has directly contributed to the increase in the Indigenous prison population. There is a need for proper medical assessment on reception into prisons and the ongoing provision of adequate and culturally appropriate health services (Submission 78, p. 13).

- 4.123 Furthermore, in her evidence, Fiona Power, Coordinator of the Women and Girl's Emergency Centre told the Committee,

A lot of our clients also suffer from mental illness. Regardless of that, they are still unable to be housed. There are not sufficient housing programs for people with mental illness to accommodate our clients so their mental illnesses also has an impact on the likelihood of them committing crime, as well as drug and alcohol issues. A great many of our clients have drug and alcohol problems. Due to the lack of services for them, they also are in a position where they are more likely to be tempted to commit crimes (Power evidence 28 March 2000).

4.124 Conclusions and recommendations regarding mental illness are made in Chapter Six .

Intellectual Disability

4.125 As noted in Chapter Three, Associate Professor Susan Hayes told the Committee that the prevalence of adult prisoners with an intellectual disability has risen from 12.5 per cent in 1988 to 17.5 per cent in 1998. By 1999 that figure was 19.3 per cent (Hayes, tabled evidence 27 March 2000). As previously discussed, this figure has been disputed by the Department of Corrective Services who place the percentage much lower.

4.126 In relation to women prisoners specifically, Associate Professor Hayes stated that the proportion of women with an intellectual disability does not seem to have risen quite as much as men. However, she argued that their adaptive test performance is worse (Hayes evidence 27 March 2000).

4.127 The American Association on Mental Retardation (cited in Hayes tabled evidence, 27 March 2000) defines intellectual disability to mean,

substantial limitations in present functioning, characterised by significantly sub-average intellectual functioning, existing concurrently **with related** limitations in two or more adaptive skill areas such as communication, self-care, home living, social skills, community use, self-direction, health and safety, functional literacy, leisure, and work.

4.128 These adaptive deficits, according to Hayes,

(are) in line with reasons why women become incarcerated often. It is not so much the crime they have committed but their behaviour surrounding the crime and their ability to cope in the community (Hayes evidence 27 March 2000).

Further, more women prisoners than men have a dual diagnosis, that is an intellectual disability and an additional mental health problem such as a psychiatric diagnosis (Hayes tabled evidence, 27 March 2000).

4.129 Indigenous inmates are dramatically over-represented in the group of prisoners with an intellectual disability. Hayes research has found that Aboriginal people presenting to rural courts have an even higher proportion of intellectually disabled people. In relation to Indigenous women Hayes found that,

twenty-nine per cent of Indigenous women, who formed 9 per cent of the female population that I studied, had a standard score of less than 70 on the intelligence tests and 26 per cent fell below 70 on adaptive behaviour (Hayes evidence 27 March 2000).

4.130 In its submission, the Disability Council of NSW observes that offenders with an intellectual disability are more likely to receive custodial sentences than non-disabled offenders, and that those sentences are likely to be for longer periods of time. Citing the work of Hayes and Hayes the Council further submits that,

people with a disability who commit offences are more likely to confess quickly, and are less likely to understand their right to have legal representation. The Council is also aware that people with an intellectual disability who are inmates have more difficulty learning the rules and regulations of correctional facilities, which results in more accumulated rule infractions. Inmates who have an intellectual disability are denied parole more often, serving on average two to three years longer than other inmates for the same offence (Submission 87, p. 4, citing Hayes, S and Hayes, R [1984], *Simply Criminal*, Law Book Company, Sydney).

4.131 Among the factors submitted to the Committee as having possibly contributed to the increase in the prevalence of intellectual disability (and adaptive deficits) are:

- the dearth of facilities for people with an intellectual disability within the community;
- substance abuse (this has increased among people with an intellectual disability);
- breach of bail or parole conditions (“people with an intellectual disability are often ‘set up’ to fail, through having bail or parole conditions imposed that are beyond their abilities”);
- de-institutionalisation; and
- lack of secure alternative placements (Hayes tabled evidence, 27 March 2000).

4.132 The Standing Committee on Law and Justice dealt at length with the issue of people with an intellectual disability and crime prevention in its first report on *Crime Prevention Through Social Support*. Among the recommendations put forth were that:

- the policy of devolution be supported by a significant increase in funding of support services for those living in the community. Future closures of large institutions should follow successful past models of planned transitions for disabled persons into the community;
- a category of “risk of offending” be used in criteria for determining services to the intellectually disabled. The Interdepartmental Committee on Intellectual Disability should consider how services provided under this criteria can be jointly funded by human services and criminal justice agencies and which Department should administer the allocation of these services;
- training at the Police Academy in intellectual disability be increased to a level more commensurate with such persons making up more than one in five of the prison population; and that regular in-service training should also be developed;
- NSW Police adopt and train staff in the use of a screening test or other methods identifying intellectual disability during police interviews; and
- the Interdepartmental Committee on Intellectual Disability examine the following aspects of the legal process for those with an intellectual disability charged with a criminal offence:
 1. improved co-ordination between relevant agencies in the obtaining of required reports prior to trial, so as to avoid unnecessary adjournments.

2. Review of the use of s. 32 of the *Mental Health (Criminal Procedure) Act 1990*, and how greater use of the provision as a diversion can be encouraged by magistrates.
3. Review of the “fitness for trial” hearings in District Court matters as to how their current adversarial nature can be reduced.

The Law and Order Debate

4.133 A number of submissions regarded the effects of the debate on law and order, waged in the media and by politicians, as having significantly contributed to the increase in prisoner numbers, including among women. In his evidence, Ivan Potas from the Judicial Commission of New South Wales stated,

the real problem is that the Parliament seems to provide diametrically opposed messages. One is we must get tougher and the other is you must use alternatives more often. It is a very, very difficult job to do both at the same time (Potas, evidence, 14 February 2000).

4.134 The submission from the Legal Aid Commission argues,

successive State Governments have adopted increasingly stringent law and order policies in response to expressed community concerns about crime rates. Such concerns are often generated or exacerbated by alarmist media reporting and do not appear to be borne out by crime statistics. New legislation and government policies have emphasised increased penalties and more aggressive policing. This has been a major factor in the increasing prisoner population. However, the increase in arrests, charges, convictions and prison sentences has not led to a fall in the crime rate (Submission 74, p. 1).

4.135 Further, the Public Defenders’ submission maintains,

the courts have become more tough in their sentencing approach. No doubt, this is in part in response to the “law and order” lobby represented in the media, particularly papers such as the Daily Telegraph and Illawarra Mercury. A number of politicians, including members of parliaments and would-be members of parliament, have spoken out dramatically criticising the courts and undermining the confidence in the administration of justice at perceived leniency in sentences. Where a particular case may be open for criticism on the basis of leniency, there has been a tendency to argue from the particular to the general, suggesting that all judges and judicial officers are lenient, when such is not the case (Submission 120, p. 15).

4.136 Recent research from the NSW Bureau of Crime Statistics and Research found that the courts were not in fact, becoming more lenient in their sentences, despite public concern and media reports. Joanne Baker for the Bureau observes that,

part of the reason for the concern about leniency is a lack of public understanding about the sentencing process and how it can produce what seem to be large disparities in the outcomes and penalties for apparently similar crimes. This lack of understanding can easily be manipulated by the media to create the impression that the courts are very haphazard in the way they deal with offenders (Baker, 1998:1).

4.137 Studying the conviction rates and trends in penalties in the Higher and Local Courts for the period 1990-1997, Baker found the following:

- conviction rates in the Higher and Local Courts in NSW were generally quite high, in most cases ranging above 70 per cent and in some cases, such as break and enter, robbery, fraud and deal and traffic in opiates when dealt with in the Higher Courts, were 90 per cent or more.
- the penalties imposed by the NSW Higher and Local Courts have not become any lighter in the period between 1990 and 1997. The percentage imprisoned, in both jurisdictions, has remained stable or increased for each of the selected offences (ie assault, sexual assault, child sexual assault, manslaughter, murder, break and enter, robbery, fraud, deal and traffic in opiates).

4.138 She concludes,

despite the largely media-driven perception of court leniency, the NSW Court system is not generally acquitting people, and penalties have, if anything, become heavier since 1990. The courts also deal more harshly with offenders who commit more serious crimes and have more serious criminal records (Baker, 1998:9).

Chapter 5 Imprisonment

Introduction

- 5.1 This report has previously highlighted the characteristics of a “typical female inmate”. To reiterate, she is normally young, drug addicted, has experienced violence and abuse in her child and/or adult life, is single or in a de facto relationship and has dependent children. She is usually economically and socially disadvantaged, has had limited education and is usually dependent on social security. A high percentage of women suffer a mental illness. Often there is a man involved in her crime – that is, a stand-over person or a pimp. The average length of sentence served by a women offender is 3-4 months (Chilvers evidence 14 February 2000). A significant proportion of offences committed by women are property-related. Between twenty-five to thirty- one per cent of female inmates are Indigenous at any one time.
- 5.2 Many of these factors can have a significant impact on how a women responds to her incarceration.
- 5.3 The following discussion will examine the effect of imprisonment on a women and its effectiveness in rehabilitation and deterrence. It will also explore the range of programs offered by the Department of Corrective Services to female inmates.

The Effectiveness of Imprisonment

- 5.4 The role of imprisonment includes:
- Punishment and retribution
 - Deterrence
 - Community protection
 - Rehabilitation.
- 5.5 While acknowledging the importance of all of these roles, the terms of reference for the inquiry required the Committee to examine incarceration in terms of its effectiveness in reducing offending behaviour.

Imprisonment, Rehabilitation and Recidivism

- 5.6 Rehabilitation of an offender can involve a number of outcomes. Of particular significance is that the offender having been rehabilitated will not re-offend once released from custody. Largely, rehabilitation means that an offender can become a productive member of society when freed from prison. Should an offender re-offend and be returned to prison, she or he is considered a recidivist. In his evidence to the Committee, Department of Corrective Services Commissioner, Dr Leo Keliher, told the Committee that the vast bulk of inmates are recidivists,

They are people who have been in gaol two, three or many more times. For people who have only been to gaol once, only 27 per cent of them come back to gaol but for people who have been in gaol several times, in excess of 50 per cent can come back to gaol. The age of the inmate is very important too. Of people in excess of the age of 60, only 6 per cent come back to gaol whereas people at the very bottom end of the adult scale have a very much higher rate, in excess of 90 per cent return. That is for people who have served sentences (Keliher evidence 14 February 2000).

- 5.7 According to Harding there is no empirical evidence which suggests that offending behaviour and recidivism can be deterred by incarceration (Harding, 1992 cited in Sherrin 1996). Further Sherrin reports that at a conference in Europe examining non-custodial alternatives,

In almost every country's reply imprisonment is repeatedly described as a sanction which cannot achieve any improvement in the great majority of prisoners or in the social situation. Some European countries (specifically Germany, Austria, Finland, Holland) have transformed their justice system by adopting alternatives which reduce the rate of imprisonment without affecting the safety of the community. They hold a shared realisation that imprisonment is not only inappropriate (especially short sentences) but is also counterproductive to the objective of reducing the incidence of crime (Sherrin, 1996:6).

- 5.8 The Committee heard that the issue of imprisonment and recidivism is complex. Much of this complexity lies in the interpretation of recidivism. Commissioner Keliher highlighted this in his evidence. He stated,

There are some philosophical problems with the concept of recidivism. First of all, some authors argue that the only true recidivism measure is one which records any return to custody at any future date in an inmate's life. Others would argue, and I am more to be inclined down this path, that recidivism should only be measured for those who return for the same offence... There is also the argument as to whether the return to gaol as a sentenced offender, a re-arrest or simply coming to the notice of police is enough to constitute recidivism...the whole thing is fraught with the problem of how we count recidivism (Keliher evidence 14 February 2000).

- 5.9 According to the submission from the No New Women's Prison,

recidivism rates measure how many people return to gaol for a second, third or fourth time. Although statistics on recidivism are hard to collate, with studies using many different performance indicators to extract conclusions, all studies show that many people return to prison at extremely high rates. One commonly accepted form of determining recidivism, and thus revealing one key indicator of determining whether prisoners are being "rehabilitated" by the prison system, is to determine how many people released from gaol, return to it (on sentence) in the following two years (Submission 115, p. 4).

- 5.10 For the purposes of this report, the Committee will adopt the definition of recidivism as used by the NSW Bureau of Crime Statistics and Research in the study by Thompson, *Recidivism in NSW: General Study* (1995):

Recidivism... is defined as the percentage of people with a conviction leading to a sentence of full-time custody in New South Wales...within two years of being discharged after a sentence of full-time adult custody in New South Wales (Thompson, 1995:3).

5.11 The Commonwealth Government's Report on Government Services 2000 reveals that nationally:

- 62% of prisoners were previously imprisoned;
- women overall reported slightly less recidivism than men at 55%; and
- NSW reported the highest rate of returns to prison with 40% of Australia's total recidivism.

5.12 In her study for the NSW Bureau of Crime Statistics and Research, Thompson found that,

- for the people discharged after a full time custodial episode in 1990 or 1991 (the focal episode) overall recidivism was 35% for males and 38% for females;
- younger people had higher recidivism;
- people who returned more quickly to custody after prior imprisonment had higher recidivism;
- people discharged at higher security classification had higher recidivism;
- for people in the repeat imprisonment group, those with a most serious offence in the property offence category had higher recidivism;
- overall Indigenous people had higher recidivism than non-Indigenous people. This was especially evident for those serving their first imprisonment episode (45% Aboriginal vs 24% first imprisonment, 52% Aboriginal vs 42% non-Aboriginal repeat imprisonment);
- the highest recidivism group identified for women inmates was the repeat imprisonment property offences group for those who had spent less than one year in the community after their prior imprisonment (Thompson, 1995, 3 and 4).

5.13 Edwards' study for the Bureau, *Women in Prison* (1995) found that,

more than half (55.6%) of the women in custody on census day (30 June 1994) had a prior episode of imprisonment.

5.14 Further, in her evidence to the Committee, Ms Colleen Subir, Acting Senior Policy and Project Officer for the Women's Services Unit, Department of Corrective Services advised that,

In 1999 a female in custody has a two-in-three chance of having had a prior period of imprisonment. For Indigenous women there is a three-in-four chance of having a prior period of imprisonment (Subir evidence 28 March 2000).

- 5.15 A number of submissions argued that there is no proven link between imprisonment and a decrease in crime in the community. The submission from the Central-Southern Aboriginal Corporation argued that,

there is little or no evidence that imprisonment acts as a deterrent either for the prisoner or other potential offenders. On the contrary, the overwhelming experience is that imprisonment brutalises, dehumanises and toughens people, often making them more likely to re-offend, and in more serious ways. In recent years, the State Government and the Opposition have proclaimed their view that we need to “get tough on crime” by making greater use of imprisonment as a sentencing option. New Correctional Centres have been built, maximum terms of imprisonment for various offences have been increased and pressure has been placed on the judiciary to gaoil more people for longer. In our submission, this approach is based on the fallacy that potential offenders make very rational decisions and will be deterred by increased penalties. Yet the real evidence is that the recent dramatic increase in imprisonment rates have not had any effect on crime rates (Submission 36, p. 2).

The social and economic costs of imprisonment

The Impact of Imprisonment

- 5.16 In her study, *Women in Prison*, for the NSW Bureau of Crime Statistics and Research, Edwards found that incarceration is a time of immense stress for inmates. She writes,

The personal consequences of imprisonment can be devastating. Imprisonment can mean the loss of a job, of significant relationships and of the legal custody of children... Prisons are also sometimes places of violence and danger... Aside from the physical dangers of prisons, inmates must negotiate the day to day prison routine. Prison is an unnatural social environment, and it can take some time to adjust to it. Inmates can experience chronic boredom and loss of control over daily routine, and must learn the social norms governing relations among inmates and between inmates and prison staff (Edwards, 1995:4).

- 5.17 Much of the evidence received by the Committee, including oral testimony and submissions, supports this picture of prison. For example the submission from CRC Justice Support maintains on the one hand that,

Prisons protect the community for short periods of time. For some prisoners they provide an opportunity to access educational and welfare services. For some prisoners the experience of prison is shocking enough to serve as a ‘wake up call’ and is a deterrent from committing further crime (Submission 56, p.4).

- 5.18 On the other hand, according to CRC Justice Support,

For the vast majority of people incarcerated, prison does not perform these functions. The experience of prison can be both psychologically and physically damaging. Ex-prisoners talk about loss of identity, loss of community and extreme isolation. The prison culture is not one that fosters individual responsibility, particularly not in relation to the crime that has been committed. Many people in prison experience a

significant drop in self esteem which does not function as a good starting point for rehabilitation (Submission 56, p4).

5.19 Most of the women inmates with whom the Committee spoke acknowledged that they deserved to be punished because of their offending behaviour and therefore accepted that they had to be imprisoned. The following is a sample of their description of their experience of prison is:

- You are just thrown in and left to it. It is very hard.
- I get to the point sometimes where I think an animal gets treated better in a zoo than we do here. I would rather be an animal in a zoo and you get treated better.
- Whilst there are some very decent officers here at Mulawa management had changed from when I left here in 95 to coming back here in 99. Since Mrs Leyshon became Governor, very decent lady and has her head certainly with the issues that women face within the system, and I thank the Lord for Mrs Leyshon, but I can see her uphill battle, because her staff are relatively good but there are some that are obviously a bit difficult. You only need one bad apple to spoil a whole bunch.
- There are just not enough professional staff here and they are either all here and they are in Committee meetings or they are not here so we have got no-one anyway. Really, that is the worst thing about being here.
- I finished my Bachelor of Arts in gaol. I got my BA in gaol.
- I was missing gaol too much, being inside... On the outside you have friends and they are just all drug addicts. I think I am better off back in gaol. At least I am not going to get on drugs.
- I was sent to Mulawa. I was only here (Grafton) for two weeks and I was still in shock, and I went down there and my life was threatened. My cell mate had been brutally bashed that morning and my life was threatened, and this girl apparently is a well-known person there. I was totally terrified. The experience affected me. I came back here. I believe I had a nervous breakdown. It took me two months to recover from that one-week experience.
- We are a number basically, society rejects that are treated badly.

5.20 Academic, anecdotal and statistical evidence indicates that prison is generally ineffective in terms of rehabilitation but often has a destructive effect on individuals incarcerated and their families. The Disability Council writes,

it is common knowledge that prisoners emerge from prison more isolated and marginalised, and if they are a person with a disability this is likely to be more pronounced (Submission 87,p. 4).

5.21 Despite these negative effects, the community's requirement for punishment and protection often means that prison is considered to be the most suitable option for offenders.

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- 5.22 The Committee reaffirms the principle that prison should only be a sentence of last resort. The necessity to incarcerate offenders can be decreased by the development and use of effective community based forms of punishment. These are explored further in Chapter Six

Services and Programs Within Prison

- 5.23 The Committee accepts that the prison environment, particularly within large prisons, does not generally foster lasting rehabilitation of inmates. However, as long as it is necessary to sentence people to prison, we must do what we can to make positive change within that environment possible. Some individual inmates are able, with the assistance of appropriate programs, to make positive changes and better equip themselves for life outside. The Committee heard evidence of inmates getting off drugs, accessing health care and acquiring skills and qualifications while within prison. Although experience shows that this can be done more effectively within the community, such change is achievable and worth striving for within the prison environment.

- 5.24 The Department of Corrective Services offers a number of services and programs for female inmates. The submission from the Department states,

the Inmate Management Division, which is responsible for all inmate programs and services, places emphasis on the Department's key result areas as expressed in the Corporate Plan:

- Managing Offenders – safely and effectively manage offenders while enforcing the orders of the court and discharging the duty of care;
- Reducing Offending Behaviour – Provide Opportunities and encouragement for offenders to acquire insights and skills to positively address deficits or addictions associated with offending behaviour.

- 5.25 The Inmate Management Division consists of:

- Psychological Services;
- Alcohol and Other Drug/HIV and Health Promotion Unit (AOD/HHPU);
- Welfare Services;
- the Adult Education and Vocational Training Institute (AEVTI);
- the Chaplaincy;
- Corrective Services Industries (CSI)
- Inmate Classification and Programs;
- Community Grants Program.

- 5.26 According to the Department of Corrective Services,

these services are provided in each centre, and in conjunction with custodial staff, provide programs and activities to inmates within the framework of case management. Great emphasis is placed on screening and assessment and pre-release programs as these areas are crucial in enabling the Department to respond effectively to the needs of inmates while ensuring security and to enable inmates to make a smooth transition back to the community (Submission 55).

- 5.27 As provided by Assistant Commissioner McComish in her tabled evidence, the current staffing and budget of Inmate Development Services (for the general inmate population) is as follows:

Discipline	Staff Numbers	Budget (approximately)
Psychology	63 (in centres) 22 (specialist groups)	\$5.6 million
Alcohol and Other Drug	71	\$3.8 million
Welfare	69	\$3.8 million
Education	60 (plus part time teachers)	\$6.6 million

- 5.28 The Department of Corrective Services has within it a Women's Services Unit which researches, develops and assists the Department in the formulation of policy and programs relating to the special needs of women in correctional centres. Colleen Subir, Acting Senior Project and Policy Adviser for the Women's Services Unit stated in evidence,

One of the main areas (of the Women's Services Unit) is to ensure equity of access to programs and services for female inmates (Subir evidence, 28 March 2000).

It seems that this equity of access cannot be fully realised because of the fact that most women's sentences are less than 2 years, and therefore it is difficult to put together a long term program (Subir evidence, 28 March 2000).

- 5.29 Bonta, Pang and Wallace-Carpetta in their 1995 study, examined predictors of recidivism among incarcerated Canadian female offenders. They state that,

one important goal of prison programs is to return offenders to the community at a reduced risk for recidivism. Other goals include emotional and personal self-improvement and minimising institutional disruptive behaviour... Evidence from study 2 demonstrates that, many prison programs in place had little or no association with criminal behaviour upon release. Regardless of the nature of the programs, whether they were for psychological counselling or educational and work programming, we found no relationship between participation in them and recidivism... Some prison-based treatment programs have been shown to reduce recidivism, although the magnitude of the effectiveness is not as large as when the programs are delivered in the community (Bonta, Pang and Wallace-Carpetta, 1995:291).

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5.30 The authors also maintain that another possible explanation for the finding that program involvement was unrelated to recidivism is that the programs may have targeted “non-criminogenic needs”. They argue,

For example, counselling that focuses upon healing the hurt from past victimisations may help victims to feel better about themselves and improve relationships with others but may not alter the factors that initiated and maintained their criminal behaviour. A budgeting course may help a single mother on welfare make ends meet but may not affect her views on the acceptability of crime for coping in life. Offenders present many needs, but not all of these needs are necessarily criminogenic (Bonta, Pang and Wallace-Carpetta, 1995:291).

5.31 This view appears to be shared by the Department of Corrective Services. In her evidence to the Standing Committee on Law and Justice Assistant Commissioner, Inmate Management, Catriona McComish told the Committee,

There is a high degree of consistency in the factors that will come forward about what makes an effective program. The attempt is to target higher risk offenders, to target those factors that are closely associated with offending behaviour so, rather than a generalist notion of counselling or courses to raise self-esteem, one targets the factors which directly contributed to the offences, such as alcohol and other drug programs. The programs need to be structured and consistent across the system and the acquisition of social and cognitive skills related to real-life performances also must be targeted. Essentially, there must be a community arm to the programs. A lot of the research that has emerged has come from programs based in the community. They have a much greater chance of success, obviously because one is able to work with establishing supports in the community which have been absent and which contributed to the offending behaviour in the first instance (McComish evidence to the Standing Committee on Law and Justice, 9 February 2000).

Reception Screening and Induction Program

5.32 When an inmate is initially remanded in prison she or he under goes a Reception Screening and Induction Program. The following information, describing this program is taken from the submission from the Department of Corrective Services:

5.33 The aims of the program are to:

- ensure an inmate’s health, safety and welfare by gathering relevant information and assessing potential risk upon entry into a correctional environment;
- reduce anxiety and agitation through the provision of appropriate support;
- provide information about the correctional system to assist the inmate to adjust to imprisonment;
- develop a profile of an inmate’s social, educational, alcohol and other drug use, physical and mental health background and status to facilitate initial case planning.

5.34 The Reception Screening and Induction process starts at the court where officers collect basic demographic data and flag inmates who may be unstable. When inmates are then

received at a correctional centre, they are screened by health and welfare staff who put into place initial stabilisation strategies if required. If inmates are suicidal or threaten self harm, the Risk Assessment Intervention Team (RAITO), consisting of Inmate Development Staff and Correctional Health staff apply specific crisis intervention strategies.

- 5.35 About 36-48 hours after the inmate has been received, a more detailed screening is conducted and referrals made to appropriate staff such as psychology or ADO. The results of these referrals contribute to the case planning process.

Case Management

- 5.36 According to Assistant Commissioner McComish, among the criteria about what works and what makes for effective programming in preventing further offending behaviour and in the safe management of inmate, is the Department of Corrective Services' emphasis on

the critical nature of the assessment and of the case management system (McComish evidence to the Standing Committee on Law and Justice, 9 February 2000).

- 5.37 Case Management is defined as:

...a collaborative, multi-disciplinary process which assesses, plans, implements, co-ordinates, monitors and evaluates options and services to meet an individual's needs (Submission 55, p. 37).

- 5.38 Those involved in the Case Management Team include classification staff, IDS staff, custodial staff and the inmate. The Team develops a case plan for the inmate based on information relating to :

- the inmate's offence;
- needs in relation to alcohol and other drugs issues;
- mental health issues;
- welfare and education needs; and
- work needs.

- 5.39 The Department of Corrective Services has stated,

Case Management is the most significant correctional activity implemented by the Department in the last 10 years and is the process driving major correctional reform. Through Case Management barriers between custodial and non-custodial staff are gradually breaking down as custodial staff take up a more significant role in the management of offenders rather than only the secure containment of offenders (Submission 55, p. 37).

- 5.40 The initial case plan, developed by the Case Management Team, will determine the inmate's security classification and placement and will make recommendations regarding the type of treatment, education and work interventions required. Further,

when an inmate is transferred to his/her correctional centre of classification, the case plan is further developed by the Case Management Team and the inmate is assigned a case officer. It is the role of the case officer to monitor the inmate's progress on the case plan and to encourage the inmate to participate in programs, work and counselling, if appropriate. The case plan is reviewed every 6 months by the Case Management Team (Submission 55, p. 37).

5.41 In March 1999, the Independent Commission Against Corruption released its report into Case Management in New South Wales. Among the findings of that report was that both inmates and officers think that case management was a "good thing" (Coulter, 1999:61). However, it was reported that case management,

needs some 'renovation', an injection of robustness and overt support in the form of resources and reaffirming current and new policies and procedures. Given that inmates think having a case officer is a 'good thing', the DCS should capitalise on this (Coulter, 1999:61).

5.42 During its visits to Mulawa and Emu Plains Correctional Centres and the June Baker facility at Grafton Correctional Centre, Committee members took evidence from inmates and staff regarding case management. On the whole, most inmates believed that the effectiveness of case management depended on individual case managers and on the efforts made by the inmates themselves to contact their case manager. Some of the inmates comments are highlighted below:

CHAIR: Are you familiar with the term "case management"?

INMATE A: Yes.

CHAIR: How do you get on with your case officers?

INMATE B: You hardly see them. You have to chase them. They never chase us. We have to chase them. And that is another reason why some girls get put back progressing through.

The Hon. JAN BURNWOODS: How often would you see your case officers?

INMATE A: We see them all the time but a lot of girls do not even know who theirs is. They know they have a name there but they do not know who the person is.

The Hon. JAN BURNWOODS: How come you see yours all the time?

INMATE A: Because we push them. We chase them because we have to. Otherwise we do not get anywhere.

CHAIR: What do you see your case officer for? Why are you pushing to see them?

INMATE A: Because we want work release, because we want day leave, because we want to go out shopping once a month, because we want to progress. If you do not see them, you do not get anywhere. They write "do not care" on the thing.

INMATE C: Case management here doesn't occur. It's not there. What's the good of case management when, you know, it doesn't matter?

CHAIR: What do you think is supposed to be happening by case management?

INMATE C: It should be incentives. There's no incentives.

CHAIR: As I understand it, case management involves you meeting and getting to know --

INMATE D: Which doesn't occur.

CHAIR: Why doesn't it occur?

INMATE D: Because there's no communication between inmates and officers.

INMATE E: And some officers just aren't suitable to be case officers. Some of them are just like: "Well, you're a crim, that's it, f__ you" - excuse me, but yes, "F__ you, why should I help you?" And there are other ones, like my case manager, I was here six weeks and she walked out and she goes, "Oh, (X), I'm your case manager", and I said, "Yeah, I know, I've known since induction", and she goes, "Have you got any problems?" I said, "No". "How are you going?" I said, "Fine", and she goes, "Yeah, I thought you'd say that" and walked away. Then I spoke to another officer who I relate to really well and I know she'd try and help me sort through my stuff. I put in for a case officer change and she was happy to take me on, she had a free case load, like a vacancy. The other officer was happy to let me go off her case load, but they said No, and I mean I'm not going to get anywhere, I'm just butting heads - don't even want to know.

CHAIR: How do you normally get a case officer?

INMATE F: Oh, they issue them, you've got no choice, you're just thrown on someone's case load. I tried to get the same case manager I had last time I was here, because he's quite aware of my mum's condition and everything that's going on, but they put me back onto case load, even though he was happy to take me back on.

INMATE G: My case manager, I am lucky, she is a nice officer and she takes quite good care of me. I have no complaints about her.

CHAIR: What about case management.

INMATE I: I have met her once, seen her once, "You are fine. See you later", after I was here about two months. "I was wondering when you were going to show your head". I heard about people having a case manager. I thought I did not get allocated one. I have seen her once.

INMATE J: Each inmate is allocated to a case officer and then you have a tier structure, which is a correctional officer, then you have above that the senior correction officer, a case supervisor. Above that you have the case manager. We are dealing with the case officers here. We are dealing with a culture which in the past has been resistant to case management and we are slowly trying to get them to come the

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way of the case management system. It has been a long, slow process. We are dealing with people who are not interested in doing that sort of thing.

- 5.43 Case managers were drawn from the custodial staff. This gave rise to a number of changes in the relationships between staff and inmates within the custodial setting. When case management and inmates work well together, the traditional distrust and conflict can be broken down. As one inmate told the Committee,

INMATE: I am very old school, so (case management) goes against the grain of everything that I have known. I was very hesitant in the beginning. I have found, in spite of myself, that case management has been extremely helpful since it has been introduced.

CHAIR: By “old school” you mean that once upon a time people did not talk to prison officers?

INMATE: No, we used to get charged for insolence for looking them in the eye. That is pretty archaic. We have come a long way since then, thank God.

- 5.44 However, a number of inmates, particularly those in the larger institutions, still felt that they could not confide in their case managers for fear these confidences would be breached.

- 5.45 Custodial staff involved in case management agreed that some case managers are more committed than others. One officer told the Committee,

it is true that there is not a lot committed to it. I look at the staff I have around here, I have 5 per cent that are really enthusiastic, 5 per cent that don't want to do it, bordering on refusing, and the remainder are getting on steadily. If you tell them to do something, they do it. There is no incentive to take the extra step. They are doing it because they have to (Custodial officer evidence 15 February 2000).

- 5.46 The potential for case management to break down longstanding friction between custodial staff and inmates was echoed by custodial staff. It was submitted that with the new officers coming into the system, the potential for change has increased. One custodial officer told the Committee,

A lot of the staff prior to 1992 (when case management was introduced) did not have the option, it was something that came along, and there is fear of change in this place. That is evident...a lot of people do not like change — inmates included — but new staff are starting to pick up the slack. That is where the change will come from... It is improving...with the newer staff who have not been influenced by an older culture. Those people are starting off on the right track and their levels of determination are much higher, so maybe when you talk about putting a time on it of years, it is not years at all, it is actually starting to change. As the trend develops where these people do start to become more active, the hope is that a few others might follow the same path (Custodial officer evidence 15 February 2000).

5.47 The report, *Case Management in NSW Correctional Centres*, by the ICAC made 28 recommendations in relation to the improvement of case management. Among them were that,

the importance of case management needs to be reinforced from the top down in all centres, with a commensurate commitment of resources and structures to support it. Management need to acknowledge that case management requires officers to undertake different tasks from those associated with their custodial role, and that these tasks take up a percentage of an officer's time on duty. It seems somewhat counter-productive to ensure that the flags for case-management are in place and then not provide a structure for it to function (Coulter, 1999:64).

5.48 In its submission, the Department of Corrective Services stated that,

the Department recognised that case management has been introduced unevenly across the correctional system and has encountered practical obstacles. The Department has been working with the ICAC to implement a revised model of Case Management based on the recommendations of the report (Submission 55, p. 38).

5.49 The Committee supports the concept and practice of case management. It notes that already, the Corrections Operational Support Team conducted an audit of case management for the period July 1996 to February 1999. Among those recommendations were that:

- white boards to be mounted in each area with case officer case load allocations and review dates to be displayed;
- procedures to be established to ensure inmates know the name of their case officers;
- case note quality to be monitored by Case Managers to improve quality of information records;
- all inmates, irrespective of sentence length, be included in the case management process;
- inmates to have their case plans reviewed on placement in a centre to ensure local resources acknowledged;
- Program Managers to conduct monthly meeting with Case Manager;
- Copy of minutes to go to Governor;
- training in case management file form use, and case management generally be provided for staff;
- staff commitment to case management be acknowledged and rewarded in each centre;
- departmental rewards be given to centres of excellence in case management;
- a regional auditing process for case management be instituted.

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- 5.50 The Committee believes that a revised model of case management, based on the report of the ICAC, *Case Management in NSW Correctional Centres*, be implemented as a matter of urgency. The Committee proposes to continue its inquiry into the revised model of case management in Part II of this Inquiry.
- 5.51 The Committee was concerned by evidence that suggested that many of the issues which may have led a women into offending behaviour and ultimately into prison are not addressed adequately while she is in custody, nor in the post-release period. This can have a considerable impact on whether she may engage in criminal behaviour once released. The Committee therefore recommends that each new inmate is assessed with a case management plan that addresses any issues that are likely to impact on the likelihood of recidivism.

RECOMMENDATION

- 5.52 That the Minister for Corrective Services implement the revised model of case management based on the report of the Independent Commission Against Corruption, *Case Management in NSW Correctional Centres*, as a matter of urgency.
- 5.53 That the Minister for Corrective Services ensure that each new inmate is assessed with a case management plan that addresses any issues that are likely to impact on the likelihood of the inmate re-offending upon release from prison.

Drug and Alcohol Services and Programs

- 5.54 Given the high proportion of women in prison with a drug and/or alcohol dependence and the major role played by these addictions in offending behaviour, the provision of high level drug and alcohol services and programs within the gaols is critical.
- 5.55 The Department of Corrective Services' Annual Report for 1998/99 states that,

As a significant number of offenders are addicted to alcohol and other drugs, therapeutic programs are part of the Department's strong commitment to reducing offending behaviour (Department of Corrective Services, 1999:5).
- 5.56 Methadone is available to women who have heroin addictions and when the Committee visited Emu Plains Correctional Centre on 16 February 2000, one woman was undergoing treatment through naltrexone. Ms Julianne French, clinical nurse at Emu Plains told the Committee that she envisaged that naltrexone will be used more widely in the future.
- 5.57 Overall, the message that came from both staff and inmates was that alcohol and other drug services for women are inadequately staffed and resourced. The Committee heard from a drug and alcohol worker at Mulawa that 90 per cent of the population have a drug and alcohol problem (evidence, 15 February 2000). However, with a population at Mulawa of over 280 inmates, there are only two and a half drug and alcohol worker positions. One of those workers works largely within the induction area. The Committee heard,

what we (drug and alcohol counsellors) do or are supposed to do is counselling. We are supposed to run groups — and I say “supposed” because we do not have time to do that at the moment. We make referrals to rehab and outside counselling services. We have an induction assessment system which we have to attend to and that is very time consuming. We have to write court and parole reports, which is quite time consuming too. We liaise with probation officers and solicitors. We have to write counselling notes; we have to maintain files and then we have to attend meetings. The variety of work is quite spread out and we do not have enough staff...we cannot meet the demand... and that might mean in some cases we cannot see women who really want to be seen for various reasons. Some only want to see us because the court told them to do that or it would look good for parole or something like that, but others are genuinely interested and we do not even have the time to sort that out. We have women who fall through the net (evidence 15 February 2000).

5.58 Further, another staff member at Mulawa explained to the Committee,

the numbers (of inmates) have crept up, but the staffing has remained static, which makes it very difficult to provide the range of services that should be provided (evidence 15 February 2000).

5.59 Emu Plains has two drug and alcohol workers. There is no Indigenous worker at either centre, however there is a dedicated position for one at Mulawa. It is currently vacant.

5.60 Over the whole women’s prison population which consists of approximately 430-450* inmates there are 5 drug and alcohol counsellors.

5.61 Inmates from Mulawa, Emu Plains and June Baker told the Committee of their experience with the alcohol and other drug programs. Some are highlighted below:

- Well, there’s only one D and A at the moment for what, 260, 270 girls, and she’s overloaded. A lot of girls do want to see her, but it’s a very long wait, and you need consistent, like regular, one on one with them. She might be a person from sexual abuse and what not, so she can’t just talk to anyone. Some girls can’t relate to the worker and need a different worker. I suppose it would help some people.
- We need a Koori D and A. We have Indigenous people who relate with their own people. Like half the girls in this gaol do not do any programs because there aren’t enough Koori workers.
- When I went for Supreme Court bail I was told (the waiting list) would be a minimum three weeks to see a drug and alcohol worker. I went to court, got knocked back Supreme Court bail because I had not been attending D and A, because going in hard for rehab. Then when I put my court case off deliberately for nearly three months so I could continue seeing D and A so I would have a better chance at rehab, my drug and alcohol worker left and I was told I would not be put on anyone else’s case load unless it was an absolute emergency and I was still waiting for another D and A worker. I did get to see one yesterday but she is not technically my D and A, she is for induction, but because she was my

* This figure excludes the 20 beds at the Parramatta Transitional Centre.

D and A before, I pulled her up every time I seen her and jumped on her, so I got to see her yesterday. It just doesn't happen.

- I wanted to go to D and A but there is no Koori D and A worker. As an Indigenous person, if I relate to Koori worker, then I think it is my right to have a Koori D and A worker.
- I'm lucky if I get to see (the drug and alcohol worker) once a month because my needs are not priority. A new girl who comes in has priority over me because I've been here longer and I've learned to cope. If they're desperate, they get first choice. She is fully booked. There are up to 300 women in here and one or two workers in the drug and alcohol area. It is just hopeless.
- You know, the majority of females are here for drug-related crimes and there are no programs to rehabilitate us - I should not say "no programs" - minimal programs to rehabilitate us.
- I do not think a DOA worker outside would have anywhere near the caseload that the DOA workers have here. I have been in therapy inside and out close to 17 years and I have never had problems seeing a D and A worker or a psychologist (Grafton).

5.62 Emu Plains Correctional Centre (with over 150 inmates, including the periodic detention inmates) has two full-time drug and alcohol workers. A third worker has recently been employed in a part-time capacity to run the POISE program. That position is funded from the Drug Summit. There is no specific Indigenous drug and alcohol position in the gaol. Ms Margaret Lightfoot, Programs Manager at Emu Plains Correctional Centre, explained the POISE program to the Committee in evidence.

The idea behind that program is that it is for people who have long-term drug use, who are recidivist inmates, and (it is designed) to help them once they get out into the community, to try to give them the living skills to say no. A major part of the program is some of these community organisations coming into the centres, making contacts, and the idea behind it is to help those longer term drug addict problems, basically. There is a lot of relapse prevention-type discussions in it. The particular program is a drug-free, live-in program for a period. It is aimed at people who are getting reasonably close to release, and the idea behind it is that they take responsibility for themselves, and the program encourages them to do that (Lightfoot evidence 16 February, 2000).

5.63 Emu Plains Correctional Centre has recently established a drug-free wing for inmates wishing to remain clean and sober during their period in prison. This wing will also have a focus on living skills, parenting issues, job skills and conflict resolution in terms of their substance abuse. The Committee supports the establishment of the drug free wing and urges the Department of Corrective Services to set a similar wing up in Mulawa.

5.64 Grafton Correctional Centre, with a population of 290 inmates has 3 drug and alcohol workers — two full-time and one alcohol and other drug detox position (Wilson evidence 29 March 2000). The June Baker facility which is the women's section of the gaol houses up to 20 inmates. Inmates at that facility indicated that they had "no problem" accessing the drug and alcohol workers.

- 5.65 Drug and alcohol workers can provide a number of services to inmates. These include one-to-one counselling, support for inmates in case management, running groups for people with a history of drug and alcohol abuse, establishing contacts with community agencies, preparing court and parole reports. However, some of the evidence received by the Committee and highlighted above indicates that drug and alcohol workers may not always be able to fulfil their roles.
- 5.66 It was also put to the Committee that the demand for drug and alcohol counselling is greater in the women's gaols than in the men's gaols:
- In the male gaols the percentage of people who have drug and alcohol problems is less high, it is about 70 per cent, and with women it is 90 per cent, so...the demand is higher (Giessler evidence 15 February 2000).
- 5.67 The Committee recognises that the environment in which an inmate is trying to detox and ultimately stay drug-free is, in many ways artificial. As Dr Matthews told the Committee,
- one of the great difficulties in drug and alcohol rehabilitation is that this is clearly not a normal environment. Whilst some might achieve a great degree of abstinence in this environment, very many people return. When they leave they return to their normal environment which is dysfunctional and returning to the dysfunctional environment is likely to lead to a greater chance of relapse.
- 5.68 A number of the inmates with whom the Committee spoke stated that whilst drugs may get into the prisons, it is nevertheless possible to remain drug-free. According to one woman at Emu Plains,
- there are drug and alcohol counsellors you can see. Basically, you choose if you do not want to touch drugs. If you do not want to touch them, it is no hassle to you. No-one comes up to you and makes you do it. Do you know what I mean? If you do not want to touch them, you just stay away from them (Inmate evidence 15 February 2000).
- 5.69 Another woman also told the Committee,
- It is a choice, but I personally believe that it is easier if you are living in an environment where it is sort of stipulated as drug free. Like, in Mulawa, there were certain wings that were categorised as a drug-free unit where the inmates who were there were really trying their hardest to not use drugs. They were urined on a regular basis to prove whether they were. If the urine was dirty, they were moved from that area. I lived in G Wing, which at the time was a trusted unit, at Mulawa, and it was for long-term inmates who were drug free, and it made it a lot easier if it is not sort of around you. It can be very tense to have people around you who are using drugs when you are doing your really hardest not to (Inmate evidence, 16 February 2000).
- 5.70 A drug free wing is currently operational at Emu Plains Correctional Centre.
- 5.71 Drugs in correctional centres were a focus of specific attention at the 1999 Drug Summit. The Summit endorsed twelve recommendations in this specific policy area, and nine had particular relevance to the delivery of drug and alcohol services inside prisons. These were:

7.4 The Department of Corrective Services should continue every endeavour to prevent the availability of illicit drugs in correctional centres while emphasis is nevertheless placed upon the enhancement of drug therapies and programs.

7.5 The Corrections Health Service detoxification and stabilisation programs should be expanded to all inmates who require them. Services should be supported by appropriately trained staff and evaluated through a coordinated research program.

7.6 The range, effectiveness and cultural sensitivity of alcohol and other drug services and programs for juvenile detainees, including the provision of designated detoxification beds at larger juvenile remand centres, should be reviewed and evaluated by a panel including representatives of the Department of Juvenile Justice and the Department of Health. The recommendations of the report on the detection and management of illicit drugs in juvenile detention centres (the DAMOID Report) are noted.

7.7 The Department of Corrective Services' urinalysis program in correctional centres be recognised as an important management tool for custodial and health staff. Positive test results will usually lead to sanctions, but such results should also lead to referral for initiation of treatment or modification of existing treatment, and Corrections Health Service should provide appropriate feedback to the Department of Corrective Services.

7.8 The range of alcohol and other drug programs in correctional centres should be reviewed with a view to the more systematic introduction of evidence-based treatment programs and strategies which minimise harm, are culturally and gender appropriate, and are supported by a training and research program.

7.9 The Department of Corrective Services should implement a pilot scheme to establish drug free zones as a program option within the correctional system. Such a program should operate on a principle that inmates enter into a contract to avoid drug-using behaviour and to participate in programs that will assist their eventual integration into the community.

7.10 Because the risk of recidivism and relapse is much higher among released drug-affected offenders who have not entered community programs, greater emphasis should be placed upon measures for closer co-operation between government and non-government agencies to ensure continuity of care, treatment and rehabilitation both before and after the release of inmates from prison. A trial "through care model of service delivery" including post release support services should be developed by the Department of Corrective Services in partnership with the following organisations: Corrections Health Service, Aboriginal Medical Service, Probation and Parole Service, Department of Juvenile Justice, Department of Housing, non-government agencies including those operating under the Department of Corrective Services Community Grants Program, and other government departments.

7.11 A joint working party, comprising the Corrections Health Service, the Department of Corrective Services and the Department of Juvenile Justice, develop a methodological framework to evaluate the efficacy of drug and alcohol programs. This framework would include the development of robust health outcome measures and performance indicators.

5.72 In moving a motion to endorse these recommendations, the Minister for Corrective Services, the Hon Bob Debus said:

We endorse the principle, for inmates from both juvenile and correctional centres, that the provision of effective and culturally appropriate programs and services, especially medical and therapeutic services, were needed to address drug-related problems, and we endorsed the idea that a concerted and focused effort in both pre-release and post-release programs was needed to ensure the smooth transition of people from custody back into society.

I draw the attention of the meeting particularly to recommendation 7.10, which says that because the risk of recidivism and relapse is much higher amongst drug-affected offenders who have not entered community programs, that greater emphasis should be placed upon measures for closer co-operation between non-government and government agencies to ensure there was a continuity of care, treatment and rehabilitation both before and after the release of inmates from prison.

The point here is that drug-using offenders are very often those who have the longest and heaviest drug dependence. In the end, the system of corrections catches those people who have been most dependent and most likely in many cases to have committed some form of crime. While, in turn, that means that any intervention of a therapeutic nature, any care given to an offender within the correctional system, is likely to have to be very intensive to be successful, it is the case nevertheless that successful interventions with such people will be particularly beneficial for society at large, simply because those people are the ones who are most likely to have been causing the most disruption and committing the most crime within our society because of their high level of drug use.

So, we have very strongly emphasised the need to continue to develop programs that not only deal with offenders who are within the correctional system but also give support to them when they have left the correctional system. If you do not give support to people who are released from prison or from a juvenile justice centre, they are much more likely to relapse and begin to commit crime again. There is no question at all that the most important recommendation working group No. 7 has put before you is No. 7.10.

5.73 On 13 April 2000, the Minister for Corrective Services, the Hon. Bob Debus, announced a package of \$23.6 million over the next four years to trial new ways of assisting prisoners to stop using drugs before they re-enter the community. Part of that package includes a trial of naltrexone in Parklea prison and it is expected that 450 prisoners will participate in that trial. Further, the Corrections Health Service will also trial a long lasting methadone alternative, LAAM, at Lithgow Correctional Centre. It is also expected that shortly 150 inmates at the Metropolitan Remand and Reception Centre and at Mulawa will participate in a buprenorphine trial which is a maintenance drug therapy similar to methadone but it is in a tablet form. Other items included in the announcement are measures to tighter security to prevent the entry of drugs into prison, including an increase in funding for the drug dog unit and for the State Investigative and Security Group, which specialises in drug detection operations.

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- 5.74 The Minister for Corrective Services also announced that the detoxification unit at Mulawa will be expanded. Currently, there are four detox beds in the induction unit at Mulawa, which has 42 beds in total. Given that a large proportion of women come into prison with urgent detoxification needs this allocation would seem manifestly inadequate. The Committee therefore urges the Minister, together with the Minister for Health to use the resources earmarked for the expansion of the unit at Mulawa to increase the bed capacity to a more realistic level that is commensurate with the needs of the inmates.
- 5.75 There are a number of details which the Committee still has to clarify with regard to the new funding. These include how the funding is to be split up between the various announcements and whether or not funding will be extended to include the provision of additional staff for drug and alcohol counselling.
- 5.76 While the Committee welcomes this injection of funding, the Committee notes that a greater proportion of women inmates suffer drug and alcohol addictions than men and therefore have a greater need for appropriate services and programs. Although a smaller proportion of the prison population, drug and alcohol programs for women should be given a relatively higher priority. In particular, the Committee considers that as well as an expansion of the detox unit at Mulawa, more drug and alcohol counsellors should be employed at Mulawa to ensure that inmates are receiving adequate treatment and therapeutic assistance which is ongoing and not merely crisis-driven.
- 5.77 Almost \$20 million has been allocated to drug and alcohol treatment services in the community. This includes 62 new rehabilitation beds in non-government organisations. The issue of community drug programs will be discussed in the chapter on alternatives to imprisonment.
- 5.78 The Committee will report again on the issue of drug and alcohol services in gaols in the second report. The Committee welcomes further submissions in regard to this issue from interested individuals or groups.

RECOMMENDATION

- 5.79 That the Minister for Corrective Services, together with the Minister for Health, use some of the resources earmarked for the expansion of the detoxification unit at Mulawa to increase the bed capacity of that unit to a more realistic level that is commensurate with the needs of the inmates.
- 5.80 That, as a matter of urgency, the Minister for Corrective Services employ at least 2 additional full-time drug and alcohol counsellors at Mulawa Correctional Centre. At least one of those positions should be a designated Indigenous position.
- 5.81 That the Minister for Corrective Services establish a designated drug free wing at Mulawa Correctional Centre as soon as possible.

- 5.82 That the Minister for Corrective Services ensure women inmates are given priority according to need in allocation of funding for drug and alcohol services and programs, including any treatment trials.

Education and Industry

- 5.83 A major component of the inmate program is education and industry. Most women who enter gaol have very low literacy and educational levels and are often unemployed, with limited or no work skills. This is particularly exacerbated in the case of inmates who are within disadvantaged groups such as Indigenous women, women from non-English speaking backgrounds, and women with an intellectual disability. As the Department of Corrective Services' submission states,

women in prison overwhelmingly have acute education and vocational deficiencies with limited employment skills and associated social deficiencies (Submission 55, p. 58).

- 5.84 The Senior Education Officer at Mulawa told the Committee in evidence,

There are a lot of women in Mulawa who have low literacy levels. They have the background of leaving school with prior to Year 10 completion. We have a range of women who have problems with English because of their non-English speaking backgrounds and we have women with intellectual disabilities. The idea is to try and set up a program which is going to encompass a wide range up to pre-tertiary level. There is a diploma which we anticipate being able to use at Mulawa which would be the equivalent of HSC or pre-tertiary certificate... If you think about a structured day, we are asking part-time students to leave work at 2 o'clock and come and study. That is quite a big ask. We can make most of the programs that we have here available to everybody. We often get partial completion. We get module completion, but we will not get certificate completion. We tend to move down the line in some areas and say that it is in the interests of people to do computer studies on a full-time basis, which means that ten people will finish that course and that makes them employable. To finish that course makes them employable. To finish the computer hardware servicing course would make you employable. That is complicated by the fact that, in reality, you have to look at probably between 40 and 50 percent of the population who will not be. That is the reality. You are going to find people who do not have the confidence to approach the workplace; you are going to find people who have children; you are going to find people who are second, third or fourth generation welfare recipients who have not got the ability to look at vocational training and work as a viable option for them. What we are trying to do in terms of setting up a program is to give equal validity to the kinds of skills people can use in the home and the kinds of skills people can use to work, if they choose to. The way that we do that is to have the accreditation base in place if anyone wants to follow it when they leave, when they go to Emu Plains or when they go to transitional centres (Adams evidence 15 February 2000).

- 5.85 Further, Lightfoot explained,

What we can do is encourage them to participate in programs here that may encourage them to continue that type of participation when they leave, so that what they start here in an education area can be continued when they are released. For instance, they may start a horticulture training course here; they may be able to do the first stage of it here, with the idea both for them and for us that when they are released they may go to a tech college to complete some more of that course, but there is still no way we have of ensuring that they do that. The same applies to other areas (Lightfoot evidence, 16 February 2000).

5.86 The Department of Corrective Services submission states that its Adult Education and Vocational Training Institute (AEVTI) is a registered training organisation which is responsible for the development, delivery and evaluation of educational, recreational and library programs for inmates in correctional centres. Programs are designed to:

- enable inmates to adapt to conditions resulting from their imprisonment;
- to maintain and build upon existing skills and knowledge;
- to complement industrial, administrative, maintenance and special management programs;
- to develop inmate vocational, social, leisure and personal skill;
- to promote co-operation with fellow inmates and correctional centre management and staff,

all of which have the ultimate objective of preparing inmates for a law abiding and productive life upon return to the community (Submission 55 p. 57).

5.87 In developing programs, AEVTI staff take account of:

- the special needs of the inmate population;
- constraints associated with security, accommodation, resource availability, special management programs, inmate employment and institutional routines;
- the availability of expertise within the Department and from external providers including TAFE NSW and a range of other community providers (Submission 55 p. 58).

5.88 The submission further notes that in 1998/99 76% of (all) inmates were enrolled in education programs and 5, 876 Statements of Attainment were awarded.

5.89 All inmates are required to work, which includes undertaking study. In relation to Corrective Services industries inmates are involved in:

- a range of service industry functions to provide for the self-sufficiency of the correctional system, for example, food services, building maintenance, clerical activities, landscaping;
- commercial based business units which market products and services as Corrective Services Industries-CSI; community projects, eg community landscaping projects;
- community based programs immediately prior to release including work release.

5.90 Ms Gail Malpass, Manager of Industries at Emu Plains Correctional Centre advised the Committee in evidence of one of the main objectives of the industries program:

Basically in industries we try to get them back into the work ethic and getting up and having responsibility to actually go and perform a task (Malpass evidence 16 February 2000).

5.91 She further described some of the kinds of industry programs in place at Emu Plains:

occupational health and safety, manual handling, first aid in conjunction with education. We do a lot of things in conjunction with education. First aid training - they use that outside as well as inside. Fork lift driving, tractor handling because of the industries we have here. There are actually things like fork lift driving they can use on the outside too. Girls are very keen to do those sorts of courses. Workplace assessments on production processes, forwarding systems, which is all applicable to outside industry, so we try to base them as close as we can to outside industry to give them the knowledge and the capability of slotting into a work position when they actually leave.

Grafton Correctional Centre offers industry and education to inmates but being largely a male prison, the women tend to participate in the same work or education programs that are offered to the men. Like Mulawa and Emu Plains Correctional Centre, all inmates at Grafton, including in June Baker, are required to work. Full-time study is the equivalent of a work position. A major source of work for the inmates at June Baker is sorting sugar bags. There are also a range of courses offered through TAFE and the centre offers 20 hours per week of face to face numeracy and literacy courses. At that facility work does not conflict with courses that an inmate wishes to undertake. If there is a conflict the inmate is released from work to attend the course (Wilson evidence 29 March 2000).

5.92 Inmates responses to education and industry at Mulawa, Emu Plains and June Baker were mixed. Whilst some inmates found these programs extremely worthwhile, others raised such issues of the accessibility of certain courses, the precedence which work took over education and the disparity of income earned from industries and from education. Some of those responses are listed below:

- I went to education and only because of Janet, I started to open myself up talking to her, I have got an education. I have been able to show that I am not a stupid clown like I was before (Mulawa).
- Over the last decade I have been doing full-time education. I work seven days a week. I do permaculture, painting and decorating, carpentry, computers, desk top publishing. I go all out. There is a lot of girls that would like to do education but there is courses there that will not benefit them and will not help them. You can get heaps of certificates and still keep coming back into the system because you have no training. You have the qualifications but no training or experience... I tried two months straight (to get a job) and it did not help me. I keep trying to do different ones and it is not a wide enough avenue. There should be some types of workshops for girls, something different (Mulawa).

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- The men next door (at Silverwater), do the carpentry and build furniture and stuff. We get to make jewellery boxes and stuff together out of scrap wood. It is fun and everything but — (we would like) something more than winding wires and changing ear muffs on head sets and potting plants.
- The girls that do get stuck into their education in here (Mulawa) and do make it out there (Emu Plains), they have to give it up. You cannot continue it. They have to give up and work on a slave labour wage what the gaol pays.
- I have just had something happen personally to myself in here about a permaculture class that they were going to hold here. I am not allowed to do that. I have been told that it is government policy. I do not understand it, and there are a lot of other women in here who do not understand when we have an expectation of society wanting girls in gaol, anyone in gaol, to rehabilitate. We do not have the access. When we start to try to do something for ourselves and help ourselves, we are told we cannot do that...we have got the (permaculture) class here. I could not do it because it is in work hours... it is three hours one day a week, and I believe it is the same with any of the craft classes that we have. The only thing that they actually approve to do during work hours is numeracy and literacy. Women come into gaol not knowing themselves and a lot of people want to rehabilitate themselves, and they are making new discoveries and it is like a new journey for themselves, and they start to discover things and then they are held back from doing it. It is all about rehabilitation to go back outside and fit into society out there.
- If you are working somewhere in an industry such as the dairy or head sets at Mulawa, you can earn \$50 or \$60 a week, and that is an amount that you can spend on your buy-up that will see you through comfortably for the things that you need, whereas full-time education wages usually are around \$15 a week and people just cannot survive on that money.
- A lot of the inmates in custody do not have outside support money-wise, whether they do not have family or friends who can help them financially, so it is really hard, and it sort of deters people from doing study because they think, "I would like to do this study full-time and do courses that are on offer," but they are worrying about financial things, because even if you did not smoke there are things you have to buy.
- Hygiene products alone can cost far more than \$15 a week, and it can be a problem. There seems to be no incentive to study. There is more incentive to work for the gaol in the industries.
- I work in industries, sugar bags, to help me get a proper job. It is a men's gaol and it is hard for the girls to get work here.
- We have only just got an industry for the females as of six weeks ago. Until then girls were trying to live on \$10.50 unemployment a week, and if you do education I think it is \$16 here a week. Now, that we have got an industry they are looking at \$24 to \$30 compared to \$16. Who is going to do education?
- I enjoy all the programs that we do get access to... I am doing a leather course. I am planning on doing a small business course as well and continuing with craft.

- 5.93 The Committee is concerned that should an inmate chose the work option of education she is not remunerated to the same level as those who choose industry. This disparity of wages acts as a disincentive to prisoners to complete or further their education. The Committee recommends that the Minister for Corrective Services ensure that there is parity of wages for inmates undertaking full-time work and those undertaking full-time study. It also recommends that the Minister ensure that women have the same choice and access to programs as male inmates.
- 5.94 Further, the Committee considered that the levels of education staff were low, particularly at Mulawa, where there was a high demand for teaching services. The Committee recognises that education can be a significant factor in the rehabilitation of offenders. To this end, the Committee would like to see the expansion of the teaching positions at Mulawa and recommends that an additional two positions be created.

RECOMMENDATIONS

- 5.95 That the Minister for Corrective Services ensure that there is parity of wages between inmates undertaking full-time work and those undertaking full-time study.
- 5.96 That the Minister for Corrective Services ensure that women have the same choice and access to programs as male inmates.
- 5.97 That the Minister for Corrective Services create two additional teaching positions at Mulawa Correctional Centre.

Health and Mental Health

- 5.98 Many women present in prison with a range of health problems including mental health problems. Many have had little contact with a health professional prior to their incarceration. The Corrections Health Service reports that,
- the health status of inmates is generally poorer in comparison to the wider community (Submission 119, p. 1).
- 5.99 According to Ms Shirley Nixon, Official Visitor at Mulawa, health is a common issue that inmates often raise with her. Inextricably linked with a person's health is her or his socio-economic status. The Corrections Health Service observes,
- Socio-economic status, a powerful predictor of health status, is substantially lower for inmates than in any other population (Corrections Health Service, 1999: 35).
- 5.100 Dr Ann Sefton, Director of Women's Health, for the Corrections Health Service told the Committee in evidence,
- I think probably every health issue you could think of is common in the female inmate population. Our core business is drug and alcohol and mental health problems, but

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there are very considerable psycho-social problems, problems relating to separation from families and support systems (Sefton evidence 15 February 2000).

5.101 Dr Sefton advised that among the most common health issues which women present with are drug and alcohol withdrawal, mental health problems and gynaecological problems. Oral health problems are also frequent.

5.102 According to Dr Sefton,

These women lead a very tough, chaotic lifestyle in the community. They do not access health services and we are essentially their health service, especially for those women who come in and out of custody many times. I think about 60 percent have a history of previous incarceration, so for those women we are their health service because when they are out they do not have the time or ability to access community services. They are often very isolated in the community and too busy chasing the drugs that they need to support their habit (Sefton evidence 15 February 2000).

5.103 Preliminary findings from the *Inmate Health Survey*, conducted by Tony Butler for the Corrections Health Service, showed that of the 132 female inmates who participated in the survey,

- two thirds tested positive for hepatitis C;
- 2 tested positive for HIV;
- approximately 50% reported that they had consumed, prior to imprisonment, quantities of alcohol which the World Health Organisation would rate as harmful;
- 23.7% reported heroin use while in prison;
- 16% reported that they regularly gambled prior to imprisonment;
- 48% reported that an adult or older person involved them in some form of sexual activity before they were 16 years old;
- 51% tested positive for Herpes Simplex Type 2 Virus;
- 51% either consented to having a PAP smear or results were available from screening in the previous twelve months. Forty % of those tested had abnormal smears;
- 76% reported a previous pregnancy. The mean age at the birth of the first child was 19.7 years (range -12 to 32 years). Forty nine % of those with previous pregnancies said they had miscarried and 43% had undergone abortions;
- 57% reported that they had been abused by their partner or spouse in the 12 months prior to imprisonment. This included, 30.2% verbal abuse; 25.0% physical assault; 10.4% sexual assault; 14.2% money withheld; 20.3% family contact stopped;
- 50% stated they had received some form of treatment or undergone assessment for an emotional or mental problem by a psychiatrist or a psychologist at some time in their life. Of these, 36% had previously been admitted to a psychiatric unit or hospital;

- Females were more likely to be moderately to severely depressed compared with males;
- 54% stated that they thought about suicide at some time in their life. Over 55% of suicidal thoughts in females occurred over one year ago. Over 10% of suicidal thought occurred in the previous month. Approximately 30% stated that thoughts of suicide had increased since incarceration. Approximately 10% had greatly increased their suicidal thoughts since imprisonment;
- 39% stated that they had previously attempted suicide;
- 23% stated they had deliberately self-harmed or injured themselves at some time in the past. Approximately half the self harms incidents reported occurred in the community and 40% occurred in prison alone. About 10% had self-harmed in both settings;
- Cannabis and heroin were the most popular drugs used prior to imprisonment. With the exception of cannabis and tranquillisers, women were more likely to consume drugs on a daily basis than men; and
- In the year prior to imprisonment 48% reported using heroin. Almost two-thirds of female heroin users reported daily usage.

5.104 These findings were supported by the anecdotal evidence provided by Dr Anne Sefton, Dr Michael Giuffrida, visiting psychiatrist to Mulawa and Dr Richard Matthews, Acting Chief Executive of the Corrections Health Service. Dr Sefton also explained that a woman inmate's health can be affected by her situation more than a male inmate's. She stated,

(women's prisons) are much more centralised and (the women) have to often be very far from their families, their friends, their children, because they may come from all over the State, whereas men may be more likely to be placed in the country near their family, so issues of separation and situational stress are very big for women coming into custody and it is a big adjustment for them. I think that impacts very strongly on their health and we see a lot of situational stress (Sefton evidence 15 February 2000).

5.105 The Corrections Health Service is responsible for providing and coordinating a comprehensive range of health care programs for people in custody across the State. The Service's major clinical programs are:

- **Drug and Alcohol**, including acute detoxification (including a detoxification unit at Mulawa), the drug court program and the drug stabilisation programs;
- **Mental Health**, including ambulatory services, acute and rehabilitation in-patient services, risk assessment and mental health promotion;
- **Population Health**, including public health, women's health and Aboriginal health;
- **Primary Health**, including primary health clinics, in-patient medical and surgical services, tertiary referral and specialist medical services;
- **Clinical Support Services**, including oral and allied health services, medical records and pharmacy services.

5.106 In its submission the Corrections Health Service advises:

General health care is provided by registered and enrolled nurses and by female general practitioners. Specialist nurses provide women's health, mental health, public health and methadone services. Inmates have access to psychiatric and dental treatment, to an optometrist, and Aboriginal medical officers and health workers.

The Mulawa Annexe is a six bed inmate unit for patients who require more intensive nursing supervision. Health promotion is performed on an individual basis by nursing and medical staff and the HIV and the Health Promotion Unit. There is a limited range of specialist and emergency services available to women within the correctional system. Female offenders are referred to community health facilities when they require a health service that is not available to within the correctional system, as indeed are male offenders. Women are generally sent to Westmead, Nepean or Auburn Hospitals, depending on the type of service required and the inmate's correctional centre classification. The strength of the Women's Health Service lies in its community health focus. The relatively small numbers of women in the stem being held in two main centres enables development of the model of continuity of care that has not yet been achieved thus far for male inmates (Submission 119 p. 3).

5.107 On 8 June, 2000 12 women in custody were known to be pregnant. In its status report on the implementation of the recommendations of the report of the Standing Committee on Social Issues, *Children of Imprisoned Parents*, the Department of Corrective Services stated,

Corrections Health Service has developed and implemented a gender specific reception form to ensure that pregnant women are identified upon reception into custody, as well as several specific policies relating to pregnancy. Pregnant women in custody receive appropriate antenatal care meeting community standards including regular checkups, antenatal tests and medications etc. Female general practitioners with special interest and training in women's health issues attend Mulawa and Emu Plains correctional centres regularly. Inmates are also cared for by the Women's Health Nurse and other nursing staff with qualifications in women's health or midwifery. Corrections Health Service staff liaise closely with the local Area Health Services to which pregnant women in custody will be referred for specialist tests, and for alcohol and other drug issues. If the woman is to give birth while in custody, Corrections Health Service staff complete booking procedures for the hospital and refer the woman to the antenatal clinic of the hospital for a routine visit at 32-34 weeks gestation or at any other time when specialist care is required. If a woman is released from custody before delivery of her baby Corrections Health Service staff arrange for her to be booked into an antenatal clinic and delivery suite of her choice and transfer all relevant records to the clinic and to the inmate.

5.108 Currently, there are only six forensic beds allocated to women at Cumberland Hospital. There is a 100 per cent occupancy with constant waiting list for admission (Submission 119, p. 2). In his evidence Dr Michael Giuffrida explained that,

at any one time I would be seeing about 30 women in this prison and there would be others at Emu Plains I do not see who would suffer from established chronic psychotic illness...there is for that group in between a dearth of services (Giuffrida, evidence 15 February 2000).

5.109 In his submission former psychiatric nurse, Mr Peter Neame claimed that mentally ill criminal offenders are 20-30 times more likely to re-offend,

so the lack of provision of medium and long term care beds in designated psychiatric hospitals means simply that prisons are being asked to do a job they were never designed for (Submission, 11, p. 1).

5.110 The Committee understands that “improved access to forensic beds for female forensic patients is a priority” of the Corrections Health Service (Corrections Health Service, 1999:44). The Committee strongly supports the direction of Corrections Health in this regard and urges that those beds become available as a matter of urgency.

RECOMMENDATION

5.111 That, in recognition of the great needs of women who enter the prison system with a serious psychiatric illness, the Minister for Health expand the number of forensic beds that are allocated to women inmates outside correctional centres as a matter of urgency.

5.112 The Disability Council of NSW also addressed the issue of women inmates with a psychiatric disability. According to that submission the ability of these women to access adequate medical services has been obstructed by a number of factors,

not least of which is the difficulty of attracting psychiatrists to work at such facilities as Mulawa. The lack of assessment more than often results in women going undiagnosed, and hence receiving no treatment. Psychiatrists complain that women inmates with a psychiatric disability are moved without consultation with the treating psychiatrist. This invariably results in an individual receiving no treatment or treatment that is different to that provided before their move (Submission 87, p. 9).

5.113 The issue of whether better psychiatric support services in the community would have an effect on the prison population was raised during the Inquiry. According to Dr Giuffrida,

it is hard to know. The clearest group would be those women who suffer from a chronic psychotic illness, schizophrenia and manic depressive illness. The next significant group would be those people who suffer from severe intellectual disability, or even perhaps moderate to severe, and those people that have brain damage from various causes. I think they are the groups for which there at least are other services readily available to care for them on a longer term basis, but the problem in general is that those facilities are over-burdened and it is difficult to find beds for those people in the public hospital system (Giuffrida evidence 15 February 2000).

5.114 In this regard the Committee welcomes the recent increase to mental health funding. The 2000-2001 Budget provides,

mental health funding will increase by \$36.5 million in 2000-01 rising to \$107.5 million per annum by the year 2002-03 providing an additional 700 direct care staff. By 2002-03, this increased funding will support 12,000 new community service clients, 450,000

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new community service contacts, 45,000 extra emergency department clients and 190 new acute beds including 90 in rural areas (NSW Treasury, 2000:10-4).

- 5.115 The Committee hopes that this major injection of resources to mental health services will allow many people with a mental illness to be treated and properly managed **before** they become involved in the criminal justice and penal systems. The Committee considers that some of these resources should be directed to rural areas so that magistrates in those regions have realistic options to which they can refer appropriate defendants.
- 5.116 The Committee also notes that a pilot Community and Court Liaison Service has been established in Central Sydney and Parramatta. The service is staffed by mental health nurses and psychiatrists who conduct triage in courts and police cells so that mentally ill offenders can be identified and diverted to community health facilities, where appropriate. The liaison officers provide reports to the court, establish community follow-up of mentally ill persons released from correctional centres and liaise with Area Health Services (Corrections Health Service, 1999:44).
- 5.117 The Committee commends Corrections Health for this initiative. Given the high proportion of inmates, particularly women, who have a mental illness and who end up in prison the Committee considers that the Community and Court Liaison Service will have play a significant diversionary role. It looks forward to the evaluation of the service.
- 5.118 The Committee strongly supports the introduction of telehealth at Grafton Correctional Centre giving women inmates at the June Baker facility access to psychiatry clinics and emergency mental health clinics. However, when visiting that facility it seemed that inmates were not familiar with the service. The following evidence was provided by inmates about telehealth at Grafton Correctional Centre:
- The Hon. JENNIFER GARDINER:** With respect to mental illness and psychiatric disorders, we have been told that there is a service here where the staff can get psychiatric back-up by teleconferences or telemedicine. Are you aware of that specialist back-up service being made available?
- INMATE A:** For the staff?
- The Hon. JENNIFER GARDINER:** No, for the inmates.
- CHAIR:** Has anyone used it?
- INMATE B:** I actually had a psychiatric report ordered for court. They were given eight weeks to prepare. Admittedly, it was a mistake on the warrant. It should have been psychology but it was written "psychiatric" so, therefore, the gaol has to follow what is written on that warrant. That report did not happen before I went back to court. It is a perfect example of how well this link-up business works.
- 5.119 The Committee considers that telehealth should be used in all appropriate cases in Correctional Centres.

RECOMMENDATION

5.120 That the Minister for Corrective Services ensure that telehealth conferencing is used in all appropriate cases in correctional centres when access to a specialist health professional is not readily provided.

5.121 Suicide, attempted suicide and self-harm are significant risks among inmates, particularly those who present with mental health problems. In relation to self-harm among women in prison, Dr Giuffrida explained that,

it is clearly much higher than one would expect in the community, and indeed more so than you would expect to see in a public hospital situation, and often the forms of self-harm are really quite severe and even grotesque. There are a small number of women who do repeated self-damage causing severe scarring and often secondary infection and have been extraordinarily difficult to manage and control in the prison situation (Giuffrida evidence 15 February 2000).

5.122 The Committee notes that the Department of Corrective Services, in conjunction with Corrections Health, has implemented certain strategies aimed at reducing deaths in custody and the risk of self-harm. Immediately after an inmate is received, she is taken to the health service and assessed including an assessment of her mental health risk which has already been identified by Corrective Services through their reception procedures. Should an inmate be identified to be at risk, she is referred to a risk intervention team. The Department of Corrective Services' Annual Report for 1998/99 states that,

when notification is received of an inmate engaging in acts of self harm or threatening suicide, or is believed to be at risk of suicide or self harm, a risk intervention team immediately convenes to manage the inmate through the acute crisis (Department of Corrective Services, 1999:10).

5.123 Further, Dr Sefton told the Committee,

If inmates express any risk factors of self-harm or if they are identified from past history or if staff members observe other factors that might contribute to that, that is reported. It is a mandatory reporting situation and it goes to the risk intervention team to be reviewed. In fact we have much less incidence of self-harm nowadays than we used to have because of various management procedures and identification procedures, but there are a small number, as (Dr Giuffrida) said, of people, usually with quite severe personality disorder, behavioural disorder, who will repeatedly self-harm and are very, very difficult to manage (Sefton evidence 15 February 2000).

5.124 The Mum Shirl Therapeutic Unit (MSU), located at Mulawa Correctional Centre, is a 13 bed residential unit for women identified with mental health issues and behavioural problems. The Corrections Health Service reports,

inmates are assessed, assisted with crisis resolution and behavioural management. Therapeutic programs available to women adopt a team approach in the management

of health and health related issues. The MSU is managed by a psychologist, mental health nurses attend daily and psychiatrists attend weekly (Submission 119, p. 2).

5.125 During the Inquiry the Chair of the Committee and the Committee Clerk visited the Mum Shirl Unit and spoke with the staff. It was indicated that many of the residents in Mum Shirl are extreme psychiatric patients who would be more appropriately managed in a secure psychiatric ward rather than in a prison. Residents in Mum Shirl are normally those who have difficulty adjusting to prison life. Many have severe behavioural problems and limited social skills founded in intellectual disability or mental illness. In her evidence to the Committee Associate Professor Susan Hayes, responding to queries from the Chair commented on the Mum Shirl Unit. The evidence is reported as follows:

CHAIR: Members of the Committee visited it a week ago. I must say, and I am making a presumption here on other members of the Committee, but my observation was that it appeared to be a fairly medically-based facility in that the cells were fairly spartan. There was not much access in the way of privacy. All of the walls were see through other than the external ones. There were cameras used to observe people.

The floors were covered only in concrete and there was not much access to outdoor recreation, certainly not much voluntary outdoor recreation, and the prisoners appeared to be confined either to their cells or to an open area that might have been roughly three quarters of the size of this room and that was during the day and they were only allowed to go outside in a small outdoor area under supervision.

Is that standard practice for dealing with people who have intellectual disabilities, that they would be that confined and subject to such a reasonably spartan environment?

Associate Professor HAYES: No, it is not standard. Certainly the male prisoners, especially the ones at Goulburn minimum security, have different conditions. They have access to basic skills courses such as cooking and literacy. They are allowed to do gardening or farm work, I think, about one day a week. They are also allowed to go on walks and play sport, so it seems that the males would be better off than the females in some of these units.

Also, from what I have seen of the Long Bay unit, it does not seem as spartan and as medically oriented there and also the inmates have the opportunity to do some work assembling QANTAS headsets. In the community and certainly in other programs for intellectually disabled prisoners I have seen elsewhere, the environment is made as much as possible like a group home in the community, so that people can learn appropriate skills such as cooking, budgeting, getting along with other people. That would assist them when they were integrated into the community.

CHAIR: I think the main reason for the spartan conditions of this prison and the close supervision relates first of all to the need to assist prisoners getting on with each other. Apparently they tend to fight a lot with each other and it is necessary to keep them contained in different places so that they do not fight with each other.

The other area of concern is potential suicide and self-harm. So there is obviously a wide level of supervision, and that probably explains the clear perspex walls and use of canvas blankets, for example, in the bedrooms and so on. Do you feel that is an appropriate way to treat all people with an intellectual disability?

Associate Professor HAYES: No. It may be appropriate to treat some of the dual diagnosis ones in that way but, in the main, people with an intellectual disability do not need that kind of containment and, in fact, would probably be disadvantaged by those kinds of conditions.

Having said that, of course, many of the people in Mum Shirl may be there because they are vulnerable in the mainstream and may be liable to be beaten up or in other ways victimised because of the nature of their crime or the nature of their challenging behaviour, so this may be a protective environment, to protect them from either self-harm or harm from others, but it is not an environment which is going to be appropriate for most intellectually disabled prisoners (Hayes evidence 27 March 2000).

- 5.126 The Committee will continue to investigate the provision of services to inmates with high support psychiatric needs and welcomes further submissions from interested individuals or groups. It considers, however, that there should be a review of the Mum Shirl Unit with a view to improving the quality of the conditions for women who are admitted there.

RECOMMENDATION

- 5.127 That the Minister for Health and the Minister for Corrective Services undertake a review of the conditions of the Mum Shirl Unit with a view to improving the quality of the conditions for women who are admitted there.

- 5.128 Whilst the Committee commends much of the work undertaken by Corrections Health and recognises the considerable workload that it must undertake, it was concerned at certain comments made by inmates about certain aspects of the provision of health services. The Committee intends to examine health services to inmates further in Part II of the Inquiry.

- 5.129 As noted in the Literature Review, the Standing Committee released a report into Hepatitis C, in 1998. A number of the recommendations in that report are relevant to the issues currently being investigated by this Committee. Some of the recommendations contained in that report were that:

- the Minister for Corrective Services, in conjunction with the Minister for Health, commission an independent study of the incidence and modes of transmission of Hepatitis C in the state's corrections system.
- the Ministers for Health and Corrective Services ensure adequate funding is allocated to ongoing monitoring and research of the incidence and modes of transmission of Hepatitis C in the state's corrections system;
- the independent study of Hepatitis C incidence be conducted on a regular basis to ensure information on the incidence and modes of transmission of Hepatitis C in the state's corrections system is gathered over time.
- the Minister for Corrective Services ensure the program offered at the Lifestyle Unit be expanded (in both scope and size) to respond more adequately to the prevalence of Hepatitis C within the corrections system. The Committee further recommends that the program be extended to include female inmates who are HCV +;

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- the Department of Corrective Services and the Corrections Health Service recognise the extraordinarily high rates of Hepatitis C amongst inmates in the state's correctional system and develop a Best Practice Model for the delivery of Hepatitis C health care services to these inmates as a matter of priority.
- urgent consideration be given to a range of non-custodial sentencing options such as the use of diversionary sentencing, utilisation of drug courts and the inappropriateness of mandatory sentences for minor offences as a means of reducing the transmission of Hepatitis C in the corrections system;
- the Minister for Corrective Services direct that appropriate educational strategies target non-Hepatitis C positive inmates who are at risk of infection during their first few weeks in prison;
- the Department of Corrective Services design, develop and implement an in-service training course for prison officers made up of education modules on harm minimisation and that adequate resources be made available to fund the implementation of the modules. The Committee further recommends that the Minister for Corrective Services direct all prison officers to undertake the proposed in-service training course on harm-minimisation;
- the Corrections Health Service make available a range of drug withdrawal strategies to inmates to inmates seeking to give up their drug habit.

5.130 The Committee endorses all the recommendations of the Social Issues Committee's report on Hepatitis C that deal with the corrections system. It proposes to examine the issue further, in Part II of the Inquiry.

Welfare Services

5.131 At each Correctional Centre welfare workers are employed to provide counselling and assistance to an inmates and their families on a range of issues. The key priorities of the Welfare Service are to:

- provide structured, culturally sensitive, comprehensive psycho-social assessment;
- provide a counselling service in a confidential setting;
- respond appropriately to the holistic needs of inmate clients and their extended families, through the provision of a professional, accessible service;
- develop structured programs which target identified needs of specific client groups;
- regularly evaluate and plan the Welfare Service to ensure that programs and services remain relevant tot the target population, staff and the community, and consistent with the Department's corporate goals;
- active professional learning that positively contributes to the Organisation, staff roles and responsibilities is a mandatory requirement of the Welfare Service;
- mandatory professional supervision for all Welfare staff to ensure the continuation of an ethical, accountable and proactive service.

- 5.132 The Welfare Service can provide an invaluable link between an inmate and her family and can assist in the necessary arrangements for an inmate's release. For instance, housing, social security, Medicare and the reunification with family and children, are all areas that a welfare officer can undertake for an inmate prior to her release. These issues will be discussed in greater detail in the section "Pre-Release". The process for an inmate consulting with the Welfare Service is described by Ms Iris Willoughby, Welfare Officer at Emu Plains Correctional Centre:

The inmate would usually self-refer for assistance, or could be referred through case management, or could be referred through any of the other workers that they are dealing with, such as alcohol and other drug services, or psychology, and they would then access welfare. The idea would be to identify what the inmate saw as the problem or what they saw as an issue when they leave, and we would assist them in any way we could to solve those problems or to resolve them (Willoughby evidence 16 February 2000).

- 5.133 The Annual Report of the Department of Corrective Services, for 1998/99 reports that for the total prison population,

the Department's Welfare Officers conducted more than 94,000 inmate interviews. Of these, 44,000 were for crises. More than 49,000 interviews were counselling on matters such as stress management, grief, mediation and conflict resolution... (further) welfare officers conducted 42,630 family interviews by telephone and in person, as part of the policy to help inmates maintain an active interest in family while in prison. This is an increase of 1,416 interviews since 1997/98... Financial assistance was given to 121 families to visit inmate relatives and 17, 934 contacts were made with community agencies in behalf of inmates and their families (Department of Corrective Services, 1999: 23 and 17).

- 5.134 Mulawa currently has 2.5 welfare officers and Emu Plains two. A welfare officer is employed for 2.5 days per week to specifically assist the women in the June Baker facility at Grafton. Women at Grafton also have access to an Aboriginal welfare officer. This is to service a population of approximately 430 inmates. A great deal of evidence was received from both inmates and staff alike that the high demand for the welfare service often cannot be met under the current staffing arrangements. According to one welfare officer for instance,

for me as a welfare worker... you are trying to always just to deal with the crisis things that come up. Personally, I think sometimes the quality of work that we are talking about there can be, on my part anyway, compromised because I am trying to meet needs, trying to be the crisis person, and I think sometimes people miss out. Some of the inmates miss out on some of that interaction which I think is of vital importance in their growth (Wood evidence, 15 February 2000).

- 5.135 Further, an inmate stated to the Committee,

I make all the appointments for the inmates to have access to all these women, psychology, welfare and drug and alcohol counselling, and I have to say to some of the girls that come in every day, "I am sorry, there is nobody to see you. You cannot

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see a welfare officer, you cannot see a drug and alcohol counsellor” (Inmate evidence 15 February 2000).

- 5.136 The Committee considers that the scope of the welfare services within the prisons appears to be wide. It will undertake further investigation of this issue at a later stage and welcomes any submissions from interested persons.

Pre-Release Programs

- 5.137 The submission from the Department of Corrective Services provides that,

minimum security inmates, who meet the (specific criteria)...are eligible for participation in external leave programs including work release, day and weekend leave, and education leave. The aim of the program is to ease inmates back into the community through employment and consolidation of their relationships with family and friends (Submission 55, p. 39).

- 5.138 Pre-release programs are available to women inmates serving the last six months of their sentence and includes those at Emu Plains Correctional Centre, the June Baker facility at Grafton Correctional Centre and the Parramatta Transitional Centre. Maximum security prisoners, such as those at Mulawa, are not eligible for pre-release programs. According to Mr Phillip Ricketts, Senior Education Officer at Emu Plains Correctional Centre,

the whole gaol (Emu Plains) is a pre-release program. I guess, looking at it in those terms, it is a pre-release gaol. As soon as (the inmates) get here we are looking at them getting out because they are not here that long sometimes... Our pre-release program is a multidisciplinary program here co-ordinated through education but it utilises welfare services and drug and alcohol services as well. It is largely designed, I guess, to prepare them for release either on education leave programs or work release programs for release once they have left gaol, so we look at areas of need such as restoring relationships when people get out, housing needs, some idea of goals and things like that (Ricketts evidence 16 February 2000).

- 5.139 The Committee did not speak to any inmates currently involved in works release. However, information on the work release scheme was provided by the Department of Corrective Services. The Department reports that there are two stages to the program. Participants in Stage 1 may leave for work during the day but return to the Correctional Centre each night. During Stage 2, inmates are able to reside at home on weekends. The submission from the Department of Corrective Services advises that,

a research study conducted by the Department of Corrective Services in 1995 found that participants were less likely to re-offend on their release from custody (Submission 55, p. 39).

- 5.140 Evidence provided by Ms Gail Malpass, Manager of Industries at Emu Plains Correctional Centre observed that Corrective Services Industries corporate office,

actually takes inmates when they get to a certain category to actually work in facilities. There is clerical assistance and things like that, but usually girls then go to the transitional centre for that. Some jobs we actually get in general industries might

progress through to them offering work release positions so that the girls actually have a knowledge prior to getting out of what tasks are required in industry (Malpass evidence 16 February 2000).

- 5.141 The Committee heard some evidence from inmates and staff regarding education leave. Ms Margaret Lightfoot, Program Manager at Emu Plains Correctional Centre told the Committee,

We have a wide variety of education programs in this centre. We focus a lot on preparing for release. We focus on inmates who are of an appropriate classification being able to attend things like tech colleges and universities, when they want to do that (Lightfoot evidence, 16 February 2000).

- 5.142 Further, one of the inmates explained to the Committee,

You have got one girl at the moment who has a 12-month sentence and she is going out to TAFE four days a week. I will be going out to TAFE. I am just waiting on my classification to be ratified for me to go out, but I have started the process. I was actually given the opportunity to audition. It is a music course I am doing, and although I was a category 2, (the Governor) arranged that I could go down to the audition, which I passed and got accepted into the course. I have been doing it through a tutor who comes in once a week until I am able to have the right classification to be able to go to TAFE myself. It is great (Inmate evidence 29 March 2000).

- 5.143 As well as education and work leave, the minimum security facilities also conduct programs within the gaols to prepare the inmates for their release. These Life Skills programs allow inmates to learn or refresh basic living skills such as financial management, parenting and relationships and communication skills (Department of Corrective Services, Through Care, 2000:4). Margaret Lightfoot from Emu Plains explained,

we do also have a lot of community organisations coming in here. We have people coming in running programs from women's health centres; we have people come in who run alternatives to violence programs. These are community people. The idea of community interaction with the inmates is so that they will have contacts in the community that they can go to when they are released to give them assistance. We have had the Department of Housing at various times come in as part of pre-release programs. So while there is not specifically someone who will call every inmate over and say, "Do you have housing? Have you organised this? Have you organised that?" as a general rule, it is included in pre-release discussions (Lightfoot evidence 16 February 2000).

- 5.144 Ms Kim Anson, Executive Director, Policy and Strategy Division, with the Department of Housing explained the services offered by that Department to inmates in her evidence to the Committee,

The client service teams within the vicinity of each of the major correctional centres in New South Wales do provide assistance to those facilities, and that includes the Penrith office providing services to Emu Plains and John Morony. The services provided differ slightly from one area to another, but overall the services include client

service staff visiting the facility on a regular basis, and at other times making visits as needed or on the invitation of the welfare officer. In some other cases support is primarily provided through the prison's welfare officer or social worker. You raise the specific example of Penrith. The staff there visit Emu Plains and John Morony, and meet with groups of prisoners to provide them with relevant housing information, and they assist individual prisoners with applications. They will generally check the status of prisoners who apply for public housing prior to imprisonment, to ensure that they have not been removed from the waiting list because they have been out of contact with the department. They will check the status of former tenants who had to leave their dwellings as part of being imprisoned, to ensure that they are not on our record as unsatisfactory tenants and to ensure that we are not regarding the property as abandoned, but rather that we understand where those persons are, so that they will not have a poor record with us that could affect their future relationship with us. Staff there also liaise with the social worker at Emu Plains, so that those about to be released have the documentation needed to receive the maximum assistance for which they are eligible. Regular visits also occur at Long Bay, Silverwater, Bathurst, Kirkconnell, Oberon, St Heliers and Armidale, and similar services are provided. In other prisons, visits are provided on request or, in some cases, our staff record very good working relationships with social workers and welfare offices and report doing business or providing assistance primarily through those people rather than specifically visiting on a regular basis. So Penrith is certainly one example, but many of our client service teams have ongoing liaisons and linkages with major correctional facilities (Anson evidence, 28 March, 2000).

5.145 The issue of access to the pre-release programs, particularly work, education and weekend leave is inextricably linked to the issue of **classification**. For women, the classification categories are as follows:

- Category 4: Continuous supervision** – those female inmates who, in the opinion of the Commissioner, should at all times be confined by a secure barrier.
- Category 3: General supervision** – those female inmates who, in the opinion of the Commissioner, should at all times be confined by a secure barrier.
- Category 2: Minimum supervision** – those female inmates who, in the opinion of the Commissioner, should be confined by a physical barrier unless in the company of a correctional officer or some other person authorised by the Commissioner.
- Category 1: monitored** – those female inmates who in the opinion of the Commissioner, need not be confined by a physical barrier at all times and who need not be supervised.

5.146 Category 4 inmates are subject to maximum security. Category 3 inmates are medium security and Category 2, low security. Category 1 inmates require the least supervision of all prisoners and can access work release and education leave. Category 1 inmates are detained at Emu Plains Correctional Centre.

- 5.147 Figures from the Department of Corrective Services *Inmate Census*, 30 June 1999, show that out of the total female prison population, only 1.1 per cent are C4 classification; 5.2 per cent are C3 classification; 51.2 per cent are C2 classification and 5.9 per cent, C1 Classification.
- 5.148 A female inmate's classification is based on her needs and her access to programs. However, some of the women the Committee spoke to were unable to access any of the pre-release programs such as day, work and education leave because of they were categorised as serious offenders. For instance, one women, who had served eight years of a thirteen year sentence was incarcerated at Emu Plains but could not access the full range of programs there. She told the Committee in evidence,

My minimum term is thirteen and a half years and originally when they sent me here to Emu Plains they said that within 12 months I would get my first lot of externals, which is days out shopping and possibly going to the movies and things like that. Then they said that a change came in and that now we are not under individual needs, that it is across the board for long-term serious offenders under SORC (Serious Offenders Review Committees) and PRLC, and I am under SORC, and I cannot go anywhere or get externals at all until the last 12 months of my sentence. I said to SORC that I felt that if I spent twelve and a half years in custody without any external and only have 12 months out that I would feel I probably would not be ready to go out into the community. I have only been on one day out and that was, like, a funeral, and I was pretty freaked out being in society after eight years. It was very frightening, and I just sort of said that I do not think 12 months is a long enough time, when you see that an inmate serving four years can spend two and a half years out and about whereas if you are serving 13 years you can only spend 12 months out. It is a big comparison...Yes, I have made a very grave mistake and people have suffered because of my actions, and I do not deny that, and I have a lot of remorse for that, but I feel that the more time I get out and about and get myself doing things that I can get better within myself. The longer I spend in here locked away, you cannot really do much to get yourself used to society again and being a member of society and a productive member of that, you know. It just seems you get punished time and time again. You are already serving this length of time and you are paying the price because you are a serious offender and might not be able to move to Jacaranda. Because I am a serious offender I cannot go anywhere until the last 12 months. It just seems you pay more than once for that crime (Inmate evidence, 16 February 2000).

- 5.149 A number of inmates are subject to an "E" classification. Inmates receive a special "E" classification if they escape or attempt to escape. This classification remains with an inmate until it is revoked by the Escape Review Committee. Inmates told the Committee that those with an "E" classification are denied access to pre-release programs and that their "E" classification, which could have been the result of an attempt to escape during an earlier term of imprisonment, virtually prevents them ever gaining access to pre-release programs such as work release, TAFE courses or placement in the transitional centre.
- 5.150 However, in her tabled evidence Assistant Commissioner Catriona McComish stated,

E category inmates have no more difficulty than other inmates in accessing programs and services available within the centre of classification...Inmates can apply to have their E category reviewed by the Escape Review Committee after they have served 50% of their minimum term. If successful they are classified as a E1 equivalent to C1

or Category 2 inmate allowing progress through to pre-release programs (McComish tabled evidence, 28 March 2000).

- 5.151 The classification system and access to programs was an area of concern raised by a number of witnesses and in many of the submissions that dealt with the experience of Indigenous inmates. Aboriginal prisoners are over-represented in the higher classification categories. Marcia Ella-Duncan, Executive Officer to the Aboriginal Justice Advisory Council stated in evidence,

most Aboriginal prisoners have a higher classification and are deemed more at risk. The classification often follows Indigenous people through their involvement in the Corrective Services. For example, if an Indigenous prisoner did some time, say, 10 years prior and played up a little bit, got a more serious classification because of behavioural problems which may have been quite appropriate at the time, but several years down the track he is facing another period of incarceration, their classification usually depends on the reports from the previous period. So it makes it very difficult for Aboriginal people to progress to less serious or to be assessed as less of a risk (Ella-Duncan evidence, 14 February 2000).

- 5.152 Further, the submission from the Sydney Regional Aboriginal Corporation Legal Service maintains,

the classification system has ...proven to be an impediment to Indigenous access to prison programmes. Inmate classification ranking's are an important determinative of an individual's access to programmes. Studies have shown that Indigenous Australians are grossly over represented in higher classification categories and less likely to move down the classification system...Inmate behaviour, the classification system and access to offender programmes are inseparable, in that a breach of discipline results in a more restrictive classification and subsequently retarding the developmental programme...In addition, our clients are frequently not aware of how the classification system operates and what programmes are available to them (Submission 78, p. 8).

- 5.153 It was also put to the Committee that many of the pre-release programs were not culturally appropriate with respect to Aboriginal people. To quote further from the Sydney Regional Aboriginal Corporation Legal Service,

A further reason for lack of participation (in pre-release programs) is that many Indigenous inmates simply do not want to participate in programs that are not culturally appropriate...SCRALS notes that the Corrective Services Industry (CSI) identifies in its Action Plan the goal of providing meaningful and culturally appropriate work. However, this aim must be translated into tangible and measurable outcomes through the introduction of practical and culturally appropriate training programmes leading to participation in work release or other pre-release programmes (Submission, 78 pp. 7, 8).

- 5.154 Assistant Commissioner McComish acknowledged the low participation rates among Aboriginal people in pre-release programs. To this end, she advised the Committee of,

the establishment of the Aboriginal Pre and Post Release program and the funding of organisations such as Yulawirri Aboriginal Corporation to provide a dedicated liaison officer to assist Aboriginal women with employment and housing issues pre- and post release, are specific strategies put in place to improve participation (McComish tabled evidence 28 March 2000).

- 5.155 The Committee also understands that the Department of Corrective Services supervises Mercy Camps in which Aboriginal people take Aboriginal women inmates on a spiritual journey in the bush outside Goodooga. The purpose of the camps is to “bring (Aboriginal women) in touch with themselves and their culture. Of approximately 40 women who have been through the program to date, only one has reoffended (Debus, General Purpose Standing Committee No. 5, 6 June 2000, p. 15).
- 5.156 Information provided by the Department of Corrective Services on 22 June, 2000 reports that:
- two Aboriginal women are participating in external activities at Emu Plains;
 - two Aboriginal women are participating in external activities at the Parramatta Transitional Centre;
 - ten women from a non-English speaking background are participating in external activities at Emu Plains and Parramatta Transitional Centre;
 - there are no intellectually disabled women participating in external programs at Emu Plains or Parramatta Transitional Centre (Department of Corrective Services, 2000:2).
- 5.157 The Committee was unable to take detailed evidence on pre-release programs particularly in relation to Indigenous women, women from non-English speaking backgrounds and women with an intellectual disability. It therefore proposes to investigate the matter further in Part II of the Report and welcomes further information in this regard.

The Mothers and Children’s Program

- 5.158 In 1996, a residential Mothers’ and Children’s program was established at Emu Plains Correctional Centre and the Parramatta Transitional Centre. The program comprises a full-time residential program and an occasional residential program. The full-time program allows for children to reside with their mother whilst in custody up to school age. An occasional residential program also exists to allow children up to the age of 12 years to spend weekends and/or school holidays with their mother. The Department of Corrective Services reports that since December 1996 until January 2000 the Mothers and Children’s Program has been responsible for assisting 21 women and 23 children in the full-time residence program and 34 women and 46 children in the occasional care program. Eligibility to the program rests first with the determination of what is in the best interests of the child. A woman must also be a minimum classification prisoner.
- 5.159 A Family Support Worker manages the program and a network of community agencies support the women and their children. The agencies include:
- Wentworth Area Health Service

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- Tresillian Nursing
- Nursing Mothers Association
- Kidsafe
- Salvo Moneycare
- Parenting Effective Training
- Children's Toy Library – Penrith Council

5.160 The women are also assisted with a pre-release plan through Inmate Development staff who also run such groups as:

- Domestic Violence
- Alternative to Violence Groups
- Drug and Alcohol Counselling
- Psychological Counselling
- Welfare Assistance
- Education.

5.161 When the Committee visited Jacaranda Cottages all the women with whom Members spoke found the mothers and children's program to be particularly beneficial to both them and their child. According to one woman,

Eight days after I have been in Mulawa I found out the mothers and babies program was running. I straight away went to a computer and wrote a big letter to Ms Madeleine Loy, and she got straight away back to me. Within a week I had an answer from her. She told me she is going to visit me in Mulawa, which she did. My conditions were that I first of all had to get my sentence before the process would start up, so I was on remand for 10 months. After the 10 months I was sentenced to a total of seven and a half years, four and a half without parole because it is such a big sentence. Then I wrote back to her straight away and told her what has happened to me, and she came out again to see me, and we started on the process of getting my child here, which was not an easy one because he had to come all the way down from Holland and there was the whole of the medical thing and his medical had to be cleared and his coming over here, and finance, of course, because as I am not from here I have no child endowment, so I had to put some money up on my own account in order to take care of him, but I had a lot of assistance from the gaol and all the welfare people and from the mothers and babies program and I really felt that I was fairly treated and I am happy that I finally got him here because that was my priority, all that I could think of, and they understood me pretty well (inmate evidence 16 February 2000).

5.162 The Committee applauds the Department of Corrective Services for the establishment of the Mothers and Children's program which has gone some way to address the issue of child-mother separation through imprisonment. However, the vast majority of women

inmates with children do not have access to the program, and remain incarcerated in the mainstream prison system. To this end it welcomes the advice that,

with the planned expansion of Emu Plains, it will be possible to also expand the Mothers and Children's program to provide more beds (Submission 55, p. 52).

5.163 It also considers that with the ongoing success of the program the Department should expand it to rural facilities that detain women.

5.164 In its submission, the Aboriginal Justice Advisory Council stated that

the matter of parenting and birthing ethics for Indigenous women may differ greatly from non-Indigenous women. Traditional roles surrounding birthing rites of passage as well as the effects of the assimilation policies have impacted on Aboriginal women. Therefore, AJAC supports the option as outlined in the Department of Corrective Services "Mothers and Children Policy" regarding the Aboriginal women accessing the fulltime residence program and the occasional residence program. However, there is no evidence to identify the extent to which Aboriginal women access these programs and it appears the program needs evaluation (Submission 120, p. 7).

5.165 The Committee urges the Minister for Corrective Services to ensure that Aboriginal women are participating in the Mothers and Children's Program at a rate at least proportionate to that of non-Aboriginal women.

RECOMMENDATION

5.166 That the Minister for Corrective Services ensure that Aboriginal women are participating in the Mothers' and Children's Program at a rate at least proportionate to that of non-Aboriginal women.

5.167 In endorsing the Mothers' and Children's program the Committee reiterates its belief that **imprisonment should always be used as a sanction of last resort** and that the existence of the program should not be a reason for gaoling a mother, as was the case in *R v Everett* 2000 NSWCCA and *R v Robinson* 2000 NSW (See Recommendation 4.88). Imprisonment is still a major infringement of a person's liberty and a grave form of punishment with or without such as program.

5.168 The Committee recognises that currently the Mothers' and Children's program is not available to women on remand or those in maximum security facilities. The Committee understands that there may be security and safety issues regarding the acceptance of children into a facility with high classification inmates. Further, and particularly in relation to women on remand, the Committee's preferred view is for women who are pregnant or who have dependent children not to be held in custody rather than be imprisoned with their children. The Committee acknowledges that the issue is problematic especially as some women with children can spend considerable periods of time in custody. It recommends that the Minister for Corrective Services find means whereby women in custody who are on remand can have access to the mothers and children's program.

RECOMMENDATION

5.169 That the Minister for Corrective Services find means whereby women in custody who are on remand can access the Mothers' and Children's program.

5.170 Currently, there are no plans for a mothers and children's program to operate from the proposed new women's correctional centre at South Windsor. That centre is intended to be a multi-classification facility and therefore could properly accommodate a mothers' and children's facility and service. Although the Committee is recommending a review of the proposal of the prison at South Windsor in Chapter Seven, it considers that should in fact, the construction go ahead, serious consideration be given to the inclusion of a Mothers' and Children's program.

RECOMMENDATION

5.171 That the Minister for Corrective Services expand the Mothers' and Children's Program to rural correctional centres so that women imprisoned in these centres have greater access to their children.

5.172 The Mothers and Children program also allows for conditional release of a female inmate under s. 26(2)(l) of the *Crimes (Administration of Sentences) Act 1999* (previously s.29(2)(c) of the *Prisons Act 1952*). Under this provision a women who is the carer of a young child or children may be conditionally released into the community to care for her children. Data supplied by the Department of Corrective Services shows that between December 1996 and January 2000, 10 women were released under then s.29(2)(c) (Submission 55, p. 52). The issue of conditional release under the then s. 29(2)(c) was discussed at length in the report of the Standing Committee on Social Issues, *Children of Imprisoned Parents*. In that report the Committee found that,

in practice, few women prisoners have been granted leave under s. 29(2)(c) (the former provision). Of a female prison population of 400, there is, at the time of writing, only one woman on conditional release under s.29(2)(c). Given that the majority of female inmates are mothers, most of whom are primary carers, this would suggest that s.29(2)(c) is not working as it should.

5.173 Among the recommendations were that the Minister for Corrective Services make suitable arrangements to expedite approvals for section 29(2)(c) recommendations, particularly for women in the latter stages of their pregnancy. This Committee is pleased to note that pursuant to the *Progress Report of the Implementation of the Recommendations of the Children of Imprisoned Parents Report*, released in March 2000, that recommendation has been implemented. The Progress Report states,

A Mothers and Children's Program Committee was established to streamline the processing of s.29(2)(c) applications by reducing the number of officers who need to comment on the applications. Since December 1996 all s. 29(2) (c) applications have

been processed in accordance with this revised procedure (Department of Corrective Services, 2000:13).

- 5.174 The Committee urges the Department of Corrective Services to continue to make women inmates aware of s. 26(2)(l) and to ensure that full use is being made of the provision by departmental staff and appropriate inmates.

Parramatta Transitional Centre

- 5.175 The Parramatta Transitional Centre for women was established in 1996 as a facility for women nearing the end of their sentence to be supervised in a boarding house environment. It provides a “bridge between the institutional routine of a correctional centre and the living skills needed to reintegrate into the community” (Submission 55, p. 65). Women applying for conditional release under s. 26(2)(l) of the *Crimes (Administration of Sentences) Act, 1999* may be released to the Parramatta Transitional Centre to reside with their child. As at 16 January 2000 there were 19 female inmates residing at the Parramatta Transitional Centre. The Department of Corrective Services report, *Though Care in the Department of Corrective Services – Achievements and Future Directions* states that,

women in the TC work in paid employment in the community and access community services. Community based agencies and educational services are also provided to the women in core programs. **Preliminary figures suggest that since the opening of the TC in 1996, only one women out of the 84 who have been through the Centre has returned to custody** (Department of Corrective Services, 2000: 5, emphasis supplied).

- 5.176 The Committee understands that the Department of Corrective Services is currently in the planning and development process for a second Transitional Centre for women. Assistant Commissioner McComish advised the Committee,

One possible site is on the Emu Plains CC Land, developing and adding to existing departmental houses which are at some distance but adjacent to the Correctional Centre complex. The TC will target the population with (alcohol and other drug) problems and will provide specific in-house programs. It is anticipated that the close relationship with Wentworth Area Health Service will be further developed in the provision of community based services to women. This second Transitional Centre has been funded to meet a major recommendation of the Drug Summit in relation to the provision of transitional services. Like Parramatta Transitional Centre there will be a Mothers and Children’s program at this centre (McComish tabled evidence 28 March 2000).

- 5.177 The Committee strongly supports the establishment of the new Transitional Centre for women. It also commends the Department of Corrective Services for the success of the Parramatta Transitional Centre. The Committee however, would like to see the establishment of services similar to these, developed in rural and regional areas so that women in regional gaols have a realistic opportunity to participate in this pre-release program without having to move too far from their community and family. It considers that such services should be established in the north coast region and in the far-west. The

Committee believes that any Transitional Centre or similar service should be physically and administratively separate from correctional centres.

RECOMMENDATION

- 5.178 That the Minister for Corrective Services develop services for women in rural and regional areas similar to those offered by the Parramatta Transitional Centre. The purpose of these services is to enable more women in rural areas to access the option of conditional release near to their communities.
- 5.179 That the Minister for Corrective Services ensure that any Transitional Centre or similar service be physically and administratively separate from a prison facility.

Visits

- 5.180 The issue of visits was raised, particularly by inmates, during the Inquiry. The Committee recognises that visits are very important in maintaining family ties. This is particularly so in the case of child/parent visits. As the report, *Children of Imprisoned Parents* found,
- maintaining meaningful contact with a child during a period of incarceration can assist in the reunification process with that child once the parent is released (Standing Committee on Social Issues, 1997:65).
- 5.181 At this stage in the Inquiry not enough evidence was taken by the Committee in relation to visits to enable it to make any findings or formulate any recommendations. The issue of visits will be dealt with in greater detail in Part II of the report.

Specialist Programs – Indigenous and Culturally-Specific Programs and Programs for Women with an Intellectual Disability.

- 5.182 The Committee understands that the Department of Corrective Services provides specific programs for Indigenous female inmates, female inmates from a non-English speaking background and female inmates with an intellectual disability.
- 5.183 Little evidence has been received to date on these specific programs and their effectiveness. Therefore, the Committee plans to investigate the issues in greater detail in Part II of the Report.

Remissions

- 5.184 The issue of remissions is one of considerable contention. Remissions were abolished in 1989 in the wake of the controversial and discredited early release scheme and the introduction of the Sentencing Act. Because of the controversy surrounding remissions, they have been regarded with much suspicion. Under the remission system, a prisoner automatically earned time off his or her sentence during the period of incarceration. Bad behaviour in prison meant loss of remissions.

5.185 A number of submissions argued that the abolition of remissions had a profound effect on the prisoner population. Many suggest that the introduction of an **earned remission** scheme could significantly reduce the inmate population and offer incentives to prisoners. The submission from the Law Society of NSW, for instance recommended the reintroduction of a system of earned remissions for deserving inmates. The submission argues,

The main criticism of remissions is the risk of corruption and abuse arising from the need to assess suitability for remissions. The Law Society's proposal for the reintroduction of earned remissions is predicated on the basis that the system put in place should be:

- accountable;
- subject to independent supervision; and
- transparent.

5.186 The other criticism of remissions is that they may conflict with the principles of truth in sentencing . Under the Law Society's proposal, the term of an inmate's sentence would remain unchanged; the parole period would increase in direct proportion to any reduction in the non-parole period.

Earned remissions have a number of very valuable benefits. They:

- encourage rehabilitation and facilitate integration/reintegration into the community on release;
- reduce recidivism;
- are particularly valuable for young adult offenders (18-25 years).

The Law Society proposes that remissions could be earned by an inmate who makes an outstanding achievement or contribution, for example in education, training or rehabilitation...To ensure the accountability and transparency of the process of granting earned remissions, the Law Society also recommends that the process should be administered by a Management Committee or Board, chaired by a Judicial Officer, with Departmental, professional and community membership (Submission 93, p. 9).

5.187 On its face, the Committee sees merit in this proposal, particularly in relation to a pilot project of earned remissions being established for women inmates. However, as the Committee has not yet fully investigated this issue it would be inappropriate to make recommendations at this stage. Part II of the report will address this issue.

Prison Size and Capacity

5.188 It has been suggested that the size of the inmate population can have a significant impact on the rehabilitative effect of any programs and services offered within gaols. The Department of Corrective Services has acknowledged this issue as a reason for the unsuitability of Mulawa and the need to build the new Correctional Centre for women at South Windsor. In a recent interview on national radio, the former Tasmanian Director of Corrective Services, Mr Ben Marris argued that the effectiveness of any rehabilitative

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prison program is dependent on the size of the prison population. He advised that to achieve positive results in the rehabilitation of inmates, prisons should house no more than 50 inmates (Radio National, 15 May 2000). This issue will be further investigated in Part II of the Inquiry.

Chapter 6 Community Based Corrections

Introduction

- 6.1 A common theme throughout the Inquiry has been that women should be diverted from imprisonment as far as possible. Brand (1993:1) argues that alternatives to imprisonment, particularly for women offer greater opportunity for rehabilitation and relieve the pressure on the prison system. He maintains that,
- non-custodial ...sanctions avoid the negative effects of imprisonment; contribute to a reduction in the crime rate and recidivism; provide a better opportunity to compensate victims; afford an opportunity for offenders to address their offending behaviour; and cost less (Brand, 1993:29).
- 6.2 As well as the issues raised above regarding the particular vulnerabilities of women who are imprisoned, a woman's incarceration (often, even more so than a man's), can have a devastating effect on a family. The report, *Children of Imprisoned Parents*, by the Standing Committee on Social Issues found that families often irreversibly fall apart when a mother is sent to prison. For children in particular, a mother's imprisonment can mean profound and far-reaching experiences of pain and loss, often resulting in the child later being involved in self-destructive behaviour.
- 6.3 The Committee accepts that for certain female offenders imprisonment is the only realistic alternative because of the seriousness of their crime. Women who have committed serious acts of violence and pose a threat to the safety of the general public would inevitably fall into this category.
- 6.4 However, the main body of evidence received by the Committee suggests that for a large proportion of women inmates imprisonment may be an inappropriate option. This relates to women on remand and those sentenced to prison. It was submitted that community alternatives, properly resourced and supervised can offer appropriate penalty options for women offenders.
- 6.5 The following discussion will examine the range, appropriateness and effectiveness of bail and alternative sentencing options available to women in the criminal justice system.

Alternatives for Women on Remand

- 6.6 Women who are charged with a criminal offence may be granted bail to appear in court on a future date, granted bail with conditions or refused bail and remanded in custody. As reported earlier, the number of women remanded in custody has increased in the last five years. Possible reasons for this increase are discussed in Chapter Four.
- 6.7 Vinson and Baldry (2000:4) and Mariasson and Eyland for the Department of Corrective Services (2000:12) observe that the number of female inmates **on remand** or awaiting trial has been following an upward trend since 1995. **The Department of Corrective Services**

advises that in relation to unsentenced female receptions, the numbers went from 714 in 1996-97, to 788 in 1997-98 and then jumping to 1080 in 1998-99.

6.8 The Department of Corrective Services submission also notes that the majority of unsentenced female receptions stay on remand less than one month (Submission 55, p12).

6.9 Research conducted by Professor Tony Vinson and Dr Eileen Baldry of the University of New South Wales, and reported in their submission and evidence, suggests that a significant number of women in custody can be appropriately diverted into alternative settings. Their research is based on the "ratings" of offences by six magistrates originally formulated in Vinson's study, *Comparison of the Sentencing of Indigenous and non-Indigenous Prisoners in New South Wales* (1998). Those ratings are divided into the categories of:

- Most serious (crimes of violence i.e. offences endangering persons, serious challenges to the authority of law, and drug trafficking);
- Middling serious; and
- Relatively less serious.

6.10 These categories were used as a tool to examine who was in gaol at 30 June 1999.

6.11 In relation to the remand component of the female prison population Vinson and Baldry found that from a total of 103 women on remand on 30 June 1999, there was only one woman remanded who was in the relatively less serious category (an illegal immigrant) as determined according to the magistrates ratings. However, they report in their submission that,

if there were few women on remand charged with relatively 'light' offences, the same is not true of the number in the **middling seriousness** range (emphasis theirs) (Submission, 41 p. 5).

Seriousness Rating Of Charges Facing Remandees

Offence Grading	Aboriginal/Torres Strait Islander	Non-Aboriginal	Total
Most Serious	13 (48.1%)	40 (52.6%)	53 (51.5%)
Middling Seriousness	14 (51.9%)	35 (46.1%)	49 (47.6%)
Relatively Less Serious	-----	1 (1.3%)	1 (0.9%)

(Submission41, p. 6)

6.12 The "middling serious" charges for which women were held in remand on 30 June 1999 are detailed in the table below.

Principal Remand Charges Excluding Cases in the Most Serious Category

CATEGORY	PREVIOUS FULL-TIME PRISON	NO PREVIOUS FULL-TIME PRISON
Crimes against person		
assaults, bodily harm	3	1
other assaults	3	1
Against good order		
resist arrest	1	-
Break and Enter	6	1
Drugs		
possess	1	1
Theft		
receive stolen goods	1	2
goods in custody	4	3
fraud	2	5
stealing	2	1
motor vehicle theft/use	3	---
shoplifting	2	---
malicious damage	1	---
Breach of Orders		
bond	---	1
illegal immigrant	---	1
breach of community service order	---	1
breach of the Justices Act	---	1
Unlawful Possession of Weapon	1	

(Submission, 41 p.7).

6.13 The Committee recognises that prior convictions, although not detailed in the Vinson and Baldry table, could impact on the criteria used in a bail determination. Vinson and Baldry have advised that they were unable to secure information on prior convictions from the Department of Corrective Services. In any case, they argue,

it is certainly conceivable that the existence of some records could impact on the criteria followed for deciding whether or not to release on bail. (However):

- we have excluded from our calculation of those women who might be eligible, those whose current offence is of a “serious” nature (as defined by our panel of magistrates); and
- the specialist bail hostel and regime that we propose is intended to provide a bail option to judicial officers in cases where a lesser degree of surveillance and control would rule out the possibility of bail (Vinson and Baldry, supplementary submission).

6.14 Based on their findings, Vinson and Baldry argue that approximately half of both the Indigenous and non-Indigenous remand detainees were in the *comparatively less serious category*.

Consequently, they contend that custodial alternatives should be made available for this group.

6.15 The authors recommended the establishment of bail hostels “of the kind encountered in Europe”. Such hostels are an alternative to custodial remand and offer a supervised, residential service based in the community.

6.16 Currently, there are no such hostels in NSW that cater for adult offenders. The Department of Juvenile Justice however, operates a bail hostel for young Aboriginal offenders in Western Sydney. The Ja-Biah Bail Hostel houses between 6-8 young people and has been operational for four years.

6.17 A number of witnesses and submissions recommended the establishment of bail hostels or specialist accommodation services throughout New South Wales as one means of addressing the issue of increasing prison numbers and overcrowding of gaols and of countering some of the difficulties experienced by people on remand. Such hostels would have the advantage of allowing a defendant to remain in a community setting and could alleviate many of the problems the Department and the inmate have at reception. Furthermore, it was submitted that bail hostels could link up with appropriate services within the community or within Corrective Services to ensure that an inmate is receiving adequate treatment or counselling, where necessary. In its submission, the Law Society of NSW recommends the establishment of bail hostels throughout New South Wales and proposes that,

sufficient diversionary and remedial programs be made available to ensure that people are only committed in custody on remand when no other appropriate means of security or sanction is available (Submission 93, p. 4).

6.18 The submission from the Sydney Regional Aboriginal Corporation Legal Service also highlights the need for special bail accommodation to be established for Indigenous defendants awaiting court appearances. That submission states that with

the creation of specialist accommodation services for Indigenous persons on bail such initiatives would ensure compliance with the Royal Commission into Aboriginal Deaths in Custody and enable remandees to maintain contact with family, culturally appropriate support services and community members (Submission 78, p. 4).

6.19 Bail hostels in other jurisdictions are specifically designed to keep suitable remandees out of prison. Vinson and Baldry report that,

the main aims of the bail hostels in the UK are:

- securing the bailee’s co-operation with their bail order and thus minimising the risk to the public; and
- providing the opportunity for bailees to use this period constructively and, where appropriate, addressing the problems that gave rise to, or arise out of their offending (Submission 41, p. 13).

- 6.20 Bail hostels, it was submitted, also have the advantage of being independent from the prison environment and thus its often negative influences.
- 6.21 In 1998, the English Home Office released its findings in relation to a review of approved probation and bail hostels. The review reports,
- in 1971 the first hostel accommodating bailees opened as an experimental project, managed by the voluntary sector. The purpose behind the initiative was to avoid the unnecessary custodial remand of defendants by providing supportive hostel accommodation from which they might be less likely to abscond than if otherwise accommodated in the community. By 1972, probation services were encouraged to develop bail hostels, probation Committees were empowered to manage them and, by 1973, the Home Secretary was enabled to approve and regulate them. In 1974, it was determined that defendants on bail could be accommodated in probation hostels. The problems of overcrowding in prisons and prison cells prompted an expansion of hostels between 1988 and 1994. During that time, 27 new hostels were established and a significant number of existing ones were extended to provide over 1,000 additional bed spaces (Home Office, 1998:5).
- 6.22 The purpose of the approved hostels as set out in the National Standards for the Supervision of Offenders in the Community is to provide an
- enhanced level of supervision to enable certain bailees and offenders to remain under supervision in the community.
- 6.23 Two of the English hostels allowed for the accommodation of women with their children.
- 6.24 Among the Home Office's findings were that
- hostels, including those managed by voluntary Committees unquestionably demonstrated their ability to accommodate and work successfully with some of the most difficult, damaged and potentially dangerous defendants and offenders within the criminal justice system, in a manner which gave due regard to public safety (Home Office, 1998:5).
- 6.25 However, during the inquiry the Committee heard some concern for and opposition to the establishment of bail hostels. Senior Public Defender, John Nicholson, SC for example, supported to some extent the concept of bail hostels but expressed certain reservations also. He stated,
- often, persons accused of crimes have no fixed place of abode or, because of the alleged crime, can no longer continue residing at the last residential address... For such persons, a bail hostel may assist in resolving their residential requirements sufficient to help them obtain bail. Bail hostels run by Indigenous persons for Indigenous persons could be very useful in regions where there are centres of Indigenous populations. The management of these hostels would need to receive the input of Indigenous communities. However, if bail hostels (generally were) subjected to such supervision that it becomes a gaol in everything but name only, then that form of bail hostel would be little different to bail refused (Nicholson tabled evidence 27 March 2000).

6.26 Nicholson also addressed the issue of the potential for netwidening because of the existence of bail hostels. He argued,

there would also need to be built into the legislation and philosophy of bail hostels that they are being created to increase opportunities for bail to be granted to persons currently found unacceptable for bail. Frequently, well-intentioned legislation has the effect of raising the bar so that persons who judicial officers now release, albeit with hesitation, might find themselves confined to bail hostels, while the person for whom the bail hostel was intended remains firmly secure inside the remand centre (Nicholson tabled evidence 27 March 2000).

6.27 The Department of Corrective Services was not supportive of the establishment of bail hostels. Evidence was taken on this issue from Ms Catriona McComish, Assistant Commissioner, Inmate Management and Mr Peter McDonald, Acting Manager, Probation and Parole Service. McComish advised the Committee,

the Department supports the provision of accommodation in the community to always provide an option to incarceration in those cases judged by the Court to be able to be managed in the community. On existing evidence the Department does not see "bail hostels" as a viable alternative nor one which should be managed by a correctional service (McComish tabled evidence 27 March 2000).

6.28 In his evidence, McDonald advised the Committee,

On a number of occasions over the years (the Department of Corrective Services) have also looked at the broader issue of bail hostels. More recently I have had contact with my counterpart in Western Australia in relation to that State's experience with a bail hostel. For Western Australia, it was not a positive experience. It was found in relation to the 24-bed bail hostel established in Western Australia, which also was designed to reduce prison numbers, that (a) it did not have that effect; (b) it was never able to fill the 24 beds in the bail hostel; (c) people who went to the bail hostel for the most part actually had accommodation elsewhere so it was just a ramping-up or a way of providing a tougher form of bail without someone actually going to gaol; and (d) people who breached the bail house rules for the most part when they returned to court were then released on bail in the community. After 12 years of operation, the Western Australians got out of the business because they believed it that it did not actually add any value and did not have any impact on the prison system. Essentially, those people who went into the hostel just added to the networking process... (Further), no matter where we may put the bail hostel, unless there is a broad range of bail hostels—and Western Australia is a large state, as is New South Wales—people would be a long way from home (McDonald evidence, 28 March 2000).

Western Australian Bail Hostel

6.29 The Stirling House Bail Hostel was established in 1983 at North Fremantle in Western Australia with the capacity to accommodate 24 residents (up to 18 male and 6 female). Information provided by the Western Australian Ministry for Justice reports the philosophical underpinnings of the Bail Hostel were that:

- Bail should be available to any unconvicted defendant subject only to limitations pertaining to risk to the community, potential for interference with witnesses, and an unacceptable risk of absconding.
- Defendants should be enabled to maintain social links through family, friends, and work unless and until removed from the family by way of sentence.
- Remand in custody exposes a defendant to negative experiences and pressures.
- Redefining of personal goals can best be achieved through access to counsellors and lawyers in the community (Western Australian Ministry of Justice, 1999:1).

6.30 Further, it was anticipated that a significant proportion of residents would be:

- itinerant persons or arrivals from other States, and with no one to provide surety;
- defendants charged with domestic offences and therefore unable to return home, at least temporarily;
- socially disadvantaged persons with no permanent dwelling place (Western Australian Ministry of Justice, 1999:1).

6.31 Eligibility to the Bail Hostel was established by “bail officers” who would screen admissions to the Remand Centre and refer suitable candidates to the courts. The courts could also remand a defendant to the Bail Hostel on his or her first court appearance.

6.32 The hostel closed in 1995. This was due to a number of issues. Among them were that the bail hostel failed to achieve its occupancy rate as custodial remands rose. During the period 1989-1990 the occupancy rate fell to a low point of less than eight residents on a monthly average whilst custodial remands rose by almost one third. Moreover, the Ministry of Justice details the following factors in the demise of the bail hostel:

a major factor in the reduced use of the Bail Hostel was the belated proclamation on 6 February 1989 of the Bail Act 1982, which signalled a shift in bail release patterns. A major factor was that “bail jumping” was established as an offence in its own right, punishable, at last resort by imprisonment. At the same time, sureties were more likely to come forward, because once they signed the bond there was no need for a further Court attendance each time the defendant was required to return there. The overall effect appeared to be that marginal bail candidates were more likely to be released on bail without a hostel residence requirement, whereas those formerly held in custodial remand continued to be so detained. In 1991, home detention as a condition of bail became available. This program allowed the release of certain defendants under a tightly managed curfew regime, including electronic monitoring. Although the number of defendants released on home detention as a condition of bail has remained relatively small (currently around 30), it offered the courts another alternative to the Bail Hostel (Western Australian Ministry of Justice, 1999:2).

6.33 By 1995, it was considered that the Bail Hostel was not fulfilling its role as a last resort alternative to custodial remand. Further, in that same year there was a serious assault on two members of staff at the Bail Hostel and,

safety concerns had made it clear that if the hostel were to continue to operate, there would need to be revised staffing formulas at concomitant greatly increased cost (Western Australian Ministry of Justice, 1999:2).

- 6.34 The hostel closed in November 1995. Despite enquiries to reopen the Bail Hostel, the Ministry of Justice considers this to be an unrealistic option. The Ministry advises,

community values had changed substantially since the opening of the Bail Hostel in 1983, and...it would be much more difficult to operate any sort of low security institutions in the metropolitan area.

The Situation in New South Wales

- 6.35 Currently, there is only one facility that can accommodate women who are on bail. Although set up more as a post-release service, Guthrie House in Enmore can take eight women involved in the criminal justice system and any of their children. In her evidence to the Committee, Anne Webb, coordinator of Guthrie House advised that last year she had to turn away 90 women because of a lack of space.

- 6.36 Expressing her opposition to the construction of the new women's prison at South Windsor (at a cost of \$34 million) Ms Webb argued before the Committee,

I really cannot understand why there is a proposal for a prison to be built at Windsor or anywhere else in New South Wales when more than one-third of the women who are in prison at the moment are there on remand. They have not been convicted of any offence. So, if we only took away 28 per cent of those women on remand and assumed, which is not true, that the rest of them there are such a danger to the community that they cannot be bailed, how could we possibly need the facility at Windsor? Why are we not putting it into a bail house where women can be with their children and hopefully pick up a few parenting skills so we do not find those children within the prison system within 10 years? (Webb evidence 23 February 2000).

- 6.37 In relation to defendants with an **intellectual disability**, Chapter Three reported from the evidence of Associate Professor Susan Hayes that, based on anecdotal evidence, people with an intellectual disability are more likely to be remanded in custody than non-disabled defendants. The NSW Law Reform Commission in its report, *People with an Intellectual Disability and the Criminal Justice System* argued bail is often denied due to,

inadequate support and accommodation services for the person with an intellectual disability to allow them to understand and meet the conditions of bail (NSW Law Reform Commission, 1996: 121).

- 6.38 In its earlier Discussion Paper (29) the NSW Law Reform Commission suggested that a pilot bail hostel for intellectually disabled people be considered to overcome some of the difficulties they experience when trying to access bail. However, in its later report, the Commission abandoned that proposal based on the following objections raised by many groups:

- a hostel would be inappropriately stigmatising and segregating;

- a hostel would become a “dumping ground” for people with an intellectual disability; and
- that it would be better for the Department of Community Services to become more involved with finding accommodation in the community and assisting court attendance than creating a further institution (NSW Law Reform Commission, 1996:121).

6.39 Vinson and Baldry suggest that one of the major reasons for the failure of the Western Australian Bail Hostel was that the “bail officers” approached judicial officers after the judicial officers had made their formal determination with a view to persuading them to alter a decision already made. They argue:

it is too late to be relying on initiatives taken when the defendant has already been placed in a remand centre. The (Western Australian Ministry for Justice) speaks of a ‘concerted marketing plan to promote the (bail) service to the judiciary, the legal profession, staff of the Department and to remand prisoners at the Canning Vale (Western Australia) remand centre’. Gaining the attention of judicial officers by these means is notoriously difficult in the absence of a recommendations concerning specific cases (supplementary Submission 41 p. 2).

6.40 They maintain that,

the reason why bail hostels enjoy success in the UK is largely the fact that bail officers are in court when the judicial officer is deciding what is to be done. The hearing is frequently adjourned to allow the bail officer to interview the defendant in the cells on the points at issue, such as appropriate accommodation and continuing contact with a responsible adult, and to make inquiries needed to ensure that practical arrangements can be made. Upon resumption of the bail hearing, the judicial officer has a proposal before her or him, which enables the bail hostel option to be adopted. All of this is in total contrast to the (process which occurred in) Western Australia (Supplementary submission 41, p. 2).

6.41 Information was not available from Western Australia regarding the experiences of women specifically who were remanded to the Bail Hostel. The Hostel there was for both women and men. Submissions put forth for Part I of this inquiry focussed on the establishment of a women-only hostel. Given all the evidence that points to the fact that women offenders have special needs apart from those of male offenders, the Committee considers that different issues would have to be considered in the establishment of a female specific custodial alternative. For instance, as research tells us that women pose less than a safety threat to others than men, the issue of security might be less critical than for male residents at a bail hostel.

6.42 The Committee sees much merit in the establishment of bail hostels for women defendants. One of the most persuasive arguments for the Committee’s view is that women offenders are usually the primary carers of children and any period of custody of a mother, and subsequent separation, can have a profoundly negative effect on a child (see Standing Committee on Social Issues Report, *Children of Imprisoned Parents*, 1997). A women’s bail hostel, like the facility at Guthrie House, could feasibly accommodate both a

mother and her dependent children. Ultimately, this would require adequate resources, including the employment of appropriately trained staff.

- 6.43 The Committee strongly supports the view that the success of any custodial alternative requires a well-informed judiciary and legal profession.
- 6.44 Further, a non-custodial remand facility should not be a trap for netwidening. Clear guidelines would have to be developed to ensure that a bail hostel is an alternative to custody, not an alternative to being in the community. It would have to be made very clear to judicial officers that **remanding a person to a bail hostel is a last resort before imprisonment.**
- 6.45 As noted earlier the Department of Juvenile Justice successfully manages a bail hostel for young Aboriginal remandees. A committed and well trained staff as well as appropriate community input are considered to be major factors in the success of that facility.
- 6.46 Although not a bail hostel as such, defendants can be remanded to reside at Guthrie House as a condition of their bail. In terms of funding Guthrie House receives \$117,000 from the Department of Corrective Services, \$101,000 from the Department of Health and \$64,000 from the Department of Community Services. From a total of \$281,000 per year the service accommodated 43 women and 23 accompanying children during 1998-99. Guthrie House provides eight beds for the women at a cost of approximately \$35,000 per year, per adult resident. This compares with the cost of detaining a remand inmate (maximum security) of \$64,762 per year (Department of Corrective Services, 2000: 1).
- 6.47 The Committee recognises that bail hostels would require additional staffing and further supervisory costs than Guthrie House however, it would still seem that bail hostels are a workable financial option.
- 6.48 The Committee considers that two bail hostels for women should be piloted in New South Wales and evaluated after a period of two years. They should be managed by the Department of Corrective Services but have appropriate input from the Departments of Community Services, Health and Housing. If after that evaluation the hostels have been successful, in that, for instance, the residents have responded positively to the services offered and there has not be substantial netwidening, the Department should consider expanding the bail hostels for women throughout New South Wales. The Committee considers that one of these women hostels should be specifically for Indigenous women and the other for both Indigenous and non-Indigenous women. Liaison with relevant Departments and community agencies should be established so that the residents have access to appropriate services and treatment where needed. The hostels should be adequately resourced and staffed.

RECOMMENDATION

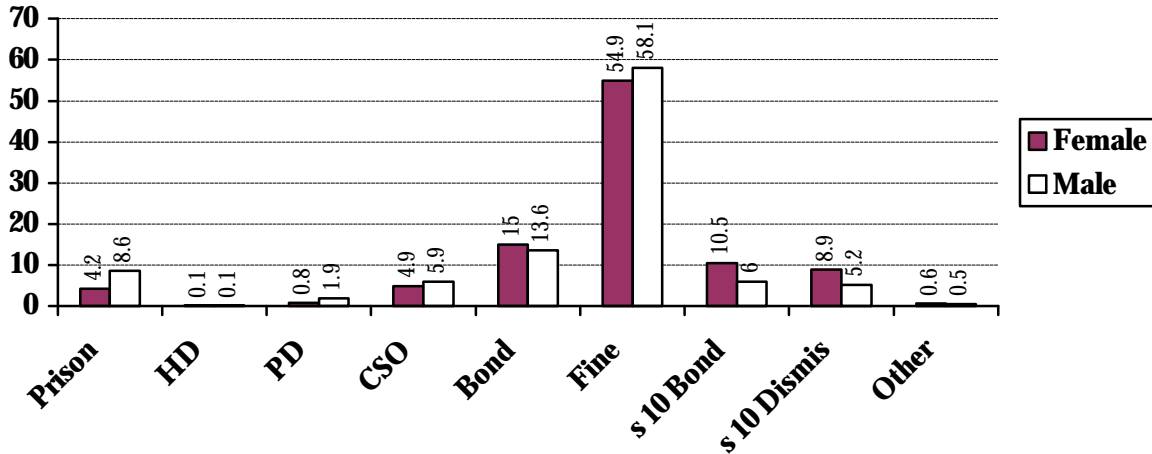
- 6.49 That the Government fund two bail hostels in New South Wales for women. One of those hostels should be specifically for Indigenous women. No more than 10 adult residents should be accommodated in each bail hostel.

- 6.50 That the bail hostels be subject to a pilot period of two years after which time the Government fund independent research to evaluate their effectiveness. Issues to be considered in the evaluation shall include, but not be limited to, netwidening and referral to the hostels by the judiciary, the response of the residents to the services provided by the bail hostel and the effect on the women's prison remand population.
- 6.51 That liaison between relevant Departments and community agencies be established so that the residents of the bail hostels have access to appropriate services and treatment where needed. The hostels should be adequately resourced, have specialised staff and be equipped to accommodate dependent children of the residents.
- 6.52 That the Government establish an Interdepartmental Committee which includes representation from relevant community agencies to oversee the operation of the bail hostels.
- 6.53 That the Attorney General provide appropriate and ongoing training to judicial officers about the women's bail hostels. Appropriate and strict guidelines should be developed which emphasise that remand to a bail hostel is the last resort before remand in custody. The bail hostels should never be used as an alternative to unconditional bail or other orders of bail allowing a defendant to remain in her community.

Sentencing Alternatives to Full-Time Imprisonment

- 6.54 Imprisonment is the final and most serious option a court can use when sentencing a defendant. The other options available to a court are:
- fines;
 - bonds or probation;
 - community service orders;
 - periodic detention orders;
 - home detention orders; and
 - Drug Court orders.

Percentage Distribution of Penalties for Females and Males 1995–1999

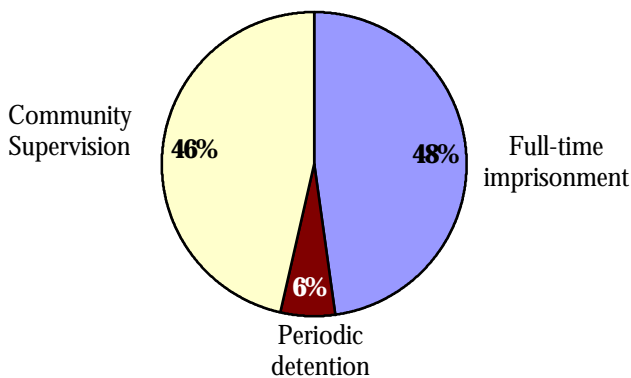


(Sentencing Female Offenders in New South Wales, Sentencing Trends: An Analysis of New South Wales Sentencing Statistics, Patrizia Poletti, Judicial Commission of New South Wales)

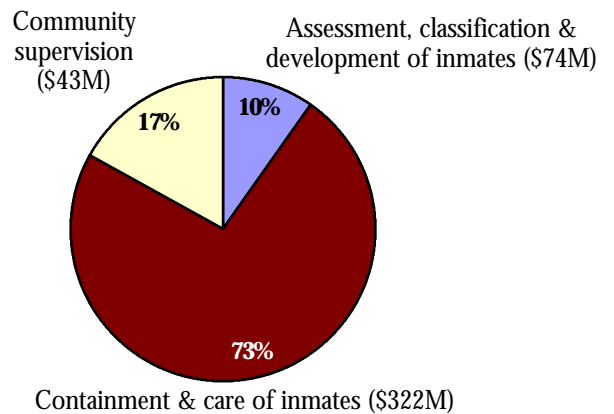
6.55 Community Service, Periodic Detention and Home Detention orders are the most serious alternatives to full-time custody, representing as they do an infringement on a defendant's liberty.

6.56 Around half of the offenders received by the Department of Corrective Services are supervised within the community, costing less than a fifth of the Department's budget. Counting the number of people managed by the Department on a given day, around 60% of the total population and over 80% of women are under community based orders (approximations based on figures in Department of Corrective Services Submission, p 80).

Offenders Received By Category of Penalty

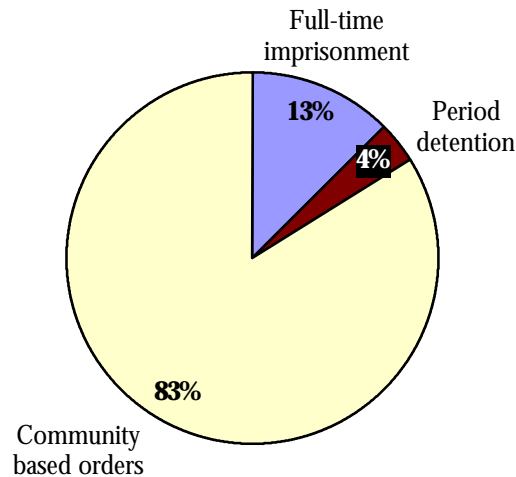


Expenditure By Program



(Department of Corrective Services 1998/99 Annual Report, pp 10 & 34)

Women in Full-Time Custody and Periodic Detention at 16 January 2000 & with Community Based Orders at 1 November 1999



(Department of Corrective Services Submission, p 80)

6.57 The majority of alternatives to imprisonment are managed by the Probation and Parole Service. Currently, there are approximately 16,000 offenders being managed by that service across New South Wales (McDonald evidence, 28 March 2000). Mr Peter McDonald, Acting Assistant Commissioner, Probation and Parole Service explained to the Committee in evidence,

(alternatives to imprisonment) fit into the broader categories of probation orders provided by courts, people released under mandate by the Parole Board under the parole program, the management of the home detention program and the management of the Drug Court. In relation to those programs we also provide a range of pre-sentence assessments to courts prior to sentencing... In the last reported financial year the Probation and Parole Service wrote almost 22,800-plus pre-sentence reports to either the Local Court jurisdiction or the District Court jurisdiction and we anticipate in the last calendar year having returned something in excess of 24,000 pre-sentence reports... There are approximately 460 operational staff providing those programs across New South Wales (McDonald evidence, 28 March 2000).

6.58 A number of witnesses and submissions to the Inquiry contend that alternatives to imprisonment can be particularly appropriate for female offenders and for the community. Community-based alternatives can have the advantage of allowing an offender to remain in her community and, where possible, with her family whilst at the same time providing appropriate support and supervision. They can be especially useful in the case of women offenders who have children.

6.59 Evidence supplied by the Department of Corrective Services demonstrates the cost of community-based alternatives compared with the cost of incarceration:

Inmate costs (full-time custody) – average for 1998/99:

	Per Day	Per Year
Maximum Security	\$177.43	\$64, 762
Medium Security	\$161.35	\$58,893
Minimum Security	\$121.09	\$47, 118.

6.60 The Department of Corrective Services reports that the average cost per offender per day when completing a community based program delivered by the Probation and Parole Service is \$8.63 (Department of Corrective Services, Annual Report, 1998/99).

Cost of sentencing alternatives-parole, probation, community services and home detention

	Per Day	Per Year
Parole	\$5.39	\$1,967.35
Probation	\$3.94	\$1,438.10
Community Service	\$3.	\$1,310.35
Home Detention	\$58.83*	\$21,472,95

* The Departmental goal is to reduce the Home Detention Unit cost per day to \$40.00. This will be achieved with economies of scale as the program expands (Department of Corrective Services, tabled evidence to Standing Committee on Law and Justice, 9 February 2000).

6.61 Acting Assistant Commissioner Peter McDonald told the Committee that in 1998/99 about 87 per cent of supervision orders, both probation and parole, were successfully completed. This is from a total of 12,067 orders (McDonald evidence, 28 March 2000).

6.62 The following discussion will examine the range of alternatives to imprisonment in relation to sentenced women and where appropriate make recommendations to improve the current system.

Fines

6.63 The New South Wales Law Reform Commission defines the penalty of a fine as being,

a sentencing option which requires the offender to pay money to the State. Fines may be imposed by a court or by way of an infringement or penalty notice. Courts can impose fines for any summary offence for which a fine is specified as a penalty for that offence and for any indictable offence in addition to, or instead of, any other punishment, including a bond where sentence has been deferred (New South Wales Law Reform Commission, 1996:48).

6.64 Fines are the most utilised sentencing option in New South Wales (New South Wales Law Reform Commission, 1996:48). Under the *Fines Act 1996* the court is required to consider an offender's financial means before imposing fine. An offender has 28 days from the date of judgement in which to pay the fine. Should an offender default from paying a fine, he or she will be liable for community service. Failure to perform community service may result in imprisonment.

Probation

6.65 An order of probation is a commonly used sentence in NSW and involves some supervision and control of offenders by the Probation and Parole Service, as well as programs to assist and rehabilitate them (Figgis, 1998:1). Among the advantages of probation over a sentence of imprisonment are that :

- it promotes rehabilitation of the offender by maintaining family and community contacts;
- offenders can be required or assisted to undertake treatment programs aimed at preventing further offending;
- it avoids the negative effects of imprisonment;
- it costs far less than incarceration; and
- it minimises the impact of conviction upon the family of the offender (Figgis, 1998:1).

6.66 At 6 June 1999 that there are 1,400 women under probation supervision (McDonald evidence, 28 March 2000). Figures were unavailable regarding the number of women who successfully complete a probation order.

6.67 In their submission, Vinson and Baldry argue that although heavy use continues to made of probation by sentencers in New South Wales,

the capacity of this program to divert women offenders from imprisonment is limited by the judicial perception of it as being especially appropriate in cases of offences which are at the 'lighter' end of the range of seriousness .

6.68 They advocate for a more intensive system of probation that exists in a number of other jurisdictions that could provide a more realistic alternative to imprisonment. Their submission states,

in a substantial number of jurisdictions the above perception has been modified by the intensification of probation to include additional components which safeguard the public and test the rehabilitative intent of the offender. Very frequent reporting, restrictions on freedom of movement, urine testing and compensation payments, are examples of the additional measures that can help reposition a non-standard version of probation on the scale of punishments. The availability of a defined **intensive probation** scheme would enable sentencers to consider its imposition in cases where

otherwise they may feel there is no other choice but to use imprisonment (emphasis theirs) (Vinson and Baldry submission 41, p. 14).

6.69 As an example of intensive probation, Vinson and Baldry draw from the probation hostel that exists in England. Those hostels operate in conjunction with or independently from the bail hostels which were discussed above. The review of the English bail and probation hostels found that they provide a high measure of control while avoiding many of the negative effects of prison. Further, it allows women who are mothers to care for their young children in the hostel and to maintain relations with older children.

6.70 Vinson and Baldry note that the programs attached to intensive supervision would have to be clearly defined and promoted. There would need to be close consultation with and the provision of feedback to them in order for the new initiatives to succeed. They write,

The Department of Corrective Services would need to be tangibly involved beyond the design of the program. While it may be advisable in some instances, particularly in non-metropolitan areas, to contract-out this work (under supervision), department-run hostels would ensure a firm commitment to this field of correctional practice. The staffing of the hostels should always be on the basis of personal suitability but the positions could add diversity to the careers of selected custodial staff, working alongside human services staff (Submission 41, p.15).

6.71 In her evidence Baldry advised that women generally respond “extremely well to non-custodial forms such as this” and they “do not on the whole abuse these forms of supervision” (Baldry evidence 27 March 2000).

6.72 Vinson and Baldry determined that from the “snapshot” of female inmates on 30 June 1999 the percentage of sentenced women prisoners fell into the following categories:

Offence Grading	Aboriginal/Torres Strait Islander	Non-Aboriginal	Total
Most Serious	23 (29.1%)	103 (39.8%)	126 (37.3%)
Middling Serious	56 (70.9%)	154 (59.4%)	210 (62.1%)
Relatively Less Serious	-----	2 (0.8%)	2 (0.6%)

6.73 Since 62.7 per cent of sentenced women were in the middling serious and relatively less serious category it is contended that a significant proportion of this group, (those who have not committed crimes of violence) could be diverted into the alternative sentencing option of intensive supervision.

6.74 The Law Society of NSW, in its submission, made recommendations akin to a bail and probation hostel as means of diverting women from full-time custody. The submission states:

The Law Society recommends the creation of a residential rehabilitation facility for Indigenous women to which they could be diverted from full-time custody.

The facility would offer a holistic program for Indigenous women, particularly assisting those who:

- are drug and/or alcohol dependent;
- are victims of abuse and/or domestic violence;
- have mental health issues;
- have children.

6.75 The Society also recommends the establishment of similar facilities for non-Indigenous women (Submission 93, p. 15).

RECOMMENDATIONS

6.76 That the Minister for Corrective Services and the Minister for Housing establish three probation hostels in New South Wales for women. One of those hostels should be specifically for Indigenous women. The hostels should provide intensive and appropriate supervision to women serving their sentences there.

6.77 The probation hostels shall be subject to a pilot period of two years after which time the Department of Corrective Services will fund independent research to evaluate their effectiveness. Issues to be considered in the evaluation shall include, but not be limited to, netwidening and referral to the hostels by the judiciary, the response of the residents to the services provided by the probation hostel and the effect on the women's prison population.

6.78 Liaison with relevant Departments and community agencies should be established so that the residents of the probation hostels have access to appropriate services and treatment where needed. The hostels should be adequately resourced and staffed and should be equipped to accommodate children of the residents.

6.79 That the Attorney General instruct the Judicial Commission to provide appropriate and ongoing training to judicial officers about the women's probation hostels.

Periodic Detention

6.80 Periodic detention is an alternative to full-time imprisonment, having been introduced in 1971. By virtue of the 1999 amendments to the periodic detention legislation courts are required to sentence a person to imprisonment before considering whether to make an order for periodic detention – reflecting the severity of periodic detention as a sentencing option. Periodic Detention involves defendants serving two days per week in a custodial setting often performing community work, whilst remaining in the community for the rest of the week. Sentences are usually served on the weekend, although provision is made for mid-week detention also. The submission from CRC Justice Support reports that most

people serving periodic detention sentences have been convicted of traffic, drug and stealing offences (Submission 56, p.17).

6.81 The Department of Corrective Service's periodic detention centres are:

- Bathurst Periodic Detention Centre (male and female)
- Broken Hill Periodic Detention Centre (male and female)
- Grafton Periodic Detention Centre (male and female)
- Mannus Periodic Detention Centre, Tumbarumba (male and female)
- Metropolitan Periodic Detention Centre (male and female)
- Norma Parker Periodic Detention Centre, Parramatta (female only)
- Tamworth Periodic Detention Centre (male only)
- Tomago Periodic Detention Centre (male and female)
- Windsor Periodic Detention Centre (male only).
- Wollongong Periodic Detention Centre (male and female).

(Submission, No.55 p.33-34).

6.82 Evidence provided by Acting Assistant Commissioner Peter McDonald indicated that as at 28 March 2000, 120 women were serving periodic detention orders. He stated,

Now there are 168 female beds available for periodic detention, including the rural locations of Bathurst, Broken Hill, Mannus near Tumbarumba, Tomago at Newcastle and Wollongong. There is a substantial availability of beds for women to do periodic detention (McDonald evidence 28 March 2000).

6.83 The submission from the Department of Corrective Services notes that "periodic detention is available for offenders who live a reasonable distance from a periodic detention centre". It also states that the availability for periodic detention for both men and women in regional areas has greatly increased since 1995. Prior to that time, periodic detention was available for women at Parramatta only.

6.84 However, although the availability for periodic detention may have increased, some evidence suggests that the periodic detention population has in fact decreased for both male and female defendants.

6.85 Further evidence to the Committee reports that there is a continuing high rate of periodic detention orders being cancelled. In its submission to the Inquiry, the New South Wales Law Society stated that,

The integrity of Periodic Detention is in grave danger. Some 12 months after legislation transferring the function of cancelling orders from the court to the Parole Board (1 March 1999) and regulations giving greater guidance in assessing suitability,

Periodic Detention Orders continue to be cancelled at a rate of up to 20 per week (Submission 93, p.29).

6.86 A periodic detention order is cancelled when there has been a failure to report for three or more detention periods. When a cancellation of an order is made by the Parole Board, there is no provision for a person to be granted bail pending the presentation of his or her case to the board. According to the Law Society,

This could happen, for example:

- In the case of administrative error where an application for leave has been made but not considered by the Department; or
- Where there is good reason for the absences – if the detainee is hospitalised (especially if in a mental hospital). (Submission 93 p.29).

6.87 The submission from the South Eastern Aboriginal Legal Service also commented on the changes to the Periodic Detention Act from 1 March 1999, claiming that they have had “disastrous effects for Aboriginal imprisonment”. The submission states,

until 1 March 1999 individuals who had missed three weekends of Periodic Detention were brought before a court. If circumstances require some leniency Magistrates then gave the person a further chance to complete their weekends. This was a good warning-many then completed all or most of their weekends. Now (there is) no option as the matter goes before the Parole Board (and if there are) three weekends missed (the Board has) no discretion to give another opportunity. This service has had a number of clients being imprisoned for Breach of Periodic Detention this year. They serve the remaining sentence plus penalties... At present solicitors must really consider advising their clients to apply for periodic detention (Submission 37, p.2).

6.88 The Law Society recommends that consideration be given to enhancing the support offered to Periodic Detainees:

This will not only assist the rehabilitation of offenders, it could also assist in ensuring conformity with administrative procedures and reduce unauthorised absences (Submission 93, p. 25).

6.89 The appropriateness and accessibility of periodic detention to women offenders raises a number of issues. In its current form, a periodic detention order requires a women to present at a custodial facility over a particular period of time, For women with children and, for those who are single parents especially, periodic detention can be a particularly onerous sentence. Currently, there are no childcare facilities available to women serving periodic detention sentences. The *Children of Imprisoned Parents* report recommended that the Minister for Corrective Services explore the possibility of introducing childcare facilities at periodic detention centres for women in order to ensure that periodic detention is realistically available to women. However, this was not supported on the grounds that periodic detention centres have a variety of detainees who may well be volatile and the safety of children in this environment would be a major concern (Department of Corrective Services, tabled document to Standing Committee on Law and Justice, 9 February 2000).

6.90 The Committee considers that the use of mid-week period detention has given the courts some realistic flexibility when sentencing a woman with children to such a periodic detention order. Further, the expansion of periodic detention centres which cater for women means that theoretically more women can be illegible for periodic detention than was previously the case. However, as the report of the Standing Committee on Social Issues found:

If a caregiver cannot arrange suitable care for her children or would be required to travel a long distance to the centre, she is unlikely to qualify for this particular option...(Further), in some cases, the fact that women have children precludes them from periodic detention (1997:115).

6.91 Potas, Cumines and Takach's 1992 study, *A Critical Review of Periodic Detention in New South Wales*, found that 72 per cent of the 47 women then serving periodic detention orders had primary care-giving responsibilities for children (Potas *et al*, 1992:26). The study also found that the rate of failure to complete a periodic detention order was significantly higher among women in the 21-30 year age range than in any other range. According to the authors, as this age group was the most likely group to have children, the higher failure rate was probably due to the added responsibilities associated with parenthood.

6.92 It has been argued that a system of periodic detention that requires women,

to report to a college, training centre, drug rehabilitation centre or a community corrections centre during school hours, would serve as a true alternative to imprisonment. It would keep the family unit together and provide a means by which the offender could address the offending behaviour (Brand, 1993:28).

6.93 The Committee supports this approach.

RECOMMENDATIONS

6.94 That the Attorney General direct the Judicial Commission to undertake urgent research into the reasons for the decrease into periodic detention among women.

6.95 That the Minister for Corrective Services investigate the reasons for the increase in the cancellations of periodic detention orders, particularly among women, and develop measures to address this issue.

6.96 That the Minister for Corrective Services consider the option of women offenders serving their periodic detention order in a rehabilitation or other suitable facility.

Home Detention

6.97 Home detention was introduced in 1997 as an alternative to full-time custody. The submission from the Department of Corrective Services states that

in order to preserve home detention as an alternative to imprisonment, and thus avoid net widening, section 11 of the Home Detention Act 1997 requires that a court must first sentence an offender to imprisonment before calling for an assessment report from the Probation and Parole Service as to the offender's suitability for home detention (Submission 55, p.31).

6.98 Home detention is available in Sydney, the Illawarra, Central Coast and lower Hunter regions. According to the Department of Corrective Services,

in 1998-99, 350 offenders were admitted to the home detention program. Of these, 83% were men and 17% were women. Seventy-eight percent (258) of home detention orders completed during 1998-99 were completed successfully.

6.99 Under the *Home Detention Act 1996* offenders may be sentenced to a term of imprisonment of up to 18 months to serve the sentence in their homes rather than in prison. Home detainees are monitored by a combination of random telephone checks, visits by supervising officers and electronic devices (surveillance bracelets). Supervision is conducted by a probation and parole officer (NSW Law Reform Commission, 1996:151). The maximum length of sentence for an order of home detention is 18 months.

6.100 Home detention was developed as a way to both punish an offender through the curtailment of his or her liberty, and to enable the offender to maintain family and community ties, employment and to access community services. Heggie for the Department of Corrective Services, in her study, *Review of the Home Detention Scheme*, (1999:24) writes that the primary goals of the Home Detention Scheme are as follows:

- diversions of minor offenders from gaol;
- high level control of offenders while serving a sentence in the community;
- addressing offending behaviour through community based rehabilitation programs; and
- addressing the affect of the program to affected families.

6.101 In her study, Heggie found that for the period 21 February 1997 to 27 August 1998, of the 510 offenders referred for a home detention assessment, 366 (71.7%) offenders commenced that scheme. Of that 366:

- 67 (18%) were women; and
- the most common offences committed by women placed on home detention were fraud related, closely followed by property related crimes (1999:21).

6.102 Heggie's overall findings of the home detention scheme were that the current scheme,

is rigorous, well maintained and a highly reliable scheme in allowing offenders to complete their sentence within the community without presenting a threat to the larger community (Heggie, 1999:145).

6.103 However, she outlined a number of concerns in the use of home detention as a sentencing option:

- the use of the HD Act within the Local Court was generally uneven and inconsistent;
- the use of the HD Act within the District Court was generally even and consistent;
- there are currently no specific guidelines to assist judicial officers in determining the appropriateness of granting eligible offenders a home detention assessment.

6.104 During the Inquiry a number of witnesses and submissions commented on the use of home detention as an alternative to imprisonment for women defendants. Although home detention was supported in principle, a number of factors were considered to render it a limited option for most sentenced women.

6.105 For instance, the home detention scheme is available only in Sydney, the Illawarra, Central Coast and lower Hunter regions. Women from other areas are therefore denied the opportunity of a home detention sentence.

6.106 Further, concern was raised that poor or homeless offenders would be excluded from the home detention scheme because of the requirement of a suitable residence. Section 10(5) of the *Home Detention Act* provides that if a particular offender is homeless, all reasonable efforts must be made by the Probation and Parole Service to find suitable accommodation for the duration of the home detention. In its report on *Sentencing*, the NSW Law Reform Commission argued,

this provision goes some way in reducing the risk that impoverished offenders will be excluded from the scheme, although it may be that these offenders will nevertheless be excluded if they are unable to find accommodation which is suitably equipped for monitoring. The Commission considers that it is a significant disadvantage of the home detention scheme if it operates in a discriminatory fashion so as to exclude poor offenders (NSW Law Reform Commission, 1996:153).

6.107 Heggie's study in fact found that for the period 21 February 1997 and 27 August 1998, of the 93 (from a total of 510) offenders 11 were unable to find suitable accommodation even with the assistance of home detention officers. Heggie argues that they were hampered by the following factors, either:

- living in hostels with no private access to a telephone and unable to afford private accommodation;
- living with no fixed address and without the support of relatives;
- unable to secure NSW Department of Housing assistance for emergency public housing; or
- unable to secure affordable housing in areas compliant to surveillance needs (Heggie, 1999:31).

6.108 In its submission, the Women's and Girls' Emergency Centre cited homelessness as being a crucial factor in a woman's involvement in criminal activity and incarceration. Drawing from the experiences of the centre's clients, the submission states

homeless women...do not have access to options such as home detention and are seen as a poor risk for other programs due to their itinerancy. This can mean that homeless women are at greater risk of being given custodial sentences (Submission 66, p. 2).

- 6.109 The Committee suggests that the defined intensive probation scheme referred to in the submission of Professor Vinson and Dr Baldry may address some of the logistic problems of extending the home detention scheme to homeless people and into rural areas of the state. Such a scheme will probably require more staff and will consequently be more expensive than the current telecommunication based home detention scheme. However, intensive probation is still likely to be less expensive than full time custody. The Committee proposes that the Probation and Parole Service should design and possibly pilot an intensive probation scheme drawing on local expertise and overseas experience. This scheme should feature restrictions on freedom of movement, very frequent reporting to authorities and frequent urine testing and it should only be imposed as an alternative to imprisonment. Like the home detention scheme, it should be subject to the imposition of a custodial sentence. It should first be trialed in regions and in circumstances where home detention has been difficult to implement.

RECOMMENDATION

- 6.110 That the Minister for Corrective Services expedite the expansion of the Home Detention Scheme to ensure that the program is available as an alternative to full-time imprisonment to more offenders in New South Wales.
- 6.111 That the Minister for Corrective Services develop strategies to enable women who are homeless and who would otherwise be sentenced to prison for an offence to access the Home Detention Scheme.
- 6.112 That the Attorney General and the Minister for Corrective Services develop guidelines to assist judicial officers in determining the appropriateness of granting eligible offenders a home detention assessment.
- 6.113 That the Minister for Corrective Services develop a scheme of defined intensive probation for use as an additional alternative means of serving a custodial sentence under similar circumstances to the Home Detention Scheme.
- 6.114 The Committee notes a proposal put forward by the New South Wales Law Society that allows home detention to be served as a “back end option”. That is, a period of home detention could be served towards the end of a prison sentence to help ease an offender’s transition back into the community. The Committee proposes to take further evidence on this issue in Part II of the Inquiry.

Community Service Orders

6.115 A community service order requires an offender to perform unpaid work in non-profit agencies as a means of reparation to the community and to enable an offender to develop work skills and make constructive use of their time (Submission 55, p. 29). The maximum number of hours to be served under a community service order is 500 over a maximum period of 18 months.

6.116 Community service orders were originally intended to be used as an alternative to imprisonment when they were first introduced in 1979. However, as the submission from the Department of Corrective Services reports

The NSW Law Reform Commission, in its discussion paper on sentencing, noted research carried out by the Judicial Commission which showed that it was doubtful that community service orders have always been used solely as an alternative to imprisonment. The Department considers that the original purpose of community service — as an alternative to imprisonment — has in many cases, disappeared (Submission 55, p. 29).

6.117 Similarly, the submission from CRC Justice Support, in citing the research of Booby, 1998, Bray, 1990, Chan and Zdenkowski 1986 and Weatherburn 1991, observes that,

Whilst community service orders can act as an alternative to imprisonment, they are also used when imprisonment would have been unlikely...The characteristics of people serving CSOs were more similar to those serving probation orders, periodic detention orders, fines and bonds than those serving time in prison. (Bray's research cited in Booby found) that community service orders were in fact being used as 'alternatives to alternatives' rather than alternatives to imprisonment (Submission 56, p.15).

6.118 It has been suggested that for defendants in some rural areas the option of a community service order is not available because of the lack of appropriate and accessible services. Often, the only alternative option available to the court is imprisonment. The Law Society addresses this issue in its submission:

There is a constant outcry for consistency in sentencing. Unless every judicial officer in New South Wales is supported by the local availability of each of the sentencing options provided by this State, there is no way that the law can be applied consistently, fairly and equitably to each person who comes before the court (Submission, 93, p. 26).

6.119 Further, commenting on rural women's access to the range of community-based sentencing options an inmate told the Committee,

Country girls do not have an option. It is custodial or it is not. That is the bottom line. You have no weekends. You have no home detention. It is outrageous. The whole idea of weekends is so that probably a mother or somebody who works, has a family, can still run their life and pay their dues to society. To do that, they have to pack up and go to Sydney to do weekends (Inmate evidence, 29 March 2000).

RECOMMENDATIONS

- 6.120 That the Minister for Corrective Services develop, as a matter of urgency, strategies which maximise the opportunities of rural women offenders to access appropriate community service based sentences. Liaison should be undertaken with relevant government and non-government agencies to ensure that Probation and Parole officers who are supervising a women offender in the community can draw on assistance from a wide range of suitable programs. Those community organisations offering relevant services should be provided with adequate funding so that co-operative service delivery between the government and non-government sector can be fostered.

Indigenous Offenders and Community-Based Sentencing Options

- 6.121 Concern was expressed during the Inquiry about the under-representation of Aboriginal people in community-based sentences. Solicitor, Sarah Hopkins told the Committee in evidence,

Aboriginal people are not being offered these options on the same basis as non-Indigenous people. I think the statistics show that less than 10 per cent of those given community-based options are Aboriginal. I think for the reparation or community service-type penalty it is 406 out of 5,432; for the Griffith remand or home detention it is 39 out of 449; for supervision it is 970 out of 10,609, which is well below the percentage of the prisoner population (Hopkins evidence 23 February 2000).

- 6.122 Further, the submission from the Sydney Regional Aboriginal Legal Service reports that,

while non-imprisonment sentencing options such as Community Service Orders, Home Detention, and Suspended Sentences have the potential to reduce the incidence of Indigenous incarceration, the Australian Institute of Criminology Community Based Correctional Data (for NSW) indicates their proportional participation is extremely low (Submission 78, p. 4).

- 6.123 Evidence was also presented to the Committee regarding the low rate of home detention orders given to Aboriginal offenders. Winsome Matthews, Chair of the Aboriginal Justice Advisory Council told the Committee in evidence,

during the first 15 months of operation of the home detention scheme, of Aboriginal men technically eligible for home detention, only 4 per cent were placed on home detention. Of all Aboriginal women eligible for the home detention scheme, only 5 per cent received it (Matthews evidence 14 February 2000).

- 6.124 Further, Marcia Ella-Duncan, Executive Officer with the Aboriginal Justice Advisory Council explained that this low percentage of home detention orders among Aboriginal people relates to people who come within the geographical area covered by the home detention scheme and fitted other relevant criteria (Ella-Duncan evidence 14 February 2000).

6.125 Heggie argues that the reason why the Aboriginal participation figures are lower than expected has not been fully explained. However, she suggests that some of the factors contributing to the low figures may be:

- lack of availability of the program in those areas where Aboriginal populations are substantial in NSW,
- the restricted number of offences eligible for Home Detention court ordered assessment, and
- cultural and 'kinship' issues may prove to be in conflict with the logistics of Home Detention supervision (Heggie, 1999:15).

6.126 The Senior Public Defender, Mr John Nicholson, SC, has also submitted the following reason for the low participation rate of Aboriginal people in the Home Detention Scheme,

One of the pre-requisites for home detention is the need to have a telephone within the household. There are a number of people in Aboriginal communities and people below the poverty line who do not have telephones and therefore cannot take advantage of home detention (Public Defender tabled evidence, 27 March 2000).

6.127 The Committee notes from the evidence of Acting Assistant Commissioner McDonald that the Department of Corrective Services is proposing to extend the home detention program as follows:

- to extend the home detention program to the mid North Coast of New South Wales where there are significant Indigenous populations in both the Taree and Kempsey areas and which would be picked up in that process; and
- to look at the use of home detention as the final part of someone's serving of their sentence. In other words, the last aspect of their custodial sentence would be served at home.

6.128 Both schemes will not progress unless there is funding for them to go ahead and that has not been determined at this stage (McDonald evidence, 28 March 2000).

RECOMMENDATION

6.129 That, as a matter of urgency, the Minister for Corrective Services develop strategies to ensure that home detention is available to Aboriginal offenders as an alternative to full-time imprisonment at a greater rate than it is at present.

6.130 That the Minister for Corrective Services, the Minister for Women and representatives from the Aboriginal Justice Advisory Council develop alternatives to home detention for woman who are unable to serve a sentence in the home because of abusive and violent domestic circumstances.

6.131 A number of reasons were put to the Committee as possibly contributing to the low representation of Aboriginal people in community-based sentences. The following were

submitted by the Sydney Regional Aboriginal Legal Service and its representative Sarah Hopkins:

- Amendments to the regulations of the *Periodic Detention Act* and the *Community Service Orders Act* excludes offenders who have serious drug addictions. Sarah Hopkins of the Sydney Regional Aboriginal Legal Service argued that “the vast majority of our clients do have serious drug addictions, so the pre-sentence report says “not suitable” for both non-custodial options and often imprisonment results” (Hopkins evidence, 23 February 2000).
- The heroin problem in the Aboriginal community (particularly among women) is at a stage of what has been termed “endemic proportions”. Sarah Hopkins advised the Committee that, “we estimate that at least 90 per cent of our clients have a heroin addiction, and this results in repeat property offences”. Consequently, as offences are accumulated the chances of a community based sentencing options diminished.
- The delivery of community based options and periodic detention is not culturally sensitive. The Sydney Aboriginal Legal Service argues that “the inability of Probation and Parole to respond in a culturally sensitive way to the communal and family responsibilities of Indigenous people has resulted in many offenders being charged for breaches of their parole conditions or supervised bonds and consequently imprisoned” (Submission 78, p. 4).
- Lack of flexibility in assessment of Aboriginal people for those options. Hopkins explains “for instance, a client of ours may have been assessed as unsuitable for a community service order a couple of years ago because of some particular problem with a community service organisation or something like that and then it means that he is unsuitable now for a community service order, which may not be the case” (Hopkins evidence, 23 February 2000).

6.132 Further, the submission from the Aboriginal Justice Advisory Council (AJAC) argued,

of concern is the apparent inability of Aboriginal people to access alternative sentencing options... AJAC supports sentencing options and policies that empower Aboriginal people and address the real causes of crime and recidivism (Submission 120, p. 4).

6.133 AJAC is currently developing a proposed alternative model of sentencing for Aboriginal people based on the Canadian Circle Sentencing Model. A research paper prepared by AJAC states that,

Circle Courts are designed for more serious or repeat offenders and aim to achieve full community involvement in the sentencing process. It aims to broaden the sentencing phase so that it can fully examine the underlying issues of offending behaviour and examine the needs of victims of crime... The procedures for circle courts may differ in limited ways from community to community, although the usual process should be that participants are welcomed to the circle by community elders and the judicial officer... The facts of the case then presented to the circle by the crown and the defence is then allowed to comment. The discussion that follows in the circle would then focus on:

- extent of similar crimes in the community;
- underlying causes of crime;
- an analysis of what life was like in the community before the increase in crime;
- the impact of these crimes on community and family life;
- what can be done in the community to prevent this type of behaviour;
- what must be done to heal the victim;
- what must be done to heal the offender;
- what will constitute the sentence plan;
- who will be responsible for carrying out the sentence plan;
- who will support the offender to ensure that the sentence plan is completed; and
- what support can be provided for the victim...

At the end of the circle a set of goals are set for the offender such as curfew, work programs, abstention from alcohol and anger management programs (AJAC, 1999:l).

6.134 AJAC proposes that a three year trial of Circle Sentencing be established in New South Wales. A working party has been convened by AJAC consisting of members of the NSW Police Service, Ministry of Police, Attorney General's Department, Department of Corrective Services, Department of Juvenile Justice, Office of the Director of Public Prosecutions and the NSW Judicial Commission. The working party has developed a model of Circle Sentencing for a trial period of three years and which is to be established in three Aboriginal communities. The objectives of the trial are to:

- empower Aboriginal communities in the sentencing process;
- increase Aboriginal community confidence in the sentencing process;
- reduce barriers between Aboriginal communities and courts;
- provide more appropriate sentencing options for Aboriginal offenders;
- provide relevant and meaningful sentences for Aboriginal defendants;
- provide effective support to Aboriginal defendants when completing sentences;
- provide support to Aboriginal victims of crime; and
- reduce offending in Aboriginal communities.

6.135 Offences that could be determined by Circle Sentencing include those that can be finalised in a local court, those that carry a term of imprisonment, and those where a term of imprisonment is judged by the magistrate as a likely outcome. All sexual offences would be excluded from the trial.

- 6.136 Entry into circle sentencing would be by application to the court by the defendant after a plea or determination of guilt. There would be two tests for acceptance to circle sentencing:
- a suitability test by the court and
 - an acceptability test by the community (AJAC, 1999: 2).
- 6.137 The circle would be presided over by the responsible magistrate and include the defendant and support people/family, victim/s and support people/family, prosecuting authority, defendants legal representative, elders from the community, other community members affected by the offence and service providers who may be required to provide services to the defendant or victim (AJAC, 1999:3).
- 6.138 The Committee considers that unless appropriate custodial alternatives are delivered to, and are accessible by Indigenous defendants, Aboriginal people will continue to be overrepresented in prison statistics and the risk of Aboriginal deaths in custody will increase. The Committee sees much merit in the proposal of establishing a trial of Circle Sentencing in three Aboriginal communities. It therefore recommends that the Attorney General, the Minister for Police and the Minister for Corrective Services implement a three year trial period of Circle Sentencing to be operative in three Aboriginal communities as soon as possible. The Circle Sentencing model should be based on the proposal of the working party on Circle Sentencing and consist of members from the Aboriginal Justice Advisory Council, NSW Police Service, Ministry of Police, Attorney General's Department, Department of Corrective Services, Department of Juvenile Justice, Office of the Director of Public Prosecutions and the NSW Judicial Commission.

RECOMMENDATION

- 6.139 That, as a matter of urgency, the Minister for Corrective Services, in consultation with the Aboriginal Justice Advisory Council, develop strategies to maximise the opportunities of Indigenous people to access community-based sentences.
- 6.140 That the Minister for Corrective Services ensure that when an Indigenous person is sentenced to a community-based sentence, that sentence is delivered in a culturally sensitive way.
- 6.141 That the Attorney General, the Minister for Police and the Minister for Corrective Services implement a three year trial period of Circle Sentencing to be operative in three Aboriginal communities as soon as possible. The Circle Sentencing model should be based on the proposal of the working party on Circle Sentencing and comprise members from the Aboriginal Justice Advisory Council, NSW Police Service, Ministry of Police, Attorney General's Department, Department of Corrective Services, Department of Juvenile Justice, Office of the Director of Public Prosecutions and the NSW Judicial Commission.

Intellectually Disabled Offenders and Community-Based Alternatives

The issues of the access of intellectually disabled offenders to community-based alternatives was raised in the Inquiry. Preliminary investigations by the Committee revealed that this group is under-represented in non-custodial sentencing options. The Committee intends to examine this issue in detail in the second stage of the Inquiry.

The Drug Court

6.142 In response to the strong link between crime and drug dependency, the New South Wales Drug Court was established on 8 February 1999 as a two year pilot program at Parramatta. The Program can cater for 300 participants. Pheils and Eckhold write that,

The New South Wales Drug Court is a pilot program modelled on similar American Drug Courts. The philosophy underlying these courts is that the interests of criminal justice and health of the offender are united, to provide incentive and support for an offender to rehabilitate himself or herself. The offender should then be able to break the cycle of dependency, criminal activity and dependence. The object of the Drug Court Act is to reduce the level of criminal activity that results from dependence by establishing a scheme where persons can be diverted into programs designed to eliminate or at least reduce their dependency on drugs and increase their ability to function as a law abiding citizen (Pheils and Eckhold, 1999:2).

6.143 The Drug Court operates as a kind of sentencing alternative. Upon entering the program the offender is sentenced and that sentence is suspended while he or she participates in a Drug Court Program. To quote further from Pheils and Eckhold:

The offender therefore knows at the outset what the sentence is, and that it cannot increase, but may decrease according to what is achieved on the program. This is not a soft option (Pheils and Eckhold, 1999:3).

6.144 Eligibility to the Drug Program requires that an offender must:

- Be charged with an offence other than an offence involving violent conduct or sexual assault, or an offence under Division 2 Part 2 of the *Drug Misuse and Trafficking Act 1985*, not being an offence that is capable of being dealt with summarily.
- Appear to be dependent on a prohibited drug.
- Usually reside within the following local government areas: Campbelltown, Fairfield, Liverpool, Bankstown, Penrith, Hawkesbury, Auburn, Baulkham Hills, Blacktown, Holroyd or Parramatta.
- Have indicated that a plea of guilty will be entered into to the offence(s).
- Be willing to participate in a drug court program.

6.145 Referral to the Drug Court comes from the courts. Those courts involved in the referral process are Bankstown, Blacktown, Campbelltown, Liverpool, Penrith, Parramatta, Fairfield, Ryde, Burwood, Richmond and Windsor Local Courts and Parramatta, Penrith, Liverpool and Campbelltown District Courts.

- 6.146 Should an offender be accepted to the Drug Court program and there is a bed available the matter is adjourned for about 8 days for further assessment. Bail is refused and the offender is remanded to the detoxification unit at the MRRC or Mulawa. Offenders who are on bail will therefore have to enter custody on the day they are referred. The eight day adjournment is to allow time for an offender to detoxify if necessary, and for a treatment plan to be developed. Treatment can be involve one of the following:
- Abstinence based in the community,
 - Abstinence based residential,
 - Community based methadone or naltrexone treatment, or
 - Residential methadone or naltrexone treatment.
- 6.147 After the adjournment the offender is brought back to court and sentenced. That sentence is suspended pending an offender's participation in the Drug Court Program.
- 6.148 Recently, the NSW Bureau of Crime Statistics and Research released its overview report on the first 12 months of the Drug Court, *New South Wales Drug Court Evaluation: Program and Participant Profiles* (2000). Amongst the findings of that report are that:
- 70% of the participants are under the age of 30, the average age being 27.4 years;
 - 83% of the participants are male; 17.0% were female;
 - 86% of the participants are Australian born;
 - 6% of the participants identified themselves as being Aboriginal or Torres Strait Islander;
 - 77% have been to prison before;
 - retention rates have been maintained at 67%;
 - of the 186 male participants, 72.0 per cent were under the age of 30 when they commenced the program. A smaller proportion of the 38 female participants were under the age of 30 when they commenced the program (63.2%);
 - More than half the participants completed fewer than four years of high school, reaching no further than Grade 9.
- 6.149 A higher proportion of female participants (35.7%) had a drug-using partner than did males (NSW Bureau of Crime Statistics and Research, 2000:9).
- 6.150 The Bureau's report states that the percentage of female participants (17.0%) is slightly higher than that projected during the planning of the Drug Court.
- 6.151 Among the conclusions of the Bureau was that only 13 per cent of participants have been sentenced for new offences committed while on the Program. According to the Bureau,

this last result is encouraging given the normally high level of recidivism of heroin-dependent property offenders (NSW Bureau of Crime Statistics and Research, 2000:1).

- 6.152 Some of the submissions to this Inquiry addressed the issue of the Drug Court. While the philosophy and object of the Drug Court was generally supported, a number of submissions were concerned at the “exclusivity” of the Drug Court. In support of the Drug Court the submission from the Legal Aid Commission states,

The Drug Court is an example of a successful program which aims to reduce the aggregate harm caused by drug use in a way that gaoling offenders drug offenders fail to do (Submission 74, p.5).

- 6.153 Further, the submission from the Public Defender states,

The New South Wales Drug Court is another example of the criminal justice system operating with a different (and better) focus to criminal conduct going beyond simple drug abuse (Submission 90, p. 2).

- 6.154 However, some submissions felt that the Drug Court was limited in that it was confined to only certain geographic areas.

- 6.155 The submission for the South Eastern Aboriginal Legal Service, with officers in Nowra, Moruya and Canberra, argues,

As the present trial is based in Parramatta...a large number of Aboriginal clients are suffering further discrimination by not living in the Parramatta area. Any benefits from the resources of the trial are not available. The resources utilised by the Drug Court in the way of beds, support etc, should be available to all. Drugs are a serious problem in this area. We need major increase of resources, programs and beds (Submission 37, 4).

- 6.156 Expansion of the Drug Court program was also recommended by the Law Society. It proposed that the number of beds in the detoxification unit at Mulawa be increased to enable more women to access the Drug Court program.

- 6.157 Moreover, it was submitted that the *Drug Court Act 1998*, in excluding certain offences, limits participation by Aboriginal offenders. The Sydney Regional Aboriginal Corporation Legal Service writes,

The Drug Court Act 1998, (NSW) apply strict eligibility criteria concerning offence type and exclude violent crime offenders from accessing the programs, thereby restricting the access of Indigenous offenders. It is our view that in many assault matters, the Drug Court would provide an appropriate sentencing option (Submission 78, p. 10).

- 6.158 This restriction on offences would also mean that women who commit armed robberies, an offence which we have seen is increasing among women largely due to their heroin dependencies, are excluded from the Drug Court program.

- 6.159 It was also suggested that the fact that offenders have to go to prison to detoxify from drugs, even if they had previously been granted bail, was an inappropriate alternative, particularly when the offender was the primary carer of children.
- 6.160 The Committee considers that the Drug Court is a positive step towards diverting some offenders from imprisonment. For women, its objective of rehabilitation is particularly appropriate given that the vast majority of women in prison have a drug and/or alcohol dependency. Whilst recognising that it is still in its pilot stage, the Committee is concerned that significant numbers of offenders with drug dependencies are excluded from the program, particularly women from rural areas.
- 6.161 It is hoped that many of these issues will be resolved when the NSW Bureau of Crime Statistics and Research delivers its completed study on the Drug Court, including its study on the cost-effectiveness of the Drug Court, (including its impact on reducing re-offending), and the changes in indicators of health and social functioning of Drug Court participants.

RECOMMENDATION

- 6.162 That the Attorney General ensure that the NSW Bureau of Crime Statistics and Research include in its evaluations of the NSW Drug Court Program the following:
- the success or otherwise of the outcomes of women who participate in the program;
 - the success or otherwise of the outcomes of Indigenous people who participate in the program;
 - the participation rate of people with an intellectual disability and their success or otherwise in the program;
 - the effect that the “bail refused” and incarceration period has on a female Drug Court participant and any of her dependent children; and
 - the adequacy or otherwise of the number of residential treatment centres that can accept drug court participants and the impact these participants have on the accessibility of these centres by drug users within the community.

- 6.163 As noted earlier, the Special Minister of State, the Hon John Della Bosca has recently announced the provision of almost \$20 million to drug and alcohol programs in the community. The Committee welcomes this initiative. It considers that a major priority of any such community-based program for which this funding is provided should be its availability to women offenders with drug and alcohol problems who are sentenced to a community-based penalty. Women offenders should be able to be referred by the courts to drug treatment facilities and programs in the community as part of their sentence and should be offered a range of appropriate treatment options (including long-term rehabilitation) to overcome their addictions and ultimately address their offending behaviour. The Committee believes that the availability of a drug and alcohol services in the community would be particularly beneficial to women with children as it would enable

them to maintain their relationships whilst at the same time addressing issues that may have led to their drug abuse and learning how to manage their anti-social behaviour. As a further means of ensuring the mother and child relationship is least disrupted the Committee considers that the drug programs in the community should be available, where appropriate, on a day basis.

RECOMMENDATION

- 6.164 That the Special Minister of State ensure that any drug and alcohol programs and services in the community that are allocated money from the Drug Summit be available for women offenders with drug and alcohol problems who are sentenced to community-based sentences. Such services and programs should offer a range of treatment options including long-term rehabilitation to women to enable them to overcome their addictions and address their offending behaviour. Day programs should be available to women with children.

Sentencing Alternatives in other Jurisdictions

- 6.165 Non-custodial sentencing alternatives are available in numerous jurisdictions. The Committee plans to investigate these alternatives further in the second report of this Inquiry. Options that had been drawn to the Committee's attention include:
- **The Californian Civil Addict Program** — a program which evaluated mandated treatment programs (full time residential programs) and found that they were successful in reducing reoffending and addressing drug dependencies.
 - **Alvis House** — a community corrections programs in Central Ohio, providing post-release residential and support programs for former offenders. As well as residential half-way houses it offers a residential program for offenders with intellectual disabilities and an educational program for juvenile offenders. Programs are offered that focus on academic development, the development of job skills, life skills, and substance abuse skills issues. It has an annual budget of \$US5 million and 120 staff. It provides services to more than 1,400 ex-offenders each year. Those who complete the program each year (over 90% of participants) are more than twice as likely to remain crime free than other offenders who have not completed the program. Over 450 ex-prisoners find full time employment through the program each year.
 - **The STOP (Straight Thinking on Probation) Program** is managed by the Mid-Glamorgan Probation Service in Wales and was developed initially in Canada. This program offers two, two hour sessions each week for offenders on probation on issues relating to self-control, thinking skills, social skills, values enhancement, victim awareness, creative thinking, critical reasoning, social perspective taking, their effect on others, emotional management and helper therapy. The course is based on a cognitive therapy model which aims to expand offenders problem solving skills. Early evaluations have indicated that re-conviction rates are significantly lower for

those participating in this course than they are for those who have experienced full time custody.

- **The Hopper Home Alternative to Incarceration Program** is a transitional residence and intensive reporting program for women who would otherwise be in gaol or prison. The program is run by the Women's Prison Association in New York.
- **The Turnaround Project** began operation in Glasgow in 1997 and provides services to women drug-misusers at all stages of the criminal justice process, from arrest through to sentence and also through care in prison and after release. The main aims of the program are to reduce the number of women drug users, help them stabilise or reduce their drug use and also reduce their offending behaviour. The first opportunity for contact is at the point of arrest, when police can refer women drug-misusers to Turning Point for consideration of their involvement in a treatment program delivered by the agency. Alternatively women may be given the opportunity to participate in a diversion from prosecution scheme and be referred to a community drug project. Turning Point also delivers services in the form of group work programs to women referred at court and through seminars in the women's prison to serving prisoners. On release women will be offered on-going support. There is also an informal drop-in service in operation at the Turnaround based in the Glasgow Drug Crisis Centre.
- **Healing Communities for Indigenous Women — The Okimmaw Ohci Healing Lodge for Aboriginal Women**- based at Nekaneet Reserve, outside Maple Creek, Saskatchewan, Canada. It was the first institution of its kind, developed with and for the First Nations community. Sixty per cent of staff are of Aboriginal descent. The operation of the facility is based on Aboriginal teachings and philosophy and there is a strong emphasis on Indigenous culture and spirituality. The Lodge is part of a national initiative to bring federally sentenced women "closer to home" and is distinct in its development and design. It is the first and only facility designed specifically for Aboriginal offenders and to respond to the unique cultural needs of Aboriginal women. The primary objective of these communities is, through Aboriginal teachings, spirituality and culture, healing from histories of abuse, regaining a sense of self worth, gaining skills and rebuilding families.

(extracted from the submissions of the Public Defenders, Yulawirri Nurai Indigenous Association Incorporated and the No New Women's Prison Campaign).

Post-Release

Introduction

- 6.166 The issue of post-release was raised extensively during the Inquiry. Inmates, departmental staff, academics and legal and health practitioners all commented that post-release was a critical period in an inmate's path to rehabilitation. For many of the female inmates the Committee spoke to, the period after release from prison can be extremely daunting. Reunification with family, accommodation and financial issues and, for many, the challenge of remaining drug-free, can present enormous problems where there are little or no

supports. Indeed, community organisations have reported that the most pressing problems for women on release are:

- accommodation especially with children;
- work or financial support;
- someone who gives personal support;
- acceptance and direct help when needed;
- help re-establishing the family;
- managing drug/alcohol addiction; and
- feeling part of society (Baldry, 1996:8).

6.167 The submission from CRC Justice Support confirmed the difficult process experienced by many post-release inmates:

Ex-prisoners are often released entirely unsupported (both financially and emotionally). They have to deal with the 'stigma' of having been in custody, they have to 'remember' their roles as husband, wife, mother, father etc, and they usually have to organise accommodation and income (Submission 56, p. 6).

6.168 Clearly, post-release issues, like crime prevention generally, are related to many government (both State and Federal) and non-government agencies; it is not solely the responsibility of the Department of Corrective Services. The Departments of Housing, Health, Community Services and the Commonwealth agency Centrelink, are all relevant to the post-release process.

6.169 In early 1995, a review of post-release community services was undertaken which called for a more integrated approach to post-release. In 1996 Dr Eileen Baldry wrote,

the...Minister, Bob Debus, took (the review's) recommendations seriously (and) a more integrated approach to post-release is now being implemented with increased resource... In particular, the women's programs, all of which were under threat, were funded by the Minister and have been included as ongoing funded programs in the future (Baldry, 1996:8).

6.170 The following discussion will examine the issue of post-release as it relates to women prisoners.

Post-Release, Parole

6.171 The Department of Corrective Services manages an inmate's post-release when he or she is to be supervised by the Probation and Parole Service. Simpson writes,

parole refers to the conditional release of a prisoner from custody after the expiration of the minimum term of the sentence (the non-parole period) and is thus one form of early release... The fundamental aim of parole is to provide the prisoner with an incentive for rehabilitation through the prospect of early release, and perceived

benefits of parole stemming from this prospect include increased likelihood of reform of prisoners and better overall prisoner discipline. Other benefits of parole include easing the transition from prison to the community through supervision, which reduces the risk of recidivism (re-offending). There are also economic advantages to parole: a reduction in recidivism will reduce the burden on the criminal justice system at all levels, and the cost of community supervision is low compared to the cost of incarceration (Simpson, 1999:1).

6.172 Inmates who serve sentences of six months or less do not serve an additional period of parole. According to Acting Assistant Commissioner, Peter McDonald, this is the case for the majority of prisoners.

6.173 In his evidence Acting Assistant Commissioner McDonald advised the Committee that on 6 June 1999, there were 173 women on parole. He further explained that 87 per cent of the general probation and parole population completed their supervision orders (McDonald evidence, 28 March 2000).

6.174 Currently, there are no specific parole officers who provide a service to women offenders when they are released from gaol. According to Acting Assistant Commissioner McDonald this is because, “women by far make up a very small percentage of the total (prison) population” (McDonald evidence, 28 March 2000).

6.175 A person’s contact with his or her parole officer and level of supervision is normally determined prior to release from prison and is a part of the case management plan. Case management decisions are made about levels of risk. To quote further from Acting Assistant Commissioner McDonald,

someone is most at risk of re-offending when released from gaol on parole in the first three months of release. That is the critical period, and research supports that fairly substantially. We would envisage seeing that person at least once per week during the first three-month period... During that period (case plans based on assessments made in gaol) will focus on what the offending behaviour was, what processes need to be put in place to support that offender and, even more importantly from our point of view, what processes need to be put in place to manage the risk to the community (McDonald evidence, 28 March 2000).

6.176 In his evidence to the Committee, Commissioner Leo Keliher described the range of options offered by the Department of Corrective Services to a person on parole. He stated,

Post-release options are very important, especially the parole services. We provide an enormous number of programs to people who are in their post-release phase, so there is the parole group, which is just a group which helps people to identify personal and social goals and to reintegrate into society. Those groups operate very effectively.

The drug and alcohol programs, relapse prevention programs and dependency and lifestyle programs help offenders to be educated in the benefits of a lifestyle free from substance abuse.

The alcohol and cannabis program, living without violence program, the minor drug offenders program, the personal development programs, anger and aggression

management programs, drink-driving programs, traffic offender programs, driver education programs, life management skills programs, living skills programs, social and legal issues programs, women's issues and responsible living and education programs are all particularly useful.

For Aboriginal parolees we have alcohol and other drug issues for Aboriginal offenders, breaking barriers, domestic violence perpetrators program and the Indigenous women's issues programs. They are just examples of the sorts of things we do in the parole service.

We also have the community grants programs and we provide funding to a range of settings such as the Glen Aboriginal Alcohol and Drug Centre at Ngaimpe, the Khoompahtoo Aboriginal Alcohol and Other Drugs Program, Glebe House and Rainbow Lodge.

We also fund Guthrie House, the Transitional Centre at Parramatta and a vast array of community agencies, which provide an incredibly valuable support program for those post-release inmates.

Post-release is an area where we have sought additional funding from Treasury in our most recent submission with a view to expanding the period immediately prior to and immediately after release — the New Start program is what we have been calling it. That really is about getting people prepared for release, going into the release program and into that first 6, 12, or 18 months of release, which is the most crucial time. I assure you that no one in Australasia does it better than New South Wales does (Keliher evidence, 14 February 2000).

- 6.177 The Committee also notes that the Department of Corrective Services has established a Senior Officers Transitional and Post Release Project Steering Committee, consisting of the Assistant Commissioner, Inmate Management; Assistant Commissioner, Probation and Parole; and the Executive Director of the Office of the Commissioner. It also operates a Post Release Program to assist Aboriginal inmates make the transition from custody back to their communities. The program officers provide support, guidance and counselling as well as assessment and referral for employment or other services (eg Alcohol and other Drug counselling). These officers are located at Bathurst, Dubbo, Metropolitan Regional Office, Morisset and Grafton. The Department reports that,

by the middle of 2000, a further 5 positions will be located at Broken Hill, Bateman's Bay, Wagga Wagga, Brewarrina and Moree. A designated female position will be added to the Metropolitan Regional Office (Department of Corrective Services, 2000:11).

- 6.178 The Committee received varied responses about the responsibilities of the Probation and Parole Service. It seemed from the evidence that the effectiveness of the service often rested with individual officers or certain regions. In her evidence the Chairperson of the Aboriginal Justice Advisory Council, Winsome Matthews stated,

When you mention post release programs, in our community they say the missing persons list because you never see them. This is feedback from the community but also inmates themselves getting ready for post release. Again, you are alerted to

exceptional programming around post release that happens in small jurisdictions like Bathurst. So, whilst you have good outcomes occurring there, other parts of the State they are occurring in a very ad hoc fashion (Matthews evidence, 14 February 2000).

6.179 Ann Webb, Coordinator of Guthrie House (a residential service that takes in women on parole) stated that,

It is probably very hard to access any sort of support when you are just released. It also depends — perhaps people coming out on parole may be assisted more easily because they go and report to the parole officer and the parole officer in the gaol usually has spent some time and often those people will have somewhere to go...my understanding, at least from Mulawa, is that the parole staff there are very good and I should think that they have pretty well spent time with everyone who is going to be released on parole... (Webb evidence 23 February 2000).

6.180 Evidence was also presented to the Committee from the a District Manager of the Probation and Parole Service, Mr Eddie Ozols. Mr Ozols outlined the difficulties that probation and parole officers often face in fulfilling their role. He explained,

I think you need to appreciate the difficulty in working with people who are angry about the court system, the legal system. They are angry about life and so they come to the Probation and Parole Service with lots of problems and they see — I do not know what the number in the State is but certainly in my office there are about seven or eight staff, and we sit down and try to assess the needs of those people and try to figure out what we can do that is going to, firstly, protect the community and, secondly, hopefully assist them to stop re-offending. So, we wear two hats. We wear a hat that is a public accountability, public safety, public protection hat. So, we get people who come out of institutions like this who may not be better people than they were when they went in here and so we are dealing with in some cases people who have been institutionalised, who have no life skills and who come to Probation and Parole and we have got all the answers theoretically. The community expects that we will do something to protect them from these people of whom the perception out there is we are dealing with dangerous people who are human beings. The other side of it is that we also wear a hat as support role, as advocates, as people who are trying to help often disadvantaged and marginalised people in the best way that we can and with the resources within the department at our disposal and at our disposal within the wider community. So, in a lot of ways, probation officers tend to have to be very creative, inventive and need to try to balance the public safety against the needs of the offender. That is a very difficult task. We have systems in place to try to help us do that, specifically the case management system (Ozols evidence, 29 March 2000).

6.181 The Committee recognises that there are many effective Probation and Parole district offices and officers throughout the State. It is concerned however, that adequate services are being provided on an ad hoc basis. It therefore urges the Minister for Corrective Services to ensure, by way of an audit or study, that the Probation and Parole Service is working effectively, through its level of supervision and post-release programs, throughout New South Wales.

RECOMMENDATION

- 6.182 That the Minister for Corrective Services undertake an audit or study to determine whether the Probation and Parole Service is working effectively and has an appropriate level of supervision of offenders and post-release programs throughout New South Wales. Issues to be considered should include:
- level of contact with a client;
 - availability and accessibility of programs;
 - culturally appropriate support and programs; and
 - rate of recidivism.

Post-Release, General

- 6.183 Despite the best efforts of Probation and Parole officers there is a large group of women inmates who have little or no support when they are released from prison. According to Ann Webb,

it is the people who are released unconditionally and the people released on bail who have great difficulty (Webb evidence, 23 February 2000).

- 6.184 The submission from the Women's and Girls' Emergency Centre detailed the experiences of many of its clients when released from prison:

Women who had served custodial sentences described leaving prison feeling isolated and unable to fit into mainstream society. Most had lost their network of family and friends during their time in prison. Although some had housing on release, in most cases this broke down due to loss of living skills, loneliness and lack of support. They identified a need for outreach services, transitional housing and greater access to community services, particularly those addressing drug and alcohol, housing, mental health and sexual assault issues. Women who had served time felt that this had affected their ability to fit into the community. Many expressed a desire to return to prison in spite of the hardships endured there because of their lack of ability to cope with the stresses of life outside. They felt ill-equipped to deal with the difficulties of living independently and had lost the skills they once possessed due to incarceration (Submission 66, p. 2).

- 6.185 Similarly, Dr Eileen Baldry observed in relation to housing,

Accommodation is extremely difficult. CRC Justice Support's Accommodation Service has an accommodation worker who spends her whole time trying to find reasonable accommodation for ex-inmates and their families. Women form a disproportionate number of these clients. There is a critical shortage of acceptable places. Women ex-inmates have a number of problems, such as taking methadone, that preclude them from the already scarce beds available and do not augur well for long term shelter. Many women who have nowhere else to go but back to a violent or drug addicted partner or the street scene, who are desperate to get their children back

together but cannot do so until they have suitable accommodation, see little hope (Baldry, 1996:8).

6.186 A number of the inmates with whom the Committee met, spoke of their fear of leaving prison. They stated:

- I am at a turning point in my life, I guess, especially my gaol time, in that I am looking at being re-paroled and getting out and I am as scared as hell, to be honest. I am probably a good result of the end result of this system, and that is somebody who is too scared to walk out the gate. I am very institutionalised (inmate evidence 29 March 2000).
- (The prison) will give you a list of your local, like, needle exchanges and stuff like that. There is D and A workers there — what do you call them — community centres and stuff like that? We have no C.R.C. places to go to like the men do. Refuges, hostels, they are chock a block full. We basically get told, go out, go to social security, get your dole cheque and go to the Department of Housing and try to get money for a house. We don't have places like the C.R.C. places like the men do. We are put out on our own.
- We used to have Women at Work and they used to help ladies getting released from gaols with employment and training but I have not heard about them for a few years now. They were very helpful with women.
- We need preventive programs because there is so many (women) re-offending. There is nothing for the girls that get out. There has to be assimilation back into society, something is going wrong.
- Well, I was doing well, I kept out of trouble for 18 months, 16 or 18 months, and I was doing well, and then I went into a depression, I wasn't taking my medication and I ended up back here because I couldn't cope. There needs to be other avenues, somewhere to go, like someone else to talk to, because it's not working.
- I was out for six weeks, back in, and then I was out for four weeks... I go to social, like, trying for a job and that because for many Aboriginal people they cannot live on the outside world. They just go and do crime and that. I was trying to get into TAFE, and it just did not work for me... I was missing gaol too much, being inside, I think... Yes. On the outside you have friends and they are just all drug addicts. I think I am better off back in gaol. At least I am not going to get on drugs.

6.187 Departmental staff also commented on the difficulties faced by women on release. The Welfare Officer at Mulawa Correctional Centre stated,

one third of the people who leave here have nowhere to go ... I have only worked here a year and I can think of six women who have been here on relatively small charges and, of those six, four had nowhere to go when they walked out the gate. They are all back here and each of them is here on significantly increased charges. I think that is why they come back. (Evidence, 15 February 2000).

6.188 Welfare Officers can provide assistance to women in accessing services for their release. Iris Willoughby, Welfare and Family Support Worker explained to the Committee,

We actually contact (the Department of Housing) and help (the women) fill out the forms if they require that, make appointments with them with Centrelink, anything at all that we can possibly do, contact agencies for them as far as getting accommodation. We can also send them with a referral to the Smith Family or the Salvos or just basically things when they get out, and we can also refer them to CRC Justice and such places (Evidence, 16 February, 2000).

- 6.189 The Mulawa Welfare Officer also advised that many of the women can leave prison without any identification making access to social security, Medicare, housing and banking services extremely problematic. When a women is due for post-release she can often have an interview with Centrelink within the gaol. That interview may enable her to subsequently access benefits when she is released. To quote further from Carmel Wood,

The process here (at Mulawa) is that they get cash as they go out the gate and then I think there are some problems, in fact I know there are problems with a number of Centrelink places, and I sing the praises of Auburn. We send them up to Auburn if they have missed out on that interview here and Auburn will give them a cheque. They do not give them cash money. They give them a cheque or card which they can access right there and then. That is \$160 (Evidence, 15 February 2000).

- 6.190 However, the Committee heard that many women cannot actually open a bank account to deposit their Centrelink cheque because they cannot provide the 100 points of identification required by the bank. According to Margaret Lightfoot, Program Manager at Emu Plains Correctional Centre, an inmate's case management plan does not necessarily include whether she has adequate identification. She did explain however, that,

at the moment (we are) trying to come up with some sort of program whereby we can help (the women) with the identification needed in that area. It is a difficult one while they are in here.

- 6.191 The Committee clearly sees the issue of an inmate's need to have proof of identity when released from prison as critical. It considers that the Department of Corrective Services should make this issues a part of all inmates' case management plans.

RECOMMENDATION

- 6.192 That the Minister for Corrective Services ensure that any issues relating to an inmate requiring identification when released from prison, such as for Medicare, Centrelink and the opening of bank accounts, are part of the inmate's case management plan and are resolved prior to release. This should occur in all prisons.

- 6.193 The Committee understands that the Department of Housing provides a service to inmates by visiting the gaols and advising them of their housing options when released. Ms Kim Anson, Executive Director, Policy and Planning with the Department of Housing advised the Committee,

The client service teams within the vicinity of each of the major correctional centres in New South Wales do provide assistance to those facilities, and that includes the Penrith office providing services to Emu Plains and John Morony. The services provided differ slightly from one area to another, but overall the services include client service staff visiting the facility on a regular basis, and at other times making visits as needed or on the invitation of the welfare officer. In some other cases support is primarily provided through the prison's welfare officer or social worker. You raise the specific example of Penrith. The staff there visit Emu Plains and John Morony, and meet with groups of prisoners to provide them with relevant housing information, and they assist individual prisoners with applications. They will generally check the status of prisoners who apply for public housing prior to imprisonment, to ensure that they have not been removed from the waiting list because they have been out of contact with the department. They will check the status of former tenants who had to leave their dwellings as part of being imprisoned, to ensure that they are not on our record as unsatisfactory tenants and to ensure that we are not regarding the property as abandoned, but rather that we understand where those persons are, so that they will not have a poor record with us that could affect their future relationship with us. Staff there also liaise with the social worker at Emu Plains, so that those about to be released have the documentation needed to receive the maximum assistance for which they are eligible (Anson evidence 28 March 2000).

- 6.194 However, despite this service, lengthy waiting lists for public housing means that an inmate is not always guaranteed somewhere to live when she leaves gaol. Recent incarceration does not automatically place a person on the Department of Housing's priority housing list. The housing issue is exacerbated by the,

exorbitant prices of the in the private rental market, the conversion of cheap boarding houses into backpacker hostels, and the general absence of affordable accommodation for single people...(Submission 56, p. 7).

- 6.195 According to CRC Justice Support, the ramifications that this has for crime and recidivism are enormous:

without stable accommodation the risks of re-offending are very high. It is difficult for ex-prisoners to begin to re-establish ties with the community if they do not have somewhere to live. There is not only the risk that crime will be committed in order to pay for expensive short term accommodation, but the risk that any rehabilitative work achieved in prison will be undone. When ex-prisoners have no family to stay with, and no accommodation of their own, they are often left with very few options (Submission 56, p. 7).

- 6.196 In the section regarding bail the Committee referred to Guthrie House at Enmore, which is the only half-way house for women in New South Wales. It can accommodate eight women and any of their children and takes in women on bail or parole, and those recently released from prison. Anne Webb, Coordinator of Guthrie House told the Committee that women coming out of prison are regularly being turned away from the service because of lack of available beds. Last year 90 women were turned away. Ms Webb gave evidence that,

One of the turnaways one of our clients met. Our client had to go somewhere quite early in the morning and she was on her way to the station. She walked through

Belmore Park near Central and she found one of our turnaways, a young Aboriginal woman, lying on the grass just waking up from her night's sleep. She had been pretty stoned, drug affected, and my client stopped to talk to her and ask her how she was going. The young woman replied that she was not going very well, she thought she would be dead very soon and she was pretty desperate and did not know what to do (Webb evidence 23 February 2000).

6.197 Guthrie House receives both metropolitan and rural women. There is no similar service in rural New South Wales. Webb stated,

in the country a lot of Aboriginal women from around the north coast area have been imprisoned down in the city and they want to return as quickly as possible. Sometimes, not all. Some want to come to us and stay with us for a while before moving back to the country, but it is pretty grim when they do not have their train fares, et cetera, and they are likely to commit some stupid crime, help themselves to it because they do not know where to go (Webb evidence 23 February 2000).

6.198 The Committee received a submission from Yulawirri Nurai Indigenous Association Incorporated, in Morisset which operates an Aboriginal Women's post-release support service. That organisation receives no government funding. One of its roles is to assist Indigenous women with accommodation needs. The submission states,

Even before Yulawirri's inception, transitional accommodation and low cost housing for post-release clients and their families has been the biggest thorn of all in our attempts to aid in breaking the recidivistic cycle among our people. The NSW Department of Corrective Services Aboriginal Pre- and Post-release Officers have identified time and time again with relevant government, community, Aboriginal and non-Aboriginal housing agencies of the need and priority of low income affordable, short and long term accommodation.

6.199 The Committee strongly supports the expansion of half-way style accommodation for women released from gaol. It considers that such facilities should operate in metropolitan and rural areas of New South Wales.

RECOMMENDATION

6.200 That the Minister for Corrective Services, the Minister for Housing, the Minister for Health and the Minister for Community Services collaboratively fund, as a matter of urgency, at least three additional supported accommodation/halfway houses for women prisoners to access when they are released from custody. These facilities should be established in Sydney, the North Coast and the Far-West regions of New South Wales and offer women access to appropriate programs and services to assist in their reintegration into the community.

6.201 That as part of a prisoners case management and pre-release plan, the Minister for Corrective Services ensure that all inmates and, particularly those with children, have adequate accommodation upon their release.

Post-Release and Special Needs Women

6.202 Post-release issues are particularly relevant for Indigenous women, women with an intellectual and/or psychiatric disability, women from a non-English speaking background and women from rural New South Wales. In relation to prisoners with a disability, the submission from the Disability Council of NSW stated,

There is little doubt that people with a disability in the corrective services system have a reduced chance of gaining parole. It was suggested to the Council that the over-representation of people with a disability in the corrective services system have a reduced chance of gaining parole. It was suggested to the Council that the over-representation of people with a disability in the prison system may be due to the lack of post-custodial services available. Recidivism is a far greater problem for people with a disability than other former inmates because of the lack of post-release accommodation and support that is available. Even where such services exist, people with a history of crime or violence are unlikely to be offered placement (Submission 87, p. 9).

6.203 The Committee proposes taking further evidence on the issue of post-release and women with special needs in the second phase of the Inquiry.

Chapter 7 The Building of the New Women's Prison

Introduction

- 7.1 As a response to the increase in the NSW female prisoner population the Department of Corrective Services intends to build a new correctional centre for women at South Windsor, Sydney. Once completed that prison will accommodate 200 women. A new correctional centre is also being built at Kempsey and will accommodate 50 women. Additionally, there are to be a further 50 beds built at Emu Plains Correctional Centre. The total cost of the complex at South Windsor, the facility for women inmates at Kempsey and the 50 new beds at Emu Plains will be \$42 million — South Windsor has a budget of \$34 million, Emu Plains' additional 50 beds, \$3 million and the North Coast facility, \$5 million (McComish, tabled evidence, 28 March 2000).
- 7.2 In its submission to the Committee the Department of Corrective Services reported the following factors which led to the decision to build the new prison at South Windsor:
- an increase in the female prisoner population;
 - the unfeasibility of improving the site at Mulawa Correctional Centre to the desired standard;
 - the lack of a purpose built facility for women that offers at least comparable services to those of male inmates, rather than makeshift and adapted accommodation;
 - building additional beds would enable the Department to demolish the 120 bed Conlon wing at Mulawa Correctional Centre which is not conducive to delivering correctional programs;
 - the South Windsor facility will enable Mulawa Correctional Centre to be used primarily as a reception, remand and special program centre. Small highly specialised units such as the detox centre and the Mum Shirl unit will remain at Mulawa;
 - the new facility will assist the Department in improving the quality of, and increase the number of, inmate programs available to female inmates (Submission 55, p.71 - 72).
- 7.3 According to the Department,
- the South Windsor proposal is not a wholesale increase in gaol beds for women but rather is part of an overall restructuring of the system including the closure of unsuitable cells (Submission 55, p 72).
- 7.4 The submission from the Department of Corrective Services outlines the current proposal for the South Windsor facility. The proposal is that:
- the facility at South Windsor will be built in landscaped, single story clusters of 18 units. The low density accommodation is being designed with an emphasis on a residential character with the maximum use of natural light and the creation of an environment as close to 'normal' living as possible;

- the Department will negotiate with private bus companies to ensure that additional services will be provided for visitors and families;
- the new centre has been planned in such a way that allows progression in programs and placement in accordance with the Department's female specific classification system. It will improve the quality of accommodation for female inmates and has been planned with the unique demands of women inmates in mind. On completion, there will be a clear pathway for women inmates through the correctional system where programs can be delivered in a purpose built setting (Submission 55, p.41).

7.5 The Committee understands that the 18 separate accommodation units will be spaced into four separate groupings which will each have their own communal "village green". Three of the "low need" accommodation units will be situated outside the main security fence but within the boundary fence of the South Windsor women's complex and will function as "honour houses" for inmates that are due to be released (*Statement of Environmental Effects for a New Women's Correctional Facility, The Northern Windsor Road, South Windsor*).

7.6 As noted in the Introduction to the report the Committee has received 138 submissions to this Inquiry. The submission from the Department of Corrective Services was the only submission that expressed support for the construction of the women's prison at South Windsor.

7.7 There was some conflicting evidence regarding the consultation process that went on regarding the building of the prison at South Windsor. It is the view of some community groups (expressed below under the objections to the prison) that the consultation was only sought once the Department of Corrective Services had made its decision to build the new women's prison. However, according to Assistant Commissioner McComish, there was a range of consultations, beginning with a conference in August 1998, attended by a number of government and non-government agencies and community groups. Further, she states that in June 1999, she held a meeting with various stakeholder groups.

7.8 The Committee strongly agrees with the Department of Corrective Services that Mulawa is unacceptably overcrowded. The Committee considers that a consequence of such overcrowding is that services have, and will continue to, become compromised. Tabled evidence from Assistant Commissioner, Catriona McComish confirmed this situation:

Cramped and crowded conditions at Mulawa result in staff devoting most of their time to alleviating inmate distress and responding to crises rather than providing programs and services that will assist the women to lead productive and law abiding lives in the community. There is no useable space at Mulawa for management based on identified need for supervision and program delivery, developing personal responsibility and life skills, providing for community and family involvement and activities such as sport and physical fitness... The Department does not support holding women in substandard and dangerous facilities and crowded conditions as a way of attempting to deter courts from using custodial sentences (Tabled evidence, McComish, 29 March 2000).

7.9 The Committee accepts that the Department of Corrective Services' decision to build a new women's prison is based upon the objective of improving facilities for imprisoned

women. The Department, quite rightly, does not want to, and indeed should not, detain women in unacceptable and inadequate accommodation.

7.10 The Committee supports the view that facilities are badly in need of an upgrade and that programs and services to inmates should be improved. The Committee agrees with the Department that women inmates are a particularly high needs group and that the services and programs delivered to this group should be of an appropriate and specialised standard.

7.11 The Committee also acknowledges and supports the Department's objective to "reduce, as far as possible the stress of a prison environment" with its proposed design of, and support facilities for, the women's correctional facility at South Windsor.

7.12 Further, in regard to the proposed Kempsey prison, the Committee acknowledges that the Department is responding to the recommendation of the Royal Commission into Aboriginal Deaths in Custody that Aboriginal prisoners should be detained near their communities.

7.13 However, based on the majority of the evidence that it has received, the Committee is concerned that the decision to build the women's prison at South Windsor in particular, is largely a band-aid response to the burgeoning female prison population.

7.14 The evidence received by the Committee to date overwhelmingly shows that prison is probably the least effective criminal sanction for women in so far as preventing the recurrence of offending behaviour is concerned. Witnesses and academic studies indicate that community-based sentences, with supervision, can achieve greater results for female offenders than incarceration, irrespective of the programs offered. Bonta, Pang and Wallace-Carpetta found in their study,

Some prison-based programs have been shown to reduce recidivism, although the magnitude of the effectiveness is not as large as when the programs are delivered in the community (Bonta, Pang and Wallace-Carpetta, 1995:291).

7.15 It is the Committee's view that there are a number of issues that the Government has yet to resolve before it should proceed with the construction of the new prison at Windsor. These include:

- how likely is it that the female imprisonment rate will continue to rise, especially in light of the new *Crimes (Administration of Sentences) Act 1999* which requires that prison sentences only be imposed when no other sentence is appropriate and reasons be given for sentences of six months or less?
- to what extent would increased promotion and development of community based sentencing options reduce the prisoner population?
- to what extent could a number of small new correctional centres closer to a range of significant and currently unserved population areas relieve the population stress of women's prisons?
- to what extent can effective alternatives be developed for those prisoner currently on remand?

- what will be the impact of the new women's prison on other criminal justice and human services agencies?

7.16 In her tabled evidence, Assistant Commissioner Catriona McComish explained that a Capital Works Program Value Management Study had confirmed that there was a need for a new women's metropolitan correctional centre and additional beds for women in view of the inability of the current facilities to cope with the rising numbers (McComish tabled evidence, 28 March 2000). Further, in his evidence Commissioner Leo Keliher told the Committee that,

Based on best information, based on current activities of the New South Wales Police Service and on sentencing trends of the court, we believe that there will continue to be growth in inmate numbers, and for this reason we have implemented a strategically designed process to construct correctional centres to prudently deal with the increased numbers which we anticipate over the coming years (Keliher evidence 14 February, 2000).

7.17 The Committee accepts that some examination has been done by the Department of Corrective Services in relation to the likely trends in female inmate numbers but would have liked to have seen a more rigorous analysis of projected prisoner numbers, particularly in light of the anticipated effect of the new Sentencing legislation. In addition, 1999 figures show that there has been some decline in the female prisoner numbers since August 1999 and that those numbers have plateaued (see Department of Corrective Services submission 55, p. 79).

7.18 Professor Tony Vinson claimed that the one iron law of penology was that "as you increase capacity so you shall increase the number of people who will be imprisoned" (evidence 27 March 2000). While the Committee rejects the view that courts will simply sentence offenders to fill the prison cells available, it is most concerned that unless significant resources are put into the development and promotion of alternatives to incarceration, then the result will be that the prison population will increase. If, as the evidence indicates, prison tends to have a corrupting rather than corrective effect on inmates, then the prison system itself promotes the offending behaviour that causes the courts to sentence offenders into custody. Unless this trend can be reversed by the development of alternatives which help offenders adjust to life as law abiding citizens, then Professor Vinson's gloomy predictions are likely to come true and what would be surplus capacity today will become a renewed overcrowding problem tomorrow.

7.19 Although the Committee considers that the overcrowding problem, particularly at Mulawa, needs to be addressed as a matter of urgency, it cannot support the commitment of significant resources in the absence of an integrated strategy to address the causes of that increase. In particular, the Committee opposes any move that could compromise the provision of community based correctional options and prevention programs by the diversion of the Government's finite resources to what are relatively ineffective and expensive custodial facilities.

7.20 The Committee also notes the overwhelming community opposition to the development of the new prison expressed in the submissions it received and evidence it heard. This

opposition did not come from residents who were opposed to having a new correctional facility in their area but from people who have contact with the criminal justice system through inmate and family advocacy, academic study, and work in the legal profession. Some of the objections to the prison are reported below:

- I would not be in agreement with the establishment of another prison, especially for women, when the application of service provision is so ad hoc now and the troughs and gaps that are there are creating more inequities in the community, particularly on children (Winsome Matthews, Chair, Aboriginal Justice Advisory Council, evidence 14 February 2000).
- the main issues in relation to the issue of Windsor gaol in particular are as follows. We argue that there is no evidence to support the Government's contention that building a new gaol is the only option. There is no thorough evaluation, other than this inquiry, that has been undertaken to evaluate what other community options exist in New South Wales or in other States that would make a prison the only option that you could do.

What we do know is that they cost a lot of money. We know that they do not rehabilitate in terms of reducing recidivism. In fact, there are very strong arguments and there is evidence to show that crime increases and that the levels of crime that people commit increase after a period of imprisonment. We know that there are very, very poor social support structures in the community that address the needs of prisoners, particularly women prisoners, and we know that until those issues are addressed, then crime rates will not fall (Kath McFarlane, Positive Justice Centre, evidence 23 February 2000).

7.21 Further objections to the proposal to build the prison at South Windsor, and received by the Committee, are as follows:

- The consultations with stakeholders only took place after the decision to build the prison at Windsor had been taken and after planning was well under way. All the groups mentioned as being asked for feedback have only been asked for feedback on the fait accompli of the new prison (Vinson and Baldry, supplementary submission 41, p. 3).
- The extension of the Westbus service to the South Windsor site will not deal with the difficulties raised by having the prison at that site. Children visiting that prison will be particularly disadvantaged as they are often picked up and taken and dropped back home by Children of Imprisoned Parents and other NGOs. The site is much more remote than Mulawa or even Emu Plains for such visiting. And if there are not enough passengers (eg if only five or six visitors to the women's prison need to go there at the times when the bus doesn't run) to make up reasonable bus-loads, the service will be reduced, again disadvantaging children (Vinson and Baldry, supplementary submission 41 p. 3).
- A moratorium on all new prison complexes should be undertaken until such time feasibility studies are implemented embracing wider social research (Australian Prisoners Alliance, submission 34, p. 34).
- The answer to this increase (in female inmate numbers) is not to spend large amounts of money in building new jails but to look at diverting women from

prison. Money should be spent on upgrading Mulawa, and possibly a new, smaller prison to replace the Conlon Wing, but not to increase the cell numbers overall (NCOSS submission 71, p.3).

- Of the three prisons with the highest death rates in Australia, two are less than four years old... It is imperative that no new prisons are built until the reasons for the high deaths in custody rates of Australia's newest prison are known (Justice Action submission 77, p. 13).
- In accordance with the principle of the use of imprisonment as a last resort only, it is the Council's submission that in determining resource allocation, priority should be given to diversionary schemes as opposed to increased prison facilities...the Council opposes the building of a new women's prison at Windsor and urges the Committee to examine ways to divert women from full-time custody. It is of particular concern to the Council that Indigenous women constitute 25% of the female prison population and that the majority of these are drug or alcohol dependent, are the victims of domestic violence and/or have mental health issues (NSW Council for Civil Liberties Inc, submission 89, p. 1).
- In its report the Standing Committee on Social Issues recognised the potential that non-custodial sentencing options can play for reducing the transmission of hepatitis C in the corrections setting, and we support their recommendations in this regard. The building of further prisons will do nothing to sustain efforts to improve overall public health, or to work towards commitments to use imprisonment only as a sentence of last resort for non-serious offenders. We consider proposals to build additional prison facilities to be misguided, particularly considering that there has been no evaluation of the success or failure of current NSW correctional policies for offenders. We consider this to be an essential first step before substantial amounts of public money are spent on new capital works and revenue programs (Hepatitis C Council of NSW, submission 83, p. 3).
- Instead of building a new gaol, why not get, especially for people who are not serious offenders, like shoplifters, driving offences, petty offences, why not set up places that can be run based on case management where you can establish contact with a D and A worker in an area where you are going to live and continue so you are building something up. If it is run on case management, it is hanging over your head. If you screw up you go to gaol, like a suspended sentence, but where the help is available. You could go out and get a job and stuff like that. We get nothing like that (Inmate, Mulawa Correctional Centre, 16 February 2000).
- (The Aboriginal Justice Advisory Council) strongly opposes the development of new correctional centres or plans to build a new facility for women, and are deeply offended that appropriate consultation regarding this development has not occurred with the Council or with Aboriginal communities, prior to the decision being made. AJAC believes that the establishment of new correctional centres will further intensify the current rates of incarceration of Aboriginal women (The Aboriginal Justice Advisory Council, submission 120, p. 8).

Giving Priority to Community Based Corrections

7.22 The Department of Corrective Services is responsible for managing offenders who are ordered into custody. It is also responsible for managing those offenders who are released into the community to serve a sentence. It seems however, that the former role is the one that is given the greatest priority. The Standing Committee on Social Issues examined this issue in its report, *Children of Imprisoned Parents*. That Committee found that,

it appears to the Committee that security is the overriding consideration in determining the policies of the (Department of Corrective Services) and in the allocation of resources and the Department's priorities reflect this role. Consequently, the general community perception of the role of the Department of Corrective Services is that of a gaoler (Standing Committee on Social Issues, 1997:146).

7.23 The Committee is of the view that that statement by and large still holds true. The function of holding people in custody appears to dominate the resource allocation and the priorities of the department. This is reflected on the Department's website home page which states that,

The Department's mission is to protect the community by managing inmates in an environment which is safe, secure, fair and humane and in a manner which encourages inmates' personal development through the use of correctional programs and their own efforts.

7.24 While the Committee considers that security is a major concern, it is of the view that the rehabilitation of offenders, particularly through community based sentencing options, needs to be given a higher priority.

7.25 The Commissioner for Corrective Services in evidence to the Committee, demonstrated the view that the work of the Department was at the end of the criminal justice process and that the department could have no effect on the number of people sentenced to prison:

The department does work downstream from the police and court processes and, as I said, we have no control over the number of persons sentenced to imprisonment, but the factors that really affect the rate of imprisonment are the crime rates, police activities, court activities and breaches of orders (Keliher, Evidence 14 February 2000).

7.26 And again:

I have got to say that the increase in inmate numbers in New South Wales really was something that arose out of strategies implemented upstream from our department (Keliher, Evidence 14 February 2000).

7.27 However, the Committee is of the view that, rather than being the end of the system, corrective services, through both prisons and parole, is more a part of the criminal justice cycle than the end of the line. As the commissioner also noted in evidence:

The point I am making is that the vast bulk [of inmates] are recidivists. They are people who have been in gaol two, three or many more times. For people who have only been to gaol once, only 27 per cent of them come back to gaol but for people who have been to gaol several times, in excess of 50 per cent can come back to gaol (Keliher, Evidence 14 February 2000).

7.28 Representatives of the Department of Corrective Services have also often commented that “it is not the Department of Corrections that puts people in prison, it is the courts” (Keliher, evidence GPSC No. 5, 6 June 2000). Although true, the Committee believes that it is the role of the Department to develop and promote suitable alternatives in order that the courts have a greater range of options when sentencing.

7.29 The Committee supports the approach of the Queensland Criminal Justice Commission which stated in its recent report, *Prisoner Numbers in Queensland, An Examination of Population Trends in Queensland’s Correctional Institutions*,

...the increase in prisoner numbers is to a large degree a consequence of the increase in admissions resulting from the practices of both the police and the court. However, the magnitude of the increase cannot be fully explained by these two factors alone. **Policies and practices within the corrections system have also contributed to the increasing prisoner population** (Queensland Criminal Justice Commission, 2000:59, emphasis supplied).

7.30 In his submission to this Inquiry, Garth Luke, Consultant of Management Information to the Department of Juvenile Justice, compared the roles and outcomes of that Department with the Department of Corrective Services. He wrote,

I have been following in the media some of the submissions made to the Committee and I was concerned to hear that the Department of Corrective Services has been maintaining that it could do little to reduce the number of people entering custody. This was the attitude of management in the Department of Juvenile Justice up until the mid 1980s. Since then DJJ staff have recognised that they are **active** players in the justice system and not just passive gaol keepers. The result has been a halving of the number of young people in custody. During the same period the adult prisoner numbers have doubled. Key to this strategy has been an active advocacy for young people, clear diversionary roles for staff, narrow targeting of custodial alternatives, continual monitoring of program effectiveness and commitment to the practical realisation of gaol as a last resort (Submission 109, p. 1, emphasis his).

7.31 Luke poses a range of questions to establish whether the Department of Corrective Services is proactive in reducing custodial numbers and offending behaviour. Central to many of these questions is the issue of whether the Department actively promotes, both in its own philosophy, its allocation of resources and in its submissions to the courts, a strong commitment to prison as a last resort. Further, Luke questions whether Corrective Services, through knowledge of the demographic characteristics of its client population, both in and out of gaol, target its range of services appropriately. He also asks whether the Department allocates sufficient staff resources to provide effective diversionary strategies.

- 7.32 In her evidence to the recent Budget Estimates Committee hearing, Minister for Juvenile Justice, the Hon. Carmel Tebbutt, confirmed her Department's achievements in reducing the numbers of juvenile's sentenced to a detention centre.
- 7.33 The Committee recognises that it is not a straightforward task to compare the outcomes of one Department with another. In the case of the Department of Juvenile Justice and the Department of Corrective Services there are a number of variables, such as the existence of specialist courts, and the introduction of Youth Conferencing, which can make a straight comparison problematic. However, the Committee is nevertheless impressed with the achievements of the Department of Juvenile Justice and considers that the Department of Corrective Services could develop similar diversionary strategies to deal with the offender population. Further, in light of the fact that the prison numbers in Victoria are much lower than those in New South Wales, the Committee believes that the Department of Corrective Services should prepare a program to reduce numbers by alternative placement.

RECOMMENDATION

- 7.34 That the Minister for Corrective Services commission research to determine whether the diversionary measures which have successfully reduced the numbers of young people held in custody may be applied to bring about a reduction in the number of women in custody.
- 7.35 The Committee is of the view that, for the Department of Corrective Services to more effectively achieve the goal of enabling offenders to lead lives as productive citizens and put aside offending behaviour, the Government must give a higher priority to Corrective Service's rehabilitative role and allocate more resources to community based sentencing options. Diversion of offenders from prison should provide a significant benefit to the individuals concerned, their families and the wider community while at the same time reducing the cost of corrections.
- 7.36 As discussed in Chapter Six, studies indicate that a number of community based forms of punishment appear to have a greater rate of success at reducing recidivism and can be delivered at a significantly lower cost than incarceration. One example that has shown promising initial results is the Government's Drug Court initiative.
- 7.37 Some members of the Committee believe that the Department of Corrective Services should make a case that higher levels of incarceration will either rehabilitate more prisoners and reduce crime in the community more effectively than community based sentences.
- 7.38 The Committee notes that, while very significant improvements to the New South Wales prison system have occurred, particularly over the last decade, the rate of improvement appears to be hampered by the slow rate of cultural change within the department. This is most clearly demonstrated in the evidence the Committee received in relation to case management, where commendable policy initiatives of the department are limited in their effectiveness due to a lack of full commitment on the ground.

- 7.39 To help raise the status of community based corrections within the department and free it from the prison dominated culture that appears to exist, the Committee proposes that a separate Division be established, headed by a Deputy Commissioner. This is consistent with Recommendations 72 and 73 of the report into *Children of Imprisoned Parents*.

RECOMMENDATION

- 7.40 In order that the rehabilitation of offenders, particularly through community-based options is given a higher priority, the Minister for Corrective Services should establish a Community Corrections Division within the Department of Corrective Services. The Division should be headed by a Deputy Commissioner who is directly responsible to the Commissioner.
- 7.41 That the Minister for Corrective Services develop appropriate responsibilities for the Community Corrections Division. Those responsibilities should include the management of offenders serving community-based sentences that require supervision.

Review of the Proposed South Windsor Facility

- 7.42 The Committee agrees that measures to address the increased population should be part of an integrated approach to reducing crime and premised on the principle that imprisonment should only be a measure of last resort.
- 7.43 Opinions were divided within the Committee regarding the construction of the new facility at South Windsor. Some members were of the view that:
- construction of the facility was an appropriate response to the existing overcrowding problems and lack of adequate, purpose built facilities for women;
 - South Windsor will offer a more appropriate range and standard of programs to the inmates. Currently, because of the crowded and cramped conditions, staff at Mulawa have been devoting most of their time to alleviating inmate distress and responding to crises rather than providing relevant programs and services;
 - the development of Mulawa into primarily a reception, remand and special program centre, will greatly improve the systemic management and rehabilitation of women through the correctional system; and
 - the construction of South Windsor will also enable the demolition of Conlon Wing (120 beds) at Mulawa, criticised in the Ombudsman's 1997 report on Mulawa Correctional Centre.
- 7.44 Other members were of the view that the new facilities should not be built as:
- it was poor use of the Government's finite resources and spending more money on prisons means that less is available for more effective programs,

- providing more prison beds allowed the Government to avoid addressing the causes of the increase in prisoner population and developing more effective diversionary programs,
- experience shows that building more beds inevitably leads to an increase in population and previous promises to destroy inadequate facilities have been reneged on (eg, Parramatta gaol);
- the Department of Corrective Services had not demonstrated sufficiently that increased incarceration rates were an effective means of reducing crime, particularly for women.

7.45 It was agreed however, that the decision to build a new women's facility should be subject to more rigorous scrutiny in light of the possible alternatives, the recent drug court results and the likely and actual impact of the *Crimes (Sentencing Procedure) Act 1999*. Such scrutiny should include an analysis of the cost, both capital and recurrent, of the new facilities against effective alternative means of dealing with the increased population. The figures collected by the Committee in evidence raise serious questions of the cost effectiveness of imprisonment when compared with alternative means of addressing the increased prison population and the Committee considers a proper analysis of these issues should be done by the Department of Corrective Services to ensure that the State's corrections dollar is spent as effectively as possible.

RECOMMENDATION

7.46 That the Minister for Corrective Services undertake a cost-benefit analysis of the proposal to build the new women's correctional facility at South Windsor and of the alternative community based measures recommended in this Report. The cost-benefit analysis should be completed no later than the first sitting week in October 2000 of the NSW Parliament. Results of that analysis should be published.

7.47 That the Minister for Corrective Services review the decision to build the new women's correctional facility at South Windsor in light of the results of that analysis. The review process shall include seeking independent advice from the Inspector General for Prisons, representatives of Treasury, groups representing women and at least one academic with research experience in the field of corrections and community services.

7.48 The Committee was unanimous in the view that the Government should be working towards a reduction in the prisoner population and should be taking all reasonable measures to achieve that end. The Committee considers that a reduction is achievable through such measures as the recommendations contained in this report, particularly those relating to the establishment of bail hostels, probation hostels, drug treatment programs in the community and the expansion of transitional centres. The changes to sentencing law contained within the *Crimes (Sentencing Procedure) Act 1999* which came into effect recently should also result in some easing of the prison population. The full effects of the Drug Court program on the prison population have yet to be felt, however, early evaluations

show that the program is successful and therefore should divert significant numbers of offenders away from the prison system. Further, the Committee anticipates that the court liaison program which is designed to divert offenders suffering from mental illness from the correctional system to community treatment will also impact on prison numbers.

- 7.49 The Committee rejects the view that a worldwide trend in increasing prisoner populations means that that trend must be followed in New South Wales. Identifiable measures exist which can work against that trend and countries exist where that trend has been reversed. As in all things, New South Wales should be striving to achieve world's best practice in relation to its criminal justice system.
- 7.50 To ensure that adequate resources are channelled into reducing the women's prisoner population and that the construction of any improved facilities replaces rather than adds to prisons which already exist, the Committee calls for there to be a moratorium on the number of prison beds for women. The Committee considers that there should be a freeze on both the number of beds for remand *and* sentenced female inmates. Strategies which reduce the remand population should not allow for an increase in the sentenced population. Any new gaol proposed and/or established should only replace existing bed numbers so that the total number of women in prison does not exceed current levels.

RECOMMENDATION

- 7.51 That to help ensure the proper targeting of resources at the reduction of imprisonment numbers and the utilisation of alternatives to imprisonment, the Minister for Corrective Services impose a moratorium on the total number of prison beds for women in New South Wales. Any new gaol proposed and/or established shall replace existing prisoner accommodation numbers only so that the total number of women in prison does not exceed current levels.

Chapter 8 Future Work

8.1 The terms of reference for this Inquiry are broad and involve identification and analysis of many complex issues. Because of the short time frame given to the Committee to report on Part I of the Inquiry, that is, issues affecting women prisoners, the Committee has been unable to address a range of issues in this Report. Consequently, the remaining issues for the second part of the report encompasses not only issues in relation to men but issues raised but not resolved in this report.

8.2 Among the issues that the Committee will examine in relation to women prisoners in Part II are:

- Aboriginal women and the criminal justice and penal systems;
- Women from a non-English speaking background and the criminal justice and penal systems;
- Intellectually disabled women and the criminal justice and penal systems;
- State wards and people who have been in the care of the state and the criminal justice and penal systems;
- Policing;
- Drug and alcohol services in prisons;
- Issues relating to gambling and imprisonment;
- Programs in prison for women with special needs;
- The prison welfare system;
- Pre-release options for Indigenous, non-English speaking background, intellectually disabled, and mentally ill women;
- Post-release options for Indigenous, non-English speaking background, intellectually disabled, and mentally ill women;
- Case Management;
- Home Detention as an option to be served towards the end of a full time custody sentence;
- The Classification system;
- Remissions;
- Issues surrounding data collection; and
- Criminal justice impact statements.

- 8.3 The Committee recognises that this list may not be exhaustive and welcomes further submissions on any of the factors raised above or any other issue relevant to women and imprisonment.
- 8.4 The Committee emphasises that this report is not about “going soft on crime” or excusing offenders from their offending behaviour. Rather, it is an acknowledgment of the wide body of evidence that imprisonment, for women in particular, is not always the most appropriate or effective sanction against criminal behaviour. Well resourced and supervised community based penalties which focus, among other things, on the causes of offending and which seek to develop strategies to enable an offender to address her offending behaviour can often be of greater value to the offender, the victim and the community at large than a prison sentence.
- 8.5 The Committee accepts that for some offenders imprisonment is the only realistic option since they may pose a serious threat to the community. It appears that women are now involved in more violent crimes that was once the case. For some, community-based alternatives are not realistic alternatives to custody.
- 8.6 However, for a significant proportion of women a gaol sentence may not be the most appropriate option. The Committee agrees with the evidence it received that many female offenders respond better to rehabilitation programs if they are properly supervised, managed and supported in their communities. The Committee also accepts that such non-custodial sentencing options can be considerably less expensive than imprisonment.
- 8.7 While the Committee believes that women offenders should be accountable for their crimes, it concurs with the evidence and research it has received, that management in the community and not in prison is the best way for these women to break the cycle of offending and to re-integrate properly into society.

Appendix 1 — List of Submissions

- No. 1 LAURIKAINEN Ms Christina
- No. 2 MELLOR Mr Jim (No New Women's Prison Campaign)
- No. 3 KENNEDY Mr Paul
- No. 4 THOMAS Mr Geoffrey
Supplementary Submission A
Supplementary Submission B
Supplementary Submission C
Supplementary Submission D
- No. 5 PARKER Mr Keysta
- No. 6 SAVAGE Mr Tony
Supplementary Submission A
Supplementary Submission B
- No. 7 STEDMAN Mr Terrence R
- No. 8 LYDEN B.A (HONS) L.L.B Mr Mark P
- No. 9 NILSSON Mr Garth
- No. 10 RICHARDSON R
- No. 11 NEAME Mr Peter
Supplementary Submission
- No. 12 CLEYMAN Mr Yoo
- No. 13 DONEY Mr Richard
- No. 14 FERGUSON Mrs Beatrice
- No. 15 TIDEMAN Mrs Ruth
- No. 16 ACKLAND Mr Jim
- No. 17 NERI Mr Paul
- No. 18 WHITEHOUSE Mr Perry
- No. 19 STREET Mr E.T
Supplementary Submission

- No. 20 COOPER Mr M
- No. 21 SKENE Mr John
Supplementary Submission
- No. 22 DILLON Revd Howard (Anglicare Diocesan Services)
- No. 23 HOFSTRAND Mrs Kerrin -Gai
- No. 24 FOSTER Ms Gerda
- No. 25 ANDERSON Mr Tim (Council for Civil Liberties)
- No. 26 NEWHOUSE Mr Louis
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- No. 27 NICOL Mrs G S
- No. 28 CARNEY Ms Tammy (Yulawirri Nurai Indigenous Assoc. Incorp.)
- No. 29 SYMONDS Ms Anne
- No. 30 MCDUGALL Mr Mark W
- No. 31 O'DONNELL Ms Carol (School of Behavioural and Community Health Sciences)
- No. 32 POTEMPA Ms Victoria (Justice Action)
- No. 33 JOY Ms Valerie (Quaker Peace and Justice NSW)
- No. 34 MAC DOUGALL Mr Ian Robert (Australian Prisoners Alliance)
- No. 35 LEARY Mr Terry (Windsor Gaol)
- No. 36 CARTY Mr John G (Wiradjuri Aboriginal Legal Service)
- No. 37 PUDNEY Mr Gary (South Eastern Aboriginal Legal Service)
- No. 38 BARNETT Ms Jan (Josephite Justice Network Sisters of St Joseph)
- No. 39 VIRGONA Mr Vincent
- No. 40 PRITCHARD Mr J P
- No. 41 VINSON Emeritus Professor Tony (School of Social Work)
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- No. 42 STUTSEL Mr Garry
- No. 43 KOOP Ms Marissa

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- No. 44 PAGAN Ms Amanda
- No. 45 HEUSTON Mr Neil
- No. 46 HUMPHRIES Mr Ronald Bruce
- No. 47 CHAN Ms Elaine
- No. 48 BANKS Mr Christopher
- No. 49 GOLDER Mr Ben
- No. 50 KOH Ms Cecilia
- No. 51 WESTON Mr Paul
- No. 52 SUTHERLAND Mr Jonathan
- No. 53 HAYES Associate Professor Susan (Department of Behavioural Sciences in Medicine, University of Sydney)
- No. 54 BIRCH Mr Michael
- No. 55 CARTER, CSB Ms M. Eleanor (Conference of Leaders of Religious Institutes in NSW)
- No. 56 SOTIRI Ms Mindy (CRC Justice Support Inc.)
- No. 57 PILLAI Ms Anitha
- No. 58 BOWMAN Mr Paul
- No. 59 GRABOWSKY Dr Peter (Australian Institute of Criminology)
- No. 60 MAMO Mr Edward J ('Nguon Song' Homeless Student Accommodation)
- No. 61 MANNING Bishop Kevin (Diocese of Parramatta)
- No. 62 COLLINS Mr Brett (Justice Action)
Supplementary Submission
- No. 63 KELIHER Mr Leo (Department of Corrective Services)
Supplementary Submission A
Supplementary Submission B
- No. 64 MCKEOWEN Ms Jill
- No. 65 THOMAS Mr Geoffrey
- No. 66 POWER Ms Fiona (Women's & Girls' Emergency Centre Inc.)

- No. 67 CHAPPLE Mr Robert
- No. 68 BROUGHTON Mr David
- No. 69 HENNESSY Mr John (NSW Teachers Federation)
- No. 70 LARMAN Ms Gloria (Children of Prisoners' Support Group Co-Op Limited)
- No. 71 MOORE Mr Gary (Council of Social Service of New South Wales)
- No. 72 WALKER Mr J F (Aboriginal Corporation for Homeless and Rehabilitation Community Services)
- No. 73 KELLY Mr Mark William
- No. 74 ALLISON Ms Margaret (Legal Aid of NSW)
- No. 75 DUNSTAN Mr Graeme (Australian Cannabis Law Reform Movement)
- No. 76 BOGUNOVICH Mr Matthew Scott
- No. 77 STRUTT Mr Michael (Justice Action)
- No. 78 DEARING Ms Caroline (Sydney Regional Aboriginal Corporation Legal Service)
- No. 79 WEBSTER & SUNJIC Professor . & Ms Ian & Sandra
- No. 80 ENGMAN Ms Amy (No New Women's Campaign Coalition)
- No. 81 FORD Mr Col
- No. 82 STIEN Ms Rhonda (Burnside, Uniting Church NSW)
- No. 83 LOVEDAY Mr Stuart (Hepatitis C Council of NSW)
- No. 84 JACKSON Mr Ray (Indigenous Social Justice Association)
Supplementary Submission
- No. 85 FORD Ms Shirley
- No. 86 BRANNAN Mr Adrian
- No. 87 MANNS Ms Leonnie (The Disability Council of NSW)
- No. 88 RAVEN Mr Brian Henry
- No. 89 HOPKINS Ms Sarah (NSW Council of Civil Liberties)
- No. 90 NICHOLSON SC Mr John C (Public Defenders)
Supplementary Submission

LEGISLATIVE COUNCIL

Appendices

- No. 91 SYKES, DTM Ms Jill (Toastmasters International)
- No. 92 BOND Ms Lyn (“Jailbreak”)
- No. 93 NORTH Mr John (Law Society of New South Wales)
- No. 94 POTAS Mr Ivan (Judicial Commission of New South Wales)
- No. 95 WORTLEY Ms Sally (Brain Injury Association of NSW Inc.)
- No. 96 THOMAS Mr Geoffrey
- No. 97 MCFARLANE Ms Kath (Positive Justice Centre)
- No. 98 CHILVERS Ms Marilyn (NSW Bureau of Crime Statistics and Research)
- No. 99 JONES, MLC The Hon Richard (Legislative Council)
- No. 100 FRENCH Mr Simon
- No. 101 CLARKE Ms Catherine (Kay)
- No. 102 WONG AM MLC The Hon Dr Peter
- No. 103 COOPER Mr Michael
- No. 104 VAN GELDER Ms Anna-Louise (Conference of Leaders of Religious Institutions in NSW)
- No. 105 KELLY Mr Frank
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- No. 106 ROSA Ms Solange (Positive Justice Centre)
- No. 107 ENDERBY, QC Hon Kep (Serious Offenders Review Council)
- No. 108 MARTIN Ms Rachael (Wiringa Baiya)
- No. 108 MARTIN Ms Rachael (Aboriginal Women’s Legal Centre)
- No. 109 LUKE Mr Garth (Department of Juvenile Justice)
- No. 110 MCCALLUM Mr John Darrin
Supplementary Submission
- No. 111 DEBUS The Hon Bob (Department of Corrective Services)
- No. 112 PERRY Ms Astrid (NSW Migrant Resource Centre Forum)
- No. 113 DEBUS Hon Bob (NSW Department of Corrective Services)

- No. 114 KNOBEL Mr Paul
- No. 115 BALDRY Dr Eileen (The No New Women's Prison Campaign)
- No. 116 REYNOLDS Miss Kath
- No. 117 PERRY Ms Astrid (St George Migrant Resource Centre, on behalf of NSW Migrant Resource Centre Forum)
- No. 118 SNUDDEN Sister Pat (Sisters of St Joseph)
- No. 119 CUNLIFFE, RSC Sister Annette (Sisters of Charity of Australia)
- No. 120 HINCHEY, RSM Ms Margaret (Catholics Coalition for Justice and Peace)
- No. 121 O'SULLIVAN Ms Margaret (St Paul of the Cross' Parish, Dulwich Hill)
- No. 122 MORAN Mr Greg
- No. 123 HILL Mr Michael
- No. 124 BYRNE Mr and Mrs Anne and Bill
- No. 125 MORIARTY Sister Betty (Religious of the Sacred Heart)
- No. 126 HALLIGAN Ms Patricia (Outer Western Good Shepherd Social Justice Network)
- No. 127 DRYZA Mrs Susan
- No. 128 SMITH Ms Naomi
- No. 129 O'KEEFFE P
- No. 130 MCCAFFREY Sister Veronica
- No. 131 FOLEY Ms Theresa
- No. 132 ROGERSON Ms Libby (Diocese of Parramatta)
- No. 133 GAUDRY, RSM Sister Marie (Marymount Mercy Centre)
- No. 134 GRADY Ms Joan
- No. 135 GAUDRY Ms Therese
- No. 136 HERSCOVITCH Sister E
- No. 137 RAE Mr Stephen
- No. 138 QUONAEY Ms Sheila

Appendix 2 — List of Witnesses

Monday, 12 February 2000, New South Wales Parliament

Marilyn Elizabeth Chilvers, Statistician and Manager, Statistical Unit, NSW Bureau of Crime Statistics and Research

Ivan Leslie Potas, Research Director, Judicial Commission of New South Wales

Leo Keliher, Commissioner, NSW Department of Corrective Services

Winsome Ruth Matthews, Project Development Officer, NSW Women's Legal Resource Centre and Chairperson, Aboriginal Justice Advisory Council

Marcia Lynne Ella Duncan, Executive Officer, Aboriginal Justice Advisory Council

Tuesday, 15 February 2000, Mulawa Correctional Centre

Shirley Anne Nixon, Teacher and Official Visitor, Mulawa Correctional Centre

Jennifer Anne Sefton, Medical Practitioner, Mulawa Correctional Centre

Michael Robert Giuffrida, Medical Practitioner, Forensic Psychiatrist, Cumberland Hospital

Richard John Matthews, Medical Practitioner

Inmate, Mulawa Correctional Centre

Inmate, Mulawa Correctional Centre

Inmate, Mulawa Correctional Centre

Inmate, Mulawa Correctional Centre

Mark Stuart Adams, Senior Education Officer, Mulawa Education Unit

Nicholas Kailis, Acting Program Manager, Mulawa Correctional Centre

Carmel Anne Wood, Officer, Mulawa Correctional Centre

Ute Geissler, Drug and Alcohol Worker, Mulawa Correctional Centre

Paul James Foster, Correctional Officer

Brian Gregory Haddrick, Correctional Officer

Wednesday, 16 February 2000, Emu Plains Correctional Centre

Gail Lillian Malpass, Manager of Industries, Emu Plains Correctional Centre

Margaret Ann Lightfoot, Program Manager, Emu Plains Correctional Centre

Julie Christine Ellis, Senior Assistant Superintendent and Acting Deputy Governor, Emu Plains Correctional Centre

Julianne Gay French, Clinical Nurse Specialist, Corrections Health Service, Emu Plains Correctional Centre Clinic

Anne Sefton, Director, Corrections Health Service

Karen Ann Burgoyne, Psychologist, Emu Plains Correctional Centre

Robyn Hall, Drug and Alcohol Worker, Emu Plains Correctional Centre

Dawn Hart, Drug and Alcohol Worker, Emu Plains Correctional Centre

Bogdon Smeu-Kirileanue, Psychologist, Emu Plains Correctional Centre

Iris Fay Willoughby, Welfare Worker and Family Support Worker, Emu Plains Correctional Centre

Thelma Jean Pellitt, Prison Chaplain, Emu Plains Correctional Centre

Madeleine Loy, Mothers and Childrens' Program Co-ordinator, Women's Services Unit

Phillip Anthony Ricketts, Senior Education Officer, Emu Plains Correctional Centre

Inmate, Emu Plains Correctional Centre

Inmate, Emu Plains Correctional Centre

Inmate, Emu Plains Correctional Centre

Inmate, Emu Plains Correctional Centre

Inmate, Emu Plains Correctional Centre

Inmate, Emu Plains Correctional Centre

Inmate, Emu Plains Correctional Centre

Inmate, Emu Plains Correctional Centre

Evidence also taken in camera from three witnesses

Wednesday, 23 February 2000, New South Wales Parliament

Appendices

Katherine Lynn McFarlane, Solicitor, Executive Member, Positive Justice Centre

Anna Solange De Matos Criste Rosa, Policy Officer, NSW Users and AIDS Association, and Executive Member, Positive Justice Centre

Anne Maria Webb, Social Worker and Co-ordinator of Guthrie House

Kerrin-Gai Hofstrand

Michael James Strutt, Justice Action Spokesperson

Kilty O’Gorman, Justice Action Co-ordinator

Brett Anthony Collins, Justice Action and Prisoners Action Group Spokesperson

Sarah Conant Hopkins, Deputy Principal Solicitor, Sydney Regional Aboriginal Corporation Legal Service

Trevor Charles Christian, Manager, Sydney Regional Aboriginal Corporation Legal Service

Rachael Anne Martin, Principal Solicitor, Wirringa Baiya Aboriginal Women’s Legal Centre

Abraham Najarin

Wayne Lindsay Emonson

Douglas Andrew Walsh

Ian Robert MacDougall

Brian Henry Raven

Tanya Jane Beeby

Philip George Ambler

Monday, 27 March 2000, New South Wales Parliament

Susan Carol Hayes, Associate Professor and Forensic Psychologist, Department of Behavioural Sciences in Medicine, University of Sydney

Eileen Baldry, Senior Lecturer, School of Social Work, University of New South Wales

Tony Vinson, Professor Emeritus, School of Social Work, University of New South Wales

Violet Roumeliotis, Executive Officer, CRC Justice Support Incorporated

Jan Cregan, Psychologist and Board Member, CRC Justice Support Incorporated

Gloria Jean Larman, Executive Officer, Children of Prisoners Support Group

John Cecil Nicholson SC, Senior Public Defender of NSW, Public Defender's Office

Tuesday, 28 March 2000, New South Wales Parliament

Catriona Ann McComish, Assistant Commissioner, NSW Department of Corrective Services

Colleen Frances Subir, Acting Senior Policy and Project Officer, Women's Services Unit, Department of Corrective Services

Patricia Margaret Maurer, Regional Aboriginal Project Officer, NSW Department of Corrective Services

Peter James McDonald, Acting Assistant Commissioner, Probation and Parole Service, NSW Department of Corrective Services

Christopher Evans, Commander, NSW Police Service

Fiona Power, Co-ordinator, Women's and Girls' Emergency Centre

Kim Elizabeth Anson, Executive Director, Policy and Strategy Division, NSW Department of Housing

Ray Jackson, Official Spokesperson, Indigenous Social Justice Association

Wednesday, 29 March 2000, Grafton Correctional Centre, Grafton

Douglas Ernest Stanford, Governor, Grafton Correctional Centre

Thomas Breckenridge, Deputy Governor of Grafton Correctional Centre

Andrew James Wilson, Program Manager, Grafton Correctional Centre

Christine Anne Drayden-Thompson, Psychologist-in-Charge, Grafton Correctional Centre

Rebecca Mary Burke, Welfare Officer, Department of Corrective Services

Kaye Cooke, Alcohol and Other Drug Worker, Department of Corrective Services

Edgars Stanly Ozols, District Manager, Probation and Parole Service, Department of Corrective Services

Inmate, Grafton Correctional Centre

Inmate, Grafton Correctional Centre

Inmate, Grafton Correctional Centre

Wednesday 19 April 2000, New South Wales Parliament

Keppel Earl Enderby, Chairman, Serious Offenders Review Council

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