



Final Report of the
Legislative Council Select Committee
Inquiry on the Increase in Prisoner
Population

NSW Government Response
August 2002

NSW GOVERNMENT RESPONSE TO THE FINAL REPORT OF THE SELECT COMMITTEE ON THE INCREASE IN PRISONER POPULATION

Recommendation 1

The Committee recommends the Department of Corrective Services undertake a research project to focus on the needs of former State wards and care leavers in the prison system. The research project should identify the numbers of former State wards and care leavers in the prison system. [page 26]

Government's Response

In NSW the term "wards" has been replaced with "children and young people in out-of-home care".

Privacy considerations would make it difficult to determine the precise number of such persons in the correctional system. However, the Select Committee Report refers to international and Australian studies, which show that over-representation of such persons in prison is the norm.

Longitudinal data (Cashmore and Paxman, 1996) shows that young people leaving care in NSW have far higher rates of problems with drugs and alcohol and poor educational attainment, among other difficulties.

The Department of Corrective Services is well-equipped to deal with inmates with drug and alcohol dependence and poor education levels. The Department employs psychologists, welfare officers, alcohol and other drug counsellors and trained teachers to assist inmates throughout their time in prison. Following the Drug Summit in 1999, detoxification and stabilisation programs were extended. New detoxification units have been established at Bathurst, Grafton and Parklea Correctional Centres, and 15 new positions for nursing, alcohol and other drug workers and other staff have been created.

Corrections Health Service pharmacotherapy treatment programs (Methadone Treatment Program, Naltrexone trial and Buprenorphine trial) have also been expanded. All inmates entering correctional centres on the methadone program now continue on the program whilst in prison.

A 40-bed Drug Therapeutic Unit has commenced operation at Long Bay Correctional Complex, which assists inmates with substance abuse issues to prepare for release.

'Healthy lifestyle zones' have been established at Parramatta, Cessnock and Emu Plains Correctional Centres, where inmates who have a history of substance abuse, commit themselves to more stringent drug-testing and participation in relapse prevention programs.

The Department recognises that it is important to provide positive and meaningful opportunities for inmates to engage in an educational/vocational environment and to equip them with qualifications and experience that are recognised by TAFE, community and evening colleges

and other registered training organisations. The Department's own education provider, the Adult Education and Vocational Training Institute (AEVTI), is itself a registered training organisation.

Approximately 50% of inmates are enrolled in one or more education programs at any given time, and a Student Learning Profile is developed for each participating inmate. Courses focus on the acquisition of literacy and numeracy skills and vocational training.

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Recommendation 2

The Committee recommends that the Bureau of Crime Statistics and Research investigate and report on the reasons for the increase in the rate of bail refusal and its consequent impact upon the increase in the remand population in the NSW prison system. [page 45]

Government's Response

The Bureau of Crime Statistics and Research has already adequately reported on the level of bail refusal in its reports *Increases in the NSW Remand Population* (Nov 2000) and *Bail in NSW: Characteristics and Compliance* (Sept 2001). Both reports found there are indications that police and magistrates are becoming less willing to grant bail.

The Research & Statistics Unit of the Department of Corrective Services has also reported on the NSW remand population, in its publication *Remand Inmates in NSW - Some Statistics* [Barbara Thompson, *Remand Inmates in NSW: Some Statistics*, Research Bulletin No 20, Department of Corrective Services, June 2001].

The increase in bail refusals has been incremental over many years (less than 1% per year) and, accordingly, no meaningful study of the reasons for the increase could be undertaken.

The *Bail Amendment (Repeat Offenders) Act 2002* commenced on 1 July 2002. The Act amends the *Bail Act 1978* to significantly tighten the circumstances in which bail may be granted. The Bill includes a provision requiring the Attorney General to review the operation of the amendments as soon as possible after the period of 12 months after their commencement.

The Bureau of Crime Statistics & Research will continue to monitor the level of the prison population and, if the population does increase, will investigate the reasons for the increase.

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Recommendation 3

The Committee recommends that the Bureau of Crime Statistics and Research specifically review the impact of the exceptions to the presumption in favour of bail now provided for in section 9 of the *Bail Act*. [page 46]

Government's Response

The *Bail Amendment (Repeat Offenders) Act 2002* commenced on 1 July 2002. The Act amends the *Bail Act 1978* to significantly tighten the circumstances in which bail may be granted. The Bill includes a provision requiring the Attorney General to review the operation of the amendments as soon as possible after the period of 12 months after their commencement.

The Bureau of Crime Statistics & Research will continue to monitor the level of the prison population and, if the population does increase, will investigate the reasons for the increase.

The Criminal Law Review Division of the Attorney General's Department will oversee the review to be undertaken in accordance with the *Bail Amendment (Repeat Offenders) Act 2002*.

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Recommendation 4

The Committee recommends that the *Bail Regulation 1994* be amended to make provision for the prompt determination of the revocation of periodic detention, home detention or parole orders in order to minimise the number of offenders remanded into custody and the length of time spent on remand.

Government's Response

Recommendation 4 is misconceived. An offender held in full-time imprisonment as a result of being arrested on a warrant issued by the Parole Board is not held on remand. Accordingly, bail is not relevant to such an offender.

Such an offender would originally have been convicted of a criminal offence and sentenced by a court to a term of imprisonment to be served by way of periodic detention, home detention or full-time imprisonment with a non-parole period. The offender would have subsequently breached the conditions of his or her periodic detention order, home detention order or parole order, as the case may be, and the Parole Board would have revoked the order. When arrested on a warrant issued by the Parole Board after revocation of the relevant order, such an offender would have been committed to full-time imprisonment.

In some circumstances, the Parole Board may revoke a periodic detention order, home detention order or parole order, but decline to issue a warrant for the offender's committal to full-time custody. The Board would then cause a revocation notice to be served on the offender, in effect giving the offender an opportunity to show cause why the revocation should be rescinded and allowing the offender to remain at large pending the review hearing.

Sections 173-175 of the *Crimes (Administration of Sentences) Act 1999* require that, if the Parole Board revokes an offender's periodic detention order, home detention order or parole order, the Board must issue a revocation notice and cause the revocation notice to be served on the offender as soon as practicable after revocation unless the Board issues a warrant under section 181, in which case the revocation notice must be served as soon as practical after the warrant is executed - ie, when the offender is received into full-time custody. The revocation notice must set a date between 14 and 28 days after service on which the Parole Board is to meet for the purpose of reconsidering the revocation. The offender must notify the Board if the offender intends to make submissions to the Board in relation to the matter and, if the offender duly so notifies the Board, the Board must conduct a hearing at which the offender may make submissions. After reviewing all the reports, documents and other information placed before it, the Board must then decide whether or not to rescind or vary the revocation.

It should be noted that, in the overwhelming majority of cases, the Parole Board revokes a periodic detention, home detention or parole order because of failure by the offender to comply with his or her obligations under the relevant order - for example, in the case of periodic detention, repeated failure to report for periodic detention as required, in spite of ample

provision for an absence to be authorised in appropriate circumstances such as health reasons. It would clearly be inappropriate for offenders who fail to report for periodic detention without reasonable excuse, or who fail to comply with the conditions of their home detention or parole orders, to be permitted to remain at large upon revocation, pending a review hearing by the Parole Board.

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Recommendation 5

The Committee recommends that the Department of Corrective Services adopt a co-ordinating and monitoring role for information on the adult criminal justice system and that, with the Bureau of Crime Statistics and Research, the Department ensure the full sharing of data between all departments and agencies in the criminal justice system and regularly review and report upon both the direct and underlying causes of change in the prison population. [page 60]

Government's Response

The Standing Committee of Criminal Justice Agency Chief Executive Officers meets quarterly and receives regular reports on the NSW criminal justice system. This Committee, which is chaired by the Director-General of the Attorney General's Department and includes the Commissioner of Corrective Services and the Chief Executive Officer of the Judicial Commission, considers, among other things, data sharing between agencies and cross-government developments.

The Attorney General's Department has a key role, particularly through the Bureau of Crime Statistics and Research, in supplying and monitoring information. Further, the Judicial Commission has a statutory requirement to assist courts in sentencing offenders. It does this primarily by collecting, analysing and publishing sentencing information through its Judicial Information Research System and providing this information in regular publications back to the courts, as well as to other criminal justice agencies. Additionally, the Department of Corrective Services maintains a database and regularly publishes statistical analyses and related papers on research into current issues.

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Recommendation 6

The Committee recommends that the Judicial Commission or another agency conduct regular studies of sentencing patterns in courts in specific districts, and that the results of these studies be made available to policymakers to assist in understanding the impact of legislative and policy change on the future prison population. [page 61]

Government's Response

The Judicial Commission of New South Wales is an independent statutory corporation established under the *Judicial Officers Act 1986*. Under section 8 of that Act the Commission has a statutory mandate to monitor sentences imposed by the courts. The Commission undertakes research into sentencing patterns for specific offences with a view to providing information to the courts in order to promote consistency in sentencing. Research studies usually are published by the Commission in a bulletin called 'Sentencing Trends' or else they are published in the form of a monograph. These are distributed widely. Sentencing statistics of a most detailed kind are also available through the Commission's computerised sentencing information system known as 'JIRS' (Judicial Information Research System).

The study of sentencing patterns in courts in specific districts will not, of itself, assist policymakers to understand the impact of legislative and policy change on the further prison population. Such data cannot reveal for example, whether an offender 'should' or 'could' have been sentenced differently. On the other hand, the Commission does and will undertake from time to time, research indicating whether the severity of sentences for particular offences are rising or falling and this may assist policymakers in drawing inferences about the impact on future imprisonment rates. However, the Government is unwilling to support gathering data that could potentially be interpreted as interfering with the discretion of judicial officers, as they could be identified by reference to the relevant district.

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Recommendation 7

The Committee recommends that the Premier ensure that the Minister for Corrective Services is represented on any Cabinet sub-committees which have a decision-making role in relation to the criminal justice system, so as to ensure that the implications of any such decisions for the prison population and the economic and social impacts of those decisions are given full consideration.
[page 62]

Government's Response

This recommendation reflects current Government practice.

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Recommendation 8

The Committee recommends that the Department of Corrective Services be given an active role in the Premier's Council on Crime Prevention and any similar bodies which have a role in the development of policy of legislative proposals in relation to the criminal justice system, so as to ensure that the implications of any such decisions for the prison population and the economic and social impacts of those decisions are given full consideration. [page 62]

Government's Response

This recommendation reflects current Government practice.

The Commissioner of Corrective Services is a member of the Standing Committee of Criminal Justice System Chief Executive Officers and the Criminal and Civil Justice Forum. Senior departmental officers represent the Department on a wide range of committees and working parties which address different issues across all criminal justice portfolios. The Department routinely briefs the Minister for Corrective Services on legislative and policy proposals that concern criminal justice portfolios.

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Recommendation 9

The Committee recommends the Department of Corrective Services give very high priority to the implementation and evaluation of case management in its Corporate Plan. The Department should be required to report back to Parliament in 12 months time on how it has measured progress on addressing problems identified by ICAC, the Inspector General of Corrective Services and this Committee. [page 79]

Government's Response

The Department of Corrective Services already gives very high priority to the implementation and evaluation of case management not only in its Corporate Plan but also in its day-to-day operations.

The high priority already given by the Department of Corrective Services to case management is evidenced by:

- the statement in the Department's *Corporate Plan 2001-2004* that one of the Department's three strategies in improving correctional performance is its strategy to "implement common offender assessment and case management protocols designed to maximise program and service delivery" [see page 6 of the Corporate Plan]
- the statement in the Department's *Corporate Plan 2001-2004* that one of the key performance measures for measuring the performance of correctional centre management is the "participation by inmates in case management and the structured day" [see page 10 of the Corporate Plan]
- the statement in the Department's *Corporate Plan 2001-2004* that one of the objectives of community-based correctional services is that such services are to "contribute towards case management and the establishment of program pathways as part of a unified community/custody based correctional strategy (Throughcare)" [see page 12 of the Corporate Plan].

The Department welcomes the Select Committee's acknowledgement of the Department's commitment to case management, noted in paragraph 6.49 of the Select Committee's final report.

There is already a high level of awareness in the Department, at both corporate and operational levels, of ways in which case management might be further improved. As the Select Committee noted in paragraph 6.44 of its final report, case management was re-invigorated in 1999 when the then Senior Assistant Commissioner, Inmate and Custodial Services, Ron Woodham, who is now the Commissioner of Corrective Services, personally addressed staff at most correctional centres across the state to re-inforce Departmental expectations with regard to case management.

The Department's Corporate Planning and Development Unit conducts formal evaluations of selected departmental programs. The key findings and outcomes of such evaluations are published in the Department's annual report. The Department considers that it is appropriate to defer a formal evaluation of case management to allow consolidation of the reforms which have been put in place since 1999. Case management will be included for consideration when the Commissioner is asked to select and approve evaluations to be conducted in 2002-03.

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Recommendation 10

The Committee recommends that the Department [of Corrective Services] produce and release preliminary findings of its long-term evaluation of the Sex Offender programs, so as to assist modifications of these programs. [page 85]

Government's Response

Paragraph 6.69 of the Select Committee's final report refers to research being undertaken by the Department of Corrective Services into the *Custody Based Intensive Therapy (CUBIT)* program and the *CUBIT Outreach (CORE)* program. CUBIT is an intensive residential program where participating inmates are taken out of the mainstream prison population and accommodated in a special unit at the Metropolitan Special Programs Centre at Long Bay Correctional Complex. CORE is a non-residential program for lower-risk sexual offenders and is conducted in various correctional centres.

The research referred to is not a full evaluation of the CUBIT and CORE programs as, to date, insufficient numbers of offenders have participated in the programs to make a full evaluation feasible at this time. The intention is to present an outline and review of the treatment programs developed for sexual offenders imprisoned in NSW correctional facilities, and any preliminary findings from the review.

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Recommendation 11

The Committee recommends that the Department of Corrective Services include in future research programs a long-term study on the impact of its education programs on recidivism.
[page 89]

Government's Response

The Department of Corrective Services is developing a recidivism database, the aim of which is to allow the calculation of recidivism rates of inmates two years after discharge from full-time custody.

The Department's Research & Statistics Unit has arranged with the Department's Adult Education & Vocational Training Institute (AEVTI) to obtain data on completion rates and completion levels of inmates participating in education and vocational training courses.

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Recommendation 12

The Committee recommends that the NSW Government give urgent priority to funding proposals that will enable NSW to comply with the National Medical [sic] Health Forensic Policy by housing forensic inmates in secure community-based facilities. [page 93]

Government's Response

Forensic patients in NSW are held either in a custodial setting (such as the 120-bed forensic hospital at Long Bay Correctional Complex) or at community based units such as Kestrel or Bunya, which are operated by the Department of Health. In September 2001, the Government announced \$1.5 million in funding to plan for a new Mental Health Unit at the Metropolitan Remand and Reception Centre, Silverwater.

In February 2001 there were 219 forensic patients in NSW, of whom 87 were held in the correctional system.

The Department of Health is familiar with the Commonwealth discussion paper "Toward a National Approach to Forensic Mental Health". In line with the principles set out in that paper, the Government supports the housing of forensic patients, where consistent with community safety, in secure community-based facilities. The Government's aim is to provide a range of facilities to ensure that therapeutic and security needs are fully addressed.

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Recommendation 13

The Committee recommends the Department [of Corrective Services] review the impact of "E" (previous escape) classification on the ability of prisoners to participate in programs to address their offending behaviour. Procedures should be examined to determine whether modifications to current restrictions can be made so as to assist access to programs for prisoners who are not considered high risk in their current term. [page 95]

Government's Response

In accordance with clause 24 of the *Crimes (Administration of Sentences) Regulation 2001*, any new inmate who has previously escaped from lawful custody is to be initially classified as either E1 or E2. An E1 classification is a higher classification than an E2 classification. Both classifications are higher than the three minimum security classifications, C1, C2 and C3.

In accordance with clause 27 of the same Regulation the Commissioner of Corrective Services, after having sought the advice of the Serious Offenders Review Council's Escape Review Committee, is able to re-classify an E classification inmate to a C classification.

As paragraph 6.120 of the final report of the Select Committee points out, it is often not possible for an inmate who has not reached minimum security classification to participate in many of the programs offered to inmates.

In October 2000 the Department of Corrective Services reviewed the way in which it classifies new inmates who have previously escaped from custody. As a result of the review, the Department streamlined the way in which it classifies a new inmate who, though he or she has previously escaped, was able to reach E2 or C classification in his or her previous episode of custody and has not escaped again since that time.

The Serious Offenders Review Council's Escape Review Committee closely scrutinises the circumstances of each E-category inmate before recommending to the Commissioner that any such inmate be re-classified to a non E-category classification. The Review Council, and the Commissioner, are mindful of the need to maintain the security of the correctional system and to protect the public.

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Recommendation 14

The Committee recommends the Department of Corrective Services expand the establishment of transitional centres, and that, where possible, they be located outside but near to existing NSW Correctional facilities. [page 103]

Government's Response

On 29 April 2002 the Minister for Corrective Services opened a second transitional centre for female inmates. This second transitional centre, which is called Bolwara House, is located within the grounds of Emu Plains Correctional Complex but outside Emu Plains Correctional Centre. Bolwara House is able to accommodate up to 16 female inmates approaching release. On 23 June 2002 Bolwara House was accommodating 4 inmates. Numbers will increase as the centre becomes fully operational. The Government allocated funds for the new centre following the New South Wales Drug Summit held in May 1999.

When fully operational, the new centre will be staffed by a manager and 6 transitional centre workers. The centre comprises 4 residential cottages (2 newly built and 2 renovated existing cottages), each sleeping 4 inmates, and a multi-purpose centre which will function as an administrative area, a visits area and an area for programs.

A central aim of Bolwara House will be to develop strong ties with community-based service providers. The Department of Corrective Services has reported that the response, to date, from community agencies has been encouraging. Contact has been made with various agencies providing health, welfare, and post-release accommodation services. Particular attention is being given to establishing links with Aboriginal community groups.

In consultation with the Department's Women's Advisory Network (whose members are drawn from various community groups), the Department has drafted a management plan for Bolwara House, which addresses such issues as accommodation, health services, visits, staff and program facilitators.

Bolwara House will concentrate on assisting inmates who have far more serious substance abuse problems than inmates who enter the existing transitional centre at Parramatta.

The Department of Corrective Services is encouraged by the outstanding success of Parramatta Transitional Centre, which celebrated its 5th anniversary on 5 September 2001. Of the 88 inmates who have been released from Parramatta Transitional Centre in its first 5 years of operation, only two have returned to prison.

The Department will monitor both transitional centres in order to inform the future operation of this program.

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Recommendation 15

The Committee recommends that, following the completion of its current research into the home detention scheme, the Department of Corrective Services re-examine proposals for back-end home detention. [page 105]

Government's Response

The Government has previously considered, but rejected, the possibility of introducing a back-end home detention scheme. Under such a scheme, an offender serving a sentence of full-time imprisonment, who met strict requirements as to the nature of his or her offence and the level of rehabilitation achieved while in prison, would be able to serve a short period prior to release under the same stringent conditions applicable to offenders participating in the front-end home detention scheme.

The Government considered that, no matter how stringent were the conditions imposed on offenders participating in a back-end home detention scheme, the scheme would nevertheless amount to a form of early release and, as such, would be contrary to the principle of truth in sentencing.

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Recommendation 16

The Committee recommends that the NSW Attorney General commission research to investigate the impacts of abolishing sentences of six months or less in NSW, and table this research in Parliament. The research should consider:

- the impact on the size of the NSW prison population,
- potential savings to the NSW Budget,
- the impact on the management of NSW correctional centres,
- development of alternatives to full-time custody,
- the impacts on other services such as the Probation and Parole Service,
- the profile of the inmates who are sentenced to less than six months including their most serious offences, and
- the number of inmates serving six months or less who are male, female or indigenous.

If the research supports the introduction of measures to abolish short sentences the proposal should be circulated in a Discussion paper for public consultation. [page 112]

Government's Response

The Director of the Bureau of Crime Statistics & Research has indicated that the Bureau has commenced this investigation, and will also review similar reforms which have been implemented in Western Australia. When the investigation has been completed the Attorney General will consider its findings.

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Recommendation 17

The Committee recommends that the Government initiate a pilot project which would select and divert a number of offenders who would otherwise be sentenced to imprisonment for a period of three months or less. Priority should be given to selecting women and indigenous inmates for the pilot study. [page112]

Government's Response

This recommendation has been referred to the Aboriginal Justice Advisory Council (AJAC) for investigation.

The Government's commitment to diversionary schemes and restorative justice for Indigenous people is demonstrated in the introduction of circle sentencing, which was announced in October 2001 and commenced in Nowra in February 2002. Circle sentencing is a community based sentencing process for Indigenous communities that brings the offender together with the victim, Aboriginal elders, relatives and other community members to discuss the crime and agree on a sentence, subject to a magistrate's final approval.

The Attorney General has recently announced that circle sentencing is to be extended to Walgett, Dubbo and Brewarrina.

NSW GOVERNMENT RESPONSE TO THE FINAL REPORT OF THE SELECT COMMITTEE ON THE INCREASE IN PRISONER POPULATION

Recommendation 18

The Committee recommends that the Judicial Commission conduct a survey of judges' and magistrates' perception of the severity of different penalties varying in duration. This study should compare, for example, what judges and magistrates consider to be the periodic detention equivalent of twelve months imprisonment, and the factors that may cause this assessment to vary. [page 115]

Government's Response

The Judicial Commission of New South Wales is an independent statutory corporation established under the *Judicial Officers Act 1986*.

The Judicial Commission periodically conducts attitudinal surveys of judges and magistrates to ascertain their views on numerous topics, including periodic detention and the use of alternatives to imprisonment. The Commission will consider this recommendation as part of its future research programs.

Recommendation 18 is partly misconceived. The recommendation assumes that current legislation enables a judge or a magistrate to impose a longer sentence of periodic detention than the judge or magistrate would have imposed if sentencing the same offender to full-time imprisonment. The law clearly provides, however, that the periodic detention equivalent of 12 months imprisonment is 12 months periodic detention.

Section 6(1) of the *Crimes (Sentencing Procedure) Act 1999* states:

"A court that has sentenced an offender to imprisonment for not more than 3 years may make a periodic detention order directing that the sentence be served by way of periodic detention." [emphasis added].

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Recommendation 19

The Committee recommends that, following the operation for a period of two years of s12 of the *Crimes (Sentencing Procedure) Act 1999*, the Bureau of Crime Statistics and Research evaluate the extent of breaches of orders for suspended sentences and its impact on the prison population. [page 116]

Government's Response

Section 12 of the *Crimes (Sentencing Procedure) Act 1999* enables a court, in certain circumstances, to suspend a sentence of imprisonment.

The Government supports the proposal that the operation of section 12 be reviewed; however, the Government considers that the review should occur in accordance with section 105 of the Act, which requires a review 5 years after the Act's commencement.

Section 105 of the *Crimes (Sentencing Procedure) Act 1999* states that the Minister must review the Act as soon as possible following the period of 5 years from the date of assent to the Act and that the review must be tabled in Parliament within the following 12 months. As the *Crimes (Sentencing Procedure) Act 1999* received Royal Assent on 8 December 1999, the 5-year review is to be completed by 8 December 2005 - ie, within six years from the date of assent to the Act.

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Recommendation 20

The Committee recommends that the Bureau of Crime Statistics and Research conduct research to evaluate the effectiveness of periodic detention as an alternative to full-time custody. The research should investigate why there are currently problems with compliance leading to breaches, and whether the program can be improved to address these problems.

This research should include consideration of what impact periodic detention reports at the sentencing stage have on the use of alternatives to imprisonment. [page 121]

Government's Response

In December 2001 the Department of Corrective Services completed a detailed review of the periodic detention scheme. Arising from that review, the Government has introduced the *Crimes Legislation Amendment (Periodic Detention) Bill 2002* to make a series of amendments to the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999*.

In light of these developments, the Government considers that a further review of the periodic detention scheme by the Bureau of Crime Statistics & Research is not required at this time.

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Recommendation 21

The Committee recommends that, following its current research into the home detention program, the NSW Government give priority to funding the expansion of home detention on a strategic basis into rural areas, as an alternative to full-time custody. [page 123]

Government's Response

The home detention scheme commenced operation in February 1997 in Sydney, the Hunter, and the Illawarra. The scheme was extended to the Central Coast in September 1998.

The Government acknowledges the desirability of extending the home detention scheme to other areas of the state, including rural and regional areas where there is a high concentration of indigenous offenders.

The Department of Corrective Services has provided information to magistrates about the benefits of home detention as a diversionary program, to encourage the scheme's continued growth. Extension to new areas will depend on factors including the level of use by courts of existing home detention capacity, and the availability of facilities and support in rural and regional areas.

On 23 June 2002 159 male offenders and 26 female offenders (total: 185) were completing home detention orders.

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Recommendation 22

The Committee recommends that the Department of Corrective Services initiate a pilot program to expand the use of home detention by Indigenous offenders in rural NSW. This pilot should include providing alternative accommodation, and/or other forms of community support, where offenders can complete a sentence of home detention. [page 124]

Government's Response

The Department of Corrective Services has commenced exploring potential partnerships with rural Aboriginal communities. Support at a local level from both the indigenous community and the community as a whole would be a desirable ingredient for any proposed trial.

Preliminary discussions have focused on a partnership arrangement between the Department and local Aboriginal communities that own suitable facilities. One possibility being explored is the use of these facilities as a designated home address for offenders placed on home detention.

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Recommendation 23

The Committee recommends that the Attorney General's Department make provision for courts, when canceling a periodic or home detention order, to substitute a different non-custodial sentence, for example a bond or Community Service order, when appropriate to the specific offender concerned. [page 125]

Government's Response

Recommendation 23 is misconceived.

Firstly, it is the Parole Board, not the courts, which revokes periodic detention orders and home detention orders. The role of the courts in revoking periodic detention orders and home detention orders ceased, except for cases in progress at the time, on 3 April 2000 when the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999* commenced.

Secondly, the previous legislation did not provide, as asserted in paragraph 7.87 of the Select Committee's final report, that a court could, in its discretion, when cancelling a periodic detention order, make such other orders as the court considered appropriate. Section 27(4) of the *Periodic Detention of Prisoners Act 1981* provided that a court could only do so "on application by the Commissioner [of Corrective Services]". Section 163(1A) and (1B) of the *Crimes (Administration of Sentences) Act 1999* make similar provision, as follows:

"(1A) The Parole Board may revoke an offender's periodic detention order on the application of the Commissioner if it is satisfied that health reasons or compassionate grounds exist that justify its revocation.

(1B) If a periodic detention order is revoked under subsection (1A), the Parole Board may, on the application of the Commissioner, make such other orders in relation to the offender as it considers appropriate."

Recommendation 23 misunderstands the nature of periodic detention and home detention. Both of these sentencing options are custodial sentences. A periodic detainee serves a *sentence of imprisonment* by way of periodic detention; a home detainee serves a *sentence of imprisonment* by way of home detention.

Recommendation 23 also misunderstands the place which periodic detention and home detention hold in the sentencing hierarchy. Both periodic detention and home detention stand higher in the sentencing hierarchy than do good behaviour bonds and community services orders. To implement recommendation 23 would be to undermine the place of periodic detention and home detention in that hierarchy. As these sentencing options are both intended as alternatives to full-time imprisonment, failure to comply with either of them must result in a

higher, not a lower, penalty. The exception in section 163, mentioned above, which allows the Parole Board in certain circumstances to make some other order, is a very limited exception.

Authorising the imposition of good behaviour bonds or community service orders upon revocation of periodic detention or home detention orders would reduce the incentive which an offender has to complete such an order and could lead to an increase in revocation rates.

Since periodic detention and home detention are both forms of imprisonment, a sentencing court, in sentencing an offender to either form of imprisonment, must already have been satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate - see section 5(1) *Crimes (Sentencing Procedure) Act 1999*. If the sentencing court has already determined that no sentence other than imprisonment is appropriate, it is not incumbent on any other body to substitute a non-custodial option which the sentencing court has already deemed inappropriate.

NSW GOVERNMENT RESPONSE TO THE FINAL REPORT OF THE SELECT COMMITTEE ON THE INCREASE IN PRISONER POPULATION

Recommendation 24

The Committee recommends that the Psychiatric Consultation and Assessment Service be expanded statewide and that an evaluation be conducted to review its success in diverting offenders. [page 128]

Government's Response

The provision of community-court psychiatric liaison services has been significantly enhanced, and continues to expand.

In April 2002, there were five programs of this type – two instigated by the Corrections Health Service (Central and Parramatta courts) and three under the auspices of Area Health Services (Hunter, Illawarra and Mid-North Coast).

Five further programs have since commenced operation (Sutherland, Burwood, Liverpool/Fairfield, Penrith and Lismore), and planning involving the Chief Magistrate and Chief Health Officer is underway for a further six, mainly in regional areas. A Senior Forensic Psychiatrist has been appointed to manage and evaluate the project as a whole.

NSW GOVERNMENT RESPONSE TO THE FINAL REPORT OF THE SELECT COMMITTEE ON THE INCREASE IN PRISONER POPULATION

Recommendation 25

The Committee recommends that the Bureau of Crime Statistics and Research include in one of its evaluations of the Drug Court consideration of offenders who receive sentences of custody after failure to obtain one of the limited places on the program. [page 133]

Government's Response

The Bureau of Crime Statistics and Research (BOCSAR) undertook to review the operation of the NSW Drug Court. On 28 February 2002 the Bureau released its findings in three reports:

1. *New South Wales Drug Court: Cost Effectiveness*
2. *New South Wales Drug Court: Health Well-being and Participant Satisfaction*
3. *New South Wales Drug Court: A Process Evaluation.*

The Bureau does not intend to conduct any further review of the Drug Court at this time.

In its 'cost effectiveness' evaluation, BOCSAR compared outcomes for 309 participants in the Drug Court program with a randomised control group of 191 offenders who had unsuccessfully sought admission to the program and been sanctioned in the usual way (for the most part, imprisonment).

The object of the comparison was to assess both the effectiveness and cost-effectiveness of the Drug Court in reducing recidivism. BOCSAR's findings included that:

- Recidivism for those on the Drug Court Program was 369 days compared to 294 days for the control subjects.
- Those on the Drug Court Program outperformed the control group in having lower rates of offending for most categories of offence.

The cost per day for an individual placed on the Drug Court program (\$143.87) was slightly less than the cost per day for offenders placed in the control group and sanctioned by conventional means (\$151.72).

NSW GOVERNMENT RESPONSE TO THE FINAL REPORT OF THE SELECT COMMITTEE ON THE INCREASE IN PRISONER POPULATION

Recommendation 27

If and when the Drug Court program includes those with alcohol related problems, the Committee recommends that, following the Bureau of Crime Statistics and Research evaluations, the Government consider establishing a Drug Court in a regional part of NSW, where there are a significant number of indigenous people are arrested and charged [sic]. [page 133]

Government's Response

As stated under recommendation 26, the Government considers that the Drug Court program, which is still in its trial stage, should be limited to offenders with illicit drug problems.

However, amendments to the *Bail Act 1978* allow *any* court, whenever it is of the opinion that a person seeking bail would benefit from assessment, treatment or rehabilitation for drug or alcohol misuse, to bail the person subject to the person entering into an agreement to undergo assessment or to participate in a drug or alcohol treatment or rehabilitation program. The Magistrates Early Referral into Treatment (MERIT) program provides courts with direct contact with assessment and treatment providers in the areas where it operates.

The Government has also introduced circle sentencing as a means of providing indigenous people with justice processes that are designed to help offenders address the causes of their offending. A circle sentencing pilot has commenced in Nowra, and the Government has announced its extension to Walgett, Brewarrina and Dubbo.

NSW GOVERNMENT RESPONSE TO THE FINAL REPORT OF THE SELECT COMMITTEE ON THE INCREASE IN PRISONER POPULATION

Recommendation 26

The Committee further recommends that the evaluations include consideration of the applicability of the Drug Court program to offenders with alcohol problems. [page 133]

Government's Response

In the review of the operation of the Drug Court (reports noted under recommendation 25), the Bureau of Crime Statistics & Research did not speculate on whether the Drug Court program could be adapted for use among offenders with alcohol problems rather than illicit drug problems.

The Government considers that the Drug Court program, which is a pilot program operating in a limited geographical area, is currently designed only to address the needs of offenders with illicit substance abuse. The circumstances and offending patterns of offenders with alcohol related problems are in general different to those who are currently admitted to the Drug Court program.

However, the Government is considering the different problems presented by alcohol related offending, for example through the extension of the Magistrates Early Referral into Treatment (MERIT) program. After starting on the Far North Coast, MERIT now operates also in the Illawarra, Nowra, Liverpool (Cabramatta), Orange, Newcastle, Dubbo, Gosford and Wagga Wagga.

The Government has also amended the *Bail Act 1978* to allow any court, whenever it is of the opinion that a person seeking bail would benefit from assessment, treatment or rehabilitation for drug or alcohol misuse, to bail the person subject to the person entering into an agreement to undergo assessment or to participate in a drug or alcohol treatment or rehabilitation program.

NSW GOVERNMENT RESPONSE TO THE FINAL REPORT OF THE SELECT COMMITTEE ON THE INCREASE IN PRISONER POPULATION

Recommendation 28

The Committee recommends that the Department of Corrective Services Research and Statistics Branch examine the papers presented at the "Women in Corrections: Staff and Clients" hosted by the Australian Institute of Criminology in November 2000. The Research Branch should determine whether they should develop and pursue any of the suggestions for further research in NSW or refer relevant data to other crime research bodies or interested individual researchers. The Committee recommends the Branch give strong consideration to those projects dealing with the deaths of inmates post release, the operation of bail laws and links between trauma and patterns of drug abuse by female offenders. [page 153]

Government's Response

The Department of Corrective Services' Research & Statistics Unit has considered, in consultation with the Department's Director, Strategy and Policy, Inmate Management, the papers presented at the Australian Institute of Criminology Conference "Women in Corrections: Staff and Clients", held in November 2000.

The Unit has also examined ideas arising from a forum held by the Australian Capital Territory Corrective Services in November 2001, entitled "Working with Female Offenders Forum: Throughcare".

Female inmates comprise around 7% of the total inmate population. On 30 June 2002 there were 516 female inmates in the NSW correctional system out of a total inmate population of 7793.

The Department operates the Parramatta Transitional Centre for selected female inmates approaching release. In April 2002 the Department opened a second transitional centre for female inmates in the grounds of Emu Plains Correctional Complex.

The Mothers and Children's Program offers places for selected female inmates at Jacaranda Cottages (part of Emu Plains Correctional Centre) where participating female inmates are able to live with their children.

The Karrka Mobile Camp Program enables selected female indigenous inmates to participate in cultural awareness activities.

In addition to these specialised programs, the Department provides to female inmates, as it does to male inmates, alcohol and other drug services, psychological services, welfare services, educational opportunities, work opportunities and pre-release assistance.