



REPORT OF THE

STANDING COMMITTEE ON

ESTIMATES AND FINANCIAL OPERATIONS

IN RELATION TO THE

FINANCIAL MANAGEMENT OF PRISONS

Presented by Hon Mark Nevill MLC (Chairman)

Report 29

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

Date first appointed:

December 21 1989

Terms of Reference:

1. There is hereby appointed a Standing Committee to be known as the *Estimates and Financial Operations Committee*.
2. The committee consists of 5 members.
3. The functions of the Committee are to consider and report on:
 - (a) the estimates of expenditure laid before the Council each year; and
 - (b) any matter relating to the financial administration of the State.
4. The Committee shall report on the estimates referred under clause 3 by or within one sitting day of the day on which the second reading of the *Appropriation (Consolidated Revenue Fund) Bill* is moved.
5. For the purposes of clause 3(a), the House may appoint not more than 6 members at any stage of its examination.
6. A reference in clause 3 to "estimates of expenditure" includes continuing appropriations, however expressed, that do not require annual appropriations.
7. The Committee may initiate investigations under clause 3(b) without prejudice to the right of the Council to refer any such matter.

Members as at the time of this inquiry:

Hon Mark Nevill MLC

Hon Muriel Patterson MLC

Hon Ed Dermer MLC

Hon Simon O'Brien MLC

Hon Ljiljana Ravlich MLC (appointed March 21 2000)

Hon Bob Thomas MLC (resigned March 21 2000)

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"If only there were evil people somewhere insidiously committing evil deeds and it were necessary only to separate them from the rest of us and destroy them. But the line dividing good and evil cuts through the heart of every human being. And who is willing to destroy a piece of his own heart?"

(Aleksandr Solzhenitsyn, The Gulag Archipelago)

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CHAPTER 1

EXECUTIVE SUMMARY AND RECOMMENDATIONS

EXECUTIVE SUMMARY

- 1.1 Western Australia has an imprisonment rate which is over twice that of: the State of Victoria; the Netherlands; and Germany.
- 1.2 Imprisonment as a sentencing option is expensive and largely ineffective in rehabilitating offenders. In many cases imprisonment has a negative effect on both the offender and their family. On a daily per offender basis, it costs approximately 14 times more to imprison an adult or juvenile offender than to impose a community based sentence.
- 1.3 Imprisonment should be primarily for violent offenders (who constitute approximately half of all current prisoners). Non-violent offenders and those currently receiving short prison terms are best directed to community based sanctions with strict enforcement of the conditions.
- 1.4 The use of a broader range of more sophisticated alternative sanctions to imprisonment will provide more effective programs for offenders and have less disruptive effects on the families of offenders.
- 1.5 The broader range of alternative sanctions should include therapy programs that adequately address the causes of offending behaviour. Social programs should provide appropriate skills to offenders such as life and social skills and improve education levels. Community service programs that provide work of benefit to the community such as gardening and environmental work should be expanded.
- 1.6 Programs need to be developed to place released offenders or those serving community sentences in accommodation, employment and education, so as to decrease the risk of re-offending.
- 1.7 These alternative sanctions to imprisonment can be achieved through home detention with attached programs, use of half-way houses, and with work and study release from prison. Some offenders could serve half of their sentence in prison and half in the community.
- 1.8 Prison health care services need significant improvement so that they address the mental health needs of offenders. Mentally disordered prisoners should be kept in a

separate secure facility. The use of medication within the prison system needs close monitoring to set upper limits on the use of prescribed medications. The level of self-harm and suicide could be reduced significantly by adopting some of the practices of the New York City Department of Corrections.

- 1.9 In order to reduce the number of non-violent offenders in prison, some specific legislative changes are recommended. Imprisonment as a sentencing option for the offence of driving without a licence under the *Road Traffic Act 1974* should only be imposed in extraordinary circumstances. The number of Aboriginal Australians held in Western Australian prisons could be reduced by amending the *Bail Act 1982* so as to require an automatic re-appearance before the court within five days where an offender has been remanded because of an inability to raise a bail surety. Offenders who escape or abscond from minimum-security prison should be dealt with internally by loss of privileges and removal to a higher security prison.
- 1.10 The gap between research and practice needs to be bridged. The Ministry of Justice and the Western Australian Police Service need to vastly improve the collection of information and data that is required to understand what is happening in the justice system. Accurate information is essential for research, targeting programs to offending behaviour, evaluating programs and the effectiveness of results and for feedback to judges and magistrates as to what is effective in helping offenders reduce their involvement in criminal activity. A stronger empirical approach is needed to ensure that programs being delivered are achieving their objectives.
- 1.11 The introduction of Service Level Agreements should improve the performance of Western Australian prisons and outcomes for offenders.
- 1.12 The savings generated by reducing the rate of imprisonment (to similar levels as most of the other countries and states referred to in this report who have comparable crime rates) should more than adequately fund the less expensive and more effective community programs and improve the level and effectiveness of prison programs for violent offenders.
- 1.13 The Committee acknowledges the recent establishment of an independent prison inspectorate in Western Australia and anticipates that this step will be the first of a number of significant reforms of the prison system.

RECOMMENDATIONS**Recommendation 1 [para 5.19]**

- 1.14 The Committee recommends that the *Road Traffic Act 1974* be amended to provide the courts with a wider range of sanctions alternative to imprisonment in the community as sentencing options for driving offences.

Recommendation 2 [para 6.15]

- 1.15 The Committee recommends that the *Bail Act 1982* be amended along the lines of s11(9) of the *Bail Act 1985 (SA)*, so as to require defendants who remain in custody because they are unable to meet bail conditions to be automatically brought before the courts within five days for the bail terms to be reviewed.

Recommendation 3 [para 6.16]

- 1.16 The Committee recommends that measures be put in place to ensure that persons are not held on remand unless they are deemed by a judicial officer to be a danger to the community, are likely to abscond, or are likely to pervert the course of justice. The Committee supports the presumption in the *Bail Act 1982* that bail will only be granted for those charged with offences of violence in exceptional circumstances.

Recommendation 4 [para 6.23]

- 1.17 The Committee recommends that remand prisoners be held in establishments at the lowest level of security for which they qualify according to the normal internal policy classification procedures for sentenced prisoners so as to avoid wherever possible the mixing of remand prisoners with maximum security prisoners.

Recommendation 5 [para 7.17]

- 1.18 The Committee recommends that the Ministry of Justice provide a sufficient number of places in offender management programs to cater for all eligible prisoners. Prisoners should be given the best possible opportunity to complete such programs in order to allow each prisoner to leave prison at their earliest possible release date. Furthermore, therapeutic programs, such as anger management and sex offender treatment, should be undertaken by prisoners at the commencement of their sentences rather than immediately prior to the prisoner's release.

Recommendation 6 [para 8.17]

- 1.19 The Committee recommends that there should be a determined effort to reduce the use of short-term imprisonment to enable the Ministry of Justice to use its resources to provide effective programs for a higher proportion of prisoners.

Recommendation 7 [para 8.18]

- 1.20 The Committee recommends that judicial officers responsible for sentencing decisions, should receive feedback on the rehabilitative effectiveness of their sentencing decisions, as well as evaluations of the rehabilitative effectiveness of different sentencing options generally. Comparative data from other Australian States would also be of value. This feedback is to include an evaluation of the effectiveness of their sentencing decisions in terms of preventing offenders from re-offending.

Recommendation 8 [para 8.24]

- 1.21 The Committee recommends strict enforcement of alternative sanctions and where possible the community sentence should not interfere with an offender's employment commitments. Fulfilment of the conditions of a community sentence should be undertaken in addition to paid employment commitments.

Recommendation 9 [para 8.58]

- 1.22 The Committee recommends a broadening of the range of sentencing options available to the judiciary when dealing with non-violent offenders.

Recommendation 10 [para 8.59]

- 1.23 The Committee recommends that the Minister for Justice and Attorney General consider amending the *Sentencing Act 1995* to extend the range of sentencing options available to the judiciary. The Committee recommends that these alternative sanctions be expanded to include:
- a) an increase in the number of supervised community service group programs;
 - b) clearer rules and more focussed supervision of those serving a community penalty;
 - c) a combination of short term detention with intensive training and community service;

- d) **a combination of sentences, for example pre-trial detention followed by community service;**
- e) **a combination of electronic monitoring with community service for sentences up to 12 months;**
- f) **the introduction of electronic monitoring for juvenile offenders, either in combination with school attendance, or for community detention;**
- g) **compulsory treatment for drug addicts as an alternative to imprisonment;**
- h) **training orders for adults and juveniles including job training, monitoring job placements and social skills training;**
- i) **work release from prison;**
- j) **‘day fines’ determined according to the means of the offender (with provision for less affluent offenders to pay a proportional amount); and**
- k) **early diversion programs.**

Recommendation 11 [para 8.61]

- 1.24 **The Committee recommends that the Ministry of Justice implement a range of initiatives designed to exploit the potential of community supervision to prevent crime through rehabilitation and supervision, reduce the number of offenders sentenced to prisons and to assure the public and the judiciary of the effectiveness of community supervision operations.**

Recommendation 12 [para 8.63]

- 1.25 **The Committee recommends that community supervision services should be adequately funded to provide a variety of specialised services such as: the provision of psychiatric and psychological assessments to Courts; assessments of high risk offenders; and the delivery of specialised programs and interventions, particularly to Aboriginal and women offenders. This proposal could result in the diversion of some prisoners from custody to a community-based option where their needs and risks can be better managed. The provision of these services would also encourage the release of prisoners from custody and significantly increase the rehabilitative effectiveness of community supervision.**

Recommendation 13 [para 8.65]

- 1.26 **The Committee recommends that electronic surveillance technology be used by the Ministry of Justice to enhance community supervision sentences. Electronic surveillance should, however, only be used in conjunction with a rehabilitative program, and not as a stand alone sentence. Rehabilitative programs involving home detention with electronic surveillance attached must involve the prior approval and continuing co-operation of the offenders' co-habitants.**

Recommendation 14 [para 10.23]

- 1.27 **The Committee recommends that the Ministry of Justice establish a specialist criminal justice statistics unit (with appropriate resources and expertise). The functions of such a unit would be to reduce the possibility of an unbalanced view of the level of crime within the community by:**
- a) **the development of a statewide system for the recording of crime rates and the gathering of standardised crime statistics from various agencies; and**
 - b) **the publishing of accurate and informative criminal justice statistics on crime trends.**

Recommendation 15 [para 11.34]

- 1.28 **The Committee recommends that a close check be made on the prescription of medication by prison doctors and that consideration be given for targeted education of prisoners on medication usage. The Ministry of Justice should consider the incorporation of health standards that describe upper level limits for prescription of medication and these standards must be reflected in the accreditation of health services in all Western Australian prisons.**

Recommendation 16 [para 11.57]

- 1.29 **The Committee recommends that investigations be undertaken into the feasibility of introducing “drug free wings” and intensive voluntary drug treatment programs in Western Australian prisons along the lines of programs currently operating in the United Kingdom and the Netherlands.**

Recommendation 17 [para 11.58]

- 1.30 The Committee recommends the adoption of mandatory drug testing in prisons which has proved successful in the United Kingdom and the Netherlands in identifying and deterring drug misuse.

Recommendation 18 [para 12.19]

- 1.31 The Committee recommends that consideration be given to building suitable accommodation to cater for mentally disordered prisoners, within prison boundaries, which will satisfy the demands of security, and ease some of the pressure on the Franklin Centre.

Recommendation 19 [para 12.20]

- 1.32 The Committee recommends that the Health Services Division of the Offender Management Division of the Ministry of Justice should be provided with the resources to assess and treat all prisoners with mental disorders.

Recommendation 20 [para 12.43]

- 1.33 The Committee recommends that consideration be given to adopting the approach of the New York City Department of Corrections towards prisoners at risk. This involves the introduction of additional training for correctional staff about mental health issues; an induction program for prisoners (minimum of 48 hours in a dedicated induction area which has dormitory style accommodation); the appointment of professionally trained suicide prevention workers; and the engagement of paid prisoner observation aides.

Recommendation 21 [para 13.21]

- 1.34 The Committee recommends that Service Level Agreements should be adopted as a pilot scheme for prisons in Western Australia and that a working group be established with broad representation to draft appropriate Service Level Agreements.

Recommendation 22 [para 14.37]

- 1.35 The Committee recommends that a system of Official Visitors (similar to the Board of Visitors in the United Kingdom system) be established. It is suggested that at least three Official Visitors (preferably one legally qualified and two community representatives) be appointed by the Minister and assigned to each

prison (for a specified period) and that the Official Visitors report directly to the Minister in accordance with an established reporting procedure on management, policy and prisoner grievance issues. It is also recommended that an Annual Report of Official Visitors be produced and the results incorporated into the reporting requirements of the Independent Inspector of Custodial Services.

CHAPTER 2

INTRODUCTION

- 2.1 The Standing Committee on Estimates and Financial Operations (the Committee) was first appointed on December 21 1989. Under its terms of reference, the Committee is required, inter alia, to consider and report on any matter relating to the financial administration of the State.
- 2.2 This Report has been prepared pursuant to the Committee's terms of reference to conduct an inquiry into the allocation and expenditure of financial resources within the Western Australian prison system and to specifically address:
- (a) alternative sanctions to prison sentences;
 - (b) the role of an external auditor and/or independent inspectorate;
 - (c) strategies aimed at reducing the recidivism rates of prisoners; and
 - (d) strategies to deal with drug dependent prisoners.
- 2.3 Evidence of deficiencies within the Western Australian prison system were identified in the *Report of the Inquiry into the Incident at Casuarina Prison on 25 December 1998*¹ (the Smith Report), and various recent Coroner's reports.² The Committee notes the findings of these reports and does not seek to duplicate their work.
- 2.4 The Committee has spent a considerable amount of time visiting prisons in the Perth metropolitan area. The Committee examined procedures and conditions within the prisons, and received evidence from a variety of people involved in the administration and study of the Western Australian prison system.³
- 2.5 On November 25 1998 the Chairman of the Committee tabled the twenty-fifth report of the Committee. The Legislative Council granted approval for the Committee to travel on the basis of the proposals contained within the twenty-fifth report. The Committee travelled from January 29 1999 to March 6 1999. Attached to the report at

¹ *Report of the Inquiry into the Incident at Casuarina Prison on 25 December 1998*, report to the Director General, Western Australian Ministry of Justice, March 19 1999. The inquiry team consisted of Mr L.E. Smith AM, Dr D. Indermaur, Mr S. Boddis, Mr C. Smith.

² Hope, Alastair, *Record of investigation into Death of Tammy Lee Green*, June 28 1999.

³ See Appendices B and C.

Appendix A is a schedule of the Committee's itinerary showing a schedule of appointments and meetings during the course of the Committee's travels. The Committee identified the United Kingdom, the Netherlands and Germany as jurisdictions which, when faced with problems similar to those of the Western Australian prison system, responded with innovative and practical measures. The Committee also visited the United States of America (United States) to examine measures being taken to deal with the enormous escalation in rates of imprisonment in that country.

2.6 This report considers a number of relevant factors for the management of the prison system, such as:

- i. a comparison of the rate of imprisonment in Western Australia with other jurisdictions;
- ii. the composition of the Western Australian prison population;
- iii. the types of offences for which imprisonment is provided as a sentencing option; and
- iv. the reasons why the Western Australian prison population has increased dramatically over recent years.

2.7 Suggestions are made in the report as to how the prison population can be reduced by: alternative sanctions to imprisonment for all but the most violent offenders; improved programs within prison; bail condition reform; sentencing changes; and the benefits that can flow in:

- i. lower costs to the taxpayer;
- ii. more effective rehabilitation outcomes for offenders; and
- iii. greater benefits to the community.

2.8 The report also addresses health and mental health issues, the importance of research and information systems and independent prison inspectorates.

CHAPTER 3

THE COST OF IMPRISONMENT IN WESTERN AUSTRALIA

- 3.1 For the 1997/1998 financial year, the Western Australian prison population was comprised as follows:
- i. one in seven of all offenders received into prison were sentenced to prison for fine default⁴ (57 percent of all Aboriginal females entering prison in 1998 did so for fine default⁵);
 - ii. approximately one in ten of the male prison population and one in fourteen of the female prison population were classified as mentally ill⁶;
 - iii. approximately one-quarter of all prisoners were on court ordered drug and alcohol programs⁷;
 - iv. approximately three-quarters of all prisoners were unemployed at the time of admission to prison⁸;

⁴ Sentences commenced from 01/07/97 to 30/06/98				
Remand with fine default	Fine default	Sub-total	Total	Percentage of total
38	361	399	2,774	14.38 %
Sentences commenced from 01/07/98 to 30/06/99				
Remand with fine default	Fine default	Sub-total	Total	Percentage of total
59	589	648	3,889	16.67%

Ministry of Justice, Policy and Legislation, Research and Statistical Unit

⁵ *Crime and Justice Statistics for Western Australia: 1998*, The University of Western Australia Crime Research Centre, November 1999, p. ix.

⁶ Answer provided by the Attorney-General to Hon Mark Nevill MLC re Legislative Council Parliamentary Question on Notice Number 1446 notice of which was given on March 31 1998.

⁷ Answer provided by the Attorney-General to Hon Mark Nevill MLC re Legislative Council Parliamentary Question on Notice Number 1457 notice of which was given on March 31 1998.

⁸ 76.2 percent of prisoners reported being unemployed at the time of receipt into prison.
Crime and Justice Statistics for Western Australia: 1997, The University of Western Australia Crime Research Centre, November 1998, p. 112.

- v. approximately three-quarters of all prisoners had only completed a primary school education⁹;
- vi. approximately one-third of adult offenders¹⁰ and approximately one-half of juvenile offenders¹¹ would re-offend and re-enter the prison system within two years of release;
- vii. approximately one third of all prisoners held in Western Australian prisons were Aboriginal;¹² and
- viii. approximately four out of ten prisoners were sentenced to prison for non-violent offences.¹³

3.2 The total cost of managing adult and juvenile offenders in Western Australia in the 1997/1998 financial year was over \$168 million.¹⁴ Of that amount, over \$143 million was spent on maintaining Western Australia’s prison population (which is an increase of approximately \$12 million from the 1996-97 financial year¹⁵). In the 1997/1998

⁹ Answer provided by the Attorney-General to Hon Mark Neville MLC, Legislative Council Parliamentary Questions on Notice Numbered 1441 and 1442 notice of which for both questions was given on March 31 1998. As at February 28 1998, 1,687 prisoners comprising 1,593 male prisoners and 94 female prisoners, had only completed a primary school education. Based on the daily average prison muster for the year of 2,255 this equates to approximately 75 percent of all prisoners.

¹⁰ 1997/1998 Ministry of Justice Annual Report, p. 57. The 1997/98 rate of re-offending for juveniles was 46.15 percent (49.15 percent for 1996/97).

¹¹ Ibid, p. 53. The 1997/98 rate of re-offending for adults is 31 percent (30 percent for each of 1995/96 and 1996/97).

¹² Ibid.

¹³ 45.9 percent of the census prison population were committed to prison for offences against the person, 41.9 percent relate to non-violent offences with the remaining 12.2 percent being remand and unsentenced prisoners.

Crime and Justice Statistics for Western Australia: 1997, University of Western Australia Crime Research Centre, November 1998, p. 107.

¹⁴ 1999/2000 Budget Statements, Budget Paper No. 2, Government of Western Australia, p. 737 and p. 741.

¹⁵ 1997/1998 Ministry of Justice Annual Report. Extract taken from Summary of Consolidated Fund Appropriations and Revenue Estimates for the year ended June 30 1998:

Custodial Management Costs	1996-97 \$1, 000s	1997-98 \$1, 000s
Sub-Program Details		
Adult Offenders Custody	116,158	128,958
Juvenile Offenders Custody	15,389	14,284
Total Custody Cost	131,547	143,242

financial year, Western Australia spent approximately \$63,500 per prisoner; which is more than Victoria spends per prisoner per year.¹⁶

- 3.3 The estimated total cost of managing adult and juvenile offenders in Western Australia in the 1999/2000 financial year was almost \$240 million.¹⁷ The cost of managing adult and juvenile offenders is forecast to rise to over \$270 million for the 2000/2001 financial year.¹⁸ The annual cost per adult prisoner in Western Australia is predicted to rise to over \$64,000 in the 2000/2001 financial year.¹⁹ The cost of juvenile offender management is also rising rapidly.²⁰

THE COST OF IMPRISONMENT WHEN COMPARED WITH THE COST OF COMMUNITY BASED SANCTIONS IN WESTERN AUSTRALIA

- 3.4 The cost per day of supervising an adult offender through community supervision in Western Australia is \$12.00 per day.²¹ The cost per day of keeping an adult offender

¹⁶

	Victorian prison system	WA prison system
Cost of delivery of prison services 1997-98	\$ 163.3 million	\$ 168.2 million
Estimated average daily prison population 1997-98	2,692	2,255

Auditor General, *Victoria's Prison System - Community protection and prisoner welfare*, Special Report No. 60, Victoria, May 1999, p. 167.

¹⁷ \$199 546 000 for adult offenders managed and \$40 222 000 for juvenile offenders managed. The 1998/1999 financial year actual cost figures were \$174 588 000 for adult offenders managed and \$33 451 000 for juvenile offenders managed.
 2000-2001 Budget Statements, Budget Paper No. 2, Government of Western Australia, p. 742.

¹⁸ \$229 882 000 for adult offenders managed and \$40 883 000 for juvenile offenders managed. Ibid.

¹⁹ At an average daily cost of \$176. Ibid, p. 756.

²⁰

	1998-1999 Estimated \$	1999-2000 Estimated \$	2000-2001 Target \$
Daily average number of juveniles in detention	122	135	145
Average cost per juvenile per day in detention	422	455	439
Average cost per juvenile per year	154,030	166,075	160,235
Total annual cost of all juveniles in detention	\$18,791,660	\$22,420,125	\$23,234,075
Daily average number of juveniles in community	1,500	1,250	1,300
Average cost per juvenile per day in community	27.56	32	33
Average cost per juvenile per year	10,059	11,680	12,045
Total annual cost of juvenile supervision	\$15,089,100	\$14,600,000	\$15,658,500
Total annual cost of juvenile management	\$33,880,760	\$37,020,125	\$38,892,575

1999-2000 Budget Statements, Budget Paper No. 2, Government of Western Australia, Vol. 2, pp.737 - 743.

2000-2001 Budget Statements, Budget Paper No. 2, Government of Western Australia, p. 759.

²¹ Letter from Ministry of Justice, May 11 2000. Estimated actual cost for 1999/2000. The 1998/1999 figure was \$12.40.

in custody in Western Australia is \$170.00.²² The cost differential for juvenile offenders between community supervision and custody is similar to that applying to adult offenders. The cost per day of managing a juvenile offender through community supervision in Western Australia is \$32.00.²³ This figure is compared with a daily cost of \$455.00 for holding a juvenile offender in custody.²⁴

- 3.5 The cost difference alone provides an impetus for careful consideration of more community based sentences. For example the cost of keeping 750 adult prisoners, which is the planned capacity of the new medium security Acacia Prison on 2000-2001 projected costs of \$64,240²⁵ per prisoner per year, would be approximately \$48.2 million per year. If 750 offenders out of the projected 3,250 average daily number of adult offenders to be held in custody in the Western Australian prison system in 2000-2001 were diverted into community based programs, based on 2000-2001 projected figures it would only cost approximately \$3.6 million²⁶ to manage them. The savings to Western Australian taxpayers of community based sentences over imprisonment are clear and, as will be explained further in this report, the outcome for most offenders is likely to be significantly better in a range of areas.
- 3.6 The Committee is of the view that the use of funds to accommodate the growing prison population of non-violent offenders diverts resources away from programs most directly related to reducing the risk of re-offending. It notes there is little evidence to show that imprisonment has a better record of rehabilitating offenders than community based sentencing options.
- 3.7 It is clear from the material collected and evaluated in this report that the available evidence on effective alternative approaches to reducing re-offending is extensive. It is equally clear that these alternative approaches to reducing re-offending have not been properly trialed and evaluated in Western Australia.
- 3.8 This compels a consideration of alternatives to custody. As shown above, the cost differential between imprisonment and community supervision is great, yet for every

²² Ibid. Estimated actual cost for 1999/2000. The 1998/1999 figure was \$163.24.

²³ Ibid. The 1998/1999 figure was \$29.20.

²⁴ Ibid. The 1998/1999 figure was \$406.12.

²⁵ Based upon daily average costs of \$176 per adult prisoner (Note: this figure is up from an estimated figure of \$170 for the 1999-2000 financial year – the increase is stated to incorporate transitional costs associated with the start-up of Acacia Prison).

2000-2001 Budget Statements, Budget Paper No. 2, Government of Western Australia, p. 756.

²⁶ Based upon daily average costs of \$13 per adult offender managed in the community.
Ibid.

\$1 spent on community based sentences, more than \$6.50 continues to be spent on the costs of maintaining the Western Australian prison population.²⁷

²⁷ Total projected costs of managing adult and juvenile offenders in custody for 2000-2001 is \$232,014,075, while the total projected cost of managing adult and juvenile offenders through community orders in 2000-2001 is \$35,587,500.
Ibid, p. 756 and p. 759.

CHAPTER 4

OVERCROWDING IN THE WESTERN AUSTRALIAN PRISON SYSTEM

Decrease in the number of offenders received into prison

4.1 The number of offenders received into prison annually in Western Australia actually decreased over the last decade of the twentieth century.²⁸ Despite this decrease in receivals, the actual standing prison population rose sharply over the last five years of the twentieth century,²⁹ peaking at approximately 3,000 prisoners in June 1999 (which

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Prison population trends (Receivals) in Western Australia, 1990-1998

Year	All Persons	Aborigines		Non-Aborigines	
	No.	No.	%	No.	%
1990	6,717	3,139	46.7	3,578	53.3
1991	6,212	2,685	43.2	3,527	56.8
1992	5,622	2,358	41.9	3,264	58.1
1993	6,042	2,505	41.5	3,537	58.5
1994	6,059	2,550	42.1	3,509	57.9
1995	4,646	1,739	37.4	2,907	62.6
1996	4,628	1,877	40.6	2,751	59.4
1997	4,547	1,924	42.3	2,623	57.7
1998*	4,652	1,931	41.5	2,721	58.5

Crime and Justice Statistics for Western Australia: 1997, Crime Research Centre, November 1998, p.111. Ministry of Justice, Policy and Legislation, Research and Statistical Unit.

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Prison population trends (census December 31) in Western Australia, 1990-1998

Year	All Persons	Aborigines		Non-aborigines	
	No.	No.	%	No.	%
1990	1,620	548	33.8	1,072	66.2
1991	1,809	581	32.1	1,228	67.9
1992	1,852	613	33.1	1,239	66.9
1993	2,078	654	31.5	1,424	68.5
1994	2,053	683	33.3	1,370	66.7
1995	2,206	722	32.7	1,484	67.3
1996	2,071	678	32.7	1,393	67.3
1997	2,205	729	33.1	1,476	66.9
1998*	2,617	870	33.3	1,747	66.7

Crime and Justice Statistics for Western Australia: 1997, Crime Research Centre, November 1998, p.111. **Corrective Services Australia*, Australian Bureau of Statistics, December Quarter 1998, pp. 6 and 20.

was approximately 29 percent higher than the population 12 months earlier³⁰). During the December quarter of 1999, the average daily Western Australian prison population was 2,896 prisoners, which was 14 percent of the national average daily prison population total of 20,619 prisoners.³¹

- 4.2 The estimated daily average number of offenders in Western Australian prisons in the 1999-2000 financial year was 3,187 (made up of 3,052 adults and 135 juveniles), and this figure is projected to increase to 3,395 in the 2000-2001 financial year (made up of 3,250 adults and 145 juveniles).³² The increase in the Western Australian prison population reflects the trend of a growing number of prisoners serving longer prison sentences.

Chronic overcrowding

- 4.3 The increase in the prison population has resulted in overcrowding and doubling, ie, placing two prisoners in a cell designed for one. Modifying the operating capacity of the prison system has increased the capacity of prisons. A prison's operating capacity is determined by the number of beds placed in cells and units, which determines the number of prisoners who can be housed in a prison. The Designed Operational Capacity for Western Australia is 2,474 beds.³³ This capacity has been modified by placing beds in quarters including hospital/infirmarary cells, gymnasiums, medical cells, punishment cells, and observation cells. There are 2,973 beds in the Modified Operating Capacity.³⁴ As a result, currently there are approximately 500 prisoners who are housed in accommodation which is not designed to house prisoners. Consequences from overcrowding include:

- i. the "double-up" of single-cells in Bandyup Women's Prison with the use of floor mattresses positioned adjacent to open toilet facilities;
- ii. the use of the gymnasium at Bandyup Women's Prison to house prisoners in dormitory style accommodation with no toilet facilities;

³⁰ In the four quarter reporting periods from June 1998 to June 1999 the Western Australian prison population rose from 2,292 as at June 1998 to 2,959 as at June 1999 adding 667 (or approximately 29 percent) prisoners to the State prison population.

Corrective Services Australia, June, September and December Quarters 1998, March and June Quarters 1999, Australian Bureau of Statistics, p. 3.

³¹ *Corrective Services Australia*, December Quarter 1999, Australian Bureau of Statistics, p. 1.

³² *2000-2001 Budget Statements*, Budget Paper No. 2, Government of Western Australia, p. 756 and p. 759.

³³ As at April 14 2000, letter from Ministry of Justice, May 11 2000.

³⁴ *Ibid.*

- iii. the “double-up” of single cells at Casuarina Prison;
- iv. the use of the medical infirmary at Casuarina Prison to house healthy prisoners due to lack of prison cell space; and
- v. the lack of employment or activities for the additional prisoners, resulting in a large number of prisoners not having access to constructive activities.

4.4 The prison utilisation rate is the extent to which prison design capacity is meeting the demands for prison accommodation. The internationally accepted range for the best practice management of prisons is an 85 to 95 percent prison utilisation rate (which allows for some spare capacity for the transfer of prisoners, the categorisation of prisoners into different security levels, the provision of special purpose accommodation such as hospitals and protective units, and short term fluctuations in prisoner numbers).³⁵ The prison utilisation rate in Western Australia is well over 100 percent.³⁶ This high prison utilisation rate cannot help but have a detrimental effect on the standards and regimes operating in Western Australian prisons.

³⁵ The Australian Institute of Criminology, the Council of Europe and the American Correctional Association have recommended a utilisation rate of 85-95 percent in the industrialised world. Steering Committee for the Review of Commonwealth/State Service Provision, *Report on Government Services 2000*, February 18 2000, Vol. 2, p. 757.

³⁶ **Prison Utilisation Rates:**

Location	1995-96 %	1996-97 %	1997-98 %	1998-99* %
Western Australia	104.9	103.1	109.1	113.2
Australia	103.0	99.0	101.5	99.5

Ibid, p. 785.
Steering Committee for the Review of Commonwealth/State Service Provision, *Report on Government Services 1999*, February 11 1999, Vol. 1, p. 598 (Corrective Services Attachment).

CHAPTER 5

SENTENCING

- 5.1 Imprisonment continues to be favoured by Western Australian courts over other sentencing options. Western Australian sentencing statistics for 1998 show that 65.6 percent of finalised charges resulted in a sentence of imprisonment.³⁷ There has, however, been a very slight decrease in the proportion of charges receiving sentences of imprisonment or fines, and a correspondingly small increase in the number of charges receiving non-custodial sentences, since 1996.³⁸ In 1998, non-custodial sentences were most often imposed for good order offences (49.4 percent of all good order charges), property offences (29.5 percent of all property offence charges), and drug offences (24.6 percent of all drug offence charges).³⁹ The continued preference for custodial sentences reflects the adoption of a harsh sentencing policy.
- 5.2 The sentencing pattern by the Children's Court is also of concern. Between 1990 and 1997, it is estimated that the number of charges and distinct individuals formally dealt with by the Children's Court fell by at least 63 percent due to the introduction of diversionary schemes such as the formal cautioning system (introduced in 1991) and referrals to juvenile justice teams (introduced in 1995).⁴⁰ Nevertheless, for the 1998 year, there was almost a 10 percent increase⁴¹ in the use of custodial sentences. Although a non-custodial penalty remains the most common sanction imposed by the Children's Court for most offence types, 12.8 percent of juvenile offenders who

³⁷ *Crime and Justice Statistics for Western Australia: 1998*, The University of Western Australia Crime Research Centre, November 1999, p. 75.

³⁸ **Types of penalties imposed for all charges, 1996-1998**

	Fine %	Non-custody %	Custody %	Other %
All charges				
1996	9.9	22.3	67.8	0.0
1997	7.5	27.9	64.6	0.1
1998	7.9	26.4	65.6	0.1

Ibid.

³⁹ Ibid.

⁴⁰ Ibid, p. 110.

⁴¹ There was an increase in the use of custodial sentences from 355 to 388, an increase of 9.3 percent. Statistics - Children's Court of Western Australia, Policy and Legislation Division, Ministry of Justice, 1998, p. 6.

appeared before the Children's Court in 1998 received custodial sentences.⁴² The Policy and Legislation Division of the Ministry of Justice noted:

“[T]he increased use of prison sentences, may at least partly reflect changes introduced with the 1995 Sentencing Act.”⁴³

Over reliance on short sentences

- 5.3 Statistical comparisons with other Australian states reveal that for sentences of imprisonment of less than two years duration, the number of prison sentences imposed in Western Australia is much higher than that of the other states. Western Australia imprisons offenders for sentences of 12 months or less at a rate which is over twice the national average.⁴⁴
- 5.4 Ten years ago, only one-quarter of offenders received sentences of less than 12 months. In 1999 almost half of all offenders sentenced received sentences of less than 12 months.⁴⁵ In 1999, approximately one-third of all offenders received sentences of less than six months, with Aboriginal offenders being heavily over-represented in this category.⁴⁶ Under s.89(3) of the *Sentencing Act 1995* there is no eligibility for parole for sentences of less than 12 months and so the offender serves the full sentence irrespective of his or her behaviour in prison.
- 5.5 Western Australia imposes many more short sentences (ie, sentences of less than two years' duration) per head of population than the other states for breaking and entering, robbery, sex offences, and assault. It is, however, interesting to note that at the same time that these numerous short sentences are being imposed, Western Australia

⁴² *Crime and Justice Statistics for Western Australia: 1998*, The University of Western Australia Crime Research Centre, November 1999, p. 113.

⁴³ Statistics - Children's Court of Western Australia, Policy and Legislation Division, Ministry of Justice, 1998, p.6.

⁴⁴ Western Australian figures from Ministry of Justice, Research and Statistical Unit, Duration of Maximum Sentence Commenced from 01/07/1998 to 30/06/1999. National figures from: *Prisoners in Australia - 1998: Results of the 1998 National Prisoner Census*, Australian Bureau of Statistics. Commonwealth of Australia 1999.

⁴⁵ 49.8 percent of offenders received sentences of less than 1 year (1998: 41.2 percent, 1997: 39.5 percent, 1989: 26.5 percent). **Note:** s86 *Sentencing Act 1995* indicates that a term of three months or less is not to be imposed. Figures supplied by the Ministry of Justice, Research and Statistical Unit.

⁴⁶ In 1999, 68 percent of Aboriginal female offenders received sentences of 6 months or less. 27 percent of non-Aboriginal female offenders received sentences of 6 months or less.

In 1999, 35 percent of Aboriginal male offenders received sentences of 6 months or less. 21 percent of non-Aboriginal male offenders received sentences of 6 months or less.

Figures supplied by the Ministry of Justice, Research and Statistical Unit.

continues to imprison persons for sentences greater than two years for those same four offences at roughly the same rates per head of population as the other states.⁴⁷

- 5.6 The problem of imposing short sentences was identified at least eight years ago and still has not been addressed:

*“An important additional consideration is that the majority of prisoners in Western Australian prisons are serving very short sentences. ... By any reasonable assessment these are minor offenders who, if they were still in the community, would not present a serious risk to public safety. Arguably, by detaining these offenders in prison we do more harm than good by providing them with a schooling in crime.”*⁴⁸

Why are offenders being sentenced to short prison sentences?

- 5.7 Important issues regarding the composition of the State’s prison population were raised during the inquiry. The Committee examined the available statistics relating to prison admissions and identified the following issues.

Imprisonment of non-violent offenders

- 5.8 Approximately half of all sentenced prisoners in Western Australian have been sentenced for non-violent offences.⁴⁹
- 5.9 More than half (57.3 percent) of all female Aboriginals entering prison in 1998 did so for fine default.⁵⁰
- 5.10 Of the offenders commencing prison terms during 1998/1999, 763 or 12.67 percent received prison sentences for breaches of parole, work release, home detention or escapes.⁵¹

⁴⁷ Letter from Mr Alan Piper, Director General, Ministry of Justice, to the Committee, January 13 1999.

⁴⁸ WA Attorney General Study Group, *Report of the Official Visit to Europe to Examine Criminal Justice Policies*, November 12 1991, p. 8.

⁴⁹ Based upon prison census statistics as at December 31 1998. *Crime and Justice Statistics for Western Australia: 1998*, The University of Western Australia Crime Research Centre, November 1999, p. 148.

⁵⁰ *Criminal Justice Statistics for Western Australia: 1998*, University of Western Australia Crime Research Centre, November 1999, p. 146.

⁵¹ Letter from Ministry of Justice, May 11 2000. The figure was 18 percent for 1996/1997 and 1997/1998, Ministry of Justice, Research and Statistical Unit, ‘Major Offences of Sentences Commenced’, comparison of 1996/97 figures with 1997/98.

- 5.11 The fastest growing category of imprisonment (over the two year period from 1996 to 1998) was in respect of driving licence offences, while the percentage of the prison population sentenced for violent offences fell sharply.⁵²

Mandatory minimum sentences

- 5.12 Western Australian legislation provides for mandatory minimum sentences for certain property offences. Section 401(4) of the *Criminal Code* provides for a one-year mandatory prison sentence for repeat offences of burglary. The experience of the United States following the introduction of mandatory sentence legislation is an increase in the number of prisoners and an increase in average sentence length resulting in a rapid increase in the prison population.

Re-offending

- 5.13 Over one-half of juvenile offenders imprisoned will re-offend⁵³ within two years of release from detention and over one-third of adult offenders will re-offend.⁵⁴

⁵² Offences of Sentences Commenced:

Nature of offence	1996/97	1997/98	1998/99
Offences against the person	25.5%	21.4%	18.44%
Robbery and extortion	5.4%	5.2%	4.53%
Burglary and theft	28.85%	29.6%	23.32%
Property	1.54%	1.3%	1.39%
Breaches/ escapes	18%	18%	19.62%
Other Justice			
procedures/good order	3.27%	3.71%	2.37%
Drug offences	5.53%	3.98%	4.45%
Driving licence offences	4.9%	8.1%	13.5%
Motor vehicle/traffic	4.97%	5.91%	7.92%
Other offences	1.2%	1.9%	2.65%
Offences in custody	0.04%	0%	0%
Other/ unknown	0.8%	0.9%	0.39%

Ministry of Justice, Research and Statistical Unit. See also letter from Ministry of Justice, May 11 2000.

⁵³ 1999/2000 estimated actual of 51 percent. The 1998/1999 figure was 51.85 percent.
Letter from Ministry of Justice, May 11 2000.

⁵⁴ 1999/2000 estimated actual of 34 percent. The 1998/1999 figure was 31 percent, letter from Ministry of Justice, May 11 2000. For adult offenders, “*re-offending*”, “*repeat offender*”, or “*recidivism*” is defined as a return to the offender management system by distinct adult offenders within two years following release from custody or termination of their order. A “*distinct*” offender is interpreted to mean that an offender is counted only once even if the offender re-enters the system several times over the two year period. This is said to be “consistent with national standards” but may lead to an understating of the true rate of recidivism.

1997/1998 Ministry of Justice Annual Report, p. 53.

The Fines, Penalties and Infringement Notices Enforcement Act 1994

- 5.14 The introduction of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* was followed in 1995 by a sharp decrease in the number of those imprisoned for the non-payment of fines:

“Since 1990, the number of offenders received into prison has progressively declined. The largest decline was experienced in 1995 when receivals fell by 23%. This was largely due to reductions in the number of people imprisoned for default of payment of fines, which followed the introduction of the *Fines, Penalties and Infringement Notices Enforcement Act (1995)*. This Act introduced a range of measures, including the suspension of a person’s motor driving licence, to improve the efficiency and effectiveness of fines collection.”⁵⁵

- 5.15 However, since 1995 the number of offenders entering prison for fine defaults has been increasing rapidly,⁵⁶ almost doubling each year.

Driving without a licence

- 5.16 The imprisonment of a growing number of offenders for driving without a licence is of concern. One of the sanctions provided under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* is a driving licence suspension.⁵⁷ The *Road Traffic Act 1974* creates an offence of driving without a driver’s licence that has been cancelled or suspended and provides for a penalty of a fine or imprisonment.⁵⁸

- 5.17 Where an individual has had his or her driver’s licence suspended for not paying fines under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* the

⁵⁵ *Crime and Justice Statistics for Western Australia: 1997*, University of Western Australia Crime Research Centre, November 1998, p. 110.

⁵⁶ Persons sentenced for fine default

Calender year	1996	175 offenders received into prison
Calender year	1997	334 offenders received into prison
12 months to June 30 1998		399 offenders received into prison
12 months to June 30 1999		648 offenders received into prison

Calender years 1996 and 1997 from *Crime and Justice Statistics for Western Australia:1997*, Crime Research Centre, University of Western Australia, November 1998, p. vii.

1998 and 1999 figures from Ministry of Justice, Policy and Legislation Division, Research and Statistical Unit.

⁵⁷ *Fines, Penalties and Infringement Notices Enforcement Act 1994*, Part 3 Division 2, Enforcement of Infringement Notices, s19 and Part 4 Division 3, Enforcement of Fines, s43.

⁵⁸ *Road Traffic Act 1974*, s49.

sentencing Magistrate is not likely to impose a further fine and the only alternative penalty is imprisonment. Consequently, 60 to 70 offenders are in prison⁵⁹ for driving while under suspension due to a failure to pay fines. One in six of all offenders commencing prison terms in 1998-1999 were sentenced to prison for reasons of fine default.⁶⁰

- 5.18 In Germany, the Committee was impressed by the ability of the courts to require driving offenders to attend weekend courses (which could be of up to six or eight weeks' duration) in which offenders are taught the consequences of their conduct on others. In addition, offenders are given instruction on safe driving practices and road skills. The Committee is of the view that consideration should be given in Western Australia to introducing similar programs.

RECOMMENDATION 1

- 5.19 **The Committee recommends that the *Road Traffic Act 1974* be amended to provide the courts with a wider range of sanctions alternative to imprisonment in the community as sentencing options for driving offences.**

⁵⁹ Mr Andrew Marshall, Director, Policy, Ministry of Justice, September 23 1999.

⁶⁰ **Sentence commenced from July 1 1998 to June 30 1999 by duration of maximum sentence and sentence type**

Fine Default	Finite	Parole	Governor's Pleasure	Life	No Sentence found	Total
648	1,355	1,850	6	16	14	3,889

16.67 percent off all prison sentences commenced were in respect of fine default.
Ministry of Justice, Policy and Legislation, Research and Statistical Unit.

CHAPTER 6

REMAND

Remand and unsentenced prisoners

- 6.1 The number of prisoners on remand in Western Australia is steadily increasing. Since 1990-91 the total annual number of remand prisoners has increased by 200 percent.⁶¹ On 1 December 1999, 13 percent of the Western Australian prison population comprised persons on remand or awaiting sentence.⁶² Although Western Australia recorded the lowest proportion of unsentenced persons in custody of all Australian states and territories for the December 1999 quarter, this figure could still be significantly reduced. Furthermore, one in three juveniles in detention are being held on remand.⁶³
- 6.2 Approximately one third of the 34,813 persons apprehended and charged in Western Australia in 1998 were held in custody.⁶⁴ Aboriginals were more likely to be held in custody after being arrested than non-Aboriginals.⁶⁵
- 6.3 The Committee is of the view that significant potential exists to reduce the number of remand prisoners.

Bail and prisoners on remand

- 6.4 The annual cost of detaining remand prisoners is approximately \$10.5 million.⁶⁶ Nearly all remand prisoners are detained at maximum security prisons.
- 6.5 In late 1997 the Auditor General investigated issues surrounding the escalating growth in the number of remand prisoners⁶⁷ and the pressures this placed on the prison

⁶¹ Auditor General, *Waiting for Justice - Bail and Prisoners in Remand*, Performance Examination Report No. 6, Western Australia, October 1997, p. 6.

⁶² *Corrective Services Australia*, December Quarter 1999, Australian Bureau of Statistics, p. 2.

⁶³ As at June 30 1998, of the total of 143 juveniles held in detention in Western Australia, 48 (33.56 percent) were being held on remand.
Ministry of Justice, Offender Management, Juvenile Custodial Services.

⁶⁴ *Crime and Justice Statistics for Western Australia: 1998*, University of Western Australia Crime Research Centre, November 1999, p. 51.

⁶⁵ Ibid.

⁶⁶ Auditor General, *Waiting for Justice - Bail and Prisoners in Remand*, Performance Examination Report No. 6, Western Australia, October 1997, p. 1.

⁶⁷ Ibid, p. 3.

system. The Auditor-General found that many prisoners are in custody only because of an inability to promptly arrange bail.⁶⁸

*“A major bail problem faced by many remand prisoners is finding a person with sufficient and appropriate assets to act as surety. Often the amount involved is relatively small. ... 25 percent of surety bail for prisoners in remand involved amounts of less than \$1,000.”*⁶⁹

6.6 The Committee recognises that for many prisoners, particularly Aboriginal prisoners, finding \$200.00-\$300.00 for bail is often very difficult.

6.7 The Aboriginal Legal Service advised the Auditor General that the inability to obtain a person to act as surety is a common problem for Aboriginal remand prisoners. The Aboriginal Legal Service expressed the view that bail requirements needed to be modified so as to recognise the disadvantages experienced by specific cultural groups. This comment was supported by the Western Australian Police Service who advised the Auditor General that:

*“[S]pecific and inflexible requirements for sureties and fixed places of abode work against certain groups, particularly indigenous and migrant groups.”*⁷⁰

6.8 The Committee notes that there are various ways of dealing with defendants who cannot arrange bail. For example, in South Australia, defendants remaining in custody because they have been unable to meet bail conditions are automatically brought before the court within five days for their bail terms to be reviewed.⁷¹ This provides the court with the opportunity to reconsider the appropriateness of the bail conditions in light of the defendant's inability to meet the set requirements. In Western Australia there is no provision for this to occur automatically.

6.9 The opportunity to grant bail prior to the trial of the defendant should be encouraged, as the Auditor General explained:

“The provision of bail is one of the most difficult and potentially contentious areas in the administration of justice. On the one hand, if the defendant is released on bail the community may be at risk of the defendant absconding, committing an offence or attempting to pervert

⁶⁸ Ibid, p. 29.

⁶⁹ Ibid, p. 30.

⁷⁰ Auditor General, *Waiting for Justice - Bail and Prisoners in Remand*, Performance Examination Report No. 6, Western Australia, October 1997, p. 31.

⁷¹ *Bail Act 1985 (SA)*, s11(9).

the course of justice. On the other hand, it is desirable wherever possible for the defendant to remain at liberty:

- (a) as there is a presumption of innocence;*
- (b) to arrange for the preparation of a defence;*
- (c) to discharge responsibilities to family and the community; and*
- (d) to limit the burden of public funds from detention in custody.*

The decision to grant or refuse bail is a reflection of the assessment of these conflicting considerations. The decision is at the discretion of the judicial officer or authorised officer in whom jurisdiction is vested.”⁷²

Increased risk of self harm and suicide

6.10 Prison is a difficult and potentially dangerous environment. Assault and incidents of self-harm are not uncommon amongst remand prisoners. One contributing factor to the increase in these incidents is boredom and prisoner inactivity. Little suitable work is available in prisons for remand prisoners and they often choose not to occupy themselves with other activities. In this environment, prisoners are at increased risk of assault and self-harm. The Ministry of Justice is beginning to address the issue of programs for remand prisoners but it is confronted with the practical difficulties associated with the fact that remand prisoners are presumed innocent of any offence until convicted by a court. Many remand prisoners have an expectation that they will not be convicted, and so are not motivated to become involved in any long-term programs and training offered to them whilst they are on remand.

Coping with imprisonment

6.11 Being sent to prison is rarely, if ever, a neutral experience for prisoners. It is difficult to imagine living in an environment where you have little control or influence, where you are forced to mix with and feel yourself to be at the mercy of other prisoners, where you are forced to rely entirely on the integrity of staff, where you feel there is no privacy, where trivial matters can be taken out of proportion, where you are deprived of normal family contacts and where scope for choosing what you do at any time is severely restricted or denied altogether. The effects of custody can be very destructive, particularly for remand prisoners.

⁷² Auditor General, *Waiting for Justice - Bail and Prisoners in Remand*, Performance Examination Report No. 6, Western Australia, October 1997, pp. 5-6.

6.12 The impact of custody, coming to terms with the length of sentence of imprisonment, estrangement from family and friends and the isolation of being placed in a penal establishment all have profound effects on remand prisoners and prisoners received into prison for the first time. For remand prisoners the uncertainty of their future and the pressures of an impending trial compound these difficulties.

6.13 Persons under remand are more likely to commit suicide than those who have received sentences. As the Auditor-General noted in his report:

*“Remand prisoners made eighteen suicide attempts between January 1, 1994 and March 31, 1997, with remand prisoners more than twice as likely to be involved in incidents of self-harm as sentenced prisoners.”*⁷³

6.14 Assisting remand prisoners to arrange release on bail not only reduces the demand for prison accommodation but also lessens the risk of self harm and suicide.

RECOMMENDATION 2

6.15 **The Committee recommends that the *Bail Act 1982* be amended along the lines of s11(9) of the *Bail Act 1985 (SA)*, so as to require defendants who remain in custody because they are unable to meet bail conditions to be automatically brought before the courts within five days for the bail terms to be reviewed.**

RECOMMENDATION 3

6.16 **The Committee recommends that measures be put in place to ensure that persons are not held on remand unless they are deemed by a judicial officer to be a danger to the community, are likely to abscond, or are likely to pervert the course of justice. The Committee supports the presumption in the *Bail Act 1982* that bail will only be granted for those charged with offences of violence in exceptional circumstances.**

Classification and accommodation of remand prisoners

6.17 Director General Prison Rules require remand prisoners to be rated as maximum-security and held in maximum-security prisons. The security ratings can be reassessed in the event of accommodation shortfalls or for welfare reasons. This is consistent with the Standard Guidelines for Corrections in Australia, and recognises the need to categorise prisoners. However, it does not recognise the enormous diversity in the seriousness of the offences allegedly committed by remand prisoners

⁷³ Ibid, p. 31.

and the risk of a particular remand prisoner attempting to escape. It also appears contrary to the spirit of the Standard Guidelines for Corrections, in which the major principle when classifying prisoners is to place each prisoner in the lowest level of security for which he/she qualifies.

- 6.18 The Auditor General noted in 1997 that 18 percent of defendants held in remand at the time of their conviction received a non-custodial penalty indicating that they may not have warranted a high security rating whilst in remand.⁷⁴
- 6.19 Detaining some remand prisoners in lower security prisons would also be consistent with the findings of Lord Justice Woolf's review of Prison Disturbances in 1990 in England and Wales.⁷⁵ The review found that most remand prisoners were rated as medium-security but should have been rated as minimum security. Lord Justice Woolf found that a greater use of minimum security ratings for remand prisoners would have encouraged more relaxed regimes and cost savings within the overall prison system.
- 6.20 According to the Smith Report, the mixing of remand and sentenced prisoners was a contributing factor in the 1998 Christmas Day incident at Casuarina Prison:
- “Figures show that aside from being overcrowded the prison was no longer holding sentenced long term prisoners but was also having to deal with increasing numbers of younger remand prisoners many without a significant history of being in prison (though many had been through the juvenile justice system) - traditionally a far more volatile population to manage. The mixing of remand and sentenced prisoners in an unstructured way is not desirable and is in contravention of United Nations codes”.*⁷⁶
- 6.21 The Committee heard evidence in Berlin that prisoners entering German prisons are automatically placed at the lowest level of security which is consistent with the protection of the community.
- 6.22 The rationale behind starting prisoners in the lowest security classification is to afford prisoners as much responsibility as is consistent with their inevitable loss of liberty.

⁷⁴ Ibid. p. 28.

⁷⁵ *Prison Disturbances: April 1990*, Report of an Inquiry by Rt. Hon. Lord Justice Woolf and Hon. Judge Stephen Tumim, CM 1456, HMSO, London.

⁷⁶ *Report of the Inquiry into the Incident at Casuarina Prison on 25 December 1998*, March 19 1999, p. 54.

RECOMMENDATION 4

- 6.23 **The Committee recommends that remand prisoners be held in establishments at the lowest level of security for which they qualify according to the normal internal policy classification procedures for sentenced prisoners so as to avoid wherever possible the mixing of remand prisoners with maximum security prisoners.**

CHAPTER 7

THE RATE OF IMPRISONMENT IN WESTERN AUSTRALIA

- 7.1 The following trends are noteworthy:
- i. Western Australia has the fastest growing prison population of any State or Territory with the prison population almost doubling over the last decade.⁷⁷ It increased by a staggering 29 percent over the course of the 1998/1999 financial year.⁷⁸
 - ii. Western Australia has the fastest growing rate of imprisonment of any State or Territory with a rate of growth over three times above the national average.⁷⁹
 - iii. Western Australia imprisons women at the highest rate of any State in Australia, at approximately double the national average.⁸⁰
 - iv. Amongst the Australian states and territories, only the Northern Territory

⁷⁷ *Prisoners in Australia 1998 - Results of the 1998 National Prisoner Census*, Australian Bureau of Statistics, June 1999, pp. 102-103.

June 30 1989 prison population 1,568 compared to June 30 1999 prison population of 3,015, an increase of 92.3 percent.

⁷⁸ In the four quarter reporting periods from June 1998 to June 1999 the Western Australian prison population rose from 2,292 as at June 1998 to 2,959 as at June 1999 adding 667 (or approximately 29 percent) prisoners to the State prison population.

Corrective Services Australia, June, September and December Quarters 1998, Australian Bureau of Statistics, March and June Quarters 1999, p .3.

⁷⁹ In the four quarter reporting periods from June 1998 to June 1999 the increase in the rate of imprisonment in Australia and in the individual states and territories was as follows:

Australia	133 prisoners per 100,000 to 144 prisoners per 100,000 (an increase of 8 percent)
WA	171.5 prisoners per 100,000 to 216 prisoners per 100,000 (an increase of over 25 percent)
NSW	135.4 prisoners per 100,000 to 148.5 prisoners per 100,000 (an increase of 9 percent)
VIC	78.6 prisoners per 100,000 to 80.3 prisoners per 100,000 (an increase of 2 percent)
SA	123.9 prisoners per 100,000 to 120.7 prisoners per 100,000 (a decrease of 2 percent)
QLD	189.1 prisoners per 100,000 to 195 prisoners per 100,000 (an increase of 3 percent)
TAS	79.9 prisoners per 100,000 to 95.4 prisoners per 100,000 (an increase of 19 percent)
NT	451.6 prisoners per 100,000 to 475.5 prisoners per 100,000 (an increase of 5 percent)
ACT	64.8 prisoners per 100,000 to 66.1 prisoners per 100,000 (an increase of 2 percent)

Corrective Services Australia, June Quarter 1999, Australian Bureau of Statistics, p. 3.

⁸⁰ As at March 1999, Western Australia had an average daily female imprisonment rate of 32.7 prisoners per 100,000 adult population, compared to a national average of only 16.9 female prisoners per 100,000 adult population. The proportion of prisoners in Western Australia who were female was 8 percent of the prison population. The average prison population of female prisoners across Australia was only 6 percent of the total prison population.

Corrective Services Australia, March Quarter 1999, Australian Bureau of Statistics, p. 4.

imprisons juveniles at a higher rate than Western Australia. In 1998, the juvenile imprisonment rate in Western Australia was 62.7 per 100,000 juvenile persons – 1.7 times higher than the national rate.⁸¹

- v. The rate of juvenile imprisonment in Western Australia increased by almost 10 percent over the course of the 1998/1999 financial year.⁸²

Over representation of Aboriginal Australians in the Western Australian prison system

7.2 Amongst the Australian states and territories, Western Australia recorded the highest rate of imprisonment of Aboriginal persons for the December 1999 quarter. 2,972 Aboriginal persons were imprisoned per 100,000 adult Aboriginal population.⁸³ Western Australia has an Aboriginal rate of imprisonment which is 21 times the non-Aboriginal rate.⁸⁴

7.3 Western Australia imprisons Aboriginal juveniles at 32 times the rate of non-Aboriginal juveniles.⁸⁵

Rates of crime compared to levels of imprisonment

7.4 In comparison with national crime rates, Western Australia recorded average or higher than average crime rates for most offence categories in 1998. In particular, Western Australia recorded the highest rate of motor vehicle theft and burglary offences. Western Australia has had the highest rates of recorded burglary offences since the start of the Australian Bureau of Statistics national recorded crime series (1993).⁸⁶

7.5 A Parliamentary report noted in 1991 that:

“Concern about the rate of imprisonment is not primarily about money although the cost to the state of building new prisons and administering the system is very high. Rather, the concern is that, relative to the other Australian states, the rate of imprisonment is

⁸¹ *Crime and Justice Statistics for Western Australia: 1998*, The University of Western Australia Crime Research Centre, November 1999, p. 118.

⁸² There was an increase in the use of custodial sentences from 355 to 388, an increase of 9.3 percent. Statistics - Children’s Court of Western Australia, Policy and Legislation Division, Ministry of Justice, p. 6.

⁸³ *Corrective Services Australia*, December Quarter 1999, Australian Bureau of Statistics, p. 3.

⁸⁴ Ibid.

⁸⁵ *Crime and Justice Statistics for Western Australia: 1998*, The University of Western Australia Crime Research Centre, November 1999, p. 118.

⁸⁶ Ibid, p. vi.

disproportionately high, and that this high rate of imprisonment has had no discernible positive impact upon the crime rate. The rate of imprisonment in Western Australia is almost 40% higher than the national average and 100% higher than the rate in Victoria. There are no such marked variations in the rates of crime between the states."⁸⁷

7.6 Despite the comparatively low rate of imprisonment in Victoria relative to Western Australia, the head of Victoria's Parole Board, Supreme Court Justice Frank Vincent, recently called for an overhaul of the Victorian prison system recommending:⁸⁸

- i. the introduction of bail hostels linked to drug treatment programs to reduce the number of remand prisoners;⁸⁹
- ii. a new minimum security "reintegration prison" with programs to better prepare prisoners due for release; and
- iii. less emphasis on law enforcement in the strategies applied to young drug offenders.

7.7 The "reintegration prison" would house offenders due to be released within six to twelve months,⁹⁰ and provide work experience, work release and facilities for psychological and drug treatment.

7.8 Justice Vincent stated that these proposals would be cheaper and more effective than building more medium/high security prisons:

*"I am absolutely convinced as a consequence of far too many years of exposure to our correctional systems that the crudity of their operations has created untold damage and has been itself a significant contributor to the incidence of crimes in our society."*⁹¹

7.9 Western Australia, with an imprisonment rate in excess of 210 prisoners per 100,000 population, has a significantly higher rate of imprisonment than the European

⁸⁷ WA Attorney General Study Group, *Report of the Official Visit to Europe to Examine Criminal Justice Policies*, November 12 1991, p. 7.

⁸⁸ Excerpt from address by Mr Justice Frank Vincent to delegates of an international crime prevention conference held in Melbourne in October 1999 and quoted from *The Age* newspaper of 20 October 1999.

⁸⁹ 15 percent or 468 out of 3,240 prisoners in Victoria are held on remand. *Corrective Services Australia*, June 1999 Quarter, Australian Bureau of Statistics.

⁹⁰ 40 percent or 1,100 of 2,772 sentenced prisoners in Victoria are serving sentences of 12 months or less. *Corrective Services Australia*, June 1999 Quarter, Australian Bureau of Statistics.

⁹¹ Excerpt from address by Mr Justice Frank Vincent to delegates of an international crime prevention conference held in Melbourne in October 1999 and quoted from *The Age* newspaper of October 20 1999.

countries visited by the Committee. Western Australia imprisons its citizens at almost twice the rate of the United Kingdom,⁹² more than twice the rate of Germany,⁹³ and almost three times the rate of the Netherlands.⁹⁴ No country in Western Europe has a rate of imprisonment approaching that of Western Australia.

Prison numbers crisis

7.10 In 1998 the State Ombudsman noted:

*“Building one or more new prisons will ease one aspect of the problem in the short term. What is more important, in my opinion, is the development and implementation of strategies (with adequate resources) to address comprehensively the way prisons can and should operate in this State. There is a long way to go.”*⁹⁵

Imprisonment rates in the United States

7.11 Of the countries visited by the Committee, only the United States exceeded Western Australia’s imprisonment rate.⁹⁶

7.12 The total United States Federal, State, and local adult offender population – either incarcerated or serving a sentence in the community - grew by 163,800 during 1998 to

⁹² **United Kingdom**

1998 England & Wales prison population	65,771
1998 Northern Ireland prison population	1,516
1998 Scotland prison population	6,018

England and Wales have an imprisonment rate of 126 prisoners per 100,000 population. Northern Ireland has an imprisonment rate of 91 prisoners per 100,000 population. Scotland has an imprisonment rate of 117 prisoners per 100,000 population. Apart from Portugal, England and Wales, and Scotland have the highest per capita imprisonment rates in Western Europe. The England and Wales imprisonment rate ranks at about the mid point in world imprisonment rates.

⁹³ **Germany**

1998 prison population	78,324
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Germany has an imprisonment rate of 95 prisoners per 100,000 population.

⁹⁴ **The Netherlands**

1998 prison population	11,699
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The Netherlands has an imprisonment rate of 75 prisoners per 100,000 population. It is notable that the Netherlands’ imprisonment rate increased by a massive 87 percent between 1988 and 1998.

Barclay, Gordon C, and Tavares, Cynthia, *International Comparisons of Criminal Justice Statistics 1998*, Issue 04/00, February 22 2000, UK Home Office Research Development and Statistics Directorate, pp. 6-7.

⁹⁵ *1998 Parliamentary Commissioner for Administrative Investigations Annual Report.*

⁹⁶ On 1999 figures, the United States had an imprisonment rate of 682 prisoners per 100,000 population, which is second only in the world to Russia which on 1998 figures had an imprisonment rate of 685 prisoners per 100,000 adult population. *Facts About Prisons and Prisoners: Factsheet*, The Sentencing Project, April 2000.

reach 5.9 million.⁹⁷ About 2.9 percent of the United States adult population, or about 1 in every 34 adults, were incarcerated or on probation or parole at the end of 1998.

- 7.13 In February 2000, the United States recorded a prison population of 2 million people.⁹⁸ The United States, comprising only 5 percent of the global population, now holds 25 percent of the world's prisoners.⁹⁹

Rates of re-offending in Western Australia

- 7.14 The rate of re-offending (the recidivism rate) in Western Australia in 1999/2000 for adults is estimated to be 34 percent.¹⁰⁰ Alarming, the rate of re-offending for juveniles "cannot be measured until all relevant information systems are linked." However, the rate of return to detention,¹⁰¹ which is a crude measure of the rate of re-offending for juveniles, is estimated to be 51 percent for 1999/2000.¹⁰²
- 7.15 The Committee notes the apparent ineffectiveness of imprisonment in deterring a large percentage of offenders, particularly juvenile offenders, from re-offending. The Committee is of the view that there should be an evaluation of the effectiveness of imprisonment as a sentencing option for the majority of non-violent offenders. The Committee does not question that imprisonment is an appropriate response to serious and dangerous offenders.

The costs of failing to release offenders from custody at the earliest possible release date

- 7.16 The Committee notes that the Ministry of Justice predicted that one in seven of all adult offenders would not be released at the earliest possible release date for the 1999/2000 financial year.¹⁰³ The reason given to the Committee as to why such a high

⁹⁷ Bureau of Justice Statistics Bulletin, "Probation and Parole in the United States, 1998", August 1999, NCJ 178234.

⁹⁸ Campbell, Duncan, 'US jails two millionth inmate', *The Guardian Weekly* newspaper, Vol. 162, No. 8, Thursday February 17 to Wednesday February 23 2000, p. 1.

⁹⁹ Ibid.

¹⁰⁰ Letter from Ministry of Justice, May 11 2000.

¹⁰¹ *1997/1998 Ministry of Justice Annual Report*, p. 57:

"The rate of re-offending for juveniles can not be measured until all relevant information systems are linked. Instead, an interim measure has been developed. This is the rate of return to detention which is defined as the percentage of distinct juvenile offenders returning to detention, between exit two years ago and the end of the current financial year, following release from custody two years ago."

¹⁰² Letter from Ministry of Justice, May 11 2000. The 1998/1999 figures were 31 percent for adults and 51.85 percent for juvenile offenders. See also *1997/1998 Ministry of Justice Annual Report*, p. 57. Rate of re-offending: juveniles 1997/98 46.15 percent (1996/97 49.15 percent).

¹⁰³ *1999-2000 Budget Statements*, Vol. 2, Government of Western Australia, pp. 738-742.

proportion of prisoners fail to be released at the earliest possible release date, is the prisoners' lack of access to offending behaviour programs, which are prerequisites for release. This situation was commented upon in the Smith Report:

"The list of grievances [from prisoners] included ... lack of access to programmes in order to obtain parole. ... The programmes being run for prisoners were unable to deal with all referrals - a source of tension for prisoners whose parole is often dependent on attending such programmes. The social/psychological effects of having no job/occupation can reinforce negative self esteem perceptions and increase hostility and negative feelings toward authority."

*"Despite the increasing prisoner numbers the regime had not been significantly altered. ... Extra programmes were not provided. Instead, increasing numbers of staff were provided to manage the larger number of prisoners."*¹⁰⁴

RECOMMENDATION 5

7.17 The Committee recommends that the Ministry of Justice provide a sufficient number of places in offender management programs to cater for all eligible prisoners. Prisoners should be given the best possible opportunity to complete such programs in order to allow each prisoner to leave prison at their earliest possible release date. Furthermore, therapeutic programs, such as anger management and sex offender treatment, should be undertaken by prisoners at the commencement of their sentences rather than immediately prior to the prisoner's release.

¹⁰⁴ *Report of the Inquiry into the Incident at Casuarina Prison on 25 December 1998*, March 19 1999, pp. 61, 62 & 66.

CHAPTER 8

POSSIBLE SOLUTIONS

The pressure to build more prisons

- 8.1 The Western Australian prison population has continued to expand leading to severe overcrowding and a diminution of standards for both prisoners and staff alike.
- 8.2 The high cost of both the construction and management of prisons has acted as a disincentive for new prison construction throughout most of the industrialised world and has in part stimulated the search for new sentencing options.
- 8.3 One of the most controversial aspects of the use of private prisons is the duration of contracts for the use of such prisons, since such contracts will effectively bind successive governments to the policy throughout the period of the contract whatever the successive governments' views about the ethics and political appropriateness of contracting out correctional management.
- 8.4 A perturbing example of what can happen when a policy of prison construction is pursued over other alternatives for prison overcrowding is provided by recent penal trends in the United States in general and the State of California in particular. Between 1980 and 2000, the United States prison population increased from 500,000 to 2,000,000. In California alone, the number of adult prisoners increased from 19,623 in December 1977¹⁰⁵ to over 159,000 in 1998.¹⁰⁶ Between 1984 and 1994 the number of prisons in California increased from 12 to 29,¹⁰⁷ including 8 new maximum security prisons.¹⁰⁸ California now operates the largest prison system in the Western industrialised world.
- 8.5 California's annual prison budget now stands at US\$4.7 billion.¹⁰⁹ Simply to maintain its current level of over-crowding, California will need to open at least one new prison a year, every year, over the next decade at an approximate cost of US\$6.1 billion over

¹⁰⁵ *50 Years: Public Safety, Public Service*, California Department of Corrections, June 1995, pp. 20, 24.

¹⁰⁶ Eric Schlosser, "The Prison-Industrial Complex", *The Atlantic Monthly*, December 1998, Vol. 282, No. 6, pp. 51-77.

¹⁰⁷ *50 Years: Public Safety, Public Service*, California Department of Corrections, June 1995, pp. 20, 24, p. 24.

¹⁰⁸ Eric Schlosser, "The Prison-Industrial Complex", *The Atlantic Monthly*, December 1998, Vol. 282, No. 6, pp. 51-77.

¹⁰⁹ Dan Moran, "Private Prison has Everything but Prisoners", *Los Angeles Times*, July 13, 1999, p. 1.

the existing California prisons budget.¹¹⁰ In addition, local counties in California will need to spend an additional US\$2.4 billion over the next decade to build more lock-ups to also simply maintain their current levels of over-crowding.¹¹¹ In 1995, California spent more on its prison system than on higher education for the first time in history.¹¹² In spite of such expenditure, prisons are now more overcrowded than they were at the beginning of the prison construction program in 1984.

- 8.6 The American experience contains a serious warning of the cost associated with a rapid expansion in prisoner numbers. With such an increase in prisoner numbers comes a significant increase in spending on prison construction and a corresponding drain on the total State budget. The Committee believes that the primary emphasis of the criminal justice system should be on public safety, rehabilitation and restitution. The current approach of imprisoning such a large number of non-violent offenders is an expensive option and needs to be re-evaluated as a policy approach.

Reduction of the existing prison population

- 8.7 Western Australia needs a more balanced approach to sentencing. One which makes use of effective community sentences and effective custodial sentences, each working to protect the public and reduce re-offending.
- 8.8 The Committee believes that by developing further effective alternatives to imprisonment, the potential exists to significantly reduce the prison population.
- 8.9 Those currently in prison, but for whom a custodial sentence is not appropriate suffer the breakdown of family ties, lose their employment, learn few life skills and emerge with a high statistical predisposition to re-offend.
- 8.10 Freeing up prison space and resources by shifting emphasis towards community sentences will enable the upgrading of current prison facilities and allow the development of effective rehabilitation programs.
- 8.11 It is important to focus on the reasons for criminal behaviour and seek to rehabilitate offenders where possible by providing the courts with increased sentencing options which provide a range of alternative sanctions aimed at reducing criminal behaviour.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Donziger, Steven (ed.), *The Real War on Crime*, 1996, p. 13.

- 8.12 The Committee notes an important need for the Ministry of Justice to be provided with the guidance and resources to implement a more effective and efficient correctional system.
- 8.13 The Committee is of the view that the most effective approach would be a comprehensive one, balancing the funding between prisons, rehabilitation programs offered to prisoners and the development of effective alternative sanctions to imprisonment.

Alternative sanctions to imprisonment should be targeted at short sentence prisoners

- 8.14 Many short-term prisoners would be better dealt with by community supervision aimed at reducing re-offending.
- 8.15 Short custodial sentences combine the maximum disruption of offenders' lives by the loss of jobs, homes and community ties (loss of which in itself increases likelihood of re-offending) with the minimum scope for rehabilitative work. Community supervision programs would be significantly less expensive and less disruptive to the prisoner's family circumstances than short prison sentences.
- 8.16 District Court Judges and Magistrates are primarily the judicial officers responsible for sentences of less than 12 months.

RECOMMENDATION 6

- 8.17 **The Committee recommends that there should be a determined effort to reduce the use of short-term imprisonment to enable the Ministry of Justice to use its resources to provide effective programs for a higher proportion of prisoners.**

RECOMMENDATION 7

- 8.18 **The Committee recommends that judicial officers responsible for sentencing decisions, should receive feedback on the rehabilitative effectiveness of their sentencing decisions, as well as evaluations of the rehabilitative effectiveness of different sentencing options generally. Comparative data from other Australian States would also be of value. This feedback is to include an evaluation of the effectiveness of their sentencing decisions in terms of preventing offenders from re-offending.**

Are community sentences a soft option?

- 8.19 Public confidence in community sentences will be increased if they are regarded as an effective sanction and they are shown to reduce re-offending rates.

The Netherlands' experience with community sentencing

8.20 The Dutch criminal justice system uses a definition of community sentence which incorporates both the interests of the offender and the wider community. The policy objectives of the Dutch Ministry of Justice are to:

*"[A]uthoritatively assist persons under supervision in living a crime-free life and in successfully completing the conditions of their sentence in a manner consistent with obligations to public safety and obligations to the sentencing authority."*¹¹³

8.21 This definition has two important implications:

- i. every assistance program, whether education, employment or drug therapy, should be subsumed within the broader goal of assisting the offender to lead a crime-free life; and
- ii. the actions of the probation officer must strictly accord with the sentence conditions imposed by the sentencing authority including public safety demands.

8.22 Under the Dutch system, the main objective of community programs is to promote an offender living a life free of crime. Other objectives (social integration, employment, education, emotional and physical well being of the offender) only assume importance if they serve the final objective - a life without crime.

8.23 The Dutch system recognises that the conditions imposed by the sentencing court must be strictly enforced. Without strict enforcement, public confidence in the effectiveness of such sanctions is undermined.

RECOMMENDATION 8

8.24 **The Committee recommends strict enforcement of alternative sanctions and where possible the community sentence should not interfere with an offender's employment commitments. Fulfilment of the conditions of a community sentence should be undertaken in addition to paid employment commitments.**

Why pursue alternative sanctions?

8.25 Programs attached to community sentences have a greater propensity than imprisonment to enable an offender to confront his or her offending behaviour. Properly structured and carefully monitored alternative sanctions are demanding, and

¹¹³ *Overview of Criminal Justice System*, Ministry of Justice, Netherlands, 1997, p. 3.

- in some cases, particularly where intensive supervision programs are concerned, offenders may well prefer imprisonment as an easier option.
- 8.26 Community sentences put responsibility back on the offender, whereas imprisonment tends to take responsibility off the offender and place it on the state/community.
- 8.27 Alternative sanctions in the community require the offender to participate in activities and programs which it is hoped will lead to a change in behaviour and help the offender to lead a life without crime, thus facilitating the offender’s reintegration into society.
- 8.28 Approximately two-thirds of offenders who receive community sentences in Western Australia will successfully complete their community orders.¹¹⁴
- 8.29 The courts need to be convinced that community punishments are demanding and rigorously enforced. Offenders who do not go to prison should not be seen as “getting away with it”.
- 8.30 Experience from the Netherlands and Germany indicates that if educational or behaviour modification programs are added to the supervision of offenders in the community, rehabilitation becomes realisable. Programs directed at providing employment skills, familiarisation with the causes of alcohol and drug addiction, and promoting positive family relationships have a significant effect on reducing re-offending. Supervision and control are seen to play an intermediary and facilitating role.
- 8.31 Alternative sanctions currently available under the *Sentencing Act 1995* focus too strongly on supervision and control and not enough on education and rehabilitation programs.
- 8.32 An important issue that needs to be addressed in future planning is the role of community sentences in crime prevention.

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Completion rates of Community Sentences:

	1998-99 Estimated %	1999-00 Estimated %	2000-01 Target %
Adult community orders successfully completed	67%	66%	65%
Juvenile community orders successfully completed	70%	65%	65%

1999-2000 Budget Statements, Vol. 2, Government of Western Australia, pp. 738-742.
2000-2001 Budget Statements, Vol. 2, Government of Western Australia, pp. 756 & 760.

Community sentences have a major role in crime prevention through rehabilitation and supervision

- 8.33 The role of community supervision officers is to ensure that offenders carry out their sentence program and do not commit further offences.
- 8.34 The Committee is concerned at the lack of resources devoted to the supervision and management of offenders in the community. Members of the judiciary have publicly stated that there is little feedback provided to them with regard to recidivism rates, program completion and rehabilitation progress.¹¹⁵ They have indicated that they usually only hear about offenders if they are returned to Court for breaching community service conditions. More feedback needs to be provided to the judiciary on the success or otherwise of community supervision programs.

The European experience - increasing prison populations

- 8.35 All of the countries which the Committee visited have experienced increasing prison populations over the last decade. The United Kingdom and the Netherlands have both actively pursued alternatives to imprisonment in order to reduce their prison populations.
- 8.36 Around the world, the introduction of alternative sanctions has been one of the most important developments in sentencing policy in the last two decades. It has required a reconsideration of the priorities of criminal justice policy.

The Netherlands' response to prison over-crowding

- 8.37 The Dutch imprisonment rate of approximately 75 prisoners per 100,000 population is low in comparison with Western Australia's current rate of in excess of 210 prisoners per 100,000 population.¹¹⁶ However, the Dutch imprisonment rate increased considerably over the last decade from 51 prisoners per 100,000 population in 1987 to a high of 102 prisoners per 100,000 population in 1996,¹¹⁷ before stabilising in the last few years. This increase was due to a general increase in the crime rate and also because, in recent years, on average almost 15,000 sentenced persons have had to wait a considerable period of time before being able to serve their prison sentences. There

¹¹⁵ See, for instance, the evidence of Mr Con Zempilas, Chief Stipendiary Magistrate, taken by the Committee on Wednesday 24 November 1999, pp. 4-5 & 24-25.
[<http://www.parliament.wa.gov.au>]

¹¹⁶ As at the December quarter 1999. *Corrective Services Australia*, December Quarter 1999, Australian Bureau of Statistics, p. 1.

¹¹⁷ *Facts in Figures*, Dutch National Agency of Correctional Institutions, Ministry of Justice, December 1997, p. 19.

is a lack of prison space in custodial corrections. The Dutch prison system has the added problem of an increasing number of illegal immigrants.

- 8.38 In the Netherlands, there is a “one person per cell” rule which acts as a safety screen against over-crowding. In 1981 the shortfall in prison capacity was 800 cells. In 1990 this increased to 2,200 cells. This shortfall in cell space initially led to the Dutch Government funding the building of more prisons. The average number of prisoners rose as the cell capacity went up from 3,224 in 1980 to 7,677 in 1990 and 12,306 as at September 1997.¹¹⁸
- 8.39 The shortfall in cell capacity fuelled by an increasing prison population and longer prison sentences, combined with the high cost of both the construction and management of prisons, led the Dutch Government to develop a range of alternative sanctions in a search for new sentencing strategies to overcome these problems.

The Netherlands’ Penitentiary Plan

- 8.40 Alternative sanctions were developed by the Dutch Government to reduce the number of people being sent to prison. These alternative sanctions are known as the Penitentiary Plan. Under this plan, part (up to half) of the sentence is served in prison, and the remainder is served in the community. The two models available to sentencing judges under the plan are:
- i. the “front door” variety by which the judge passes an alternative sanction at the time of conviction to prevent imprisonment, or approves an alternative sanction after screening by the prison authorities; or
 - ii. the “back door” variety, by which the prison board and/or the parole board decide on an early release from prison usually under the condition of intensive supervision.
- 8.41 An example of a “front door” alternative sanction includes the power to place convicted drug addicts in a specific drug treatment institution. This measure, which lasts for a maximum of two years, consists of a period of intensive care and counselling in a special institution followed by outpatient care at a local care unit with the aim of increasing the addict’s chances of social rehabilitation. The local authorities are responsible for the welfare of the offender for the second year of the program.
- 8.42 An example of a “back door” alternative sanction is vocational training where the last year of the sentence is served outside prison under supervision. The Committee was

¹¹⁸ Ibid, p. 12.

advised that through this program, 500 prisoners ended their sentence and went directly to paid employment during 1998.

Effectiveness of the Penitentiary Plan

- 8.43 Even though only recently introduced, the Penitentiary Plan has already resulted in a reduction in the Dutch prison population. The expanding use of alternative sanctions is expected to eventually result in a substantial decrease in the number of prisoners and a decrease in the total costs of the prison system.
- 8.44 The strongest argument in favour of alternative sanctions is that they are better able to realise the important objectives of the sentence – deterrence, rehabilitation and restitution – than imprisonment. Both the community and the offender benefit.
- 8.45 In the Netherlands the Committee found empirical evidence as to the effectiveness of alternative sanctions in rehabilitating offenders and reducing rates of re-offending. The Committee was advised that alternative sanctions in the Netherlands are also substantially cheaper than imprisonment with most non-prison sanctions costing less than half as much as prison.

United Kingdom experience

- 8.46 The England and Wales prison population has increased from an average of 49,000 prisoners in 1987 to 65,286 as at 10 March 2000.¹¹⁹ If this growth in the rate of imprisonment and increases in sentence lengths continue, the England and Wales prison population is projected to increase to approximately 80,300 prisoners by 2007.¹²⁰ The rapid rise in the total prison population led to the establishment of an extensive inquiry to consider alternatives to prison sentences.
- 8.47 The House of Commons Select Committee on Home Affairs (Home Affairs Committee) conducted an inquiry which reported on 28 July 1998. The inquiry was established to examine:
- i. the causes of the escalating prison population and the cost of running Her Majesty's Prison Service (HM Prison Service);
 - ii. the effect of an escalating prison population on the running of prisons,

¹¹⁹ Turner, David et al., 2000 Figures from HM Prison Service, UK. 1987 figure from "Projections of Long Term Trends in the Prison Population to 2005", Issue 7/97, *Home Office Statistical Bulletin*, April 3 1997, p. 1.

¹²⁰ White, Philip and Cullen, Christopher, "Projections of Long Term Trends in the Prison Population to 2007", Issue 2/00, *Home Office Statistical Bulletin*, UK, February 10 2000, p. 1. However, if the 1999 rate of imprisonment and sentence lengths continue unchanged, the 2007 prison population is predicted to reach only 70,400.

including the increased strain and tension placed on prison officers and prison administrators;

- iii. the injustice that may be done by the imprisonment of those for whom a prison sentence is not strictly necessary;
- iv. the effectiveness of non-custodial sentences; and
- v. alternatives to prison sentences which will engender public confidence as well as alleviating the strain on HM Prison Service.

8.48 The House of Commons' Committee inquiry sought to demonstrate the importance of finding effective alternatives to prison for those who can safely be punished in the community. However, as the Home Affairs Committee noted, "*unless the public has confidence in them, then far from being able to use alternative sentences as a means of reducing the prison population, there will be calls - as is already the case - for still wider use of imprisonment.*"¹²¹

8.49 Of the reasons given for the increasing prison population in the United Kingdom, it has been said that:

*"the reason for this exponential increase ... [is] the vocal expression of opinion by influential public figures that custody is an effective penalty ... Judges and magistrates have been the subject of criticism ... for imposing what are widely portrayed as excessively lenient sentences."*¹²²

¹²¹ House of Commons Select Committee on Home Affairs, *Third Report: Alternatives to Prison Sentences*, p 1.

¹²² Quote by Lord Bingham of Cornhill, the Lord Chief Justice of England and Wales contained in the Select Committee on Home Affairs, *Third Report*, p. 1. In Minutes of Evidence taken before the Home Affairs Committee on Tuesday March 17 1998, the Lord Chief Justice said the following:

"Given the temper of our society in the last five years, I do not find it surprising that the prison population should have increased by 50 percent, reflecting the more ready resort to custody by sentencers and an increase in the length of sentences imposed. The tenor of political rhetoric has strongly favoured the imposition of severe sentences; this rhetoric has been faithfully reflected in certain elements of the media; and judges accused of passing lenient sentences have found themselves routinely castigated in some newspapers. Against this background judges have, understandably, sought to avoid the unwelcome experience of passing sentences which the Attorney General has sought to refer to the Court of Appeal for being unduly lenient. So we have the extraordinary paradox, that judges and magistrates have been roundly criticised for over-lenient sentencing during a period when they have been sending more defendants to prison for longer periods than at any time in the last 40 years. The increase in the prison population is not explained by any recent increase in sentencing powers, and I have no doubt that it is related to the pressure of public opinion."

- 8.50 The evidence of the United Kingdom's Chief Inspector of Prisons was that only 30 percent of the women in prison need to be there and only between 30 and 40 percent of young offenders need be in prison.¹²³
- 8.51 With over 50 percent of prisons in the United Kingdom housing more prisoners than they were designed for¹²⁴ and the need to recommission disused prisons there is a chronic overcrowding problem facing the United Kingdom Prisons Service.
- 8.52 It is against this background of a rapidly escalating prison population that the Home Affairs Committee investigated credible alternatives to custody concluding that while prisons will always be necessary for the most dangerous and persistent criminals, there are many other offenders who should be given non-custodial sentences. These would be effective and the public would have confidence in this approach.¹²⁵
- 8.53 In addition to probation orders, community service orders and supervision orders (which are the existing community penalties available in the United Kingdom), the Home Affairs Committee investigated the use of the following techniques to increase public confidence in community sentences:
- i. the increased use of probation hostels, which are seen as a credible and lower cost alternative to prisons for offenders who are not a significant risk to the community;
 - ii. the trialing of curfew orders with electronic monitoring;
 - iii. the use of "weekend prison", offering the possibility of prison sentences whilst also allowing offenders to maintain or seek employment;
 - iv. the use of cautioning in conjunction with restorative justice conferences (ie,

¹²³ Sir David Ramsbotham, Chief Inspector of Prisons, Minutes of Evidence Taken Before the House of Commons Home Affairs Committee, Tuesday March 10 1998. In evidence the Chief Inspector of Prisons said as follows:

"I am very concerned about these youngsters in prison because prison corrupts them. One does not want to see them in there but you have to have something meaningful for them outside. I believe what these figures show is that you have to include in what is done - and this is a community sentence - education as well to make good the ravages of what they have not had. I do not see evidence of that being provided."

¹²⁴ The worst overcrowding is endured by people on remand or serving short sentences. HM Prison Service, Offenders and Corrections Unit, August 1998.

¹²⁵ A recommendation of the Select Committee on Home Affairs, *Third Report: Alternatives to Prison Sentences*, is as follows:

"What the public really want to hear is that community sentences are effective in reducing crime. The most compelling argument that could possibly be put forward for community sentences is that they are consistently more effective than prison in reducing re-offending. Evidence exists that some community sentences are more effective, but we note again the findings of the Inspectorate that these programmes are, overwhelmingly, not adequately evaluated in order to put forward this argument with conviction."

- bringing the offender and victim together);
- v. the lifting of the restriction in the use of suspended sentences in circumstances where the crime might ordinarily justify a custodial sentence but is seen as a “one-off” offence which is unlikely to be repeated;
 - vi. the reduction in the number of fine defaulters sent to prison and the dealing with fine defaulters in the community through strictly enforced community service;
 - vii. amending the requirements for pre-sentence reports so that they state clearly circumstances where non-custodial sentences are considered appropriate and where a custodial option is considered the only option available to the court;
 - viii. recommending that all sentencers make regular visits to probation centres and community service placements and receive regular feedback about the results of the sentences they make in terms of their success, or otherwise, in preventing offenders from re-offending;¹²⁶
 - ix. the strict return to court for offenders who breach community sentences and the introduction of a new offence of breaching a community sentence which would attract the penalty of a prison sentence;
 - x. community education about the type of work carried out by offenders who are given a community sentence and to explain that community sentences are not a “soft option” and acknowledging that they often force offenders to confront their criminal behaviour and its effects - something they may never be required to do in prison; and
 - xi. undertaking a rigorous assessment of the cost and effectiveness of community sentences.¹²⁷

8.54 The British Government has implemented a number of the above recommendations in the following form:

¹²⁶ Without such knowledge it is considered that sentencers remain largely ignorant of the effectiveness of the various sentencing options available to them.

¹²⁷ The Select Committee noted that, when viewed in the context of the overall expenditure on the criminal justice system, and the further costs of crime both to the victims and to society, the figures spent nationally on research are “risibly minuscule.” The Chief Inspector of Prisons in his evidence to the Select Committee on Home Affairs also noted that, although everyone knows how much money is actually spent on imprisonment, no research has been undertaken into how much money *should* be spent if you were actually going to conduct imprisonment as you would like to: in other words, provide all the regimes and offending behaviour treatment and resettlement activities etc.

- i. Trials of electronic monitoring¹²⁸ have been successfully undertaken, and large numbers of offenders currently serve the final six months of their sentence outside of prison but subject to electronic monitoring.¹²⁹
- ii. The Home Office has implemented several measures to strengthen the credibility and effectiveness of punishment in the community and to improve the support which probation services give to the courts.
- iii. New community penalties for young offenders have been introduced which encourage reparation to the victim and provide for intensive intervention to tackle offending behaviour.
- iv. The Home Office has implemented a package of new measures designed to improve the effectiveness of work undertaken by the prison and probation services jointly, including the development of a national correctional policy framework, better arrangements for joint strategic planning and common approaches to the accreditation of offender programs, staff training and risk assessment.

8.55 It is too early to speculate what the long term effect of these measures may be. However, since the publication of the Home Affairs Committee Report on 28 July 1998 the imprisonment rate for England and Wales has stabilised.¹³⁰

What alternative sanctions are currently available in Western Australia

8.56 Many non-prison punishments are available under the *Sentencing Act 1995*, but most are not as widely used as they could be, in part because of funding limitations but also because of concerns about their effectiveness as presently operated. These non-custodial punishments include:

- intensive supervision orders;
- community based orders;

¹²⁸ In November 1998, the United Kingdom Home Office appointed contractors to provide a nationwide electronic monitoring service under the home detention curfew provisions in the *Crime and Disorder Act 1998*. Home detention curfew, which began at the end of January 1999, provides a new and important way of managing the transition from prison to the community of selected short-term prisoners coming to the end of their sentence. By 7 March 1999, 1,856 prisoners had been made subject to home detention curfew - 140 orders had been successfully completed and just 50 prisoners had been recalled.

¹²⁹ As at July 23 1999, 2,106 offenders were under electronically monitored home detention curfew. HM Prison Service Statistics.

¹³⁰ On November 30 1997 the England and Wales prison population stood at 63,738, having increased by almost 20% over the previous 18 months. On November 30 1998 it stood at 66,087, an increase of 3.5 percent, the population having peaked at 66,513 on July 31 1998, since then it has remained stable at slightly over 65,000. HM Prison Service Statistics, 1999-2000.

- probation;
- community service orders;
- parole;
- work release;
- home detention prison;
- home detention bail; and
- work and development orders.

8.57 Intensive supervision orders and community based orders were introduced as part of the *Sentencing Act 1995* to generally replace probation and community service orders.

RECOMMENDATION 9

8.58 **The Committee recommends a broadening of the range of sentencing options available to the judiciary when dealing with non-violent offenders.**

RECOMMENDATION 10

8.59 **The Committee recommends that the Minister for Justice and Attorney General consider amending the *Sentencing Act 1995* to extend the range of sentencing options available to the judiciary. The Committee recommends that these alternative sanctions be expanded to include:**

- a) **an increase in the number of supervised community service group programs;**
- b) **clearer rules and more focussed supervision of those serving a community penalty;**
- c) **a combination of short term detention with intensive training and community service;**
- d) **a combination of sentences, for example pre-trial detention followed by community service;**
- e) **a combination of electronic monitoring with community service for sentences up to 12 months;**
- f) **the introduction of electronic monitoring for juvenile offenders, either in combination with school attendance, or for community detention;**
- g) **compulsory treatment for drug addicts as an alternative to imprisonment;**

- h) **training orders for adults and juveniles including job training, monitoring job placements and social skills training;**
- i) **work release from prison;**
- j) **‘day fines’ determined according to the means of the offender (with provision for less affluent offenders to pay a proportional amount); and**
- k) **early diversion programs.**

The elements of good community supervision: Findings

8.60 The Committee finds that:

- i. In assessing the effectiveness of community supervision, the satisfaction of supervising staff, the judiciary, and the wider community together with the effectiveness of the services, including cost effectiveness, must be evaluated.
- ii. Good data is essential for an evaluation of the effectiveness of alternative sanctions.
- iii. Community supervision in Western Australia requires a research and information base to improve general understanding of the variables associated with its effectiveness. Issues such as offender demographics, predictive modelling and analysis of sentencing trends, supervision practices across jurisdictions and response rates to alternative supervision methodologies, all require further investigation.
- iv. Research is currently isolated and under-resourced. The current level of resources dedicated to research in the Ministry of Justice is inadequate, given the complex nature of corrective services and the need for innovation to improve policy, planning and programs. Greater emphasis on research is needed to assist the Ministry of Justice to plan and improve its core business of managing and rehabilitating prisoners.
- v. Without reliable research and information there is a risk that public money will be wasted through the implementation of programs which have little or no benefit to the prisoner or to the community.
- vi. The research, planning, policy and programs functions of the Ministry of Justice needs to be resourced so that the following tasks can be carried out effectively:
 - a) the analysis of emerging international and national trends and issues in corrective services;

- b) the prediction of forward needs of the system based on analyses of information collected from across the criminal justice system;
 - c) the formulation of plans and policies for the system, based on well researched information and on information collected from collaborative work with staff and others involved with the criminal justice system, including the wider public; and
 - d) the development of offender program outcomes and specifications and the evaluation of program effectiveness.
- vii. Performance indicators need to be developed to assess the effectiveness of community supervision. These indicators should be continually improved as a result of targeted research and analysis into the factors contributing to the successful completion of community based orders.
- viii. The indicators should also reflect the wider community's expectations of performance by identifying:
- a) the success of community re-integration programs for prisoners;
 - b) the performance of supervision methods;
 - c) the benefits of offender reparation;
 - d) offender restitution to the community; and
 - e) the timeliness and completeness of court and community supervision assessment reports or advice.

RECOMMENDATION 11

- 8.61 **The Committee recommends that the Ministry of Justice implement a range of initiatives designed to exploit the potential of community supervision to prevent crime through rehabilitation and supervision, reduce the number of offenders sentenced to prisons and to assure the public and the judiciary of the effectiveness of community supervision operations.**

A special assessment and programs unit would provide timely assessment reports

- 8.62 Community supervision staff are often unable to meet the courts' demands for specialist assessment services and reports on offenders. In many cases this results in offenders being imprisoned or not being released from prison to community supervision.

RECOMMENDATION 12

- 8.63 **The Committee recommends that community supervision services should be adequately funded to provide a variety of specialised services such as: the provision of psychiatric and psychological assessments to Courts; assessments of high risk offenders; and the delivery of specialised programs and interventions, particularly to Aboriginal and women offenders. This proposal could result in the diversion of some prisoners from custody to a community-based option where their needs and risks can be better managed. The provision of these services would also encourage the release of prisoners from custody and significantly increase the rehabilitative effectiveness of community supervision.**

Electronic surveillance

- 8.64 The surveillance capabilities of community supervision staff who supervise offenders on intensive supervision orders and home detention orders would be improved by the introduction of electronic surveillance technology. This technology, which is used successfully overseas, would also increase the confidence of community supervision boards and community agencies that the conditions of these orders were being strictly enforced. It is likely that this would encourage the release of more prisoners to home detention and encourage courts to consider placing some offenders on an intensive corrections order - rather than sentencing them to prison. The Committee stresses that the overseas experience indicates that electronic surveillance is effective only where it is combined with intensive corrective programs. Releasing prisoners on electronic surveillance without further intervention sets prisoners up to fail.

RECOMMENDATION 13

- 8.65 **The Committee recommends that electronic surveillance technology be used by the Ministry of Justice to enhance community supervision sentences. Electronic surveillance should, however, only be used in conjunction with a rehabilitative program, and not as a stand alone sentence. Rehabilitative programs involving home detention with electronic surveillance attached must involve the prior approval and continuing co-operation of the offenders' co-habitants.**

Summary of Alternative Sanctions

- 8.66 Many offenders currently being sentenced to imprisonment could be dealt with more effectively, and at far less expense, by a non-custodial sentence. The public are, of course, entitled to expect that non-custodial sentences are sufficiently robust so as to leave offenders in no doubt about the seriousness of their offending and to reduce the possibility of future offending.

8.67 The Smith Report noted:

“The numbers of prisoners serving short sentences for minor offences should be monitored with a view to diverting such prisoners away from high security prisoners. ... In any system, for a small group of prisoners security must remain the prime consideration. But for the majority of prisoners it is neither practical nor desirable to hold them in such extreme conditions.”¹³¹

¹³¹ *Report of the Inquiry into the Incident at Casuarina Prison on 25 December 1998*, March 19 1999, p. 128.

CHAPTER 9

LOWER SOCIO-ECONOMIC YOUTH AND IMPRISONMENT – “WINNERS AND LOSERS”

- 9.1 In general, youths from lower socio-economic backgrounds who have been imprisoned are not successful at surviving in mainstream society. In many instances, they are disadvantaged. They feel excluded from society. Many of them are both offenders and victims. Many will re-enter the prison system.
- 9.2 The Committee met with the Director of the Criminal Institute of Lower Saxony, Professor Christian Pfeiffer. Professor Pfeiffer provided research based on German experience into risk factors which predispose offending, particularly by young males, the largest sector of the prison population.
- 9.3 Some of the risk factors identified by Professor Pfeiffer relate to the family, parental supervision, erratic discipline and conflict between parents.
- 9.4 Some of the risk factors relate to schooling. The typical picture is of low attainment, exclusion and truancy.
- 9.5 Some of the risk factors are of a more general, social kind. They include poverty, poor housing, unstable living conditions, association with other young delinquents and a lack of any occupation, employment or recreation. Many of these factors are inter-related.
- 9.6 A young person exposed to multiple risk factors has an increased chance of becoming a persistent offender. Where offending begins at a young age, the risk of a settled pattern of delinquency is correspondingly greater.
- 9.7 Since the root causes of juvenile crime are to be found in these intractable predisposing risk factors, it must follow that the public interest is best served by effectively addressing these risk factors. If this can be done it will save the victims of crime much needless misery, will enable the young offenders to live constructive and fulfilling lives, and will relieve the public purse.

Aboriginal issues

- 9.8 The most critical issue surrounding Western Australia's prison system is the failure of the existing prison system to engage Aboriginal prisoners, many of whom are re-offenders, and assist in their treatment and rehabilitation.

- 9.9 Broadening the range of sentencing options available to the judiciary is likely to have a positive rehabilitative effect when dealing with Aboriginals convicted of non-violent offences.
- 9.10 An evaluation needs to be undertaken as to the effectiveness of programs and services delivered to Aboriginal prisoners. The need for such an evaluation is clearly demonstrated by the following extract from the findings of the Smith Report:¹³²
- "The widespread disaffection among young Aboriginal offenders, together with their increasing drug use should be of concern to the administration and the Ministry of Justice as a whole as well as those concerned about the welfare of Aboriginal prisoners. This suggests the need for a concerted strategy to engage young Aboriginal prisoners".*
- 9.11 Given the high proportion of Aboriginal offenders, steps should be taken to evaluate the relevance and effectiveness of programs for Aboriginal people in custody.
- 9.12 The new Acacia Prison will have a staffing requirement that 10 percent of all prison officers will be Aboriginal. The Committee is of the view that such targets should be encouraged.

Prisoner development programs in prisons

- 9.13 Because prisoner programs are the primary means by which prisoners are able to address their rehabilitation goals, it is critical that quality prisoner programs providing opportunities for prisoner development are in place and that there are mechanisms within the system to ensure that programs are adequately evaluated by the Ministry of Justice.

Scope for upgrading effectiveness of programs

- 9.14 Evidence which the Committee gathered indicated that the most effective programs are those delivered in partnership with psychologists, probation officers and prison officers. Research from the United Kingdom, the United States and Western Europe demonstrates that the best results of offender programs are achieved when the following principles are applied:
- i. the greater the seriousness of the offending and the risk of re-offending, the more intensive and extensive the supervision program should be;
 - ii. the work should target those needs of offenders which are directly related to

¹³² Ibid, p. 130.

- their offending;
- iii. programs which match staff with offenders' learning styles and encourage the active participation of offenders are more effective;
 - iv. once a program has been selected, it should not be changed part way through: those delivering the program should adhere to the way it was planned and evaluate its results;
 - v. offender programs can produce reductions in re-offending on release when applied in prison settings. However, programs produce better results when carried out in the community rather than in custody; and
 - vi. while cognitive skills programs work well, they work much better if steps are taken to find employment and accommodation for the participant when he/she is released from prison. The development of programs to change offending behaviour must be accompanied by work to resettle offenders into housing and employment, and help them maintain family ties during a prison sentence.

CHAPTER 10

STATISTICAL RESEARCH ON CRIME AND IMPRISONMENT IN WESTERN AUSTRALIA

- 10.1 There appears to be a wide gap between what criminologists know and what policy makers do. Professor Christian Pfeiffer, the Director of the Criminal Institute of Lower Saxony, recently commented on this situation:

*“Scientists lamenting these developments ought, of course, to ask themselves what their own contribution to the public debate has been. If all we do is to publicize our findings in specialist periodicals and scientific publications, we cannot expect the mass media and policy makers to sit up and take notice ... The first thing we must do is to realize that the people to whom we should primarily be addressing our knowledge are not other members of the academic world but politicians, journalists, police officers, juvenile judges, and social workers: not until we realize this and adapt the way we do things accordingly shall we make our proper contribution toward a policy on juvenile crime based on the right blend of specialist knowledge, reason, and a keen sense of what is appropriate”.*¹³³

- 10.2 In Germany, there is a constant recognition of the need to effectively disseminate the findings of research to keep bridging the gulf between research and practice so that full use can be made of the research undertaken.

Statistical “unknowns” and deficiencies in record keeping

- 10.3 During the course of this inquiry, the Committee has had access to numerous statistics dealing with criminal justice matters.
- 10.4 Statistics on crime data contained in the annual Crime and Justice Statistics for Western Australia¹³⁴ compiled by the Crime Research Centre remain the single most useful source of statistical information surrounding crime and justice issues in this State.

¹³³ Pfeiffer, Christian, *Juvenile Crime and Violence in Europe*, The University of Chicago, 1998, pp. 322-323.

¹³⁴ *Crime and Justice Statistics for Western Australia: 1998*, The University of Western Australia Crime Research Centre, November 1999.

- 10.5 The primary sources of information for the Crime Research Centre are police and criminal justice records.¹³⁵ Within these records there are alarmingly high levels of “unknowns” in the data because of inadequate recording.

Court Records

- 10.6 For example, in 41 percent of all cases dealt with by the Children’s Court, ethnicity details were not recorded.¹³⁶ For almost one in four cases referred to the Juvenile Justice Teams from the Children’s Court in 1997/98 ethnicity was not recorded.¹³⁷ Yet, details about the sex of the individual were unrecorded in only 1.5 per cent of cases. It was also considered important by the Committee that circumstances surrounding the decision to charge and prosecute should be recorded on the police offence information system. Given the over-representation of Aboriginal juveniles in detention, an accurate recording of the ethnicity of those appearing before the Children’s Court and those being referred to Juvenile Justice Teams is essential if a reliable exploration of this phenomena is to be undertaken.
- 10.7 For more than 56 percent of cases finalised by the Supreme and District Courts in 1998, the race of the defendant was not known or recorded.¹³⁸ The level of non-recording of ethnicity has increased substantially since 1996, when the proportion of finalised charges with no ethnicity details was just over 20 percent.¹³⁹ Again, given

¹³⁵ Data for reported crime obtained from the Police Offence Information System. Data for apprehensions and juvenile cautions from the Juvenile Cautioning System maintained by the WA Police Service. Data for Supreme and District Courts obtained from the criminal case management system (SRCASE) of the Ministry of Justice. Data for Children’s Court and related juvenile justice and Courts of Petty Sessions (since 1998 - previously compiled by Australian Bureau of Statistics) activities is obtained from the Ministry of Justice lower court case management system (CHIPS). Data for correctional services extracted from computerised records of the Offender Management Division of the Ministry of Justice and the Lock-up Admission System of the WA Police Service. Data on juvenile justice teams is obtained from police records and Children’s Court outcome data. Ibid, pp. 1-3.

¹³⁶ “The recording of ethnicity data by the Children’s Court has been incomplete for some years. In 1994, almost one third of cases did not contain information on the race or ethnic background of the juvenile involved. By 1996 this level had increased to 42.5% and, in 1997, 41% of records did not contain race data. This situation is regrettable since it hinders any attempt to fully describe the extent of ethnic involvement (especially indigenous participation) in the juvenile justice system.”
Crime and Justice Statistics for Western Australia: 1997, The University of Western Australia Crime Research Centre, November 1998, p. 88, footnote 4.

¹³⁷ Statistics - Children’s Court of Western Australia, Policy and Legislation Division, Ministry of Justice, p. 3 “In just under a quarter of cases, 23.8%, ethnicity was not recorded.”

¹³⁸ *Crime and Justice Statistics for Western Australia: 1998*, The University of Western Australia Crime Research Centre, November 1999, p. 71.

¹³⁹ Ibid.

the over-representation of Aboriginal Australians in the prison population, an accurate recording of ethnicity of those appearing before the Higher Courts is essential for an assessment of the problem.

Records of the Police Service

- 10.8 Another example of a gap in the collection of information is the non-recording of victim-offender relationships by the police when entering data into the Police Service's Offence Information System.¹⁴⁰

Records of the Ministry of Justice

- 10.9 The Ministry of Justice now publishes an annual summary of sentencing statistics. However, even these statistics are incomplete, as the following extract from the introduction of the sentencing statistics of the Children's Court of Western Australia shows:

*"The ... data for some pieces of information is clearly poor, and for others where it is apparently error-free it should nonetheless be treated with caution in case it contains errors. Hence there may be some unforeseen errors in this report."*¹⁴¹

- 10.10 Commencing with the above general qualification of errors, the Children's Court sentencing statistics are a catalogue of unrecorded information, ie:
- a) the ethnicity of defendants referred to Juvenile Justice Teams was not recorded for one in three referrals;¹⁴²
 - b) the ethnicity of defendants was not recorded for one in four of juveniles charged for both the 1997 and 1998 years;¹⁴³
 - c) the ethnicity of offenders convicted, was not recorded for one in three convictions for both 1997 and 1998;¹⁴⁴ and

¹⁴⁰ "Deterioration of the victim-offender relationship data - Note that the level of "unstated" relationships increased dramatically in 1996 and again in 1997 and is the result of changes to the business rules which govern data entry in the police Offence Information System. The high level of non-recording of victim-offender relationships now makes the task of monitoring the level of domestic violence in our community much more difficult." *Crime and Justice Statistics for Western Australia: 1997*, The University of Western Australia Crime Research Centre, November 1998, p.16.

¹⁴¹ Statistics - Children's Court of Western Australia, Summary Statistics - 1997/98, Policy and Legislation Division, Ministry of Justice, p. 2.

¹⁴² Ibid, p. 3.

¹⁴³ Ibid, p. 4.

¹⁴⁴ Ibid, p. 6.

- d) the ethnicity of distinct individuals appearing before the Children's Court was only recorded for half of those individuals who appeared before the Court (that is, one in two offenders appearing before the Court did not have their ethnicity recorded).¹⁴⁵

Records of the Offender Management Division

- 10.11 The State Coroner's inquest into the death of Tammy-Lee Green, along with the Smith Report, identified deficiencies in the keeping of medical records by prison authorities. The State Coroner noted:

*"It is clear that the procedures in relation to the retention of records after deaths in custody will have to be reviewed."*¹⁴⁶

- 10.12 The Smith Report found that at Casuarina Prison:

*"Record keeping is not computerised so that even to arrive at this cursory picture, the Pharmacy Department had to go through paper records by hand ... Clearly, record keeping needs to be enhanced."*¹⁴⁷

- 10.13 It is difficult for effective policies to be implemented when there are significant deficiencies in record keeping.
- 10.14 It must be a critical function of the criminal justice system, the courts, the Ministry of Justice and the Police Service, to ensure that all relevant information is recorded and processed to enable reliable and systematic examination of the data and to enable the outcome of this process to feed into criminal justice policy.

Public perception of crime

- 10.15 The public perception of the levels of crime in the community is a very important measure. Criminal justice policies must not only address the reported levels of crime but also the perceived fear of crime.
- 10.16 In November 1992 the Australian Bureau of Statistics published a report which examined the perceived level of crime in the Western Australian community by

¹⁴⁵ Ibid, p. 1.

¹⁴⁶ Hope, Alistair, *Record of Investigation into the Death of Tammy Lee Green*, June 28 1999, p.29.

¹⁴⁷ *Report of the Inquiry into the Incident at Casuarina Prison on 25 December 1998*, March 19 1999, Appendix 5, p. 1.

surveying Western Australian households.¹⁴⁸ The results of the survey indicated that there is not a uniform correlation between the public perception of the incidence of crime and the actual recorded incidence of crime.

10.17 The Committee notes that the Australian Bureau of Statistics has since produced two national surveys¹⁴⁹ which cover victimisation rates and perceptions of crime but it is difficult in these reports to separate the figures for Western Australia.

10.18 The need for greater community awareness of levels of crime and sentencing issues has been known for some time but strategies to enhance awareness are slow to be introduced. In November 1991 one of the recommendations of the study group¹⁵⁰ from the report tabled in Parliament by the then Attorney-General for Western Australia and Minister for Corrective Services, Hon Joe Berinson QC MLC was as follows:

“Community awareness

In Western Australia there is a need to better inform the public of the extremely limited value of imprisonment, particularly short prison sentences, as a means of preventing crime.

*Strategies including the provision of clearly presented and relevant statistical information, research findings and other information to better inform the public of the operations of the criminal justice system should be developed and implemented.”*¹⁵¹

¹⁴⁸ “The ABS conducted a survey on the perceived level of crime in the Western Australian community in October 1991. Respondents were also asked to report whether they had been the victim of certain crimes during the last 12 months.” *Crime Victims Western Australia - October 1991*, Australian Bureau of Statistics, December 21 1992.

¹⁴⁹ *Crime and Safety Australia April 1993*, Australian Bureau of Statistics, April 29 1994.
Crime and Safety Australia April 1998, Australian Bureau of Statistics, August 25 1999.

¹⁵⁰ The study group comprised the following members:

- Hon Joe Berinson QC MLC Attorney General and Minister for Corrective Services;
- Hon David Malcolm, Chief Justice of Western Australia;
- Mr Kevin Parker QC Solicitor General;
- Mr Con Zempilas, Chief Stipendiary Magistrate;
- Mr Ian Hill, Executive Director, Department of Corrective Services, and
- Dr Robert Fitzgerald, Director Strategic Services, Department of Corrective Services.

¹⁵¹ WA Attorney General Study Group, *Report of the Official Visit to Europe to Examine Criminal Justice Policies*, November 12 1991, p. 3.

10.19 The Chief Justice of Western Australia also made the following comments in a 1998 report to Parliament:

*“The Ministry and the Government have failed to make proper use of the statistics published by the Crime Research Centre to provide adequate information to the Parliament and the public and have left this task to the news media. The media only tend to report sentencing decisions which are either perceived to be lenient or those which are very severe. Many decisions which are unremarkable are simply not reported.”*¹⁵²

10.20 The Australian Bureau of Statistics produces an annual report of sentencing decisions in the “Higher Courts” throughout Australia, the most recent edition for the 1997-98 year being issued on July 26 1999.¹⁵³ The Ministry of Justice also now publishes quarterly sentencing statistics for the courts including the Children’s Court.

Presentation of statistics by the media

10.21 The Committee notes that the media can exercise a powerful influence on the public perception of crime.

10.22 The discrepancy between public beliefs about the level of crime within the community and the actual crime rates raises serious questions about the effectiveness of how crime information is transmitted to the public.¹⁵⁴ This is not a task solely the responsibility of the media alone but rather, as the earlier quote from Professor Pfeiffer indicates, the task of publishing accurate criminal justice statistics is the responsibility of all those involved with the criminal justice system: the Ministry of Justice, the Police Service, the Probation Services and the Crime Research Centre. Nevertheless the Committee is of the view that the collection, evaluation and dissemination of criminal justice statistics needs to be significantly improved.

¹⁵² Hon David K Malcolm AC, *Sentencing Legislation Amendment and Repeal Bill 1998 and Sentence Administration Bill 1998*, November 1998, pp. 4-5.

¹⁵³ *Higher Criminal Courts 1996*, Australian Bureau of Statistics, August 27 1998.

Higher Criminal Courts 1997-98, Australian Bureau of Statistics, July 26 1999.

¹⁵⁴ It is interesting to note the commentary in the report, *Crime Victims Western Australia - October 1991*, Australian Bureau of Statistics, December 21 1992, p. 9 as follows:

“During the period leading up to the survey, considerable media attention had been focussed on crime in the community - especially related to juveniles and high speed car chases, the penalties imposed and the rights of victims. General community concern about crime resulted in a “Rally for Justice” held in Perth on 20 August 1991. Such media attention could affect the community’s perception of the crime level and needs to be kept in mind when interpreting the results of Survey.”

RECOMMENDATION 14

10.23 **The Committee recommends that the Ministry of Justice establish a specialist criminal justice statistics unit (with appropriate resources and expertise). The functions of such a unit would be to reduce the possibility of an unbalanced view of the level of crime within the community by:**

- a) **the development of a statewide system for the recording of crime rates and the gathering of standardised crime statistics from various agencies; and**
- b) **the publishing of accurate and informative criminal justice statistics on crime trends.**

CHAPTER 11

DRUGS

REHABILITATION OF DRUG OFFENDERS

Diversion of first time drug offenders from prison

- 11.1 A major contributor to the increase in young offenders in prison is the number of young drug addicts committing offences. The Committee considers that there should be more emphasis on rehabilitation strategies for first time drug offenders. As the Smith Report noted:

“There are indications of widespread use of drugs by offenders in the community. Surveys of offenders are showing high levels of drug abuse by prisoner populations. ... Many accounts also suggest that young Aboriginal prisoners are also increasingly involved in drug use including polydrug use, opiate abuse and the abuse of prescription medication. This is a relatively new phenomenon.”

“The situation needs to be seen in the context of changes in the society from which prisoners come. Various indications, despite their inadequacies, point to growing drug use amongst offender groups, particularly in regard to opiates which are now fairly cheap and widely available. Drug use amongst offender groups is now so widespread it is probably more than likely that a prisoner entering a prison such as Casuarina (and other prisons) has a drug problem. It may be wise in fact to assume as a matter of course that prisoners are drug dependent rather than not. In the wider community, many young offenders are putting pressure on medical practitioners for benzodiazapines, or minor tranquillisers, either directly for their psychoactive qualities or as a way of managing their dependence on opiates.”¹⁵⁵

- 11.2 In other jurisdictions visited by the Committee, steps were taken to divert first time offenders, particularly juvenile offenders, from imprisonment by a sentence involving participation in a drug treatment program.

¹⁵⁵ Report of the Inquiry into the Incident at Casuarina Prison on 25 December 1998, March 19 1999, p. 68 and p. 69.

Drug Addicts (Compulsory Treatment of Offenders) Act (Netherlands)

- 11.3 The Netherlands has legislated for sentencing options to include drug treatment in the *Drug Addicts (Compulsory Treatment of Offenders) Act 1998*. The Act gives criminal courts the power to place convicted drug addicts in a specific institution for the care of drug addicts. This measure, which lasts for a maximum of two years, consists of a period of intensive care and counselling in a special penal institution followed by outpatient care at a local care unit with the aim of increasing the addict's chances of social rehabilitation.

The role of drug courts in the United States

- 11.4 The Committee was impressed by the operation of drug courts in the United States. Singled out for special praise was the juvenile drug court operating in Pensacola, Florida.
- 11.5 In the United States the marriage of the legal system with therapeutic programs is proving very useful in diverting juveniles from the prison system, and ensuring attendance and participation by juvenile offenders in drug therapy programs. Prior to the introduction of drug courts, there was no way in which a judge could ensure that a juvenile participated in a drug program. In a drug court, it is a condition of probation that the young offender's progress be monitored by the sentencing judge who is formally part of the drug therapy team.
- 11.6 The Committee commends the initiative of drug courts. Drug dependent offenders should be provided with the opportunity to receive help with addressing the causes of their addiction.
- 11.7 In Western Australia, drug dependent offenders have been placed in prison without an appropriate rehabilitation program and have been subsequently released back into the community without any improvement in their prospects for successful reintegration. This pattern is a recipe for futility, and it results in a depressing, and costly, cycle of repeated imprisonment and petty crime. The drug court is designed to stop that cycle by keeping minor drug offenders out of prison, whilst still using the threat of prison to encourage them to participate in treatment programs. Those who successfully complete a treatment program are not prosecuted.
- 11.8 Like the most effective rehabilitation programs inside the prisons, the drug court establishes a quasi-contract with the offender. Freedom is contingent on the prisoner making a serious effort to change. Breaking the law, therefore, has real consequences, which are designed to help offenders take responsibility for their own lives. For many of the people who appear before a drug court, taking on that challenge is harder than

simply “doing the time” in prison, which is why some may prefer to go to jail rather than undergo the rigours of the drug court’s program. Drug courts will not live up to their potential unless there is sufficient investment in treatment facilities and employment of appropriately qualified professional staff. Drug courts are a creative response to the growing problem of juvenile drug offenders, allowing the offenders to take responsibility for their actions.

11.9 The Committee supports the trialing of drug courts in Western Australia.

Drug treatment and testing orders in the United Kingdom

11.10 A recent United Kingdom drug prevention strategy is the Drug Treatment and Testing Order. This Order allows courts to ensure that drug dependent offenders enter treatment in full confidence that their progress will be strictly monitored and supervised by the court.

Tackling drug misuse among prisoners

11.11 Prisoners are, in general, a group with poor health. They commonly have a range of health problems such as high levels of alcohol and other drug use when they are taken into custody.

11.12 Rehabilitation of offenders should be the primary aim of imprisonment and any time spent by drug-abusers in prison presents a key opportunity to address the causes of drug abusing behaviour. Not only are prisoners literally a captive audience but, for some, the fact of being in prison may be a catalyst to their starting to consider how they are leading their lives.

11.13 Drugs policy in prisons cannot operate in isolation. Controlling and reforming prisoners’ drug habits is an important part of the general objective of rehabilitation. It is dependent on the overall good management of prisons delivering the necessary conditions and healthy atmosphere in which attempts at rehabilitation can prosper.

11.14 The Committee is of the view that not enough is currently being done to tackle drug misuse among prisoners. The Smith Report recommended the introduction of:

“A comprehensive drug strategy to incorporate all aspects of prisoners’ drug use.¹⁵⁶ ... The drug strategy cannot progress unless there are meaningful alternatives to drug use. Prisoners must be meaningfully engaged in work, recreation and training. The

¹⁵⁶ Ibid, p. 145.

provision of these services are therefore not just good for prisoner morale, they are actually part of a drug control strategy.”¹⁵⁷

- 11.15 Drugs policy in prisons cannot be viewed in isolation from developments in other parts of the prison system, nor can it be assessed in isolation from what is happening in the field of drug policy in the community. Prisons, despite being closed communities, reflect the problems of the wider community, which includes a high prevalence of drug taking and abuse.

How do drugs get into prisons?

- 11.16 To the general public it would seem surprising that in prisons, one of the most highly controlled environments, illegal drugs are still available.

- 11.17 Drugs enter prison through a variety of routes, the most common of which is via visitors during visiting periods. Other methods include: packages thrown over the perimeter fence or wall, sometimes in tennis balls; in deliveries of goods; by prisoners who have been to court or temporarily released; and via prison personnel and civilian workers.

- 11.18 The Smith Report raised concerns about how drugs are brought into prisons:

“The amount of illegal drugs in prison led some persons interviewed by the Inquiry team to suggest that it was not only prisoners who were introducing drugs into prison. The team makes no comment on this. However, to protect staff from any allegation of drug trafficking, it is recommended that consideration be given to visitors and staff entering a maximum security prison being searched and their bags and brief cases thoroughly examined. This is not an attack on any individual’s credibility but it is common practice in many jurisdictions.”¹⁵⁸

- 11.19 Given the variety of methods of entry, it was explained to the Committee (during a visit to Manchester Strangeways Prison) that the introduction of a totalitarian regime where there were no open visits with friends and family, where everyone who worked in the prison and everyone who delivered to the prison and everyone who provided a service for the prison would be screened and tested upon every occasion that they entered the prison may work in reducing the prevalence of drugs in prison but that such a regime would be unacceptable in a democratic society. Isolating all prisoners

¹⁵⁷ Ibid, p. 139.

¹⁵⁸ Ibid, p. 140.

from all contact with the outside world would be unacceptable in terms of control, care and resettlement.

- 11.20 The Committee has already commented on two risk factors linked to high levels of re-offending: the dislocation of prisoners' links with their families; and the lack of preparedness of prisoners to adjust to life "on the outside". Introducing a "tough" totalitarian regime would work against the elimination of these risk factors and would leave the offender with a higher predisposition to re-offend after release.
- 11.21 There is also the practical issue of how such a strict regime could be managed. In a prison with many hundreds of people, the practicalities of feeding them, maintaining them, providing educational and employment programs and maintenance of prison security, would involve thousands of people. With a strict regime operating, these people would have to be tested and searched every day. Practically, it is not possible to stop all drugs from entering prison. A balance needs to be set where practical measures can be implemented to reduce drug availability and use in prison.

Drugs in the United Kingdom prison system

- 11.22 HM Prison Service is also addressing the issue of how illegal drugs get into prison. The use of closed circuit televisions in visiting areas, the use of passive drug sniffer dogs trained to sit next to any person or thing containing drugs (the non-aggressive demeanour of these dogs makes them ideal for working close to the public), and searches of visitors are already widely in place. In addition, a number of prisons are trialing technology used by the United Kingdom Customs Service, which is capable of detecting illicit substances and which has the appearance of a metal detecting arch through which people have to walk at airports.
- 11.23 It is considered that the introduction of such technology into prisons, and through which everyone - Governor, staff, prisoners, visitors, voluntary workers etc - has to pass every time they enter or leave the prison, is highly preferable to current strategies. This technology will reduce some of the complaints made about strip searching of visitors.
- 11.24 The United Kingdom prison system conducts mandatory drug testing of prisoners which is discussed more fully later in the report. This gives a profile of the likely drug use in prisons. The results of mandatory testing in the United Kingdom indicate that prisons in the United Kingdom are not awash with drugs, although drugs remain a problem. In the short time mandatory drug testing has been in operation, there is some evidence suggesting that it is working in the sense that the level of positive tests seems to be declining.

11.25 The amount of drugs that prisoners take is less than they would normally take outside because of the comparatively limited availability of drugs in prisons. However, the presence of drugs and drug-dependent prisoners raises serious health and control issues. There is evidence that in Western Australian prisons, drugs remain a serious issue. As the Smith Report noted:

“This demand for drugs may be a result of one or more of the following factors:

- *A large and increasing number of drug using/dependent prisoners;*
- *Successful interdiction by management resulting in a lack of normal illicit supplies; ...*
- *Increased use and reliance upon prescription medication as a result of the effects of overcrowding and the greater pressure on the medical staff;*
- *A growing increase in the prescription of drugs.*

...

[T]here are indications of widespread use of drugs by offenders in the community. Surveys of offenders are showing high levels of drug abuse by prisoner populations.”¹⁵⁹

“[G]iven the increasing demand for drugs, successful control is likely to have implications in other parts of the system and the demand on medical staff for prescription medication is noted.”¹⁶⁰

11.26 It is sometimes said that prison staff deliberately tolerate a certain level of drug use in prisons as a means of maintaining cooperation and compliance from prisoners. The following extract from the Smith Report illustrates the nature of the problem.

“One of the major concerns for all staff working in a prison over the past few years has become “deaths in custody”. ... Avoiding a death has become probably the main priority amongst operational staff. Staff are understandably motivated to do “whatever it takes” to avoid this outcome. Most prisoners know this and it is alleged that they will threaten suicide or self harm as a means of coercing staff to get what they want. Medical staff are particularly vulnerable and the

¹⁵⁹ Ibid, p. 68.

¹⁶⁰ Ibid, p. 69.

prescription of psychoactive drugs as an “insurance” against a possible suicide must be seen as a possibility. Some have argued that both the staff and the prisoners are managing overcrowding through an over-reliance on drugs. For prisoners, getting psychoactive drugs can be an escapeFor staff, prescription medication may provide a “quick fix” way of staving off prisoner demands. ... However, as with individuals, this management strategy is precarious and acts to disguise problems rather than dealing with them.”¹⁶¹

11.27 As the Smith Report goes on to argue, such a state of affairs is creating a “monster”:

“The acquiescence to prisoners’ demands for drugs may solve immediate problems, but in the process creates a monster.

The greater pressure put on nursing staff may result in a tendency to deal in the easier way with the prisoner rather than the best way. Many prisoners see medical staff with the sole purpose of getting drugs. To deny the prisoner access to what he wants is stressful and time consuming. Medical staff know that such a denial may lead to a prisoner complaint to the Ombudsman and an investigation. It is easy to imagine that many doctors and to some extent nurses would be more likely to acquiesce to prisoner demands as the pressure builds.”¹⁶²

11.28 During the week August 30 to September 3 1999, 1210 prisoners out of the total Western Australian adult prison muster count of 2941 were receiving prescription medication.¹⁶³ Of a total of 3510 individual prescriptions issued over the period, 360 (almost 10 percent) were for antipsychotic medication, 343 were for antidepressants, 186 were for benzodiazepines, and 2621 were for other types of medication.¹⁶⁴

11.29 The high level of prescribing medication to prisoners is a problem experienced by all prison systems. The particular problem within the Western Australian prison system was outlined in the Smith Report:

“The situation needs to be seen in the context of changes in the society from which prisoners come. Various indications, despite their inadequacies, point to growing drug use amongst offender groups,

¹⁶¹ Ibid, pp. 72-73.

¹⁶² Ibid, p. 73.

¹⁶³ Letter to the Committee from the Attorney General for Western Australia, February 24 2000.

¹⁶⁴ Ibid.

particularly in regard to opiates which are now fairly cheap and widely available.

...

In prison the demand for drugs is evidenced in a number of ways. First, the amount of illicit drugs in the prison, the number of overdoses due to opiates, and more recently the pressure to get psychoactive drugs from medical staff.”¹⁶⁵

“The reasons for the escalation in prescription rates largely centre on the increasing drug use in the community generally and the use of psychoactive drugs as either a substitute or a self-management strategy. In prisons it is almost certainly the former. Taking psychoactive drugs often fulfils the same purpose as the consumption of illicit drugs. It relieves the boredom and stress as well as “escaping” the reality of prison.”¹⁶⁶

- 11.30 As shown above, a high percentage of Western Australian prisoners are receiving some form of medication. However, as nearly all prisoner medication is registered and controlled in prisons and is dispensed by nurses under prescription by the prison doctor, the level of abuse should not be high. Most clinical staff with whom the Committee spoke were aware of the problems associated with over prescription and were aware of the need to limit the supply of medication, particularly for night sedation.
- 11.31 Nevertheless, the requirement for health care providers to manage the issue of medication, particularly psychotropic and codeine-based medication, in a responsible and professional manner and provide feedback to the prescribing doctor, needs to be closely monitored.
- 11.32 Demand for medication among prisoners will continue to be high. While the Committee believes that the giving of prescription drugs in prison must be closely monitored, the Committee is equally concerned that prisoners receive appropriate medical assessment and treatment based upon sound clinical decision making.
- 11.33 There is evidence that record keeping of drugs prescribed in Western Australian prisons is inadequate. Proper records detailing prisoner dosage and use of medications need to be maintained by the Ministry of Justice. There should be greater emphasis on education for prisoners on the benefits and side effects of medication

¹⁶⁵ *Report of the Inquiry into the Incident at Casuarina Prison on 25 December 1998*, March 19 1999, p. 69.

¹⁶⁶ *Ibid.*, p. 72.

usage. The Ministry of Justice should incorporate standards into the accreditation system that set upper limits for prescriptions of medication as a guide for all prison health care providers. It should ensure providers are accountable if they over prescribe.

RECOMMENDATION 15

- 11.34 **The Committee recommends that a close check be made on the prescription of medication by prison doctors and that consideration be given for targeted education of prisoners on medication usage. The Ministry of Justice should consider the incorporation of health standards that describe upper level limits for prescription of medication and these standards must be reflected in the accreditation of health services in all Western Australian prisons.**

Procedures for the administration of prescription drugs

- 11.35 Evidence of the difficulties experienced by prisons in handling prescription drugs and recording the giving of medication to prisoners is illustrated from the following extract of the State Coroner's Report into the death of Tammy-Lee Green:

"The practice [of registered nurses] signing for provision of medication prior to it being given to a prisoner is unsatisfactory ... the medication chart should only be signed after drugs have been provided. This practice should be reviewed and appropriate directions given to nursing staff.

*It is a matter of some concern in the context of the present case that the relevant Drug Order Book and Emergency Cell Call Contact Form directly relevant to the circumstances of the case were missing. ... It is clear that the procedures in relation to retention of records after deaths in custody will have to be reviewed."*¹⁶⁷

- 11.36 Evidence of the inadequacy of current recording practices when administering prescription drugs is also supported by the findings of the Smith Report:

"Record keeping is not computerised so that even to arrive at this cursory picture, the Pharmacy Department had to go through paper records by hand. Certainly this initial review of the consumption of prescription drugs [supporting the concern expressed by many in regard to prisoners' use of prescription drugs] should be considered merely a first step in any attempt to fully understand what is

¹⁶⁷ Hope, Alastair, *Record of Investigation into the Death of Tammy Lee Green*, June 28 1999, pp. 28-29.

occurring in regard to the use and possible abuse of prescription medication in the prison system.”¹⁶⁸

Strategies to deal with drug dependent prisoners

- 11.37 In Western Australia one in seven of all female prisoners and one in eight of all male prisoners are in prison for drug related offences.¹⁶⁹ Nearly one in four of all prisoners in Western Australia are undertaking court ordered drug and alcohol programs.¹⁷⁰
- 11.38 The prevalence of drug dependency of prisoners entering prison was mirrored in the experience of overseas prisons visited by the Committee.

United Kingdom experience

- 11.39 In the United Kingdom it is estimated that approximately one quarter¹⁷¹ of all reported crime is drug-related. The United Kingdom has developed “Drug User Offending Programs” to assist prisoners to focus on changing their existing beliefs and attitudes, to increase their awareness of the negative impact of continued drug use and to assist prisoners in developing links with community based drug support agencies to increase the likelihood of a break from drug dependency when they are released from prison.
- 11.40 The Prisons Service in the United Kingdom is currently evaluating alternative strategies for dealing with drugs in prisons. There is recognition in the United Kingdom that tackling drugs in prison is not just a health issue but involves coordinating strategies at various stages of the criminal justice system. At a number of prisons in the United Kingdom resources are allocated for both the treatment of drug abusers and the introduction of voluntary testing wings where prisoners can live in a relatively drug free environment.

¹⁶⁸ *Report of the Inquiry into the Incident at Casuarina Prison on 25 December 1998*, March 19 1999, p. 1, Appendix 5.

¹⁶⁹ Answers provided by the Attorney General to Hon Mark Nevill MLC, Legislative Council Questions on Notice Questions 1454, 1455 with Notice Given March 31 1998.

¹⁷⁰ Answer provided by the Attorney General to Hon Mark Nevill MLC, Legislative Council Questions on Notice Question 1457 with Notice Given March 31 1998. As at February 28 1998 553 prisoners, comprising 426 male prisoners and 127 female prisoners, were on court order drug and alcohol treatment programs. With a daily average prison muster of 2,255 throughout 1997/98 this approximates 25 percent.

¹⁷¹ Sir David Ramsbotham stated that: *“If the public believed much of what was alleged by the media, they could be forgiven for thinking that prisons, alone, were responsible for the amount of substance abuse in this country. All prisoners come from a society in which drugs are abundant, but, sadly, the drug culture that has been allowed to grow up in prisons drags too many, including some who have previously avoided the habit, into its clutches. There has been a recognition that a prison sentence presents society with an opportunity for tackling this problem with all sentenced prisoners, that must be seized.”*
Inspector of Prisons, April 1995 to March 1996, Annual Report.
[\[http://www.penlex.org.uk/pages/ci95ar2.html#drugs\]](http://www.penlex.org.uk/pages/ci95ar2.html#drugs)

11.41 In 1995 HM Prison Service set up eight pilot projects at prisons as a trial to evaluate the effectiveness of mandatory drug testing in prisons. The stated benefits of the mandatory drug testing program were to assist in the following areas:

- i. Drug testing will increase significantly the detection of those misusing drugs and will send a clear message to all prisoners that if they misuse drugs there will be a greater risk of being caught and punished.
- ii. The tests will also help identify prisoners who may need assistance to combat their drug problems and treatment will be offered to those who want it.
- iii. The increased possibility of detection will help prisoners to resist peer pressure placed on them to become involved in drug taking.
- iv. The random testing program will, for the first time, provide more accurate and objective information on the scale and patterns of drug misuse allowing prisons to manage and target more effectively their resources for tackling drug problems.
- v. The proportion of prisoners testing positive for different drug types on the random testing program will be used as one performance indicator of drug misuse.¹⁷²

11.42 The mandatory drug testing program has been rapidly expanded so that approximately 10 percent of the United Kingdom prison population (some 6,000 people) is tested each month. The effectiveness of a mandatory drug testing program is seen as resting on three elements:¹⁷³

- i. There must be proper testing, based on a combination of random selection and good intelligence.¹⁷⁴

¹⁷² Extract from HM Prison Service, *Mandatory Drug Testing Policy*.
[<http://www.penlex.org.uk/pages/mandrug.html>]

¹⁷³ Factors identified in HM Prison Service, *Mandatory Drug Testing Policy* and reiterated by the United Kingdom Chief Inspector of Prisons in his April 1995 to March 1996 *Annual Report*.
[<http://www.penlex.org.uk/pages/ci95ar2.html#drugs>]

¹⁷⁴ Under HM Prison Service, *Mandatory Drug Testing Policy* the selection of prisoners for testing is as follows:

- All prisoners will be required to participate in a random testing program, prisoners will be chosen by computer on a totally random basis.
- Prison officers will have the power to require prisoners to be tested if they have reasonable suspicion of drug misuse by the prisoner.
- Persistent offenders may be required to be tested at a much greater frequency.
- Prisoners about to go out of the prison on temporary release or those being considered for re-classification to open prison status may be liable to drug testing as a pre-condition.
- Some testing of prisoners may also be carried out on reception to prison.

- ii. There must be drug free wings in which to accommodate those who declare themselves neither to be using nor intending to use drugs, with obvious advantages and privileges as well as obligations such as regular testing.
- iii. There must be arrangements for the treatment of those who test positive from simple detoxification treatment to full scale programs for addicted offenders.

11.43 The Chief Inspector of Prisons of the United Kingdom made the following comment on mandatory drug testing:

“Prisons have been given money to carry out the actual testing, but aside from the pilot programmes, have to fund the remainder of their programmes from their own budgets. Drug free wings are not cost neutral, because there has to be frequent testing of all prisoners, and other practical arrangements to honour the voluntary commitment of prisoners to the demands of the regime. There is a very real danger that the whole mandatory drug treatment program will be discredited if there is no follow up to testing, either reward or treatment.”¹⁷⁵

The Netherlands experience in responding to the problem of drugs in prisons

11.44 In the Netherlands, the possession of small amounts of certain drugs for one’s own use is not subject to penalty. However, the general crime rate among drug users is high and currently about 50 percent of the prison population have drug problems which in turn has lead to problems in prisons: uncontrollable situations caused by drug use; dealing and smuggling; formation of a sub-culture among addicts; disturbances of prison routine caused by withdrawal symptoms and psychological problems; increased tension between staff and prisoners; and an increased risk of HIV and Hepatitis C infection.

11.45 To counter this growing problem a special judicial drug policy was implemented with the following aims:

- i. to provide care for drug users by way of medical and psycho-social treatment and the opportunity to continue treatment on release; and
- ii. to create a detention climate in which the drug problems can be controlled (for example, by means of cell inspection and urine testing).

¹⁷⁵ Chief Inspector of Prisons of the United Kingdom, April 1995 to March 1996 Annual Report. [<http://www.penlex.org.uk/pages/ci95ar2.html#drugs>]

SUCCESSFUL DRUG TREATMENT PROGRAMS OBSERVED BY THE COMMITTEE IN THE UNITED KINGDOM AND THE NETHERLANDS**Manchester - Strangeways Prison**

11.46 The Committee visited and observed the running of the drug-free unit at Strangeways Prison in Manchester, which operates a drug strategy directed at both supply and demand reduction. It is part of a national strategy - based on five principles and known as the "CARAT" plan - Counselling, Assessment, Referral, Advice and Throughcare Service.

Voluntary Testing Units ("Drug-free wings") in the United Kingdom and the Netherlands

11.47 Voluntary Testing Units are areas of a prison housing prisoners who have agreed to lead a drug-free life and to be subjected to extra drug testing. The advantage to the prisoner is that it should be easier for him or her to avoid the temptation of using drugs or the threats associated with them. This is attractive both to those who have never had any dealings with drugs and those who are trying to overcome a drug habit, particularly following the completion of a treatment course.

11.48 The most critical determinant of the effectiveness of any strategy aimed at tackling drug addiction and reducing crime will be the extent to which it integrates successfully with criminal justice and drug services outside prison. The quality of the aftercare offered to individuals after treatment is crucial to the success of the program. In the absence of rehabilitation facilities upon release, the cycle of further drug abuse, offending and reincarceration seems almost inevitable in the majority of cases.

11.49 The running of the drug free wing has been very successful in capitalising upon the motivation of prisoners. There is a large waiting list in Strangeways Prison to secure a place on the drug free wing. At the time of the Committee's visit, approximately 200 out of the prison's total of 1,100 prisoners were held in the drug free wing.

11.50 The Committee visited the Netherlands Ministry of Justice in the Hague. The Committee was impressed with the Dutch approach to running prison programs.

11.51 In 1994 the Dutch Ministry of Justice introduced a policy which has a simple but powerful rationale: "We MUST invest in prisoners who are motivated to do something about it." All prisons in the Netherlands must have an active policy on drug prevention.

11.52 The Committee observed the operation of drug free wings in a number of Dutch prisons. Prison officers who work in these wings receive special training in the care of drug users. Admission to a drug free unit is voluntary, although there are some entry criteria:

- a) prisoners must be motivated to change their drug habits;
- b) they must be willing to take part in the therapeutic program;
- c) they must undergo compulsory urine testing; and
- d) they are not allowed to use methadone.

11.53 The main aims of these units are to motivate drug dependent prisoners to accept help and to prepare them actively for external treatment and social rehabilitation. Drug free units also aim to protect prisoners from drugs. To ensure this protection, compulsory urine testing is part of the program. In addition to general medical and social care, the program involves structured activities such as sport, work and discussion groups.

11.54 Characteristics of the Dutch drug-free units are as follows:

- i. The unit/department is separate from every other unit. This creates an environment in which people can feel free from the pressure of drugs and drug pushers.
- ii. Limited places are available. Those wishing to participate must meet certain standards - they must show that they really want to become drug free.
- iii. Special social workers, skilled in the treatment of addicts, are involved in the programs. They will report whether "someone is not motivated for the drug free unit."
- iv. Prior to admission, urine tests are taken for a period of four weeks. If the prisoner is using drugs, then the prisoner is not accepted as a candidate for the drug free unit.
- v. The prisoners must speak Dutch to a level that they can take part in group activities.
- vi. The prisoners must not be on medication for psychiatric illness.
- vii. When prisoners have complied with the above conditions they are admitted to the drug free unit.
- viii. Drug free units work to motivate prisoners for treatment after and during detention. For the last six months of detention a prisoner can attend at a drug

clinic or alcohol clinic operated outside of the prison.

- ix. The time spent in the drug free unit prepares the prisoner for treatment in outside clinics.
- x. The drug free unit offers a strict program with which prisoners are obliged to comply.
- xi. Prisoners are obliged to take an active part in the group sessions. If the prisoner is lacking motivation they are removed from the drug free unit. There is a mentor in each group which participants meet with on a regular basis. The mentor programs are designed to give structure to people's lives and provide positive role models.

11.55 At one Dutch prison visited by the Committee, the Dutch Ministry of Justice had recently allowed 21 prisoners to take part in drug courses run outside the prison. Since the prison began the program, only one prisoner who has been permitted to attend drug clinics outside prison for the last six months of their program has breached the program conditions and been returned to prison.

11.56 The rationale for running these drug programs outside prison is the acceptance that prison is not a good environment for change.

RECOMMENDATION 16

11.57 **The Committee recommends that investigations be undertaken into the feasibility of introducing "drug free wings" and intensive voluntary drug treatment programs in Western Australian prisons along the lines of programs currently operating in the United Kingdom and the Netherlands.**

RECOMMENDATION 17

11.58 **The Committee recommends the adoption of mandatory drug testing in prisons which has proved successful in the United Kingdom and the Netherlands in identifying and deterring drug misuse.**

CHAPTER 12

MENTAL HEALTH ISSUES

- 12.1 Section 4 of the *Mental Health Act 1996* defines the phrase “mental illness” as the situation existing whereby a person “*suffers from a disturbance of thought, mood, volition, perception, orientation or memory that impairs judgment or behaviour to a significant extent*”.
- 12.2 The national trend towards the deinstitutionalisation of people with a mental illness commenced in the early 1980s when many hospitals and institutions were closed. These initiatives meant that alternative placements for residents or patients diagnosed with a mental illness were required. Simultaneously, corrective service agencies reported increasing numbers of these people coming into contact with the criminal justice system.
- 12.3 In Western Australia, people coming into custody who are legally sane but who are identified as having a “mental illness” (ie, as defined under the *Mental Health Act 1996*) are, in theory, transferred to a secure mental health hospital (ie, the Franklin Centre) for assessment. When they stabilise they are returned to the referring correctional centre. In practice, many mental disorders manifested by prisoners do not strictly satisfy the definition of mental illness as the term is defined in the *Mental Health Act 1996*. These prisoners remain in prison often with their underlying mental condition undetected and untreated.
- 12.4 The result of the failure to appropriately identify mentally ill prisoners is of considerable concern to the Committee.
- 12.5 Prison conditions have an extremely adverse effect on the mental health of all prisoners. The problem is particularly acute with mentally ill prisoners. In every prison in Western Australia, mental health services are lacking. The Western Australian prison system has only twelve crisis care units for a prison population of approximately 3,000.

Mentally disordered prisoners

- 12.6 One group with whom the prison health services are unable to deal is the large number of mentally disordered offenders (ie, those whose mental faculties are impaired, but who may not meet the criteria of having a “mental illness” pursuant to the *Mental Health Act 1996*), who it is estimated form a significant section of the prison population when substance abusers are taken into account. When mentally disordered

prisoners are not given access to appropriate treatment, their condition deteriorates. There is currently no strategy for dealing with mentally disordered prisoners in Western Australian prisons.

- 12.7 An example of this lack of strategy is revealed by the fact that the only purpose built unit for housing mentally disordered offenders is at Casuarina Prison which has a crisis care unit comprising 12 beds. The Franklin Centre (outside the prison system) has a total of 30 beds, 7 or 8 of which are available for use by prisoners. However, these beds are for use by patients who present symptoms of a “mental illness” under the *Mental Health Act 1996*. The conditions of mentally disordered offenders will not necessarily meet these criteria.
- 12.8 Recently much attention has been paid to the issue of severe personality disorder. The Franklin Centre will only accept prisoners where the mental condition is considered to be treatable (they must have a diagnosed “mental illness” under the *Mental Health Act 1996*). On many occasions prisoners are either not sent to the Franklin Centre because it is believed they will not be admitted or when they are sent they are returned to prison on the grounds that they are untreatable.
- 12.9 The issue of addressing mental health problems must be incorporated into every aspect of prison life. Mental health treatment must be ongoing. Unlike treatment for a broken limb where the prisoner can return to the general prison population with the ailment fixed, mental health treatment needs ongoing observation and problems are likely to re-occur if, once discharged from the prison infirmary, the mental health needs of prisoners are not catered for in the wider prison community.
- 12.10 More than one-third of all prisoners may suffer some mental illness or personality disorder although the precise percentage of prisoners in Western Australia with an intellectual disability is unknown.¹⁷⁶ The *Mental Health Act 1996* does not include persons with a personality disorder in its definition of mental illness. Therefore individuals with a personality disorder cannot be admitted to psychiatric institutions for long-term treatment.
- 12.11 There are few appropriate services available to these individuals during their imprisonment, nor do corrections staff have regular training to identify, assess or manage prisoners with a personality disorder. In many instances, the disability is masked, as it may not be perceived to be in the interests of the prisoner to be identified

¹⁷⁶ Professor Teblenski of the University of Western Australia has conducted research which shows a 40 percent match between those who have come into contact with mental health professionals suffering some form of mental illness and those with criminal records.

as having a personality disorder. In addition a personality disorder may be accompanied by a mental disorder or mental illness.

- 12.12 The result of the failure to identify and appropriately treat all prisoners with mental health problems is of considerable concern to the Committee.

Treatment for the seriously mentally disturbed – the Netherlands experience

- 12.13 The Committee believes that Western Australia can learn from the Dutch method of dealing with mentally disturbed prisoners. The Dutch term for the treatment program is Terbeschikkingstelling (TBS).¹⁷⁷

- 12.14 The TBS measure is a sentencing option which can be imposed by a judge on prisoners who have been sentenced for grave crimes and who are mentally disturbed. Even though the judge sentences a prisoner to a TBS, it is a medical decision whether a prisoner is suitable to undertake the program and the judge will seek advice from an expert medical panel before sentencing an offender to a TBS.

- 12.15 TBS institutions are run by State-funded trust foundations and are used principally for sentencing dangerous sexual offenders.

- 12.16 The purpose of TBS is to eliminate, or at least reduce to an acceptable level, the danger of recidivism by:

- i. removing the person concerned from society for an indefinite period and maintaining this removal for as long as is required to ensure the safety of others or the general safety of persons and property (protection in the shorter term); and
- ii. treating the person concerned to bring about a change of behaviour which will allow him/her to participate in social activities in a responsible manner (protection in the longer term).

- 12.17 The TBS order recognises the unlawful and dangerous nature of the offender's behaviour. Consequently there is a stronger emphasis on security, and the Ministry of Justice has a significant input into the treating institution's decisions to grant leave to patients.

- 12.18 TBS is distinguished from long-term imprisonment in that the offender is deemed to be not responsible or to have only diminished responsibility for the crime committed.

¹⁷⁷ *TBS: A Special Hospital Order of the Dutch Criminal Code*, Dutch Ministry of Justice, 1991 Memorandum of the Dutch Government.

Its primary objective is to reduce recidivism by treatment to effect a change in behaviour. For this reason the order is of indefinite duration, because it is not possible to indicate in advance how long the required treatment will take.

RECOMMENDATION 18

12.19 **The Committee recommends that consideration be given to building suitable accommodation to cater for mentally disordered prisoners, within prison boundaries, which will satisfy the demands of security, and ease some of the pressure on the Franklin Centre.**

RECOMMENDATION 19

12.20 **The Committee recommends that the Health Services Division of the Offender Management Division of the Ministry of Justice should be provided with the resources to assess and treat all prisoners with mental disorders.**

Mental health and treatment of prisoners in the United States

12.21 To provide some background to the extent of mental health problems suffered by prisoners, the following statistics from the United States prison system illustrate the degree of the problem.

12.22 At mid year 1998, an estimated 283,800 mentally ill offenders were imprisoned in the United States.¹⁷⁸ United States Bureau of Justice Studies statistics indicate that approximately 16 percent of United States State prisoners reported either a mental condition or an overnight stay in a mental hospital.¹⁷⁹ About 16 percent, or an estimated 547,800 probationers, said they had suffered a mental condition or stayed overnight in a mental hospital at some point in their lifetime.¹⁸⁰

12.23 Of United States State prisoners with a mental condition, 53 percent compared to 46 percent of other United States State prisoners, were incarcerated for a violent crime.¹⁸¹ Among prisoners in United States Federal prison, 33 percent of the mentally ill were incarcerated for a violent offence, compared to 13 percent of other United States

¹⁷⁸ Ditton, Paula M, *Mental Health and Treatment of Inmates and Probationers*, Bureau of Justice Studies Special Report, July 1999, NCJ 174463, US Department of Justice, p. 1.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

- Federal prisoners.¹⁸² An estimated 28 percent of mentally ill probationers and 18 percent of other probationers reported their current offence was a violent crime.¹⁸³
- 12.24 Mentally ill United States offenders reported high rates of homelessness, unemployment, alcohol and drug use, and physical and sexual abuse prior to their incarceration. During the year preceding their arrest, 20 percent of mentally ill prisoners in United States State or United States Federal prisons reported a period of homelessness, when they were living either on the street or in a shelter.¹⁸⁴ This compares with only 9 percent of other United States State prison prisoners and 3 percent of other United States Federal prisoners.¹⁸⁵
- 12.25 Mentally ill male United States State prisoners were more than twice as likely as other males to report physical abuse prior to admission to prison (27 percent versus 11 percent) and nearly four times as likely to report prior sexual abuse (15 percent versus 4 percent).¹⁸⁶ Among male prisoners 25 percent of the mentally ill in United States Federal prisons reported prior physical abuse, compared to 5 percent of other male United States Federal prisoners.¹⁸⁷ Mentally ill male probationers were four times as likely as other probationers to report prior physical abuse.¹⁸⁸
- 12.26 The rate of physical abuse reported by mentally ill female prisoners was over twice that reported by males. Nearly 70 percent of female United States State prisoners, 50 percent of female United States Federal prisoners, and 47 percent of female probationers reported a history of physical abuse.¹⁸⁹ Nearly 60 percent of female mentally ill United States State prisoners, 45 percent of female United States Federal prisoners, and 42 percent of female probationers reported prior sexual abuse.¹⁹⁰
- 12.27 Mentally ill prisoners in United States State and United States Federal prison, were more likely than others in those facilities to have been involved in a fight, or hit or punched since admission. Among United States State prisoners 36 percent of mentally ill prisoners reported involvement in a fight, compared to 25 percent of other

¹⁸² Ibid, p. 4.

¹⁸³ Ibid.

¹⁸⁴ Ibid, p. 5.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid, p. 6.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid, pp. 6-7.

¹⁸⁹ Ibid, p. 7.

¹⁹⁰ Ibid.

prisoners.¹⁹¹ Mentally ill prisoners in United States Federal prison were over twice as likely as others to report involvement in a fight (21 percent compared to 9 percent).¹⁹²

12.28 An estimated 60 percent of the mentally ill in United States State and United States Federal prison received some form of mental health treatment during their current period of incarceration.¹⁹³ 50 percent said they had taken prescription medication, 44 percent had received counselling or therapy, and 24 percent had been admitted overnight to a mental hospital or treatment program.¹⁹⁴

12.29 With a significant number of those coming into the Western Australian criminal justice system also coming into contact with health care professionals, it is highly likely that if a similar statistical analysis were undertaken on the Western Australian prison population, the results of the local study would mirror the United States experience.

Psychiatric services

12.30 While a small percentage of prisoners will develop a major long term mental illness, many prisoners will suffer from depression and anxiety with a large number experiencing substance abuse, that is, abuse of and/or addiction to alcohol and other drugs and behavioural problems.

12.31 Consequently, the provision of comprehensive psychiatric services is a key component of effective prison health care services. Services need to be responsive to inmate needs in a timely and appropriate way. Treatment, however, often takes place in difficult circumstances due to the nature of the prison environment.

Suicide awareness - New York City Department of Corrections

12.32 The number of self-inflicted deaths in prisons in Western Australia is an issue of great concern.

12.33 The Committee was impressed by the suicide prevention plan adopted by the New York City Department of Corrections when it visited the Rikers Island facility.

12.34 In 1985 the New York City Department of Corrections faced a rising suicide rate under the additional pressures of maintaining security and reducing costs. Their total

¹⁹¹ Ibid, p. 9.

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

prison population in 1998 was 17,524, not much less than the prison population for the whole of Australia, with most prisoners being on remand and a small number serving sentences of less than one year. Prisoners serving longer sentences are sent to New York State rather than to City institutions. With the introduction of radical new systems and procedures, the number of suicides has fallen by 64 percent and has been maintained at this level, with an average of four suicides per year over the past fourteen years.¹⁹⁵ This should be compared with the total number of deaths in Australian prisons in 1997/1998 of 76 (17 of which occurred in Western Australian prisons), just over half of which were identified as self-inflicted.¹⁹⁶

- 12.35 From the Committee's observations it appears that the key features of the New York City Department of Corrections model are:
- a) the creation of minimum standards for mental health;
 - b) staff training in mental health; and
 - c) use of dormitories.

The creation of minimum standards for mental health

- 12.36 The American use of the term "mental health" embraces a much wider notion of an individual's emotional and social wellbeing than in Australia, where it is commonly used to refer to psychiatric illness. This does not imply that the New York City Department of Corrections operates a purely medical model of suicide prevention. Many of those responsible for the care of those at risk have been recruited from backgrounds in social work and psychology. The psychiatric services section is headed by an Australian psychiatrist, Dr John D. Burgess M.D., who is the Director of Mental Health. Dr Burgess works with a team of 40 psychiatrists, psychologists and social workers.
- 12.37 From its visit the Committee was left with the impression that avoiding suicide was seen as being as much the business of all prison staff as maintaining good security and control. Mental health issues were not confined to the prison infirmary - rather, they informed the practices and procedures of all aspects of prison operation.

¹⁹⁵ "Suicide is Everyone's Concern", *A Thematic Review by Her Majesty's Chief Inspector of Prisons*, May 1999.
[<http://www.penlex.org.uk/pages/cisuic03.html#6.14>]

¹⁹⁶ Dalton, Vicki, *Australian Deaths in Custody & Custody-Related Police Operations 1997-98*, Australian Institute of Criminology, August 1998, p. 3 and p. 7.

Staff training in mental health

- 12.38 One measure of the commitment of the New York City Department of Corrections towards suicide prevention is the training received by staff to recognise at risk prisoners. During basic training New York Corrections Service officers undergo 40 hours of instruction about mental health issues for prisoners.
- 12.39 One of the most impressive features of the American model is the use of paid prisoners (at the normal daily prisoner rate) to frequently observe and give support to other prisoners assessed as being at risk of suicide or self-harm. Observation aides, or companions, as they are called in the United States Federal system, are trained and expected to be proactive (for example to hold a conversation with each prisoner for whom they are responsible within defined time boundaries, such as for 10 minutes). Having a group of prisoners who are paid to observe other prisoners and who are accountable to staff for their work, provides a very different form of service than from the present prisoner mentoring schemes currently operating within Western Australian prisons.

Use of dormitories

- 12.40 A feature of the New York City Department of Corrections system which the Committee was told assisted in reducing prison suicides was the use of dormitories where the presence of other prisoners and staff was seen as having a deterrent effect on prisoners who may otherwise be at risk of suicide.
- 12.41 This approach seems to deliver greater success in reducing suicide and self-harm for those at risk and stands in stark contrast to the current practice in Western Australia of isolating “at risk” prisoners and locating them within solitary observation cells.

The Committees’ findings based upon its observations of the practice of the New York City Department of Corrections

- 12.42 The Committee makes the following findings in relation to the Western Australian prison system based upon the model of the New York City Department of Corrections:
- i. There should be much better training for all prison staff, particularly remand staff in recognising and responding to prisoners at risk.
 - ii. Any successful strategy to reduce suicide in prisons and remand centres must include greater investment in awareness and skills training for front line staff. It should be directed at increasing their awareness and understanding of the factors influencing the mental wellbeing of prisoners. This training should

- ensure that the whole issue of self-harm and suicide is thoroughly canvassed.
- iii. There should be more effective initial risk assessment.
 - iv. When a prisoner is admitted to prison he/she should receive a thorough assessment of his/her health needs.
 - v. A full induction program should be provided for those entering prison for the first time. This should monitor behaviour as well as provide essential support and information. The induction program should last for a minimum of 48 hours during which time prisoners should be under close supervision from staff and trained support prisoners in a dedicated induction area. It is very important that reception cells are free from ligature points and that shared accommodation is available. Consideration should be given to the use of dormitory style accommodation for this initial assessment to house those considered to be at greatest risk.
 - vi. Suicide prevention workers should interview and support at risk prisoners.
 - vii. Suicide prevention workers should be recruited to undertake the assessment and care of those at risk. They should have specialised training and be suitably qualified.
 - viii. There should be more use of other prisoners to assist staff in preventing suicide.
 - ix. Consideration needs to be given to investigating alternative means of accommodating at risk prisoners in light of new authoritative research into the effects on prisoners of being accommodated in observation cells which have been stripped of all amenities.

RECOMMENDATION 20

- 12.43 **The Committee recommends that consideration be given to adopting the approach of the New York City Department of Corrections towards prisoners at risk. This involves the introduction of additional training for correctional staff about mental health issues; an induction program for prisoners (minimum of 48 hours in a dedicated induction area which has dormitory style accommodation); the appointment of professionally trained suicide prevention workers; and the engagement of paid prisoner observation aides.**

CHAPTER 13

IMPROVING PRISON MANAGEMENT – SERVICE LEVEL AGREEMENTS

- 13.1 The Smith Report made a number of recommendations concerning ways in which the Western Australian prison system could be improved. Included amongst the Report's recommendations was the following:

“The Ministry of Justice should be allocated sufficient funds to provide adequate services for sound prison management. Prison operations could perhaps then be funded on the basis of prisoner/days. This would ensure that prisons, prisoners and staff do not suffer due to circumstances (such as changes in crime and/or sentencing policy) that they have no control over.”¹⁹⁷

- 13.2 The Smith Report also recommended that the Offender Management Division of the Ministry of Justice should ensure that business and strategic plans have short, medium and long term objectives. The plans need to include the following minimum elements:

“a) Service Level Agreements for each prison that set out the accountabilities, requirements, responsibilities, authorities and provisions for the operation of the service.

b) The urgent and comprehensive training of prison officers on a continuous basis to achieve high levels of competence and professionalism.

c) A productive co-operation between the Health Services Directorate and Prison Operations to maximise the goals of both Directorates and ensure productivity at interface issues such as crisis care, drug use and program delivery.

d) Sufficient levels of activities and engagement for all prisoners at various periods of their imprisonment.

e) Benchmarks, performance indicators and measures of acceptable levels of control and safety.

¹⁹⁷ Report of the Inquiry into the Incident at Casuarina Prison on 25 December 1998, March 19 1999, p. 144.

f) A strategic and effective system of incentives to shape and encourage pro-social behaviour in prisoners.

g) A plan to monitor and improve the quality of prisoner-officer relationships.

h) Procedures for the control and restraint of disruptive prisoners that are effective and perceived as fair by prisoners.

I) A comprehensive drug strategy to incorporate all aspects of prisoners' drug use. This should be based on a clear understanding of the current nature of offender drug use patterns and incorporate a strategic approach covering drug interdiction, the prison power structure and drug trade, use of prescription medication, the role of Health Services, detoxification, opiate dependency and the role of education, programmes and occupation.

j) Relevant and effective medical and treatment services.

k) An effective regulatory mechanism. Every aspect of the operations of prisons should be subject to qualified inspection on a random and regular basis.

*l) Adequate prisoner services such as accommodation, programmes, access to telephones, visits, recreation and work.*¹⁹⁸

13.3 The Committee has touched on most of the above recommendations, with the important addition of alternative sanctions to imprisonment. With a greatly reduced prison population, the Western Australian prison service would be better able to provide the health services, programs and level of care quite properly expected of it.

13.4 Many of the above objectives can be clearly established as minimum requirements with the introduction of Service Level Agreements.

13.5 The Committee was impressed with the operation of the Service Level Agreement at Strangeways Prison in Manchester. The Committee visited Strangeways Prison, observed the running of the prison and met with the Governor. The Committee was provided with a copy of the Manchester Service Level Agreement, the important features of which are set out below.

¹⁹⁸ Ibid, pp. 144-146.

- 13.6 A Service Level Agreement clarifies roles and responsibilities and provides comprehensive and unambiguous statements of requirements, standards and expected outcomes from service providers. It provides a means of focussing management effort on specific outcomes. Appropriate financial arrangements and performance review provide a framework for financial and operational accountability.

What is a Service Level Agreement?

- 13.7 A Service Level Agreement is a formal agreement between two government departments/agencies, or two parts of the same department or agency (or any interdependent unit), for the provision of a service by one to the other. A Service Level Agreement usually includes arrangements for the service provider to be funded by the customer for the cost of delivering the service. A Service Level Agreement, although having many features of a contract, is not legally enforceable as the Crown is indivisible in law (that is, government departments and agencies all represent the Crown and the Crown cannot sue itself).

Manchester Prison

- 13.8 Manchester Prison is the only prison in the United Kingdom operating under a Service Level Agreement.
- 13.9 After a serious riot in 1990, Manchester Prison was completely refurbished. It was virtually rebuilt around the core of Victorian galleried wings and some other original buildings. Located on the very edge of the city centre it is easily accessible for visits and for links to courts.
- 13.10 The Governor and selected management staff successfully bid for the running of Manchester Prison after a competitive tender against six other bidders. The bid from the "in-house" team was judged by HM Prison Service to offer the best combination of quality, price and confidence of delivery. The Service Level Agreement was entered into between the Governor of HM Prison Manchester and the Head of the Contracts and Competition Group on behalf of HM Prison Service.
- 13.11 The Service Level Agreement is modelled on the contracts which exist between HM Prison Service and the private sector prison operators in the United Kingdom. The heart of the Service Level Agreement is in a schedule which contains performance criteria representing the measurable outputs of fulfilment of service. The performance criteria reflect HM Prison Service targets. The Service Level Agreement commits the Governor to ensuring that Manchester Prison fully meets the performance criteria using only the resources provided for that purpose. It therefore follows that the Governor must be given the maximum discretion possible to manage the process (that

is, inputs) in the way he/she thinks will best ensure that the required outputs are delivered. However, in some areas of security and control HM Prison Service believes that common approaches need to be followed to ensure public confidence irrespective of who manages a prison. These standards apply to all prisons, including contract managed prisons.

- 13.12 Manchester Prison's budget is "ring fenced" which means that it cannot be unilaterally reduced by HM Prison Service. Furthermore, HM Prison Service cannot impose further efficiency gains on Manchester Prison for the term of the Service Level Agreement as HM Prison Service judges that it has already made substantial savings from Manchester Prison stemming from the original competition.
- 13.13 HM Prison Service can alter the service it gets from Manchester Prison (including increasing Manchester Prison's obligations under the Service Level Agreement), but only by entering into an implementation plan with the Governor setting out an estimate of how the Service Level Agreement Price (that is, the prison's budget) would need to be adjusted to allow implementation of the change without affecting the rest of the service.
- 13.14 The benefits of the Service Level Agreement have been to achieve the designated efficiency savings to HM Prison Service and to improve drastically the prison regime (average time out of cells, etc.). The benefit to the management and staff at Manchester Prison has been in having a signed and binding agreement specifying what they will deliver and outlining the resources required to provide a specified standard of service.
- 13.15 In the event of non-compliance with any of the requirements of the Service Level Agreement (including meeting the performance criteria) Manchester Prison may be held in default and failure to remedy the default may result in the Service Level Agreement being terminated.
- 13.16 The staff at Manchester Prison continue to work for HM Prison Service and their pay and conditions of service are identical to those of staff at any other public sector prison. The Independent Inspector of Prisons in the United Kingdom considers Manchester Prison to be a very important prison in the prison system because of what it represents for the future.
- 13.17 The Independent Inspector of Prisons of the United Kingdom indicated to the Committee that Service Level Agreements are the way ahead for HM Prison Service, not least because they represent a most effective tool for estimating the true cost of not just a prison, but of all activities conducted within it, particularly those designed to protect the public by tackling re-offending. They also allow more precise estimating,

and therefore allocating, of resources required to satisfy the operational role of a prison.

- 13.18 The Committee met with the Governor and staff of Manchester Prison, and were impressed by the enthusiasm and care with which they have responded to the opportunity and the challenge that introducing and operating the Service Level Agreement has provided. The Committee noted the sense of ownership that permeated the whole staff, which appeared to be a positive motivating factor.
- 13.19 Through the Service Level Agreement, the staff at Manchester Prison, have the advantage of being told precisely what is expected of them, for which they are then resourced, which provides a much more exact explanation of the cost of imprisonment in those prisons than is possible elsewhere. Because Service Level Agreements have to be set according to the role and type of each prison, they are, in themselves, useful tools for clarifying the role of a prison within a complex system. To work properly they require continuous self-audit, to ensure compliance, and compliance monitoring becomes an important responsibility.
- 13.20 The effective use of a Service Level Agreement at Manchester Prison has demonstrated that this approach can work and in our opinion this model can be adapted for use within the Western Australian prison system. The Committee notes however that considerable work is needed to identify the nature and structure of Service Level Agreements as they would operate in the Western Australian prison system. The Committee also notes that the development of Service Level Agreements also requires a clarification of objectives and performance criteria to be used by the Offender Management Division within the Ministry of Justice. The Committee stresses that there must be proper internal and external regulatory structures and monitoring processes in place to ensure compliance with the Service Level Agreements.

RECOMMENDATION 21

- 13.21 **The Committee recommends that Service Level Agreements should be adopted as a pilot scheme for prisons in Western Australia and that a working group be established with broad representation to draft appropriate Service Level Agreements.**

CHAPTER 14

OUTSIDE SCRUTINY OF INMATE MANAGEMENT

Independent Inspector of Prisons

- 14.1 In evidence presented to the Committee in 1998, it was suggested there should be an independent inspectorate role within the Western Australian prison system along similar lines to the independent inspectorate model operating in the United Kingdom.¹⁹⁹
- 14.2 The role of the United Kingdom Independent Prisons Inspectorate is built around a five yearly program of announced inspections of every prison establishment as well as a program of unannounced and follow-up inspections, in addition to preparing two thematic reviews per year on issues affecting the treatment and conditions of prisoners.²⁰⁰ This involves inspections of 139 prisons with a total prisoner population of about 65,000. The establishment of an Inspectorate of Prisons, independent of the Prison Department, and the publication of its reports, are considered an important part of the process in the United Kingdom of increasing public understanding of the prison system.
- 14.3 While in the United Kingdom, the Committee met with Mr Colin Allen, Deputy Chief Inspector of Prisons. Mr Allen conveyed to the Committee a range of matters in relation to the running of an Independent Inspectorate and how the prison system in the United Kingdom is conducted.
- 14.4 The influence of the Independent Inspectorate in the United Kingdom on the operation of HM Prison Service is significant:

“In the United Kingdom, the establishment of an Inspectorate of Prisons, independent of the Prison Department, and the publication of its reports, are considered a vital part of the process of increasing public understanding of the prison system. HM Chief Inspector also, however, draws attention - quite rightly - to the serious implications of some of the major problems facing the Prison Service such as overcrowding, the poor quality of the regime in local prisons in particular and the maintenance of the prison estate. All are direct

¹⁹⁹ Professor Richard Harding's evidence to the Committee, March 11 1998, p. 9.

²⁰⁰ It carries out its functions under section 5A of the *Prisons Act 1952* (UK) as amended by section 57 of the *Criminal Justice Act 1982* (UK).

consequences of the mismatch between the demands made upon the Prison Service and the resources available to it; a mismatch which the Government has acknowledged and which it is the aim of Government policy to correct."²⁰¹

14.5 The Statement of Purpose of the Chief Inspector of Prisons aims at a reduction in crime by providing for the inspection of the treatment and conditions of those in HM Prison Service custody. This informs Ministers, Parliament and others and influences the planning process.

14.6 The most eloquent advocate for the work of the Independent Inspectorate is the Independent Inspector himself:

*"I interpret the role of the Chief Inspector of Prisons as being to monitor, and hopefully influence, treatment and conditions of prisoners. I couple this with monitoring and influencing treatment and conditions of staff, because I do not believe that conditions will be right for prisoners unless conditions are right for staff."*²⁰²

14.7 The role of the Chief Inspector also involves constructive criticism:

"In exercising my responsibilities for monitoring and influencing the treatment and conditions of prisoners, I report on what I find and make recommendations for improvements to delivery. It will not have escaped people's notice that I have appeared to concentrate as much on the means of delivery, namely the actions of Prison Service senior management, as on the point of delivery, namely the prison being inspected. I have done this quite deliberately, because prisons need direction and leadership, not just resources, and the quality of that leadership is a hugely important factor in the achievement of objectives. Unless senior management is ruthless in insisting on the maintenance of standards, never tolerating anything less than what is required, while recognising and enthusing over what is good, or better, no operational organisation can hope to succeed. ... Prisons can only do what they can with what they have been given, and, if this is insufficient for their task, it is the task of senior management to try to obtain it for them. Independent and rigorous inspection is part of the penal system, but I remain concerned at the number of times that I

²⁰¹ Rt. Hon. William Whitelaw CH MC MP, Secretary of State for the Home Department, in a foreword to the first report of Her Majesty's Chief Inspector of Prisons, March 1982, Cmnd 8532.

²⁰² HM Chief Inspector of Prisons for England and Wales, April 1996 to November 1997, *Sixteenth Annual Report*, p 6.

find myself reporting on poor standards in prisons, which I would have expected senior management to have identified and eliminated, not leaving them to be discovered by the Inspectorate on what are, necessarily, only infrequent visits to each prison. ... If therefore I appear critical of some aspects of senior management it is because of the impact that it has on the treatment and conditions of prisoners on which I am required to report.”²⁰³

- 14.8 The inspection process also contributes to the sharing of good practice between prisons:

“When I addressed the Prisons Board recently it was put to me that they felt encouraged because so many of the items I was advocating were being thought about or were already in hand. That may be so, but it is one thing to be thinking about something at Headquarters, it is another thing entirely to oversee its introduction on the ground, and it is at ground, or prison level, that I see effects on the treatment and conditions of prisoners, on which I am required to report.

It is not as if the Prison Service is not thinking about these things. But good practice is something they are very bad at sharing. The “not invented here” syndrome comes into play. There are some very good examples of prisoner information around, there are very good examples of sentence planning on a computer but only used in one prison, not transported to others. They could help themselves if they shared information much more quickly.”²⁰⁴

- 14.9 The sharing of information and the exchange of ideas has greatly assisted the work of prison staff who work in conditions that survey after survey reveal have high levels of stress:

“It is no surprise to me that Prison Officers consistently top the list of stressful jobs, whenever these are analysed, because some of them have to deal, day-after-day, with very difficult, dangerous and disruptive people, who are only committed to their care because of a crime that they have committed against the community to which the majority of them will ultimately return. It is their job both to ensure that those committed to prison are kept there for the period of their

²⁰³ Ibid.

²⁰⁴ Sir David Ramsbotham, Chief Inspector of Prisons, Minutes of Evidence Taken Before the House of Commons Home Affairs Committee, Tuesday March 10 1998.

*sentence, in safety but also ensuring the safety of the community, and that sentence time is used to encourage and enable prisoners not to re-offend, using all the means that they have at their disposal, and I can only admire them for what they do.”*²⁰⁵

- 14.10 In the above paragraphs, the Chief Inspector of Prisons has concisely articulated problems which beset not just the British prison system but the Western Australian prison system as well.
- 14.11 The Committee notes the effectiveness of the Chief Inspector of Prisons of the United Kingdom in bringing to the attention of the Parliament and the wider public issues relating to the operation of prisons in the United Kingdom. The Committee notes that in Western Australia an Office of Inspector of Custodial Services has recently been established.²⁰⁶ The Committee supports the establishment of an independent inspector of prisons as part of a total revision of the external accountability mechanisms that apply to Western Australian prisons.
- 14.12 The Committee is especially pleased to note that the Inspector of Custodial Services has been equipped with wide-ranging powers to enter and inspect Western Australian prisons at any time without notice.²⁰⁷
- 14.13 The Chief Inspector of Prisons of the United Kingdom is assisted by the work of the Prisons Ombudsman and prison Boards of Visitors. The role of these parties will be discussed briefly below.

Dealing with prisoners' complaints in the United Kingdom

- 14.14 Failure to take prisoners' grievances seriously can have damaging consequences for both the individual's rehabilitation and for the prison system as a whole. The fair and just treatment of prisoners is in the interests of the wider criminal justice system as well as the general public.
- 14.15 As the Smith Report revealed:

“A major source of tension for both prisoners and staff was the current grievance procedures. Some staff felt they were under

²⁰⁵ Ibid.

²⁰⁶ S18 of the *Prisons Amendment Act 1999* inserts Part XA “Inspector of Custodial Services” after s109 of the *Prisons Act 1981*. The Office of the Inspector of Custodial Services formally commenced operation as of June 18 2000.

²⁰⁷ Ss109I-109K of the *Prisons Act 1981* as amended by s18 of the *Prisons Amendment Act 1999*.

constant attack from the Ombudsman whilst prisoners had little faith in the current grievance procedures.”²⁰⁸

- 14.16 The Committee had the opportunity to review the prisoner grievance system operating in the United Kingdom.
- 14.17 In addition to internal grievance procedures, the United Kingdom has a Prisons Ombudsman and each prison has a Board of Visitors. Every prison has a formal request/complaint procedure.
- 14.18 Prisoners can raise complaints in the United Kingdom in the following ways:
- i. Formal requests/complaint procedure - submitted through a set of prescribed methods.
 - ii. Informal procedure - taken to personal officer/line manager.
 - iii. Option of speaking to Board of Visitors.
 - iv. To approach external sources (solicitor or other source) which then comes back into the prison. Prisoners are increasingly turning to external grievance procedures.
- 14.19 Often prisoners raise complaints externally to solicitors because HM Prison Service is obliged to formally respond to solicitors who write to prison governors.

Grievance procedure in Western Australia

- 14.20 The United Kingdom model not only offers a range of parties to whom prisoner complaints can be made, but also imposes an orderly procedure in which this may be accomplished. Until a prisoner has exhausted the “request/complaint” procedure, the prisoner cannot go to the Prisons Ombudsman.
- 14.21 Under the current Western Australian grievance procedures, a prisoner can make a complaint directly to the Ombudsman, Human Rights Commissioner, Attorney General, Superintendent and Members of Parliament. There is no process to ensure that duplication is avoided in handling complaints or that internal complaint processes are first followed or that action is taken when complaints are justified. This highlights a serious flaw in the current system for dealing with prisoner complaints. The current grievance and complaints system does not have clear lines of responsibility and accountability. This in part stems from poorly defined minimum standards and a

²⁰⁸ *Report of the Inquiry into the Incident at Casuarina Prison on 25 December 1998*, March 19 1999, p. 137.

confused organisational structure, which should be rectified by the introduction of Service Level Agreements.

United Kingdom Prisons Ombudsman

14.22 In the United Kingdom in October 1994 the first Prisons Ombudsman was appointed. The Prisons Ombudsman has the following statement of purpose:

*“To provide prisoners with an independent and effective avenue of complaint which is fair and even-handed, has the confidence of prisoners and the Prison Service, and contributes towards a just prison system.”*²⁰⁹

14.23 The Prisons Ombudsman’s main responsibility is to investigate complaints about prisoners’ treatment in both public and privately run prisons, including disciplinary decisions, but excluding complaints about convictions, sentence lengths and release dates. All internal procedures have to be exhausted before a complaint can be made to the Prisons Ombudsman. His powers are limited to making recommendations and do not extend to the award of compensation, although he may recommend an *ex gratia* payment.

14.24 The role of the Prisons Ombudsman is to make a significant contribution not just to the resolution of individual problems but also to promote a fairer and more just prison system.

14.25 In Western Australia the State Ombudsman, currently Mr Murray Allen, as part of his general role of investigating complaints against public sector agencies, undertakes duties similar to those of the specialist United Kingdom Prisons Ombudsman.

Boards of Visitors in the United Kingdom

14.26 The role of Boards of Visitors in the United Kingdom is to:

- a) hear complaints;²¹⁰
- b) report any abuse immediately to the Secretary of State;²¹¹ and
- c) enquire into any report made to them that a prisoner's health, mental or physical, was likely to be affected by any condition of

²⁰⁹ 1998/1999 United Kingdom Prisons Ombudsman’s Annual Report.
[<http://www.penlex.org.uk/pages/oms9901.html#a>]

²¹⁰ Prison Act 1952 (UK), s6.3.

²¹¹ Prison Rules 1969, Rule 94(4) (Prison Rules 1999, Rule 77(4)).

imprisonment.²¹²

14.27 The members of the Boards of Visitors are considered to perform a useful function in maintaining the standards of prisons by having the opportunity to get to know the operations of a specific assigned prison. Neither the Prisons Ombudsman nor the Chief Inspector of Prisons is in the position to monitor a specific prison in such a regular and comprehensive way. The Independent Inspector (and to a lesser extent the Prisons Ombudsman) closely reviews the annual reports of the Boards of Visitors.

14.28 The role of the Prisons Ombudsman and Boards of Visitors are a complementary part of the external system of accountability. The important role that Boards of Visitors play in ensuring accountability of the HM Prison Service has been vividly demonstrated recently in the case of Wormwood Scrubs Prison.

14.29 In its Annual Report for 1997, the Wormwood Scrubs Board of Visitors noted:

*“Another principal area of concern is inmate allegations of abuse by officers ... There were investigations and none of the complaints were upheld. This may have been the right conclusion in every case but because investigations are carried out internally it supports the scuttlebutt of whitewash and collusion. Some names crop up regularly in these allegations and some staff have privately acknowledged to us that 'it goes on'.”*²¹³

14.30 Lord Justice Woolf, following the Strangeways Riot, observed that:

*“A prisoner, as a result of being in prison, is peculiarly vulnerable to arbitrary and unlawful action.”*²¹⁴

14.31 Although Lord Woolf’s observation was made almost a decade ago, the recent charging of more than 25 HM Prison Service staff from Wormwood Scrubs Prison for alleged assaults against prisoners indicate his words are still valid today.²¹⁵ In 1999, the Chief Inspector of Prisons described the regime of Wormwood Scrubs Prison as “callous and evil”, and to which successive prison governors and directors of the HM Prison Service had turned a blind eye for years.²¹⁶ The investigations initiated by the

²¹² *Prison Rules 1969*, Rule 95(3) (*Prison Rules 1999*, Rule 78(3)).

²¹³ *1997 Wormwood Scrubs Board of Visitors Annual Report*.
[<http://www.penlex.org.uk/pages/bvworm97.html>]

²¹⁴ *Prison Disturbances: April 1990*, Report of an Inquiry by Rt. Hon. Lord Justice Woolf and Hon. Judge Stephen Tunim, CM 1456, HMSO, London, para 14.293.

²¹⁵ “Silencing Rambo (proposed merger of British prison and probation inspectorates would eliminate job of chief inspector of prisons David Ramsbotham)”, *The Economist (US)*, April 29 2000, v355 i8168, p. 54.

²¹⁶ Ibid.

Director General of Prisons that resulted in the prosecution of the Wormwood Scrubs Prison staff arose directly from complaints raised in reports by the Board of Visitors, the Prisons Ombudsman, and the Chief Inspector of Prisons.

14.32 The Boards of Visitors at specific prisons are an important part of the accountability process and can alert other accountability agencies to problems. For example, the Holloway Board of Visitors drew attention to unacceptable conditions at Holloway Women's Prison and the Chief Inspector acted upon the Board of Visitors' comments by visiting Holloway Women's Prison in 1997. Following the inspection, the Chief Inspector arranged a press conference at which he directed severe criticism at prison management and conditions. About six months later, the Chief Inspector returned and noted that there had been a radical upgrading of conditions and facilities at the prison.

14.33 The Chief Inspector of Prisons acknowledged the role of the Holloway Board of Visitors. In his Annual Report for 1996/97 Sir David Ramsbotham wrote:

*"It is of interest that, in addition to the fact that it was the Board of Visitors that drew attention to the conditions in HMP Holloway on which I reported last year, the Board of Visitors have subsequently drawn my attention to unsatisfactory conditions in a number of other prisons, encouraging me to carry out unannounced inspections and highlight problems in published reports. This is an example of how their genuine interest in the treatment and conditions of prisoners in their prisons, coupled with the experience that they bring to the judgements that they make, must not be discounted."*²¹⁷

Official Visitors scheme in Western Australia

14.34 The concept of official visitors encourages greater community involvement in the corrective services system. It assists in "opening up" the system and is an enhanced accountability mechanism.

14.35 A prison visitors' scheme operates in Western Australia under section 54 of the *Prisons Act 1981*. However, there is anecdotal evidence that this scheme is not operating as effectively as it could in some prisons and is largely irrelevant to the system of accountability.

14.36 The Committee considers that there is a need to put in place a more coordinated system of outside scrutiny of prison operations in Western Australia. The monitoring grievance and complaint resolution system needs to operate within the various levels

²¹⁷ 1996/1997 *Her Majesty's Chief Inspector of Prisons for England & Wales Annual Report*.
[<http://www.penlex.org.uk/pages/ciar96.html>]

of offender management. Whilst the Committee is encouraged by the introduction of the Independent Inspector of Custodial Services in Western Australia to deal with systemic issues, there are still no effective institutional level mechanisms to deal with prisoner grievances and complaints on a daily basis.

RECOMMENDATION 22

- 14.37 **The Committee recommends that a system of Official Visitors (similar to the Board of Visitors in the United Kingdom system) be established. It is suggested that at least three Official Visitors (preferably one legally qualified and two community representatives) be appointed by the Minister and assigned to each prison (for a specified period) and that the Official Visitors report directly to the Minister in accordance with an established reporting procedure on management, policy and prisoner grievance issues. It is also recommended that an Annual Report of Official Visitors be produced and the results incorporated into the reporting requirements of the Independent Inspector of Custodial Services.**

**HON MARK NEVILL MLC
CHAIRMAN**

JUNE 27 2000

APPENDIX A: TRAVEL ITINERARY

Meetings in the United Kingdom

Monday, February 1 1999

Foreign and Commonwealth Office

Old Admiralty Building

The Mall, SW1, London

- Mr Peter Bullock, Head of Asia Pacific Group
- Ms Azra Zakir, Programme Organiser
- Mr John Sandy, Accompanying Officer

South London Drugs Prevention Centre

190 Great Dover Street, SE1, London

- Ms Judith Barker, Team Leader
- Mr Chris Apostolides, Senior Development Officer

Government of Western Australia European Office

Australia Centre, Cnr Strand and Melbourne Place, WC2, London

- Hon Clive Griffiths, Agent General for Western Australia
- Mr Stuart Russell, Senior Manager, Investment and Trade
- Mr Brian Barnes, Manager, Administration and Finance
- Ms June Phillips, Investment and Information Officer

The International Centre for Prison Studies

School of Law, King's College

75-79 York Road, SE1, London

- Dr Andrew Coyle, Director
- Mr Andrew Barclay, Project Director
- Ms Vivien Stern, Senior Research Fellow

Tuesday, February 2 1999

HMP Lowdham Grange, Nottingham

(Operated by Premier Prisons Services Ltd)

- Mr Joe Mullens, Director of Operations
- Mr David Bramley, Deputy Director
- Mr Les Bolam, Industries Manager
- Mr Colin Carr, Head of Housing
- Mr David Kirkham, Assistant Director, Programmes

Representatives from Board of Visitors

Wednesday, February 3 1999

HMP Manchester (“Strangeways” prison)

- Mr John Smith, Governor
- Mr Bob McColm, Deputy Governor
- Mr Cormac Martin, Governor for Regimes
- Ms Anne Lacey, Education Coordinator
- Dr Wils Walker, Clinical Director, Healthcare Centre
- Mr Bill Knight, Principal Officer, Induction Unit
- Mr Mike Winston, Industrial Manager
- Mr Stewart Millikin, Governor of Operations
- Ms Sue Morrison, Deputy Governor
- Mr Kevin Flynn, Prison Officer
- Mr Mick Burns, Prison Officer

Thursday, February 4 1999

The Howard League for Penal Reform

708 Holloway Road, N19

- Ms Frances Crook, Director

Prison Reform Trust

Old Trading House

15 Northburgh Street, EC1

- Mr Stephen Shaw, Director
- Mr Stephen Nathan, Journalist and Researcher

Home Office**Contracts & Competition Group**

Abell House, John Islip Street, SW1

- Mr David Kent, Head of Group

HM Inspectorate of Prisons

Room 1008

50 Queen Anne's Gate, SW1

- Mr Colin Allen, Deputy Chief Inspector

Friday, February 5 1999**HMP Bullingdon**

Bicester, Oxfordshire

- Mr Luke Serjeant, Governor
- Mr John Cann, Deputy Governor
- Mrs Carole Allen, Director of Staff Development and Administrative Services
- Mr Bob Kennedy, Senior Officer
- Mrs Mandy Holliss, Administrative Officer, Staff Training Department
- Mr Flinton, Senior Officer, Prisoner Grievance System
- Mr Geoff Emerson, Senior Probation Officer
- Mr Mike Holliss, Officer
- Ms Ruth Carter, Administrative Officer

Meetings in the Netherlands

Monday, February 8 1999

Penitentiary Institution Zwolle

- Mr A Vroom, Managing Director

Tuesday, February 9 1999

Ministry of Justice

The Hague

- Mr M A G Rutter, Director of Prison Services

National Agency of Correctional Institutions

- Dr F J M Hoogenboom, Director
- Mr N M Willems, Public Relations
- Prof Dr Josine Junger-Tas, (from University of Leyden - Institute of Criminology)

Wednesday, February 10 1999

Penitentiary Institution Noordsingel

Rotterdam

- Mr Versteeg, Director

Meetings in Germany

Thursday, February 11 1999

State Parliament of Lower Saxony

Hannover, Germany

- Prof Rolf Wernstedt, President of the Parliament

Parliamentary Sub-Committee on Prisons and Support for Offenders

(a sub-Committee of the Legal and Constitutional Committee)

SPD (Social Democratic Party) Members

- Heike Bockmann
- Elke Muller
- Jacques Voigtlander

CDU (Christian Democratic Union)

- Ursula Kortner, Lutz Stratmann

The Greens

- Thomas Schroder

Lower Saxony Ministry of Justice

- Am Waterlooplatz 1, Hannover
- Burkhard Hasenpusch, Head of Division, Prison Services/ Probation/ Parole

Friday, February 12 1999

Criminology Research Institute of Lower Saxony

Lutzerodestr 9, House 4, Hanover

- Prof Dr Christian Pfeiffer, Director
- Dr Werner Greve, Deputy Director
- Dr Drewniac
- Dr Hoyneck, Chair German Juvenile Judges Association

Monday, February 15 1999

Ministry of Justice - Berlin

Salzburger Strasse 21-25

10825 Berlin-Schoneberg

- Dr Christoph Flugge, Director of Prisons

Meetings in the United States of America

Tuesday, February 16 1999

U.S. Department of Justice

800 K Street, NW

Washington DC 20531

- Prof Frank Porpotage, Deputy Director, Training and Technical Assistance Division, Office of Juvenile Justice and Delinquency Prevention

Federal Bureau of Prisons

320 First Street, NW

Washington DC 20534

- Mr William G. Saylor, Deputy Director, Federal Bureau of Prisons
- Ms Fay Pollard, Office of Public Affairs
- Dr Scott D. Camp, PhD, Research Analyst, Office of Research

Wednesday, February 17 1999

United States Senate

224 Dirkin Senate Office Building

Washington, DC 20510

- Mr Michael Kennedy, Counsel, Senate Judiciary Committee

U.S. Department of State

2201 C Street, NW

Washington, DC 20520

- Mr Emil Skoden, Director, Office of Australia and New Zealand Affairs, Bureau of East Asian and Pacific Affairs
- Mr Phillip L. Antweiler, Australia Desk Officer

Thursday, February 18 1999**Metropolitan Detention Centre**

100 29th Street, Brooklyn

- Mr Scott Middlebrooks, Executive Assistant

Department of Probation of the City of New York

115 Leonard Street, New York, New York

- Mr Raul Russi, Commissioner
- Mr Jack Ryan, Director of Public Information
- Mr Frank Domurd, Director of Staff and Organizational Development/Grants

Friday, February 19 1999**Rikers Island Correctional Center**

The City of New York Department of Corrections

- Mr John J. Mohan, Director, Media Services
- Dr John Burgess M.D., Director of Mental Health

APPENDIX B: WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Date	Witness
11/03/98	Crime Research Centre Professor Richard Harding, Director
01/04/98	Ombudsman’s Office Mr Murray Allen, Parliamentary Commissioner
15/04/98	Mr Peter Jones, Chairman Police/Justice Core Functions Project
15/04/98	Ministry of Justice Mr Kevin Payne, Executive Director, Offender Management
11/05/98	Ministry of Justice Mr Kevin Payne, Executive Director, Offender Management
16/09/98	Ministry of Justice Mr Athol Jamieson, A/Exec Director, Offender Development
20/01/99	Prisoners’ Advisory Support Service Ms Dorothy Goulding, Chairman
17/11/99	Ministry of Justice Mr Alan Piper, Director General Mr Andrew Marshall, Director Policy & Research Ms Annette Wells, A/General Manager Community Based Services Mr Papandreaou, A/Director Community Corrections
24/11/99	Mr Con Zempilas, Chief Stipendiary Magistrate
	Witness “PA” (See APPENDIX D)
	Witness “PB” (See APPENDIX D)
	Witness “PC” (See APPENDIX D)

	Witness "PD" (See APPENDIX D)
	Witness "PE" (See APPENDIX D)
	Witness "PF" (See APPENDIX D)
	Witness "PG" (See APPENDIX D)

APPENDIX C: WESTERN AUSTRALIAN PRISONS VISITED BY THE COMMITTEE

During the course of its inquiry into the allocation and expenditure of financial resources with the Western Australian prison system the Committee visited the following prisons and detention centres in Western Australia:

- Bandyup Women's Prison x 3 visits
- Canning Vale Prison x 3 visits
- Casuarina Prison x 3 visits

APPENDIX D: EVIDENCE WHICH THE COMMITTEE RECOMMENDS THAT THE LEGISLATIVE COUNCIL SUPPRESS PURSUANT TO STANDING ORDER 324

Some evidence (both oral and documentary) was provided to the Committee in private session during the course of the inquiry. The relevant evidence contains details of specific events and individuals.

The Committee is of the opinion that there would be a genuine and immediate threat to the wellbeing of a number of individuals if certain evidence that has been provided to the Committee during the inquiry is published. The public release of this evidence is likely to expose a number of witnesses and other individuals named in the evidence to physical danger, harassment and victimisation.

A large number of persons who are identified in the evidence and who are the subject of serious allegations in that evidence, have also not been given an opportunity to respond to those allegations.

Furthermore, the Committee has formed the view that, although it has found the evidence provided in private session during the inquiry to be valuable in providing some contextual background as to the impact of the prison system on the lives of the individuals within it, this evidence is not directly related to the broader financial management issues on which the Committee has focused during the inquiry. As such, this evidence will not be specifically referred to in the text of the Committee's report to the Legislative Council on the inquiry.

The Committee is of the opinion that it is not practical to attempt to excise portions of the relevant evidence, whether that evidence be in the form of a document or a transcript of evidence of a witness. Accordingly, the Committee seeks from the Legislative Council a suppression order with respect to the relevant documents and transcripts of witnesses' evidence in their entirety.

The relevant documents and transcripts of evidence of witnesses have been separated from the other evidence gathered during the inquiry, and have been marked for identification purposes as follows:

- Document "P1"
- Document "P2"
- Document "P3"

- Document "P4"
- Document "P5"
- Document "P6"
- Document "P7"
- Document "P8"
- Document "P9"
- Document "P10"
- Document "P11"
- Document "P12"
- Document "P13"
- Document "P14"
- Document "P15"
- Document "P16"
- Document "P17"
- Document "P18"
- Document "P19"
- Document "P20"
- Document "P21"
- Document "P22"
- Document "P23"
- Document "P24"
- Transcript of Evidence of Witness "PA"
- Transcript of Evidence of Witness "PB"

- Transcript of Evidence of Witness “PC”
- Transcript of Evidence of Witness “PD”
- Transcript of Evidence of Witness “PE”
- Transcript of Evidence of Witness “PF”
- Transcript of Evidence of Witness “PG”

