

Select Committee on the Increase in Prisoner Population

Final Report

Ordered to be printed 13 November according to the
Resolution of the House

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Council. Select Committee on the Increase in Prisoner Population.
Final Report / Select Committee on the Increase in Prisoner Population. [Sydney, N.S.W.] :The Committee, 2001. – 190p. ;
30 cm. (Parliamentary paper ; no. 924)

“Ordered to be printed according to resolution of the House”.

Chair: John Ryan.

ISBN 0734764685

Prisoners—New South Wales.

I. Title

II. Ryan, John.

III. Series: New South Wales. Parliament. Legislative Council. Select Committee on the Increase in Prisoner
Population. Report ; Final Report

IV Series: New South Wales. Parliament. Parliamentary paper ; no. 924

365.6 (DDC21)

How to contact the committee

Members of the Select Committee can be contacted through the Committee Secretariat. Written correspondence and inquiries should be directed to:

The Clerk

Select Committee on the Increase in Prisoner Population

Legislative Council

Parliament House, Macquarie Street

Sydney New South Wales 2000

Internet www.parliament.nsw.gov.au

Email scipp@parliament.nsw.gov.au

Telephone 02 9230 3544

Facsimile 02 9230 3416

Terms of Reference

House Resolved 17 November 1999, 2nd Session, Minutes of Proceedings No. 23, pp 234-6

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

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

House Resolved 6 September 2000, 2nd Session, Minutes of Proceedings No. 62, p634

That the reporting date for the final report of the Select Committee on the Increase in Prisoner Population be extended from 1 October 2000 to 29 June 2001.

House Resolved 20 June 2001, 2nd Session, Minutes of Proceedings No. 107, p1032

That the reporting date for the final report of the Select Committee on the Increase in Prisoner Population be extended from 29 June 2001 to 31 August 2001.

House Resolved 18 September 2001, 2nd Session, Minutes of Proceedings No. 118, p1148

That the reporting date for the final report of the Select Committee on the Increase in Prisoner Population be extended to 31 October 2001.

Committee Membership

The Hon John Ryan MLC Liberal Party (Chair)

Ms Lee Rhiannon MLC The Greens (Deputy Chair)

Ms Jan Burnswoods MLC Australian Labor Party

The Hon Dr Arthur Chesterfield-Evans MLC Australian Democrats

The Hon Jenny Gardiner MLC National Party

The Hon Peter Primrose MLC Australian Labor Party

The Hon Janelle Saffin MLC Australian Labor Party

Table of Contents

	Chair's Foreword	xii
	Executive Summary	xiv
	Summary of Recommendations	xviii
Chapter 1	Introduction	1
	Terms of Reference	1
	Interim Report and the Government Response	1
	Conduct of the inquiry	1
	Scope of this Report	2
	Structure of the Report	2
Chapter 2	The NSW Prison System: role of imprisonment; sentencing legislative framework; and correctional centres.	4
	Introduction	4
	The Role of Imprisonment	4
	Legislative framework for sentencing and imprisonment	6
	<i>The Crimes (Sentencing Procedures) Act</i>	6
	<i>The Crimes (Administration of Sentences) Act</i>	7
	NSW Correctional Centres and Imprisonment	8
	Maximum Security	8
	Medium Security	8
	Minimum Security	9
	Total Capacity of Prison System	10
	Geographic Location	10
	Conclusion	12
Chapter 3	Size of the prison population	13
	Introduction	13
	New South Wales	13
	Current NSW prison population	13
	Rate of increase in NSW prison population	13
	Increase in NSW Imprisonment Rate	15

	Increase in Australian Imprisonment Rates	15
	Increase in Prison Population	15
	Increase in Imprisonment Rates	16
	New South Wales vs Victoria	16
	International Prison Population and Imprisonment Rates	17
	Conclusion	18
Chapter 4	Profile of prison population	19
	Introduction	19
	General characteristics of the NSW prison population	19
	Inmate Health	19
	Socio-economic status	20
	Profiles of Specific Groups within Prison Population	21
	Indigenous Inmates	21
	Inmates with an Intellectual Disability	22
	Inmates from a Non-English Speaking Background	24
	Inmates with a Mental Illness	25
	State Wards and Prison	25
	Vulnerable Prisoners	26
	An Ageing Inmate Population	27
	Offences resulting in imprisonment	28
	Length of sentences	29
	Repeat Offenders	30
	Institutional Security Classification of Inmates	31
	Sentenced/unsentenced inmates	32
	Conclusion	32
Chapter 5	Analysis of the increase in the prison population	33
	Introduction	33
	General Factors: immediate and underlying causes	33
	Police activity	34
	Arrest rates	34
	Criminal charges coming before the courts	35
	Police Charges	36
	Crime rates	36
	Remand	40

	Increase in the number of inmates on remand	40
	Factors contributing to the increase in the remand population: Bail refusal	42
	Factors contributing to the increase in the remand population: Changes to Bail Act	45
	Factors contributing to the increase in the remand population: Persons unable to meet bail conditions	47
	Factors contributing to the increase in the remand population: Length of time on remand	48
	Factors contributing to the increase in the remand population: Conclusion	48
	Processing of cases by the courts	48
	Increased Conviction Rates	49
	Court Delays and influence on Remand population	50
	Severity of court decisions	50
	Guideline Judgements	52
	Breach of orders	56
	The Complexity of the causes of the increase	58
	Research Needs	58
	Information relating to judicial decisions	61
	Whole of Government Approach	62
	Conclusion	63
Chapter 6	Incarceration	65
	Introduction	65
	Changing sentencing policies: impact on the aims of incarceration	65
	The Shift Away from Incarceration as Rehabilitation	65
	Australian Policies Since the 1980s	67
	Guideline Judgements	70
	Evidence of Effectiveness of Incapacitation	71
	Increasing Costs of Incarceration	72
	Funding of Department of Corrective Services	72
	Trends in Increasing Costs of Incarceration	74
	Inmate management	76
	Aims of Throughcare Program	76
	Classification System and Case Management	77
	ICAC Report	77
	Recent Criticisms of Case Management	78
	Prison programs	80
	Drugs and alcohol	82
	Programs for Sex Offenders	83
	Violence Prevention Program	86
	Correctional Industries	87

	Education	89
	Difficulties in Program Delivery	90
	Short Term Prisoners	90
	Overcrowding of Prison Facilities	91
	Inmates with special needs	92
	Inmates with mental illness	92
	Forensic Patients	93
	Inmates with Intellectual Disabilities	94
	Inmates from Non English Speaking Backgrounds	95
	Inmates from Indigenous Backgrounds	95
	“E” Classification Prisoners	95
	Restorative Justice	97
	Release and Transition to the Community	98
	Parole	98
	The Probation and Parole Service	100
	Transitional Centres	103
	Back End Home Detention	104
	Conclusion	106
Chapter 7	Sentencing Alternatives and Diversionary Programs	107
	Introduction	107
	Sentencing Options: Non-custodial sentences	107
	Benefits of Non-Custodial Sentences	107
	Vinson and Baldry Research: Diverting less serious offenders	109
	Abolition of Short Sentences	110
	<i>Crimes (Sentencing Procedures) Act s5(1)</i>	113
	Community based correctional orders	114
	Reasons for low utilisation	114
	Completion of community options	116
	Suspended Sentences	116
	Community service order	117
	Fines as alternative to imprisonment	118
	Bonds and Probation Orders	118
	Detention as alternatives to full time imprisonment	120
	Periodic Detention	120
	Home Detention	122
	Indigenous Offenders and Home Detention	124
	Net-widening	125
	Mechanisms for diverting eligible offenders from prison	127
	Programs for Offenders with an intellectual disability	127

	Programs for Offenders with a psychiatric illness	127
	Psychiatric Consultation and Assessment Service	128
	Programs for Indigenous Offenders	129
	Circle Sentencing	131
	Diverting Offenders with illicit drug problems	131
	NSW Drug Court Program	131
	Drug Court Program: Indigenous Offenders	133
	The MERIT Program	134
	Conclusion	135
Chapter 8	Interim Report and the Government Response	136
	Interim Report: issues relating to women	136
	Bail Hostels	148
	Disparity of Wages in Education Programs	149
	Australian Institute of Criminology Conference “Women in Corrections”	149
	Different Needs of Women Prisoners	150
	Transition from Prison	151
	Need for Sentencing Data specific to Women	151
	Deaths of Women Post Release	152
	Consideration of Conference research	154
	Continuing Need to Reduce Growth in Imprisonment	154
Appendix 1	Submissions	161
Appendix 2	Witnesses	168
	Visits	172
Appendix 3	Minutes of the Proceedings	173

Chair's Foreword

This report marks the completion of the Committee's inquiry into the increase in the prisoner population in New South Wales correctional facilities. The inquiry commenced in November 1999 when the Legislative Council resolved that a Select Committee should look at the factors responsible for the increase, the impact on prisoners and the wider implications of incarceration.

In July 2000 the Committee presented its Interim Report which made a number of findings in relation to the high rate of incarceration of women in New South Wales. This final report of the Committee makes a number of findings in relation to the whole prison population which are consistent with the findings of the interim report.

For me, the most significant observations contained in this Report are that:

- the largest contributing factor to the increasing size of the prison population is the growth in the number of people on remand, and the surprising fact that the majority of these people whilst they are held in custody up to their court hearing are ultimately not given sentences of imprisonment,
- the increasing size of the prison population is costing the community heavily in financial terms. The level of growth in the prison population which already taken place is costing taxpayers an extra \$145 million every year in current terms,
- there is no reliable research that indicates that any of this increase has either prevented crime or arisen from a significant increase in criminal behaviour in the community, and
- two thirds of the prison population spend less than six months in gaol and that this level of "churning" through the prison system disrupts its ability to provide rehabilitation programs.

On the whole it is the Committee's unanimous view that a greater focus needs to be placed on finding alternative means for sanctioning relatively less serious offenders and on providing imprisonment which aims to rehabilitate rather than incapacitate offenders.

In my own opinion I think it is unfortunate that putting people in gaol has become the benchmark for measuring our response to crime, when other sanctions such as community service orders, home detention or probation may be more effective in addressing offending behaviour, less expensive to the community and just as onerous on the offender.

Another important finding, which has been made by this Committee and many others over and over again is that certain groups such as indigenous Australians, people with intellectual disabilities and people with mental illness are over represented in the criminal justice system. The continued over representation of indigenous Australians is a particular concern in view of the fact that it has been ten years since the Royal Commission into Black Deaths in Custody.

This report recommends that research be conducted into the impact of abolishing full time custodial sentences of six months or less, similar to that introduced in Western Australia. This recommendation is based on evidence that this would have a significant impact on the size of the prison population and would also allow better targeting of scarce resources. It is difficult for the Department of Corrective

Services to prepare and implement case management and rehabilitation plans for inmates who have received short sentences resulting in offenders returning to the community without the benefit of prison based programs aimed at rehabilitation or intensive supervision from the Probation and Parole Service. Consequently the transition into the community can be difficult for these offenders increasing the possibility of re-offending.

I recognise that changes to the criminal justice system must proceed slowly and that the recommendations in this report will require considerable thought. However people should weigh any concerns against the fact that the Committee has taken evidence from a wide range of individuals, experts and inmates, has worked on the issue for two years, has attempted, without the expense of travelling overseas, to place our correctional system in NSW in an international context, and brings together the consensus of 7 politicians representing a wide political spectrum from the Greens to the National Party and with combined experience of about 50 years in public life.

I would like to thank the members of the Committee for their time and dedication throughout this inquiry, for their forthright and constructive critique and for having the courage to take the trip with me. While a bumpy ride at times, I am proud of the result we have achieved. I am confident that some, if not all of the recommendations, will influence public policy in the future.

I would like to thank the former Minister for Corrective Services, the Hon Bob Debus MP and the present Minister for Corrective Services, the Hon John Watkins MP, for their cooperation and assistance. I also thank Emma Ashton and Jane Fitzgerald from Mr Watkins's office for their considerable assistance during the inquiry. I would also like to thank then Corrective Services Commissioner Dr Leo Keliher and senior staff of the Department of Corrective Services, in particular Catriona McComish, Luke Grant and Simon Eyland for their evidence and advice. I also would like to express my appreciation to Dr Don Weatherburn and Marilyn Chilvers from the NSW Bureau of Crime Statistics and Research, and Professor Tony Vinson and Dr Eileen Baldry from the University of NSW, who not only appeared on a number of occasions before the committee, but assisted us informally as well. I would like to thank the many staff and inmates in NSW Correctional facilities for meeting with the Committee over the last two years. However I do not wish to exclude any witnesses from this list and extend my appreciation to all witnesses, organisations and individuals who made submissions to this inquiry for their interest and valuable evidence.

Finally, I would like to thank the Committee staff who have worked on this long and sometimes difficult inquiry. I greatly appreciate the work of Steven Reynolds and Susan Want during the final stages of this report. I would also like to thank David Blunt and Alex Shehadie for their work during the inquiry, Russell Keith for his work on the Interim Report and Ashley Nguyen for assistance throughout.

I commend this report to the House.



The Hon John Ryan MLC
Committee Chair

Executive Summary

The Inquiry

On 17 November 1999 the Legislative Council appointed a Select Committee to inquire into factors responsible for the increase in the prisoner population in NSW since 1995, and the consequences of that increase. The inquiry received 197 submissions, held 16 hearings and conducted several site visits and consultations. The Interim Report of the inquiry, which focussed on women prisoners, was tabled on 28 July 2000. The current report addresses issues affecting the entire population of prisoners, of which 93 % are male.

The NSW Prison System

The NSW prison system comprises 28 main correctional centres with varying capacities, security classifications and specialist purposes. The current capacity of the prison system is 8,105. The NSW Government has recently announced it will expand this capacity to nearly 10,000 by the year 2005 to address the continuing growth in the number of inmates.

The Size of the Increase in the Prison Population

The prison population in NSW has risen by 20.9% between 1995 and 2001. For women this increase has been especially rapid, representing a 67.6% increase, and an 18.6 % increase in male prisoners. The increase has mainly occurred in the two years beginning from 1998, but the NSW prison population has continued to increase, at a slower rate, up to the current date.

The prison population fluctuates on a daily basis, but at 30 June 2001 it was 7,750, of which 7,232 were male and 518 were women. This represents an imprisonment rate of 112.7 per 100,000 persons, or 172 per 100,000 adult persons.

Other states in Australia have also experienced significant increases, however Victoria has maintained an imprisonment rate of almost half that of NSW during the same period. Also, subject to the reliability of international comparisons, several European countries have also had minimal increases or decreases in their imprisonment rates during the time in which the NSW imprisonment rate has significantly increased. The different trends in imprisonment rates in different jurisdictions raises the questions as to whether more people are incarcerated in NSW than is necessary.

Prisoner Profile

Approximately forty per cent of the prison population has been sentenced for a serious act of violence such as murder, armed robbery or sexual assault. The next largest category of offenders, amounting to about 30 per cent, are those whose most serious offence was a robbery or stealing charge. The balance of the prison population is made up of those who have committed drug offences (12%), driving and traffic offences (5%), offences against good order (6%) and those who have breached a community based sanction such as probation, parole or community service orders (5%).

The prison population consists of men and women who are, on average, of lower socio-economic status, of poorer health and of lower levels of education than the rest of the population. For example:

- 60% of inmates are not functionally literate or numerate;
- 60% did not complete year 10;
- 64% have no stable family;

- 21% have attempted suicide; and
- 60% of males and 70% of females had a history of illicit drug use.

Indigenous men and women and those with an intellectual disability or a mental illness are significantly over represented. The average age of the inmate population is increasing, although the majority (64.4% of males, 73% of females) are aged 18-34. A number of prison inmates were state wards or care leavers, however the exact number is unknown. The majority of prisoners who pass through the prison system each year serve sentences of less than six months.

Causes of the Increase

The causes of the increase in the prison population are complex. The prison population can fluctuate considerably as a result of legislative, judicial and policy changes, irrespective of any changes in actual crimes committed. There has been no evidence from agencies such as the Bureau of Crime Statistics and Research to support the proposition that an increase in actual crime, as opposed to increase in police activity, is an underlying cause of the increased prison population.

A major increase in the remand population appears to be the most significant contributing factor to the increase in the total number of people in custody. Other factors include longer sentences and increased police activity. The underlying causes of these factors are, however, less clear.

(a) Increase in Remand Population

At 30 June 2001 there were 2,188 prisoners held on remand, awaiting sentence, representing more than a quarter of the prison population. This number has almost doubled since 1995. The increase in the remand population may in part be due to factors such as:

- increased bail refusals,
- changes to the Bail Act removing a presumption of bail in many cases,
- the inability of people to meet bail conditions, and
- police “over-charging” (charging offenders for several offences in the hope that one will result in a guilty plea)

(b) Increased Police Activity

Increased police activity has resulted in a 22% increase in the number of persons coming before NSW courts since 1995. This has coincided with an increase in police numbers and resulting increase in police activity.

(c) Judicial Attitudes to Sentencing Alternatives

Judges are given a broad discretion in sentencing decisions, however the sentencing legislation (Crimes (Sentencing Procedures) Act) does embody the notion that prison should be a sanction of last resort. There is a need to examine the impact of individual sentencing practices, and how judges and magistrates perceive, in terms of relative severity, alternatives to imprisonment. Increase in penalties for offences under specific legislation and guideline judgements are examples which may lead to the continuing increases in the use of prison over alternative sentencing arrangements.

Whole of Government Problem

The complex causes of the increase in the prison population raises the issue of how decisions should be made as to who should be imprisoned. The Committee believes this is a whole of government issue but that the Department of Corrective Services should take a lead role in monitoring the impact of decisions on the prison population. There is a need for research to identify and quantify the impact these and other factors have had.

Incarceration: Costs

Since the 1980s there has been an increasing shift in sentencing policy towards seeing the purpose of prison as incapacitation rather than rehabilitation. The adoption of this purpose clearly favours longer sentences and increased use of incarceration as a means to control crime. This increased use of incarceration leads to significant increases in expenditure on programs within prisons, which are much more expensive to deliver than community based programs. There has been no reliable research in Australia or overseas which has shown that increasing the number of people in gaol is an effective or economical approach to reducing crime.

The annual costs of the programs of the Department of Corrective Services have risen by \$145 million in real terms since 1994, a 37% increase. The cost of holding a prisoner in gaol can be as high as \$64,486 per year (\$181 per day) compared to \$3,150 per year (\$8.63 per day) for completing a community based program supervised by the Probation and Parole Service.

Incarceration: Programs

There are promising programs within prison in some areas such as drug and alcohol programs, the Restorative Justice Unit and transition centres. However a lack of continuity in programs has meant there is almost nothing known about the effectiveness of most programs in reducing recidivism. The case management program, which has already been intensively reviewed on several occasions, still appears to be experiencing problems under the weight of increasing prison numbers and the difficulty of assisting short term prisoners.

Alternatives to Prison

Greater examination needs to be made of alternatives to prison sentences. There are many prisoners currently in full time custody who may be more appropriately and cost-effectively supervised under alternative sentencing options. These options include community service orders, probation and parole, periodic detention, and home detention, as well as diversionary programs such as the Drug court and the MERIT scheme. Some of these alternatives are currently under-utilised, while others are in their early stages and have much promise.

Indigenous offenders are under-represented in these alternative programs. For instance, research suggests that illicit drug use is not as significant a factor for Aboriginal offenders as for the wider prison population, so few Aboriginals benefit from initiatives such as the Drug Court. The alcohol related and violent nature of many offences committed by Aboriginal offenders also precludes them from the criteria for participation in home detention programs. The lack of community service options in rural areas also disadvantages indigenous offenders.

The Committee believes more information is needed on why some options are not more extensively used, whether they are perceived as not effective, and whether new initiatives are deserving of expansion. The gains to the community from greater use of effective alternatives to sentences of full time custody are considerable, and every effort should be made to realise these gains. The Probation

and Parole Service needs to be given a more prominent role in the prison dominated culture of the Department of Corrective Services.

Abolition of Short Term Sentences

About two thirds of the people who are sentenced to imprisonment stay in gaol for less than six months. It is difficult for the Department of Corrective Services to design and implement effective rehabilitation programs and case management strategies for these inmates and transition to the community after the disruption caused by a prison sentence can be more difficult because they are not supervised by the Probation and Parole Service.

One way of addressing these issues and in countering the increasing size of the prison population, would be for NSW to follow the recent initiative of the Western Australian Government to abolish sentences of six months or less. The Committee recognises that such a move would need to be accompanied by public support. It is also important to address issues such as whether abolishing shorter custodial sentences would only lead to inmates serving longer sentences, particularly if funding was not provided for increased alternative programs. For these reasons the Committee recommends that comprehensive research and public consultation be conducted into the possible impact of such an initiative before any measures are implemented.

The Western Australian government has also recently announced a major change of direction in its prison system, particularly for women, based upon overseas models. The Committee believes approaches such as these, which creatively consider alternatives to building additional prisons, may hold many lessons for NSW.

Summary of Recommendations

Recommendation 1 *Page 26*

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

Recommendation 2 *Page 45*

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

Recommendation 3 *Page 46*

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

Recommendation 4 *Page 58*

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

Recommendation 5 *Page 61*

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

Recommendation 6 *Page 62*

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

Recommendation 7 *Page 63*

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

Recommendation 8 *Page 63*

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

Recommendation 9 *Page 80*

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

Recommendation 10 *Page 86*

The Committee recommends that the Department produce and release preliminary findings of its long term evaluation of the Sex Offender programs, so as to assist modifications of these programs.

Recommendation 11 *Page 90*

The Committee recommends the Department of Corrective Services include in future research programs a long term study on the impact of its education programs on recidivism.

Recommendation 12 *Page 94*

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

Recommendation 13 *Page 96*

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

Recommendation 14 *Page 104*

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

Recommendation 15 *Page 106*

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

Recommendation 16 *Page 113*

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

- the impact on the size of the NSW prison population,
- potential savings to the NSW Budget,
- the impact on the management of NSW Correctional Centres,
- development of alternatives to full time custody
- the impacts on other services such as the Probation and Parole Service,

- the profile of the inmates who are sentenced to less than six months including their most serious offences, and
- the number of inmates serving six months or less who are male, female or indigenous.

If the Research supports the introduction of measures to abolish short sentences the proposal should be circulated in a Discussion Paper for public consultation.

Recommendation 17 *Page 113*

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

Recommendation 18 *Page 116*

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

Recommendation 19 *Page 117*

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

Recommendation 20 *Page 122*

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

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

Recommendation 21 *Page 124*

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

Recommendation 22 *Page 125*

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

Recommendation 23 *Page 126*

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

Recommendation 24 *Page 129*

The committee recommends that the Psychiatric Consultation and Assessment Service be expanded statewide and that an evaluation be conducted to review its success in diverting offenders.

Recommendation 25 *Page 134*

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

Recommendation 26 *Page 134*

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

Recommendation 27 *Page 134*

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

Recommendation 28 *Page 154*

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

Chapter 1 Introduction

Terms of Reference

1.1 On 17 November 1999 the Legislative Council appointed a select committee to inquire into the factors responsible for the increase in prisoner population since 1995 and the consequences of that increase, together with a wide range of issues relating to incarceration. The terms of reference of the committee required that it make an interim report by 1 May 2000 on matters relating to women and a final report on remaining matters by 1 October 2000.¹ The terms of reference are reproduced in full on pages iv-v of this report.

1.2 Specific issues for the committee's consideration include:

- the effectiveness of imprisonment, including for people with special needs, Indigenous Australians, and people with a non-English speaking background,
- the use of prisons for people remanded in custody,
- the effectiveness of building a new women's prison to address increasing numbers of women prisoners and any contract entered into for such a prison,
- alternatives to incarceration, and
- post-release policies and coordination of integrated assistance.

Interim Report and the Government Response

1.3 At a meeting on 25 May, 2000, the Committee resolved to seek an extension of the date for tabling the Committee's interim report, and this request was subsequently agreed to by the Legislative Council. Consequently, the Committee tabled its *Interim Report: Issues Relating to Women* on 28 July 2000.² The Interim Report makes 58 recommendations.

1.4 On 19 February, 2001, the Minister for Corrective Services, the Hon John Watkins MP, provided a response to the *Interim Report* on behalf of the Government. This response, which reproduces each of the Committee's recommendations, is included in Chapter Nine of this report.

Conduct of the inquiry

1.5 In accordance with the terms of reference, following the tabling of the interim report, the Committee commenced its inquiry into the remaining matters.

¹ *Minutes of Proceedings of the Legislative Council*, No 17 November, 1999, Minutes No 23, Item 4.

² Hereafter referred to as "The Interim Report".

- 1.6** At the time of tabling the Interim Report, the Committee had received 138 submissions. The Committee placed advertisements in major newspapers on 16 September 2000 seeking submissions to the second stage of the inquiry with a closing date of 30 November 2000. The Committee received a further 59 submissions, making the total number of submissions received 197. The authors of submissions, except those requesting confidentiality, are listed in Appendix One.
- 1.7** The Committee held a total of eight public hearings during the second phase of the inquiry. Six of these hearings took place at Parliament House, on 19 October 2000, 20 October 2000, 28 November 2000, 12 March 2001, 19 March 2001 and 12 June 2001. One hearing was held at Goulburn Correctional Centre on 23 October 2000 and one hearing was held at Wagga Wagga RSL Club and Junee Correctional Centre on 24 October 2000. A total of 60 witnesses were examined during the second phase of the inquiry, including 20 inmates. The witnesses and hearings are listed as Appendix Two.
- 1.8** In addition to taking formal evidence, the Committee conducted a number of site visits. On 13 March 2001 the Committee visited the Drug Court of NSW and held discussions with Judge Murrell and psychiatric staff and viewed the proceedings of the Court. On 13 March 2001 the Committee also visited the NSW Judicial Commission and received a briefing on the Judicial Information Research System. On 19 March 2001, the Committee visited the Central Local Court and received a briefing on the Psychiatric Consultation and Assessment Service. On 22 March 2001 the Committee visited Long Bay Correctional Centre and consulted with Department of Corrective Services and Corrections Health staff and also a number of inmates in the Malabar Special Programs Centre.
- 1.9** The Committee at its deliberative meeting on 15 August 2001 agreed to seek an extension for the reporting deadline for the final report of 31 October 2001, and this was subsequently granted by the Legislative Council.
- 1.10** The Chair's draft report was considered and adopted at the conclusion of deliberative meetings held on 24 October, 29 October and 6 November 2001. The minutes of proceedings for the inquiry are tabled separately to this report.

Scope of this Report

- 1.11** Investigating the male population, as required by the terms of reference, has presented a particular challenge to the Committee. It makes little sense to examine the male population as a discrete group. Because more than 93% of the prison population is male, the needs of that population have historically been the benchmark for the delivery of services and programs to all inmates. This report therefore looks at issues affecting the prison population as a whole, and also examines those outstanding issues arising from the *Interim report*.

Structure of the Report

- 1.12** This report is divided into three parts. **Part One** outlines essential background information in relation to the NSW prison system and the prison population, including trends identified during the inquiry. *Chapter Two* briefly discusses the role of imprisonment

and provides an outline of the legislative framework for sentencing in New South Wales. *Chapter Three* provides statistics on the size of the prison population and comparative data for Australian and international prison populations. *Chapter Four* outlines the profile of the prison population, specifically the demography of the population and the offences for which persons are serving sentences.

- 1.13** **Part Two** of the report analyses the evidence received by the Committee during the course of the inquiry. *Chapter Five* analyses the increase in the prisoner population and examines the reasons for the increase. *Chapter Six* discusses incarceration, including the changes in attitudes over the years as to why people are put in prison, and the current financial costs of incarceration, including capital works and inmate costs. The chapter also considers the inmate management system, programs available to inmates, and post-release matters. *Chapter Seven* discusses sentencing alternatives to full-time imprisonment and diversionary programs.
- 1.14** **Part Three** of the report deals with issues arising from the Committee's interim report. *Chapter Eight* reviews the major findings and recommendations of the *Interim Report*, and the Government's response.

Chapter 2 **The NSW Prison System: role of imprisonment; sentencing legislative framework; and correctional centres.**

Introduction

2.1 This chapter provides background information on the NSW prison system prior to consideration of the specific issues at the centre of this inquiry. The chapter begins with a brief discussion of the role of imprisonment. The chapter then outlines the legislative framework for sentencing and imprisonment in NSW. Finally, the chapter provides a brief overview of the location, classification and capacity of the gaols managed by the Department of Corrective Services.

The Role of Imprisonment

2.2 The NSW Law Reform Commission, in its landmark 1996 report, *Sentencing*, summarised the rationale for punishment as follows:

Retribution – which is the notion that the guilty ought to be accountable for their actions and suffer the punishment which they deserve.

Deterrence: *specific deterrence* which aims to dissuade the offender from committing further crime; and ***general deterrence*** which aims to dissuade others from committing the crime in question by making them aware of the punishment inflicted upon the offender.

Denunciation – which involves the court making a public statement that behaviour constituting the offence is not to be tolerated by society either in general, or in the specific instance.

Rehabilitation – which relies on the philosophy that the offender's behaviour can be changed by using the opportunity of punishment to address the particular social, psychological, psychiatric or other factors which have influenced the offender to commit the crime.

Incapacitation – which involves preventing a person from committing further offences during the period of incarceration, with community protection as the justification.³

2.3 These purposes for sentencing are derived from the common law and have not been codified in NSW legislation because it was feared that it would compromise “the desirable flexibility and evolutionary nature of the common law discretion and its ability to adapt to changing societal values.”⁴

³ NSW Law Reform Commission, *Sentencing*, Report 79, December 1996, pp 331-332 (referred to in Department of Corrective Services, *Submission 63*, pp 123-124).

⁴ *Op cit* p333-334.

2.4 The Law Reform Commission stated that all of these purposes were relevant and that it was neither practicable nor appropriate to seek to place them in a hierarchy. The Commission also recognised that some of these purposes represent conflicting philosophical approaches:

The Commission is of the view that all these purposes are relevant in determining the sentence appropriate to the individual circumstances of the offence and the offender, their weight in any case depending on the circumstances of that offence and of the offender. The sentence process involves a complex and intricate interplay which emerges as a compromise between these overlapping “distinct and partly conflicting principles”. They represent varying philosophical approaches to sentencing. The Commission is unable to identify from among the objectives a dominant rationale. The importance attached to any particular goal or goals of sentencing will vary, not only with the individual circumstances, but also over time, reflecting changes in society and community expectations. The legislative statement of the purposes of punishment [recommended by the Commission] should not place them in a hierarchy. The legislation should make it clear that no priority is assigned, lest it is unintentionally interpreted to this effect.⁵

2.5 The NSW Court of Criminal Appeal has recently referred to the “multiplicity of factors” involved in sentencing decisions and to the broad discretion which judges have in applying these factors to the circumstances of individual cases:

The existence of multiple objectives in sentencing – rehabilitation, denunciation and deterrence – permits individual judges to reflect quite different penal philosophies. This is not a bad thing in a field in which “the only golden rule is that there is no golden rule” (*Geddes* (1936) 365 SR(NSW) 554, 555 per Jordan CJ). Indeed, judges reflect the wide range of differing views on such matters that exists in the community.⁶

2.6 In addition to considering these often conflicting goals, judges have to take into consideration numerous individual factors in determining a sentence for a convicted offender. The factors considered by the courts for individual matters fall into five broad categories, namely those relevant to:

- the nature of the offence;
- the nature of the offender;
- the offender’s response to the charges;
- the effect of the offence and the sanction; and
- the sentence imposed on a co-offender.⁷

⁵ *Ibid*, pp 332-333.

⁶ *R v Jurisic* (1998) 45 NSWLR 209, at 221 per Spigelman CJ. However, the Court of Criminal Appeal also identified limits to the permissible range of variation, arguing the case for, and delivering the first of a number of recent guideline judgments to structure judicial discretion.

⁷ NSWLRC *Discussion Paper 33* (1996) Sentencing 5.7.

- 2.7** The NSW Court of Criminal Appeal has recognised that there is a tension between maintaining maximum flexibility in the exercise of discretion on the one hand, and ensuring consistency in sentencing decisions on the other.⁸

Legislative framework for sentencing and imprisonment

- 2.8** In 1999 the Parliament passed legislation which consolidated and rationalised the legislative framework for sentencing in NSW. This is primarily contained in two Acts, the *Crimes (Sentencing Procedures) Act 1999* and the *Crimes (Administration of Sentences) Act 1999*. The changes were intended to implement recommendations made in the NSW Law Reform Commission's report *Sentencing* (discussed in the previous section).

The Crimes (Sentencing Procedures) Act

- 2.9** The *Crimes (Sentencing Procedures) Act 1999* is the legislation that outlines the various forms of sentences which are available for the courts to impose on offenders. The Act contains a significant statement of principle in relation to the role of imprisonment:

s 5 (1) A court must not sentence an offender to imprisonment unless it is satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate.

- 2.10** This approach, that "imprisonment should only be used as a sanction of last resort",⁹ was also adopted by the Committee in its *Interim Report*.

- 2.11** In relation to sentences to imprisonment for 6 months or less, section 5 (2) includes a requirement that the court:

must indicate to the offender, and make a record of, its reasons for doing so, including its reasons for deciding that no penalty other than imprisonment is appropriate.

- 2.12** The *Crimes (Sentencing Procedures) Act 1999* clearly distinguishes alternatives to full-time detention that a court may order for an offender sentenced to imprisonment (namely periodic detention and home detention), and non-custodial alternatives to imprisonment (namely community service orders and good behaviour bonds, dismissal of charges, deferral of sentencing and suspended sentences) and fines.¹⁰

- 2.13** Part 3 of the *Crimes (Sentencing Procedure) Act 1999* deals with sentencing procedures, with sections 36-42 dealing specifically with guideline judgments. Part 4 of the Act deals with sentencing procedures for imprisonment. Section 44 provides for the court to, firstly, set the term of the sentence; and, secondly, set a non-parole period¹¹ which must generally not be less than three-quarters of the term of the sentence. Section 45 provides that the court

⁸ *R v Jurisic* (1998) 45 NSWLR 209, Spigelman CJ and ors.

⁹ *Interim Report*, p 2.

¹⁰ Sections 6-17.

¹¹ That is the minimum period for which the offender must be kept in detention in relation to the offence.

may decline to set a non-parole period, and section 46 prevents the court from setting a non-parole period for a sentence of less than 6 months.

- 2.14** Part 5 of the *Crimes (Sentencing Procedure) Act 1999* deals with procedures for periodic detention orders. A procedure is provided for the court to obtain assessments from the Probation and Parole Service in relation to the suitability of an offender for periodic detention. Part 6 of the Act addresses sentencing procedures for home detention orders. A similar procedure is provided for in terms of an assessment report. However, Part 6 of the Act contains very detailed provisions concerning the reasons why a home detention order may not be made for an offender, including the nature of the offence and the offender's history. Part 7 of the Act once again provides a similar procedure, including assessment reports from the Probation and Parole Service, in relation to sentencing for community service orders. Part 8 provides for sentencing procedures for good behaviour bonds.

The Crimes (Administration of Sentences) Act

- 2.15** The *Crimes (Administration of Sentences) Act 1999* sets out how offenders are to be dealt with following sentence, and consolidated the law in relation to this issue.
- 2.16** Part 2 of the Act deals with imprisonment by way of full-time detention. Subjects dealt with include work by inmates (s 6), segregated and protective custody (ss 9-22), transfer of inmates (s 23), leave permits (s 26), correctional centre discipline (ss 51-65) and regulations (s 79). Part 3 of the Act deals with imprisonment by way of periodic detention. Part 4 of the Act deals with imprisonment by way of home detention. Part 5 of the Act deals with community service work. Part 6 of the Act deals with Parole. Sections 135 and 137 address the duties of the Parole Board in making decisions about the making of parole orders. The Act also contains detailed provisions in relation to the Parole Board, the Serious Offenders Review Council and the Inspector General.
- 2.17** Part 11 of the *Crimes (Administration of Sentences) Act 1999* deals with administration, including the proclamation of correctional complexes, correctional centres and periodic detention centres (ss 224-226). Section 232 of the Act provides for the functions of the Commissioner of Corrective Services, which are to have the "care, direction, control and management of all correctional complexes, correctional centres and periodic detention centres", subject to the direction and control of the Minister. Sections 233-235 provide for the functions of Governors of correctional centres, and correctional officers (including commissioned and non-commissioned officers).
- 2.18** As outlined in later chapters of this report, there are legislative provisions in other legislation which are also relevant to the prison population.¹² However, it is the *Crimes (Sentencing Procedures) Act 1999* and the *Crimes (Administration of Sentences) Act 1999* which provide the essential legal framework both for sentencing procedures and sentencing options, and for the administration of those sentences, including for the administration of the NSW prison system.

¹² See for example the discussion of the *Bail Act* in Chapter Five.

NSW Correctional Centres and Imprisonment

2.19 NSW was founded as a penal colony. The Department of Prisons was established in 1874 and was renamed the Department of Corrective Services in 1969.¹³ The Corporate Plan developed by the NSW Department of Corrective Services for the period 2001-2004 states that its mission is “reducing re-offending through secure, safe and humane management of offenders”.¹⁴

2.20 There are currently 28 correctional centres in NSW. These centres are classified maximum, medium or minimum security, although some may contain more than one category of prisoners.

Maximum Security

2.21 Maximum security correctional centres generally have high walls, state-of-the-art electronic perimeter security and strict security inside the walls. These institutions hold inmates whose escape would be highly dangerous to members of the public or the security of the State. As well as sentenced inmates, those who are awaiting trial or sentence, and those sentenced by the courts but waiting to be assessed as security risks, are generally held in maximum security.

2.22 The Department operates 7 maximum security correctional centres:

Gaol	Beds	Characteristics
Goulburn Correctional Centre	550	Males
Lithgow Correctional Centre	335	Males
Malabar Special Programs Centre (Long Bay)	n/a	Special programs: HIV, self-harm inmates, sex offenders.
Long Bay Hospital	120	Sick inmates
Metropolitan Medical Transit Centre (Long Bay)	n/a	Inmates awaiting medical treatment/appointments and those discharged from Long Bay Hospital
Metropolitan Remand and Reception Centre (Silverwater)	900	Males – remand
Special Purpose Centre (Long Bay)	n/a	Inmates requiring special protection

Medium Security

2.23 Medium security institutions are normally surrounded by walls or high security fences. Inside the walls or fences inmates are still under constant supervision but move around more freely than in maximum security.

¹³ Department of Corrective Services, *1999/2000 Annual Report*, inside cover. For more detail on the history of the NSW prison system see J Ramsland, *With Just but Relentless Discipline: A Social History of Corrective Services in New South Wales*, Kangaroo Press, 1996.

¹⁴ NSW Department of Corrective Services, Corporate Plan 2001-2004.

2.24 The Department operates 10 medium security correctional centres:

Gaol	Beds	Characteristics
Bathurst Correctional Centre	260 medium 125 minimum	Reception centre for western NSW
Broken Hill Correctional Centre	50	45 male and 5 female
Grafton Correctional Centre	154 medium 120 minimum	Reception centre for northern NSW
Junee Correctional Centre	500 medium 100 minimum	Privately run correctional centre
Mulawa Correctional Centre (Silverwater)	235	Females
Parklea Young Offenders Correctional Centre	312 92 work release	Mainly male young offenders (18-25)
Parramatta Correctional Centre	n/a	Remand
Tamworth Correctional Centre	64	Males, including periodic detention centre
Yetta Dhinnakal	42	Primarily first time indigenous offenders
Warakirri	33	Primarily indigenous offenders

Minimum Security

2.25 Minimum security institutions hold inmates who can be trusted in open conditions where there are fewer physical barriers to escape. Minor offenders and those nearing the end of their sentences are held in this type of correctional centre.

2.26 The Department operates 11 minimum security correctional centres:

Gaol	Beds	Characteristics
Berrima Correctional Centre	70	Males, medium and minimum
Cessnock Correctional Centre	464	Males, maximum and minimum
Emu Plains Correctional Centre	118	Females
Glen Innes Correctional Centre	130	Males
Industrial Training Centre (Long Bay)	412	Short sentences and due for release inmates
John Morony Correctional Centre (Windsor)	250	Males
Kirkconnell Correctional Centre (Bathurst)	210	Males, including weekend leave
Mannus Correctional Complex (Tumbarumba)	164	Includes periodic detention for males and females
Oberon Young Offenders Correctional Centre	100	Male young offenders
Silverwater Correctional Centre	450	Males, includes work release centre
St Heliers Correctional Centre (Muswellbrook)	256	Males, includes mobile prison

2.27 The Department also operates:

- 11 periodic detention centres
- 1 transitional centre for female inmates
- 69 probation and parole offices¹⁵

Total Capacity of Prison System

2.28 The Premier and the Minister for Corrective Services announced in September 2001 a major expansion of the capacity of the prison system. This included two new correctional facilities, with the re-opening of Cooma correctional centre and the establishment of a facility in central western NSW. In a statement to the House, the Minister advised that as a result of the current capital works program (including recent budget announcements outlined in Chapter Six and the September 2001 announcements) will be 1,805 new beds in 12 locations across the state.¹⁶ With current prison beds said to be 8,105, the expanded works program will see the capacity of the NSW prison system close to 10,000 by 2005.¹⁷

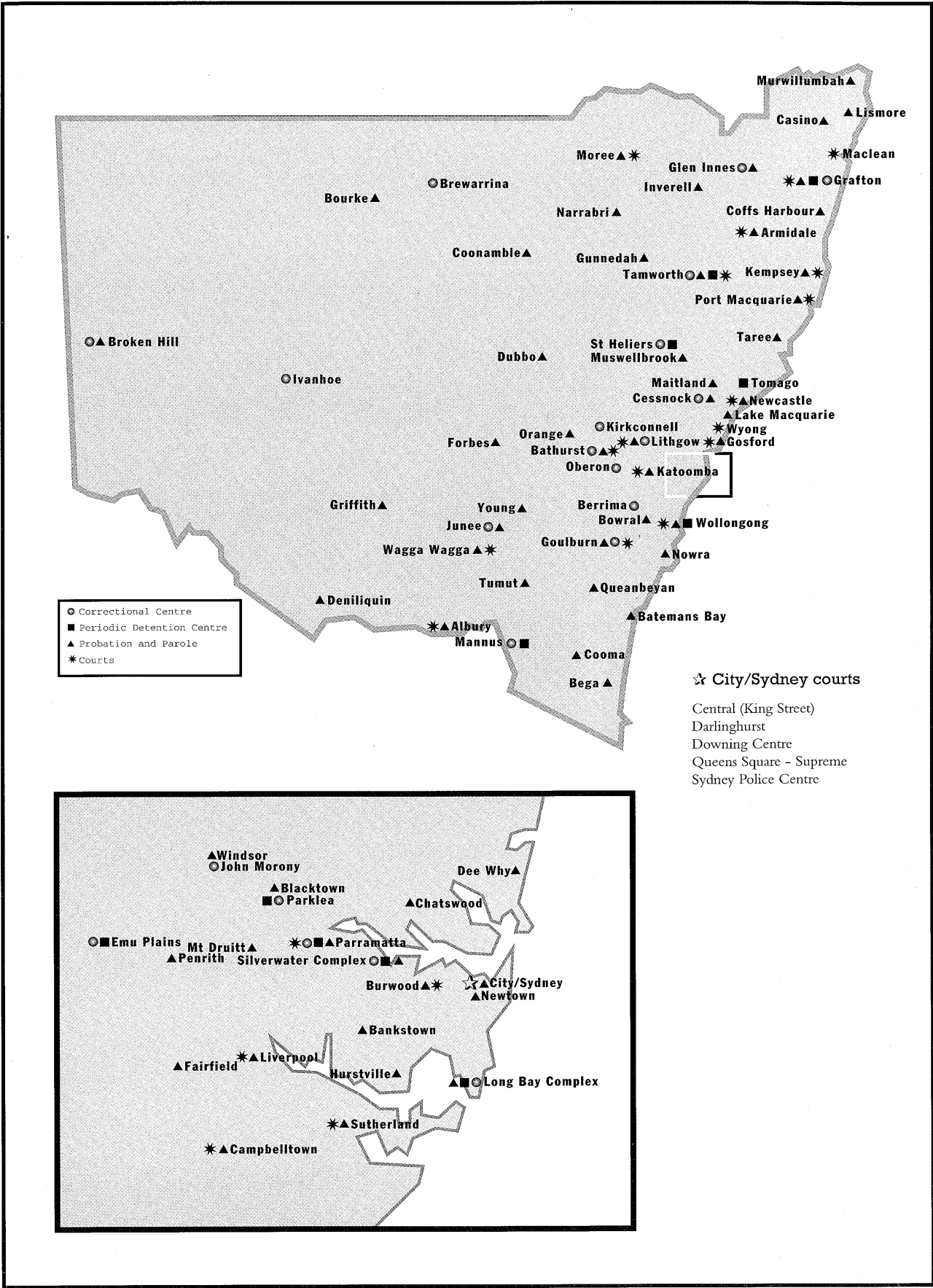
Geographic Location

2.29 Reproduced below is a map of NSW showing the current location of the correctional centres and other facilities administered by the Department of Corrective Services.

¹⁵ All information sourced from the Department of Corrective Services Website: www.dcs.nsw.gov.au/correctional/

¹⁶ Hon J Watkins MP, *NSWPD* 16 October 2001 p19.

¹⁷ "Carr announces 1,805 new places for NSW prison system" Hon RJ Carr MP, Premier, Press Release 2 September 2001.



Conclusion

- 2.30** The NSW prison system comprises of 28 main correctional centres spread throughout NSW. These centres have varying capacities, security classifications and specialist uses. Prisoners are sentenced to terms in these centres under the *Crimes (Sentencing Procedures) Act*, and then administered primarily through the provisions of the *Crimes (Administration of Sentences) Act*. Judges are given a broad discretion as to the objectives – rehabilitation, denunciation, incapacitation and deterrence – used in their sentencing decisions. However the sentencing legislation does embody the notion that prison should be a sanction of last resort.
- 2.31** The remainder of Part One of this Report examines the extent and impacts of the increase in the overall prison population. Chapter Three of this report includes detailed statistics on the size of the NSW prison population. Chapter Four includes detailed statistics on the profile of the NSW prison population.

Chapter 3 Size of the prison population

Introduction

- 3.1** The prison population can be measured by either its absolute size, or by the imprisonment rate, that is the increase in prisoners in relation to the increase in the overall population. Both are examined in this chapter, and comparison is made with prison populations in other states and overseas.
- 3.2** For the purposes of uniformity, this Report in other chapters uses details from the annual census of inmates published by the Department of Corrective Services at the end of June each year, and statistics published in the Department's *Inmate Statistics (Weekly States)* and the Department's *Annual Report*. The figures used will refer to inmates in full time custody. They do not include prisoners serving periodic detention. However, in this chapter some use in interstate comparisons will also be made of statistics produced by the Australian Bureau of Statistics (ABS). These differ from the Department's statistics because the ABS definition of the imprisonment rate per 100,000 population is based on the *adult* population rather than the *total* population. This ABS definition leads to a higher imprisonment rate statistic than that used in the Department's research figures.

New South Wales

Current NSW prison population

- 3.3** The *Inmate Statistics (Weekly States)* from the Department of Corrective Services for 1 July 2001 indicate that as at 30 June 2001 there were 7750 full time inmates in NSW correctional centres. This includes 5562 sentenced and 2188 unsentenced prisoners. 7,232 of these prisoners were men, and 518 were women.

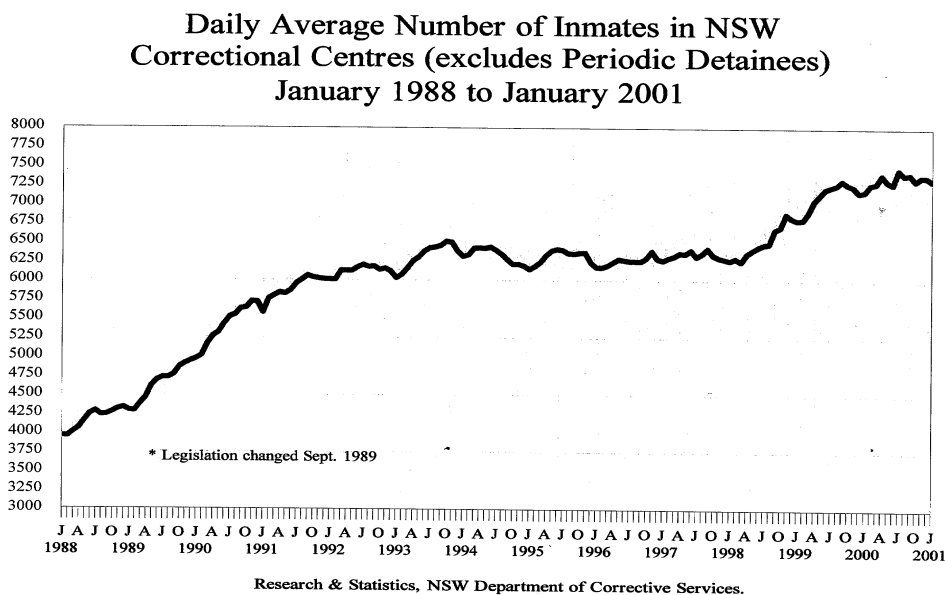
Rate of increase in NSW prison population

- 3.4** The New South Wales prison population has been steadily increasing over a number of years. Sharp increases were experienced following the introduction of the *Sentencing Act* in 1989 and during the period June 1998 to June 2000, particularly the first 12 months of that period. Slower but steady growth continued through to 2001.
- 3.5** In evidence to the Committee Mr Simon Eyland, Director, Research and Statistics, Department of Corrective Services advised:

There was a 6.4 per cent increase in the daily average number of inmates in full-time custody in the 1999-2000 financial year compared with the 1998-1999 financial year.¹⁸

¹⁸ Eyland, *Evidence* 12 March, 2001, p2.

- 3.6** The following graph illustrates the daily average number of inmates in NSW Correctional Centres from January 1988 to January 2001:



Source: Supplied on weekly basis from Correctional Centres up to May 1997. Data drawn from OMS from June 1997 onwards.

- 3.7** It can be seen from the following table that the total inmate population has had two significant periods of increase: 1989 to 1991, and 1998 to 2000. The graph continues to rise, at a slower rate, after mid 2000.
- 3.8** Since 1995 (the date identified in the terms of reference for this inquiry) the NSW prison population has increased by approximately 20.9% up to June 2001. The female prison population has increased by a greater rate, increasing from 309 to 518 (an increase of 67.6%) since 1995 by comparison to the male population which increased from 6098 to 7232 (an increase of 18.6%).¹⁹

Persons under full time detention in corrections centres as of 30 June each year						
year	unsentenced male	unsentenced female	sentenced male	sentenced female	total	rate per 100,000 NSW Population
1995	1130	71	4968	238	6407	103.1
1996	1183	95	4742	241	6261	101.9
1997	1316	95	4735	243	6389	101.3
1998	1347	104	4748	253	6452	100.6
1999	1718	144	5084	294	7240	106.9
2000	1929	169	4939	291	7328	112.7
2001	1989	199	5243	319	7750	N/A

¹⁹ The increase is even more significant when it is recognised that as of 27 January 1998 all fine defaulters have been diverted from the correctional system: in 1996/97 before the change to the *Fines Act*, 4,474 fine defaulters entered correctional centres. (Department of Corrective Services *Submission 63* p28).

- 3.9** Data provided to the Committee shows that there has also been an upward trend in the prison population since January 2001. At 30 June 2001 the figure was 7,750 (although this had declined to 7681 at 5th August, 2001,²⁰ demonstrating how levels fluctuate from month to month).
- 3.10** Evidence from the Department of Corrective Services indicates that the rate of increase in the inmate population is continuing. The Department of Corrective Services predicts that inmate numbers for the financial year 2001/2002 will be 7920 and for the financial year 2002/2003 will be 8200.²¹

Increase in NSW Imprisonment Rate

- 3.11** While the increase in the total prison population is important it is perhaps more important to refer to the increase in the rate of the total population (measured by prisoners per 100,000 of population). The last available figures (for 30 June 2000) show that the total imprisoned population represents slightly more than 112.7 prisoners per 100,000 of the NSW population.
- 3.12** Corresponding to the rise in the actual number of inmates in custody, there has been a large rise in the imprisonment rate since the early 1980's, a rise of around 64% (1981-2000).²² The rate of imprisonment in New South Wales per 100,000 population has increased from 103.1 in 1995 to 112.7 in June 2000, an increase of approximately 21%. The increase in the imprisonment rate from 1988 is shown in the graph in the next section (below) regarding interstate comparisons.

Increase in Australian Imprisonment Rates

Increase in Prison Population

- 3.13** The Australian Bureau of Statistics (ABS) produces an annual prison census. The prison census for 30 June 2000 revealed that there were 21,714 prisoners in Australia, representing a rate of 148 prisoners per 100,000 adult population.²³ The prisoner population rose from 14,305 in 1990 to 21,714 in 2000, representing an increase of 52%.²⁴
- 3.14** At 30 June 2000, when the ABS comparisons were made, the NSW population was 8,547 including periodic detainees, or 7328 excluding these inmates.

²⁰ Allen, *Evidence*, 12 June 2001, p 16

²¹ Department of Corrective Services, *Submission 63* (supplementary).

²² Eyland, *Evidence* 12 March 2001 p4.

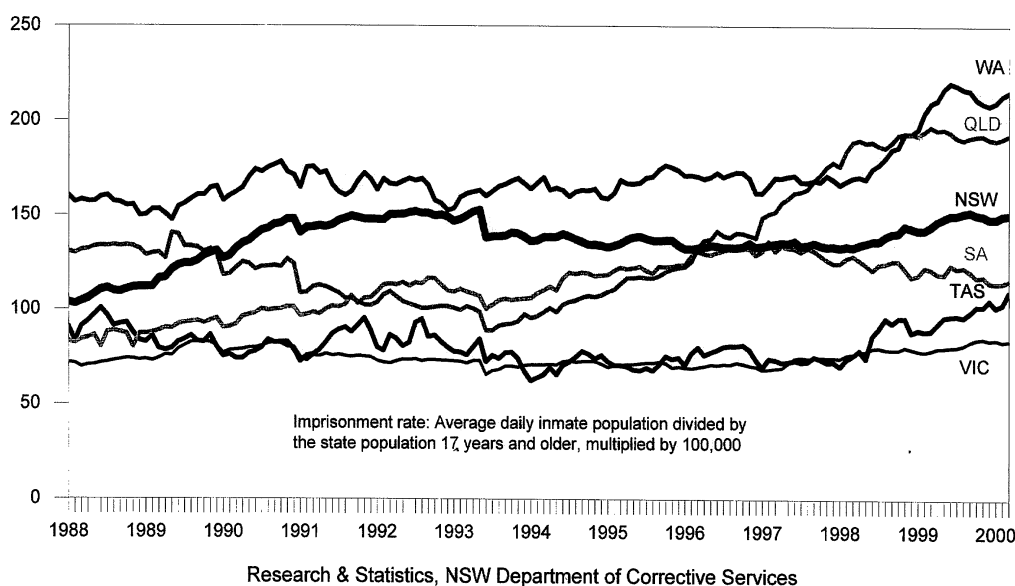
²³ Australian Bureau of Statistics, 4517.0 *Prisoners in Australia* page 3.

²⁴ Australian Bureau of Statistics, 4517.0 *Prisoners in Australia* page 2.

Increase in Imprisonment Rates

- 3.15** The NSW prison population as measured by the ABS prison census represents a rate of 172 prisoners per 100,000 adult population. This is higher than the Department figures quoted elsewhere because the ABS uses per 100,000 of the adult population rather than per 100,000 of the total population. This NSW rate compares to 85.4 per 100,000 adult population in Victoria, the lowest in Australia. The Northern Territory had the highest rate of 458.1 prisoners per 100,000 adult population.²⁵
- 3.16** The states with the steepest increases in recent years have been Queensland and Western Australia. Victoria has the lowest imprisonment rate and the most stable imprisonment rate. The following graph shows the different rate per 100,000 by state and the trends in the increase in rates:

**Imprisonment Rate per 100,000 Adult Population
January 1988 to June 2000**



Source: Australian Prison Trends, Australian Institute of Criminology and National Correctional Statistics: Prisons, Australian Bureau of Statistics.

New South Wales vs Victoria

- 3.17** Rates of imprisonment in NSW have consistently been higher than those in Victoria despite the demographic similarities between the two states. The NSW Bureau of Crime Statistics and Research has conducted two studies in relation to this issue in 1992 and in 1995. (Discussed in Chapter Six)
- 3.18** In the most recent comparison, New South Wales and Victoria recorded the greatest increases in Australia in the March quarter 2001, rising at the same rate of 2% by 159

²⁵ Australian Bureau of Statistics, 4517.0 *Prisoners in Australia* page 3

prisoners and 77 prisoners respectively. Quarterly increases are, however, affected by seasonal factors such as re-opening of courts after the January break and do not necessarily predict lasting trends.

International Prison Population and Imprisonment Rates

3.19 The increase in the prisoner population has been an Australia-wide and international phenomenon.

3.20 The following table shows the prison population (percentage changes and rates) in a range of countries and illustrates Australia's position.²⁶

Prison Population (percentage changes and rates)

Gordon Barclay and Cynthia Tavares, "International Comparisons of Criminal Justice Statistics 1999 Home Office, May 2001

Country	1988-1994	1995-99	1998-99	rate per 100,000 population 1999
U.S.A.	73%	17%	3%	682
South Africa	27%	29%	0%	327
Czech Republic	3%	18%	4%	224
New Zealand	51%	21%	4%	149
Portugal	52%	11%	-9%	131
England/Wales	35%	28%	0%	125
Canada	19%	-3%	-1%	123
Australia	63%	26%	8%	108
France	20%	1%	1%	91
Netherlands	..	14%	-1%	84
Ireland (Eire)	38%	35%	5%	72
Northern Ireland	-36%	-33%	-20%	69
Sweden	0%	-16%	0%	59
Finland	-36%	-23%	-8%	46

3.21 There are differences in the way countries collect data and direct comparisons between international prison populations should be made with caution. There is, however, very significant differences in the size of the imprisonment rate in the United States (682 per 100,000) and countries such as Sweden (59) and Finland (46). Australia's patterns of increase in imprisonment rates more closely match those of the United States rather than those countries in which rates have been static or declining.

²⁶ Walmsley, R, 1999, *World Prison Population List*, Home Office Research, Development and Statistics Directorate, Research Findings No. 88

Conclusion

- 3.22** After two years of decline from 1995, the prison population in NSW has risen significantly, as has the imprisonment rate. The increase has been most significant in the two years from June 1998, but the NSW prison population has continued to increase, at a slower rate, up to the current date. Other states in Australia and other nations have also experienced significant increases in the same period. However states such as Victoria have maintained low imprisonment rates compared to NSW in the same period. Also, subject to the reliability of international comparisons, several European countries have also had minimal increases or decreases in their imprisonment rates during the time in which the NSW imprisonment rate has significantly increased.
- 3.23** The different trends in imprisonment rates in different jurisdictions raises the questions as to whether, in NSW, more people are incarcerated than is necessary. This issue highlighted by, among others, Professor Tony Vinson and Dr Eileen Baldry in evidence to the committee,²⁷ will be discussed in more detail in Part Two of this report.

²⁷ *Evidence* 12/6/01

Chapter 4 Profile of prison population

Introduction

4.1 The previous chapter examined the overall size and rate of increase of the prison population. In this chapter specific features of the prison population are examined to build a profile of this population. Particular attention is given to specific groups within prisons such as Indigenous inmates and prisoners with an intellectual disability. The length of sentences imposed and the seriousness of offences is also examined.

General characteristics of the NSW prison population

4.2 The Department of Corrective Service's *NSW Inmate Census 2000* indicates that:

- the average age for full-time male inmates was 33 years. The average age for full-time female inmates was almost 32 years.
- Inmates in NSW correctional centres were predominantly young males, although there has been a shift towards older inmates and an increase in females as a proportion of the population(see below).
- 64.4% of males and 73 % of females were aged between 18 and 34 years.
- The country of birth of inmates broadly reflected the general population with 71.6% Australian born and 16.6% born overseas in a non English speaking country. About 6% came from other English speaking countries and the origin of the remainder was unknown.
- Approximately 15.9% of males and 21% of females identified as Aboriginal and/or Torres Strait Islander.

Inmate Health

4.3 Inmates suffer disadvantage on a whole range of specific health problems associated with mental illness, drug abuse and general neglect of health. The Correction Health Services' *Inmate Health Survey*, conducted in 1997, showed that:

- About 80% of inmates were incarcerated for offences relating to alcohol and other drug use.
- Some 60% of males and 70% of females had a history of illicit drug use.
- Around one third of males and two thirds of females were Hepatitis C positive.

- Approximately one third of males and half of females had been assessed or treated for mental illness by a psychiatrist or psychologist at some time.²⁸

4.4 The Department of Corrective Services states in its submissions to the inquiry that:

- 13% of inmates have an intellectual disability;
- 16% of male inmates have been sexually abused before the age of 16;
- 21% of inmates have attempted suicide; and
- 40% of inmates meet the diagnosis of Personality Disorder.²⁹

Socio-economic status

4.5 Inmates have a substantially lower socio-economic status than in other communities. This bears out research findings that people from lower socio-economic groups are more likely to be over represented in correctional centres than those from higher socio-economic areas.³⁰

4.6 In its first submission the Department of Corrective Services provided the following information:

- 60% of inmates are not functionally literate or numerate;
- 44% of inmates are long term unemployed;
- 60% of inmates did not complete year 10;
- 64% of inmates have no stable family; and
- many inmates have had contact with the Department of Community Services, with a high proportion of those being state wards.³¹

4.7 In his study, *Unequal in Life: The Distribution of Social Disadvantage in Victoria and NSW*, Professor Tony Vinson found that most offenders are drawn from the “top 30” most disadvantaged neighbourhoods. Those same neighbourhoods accounted for:

- four and a quarter times their share of child abuse;
- three and a quarter times their share of emergency assistance;
- three times their share of court convictions and long term unemployment;
- twice their share of low income households; and
- a little under one and a half times their share of school-leavers before 15 years.³²

²⁸ Corrections Health Service, *Annual Report 1999-2000*, p 14.

²⁹ Department of Corrective Services *Submission 63* (original and supplementary submissions).

³⁰ Corrections Health Service, *Annual Report 1999-2000*, p 14.

³¹ Department of Corrective Services *Submission 63*, pp35-36.

Profiles of Specific Groups within Prison Population

Indigenous Inmates

- 4.8** The NSW *Inmate Census 2000*, shows that 15.9% of males and 21% of females are Aboriginal or Torres Strait Islander making a total of 16% for all full time inmates.³³ The Department of Corrective Services statistics show that this has risen significantly since 1983, when Indigenous offenders were recorded as being only approximately 6% of the prison population.³⁴
- 4.9** Reports and studies have shown that Indigenous inmates are over represented at all stages of the criminal justice system. In March 2001 the NSW Bureau of Crime Statistics and Research produced a report entitled, *The Scope for Reducing Indigenous Imprisonment Rates*. Significant findings of BOCSAR's Report include that in 1998:
- ATSI persons were 10 times more likely than the general population to be imprisoned, whereas they were eight times more likely in 1991.
 - 11% of those appearing in court, 10% of those convicted, 19% of those sentenced to imprisonment and 17% of those sentenced to imprisonment for long terms (ie 6 months or more) identified themselves as Indigenous.
 - The over representation in prison stems from a higher rate of appearance at court.
 - At the point of sentencing, indigenous persons are sentenced to imprisonment at about 10 times the rate expected given their relative population size, or almost twice the rate expected given the rate at which they entered the court system.³⁵
- 4.10** Factors that contribute to this high rate of court appearance include over-representation at arrest, the nature of the offence and re-offending, the differential treatment of Indigenous persons by the criminal justice system and the disadvantage experienced by Indigenous offenders. The Bureau of Crime Statistics and Research states that without better information on the relative importance of these reasons it is difficult to know where efforts to reduce the rate of indigenous court appearances might be best placed.³⁶ The Bureau states that it is easier to determine the relative importance of contributing to the higher imprisonment rate and the limited use of alternative sanctions among convicted indigenous offenders:

³² Vinson T, (1999) *Unequal in Life: The Distribution of Social Disadvantage in Victoria and NSW*, Jesuit Social Services, Melbourne.

³³ NSW Department of Corrective Services, *NSW Inmate Census 2000*, Statistical Publication No. 22, April 2000, p 4.

³⁴ NSW Department of Corrective Services: Source: *NSW Prison Census in NSW Inmate Population: Visualising the Trends 1999*.

³⁵ NSW Bureau of Crime Statistics and Research, *The Scope for Reducing Indigenous Imprisonment Rates*, March 2001, p 8.

³⁶ *Ibid* p8.

Indigenous persons were more likely to be convicted of offences against the person, robbery/extortion and offences against justice which are violent in nature and which are more likely to attract a prison sentence. Indigenous persons were also more likely to have prior criminal convictions.³⁷

4.11 In its submission the Aboriginal and Torres Strait Islander Commission further highlighted the over representation of indigenous persons in the criminal justice system:

- for Indigenous males, three categories of criminal incident constitute 58% of all those recorded, namely:
 - theft (26%)
 - driving (13%)
 - assault (19%).
- the category of “Offences against Justice Procedures” (including breach of maintenance, Family Law orders, resist/hinder police and breach of probation/parole) constitutes 11% of all offences recorded by Indigenous offenders.
- drug offences constitute only 3.75% of all criminal incidences recorded against Indigenous persons.³⁸

4.12 According to the Bureau of Crime Statistics and Research, Indigenous offenders are more likely than non-Indigenous defendants to receive a short (i.e. less than six month) prison sentence and are sentenced to non-custodial sanctions less frequently than non-indigenous offenders. The Bureau notes that any intervention at the point of sentencing would be difficult without any radical change to current sentencing practices. However, the Bureau calculated that if Indigenous people presently given a short prison sentence of six months or less were instead given some form of non-custodial sanction, the number of indigenous persons sentenced to prison could be reduced by 54 per cent. This would have the result of reducing the rate relative to the non-Indigenous rate.

Inmates with an Intellectual Disability

4.13 While the prevalence of intellectual disability in the general population is somewhere between 1 and 3%, estimates of the prevalence in correctional facilities in the international literature range from 2% to 37%. Determining the size of this group is extremely difficult. Very limited data is collected by different agencies and the definition varies between places where data is collected.³⁹

4.14 In evidence to the Committee in March 2000, Professor Susan Hayes, Head of the Department of Behavioural Sciences in Medicine at the University of Sydney, advised that

³⁷ *Ibid* p 8.

³⁸ However anecdotal evidence to this inquiry from Aboriginal and Torres Strait Islander Legal Service staff estimate that close to 80% of all matters they deal with involve alcohol and/or drugs (*Submission 179*, pp 8-9).

³⁹ Simpson J et al, *The Framework Report*, Law & Justice Foundation of NSW, July 2001, p 8.

among adult prisoners the prevalence had risen from 12.5% in 1988 to 19.3% in 1999.⁴⁰ In evidence to the Committee in March 2001, Professor Hayes outlined studies she had conducted on the prevalence of intellectual disability in the criminal justice system in 1997 and 1999 and advised that:

I can say with confidence that the rate falls between 15 and 25 per cent, and it is likely to hover between around 19 and 20 per cent based on those studies, which had a final sample of more than 300 inmates.⁴¹

4.15 In its first submission, the Department of Corrective Services advises that 13% of the inmate population have an intellectual disability and between 1997 and 1999, of the inmates identified as intellectually disabled, 55.4% were in custody for serious offences (murder, sexual assault, robbery).⁴²

4.16 Intellectually disabled offenders also have a high rate of recidivism. Luke Grant, Assistant Commissioner, Inmate Management stated in evidence to the Committee:

Some 68.3 per cent of inmates between 1990-98, who were identified as meeting intellectual disability criterion returned to custody with a new offence within two years. That compares to 38.3 per cent of the mainstream population. It is significantly higher. Some 53 per cent of those people had returned more than once within that time.⁴³

4.17 The Minister for Corrective Services has advised the Committee that, in an attempt to determine the numbers in New South Wales, the Department will be conducting a major health survey of inmates in mid 2001 which will include a test for intellectual disability.⁴⁴

4.18 The inappropriateness of imprisonment for people with a disability was noted by a number of witnesses and submissions to the Committee. For example, the Disability Council of NSW stated:

The Council believes it is inappropriate to involve a person with a disability in the corrective services system, especially if they have committed a non-violent offence as there is little to be gained from applying such a sanction.⁴⁵

4.19 The Disability Council believes that the costs of incarceration far outweigh the benefits, and that people with an intellectual disability within the prison environment are more likely to be isolated and victimised and less likely to become integrated.

⁴⁰ Hayes *Evidence* 27 March 2000.

⁴¹ Hayes *Evidence* 19 March 2001 p2

⁴² Department of Corrective Services *Submission* 63 p53

⁴³ Grant, *Evidence* 19 March 2001

⁴⁴ Correspondence from Minister for Corrective Services, undated, in response to the Chair's letter of 26 April 2001.

⁴⁵ Disability Council of NSW *Submission* 87, p5.

Inmates from a Non-English Speaking Background

- 4.20** The Department of Corrective Services advised in its submission that 26% of the inmate population may be from a non-English speaking background.⁴⁶ Others have provided a smaller estimate. For example, Ms Violet Roumeliotis, Executive Officer, CRC Justice Support, stated that as at 30 June 2000, around 18 per cent of prison population are of a non-English speaking background.⁴⁷ The *NSW Inmate Census 2000* produced by the Department put the figure at 16.6% of full time custody, with a further 6% of unknown origin.
- 4.21** The Committee was advised by prisoner groups that the variance in the estimates of the number of people from different ethnic groups in prison was due to the way the Department of Corrective Services collected information from inmates relying on passports alone or voluntary disclosure, not always readily forthcoming from prisoners.
- 4.22** The following table taken from the 2000 *Inmate Census* provides the country of birth of the seven most numerous groups within the prison system:⁴⁸

Country of Birth: Full Time Custody Inmates June 2000

Country of Birth	Male (% of total inmates)	Female (%)	Total (% of inmates)
Australia	71.4	74.2	71.6
Vietnam	3.3	2.2	3.2
New Zealand	2.9	3.3	2.9
United Kingdom	2.4	2.2	2.4
Pacific Islands (inc Fiji)	1.8	0.7	1.8
Lebanon	1.3	-	1.3
China (exc Taiwan)	0.9	1.1	0.9
Others	15.1	16.3	14.4

- 4.23** The table shows that the great majority of prisoners are Australian born. What is not shown by this table is whether certain groups are over-represented within the prison system. The Department of Corrective Services does not produce figures on the imprisonment rate of prisoners according to country of origin, although there have been national studies which have examined this issue using census data.⁴⁹

⁴⁶ Department of Corrective Services *Submission* 63, p 35.

⁴⁷ Roumeliotis, *Evidence*, 20/10/00.

⁴⁸ *NSW Inmate Census 2000* Table 2.6 pp 28-32.

⁴⁹ Carcach and Grant "Australian Corrections: Main Demographic Characteristics of Prison Populations" Australian Institute of Criminology *Trends and Issues in crime and Criminal Justice* April 2000 p 5.

Inmates with a Mental Illness

4.24 The Department of Corrective Services and the Corrections Health Service reports that for male prisoners:

- 12% have been diagnosed with some form of psychiatric disorder including depression, anxiety disorder, schizophrenia, or bipolar disorder;
- 2.6% have been diagnosed with schizophrenia;
- 33% have undergone some form of treatment or assessment for emotional and psychological problems; and
- 21% have attempted suicide.⁵⁰

4.25 Dr Richard Matthews, of the Corrections Health Service, advised the committee that:

When we look at health we find that on reception more than 50 per cent of males and 30 per cent of females need a referral because they are depressed. You might argue that if you were not depressed coming to gaol there would be something wrong with you. But, more worryingly, 30 per cent of the males and 50 per cent of the females had had contact with public mental health services in the 12 months prior to incarceration.

Some 12 per cent had a previous axis one diagnosis, which is a major mental illness such as schizophrenia, manic depression or major depression; 80 per cent are incarcerated for drug and alcohol related offences; and again, ... we are now up to about 60 per cent of the males and 80 per cent of the females are hepatitis C positive. That compares with a community prevalence of about 1 per cent.⁵¹

4.26 The Committee was told, by a representative of the NSW Disability Council, that determining the number of inmates with a mental illness is problematic as some inmates may be reluctant to identify as having a psychiatric illness.⁵²

State Wards and Prison

4.27 In their report, *Addressing Offending Behaviour*, MacFarlane and Murray state that

at present there are no statistics available on the numbers of wards in adult prisons. Our observations (at Mulawa Correctional Centre) suggest that they make up a significant part of the women's population.⁵³

⁵⁰ These are not exclusive categories: for instance some, but not necessarily all, the 21% of prisoners who have attempted suicide may also suffer from a mental illness.

⁵¹ Matthews, *Evidence*, 12 March 2001 p 34.

⁵² Manns. *Evidence*, 12 March 2001.

⁵³ K MacFarlane & J Murray, *Addressing Offending Behaviour*, 1998, p 12.

- 4.28** In its first submission to the Committee, the Department of Corrective services states that many inmates have had contact with the Department of Community Services, with a high proportion of those being state wards.
- 4.29** The Positive Justice Centre cite a number of international and Australian studies which show that ward over-representation in adult prisons is the norm. Their submission cites a survey conducted by the NSW Department of Corrective Services which found that 30% of female prisoners claimed to have been removed from their families as children; it also cites United Kingdom research which has shown that 23 per cent of adult prisoners and 38 per cent of young prisoners have been in State care.⁵⁴
- 4.30** In evidence to the committee John Murray, for the Positive Justice Centre, indicates that little is known about the number of State Wards going into custody.⁵⁵ He was critical of the failure of many agencies over many years to address the needs of former wards. Speaking of provision for the needs of former wards and care leavers in gaol, he said:
- Personally I think it is quite inadequate, because there is certainly nothing happening in Corrective Services, to address past caring episodes and experiences that have led to offending.⁵⁶
- 4.31** As the Department of Community Services is no longer using the term “wards” it is possible that any trends in numbers will be lost in the change of definitions. So as to increase what is known about State wards in custody and assist in developing strategies to reduce this incidence, the Committee recommends a research project to identify the needs of “wards” in the prison system.

Recommendation 1

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

Vulnerable Prisoners

- 4.32** The Committee recognises that there are inmates who are particularly vulnerable within the prison system to discrimination from other prisoners or prison staff. This vulnerability may be by reason of their sexuality, for gay prisoners, or because of their status regarding HIV infection.
- 4.33** Transgender inmates⁵⁷ are another vulnerable subgroup within prisons. In 1998, the Department of Corrective Services implemented a policy for the management of

⁵⁴ The Positive Justice Centre, *Submission 97*, pp 3-4.

⁵⁵ Murray *Evidence* 12 June 2001.

⁵⁶ Murray *Evidence* 12 June 2001.

⁵⁷ Inmates who identify as a member of the opposite sex by living, or seeking to live, as a member of the opposite sex.

transgender inmates in order to comply with an amendment to the *NSW Anti-Discrimination Act* in 1996 which made it unlawful to discriminate against a person on the grounds of the person being, or being thought to be, transgender.⁵⁸ The transgender policy applies to all NSW correctional centres, and to all court cells, lock-ups and police stations where persons are received into lawful custody by correctional officers.⁵⁹

An Ageing Inmate Population

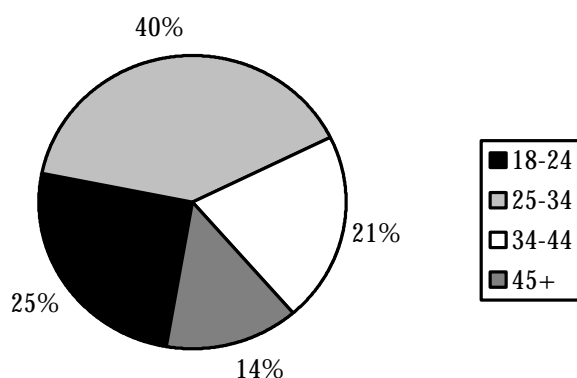
4.34 Research and evidence presented to the Committee shows that the inmate population is ageing. In the Australian Institute of Criminology (AIC) report *Elderly Inmates: Issues for Australia*, Anna Grant writes that two reasons which may account for this are either that people are entering prison relatively late in life, or that they are serving longer sentences and growing old in prison.⁶⁰ According to Grant, the most common offence category for inmates over the age of 50 years is “violent offence”.⁶¹

4.35 Witnesses to the Committee commented on the issue of the ageing prisoner population specifically in relation to NSW. Dr Richard Matthews, CEO for Corrections Health for instance, stated:

As a result of truth in sentencing legislation there is an ageing cohort and between 1992 and 1996, when the population remained stable, the number of inmates over 45 almost doubled.⁶²

4.36 Reproduced below is a pie chart which identifies the age profile of NSW inmates, as at 30 June 2000.

Age of NSW Full Time Inmates June 2000



Source: NSW Inmate Census 2000.

⁵⁸ *Transgender (Anti-Discrimination and other Acts) Amendment Act 1996* (NSW).

⁵⁹ Rosa *op cit* p 219.

⁶⁰ Australian Institute of Criminology, *Elderly Inmates: Issues for Australia*, 1999.

⁶¹ *Ibid* p 3.

⁶² Matthews *Evidence* 12 March, 2001.

4.37 This shows that the prison population is still primarily young, with the majority aged under 34, despite the evidence above that over time the prison population is ageing.

Offences resulting in imprisonment

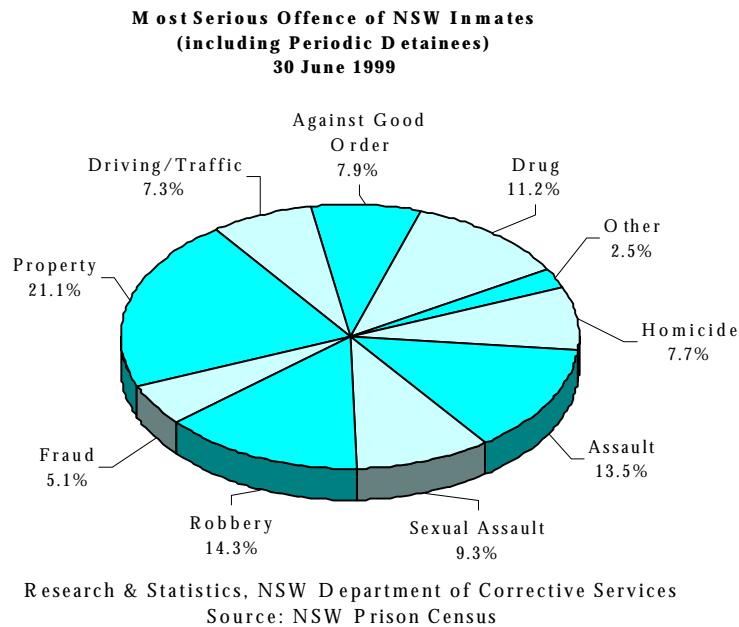
4.38 One impact on prison numbers is the seriousness of the offence for which inmates are charged. Inmates may be in prison for several offences. The table below examines the most serious offences of full-time inmates held in the NSW correctional system as at 30 June 2000:

Most Serious Offence of NSW Inmates As At 30 June 2000

Most serious offence category	Male Inmates		Female Inmates		Total	
	Count	Percentage	Count	Percentage	Count	Percentage
Murder	455	6.6%	21	4.6%	476	6.5%
Attempt Murder	71	1.0%	4	0.9%	75	1.0%
Conspiracy to Murder	11	0.2%	2	0.4%	13	0.2%
Manslaughter	95	1.4%	17	3.7%	112	1.5%
Major Assault	549	8.0%	20	4.4%	569	7.8%
Other Assault	331	4.8%	25	5.5%	356	4.9%
Rape	5	0.1%	-	-	5	0.1%
Serious Sexual Assault	442	6.4%	1	0.2%	443	6.0%
Incest/Carnal Knowledge	112	1.6%	1	0.2%	113	1.5%
Indecent Assault	83	1.2%	-	-	83	1.1%
Buggery/bestiality	26	0.4%	-	-	26	0.4%
Robbery with major assault	750	10.9%	40	8.8%	790	10.8%
Other robbery	347	5.0%	17	3.7%	364	5.0%
Fraud	239	3.5%	40	8.8%	279	3.8%
Break, Enter and Steal	781	11.4%	46	10.1%	827	11.3%
Other steal	533	7.8%	59	13.0%	592	8.1%
Driving/traffic	346	5.0%	12	2.6%	358	4.9%
Offences against order	394	5.7%	37	8.2%	431	5.9%
Breach of parole/licence	323	4.7%	30	6.6%	353	4.8%
Drug offences	802	11.7%	68	15.0%	870	11.9%
Other offences	181	2.6%	14	3.1%	195	2.7%
Total		100%		100%		100%

Source: Department of Corrective Services *Submission* No. 63

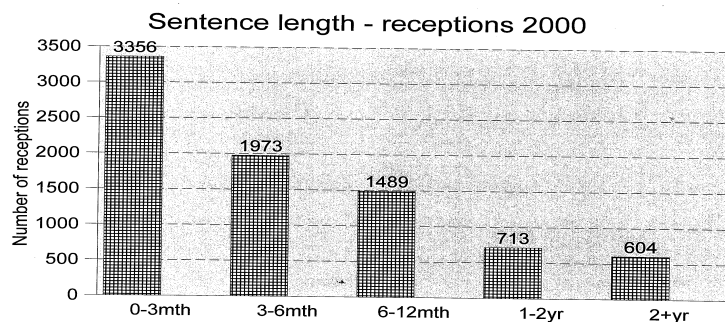
4.39 The breakdown of the most serious offences of NSW inmates is shown below in chart form:



Length of sentences

4.40 Research by Joanne Baker of the Bureau of Crime Statistics and Research entitled *Are the Courts becoming more lenient? Recent trends in convictions and penalties in NSW higher and Local Courts*,⁶³ has concluded that the percentage of prisoners sentenced to imprisonment has remained stable or increased between 1990 and 1997 in NSW in each category of offence. She also concluded that the length of prison sentences imposed generally remained stable between 1990 and 1997.

4.41 Although sentences may be increasing in severity, it is clear that many prisoners continue to be imprisoned for very short sentences. The following chart shows the sentence length of receptions in 2000:



MAJORITY SENTENCED TO LESS THAN 6 MTH

Research and Statistics Unit NSW Dept Corrective Services

⁶³ *Crime and Justice Bulletin* no 40, November 1998.

- 4.42** The chart illustrates that the majority of inmates passing through the prison system are sentenced to less than six months imprisonment. If a snapshot is taken on any one particular day short term prisoners are a minority but over a year they represent the majority of prisoners passing through the system. Prisoners serving short term sentences have increased in number significantly since 1995, as shown by the following table:

People Starting Custodial Episodes: 1995/96 to 2000/01

Sentence Length	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	TOTAL
0-3 mths	2233	2417	2515	3008	3636	3029	16838
3-6 mths	1364	1470	1566	1874	2009	1982	10265
6-12 mths	1243	1315	1337	1407	1480	1590	8372
1-2 yr	606	649	649	668	742	805	4119
2+ yr	482	481	481	609	611	598	3307
<i>Total</i>	<i>5928</i>	<i>6332</i>	<i>6332</i>	<i>7566</i>	<i>8478</i>	<i>8004</i>	<i>42901</i>

- 4.43** The short period for which the majority of inmates are sentenced raises the question as to whether prison was the appropriate sentence for some of these short term inmates. This issue is discussed further in chapters Six and Seven of this report.

Repeat Offenders

- 4.44** The Committee was told by Dr Matthews of Corrections Health that a significant number of the receptions into the prison system come from relatively small core of multiple repeat offenders.

...In the last four years, 24,000 people have come once; 7,200 have come twice; 3404 have come three times; and so on down the list. A total number of 38,626 persons came to gaol between June 1995 and June 1999. These figures are now about two years out of date, but I do not think anything much has changed apart from the numbers. This is over a four year period.

You have to remember that many of these people could not come back because they had not got out in order to come back. So if you then do the numbers, you will find that you have 3,500 people with an average of five incarcerations in four years. So, you have 17,500 episodes of reception. Maybe this is a group that we should be looking at as having special needs.⁶⁴

⁶⁴ Dr Matthews *Evidence*, 12 March 2001, p 36.

- 4.45** Dr Matthews provided the following table showing the level of repeat offenders held in custody:

Trends in Imprisonment: Last 4 Years

Number of People	Number of episodes in Custody
24,472	1
7213	2
3404	3
1737	4
820	5
465	6
515	More than 6 episodes of imprisonment

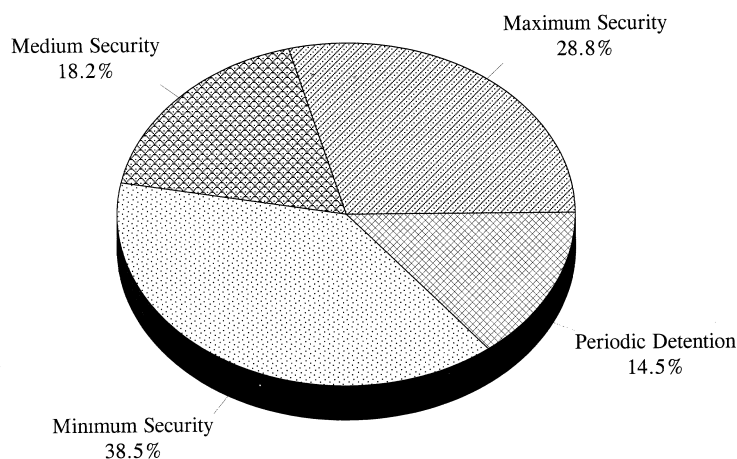
Total of 38,626 persons have spent some time in a full time custody between June 1995 and June 1999

- 4.46** The table shows significant numbers of prisoners have had at least two episodes in custody, and more than 3,000 offenders served four or more terms of imprisonment between 1995 and 1999.

Institutional Security Classification of Inmates

- 4.47** As discussed in Chapter Two, inmates are classified according to different levels of security. Set out below in graphical form is a breakdown of institutional security classification of prisoners as at June 2000.

Institutional Security Percentage on last Sunday of June 2000



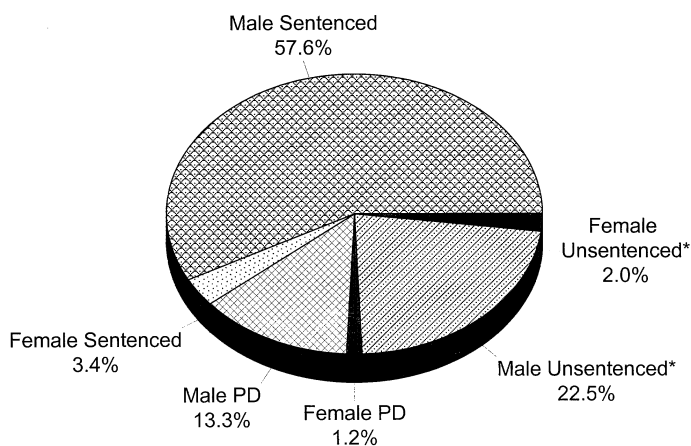
Research & Statistics, NSW Department of Corrective Services

- 4.48** Significant numbers of serious offenders are classified as maximum security, but the majority (53%) of prisoners are either minimum security or on periodic detention.

Sentenced/unsentenced inmates

4.49 As will be discussed in Chapter Six, the number of prisoners on remand awaiting sentence has a significant impact on overall prison numbers. Set out below in graphical form is a breakdown of the sentenced/unsentenced status of inmates, as at June 2000 ("PD" refers to periodic detention.)

Profile on last Sunday of June 2000



* Unsentenced includes appellants

Research & Statistics, NSW Department of Corrective Services

4.50 It can be seen that the unsentenced male population makes a significant contribution to the overall prison population, accounting for almost a quarter of the total.

Conclusion

4.51 The prison population consists of men and women who are on average of lower socio-economic status, of poorer health and of lower levels of education than the rest of the population. Indigenous men and women and those with an intellectual disability or a mental illness are significantly over represented. The average age of the inmate population is increasing. Although significant numbers of inmates have been sentenced for serious offences and are in maximum security classified institutions, the majority of prisoners who pass through the system serve sentences of less than six months and are in minimum security or serving periodic detention. Almost a quarter of the prison population are awaiting sentence.

Chapter 5 **Analysis of the increase in the prison population**

Introduction

- 5.1** Part One of this Report presented a profile of the prison system and the prison population, and documented the increase in this population in recent years. Part Two considers dimensions of how this can be addressed. In this chapter the reasons for the increase are analysed. In many cases recommendations are made for further research so that the factors causing the increasing prison population can be more effectively targeted. The Committee has not been provided any evidence which clearly links the increase in the prison population to increases in the crime rate.
- 5.2** As outlined in Chapter Three of this report, there has been a steady increase in the NSW prison population in recent years, with significant increases from 1989 and more recently from June 1998. Since 1998 the rate of imprisonment per 100,000 population has increased from 100.6 to 112.7 in June 2000. Furthermore, recent evidence from representatives of the Department of Corrective Services suggests that the number of prisoners in NSW is likely to continue to increase through 2001/2002 and 2002/2003.

General Factors: immediate and underlying causes

- 5.3** As outlined in the Committee's *Interim Report*, there is no single factor that has caused the increase in the prison population. Rather it is an interaction between a matrix of factors that has been responsible for the increase. Some of the factors identified by the Committee in its *Interim Report* include: patterns of offending; policing practices; legislative changes; tougher sentences; guideline judgments; increased drug use, particularly heroin; increasing poverty and disadvantage; and the extent of the availability and accessibility of services.⁶⁵
- 5.4** The submission received from the Department of Corrective Services distinguishes between *immediate* causes of the increase in the prison population from *underlying* causes of the increase. Immediate causes are listed as:
- the number of persons received on remand;
 - the length of time they stay on remand;
 - the number of persons starting a sentence of imprisonment; and
 - the length of time they serve.⁶⁶

⁶⁵ *Interim Report*, p 28.

⁶⁶ Department of Corrective Services, *Submission 63*, p 10.

5.5 Possible underlying causes of the increase in the prison population are identified as:

- crime rate;
- police activity;
- court activity; and
- breach of orders.⁶⁷

5.6 During the course of stage two of the Committee's inquiry, particular attention has been given to the following factors and their influence upon the increase in the prison population:

- police activity;
- crime rates;
- changes in the remand population, and underlying factors that might be contributing to those changes;
- court activity;
- severity of sentences, including the influence of guidelines judgments; and
- breach of non-custodial orders.

Police activity

Arrest rates

5.7 If there are more police officers there is the potential for a greater level of police activity, regardless of whether actual crime is increasing. The submission from Department of Corrective Services refers to the effect on the prison population of increases in the number of police in NSW and changes in police activity, measured through arrest rates.

The Police Service has also reported that the proportion of police in the front line had increased as follows since 1996:

1996	74% of police "in front line"
1997	83%
1998	85%

...the results of major operations by the Police Service in 1998-99...demonstrate that major police action often leads directly to greater numbers of arrests.⁶⁸

⁶⁷ *Ibid*, p 20.

5.8 The Bureau of Crime Statistics and Research (BOCSAR) has provided evidence to the Committee in support of this explanation. It advised the Committee that the average number of persons arrested per month by NSW police has increased by 13% over the last five years. The numbers arrested as a monthly average in NSW over the period are as follows:

- 1996 – 9,900 persons per month average.
- 1997 – 9,900 (stable)
- 1998 – 11,000 (+11%)
- 1999 – 12,000 (+10%)
- 2000 – 11,200 (-7%)

5.9 The largest increase in the number of arrests in recent years occurred in the period from January 1998 to December 1999, coinciding with the period when the prison population started to increase significantly for the second time.

Criminal charges coming before the courts

5.10 The results of increased police activity has resulted in a 22% increase in the number of cases coming before the NSW courts since 1995/96, resulting in approximately 20,000 persons being dealt with each year. This is shown by the following data produced by BOCSAR:

Number of cases registered in NSW Courts

	1994-95	1995-96	1996-97	1997-98	1998-99
Local Court	197,071	211,460	228,671	230,825	242,222
District Court	4,108	3,751	3,622	3,896	3,450
Supreme Court	93	90	89	100	82
Total	201,272	215,301	232,382	234,821	245,754

Source: Key trends in Crime and Justice – NSW – 1999

Number of persons dealt with by the courts (disposals)

	1995/96	1996/97	1997/98	1998/99
Local	106,676	114,359	110,214	127,430
District	4,324	3,845	3,418	3,803
Supreme	75	76	87	111
Total	111,075	118,280	113,719	131,344

Source: Key trends in Crime and Justice – NSW – 1999

Police Charges

- 5.11** During the inquiry, the Committee heard evidence regarding the impact on the prison population of the police “over-charging” a term used in reference to the practice of laying the most serious charge which could apply in any given case. The Committee also received evidence of the practice of executing warrants, or laying further charges, during the last few weeks of an inmate’s sentence rather than determining whether there are any outstanding warrants at the time of arrest. Mr Doug Humphreys, Director, Criminal Law, Legal Aid Commission of New South Wales told the Committee that

...it is a very effective way of keeping a target—if I can use that term—in custody for a longer period of time...because inevitably that person will be bail refused. We can do nothing to force police to do that. It would seem to me as a matter of policy, however, that that is completely and utterly undesirable.⁶⁹

- 5.12** Mr Humphreys argued that the Department of Corrective Services should be under an obligation to ensure that all warrants are called in as early as possible.
- 5.13** These matters are further addressed later in this chapter in relation to the remand population, bail and sentencing issues.

Crime rates

- 5.14** The Committee has not been presented with any evidence establishing a link between the crime rate and the recent increase in the prison population. Information from the Australian Institute of Criminology shows that the rate of imprisonment over recent years in Australia has been increasing at a greater rate than the increase in the rate of crime. The Institute has reported that the national trend to more and longer gaol sentences has arisen

⁶⁹ Humphreys *Evidence* 19 October 2000.

during a decade in which crime rates have been broadly stable, despite increases in drug-related crimes.⁷⁴

5.15 The crime statistics from BOCSAR, reproduced below in this section, seem to indicate that the increase in the prison population from June 1998 in NSW cannot readily be attributed to changes in the incidence of crime. Any significant increases in the rates of crime, in relation to offences such as assault, robbery and break and enter, appeared to occur well before the rate of increase in the prison population. The period of the most recent increase in the prison population has been marked by a broadly stable crime rate according to official measures.⁷⁵

5.16 BOCSAR publishes a range of reports on crime statistics and trends in crime and justice. Reproduced below is a summary of trends in recorded criminal incidents, covering the period 1995-1999, and including both the actual number of incidents and a rate per 100,000 population.

Table 1.1: Summary of trends in recorded criminal incidents, by offence type						
<i>Type of Offence</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>
	<i>No of recorded incidents</i>					
Murder*	119	106	112	100	121	101
Assault	39132	48869	54303	58672	57559	61338
Sexual assault	2272	2973	3601	3291	2956	3504
Indecent assault/other sexual offences	4337	5211	6156	5310	4483	3686
Robbery without a weapon	4518	4952	6487	6503	6413	6972
Robbery with a firearm	677	824	1139	919	696	655
Robbery with a weapon not a firearm	1465	1894	3381	4382	3515	3660
Break and enter dwelling	61336	74546	79838	85768	77178	80843
Break and enter non-dwelling	40393	43551	45467	48772	45551	49569
Motor vehicle theft	47093	49206	55556	53866	48224	52279
Steal from motor vehicle	55896	63771	71079	75258	75497	89576
Steal from retail store	22957	22619	21492	21112	20947	21066
Steal from dwelling	25390	28420	28586	30984	30141	31673
Steal from person	9827	9939	10864	11631	11542	12761
Fraud	17490	21702	23933	26224	25835	26436
Malicious damage to property	71817	78853	79731	89685	91577	93381

⁷⁴ Carach and Grant *Australian Corrections: Main Demographic Characteristics of Prison Populations* April 2000, Australia Institute of Criminology.

⁷⁵ The level of crime is difficult to determine and an area of great controversy. There have been a range of committee inquiries over recent years which have examined these issues of measurement of crime and its causes. Particular attention is drawn to the work of the Standing Committee on Law and Justice, in its inquiry into Crime Prevention through Social Support (*First Report* 1999).

	Rate per 100,000 population					
Murder*	1.9	1.7	1.8	1.6	1.9	1.6
Assault	640.2	787.6	865.7	926.4	897.7	949
Sexual assault	37.2	47.9	57.4	52.0	46.1	54.2
Indecent assault/other sexual offences	71.0	84.0	98.1	83.8	69.9	57
Robbery without a weapon	73.9	79.8	103.4	102.7	100.0	107.9
Robbery with a firearm	11.1	13.3	18.2	14.5	10.9	10.1
Robbery with a weapon not a firearm	24.0	30.5	53.9	69.2	54.8	56.6
Break and enter dwelling	1003.5	1201.4	1272.8	1354.2	1203.7	1250.8
Break and enter non-dwelling	660.9	701.9	724.8	770.1	710.4	766.9
Motor vehicle theft	770.5	793.0	885.7	850.5	752.1	808.8
Steal from motor vehicle	914.5	1027.8	1133.1	1192.0	1207.4	1385.9
Steal from retail store	375.6	364.5	342.6	333.3	326.7	325.9
Steal from dwelling	415.4	458.0	455.7	489.2	470.1	490
Steal from person	160.8	160.2	173.2	183.6	180.0	1974
Fraud	286.1	349.8	381.5	414.0	402.9	409
Malicious damage to property	1175.0	1270.9	1271.1	1416.0	1428.3	1444.8

For murder, the data are counts of recorded victims, not incidents

Source: *Key Trends in Crime and Justice NSW 1999*, p7, *NSW Recorded Crime Statistics 2000*.

5.17

The trends in each of these categories of crime for the last five years, including for 1999-2000, are summarised in the tables reproduced below:

Table 1. Trend tests and annual percentage changes in number of recorded criminal incidents

Offence category	% Change in recorded crime, 1998-1999	% Change in recorded crime, 1999-2000
Murder	no significant trend	no significant trend
Assault	no significant trend	no significant trend
Sexual Assault	decrease of 10.2%	no significant trend
Indecent assault, act of indecency, other sexual offences	decrease of 15.6%	no significant trend
Robbery without a weapon	no significant trend	no significant trend
Robbery with a firearm	decrease of 24.3%	no significant trend
Robbery with a weapon not a firearm	decrease of 19.8%	no significant trend
Break and enter - dwelling	decrease of 10.0%	no significant trend
Break and enter - non dwelling	decrease of 6.6%	increase of 8.1%
Motor vehicle theft	decrease of 10.5%	increase of 8.2%
Steal from motor vehicle	no significant trend	increase of 15.2%
Steal from retail store	no significant trend	no significant trend
Steal from dwelling	no significant trend	no significant trend
Steal from person	no significant trend	no significant trend
Fraud	no significant trend	no significant trend
Malicious damage to property	no significant trend	no significant trend

Table 2. Trend tests and annual percentage changes in number of recorded criminal incidents, 1995-1996 to 1997-1998.

Offence category	% Change in recorded crime, 1995-1996	% Change in recorded crime, 1996-1997	% Change in recorded crime, 1997-1998
Murder	no significant trend	no significant trend	no significant trend
Assault	increase of 22.5%	increase of 8.7%	increase of 6.2%
Sexual Assault	increase of 23.3%	no significant trend	decrease of 14.1%
Indecent assault, act of indecency, other sexual offences	no significant trend	no significant trend	decrease of 18.7%
Robbery without a weapon	increase of 8.4%	increase of 29.5%	no significant trend
Robbery with a firearm	no significant trend	increase of 33.4%	no significant trend
Robbery with a weapon not a firearm	increase of 27.8%	increase of 76.8%	increase of 29.7%
Break and enter – dwelling	increase of 20.9%	increase of 6.5%	increase of 7.0%
Break and enter - non dwelling	increase of 7.0%	increase of 3.4%	increase of 6.8%
Motor vehicle theft	increase of 4.1%	increase of 12.5%	no significant trend
Steal from motor vehicle	increase of 13.6%	increase of 10.9%	increase of 5.9%
Steal from retail store	no significant trend	decrease of 5.7%	no significant trend
Steal from dwelling	increase of 11.3%	no significant trend	increase of 7.7%
Steal from person	no significant trend	no significant trend	no significant trend
Fraud	increase of 17.2%	no significant trend	no significant trend
Malicious damage	increase of 9.0%	no significant trend	increase of 11.9%

5.18 The tables indicate no significant increases in recorded incidents of crime in the years in which the prison population rose most rapidly, in the two years from June 1998. The increase in recorded incidents was significant in some categories in the years prior to that period.

5.19 However, the figures above are recorded incidents, that is crimes which are reported to the police. If more people report crimes to the police, increases may reflect this rather than actual increases in the incidence of crime. If police numbers increase, this is likely to result in more detection of crime and hence more recorded crime in many categories.

5.20 An alternative approach to the measurement of the incidence of crime is the use of victimisation surveys, which ask whether a person has been a victim of crime whether or not it was reported. This approach is adopted by the Australian Bureau of Statistics:

Type of Offence	Year				
	1994	1995	1996	1997	1999*
Assault	2.4	2.7	3.0	3.2	3.7
Sexual assault	0.7	0.5	0.4	0.6	0.7
Robbery	n.a.	n.a.	n.a.	n.a.	1.2
Break and enter	4.5	5.3	4.6	5.6	5.6
Motor vehicle theft	2.1	2.1	2.0	2.0	2.2

*data for 1998 is not available because of a change in question wording for that year which made comparisons with earlier years unreliable. 2000 Data not currently available.

Source: ABS *Crime and Safety NSW* surveys.

- 5.21** This table indicates there was no significant percentage increase in victims of crime as in the most common categories of offences during the period in which the NSW prison population has significantly increased. As with the figures regarding reported crime, they are not conclusive that there has *not* been an increase in crime; but they certainly do not show any evidence to directly link the rise in prison numbers to a rise in crime.
- 5.22** The complexity of the relationship between crime rates and the prisoner population was raised during the Inquiry (see below in this chapter). From the evidence provided during this inquiry, the Committee believes that, of all the possible factors, an increase in crime is one of the least likely causes of the increase in the prison population.

Remand

Increase in the number of inmates on remand

- 5.23** A person is remanded in custody if he or she has been refused bail or can not meet bail conditions. Bail is basically an agreement to attend court to answer a criminal charge at a specified time, rather than entering into custody in the interim. As a general principle, there is a presumption in favour of bail, based upon the presumption of innocence. However, as indicated below, that presumption has been removed in relation to certain offences.
- 5.24** There has been a significant increase in the size of the unsentenced prison population in recent years. As at 30 June 2001 the number of inmates on remand was 2,188. The *Inmate Statistics July 1999 to June 2000* published by the Department of Corrective Services indicate that the total number of unsentenced inmates has risen by 74.7% since 1995.⁷⁶ Not only is the number of persons on remand increasing, but the proportion of the whole prison population has also increased from 18.7% to 28.6% in the same period.⁷⁷

⁷⁶ *Inmate Statistics (Weekly States) July 1999 to June 2000* p5.

⁷⁷ *Ibid* p4

- 5.29** It is clear that the increasing remand population is a major immediate cause of the increase in the prison population. What is less clear is what underlying factors are causing the increase in the remand population.

Factors contributing to the increase in the remand population: Bail refusal

- 5.30** One factor contributing to the increase in the remand population may be that more prisoners are being refused bail. BOCSAR advises that there was a statistically significant upward trend in the proportion of persons for whom bail was refused in the lower courts and an even greater increase in persons refused bail in the District Court. In evidence to the Committee, Marilyn Chilvers, NSW Bureau of Crime Statistics and Research advised that:

In the Local courts there was a significant upward trend in the proportion of persons refused bail in cases finalised in the local courts (over a five year period ending in June 2000). That increased from 4 per cent of persons in 1995-96 up to 4.9 per cent of persons in 1999-2000, an average increase of 23 per cent. In the District Court there was a significant upward trend in the proportion of people who were refused bail in cases finalised over five years, and it increased from 26.4 per cent of persons in 1995-96 up to 34.1 per cent, that is a 29 per cent increase⁸⁰

- 5.31** The following table shows the number of persons refused bail in the Local and Higher Courts between 1994 and 1999:

Trends in persons on remand at the time their Court case was finalised and total finalisations, NSW Local and Higher Courts, 1994 to 1999

	1994	1995	1996	1997	1998	1999
Local Court						
bail refused	3,552	4,075	4,581	4,884	5,374	6,415
bail refused (%)	3.56	3.97	4.14	4.37	4.61	4.87
finalisations (total)	99,663	102,617	110,773	111,686	116,598	131,833
Higher Courts						
bail refused	1,195	1,066	1,075	1,063	1,330	1,358
bail refused %	24.51	25.80	28.35	29.26	33.27	34.71
bail not met	30	30	34	33	31	22
bail not met %	0.64	0.73	0.90	0.91	0.78	0.56
finalisations (total)	4,876	4,131	3,792	3,699	3,998	3,912

BOCSAR, 2000, *Increases in the NSW Remand Population*, Crime and Justice Statistics, Issue no 9, p5

- 5.32** During the Inquiry the Committee was advised that one reason for the high rate of bail refusal is the police practice of “over-charging”. The Senior Public Defender referred to this practice in his submission stating that:

the practice of laying the most serious charge which may possibly apply to any given fact or situation has become normal police procedure...The population of

⁸⁰ Chilvers *Evidence* 12 March, 2001.

remand prisoners is particularly subject to the influence of a police tendency to overcharge.⁸¹

5.33 Mr Doug Humphreys, Director, Criminal Law, Legal Aid Commission of New South Wales advised the Committee:

...police will always select the most serious charge to proceed with, and they will then charge a number of lesser alternatives so that there is at least one charge that the person ultimately pleads guilty on.⁸²

5.34 Mr Humphreys advised the Committee that “over-charging” can have an impact on the likelihood of an offender being granted bail if the person is charged with an offence where there is no presumption in favour of bail:

If the person is charged with armed robbery there is no presumption in favour of bail. If the person is charged with ‘steal from the person’ there is either a presumption in favour of bail or there is no presumption one way or the other, and that can be the difference ..it significantly alters the situation.⁸³

5.35 A further possible cause of the increase in bail refusals may be found in the individual decisions made by magistrates and judges. However a recent report by the Australian Institute of Criminology *Factors Affecting Remand in Custody*, challenges the view that bail refusal is a result of decisions by magistrates.

Whilst the end point of the judicial process involves the judicial officer as the ultimate decision-maker, the literature suggests that his or her role in the process as a whole is largely supervisory and only an active actor in a small proportion of the reman in custody decisions.⁸⁴

5.36 The AIC report states that evidence for this is found in the empirical studies in three major ways:

- The small number of contested decisions in the judicial process - in particular, AIC cites research which reveals that for approximately 25 per cent of those remanded in custody, imprisonment had occurred “without any discussion about bail having taken place in court”;
- The brevity of the judicial bail application process – the implication of which is that the bail decision is not based on what happens in court, but what has happened prior to the hearing;

⁸¹ Mr John Nicholson SC, *Submission 90* (supplementary) p 1.

⁸² Humphreys *Evidence*, 19 October, 2001.

⁸³ Humphreys *Evidence* 19 October, 2001

⁸⁴ AIC *Factors Affecting Remand in Custody* October 2000, p13. The AIC report refers to research from the UK which concluded that “in reality, the decision making process is largely an administrative process conducted in private by participants other than the magistracy according to discretionary and hidden rules. This process is generally characterised by uncontested remand hearings where the effective decisions are made out of court, by professional participants, prior to the court hearing. The magistrates’ role is limited simply to “rubber stamping” their recommendations in the majority of cases”.

- The high degree of probability that judicial decisions merely confirm decisions already made about remand in custody - in particular, research demonstrates a consistency between judicial decisions on bail and the decision of police with respect to police bail and also, if the prosecutor and defence counsel agree, then it requires exceptional reasons for the magistrate to challenge that positions.⁸⁵

5.37 In *Increases in the NSW Remand Population*, BOCSAR concludes that, there are several factors contributing to the increase in the number of persons refused bail:

Firstly, the overall number of persons appearing in the Local Court has increased. Secondly, there has been an increase in the number of persons appearing for some offences with a high rate of bail refusal. Thirdly, there are indications that police and magistrates are becoming less willing to grant bail. Finally, court delay has increased in the Higher Courts.⁸⁶

5.38 According to the statistics given to the Committee, nearly 71 per cent of inmates who are remanded in custody for periods of less than 30 days are discharged without receiving a custodial sentence. This appears to be a very high number of people being detained in custody without bail, unnecessarily, since there should be a high correlation of being held without bail and the likelihood of receiving a custodial sentence. This appears to provide more evidence that research into bail is warranted.

Number of inmates held on Remand in Custody and discharged with a custodial sentence in 1998-99

Females	Females	Males	Males
Number held in custody on Remand for less than 30 days	Discharged without a custodial sentence after less than 30 days in custody	Number held in custody on Remand for less than 30 days	Discharged without a custodial sentence after less than 30 days in custody
829	614 (75%)	5810	4097 (70.5%)

Department of Corrective Service, Submission No 63, p11-12

5.39 There may be additional factors influencing the increase in bail refusal. For example, BOCSAR has identified a significant downward trend in the proportion of persons having legal representation.⁸⁷ It may be that this is having an influence on the outcome of decisions about bail.

5.40 There has clearly been a significant increase in the remand population, attributable at least in part to the increasing rate of bail refusal. What is not clear, at this stage, is the exact reasons behind the increasing rate of bail refusal. In view of the significant contribution of the remand population to the increase in the prison population, and the consequent increased cost to the prison system, there would be obvious benefit in this issue being the subject of specific and detailed study.

⁸⁵ *Ibid* pp 13-14.

⁸⁶ BOCSAR, 2000, *Increases in the NSW Remand Population*, Crime and Justice Statistics, Issue no 9, p6

⁸⁷ NSW Bureau of Crime Statistics and Research, *Key Trends in Crime and justice – NSW – 1999*, p 33.

Recommendation 2

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

- 5.41** The cost of the increase in persons refused bail is very significant. Persons held in custody on remand are contained under maximum security which is the most expensive form of custody at \$64,485 per annum (see Chapter Six). Any improvement resulting in the identification of causes of unnecessary bail refusal would lead to significant savings in government expenditure.

Factors contributing to the increase in the remand population: Changes to Bail Act

- 5.42** A number of witnesses and submissions argued that changes to the *Bail Act 1978* were responsible for the increased rate of people held on remand. For example, Mr Doug Humphreys, Director, Criminal Law Division, Legal Aid Commission, stated:

I believe that there have been a number of changes, particularly to the *Bail Act*, over a period, which has meant that people who were otherwise entitled to bail now do not get it. For example, there is now a presumption, as I understand it, against bail in relation to a murder charge. That was brought in by Parliament some years ago...Some of those people are found not guilty of offences. Some of those people are found guilty of a lesser offence than murder. If it is a manslaughter charge it can result in circumstances in which that person will receive a non-custodial sentence. That is one example at the extreme end of where there has been a change to the *Bail Act*.⁸⁸

- 5.43** Mr John North, then President of the NSW Law Society addressed this issue:

...the reason that the Law Society is quite upset about changes to the *Bail Act* that have been made over the years is that being on remand with bail refused is one of the worst possible features of a civilised society. A person should only be refused bail if the person is unlikely to turn up for court or is likely to be a danger to the community and commit further crimes. Since the introduction of the changes to the *Bail Act* to increase the number of matters for which the presumption in favour of bail is no longer open, some 20 per cent of the full-time gaol population in custody is on remand. In a civilised society, that is a terrible thing, because many of those people eventually will not be convicted. There is no recourse for them usually, unless the prosecution was frivolous or vexatious.

Those people on remand can spend up to 18 months or more awaiting a trial. The Law Society feels that the discretion must be given back to the courts to enable them to decide in each individual case whether those matters that determine bail are indeed met: namely, is the person going to turn up for trial? Is the person going to run away overseas or disappear interstate? Or, if let out, will the person commit more crimes? We have an increasingly proscriptive *Bail Act* in respect of

⁸⁸ Humphrey's *Evidence* 19 October 2000, p 50.

certain crimes, such as drug and customs offences. Sometimes those offences are difficult for the courts to prove, and people who should not be in gaol spend a long time in gaol.⁸⁹

5.44 In evidence to the Committee John Carty Principal Solicitor, Wiradjuri Aboriginal Legal Service, Wagga Wagga stated:

Another factor is the tendency to be overcautious with bail determinations. A lot of people have been refused bail initially and they are eventually getting bail in the Supreme Court, often after spending many months on remand. The reason given for refusing bail is the offence, on the face of it, is serious and, if convicted, the defendant would be likely to receive a custodial sentence. That is often the only justification given for the refusal of bail ... Many of our clients who might have a bad record and they are charged with offences where there is no presumption against bail, they are not on bail for anything else and the bail refusal is justified simply by the comment, "You are likely to be sentenced to a custodial sentence if convicted, therefore we are going to refuse bail"...The most important issue with bail is not what the eventual sentence will be but, number one, whether they are likely to turn up at court and, number two, whether there is an unacceptable risk that they are going to commit further offences.⁹⁰

5.45 Legislative change may have contributed to the increase in the remand population. Under the *Bail Act 1978* there is a presumption in favour of bail in certain circumstances, particularly for those offences which are not punishable by a sentence of imprisonment. The Act also sets out the circumstances under which there is a presumption against bail. On 12 December 1998 the *Bail Amendment Act 1998* commenced. This Act increased the number of offences for which there is no presumption of bail. Section 9 of the *Bail Act 1978* sets out the offences for which there is an exception to the presumption in favour of bail for certain offences under the *Crimes Act 1900*. These offences include: conspiracy to murder; attempted murder; and sending a document threatening to kill or inflict bodily harm or death; certain offences under the *Drug Misuse and Trafficking Act 1985*; certain domestic violence offences; and offences of contravening apprehended domestic violence orders.

5.46 In view of the significance of the increase in the remand population in terms of the increasing prison population as a whole, there would be benefit in the effect of the new section 9 of the *Bail Act* being reviewed.

Recommendation 3

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

⁸⁹ North *Evidence*, 20 October, 2000.

⁹⁰ Carty *Evidence* 24 October, 2000, pp 6, 14.

Factors contributing to the increase in the remand population: Persons unable to meet bail conditions

5.47 If more people are unable to meet bail conditions this will lead to increases in the remand population. Evidence was received that many people are unable to meet bail conditions imposed by the court. Representatives of the Aboriginal and Torres Strait Islander Commission, indigenous community members in Wagga Wagga (Wiradjuri country), Mr John Carty of the Wiradjuri Aboriginal Legal Service and representatives from the Sydney Regional Aboriginal Corporation Legal Services all referred to impediments to their clients obtaining bail including the need to obtain appropriate accommodation; and the inability for some to satisfy bail conditions, particularly where financial conditions are imposed.

5.48 Mr Douglas Humphreys, Director, Criminal Law, Legal Aid Commission of New South Wales, advised the Committee:

Many people we see are simply unable to meet the bail conditions imposed upon them. In the submission I have talked about the imposition of a cash penalty and the imposition of an acceptable person to show that he or she can deposit cash. Many magistrates will sometimes impose conditions whereby, although bail is granted, people are simply unable to meet that bail because of their circumstances. If we look at Aboriginal people and some other people of low socioeconomic circumstances, to impose even a \$500 cash deposit is simply beyond their means. I think that is something we need to look at. There is also a shortage of accommodation. If accommodation becomes a question as to where are they going to stay and what are they going to do, unless you can put forward some positive alternative then you are simply unable to convince a magistrate to grant bail.⁹²

5.49 Research by the NSW Bureau of Crime Statistics and Research states that it is changes in willingness to grant bail, rather than changes in ability to meet it, that account for the increase in bail refusals in the higher courts:

Local Court data does not permit any distinction between defendants unable to meet their bail conditions and defendants refused bail. Records from the Higher Courts allow the separate identification of such persons. The number and proportion of persons on remand at the time of finalisation because they have not been able to meet their bail conditions is small and has remained steady since 1994. There were 31 such persons out of the total of 4871 persons appearing in 1994 and 22 out of 3912 appearances in 1999.⁹³

5.50 Chapter Seven will discuss alternatives to imprisonment, including various programs underway which have the effect of diverting people who would otherwise find themselves on remand: for example the psychiatric assessment service. It may be that there is a potential role for the Department of Corrective Services (or another relevant agency) to

⁹² Humphrey's *Evidence* 19 October 2000.

⁹³ BOCSAR, 2000, *Increases in the NSW Remand Population*, Crime and Justice Statistics, Issue paper no 9, p 5.

provide an assessment and advocacy service at the point at which decisions are made about bail.

Factors contributing to the increase in the remand population: Length of time on remand

5.51 Longer prison stays are one factor which will have an impact on the prisoner population. This is the case for both the unsentenced and sentenced population.

5.52 Mr Simon Eyland, Department of Corrective Services, Research and Statistics Unit advised the Committee that:

- 65 per cent of male remandees spend less than 30 days in custody; and
- 72 per cent of female remandees spend less than 30 days in custody.⁹⁴

5.53 The following table sets out the length of time spent on remand for inmates received in NSW correctional centres in 2000:⁹⁵

	0-1 day	2-7 days	8-30 days	31+ days
Male	1180	2209	2377	3109
Female	211	379	325	353

Source: Department of Corrective Services Research and Statistics Unit

5.54 The length of time spent on remand will be heavily influenced by factors such as court processing times, which are considered in the section below.

Factors contributing to the increase in the remand population: Conclusion

5.55 The increase in the remand population is a very significant cause of the increase in the prison population. What is less clear is the causes of the increase in the remand population, although factors such as increased bail refusals, changes to the *Bail Act*, inability to meet bail conditions and increased length of periods on remand are all likely contributors. A research project investigating these issues, as recommended above, is considered by the Committee to be a high priority.

Processing of cases by the courts

5.56 The way in which courts process cases can have a significant impact on increasing the prison population. This can be through:

- Increased conviction rates;

⁹⁴ Eyland *Evidence* 12 March 2001.

⁹⁵ Eyland, Tabled document *Evidence* 12 March, 2001.

- Increased use of prison sentences over alternatives;
- Longer prison sentences, including use of guideline judgements;
- Increased revocation of orders for periodic detention, home detention and parole orders; and
- Delays in processing cases leading to increased time spent on remand.

Increased Conviction Rates

5.57 As previously stated, there has been an increase in the number of cases processed by courts and an increase in the conviction rates in the courts. The NSW Bureau of Crime Statistics and Research provided the following information to the Committee concerning cases processed by the Courts:

- In the Local Courts there was an overall annual increase in the number of cases processed by the Courts (finalisations) of 22% between 1995/96 and 1999/2000.
- In the District Court there was no significant quarterly trend in the number of persons whose cases were finalised and a small decrease of 6% over the five years to June 2000.
- In the Local Court there was a slight increase in the overall conviction rate with the increase mostly for males. In the Higher Court the increase was higher for females than for males.

5.58 The following table provided by BOCSAR sets out the conviction rate in the NSW Local and Higher Courts:

<i>Conviction rate – NSW Local Courts</i>			
Year	% Males	% Females	% Total
1998	86.0	88.0	86.3
1999	88.0	88.8	88.1

<i>Conviction rate – NSW Higher Courts</i>			
Year	% Males	% Females	% Total
1998	68.8	69.4	68.9
1999	71.9	75.6	72.2

5.59 BOCSAR provided the following information in relation to the convicted persons imprisoned by the Courts:

- In the Local Court, there was no significant upward or downward trend in the percentage of convicted persons imprisoned from the Local Courts. However the

percentage of convicted males imprisoned fell by 6% between 1998/99 and 1999/2000.

- In the District there was a significant upward trend in the percentage of convicted persons imprisoned from the District court for both males and females over the five years to June 2000 but no significant trend in the two years to June 2000.
- In the Supreme Court there was no significant trend either since 1995 or the last 2 years.

5.60 Increased conviction rates do not provide a clear explanation for the increase of the prison population: if there is any significant influence it would appear to come from factors such as the increase in numbers of people being processed by the courts and decisions such as those on bail.

Court Delays and influence on Remand population

5.61 Delay is a factor in the higher courts, according to the NSW Bureau of Crime Statistics and Research. As at 30 June 1999, the median delay from committal to outcome for matters finalised in the District Court was approximately 400 days, and for matters finalised in the Supreme Court it was just under 600 days. This delay will no doubt effect the number of inmates on remand.

5.62 However, the impact upon the prison numbers overall should not be overstated, as a high proportion of persons whose matters are finalised in the higher courts are convicted and their custodial sentence includes the time spent on remand. The impact of this would be to increase the remand population in proportion to the sentenced population, and it would also have an effect upon the progress which an inmate makes through the classification system.

Severity of court decisions

5.63 Longer sentences will clearly add to the size of the prison population even if conviction rates are stable. In evidence to the Committee Simon Eyland of the Research and Statistics Unit of the Department of Corrective Services stated that, while there was a decrease in the sentenced population in 1999-2000 financial year by 2.8 per cent, those that are sentenced to a term of imprisonment are being given longer sentences.⁹⁶

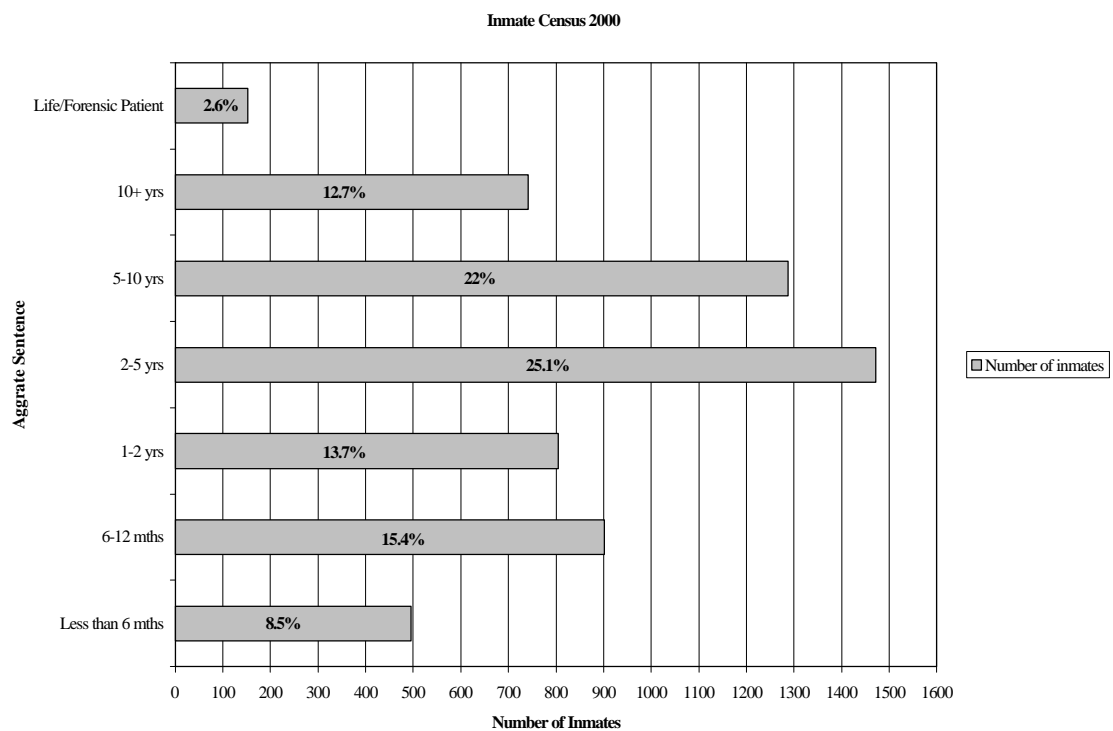
5.64 The NSW Bureau of Crime Statistics and Research provided to the Committee the following information:

- In the Local Court, for both males and females there was a significant upward trend in the average minimum/fixed term of imprisonment for persons sentenced to imprisonment by the Local Courts over the five years to June 2000. However, over the two years to June 2000, there was no significant trend.

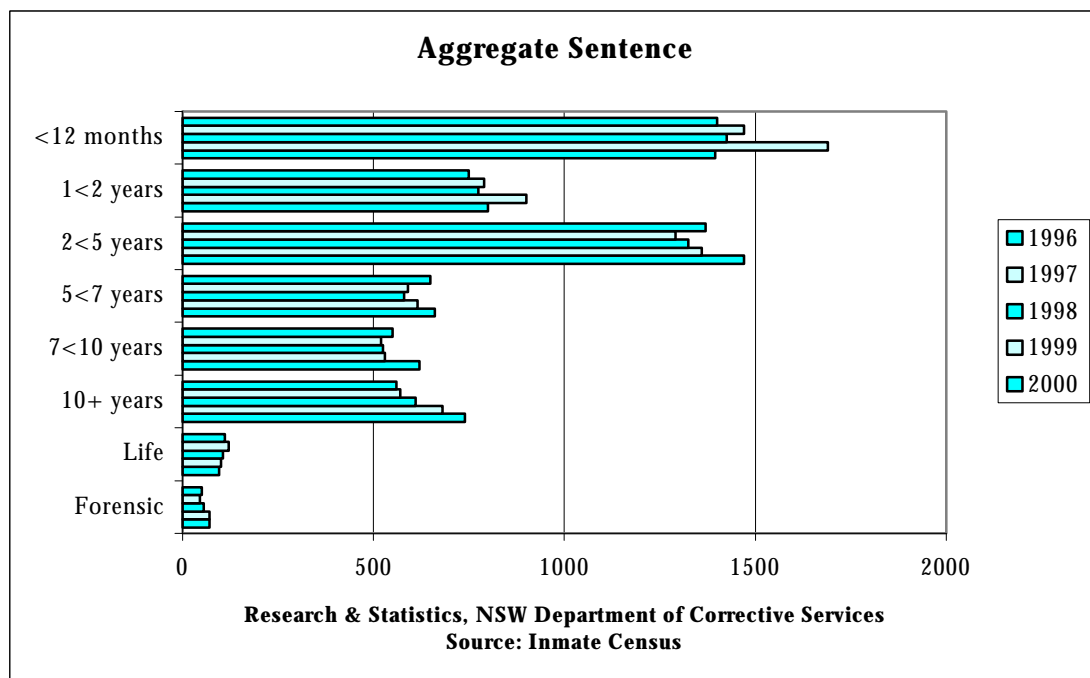
⁹⁶ Eyland, *Evidence* 12 March, 2001.

- In the District Court, for both males and females, there was no significant trend in the average minimum/fixed term of imprisonment for persons sentenced to imprisonment in the five years to June 2000. However, in the two years to June 2000 there was a significant downward trend for males(though not for females).
- In the Supreme Court, there was no significant trend over either 5 years or 2 years.

5.65 The following chart shows the aggregate sentences length being served as at 30 June 2000.



5.66 The following graph shows the aggregate sentence length for the years 1996 – 2000 at 30 June for each year.



5.67 The graph shows that the number of prisoners serving longer sentences, other than life sentences, has grown over the last five years. Increased length of sentences is a contributor to the increase in the prison population.

Guideline Judgements

5.68 Although “Guideline Judgements” have not been in force for sufficient time to significantly influence the size of the prison population, it is likely that in future they will.

5.69 Section 37 of the *Crimes (Sentencing Procedure) Act, 1999* allows the Attorney General to apply to the Court of Appeal for a sentencing guideline in relation to any offence or category of offences. The first guideline judgement in New South Wales was *R v Jurisic* (1998) 45 NSWLR 209 where the Court of Criminal Appeal established guidelines for the sentencing of culpable driving offenders. *R v Henry and Ors* (1999) NSWCCA 111, the second guideline judgement published by the Court of Criminal Appeal, set the sentencing range for certain types of armed robbery offences.

5.70 Mr Nicholas Cowdery QC, Director of Public Prosecutions, NSW states in *Guideline Sentencing: A Prosecution Perspective* that the *Jurisic* proceedings were prompted by a long list of successful Crown appeals against inadequate sentences for dangerous driving causing death or grievous bodily harm.

- 5.71** There has been a level of debate about the impact of guideline judgements. On the one hand, guideline judgements will ensure consistency and appropriate sentences are handed down resulting in fewer Crown appeals, while on the other hand, it is argued that guideline judgements generally fix sentences at a higher level and they remove judicial discretion so that, the question in most cases is not whether the person should be imprisoned but for how long.⁹⁷
- 5.72** The submission from the Department of Corrective Services suggests that guideline judgments may start to affect the rise in the inmate population.⁹⁸
- 5.73** The following graphs, developed by the Judicial Commission of New South Wales reveal the sentencing patterns before and after the decisions in *R v Jurisic* and *R v Henry and ors* for the offence of dangerous driving occasioning death.

⁹⁷ See *Judicial Officers' Bulletin*, September 1999, Volume 11, Number 8, page 59 and *Judicial Officers' Bulletin*, December 1999, Volume 11, Number 11.

⁹⁸ Department of Corrective Services, *Submission 63*, p 24.

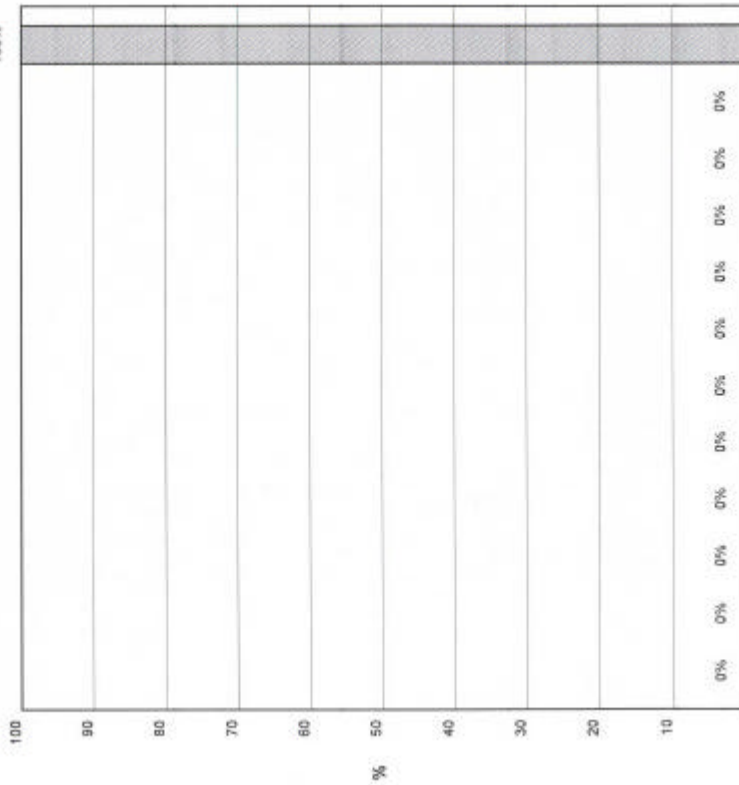
Increase in Prisoner Population

CRIMES ACT 1900
s.52A(1)(a) dang. driving occ. death - drive under influence - after Jurisc

Higher Courts
Oct 1988 to Dec 2000

Penalty Type

All Offenders



Total Cases	15
s.10 Disml	0
s.10 Bond	0
Rise of Court	0
Fine Only	0
s.9 Bond	0
s.8+ Super	0
CSO	0
Susp Super	0
Susp+ Super	0
Period Detent	0
Home Detent	0
Prison	15

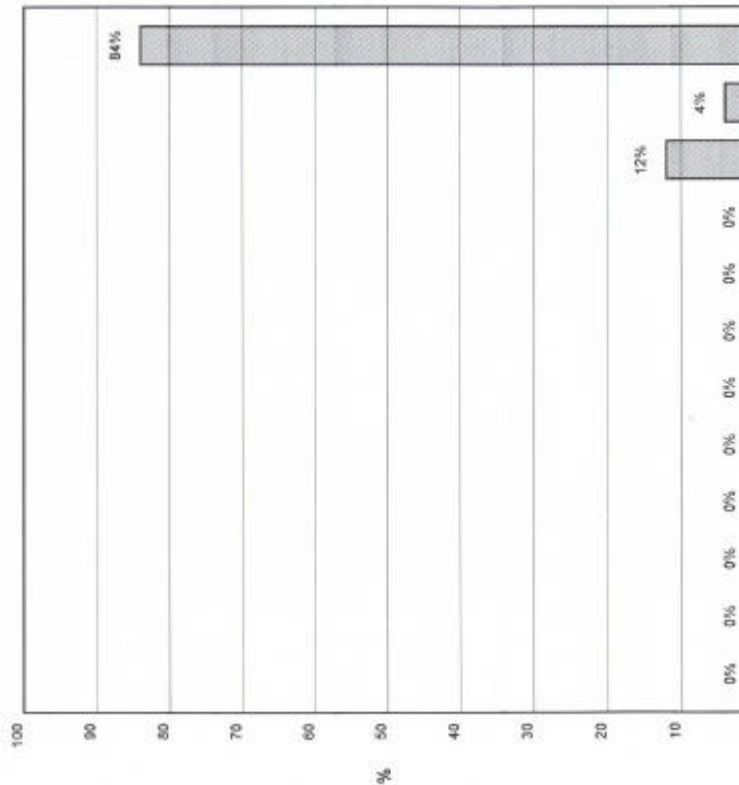
© Judicial Commission of New South Wales 1998

CRIMES ACT 1900
s.52A(1)(a) dang. driving occ. death - drive under influence - before Jurisc

Higher Courts
Dec 1994 to Oct 1995

Penalty Type

All Offenders



Total Cases	25
s.10 Disml	0
s.10 Bond	0
Rise of Court	0
Fine Only	0
s.9 Bond	0
s.8+ Super	0
CSO	0
Susp Super	0
Susp+ Super	0
Period Detent	3
Home Detent	1
Prison	21

© Judicial Commission of New South Wales 1995

5.74 The graph relating to *Jurisc* shows that prior to the implementation of the guideline judgement, the offence for dangerous driving occasioning death attracted sentences of periodic detention, home detention and imprisonment. The graph depicting the situation after *Jurisc* reveals that all convictions for dangerous driving occasioning death have attracted a prison sentence.

5.75 A similar “before and after” graph has been provided for the offence of armed robbery or robbery in company. In the five years prior to the case of *Henry and ors*, 82% of offenders attracted prison sentences. After *Henry and ors*, (May 1999) 91% of cases have attracted a prison sentence.

Breach of orders

5.76 The submission from the Department of Corrective Services states that:

If a periodic detainee, home detainee, or parolee breaches his/her order, the court or Parole Board (as the case may be) is likely to revoke the order and issue a warrant for the apprehension of the offender and his/her return to prison. If a person servicing a community service order or a person under a bond breaches the conditions of the order or bond, the court may sentence the offender to imprisonment.⁹⁹

5.77 In February 1999 an amendment to the *Periodic Detention of Prisoners Act 1981* shifted the function of cancelling orders from the courts to the Parole Board.

5.78 There appears to have been an increase in the number of cancellations of periodic detention orders, home detention orders and parole in recent years. The submission from the Department of Corrective Services states that:

There was an increase in the number of cancellations of periodic detention orders in 1999. The Parole Board made initial determinations to cancel 1126 orders in the 12 months from 1 February 1999. The courts cancelled 424 orders in 1997-98. The Board later reviewed its decisions to cancel 588 of these orders, as required by law. Of the cases reviewed, the decision to cancel the order was rescinded on 125 occasions and cancellation was confirmed in the other 463 cases. Of the cases in which cancellation was confirmed, on 25 occasions the remainder of an offender’s sentence was converted to an order for home detention.

In 1999 the parole Board revoked the home detention orders of 86 offenders which was 17 more than in the previous years.

In 1999, the Parole Board revoked the parole of 1159 offenders which was 223 more than in the previous year.¹⁰⁰

⁹⁹ Department of Corrective Services, *Submission 63*, p 24.

¹⁰⁰ Department of Corrective Services, *Submission 63*, p 26.

5.79 The Department in its supplementary submission advised the Committee that:

The vast majority of revocations were for failure to comply with the terms of the periodic detention order. A small number were revoked due to the imposition of a subsequent full-time sentence.¹⁰¹

5.80 A number of submissions and witnesses have raised concerns about the changes to the *Periodic Detention Act*. For example, Mr John North, Law Society of New South Wales in evidence stated that the changes have resulted in an increasing number of breaches and that fewer magistrates and judges ordering periodic detention because of the impression that it was not working.¹⁰²

5.81 In its submission the Law Society states that the lack of discretion in the existing provisions, in particular, the inability to be granted bail between revocation of an order and a Parole Board hearing, can lead to injustice and unnecessary detention in full-time custody. The Law Society states:

The Law Society recommends that provision be made for people arrested on warrants issued upon revocation of a Periodic Detention, Home Detention or Parole order to be brought before the court if they wish to seek bail, and that an appropriate amendment be made to the *Bail Regulation 1994* to prescribe the period between revocation of an order and the review hearing for the purposes of section 6(h) of the *Bail Act 1978*.¹⁰³

5.82 The South Eastern Aboriginal Legal Service claimed that change to revocations of periodic detention orders has had “disastrous effects for Aboriginal imprisonment”. The submission states that, previously, if circumstances required some leniency, Magistrates would give the person a further chance to complete their sentence.¹⁰⁴

5.83 According to the Parole Board, leniency can be exercised. In evidence to the Committee, Graham Egan, Secretary of the NSW Parole Board, explained that the Board’s aim is to keep people out of prison. Mr Egan stated that the Periodic Detention Review Committee considers each case on its merit when considering whether to make an application to the Parole Board for revocation of the order.

The committee must try to balance the spirit of the periodic detention legislation to divert people from gaol with the fact that they have been sentenced by a court and have to do that order. So, each case is looked at. I can think of one person we have been monitoring since April last year. After being spoken to he has continued to attend every time or has applied for and obtained the appropriate leave.¹⁰⁵

¹⁰¹ Department of Corrective Services, *Submission 63*, p 2.

¹⁰² North, *Evidence*, 20 October, 2000, p 6.

¹⁰³ Law Society of New South Wales, *Submission 93*, p 28.

¹⁰⁴ South Eastern Aboriginal Legal Service, *Submission 37*.

¹⁰⁵ Egan, *Evidence*, 19 October, 2000.

5.84 According to Mr Egan it would be “very rare” for a person to be immediately incarcerated for simply missing three periodic detention attendances. He advised:

The committee rarely applies for revocation on three because the person has just come to notice. A chance is given for them to do something.¹⁰⁶

5.85 The Government, in its response to the Committee’s *Interim Report*, advised that the Department of Corrective Services is working on strategies to overcome the number of people not attending periodic detention. The recommendation below would also assist.

Recommendation 4

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

5.86 Measures to increase the attractiveness and use of periodic detention and home detention as an alternative to full time incarceration are discussed in Chapter Seven of this report. In that chapter the Committee recommends that the Judicial Commission undertake a survey of judicial officers to ascertain their views on periodic detention and home detention, and steps which may increase the level of confidence of judicial officers in the appropriateness of these as sentencing alternatives to full time incarceration.

The Complexity of the causes of the increase

Research Needs

5.87 This chapter has outlined the evidence which has been received by the committee in relation to factors which may have influenced the increase in the prison population. Clearly, the increase in the remand population has been the major factor contributing directly to the overall increase in the prison population in recent years. Some possible underlying causes for the increase in the remand population have been discussed, as have possible underlying causes of the increase in the sentenced population. However, it has not been possible, on the basis of the evidence received by the committee, to clearly attribute specific numbers to each underlying cause.

5.88 The Bureau of Crime Statistics and Research concedes that attempting to quantify or assess the changes in the prison population is a complex task. It argues that:

At the moment research can answer some questions about changes in the prison population but not others. It can also answer some questions about changes in the prison population much more easily than others. As a general rule, the further back down the causal chain you want to go, the harder it is to determine whether a

¹⁰⁶ Egan, *Evidence* 19 October 2001.

factor exerted an impact on the prison population. Thus, it is relatively easy to determine whether a prison population has grown because more people are being sent to prison or people are staying in prison longer than they used to. It is harder to determine whether increases in the crime rate have led to increases in the prison population. Whether one needs more data to answer questions about changes in the prison population depends upon the precise questions being asked.¹⁰⁷

5.89 The Committee was provided with a comprehensive list of possible factors from the NSW Bureau of Crime Statistics and Research. BOCSAR regards the list as illustrative rather than exhaustive. The main factors are identified by the Bureau as follows:

- Increased criminal activity;
- change in offence mix of current criminal activity – more serious crimes;
- increase in number of persons charged by police and processed to Court;
- change in offence mix of offenders apprehended;
- increase in the rate of people remanded in custody by police or courts;
 - change in offence profile of offenders
 - change in criminal history/social backgrounds of offenders apprehended
 - tighter bail conditions
 - change in offender impecuniousness
 - increased offending on bail
 - tougher policing of bail;
- increased court congestion (lengthening stays on remand);
 - increased case complexity
 - increased court workload
 - change in offence mix
 - change in plea rate (eg through increased penalties)
 - reduced court efficiency (eg. more adjournments)
 - reduced court capacity;
- Increased number of imprisonments;
 - tougher sentencing policies
 - change in offence mix
 - change in offender profile
 - increased conviction rate
 - increased court workload
 - changes to summary/indictable offence division;
- Longer prison terms;
 - tougher sentencing policies
 - change in offence mix
 - change in offender profiles
 - tougher parole policies

¹⁰⁷ BOCSAR, 9 April, 2001 – document supplied at meeting with John Ryan.

5.90 From this list the Bureau further determined that the following factors are a basic set which would allow one to answer most questions about changes in the prison population:

- remand receptions
 - offence profile
 - offender profile (criminal history)
 - source and result of bail hearing
- remand population
 - offender plea
 - court listed for hearing
 - offence details
- prison receptions
 - new vs returning prisoners
 - offence details
 - length of sentence, non-parole period
 - criminal history
- prison population
 - offence details
 - length of sentence, non-parole period
 - criminal history.

5.91 The Committee also believes the role of the police, including the impact of police numbers, police charging practices and general policing strategy needs to be included in the key factors to be studied.

5.92 The Committee understands the complexity of analysing changes in the prison population. Nevertheless the Committee considers that the ability to quantify the relevant factors would have significant implications for future policy and cost decisions. Based on the research and evidence provided to the Committee it appears that legislative and policy changes are an identifiable factor in the increase in the prisoner population but it is difficult to quantify the extent of that impact.

5.93 Given the considerable financial and social costs of imprisonment, the Committee considers that policy makers and legislators should have access to reliable data and analysis which would illustrate which factors have had, and are likely to have, the greatest impact on the size of the prisoner population.

5.94 In the main, the difficulty does not seem to be so much one of the lack of data, as the compilation and interrogation of that data.¹⁰⁸ That is, who receives the data, and the questions which are sought to be answered.

¹⁰⁸ Although some gaps or problems have been identified. For example, evidence provided to the Committee on the profile of offenders in NSW criminal justice system shows that there is a lack of reliable data on certain profile characteristics. In particular the debate concerning the number of intellectually disabled inmates highlights the need for a specific prevalence study to determine numbers. Full knowledge of inmate numbers will assist in the allocation of resources and the provision of services to inmates with an intellectual disability. The Committee notes that the Department plans to conduct such a study.

Recommendation 5

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

Information relating to judicial decisions

- 5.95** One comment regularly made to the Committee by those within the criminal justice system was that there is wide diversity in judicial sentencing practices, and in particular the use of imprisonment. Chapter Seven of this report contains a recommendation for a scaling study which would examine the way in which judges and magistrates perceive the severity of alternatives to full time custodial sentences. However there is also a need for improved access to information on how sentencing practices differ in courts in different districts within NSW.
- 5.96** The New South Wales Parliament has recently passed the *Consumer, Trader and Tenancy Bill*, which establishes an integrated dispute resolution tribunal and introduces measures to ensure quality, consistency and efficiency of decision making by Tribunal Members. This includes mechanisms for the exchange of information between the Director-General of Fair Trading and the Tribunal Chairperson.
- 5.97** The Minister for Fair Trading, the Hon John Watkins, stated in his second reading speech on 23 October 2001:

The provisions will operate in the following way. First of all the Director-General and the chairperson of the tribunal will be able to enter into arrangements where information is exchanged by agreement. Secondly, the tribunal will have a power to voluntarily provide reports on important matters or issues which relate to matters of public interest. The third provision will be one allowing the Director-General to request information from the chairperson on matters relating to the director-general's general investigative powers.

The Minister states that a central aim of the legislation is to provide for consistent and high quality decision making by tribunal members and that all tribunal members will have to enter into performance agreements and agree to abide by a code of conduct. An independent peer review panel will oversee the education, training and disciplinary aspects of the tribunal's operations.

Also, the Committee notes concerns raised about the way in which the Department of Corrective Services determines cultural and linguistic background and that it may contribute to a lack of clarity in this area. For example Mr Isileli Tuitavuici, Prisoner Advocate, CRC Justice Support and Official Visitor to the Department of Corrective Services, stated in evidence that identification based on passports is inadequate in determining ethnicity and Ms Violet Roumeliotis commented that information is not requested from the inmates in a regular and standardised way but relies on staff assessment.

- 5.98** While recognising that judicial independence is paramount and that this model may not easily be transferable, the Committee nevertheless considers that the measures introduced to exchange information so as to encourage quality, consistency and efficiency of decision making should be considered for application in the criminal justice system. Information on sentencing practice, (as well as how the courts perceive the severity of different penalties, covered in Chapter Seven), as the potential to provide valuable information for both the development of policy and legislative proposals and in assisting the Department of Corrective Service in co-ordinating and monitoring information on the potential growth in the prison population.

Recommendation 6

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

Whole of Government Approach

- 5.99** The Department of Corrective Services has described itself as a “downstream” agency in the criminal justice system. The question must therefore be asked as to whether the Department of Corrective Services, and consideration of the impact of policy and legislative decisions upon the prison system generally, is always given an adequate role in decisions which are made about these issues. It may be that the Department of Corrective Services could play a more proactive role in relation to decisions that are made about the criminal justice system.
- 5.100** The Standing Committee on Law and Justice, in its report, *Crime Prevention Through Social Support*, highlighted the importance of a whole of government response to crime prevention. As well as the responsibilities of government departments, the report highlighted the importance of involving the community and every relevant stakeholder to ensure that a systematic and thorough approach to the prevention of crime is taken.¹¹⁰
- 5.101** It is the committee’s view that greater liaison between all the key agencies whose policies and actions impact on imprisonment rates is required and that, as recommended above, the Department of Corrective Services should adopt a co-ordinating and monitoring role for information on the adult criminal justice system.
- 5.102** It is understood that there are a number of high level forums within Government at which issues concerning the criminal justice system are discussed and at which decisions are made. Examples include the system of Cabinet sub-committees and the Premier’s Council on Crime Prevention. It is important that the Department of Corrective Services be given “a seat at the table” so that its voice may be heard in relation to the economic and social

¹¹⁰ *Resource Manual* NSW Crime Prevention Division, Attorney General’s Department, 1997, p.2, cited in Standing Committee on Law and Justice, *First report into Crime Prevention Through Social Support*, 1999, p. 65.

impact of policy and legislative decisions. Some of the specific issues on which the voices of the Department should be heard include:

- any policies being pursued by other agencies that may impact on prisoner numbers;
- any initiatives other agencies are undertaking to prevent rises in the prisoner population;
- how they can, as individual agencies and as a collective group, monitor significant rises in imprisonment rates;
- what initiatives are occurring in other jurisdictions that have had reduced imprisonment rates; and
- the impact of legislation and judicial decisions.

Recommendation 7

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

Recommendation 8

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

Conclusion

5.103 The causes of the increase in the prison population are complex. The immediate causes appear to be a major increase in the remand population, longer sentences and increased police activity. The underlying causes of these factors are, however, more complex. Regarding the increase in the remand population, it appears increased bail refusals, changes to the *Bail Act* removing a presumption of bail in many cases, and the inability of people to meet bail conditions have all had an impact. There is, however, the need for research to identify and quantify what impact these and other factors have had. Regarding increased police activity it may be that increased police numbers and the practise of "over-charging" are important factors. If the increased number of arrests is due to an increase in crime there has been no evidence from agencies such as the Bureau of Crime Statistics and Research to support this as an underlying cause of the increased prison population.

5.104 From the analysis in this chapter it is apparent that the prison population can fluctuate considerably as a result of legislative, judicial and policy changes, irrespective of any changes in actual crimes committed. The impact of guideline judgements on increased use of imprisonment is one recent example which is likely to see more offenders imprisoned in future for crimes which previously would have seen some remain under alternative sentencing arrangements. This raises the issue about how decisions should be made as to who should be incarcerated; this is the subject of the next chapter.

Chapter 6 Incarceration

Introduction

6.1 The rising prison population means that increasing resources need to be allocated to managing prisoners during their sentences. Programs run within prison have to accommodate a greater number of potential participants; post release and transition programs have to expand and case management of prisoners becomes more onerous. This chapter examines some of the issues arising from incarcerating prisoners, beginning with a survey of how views of policymakers have changed over the years regarding the purpose and intended outcomes of incarceration. The Chapter then considers specific programs within prison and programs to assist the transition into the community.

Changing sentencing policies: impact on the aims of incarceration

6.2 The policy objectives of incarceration are outlined in Chapter Two. In summary, they are: denunciation, retribution, incapacitation and rehabilitation. Over time governments and political parties aspiring to govern, influenced by contemporaneous community values, public concern and the media, have emphasised some of these policy objectives more than others. As sentencing policy has the capacity to influence the size of the prison population, the Committee has surveyed select academic literature in order to identify the extent to which particular sentencing policies have been successful. The Committee has also attempted to examine the impact sentencing initiatives have had on the NSW prison population.

The Shift Away from Incarceration as Rehabilitation

6.3 During the earlier part of the twentieth century up until the 1970's, the prevailing view of law and justice policy makers was that individual offenders required reform or rehabilitation. This view began to change during the 1970s:

“The belief now in vogue is that they require control”.¹¹¹

6.4 Greater emphasis has been given to the use of incarceration as a crime control tool since the work of academics like S & R Shinnar was published in 1975. Shinnar and Shinnar developed a mathematical model to study the relationship between imprisonment and crime rates proposing that an increase in the prison population could reduce the crime rate by 20 percent.¹¹² Around the same time an exhaustive study by sociologist Robert Martinson examined every available report on rehabilitation techniques published in English from 1945 to 1967, drawing on 231 studies. He found that:

¹¹¹ Todd R Clear, Backfire: “When Incarceration Increases Crime” , Florida State University, Internet www.doc.state.ok.us/Docs/OCJRC/Oejre96/Ocjrc7.htm (accessed June 2001).

¹¹² Shinnar, S and Shinnar R, “The Effects of the Criminal Justice System on the Control of Crime: a quantitative approach” *Law and Society Review* 9, 581 –611 (1975).

“with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.”¹¹³

6.5 While Martinson had intended his study to result in less imprisonment, his work had the opposite impact.¹¹⁴ Prison policies in the United States became increasingly punitive focussing on the remaining purposes of imprisonment; retribution, denunciation and incapacitation. The attitude might be best summed up in what became a seminal statement in the United States in regard to imprisonment published in *The New York Times* in 1996 by academic John J. Dilulio, “Prisons are a Bargain, by Any Measure”.

But if the question is how to restrain known criminals from murdering, raping, robbing, assaulting and stealing, then incarceration is a solution, and a highly cost effective one. On average, it costs about \$25,000 a year to keep a convicted criminal in prison. For that money, society gets four benefits: imprisonment punishes offender and expresses society’s moral disapproval. It teaches felons and would be felons a lesson: Do crime, do time. Prisoners get drug treatment and education. And as the columnist Ben Wattenburg has noted, “A thug in prison can’t shoot your sister.”¹¹⁵

6.6 During the last 30 years, sentencing policies overseas, led by the United States have been characterised by a sustained attack on judicial independence in sentencing, the reduction or elimination of parole and the imposition of more rigorous guidelines. Offender based sentencing has been changed to one that is more offence based. Executive input into the sentencing process has been introduced or increased by means of sentencing commissions or councils. One-, two- and three-strikes laws have proliferated as have mandatory and minimum sentences, many of which over-rode or displaced sentencing guidelines which have been carefully crafted by judicial officers. Capital punishment has been reintroduced and continues to gain in popularity. Non-custodial but punitive schemes such as intensive supervision orders, house arrest, electronic monitoring, boot camps and public shaming rituals have also been developed in the United States.¹¹⁶

¹¹³ Robert Martinson, “What Works? Questions and Answers about Prison Reform” *The Public Interest* Spring 1974 pp 22-54.

¹¹⁴ There have of course been numerous responses to Martinson’s controversial work. Associate Professor Rick Sarre, University of South Australia, “Beyond ‘What Works?’ A 25 Year Jubilee Retrospective of Robert Martinson”, paper presented at an Australian Institute of Criminology Conference, 9-10 December 1999 on *The History of Crime, Policing and Punishment*. Also K. Howells and A. Day, *The Rehabilitation of Offenders: International Perspectives Applied to Australian Correctional Systems*. AIC Publication May 1999.

¹¹⁵ John J. Dilulio, Jr. “Prisons Are a Bargain, By Any Measure,” *New York Times* 16 January 1996. (Professor Dilulio has had a change of heart in recent times and now is one of America’s most prominent advocates for a less punitive approach to controlling the illicit drug trade).

¹¹⁶ Arie Freiberg, “Three Strikes and You’re Out-It’s Not Cricket: Colonisation and Resistance in Australian Sentencing”, in M. Tonry and R. Frase (eds) *Sentencing Policy in Comparative International Perspective*, New York (1998).

Australian Policies Since the 1980s

- 6.7** According to Professor of Criminology at the University of Melbourne, Arie Freiberg, these policies have had an influence in Australia, but most jurisdictions have offered some resistance to trends established in the United States.¹¹⁷
- 6.8** One trend from the United States, which has been largely resisted in NSW and the rest of Australia, has been moves to reduce judicial discretion. The NSW Law Reform Commission in its report *Sentencing*, stated:
- The Commission argued that the existence of a wide judicial discretion is essential to doing justice in the individual case. A point which the Chief Justices of NSW, Victoria and Western Australia, as well as the Lord Chief Justice of England, have recently felt it necessary to assert extra-curially. We therefore, rejected any approach to the “reform” of sentencing law which would constrain the exercise of judicial discretion either by the codification of common law principles, the creation of sanction hierarchies, or the specification of tariffs (especially for terms of imprisonment) for each offence.¹¹⁸
- 6.9** There have been some more recent divergences from this trend, mostly in jurisdictions other than NSW.
- 6.10** The most significant copying of overseas sentencing policy in NSW occurred in 1989, when the Greiner Government introduced the *Sentencing Act 1989* and the *Crimes (Life Sentences) Amendment Act 1989*. This legislation implemented the policy referred to as “truth-in-sentencing”, abolishing remissions (time taken off an offender’s custodial sentence for good behaviour through an administrative procedure) and creating a term of imprisonment, imposed at the discretion of a judge, lasting for the remainder of the offender’s natural life.
- 6.11** The abolition of remissions corresponded with a steep increase in the size of the prison population. The daily average prison population increased from 4,124 in 1988 to 6,056 in 1992.¹¹⁹ Other jurisdictions in Australia have followed with similar provisions but have not experienced the same impact in the size of their prison populations. For example, Victoria abolished remissions in 1992, by the provisions of the *Sentencing Act 1991 (Vic)*, but unlike NSW, the prison population did not increase significantly afterwards. Section 10 of the *Sentencing Act* contained a provision that required the courts to construct the new sentences in such a manner that would not increase the time a prisoner actually spent in custody.¹²⁰

¹¹⁷ A Freiberg, Op Cit, and A Freiberg, “Explaining Increases in Imprisonment Rates”, paper presented at AIC Conference, *Mapping the Boundaries of Australia’s Criminal Justice System*, Canberra, 22-23 March 1999.

¹¹⁸ NSW Law Reform Commission Report 79, *Sentencing* pages 6-7. See also page 12, where the Commission specifically refers to sentencing guidelines in the United States and specifically rejected them, stating that they were “inappropriate for the Australian context”, describing them also as “nothing short of a disaster” which has “attracted virtually unanimous judicial and academic condemnation.”

¹¹⁹ Department of Corrective Services *Statistical Publication No 21*, September 2000, p 6.

¹²⁰ Section 10 (1) was in the following terms: “When sentencing an offender to a term of imprisonment a court must consider whether the sentence it proposes would result in the offender spending more time in custody, only because of the abolition of remission entitlements by section 3 (1) of the Corrections (Remissions) Act

- 6.12** The introduction of indeterminate life sentences may have an impact on the size of the NSW prison population in the long term, as discussed in Chapter Five. Between January 1990 and March 1998, 14 offenders received sentences of penal servitude for life. In the period between 1990 and 1998, two of these sentences had been overturned on appeal, and two of the individuals had died in prison¹²¹. Until that time the longest sentence ever imposed on an offender in NSW was a period of 28 years, whilst the average term served for life had been somewhere between 11 to 14 years.¹²² Some of the individuals sentenced to life imprisonment without the possibility of release have life expectancies of up to 40 years. The number of these prisoners is too small to have a significant impact on the size of the prison population. Also, the crimes involved were such that the individuals concerned would probably still have been in prison now, regardless of harsher penalties provided by *Crimes (Life Sentences) Amendment Act, 1989*.
- 6.13** In 1994, the Fahey Government introduced the *Community Protection Act*, as a means of preventing the release of one particular individual. The law was struck down by the High Court on the grounds that it improperly attempted to invest the state court with a non-judicial power.¹²³ The Carr Government's *Crimes Amendment (Mandatory Life Sentences) Bill 1995* introduced amendments to the *Crimes Act 1900* to reduce the discretion of a judge to impose any sentence other than a life sentence without any chance of release for murder in certain defined circumstances. It also amended the *Drug Misuse and Trafficking Act 1985* to provide for a mandatory life sentence for trafficking in large commercial quantities of illicit drugs. However, the provisions of these laws were carefully crafted to replicate precedents that had already been set in NSW Courts. Their impact was more to ensure consistency rather than increase the number of people on whom the penalty was imposed.
- 6.14** Legislation has also been introduced in NSW to increase penalties of imprisonment in response to a peak of public concern about specific crimes. They include:
- *Crimes (Domestic Violence) Amendment Act 1993*, increased penalties for breaching a Domestic Violence Order to 2 years imprisonment.
 - *Crimes (Dangerous Driving Offences) 1994*, doubled imprisonment penalties for culpable driving to 10 years when the offence was committed whilst speeding at more than 45 kilometres over the speed limit or when the driver was under the influence of alcohol.
 - *Crimes (Threats and Stalking) Amendment Act 1994*, increased the maximum penalty for this offence from two years imprisonment to five years, and created a new offence of sending a letter threatening to kill a person, setting a penalty of 10 years imprisonment.
 - *Bushfires Amendment Act 1994*, increased the penalty for setting fire to another person's land or property or allowing fire to escape from property so as to cause damage to

1991, than he or she would have spent had he or she been sentenced before the commencement of that section for a similar offence in similar circumstances." Section 10 of the *Sentencing Act 1991* has now expired by a sunset provision on 22 April 1997. The *Statutes Amendment (Truth-in-Sentencing) Act 1994*, which abolished remissions in South Australia contained similar provisions.

¹²¹ John Anderson, "Sentencing for Life In NSW", paper presented at ANZOC Conference 1998.

¹²² A Freiberg, "The Meaning of Life: A Study of Life Sentences in Australia" paper published by AIC, 1975 and I. Potas, *Life Imprisonment in Australia, Trends and Issues in Crime and Criminal Justice*, August 1989.

¹²³ *Kable* (1996) 138 ALR 577.

another persons land or property from 12 months imprisonment to a maximum of five years.

- *Crimes (Home Invasions) Amendment Act 1994*, increased penalties for burglary from 10 or 14 years imprisonment, to a maximum penalty of 25 years imprisonment depending on whether the robbery was carried out using either threats of corporal violence, causing bodily harm or with firearms.
- *Crimes (Dogs) Amendment Act 1994*, created a new offence of using a dog to cause actual or grievous bodily harm, with a penalty of five years imprisonment.
- *Crimes Amendment (Child Pornography) Act 1995*, introduced a new offence of possessing child pornography with a penalty of up to 12 months imprisonment.
- *Crimes Amendment (Assault of Police Officers) Act 1997*, increased penalties for assaults on police officers, making the penalties greater than those for assaulting other members of the public. The Act increased the maximum term of imprisonment for assault of police officers to five years, occasioning actual bodily harm to seven years and a maximum of 12 years for causing grievous bodily harm.
- *Sentencing Legislation Further Amendment Act 1997*, required the Supreme Court to have regard to recommendations made by the original sentencing judge when considering applications for a re-determination of sentences.
- *Summary Offences Amendment Act 1997*, doubled the penalty for carrying an offensive implement, which was redefined to include a knife in a public place, from one year to two years.
- *Crimes Amendment (Offensive Weapons) Act 1999*, increased the maximum penalties of imprisonment for breaking and entering with an offensive weapon from 14 years to 20 years.
- *Crimes Amendment (Computer Offences) Act 2001*, created new offences designed to punish computer “hackers” with maximum sentences of up to 10 years imprisonment, and credit card fraud with a computer with sentences of up to five years imprisonment.
- *Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001*, created a new offence of aggravated sexual assault in the company and with the use or threat of violence, or against a victim with a serious physical or intellectual disability, with a maximum penalty of life imprisonment with out opportunity of release.

6.15

In contrast, there have also been moves in other areas to reduce penalties or decriminalise certain offences. Examples include:

- The *Fines Act 1996*, which diverted fine defaulters from the prison system. In the year prior to its commencement 4474 fine defaulters had served prison sentences.¹²⁴

¹²⁴ Department of Corrective Services, *Submission 63* p28.

- *The Young Offenders Act 1997*, which introduced formal cautions and community youth conferencing for young people to divert them from the criminal justice system wherever possible.
- *The Disorderly Houses Amendment Act 1995* which abolished the offence of living off the earnings of prostitution.

6.16 It is difficult without further and more detailed research to establish exactly what impact the above increases to maximum penalties have had on increasing the size of the prison population in NSW. Each measure is narrowly targeted and likely to make only a marginal increase to the prison population that is difficult to detect. Taken individually, many of the penalties were argued to be justified in terms of the purpose of incapacitation by targeting serious offenders. Additionally, when the list above is cross-referenced to details published for the most serious offence for which inmates are imprisoned (see chapter Four), they do not appear to have had a significant impact, although the Committee has not investigated this in depth.

Guideline Judgements

6.17 In October 1998, the full NSW Court of Criminal Appeal, presided over by Chief Justice Spigelman handed down the State's first guideline judgement. The impact of this development has already been referred to in Chapter Five. The Chief Judge went into some length to explain that the formal step of issuing guideline judgments was a logical development of longstanding practise. However he also acknowledged that the practice was being undertaken in response to public concern, so that such judgments may reinforce public confidence in the integrity of the process of sentencing. The judgement drew heavily on practice in the United Kingdom and expressly rejected the "grid" sentencing practices that had been imposed by some legislatures in the United States to limit judicial discretion:

The critical difference between judicial guidelines and statutory guidelines - whether minimum penalties or a grid system - is the flexibility of the former. There is provision for the special or exceptional case. There is recognition that sentencing must serve the objective of rehabilitation, as well as the objectives of denunciation and deterrence. A trial judge can respond appropriately to all the circumstances of a particular case. ... (and) .. The preservation of a broad sentencing discretion is central to the ability of the criminal courts to ensure justice is done in all the extraordinary variety of circumstances of individual offences and individual offender.¹²⁵

6.18 Reference has already been made in Chapter Five of the possible impact that guideline judgements have had, and are likely to have in the future on increasing the size of the prison population. The increased penalties may, however, only have an impact on a limited number of offenders.

¹²⁵ Spigelman CJ, 1998 *Jurisc* (Christopher Tom) NSW CCA 12-Oct-1998.

Evidence of Effectiveness of Incapacitation

- 6.19** One purpose of increasing imprisonment penalties is to deter people from committing particular crimes or to keep them in gaol for sufficient time to extinguish their desire to commit these crimes. There has been a significant amount of research done to test whether keeping people in gaol prevents crime.
- 6.20** Initially there were a number of researchers who gave support to the proposal that keeping people in gaol significantly prevented crime. These included studies by J. Cohen, “The Incapacitive Effect of Imprisonment: A Critical review of the Literature”¹²⁶ and James Q. Wilson, *Thinking About Crime* (1975)¹²⁷. Wilson for example suggested that a reduction of up to 20 percent in the robbery rate was possible by following a strategy of imprisoning serious offenders.
- 6.21** Most of the research which has been done to calculate the deterrent effect of imprisonment has used mathematical models of the crime habits of criminals based on various surveys of actual individual criminal histories. Information about criminal histories was gathered by self-reporting surveys of inmates or by examining files. The researchers “tested” the likely impact on crime rates that locking similar individuals up might have, for various periods of time. In most instances the researchers assumed that gaol had no rehabilitative effect at all. The sole impact of incarceration was that it denied criminals the opportunity to commit crime at the same rate indicated by their criminal histories.
- 6.22** Many of these studies were examined by the NSW Bureau of Crime Statistics and Research in a study by Janet Chan, Senior Lecturer of the School of Social Science and Policy at the University of New South Wales published in 1995. Ms Chan concluded:

The research suggests that estimates of the impact of ... incapacitation vary considerably from one study to another and depending on the severity of the policy. However, a modest reduction in crime involves paying a high price in terms of increases in the prison population: a ten- percent decrease in crime typically requires a doubling of the prison population. (More) Selective incapacitation promises a better trade off by targeting offenders who have high rates of offending. Such policies, however, punish offenders on the basis of prediction, an exercise heavily criticised both on technical and ethical grounds. The attractions of such policies are considerably diluted when crime reduction benefits were found to be more modest than initially claimed and the rate of “false positives” unacceptably high.

In conclusion, it is important to point out that the models used to evaluate the effectiveness of incapacitation are based on a number of assumptions, which may in fact be false. For example, the assumption that offenders sentenced to imprisonment are not replaced by other offenders may not hold for activities such as drug trafficking or property crime where a market for the illegal substance or stolen goods exists. The assumption that individual offending rates are stable over their “criminal careers” has also been challenged by some research findings. Any

¹²⁶ In Blumstein, et al. (eds) *Deterrence and Incapacitation*, Washington (1978).

¹²⁷ Second Edition published by Basic Books, New York (1983).

violation of these assumptions would lead to a lower estimate of the incapacitative effect of imprisonment.¹²⁸

- 6.23** More recently, some researchers have started to examine the indirect negative impact that imprisonment has on families and communities. They speculate that increasing rates of imprisonment may in fact cause more crime.¹²⁹

Increasing Costs of Incarceration

- 6.24** The continuing increase in the prison population forecasts a significant and increasing financial cost to New South Wales.

- 6.25** The cost per inmate per day by security classification as stated in the Department of Corrective Services' *Annual Report 1999/2000* is:

Maximum security: \$181.14 per day – \$64,485.84 per annum

Medium security: \$163.19 per day – \$58,095.64 per annum

Minimum security: \$138.93 per day – \$49,459.08 per annum

- 6.26** The Department of Corrective Service's Annual Report 1998/99 reports that the average cost per offender per day when completing a community based program delivered by the Probation and Parole Services is \$8.63.¹³⁰

Funding of Department of Corrective Services

- 6.27** The 1999/2000 Annual Report shows that for the year ended 30 June 2000, the Department of Corrective Services net expenditure was \$549.6 million, with a total Government contribution of \$507.7 million.

- 6.28** In the 2001-2002 Budget Papers the Government notes that the increasing full time inmate population has impacted on expenditure trends within the Department of Corrective Services over recent years:

One of the key strategic issues in 2001-02 facing the Department is the predicted growth in the full time inmate population in comparison to current and proposed facility operational capacity.¹³¹

- 6.29** The Budget Estimates Papers for 2001/2002 estimate expenditure for 2000-2001 as \$531.5 million and allocates \$560.3 million for 2001-2002.¹³²

¹²⁸ Janet Chan, *Crime and Justice Bulletin*, NSW BOCSAR, September 1995.

¹²⁹ Todd R Clear, "Backfire: When Incarceration Increases Crime" accessed from the Internet on www.doc.state.ok.us/DOCS/OCJRC/Ocjrc96/Ocjrc7.htm

¹³⁰ Department of Corrective Services, *Annual Report 1998/99*.

¹³¹ *Budget Paper No. 3 2000-2001*, Vol 1, 7-5; 7-6.

¹³² *Budget Paper No. 3 2000-2001*, Vol 1, 7-28.

6.30 The proportion of expenditure on the Department's programs are:

- community supervision - 10%,
- containment and care of inmates - 73%; and
- assessment, classification and development of inmates - 17%.¹³³

6.31 The Budget Papers note that provision has been made in 2001-02 for the following items:

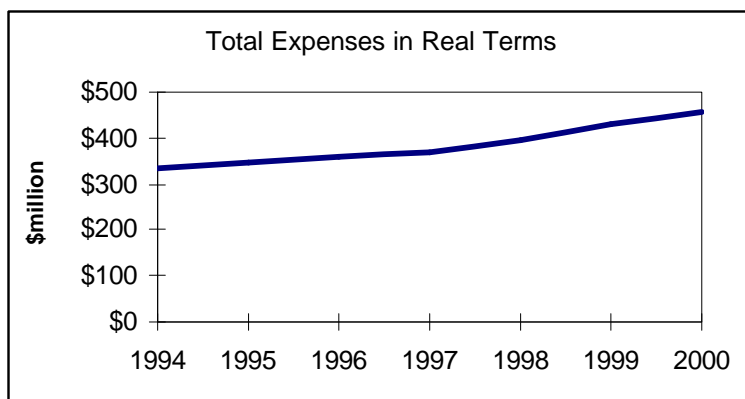
- Funding for the expansion of the Department's correctional bed capacity to cope with the increase in inmate numbers estimated to cost \$8 million in 2001-02.
- 200 Bed Parklea Metropolitan Remand Centre – the centre will provide 200 new beds for young offenders at a cost of \$36.6million (\$19 million in 2001-2002).
- 350 Bed Mid North Coast Correctional Centre at Kempsey - this project involves the construction of a new purpose built multi-classification Correctional Centre for male and female inmates at an estimated cost of \$70 million (\$20 million in 2001-2002).
- 200 Bed Metropolitan Women's Correctional Centre – the construction of a new purpose built Correctional Centre for female inmates. The Centre will provide 200 new beds and operate as a multi-classification Centre, enabling Mulawa Correctional Centre to cater specifically for remand and special needs female inmates. The estimated total cost for the project is \$48 million (\$20 million in 2001-2002.)
- Infrastructure Upgrade for Silverwater Correctional Complex – construction of a new gatehouse, administration facilities and visitors' centre and will provide additional program space for inmates. The estimated total cost of the project is \$55 million (\$2.8 million in 2001-2002).
- Goulburn Redevelopment – Stage Two – A new intensive case management facility for seventy-five inmates is currently being constructed within an extension of the secure perimeter wall and a new visiting facility, new gatehouse, control room, administration building and accommodation for the Emergency Unit. The estimated total cost \$41 million (\$7.1 million in 2001-2002).
- Long Bay Redevelopment – the redevelopment will cater for therapeutic special needs programs such as those for sex offenders, violent offenders, inmates with intellectual disabilities, those at high risk of suicide, medical transients and offenders with major drug and/or alcohol problems. The estimated total cost of the project is \$36.4 million (\$7 million in 2001-2002).¹³⁴

¹³³ Department of Corrective Services, *Annual Report 1999-2000*, p34.

¹³⁴ *Budget Paper No. 3 2000-2001*, Vol 1, 7-6.- 7-8.

Trends in Increasing Costs of Incarceration

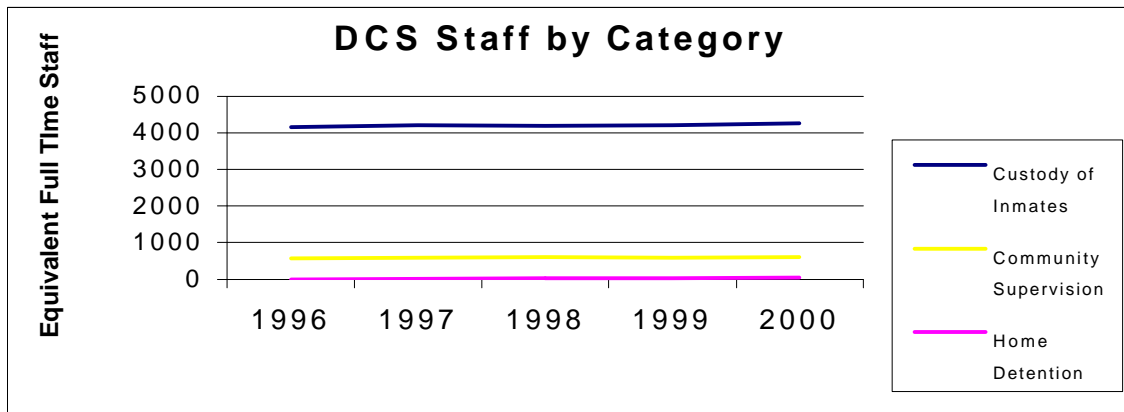
- 6.32** The increasing costs of a rising prison population are more apparent if studied over time. The accompanying graph indicates that the total annual expenses for the Department of Corrective Services has increased by 37 per cent in real terms since 1994, equating to approximately \$145 million additional expenditure a year in current terms.



Source: Annual Reports, ABS inflation data, calculated by Committee, verified by Corrective Services finance section.

- 6.33** As at 30 June 2000 the Department of Corrective Services had 4,906 full time equivalent employees. Each year the Department of Corrective Services *Annual Reports* publishes statistics in relation to the employment of staff by category. The categories are “custody of inmates and detainees”, “community supervision” and “intensive community supervision” (the Probation and Parole Service). At 30 June 2000 there were 3,402 custodial staff. 69% of the Department’s total staff were classified as “Operational – custodial”, compared to only 9 % classified as “Operational – community supervision”.¹³⁵
- 6.34** As illustrated in the accompanying graph, over time it would appear that the numbers of staff employed in the various categories of service for the Department of Corrective Services has remained stable despite the increase in prison numbers:

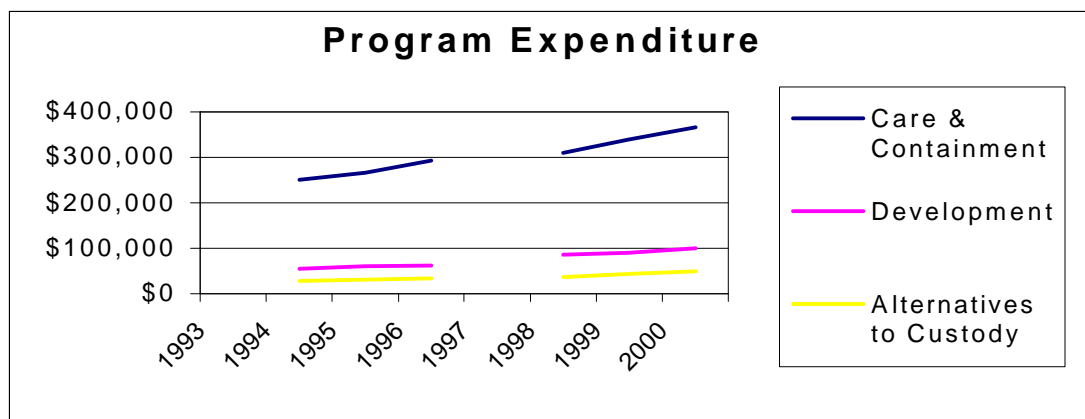
¹³⁵ Department of Corrective Services, *Annual Report 1999/2000*, pp 30, 57.



Source: Annual Reports, calculated by Committee.

6.35

The Department of Corrective Services has also published details of its expenditure according to three programs: care and containment of inmates, assessment, classification and development of inmates and alternatives to custody.¹³⁶ The figures published in Annual Reports from 1994 to 2000 have been displayed in an accompanying graph:



Note: The break in the graph is caused by the Department not publishing comparable statistics in the 1997/1998 Annual Report.¹³⁷

6.36

These details appear to indicate that while the numbers of staff employed in the various categories of work within the Department have remained stable, the expense of keeping inmates in full time custody has increased sharply. The increase in expenditure for full time custody appears to rise more sharply than the other programs and appears to correspond with the increasing numbers of inmates in full time custody. By comparison the programs relating to alternatives to full time custody have remained stable despite a similar increase in the number of people being sentenced to these alternatives. The analysis of the trends in spending illustrates further the financial benefits of diverting as many individuals as possible from full time custody to alternative sanctions.

¹³⁶ See notes on Programs in Department of Corrective Services *Annual Report, 1999/2000* page 49.

¹³⁷ Statistics shown in graphs are taken from figures published in the published Annual Reports of the Department of Corrective Services from 1994/95 – 1999-2000.

Inmate management

Aims of Throughcare Program

6.37 The Department of Corrective Services advises that overall management of the offender population is through a systematic and co-ordinated approach referred to as *Throughcare* which manages offenders from their first contact with the Department to the completion of their supervision and transition back to the community. The aims of *Throughcare* are:

- to ensure thorough coordination of all areas of the Department that provide direct service delivery to offenders before, during and after custody; and
- to develop and establish core programs which reduce the likelihood of further offending.

6.38 Once in prison, inmates enter a system of case management and classification. The Department of Corrective Services advises that while the process of case management and classification are not explicitly stated in legislation, the rudimentary principles are contained in Part 3 of the *Crimes (Administration of Sentences) Act 1999* which deals with the treatment of inmates and their separation into classes. The term classification derives from this separation and refers to more than the assignment of security categories.

Case management is a collaborative, multi-disciplinary system of management which is used to assess, plan, implement, monitor and evaluate programs and services developed to meet an individual inmate's assessed criminogenic and risk needs, having regard to community expectations. As a management structure it coordinates the processes of assessment, case planning, classification and security, as well as linking the roles of individual staff, for example Case Officers and Inmate Development Services (IDS) into teams.

Central to the case management process is the formulation of a case plan for each inmate who is received into custody. There is an important link between the case plan and classification.

The Department assesses the risk presented by each inmate within the context of its duty of care towards the inmate. A fundamental component of the assessment process is the identification of the factors contributing to the offending behaviour (criminogenic needs). The assessment forms the foundation of the case plan, prescribing the developmental programs which will be implemented during the period of incarceration. This links into the classification process which is an outcome of case management.¹³⁸

¹³⁸ Department of Corrective Services, *Submission 63* (Supplementary submission).

Classification System and Case Management

6.39 Inmate classification is grounded in the belief that:

- there are differences in levels of risk between inmates that can be identified or measured, and
- that separation of different categories of offenders is desirable.

6.40 Clause 10 and 11 of the *Crimes (Administration of Sentences) (Correctional Centre Routine) Regulation 1995* sets out the classification system for men and women in New South Wales correctional facilities.

6.41 Dr Leo Keliher, Commissioner, NSW Department of Corrective Services advised the Committee that approximately 90 per cent of inmates proceed through the classification system from start to finish. Exceptions to this include those inmates convicted of a very serious crime. For example, a person who is sentenced to the term of his natural life, will not be eligible for work release or C3 minimum security classification; also those who are sentenced for a relatively serious violent crimes but for a relatively short period will be ineligible. The violent offender may spend the entire time as a maximum security inmate. Dr Keliher further advised:

We believe that by offering the classification system, as it stands as a process, that really gets around the issue of remissions. People will strive to get a minimum security classification so that they can have longer hours out of cells, they can have the opportunity to go outside the walls of the gaol to work, they can have the opportunity to engage in work release programs, education leave programs and so on, and we believe that that is the encouragement that needs to be put in place, but the vast majority, as I say, of inmates do have the opportunity to start at the top of the classification and work their way through, and some of our most notorious inmates have done that.¹³⁹

6.42 The Department of Corrective Services advises that, in practice, the Commissioner has delegated the responsibility for the classification of inmates to the Case Management Committee, chaired by a Manager Classification, from the Inmate Classification & Case Management Branch. The only exception of those managed by the Serious Offenders Review Council.

ICAC Report

6.43 In March 1999 the Independent Commission Against Corruption released its research report into the Department's case management of inmates in full-time custody entitled *Case Management in NSW Correctional Centres*. The ICAC report listed a number of views of both inmates and staff about case management. The criticisms by inmates included:

- Difficult to access case files

¹³⁹ Keliher, *Evidence*, 12 February, 2000, p 55.

- Lack of consultation on case plans
- Delays in preparation of reports
- Effects of classification and movement decisions
- Inability to access Inmate Development Services (IDS) staff and employment opportunities
- Disputes with staff affecting outcomes

The criticisms by staff included:

- Lack of time and resources
- Difficulties in accessing IDS staff
- Difficulties in interaction with inmates

6.44 The Committee made two recommendations in its *Interim Report* in relation to case management based on the evidence received and on the findings of the ICAC report. In essence, the Committee recommended that the Minister for Corrective Services implement the revised model of case management based on the ICAC report and that the Minister ensure that a case management plan is developed for each new inmate. In response, the Minister stated that case management had been reinvigorated in 1999 following the ICAC report and that the Senior Assistant Commissioner and Assistant Commissioner Inmate Services had personally addressed staff at the majority of correctional centres to reinforce Departmental expectations with regard to case management.¹⁴⁰

Recent Criticisms of Case Management

6.45 Since completing its *Interim Report*, the Committee has heard further criticisms of the case management system from inmates including that they had not met their case manager or had not seen their case manager since first entering prison. Other inmates stated that the need to transfer inmates between prisons interrupted case management plans.

6.46 One prisoner at Junee Correctional Centre told the Committee in evidence that:

case management...would work if they had enough prison officers to look after a small number of inmates. They have one prison officer to about 30 inmates and he doesn't have the time and most of them do not care. They just fill out the paperwork and do not even bother serving inmates anyway.¹⁴¹

6.47 The Inspector-General of Corrective Services, Lindsey Le Compte, stated in his *Annual Report* for the year ended 30 June 2000 that both inmates and staff had indicated to him that the problems identified by the ICAC report were still evident.¹⁴² The Inspector-

¹⁴⁰ *Government Response* 19 February 2001 p 3.

¹⁴¹ *Inmate Evidence* 24 October 2000.

¹⁴² Inspector-General of Corrective Services, *Annual Report for year ended 30 June 2001*, p 12.

General considered that, while the Department had taken action to address the issues identified by ICAC, a detailed strategic plan to address the difficulties of case management was needed. He also called for the availability of effective management information so that other impacts on case management such as the classification process, movements and programs and services available at correctional centres were able to be more effectively integrated. The Inspector-General proposed to review the implementation of the ICAC recommendations and to assess options in relation to information flow, performance indicators and the transparency and accountability of the system.

6.48 In evidence to the Committee on 12 June 2001, Assistant Commissioner Inmate Development Services, Mr Luke Grant confirmed the commitment of the Department of Corrective Services to case management. He stated:

I am very disappointed to hear that inmates are not aware who their case officers are and I had really hoped that that wasn't the case across the system. I would be surprised if that is the case everywhere. The system of case management has been a very difficult process to implement because such a fundamental change to the way we do business in corrections involves custodial staff caring for a group of identified inmates and all staff having such a case load and it also, as you imply has a component of programming, case planning or participating in programs that will, ultimately ideally result in a reduction in offending.

We are very concerned about case management and in fact in terms of the resources we are putting in to try and make it work. We have an offline team, a multidisciplinary team, called a corrections operational support team. The whole function of that team is to improve the implementation of case management and monitor the implementation of case management state wide and develop resources so that staff develop the skills to do what we want. In terms of inmates and their own awareness of what's happening to them, we have a number of strategies in place for that. One of these is a multimedia unit and the process of developing videos.

We have done two videos now. One of them is what to expect in your first 24 hours. That is written into six languages. A lot of the onus we think should also be on inmates seeking out programs and seeking out the services of their case officer. The second video is to carry people into their next part of their sentence—an induction video to be shown to all inmates and, again, it is in six languages as well is aimed towards explaining amongst other things how case management should operate.¹⁴³

6.49 It appears to the Committee that despite the Department's commitment to case management it is struggling to make *Throughcare* work effectively under the pressure of the increasing numbers of prisoners incarcerated. Greater resources and increased priority to the problem still needs to be given. Effective case management is the foundation for ensuring individual prisoners participate in appropriate programs.

¹⁴³ Grant *Evidence* 12 June 2001.

Recommendation 9

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

Prison programs

6.50 As noted in the Committee's *Interim Report*, academic, anecdotal and statistical evidence indicates that prison is generally ineffective in terms of rehabilitation and often has a destructive effect on individuals who are incarcerated and on their families.

6.51 There is a high rate of recidivism among offenders. According to the Commonwealth Government's *Report on Government Services 2000*, 62% of prisoners had been previously imprisoned and most re-offend in the first three months of release. Dr Richard Matthews, CEO of the Corrections Health Service advised the Committee that for the majority of inmates who are sentenced to six months or less, it is unrealistic to expect rehabilitation to occur during their prison sentence. Dr Matthews stated:

People have unrealistic expectations about rehabilitation in gaol and there are three reasons why they are unrealistic. First, in adult institutions, when people arrive for the first time, there are already 18 years minimum of history behind them. That history often involves the family use of drugs, parental abuse, alcoholism, violence... Then they are in for a very short period of time and later they return to the same environment. It is actually unrealistic to expect that very much that you do inside will make much difference to what people do when they get out unless they are sentenced for a reasonable period of time.¹⁴⁴

6.52 Programs in prisons are the responsibility of the Inmate Management Division. The Inmate Management Division places emphasis on:

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

The Inmate Management Division consists of:

- Psychological Services;
- Alcohol and Other Drugs/HIV and Health Promotion Unit (AOD/HHPU);
- Welfare Services;

¹⁴⁴ Matthews *Evidence* 12 March 2001.

- the Adult Education and Vocational Training Institute (AEVTI)
- the Chaplaincy;
- Corrective Services Industries (CSI);
- Inmate Classification and Programs;
- Community Grants Program.¹⁴⁵

6.53 Programs offered to eligible male inmates include education, industry, drug and alcohol programs, mental health, welfare and pre-release programs. There are also violence prevention programs, sex offender programs and young offenders programs. Indigenous and culturally specific programs are also available.

6.54 The Productivity Commission *Report of Government Services 2001* notes that a key policy issue for corrective services across Australia in 1999-2000 was the continuing focus on policies and programs that address the transition from custody to community, including the continuity of services between full-time custody and community corrections. A crucial part of the transition is maintaining links with families, and the provision of facilities and services to assist the transition.

6.55 The Productivity Commission reports that a new framework of performance indicators has been approved by Corrective Services administrators and endorsed by Australian Corrective Services Ministers. Performance is reported against six key result areas: containment, community, reparation, offender programs and advice to sentencing and releasing authorities. The objectives for corrective services related to offender programs is to provide programs and opportunities that address the causes of offending and maximise the chances of successful re-integration into the community.

6.56 The Committee notes that the Department of Corrective Services is currently undertaking, or planning to undertake evaluations of various prison-based programs. These are presented in the table below, together with completion dates:

Program	Completion Date	Status
Evaluation of prison-based drug free wing programs	August 2002	Current
Evaluation of a prison-based pre-release alcohol and other drug therapeutic community	November 2002	Current
Evaluation and development of the Violence Prevention Program (VPP) at Malabar Special Programs Centre and the High Risk Management Unit (Goulburn)	Ongoing	Current
Evaluation of a first tier alcohol and violence prevention program	TBA	Under consideration
Evaluation of the therapeutic units for 'at risk' inmates	Ongoing	Current
Preliminary evaluation of data collection and distribution procedures for Sex Offender Programs therapeutic Units	Ongoing	Current
Sex Offender Treatment: The CUBIT and CORE programs in NSW correctional facilities	December 2001	Current

¹⁴⁵ Department of Corrective Services *Submission 63* p 39.

Program	Completion Date	Status
Basic education and literacy levels of inmates from reception to discharge	June 2002	Awaiting funding
Evaluation of the Restorative Justice Program	June 2002	Current
Evaluation of the Aboriginal Second Chance Program	Ongoing	Awaiting funding
Evaluation of Bolwara House Transitional Centre	Ongoing	To commence on program starting

Source: NSW Department of Corrective Service, *Research Program 2001-2002*

6.57 The Committee supports the need for such evaluations, as it has seen few examples of useful evaluations of prison programs, with some exceptions such as that of the methadone program.¹⁴⁶ Prison activists and inmates during the inquiry raised concerns about the availability of certain programs including the limitation or lack of programs in some prisons and relating to time served and length of sentence. The Committee was advised by inmates that, in the case of lengthy sentences, some inmates can experience an intense period of participation in programs at the beginning of their sentence, followed by a long period of inattention until the final six months.

Drugs and alcohol

6.58 As stated in Chapter Four, a significant percentage of inmates have an alcohol or other drug substance use problem. The Alcohol and Other Drug Health Promotion Service has implemented various strategies to address the needs of those inmates. The Department of Corrective Services submission states:

These strategies range from the Core AOD HHPU Programs, Peer Support Programs and the contributions of various community organisations to the more specialised and intense programs that will address the issues of relapse and recidivism for inmates with high incidence of relapse.¹⁴⁷

6.59 Drug Free Wings have been established in three Correctional Centres: Parramatta, Emu Plains and Cessnock. Inmates who enter these wings are selected through an assessment criteria which includes having remaining time to serve of not less than 3 months and no more than 6 months. Inmates are required to sign a contract in relation to participation in the program and are subject to random urine analysis testing. This program will work under the umbrella of harm minimisation, that is, there will be a hierarchy of punishments and the use of relapse prevention tools as an education strategy. The Wings operate within the normal gaol routine and the programs and services attached to these Wings have the long term aim of reducing offending behaviours.

6.60 The Alcohol and Other Drug Therapeutic Unit at Long Bay Correctional Centre, called Ngarra Nura, which has been operating since November 2000, accommodates forty men at the pre-release stage of their sentence. It illustrates the use of prison programs pre-release and links with community based agencies:

¹⁴⁶ Dolan, Wodak and Hall, "Methadone maintenance treatment reduces heroin injection in NSW prisons" *Drug and Alcohol Review* 1998, v17, pp 153-158.

¹⁴⁷ Department of Corrective Services, *Submission 63* p 49.

These inmates must be in the last 12 - 14 weeks of their sentence. The program content is based on increasing links to the community through facilitating social support networks and using the services of agencies such as the Department of Housing, TAFE and Centrelink, as well as non government agencies involved in the prisoner rehabilitation. There is a strong family reconciliation component in this program. It has been extensively researched with all programs in this unit based on a cognitive behavioural framework. The program will be evaluated as recommended from the Drug Summit with the overall evaluation framework being directed from the Office of Drug Policy.¹⁴⁸

- 6.61** All programs in this unit are educational, therapeutic and cognitively based. The Department of Corrective Service submission states that these intensive programs have been well researched and, whilst it is acknowledged that addiction is a complex issue with many variables, the whole of community approach to service provision looks promising in terms of successful outcomes. As noted above, the Department of Corrective Services will be evaluating the Drug Free Wing projects and prison-based alcohol and other drugs programs.

Programs for Sex Offenders

- 6.62** One of the most intensive programs within the Department of Corrective Services aimed at reducing offending behaviour are the sex offender programs. The current highly structured programs have their origins in a review of sex offender programs undertaken during 1994/1995 by a senior departmental clinical psychologist. A "comprehensive" sex offender program was developed and implemented during the 1995/1996 financial year at the former Cooma Correctional Centre. The program was further developed during 1996 to include both a 16 week intensive therapy whilst inmates were in custody and a community stage. Other, less structured, programs were offered at the Kirkconnell Centre at Bathurst and the St Heliers Centre at Muswellbrook.
- 6.63** Plans were initiated to move the program to Sydney at Long Bay because of the difficulty of attracting specialist staff outside the Sydney metropolitan area. The intensive program was suspended during 1997 whilst it was moved to the developing Special Purpose Centre at Long Bay. Eight staff were employed for what was to become a more extensive program. In 1998 the Department commenced screening inmates for its Custody Based Intensive Therapy (CUBIT) program at Long Bay, initially under the supervision of a therapeutic consultant seconded from overseas. The program started with seven inmates in February 1999, building to 16 inmates by the end of June. The therapy is now designed to last an average of 44 weeks to be conducted as the inmates near the end of their sentence.
- 6.64** The sex offender treatment program run at Junee Correctional Centre - NETT SORT - is considered a low intensity treatment program by the Department of Corrective Services. Recently the Department in consultation with Junee Correctional Centre have put guidelines in place so that only lower risk sex offenders participate in the program. Junee Correctional Centre will assess offenders prior to acceptance into a program. Moderate and high risk offenders at Junee Correctional Centre will now be referred directly to CUBIT. Lower risk sexual offenders will be able to undertake an appropriate treatment program

¹⁴⁸ Department of Corrective Services, *Submission 63* (Supplementary).

(matched to their level of risk) either at Junee Correctional Centre (NETT SORT) or within Department of Corrective Services (CORE).

6.65 The Minister for Corrective Services provided the following outline of the sex offender programs operated by the Department of Corrective Services:

The sex offender treatment programs within the Department of Corrective Services have been developed based on international best practice and are based on research findings about effective correctional programming. The literature is very clear on what constitutes appropriate treatment services for such offenders. Empirical findings clearly demonstrate that effective correctional programming follow the risk, needs and responsivity principles. This means that:

1. programs target the criminogenic factors that lead to the offending behaviour, as opposed to targeting other issues unrelated to the offending behaviour (need principle);
2. are delivered at an intensity that matches the risk level of the offender (risk principle);
3. use modes of treatment that have been shown to be effective with the criminal population (responsivity principle).

The Department of Corrective Services offers programs to meet all levels of risk and needs high, moderate and low. These are:

- the CUBIT high intensity program for high risk offenders . ten months residential;
- CUBIT moderate intensity program for moderate risk offenders . eight months residential;
- CORE (CUBIT outreach) lower intensity program for lower risk offenders . five months non residential.¹⁴⁹

6.66 The Minister for Corrective Services also advised that the sex offender treatment programs run by the NSW Department of Corrective Services are based on standards written by the Correctional Service of Canada which, in brief, are:

- Assessment of sex offenders shall focus on offender risk/need, responsivity/treatability and the management of risk.
- Timing, duration, focus and intensity of services based on offender's level of risk, need, responsivity.
- Treatment of sex offenders is a therapeutic and structured intervention aimed at the reduction of the risk to reoffend sexually.
- Group treatment is the preferred treatment modality. Cognitive-behaviour therapy approach.
- Treatment goals: minimisation and rationalisation, attitudes and cognitive distortions, social competence skills, sexuality, offender victimisation, victim awareness, deviant arousal and fantasy, anger management, relapse prevention.

¹⁴⁹ Department of Corrective Services, *Submission 63* (supplementary).

- Program intensity is linked to offender risk need. High intensity programs recommended for offenders assessed as higher risk. Usually delivered in specialised unit. Moderate intensity, low intensity, maintenance in custody, maintenance in community.¹⁵⁰

6.67 Some provision has now been made for an Aboriginal worker within the program to liaise with communities across the state to raise awareness of issues related to sex offender treatment, and in supervising and supporting treatment gains after the offender's release.

6.68 Whilst the sex offender programs are now well developed and operating consistently they are still quite new. It addresses the needs of about 10 per cent of male inmates in full time custody. The Committee has not been provided with any data indicating the effectiveness of the sex offender programs and only scant details are available for public scrutiny on a regular basis in the Department's Annual Reports.

6.69 The Department of Corrective Services is currently evaluating the CUBIT and CORE programs. The evaluations will be completed in December 2001. The Department provided the following information on the evaluation of these programs:

It is important to assess whether the sex offender treatment programs are leading to the required changes in criminogenic needs of offenders and whether the programs are leading in the longer term to a reduction in recidivism.

To determine whether the program is leading to changes in dynamic risk factors (also known as criminogenic needs), evaluation of pre/post treatment measures is needed. Several preliminary studies have been conducted examining a range of treatment measures. A preliminary evaluation of the impact of the sex offender treatment programs (CUBIT, CORE) on the cognitive distortions of sexual offenders found that both offence specific and general cognitive distortions had been reduced post treatment. Numbers in the sample were still small given that the program is only now achieving full capacity (permanent CUBIT began in January, 2001). However, results of the studies are encouraging as international research shows that the successful reduction of those dynamic factors leads to a reduction of sexual recidivism in treated sexual offenders.¹⁵¹

6.70 In regard to whether the programs led to any reduction in offending behaviour, the Department said:

This requires examination of recidivism rates for treated offenders compared to matched untreated offenders. This will be a long term study. Given the recency of the programs no data is available at this stage. However, this research is seen as crucial and is planned for when sufficient numbers have been through the treatment programs. A database is being established to contain comprehensive information on all sex offenders within the NSW Correctional system.¹⁵²

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

6.71 The Australian Institute of Criminology reported in November 1999 that initial estimates of a cost-benefit analysis of child sex-offender treatment programs for male offenders in correctional services suggest that:

within plausible parameters, the costs of such programs are likely to be more than compensated by the benefits which they produce (in terms of costs forgone)...The exploratory work also suggests that, despite these difficulties, the magnitude of the problem of child sexual abuse generally, and offences by recidivists in particular, is such that its costs are substantial and the associated benefits to be achieved from appropriate treatment programs high.¹⁵³

6.72 While the Committee welcomes the delivery of these programs, it is concerned that the programs, because they are new, have not had any opportunity to be evaluated for their effectiveness in reducing recidivism, as is the case with many other of the Department's inmate programs. The Department's submission states that the evaluation of the program will:

need to be managed for the next 15-20 years to ensure reliable results.¹⁵⁴

6.73 This time frame may be valid to judge the overall effectiveness of the program. However there should be useful results obtained much earlier for the Department to be assured that the programs are heading in the right direction. For instance, if offenders are immediately re-offending upon release at their previous rate there may be lessons able to be drawn to assist modification of the program.

Recommendation 10

The Committee recommends that the Department produce and release preliminary findings of its long term evaluation of the Sex Offender programs, so as to assist modifications of these programs.

6.74 The Committee visited the Junee Correction Centre that accommodates a substantial number of sex offender inmates, many of whom require some level of protection. In March 2001, the Committee conducted a site visit to Long Bay Correctional Centre and met with the staff of the Malabar Special Programs Centre operating the CUBIT program and a number of inmates participating in the program. Inmates reported the course to be challenging both in terms of the large volume of work which they were required to complete and in psychological terms. Participants stated that the program forced them to confront their offending behaviour and the impact on victims.

Violence Prevention Program

6.75 The Department of Corrective Service *Annual Report 1999/2000* states that research by the Department indicates that 48 per cent of inmates are in prison for violence-related crime. The Annual Report states that, at the time of reporting, the Department employed

¹⁵³ Donato R & Shanahan M, 'The Economics of Implementing Intensive In-prison Sex-offender Treatment Programs, *Australian Institute of Criminology, November 1999: 134, p 5.*

¹⁵⁴ Department of Corrective Services, *Submission 63 p 45.*

approximately 300 psychologists, welfare and drug and alcohol staff who work with inmates to help them address their violent behaviour.

- 6.76** Early violence prevention programs were developed by clinical service staff in 1995. Like the sex offender program, the long-term plan of the Department has been to establish the more intensive violent offenders programs in the Special Purposes Centre at Long Bay.
- 6.77** The first programs were commenced at Long Bay gaol in the Alexander Maconochie centre in June 1996. The 14-week residential program provided for 10 volunteer inmates and was supervised by a senior psychologist. There were four intakes “averaging 10 maximum security inmates” for each course. In 1998, the intensive program was still only servicing 31 inmates a year,¹⁵⁵ while other less intensive programs treated about 90 additional inmates.
- 6.78** In May 1999, the intensive programs were suspended “pending a review and restructure”. During the next year a multi-agency Ministerial Reference Committee was established with representatives of the Department of Corrective Services, the NSW Police Service, the Law Society, Victims of Crime Bureau, the Anti-Discrimination Board, Aboriginal Justice Advisory Council, the Department of Health and WorkCover to review policies and programs and address the issue of violence based on race, sexuality and culture.
- 6.79** The Committee met with staff and inmates participating in the program at the Special Purpose Centre at Long Bay in March 2001. The Violence Prevention Program at the Centre is a four stage process. Inmates reported a high level of satisfaction with the program to date, although this does not mean the programs are necessarily effective. The Department of Corrective Services has advised the Committee that no evaluation of the Violence Prevention Program has taken place to date, but will commence as soon as the four stages are operational.
- 6.80** The Committee is concerned that the Department does not yet have a well-established program to treat violent offenders, with a record of continuity or demonstrated impact on reducing recidivism.

Correctional Industries

- 6.81** The Department of Corrective Services advises in its submission that the overwhelming proportion of inmates who enter the correctional system, particularly those within disadvantaged groups, have acute education and vocational deficiencies with limited employment skills and associated social deficiencies. The Department states:

The provision of inmate education, vocational training and work skills is therefore regarded as an important correctional endeavour and a key to securing the social and economic independence for inmates to facilitate their successful return to the community.¹⁵⁶

¹⁵⁵ DCS *Annual Report 1998/99* p 24.

¹⁵⁶ Department of Corrective Services, *Submission 63*, p 58.

6.82 Inmates are involved in a range of service industry functions to provide for the self-sufficiency of the correctional system, for example, food services, building maintenance, clerical activities and landscaping. Inmates also work in commercial based business units which market products and services as Corrective Service Industries and on community bases programs immediately prior to release including work release programs.

6.83 The objectives of NSW Correctional Industries (CIs) are as follows:

- to help rehabilitate inmates, by providing them with work related skills and experience needed to enhance their ability to find and retain a job and lead productive lives on release;
- to keep inmates occupied, and therefore facilitate inmate management, by minimising undesirable inmate behaviour associated with inmate idleness and boredom;
- to reduce the costs of running prisons, through the productive utilisation of inmate labour.¹⁵⁷

6.84 Sales by Corrective Services Industries rose to \$25.5 million during 1999/2000, an increase of \$5.3 million over 1998/99.

6.85 The Department of Corrective Services' *Annual Report 1999/2000* states that during that year inmates worked on a variety of projects, including:

- a school refurbishment project at St Heliers Correctional Centre that refurbishes an average of two classrooms of furniture daily
- at Cessnock Correctional Centre refurbishment of 16 demountable buildings that were to form part of the media village for the Sydney Olympics
- up to 40 inmates repair slightly faulty appliances at Bathurst Correctional Centre.

6.86 In June 2001 the Audit Office of New South Wales completed its performance audit of the Department of Corrective Services NSW Correctional Industries. The Audit Office report states that, along with other rehabilitative programs run by the Department, Correctional Industries can help to reduce re-offending:

Research shows a link between unemployment and criminal activity. 44% of inmates have histories of long term unemployment prior to imprisonment. Overseas studies indicate that ex-inmates who find stable jobs have half the probability of re-conviction compared to those inmates who were unemployed. By developing inmate skills to enhance their chances of finding and retaining employment on release, CIs can assist to reduce the likelihood of re-offending.¹⁵⁸

¹⁵⁷ The Audit Office of New South Wales, *Performance Audit report: Department of Corrective Services: NSW correctional industries*, June 2001, p 2.

¹⁵⁸ *Ibid.*

- 6.87** The Audit Office acknowledges the notable achievements of CIs. The proportion of inmates employed in correctional Industry programs has generally matched the National Performance Indicator of 65%. The Audit Office report states that, over the past ten years, CIs have grown to employ approximately 63% of the inmate population which is at world best practice level.
- 6.88** The Audit Officer found CIs to be effective in terms of keeping the maximum number of inmates occupied (in order to facilitate inmate management). However, the report also states that CIs should tackle even more challenging issues. The performance audit found that in order to optimise the development of inmates for employability purposes further actions are needed to improve CIs' effectiveness such as providing inmates with broader foundational employability skills which are transferable to a wide variety of work.

Education

- 6.89** As noted in Chapter Four of this report:
- 60% of inmates are not functionally literate or numerate
 - 44% are long term unemployed, and
 - 60% did not complete year 10.¹⁵⁹
- 6.90** The Department of Corrective Services' Adult Education and Vocational Training Institute (AEVTI) is a registered training organisation responsible for the development, delivery and evaluation for educational, recreational and library programs for inmates in correctional centres. The Department of Corrective Services' submission states that in developing programs, AEVTI staff take account of:
- the special needs of the inmate population;
 - constraints associated with security, accommodation, resource availability, special management programs, inmate employment and institutional routines; and
 - the availability of expertise within the Department and from external providers including TAFE NSW and a range of other community providers.
- 6.91** The Department of Corrective Service *Annual Report 1999/2000* reports that up to 47 per cent of inmates were enrolled in education programs each month under the Department's program. \$9.1 million was provided to a broad range of education and vocational training programs for offenders.
- 6.92** A review of education and vocational training in NSW corrective centres in November 1999 was made with the aim of assisting development of future directions for education and training of inmates. The review stated that:

¹⁵⁹ Department of Corrective Service *Submission 63*.

The correlation between low socio-economic status and imprisonment is well documented. One of the key challenges is to meet the enormous needs of a diverse population and to develop and deliver programs and therapeutic interventions to address some of the issues relating to offending behaviour.¹⁶⁰

- 6.93** The review concluded that core education provision in correctional facilities should be in the area of vocational education, where possible accredited. Literacy and numeracy education and ESL are vital elements of the educational programs but should be undertaken largely within the context of vocational courses, broadly defined as those leading to some possibility of employment.
- 6.94** The Committee's *Interim Report* noted the disparity of wages between inmates undertaking full-time work and those undertaking full-time study. The review considered that linking of TAFE courses and industry overcomes one of the problems which restricts the appeal of education – the amount of money earned by inmates. This issue is considered again in Chapter Eight of this current report.
- 6.95** One issue which has emerged in evidence and conversations with inmates during this inquiry is the impact of increased prison numbers on disrupting the continuity of education programs. In one instance the Committee heard from a prisoner who had almost completed a significant course, only to be relocated to another prison due to accommodation pressures.
- 6.96** The NSW Teachers Federation submission states that given the inmate profile, the importance of education cannot be overestimated in assisting with rehabilitation and reintegration to the community.¹⁶¹ The Federation notes that there is a lack of post-release information about inmates. A longitudinal study of inmates post-release, would provide information about the impact of education on recidivism and the impact of education programs on inmate's ability to find employment and to access further education.

Recommendation 11

The Committee recommends the Department of Corrective Services include in future research programs a long term study on the impact of its education programs on recidivism.

Difficulties in Program Delivery

Short Term Prisoners

- 6.97** One of the major problems in delivering programs within prison is that a significant proportion of the population is incarcerated for periods of less than six months. Most courses can not be completed within the six-month time frame, particularly with delays such as that required to apply for courses. This means that those prisoners most in need of

¹⁶⁰ Gonsczi, A (1999), Review of education and vocational training, NSW Department of Corrective Services.

¹⁶¹ NSW Teachers Federation, *Submission 69*.

programs to assist their rehabilitation and integration into the community have least access to programs to assist this rehabilitation.

6.98 Some notable aspects of this problem include:

- Case management plans are reviewed every six months – so short term offenders do not have their plan reviewed during their imprisonment.¹⁶²
- Some intensive pre release courses, such as the Alcohol and other Drugs (AOD) course at Long Bay, is only offered to prisoners in the last 14 weeks of their sentence, effectively excluding many short term prisoners from applying for the course.¹⁶³
- Most short term prisoners are not eligible for the type of support provided by programs organised by the Probation and Parole service.¹⁶⁴

6.99 Problems such as these raise the question as to what purpose is served by incarceration for such short sentences when access to suitable programs addressing offending behaviour, offered within the community, may be more effective. This is considered further in Chapter Seven.

Overcrowding of Prison Facilities

6.100 Dr Matthews from Corrections Health outlined ways in which the recent growth in the prison population has contributed to difficulties in delivering programs:

The system is full. So every time an inmate in Lithgow has to come down to Sydney for court, someone has to go the other way because there has to be virtually a body in every bed. If there is no-one suitable to go directly the other way, sometimes there has to be a quadruple shuffle. That is to satisfy the demands of the court, which is something that Corrective Services has to do. So we get separate movements for medical treatment: we bring people to Long Bay to get them specialist treatment at Prince of Wales (Hospital). So, if we pluck someone out of Cessnock to come down to the orthopaedic surgeon, someone has to go the other way. And then, of course, there are administrative moves for legitimate reasons, and there are security moves for legitimate reasons as well. It is very difficult to reduce the movements, even though often to the inmates and to others they appear to be capricious.¹⁶⁵

6.101 The Productivity Commission reports that the internationally agreed standard for prison utilisation, which is a measure for prison overcrowding, is between 85-95 per cent. The rate of prison utilisation in NSW exceeds 100 per cent.¹⁶⁶

¹⁶² Department of Corrective Services, *Submission 63* p 37.

¹⁶³ *Ibid* p 49.

¹⁶⁴ Department of Corrective Services, *Submission 63* Appendix 15.

¹⁶⁵ Matthews *Evidence* 12 March 2001 p 24.

¹⁶⁶ Productivity Commission, *Report on Government Services 2001* p 468.

6.102 The Committee was also advised some therapeutic programs at the Long Bay Complex had been disrupted because of the need to “keep 150 beds open for remandees, many on protection”.¹⁶⁷

6.103 If programs are to be delivered efficiently to inmates in order to maximise their potential rehabilitation, it is essential to address overcrowding in NSW prisons. If it is not possible to reduce the prison population by changes in Government policy, the only alternative will be to significantly increase expenditure to build more gaols. The Committee would be concerned if the Government were to pursue a policy that sought to deal with the increase in the prison population solely by constructing additional prison accommodation. One specific suggestion for reducing the number of short-term receptions is outlined in Chapter Seven.

Inmates with special needs

6.104 The section below provides a brief account of some significant programs aimed at inmates with special needs. The Committee welcomes some of the innovative programs offered. However the approach of this report overall is to question whether too many of these inmates with special needs are in the prison system, when their offending behaviour would be better addressed without incarceration as the sanction.

Inmates with mental illness

6.105 The Department of Corrective Services advised that the Department of Health, through the Corrections Health Service, provides mental health services to inmates throughout NSW correctional centres. Health clinics are provided at each correctional centre and they are staffed by nurses with consultation provided by psychiatrists on a regular basis. Male inmates requiring in-patient assessment and treatment are admitted to Long Bay Hospital.

6.106 Long Bay Hospital also provides facilities for offenders who are under the jurisdiction of the Mental Health Review Tribunal where they:

- have been found ‘unfit to be tried’ on the basis of mental illness, intellectual disability, brain damage or other related cause, or
- are found not guilty by reason of mental illness, or
- are transferred from the correctional system to the hospital system because of mental illness.

6.107 In September 2001 the Premier announced a \$1.5 million plan for a new Mental Health Unit at the Metropolitan Remand and Reception Centre (MRRC) at Silverwater.¹⁶⁸

¹⁶⁷ Department of Corrective Services *Submission 63* (supplementary).

¹⁶⁸ Hon RJ Carr MP, Premier, “Carr announces 1,805 new places for NSW prison system” *Press Release 2* September 2001.

- 6.108** Unfortunately in some areas of NSW prison facilities provide the only opportunity for readily accessible treatment. In its *Crime Prevention Through Social Support: Second Report* the Standing Committee on Law and Justice reported on instances in rural areas where a magistrate had sentenced people with mental illness because it was the only place they would receive proper treatment programs for their offending; and of delays for psychiatric assessments leading to mentally ill persons being held on remand.¹⁶⁹

Forensic Patients

- 6.109** Forensic patients are people who have been accused of a criminal offence, but the courts have found that they are either not fit to plead or they have been found not guilty because of a mental illness. They become subject to the management of the Mental Health Review Tribunal according to the provisions of the Mental Health Act. If the offence is of a less serious nature, the Tribunal can recommend that the inmate be transferred to a community based unit such as Kestrel or Bunya, which are facilities operated by the NSW Department of Health. Such a recommendation also has to meet with the approval of both the Minister for Health and the Minister for Corrective Services. If the offence is more serious, and the inmate requires a high level of security, the inmate will probably remain at the Long Bay Hospital. Currently there are 120 beds in the forensic hospital at Long Bay Hospital.
- 6.110** The Committee received evidence from Leonie Manns, Chairperson of the Disability Council, that NSW was the only state in Australia that was unable to comply with the provisions of the National Medical Health Forensic Policy. She also informed the Committee that in most western countries and all other states of Australia, it is considered inappropriate to accommodate forensic patients within the grounds of a gaol.¹⁷⁰
- 6.111** The Department of Corrective Services concurs with that opinion. The Department stated in a submission to the Committee that a number of people held in NSW prisons should be housed in community options as occurs in Victoria:

There are a significant number of inmates each year who would be appropriate for community options if they were available. As well there are a small number of inmates (approximately 5-6 per year) for whom gaol is completely inappropriate. They mostly function within the moderate range of disability. The development of community options is essential for these offenders, as they are vulnerable even within the separate units available within the correctional centres.

In Victoria, there are provisions within the Sentencing Act for recommendations to be made to the court for offenders with intellectual disabilities to be directed to reside in secure facilities outside the custodial system. Secure units have been developed in the community by the Statewide Forensic Service. At present the Victorian Disability Service legislation is under review and one of the issues for consideration is whether this legislation should include a capacity to detain. Victoria thus has two separate disability options within the custodial environment as well as secure community options for offenders with intellectual disabilities.¹⁷¹

¹⁶⁹ Standing Committee on Law and Justice, *Crime Prevention Through Social Support: Second Report*, August 2000, p 84.

¹⁷⁰ Manns *Evidence* 12 March 2001 p 55.

¹⁷¹ Department of Corrective Services, *Submission 63* p 53.

6.112 Dr Richard Matthews from the Corrections Health Service developed this proposal further:

I am particularly impressed by the Mason Clinic in Auckland and, indeed, by new facilities in Victoria – the Thomas Embling Hospital, which is an assessment hospital for mentally ill people; and the forensic care, where people who are formally certified under the Mental Health Act are held in a secure facility run by Health, rather than a prison. My personal view is that someone who formally becomes forensic that they should be held in a secure facility run by Health.

Indeed, we have put in a submission jointly to our department and the Department of Corrective Services that such a facility should be built. We have a reasonable commitment that when funds are available that will happen. When the funds will be available, I do not know, but we will then be seeking to provide a better environment for forensic patients that they are currently getting.¹⁷²

6.113 The Committee has been informed that planning for alternative facilities for forensic patients has been undertaken at senior levels of a number of Government Departments including the NSW Department of Health, the Department of Corrective Services and the Attorney General's Department. A detailed proposal is now waiting for funding approval from the NSW Treasury.

Recommendation 12

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

Inmates with Intellectual Disabilities**6.114** Chapter Four discussed the difficulties of people with intellectual disabilities in the prison system. The Disability Unit was established in 1999 to address the additional needs of inmates with disabilities.**6.115** The Department advises that many inmates with an intellectual disability are vulnerable within the custodial environment. To address this it has provided separate units to cater for the most vulnerable of these inmates since 1989:

Inmates with an intellectual disability are managed in both separate units and in mainstream custodial centres across the state. The development of an inmate's case plan and their placement is decided on an individual basis with consideration to such issues as assessed level of disability, interpersonal skills, age, availability of family contact and general vulnerability within the correctional environment. Inmates identified as having an intellectual disability are registered on the Disability Services Unit data system. Staff of the Disability Unit are alerted if an inmate returns to custody and this enables the Department to draw on its past experience in the management of the inmate.

¹⁷² Matthews *Evidence* 12 March 2001 p 45.

The Department's Disability Action Plan addresses the development of services and programs for person with a range of disabilities within the Department Both offenders and staff. Intellectual disability is one of the areas addressed.¹⁷³

- 6.116** The Department is currently negotiating with the Corrections Health Service to include a test for intellectual disability in their major health survey of inmates. Some issues still need to be finalised including the methodology and the duration of the survey. The findings will assist both Department of Corrections Services and the Corrective Health Service to provide improved services to inmates with intellectual disability and to provide other agencies, such as the Ageing and Disability Department and the Department of Health, with information about services needed for inmates upon release.¹⁷⁴

Inmates from Non English Speaking Backgrounds

- 6.117** To address the needs of prisoners from non-English speaking backgrounds the Department in 1992 established a Policy & Project Officer, Ethnic Affairs position. The Department encourages the participation of members of ethnic and religious communities to play a role in the development and implementation of Departmental policies, programs and services and to provide pre and post release services. The project officer collects data regarding accredited interpreter usage to identify the needs of offenders from diverse cultural, religious and linguistic backgrounds.

Inmates from Indigenous Backgrounds

- 6.118** Chapter Four of this report examined in detail the over representation of Indigenous persons in the prison system, and the potential to reduce their imprisonment rate. The Department has a discrete Indigenous Services Unit and a comprehensive policy, the Indigenous Offenders Action Plan. The policy is developed in response to the disproportionate incarceration of Aboriginal offenders, the greater risks they face in custody, the need to provide alternatives to full-time custody and to ensure that services are provided in a culturally appropriate manner.
- 6.119** In Chapter Seven issues are considered regarding the under representation of Indigenous offenders in home detention and the Drug Court. With the high rate of incarceration of Indigenous offenders it is particularly important that full advantage is taken of alternative sentencing options for this group. Two recommendations are raised in that Chapter to attempt to address the specific difficulties faced by this group in participating in home detention and in Drug Court programs.

“E” Classification Prisoners

- 6.120** One of the issues identified in the first stage of this inquiry was the difficulties in delivering programs to prisoners classified as “E” because of a previous escape attempt, even if that attempt was in an earlier sentence. They are classified as maximum security regardless of

¹⁷³ Department of Corrective Services, *Submission 63* (Supplementary).

¹⁷⁴ Correspondence from Minister for Corrective Services, Hon John Watkins MP, not dated.

the seriousness of the offence for which they were originally charged. According to the provisions of the *Crimes (Administration of Sentences) (Correction Centre Routine) Regulation 1995*, inmates with an “E” classification cannot do any program while they are in custody that requires them to move outside a secure physical barrier, even if they are in the company or supervision of a custodial officer. This has a great impact on their capacity to participate in vocational programs, and of course, work release schemes.

6.121 As advised in the Government Response to the *Interim Report*, such prisoners are not able to apply for courses or programs until they are 50% of the way through their sentence. This halves the length of time they are able to participate in programs which may assist their rehabilitation. For prisoners serving shorter terms, such as six to 12 months, it may exclude them altogether from participation in programs. For example if an inmate has been sentenced for two years, they are unable to apply for a review of their “E” classification until they have served 12 months. They are often released from prison when they have completed 18 months. This leaves only six months, if their application for review is accepted, to participate in programs. Frequently their sentence is over before these procedures are completed.

6.122 The Committee has received submissions about this issue from the Aboriginal Legal Service and the NSW Law Society. The Committee was informed that this is an issue which particularly affects inmates with an indigenous background:

CHAIR: What are the blockages to Aboriginal women, or Aboriginal men, for that matter, having difficulty getting through the classification system? You made the point earlier, Ms Hopkins, that Aboriginal women are not getting through the classification system. I am wondering, if that is the case, why it is?

Ms HOPKINS: If I could just deal with men and women together firstly, one of the big problems with the classification system is this E classification. If you have ever escaped, you cannot then ever get through the classification system. It is like a mark tattooed on your forehead. It seems to be an outdated, outmoded system that has to go. So many of our clients because of their relationship with the police also have got an escape somewhere on their record, which means that they are not going to be able to get work release 10 years later.¹⁷⁵

6.123 The Committee recognises that for some high risk prisoners an “E” classification and restricted access to programs such as work release is appropriate. However the classification system needs to properly distinguish between such prisoners as those for whom the restrictions on participation in programs is unnecessary.

Recommendation 13

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

¹⁷⁵ Hopkins, *Evidence* 23 February 2000.

Restorative Justice

6.124 The aim of restorative justice is to encourage offenders to take responsibility for their actions, acknowledge their impact on the victims, and, as a consequence, change their behaviour. Its principles have been used to considerable effect in juvenile justice, both in NSW and overseas.

6.125 The Restorative Justice Unit within the Department of Corrective Services, established in 1999, operates a victim-offender conferencing program under which offenders and victims, families and supports can be brought together and to give the offender an opportunity to make reparation. The post-sentencing scheme is available to inmates and to offenders on probation or parole.

6.126 The Unit has designed a victim awareness program for both inmates and people under community supervision. The Unit also operates a victims register under the *Victims Rights Act* under which victims have a right to know about an inmates' application for parole or any moves that might see the offender in the community.

6.127 Ms Rhonda Booby, Director of the Restorative Justice Unit, stated that the purpose of the Unit is to:

promote victims' issues within the department but also to have offenders accept or acknowledge responsibility for the offence and also for them to stop minimising the offence.¹⁷⁶

6.128 During her evidence in March 2001, Ms Booby stated that since its first conference in November 1999, the Unit had received 105 referrals and had conducted 10 interventions. Some interventions were not conferences but consisted of the victims and offenders meeting with a mediator. Ms Booby described the process for arranging conferences:

The referrals can come from the victims or the offenders. Most of ours have come from the offenders. After that, we make an assessment of the offender based on information that is available to Corrective Services. Included in that is the offender's motivation, what the offender has been doing whilst in custody, his or her ability to empathise with the victim, and the offender's understanding of what the offence involved. If we assess the offender as being suitable for conferencing, we will then approach the victim. The first contract we make with the victim is by way of letter, saying, "This offender wants to meet with you to talk about what it is he/she did and anything that can help to reduce the harm." Then we will follow that up with telephone calls and visits, if the victim is willing to entertain visits. We proceed from there.¹⁷⁷

6.129 The Committee supports the concept of the Restorative Justice Unit as a very important initiative which should be given every opportunity by the Department to make an impact on recidivism.

¹⁷⁶ Booby *Evidence* 12 March, 2001.

¹⁷⁷ *Ibid.*

Release and Transition to the Community

- 6.130** Release into the community is recognised as a critical time for offenders. Recidivism rates are high as is the incidence of drug related deaths and suicide for recently released prisoners (see Chapter Eight).
- 6.131** Supervision post release is provided by the Department of Corrective Services through a range of programs and orders which aim to ease inmates back into the community. These include parole, work and education release and transitional centres.
- 6.132** The Department operates external pre-release programs for minimum security inmates who meet the criteria set out in section 18 of the Department's Operations Procedures Manual. The programs, including work release, day and weekend leave and education leave, aim to ease inmates' transition into the community through employment and consolidation of their relationship with family and friends. These external programs require a range of monitoring and support to maintain the security and integrity of programs.
- 6.133** The Committee in its *Interim Report* discussed some of the problems arising from the way in which prisoners are released into the community with inadequate preparation. The Standing Committee on Law and Justice in its *Crime Prevention Through Social Support: Second Report* also discussed at length the way gaps and lack of resources for post release programs contributed to prisoner recidivism.¹⁷⁸

Parole

- 6.134** Parole refers to the discharge of a prisoner from custody after the expiration of the minimum term of the sentence. The intention is that the offender will serve the remaining portion of their sentence under supervision in the community.
- 6.135** The aim of parole is to monitor offending related behaviour and influence change through planned and individualised intervention. When released to parole supervision the offender is subject to conditions to be of good behaviour and not to re-offend, and may be required to undertake such things as specified counselling or treatment.
- 6.136** The benefits of parole include:
- easing the transition from prison to the community,
 - a reduction in recidivism through supervision; and
 - the economic advantage (as the cost of community supervision is low compared to the cost of incarceration).
- 6.137** Criticism of parole includes:
- the perceived leniency on offenders,

¹⁷⁸ Standing Committee on Law and Justice in its *Crime Prevention Through Social Support: Second Report*, Chapter 7.

- the perception that the deterrent effect of imprisonment is weakened, and
- the fear of a threat to public safety, particularly for victims.

6.138 Under amendments to the *Sentencing Act 1989*, enacted by Parliament in 1999, when a court imposes a sentence of imprisonment it must first set the maximum term of the sentence to be imposed. It may then set a non-parole period, which is the minimum amount of time the prisoner must be kept in detention in relation to the offence. In the ordinary course of events, the non-parole period will be three quarters of the term of the sentence unless the court decides there are special circumstances, in which case it can impose a lesser non-parole period. If the court decides to impose a non-parole period that is less than 75 per cent of the maximum, it must record its reasons for doing so.

6.139 A court may not set a non-parole period for a term of imprisonment which is six months or less. This means that a significant number of the inmates sentenced to full time custody do not have a period of supervision by the Probation and Parole Service after they are released. Whilst a period of probation is part of the sentence for an inmate, it brings with it assistance with welfare support services, such as housing assistance and counselling, which greatly assist the transition back to the community. Offenders who are sentenced to periods of imprisonment of three years or less have a parole period set by the court, which triggers their “automatic” release from custody.

6.140 The Committee was informed in evidence by the Probation and Parole Service that only a small proportion of people, amounting to about 20 per cent of the 18,000 inmates who are discharged from gaol each year, have an active involvement with the Probation and Parole Service after their release.¹⁷⁹ This perhaps is a further disadvantage to the practice of sentencing inmates to periods of imprisonment of less than six months. They often miss out on intensive programs in gaol, and they do not get access to programs after they are released.

6.141 Offenders sentenced to periods of imprisonment longer than three years have their date of release determined by the Parole Board. The criteria used to determine parole applications is laid out in s135 of the *Crimes (Administration of Sentences) Act 1999*. The Minister provided the following information from Secretary of the Parole Board:

The primary criterion is the public interest. The Act says that the Board may not make a parole order, unless it has decided that the release of the offender is appropriate, having regard to the principle that the public interest is of primary importance.

The process for determining parole applications centres on an initial private determination “on the papers” by the Board. The Board gathers reports from a number of people. These always include a pre-release report from a parole officer, an assessment by the custodial staff and the remarks of the sentencing judge. According to the needs of the individual under consideration, there may also be reports from a psychologist or a drug worker.

If the Board decides to make an order for release to parole, the order is made and the offender is released on the approved date.

¹⁷⁹ MacDonald *Evidence* 28 March 2000 p 41.

If the Board intends to refuse parole, before it makes a final decision, it notifies the offender, gives him or her a copy of all the material before the Board and invites the offender to appear before the Board, at a public hearing, with legal representation, if desired. After hearing all submissions, at the public hearing, the Board makes a decision. If the decision is to refuse parole, the Board states the reasons and sets a future date for another parole consideration. That future date must be no longer than one year or three years for serious offenders.¹⁸⁰

6.142 During a visit to a correctional facility, inmates advised the Committee that in some cases the relationship between prison programs and parole was not clear and it was their perception that inmates were being denied parole if they had not undertaken certain courses.

6.143 The Department advised that the Parole Board does tend to have a higher expectation than the offender that an offender has done something in custody to address the offending behaviour. The Department advises that the likelihood of parole is greater if there has been participation in programs.¹⁸¹ Participation in prison industries also helps the Board gain an overall positive picture, however would not be a determining factor in the decision of the Board.

The Probation and Parole Service

6.144 The NSW Probation and Parole Service carry out the supervision of offenders who have been released to the community. Most of the 460 staff have tertiary qualifications in social work, drug and alcohol counselling, psychiatric or related services. They broker treatment for offenders with community agencies and also provide a number of intervention programs particularly in the areas of alcohol and drug relapse prevention, domestic violence and family work. Some of these programs are;

- Parole Group – Offenders participate in specifically tailored programs which address issues such as community re-integration, goal identification, personal and social development.
- Drug and Alcohol Program – Offenders are presented with the physiological and social implications of substance abuse
- Dependency and Lifestyle Program - Offenders are educated in the benefits of a lifestyle free from substance abuse.
- Relapse Prevention Program – Offenders are taught the skills to prevent their return to a substance dependent lifestyle.
- Living without Violence Program – Offenders learn personal skills to assist them to resolve problems and relationship issues without recourse to violence.

¹⁸⁰ Department of Corrective Services, *Submission 63* (supplementary).

¹⁸¹ *Submission 63* (supplementary).

- Personal Development Program – Offenders deal with a variety of personal, social and legal issues to assist their personal development.
- Anger and Aggression Program – Offenders learn to deal with their anger without recourse to anti social behaviour.
- Drink Driving Program – Offenders are presented with the legal issues and ramifications of drink driving in a framework, which addresses behaviour and attitude.
- Traffic Offenders Program – Offenders are presented with the legal issues of traffic offending in an environment that utilises the expertise of relevant community groups (eg Police and visits from members of families of persons killed in vehicle accidents).

6.145 The programs appear to be a valuable means of addressing offending behaviour. However the Minister for Corrective Services advised in response to a Question on Notice, during the 2001 Budget Estimates, that data outlining the current rate of participation in these programs by clients of the Probation and Parole Service was not available.¹⁸²

6.146 The Committee notes that the development of key performance indicators is listed for development in the Department's Corporate Plan. The Committee recommends that the data collection relating to the rate in which clients of the Parole Service participate in their programs is one of the measures to be developed.

6.147 The Probation and Parole Service also arrange and supervise other community based sentences such as Community Service Orders, Home Detention, probationary periods imposed by courts as an alternative to a sentence of imprisonment. Probation and Parole staff have made a number of submissions to the Committee regarding the difficulty of finding appropriate services for people with mental illness and intellectual disabilities within the community. They have also reported that finding appropriate activities which offenders with mental illness and intellectual disability can participate in, as part of a Community Service Order is also frequently very difficult. They have told the Committee that this sometime limits the capacity of a court to sentence offenders with mental illness or intellectual impairment into non-custodial options. The following example was given to the Committee:

JD is a 29-year-old man whose mild intellectual disability resulted from a hypoxic accident following an anaesthetic for the repair of a broken arm at 7 years. He attended special schools and is on the Disability Support Pension.

JD has spent 2 periods in custody for armed robbery of a bank and a supermarket between 1993-1994, and in 1996-1998. After his release in 1998, he breached parole and served an additional 6 months at Goulburn Disability Unit.

Prior to his release on parole from Goulburn disability unit in 1998 extensive efforts were made by staff of the unit, and staff of the Probation and parole Service, JD's mother and others to find appropriate post release options for this

¹⁸² Minister for Corrective Services, *Responses to Questions on Notice*, Budget Estimates GPSC 3, p 58.

man – without success. Meetings were held within the community into which he was to return were written to executive staff of appropriate departments, and non-government agencies were approached.

JD was released to live with his mother without appropriate support, after a short time he stole a small item, when not arrested for this incident he approached the parole officer with a knife and threatened that he would use it unless he was returned to custody.

He was released at the expiry of his sentence on 20/10/98.

He is presently on remand for another bank robbery and is housed in the Disability Unit at the Sydney Police Centre.

JD would not be a significant threat to the community if appropriate support options were available. After extensive attempts, it has not been possible to locate such services.¹⁸³

- 6.148** Probation and Parole also provide a bail assessment program, which is used to supervise people on bail as an alternative to them being held in custody. The Committee was advised however that the numbers are relatively small and it is not highly used by the judiciary. The program was withdrawn purely due to its lack of use.¹⁸⁴
- 6.149** The Committee is concerned that lack of community based facilities for mentally ill people and for people with intellectual disabilities may be contributing to crime in the community and resulting in the imprisonment of disadvantaged persons.
- 6.150** The Service is also responsible for writing pre-sentence assessment reports to assist judges and magistrates in determining appropriate sentences. The number of reports prepared for the Courts system has increased from 17,931 in 1995/96 to 23,824 in 1999/00.¹⁸⁵
- 6.151** During the Budget Estimates 2001, the Minister for Corrective Services was asked whether the Department of Corrective Services had or planned to have a measure of how often recommendations by Parole Service to divert offenders from custody were accepted by the Courts. He advised that the Department did not plan to introduce such a measure, because “all sentencing options are canvassed in the reports.”¹⁸⁶
- 6.152** A measure of the effectiveness in promoting the diversion of offenders from full time custody should be developed since this purpose is one of the major reasons that the reports are prepared and provided. In the same Response to Questions on Notice, the Minister also advised that the Court Advice Program is currently being reviewed. The Committee looks forward to the review of the Advice program being published.

¹⁸³ Department of Corrective Services *Submission* 63 p106. Similar comments were made by an officer of the Grafton Probation and Parole Service, Mr Ozols during the hearing conducted at Grafton Gaol, 29 March 2000, pages 39-50, and to the Chair by staff of the Campbelltown Probation and Parole Service during a visit there on 7 September 2001 at which no transcript was taken.

¹⁸⁴ McDonald *Evidence* 28 March 2000 p 48.

¹⁸⁵ Department of Corrective Services, Annual Report 1999/00 p 24.

¹⁸⁶ Response to Questions on Notice during Budget Estimates for GPSC No3 by the Minister for Corrective Services, p58.

- 6.153** The Committee's *Interim Report* recommended a Separate Community Corrections Division be established within the Department of Corrective Services to raise the status of community based corrections within an agency dominated by a "culture of imprisonment".¹⁸⁷ In the Government Response to the *Interim Report*, the Minister advised that the Probation and Parole Service already serves this function.¹⁸⁸
- 6.154** The Committee intended that the Probation and Parole Service should play a leading role in the proposed new Division of Community Corrections. The Probation and Parole Service has only recently been "returned" to the Department of Corrective Services. Until 1995, it was a part of the Attorney General's Department, operating within Court Services.
- 6.155** There are a variety of differences between services, culture and requirements of community corrections to those of the full time custody program within Corrective Services. For example, the operational duties of prison officers require them to wear uniforms, use "military" style discipline and work place titles and even carry weapons. Probation and Parole officers do not wear uniforms and their workplace culture resembles more of a "therapeutic personal services" model. There is a greater emphasis in containing and controlling inmates in prisons, where as rehabilitation has a more paramount role in community corrections.
- 6.156** The management and resource needs of the smaller community correction branch can be easily "swamped" by the larger and more expensive requirements of the larger full time custody program. Of the 4,906 people working for the Department of Corrective Services in 1999/2000, about 87 percent of them perform tasks associated with providing full time custody of inmates. By comparison, 13 per cent provide community supervision. Ninety percent of the total expenditure of the Department of Corrective Services is allocated to programs associated with holding inmates in full time custody or providing them with assessment, classification and development services. Often the amounts allocated in the capital works budget for building and renovating new prisons equals the recurrent expenditure for community corrections.¹⁸⁹
- 6.157** The Committee believes that the recommendation in the *Interim Report* continues to have merit.

Transitional Centres

- 6.158** As noted in the Committee's *Interim Report*, the Department of Corrective Services currently operates the Parramatta Transitional Centre for women which provides a bridge between the institutional routines of a correctional centre and the living skills needed for the community. Preliminary figures suggest that since the opening of the Transitional Centre in 1996, only one woman out of the 84 who have been through the Centre has returned to custody.

¹⁸⁷ *Interim Report* pp 158-159.

¹⁸⁸ *Government Response*, 19 February 2001 p 15.

¹⁸⁹ In 1999/2000, the capital works budget for the Department of Corrective Services was \$60.9 million, while recurrent expenditure for the "Alternatives to Custody Program" was \$49.4, Assessment, – *DSC Annual Report 1999/2000*.

6.159 The Department of Corrective Services is due to complete a second Transitional Centre for women near the existing Centre at Emu Plains in early 2002. The Department, in its supplementary submission advised that

consideration is also being given to either a Transition centre or honour houses attached to Kempsey for Aboriginal men. The focus of this Transition Centre will be family reconciliation. The Transition Centre will be designed so that families can be accommodated with inmates to specifically work on transition issues. This Transitional Centre is only at the conceptual stage.¹⁹⁰

6.160 There appears to the Committee to be a need for an expansion in the numbers of these transitional centres to many more facilities.

Recommendation 14

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

Back End Home Detention

6.161 The ability to serve a period of home detention toward the end of a prison sentence, is referred to as “back end” home detention. It was raised by The Law Society of NSW as a means to ease an offender’s transition into the community, with the Society suggesting that the home detention scheme be expanded to permit ‘back end’ home detention.¹⁹¹ There is currently no provision for back-end home detention in New South Wales.

6.162 In evidence to the Committee, Ms Deborah Allen for the Department of Corrective Services stated:

We are able to introduce front-end home detention. That is being taken up slowly by the judiciary. It remains to be seen whether the community would accept back-end home detention. Our advice is that that is a lot more controversial. Back-end home detention is a scheme whereby inmates would do the last, say, 18 months or so of their sentence in the same conditions that the people on home detention have now. For instance, they would have their electronic bracelets and so forth. There has been criticism of that sort of scheme because there is a perception that it is reintroducing remissions...¹⁹²

6.163 The Law Reform Commission considered back-end home detention in its Report on Sentencing in December 1996. During the Commission’s inquiry the Department put forward a submission explaining how back-end home detention could work:

The Department is examining whether to recommend to the Minister for Corrective Services that the government introduce legislation to establish back-

¹⁹⁰ Department of Corrective Services, *Submission 63* (supplementary) p5.

¹⁹¹ The Law Society of NSW, *Submission 93* p 20.

¹⁹² Allen *Evidence*, 12 June, 2001.

end home detention as a sentencing option. In order to preserve the concept of truth in sentencing, any order for back-end home detention would have to be sanctioned by a court.

Care will have to be exercised in formulating the words which a court would use in sentencing a person to back-end home detention. If the sentence is couched in terms of early release, the community would see the concept as a dilution of truth in sentencing. If, on the other hand, the sentence is couched strictly in terms of imprisonment, the Department of Social Security may characterise the sentence as defacto imprisonment and refuse to pay social security benefits to persons on home detention.

The conditions applicable to back-end home detention would be the same as the conditions applicable to intensive community supervision. When the first part of such a sentence is about to expire, a court or a quasi-judicial body- eg the Offenders Review Board – would have to decide whether in fact the offender should be permitted to serve the latter part of the sentence in home detention.

It would be doubtful if an offender could “progress” from home detention to work release, or vice-versa. In any event, back-end home detention would provide an opportunity for employment in the same way that work release does. The time served in home detention would be quite separate from any time later served on parole.¹⁹³

- 6.164** The Department of Corrective Services in a later submission to the Law Reform Commission’s Review stated that introduction of a back-end home detention scheme should not proceed before the front-end scheme (introduced in 1997) was properly assessed.¹⁹⁴
- 6.165** The Law Reform Commission found that there was general support for a back-end home detention scheme in New South Wales. However the divergence of opinions in the submissions it received on how the scheme could work was thought to be indicative of the difficulties involved in implementing a satisfactory scheme leading the Commission to conclude that back-end home detention should not be introduced in New South Wales.
- 6.166** The Committee believes there is value in re-visiting the back-end home detention proposal. The potential for home detention to reduce the prison population and the economic advantage over imprisonment is further discussed in Chapter Seven. The Committee notes in that the Department is currently undertaking a research project into monitoring of the Home Detention Scheme, due for completion in June 2002.¹⁹⁵ Following this, the Committee believes the Department should urge the Government to re-examine the issue of back-end home detention as a way of reducing the increasing prison population.

¹⁹³ Department of Corrective Services *Submission to NSW Law Reform Commission Sentencing Review* 4 September 1995, p 15.

¹⁹⁴ Department of Corrective Services *Submission to NSW Law Reform Commission Sentencing Review Discussion Paper* 15 July 1996, p 27.

¹⁹⁵ Department of Corrective Service *Research Program 2001-2002* p 19.

Recommendation 15

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

Conclusion

- 6.167** Since the 1980s there has been an increasing shift in sentencing policy to seeing the purpose of prison as incapacitation rather than rehabilitation. The adoption of this purpose clearly favours longer sentences and increased use of incarceration as a means to control crime. This increased use of incarceration leads to significant increases in expenditure on programs within prisons, which are much more expensive to deliver than community based programs. There are promising programs in some areas such as drug and alcohol programs, the Restorative Justice Unit and transition centres. However a lack of continuity in programs has meant there is almost nothing known about the effectiveness of most programs in reducing recidivism. The case management program, which has already been intensively reviewed on several occasions, still appears to be experiencing problems under the weight of increasing prison numbers.
- 6.168** All of the above suggests that greater examination needs to be made of alternatives to prison sentences for suitable offenders. This is the subject of the next chapter, which supplements the consideration of these issues in the Committee's *Interim Report*.

Chapter 7 Sentencing Alternatives and Diversionary Programs

Introduction

- 7.1** The prison population could be substantially reduced if greater use was made of sentencing alternatives and diversionary programs. The first part of this chapter outlines alternative sentencing options currently available in New South Wales, including periodic detention and suspended sentences and community corrections orders. The chapter also looks at the availability, use and effectiveness of these options.
- 7.2** The second part of this Chapter outlines mechanisms for diverting appropriate offenders from prison sentences including the NSW Drug Court, the Court Psychiatric Assessment Scheme and the MERIT Program and other diversionary programs.

Sentencing Options: Non-custodial sentences

- 7.3** Full time custody is only one sentencing option available to deal with an offender. In sentencing an offender, the court aims to make the punishment fit the crime and the circumstances of the offender. This presupposes a range of alternatives and wide judicial discretion in sentencing. Given the circumstances, a number of options are available to a court when sentencing an offender. These include:
- fines,
 - probation orders,
 - community service orders,
 - periodic detention orders,
 - home detention orders,
 - suspended sentences,
 - Drug Court orders, and
 - full time incarceration.

Benefits of Non-Custodial Sentences

- 7.4** The majority of convicted offenders receive supervised or unsupervised non-custodial sentences. Supervision of these offenders is undertaken by the NSW Probation and Parole Service, an arm of the Department of Corrective Services. As at 1 January 2001, there were over 18,000 offenders under the supervision of the Probation and Parole Service across

New South Wales. Luke Grant, Assistant Commissioner for Inmate Management advised the Committee:

There are three times as many people being managed in community options as there are in full-time custody. ... In recent times they have introduced home detention that did not exist before, they have introduced suspended sentences (and) increased the number of people on periodic detention as well.¹⁹⁶

- 7.5** The practical benefit of non-custodial sentences is significant in terms of the cost to the community. The Department of Corrective Services reports that the average cost per offender per day when completing a community based program delivered by the Probation and Parole Services is \$8.63, or \$3,150 per year, compared to \$138.93 per day (\$49,458 per year) to keep a minimum security inmate in full time custody.¹⁹⁷
- 7.6** Dr Tony Vinson & Eileen Baldry argue that there is a large pool of inmates who have committed relatively less serious crimes, non-violent crimes who could be diverted from correctional centres (See Chapter Six, and below). The benefits of this in reducing the prison population are significant, particularly for specific groups such as indigenous persons. As discussed in Chapter Four, research by the Bureau of Crime Statistics and Research indicates that the numbers of Aboriginal and Torres Strait Islanders in prison could be reduced by 54% if indigenous prisoners currently given less than a six month sentence were given non-custodial alternatives.
- 7.7** The NSW Department of Juvenile Justice has, over the last decade, been successful in achieving significant reductions in the rate of juveniles held in detention, to the extent that, by early 2000, only 350 juveniles were held in detention centres.¹⁹⁸ This has been achieved by extensive use of diversionary measures, including cautioning and restorative justice models such as community youth conferencing. One of the principles used by the Department has been to avoid “contamination” of minor or first time offenders with a hard core of more serious offenders. The benefits of this approach should be considered when assessing the benefits of non-custodial programs and diversionary programs for adult offenders.
- 7.8** In *Crime Prevention through Social Support: Second Report* the Standing Committee on Law and Justice considered the benefits of various non-custodial options while noting there were few adequate measures of the effectiveness of these programs in reducing recidivism.¹⁹⁹ To that end it recommended an agency such as the Bureau of Crime Statistics and Research evaluate non-custodial options in terms of their success in reducing recidivism compared to the recidivism rate for those in full time custody for similar offences. The Select Committee endorses the value of this recommendation.

¹⁹⁶ Grant, *Evidence*, 12 June, 2001.

¹⁹⁷ Department of Corrective Services *Annual Report 1999/00*, p 34.

¹⁹⁸ Standing Committee on Law and Justice *Crime Prevention through Social Support: Second Report* August 2000 p67-72.

¹⁹⁹ *Ibid* p136.

Vinson and Baldry Research: Diverting less serious offenders

- 7.9** In its *Interim Report*, the Committee presented results of research conducted Professor Tony Vinson and Dr Eileen Baldry of the University of New South Wales which attempted to determine if certain groups could be removed from prison by substituting other means of control or punishment. In summary, the research showed that alternatives to custody could be found for over half the women in prison.²⁰⁰
- 7.10** Vinson and Baldry have subsequently applied the same approach to the growth in the number of male prisoners. They examined the information for male remand detainees and male prisoners included in the prison census on 30th June, 2000. Vinson and Baldry's research consisted of a simple threefold rating (by a group of six NSW magistrates) of the relative seriousness of different categories of offences: serious; middling serious; relatively less serious. Vinson and Baldry state:
- Applying the magistrates' ratings to our unusually concrete data concerning 'what they are in for', provides us with an objective basis for considering which groups currently in prison could be removed, by substituting other means of control or punishment, to the mutual advantage of the individuals, their families, and society generally.²⁰¹
- 7.11** Vinson and Baldry state that the research shows that there were a significant number of people in prison on 30 June 2000 who had not committed crimes in the most serious offence category (including the offences such as assaults, bodily harm, crimes of violence, serious challenges to the authority of law and drug trafficking) and who had not previously been in prison for the same offence, and could therefore be considered for some other form of control or punishment.
- 7.12** They found that, of the 1,360 remandees, 734 were being held for main offences that fell below the "most serious" grade of a three tiered classification of seriousness developed with the co-operation of magistrates. Of these, 238 had no history of previous imprisonment and a further 127 had not been in prison previously for the offence for which they were now charged.
- 7.13** Moving from the unsentenced to the sentenced population, Vinson and Baldry found that 2,794 were serving sentences for less serious offences. Of these, 717 of those on less serious offences had no history of previous imprisonment and a further 525 had not served a previous prison sentence for the offence for which they were currently serving:

This means that a pool of 2,794 prisoners existed that might be considered for forms of punishment other than imprisonment, and that of that number 717 had particular claims for such consideration while another 525 warranted close consideration.

Application of the more stringent standard of 'no previous imprisonment' to both the remand and imprisoned sections of the total population indicates the existence of upwards of a thousand people in custody who, if the correctional authorities

²⁰⁰ See Chapter Six, *Interim Report*.

²⁰¹ Vinson & Baldry *Evidence* 12/6/01 Tabled document Supplementary to *Submission* 41, p3.

were committed to promoting other forms of punishment, might not need to be there.²⁰²

- 7.14** Vinson and Baldry's research found that, based on their estimations, a total of 1,619 men, plus over 200 women (at the time of the studies) could have been diverted from custodial sanctions.
- 7.15** Vinson and Baldry advocate the establishment of bail and probation hostels with intensive supervision for inmates suitable for diversion from imprisonment. In its *Interim Report*, the Committee supported these as realistic alternatives to imprisonment for certain offenders. The Committee endorsed Vinson and Baldry's findings that a significant number of offenders could be diverted from the prison system and into a structured, supervised and supportive environment in the community. In this regard probation hostels, like bail hostels would be used only as an alternative to full-time custody, in much the same way as sentencers utilise the home and periodic detention options.
- 7.16** In the Government's response to the Committee's *Interim Report*, the Department of Corrective Services indicated that it and the Bureau of Crime Statistics and Research will continue to research options such as bail hostels/accommodation, but indicated a lack of enthusiasm for the concept.²⁰³ This is discussed further in Chapter Eight.

Abolition of Short Sentences

- 7.17** The NSW Department of Corrective Services has advised that a substantial proportion of offenders being received into full time custody are sentenced for less than six months. According to statistics the Department has provided to the Committee, which are set out in the accompanying table, this trend has been fairly consistent since 1995, but could be showing an increasing trend.²⁰⁴

Prisoners serving short sentences: Receptions into custody

Financial year	Females	Males	Total less than six months (% of all receptions)	All receptions into Custody, excluding fine defaulters*
95/96	367	3230	3597 (61%)	5928
96/97	394	3493	3887 (61%)	6332
97/98	430	3651	4081 (61%)	6594
98/99	513	4369	4882 (65%)	7571
99/00	699	4946	5645 (67%)	8478
00/01	577	4434	5011 (63%)	8005

Source: Department of Corrective Services, provided to Committee Chair.

*After 1996 virtually no fine defaulters were taken into custody, hence the table excludes this category of offenders

²⁰² Tabled document 12/6/01 supplementary to *Submission 41*, Vinson & Baldry, pp 14-15.

²⁰³ *Government Response* 19 February 2001 p6.

²⁰⁴ The figures for the year 2000/2001 may not be a useful guide as they include months in which the Olympic and Paralympic games were conducted in Sydney. The Committee has been advised that during those months the number of arrests by Police and the number of receptions declined sharply.

7.18 At this time it is still difficult to state whether or not the introduction of Section 5(2) of the *Crimes (Sentencing Administration) Act* has had any impact on the number of sentences for six months or less which are imposed on offenders. Under those provisions a court that sentences an offender to imprisonment for 6 months or less must make a written record of its reasons for doing so, including its reasons for deciding that no penalty other than imprisonment is appropriate. This provision has been in operation since 1 April 2000.

7.19 The disruptive impact which the high proportion of inmates staying in full time custody for periods of less than six months has on the implementation of programs and case management was outlined in Chapter Six.

7.20 Recently the Attorney General in Western Australia announced that the Gallop Government would legislate to completely prohibit courts in that state from imposing sentences of six months or less. Western Australian Attorney General explained that he wanted to :

... take out of the prison system those people who the judiciary thought might benefit from a short, sharp shock and that is, I think a fairly discredited theory in terms of incarceration thinking. We think that if somebody only warrants a sentence of six months or less, then they should not be in prison. They should be given effective work to do in the community and that will be the nature of their punishment. So that will be quite a significant reform and it will clearly give thrust to the sentencing legislation to that often quoted statement that prisons should be there as a punishment of last resort – in other words for serious offenders. That is what prisons should be for, not for the minor offenders at the lower end of the scale.²⁰⁵

7.21 The announcement was greeted with significant support. The WA Inspector of Custodial Services, Richard Harding commended the policy, describing it as “sensible” and he said that in the long run it would free the prisons to focus more rightly on delivering appropriate programs to prisoners most in need:

The prisons are clogged up by people coming in for short periods – clogged up in the sense of the amount of time that goes into the reception processes and movements in and out of prison. If the resources put into such administration were freed up they could be redirected into managing and rehabilitating prisoners who posed the biggest problems.²⁰⁶

7.22 The plan was also welcomed by the Western Australian Law Society, the Western Australian Auditor General and the media. The Editorial of *The West Australian* stated that

The dislocation caused to offenders being sent to jail for less than six months is enormous. In many cases they lose their jobs, their dependents lose a bread winner and their employment prospects on release are damaged.²⁰⁷

²⁰⁵ WA Hansard, Assembly – Estimates Committee B, Thursday 27 September 2001.

²⁰⁶ *West Australian* 3 October 2001.

²⁰⁷ Editorial, *The West Australian* 1 October 2001.

7.23 The *Sentencing Act* in Western Australia already contains a provision in Section 86 that:

A court must not sentence an offender to a term of 3 months or less unless the aggregate of the term imposed and any other term or terms imposed by the court is more than 3 months; or the offender is already serving or is yet to serve another term.

7.24 Legislation to extend this provision from three months to six months will not be a radical change for that state's legal system. The WA Government was also able to provide Parliament and the media with details of the numbers of inmates who had been sentenced to terms of six months or less and details of offences they had been convicted.

7.25 The Committee believes that the problems, which the Western Australian Government is seeking to address are very similar to the problems in NSW outlined in this Report in NSW. The Committee believes that similar legislation abolishing sentences less periods of three months or six months should be researched and considered.

7.26 The Committee believe that the NSW Government should consider enacting legislation to preclude full-time custodial sentences of six months or less of full time custody in this State. The merits of such a proposal are that it would have a significant impact on the size of the increasing prison population in NSW and it would enable better targeting of scarce resources in that the expensive option of full time custody should be reserved for more serious offenders, while the less expensive but very effective community based penalties are best employed on less serious offenders.

7.27 It has also been very difficult for the Department of Corrective Services to prepare and implement effective case management and rehabilitation plans for inmates who stay full time in prison for less than six months. Finally, sentences of less than six months do not include a period of supervision from the Probation and Parole Service, and consequently the offenders' return to the community after imprisonment can be more difficult and increase the possibility that they will re-offend.

7.28 The Committee considers that the Government should initiate a comprehensive research and public consultation process aimed at introducing legislation in NSW to abolish full time custodial sentences of six months or less, similar to that introduced in Western Australia. The Committee is confident that further research will provide endorsement for the proposal. If the public consultation were supportive, the Committee believes that the Government could introduce legislative changes into Parliament in a timeframe of between twelve to eighteen months.

Recommendation 16

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

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

If the Research supports the introduction of measures to abolish short sentences the proposal should be circulated in a Discussion Paper for public consultation.

- 7.29** One useful way of proceeding with research into the impact of abolishing short custodial sentences is the conduct of a pilot project. The pilot project could target and divert to non custodial sanctions those offenders identified as being from groups particularly disadvantaged in the prison system and who would otherwise receive full-time custodial sentences of three months or less. The Committee recognises that considerable thought would have to be given to legislative action required to implement the pilot study as well as consultation to address community concerns.
-

Recommendation 17

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

Crimes (Sentencing Procedures) Act s5(1)

- 7.30** Whatever the benefits of alternatives to custody, there is another reason for their consideration. Judges and magistrates are required by legislation to consider options to imprisonment when imposing sentences of less than six months. As previously stated in Chapter 2, the Crimes (Sentencing Procedures) Act 1999 contains a significant statement of principle in relation to the role of imprisonment. A court under s5(1) must not sentence an offender to imprisonment unless satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate and that, in relation to sentences to imprisonment for 6 months or less, the court “must indicate to the offender, and make a

record of, its reasons for doing so, including its reasons for deciding that no penalty other than imprisonment is appropriate.”

7.31 The programs considered in the rest of this chapter provide details of the options which are available to consider during sentencing to give effect to the intent of s5(1). There is also room for the government to revisit the problem of the number of prisoners serving terms of less than six months, as has been done by the new Western Australian government.

Community based correctional orders

Reasons for low utilisation

7.32 The Committee heard evidence that during the period 1994 – 1999, when the prisoner population increased dramatically, there was a corresponding decrease in community-based correctional orders.²⁰⁸

7.33 A number of submissions and witnesses advised the Committee that greater use could be made of non-custodial sanctions. One of the reasons given for this is that the courts are reluctant to utilise community-based alternatives, perceiving them to be a “soft” sentencing option. In evidence to the Committee, Ms Deborah Allen, Director of Strategy and Policy, Department of Corrective Services stated

Not every judicial member is actually keen on alternatives to prison in our experience. There is a certain amount of community opposition to what is seen as being light on prisoners. So, certainly in the past our attempts to introduce alternatives to prison have had to be done within a climate where there is not an enormous (amount) of community support for those sorts of programs. It is a bit of a balancing act I suppose.²⁰⁹

7.34 There seems to be little evidence on reasons for failure to divert, however, Don Weatherburn, Director of the Bureau of Crime Statistics and Research, has stated that reasons include:

- Some observers have suggested that the sentencing practices of judicial officers can only be altered by clearly directing the required change in the exercise of their discretion;
- the lack of administrative support and availability of options (for example limited work available for community service orders and the limited availability of periodic detention centres in regional areas);
- non-custodial sentences are seen as alternatives to bonds and fines rather than as an alternative to imprisonment.

²⁰⁸ Chilvers *Evidence*, 12 March, 2001. Ms Chilvers, of the NSW Bureau of Crime Statistics and Research advised that in the last two years the trend has been stable.

²⁰⁹ Allen *Evidence*, 12 June, 2001.

- the tendency among judicial officers to move repeat offenders up to heavier sentences (regardless of the seriousness of the offence charged) results in only a small pool of those able to be diverted into non-custodial penalties; and
- there is a gap between the perceived severity of custodial versus non-custodial penalties.²¹⁰

7.35 Fundamental to Vinson and Baldry's proposal for bail and probation hostels as alternatives to imprisonment (see above) is that the judiciary and magistracy needs to be well-informed about the exact nature and role of these options, and be confident that there are services available to ensure their successful functioning. In his evidence to the Committee Professor Vinson explained that critical to the success of these options is that they need to be

well defined, well packaged, so that the sentencers know exactly what it is that is being proffered.²¹¹

7.36 In order to better understand why the courts are not sentencing offenders to non-custodial alternatives, further information is needed about how the courts perceive the severity of different penalties and the sensitivity of the general population to various non-custodial options. This would provide information to assess the diversionary scope of each option and which offenders are mostly likely to be regarded by the courts as potential candidates for diversion.

7.37 Speaking of the difficulty of understanding why non-custodial options were not used, Dr Weatherburn of the Bureau of Crime Statistics and Research said:

It would be preferable, nevertheless, to be able to formulate proposals for prison diversionary schemes on the basis of some understanding of their potential to divert. This may sound a fanciful hope, but the crucial piece of information we need to enable the required understanding is not, at least in principle, that difficult to obtain. What is required is a standard scaling study of how the courts perceive the severity of different amounts of different penalties varying in duration.²¹²

²¹⁰ "Non-custodial Sanctions, Prison Costs and Prison Overcrowding" NSW Bureau of Crime Statistics and Research paper to AIC Conference 1988 "Keeping People out of Prisons" pp 67-68.

²¹¹ Vinson *Evidence* 12 June, 2001.

²¹² Dr Weatherburn, 1988 *op cit* p 74.

Recommendation 18

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

Completion of community options

7.38 There is evidence that community options are effective if compliance is taken as a measure of effectiveness. In his evidence to the Committee, Peter Macdonald, then Acting Assistant Commissioner of Probation and Parole Services provided the following information:

- about 87% of supervision orders, both probation and parole, are successfully completed;
- 82% of community service orders are successfully completed; and
- about 79% of home detention orders are successfully completed.²¹³

7.39 The Productivity Commission's *Report on Government Services 2000*, notes that a key effectiveness indicator relevant to the management of offenders in the community is the successful completion of orders. However, data needs to be interpreted with caution. For example, a 100 per cent order completion figure could mean either exceptionally high compliance or a failure to detect or act on breaches of compliance. The risk level of offender populations also needs to be considered: high risk offenders experience higher levels of surveillance and have a greater likelihood of being detected and breached.

Suspended Sentences

7.40 Suspended sentences were not available in New South Wales between 1974 when they were abolished until the *Crimes (Sentencing Procedure) Act 1999* commenced in early 2000.

7.41 Now under the *Act* a court that imposes a sentence of imprisonment on an offender for a term of not more than 2 years may make an order suspending execution of the sentence. The period of the suspension, which must be specified in the court order, is not to exceed the term of the sentence. The court may also direct that the offender be released from custody on condition that the offender enters into a good behaviour bond for a term not exceeding the term of the sentence.

7.42 Under section 99 of the *Act*, if a court revokes the bond for breach of the conditions, the section suspending the sentence ceases to have effect. The offender must then service the

²¹³ McDonald *Evidence* 28 March 2000.

whole of the original sentence in prison, or the court may make an order for the sentence to be served by way of periodic detention or home detention.

7.43 The Department of Corrective Service in its submission states that the number of people receiving suspended sentences from 1 January 2001 to 30 April 2001 is:

January 2001	203
February 2001	267
March 2001	356
April 2001	270 ²¹⁴

7.44 Clearly suspended sentencing options are being used under the amendment to the *Act*, although their use is small compared to the size of the prison population serving short sentences (see Chapter Five). In its submission the Department expressed concern that if the breach rate for suspended sentences is high, suspended sentences may deliver offenders to prison rather than divert them from prison.²¹⁵ If this is the case it is important to evaluate the extent of breaches of suspended sentences to ensure that amendments to the legislation be made so as to avoid unnecessary increases in the prison population.

Recommendation 19

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

Community service order

7.45 Under s8 of the *Crimes (Sentencing Procedures) Act 1999* (NSW), instead of imposing a sentence of imprisonment on an offender, a court may make a community service order. This order directs the offender to perform community service work for a specified number of hours. The number of hours specified in a community service order in relation to an offence must not exceed 500, or the number of hours prescribed by the regulations in respect of the class of offences to which the offence belongs, whichever is the lesser.

7.46 The Department of Corrective Services provides the following data on community service orders:²¹⁶

Community Service Orders	1998-99	1999-00
No. of offenders under supervision as at 30 June	5345	5873
Variation over previous year	+373	+528
Number of new registrations (caseload intake)	5559	5729

²¹⁴ Department of Corrective Services, *Submission 63* (Supplementary submission).

²¹⁵ Department of Corrective Services *Submission 63* p 33.

²¹⁶ Department of Corrective Services, *Submission 63*.

Community Service Orders	1998-99	1999-00
Variation over previous year	+567	+170
% successfully completed	82%	76%
No. successfully completed	7901	7671

7.47 As mentioned above, there is a suggestion that community service orders are not used as often as is desirable in rural areas because of the lack of suitable local programs available. In its *Interim Report* the Committee made a recommendation to the Department to urgently address this issue in relation to opportunities for rural women. The Standing Committee on Law and Justice, in its *Crime Prevention Through Social Support: Second Report* discussed this in relation to young offenders, recommending the Departments of Juvenile Justice, Sport and Recreation and the Crime Prevention Division of the Attorney-General's Department examine how to expand the use of sport, cultural or recreational based youth programs in country areas.²¹⁷

Fines as alternative to imprisonment

7.48 A Court can impose a fine as an alternative to imprisonment. The *Fines Act 1996* introduced a fine enforcement system which is based on a hierarchy of civil and non-custodial sanctions for the non-payment of fines with imprisonment being a sanction of last resort. Under the system, if the fine is not paid, civil action, including cancellation of driver's licence and seizure of property proceeds. If the civil action is not successful, a community service order is served. If the fine defaulter does not comply with the community service order a warrant of commitment is issued for the imprisonment of the fine defaulter (except in the case of children). The fine defaulter may apply to serve that period of imprisonment by way of periodic detention.

7.49 The Department of Corrective Service states in its submission that the *Fines Act 1996* has diverted all fine defaulters from prison sentences. Prior to the commencement of the *Act* a significant number of fine defaulters (3,936 in 1995-96 and 4,474 in 1996-97) entered the correctional system. The Department notes, however, that eventually some persons will enter the correctional system because they have not completed community service orders made under the *Fines Act 1996*.²¹⁸

Bonds and Probation Orders

7.50 Various probation orders can be made under the *Crimes Act 1900* by which an offender is placed under the supervision of a Probation Officer as a condition of entering into a recognisance (bond) to be of good behaviour. The Probation and Parole Service balances the role of friend and guide to offenders with the role of controlling and monitoring them to ensure that the orders of the courts are complied with.

7.51 The advantages of probation over imprisonment is that it:

²¹⁷ *op cit* 2000 pp 104-105.

²¹⁸ Department of Corrective Services, 1.Submission 63.

- promotes rehabilitation of the offender by maintaining normal family and community contacts,
- avoids the negative effects of imprisonment,
- costs much less than imprisonment,
- minimises the impact on family of the offender, particularly if they have children; and
- offenders are given assistance to develop goals and skills which are directed toward a law-abiding lifestyle.

7.52 These latter programs include attendance at appropriate programs organised by the Probation and Parole Service including Drug and Alcohol Program, Personal Development Program, Drink Driving Program and Anger and Aggression Management Program. They are delivered in the community rather than within the prison environment, allowing the offender to work through the program while part of the environment in which they will live at the end of the program.

7.53 The disadvantage of probation are that it leaves offenders free to re-offend if they are so inclined. The Department advised that the Probation and Parole Service and sentencing courts are careful to make community safety the main priority, and offenders are initially assessed to determine how likely he or she is to re-offend and the level of risk that the offender poses to the community.²¹⁹

7.54 The table below provided by the Department illustrates the current levels of use of probation and parole as an option:²²⁰

Probation Orders	1998-99	1999-00
No. of offenders under supervision as at 30 June	10151	11496
Variation over previous year	+365	+1345
Number of new registrations (caseload intake)	8394	9928
Variation over previous year	+1090	+1534
% successfully completed	87%	84%
No. successfully completed	12067	14959

7.55 Probation orders are a significantly used community based option, and one with a high rate of compliance. As with all options considered in this section, there is the potential for greater use to be made of these options if significant sections of the prison population serving less serious offences can be identified as suitable for community options.

²¹⁹ Department of Corrective Services, *Submission 63* p 64.

²²⁰ Department of Corrective Services, *Submission 63*, (supplementary).

Detention as alternatives to full time imprisonment

7.56 Periodic Detention and Home Detention are provided in New South Wales as alternatives to full time incarceration. They represent the most serious infringement on an offender's liberty short of full time imprisonment. As a reflection of the seriousness of these sentences, courts are required to first sentence an offender to imprisonment before considering whether to make an order for periodic detention or home detention. This requirement also has the effect of avoiding "net-widening" (bringing the offender into the prison system unnecessarily, see below).

Periodic Detention

7.57 Section 6(1) of the *Crimes (Sentencing Procedures) Act 1999* (NSW) provides that a court that has sentenced an offender to imprisonment for not more than 3 years may make an order directing that the sentence be served by way of periodic detention. This is regardless of the requirement that a court must not sentence an offender to imprisonment unless it is satisfied that no penalty other than imprisonment is appropriate (s 5(1)).

7.58 Periodic detention is currently available in eleven periodic detention centres in New South Wales with limited access in some country areas.²²¹

7.59 Information supplied by the Department of Corrective Services shows a declining trend in people attending periodic detention.²²²

Year	Male	Female	Total
1995	1309	100	1409
1996	1414	104	1518
1997	1492	130	1622
1998	1282	114	1396
1999	1145	112	1257
2000	1140	107	1247
2001	991	83	1074

7.60 The reasons given for the decreasing use of periodic detention during this inquiry have primarily revolved around its lack of perceived effectiveness. Non-compliance appears to be a particular problem.

7.61 Mr Simon Eyland, Director Research and Statistics Unit, Department of Corrective Services, stated in evidence that a number of periodic detainees do not attend on any particular day for legitimate reasons.²²³ However, offenders who are absent for three periods will have their orders breached by the Parole Board. Weekly figures for non-

²²¹ NSW Law Reform Commission, 1996, *Report 79: Sentencing*: p 112.

²²² Department of Corrective Services, *Submission 63*, (supplementary).

²²³ Eyland, *Evidence* 12 June 2001.

attendance may include some detainees who later produce medical certificates and those who have been incarcerated on other charges. These detainees can be reflected as AWOL until the Department receives the information and is able to make corrections to the absentee figures. At any one time some detainees may be on the record for one or two breaches.

7.62 The Department of Corrective Services has advised that 2275 periodic detention orders have been revoked since February 1999; however the decrease in numbers of prisoners on periodic detention is due to both fewer people being sentenced to periodic detention and more being prosecuted for breach of periodic detention orders. Mr Eyland stated:

Certainly we are having fewer people sentenced to periodic detention... Those who are actually not attending, without permission, and do not have a legitimate reason for that, are prosecuted at a much higher rate as well... Certainly, more are being breached than before. ... more are being breached so they cannot attend. But there are fewer actually getting periodic detention as well. There are two factors here. The bigger factor would be fewer getting periodic detention.²²⁴

7.63 In response to a recommendation to investigate the reasons for the increase in the cancellation of periodic detention orders for women in the Committee's *Interim Report* the Department stated:

The tightening up of the program is responsible for the increase in revocations and again this tightening up was inevitable to maintain the integrity of periodic detention. The Department is however working on ways to improve the compliance rate but it must be remembered that periodic detention is a rigorous program which require personal discipline to complete successfully.²²⁵

7.64 It is apparent that there is a perception by the Department that periodic detention is not effective, with some support for this in the poor compliance with the program. What is less clear are the reasons for this poor compliance. The continuing decline in use of this sentencing option suggests a need for research to identify whether there is an inherent problem with the program or whether there are aspects of the way it is implemented which could be improved.

7.65 It is also possible that problems may even begin in the sentencing stage. The Department advises that courts are provided with pre-sentence reports by the Probation and Parole Service which contain relevant information about offenders in relation to matters such as alcohol and other drugs; psychiatric or psychological conditions; criminal record, employment and other personal circumstances. When making a decision about periodic detention, the courts also take into account an offender's accommodation arrangements and access to suitable transport.²²⁶

7.66 The Committee also received evidence that in some parts of NSW the preparation of pre-sentence reports are interfering with their capacity to attend to the supervision of non-custodial sentence options such as Community Service Orders and good behaviour bonds.

²²⁴ Eyland *Evidence*, 12 March, 2001.

²²⁵ *Government Response* 19 February 2001 p 8.

²²⁶ Department of Corrective Services, *Submission* 63 p 31.

Mr Dennis Nickle of the Probation and Parole Service at Wagga Wagga addressed the Committee about the work load of officers in his office:

In terms of the office in Wagga Wagga – and we cover the Junee community, Narrandera and the smaller communities to the south-west, Henty and Culcairn – there are somewhere between 250 and 300 clients, offenders under supervision. It is impossible for us to provide overall supervision for that number of people. In my time in the Probation and Parole Service there has been a huge increase in the number of pre-sentence reports that are prepared. The figure has probably doubled, maybe more than doubled, in the time that I have been in the Probation and Parole Service. A lot of our energy and work goes into the preparation of pre-sentence reports. That obviously then leaves us with less time for supervising offenders. We prioritise: parolees are our first priority, community service orders are our second priority and good behaviour bonds are our third priority. What is most difficult in terms of appropriate supervision is availability of resources.²²⁷

- 7.67** Under s 5(1) of the *Crimes (Sentencing Procedures) Act 1999* magistrates are required to provide reasons for using imprisonment over other alternatives when sentencing for terms of less than six months; it is possible that periodic detention reports are used routinely as a way of satisfying this requirement without serious consideration being given to alternatives.
-

Recommendation 20

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

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

Home Detention

- 7.68** Section 7(1) of the *Crimes (Sentencing Procedures) Act 1999* (NSW) provides that a court that has sentenced an offender to imprisonment for not more than 18 months may make a home detention order directing that the sentence be served by way of home detention. A home detention order can not be made in respect of a sentence of imprisonment where the offender was convicted of such crimes as murder, sexual assault or armed robbery.
- 7.69** Offenders on the scheme are subjected to intensive surveillance by way of electronic monitoring devices, visits from supervising officers, and drug and alcohol testing.²²⁸
- 7.70** The objective of the legislative provisions for home detention is to reduce the prison population by diverting people from the prison system. Home detention is a less expensive sentencing option than imprisonment, although the fact that the offender's home is

²²⁷ Nickle *Evidence* 24 October 2000, p 22.

²²⁸ NSW Law Reform Commission, 1996, *Report 79: Sentencing* p145

effectively converted into a prison makes it relatively expensive to administer in comparison with other non-custodial options. In addition, home detention may offer a more humane form of punishment, particularly for those offenders who do not constitute a threat to public safety and whose crimes do not merit the harshest of penalties. It may be particularly suitable for those people who are typically vulnerable in the prison environment such as young offenders, Aborigines and people with an intellectual disability or who are seriously ill.

7.71 As at 1 January, 2001, 162 males, 24 females and 3 unknown were serving home detention sentences.²²⁹ The Department of Corrective Services has provided the following information of numbers sentenced to Home Detention since the commencement of the scheme on 21 February 1997²³⁰:

Year	Total Admitted	Male	Female	Number Completed
1997/1998	267	218	49	211
1998/1999	350	291	59	258
1999/2000	385	320	65	260

7.72 The Home detention scheme is only available in the Sydney, Illawarra, Central Coast and lower Hunter areas.

7.73 The option may not be appropriate for some offenders, particularly in cases where there is alcohol or drug abuse or violence in the home. A comprehensive assessment of the offender's home circumstances and lifestyle is undertaken in each case to determine suitability.

7.74 The Committee considered the advantages and the under utilisation of home detention in its *Interim Report*.²³¹ The limited availability of the scheme particularly disadvantages eligible Aboriginal offenders in remote areas. In its response to the Committee's *Interim Report* the Government stated that 55 indigenous offenders had been through the program and that the Department was in the preliminary stages of assessing particular areas including the Mid North Coast region for possible expansion.²³² The committee notes the Department is currently undertaking a research project into monitoring of the Home Detention Scheme, due for completion in June 2002.²³³

7.75 Extending the Home Detention Scheme into country areas will require a significant allocation of additional resources into rural and regional areas. Mr Dennis Nickle of the Wagga Wagga Probation and Parole Service explained the level of additional resources that may be required:

²²⁹ Department of Corrective Services, *Submission 63* (supplementary).

²³⁰ Eyland *Evidence* 12 March 2001.

²³¹ *Interim Report*, pp 124-127.

²³² *Government Response*, 19 February, 2001, p. 9

²³³ Department of Corrective Service *Research Program 2001-2002* p 19.

CHAIR: Do you think that (Home Detention) is an option that would work in an area like Wagga Wagga?

MR NICKLE: With appropriate resources, yes.

CHAIR: What do you think would be appropriate resources?

Mr NICKLE: Additional people and some additional equipment. We are talking about a 24-hour operation, which, obviously, has its own needs, motor vehicles and communication and stuff like that, and more people.

CHAIR: What is the size of the staff of the local Probation and Parole Service?

Mr NICKLE: In addition to myself as manager there are five full time field staff and a sessional supervisor who works on a Tuesday and two clerical officers.

7.76 Mr Nickle went on to explain that only the field staff could provide supervision for Home Detention and each of his field officers already had a caseload of about 50 clients and duties to write pre-sentence reports.²³⁴ The Department of Corrective Services also advised the Committee that they had applied for additional funding to expand the Home Detention Program into the Mid North Coast of NSW, but their applications for funding had been unsuccessful.²³⁵

Recommendation 21

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

Indigenous Offenders and Home Detention

7.77 Nineteen percent of those sentenced to imprisonment and 17% of those sentenced to imprisonment for long terms (ie 6 months or more) identified themselves as indigenous. In 1998/99 only 6.6%, or 17 out of 258 participants in the Home Detention Scheme identified themselves as Aboriginal or Torres Strait Islanders.²³⁶

7.78 The Department of Corrective Services has outlined a number of reasons as to why Aboriginal offenders may be under represented on Home Detention, which may also apply equally to the Drug Court initiative(see below):

- the nature of the offence precludes consideration for Home Detention;
- the unavailability of the program in regional areas with significant concentrations of indigenous people;

²³⁴ Nickle *Evidence* 24 October 2000 pp 25-26.

²³⁵ McDonald *Evidence* 28 March 2000, p 47.

²³⁶ Department of Corrective Services *Annual Report 1998/99* p 13.

- inability of offenders to meet the necessary criteria required of the program.

7.79 The Department also advised that:

while the expansion of the Home Detention Program remains a priority in the Department's development of strategies aimed at diverting Aboriginal inmates from full time custody budgetary proposals for expansion have been unsuccessful.²³⁷

7.80 A critical difficulty for Indigenous offenders in meeting the requirements of the Home Detention Program has been that the Home Detention program excludes violent offenders from participation. The program also requires the consent of other family members and suitable accommodation equipped with a telephone connection.

7.81 The Committee believes a pilot program should be initiated to expand the use of home detention by Indigenous offenders in rural NSW which includes providing alternative accommodation such as hostel where offenders can complete a sentence of home detention.

Recommendation 22

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

Net-widening

7.82 The Department of Corrective Services states in its submission that the major risk with all alternative sentencing options is that authorities may impose those penalties on offenders who would not otherwise have been given a custodial sentence.

While the same, or similar, number of offenders may be sentenced to prison, a wider circle of lesser offenders are brought within the "net" of the alternative penalties. When a proportion of those offenders breach the terms of their orders, they run the risk of full-time imprisonment.²³⁸

7.83 The Parole Board has the responsibility for procedures for revoking Periodic Detention, Home Detention and parole orders. That responsibility was transferred from the Court to the Parole Board in order to address delays that were occurring between breaches of orders, cancellation proceedings and returning offenders to prison to serve the balance of their sentence. If a periodic detainee, home detainee, parolee or person serving a suspended sentence breaches his or her order, the court or Parole Board can revoke the order and issue a warrant for the apprehension of the offender and their return to prison. If a person

²³⁷ *Submission 63 Appendix- Indigenous Offenders –Departmental Programs and Initiatives p 1.*

²³⁸ Department of Corrective Services, *Submission 63*, p 33.

servicing a community service order or a person under a bond breaches the conditions of the order or bond, the court may sentence the offender to imprisonment.

7.84 It was submitted by the NSW Law Society that consideration should be given to enhancing the support offered to periodic detainees. The NSW Law Society stated in its submission that:

This will not only assist the rehabilitation of offenders, (but) also assist in ensuring conformity with administrative procedures and reduce unauthorised absences.²³⁹

7.85 As discussed in Chapter Five in relation to reasons for the increases in causes of the prison population, the Law Society in New South Wales is also concerned that cancellation procedures under which the Parole Board is currently required to operate provide no facility for people to be granted bail. The Law Society states:

This means that people who may be able to satisfy the Board that their orders should not have been cancelled, can spend considerable time in custody before they have the opportunity to present their case to the Board.²⁴⁰

7.86 The Law Society recommends that provision be made for people arrested on warrants issued upon revocation of a Periodic Detention, Home Detention or Parole order to be brought before the court if they wish to seek bail; this is addressed by the Recommendation Three in Chapter Five.

7.87 A further consequence of transferring the function of cancelling orders from the court to the Parole Board was that previously the court, when cancelling a periodic detention order or on application from the Commission to substitute a different sentence, for example a bond or Community Service order. The Law Society of NSW stated in its submission that this provision had been available previously under the *Periodic Detention of Prisoners Act 1981* and was a useful option which could be utilised when an order or imprisonment had become inappropriate:

This was a very useful and enlightened option which could be utilised where Periodic Detention or full-time imprisonment had become inappropriate due to supervening circumstances, such as the onset of a serious illness. Because the making of other orders could be sought only on the application of the commissioner and was only used in exceptional circumstances it could not be utilised as a *de facto* right to apply for re-sentencing.²⁴¹

Recommendation 23

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

²³⁹ Law Society of New South Wales, *Submission* 93 p 25.

²⁴⁰ *Ibid*, p 28.

²⁴¹ *Ibid*, p 29

Mechanisms for diverting eligible offenders from prison

- 7.88** Evidence received by the Committee highlights the over-representation of certain categories of offenders in the New South Wales correctional system including offenders with an intellectual disability, mental illness, drug addiction, those from non-English speaking background and Indigenous Australians.
- 7.89** A number of programs have been implemented which seek to divert eligible offenders from prison sentences. Some of these programs are discussed below

Programs for Offenders with an intellectual disability

- 7.90** Despite the difficulty in determining prevalence of intellectual disability in the prison system (as noted in Chapter Four) there is consensus that there is a disproportionate number of persons with an intellectual disability in NSW correctional facilities. One reason for this is that, in some cases, people with intellectual disability are incarcerated not because their offence warrants it but because there is no suitable alternative. Courts often judge intellectually disabled offenders as being unsuitable for community based sentences. Orders and conditions required of a community service order can be difficult for some to comply. As discussed in Chapter Four, offenders with an intellectual disability also have a high rate of recidivism.
- 7.91** Currently there are no services specifically designed for people with an intellectual disability who commit offences. However, a program is currently being planned by the Department of Ageing and Disability and Home Care to fund advocacy, information and support services for people with disabilities in contact with the criminal justice system.
- 7.92** The recently released *Framework Report*, prepared by the NSW Council for Intellectual Disability and the Intellectual Disability Rights Service presents the results of a project designed to develop a framework for provision of appropriate community services for people with intellectual disabilities who are in contact with the criminal or juvenile justice system or who are at risk of contact.²⁴² The project focused on accommodation, case management, behaviour intervention and related services and recommended the adoption of screening tools and enhancement of skills in identifying members of the target group. The Department and other agencies to which this report is directed are currently considering the reports findings.

Programs for Offenders with a psychiatric illness

- 7.93** As discussed in Chapter Four, a high proportion of the prison population has a psychiatric disability or some form of mental illness, including depression. According to Ms Leonie Manns of the Disability Council of New South Wales, problems for people with psychiatric disability revolve around the lack of access to treatment. This tends to exacerbate the illness, drawing the attention of both the authorities and other prisoners.

²⁴² Law and Justice Foundation, *The Framework Report: Appropriate community services in NSW for offenders with intellectual disabilities and those at risk of offending*. NSW Council for Intellectual Disability, 2001.

7.94 Mr Luke Grant, Department of Corrective Services, advised the Committee that the Department was pursuing strategies for reducing the number of people with a mental illness in custody:

At the moment the department is very actively contributing to, and has been lobbying for a review of the mental health criminal procedures legislation, which is an attempt to very significantly reduce the number of people who have mental illness problems in custody. Things like this are things that we engage in all the time, so I think it is not the correct statement to suggest that the department is not pursuing this and does not place a great value on community programs.²⁴³

7.95 Until recently, there were very few options available to the courts to divert offenders with a mental illness from custody. Sections 32 and 33 of the *Mental Health (Criminal Procedures) Act* provide that certain people may be diverted from the criminal justice system by the local courts. Under s32, if it appears to the Magistrate that the defendant is developmentally disabled, is suffering from mental illness or is suffering from a mental condition, the Magistrate may adjourn the proceedings, grant bail or make any other order considered appropriate. The Magistrate may also dismiss the charge and discharge the defendant either conditionally, that is, into the care of a “responsible person” or unconditionally. Section 33 applies to a person who is a “mentally ill person” within the meaning of the *Mental Health (Criminal Procedures) Act* and differs from s.32 in the procedure to be followed.²⁴⁴

7.96 There has been some debate about the definition of intellectual disability in the section and the application of s.32. The Law Reform Commission states that flexibility of s.32 has allowed diversion of some defendants who have an intellectual disability or other mental condition. However, the provision is not always evenly applied.²⁴⁵ In its *Crime Prevention Through Social Support: First Report*, the Standing Committee on Law and Justice made a number of recommendations regarding investigation of these provisions.²⁴⁶

Psychiatric Consultation and Assessment Service

7.97 As a means of ensuring that offenders eligible for diversion under s32 and s33 are identified and assisted, the Corrections Health Service has now established a psychiatric assessment service at Central and Parramatta Local Courts in Sydney. The Psychiatric Consultation and Assessment Service is a federally funded pilot which aims to foster effective links between the legal and mental health system and to provide early assessments of mentally ill persons appearing before the court. It is staffed by a psychiatrist and a mental health nurse.

7.98 The rationale behind the Psychiatric Consultation and Assessment Service is that large numbers of offenders with mental illness should be referred to or returned to treatment at the earliest opportunity rather than being incarcerated. The Assessment Service aims to

²⁴³ Grant *Evidence* 12 March 2001.

²⁴⁴ New South Wales Law Reform Commission, 1994, *Discussion Paper 35: People with an intellectual disability and the Criminal Justice System: Courts and Sentencing Issues*, p 135.

²⁴⁵ *Ibid*, p138.

²⁴⁶ Standing Committee on Law and Justice, 1999, pp 183-185.

avoid the situation where offenders wait lengthy periods for a psychiatric report while having, in general, committed less serious offences.

7.99 The scheme assesses and diverts, where possible, those who are before the courts for reasons of mental illness. It is estimated that the service is diverting 9 out of 10 people referred to it from prison. Dr Richard Matthews told the Committee,

...we have diverted a significant number of people and had a very large number of community treatment programs included in the after-care orders by the magistrates. I think when you talk to the magistrates you will find that they are extremely enthusiastic.²⁴⁷

7.100 The court-based service has minimised the need for, and the cost of, transferring patients to a psychiatric hospital for assessment, or the need to remand the defendant in custody for a psychiatric report. This earlier process had been widely criticised by Magistrates and lawyers for the poor quality of assessment carried out under such circumstances and by psychiatric hospital staff for the burden it placed on their services.²⁴⁸ The service is immediately accessible on site in the Court House. Reports are practical in nature, addressing providing the basis for practical solutions which the Court can use.

7.101 During the Inquiry the Committee visited the court psychiatric scheme at Central Local Court in Sydney and was encouraged by the process and the high quality service offered. The Committee considers that the scheme has the potential to divert a significant number of people from the prison system and commends Corrections Health on this important and timely initiative.

Recommendation 24

The committee recommends that the Psychiatric Consultation and Assessment Service be expanded statewide and that an evaluation be conducted to review its success in diverting offenders.

Programs for Indigenous Offenders

7.102 As discussed in Chapter Four, Aboriginal and Torres Strait Islander (ATSI) people remain over-represented among New South Wales prisoners and the level of over-representation is increasing. In this regard, Mr Peter McDonald, Acting Assistant Commissioner, Probation and Parole Service, Department of Corrective Services stated,

... both Aboriginal men and Aboriginal women are not as strongly represented in community corrections programs as one might expect measured by their level of population within the wider [prison] community.²⁴⁹

²⁴⁷ Matthews *Evidence* 12 March 2001.

²⁴⁸ Conversation with Jonathon Carne, Director of the assessment service, during committee's site visit.

²⁴⁹ McDonald *Evidence* 28 March 2000.

- 7.103** The low numbers of Indigenous men and women currently sentenced to home detention is due to both limited access to the program in rural and regional areas, and because the offences with which many Aboriginal offenders are charged precludes them from participation in the program. For instance many Aboriginal offenders, particularly in rural areas, are charged for instances of alcohol related violence, and so would be ineligible to participate.²⁵⁰
- 7.104** In order to reduce the over representation of Aboriginal and Torres Strait Islanders (ATSI) people in prison, focus should be on reducing the high rate at which ATSI people appear in court and on the use of diversion for ATSI offenders currently given short prison sentences. The Royal Commission into Aboriginal Deaths in Custody made a number of recommendations designed to reduce the over-representation of ATSI people in custody through reforming the criminal justice processes and by diverting ATSI people away from prison. The recommendations sought to ensure that imprisonment be used as a sanction of last resort through the provision of adequate non-custodial alternatives and by getting people out of prison at the earliest possible opportunity. The recent report *Keeping Aboriginal and Torres Strait Islander People out of Custody: An Evaluation of the Implementation of the Recommendations of the Royal Commission in Aboriginal Deaths in Custody* found that there had been a failure on the part of governments to adequately implement the recommendations of the Royal Commission.²⁵¹
- 7.105** The Committee understands that a number of initiatives are being developed under the Aboriginal Justice Strategy. Guided by the recommendations of the Aboriginal Justice Advisory Council, the Attorney General's Department will be developing appropriate strategies relating to indigenous people and the criminal justice system. In a recent budget estimates committee hearing, the Attorney General confirmed that there is a specific aim in these strategies to reduce the number of indigenous people in prison. Under the strategy there will be five additional Aboriginal Court Liaison Officers (ACLO) appointed. Describing the role of ACLOs, the Attorney General stated
- They have been fantastically successful. They are Aboriginal people who work with several courts across the region and act as intermediaries between people who have been charged, the communities and the court. They are mediators who are given special respect by magistrates. In some cases they have been absolutely fantastic. They have clearly reduced the number of convictions and ensured that more appropriate sentences are being given.²⁵²
- 7.106** In its submission to the Committee the Aboriginal and Torres Strait Islander Commission (ATSIC) noted the need for, and the benefit of, community involvement in creating diversion from custodial sentencing. This includes community involvement in bail,

²⁵⁰ M Kevin, "Violent Crime, Alcohol and other Drugs: an Survey of Inmates imprisoned for Assault in NSW" 1999 Department of Corrective Services *Research Publication no 39*; L Munro, G Juancey "Keeping Aboriginal Offenders out of Prison" paper presented at AIC conference "Keeping People out of Prison" 1989.

²⁵¹ Cunneen and McDonald, (1996) *Keeping Aboriginal and Torres Strait Islander People out of Custody: An Evaluation of the Implementation of the Recommendations of the Royal Commission in Aboriginal Deaths in Custody*, Office of Public Affairs, ATSIC, p189-190.

²⁵² Debus *Evidence* (Budget Estimates 2001-2002:GPSC3) 22 June 2001 p 9.

sentencing and remand options and home detention options for minor offences and use of community organisations as bond agencies for remand, bail and some minor offences.²⁵³

- 7.107** Two ways of incorporating community involvement in the criminal justice system is firstly through recognition of customary law, and, secondly, the circle sentencing initiative.

Circle Sentencing

- 7.108** Circle sentencing is one scheme within the broader concept of “conferencing” whereby members of the community become involved in dealing with offenders beyond the normal confines of the criminal justice system. The Aboriginal Justice Advisory Council reports that:

Circle courts are designed for more serious or repeat offenders and aim to achieve full community involvement in the sentencing process. It aims to broaden the sentencing phase so that it can fully examine the underlying issues of offending behaviour and examine the needs of victims of crime.²⁵⁴

- 7.109** A circle sentencing pilot scheme is to be conducted from Nowra Local Court. Commenting on the NSW proposal for Circle Sentencing, the Attorney General recently stated:

The idea is that we will have elders, as well as families, working with the magistrate, working out ways in which, for instance, a young offender may be sanctioned by the court. The reports from Canada...are extremely encouraging.²⁵⁵

Diverting Offenders with illicit drug problems

- 7.110** For a majority of offenders, the use of illicit drugs is an underlying reason for offending. Evidence suggests that over 80% of women and up to 70% of men in custody have a drug and alcohol problem.
- 7.111** Innovative programs to both address illicit drug use and to divert some offenders from prison have recently been introduced. The New South Wales Drug Court and the MERIT program are diversionary programs currently being trialed in New South Wales.

NSW Drug Court Program

- 7.112** During the Inquiry, the Committee visited the Drug Court and spoke with Judge Milson and psychiatric and legal practitioners. The New South Wales Drug Court was established on 8 February 1999 as a two year pilot program. The Drug Court is presided over by a District Court judge and has both Local and District Court jurisdiction. Persons are referred to the NSW Drug Court after appearing at one of the courts in the catchment

²⁵³ Aboriginal and Torres Straight Islander Commission, *Submission 179* p 14.

²⁵⁴ Aboriginal Justice Advisory Council, *Circle Sentencing: Involving Aboriginal Communities in the Sentencing Process*, 1999 p 1.

²⁵⁵ Debus *Evidence* (Budget Estimates 2001-2002:GPSC3) 22 June 2001 p 9.

area,²⁵⁶ and by entering a plea of guilty. A person is referred to the NSW Drug Court if it is likely that they will receive a custodial sentence.

7.113 Eligibility to participate in the Drug Court program relies on the offender:

- being charged with an offence other than an offence involving violent conduct or sexual assault,
- being dependent on a prohibited drug,
- usually residing in the catchment area, and
- being willing to participate in the drug court program.

7.114 The Drug Court program operates a system of coerced treatment whereby bail is refused and the person is placed in a detoxification unit. During the detoxification period a treatment plan is developed. Drug Court participants can be assigned to a range of treatment options and are required to attend individual counselling and relapse prevention training.

7.115 The program was designed to take approximately 12 months with participants progressing through three phases before graduating from the program. Participants can be sanctioned for breaching their program and rewarded for making progress.

7.116 Prior to the commencement of the NSW Drug Court Trial, the NSW Bureau of Crime Statistics committed to conducting three evaluation studies of the Trial. The first study provides ongoing monitoring of key aspects of the NSW Drug Court. The second study is designed to determine the cost-effectiveness of the NSW Drug Court in reducing recidivism compared with that of the conventional criminal justice system, and will be completed in early 2002. The third study focuses on the effect of the NSW Drug Court program on participants, examining changes in the well-being of participants throughout their participation on the program and assessing their satisfaction for the program.²⁵⁷

7.117 Through a series of interviews before, during and at the end of the program, the Bureau of Crime Statistics and Research's preliminary results of its third study indicate benefits in health and social functioning to offenders on the NSW Drug Court program and a high level of participant satisfaction with the program. The study conceded certain limitations of the program. The Bureau also noted that participants who were not interviewed - because they had terminated or absconded from the program - may have had a significantly different response in regard to their satisfaction and health outcomes than those participants surveyed. The study also did not allow for comparison with offenders in the traditional criminal justice system. However, Dr Don Weatherburn, Director of the Bureau, stated

²⁵⁶ Bankstown, Blacktown, Campbelltown, Liverpool, Penrith, Parramatta, Fairfield, Ryde, Burwood, Richmond and Windsor Local Courts and Parramatta, Penrith, Liverpool and Campbelltown District Courts.

²⁵⁷ *New South Wales Drug Court Evaluation: Interim report on health and well-being of participants.* (Crime and Justice Bulletin, 2001).

It's important to remember that Drug Court participants generally have large heroin habits, long criminal records and a history of not responding to previous court sanctions...It is quite unrealistic to expect all these people suddenly to turn into law-abiding, healthy and responsible citizens. The improvements we are seeing are much better than might reasonably have been expected in the circumstances.²⁵⁸

7.118 The following is a summary of participants in the Drug Court trials at 28 February 2001, provided to the Committee from the Bureau:

	2001	2000	1999	Total	%
TOTAL REFERRED TO COURT	439	403	16	858	100
Pre Program	0	16	13	29	3.38
On Program	57	114	2	173	20.16
Terminated	147	82	-	229	26.69
Referred back	192	170	1	363	42.31
Sentenced s.8	19	21	-	40	4.66
Graduated	24	-	-	24	2.80

7.119 There is one issue which the Committee does not believe is being considered by the Bureau of Crime Statistics and Research in its current evaluations, and that is the potential net-widening impact of the Drug Court. To participate in the Drug Court program the alleged offender is required to have pleaded guilty. Because of limited places, a ballot system is used to select participants from the much larger pool of potential participants. By their willingness to participate in the program it is possible that larger numbers of offenders are being imprisoned than would be the case if the program was not in operation. This is an issue which warrants further research (see recommendation below).

7.120 The Committee is unanimous in its support for the Drug Court trial. It effectively provides participants access to both justice and to treatment. Should the evaluations continue to prove positive, the Drug Court program should be expanded and accessible to eligible offenders across the state. It may be a suitable approach to extend to offenders with alcohol problems as well as its current use for those with illegal drug problems (see recommendation below).

Drug Court Program: Indigenous Offenders

7.121 In Chapter Four the Committee has reported that drug offences constitute 3.75% of all criminal incidences recorded, however anecdotal evidence to this inquiry from Aboriginal and Torres Straight Islander Legal Service staff estimate that close to 80% of all matters they deal with involve alcohol and/or drugs.

7.122 The Committee has been informed that Indigenous offenders are under represented in the numbers of people participating in two of the most recently developed initiatives for alternatives to full time custody, home detention and the Drug Court. Six per cent of

²⁵⁸ Press Release 20 February 2001.

participants in the Drug Court identified themselves as Aboriginal or Torres Strait Islanders.²⁶⁰

- 7.123** The Drug Court has been piloted in metropolitan Sydney and targets the use of illegal drugs, such as heroin, while the drug which features more prominently in offending by Indigenous people is alcohol. In order to make these programs more accessible to Indigenous offenders they may need to be supported with the provision of moderately supervised alternative accommodation based in the community. The Drug Court will have to be made available in regional parts of the State and expanded to include offenders whose primary drug of abuse is alcohol.
-

Recommendation 25

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

Recommendation 26

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

Recommendation 27

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

The MERIT Program

- 7.124** The Magistrates' Early Referral Into Treatment (MERIT) scheme is a special Magistrates' court based program that currently operates from Lismore, Northern NSW. The Special Minister of State, the Hon John Della Bosca MLC recently announced that this diversion program would be extended to Orange, and on 27 March 2001 the Premier announced that a MERIT scheme will be set up in Cabramatta to operate from July 2002.²⁶¹
- 7.125** Unlike the New South Wales Drug Court, MERIT is a voluntary, rather than a mandatory, treatment program. The MERIT program offers an opportunity for some defendants with drug problems to work, on a voluntary basis, towards rehabilitation as part of the bail

²⁶⁰ The Bureau of Crime Statistics and Research *Report on the Drug Court*, April 2000.

²⁶¹ NSWPD (*Hansard*) 27 March 2001.

process. MERIT targets clients in the pre-plea stage. The Court makes the client's involvement in MERIT a condition of bail.

- 7.126** MERIT provides for referrals from police at the time of arrest, from solicitors following arrest or from the Magistrate at court. To date, the majority of clients have been referred to MERIT at court. It is desirable that referrals be made earlier in the offenders progress through the system to maximise access to treatment.
- 7.127** If identified as eligible for MERIT and the client agrees to an assessment, a drug treatment program is developed that matches the client's needs. The program lasts for a minimum of 3 months and up to 5 or 6 months after which time their case will be heard. A client's case may be adjourned or a plea can be made ex parte to avoid interrupting rehabilitation.
- 7.128** The Committee has been advised that, following compliance with the program, almost all of participants have pleaded guilty and have been given non custodial sentences.²⁶² A number of those in rehabilitation as part of their MERIT program would probably be in prison. At the time of writing the MERIT program has been running for almost 12 months. MERIT has received 126 referrals and 89 people have been assessed as suitable for the program. At this stage no one has returned to the program following a subsequent offence. The program is currently being independently evaluated.

Conclusion

- 7.129** There are many prisoners currently in full time custody who may be more appropriately and cost-effectively supervised under alternative sentencing options. These include community service orders, probation and parole, periodic detention, and home detention, as well as diversionary programs such as the Drug Court and the MERIT scheme. Some of these alternatives are currently under-utilised, while others are in their early stages and have much promise. The Committee believes more information is needed on why some options are not used, why some are perceived as not effective, and whether new initiatives are deserving of expansion. The gains to the community from greater use of effective alternatives to sentences of full time custody are considerable, and every effort should be made to realise these gains.

²⁶² Information provided from Mr John Scantelon, Manager MERIT.

Chapter 8 Interim Report and the Government Response

Interim Report: issues relating to women

- 8.1** In July 2000 the Committee tabled its *Interim Report* presenting the findings of the first part of its inquiry. The reasons for the high rate of incarceration of women in New South Wales correctional centres was the focus of the Committee's report. Determining the reasons for the increase proved a problematic and complex task, the increase being an Australian and international phenomenon.
- 8.2** The report also considered alternatives to imprisonment and the adequacy of building a new women's prison as a means for dealing with the continuing increase in prison numbers. It recommended resources be put into strategies to reduce the increase in the prison population as a greater priority than building new correctional facilities. The Committee recommended a moratorium on the total number of prison beds for women and a cost-benefit analysis of the new women's facility at Windsor. The Committee made a number of recommendations aimed at optimising the potential for rehabilitation of inmates, reducing recidivism and for the greater use of alternative sanctions to reduce the number of offenders sentenced to imprisonment, particularly those convicted of less serious crimes.
- 8.3** While the *Interim Report* focussed on women prisoners, many of its recommendations are applicable to the entire prison population. The full recommendations, with the accompanying Government Response, are reproduced in full in the next section.

**Government Response to the Interim Report of the Select Committee on
the Increase in Prison Population Interim Report on Issues Relating to
Women**

Chapter 3 The Statistics

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

3.74 Response: The Government accepts that the two issues of crime prevention through early intervention and the reasons for the rising prison population are intrinsically linked. This is why the Government originally proposed that the Inquiry into rising imprisonment should be undertaken by the same committee - the Standing Committee on Law and Justice, which has taken a bipartisan approach to its research and had in fact already heard considerable evidence on the subject.

Chapter 4 Factors Contributing to the Increase in the Female Prisoner Population

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

4.16 Response: The Drug Summit produced a wide-ranging series of recommendations which the Government is committed to implementing. About 90% of women offenders are in prison because of drug or alcohol related crime and it is obviously in the best interests of the whole community to explore every means of preventing drug abuse and the crime it fuels.

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

4.23 Response: Both the Judicial Commission and the Bureau of Crime Statistics and Research have recently produced reports that consider the issue of women offenders and factors contributing to the increase in the number of women in prison.

Both agencies make it clear that there are many reasons for this increase - the types of offences women are committing, a growth in bail refusal rates, changed policing practices and the increased incidence of courts imposing custodial sentences.

The courts, naturally, take into account a woman's role in a crime - for instance whether she is driving the car or inside robbing the bank - when determining appropriate sentences.

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

4.61 Response: The administration of periodic detention orders is governed by the *Crimes (Administration of Sentences) Act 1999*. An appeal mechanism already exists in the revocation process.

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

4.88 Response: The Mothers and Children's program is an initiative of this Government which has demonstrably benefited female inmates. The judiciary is well aware of its existence and while it is not the role of the Attorney-General to direct the Judicial Commission to take any action, the Attorney-General has advised that he will be pleased to again draw the judiciary's attention to the program.

This Government is committed to the principle that imprisonment should be the sanction of last resort. That is why we have overseen an expansion of the range and availability of alternatives to full-time custody.

However, it would be naive to believe that no woman should be sent to prison simply because she is a mother or pregnant. The courts will always determine that some crimes are serious enough to demand a prison sentence, particularly if the offender has a long record. The courts assess each case on its merits.

4.94 Recommendation: That the Attorney-General direct the Judicial Commission to provide appropriate ongoing training to judicial offices about the range and purpose of non-custodial sentencing options available in NSW. Such training should be undertaken ASAP to ensure that S5 of the Crimes (Sentencing Procedure) Act 1999, which requires that imprisonment only be imposed after consideration of all possible alternatives, is properly implemented. The Judicial Commission should also liaise with the Dept in relation to the delivery of the training.

4.94 Response: The Judiciary has been made well aware of the range of non-custodial sentencing options available in this State; from Community Service Orders and probation to home detention and periodic detention.

The Act already requires the judiciary to give reasons when sentencing an offender to a gaol term of six months or less rather than an alternative non-custodial sentence. The Department of Corrective Services is happy to facilitate any extra information they might be interested to receive about the Department's extensive services in ensuring these schemes are rigorously monitored.

Chapter 5 Imprisonment

5.52 Recommendation: That the Minister for Corrective Services implement the revised model of case management based on the report of the Independent Commission Against Corruption, Case Management in NSW Correctional Centres, as a matter of urgency.

Response: Case management was reinvigorated in 1999 following the ICAC report and the Department of Corrective Services has demonstrated its commitment to this important inmate management tool. In a program that commenced late in 1999, the Senior Assistant Commissioner and Assistant Commissioner Inmate Services have personally addressed staff at the majority of correctional centres, including Mulawa and Emu Plains, to reinforce Departmental expectations with regard to case management. The dedicated Case Management Implementation Team will build on this by working closely with each centre's local management.

5.53 Recommendation: That the Minister for Corrective Services ensure that each new inmate is assessed with a case management plan that addresses any issues that are likely to impact on the likelihood of the inmate re-offending upon release from prison.

5.53 Response: The object of case management is to assist sentenced inmates complete programs and attend services that address their offending behaviour and reduce the risk of re-offending upon release. As part of the case management process, newly sentenced inmates participate with case management teams to prepare their case plans.

5.79 Recommendation: That the Minister for Corrective Services, together with the Minister for Health, use some of the resources earmarked for the expansion of the detoxification unit at Mulawa, to increase the bed capacity of that unit to a more realistic level that is commensurate with the needs of the inmates.

5.79 Response: The needs of the treatment population within Corrections is continuously monitored. Any expansion of this unit would only occur once an examination and assessment of the numbers using the unit was completed.

5.80 Recommendation: That, as a matter of urgency, the Minister for Corrective Services employ at least 2 additional full-time, drug and alcohol counsellors at Mulawa Correctional Centre. At least one of those positions should be a designated indigenous position.

5.80 Response: There are presently 4 psychologists, 3 welfare workers, 2.5 alcohol and other drug workers, a P/T health educator, 2 chaplains, a senior education officer, 2 education officers and 2 official visitors at Mulawa Correctional centre. The establishment provides for 1 Aboriginal alcohol and other drug worker and 1 Aboriginal welfare officer. A Regional Aboriginal Project Officer also services the centre.

Obviously staffing levels are constantly being monitored and adjusted where appropriate across the whole system.

5.81 Recommendation: That the Minister for Corrective Services establish a designated drug free wing at Mulawa Correctional Centre as soon as possible.

5.81 Response: Drug free wings have been established in a number of correctional centres. A drug free wing was running effectively at Mulawa until the present overcrowding forced the abandonment of the program. Once more beds are available, programs such as this can be resumed.

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

5.82 Response: It is not appropriate that women inmates should be given absolute priority for resources over other high need groups, such as young offenders, Aboriginal inmates and intellectually disabled inmates. The Department needs to prioritise funding to target the needs of all inmates and not only apply resources on a gender basis.

5.95 Recommendation: That the Minister for Corrective Services ensure that there is parity of wages between inmates undertaking full time work and those undertaking full time study.

5.95 Response: In the community, full time students do not receive the same salary as a full time employee. The gaol system operates under the same principle. Inmates are however, encouraged to participate in work and any accompanying vocational training. In some cases, the instilling of a work ethic and learning the discipline to manage a working day is the most important skill that can be taught. NSW has the highest rate of inmate participation in secondary education Australia wide.

5.96 Recommendation: That the Minister ensure that women have the same choice and access to programs as male inmates.

5.96 Response: It has in the past been harder to provide a wide range of choices for women inmates given that they represent only 5% of the prison population. However, substantial progress has been made. It is the underlying philosophy behind the design of the new prison that programs can be provided for women in such an environment much more readily than they can at Mulawa.

5.97 Recommendation: That the Minister for Corrective Services' create two additional teaching positions at Mulawa.

5.97 Response: Educational staffing is regularly reviewed in light of inmate numbers.

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

5.111 Response: This is a matter that is constantly monitored.

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

5.120 Response: Telehealth conferencing is a resource that is available within the correctional system. Access to and demand for these facilities is continuously monitored.

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

5.127 Response: The Mum Shirl Unit was opened in 1997 and accommodates inmates with identified mental health and behavioural issues. The Unit provides a safe environment for inmates displaying disturbed behaviour. The Unit requires high supervision levels and provides a carefully controlled environment for vulnerable inmates. It has had a positive impact on the self-harm rates of inmates residing there. The unit represents a massive improvement on conditions at the Rose Scott unit which previously housed such inmates.

However the Minister for Health and the Minister for Corrective Services have agreed that a review should be undertaken within the next twelve months.

5.165 Recommendation: That the Minister for Corrective Services ensure that Aboriginal women are participating in the Mother and Children's program at least at a proportionate rate.

5.165 Response: Indigenous women have applied for, and been granted, placement on the full time residence program (Jacaranda) since the program commenced in 1997. These applications are encouraged but it should be remembered that some indigenous women prefer their children to remain with their extended families rather than bring them into custody.

Each inmate is assessed case by case, and in consultation with the Department of Community Services. Obviously, where there is a record of past violence or abuse then neither my Department nor DOCs is likely to agree to the child coming into the prison.

Indigenous women have also applied for, and been granted release under section 29 (2) (c) (now section 26).

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

5.168 Response: Remand prisoners are housed in maximum security conditions. The Committee heard evidence about how volatile and unstable some women on remand can be. While the value and importance of the Mothers and Children's Program is accepted, the needs of the child must be paramount. A maximum security setting is not a suitable one for a child. However, should a mother be on remand for a long period of time due to the nature of her offence, departmental staff may explore options for reuniting her with her children whilst in custody.

5.170: Recommendation: That the Minister for Corrective Services expand the fulltime and occasional residential program to the rural correctional centres for women.

5.170 Response: The demand may not be there for this excellent program to be offered at rural correctional centres. A small number of women are housed at Broken Hill Correctional Centre and also at Grafton. However, the Department will investigate whether it is feasible to expand the program.

5.177 Recommendation: That the Minister for Corrective Services develop services for women in rural and regional areas similar to that offered by the Parramatta Transitional Centre. The purpose of these services is to enable more women in rural areas to access the option of conditional release near to their communities.

5.177 Response: Again, there may not be sufficient demand at any given centre, at any given time, to warrant the establishment of these services regionally. The Committee was understandably very impressed with the Parramatta Transitional Centre and planning is very advanced for another Transitional Centre for women with a drug and alcohol history.

5.178 Recommendation: That the Minister for Corrective Services ensure that any Transitional Centre or similar service be physically and administratively separate from a prison facility.

5.178 Response: This recommendation is a little puzzling since the committee "commended" the Department for the success of the Transitional Centre at Parramatta which is located across the road from Parramatta Correctional Centre. Proximity to the gaol does not appear to have adversely affected its operation. When the Transitional Centre was going to be sited at Glebe, however, the community outcry was substantial and sustained.

Chapter 6 Community Based Corrections

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

6.49 Response: Both the Department of Corrective Services and BOCSAR will continue to research options such as bail hostels/accommodation, however, the evidence obtained to date is not encouraging.

The idea of bail hostels is not a new one. Bail hostels present the possible problem of netwidening, whereby offenders who would have ordinarily be granted bail are placed in a bail hostel with its accompanying restrictions on their liberty. Western Australia has closed their bail hostel because they found that the demand was just not there. The UK experience over the last decade has seen unprecedented increases in the prison population in spite of a network of bail hostels and intensive probation hostels.

6.51 Recommendation: That liaison between relevant Departments and community agencies be established so that the residents of the bail hostels have access to appropriate services and treatment where needed. The hostels should be adequately resourced, have specialised staff and be equipped to accommodate dependent children of the residents.

6.51 Response: See above.

6.52 Recommendation: That the Government establish an Interdepartmental Committee which includes representation from relevant community agencies to oversee the operation of the bail hostels.

6.52 Response: See above.

6.53 Recommendation: That the Attorney General provide appropriate and ongoing training to judicial officers about the women's bail hostels. Appropriate and strict guidelines should be developed which emphasise that remand to a bail hostel is the last resort before remand in custody.

6.53 Response: See above.

6.76 Recommendation: That the Minister for Corrective Services and the Minister for Housing establish 3 probation hostels in NSW for women. One of these hostels should be specifically for indigenous women. The hostels should provide intensive and appropriate supervision to women serving their sentence there.

6.76 Response: Currently the Magistracy and Judiciary have a variety of options to imposing a full-time custodial sentence. No other jurisdiction in Australia offers the range available in New South Wales. Alternatives range from a fine, a bond, with or without probation supervision, Community Service Orders, Periodic Detention, Home Detention and more recently, suspended sentences. Additionally, the Drug Court trial is continuing at Parramatta. Sentencing bodies are faced with all of these choices and the community based sentences supervised by the Probation and Parole Service are continuing to grow. Well over 16,000 offenders are supervised in the community by the Service.

Rather than introduce yet another sentencing alternative, time and resources are better spent on consolidating the substantial number of existing programs. There is certainly insufficient evidence to justify setting up probation hostels immediately. Still less is there justification for setting up such facilities for women only.

6.77 Recommendation: The probation hostels shall be subject to a pilot period of 2 years after which time the Department of Corrective Services will fund independent research to evaluate their effectiveness. Issues to be considered in the evaluation should include netwidening and referral to the hostels by the judiciary, the response of the residents to the services provided by the probation hostel and the effect on the women's prison population.

Response: See above

6.77 Recommendation: Liaison with relevant Departments and community agencies should be established so that residents of the probation hostels have access to appropriate services and treatment where needed.

6.77 Response: See above

6.78 Recommendation: That the Attorney General instruct the Judicial Commission to provide appropriate and ongoing training to judicial officers about probation hostels.

6.78 Response: See above.

6.95 Recommendation: That the Attorney General direct the Judicial Commission to undertake urgent research into the reasons for the decrease into periodic detention among women.

6.95 Response: Since 1995 there has been an increase in the number of locations offering periodic detention for women. The Department of Corrective Services would welcome any research which would encourage an increase in the number of women being placed on periodic detention.

6.96 Recommendation: That the Minister for Corrective Services investigate the reasons for the increase in the cancellation of periodic detention orders, particularly among women, and develop measures to address this issue.

6.96 Response: The reasons for the increase in revocations is clear. The tightening up of the program is responsible for the increase in revocations and again this tightening up was inevitable to maintain the integrity of periodic detention. The Department is however working on ways to improve the compliance rate but it must be remembered that periodic detention is a rigorous program which requires personal discipline to complete successfully. Unfortunately, not all detainees are able to display the necessary discipline. If detainees comply with their obligations and attend, then obviously revocation will not occur.

6.97 Recommendation: That the Minister for Corrective Services consider the option of women offenders serving their periodic detention order in a rehabilitation or other suitable facility.

6.97 Response: There is already a similar option available which, appropriately, rests with the sentencing judge or magistrate. A sentencing Court can, where it is considered appropriate, release an offender to be of good behaviour and set certain conditions, including residential conditions.

6.111 Recommendation: That the Minister for Corrective Services expedite the expansion of the Home Detention Scheme to ensure that the program is available as an alternative to full-time imprisonment to more offenders in New South Wales.

6.111 Response: Home Detention was introduced by this Government in February 1997 and is currently available in the Sydney Metropolitan area, the Hunter and Wollongong regions. The Department of Corrective Services is committed to the expansion of the Home Detention program to additional centres and is currently investigating appropriate centres and funding sources.

6.112 Recommendation: That the Minister for Corrective Services develop strategies to enable women who are homeless and who would otherwise be sentenced to prison for an offence to access the Home Detention Scheme.

6.112 Response: The Department already goes to great lengths to assist all offenders in this situation and has had great success on a case by case basis in locating accommodation that will meet the requirements of the Home Detention program.

6.113 Recommendation: That the Attorney General and the Minister for Corrective Services develop guidelines to assist judicial officers in determining the appropriateness of granting eligible offenders a home detention assessment.

6.113 Response: The Probation and Parole Service already prepares pre-sentence reports for sentencing courts. These reports set out all the sentencing options available and appropriate for individual offenders.

6.114 Recommendation: That the Minister for Corrective Services develop a scheme of defined intensive probation for use as an additional alternative means of serving a custodial sentence under similar circumstances to the Home Detention Scheme.

6.114 Response: Probation is one of the options already available to sentencing courts. Other alternatives available include fines, bonds, community service orders, suspended sentences, periodic detention and home detention. The sentencing judge or magistrate can attach a wide variety of conditions to a Probation order with as much supervision as is considered appropriate.

6.120 Recommendation: That the Minister for Corrective Services develop, as a matter of urgency, strategies which maximise the opportunities of rural women offenders to access appropriate community service based sentences. Liaison should be undertaken with relevant government and non-government agencies to ensure that Probation and Parole officers who are supervising a woman offender in the community can draw on assistance from a wide range of suitable programs. Those community organisations offering relevant services should be provided with adequate funding so that co-operative service delivery between the government and non-govt sector can be fostered.

6.120 Response: The Department has a network of Probation and Parole officers throughout the State, in both metropolitan and rural areas. One of these officers' main responsibilities is to supervise offenders sentenced by the courts to Community Service Orders and probation supervision, as well as parole supervision.

The number of women serving CSOs increased by 40% between 1995 and 1998. At the end of last year 859 women were serving orders around the State. The Probation and

Parole Service offers a specific program for women offenders and providing basic life skills training and personal development programs for offenders.

It also runs a range of programs in conjunction with other government and community agencies -such as a "living without violence and alcohol" program at Bourke and Brewarrina with the Health Department, an outreach program at Moree with local community groups, an Aboriginal Families program at Lismore and women's program at Kempsey.

In 1999 the Probation and Parole Service won a silver award for services to regional and rural NSW in the Premier's Public Sector Awards. The award was for the Lismore-based Support for Aboriginal Families project run by the Service, the Dept of Community Services and NSW Health and local Aboriginal community groups. It addresses a lack of services for Aboriginal men with young families who are caught in a cycle of alcohol abuse, violence, court and prison.

The staff of the Probation and Parole Service have fostered productive relationships by tapping into their local community networks to assist offenders they are supervising.

6.129 Recommendation: That, as a matter of urgency, the Minister for Corrective Services develop strategies to ensure that home detention is available for Aboriginal people as an alternative to full-time imprisonment at a greater rate than it is at present.

6.129 Response: This Government remains committed to the expansion of the Home Detention program. The Home Detention program has proven to be a successful sentencing alternative. The key to this success has been the thorough assessment and strict monitoring of offenders on the program. In order to maintain the integrity and security of the scheme, it is crucial that staff and all necessary administrative and support mechanisms are in place before expanding the program to additional areas.

Home Detention currently covers the Sydney metropolitan area, the Illawarra and the Hunter region. Of the 55 indigenous offenders who have been through the program to date, 16 have been women. The Department is in the preliminary stages of assessing other areas for possible expansion - the Mid North Coast region, where there is a large Aboriginal population, is one such area.

It is necessary to undertake a comprehensive assessment of an offender's home circumstances and lifestyle to determine if they are suitable for Home Detention. Regrettably, it is the case that this option may not be possible for some women because of domestic violence, often fuelled by alcohol abuse, in the home. The Department is already addressing this issue in individual cases but it is another factor that needs to be considered in any large-scale and culturally-appropriate expansion of the scheme to benefit indigenous populations.

6.130 Recommendation: That the Minister for Corrective Services, the Minister for Women and representatives from the Aboriginal Justice Advisory Council develop alternatives to home detention for women who are unable to serve a sentence in the home because of abusive and violent domestic circumstances.

6.130 Response: This is happening in individual cases now. Department staff have been innovative and resourceful in finding alternative accommodation for women who would otherwise meet the requirements of the Home Detention scheme but live in a violent relationship. Unfortunately, sometimes those efforts are thwarted when abusive men can convince their wife or girlfriend to let them in - and then these women have to be removed from the program.

However, all relevant Ministers continue to discuss with AJAC and other Aboriginal community organisations ways to develop practical, realistic and culturally appropriate assistance on a wider scale than is currently possible.

6.140 Recommendation: That, as a matter of urgency, the Minister for Corrective Services, in consultation with the Aboriginal Justice Advisory Council, develop strategies to maximise the opportunities for indigenous people to access community based sentences.

6.140 Response: All relevant Ministers continue to consult with AJAC and Aboriginal community agencies to discuss meaningful ways of ensuring that indigenous offenders are able to access community-based sentences.

However, it is true that courts throughout the State are sentencing offenders to Community Service Orders and probation supervision. The Probation and Parole Service already provides a range of programs to benefit indigenous offenders serving these sentences, including programs specifically for women and families.

In 1999 the Probation and Parole Service won a silver award for services to regional and rural NSW in the Premier's Public Sector Awards. The award was for the Lismore-based Support for Aboriginal Families project run by the Service, the Dept of Community Services and NSW Health and local Aboriginal community groups. It addresses a lack of services for Aboriginal men with young families who are caught in a cycle of alcohol abuse, violence, court and prison. These sorts of projects are instrumental in helping these offenders address their offending behaviour and meet the requirements of their community sentence.

6.141 Recommendation: That the Minister for Corrective Services ensure that when an indigenous person is sentenced to a community-based sentence, that sentence is culturally sensitive.

6.141 Response: The Department of Corrective Services has a discrete Indigenous Services Unit and a comprehensive policy, the Indigenous Offenders Action Plan, to guide its work with Aboriginal offenders. This policy, developed in response to the disproportionate incarceration of Aboriginal offenders, the greater risks they face in custody and the need to provide alternatives to full-time custody, is a map to ensure that services are provided in a culturally appropriate manner.

The Probation and Parole Service has a specific plan of Offender Management Programs for Indigenous Offenders. This document has been commended by the Aboriginal Legal Service for its relevant and positive approach to working with these offenders.

The Service provides a range of services, run in conjunction with a number of Aboriginal community agencies, which are particularly targeted at Aboriginal offenders. These include a Koori women's supervision group at Lismore, "Living without violence and alcohol" programs at Bourke and Brewarrina and an outreach program in Moree. Aboriginal trainees and liaison officers are employed at a number of Probation and Parole officers.

Again, both the Department - particularly the Indigenous Services Unit - and the Minister are committed to exploring all possible avenues of delivering services for indigenous offenders - both those in full-time custody and alternative sentences - in a culturally sensitive and appropriate manner.

6.142 Recommendation: That the Attorney General, the Minister for Police and the Minister for Corrective Services implement a three-year trial period of Circle Sentencing to be operative in three Aboriginal communities as soon as possible. The Circle Sentencing Model should be based on the proposal of the working party on Circle Sentencing and comprise members from the Aboriginal Justice Advisory Council, NSW Police Service, Ministry of Police, Attorney General's Department,

Department of Corrective Services, Department of Juvenile Justice, Office of the Director of Public Prosecutions and the NSW Judicial Commission.

6.142 Response: Circle Sentencing is an interesting reform which is periodically investigated and/or recommended by committees and agencies reviewing the legal system and its cultural appropriateness for Aboriginal communities.

The Aboriginal Justice Advisory Council is currently studying this question and the Attorney General awaits its report, which is due early this year, with interest. Once the Council's findings are known, this will be the appropriate time for various members of the legal system to sit down and discuss the potential of Circle Sentencing as a judicial reform.

6.163 Recommendation: That the Attorney General ensure that the NSW Bureau of Crime Statistics and Research include in its evaluations of the NSW Drug Court Program the following:

- **the success or otherwise of women who participate in the program;**
- **the success or otherwise of indigenous people who participate in the program;**
- **the participation rate of people with an intellectual disability and their success or otherwise' in the program;**
- **the effect that the "bail refused" and incarceration period has on female Drug Court participant and any of her dependent children; and**
- **the adequacy or otherwise of the number of residential treatment centres that can accept drug court participants and the impact these participants have on the accessibility of these centres by drug users within the community.**

6.163 Response: The Attorney-General advises that the evaluation of the Drug Court is an extensive and on-going process. Initial reports on this innovative initiative have been extremely positive.

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

6.165 Response: The Probation and Parole Service is able to assist women offenders sentenced to community based orders access a range of drug and alcohol services, and indeed other services, available in the community. The Probation and Parole Service in fact runs a variety of programs for offenders in the community, evidence of which was presented to the Committee.

Additional funds arising from the Drug Summit were made available to a number of women-only services. One such example is Jarrah House, which operates a women and children's rehabilitation service in the South Eastern Area Health Service.

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

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

6.183 Response: The Probation and Parole Service provides a wide range of services and programs to offenders in the community to assist their adjustment to life in the community. The dedication of these officers in their supervision of well over 16,000 offenders in the community is unquestionable. The substance and delivery of these programs are under ongoing review.

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

6.193 Response: As part of the Throughcare program, the Department seeks to ensure that issues such as these are addressed in the case management process. There are a variety of pre-release programs operating throughout the correctional system which assist inmates identify those matters that need to be resolved prior to release. In addition to these programs, inmates are able to seek the help of welfare officers, or where appropriate, probation and parole officers to access relevant community services.

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

6.201 Response: Experience has shown that there is a need to focus resources on a variety of post release services which address factors directly contributing to offending behaviour. Indeed, the Committee has been told of the range of services the Department of Corrective Services fund under the Community Grants Program. In recognition of the role accessible accommodation plays in improving an inmate's chances of successful transition upon release, the Department funds a number of accommodation services (Guthrie House, Rainbow Lodge, Glebe House and the Glen). The Department is firmly committed to maintaining the Community Grants Program and is constantly reviewing its operation to ensure that an appropriate range of services are supported.

The Director-General of Community Services, the Commissioner of Corrective Services and the Director-General of Housing are meeting in the near future to discuss services to assist in the re-integration of former female prisoners into the community.

The whole-of-government Partnership Against Homelessness has previously identified that former female prisoners are at risk of becoming homeless and this group currently accesses substantial resources within DoCS' Supported Accommodation Assistance Scheme (SAAP).

The Department of Housing, through the Office of Community Housing, has already established a number of supported accommodation projects for ex-prisoners similar to those contained in this recommendation.

The Department of Women and the Department of Juvenile Justice are collaborating on a project to provide assistance to young women leaving the Juvenile Justice system to re-establish links with their family and re-integrate into the community.

6.202 Recommendation: That as part of a prisoner's case management and prerelease plan, the Minister for Corrective Services ensure that all inmates, and particularly those with children, have adequate accommodation upon their release.

6.202 Response: The Department of Housing staff currently liaise closely with correctional centres throughout New South Wales to provide advice and assistance to prisoners and assist people post-release.

Chapter 7 The Building of the new women's prison

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

7.34 Response: Evidence to date is that juveniles are being diverted at the pre trial stage through conferencing and police cautioning. This Government is currently exploring the issue of adult conferencing and other restorative justice options.

7.40 Recommendation: In order that the rehabilitation of offenders, particularly through community-based options is given a higher priority, the Minister for Corrective Services should establish a Community Corrections Division within the Department of Corrective Services. The Division should be headed by a Deputy Commissioner who is directly responsible to the Commissioner.

7.40 Response: Community based options are already coordinated by a Division - the Probation and Parole Service - headed by an Assistant Commissioner who reports directly to the Commissioner.

The skills and philosophy of the Probation and Parole Service can and should have a stronger influence on the general work of the Department of Corrective Services. Probation supervises 16,000 offenders in the community, more than double the prison population. This Government intends to continue the process of reform and encouraging good community based ideas.

7.41 Recommendation: That the Minister for Corrective Services develop appropriate responsibilities for the Community Corrections Division. Those responsibilities should include the management of offenders serving community based sentences that require supervision.

7.41 Response: The Probation and Parole Service already undertakes these functions.

7.46 Recommendation: That the Minister for Corrective Services undertake a costbenefit analysis of the proposal to build the new women's correctional facility at South Windsor and of the alternative community based measures recommended in the report. The cost-benefit analysis should be completed no later than the first sitting week in October 2000 of the NSW Parliament. Results of that analysis should be published.

7.46 Response: The reasons for building a new facility have been) stated at length and publicly.

Mulawa is overcrowded. The Committee visited Mulawa and agreed that this was the case.

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

7.47 Response: As above

7.52 Recommendation: That to ensure the proper targeting of resources at the reduction of imprisonment numbers and the utilisation of alternatives to imprisonment, the Minister for Corrective Services impose a moratorium on the total number of prison beds for women in NSW.

Any new gaol proposed and/or established shall replace existing prisoner accommodation numbers only so that the total number of women in prison does not exceed current levels.

7.52 Response: If women commit crimes, and those crimes are judged by the courts to merit a custodial sentence, then the Department of Corrective Services has no alternative but to take those women into custody. It would be arbitrary and unjust to exclude a particular sentencing option on the basis of gender alone - or indeed on any other characteristic.

The courts decide what sentence to impose on individuals based on the offence itself and the criminal history of the offender.

Bail Hostels

8.4 One of the key recommendations of the *Interim Report* is also of importance to the issues raised in Chapters Five and Seven of this current report. The Committee recommended the establishment of bail and probation hostels as a means of reducing the size of the remand population as a proportion of the total prison population. It considered, based on the available evidence, that bail hostels would provide an alternative to incarceration while providing intensive and appropriate supervision. The concept is not new. Bail and probation hostels have operated in Western Australia and in other jurisdictions under differing models and with varied results. Bail should be available to any unconvicted defendant, subject only to limitations pertaining to risk to the community, potential for interference with witnesses and an unacceptable risk of absconding. The provision of realistic alternatives for those defendants and offenders considered unsuitable for bail or probation, such as itinerant persons, defendants charged with domestic offences and socially disadvantaged persons with no permanent dwelling place, but who might otherwise be eligible is worthy of further consideration.

8.5 In its response to the recommendation the Government stated that both the Department of Corrective Services and the Bureau of Crime Statistics and Research would continue to research options such as bail hostels. However it appeared to be unenthusiastic about the concept:

...the evidence obtained to date is not encouraging...Bail hostels present the possible problem of net-widening, whereby offenders who would have ordinarily be granted bail are placed in a bail hostel with its accompanying restrictions on their liberty. Western Australia has closed their bail hostel because they found that the demand was just not there. The UK experience over the last decade has seen unprecedented increases in the prison population in spite of a network of bail hostels and intensive probation hostels.²⁶³

8.6 In response, Dr Baldry commented in evidence:

Notwithstanding the number of prisoners in the United Kingdom, the evidence which is quite recent of a Parliamentary review and of other well known observers is that bail hostels in the United Kingdom continue to keep people out of prison, as on remand. So, I think that that observation is one which is perhaps an assumption not based on information directly from the review that was held, I think, in 1999 in the United Kingdom. Regarding the Western Australian attempt

²⁶³ *Government Response*, 19 February 2001, p 6.

I think we made a comment to the Committee that our information indicated that the strictures on those who were going to be eligible for that bail hostel were so great, that it was bound to fail and that there were inappropriate criteria for who was able to get into that bail hostel.

... Perhaps a comment about the net widening. That has not stopped the department nor the Government from attempting the Drug Court, for example, which could also be criticised for possibly being a net widening approach. Nevertheless, the argument is that it is not, because the way in which it was set up was included to ensure that only those who were going to be sentenced would go into that. Now of course, that can be the same kind of criteria applied to the use of bail hostels, but those who otherwise were going to be remanded into custody would be considered for this. I do not think that it should present a problem as long as it is appropriately run.²⁶⁴

- 8.7** The Committee hopes the investigation of the bail hostel proposal is approached objectively by the Department with a view to what part it could play in overall strategies for reducing the remand population.

Disparity of Wages in Education Programs

- 8.8** Evidence that the disparity in wages between prison industry and education courses restricts the appeal of education programs in prison led the Committee in its *Interim Report* to recommend that there be a parity of wages between inmates undertaking full time work and those undertaking full time study. The Government responded that gaol operates under the same principle as in the community, where full time students do not receive the same salary as full time employees.²⁶⁵ The Committee does not accept this as an appropriate analogy, unless it implies that there is no potential benefit in education programs other than keeping prisoners occupied. A significant percentage of inmates are not functionally literate or numerate, have not completed year 10 and are long term unemployed. Inmate education programs, in particular the provision of literacy programs, vocational training and work skills have the potential to optimise rehabilitation, reduce re-offending and facilitate successful return to the community. Incentives for inmate participation in these programs should be pursued.

Australian Institute of Criminology Conference “Women in Corrections”

- 8.9** The Committee made a number of recommendations in its *Interim Report* regarding improvements to assist women prisoners upon their release. Since the *Interim Report* was tabled, there has been a national event in which issues relating to the imprisonment of women have been investigated and important issues have been highlighted. The Australian Institute of Criminology hosted a national conference, in conjunction with the Department for Correctional Services, South Australia focussing on women in prison entitled “*Women in Corrections: Staff and Clients*” between 31 October and 1 November 2000 at Adelaide, South Australia. Overseas representatives, distinguished academics, representatives of community organisations, professional practitioners in corrections from around Australia and former

²⁶⁴ Baldry *Evidence*, 12 June 2001, p 8.

²⁶⁵ *Government Response*, 19 February 2001, p 4.

women inmates addressed the conference. The overseas speakers included Nancy Stableforth, Senior Deputy Commissioner and Deputy Commissioner for Women, Correctional Service of Canada, Kim Pate, Canadian Association of Elizabeth Fry Societies, and Cecelia Lashlie and Kathleen Pivac from the Department of Corrections in New Zealand. Representatives of the NSW Department of Corrective Services also presented papers.

8.10 The conference was conducted on days when the NSW Parliament was sitting, so it was not possible for any Member of the Committee to attend. However the papers, which were presented at the Conference, have been examined and the Committee believes that it is appropriate to highlight some of the issues raised during the conference in our final Report.

Different Needs of Women Prisoners

8.11 A particularly important theme running through the conference was the need to recognise that in all areas where women come into contact with the criminal justice system:

Women have different physical, psychological, dietary, social, vocational and health needs and they should be managed accordingly. As one correspondent put it to us, it is not merely a question of women receiving equal treatment to men; in the prison system equality is everywhere conflated with uniformity; women are treated as if they were men ... "Cons in Skirts"²⁶⁶

8.12 It was stated for example that different criminogenic needs of women inmates should be recognised in the construction and delivery of programs in prisons and by probation and parole services. The criminogenic needs of female offenders were said to be:

- being responsible for children
- financial problems,
- limited job skills and opportunities,
- clinical depression,
- drug use,
- absence of stable relationships,
- antisocial peers and attitudes,
- lack of affiliation with pro-social agencies,
- educational problems, and

²⁶⁶ HM Chief Inspector of Prisons (1997) quoted in paper presented by M. Bryne and Professor Kevin Howells, "Key Issues in the Provision of Correctional Services of Women."

- personality and behavioural problems.²⁶⁷

8.13 There were a variety of suggestions as to how policies to recognise the above needs might be implemented in correctional environments.

We should also be asking whether standard offence-focussed programs, such as anger-management or substance abuse, should be presented in a different way for female offenders. There has been little discussion in the literature as to which variations in practice are required. ... Substance abuse has different antecedents and functions for women for men and that drugs and alcohol have more a “numbing” of emotion function for women. If this were true, programs for women would need to be modified to reflect this difference. ... Pre-release courses for women would need to have a clearer focus on relapse prevention and even more emphasis on developing skills for survival and independence in the community.²⁶⁸

Transition from Prison

8.14 Another presenter elaborated on the sorts of problems faced by women after they are released from prison:

Some women also felt affected by the “institution” such that resuming family responsibilities was difficult. Wilkinson (in Morris and Wilkinson, 1998) in a study of women entering and being released from prison and taking a wider perspective, found housing problems and short term unstable living arrangements a common feature of both the pre and post prison experience. Only a few women retained their accommodation, and this did occur it was through family assistance rather than agency intervention. In addition, she found that multiple debts were common, with financial circumstances described by women as “drastic” and chronic” prior to incarceration. Typical the debts included rent arrears, gas/electricity bills, higher purchase and outstanding fines. ... Many in fact have difficult lives that are made harder by this criminal justice process, frequently leaving them struggling with an increasing range of problems, whilst providing few solutions.”²⁶⁹

Need for Sentencing Data specific to Women

8.15 Others highlighted important areas where more analysis and research was required. Further research was recommended into sentencing patterns for women, the operation of bail laws, mortality rates for women post release from prison and links between traumatic life experiences and drug abuse by female offenders.

²⁶⁷ Kevin Howells, “Treatment, Management and Rehabilitation of Women in Prison: Relevance of Rehabilitation Principles.”

²⁶⁸ *Ibid.*

²⁶⁹ Judith Miller-Warke, Prisoners as Women: Questioning the Role and Place of Imprisonment.

8.16 During the inquiry the Committee visited the offices of the NSW Judicial Commission. During that visit the Committee noted that the Commission's computerised Sentencing Information System (SIS) could not display sentencing patterns for female offenders. Officers of the Commission responded that the database had been constructed to meet the needs of judicial officers and that to date they had not expressed a need to enquire as to whether sentencing pattern for females differs from males. Two presenters from the Australian Bureau of Statistics (ABS) suggested a number of reasons as to why such information would be useful:

The differing level of male and female criminality is one of the "empirical puzzles of criminology" (Weatherburn, 1993) and a variety of explanations have been put forward to account for these patterns of differential involvement. These include that women are inherently less inclined to criminal behaviour, and that women are selected diverted away from criminal sanctions, and that women are less inclined to forms and patterns of criminality that are likely to lead to imprisonment.²⁷⁰

8.17 The ABS representatives also outlined other questions that have been of interest to researchers about women who have come into contact with the criminal justice system. These include observations that recidivist rates for females are less than males, and hypothesises that women are treated differently in court. They presented various theories to explain why women may be treated differently in court, including paternalism or "chivalry" on the part of sentencers or genuine differences in the nature of female criminality. It has also been said that female criminality is more likely to be regarded as the product of a disordered mental state than that of their male counterparts, and that female defendants are more likely to be viewed as requiring treatment rather than punishment. The ABS representatives observed that:

One of the fundamental barriers to making sense of this puzzle is the lack of good quality data about the differential involvement of men and women in criminal behaviour and the various stages of the criminal process. It is still the case that courts do not collect information on the sex of defendants.²⁷¹

8.18 Mention has already been made in this report of the need to research in more detail the means by which bail is granted in NSW. This issue first came to the attention of the Committee as result of the paper presented by Ms Sue King, from the Social Policy Research Group, University of South Australia.²⁷²

Deaths of Women Post Release

8.19 Dr Susanne Davies and Sandy Cook from La Trobe University in Victoria presented a ground-breaking study of the mortality rates for women leaving prison. They reported some early findings of their research into the deaths of 93 women who had died within 18

²⁷⁰ Stuart Ross and Kay Forster, ABS, "Female Prisoners: Using Imprisonment Statistics to Understand the Place of Women in the Criminal Justice System".

²⁷¹ *Ibid.*

²⁷² Sue King, "Unsentenced Women in Custody".

months of being released from Victorian prisons. To date they had been able to examine coronial files for 62 of these women and they had noted a number of disturbing trends:

- Only 2 of the 62 women had died of natural causes.
- 45 out of the 62 women had died as a result of a drug overdose.
- Only 6 of the drug related deaths involved heroin alone, the rest were a consequence of mixed drug toxicity, most of those involving combinations of heroin and prescription drugs such as benzodiazepines.
- Of the remaining 15 women, four were killed by overt acts of violence such as murder, five died in motor vehicle accidents and six died by suicide.
- Many of the women died within a very short period after release. Of the 45 women who died of drug related causes, 6 had died within two days of release, 11 had died within their first 14 days, and 22 had died less than three months after their release.²⁷³

8.20 Evidence has been given to the Committee that similar trends are likely to have occurred in NSW, however no specific records have been kept of the deaths of inmates which occur after release from custody. Dr Matthews, from NSW Corrections Health, told the Committee:

The other health consequence of sending (intravenous drug) injectors to gaol is that you render people who use a lot of heroin relatively opiate naive. When they get out of gaol and return to injecting, they have lost their tolerance. They are often socially isolated, they go out to Cabramatta, and they “score”. They use on their own and they die. There are studies overseas from here, which suggest that very high mortality occurs after release from prison. In the Seaman study, which was done in Cambridge in England, the mortality rate for injectors released from prison was 93 per thousand in the first three months. That needs to be compared with the mortality rate of untreated heroin use of 24 to 30 thousand per year.²⁷⁴

8.21 Another paper outlined research conducted at the Metropolitan Women’s Correctional Centre in Victoria, which linked trauma and drug abuse in female offenders. They found, after detailed surveying of 70 women, that 76 per cent of them had experienced some form of abuse in childhood or adolescence. Other psychological tests were administered to the 70 women to rate the level of trauma they had experienced during their lives and to determine the level to which they had developed personal strategies for dealing with stress and trauma. The study confirmed earlier findings of high rates of trauma in the backgrounds of female prisoners, particularly childhood physical emotional and sexual abuse, poor coping strategies and significant trauma symptoms. The data suggests a possible link between these experiences and the use of drugs and medication to cope with trauma symptoms.²⁷⁵ The above research may have a particular relevance to how female

²⁷³ Cook S & Davies S, *Dying outside: women, parole and post release mortality*, 2nd Australian Conference on Parole Boards & offenders Review Boards, 8 October 1999.

²⁷⁴ Matthews *Evidence* 12 March 2001 p 37.

drug offenders might be treated and has obvious implications as to how the so called "war on drugs" may impact unfairly on a population of disadvantaged women in society.

Consideration of Conference research

- 8.22** Overall the research presented at the conference provides a great deal of useful and important data on women prisoners for those administering the NSW prison system.
-

Recommendation 28

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

Continuing Need to Reduce Growth in Imprisonment

- 8.23** The Committee notes that the Department does not appear in its response to believe that much can be done by it to reduce the growth in prison population other than pursuing its current strategies. The Committee firmly believes that policies should work toward reducing the number of offenders sentenced to imprisonment, and considers that the recommendations contained in the *Interim Report* remain pertinent to debate on this matter.

- 8.24** If evidence is needed that there are alternatives to the current situation in NSW prisons, the recent new direction adopted by the Labor Government in Western Australia is worthy of consideration. As was mentioned in Chapter Three, Western Australia has experienced major growth in prison numbers over the past decade. This has led to overcrowding, high recidivism rates and many of the other problems experienced in NSW prisons. The Committee finishes its report with this recent speech on women in prison by the West Australian Minister for Justice and Legal Affairs, because of the applicability of much of what is said to the increasing prison population in NSW:

The 212 women who are imprisoned in Western Australia today are held in conditions that seriously disadvantage them and impair their chances of successful rehabilitation back into the community. It is clear that we must do something different for women offenders in custody. Women in Western Australia are held in what are effectively small male prisons. This State does not have one purpose-built prison for female prisoners. Historically, the needs of female prisoners have been little understood throughout the world, and Western Australia has been no

²⁷⁵ Jacinta Pollard and Deli Baker, "An Analysis of Coping Resources, Trauma and Significant Life Events in a Sample of Female Prisoners."

exception. As other jurisdictions begin to recognise and understand those needs and to manage their female prisoners accordingly, this State must also take up the challenge so that it does not fail these women, their families or the wider community.

The purpose of any changes that I propose will be to reduce re-offending by women prisoners after release. This is fundamental to crime prevention and the public enjoying a safe community. How well this is achieved will depend on how well the problems are defined. Women in prison are not a representative sample of the community; there is a high level of damage and dysfunction among them. A few statistics illustrate the challenges that must be faced. More than 70 per cent of women in prison report a history of substance abuse. In June this year, 85 per cent of the women prisoners at Bandyup Women's Prison were on medication....Thirty-nine per cent of the women at Bandyup report a history of self-harm. More than 50 per cent of female prisoners attended less than three years of secondary education and more than 80 per cent were unemployed at the time they were imprisoned.

Coupled with this situation of serious disadvantage is the fact that the majority of these women are also the primary caregivers to children and dependent adults. This cycle of offending and imprisonment affects families and children and, therefore, the whole community. Active steps must be taken to break it.

The situation of indigenous women must also be kept central to any future planning and thinking. We must acknowledge the need to work with these women in ways that are appropriate to both their sex and culture.

As a result of my visit to overseas prisons, any change to the prison system here will not be slight. I want to take advantage of what I saw and learnt in Canada, Minnesota and England during August. My aim is to have a prison system that has aims and principles. The ultimate objective is to reduce the likelihood of women turning to crime on their release from prison. Importantly, I want the community to contribute to this change.

The most important point will be the establishment of a set of principles for guiding decision-making throughout the planning, construction and implementation phases of these changes, and operational issues concerning women's imprisonment. The Canadians developed a set of principles, which have guided their building program, management initiatives and program developments. Those principles refer to empowerment, meaningful and responsible choices, respect and dignity, providing a supportive environment, and shared responsibility. Western Australia must develop its own set of principles for delivering services to women.

I want to bring women in from their current isolationist position within the prison system. For a variety of reasons, women have been left out in the cold. Women are a small proportion - about eight per cent - of the total prison population. As a result, the system of imprisonment for women is bundled within a system that suits men. This will change. All aspects of women's imprisonment will be examined to determine whether it meets the needs of women prisoners.

The first purpose built prison for women in WA will be designed in the style of regional prisons for women in Canada. These prisons have a community living style of design and management approach, which is consistent with the principles

underpinning Canadian women's prisons. This contributes to a reduced likelihood of prisoners re-offending. This community living style environment requires a more domestic standard of construction and accommodation to enable the women to undertake all cooking, cleaning and laundry for themselves, rather than that required for a traditional cell block. Female prisoners should have maximum responsibility for their personal care and should contribute to decision-making, including matters concerning their sentence case plan.

Many of the overseas prisons place women in self-care units. This encourages good relationships between prisoners and between prisoners and staff. It also fosters independent living....

I will now turn to the staff-prisoner working relationship that I observed overseas. The quality of these relationships is vital to the positive environment of a prison. In Canada, the environment and positive community interaction is assisted by the lack of formality; prisoners wear their own clothes, staff do not wear uniforms and first names are used. This environment is not intimidating and is conducive to addressing the special needs of women, who very often have a history of sexual and physical abuse. The development of good relationships between staff and women prisoners was reported at every site to be the measure of good management of the women.

An important aspect of a positive prison regime is the emphasis given to work programs and study while in prison. The importance of meaningful work for prisoners in Canada and in the United States and its contribution to a reduction in re-offending cannot be overstated. Work and training are the key to the future independence of women when they leave prison. In Western Australia, more than 80 per cent of female prisoners were unemployed prior to incarceration and a high proportion of those have never worked. In addition, less than half have completed year 10 schooling. We must develop new employment programs such as those in Minnesota and Canada. Both Canada and Minnesota have created partnerships with industry. Women are trained and gain skills and qualifications. This employment provides women with skills and experience that is relevant and is likely to lead to a paid job on leaving the prison. There is an onus on the prison system to help women develop their skills and potential and to help them plan for the future, which includes education.

...

I want prisoners to be able to count their skills and qualifications, rather than the hours, days and months they are in prison. It is entirely reasonable for prisoners to either work, actively participate in prison programs, or undertake recognised and appropriate educational courses. Doing nothing is not an option. It is essential to make time spent in prison more meaningful. Going to work, successfully completing programs or passing courses of study should go towards early release from prison. I will request the Department of Justice to structure work, programs and courses of study on a similar basis to that which occurs in the community. We are all expected to perform at work - there are consequences if we do not. Prisoners who turn up for work, programs or education should be rewarded with an early release date. Those prisoners who passively resist any form of self-improvement cannot expect an early release. Self-improvement should be rewarded.

Many prisoner programs in Western Australia are designed for men and are adapted for women. In contrast, most programs in Canada are designed by women for women. The core federally sentenced women programs involve issues such as living skills, substance abuse, surviving abuse and trauma, and literacy, education and vocational training. The programs aim to increase prisoners' ability to function in the community; to improve social skills, increase employment skills and to integrate into further programs and education or training in the community. In short, they prepare prisoners for a life without crime.

As part of getting the design right, programs must be sensitive to cultural differences; they must recognise Aboriginal cultural differences. The programs offered by Okimaw Ohci, the Aboriginal women's prison in Saskatchewan, are gender specific and appropriate to the aboriginal Cree community. The range of programs includes traditional teachings, and the sacred and ceremonial activities of the Cree Nekaneeet - the local Indian nation. This short statement cannot do justice to the full importance of this facility for Aboriginal women in Canada.

The site, the design and the spiritual component of the women's programs were designed by the Cree Nekaneeet elders. The building is designed to look like an eagle from the air; there are no fences or physical boundaries, and the women are expected to manage their time according to tight schedules. As with other Canadian facilities, the women wear their own clothes, as do staff. They have also achieved an Aboriginal staffing level of 40 per cent. Although prisoners are residents, the titles of the staff relate to the community roles of mother, aunt, and older sister. The staff and community members participate in programs that are relevant to the area's culture, and to the psychological, health, educational, and training needs of the women. This is a most outstanding example of bridging the cultural divide between prisons and the Aboriginal community. It is not proposed that we copy this model, but that we learn from its innovation and inclusion of Aboriginal people. Is it successful? The recidivism rate of 12 to 15 per cent is low. In Western Australia, approximately 40 per cent of prisoners return to prison.

The main concerns of women prisoners are their children, their home life and other relatives; what is happening to their families outside prison is fundamental to their behaviour and wellbeing while in prison, and on release. In any future plans, family relationships will be supported, and babies and young children will be accommodated on the premises. Overnight visits for older children will also be arranged. To a limited extent this already occurs, but the Department of Justice will review its policies and planning to expand this practice.

The Canadian women's prison provides a family-visits home in the prison consisting of two bedrooms, a kitchen, bathroom, and a living area. It can be booked for a weekend every two months. At East Sutton Park in England, this type of family visit is part of the incentives programs. Family relationships and links to the community are visibly supported in women's institutions in both Canada and England. Both Canada and England have mother/baby policies and programs which are implemented in most women's prisons. Ongoing family relationships are an important means of ensuring a successful return to the community, and of minimising a dysfunctional family situation that may lead to a cycle of offending and imprisonment. In future, the relationships that women have outside prison will be given greater emphasis in the design of buildings, prisoner programs and the day-to-day operations of women's prisons.

The relationship that women prisoners have with their own family is a small part of the relationship between a prison and its community. The entrance to the Edmonton Institution for Women carries the statement, "Working In Partnership With The Community". The prison deliberately engages the community in the reintegration of offenders into the community. A representative of the advisory group sits in on the first interview of every new offender who comes into the prison. The presence of the Citizens advisory Group representative is to remind the offenders that, although they may have offended against the community - from day one the community is interested in their return to that community. The community wants, and expects, an environment free of crime - and the community is prepared to play its part.

The Grand Valley Institution for Women has a volunteer program, with up to 300 active volunteers in many areas of the prison. ...The program is based on the recognition that volunteers have an integral and important role to play in the activities designed to help prisoners become law-abiding citizens. Prisoners come from the community and, on release, will return to the community.

What does this all add up to? Simply this: the Canadian Government and the Canadian community have made a deliberate decision to establish and encourage the involvement of community organisations to make a contribution to prisons. Community groups have embraced the opportunity to contribute to the prison system. I believe such community involvement would be positive and beneficial in this State. However, I readily acknowledge that concerns associated with safety and security would have to be addressed. Of all the women's prisons I visited overseas, only one in England has a substantial fence. Shakopee in the USA, Okimah Ohci in Canada, and East Sutton Park in England have no fences at all.

The approach used in most of the prisons that I visited is called "dynamic security." This approach relies on the relationship between staff and residents to create the security. There is an expectation that through controlled movement, women will be at their appointed places at appointed times. There is an emphasis on staff checks and searches, and limited reliance on cameras, electronic monitoring and locking.

...

The level of substance abuse and mental ill health amongst women prisoners is higher than that amongst the male prison population and the female population in the community. It is important that we address these problems while women are in prison so that our goal of preventing re-offending can be achieved. In Western Australia, we already address substance abuse through programs for prisoners; however, I would like to see more work done along the lines of the intensive drug treatment programs at Shakopee in Minnesota, and at the Grand Valley Institute in Kitchener, Canada. The program at Shakopee is a live-in intensive therapy approach. It provides three levels of programs: hardened users; new attendees in drug therapy; and relapse prevention. The residents of the intensive treatment unit are kept separate from the rest of the population to prevent any drugs coming into the unit. I observed a professional and tightly managed program.

Grand Valley Institute has a mental health unit that also provides intensive therapy for drug abusers. The unit aims to address the psychosocial needs of women in prison; the overuse of medications; the incidence of sexual abuse; the high rate of mental health disorders amongst women in prison; and addictions.

The issues for women in Western Australian prisons are similar to those recorded for Canadian women prisoners. In Western Australia, more than 40 per cent of women in custody have a history of mental health disorders; 26 per cent are currently under psychiatric care; and 85 per cent are on medication, such as psychotropics and antidepressants. More than 70 per cent have a history of substance abuse. This profile cannot, and should not, be ignored. The goal of an intensive treatment unit for women prisoners in Western Australia would be to see women prisoners return to the community without risk of returning to crime and drugs. In general, I observed a pragmatic but positive approach to drug use relapses. The relapses were treated as part of the care plan, and resulted in punishment only when drug trafficking was involved.

Before commenting on the therapeutic community approach to managing drugs in prisons, I want to briefly summarise my observations of good practice in managing women offenders. Women's facilities should be designed around a community concept and smaller self-managed units; women should have the maximum responsibility possible for personal care and for contributing to decision making, including their sentence case management plan; prison staff need to be engaged with women offenders and support family relationships; and there should be real employment and skills development opportunities that relate to future employment potential. Consideration of the site and the design to achieve the maximum community interaction is critical; offence-related programs must be targeted specifically to women; and women's health and mental health issues must be kept at the forefront when planning facility design and service delivery.

[The Minister then discussed overseas approaches to drugs in prison and substance abuse programs]

...

It is also clear that there is no alternative but to address the conditions of women in prison differently from that which has been the traditional approach. I am convinced that many of the principles and practices adopted overseas, appropriately modified for Western Australia, will assist in improving the lot of women in prison and prepare them for release back into the community to a life without crime.²⁷⁶

- 8.25** The Committee believes the speech provides a good example of the alternative approach to an ever increasing prison population, as well as providing a survey of international best practise. The speech concerns women prisoners, but, as the Minister acknowledges, there is much that is relevant to the entire prison population. The Committee commends the innovative approach being adopted in Western Australia, and hopes that NSW will not be too far behind.

²⁷⁶ McGinty J WA PND paper No 536, Statement to Legislative Assembly 30 August 2001 pp 3492.

Appendix 1

Submissions

Submissions

No	Author
1	Confidential
2	Confidential
3	Mr Paul Kennedy
4	Confidential
5	Confidential
6	Confidential
7	Mr Terrence R Stedman
8	Mr Mark P Lyden
9	Mr Garth Nilsson
10	R Richardson
11	Mr Peter Neame
12	Confidential
13	Mr Richard Doney
14	Mrs Beatrice Ferguson
15	Mrs Ruth Tideman
16	Mr Jim Ackland
17	Mr Paul Neri (Middle Australia)
18	Confidential
19	Confidential
20	Confidential
21	Confidential
22	Revd Howard Dillon (Anglicare Diocesan Services)
23	Mrs Kerrin-Gai Hofstrand
24	Ms Gerda Foster
25	Mr Tim Anderson (Council for Civil Liberties)
26	Confidential
27	Mrs G S Nicol
28	Ms Tammy Carney (Yulawirri Nurai Indigenous Assoc. Incorp.)
29	Ms Anne Symonds
30	Mr Mark W McDougall
31	Ms Carol O'Donnell (School of Behavioural and Community Health Sciences)
32	Ms Victoria Potempa (Justice Action)
33	Ms Valerie Joy (Quaker Peace and Justice NSW)
34	Mr Ian Robert Mac Dougall (Australian Prisoners Alliance)

35	Mr Terry Leary (Windsor Gaol)
36	Mr John G Carty (Wiradjuri Aboriginal Legal Service)
37	Mr Gary Pudney (South Eastern Aboriginal Legal Service)
38	Ms Jan Barnett (Josephite Justice Network Sisters of St Joseph)
39	Confidential
40	Confidential
41	Emeritus Professor Tony Vinson (School of Social Work)
42	Confidential
43	Ms Marissa Koop
44	Ms Amanda Pagan
45	Confidential
46	Mr Ronald Bruce Humphries
47	Ms Elaine Chan
48	Mr Christopher Banks
49	Mr Ben Golder
50	Ms Cecilia Koh
51	Mr Paul Weston
52	Confidential
53	Associate Professor Susan Hayes (Department of Behavioural Sciences in Medicine, University of Sydney)
54	Mr Michael Birch
55	Ms M Eleanor Cater CSB (Conference of Leaders of Religious Institutes in NSW)
56	Ms Mindy Sotiri (CRC Justice Support Inc.)
57	Ms Anitha Pillai
58	Confidential
59	Dr Peter Grabowsky (Australian Institute of Criminology)
60	Mr Edward J Mamo ('Nguon Song' Homeless Student Accommodation)
61	Bishop Kevin Manning (Diocese of Parramatta)
62	Confidential
63	Mr Leo Keliher (Department of Corrective Services)
64	Ms Jill Mckeowen
65	Confidential
66	Ms Fiona Power (Women's & Girls' Emergency Centre Inc.)
67	Confidential
68	Confidential
69	Mr John Hennessy (NSW Teachers Federation)
70	Ms Gloria Larman (Children of Prisoners' Support Group Co-Op Limited)
71	Mr Gary Moore (Council of Social Service of New South Wales)

72	Mr J F Walker (Aboriginal Corporation for Homeless and Rehabilitation Community Services)
73	Confidential
74	Ms Margaret Allison (Legal Aid of NSW)
75	Mr Graeme Dunstan (Australian Cannabis Law Reform Movement)
76	Mr Matthew Scott Bogunovich
77	Mr Michael Strutt (Justice Action)
78	Ms Caroline Dearing (Sydney Regional Aboriginal Corporation Legal Service)
79	Professor Ian Wester & Ms Sandra Sunjic
80	Ms Amy Engman
81	Mr Col Ford
82	Ms Rhonda Stien
83	Mr Stuart Loveday
84	Mr Ray Jackson
85	Confidential
86	Mr Adrian Brannan
87	Ms Leonnie Manns (The Disability Council of NSW)
88	Mr Brian Henry Raven
89	Ms Sarah Hopkins
90	Mr John C Nicholson SC (NSW Council of Civil Liberties)
91	Ms Jill Sykes DTM (Toastmasters International)
92	Ms Lyn Bond (“Jailbreak”)
93	Mr John North (Law Society of New South Wales)
94	Mr Ivan Potas (Judicial Commission of New South Wales)
95	Ms Sally Wortley (Brain Injury Association of NSW Inc.)
96	Confidential
97	Ms Kath McFarlane (Positive Justice Centre)
98	Ms Marilyn Chilvers (NSW Bureau of Crime Statistics and Research)
99	The Hon Richard Jones MLC (Legislative Council)
100	Mr Simon French
101	Ms Catherine Clarke
102	The Hon Dr Peter Wong AM MLC (Legislative Council)
103	Confidential
104	Ms Anna-Louise Van Gelder (Conference of Leaders of Religious Institutions in NSW)
105	Confidential
106	Ms Solange Rosa (Positive Justice Centre)
107	The Hon Kep Enderby QC (Serious Offenders Review Council)

108	Confidential
109	Mr Garth Luke (Department of Juvenile Justice)
110	Confidential
111	Confidential
112	Ms Astrid Perry (NSW Migrant Resource Centre Forum)
113	Confidential
114	Mr Paul Knobel
115	Dr Eileen Baldry (The No New Women's Prison Campaign)
116	Miss Kath Reynolds
117	Ms Astrid Perry (St George Migrant Resource Centre, on behalf of NSW Migrant Resource Centre Forum)
118	Sister Pat Snudden (Sisters of St Joseph)
119	Sister Annette Cunliffe RSC (Sisters of Charity of Australia)
120	Ms Margaret Hinchey RSM (Catholics Coalition for Justice and Peace)
121	Ms Margaret O'Sullivan (St Paul of the Cross' Parish, Dulwich Hill)
122	Mr Greg Moran
123	Mr Michael Hill
124	Mr & Mrs Byrne
125	Sister Betty Moriarty (Religious of the Sacred Heart)
126	Ms Patricia Halligan (Outer Western Good Shepherd Social Justice Network)
127	Mrs Susan Dryza
128	Ms Naomi Smith
129	P O'Keeffe
130	Sister Veronica McCaffrey
131	Ms Theresa Foley
132	Ms Libby Rogerson (Diocese of Parramatta)
133	Sister Marie Gaudry RSM (Marymount Mercy Centre)
134	Ms Joan Grady
135	Ms Therese Gaudry
136	Sister E Herscovitch
137	Confidential
138	Ms Sheila Quonaey
139	Ms Carol O'Donnell
140	Confidential
141	Confidential
142	Ms Anne Webb (Guthrie House)
143	Confidential
144	Mr John Smith

145	Ms Beatrice Ferguson
146	Mr Terry Leary
147	Mr Stephen Rae
148	Mrs Lynne Watts
149	Mrs Dawn Reid
150	Confidential
151	Mr Dennis Bourke
152	Mr Geoffrey Thomas
153	Dr David Moore (Transformative Justice Australia)
154	Mr John Griffiths
155	Ms Carol O'Donnell (School of Behavioural and Community Health Sciences, Faculty of Health Sciences, University of Sydney)
156	Mr Peter Neame
157	Mr Michael Birch
158	Confidential
159	Mr Geoffrey Thomas
160	Mr David Oakley
161	Councillor Thang Ngo (Fairfield Council)
162	Mr John Murray (Positive Justice Centre)
163	Ms Claudette Palmer RSC
164	Mr Craig Baird (Prisoners' Aid Association of NSW)
165	Mr Brian Charlton (Life Engineering)
166	Mr David Oakley
167	Ms Vicki Potempa
168	Mr John H Preston
169	Confidential
170	Dr David Taylor
171	Mr and Mrs Gonzalez-Betes
172	Ms Sue Sacker (Schizophrenia Fellowship Inc.)
173	Confidential
174	Confidential
175	Mr Gary Pudney (South Eastern Aboriginal Legal Service)
176	Ms Mindy Sotiri (CRC Justice Support)
177	Mr Yvo Cleyman
178	Mr John Griffiths
179	Commissioner Des Williams (National Legal and Preventative Services, Aboriginal and Torres Strait Islander Commission)
180	Ms Julie Wellsmore (Department of Social Work, University of Newcastle)

181	Mr Michael Keating
182	Ms Margaret Archer (Erin's Place Inc)
183	The Hon Peter Breen MLC (Legislative Council)
184	Confidential
185	Confidential
186	Confidential
187	Confidential
188	Confidential
189	Confidential
190	Confidential
191	Confidential
192	Confidential
193	Mrs J Tendys (Sydney Unitarian Church)
194	Confidential
195	Ms Fiona Werle
196	Confidential
197	Confidential
198	Leilagi Poutogi, Western Samoa

Appendix 2

Witnesses & Visits

Witnesses

19 October 2000 (Parliament House, Sydney)

Mr Graham Egan

Secretary
New South Wales Parole Board

Mr Lindsay Le Compte

Inspector-General
Corrective Services

Mr Garth Luke

Social Worker

Mr Douglas Humphreys

Director
Criminal Law, Legal Aid Commission of New South Wales

Mr Craig Baird

Manager
Prisoners Aid Association of New South Wales

Mr Stuart Loveday

Executive Director
Hepatitis C Council of New South Wales

20 October 2000 (Parliament House, Sydney)

Mr John North

Solicitor
President of the Law Society of New South Wales

Ms Violet Roumeliotis

Executive Officer
CRC Justice Support

Mr Isileli Tuitavuici

Prisoner Advocate
CRC Justice Support

Mr Kenneth Buttrum

Director General
Department of Juvenile Justice

23 October 2000 (Goulburn Correctional Centre)

Witnesses No. 1 to 10

Inmates (Evidence taken in camera)
Goulburn Correctional Centre

Mr David White

Correctional Officer
Goulburn Correctional Centre

Mr Graeme Wood	Manager of Administration Goulburn Correctional Centre
Mr Peter Kay	Programs Manager Goulburn Correctional Centre
Mr Roy McNair	Senior Assistant Superintendent Goulburn Correctional Centre
Mr Warwick Jones	Acting Manager of Industries Goulburn Correctional Centre
24 October 2000 (Wagga Wagga RSL Club & Junee Correctional Centre)	
Mr John Carty	Principal Solicitor Wiradjuri Aboriginal Legal Service
Mr Hewitt Whyman	Chairman ATSIC Regional Council
Ms Daphne Sheather	Wagga Wagga Aboriginal Assistance Scheme
Mr Denis Nickle	District Manager Probation and Parole Service
Witnesses No. 5-14	Inmates Junee Correctional Centre
Ms Helen Haywood	Psychologist Care of Junee Correctional Centre
Mr Paul Willis	Case Management Co-ordinator Junee Correctional Centre
28 November 2000 (Parliament House, Sydney)	
Dr Peter Grabosky	Director of Research Australian Institute of Criminology
12 March 2001 (Parliament House, Sydney)	
Ms Marilyn Chilvers	Statistical Services Manager NSW Bureau of Crime Statistics and Research

Mr Simon Eyland	Director Research and Statistics Unit, NSW Department of Corrective Services
Ms Rhonda Booby	Director Restorative Justice Unit, Department of Corrective Services
Mr Richard Matthews	Chief Executive Officer Corrections Health
Mr Robert Ramjan	Executive Officer Schizophrenia Fellowship
Ms Leonie Manns	Chairperson Disability Council of New South Wales
Mr Kevin Byrne	Executive Officer Disability Council of New South Wales
19 March 2001	
Ms Maxine Conatry	Private citizen
Mr Hewitt Whyman	Private citizen
Mr Andrew Riley	Private citizen
Mr Edward Mamo	Private citizen
Witnesses No. 5 and 6	Private citizens (Evidence taken in camera)
12 June 2001 (Parliament House, Sydney)	
Emeritus Professor Tony Vinson	Head School of Social Work, University of NSW
Dr Eileen Baldry	Senior Lecturer School of Social Work, University of NSW
Ms Deborah Allen	Director Strategy and Policy, Department of Corrective Services

Mr Luke Grant Assistant Commissioner for Inmate Management
Department of Corrective Services

Dr Joanna Penglase Careleavers of Australia Network

Mr John Murray Positive Justice Centre

Visits

23 October 2000

Goulburn Correctional Centre

24 October 2000

Wagga Wagga RSL Club

Junee Correctional Centre

13 March 2001

Drug Court of NSW (George Street, Parramatta)

The committee received a briefing from:

- Judge Milson
- Mr Castellan, Registrar
- Dr Reid, Psychiatrist

NSW Judicial Commission (George Street, Sydney)

The committee received a briefing from:

- Mr Ernie Schmatt, Chief Executive
- Mr Ivan Potas, Director, Research and Publishing

19 March 2001

Central Local Court

The committee received a briefing from:

- Dr Jonathon Carne, Psychiatrist
- Mr Prior, Nurse
- Mr Nichols, Clerk of the Court

22 March 2001

Long Bay Correctional Complex (Malabar Road)

- Malabar Special Programs Centre

- Metropolitan Medical Transient Centre

- Long Bay Hospital

The committee received a briefing from:

- Mr John Klok, Regional Commander, Metropolitan Region
 - Dr Richard Matthews, Chief Executive Officer, Corrections Health
 - Mr Luke Grant, Assistant Commissioner for Inmate Management, Department of Corrective Services
 - Senior staff of the Malabar Special Programs Centre (MSPC) and the CUBIT program
-

Appendix 3

Minutes of the Proceedings

Meeting No 17
1.10 pm 31 August 2000
Parliament House

Members Present

Ms Burnswoods
Dr Chesterfield-Evans
Miss Gardiner
Mr Primrose
Ms Rhiannon
Mr Ryan (Chair)

Apologies

Ms Saffin

1. Correspondence

The Committee noted the following correspondence tabled by the Chair:

- Letter from Dr Susan Hayes dated 21 August 2000
- Letter from Presentation Sisters Wagga Wagga
- Letter from Violet Roumeliotis, CRC Justice Support, dated 16 August

2. Transcript of discussions with Mr Ryan and Mr Primrose

Mr Primrose tabled a transcript of discussions held with he and Mr Ryan and staff and inmates of the Metropolitan Remand and Reception Centre.

3. Reporting date

Mr Primrose moved: That the committee directs the Chair to seek from the House an extension of the date for the committee's final report to 29 June 2001—put and passed.

4. Call for further submissions

Ms Rhiannon moved: That:

- (1) contingent on the granting of an extension of the committee's final reporting date, the committee calls for further submissions, to be received by 30 November 2000.
- (2) advertisements for further submissions be placed in the Sydney Morning Herald, Daily Telegraph and The Australian newspapers—put and passed.

5. Government response

Miss Gardiner moved: That the committee directs the Chair to seek from the House a resolution requiring the Government to respond to the committee's interim report within six months of tabling.

6. Publication of submissions

Miss Gardiner moved: That the committee authorises the publication of the submissions received by 15 August 2000 except those submissions received from inmates and those requesting confidentiality.

7. Adjournment

The Committee adjourned at 1.45 pm.

Russell Keith
Clerk to the Committee

Meeting No 18
10.06 am Thursday 19 October 2000
Parliament House

Members Present

Ms Burnswoods
Mr Primrose
Ms Rhiannon
Mr Ryan (Chair)

Apologies

Dr Chesterfield-Evans
Miss Gardiner
Ms Saffin

1. Public Hearing

The committee heard evidence from the following persons:

Graham John Egan, Secretary, New South Wales Parole Board, level 15/24 Campbell Street, Sydney, affirmed and examined,
Lindsay Graham Le Compte, Inspector-General of Corrective Services, Level 19, 477 Pitt Street, Sydney, affirmed and examined.

2. Deliberation

The Committee considered the Clerk's advice regarding the complaint from Dr Hayes.

3. Public Hearing

The committee heard evidence from the following persons:

Garth James Luke, Social Worker of 2 Terania Street, The Channon, affirmed and examined,

Douglas John Humphreys, Director, Criminal Law, Legal Aid Commission of New South Wales, Level 1, 323 Castlereagh Street, Sydney, sworn examined,

Craig Lawrence Baird, Manager, Prisoners Aid Association of New South Wales, 174 Broadway, Broadway, affirmed and examined,

Stuart Kinnoch Loveday, Executive Director, Hepatitis C Council of New South Wales, P.O. Box 432, Darlinghurst, affirmed and examined.

Mr Loveday tabled "SCIPP Inquiry Evidence Notes" and "Prisons and Blood Borne Communicable Diseases: The Community View"

4. Publication of Proceedings

Ms Rhiannon moved: That the committee authorises the publication of the transcripts of today's public hearings and of papers tabled at those hearings—put and passed.

5. Adjournment

The Committee adjourned at 5.40 pm.

Russell Keith
Clerk to the Committee

Meeting No 19
10.02 am Friday 20 October 2000
Parliament House

Members Present

Ms Burnswoods
Miss Gardiner
Mr Primrose
Ms Rhiannon
Mr Ryan (Chair)

Apologies

Dr Chesterfield-Evans
Ms Saffin

1. Public Hearing

The committee heard evidence from the following persons:

John Frederick Stuart North, Solicitor, President of the Law Society of New South Wales, 170 Phillip Street Sydney, sworn and examined,

Violet Roumeliotis, Executive Officer, CRC Justice Support, 174 Broadway, Broadway, and Isileli Tuitavuici, Prisoner Advocate, CRC Justice Support, 174 Broadway, Broadway, affirmed and examined.

2. Deliberation

Mr Primrose moved and Miss Gardiner seconded: That the Committee send letters to Ms Catriona McComish and Dr Leo Keliher seeking an explanation of the circumstances of Dr Hayes complaint of 21 August 2000 in the same terms as the draft letters circulated by the Clerk of the Committee this day—put and passed.

3. Public Hearing

Kenneth John Buttrum, Director General, Department of Juvenile Justice, Roden Cutler House, 24 Campbell Street, Haymarket, sworn and examined.

Mr Buttrum tabled certain papers.

4. Publication of Proceedings

Mr Primrose moved and Ms Rhiannon seconded: That the committee authorises the publication of the transcripts of today's public hearings and of papers tabled at those hearings—put and passed.

5. Adjournment

The Committee adjourned at 3.30 pm.

Russell Keith
Clerk to the Committee

Meeting No 20
1.15 pm Monday 23 October 2000
Goulburn Correctional Centre

Members Present

Miss Gardiner
Mr Primrose
Ms Rhiannon
Mr Ryan (Chair)

Apologies

Ms Burnswoods
Dr Chesterfield-Evans
Ms Saffin

1. Public Hearing

The committee heard evidence from the following persons:

David Alan White, Correctional Officer, Goulburn Correctional Centre, Graeme John Wood, Manager Of Administration, Goulburn Correctional Centre, Peter Archie Arthur Kay, Programs Manager, Goulburn Correctional Centre, Roy Mcgregor Mcnair, Senior Assistant Superintendent, Goulburn Correctional Centre, And, Warwick Thomas Jones, Acting Manager of Industries, Goulburn Correctional Centre, sworn and examined.

Goulburn Correctional Centre staff left the room. The inmates indicated no objection to Department of Corrective Services central office staff being present.

10 inmates were examined.

As the majority of persons examined indicated that they did not want their names or evidence to be published, the Chair indicated that the Committee would probably not publish the transcript.

2. Adjournment

The Committee adjourned at 3.45 pm.

Russell Keith
Clerk to the Committee

Meeting No 21
10.00 am Tuesday 24 October 2000
Wagga Wagga RSL Club & Junee Correctional Centre

Members Present

Miss Gardiner
Mr Primrose
Ms Rhiannon
Mr Ryan (Chair)

Apologies

Ms Burnswoods
Dr Chesterfield-Evans
Ms Saffin

1. Public Hearing

Isobel Reid, Wiradjuri Elder, welcomed the Committee to Wiradjuri country.

The committee heard evidence from the following persons:

John Gerard Carty, Principal Solicitor, Wiradjuri Aboriginal Legal Service, Post Office Box 5036, Wagga Wagga, Hewitt Robert Whyman, Chairman, ATSIC Regional Council, Post Office Box 1110, Wagga Wagga, and Daphne Sheather, of the Wagga Wagga Aboriginal Assistance Scheme, Post Office Box 1007, Wagga Wagga,

Denis Nickle, District Manager, Probation and Parole Service

2. Recess

The Committee went into recess at 12.30 pm and travelled to Junee Correctional Centre. The Committee reconvened at 3.15 pm.

3. Public Hearing

Junee Correctional Centre staff left the room. The inmates indicated no objection to Department of Corrective Services central office staff being present.

The committee heard evidence from 10 inmates.

Helen Mary Haywood, Psychologist, Care of Junee Correctional Centre, Post Office Box 197, Junee, and Paul James Willis, Case Management Co-ordinator, Junee Correctional Centre, Post Office Box 197, Junee, before the Committee:

4. Publication of Proceedings

Ms Rhiannon moved: That the Committee authorises the publication of the evidence heard today, except the names and evidence of those who requested their names or evidence be kept confidential, and authorises the publication of the evidence of Corrective Services officers given at Goulburn yesterday—put and passed.

5. Adjournment

The Committee adjourned at 4.45 pm.

Russell Keith
Clerk to the Committee

Meeting No 22
6.40 pm Tuesday 28 November 2000
Parliament House

Members Present

Ms Burnswoods
Dr Chesterfield-Evans
Ms Rhiannon
Mr Ryan (Chair)

Apologies

Miss Gardiner
Mr Primrose
Ms Saffin

1. Public Hearing

Dr Peter Grabosky, Director of Research, Australian Institute of Criminology, affirmed and examined.

2. Publication of Proceedings

Dr Chesterfield Evans moved: That the Committee authorises the publication of the evidence heard today—put and passed.

3. Letter to Prof Tony Vinson

Dr Chesterfield Evans moved: That the Chair send a letter to Prof Tony Vinson in the terms of the draft circulated to the Committee regarding criticisms of his research made by the Aboriginal Justice Advisory Committee—put and passed.

4. Adjournment

The Committee adjourned at 8.15 pm.

Russell Keith
Clerk to the Committee

Meeting No 23
10.00am 12 March, 2001
Room 1108, Level 11, Parliament House, Sydney

Members Present

Ms Burnswoods
Dr Chesterfield-Evans
Miss Gardiner
Mr Primrose
Ms Rhiannon
Mr Ryan (Chair)

Apologies

Ms Janelle Saffin

1. Public Hearing

The Chair declared the meeting open.

Marilyn Chilvers, Statistical Services Manager, NSW Bureau of Crime Statistics and Research, and Simon Eyland, Director, Research and Statistics Unit, NSW Department of Corrective Services, sworn and examined.

The following documents were tendered:

Key Trends in Crime and Justice NSW 1998

Simulating the NSW Criminal Justice System: A Stock and Flow Approach

NSW Criminal Courts Statistics 1998

NSW Inmate Population

Evidence concluded and the witnesses withdrew.

Rhonda Booby, Director, Restorative Justice Unit, Department of Corrective Services, sworn and examined.

Evidence concluded and the witness withdrew.

2. Deliberation

The Committee deliberated.

Resolved, on the motion of Ms Rhiannon, that the minutes of meetings 14-22 be confirmed.

Resolved, on the motion of Miss Gardiner, that the Chair circulate correspondence received from Prof Vinson.

Resolved, on the motion of Miss Gardiner, that the following correspondence be noted:

Correspondence from Hon Lee Rhiannon MLC and Hon Dr Arthur Chesterfield-Evans MLC dated 5 March, 01

Correspondence from Hon Lee Rhiannon MLC dated 5 March, 01

Correspondence from Noha Ramadan, Justice Action, dated 26 February, 01

3. Public Hearing

The public hearing resumed.

Richard Matthews, Chief Executive Officer, Corrections Health, on former oath, examined.

Dr Matthews tendered a set of overhead slides.

Evidence concluded and the witness withdrew.

Robert George Iliahi Ramjan, Executive Officer, Schizophrenia Fellowship, affirmed and examined.

Leonie Margaret Manns, Chairperson, Disability Council of New South Wales, affirmed, and
Kevin Byrne, Executive Officer, Disability Council of New South Wales, sworn and examined.

Evidence concluded and the witness withdrew.

6. Publication of Proceedings

Resolved, on the motion of Ms Rhiannon, that in order to better inform all those who are participating in the inquiry process, the Committee make use of the powers granted under section 4 (2) of the *Parliamentary Papers (Supplementary Provisions) Act 1975* to authorise the Clerk of the Committee to publish the transcript of the public hearing held on 12 March 2001, together with the tabled documents.

Alex Shehadie
Senior Project Officer

Minutes 24
13th March, 2000
10.00am, Parramatta

Members Present

Ms Burnswoods
Dr Chesterfield-Evans
Miss Gardiner
Mr Primrose
Ms Rhiannon
Mr Ryan (Chair)

1. Visit to Drug Court of NSW, George St, Parramatta

The Committee was viewed the operation of the Drug Court and received a briefing from:

- Judge Milson,
- Mr Castellan, Registrar; and
- Dr Reid, Psychiatrist

2. Visit to NSW Judicial Commission, George St, Sydney

The Committee received a briefing on the NSW Judicial Commission and the Judicial Information Research System from:

Mr Ernie Schmatt, Chief Executive; and
Mr Ivan Potas, [Director; Research and Publishing](#)

3. Adjournment

The Committee adjourned at 5.00pm.

Alex Shehadie
Senior project Officer

Minutes 25
19th March, 2000
Jubilee Room, Level 7, Parliament House, Sydney

Members Present

Ms Burnswoods
Dr Chesterfield-Evans
Miss Gardiner
Mr Primrose
Ms Rhiannon
Mr Ryan (Chair)

1. Public Hearing

The Chair declared the meeting open.

Maxine Margaret Conatry and Hewitt John Whyman affirmed and examined, and Andrew John Riley sworn and examined.

Evidence concluded and the witnesses withdrew.

Mr Edward Mamo, sworn and examined.

Evidence concluded and the witness withdrew.

The Committee deliberated.

Resolved, on the motion of Ms Rhiannon, that the Committee receive evidence from two witnesses in camera.

Dr Susan Hayes and Mr Luke Grant sworn and examined.

Evidence concluded and the witnesses withdrew.

2. Visit to Central Local Court

The Committee visited Central Local Court and received a briefing on the Psychiatric Assessment Court Assistance Scheme from:

Dr Jonathon Carne, psychiatrist;
Mr Prior, Nurse; and
Mr Nichols, Clerk of the Court.

3. Adjournment

The Committee adjourned at 5.00pm.

David Blunt
Director

Meeting No 26
10.00am 22 March, 2001
Long Bay Correctional Complex

Members Present

Ms Burnswoods
Dr Chesterfield-Evans
Miss Gardiner
Mr Primrose
Ms Rhiannon
Mr Ryan (Chair)

Apologies

Ms Saffin

1. Visit to Long Bay Correctional Complex, Malabar Road

The Committee was briefed by Mr John Klok, Regional Commander, Metropolitan Region, on the Long Bay Complex and met with Dr Richard Matthews, Chief Executive Officer, Corrections Health, Mr Luke Grant, Assistant Commissioner for Inmate Management, Department of Corrective Services and senior staff of the Malabar Special Programs Centre (MSPC) and the CUBIT program.

The Committee met with 12 offenders from the MSPC.

The committee was then conducted on a tour of the Malabar Special Programs Centre.

The Committee met with staff and 3 inmates participating in the Violence Prevention Program. The Committee then met with staff and 6 inmates at the Metropolitan Medical Transient Centre and was conducted on a tour of the Long Bay Hospital.

Resolved on the motion of Ms Burnswoods that the documents tabled be received as submissions.

2. Adjournment

The Committee adjourned at 4.30pm.

David Blunt
Director

Meeting No 27
1.00pm Thursday 31 May, 2001
Greenway Room, Parliament House

Members Present

Ms Burnswoods
Miss Gardiner
Mr Primrose
Ms Rhiannon
Mr Ryan (Chair)

Apologies

Dr Chesterfield-Evans
Ms Saffin

1. Minutes

Resolved, on the motion of Ms Rhiannon, that the minutes of meetings 23-26 be confirmed.

2. Submissions

The Committee noted receipt of submissions 181 – 183 and 184 – 192.

Mr Primrose noted that the Chair should seek advice from the Clerk regarding appropriate action to be taken concerning allegations of illegality or corruption contained in submissions.

3. Proposed additional hearing

Resolved, on the motion of Ms Rhiannon, that a final hearing be held on 12 June, 2001.

Resolved, on the motion of Ms Rhiannon, that the Secretariat contact the following persons/organisations and invite them to give evidence at the hearing on Tuesday 12 June 2001: Department of Corrective Services; Professor Tony Vinson and Dr Eileen Baldry; and Careleavers of Australia Network and Positive Justice Centre.

4. Draft Report outline

The Chair tabled the draft report outline and requested that the Secretariat be informed of any comments.

5. Adjournment

The Committee adjourned at 1.40pm.

Susan Want
Project Officer

Meeting No 28
10.00am 12 June, 2001
Jubilee Room, Parliament House, Sydney

Members Present

Ms Burnswoods
Dr Chesterfield-Evans
Miss Gardiner
Mr Primrose
Ms Rhiannon
Mr Ryan (Chair)

Apologies

Ms Saffin

1. Public Hearing

The Chair declared the meeting open.

Emeritus Professor Tony Vinson, Head, School of Social Work University of NSW, sworn and examined.

Dr Eileen Baldry, Senior Lecturer, School of Social Work, University of NSW, affirmed and examined.

The following document was tendered: *Submission to the NSW Legislative Council's Select Committee on the Increase in Prisoner Population, June 2001*

Evidence concluded the witnesses withdrew.

Ms Deborah Allen, Director, Strategy and Policy, Department of corrective Services, affirmed and examined.

Mr Luke Grant, Assistant Commissioner for Inmate Management, Department of corrective Services, sworn and examined.

Evidence concluded, the witnesses withdrew.

Dr Joanna Penglase, Careleavers of Australia Network, affirmed and examined.

Mr John Murray, Positive Justice Centre, affirmed and examined.

The following document was tendered: *The Select Committee Inquiry into the Prison Population, Additional Submission, The Positive Justice Centre, 12 June, 2001*

Evidence concluded, the witnesses withdrew.

2. Deliberation

The Committee deliberated.

Resolved on the motion of Ms Gardiner that in order to better inform all those who are participating in the inquiry process, the Committee make use of the powers granted under section 4(2) of the *Parliamentary Papers (Supplementary Provisions) Act 1975* to authorise the Clerk of the Committee to publish the transcript of the public hearing held on 12 March 2001, together with the tabled documents.

David Blunt
Director

Meeting No 29
2pm, Wednesday 15 August, 2001
Room 1153, Parliament House, Sydney

Members Present

Dr Chesterfield-Evans
Miss Gardiner
Mr Primrose
Ms Rhiannon
Mr Ryan (Chair)

Apologies

Ms Burnswoods
Ms Saffin

1. Minutes of Meetings No 27 and No 28

Resolved on the motion of Mr Primrose that the minutes of meetings 27 and 28 be confirmed.

2. Correspondence

The Chair tabled correspondence from the Minister for Corrective Services dated 13 August, 2001 providing statistics from the Department of Corrective Service.

3. Draft Report

The Chair tabled a preliminary draft of Chapters 1-6 of the Final Report.

Discussion ensued.

Resolved on the motion of Mr Primrose that the Chair seek an extension for the tabling of the Final Report for 31 October 2001.

Susan Want
Project Officer

Meeting No 30
5.45pm, Wednesday 24 October, 2001
Room 1153, Parliament House, Sydney

Members Present

Ms Burnswoods
Dr Chesterfield-Evans
Miss Gardiner
Mr Primrose
Ms Rhiannon
Mr Ryan (Chair)

Apologies

Ms Saffin

1. Draft Report

The Chair tabled certain documents relating to the Draft Report.

Chapter 1:
Committee deliberated. Chapter 1 adopted with amendments.

Chapter 2:
Committee deliberated. Chapter 2 adopted with amendments.

Chapter 3:
Committee deliberated. Chapter 3 adopted with amendments.

Chapter 4:
Committee deliberated. Chapter 4 adopted with amendments.

Chapter 5:
Committee deliberated. Chapter 5 adopted subject to circulation of amended recommendations.

2. Next Meeting

The next meeting will be held Monday 29th October, 2001 at 10am.

3. Adjournment

Meeting closed 9pm.

Susan Want
Project Officer

Meeting No 31
10.00am, Monday 29 October, 2001
Room 1153, Parliament House, Sydney

Members Present

Ms Burnswoods
Dr Chesterfield-Evans
Mr Primrose
Ms Rhiannon
Mr Ryan (Chair)

Apologies

Miss Gardiner
Ms Saffin

1. Minutes of Meetings No 29 and No 30

Resolved on the motion of Mr Primrose that the minutes of meeting 29 be adopted.

Resolved on the motion of Ms Burnswoods that the minutes of meeting 30 be adopted as amended.

2. Draft Report

The Committee considered the remainder of the Chair's Draft Report.

Chapter 6:

Committee deliberated. Chapter 6 adopted subject to circulation of certain amendments.

Chapter 7:

Committee deliberated. Chapter 7 adopted subject to circulation of certain amendments.

Chapter 8:

Committee deliberated. Chapter 8 adopted with amendments.

3. Next Meeting – Tuesday 6th November at 10am.**4. Adjournment**

Meeting closed 1.30pm.

Susan Want
Project Officer

Meeting No 32
10.00am, Tuesday 6 November, 2001
Room 1153, Parliament House, Sydney

Members Present

Ms Burnswoods
Dr Chesterfield-Evans
Mr Primrose
Ms Rhiannon
Mr Ryan (Chair)

Apologies

Miss Gardiner
Ms Saffin

1. Minutes of Meetings No 31

Resolved on the motion of Dr Chesterfield-Evans that the minutes of meeting 31 be adopted.

2. Submission

The Chair tabled submission number 198.

Resolved on the motion of Ms Burnswoods that transcripts of evidence, submissions, tabled documents and correspondence be tabled with the report and made public, excepting:

- a) all correspondence and submissions from inmates unless authors have specifically requested that they be made public,
- b) all correspondence and submissions containing defamatory or otherwise adverse comments about individuals, and
- c) all other correspondence and submissions requesting confidentiality.

3. Draft Report

The Committee considered amendments to the Chair's Draft Report.

Amendment to Chapter 4:

Resolved on the motion of Ms Rhiannon that Recommendation 1 concerning state wards be amended by deleting the words "under the age of 25 currently".

Amendments to Chapter 5:

Proposed section on information relating to judicial decisions (5.95 – 5.98 and Recommendation 5). Debate ensued. The Committee agreed that the section be inserted.

Amendments to Chapter 6:

Proposed section on "E" Classification Prisoners (6.120 – 6.123 and Recommendation 5):

Debate ensued. Committee agreed that in paragraph 6.123 third line the words "between those prisoners" be replaced with the words "between such prisoners". The Committee agreed that the section be inserted as amended.

Amendments to Chapter 7:

The Committee agreed that the table at 7.17 include a note underneath saying that: "After 1996 virtually no fine defaulters were taken into custody, hence, the table excludes this category of offender".

Proposed section on abolishing short sentences (7.23-7.29 and Recommendation 1):

Debate ensued.

Resolved on the motion of Mr Primrose that a new recommendation be inserted that the Government initiate a pilot project which would select and divert a number of offenders who would otherwise be sentenced to imprisonment for a period of three months or less and that priority should be given to selecting women and indigenous inmates for the pilot study.

Resolved on the motion of Ms Burnswoods that the report as amended be adopted as the report of the Committee and tabled in the House subject to the circulation of the minutes and revised section of Chapter 7 relating to abolition of short sentences.

Resolved on the motion of Ms Rhiannon that the Chair move in the House that:

1. On the tabling of the report:
 - a) The Clerk of the House is to refer the report to the Leader of the Government in the House who must within 6 months of a report being tabled, report to the House what action, if any, the Government proposes to take in relation to the recommendations of the Committee.
 - b) If, at the time at which the Government seeks to report to the House, the House is not sitting, a Minister may present the response to the Clerk of the House.
2. A response presented to the Clerk is:
 - a) on presentation, and for all purposes, deemed to have been laid before the House
 - b) to be printed by authority of the Clerk
 - c) for all purposes deemed to be a document published by order or under the authority of the House, and
 - d) to be recorded in the Minutes of the Proceedings of the House
3. The President is to report to the House when any Government response has not been received within the 6 month deadline.

4. Adjournment

The Committee adjourned at 11.00am sine die.

Susan Want
Project Officer