



PARLIAMENT OF NEW SOUTH WALES

LEGISLATIVE COUNCIL

STANDING COMMITTEE ON SOCIAL ISSUES

A REPORT INTO

CHILDREN OF IMPRISONED PARENTS

CONTACT DETAILS

Members of the Standing Committee on Social Issues can be contacted through the Committee Secretariat. Written correspondence and telephone enquiries should be directed to:

The Director
Standing Committee on Social Issues
Legislative Council
Parliament House, Macquarie Street
Sydney New South Wales 2000
Australia

EMAIL: sociss@parliament.nsw.gov.au

TELEPHONE: 61-2-9230-3078

FACSIMILE: 61-2-9230-2981

July 1997

Standing Committee on Social Issues, Report No. 12

ISBN 0 7313 1084 5

TERMS OF REFERENCE

That the Standing Committee on Social Issues inquire into, and report on, the adequacy of policies and services to assist the children of imprisoned parents in New South Wales.

COMMITTEE FUNCTIONS

The functions of the Standing Committee on Social Issues are to inquire into, consider, and report to the Legislative Council on:

- any proposal, matter or thing concerned with the social development of the people in all areas of New South Wales;
- the equality of access to the services and benefits including health, education, housing and disability services provided by the Government and non-Government sector to the people in all areas of New South Wales;
- recreation, gaming, racing and sporting matters; and
- the role of Government in promotion community services and the welfare of the people in all areas of New South Wales.

Matters for inquiry may be referred to the Committee by resolution of the Legislative Council, a Minister of the Crown, or by way of relevant annual reports and petitions. The Committee has the legislative power to:

- summons witnesses;
- make visits of inspection within Australia;
- call upon the services of Government organisations and their staff, with the consent of the appropriate Minister;
- accept written submissions concerning inquiries from any person or organisation; and
- conduct hearings.

COMMITTEE MEMBERSHIP

THE HON. ANN SYMONDS, M.L.C., AUSTRALIAN LABOR PARTY

CHAIR

THE HON. DR. MARLENE GOLDSMITH, M.L.C., LIBERAL PARTY

DEPUTY CHAIRMAN

THE HON. DOROTHY ISAKSEN, M.L.C., AUSTRALIAN LABOR PARTY

THE HON. JAMES KALDIS, M.L.C., AUSTRALIAN LABOR PARTY

THE HON. ELISABETH KIRKBY, M.L.C., AUSTRALIAN DEMOCRATS

THE HON. DOUG MOPPETT, M.L.C., NATIONAL PARTY

THE HON. PETER PRIMROSE, M.L.C., AUSTRALIAN LABOR PARTY

TABLE OF CONTENTS

•	CHAIR'S FOREWORD	I
•	KEY CONCLUSIONS	III
•	EXECUTIVE SUMMARY	V
•	SUMMARY OF RECOMMENDATIONS	IX
CHAPTER ONE: INTRODUCTION		1
1.1	SCOPE OF THE INQUIRY	4
1.2	A REVIEW OF THE RESEARCH	6
1.3	POLICIES AND PRACTICES	11
1.4	THE REPORT'S STRUCTURE	14
CHAPTER TWO: OVERSEAS AND INTERSTATE MODELS		17
2.1	OVERSEAS MODELS	19
2.1.1	Sweden	19
2.1.2	Denmark	20
2.1.3	United States of America	21
2.1.4	England	22
2.2	INTERSTATE MODELS	23
2.2.1	South Australia	23
2.2.2	Queensland	24
2.2.3	Victoria	25
CHAPTER THREE:		
A PROFILE OF PRISONERS IN NEW SOUTH WALES		27
3.1	FEMALE INMATES	29
3.1.1	Types of Offences	30
	Table 1: Female Inmates - Most Serious Offence, 30 June 1996	31

3.1.2	Characteristics	32
3.1.3	Characteristics of Female Offending and Sentences	33
3.1.4	Prisoners with Children	37
3.1.5	Pregnant Inmates	40
3.2	THE FATHER'S EXPERIENCE	40
3.3	THE EXPERIENCE OF THE ABORIGINAL PARENT	41
3.4	DRUGS AND ALCOHOL	46
 CHAPTER FOUR: THE CHILD'S EXPERIENCE		51
4.1	INTRODUCTION	53
4.2	GOVERNMENT DEPARTMENTS	56
4.2.1	Department of Community Services	56
4.2.2	Department of Juvenile Justice	61
4.2.3	Department of Education	62
4.2.4	Department of Corrective Services	63
4.3	VISITS	65
4.3.1	Biometric Identification Technology for Visitors	76
4.4	TELEPHONE CONTACT	78
4.5	CONCLUSION	79
 CHAPTER FIVE: GOVERNMENT DEPARTMENTS		81
5.1	THE POLICE	83
5.2	THE COURTS	88
5.2.1	The Criminal Courts	88
5.2.2	The Family Court	93
5.3	POST-RELEASE	94
5.4	DEPARTMENT OF TRANSPORT	97
5.5	DEPARTMENT OF HOUSING	98

5.6	DEPARTMENT OF SOCIAL SECURITY	102
-----	-------------------------------------	-----

5.7	CONCLUSION	105
-----	------------------	-----

CHAPTER SIX: OPTIONS AND ALTERNATIVES 107

6.1	PRISON AS A LAST RESORT	110
-----	-------------------------------	-----

6.2	USE OF NON-CUSTODIAL SENTENCING OPTIONS	112
-----	---	-----

6.2.1	Periodic Detention	113
-------	--------------------------	-----

6.2.2	Home Detention	117
-------	----------------------	-----

6.2.3	Griffiths Bonds	119
-------	-----------------------	-----

6.2.4	Community Service Orders	120
-------	--------------------------------	-----

6.2.5	Net Widening	121
-------	--------------------	-----

6.3	MOTHERS' AND BABIES'/CHILDREN'S UNITS	122
-----	---	-----

6.4	THE NEW SOUTH WALES MOTHERS' AND CHILDREN'S PROGRAM	126
-----	---	-----

6.4.1	Fulltime Residence Program	132
-------	----------------------------------	-----

6.4.2	Occasional Residence Program	133
-------	------------------------------------	-----

6.4.3	Children of Prisoners on Remand	135
-------	---------------------------------------	-----

6.4.4	Classification	137
-------	----------------------	-----

6.4.5	Conditional Release	139
-------	---------------------------	-----

6.5	OPTIONS FOR PREGNANT PRISONERS	142
-----	--------------------------------------	-----

6.6	FATHERS	145
-----	---------------	-----

6.7	COMMUNITY CORRECTIONS DIVISION	146
-----	--------------------------------------	-----

6.8	CONCLUSION	148
-----	------------------	-----

**CHAPTER SEVEN:
CHILDREN & PARENTS IN THE JUVENILE JUSTICE SYSTEM** 151

7.1	SENTENCING A YOUNG OFFENDER: The <i>Children (Criminal Proceeding) Act, 1987</i>	153
-----	---	-----

7.2	COMMUNITY SERVICE ORDERS	154
-----	--------------------------------	-----

7.3	HOME AND PERIODIC DETENTION	154
-----	-----------------------------------	-----

7.4	THE <i>YOUNG OFFENDERS ACT</i>, 1997	157
7.5	DETENTION	158
	7.5.1 <i>The Children (Detention Centre) Act, 1987</i>	158
	7.5.2 Yasmar Juvenile Justice Centre	160
7.6	MOTHERS AND CHILDREN IN JUVENILE JUSTICE CENTRES	161
7.7	YOUNG MEN IN CUSTODY	165
7.8	TELEPHONE CONTACT AND VISITS	165
7.9	POST-RELEASE	167
7.10	JUVENILE DETAINEES WHO HAVE PARENTS IN PRISON	168
7.11	CONCLUSION	169
	 CHAPTER EIGHT: CHILDREN OF INTERNED PARENTS	 175
8.1	VISITS	175
	 CONCLUSION	 177
	 BIBLIOGRAPHY	 181
 APPENDICES:		
APPENDIX ONE:	New South Wales Correctional Centres For Male Inmates: Visiting Days and Times as at 10 March 1997	187
APPENDIX TWO:	Submissions Received	191
APPENDIX THREE:	Witnesses at Hearings	195
APPENDIX FOUR:	Committee Briefings	201
APPENDIX FIVE:	Visits of Inspection	207
APPENDIX SIX	Overseas Study Tour	213

CHAIR'S FOREWORD

Medical experiments involving human subjects have led to extraordinary advances in human health as well as appalling abuses of people's rights and dignity. The potential for abuse of subjects in medical research is heightened when an individual is unable to consent to their involvement in an experiment because their decision making ability is impaired or diminished. They may, for example, have a pre-existing disability such as dementia or brain damage, or they may be unconscious or disorientated.

Recent revelations about the testing of vaccines on orphans in Victoria between 1945 and 1970 serve to heighten public anxiety about human experimentation, particularly involving vulnerable members of society.

The Committee has been acutely aware of public concerns regarding human experimentation during its deliberations. While we acknowledge the ethical dilemmas posed by the involvement of people with decision making disabilities in clinical trials, we do not believe these dilemmas would be eliminated by proscribing such research. The treatment available through a clinical trial may be the only or most promising alternative available to an individual. In such cases, it may not be in a person's best interests to deny them this opportunity.

This Report tackles important ethical questions raised by involving people with decision making disabilities in a clinical trial, including the ethicality of administering a placebo. In doing so, it also provides an overview of Guardianship law and principles in New South Wales and the regulatory framework for the conduct of clinical trials in Australia. The recommendations aim to facilitate access to clinical trials for people who cannot consent to their own treatment, at the same time as maximising the safeguards to protect them from abuse or danger.

I am extremely grateful to my parliamentary colleagues on the Committee for their dedication to this Inquiry. Members of the community play a critical role in the inquiry process. I would therefore like to convey my thanks to the many individuals and organisations who provided written submissions or evidence to the Inquiry.

My thanks are also due to the Committee Secretariat, in particular, Jennifer Knight, Committee Director for executive support and for writing a key section of the report; Senior Project Officer, Beverly Duffy who worked within an extremely tight timeframe and coordinated the inquiry process, undertook the necessary research and wrote the four technical chapters of the Report; Heather Crichton, for undertaking the administrative elements of the Inquiry and for producing the final Report with great speed and precision; and my Research Assistant, Julie Langsworth for providing valuable editorial fine tuning. Robin Creyke from the Faculty of Law at the Australian National University wrote the second chapter in the Report on Guardianship Law in New South Wales and provided generous assistance to the Senior Project Officer during the course of the Inquiry.

I commend this report to the Government.

THE HON. ANN SYMONDS, M.L.C.

COMMITTEE CHAIR

KEY CONCLUSIONS

- A sentence of imprisonment on a primary carer of children should only be imposed when all possible alternatives have been exhausted. The courts should always seek community-based alternatives, particularly in the case of offenders who have committed non-violent offences.
- Data on the number of parents in prison and on the number of children who have parents in prison should be maintained to ensure that effective policies and strategies are developed for these children.
- Effective pre- and post-release services that have as a focus, family support and re-unification, should be properly resourced and available throughout New South Wales.

EXECUTIVE SUMMARY

On 22 August 1995 the Legislative Council's Standing Committee on Social Issues received a reference from the Minister of Corrective Services, the Hon. Bob Debus, MP, to inquire into the adequacy of policies and services to assist the children of imprisoned parents in New South Wales. This Report represents the results of that Inquiry.

During the course of the Inquiry submissions were received from 38 individuals and organisations and the Committee heard evidence from 39 witnesses. In New South Wales, site visits were undertaken to Mulawa Correctional Centre, Emu Plains Correctional Centre, Long Bay Correctional Complex and Junee Correctional Centre. The Committee also visited Parramatta Transitional Centre. On each of these visits Members spoke with staff and inmates. Further visits and meetings were held at Mt. Penang, Kariong and Yasmar Juvenile Justice Centres. The Committee also met with staff and children at the premises of the Children of Prisoners Support Group.

The Committee visited prisons in South Australia and Queensland where meetings were held with inmates, correctional and welfare staff.

In conjunction with the Inquiry into Children's Advocacy the Committee Chair and one of the Committee's Senior Project Officers undertook a study tour to England, Sweden, Denmark and the United States to examine international models relevant to children of prisoners. Briefings were held with relevant experts and site visits undertaken to prisons which contained family units.

A basic premise adopted by Committee Members throughout this Inquiry is that children should not be punished or unnecessarily disadvantaged for the wrongdoing of their parents. In reality this has been the indirect consequence of policies dealing with parents who commit criminal offences. In the past, children have been overlooked and ignored at all stages of their parent's involvement with the criminal justice and penal systems. In recent times they have been separated from their parents, often forced to move from their familiar environment, and suffer the stigma and loss associated with having a parent in gaol. Many children are put into the substitute care system, become wards of the state, and can ultimately end up homeless or involved in the juvenile justice system. Reunification with a parent who is released from gaol is often traumatic and unsuccessful.

This Report identifies that one of the main reasons why children of prisoners are such a marginalised group is that they have rarely, if ever, been considered in government policy. Despite their vulnerability there has been little examination of their needs by a range of government departments and agencies including police, courts, corrective services, juvenile justice, community services and education.

In reviewing a number of models, both within Australia and overseas, the Committee learnt that some of these jurisdictions have parent-child facilities within the prisons. Some of these facilities have been in existence for some years. Chapter Two reviews the models observed by the Committee.

Inextricably linked to the issue of the separation of a child from his or her parent due to imprisonment is an understanding of the criminal, juvenile and penal systems. This includes an analysis of who offenders generally are (both male and female) and the nature of their offences. Chapter Three profiles offenders. The discussion on female offenders, who are the predominant primary carers, includes information on types of offences, characteristics of offenders, sentencing practices. There is also a discussion on inmates with children and those who are pregnant at the time of their imprisonment. The situation of fathers and Aboriginal parents is also examined.

In Chapter Four the Committee examines the issue of a parent's imprisonment from the perspective of the child. The imprisonment of a parent can cause massive upheaval and dislocation for a child and bring him or her into contact with a number of unfamiliar government departments. The Chapter examines the roles played by the Departments of Community Services, Juvenile Justice, Education, and Corrective Services. Recommendations call for the establishment of a network of Children of Prisoners Officers throughout the state, the appointment of a Children's Officer to ensure the needs of children residing with their mothers in the Corrective Services facilities are met, a review of the visiting arrangements in all the state's correctional facilities, and the prohibition of a number of practices seen by the Committee to be traumatic for young children visiting their parents including invasive security checks, biometric identification technology and boxed visits.

Because a parent's experience with the criminal justice and correctional systems has a significant impact on the child, the Committee examines the parent's experience in Chapter Five. The section examines the role played by the police, the courts and aspects of the corrections system. The Committee proposes training for police in the use of court attendance notices and a pilot project to evaluate the effectiveness of field court notices. In the discussion on the courts in Chapter Five, the Committee reiterates its concern that imprisonment must always be used as a last resort for primary carers of children. It proposes that there be judicial training to encourage members of the judiciary and magistracy to exhaust all sentencing options before imposing a gaol sentence on a parent/carer.

The issue of post-release is examined in Chapter Five and the need for adequate post-release services is discussed. In this section issues relating to transport, housing and social security benefits are reviewed.

A range of options and alternatives are identified and examined in Chapter Six. Available non-custodial sentencing options including Periodic and Home Detention, Community Service Orders and Griffiths Bonds are reviewed and supported. The Committee does not want its support of non-custodial penalties to be regarded as an acceptance of “soft options” but rather as a practical way for parents to be held responsible for their crime while minimising the impact of imprisonment upon the child.

The Chapter also examines the concept of Mothers and Babies Units and the establishment of the New South Wales Mothers and Children’s Program. The Committee sees great potential in the provision for conditional release under Section 29(2)(c) of the NSW *Prisons Act, 1952* and forwards a number of recommendations calling for the development of appropriate guidelines, the expedition of approvals, access to social security benefits and Medicare entitlements for those released under the provision and a review of the option of extending the eligibility of application for conditional release to carer/fathers of dependent children. In addition, the Committee wishes to see a review of the feasibility of allowing fathers who are primary carers to care for their children in the established Mothers and Children’s Unit, Jacaranda Cottages, at Emu Plains Correctional Centre.

The term “imprisoned parents” was interpreted by the Committee to apply to children in juvenile detention centres who are parents as well as children in detention centres who have a parent in an adult correctional centre. Issues pertaining to these children are discussed in Chapter Seven. The Committee is concerned that issues relating to young offenders who are in custody and who are parents have been overlooked. Many of the children of these young people lose contact with them. A range of recommendations are made that deal with minimising the trauma of separation for a child and his or her parent who is in the juvenile justice system.

The plight of refugee children whose parents are interned was brought to the Committee’s attention during the course of this Inquiry. The Committee determined, on the evidence it received, that the matter should be included and examined in this Report even though the management of immigration detainees is a Commonwealth responsibility. Chapter Eight discusses the experiences of these children and current contraventions of the United Nations Convention on the Rights of the Child.

The Committee is pleased to offer this body of research and recommendations to address the need for significant changes in policies and services for children of imprisoned parents.

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1: (Chapter 1)
That the Premier direct the Office of the Status of Children and Young People to consult regularly with officers of relevant government and non-government organisations, including those recommended in this Report (see Recommendations 14 and 17) to develop policies and initiatives to meet the needs of children of imprisoned parents.

RECOMMENDATION 2: (Chapter 1)
That the Minister for Community Services establish and maintain a data system on all children whose parents are in prison and who are in the substitute care system or are wards of the state. The data system should be used to assist the Department of Community Services in formulating practical and sensitive policies for this group of children.

RECOMMENDATION 3: (Chapter 3)
That the Minister for Corrective Services collect data on the number of inmates in prison who are parents. Such data should be used to establish appropriate policies and practices that facilitate contact between these inmates and their children.

RECOMMENDATION 4: (Chapter 3)
That the Attorney General, the Minister for Corrective Services and the Minister for Juvenile Justice establish a program to ensure that all options for court diversion and non-custodial penalties are thoroughly exhausted before incarceration of Aboriginal and Torres Strait Islander offenders is considered. The Committee urges that this recommendation be treated as urgent and that particular attention be paid to primary carers of children.

RECOMMENDATION 5: (Chapter 3)
That the Attorney General ensure that repeat offenders who are Aboriginal and Torres Strait Islander are not automatically excluded from any diversionary or non-custodial sentencing option.

RECOMMENDATION 6: (Chapter 3)
That the Attorney General, Minister for Corrective Services and Minister for Juvenile Justice ensure that Aboriginal and Torres Strait Islander Offenders are eligible for diversionary and non-custodial programs close to their communities by providing funds where necessary for community service programs or for Youth Conference outcomes.

RECOMMENDATION 7: (Chapter 3)

That following the implementation of the program stated in Recommendation 4 the Attorney General monitor the outcomes to determine whether the courts are utilising diversionary and non-custodial options for Aboriginal and Torres Strait Islander people, and in particular primary carers.

RECOMMENDATION 8: (Chapter 3)

That the Minister for Community Services recruit appropriate Aboriginal foster carers to care for Aboriginal children coming from rural areas to visit their parents in custody.

RECOMMENDATION 9: (Chapter 3)

That the Minister for Health expand the availability of detoxification and treatment services throughout New South Wales to make them more accessible to drug and alcohol dependent people and to provide the courts with appropriate options.

RECOMMENDATION 10: (Chapter 3)

That the Minister for Corrective Services and the Minister for Health establish drug and alcohol detoxification and treatment facilities in all New South Wales prisons. The facilities must be adequately resourced and staffed to meet the needs of inmates and their establishment should proceed as a matter of urgency particularly in relation to Mulawa Correctional Centre.

RECOMMENDATION 11: (Chapter 3)

That the Minister for Corrective Services and the Minister for Health ensure that inmates who are released from prison have access to necessary and continuing treatment for either their drug or alcohol dependency or both (see Recommendations 36 and 37).

RECOMMENDATION 12: (Chapter 4)

That the Minister for Community Services introduce a training course to overcome negative stereotypes of parents who are prisoners for all District Officers who work with children of those parents. The proposed training program should be implemented as a matter of urgency and without delay.

RECOMMENDATION 13: (Chapter 4)

That the Minister for Community Services ensure that District Officers arrange for children in their care to make regular visits to meet their parents in prison or detention. The visit should not be arranged however, when it is judged to be contrary to the child's best interests or when the child expresses the wish to avoid such visits.

RECOMMENDATION 14: (Chapter 4)

That the Minister for Community Services establish a comprehensive network of Children of Prisoners' Officers throughout New South Wales, with at least one designated Officer in each administrative region.

RECOMMENDATION 15: (Chapter 4)

That the Minister for Community Services direct the network of Children of Prisoners Officers to have regular liaison with the Office of the Status of Children and Young People and the proposed Children's Officer in the Women's Unit of the Department of Corrective Services so that policies and procedures are constantly monitored and reviewed (see Recommendations 1 and 17).

RECOMMENDATION 16: (Chapter 4)

That the Minister for Education develop guidelines for teachers and school counsellors to assist them to recognise children whose parents are in prison and respond in an appropriate and sensitive manner.

RECOMMENDATION 17: (Chapter 4)

That the Minister for Corrective Services appoint a Children's Officer to the Women's Unit in the Department of Corrective Services to ensure that the needs of children residing with their mothers in Corrective Services facilities are being appropriately met. To facilitate this role that Officer would have regular liaison with the network of Children of Prisoners' Officers in the Department of Community Services and with the Office of the Status of Children and Young People (see Recommendations 1 and 14).

RECOMMENDATION 18: (Chapter 4)

That the Minister for Corrective Services review the visiting arrangements in all New South Wales Correctional Centres as a matter of urgency. Action should be taken to:

- standardise visiting hours;
- develop a scheme to notify families when visiting arrangements are altered;
- provide appropriate funds to assist families to visit inmates in correctional centres that are some distance away from their home;
- ensure that when school days or public holidays interfere with all-day visits, alternative arrangements are introduced; and
- provide child-friendly and appropriate visiting areas.

RECOMMENDATION 19: (Chapter 4)

That the Minister for Corrective Services institute a training program for all staff to develop positive methods of interaction with the families, particularly the children, of inmates.

RECOMMENDATION 20: (Chapter 4)

That the Minister for Corrective Services prohibit invasive security checks of children under the age of 16 years.

RECOMMENDATION 21: (Chapter 4)

That the Minister for Corrective Services ensure that children are not prevented from visiting their parent in custody because of any disciplinary action taken against the parent. In the event that drugs are brought into a prison via a child the prisoner responsible for the action is to be disciplined and the child should not be disadvantaged by a suspension of visits to a parent.

RECOMMENDATION 22: (Chapter 4)

That the Minister for Corrective Services ensure that children are at all times permitted to have contact with their parents when on visits to prisons and that the practice of 'boxed visits' be discontinued when children are involved.

RECOMMENDATION 23: (Chapter 4)

That the Minister for Corrective Services direct that the use of biometric identification technology as it applies to child visitors to prisons be terminated as a matter of urgency.

RECOMMENDATION 24: (Chapter 4)
That the Minister for Corrective Services institute regulations to ensure that uniform policies governing telephone contact are adopted across New South Wales Correctional Centres.

RECOMMENDATION 25: (Chapter 4)
That the Minister for Corrective Services increase the number of telephones in each correctional centre to maximise the opportunities for children to speak with their inmate parent.

RECOMMENDATION 26: (Chapter 4)
That the Minister for Corrective Services direct the Children's Officer (see Recommendation 17) to prepare a protocol for use throughout the prison system so that children have telephone access to their inmate parent in the event of an emergency or in a crisis. The protocol should also make provision for children to have reasonable telephone access to their parents at other times. Consideration should be given to the use of hand-held telephones for this purpose.

RECOMMENDATION 27: (Chapter 4)
That the Minister for Corrective Services increase the time limits for STD calls between inmate parents and their children to 15 minutes.

RECOMMENDATION 28: (Chapter 4)
That the Minister for Corrective Services ensure that all telephone conversations between inmates and their children take place in private.

RECOMMENDATION 29: (Chapter 5)
That the Minister for Police provide continuing instruction and training to all police officers throughout New South Wales on the use of court attendance notices, particularly in situations where the accused is a primary carer of dependent children, and the offence in question does not involve violence.

RECOMMENDATION 30: (Chapter 5)
That the Minister for Police immediately implement a pilot project throughout New South Wales to evaluate the effectiveness of field court notices particularly in relation to the benefits of dispensing with the procedures associated with the arrest of primary carers of dependent children. The pilot project should be assessed within 12 months.

RECOMMENDATION 31: (Chapter 5)

That the Minister for Police and the Minister for Community Services collaborate to ensure that a strong liaison is developed between the Police Service and the network of Children of Prisoners' Officers within the Department of Community Services so that police officers make appropriate reference to the Children of Prisoners' Officers for the benefit of children when a parent is arrested. The Minister for Community Services should ensure that access to the network of Children of Prisoners' Officers is available at all times (see Recommendation 14).

RECOMMENDATION 32: (Chapter 5)

That the Attorney General immediately introduce legislation based on s. 429A of the *Australian Capital Territory Crime Act, 1900* and in particular, incorporating subsection "m", which provides that when sentencing a person the court shall have regard to the probable effect that any sentence or order under consideration would have on any of the person's family or dependents.

RECOMMENDATION 33: (Chapter 5)

That the Attorney General ensure that prior to sentencing an offender the courts are provided with reports from the Department of Community Services on the impact of a custodial sentence of a parent on any dependent children of that parent.

RECOMMENDATION 34: (Chapter 5)

That the Attorney General develop material and implement training for members of the magistracy and judiciary to enable them to take into account the impact which a custodial sentence of an accused person may have on his or her dependent children.

RECOMMENDATION 35: (Chapter 5)

That the Minister for Corrective Services ensure that any inmate involved in a custody dispute in relation to their children has access to legal assistance, is granted leave and is provided with transport to attend any court proceedings regarding the case.

RECOMMENDATION 36: (Chapter 5)

That the Minister for Corrective Services require a post-release plan for all inmates to be developed and in particular, for inmates with children, to assist in the reintegration of the inmate into the community and the reunification with his or her family. The plan for each individual should commence when the inmate is inducted into the designated correctional facility.

RECOMMENDATION 37: (Chapter 5)

That, as soon as possible, the Minister for Corrective Services establish post-release support services for inmates released from gaol throughout New South Wales, especially services which assist family reunification.

RECOMMENDATION 38: (Chapter 5)

That the Minister for Transport ensure that adequate and accessible public transport is available to and from New South Wales Correctional Centres. Such public transport should be established to facilitate:

- visits between inmates and their children; and
- the reunification process between inmate and his/her children following release.

RECOMMENDATION 39: (Chapter 5)

That as part of a prisoner's post-release plan (see Recommendation 36) the Minister for Corrective Services ensure that all inmates, and particularly those with children, have suitable accommodation upon their release.

RECOMMENDATION 40: (Chapter 5)

That the Minister for Housing ensure that inmates who are the primary carers of children receive priority housing from the Department of Housing once they are released from prison.

RECOMMENDATION 41: (Chapter 5)

That the Minister for Housing and the Minister for Corrective Services establish a Department of Housing client service team for all prisons in New South Wales and in particular, Mulawa and Emu Plains Correctional Centres.

RECOMMENDATION 42: (Chapter 5)

That the Premier urge the Federal Minister for Social Security to ensure that clear guidelines are provided to prisoners on the social security benefits to which prisoners are entitled upon their release or when subject to community-based sanctions.

RECOMMENDATION 43: (Chapter 5)

That the Premier urge the Federal Minister for Social Security to provide all information on social security entitlements for prisoners in their own languages.

RECOMMENDATION 44: (Chapter 5)

That the Premier urge the Federal Minister for Social Security to urgently address the payment of the Sole Parents Pension to women conditionally released under s. 29(2)(c) of the NSW *Prisons Act, 1952* or sentenced to community-based orders.

RECOMMENDATION 45: (Chapter 5)

That the Premier urge the Federal Minister for Health and the Federal Minister for Social Security to allow women released from New South Wales prisons under s.29(2)(c) of the NSW *Prisons Act, 1952* or sentenced to a community-based order to obtain social security benefits and Medicare entitlements.

RECOMMENDATION 46: (Chapter 5)

That the Premier urge the Federal Minister for Social Security to liaise with the Federal Minister for Health to ensure that children of parents released under s.29(2)(c) of the NSW *Prisons Act, 1952* or other community-based sentences are entitled to Medicare.

RECOMMENDATION 47: (Chapter 6)

That the Attorney General ensure that, through judicial education, magistrates and judges always use the option of prison as a last resort when sentencing an offender who is the parent of dependent children irrespective of the existence of mothers and children's units in prison.

RECOMMENDATION 48: (Chapter 6)

That the Attorney General monitor the sentencing patterns of magistrates and judges to ensure that prison is being used only as a last resort for parents of dependent children.

RECOMMENDATION 49: (Chapter 6)

That the Attorney General develop and implement an education program for judges and magistrates to encourage the use of non-custodial sentencing options for drug and other non-violent offenders. The research to develop this program should be undertaken by the NSW Judicial Commission.

RECOMMENDATION 50: (Chapter 6)

That the Minister for Corrective Services implement the mid-week periodic detention program for women at Emu Plains Correctional Centre, currently under consideration, as a matter of urgency.

RECOMMENDATION 51: (Chapter 6)

That the Minister for Corrective Services explore the possibility of introducing child care facilities at periodic detention centres for women in order to ensure that a periodic detention sentence is realistically available to women.

RECOMMENDATION 52: (Chapter 6)

That the Minister for Corrective Services expedite current plans to expand the periodic detention program across New South Wales with a particular focus on establishing centres for female offenders.

RECOMMENDATION 53: (Chapter 6)

That the Attorney General introduce legislation to allow for the requirement of attendance at a drug and alcohol treatment centre as an alternative to imprisonment, with appropriate safeguards.

RECOMMENDATION 54: (Chapter 6)

That the Attorney General ensure that information about the Home Detention Program be included in the judicial education program proposed in Recommendation 49 .

RECOMMENDATION 55: (Chapter 6)

That the Attorney General ensure that the definition of 'residence' in the *Home Detention Act, 1996* should not be limited to a family home but includes appropriate treatment and counselling services.

RECOMMENDATION 56: (Chapter 6)

That the Attorney General introduce legislation to give a statutory base for Griffiths Bonds, an option now available under common law.

RECOMMENDATION 57: (Chapter 6)

That the Attorney General extend the application of Griffiths Bonds to include the deferral of sentences during pregnancy and further, until after breastfeeding, when admission to the Mothers' and Children's Program is not possible.

RECOMMENDATION 58: (Chapter 6)

That the Attorney General ensure that the judicial education program proposed in Recommendation 49 includes material about Griffiths Bonds.

RECOMMENDATION 59: (Chapter 6)
That the Attorney General direct the NSW Bureau of Crime Statistics and Research to collect and publish data on whether there is a discrepancy in Community Service Orders being given to men and women.

RECOMMENDATION 60: (Chapter 6)
That, subsequent to the first annual evaluation, the Minister for Corrective Services extend the Mothers' and Children's Program, including the Fulltime Residence Program and the Occasional Residence Program, to Mulawa Correctional Centre. The establishment of special facilities needed to properly accommodate children at Grafton Correctional Centre should also be expedited. Extension of the Program should not jeopardise an inmate's opportunity for conditional release under s. 29(2)(c) of the NSW *Prisons Act, 1952*.

RECOMMENDATION 61: (Chapter 6)
That the Attorney General provide a bail officer to operate within the New South Wales women's prison system to assist inmates with applications for bail. Priority should be given to those inmates who are the primary carers of children.

RECOMMENDATION 62: (Chapter 6)
That the Minister for Corrective Services allow women on remand to access the Mothers' and Children's Program.

RECOMMENDATION 63: (Chapter 6)
That the Minister for Corrective Services develop publicly available guidelines setting out the circumstances and conditions which must be satisfied for an inmate to obtain a conditional release under s.29(2)(c) of the NSW *Prisons Act, 1952*.

RECOMMENDATION 64: (Chapter 6)
That the Minister for Corrective Services make suitable arrangements to expedite approvals for section 29(2)(c) of the NSW *Prisons Act, 1952* recommendations, particularly for women in the latter stages of their pregnancy.

RECOMMENDATION 65: (Chapter 6)
That the Minister for Corrective Services ensure all pregnant women in custody receive appropriate and adequate ante-natal care and that such care be commensurate to that which a pregnant woman receives in the community.

RECOMMENDATION 66: (Chapter 6)

That the Minister for Corrective Services ensure that when a pregnant woman is escorted to an outside medical practitioner or hospital she is afforded appropriate privacy. Under no circumstances should a departmental escort be present during a woman's labour.

RECOMMENDATION 67: (Chapter 6)

That the Attorney General encourage magistrates and judges to use the option of sentencing a person who is pregnant to a term of imprisonment as a last resort and only in extreme circumstances.

RECOMMENDATION 68: (Chapter 6)

That the Minister for Corrective Services ensure that pregnant inmates serving a custodial sentence may apply for release under s.29(2)(c) of the NSW *Prisons Act, 1952* at the time of and following the birth of their child and that the appropriate post-release supports are available to those women who are successful in their application to assist them with the care of the baby (see Recommendations 36 and 37). In carrying out this recommendation the best interests of the baby must be paramount.

RECOMMENDATION 69: (Chapter 6)

That the Minister for Corrective Services ensure all pregnant inmates, whether on remand or serving a sentence, who are not released under s.29(2)(c) of the *Prisons Act, 1952* are given access to the Fulltime Residence Program. In carrying out this recommendation the best interests of the baby must be paramount.

RECOMMENDATION 70: (Chapter 6)

That the Minister for Corrective Services examine the option of allowing imprisoned fathers, as primary carers, to be detained with their children at Jacaranda Cottages on the site of Emu Plains Correctional Centre.

RECOMMENDATION 71: (Chapter 6)

That the Minister for Corrective Services examine the feasibility of amending s.29(2)(c) of the NSW *Prisons Act, 1952* to make provision for the conditional release of approved male primary carers.

RECOMMENDATION 72: (Chapter 6)

That the Minister for Corrective Services 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.

RECOMMENDATION 73: (Chapter 6)

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 and the management of inmates released under s. 29(2)(c) of the NSW *Prisons Act, 1952*.

RECOMMENDATION 74: (Chapter 6)

That the Minister for Corrective Services ensure that the Community Corrections Division is adequately resourced and sufficiently staffed to effectively manage offenders in the community effectively.

RECOMMENDATION 75: (Chapter 6)

That the Minister for Corrective Services institute a policy to maximise staff experience in the Department of Corrective Services. Custodial and community staff should be able to rotate their positions so to enhance their career options.

RECOMMENDATION 76: (Chapter 7)

That the Minister for Community Services and Juvenile Justice ensure that statistics are maintained on the number of young offenders who are parents in order that appropriate policies and programs are developed for these young people and, in particular, their children.

RECOMMENDATION 77: (Chapter 7)

That the Attorney General ensure that, through judicial education, and consistent with the provisions of the *Children (Criminal Proceedings) Act, 1987*, community-based sentencing options should always be a first response of magistrates when sentencing a young offender and that custodial sentences be used only as a last resort. This should particularly be the case for young offenders who are pregnant or the primary carers of children.

RECOMMENDATION 78: (Chapter 7)

That the Attorney General ensure, through judicial education, that children's magistrates in rural areas make every effort to find relevant solutions to issues of sentencing young offenders and particularly, those with children, so as to avoid the option of incarceration and the removal of young offenders from their communities.

RECOMMENDATION 79: (Chapter 7)

That the Minister for Juvenile Justice ensure that, when a magistrate makes an order for supervision of a community-based sentencing option, the supervision should be consistent with, and relevant to, the circumstances and needs of the young offender.

RECOMMENDATION 80: (Chapter 7)

That the Minister for Juvenile Justice ensure that young offenders with children and particularly those who are pregnant are made thoroughly aware of their opportunity to elect to have their matter determined by a Youth Conference.

RECOMMENDATION 81: (Chapter 7)

That the Attorney General amend s. 24(1A) of the *Children (Detention Centre) Act, 1987* to include an express provision that leave may be granted to pregnant young detainees to allow them to pursue an activity that is relevant to the birth and well-being of their baby.

RECOMMENDATION 82: (Chapter 7)

That the Minister for Community Services revise the classification system for juvenile detainees to reflect their needs and provide access to programs without compromising security requirements. The new classification system should ensure that young people on remand or classified persons, especially those who have children or who are pregnant, are eligible for appropriate leave.

RECOMMENDATION 83: (Chapter 7)

That the Minister for Juvenile Justice introduce the Mother-Child Residency Program at Yasmar Juvenile Justice Centre as a matter of urgency.

RECOMMENDATION 84: (Chapter 7)

That the Attorney General provide judicial education to inform magistrates and judges that the existence of the Mother-Child Residency Program should not influence them in their sentencing decisions in regard to young women with children and young pregnant women. Detention should always be a sentencing option of last resort.

RECOMMENDATION 85: (Chapter 7)

That the Minister for Community Services and Juvenile Justice ensure that, in cases where young offenders are the primary carers of children, the Department of Community Services prepare a report for the presiding magistrate about the effect that any sentence may have on the children. Such a report should be prepared in addition to any report prepared on the young offender by officers of the Department of Juvenile Justice.

RECOMMENDATION 86: (Chapter 7)

That the Minister for Juvenile Justice institute regulations to ensure that uniform policies governing telephone contact are adopted across New South Wales juvenile justice centres.

RECOMMENDATION 87: (Chapter 7)

That the Minister for Juvenile Justice increase the number of telephones in each juvenile justice centre to maximise the opportunities for children to speak with their detained parent.

RECOMMENDATION 88: (Chapter 7)

That the Minister for Juvenile Justice increase the time limits for STD calls between inmate parents and their children to 15 minutes.

RECOMMENDATION 89: (Chapter 7)

That the Minister for Juvenile Justice ensure that all telephone conversations between detainees and their children take place in private.

RECOMMENDATION 90: (Chapter 7)

That the Minister for Juvenile Justice ensure that visits by children of detainees be of unrestricted length and number, as long as sufficient notice is given, and staff are available for supervision. Visiting areas should be child-friendly and have appropriate facilities for children.

RECOMMENDATION 91: (Chapter 7)

That the Minister for Juvenile Justice expand the number of residential accommodation units for visitors and, in particular for the children of detainees, at all Juvenile Justice Centres. Such units are to be used for those visitors who are required to travel long distances to visit a detainee.

RECOMMENDATION 92: (Chapter 7)

That the Minister for Community Services and Juvenile Justice include a specialist post-release service in the Mother-Child Residency Program to provide appropriate and continuing assistance to young offenders who are parents or who are pregnant at the time of their release from a juvenile justice centre.

RECOMMENDATION 93: (Chapter 7)

That the Minister for Corrective Services ensure that adult inmates are incarcerated in facilities that are near to those where their child is detained in order to facilitate visits between them, wherever such arrangements are possible.

RECOMMENDATION 94: (Chapter 8)

That the Premier urge the Prime Minister to ensure that the educational rights and needs of children held in Westbridge Detention Centre are met through the immediate employment of a teacher.

RECOMMENDATION 95: (Chapter 8)

That the Premier urge the Prime Minister to ensure that the needs of children held in Westbridge Detention Centre to access recreational, artistic and cultural activities be met.

RECOMMENDATION 96: (Chapter 8)

That the Premier urge the Prime Minister to ensure children detained at Westbridge Detention Centre have their health needs met through ready access to a general practitioner and the provision of adequate interpreting services.

RECOMMENDATION 97: (Chapter 8)

That the Premier urge the Prime Minister to abolish the 20 minute time limit on visits by their children to Stage One detainees at Westbridge Detention Centre.

BIBLIOGRAPHY

Alder, C. (1994). "Women and the Criminal Justice System" in D. Chappell and P. Wilson (eds) *The Australian Criminal Justice System: The Mid 1990s*. Butterworths: Sydney.

Baldry, A (1996). "Convicted Women: Before and After Prison". Speech to the Public Seminar, *Woman's Imprisonment: The Politics of Difference*.

Baunach, P. (1983). "Parents in Prison: A Comparative Analysis of the Effects of Incarceration on the Families of Men and Women" in *Research in Law, Deviance and Social Control*. Vol. 5, pp 171-183.

Beckerman, A. (1991). "Women in Prison: The Conflict Between Confinement and Parental Rights" in *Social Justice Journal*, Vol.18. No.3, pp 171-183.

Benjamin, C. (1990). "Prisons, Parents and Problems" in *Keeping People Out of Prison*. Proceedings of a Conference, 27-29 March, Australian Institute of Criminology.

Brand, G. (1993). "Alternatives to Imprisonment for Female Offenders" in *Criminology Australia*. Vol. 5, No.2. pp 25-30.

Bray, R and Chan, J (1991). *Community Service Orders and Periodic Detention as Sentencing Options: A Survey of Judicial Officers in New South Wales*, Judicial Commission of New South Wales: Sydney.

Buckley, C. (1990). "Parents and their Children Behind Bars" *Legal Services Bulletin*, Vol 15, No.1 pp 13-17.

Butler, J. (1994). *Mending the Broken Bond: The Post-Release Experience of Imprisoned Mothers*. Criminology Research Council: Canberra.

Carlen, P. (1983). *Women's Imprisonment: A Study in Social Control*. Routledge and Kegan Paul: London.

Community Services Commission. (1996). *The Drift of Children in Care into the Juvenile Justice System: Turning Victims into Criminals*. Community Services Commission: Sydney.

Cunneen, C. and McDonald, D (1996). *Keeping Aboriginal and Torres Strait Islander People Out of Custody: An Evaluation of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody*. Office of Public Affairs, ATSIC: Canberra.

D' Silva, P. (1996). "Periodic Detention: For Which Type of Offender is it Suitable?" in *Judicial Officers Bulletin*, Vol.8, No.8, pp. 1-2.

Easteal, P.W. (1992a). *The Forgotten Few: Overseas-Born Women In Australian Prisons*. Australian Institute of Criminology: Canberra.

Easteal, P.W. (1992b). "Women and Crime: Imprisonment Issues" in Trend and Issues in *Criminal Justice*. Australian Institute of Criminology: Canberra.

Eyland, S. (1996). *Inside...Out: A Survey of Visitors to New South Wales Correctional Centres*. New South Wales Department of Corrective Services.

Eyland, S. (1996). *NSW Inmate Census 1996: Summary and Characteristics*. New South Wales Department of Corrective Services: Sydney.

Farrell, M. A. (1995). *A Comparative Policy Study of Incarcerated Mothers and Their Young Children in Queensland, New South Wales, Victoria and England*. Unpublished PhD. Thesis.

Figgis, H. (1996). *The Home Detention Bill 1996: Commentary and Background*. NSW Parliamentary Library Research Service: Sydney.

Gabel, S. (1995). "Behavioural Problems in the Children of Incarcerated Parents" in *Forum on Corrections Research*, Vol. 7 no. 2, pp 37-39.

Gaynor, J. (1996). *The Home Detention Program for Young Offenders: A Detention Alternative Program*. Department of Family and Community Services: Adelaide.

Guthrie House (1996). *Annual Report 1995-1996*.

Gwinn, B. (1992). "Linking Inmate Families Together" in *Federal Prisons Journal*, Vol. 3. No.1. Spring 1992, pp 37-39.

Hairston, C.F. (1989). "Men in Prison: Family Characteristics and Parenting Views" in *Journal of Offender Counselling, Services and Rehabilitation*, Vol. 14 No. 1 pp 23-30.

Hampton, B. (1993). *Prisons and Women*. New South Wales University Press: Kensington.

Hartz-Karp, J. (1983). "The Impact of Infants in Prison on Institutional Life: A Study of the Mothers/Infant Prison Programme in Western Australia" in *Australian and New Zealand Journal of Criminology*. Vol. 16, pp 172-183.

Hounslow, B., Stephenson, A., Stewart, J. and Crancher, J. (1982). *Children of Imprisoned Parents*. New South Wales Department of Youth and Community Services: Sydney.

Howard League for Penal Reform. (1979). *Women and the Penal System*. Memorandum to the Education, Arts and Home Office Sub-Committee of the House of Commons Expenditure Committee, England.

Huft, A.G., Fawkes, L.S. and Lawson, W.T. (1992). "Care of the Pregnant Offender" in *Federal Prisons Journal*, Spring, pp49-54.

Human Rights and Equal Opportunity Commission (1997). *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children From Their Families*. Australian Government Publishing Service: Canberra.

Immarigeon, R. (1994). "When Parents are Sent to Prison" in *The National Prison Project Journal*. Fall, pp. 5-16.

Johnston, J. (1989). "Women in Prison in New South Wales, Australia" in *American Jails*, Spring, pp 57-60.

Karpardis, A. and Farrington, D.P., (1981). "An Experimental Study of Sentencing by Magistrates" in *Law and Human Behaviour*, Vol. 5. Nos.2/3, pp 107-121.

Kennedy, H., Parisio, A., Tchaikovsky, C., (1990). *Women and Prison*. Channel Four Television: London.

Koban, L.A. (1983). "Parents in Prison: A Comparative Analysis of the Effects of Incarceration on the Families of Men and Women" in *Research in Law, Deviance and Social Control*, vol 5, pp 171-83.

Lanier, C. (1995). "Incarcerated Fathers: A Research Agenda" in *Forum on Corrections Research* Vol 7, No 2, pp 34-36.

Lewis, K. (1995). *Women Ex-Prisoners - Their Health, Utilisation of and Satisfaction with Health Services*. University of Sydney: Sydney.

Maher, L. (1988). "Incarcerated Mothers in New South Wales: Bleeding Inside?" in *Legal Services Bulletin*. Vol. 13, No. 3, pp 106-110.

McGowan, B.G. and Blumenthal, K.C., (1978). *Why Punish the Children?* National Council and Crime and Delinquency: Washington D.C.

Minister for Corrective Services, "Brighter Christmas for Children of Prisoners". *Media Release*, 20 December 1996.

Morris, P. (1967). "Fathers in Prison" in *British Journal of Criminology*, No. 7, pp 424-430.

Moyle, P. (1993-94). "Home Detention in North Queensland and Aboriginal Inmates: Equality or Discrimination", in *Socio-Legal Bulletin*, No. 11.

National Association for the Care and Resettlement of Offenders. (1993). *Evidence of the Links Between Homelessness and Crime and the Criminal Justice System: An Occasional Paper*. National Association for the Care and Resettlement of Offenders: London.

New South Wales Taskforce on Women in Prison (1985). *Women in Prison*. New South Wales Government Publishing Service: Sydney.

New South Wales Department of Corrective Services (1996). *Mothers and Children's Program*. New South Wales Department of Corrective Services: Sydney.

New South Wales Department of Corrective Services (1996). *Insightout*. November/December. New South Wales Department of Corrective Services: Sydney.

New South Wales Department of Corrective Services (1995). *Mothers and Children's Program Committee*. New South Wales Department of Corrective Services: Sydney.

New South Wales Department of Corrective Services (1994). *Women's Action Plan: A Three Year Strategy for Female Inmates in NSW Correctional Facilities*. NSW Department of Corrective Services: Sydney.

New South Wales Law Reform Commission. (1996). *Sentencing: Report 79*. New South Wales Law Reform Commission: Sydney.

New South Wales Ombudsman. (1997). *Mulawa Report: A Special Report to Parliament Under Section 31 of the Ombudsman Act 1997*. New South Wales Ombudsman: Sydney.

O'Connor, B. (1996). "Creating Choices - Or Just Softening the Blow". Speech to the Public Seminar, *Woman's Imprisonment: The Politics of Difference*.

Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner (1996). *Indigenous Deaths in Custody 1989 -1996*. Australian Government Publishing Service: Canberra.

Potas, I, Cumines, S, Takach, R. (1992). *A Critical Review of Periodic Detention in New South Wales*. Judicial Commission of New South Wales: Sydney.

Redfern Legal Centre (1995). *The Law Handbook*. Fifth Edition. Redfern Legal Centre Publishing: Sydney.

Refugee Council of Australia (1997). *Submission to the Joint Standing Committee on Treaties' Inquiry into the Status of the United Nations Convention on the Rights of the Child in Australia*.

Somander, L. (1994). *Women Prisoners: Research Paper No.4*, Swedish Prison and Probation Administration: Stockholm.

Standing Committee on Social Issues (1995). *A Report into Youth Violence in New South Wales*. Legislative Council, Parliament of New South Wales: Sydney.

Standing Committee on Social Issues (1992). *Juvenile Justice in New South Wales*. Legislative Council, Parliament of New South Wales: Sydney.

Standing Committee on Social Issues (1996). *Inquiry into Children's Advocacy*. Legislative Council, Parliament of New South Wales: Sydney.

South Australian Department for Correctional Services. (1995). *Briefing Document for the Standing Committee on Social Issues*. Department for Correctional Services: Adelaide.

The Swedish Institute (1994). *Correctional Care In Sweden*. The Swedish Institute: Stockholm.

Victorian Office of Corrections. (1988). *Director-General's Rules*. Office of Corrections: Melbourne.

Vinson, T. (1995). "Where to Begin Cutting the New South Wales Prison Population" in *Current Issues in Criminal Justice*. Vol.1 No. 1.

Walker, M. (1995). "Interpreting the Figures: Increases in Women's Violence or Just More Masculinist Legal Tactic" in *The Australian Feminist Law Journal* Vol.5 pp123-125.

Ward, D. and Kassebaum, G. (1965). *Women's Prisons*. Aldine: Chicago.

Wine, S. (1992). *A Motherhood Issue: The Impact of Criminal Justice System Involvement on Women and Their Children*. Corrections Branch, Ministry of the Solicitor General of Canada: Ottawa.v

CHAPTER ONE:

INTRODUCTION

CONTENTS:

1.1 SCOPE OF THE INQUIRY 4

1.2 A REVIEW OF THE RESEARCH 6

1.3 POLICIES AND PRACTICES 11

1.4 THE REPORT'S STRUCTURE 14

Children of imprisoned parents represent one of the most marginalised and forgotten groups in the community. Through no fault of their own they are suddenly, and often for extensive periods, separated from one or both parent, frequently required to move from their familiar environment and provided with little, if any, specialised or other support and counselling. Children of imprisoned parents can experience a profound sense of loss and abandonment and sometimes erroneously blame themselves for their parent's incarceration.

Separation from a parent can affect a child during infancy or adolescence. Issues of bonding and attachment can be particularly damaging for a small child when a parent is imprisoned. The incarceration of a parent can also be particularly traumatic for adolescents who are in a sensitive period of development.

In conducting this Inquiry the Committee has been mindful to examine, as far as possible, imprisonment of a parent from the perspective of the child. To this end, every attempt has been made to speak with children whose parent is in prison. The Committee notes, however, that in examining this issue, it is essential to look at the circumstances and experience of the parent while in prison. In order to understand fully how the incarceration of the parent and the whole criminal justice and penal system impacts upon the child the Committee has found it necessary to examine a number of factors. These include issues such as where an inmate is located, what the inmate's classification is, what the length of sentence is, the utilisation of sentencing alternatives, the nature of the inmate's offence, whether he or she has a drug and/or alcohol problem in prison and whether the sentence relates to some harm done to the child.

As the Committee found during the Inquiry, inextricably linked to the issue of the separation of a child from his or her parent due to imprisonment is an understanding of the criminal, juvenile and penal systems. This includes an analysis of who offenders generally are (both male and female), their offences (see Chapter 3), and how they are processed through the criminal, judicial and corrections systems (see Chapter 5 and 6). In short, why is an offender, who is a parent, in prison in the first place?

In undertaking these analyses the Committee emphasises that this Inquiry is not about the rights of prisoners. It is not about absolving prisoners who are parents of their offending conduct. Rather, the Report is about the rights of children to be spared unnecessary hardship, trauma and discrimination because of their parent's imprisonment.

Witnesses and submissions to the Committee have variously described the experiences and emotions of children of imprisoned parents as being "disastrous", "damaging", "inhumane", "traumatic" and "devastating". The Committee has been told that children whose parents are in prison are "negatively stigmatised and stereotyped", "grief stricken", "depressed", "anxious", "angry", "ashamed", "isolated", "aggressive" and experience a "lack of self-worth and self-esteem".

The Committee heard that many children manifest their feelings through physical conditions and ailments. It heard for instance of the frequency of bed-wetting, change of sleeping and eating patterns, nightmares and regressive behaviour. In one specific instance the Committee heard of a three year old boy whose mother was given a 12 month prison sentence, experiencing severe gastric complaints and refusing to eat to the point where he had to be hospitalised. The child was also diagnosed as suffering from clinical depression. All of his illnesses, both physical and mental, were attributable to the separation from his mother.

The Committee is aware that some children whose parent is in prison because of an offence perpetrated on a child may not wish to have contact with that parent either in the gaol or upon release. The Committee firmly believes that where there is any potential for a child to be harmed in any way there should be no, or strictly supervised, contact with an imprisoned parent. At all times, the best interests of the child must be paramount.

Children whose parents are imprisoned because of an act of violence against them endure a multitude of emotions, often conflicting. Undoubtedly, many abused children feel enormous relief when an offending parent is imprisoned. Many may also experience guilt and self-blame because of the parent's imprisonment. They can also simultaneously feel a sense of loss and abandonment as many merely want the violence to stop, and not lose a parent. As the report, *Children of Imprisoned Parents* noted, "children are remarkably loyal creatures" (1982:6).

However, as that Report further found

Workers in the area generally agree that only a small minority of prisoners are unequivocally unsuitable for contact with their children (Hounslow et al 1982:7) .

This finding appears to be corroborated by evidence to this Inquiry.

1.1 SCOPE OF THE INQUIRY

This Inquiry is essentially about the effect of imprisonment of a parent from the perspective of a child. The Committee has defined "child" to mean any person under 18 years of age. It has defined "parent" to include either the mother, father or legal guardian of the child. The Committee has also chosen to interpret the term "imprisonment" broadly. It has examined the effect on a child of his or her parent's incarceration in adult prisons and juvenile detention centres. Further, the term imprisonment refers to a person being "in custody". Consequently, this necessarily involves an examination of arrest and bail procedures as well as matters relating to

sentencing. Policies of and practices by police, magistrates, judges and correctional personnel, and any relevant legislation will be examined throughout this Report.

The Committee heard during the Inquiry that immigration facilities such as that at Villawood should be included in the term "imprisonment". Although these facilities fall within the Commonwealth jurisdiction the level of concern about their effect on children is such that the Committee considers it appropriate to include them in this Report.

Throughout this Inquiry the Committee has gathered information from a range of sources. Thirty eight submissions have been received and evidence has been taken from 39 witnesses. In addition, the Committee held formal briefings with 31 people in New South Wales, South Australia and Queensland. Site visits and meetings with inmates and staff have been conducted at Emu Plains Women's Correctional Centre, Mulawa Correctional Centre, Parramatta Transitional Centre, Long Bay's Reception and Industrial Prisons, the Special Purpose Centre, Junee Men's Correctional Centre, Adelaide's Women's Prison, Brisbane Women's Correctional Centre, Helana Jones Community Corrections Facility in Queensland and Sir David Longland Men's Correctional Centre in Queensland. The Committee also met with detainees and staff at Mt Penang and Kariong Juvenile Justice Centres and at Yasmar Juvenile Justice Centre. Over 60 inmates and 15 children of inmates spoke with Committee Members about their experiences.

The Committee spent some time at the premises of the Children of Prisoners Support Group at Silverwater meeting with staff and children whose parents were in gaol.

During January-February 1996, the Chair and the Senior Project Officer undertook an overseas study tour to England, Sweden, Denmark and the United States. Meetings were held with a range of people involved with both children and prisoners and included academics, correctional staff, welfare workers and members of community-based organisations. The Chair and Senior Project Officer also spoke with children of prisoners and their inmate parents. Visits to prisons in Sweden and Denmark were also undertaken.

As noted above both mothers and fathers are included in the examination of incarcerated parents. Nevertheless, as the Committee found during the Inquiry, female prisoners are overwhelmingly the primary care-givers of their children prior to incarceration. In addition, it is more likely that a female, rather than male, inmate has had sole care of her children before her custodial sentence. As Gwinn observes

The issues surrounding male inmates as parents are not unimportant, but major traumas involving bonding, parenting, and separation are much more common among incarcerated mothers (Gwinn, 1992:37).

Inevitably, most of the information received for this Inquiry has concerned children of female prisoners.

The Committee recognises the special needs of Aboriginal children of imprisoned parents. It considers that an understanding of the complex issues surrounding an Aboriginal child's separation from his or her parent can only properly be understood in the context of the breakdown of Aboriginal culture and family life since European settlement.

The Committee also acknowledges that children of non-English speaking backgrounds whose parents are in prison have particular needs, especially if the parent is in gaol in New South Wales and they have remained their country of origin. In her study, *The Forgotten Few: Overseas-Born Women In Australian Prisons* (1992), Easteal found that the most pressing problems of these women was the separation from their children. Most of the women with whom Easteal spoke had not seen their children since their arrest. Most of the children were in the care of elderly or improvised relatives.

1.2 A REVIEW OF THE RESEARCH

Very few Australian studies have been conducted regarding the position and experiences of children of imprisoned parents. Not surprisingly, this has led to a lack of formal statistical information regarding these children. In commenting on this situation the Children of Prisoners Support Group submission observes that

When examining the position of children of prisoners we are faced with a lack of statistical information. In the wealth of documentation and research on prisoners there are no official statistics specifically detailing the number of prisoners who have children, where they live or how they are cared for. In a world obsessed with statistics it is not only reasonable but necessary to ask "where are the statistics on children of prisoners?" (Submission 19).

Currently, neither the Department of Corrective Services nor the Department of Community Services gather statistics on the number of parents in prison, the number of children who have one or more parent in prison, where these children are or how they are cared for.

The lack of statistics and the paucity of specific research on children of imprisoned parents has led to a vacuum in correctional and community services policy and practice for this group. It has been stated that

Government policy has on the whole ignored them, leaving their welfare to the vagaries of their individual emotional and physical support networks. Only when these networks demonstrate themselves to be absolutely incapable does the state step in, usually with heavy boots (Hounslow et al, 1982:2).

Reasons suggested to the Committee for the lack of research and policy have included the relatively low status of prisoners, particularly female prisoners, in any policy formulation that is not security based and the fact that children too, do not figure highly in policy and research. Hounslow *et al's* report further suggests that

This dearth of information is not accidental. It is both convenient and necessary, because those who uphold the prevailing legal and penal ideology simply cannot afford to consider what happens to prisoners' kids. Any recognition of their plight strikes at the very notions of "justice", "innocence" and "guilt" upon which this ideology is founded (Hounslow et al, 1982:1).

A lack of research into the children of prisoners appears to be a world-wide phenomenon. Wine, writing on the Canadian experience, observes that

the academic arena has similarly overlooked the plight of children who are separated from their mothers due to incarceration. While studies on maternal deprivation have typically dealt with children in orphanages, those experiencing wartime separations, and more recently with children who are hospitalized for long periods of time...very little has been written on separation due to the incarceration of a parent...In addition, research in this area has, until fairly recently, concentrated primarily if not exclusively on the families of male offenders (Wine, 1992:4).

A 1982 New South Wales report, *Children of Imprisoned Parents* noted that

*Child punishment is often the other side of the coin to parental imprisonment. This is one of those shadowy corners of the criminal justice system seldom spotlighted. In our society, prisoners are marginalised; their spouses and adult friends isolated and hidden; while **their children - to all intents and purposes - are invisible** (emphasis added) (Hounslow et al, 1982:1).*

A number of studies, particularly from overseas, have examined the impact of parental incarceration from the perspective of the mother or father, including their perceptions of the effect their incarceration has had on their children. Ward and Kassebaum (1965) and Baunach (1983), for instance, have documented the difficult and traumatic adjustment of incarcerated mothers being deprived of their maternal role. In their study McGowan and Blumenthal (1978:71) found that there is "a strong likelihood that the incarceration of a mother is related to long term severance of the family unit".

The authors noted that being denied the role of mother was one of the most traumatic factors in a woman's adjustment to incarceration and that a female inmate's failure to maintain contact with her children would negatively affect her chances for rehabilitation and reunification with her family.

A Canadian study (Wine, 1992) found that a large percentage of women in the criminal justice system are young, poor, undereducated, single, sole-support mothers who are far more likely to be the primary caregivers of children than are their male counterparts. The study noted that

while incarcerated fathers generally rely on their wives/partners to care for the children and to maintain the family unit during their absence...incarcerated mothers, as the primary and most often sole providers for their children, are forced to search for alternate caregivers to look after their children during their period of separation (Wine, 1992:5).

There is now a body of literature that has examined the experiences of women offenders and prisoners. Much of that research has demonstrated that female offenders and prisoners are commonly addicted to drugs and or alcohol, have experienced physical and/or sexual abuse as children and suffered domestic violence as adults.

Some studies, again primarily from overseas, have examined the experiences of the incarcerated father (Lanier, 1991 and 1995; Hairston, 1989; Morris, 1967). Lanier (1995) observes that many incarcerated fathers are concerned about maintaining their legal parenting rights while incarcerated. He argues that

however, these fathers must confront two basic problems: finding competent legal representation and the perception that contact with an incarcerated parent is not in the child's best interest (Lanier, 1995:4).

Lanier also argues that

some incarcerated fathers are concerned about being forgotten by their children, or about being replaced by another person (such as a stepfather). Some worry that their children will stop coming to see them and will be alienated from them by the time they are released, while others fear that their children will think that their father abandoned them and worry about losing their children's respect. As fathers near release, some worry about re-entering a home where their children and parental partner are fully independent and accustomed to living without them. Others are concerned about losing their relationship with their parental partner and, as a result, becoming isolated from their children (Lanier, 1995:6).

Koban's 1983 American study is a comparative analysis of the effects of incarceration on the families of men and women. She concluded that women and women's families experience greater disruption from their incarceration than male prisoners and families. Further, she argued that the cost of incarceration to a female inmate's family and to society is greater than is the incarceration of a male. In reaching this conclusion Koban, whose sample study included male and female inmates in Kentucky, made a number of observations. These included:

- *because there are fewer female than male institutions (as is the case in NSW), when a woman is committed, she is likely to be sent much farther from her community than her male counterpart;*
- *a far greater number of female inmates lived with their children prior to arrest and incarceration than did male inmates;*
- *the majority of male prisoners reported that their children had lived with their mothers prior to the resident's sentencing;*
- *the men's children were more likely to be with the child's mother, whereas women were more likely to resort to placements in and beyond the extended family, with roughly a third of children going to the father, a third to a grandparent and a third to friends, relatives or foster placements;*
- *61% of the men's children remained with their mother within an environment basically unaffected by incarceration, whereas 26% of the women's children had the chance to remain in a stable household with a continuous, primary caretaker;*
- *the most relevant factors in predicting whether a resident planned to reunite with his or her children were the sex of the resident (more men were likely not to reunite or to reunite after a longer time); whether the resident was employed at the time of arrest; the length of time the resident had been incarcerated; the frequency of visits; and the number of children (the fewer the children, the more likely the family is to reunite);*
- *the most significant individual factor determining reuniting was the preimprisonment placement of the child. The parent that lived with his/her child prior to incarceration was more likely to reunite with the child. There was a slight probability that single women were more likely to reunite with their children than either married women or men (Koban:1983).*

The effect of incarceration on the children of prisoners **from the perspective of the child** has not figured frequently or prominently in research and literature. However the 1982 Report, *Children of Imprisoned Parents*, represents one of the few comprehensive studies to be done on this group in New South Wales and indeed, Australia.

That Report paints a grim picture of the experiences of children whose parent is in custody. Regrettably, many of the findings of that study are still pertinent today. This Report will refer to that study throughout its chapters.

Those few studies that have examined the effect of a parent's incarceration on a child, have documented a plethora of potential and actual problems for the child. Most refer to the terrible trauma and grief experienced by the child and the confusion and fear which can occur from arrest to release.

An American study, *Behavioural Problems in the Children of Incarcerated Parents*, observed the following

Several researchers suggest that children (of imprisoned parents) may experience a wide variety of problems due to separation from the parent, the stigma associated with incarceration and the deception that tends to occur as to their parent's whereabouts and circumstances. It has been further argued that antisocial behaviour in boys may follow directly from paternal incarceration.

Immarigeon observes that "the more women are incarcerated, the more their children are victimized" (Immarigeon, 1994:1).

Transcripts of interviews of children of prisoners from New York City, collated by Immarigeon, reveal considerable insight into the emotions and experiences of these children. Some of their comments include:

- *It's horrible*
- *It's depressing*
- *I can't see my mom every day*
- *No matter how hard I try, I still feel guilty about this myself*
- *I lost a good role model*
- *I was an A student, then my grades ran down and I stopped going to school. Not one teacher asked me why or sought to take an interest in me (Immarigeon, 1994:1).*

1.3 POLICIES AND PRACTICES

In June 1994, the Department of Corrective Services released the Women's Action Plan which made a number of recommendations in relation to inmate mothers and their children. These included:

- the Department adopt the principle that facilities and programs be provided in correctional centres to cater for selected inmate mothers who wish to live with and care for their pre-school age children;
- that component of the 1993-2003 Ten Year Capital Works Plan relating to facilities for women, take into account the need for mothers' and children's accommodation in a range of facilities; and
- a small working group be established to develop the implementation policy of a mothers and children program. This program would be coordinated by the Director, Women's Services (Department of Corrective Services, 1994).

Based on the recommendations of the Women's Action Plan, the Minister for Corrective Services opened the Mothers and Children Unit, Jacaranda Cottages at Emu Plains Correctional Centre in December 1996. This is the first such facility in New South Wales since the closure of the Mothers and Children's Unit at Mulawa in 1981. Currently, female inmates may be eligible to have their children with them at Jacaranda Cottages or at the Parramatta Transitional Centre. Moreover, women may be released to Guthrie House, a half-way house, under s.29(2)(c) of the *Prisons Act, 1952* and have their children with them. Issues surrounding release under s.29(2)(c) are discussed further in Chapter Six.

A number of community-based agencies assist families and children whose parent is in prison. The Children of Prisoners Support Group, Justice Action and CRC Justice Support provide a range of services for children of prisoners, including transport to and from prisons, arranging special visiting days, assisting in family reunification following a parent's release and acting as advocates for the children. The Committee received a number of submissions commending the valuable work done by these organisations.

The traditional failure to include children of prisoners in any form of formal policy-making has meant that the circumstances of these children, both physical and emotional, have been an afterthought once a parent, including a sole and primary carer, is imprisoned.

In many instances this has had disastrous consequences, especially in the case where the parent has not been prepared for the prospect of imprisonment. The Committee heard evidence, for example, of a solicitor who was literally left holding the baby at court when her client, the baby's mother, was given an unexpected custodial sentence.

Evidence has also been presented of a woman, who went into court to settle some fine-related matters, but instead was imprisoned - her children were left in the car in the car park. Department of Community Services District Officer Tamena Monely told the Committee in evidence that

We have been contacted at 4.30 or 5 o'clock, or whatever time and told, "we have these kids, you will need to take them because mum is going to gaol now"... We have had to physically remove the children out of court because we have had to put them into care (Monely evidence, 19 December 1996).

In many instances, a child whose parent is imprisoned is cared for by that parent who is not incarcerated. In fact, the children of most of the fathers in prison remain with the mother, usually the father's partner, when he is incarcerated. This arrangement is often the least disruptive to the child. In other instances a relative such as a grandparent becomes the carer of a child, where the primary carer is incarcerated.

Other relatives or friends of the parent may care for the child which can sometimes be an inappropriate and, in the case of a non-relative, even illegal arrangement for a number of reasons. Often the de facto carer is dealing with a child who may be profoundly depressed, traumatised and anxious because of his or her parent's imprisonment and who may not have any specialised assistance. This situation, together with the potential for resentment and stress at having an extra person in the house, may lead to an unsatisfactory arrangement for the child.

The Committee also understands that under s.42 of the *Children (Care and Protection) Act, 1987*, it is illegal for any child under 16 years of age to be placed in non-relative care for more than 28 days. A child can only be placed with a non-relative carer for up to 28 days in any 12 month period. At the expiration of that period the carer must apply to the Department of Community Services for approval to continue caring for the child(ren).

Where there is no suitable placement for a child the Department of Community Services takes responsibility for finding substitute care for the child. In many instances children are placed with foster carers and may or may not be made wards of the state. When a child is made a ward the biological parent loses all rights and responsibilities in relation to that child.

No automatic data are recorded or available in any standardised way in relation to the number of children who are wards of the state because their parent(s) is in prison. Upon request by the Committee the Department of Community Service advised Members that, as at 19 December 1996, 106 children of prisoners were wards of the state as a direct result of their parents' imprisonment (Shanley evidence, 19 December 1996).

The Department of Community Services is obliged to ensure that a child in its care visits his or her parent in prison four times per year (Shanley evidence, 19 December 1996). The Committee heard, however, that there are some District Officers who themselves consider that the parent, because he or she is in gaol (for whatever offence) should not be entitled to see the child.

Evidence before the Committee revealed that children of imprisoned parents whose living arrangements do not work out often end up on the streets and homeless. Many of them engage in offending behaviour. In one specific case detailed to the Committee, a 12 year old boy whose mother was imprisoned went to stay with relatives who four weeks after her imprisonment went to New Zealand leaving the boy with their 16 year old daughter. He then moved onto the streets to live. His mother described his situation to the Committee in the following terms:

My son changed from a 12 year old little boy who loved fishing, surfing and watching movies on a Friday night to a complete street boy who managed to look after himself on the streets. His personality has completely changed. He may be 14 now but he has changed from an innocent little boy to a 20 year old minded criminal ... His personality has changed from a soft-natured, good-natured little boy to a child that just continually breaks the law (P evidence, 19 December 1996).

The 1982 Report *Children of Imprisoned Parents* recognised the traumatic impact of imprisonment of a parent on a child. Nevertheless, some of that impact, the Report reasoned, is avoidable:

*Children almost invariably suffer, though to greater and lesser degrees, when their parents are imprisoned. Some of the problems they face are inevitable by-products of the simple fact of parental removal. Many, however, are **not** inevitable. They are caused by structural inadequacies in the prison, legal and welfare systems - inadequacies which could be rectified by changes in public policy, if only the will to do so existed (Emphasis theirs) (Hounslow et al, 1982:1).*

The Committee considers that the needs of children of prisoners, like other marginalised children, should be a priority of government. This is essential from a humanitarian perspective. It is also essential from a preventative perspective - that is, as a means of developing policies to prevent involvement in the substitute care system, offending behaviour, drug and alcohol abuse, homelessness and failure to achieve at school. The Committee therefore recommends that issues affecting children of prisoners should be a priority of the newly created Office of the Status of Children and Young People within the Cabinet Office. That Office should liaise regularly with non-government organisations such as the Children of Prisoners Support Group as well as relevant departmental staff, including those recommended in this report (see

Recommendations 14 and 17) to ensure that the needs of children of imprisoned parents are being met.

The Committee also considers that a data system should be maintained on children whose parents are in prison and who are wards of the state or in the substitute care system. Information available on the data system should include the numbers of children whose parents are in prison, their age, their location and their status (i.e. wardship). The data system should be used to assist the Department of Community Services in formulating practical and sensitive policies for this group of children.

RECOMMENDATION 1:

That the Premier direct the Office of the Status of Children and Young People to consult regularly with officers of relevant government and non-government organisations, including those recommended in this Report (see Recommendations 14 and 17), to develop policies and initiatives to meet the needs of children of imprisoned parents.

RECOMMENDATION 2:

That the Minister for Community Services establish and maintain a data system on all children whose parents are in prison and who are in the substitute care system or are wards of the state. The data system should be used to assist the Department of Community Services in formulating practical and sensitive policies for this group of children.

1.4 THE REPORT'S STRUCTURE

Committee Members had the opportunity to examine, first hand, a number of models both interstate and overseas. These models are reviewed in Chapter Two.

In Chapter Three a profile of prisoners is examined. Given that the bulk of testimony received by the Committee has concerned mothers and their children, the Chapter primarily focuses on the experience of the mother, although the discussion does incorporate the experiences of fathers and the Aboriginal parent.

Chapter Four looks at the issue of a parent's imprisonment from the perspective of the child, including a brief overview of the effect of imprisonment of a parent on a child. The Chapter looks at a number of government departments and the services they can offer the child when the parent is in custody.

In Chapter Five the Report examines the role played by such government agencies departments as the police, the courts, corrective services, housing and social security. The Chapter explores how their policies and practices relating to accused persons and prisoners impact upon a child.

A range of options available to the children of imprisoned parents are identified and discussed in Chapter Six. The discussion identifies a range of non-custodial sentencing options as well as the Mothers' and Children's Program. The pros and cons of such units are also examined.

Chapter Seven examines the experiences of children in juvenile detention centres who are parents and children in detention centres who have a parent in an adult correctional centre.

In Chapter Eight the experiences of children of detained immigrants interned at the Westbridge Detention Centre, Villawood are examined. While the Committee is fully aware that responsibility for these parents and children is a Federal matter, Members were concerned with evidence presented to them during the course of the Inquiry.

CHAPTER TWO:

OVERSEAS AND INTERSTATE MODELS

CONTENTS:

2.1	OVERSEAS MODELS	19
2.1.1	Sweden	19
2.1.2	Denmark	20
2.1.3	United States of America	21
2.1.4	England	22
2.2	INTERSTATE MODELS	23
2.2.1	South Australia	23
2.2.2	Queensland	24
2.2.3	Victoria	25

A number of jurisdictions, both within Australia and abroad, have specific models to deal with the children of imprisoned parents. Some of these jurisdictions have parent-child facilities within the prisons which have been in existence for some years. The following discussion will examine some of the programs in a number of jurisdictions.

2.1 OVERSEAS MODELS

In January 1996, the Chair of the Committee and a Senior Project Officer visited a number of overseas jurisdictions, primarily for the Inquiry into Children's Advocacy, but also in relation to this Inquiry. The following discussion is a review of the models observed at that time.

2.1.1 SWEDEN

There are thirty "detention centres" in Sweden with a total capacity of about 1,700 detainees. There are also 58 local correctional institutions which hold between 20-50 inmates each. Such institutions may be closed or open, i.e high security or low-security. Local institutions are intended for those sentenced to imprisonment for a maximum of one year or to imprisonment followed by supervision on conditional release. Inmates serving sentences greater than one year, may also be transferred from a national to a local institution, generally toward the end of their confinement, to prepare as far as possible for release. Sweden has 18 national correctional institutions with a total capacity of about 1,900 inmates. Most of these facilities are closed. They are primarily used for people sentenced for more than one year of imprisonment (The Swedish Institute, 1994).

Women make up a very small proportion of the Swedish prison population. Nevertheless, their percentage has increased from 1.5% in 1970 to nearly 5% during the 1990s (Somander, 1994:6).

The following statistics relate to the date 6 February, 1992.

Property and drug offences are the most frequent kinds of offences for which women in Sweden are detained (32% and 31% respectively). Approximately 13% are detained for offences against the person and of this group one-third were convicted of murder, attempted murder or manslaughter. A further 13% were convicted of road traffic offences. Approximately one-third were serving sentences of over two years whilst 40% were serving sentences of six months or less (Somander, 1994:9).

Approximately 43% of female inmates had children of less than 18 years at the time of their incarceration, 40% had children who were under seven years of age, 38% had children who were more than seven but less than 15 years old while seven women's children were aged 15-18 years (Somander, 1994:15). Three women were pregnant.

Sweden has had a policy of allowing children in prison with the mothers for many years. Babies are entitled to remain in the prison with their mother for up to one year. This follows the trend of the average length of a woman's sentence being up to one year. Special facilities exist for mothers and their babies. Eligibility to have a child in prison is determined by the Department of Social Welfare and is based on the best interests of the child.

Older children are able to stay overnight with their inmate mother on weekends. Although they stay in their cells with mother the doors are unlocked. There is no upper age limit for children to stay on weekends. Technically, prison officers have the right to search children, but they rarely do so.

When a pregnant woman is convicted of an offence and she is not, at the time, in custody, she can serve a delayed sentence until after the baby is born and then for up to another year while she is breastfeeding.

2.1.2 DENMARK

Like Sweden, women make up a small proportion of the Danish prison population. Although the majority of women are the primary carers of children, mothers **and** fathers may be eligible to keep their children with them in the open prison, Horserød. Horserød is a mixed prison, and the largest in Denmark (pop.220 inmates) but contains a family unit separated from the main complex. The average length of sentence for inmates is 7-8 months.

Once admitted to the family unit a parent is required to sign a contract stipulating that he or she will not consume any drugs or alcohol. If the contract is breached, the parent is transferred from the unit and the child removed from the prison. Random urine tests are taken to ensure compliance with the terms of the contract. There is no searching of children or babies in the family unit. Sex offenders are specifically excluded from the family unit.

Parents at the unit are entitled to leave the facility for one night each week, should they so choose, to stay with their families. Further, parents may leave the unit with their child and mix with the nearby community. The children may also go to the local kindergarten one day during the week.

As an alternative to custodial sentences parents and children may reside with a nominated foster family. There is also the option for a parent to be sentenced to a “family institution” where they receive appropriate treatment. Suspended sentences may also be given.

If a parent is given a long custodial sentence they are generally ineligible to have their child with them. However, a prisoner may apply, during his or her sentence to be transferred to a half-way house, with their child to serve the remainder of the sentence.

Weekend visits are available for children up to the ages of 7-8 years. They occur every third weekend and are from Friday to Sunday. The child stays with his or her parents in their unlocked room.

2.1.3 UNITED STATES OF AMERICA

Jurisdiction over corrections and social welfare lies with the individual American states. As such, each state has different prison policies and policies relating to children. Very few have mother and child units.

In Upstate New York, Bedford Hills Prison, a high security women’s prison contains a mothers and children’s unit which allows inmates to keep their children with them until they are two years of age. Within Bedford Hills there is also a children’s centre. At the centre prisoners, irrespective of their offences or length of sentences, are able to spend time with their families. There are all day visits which are conducted in a well equipped room with games, books and painting material. Arrangements are made for volunteers to bring children and take them home so that the child can be alone with the mother.

During the summer there is a special project which enables the children to spend a week with their mothers. The days are spent inside the prison and the nights in the homes of local families.

In relation to arrest, New York law requires police to inquire, at the point of apprehension, whether a suspect has children so that the necessary arrangements can be made for the children’s care.

Massachusetts does not have a mothers and children’s unit in any of its prisons. However, it has an advocacy and aid service specifically for incarcerated mothers. Known as Aid to Incarcerated Mothers, the service has been in existence for 17 years and provides advocacy assistance to inmate mothers, transports children to and from prisons to visit their mothers and assists mothers to reunite with their children following their release from prison.

2.1.4 ENGLAND

There are approximately 2000 women in English prisons. Approximately 75% of all prisoners are the sole carers of children - the majority of these are women.

Since 1972 English prisons have allowed babies to be with their mothers in the gaol. There are currently three mothers' and babies' units in English prisons. These are Her Majesty's Prisons Askham Grange, Her Majesty's Prison Styal and Her Majesty's Prison Holloway. Farrell writes that

the Home Office is responsible for providing facilities in the (Mothers and Babies Units) for up to 44 babies to live with their incarcerated mothers. Two units are situated in closed conditions in Holloway (for remand and sentenced prisoners) and Styal (for sentenced prisoners) catering for infants up to nine months and eighteen months respectively, while Askham Grange (for sentenced prisoners) is an open prison catering for children up to eighteen months (Farrell, 1995:92).

If a woman gives birth in prison and has been given a long sentence, the baby is normally taken away from her after four weeks. Inmates who are pregnant attend outside hospitals for antenatal care. There is no separate wing for these inmates. However, they may apply to transfer to a mother and baby unit during their pregnancy.

Eligibility for the mothers and babies unit depends on the decision of a multi-disciplinary team, including the prison Governor, a probation officer, a social worker and a paediatrician. The principal criterion for admission to a mothers and babies unit is the best interests of the child (Farrell, 1995:98). Category A prisoners, i.e., drug traffickers and terrorists, are automatically excluded from eligibility to the unit.

Farrell observes that

a key aspect of the English policy context, is the ongoing cycle of independent inspections of the Mother and Babies Units (Farrell, 1995: 98).

England has 55 Visitors Centres located outside all the prisons. They are staffed by both paid workers and volunteers. Visitors Centres are facilities for visitors to prisons where they can wait for a visit to take place, have a meal and obtain information about prison policy and other relevant material. The workers at the Centres can act as advocates for the visitors including in relation to complaints.

It has been suggested that, for mothers or primary carers of children, prison is not being used as a last resort and that courts are failing to take into account the effect on a child of the parent's imprisonment. Kennedy writes

the vast majority of women in prison are sentenced for minor, non-violent offences. On 12 January 1987, there were 24 babies in the three mother and baby units in England. The ages of the babies ranged from one to thirteen months. The offences of the mothers were overwhelmingly non-violent. Only two of the 23 mothers (one woman was on remand) were imprisoned for violent offences (actual bodily harm) (Kennedy et al, 1990:7).

2.2 INTERSTATE MODELS

During the course of the Inquiry, the Committee visited South Australia and Queensland to compare those systems to that in New South Wales. During the visits Members visited various institutions and spoke with a range of people involved in working with inmates and their children. The Committee also spoke with inmates and former inmates on the experiences of their children during their period of incarceration.

2.2.1 SOUTH AUSTRALIA

South Australia's mothers and children policy allows for children to reside with mothers in Adelaide Women's Prison's Living Skills Unit and the Port Augusta Prison. No prison currently accommodates fathers and children, although the Committee heard that the South Australia Department for Correctional Services is aiming to enable fathers in the Pre Release Centre to have children stay with them for short periods as part of the pre-release program (Boyce briefing, 1 December 1995). The Department prefers the approach of having the parent staying in the family home for nightly visits as part of the pre-release program (Boyce briefing, 1 December 1995).

The new Living Skills Unit at Adelaide Women's Prison has two parenting units, which each have accommodation for two women with babies or toddlers. Each mother or pregnant inmate must apply to the Department for permission to have the child with her. The mainstream prison does not usually hold children, although in special circumstances it has been permitted (Bordoni briefing, 1 December 1995).

There is also provision for older children up to the age of twelve years to have longer visits with their mother and for full day visits on alternate Saturdays. A qualified worker is hired for that day to organise a two hour playgroup (SA Department for Correctional Services, 1995: 7). The Department also plans to have a program for mothers and adolescent children. Women on pre-release at the Living Skills Unit are permitted to have visits every evening.

There is no provision in South Australia for women who are mothers of small children to be conditionally released into the community. However, under pre-release programs they are able to serve some of the sentence as home detention or work release (Boyce briefing, 1 December 1995). Unlike New South Wales, South Australian women are able to get access to supporting parents benefits whilst they are on home detention or work release (Boyce briefing, 1 December 1995).

2.2.2 QUEENSLAND

Queensland has two Women's Custodial Correctional Facilities, Brisbane and Townsville, both of which accommodate children with their mothers. The Helana Jones Community Correctional Facility also can accommodate children.

The Brisbane Women's Correctional Centre introduced formal policy in 1989 to allow infants to stay with their mothers. The facility, however, has not been specially designed for children. The current age restriction is, except under special circumstances, that children must be no older than 12 months at the time of entry, and must be not older than two years when they leave. This age restriction reflects the physical environment of the facility, which is not suitable for small children. The Committee was informed during its visit to Brisbane Women's Correction Facility that when the new women's prison facility is opened in 1998, the upper age limit will be lifted (Briefing, 13 February 1997).

Applications for infants to reside with the mother in custody must be made to the General Manager, who investigates the circumstances, and has program staff and counsellors involved in assessing the mother. The Department of Family Services also provides advice as to the suitability and availability of outside carers. There is no restriction based on the classification of prisoners, including remand prisoners.

The Helana Jones Community Correctional Facility is located in the inner suburbs of Brisbane. Prisoners are transferred to Helana Jones from Brisbane Women's Correctional Facility under s.69(2) and s.62 of the *Corrective Services Act, 1988*, and Rule 164 of the Queensland Corrective Services Commission. The transfer to the Women's Community Custody Program is available for women with minimum security classification serving a short sentence, or at the end of a longer sentence (NSW Corrective Services, 1994: 27).

According to Community Custody Program policy, a young child of a prisoner may be accommodated within a centre at the discretion of the Commission (Procedure No 2.3). The prisoner is to be informed on admission that she may apply to the Regional Manager to have her child or children accommodated with her. Eligibility requirements include that the mother have legal custody of the child, had been caring for the child prior to sentencing, and that the child is of pre-school age (Procedure No 2.3).

Once the application is approved, the mother must take full responsibility for the child. Child care costs must be borne by the mother, and it is not permitted for the staff or other prisoners to mind the child (Briefing, Helana Jones Community Correctional Facility, 13 February 1997).

2.2.3 VICTORIA

Victoria has had a policy permitting children in custody since 1988. The policy's objectives acknowledge

the importance of maintaining parent-child relationships, especially when very young children are involved (Victorian Office of Corrections, 1988:1).

Children are permitted to reside with parents where it is both in the child's best interests and is consistent with prison security and management. Each application is assessed by a social worker, psychologist or community corrections officer, and a comprehensive report is made to the Director-General. The report must include offence and sentence details, assessment of the prisoner, the child's history, current placement and alternative options for care, and whether the prisoner or child has had contact with Community Services Victoria.

Victoria is the only Australian state whose policy does not exclude fathers from applying to have their child(ren) residing with them: the policy refers throughout to "parents" and children, rather than "mothers" and children as is the case in other states. Children may reside with their fathers in prison if it is in their best interests to do so. However, security and environmental problems associated with mens' prisons make it unlikely that approval to reside with a father in prison will be given.

The Director-General makes a decision on a case-by-case basis, with attention given to whether the parent has been or will be the major care giver, the prison's ability to meet the child's health needs, the existence of appropriate facilities in prison, and the need for security and good order in the prison.

As in Queensland and New South Wales, any parent whose child is permitted to reside in prison must sign an agreement accepting full responsibility for the child's care. The prison allows the child to move between the prison and the outside environment to maintain relationships with other family members, and to take part in outside programs. The policy notes that

[All] efforts are to be made to ensure that the child is not denied access to community programs and contacts that are consistent with the child's age and development (Victorian Office of Corrections, 1988: 3).

For parents who do not have their children residing with them in prison, there are extended visits programs. At Fairlea, for example, there are all day Saturday visits, and a Community Custodial Permit Program (CCPP) which allows a prisoner who has been the primary care giver of a child to have an eight hour CCPP residential visit. These occur once every six weeks for minimum security prisoners and once every six months for medium security prisoners. Tarrengower has a family visits centre for spouses, partners and older children of prisoners to stay overnight.

CHAPTER THREE:

A PROFILE OF PRISONERS IN NEW SOUTH WALES

CONTENTS:

3.1	FEMALE INMATES	29
3.1.1	Types of Offences	30
	TABLE 1: Female Inmates - Most Serious Offence, 30 June 1996 ...	31
3.1.2	Characteristics	32
3.1.3	Characteristics of Female Offending and Sentences	33
3.1.4	Prisoners with Children	37
3.1.5	Pregnant Inmates	40
3.2	THE FATHER'S EXPERIENCE	40
3.3	THE EXPERIENCE OF THE ABORIGINAL PARENT	41
3.4	DRUGS AND ALCOHOL	46

The following discussion provides a snapshot of who an inmate parent is and why he or she is imprisoned. The discussion focuses essentially on female inmates given that they are predominantly the primary carers of children at the time of their incarceration and gives an outline of the “typical” characteristics of such inmates, the nature of their offences and the sentences they receive. The Chapter provides a brief examination of the male inmate who is a father. Further, it discusses issues pertinent to Aboriginal inmates and their children. Given the high proportion of drug-related offences committed by people in gaol, the Chapter also examines drug and alcohol issues.

3.1 FEMALE INMATES

Women make up 5.1% of the total New South Wales prison population. As at 24 July, 1997 there were 354 women in custody in New South Wales adult correctional centres. Of those, approximately 248 are serving a full-time custodial sentence, with the remaining women on remand.

Adult women are detained in the following prisons in New South Wales:

- Special Purpose Centre
(maximum security, located at Long Bay Gaol, Malabar, Sydney);
- Mulawa Correctional Centre
(maximum and medium security, located at Silverwater, Sydney);
- Norma Parker Correctional Centre
(minimum security, located at Parramatta, Sydney); and
- Emu Plains Correctional Centre
(minimum security, located at Emu Plains, Sydney).

Women are also detained in separate sections at the following, predominately male prisons:

- Grafton Correctional Centre (medium security); and
- Broken Hill Correctional Centre (medium security);

Additionally, women can be detained in the following transitional centres:

- Parramatta Transitional Centre, Parramatta, Sydney; and
- Guthrie House, Marrickville, Sydney.

During the course of this Inquiry, the Committee met with women in a number of prisons including 57 inmates at Mulawa Correctional Centre, ten inmates at Emu Plains Correctional Centre and one woman at the Special Purpose Centre.

The Committee also spoke with a number of inmates at Adelaide Women's Prison, Brisbane Women's Correctional Centre and Queensland's Helana Jones Community Corrections Facility.

According to Dr Eileen Baldry

the gross number of women in NSW prisons has not only increased alarmingly over the last 12 years, but the rate of women per 100,000 of the population has increased. In 1984 the rate was 9.4 but had risen to 17.4 by 1992 (Baldry, 1996:4).

Baldry offers three possible reasons for the increase in women in prison:

- *the effect of the 1989 Sentencing Act NSW... has effectively increased sentences overall and therefore increased the number in prison at any one time;*
- *more women are committing crimes, particularly theft and other "economic" crimes in relation to drug addictions and poverty; and*
- *police are catching more criminals in general, including women, under the get-tough policies of recent and current governments (Baldry, 1996:5).*

3.1.1 TYPE OF OFFENCES

The statistics from the 1996 Prison Census show that the majority of female inmates are in full time custody for property offences such fraud, break, enter and steal and other steal (41.1%). The Census reveals that 27.5% of female prisoners are incarcerated for violent offences, including 5.9% (20) for murder.

Butler (1994:5) argues that, "the majority of women imprisoned are in jail for short sentences for non-violent crimes". This conforms with Alder's findings that

women are predominantly in prison for offences against property (fraud, break and enter, and theft), prostitution and drug offences. The most frequently committed offences by Aboriginal women are non-payment of fines, drunkenness and social security fraud, that is, as Payne notes, crimes which are 'the result of extreme poverty'. Violent crimes are predominantly committed by men (Alder, 1994:142).

TABLE 1: FEMALE INMATES - MOST SERIOUS OFFENCE, 30 JUNE 1996

MOST SERIOUS OFFENCE:	NUMBER:	PERCENTAGE OF FEMALE PRISONERS:
Murder	20	5.9
Attempted murder	4	1.2
Conspiracy to murder	3	0.9
Manslaughter	16	4.7
Major assault	19	5.6
Other assault	11	3.3
Serious sexual assault	3	0.9
Robbery major assault	17	5.0
Other robbery	14	4.1
Fraud	43	12.7
Break, enter and steal	47	13.9
Other steal	49	14.5
Driving/traffic	7	2.1
Offences against order	20	5.9
Drug offences	57	16.9
Other offences	8	2.4
TOTAL:	338	100.0

Source: 1996 NSW Inmate Census, Eyland, 1996

These prisoners were located in the following facilities:

- 58.3% are detained at Mulawa Correctional Centre;
- 30.8% at Emu Plains Correctional Centre; and
- 8.3% at Norma Parker Correctional Centre.

- 0.6% (2) are held at the Special Purpose Centre; and
- 2.1% (7) at Grafton Correctional Centre (Eyland, 1996).

3.1.2 CHARACTERISTICS

The 1996 Inmates Census also provides information regarding the age of female inmates in fulltime custody. The majority of women fall into the 21-39 year age group. Information relating to marital status is also provided:

- 44.3% of female inmates are either married or in a de facto relationship;
- 36.8 % are single.

Approximately 17% of detainees are Aboriginal or Torres Strait Islander.

Research from a number of sources tend to paint a picture of what may now be described as a “typical” female inmate: she is young, undereducated, unemployed, not married or in a de facto relationship. She is also commonly a mother (Alder,1994; Hampton 1993; Easteal, 1992). According to Alder (1992:152),

The majority of women are young, poor, single mothers, most of whom have committed minor property or drug offences.

On its visit to Mulawa Correctional Centre the Committee was provided with an anecdotal profile of a typical female inmate. She:

- is under 25 years;
- is drug affected;
- has had some connection with the Department of Community Services;
- has a relative in gaol;
- usually has a man involved in her crime (eg a pimp or a standover person);
- has experienced sexual and physical violence at some time in her life; and
- is often indigenous (Mulawa briefing, 28 October 1996).

The Director of Women's Health Services for the Department of Corrective Services, Dr Ann Sefton also told the Committee that approximately 60% of the women in prison are parents, of which 30-40% are sole parents (Sefton evidence, 17 December 1996).

The Census shows that many are incarcerated for drug offences. Although not delineated in the Census, much of the evidence presented to the Committee revealed that the vast majority of property offences (up to 90%) committed by female inmates were drug-related. It was further estimated that approximately 90-95% of all female inmates have a drug and/or alcohol problem when they come to gaol. Most of the inmate mothers with whom the Committee spoke had some substance abuse problem which played a role in their offending behaviour. Our evidence seems to conform with the findings of Kevin's study (1995) who found that of the 130 women she interviewed who were serving a full-time custodial sentence in New South Wales prisons between July and October 1993, 62% revealed that they had been under the influence of a drug (including alcohol) at the time of arrest. Approximately 72% reported a relationship with their drug use and current imprisonment.

At Mulawa the Committee was also told that there is a 70% recidivism rate among detainees. The most common time for re-offending is within the first few weeks of a woman's release. The issue of recidivism will be discussed in further detail later.

3.1.3 CHARACTERISTICS OF FEMALE OFFENDING AND SENTENCES

Much has been written on the nature and possible causes of female offending behaviour and their incarceration. Alder (1992) argues that an overriding factor for many of the women in prison is poverty. Quoting from Gilfus she maintains that economic, social and political marginality may well account for the overlap in membership in high risk groups, among women who are at risk of becoming both victims and offenders. She observes that

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

In relation to the experience of female inmates in New South Wales, Kevin found that of a sample of 130 women in prison with drug problems

48% reported that they had been either physically or sexually abused in the past. It is likely that due to the personal and distressing nature of this experience this figure is an under-representation of the prevalence of prior abuse against the women. The data were collected in a single interview situation in a prison environment and disclosures of this kind are more likely to be made in an established therapeutic environment (Kevin, 1995:13).

In her study, Farrell found that nationally, Australian female prisoners serve relatively short sentences. She observes that

The 1990 National Prison Census indicated that over 50 percent of female inmates served sentences of less than twelve months while only 10 percent serve sentences of five years or longer... (O)ver 85 percent of female inmates are mothers of young children who prior to being sentenced to prison, were more often than not the heads of single households (Farrell, 1995:105).

Easteal's research also shows that the 'typical' woman inmate is

most commonly in prison for property offences...It is speculated that most of these crimes have been undertaken for drug-related reasons. On 30 June, 58% of the sentenced women in prison were expected to spend less than one year in prison. The 42% of women who will be imprisoned for more than one year apparently represent the shift to longer sentences for female offenders...with an increasing number spending more than one year in gaol (Easteal, 1992:3).

Further, Baldry observes in relation to New South Wales that

the increases in terms of crimes committed by women lie in minor crime for many of which prison should not be an option. In 1994, 61% committed to prison that year had sentences of less than six months (Baldry, 1996:5).

Baldry later told the Committee in response to a query about the appropriateness of mothers and babies units in prison

the emphasis should be on not putting women with children in prison. If we are talking about women who have a sentence of six months or less, that should never be the case; they should never go to prison. There is no point to it, and no reason for it (Baldry evidence, 21 October, 1996).

Baldry's comments are supported by those of Professor Tony Vinson, former head of the Department of Corrective Services. He argues that

Any weighing of the social gain of short term, full-time punishment by incarceration, against the deterioration so frequently induced in offenders as well as the harm caused to their families, should dictate an alternative course of action. In the community's interests, we must substitute other, less noxious forms of punishment for the relatively short sentences that currently swell our prison numbers in New South Wales (Vinson, 1995:79).

On its visit to Mulawa Correctional Centre, Committee Members were told by the staff that of a prison population of over 200, only 15 women needed to be incarcerated at Mulawa for their own safety and the safety of the community (Mulawa briefing, 28 October 1996).

The sentencing of women has been the subject of a number of studies in recent times. Many of these studies have dealt with the issue of whether women receive harsher sentences than men, even though they may have committed the same offence. The literature on this issue is divided. Similarly, there is divided opinion about the severity or otherwise of sentences given to mothers. This has been borne out in both the literature and from witnesses to the Committee.

Those who argue that mothers receive harsher sentences than men do so on the basis that these women are considered “triple deviant” - as offenders who are mothers they are “bad types”, “bad women” (having offended against notions of femininity) and “bad mothers”. Beckerman describes this perception of offending women, including those with children, in the following terms:

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

In her study Carlen found that a woman who is still managing a household and caring for her children is

more likely to be a candidate for a non-custodial penalty than is her sister, who in rebelling against marital tyranny, has also stepped out with domesticity and motherhood (Carlen, 1983:70).

Similarly, Benjamin asserts that

Women were/are judged more harshly than men and a great social stigma was/is attached to their criminal activity. There is absolutely no research material to support a label of bad woman, bad mother. It is the labelling of a vengeful society (Benjamin, 1990:170) .

There is a body of research that agrees that the courts do treat women differently to men when sentencing but in fact give them more lenient sentences.

Maher reports that research conducted in the Victorian Magistrates Courts suggests that the assumption that female offenders are likely to be imprisoned is in fact illusory and that courts are reluctant to draw gender-based distinctions on sentencing. She observes that

... those women who appeared to have been dealt with more leniently were women whose domestic arrangements approximated closely with traditional gender roles (Maher, 1988:107).

The issue of the sentencing of women and mothers was addressed during Committee hearings by a number of witnesses. Associate Professor George Zdenkowski told the Committee that evidence of accused persons with children, especially mothers, are treated differently by the courts when sentenced, is equivocal. He also explained that the academic literature on this in Australia is rather sparse. However he did explain that

overseas, in particular in England, a number of academics have conducted studies which show that you cannot take a monolithic approach ... Courts will treat more leniently mothers, women offenders who are perceived to be conforming to traditional stereotypes of nurturing, caring, middle-class mothers who went astray for some reason, and therefore for whom custody would be inappropriate. On the other hand, it is argued that women who are for example, poor, perhaps drug-addicted, sex workers engaging in petty property crime, who are regarded as failures, neglectful women and mothers in terms of society stereotypes, are treated more harshly than their male counterparts- in other words, poor, drug-addicted, deviant males committing the same offences (Zdenkowski evidence, 5 February 1997).

The Director of the NSW Bureau of Crime Statistics and Research, Dr Don Weatherburn also addressed the issue of gender, motherhood and sentencing in his evidence to the Committee. He explained that

One would need to control for the sorts of offences women commit compared to the offences that men commit. It is not just a matter of the offence; it is a matter of community ties, prior record and a thousand other things that the court allows in as mitigating or exacerbating factors. Having said all that, let me tell you that no one is satisfied at the attempts that have variously been made to control for those factors... There is simply no practical limit to the number of factors that the courts are willing to consider as relevant to the sentencing decision ... (T)he question is... (is sentencing) a gender-based bias on the part of the court or is it a difference in the circumstances of women and men presenting in court? (Weatherburn evidence, 5 February 1997).

If mothers do receive more lenient sentences this may result from judges and magistrates taking into account the fact that some of these women have dependent children.

Clearly, the issue of the impact of gender and motherhood on sentencing requires further research and analyses before firm conclusions can be drawn. Nevertheless, it is appropriate to examine the types of offences for which mothers are gaoled and the length of sentence that they receive.

The Committee recognises there is some community perception that mothers who are imprisoned should relinquish their rights as parents. It is argued that mothers who offend should consider the consequences of their actions before they engage in offending behaviour.

Moreover the Committee heard that because the problems of children of prisoners are caused by the actions of their mothers “no-one else should bear the responsibility or provide the remedy” (Hounslow *et al*, 1982:2).

The Committee considers that these arguments fail to understand that the child in these situations is innocent of any wrongdoing. Allowing a mother or father to have contact with her or his child in custody is not a privilege for the parent. It is a right of the child to maintain contact and to preserve his or her relationship with a parent.

3.1.4 PRISONERS WITH CHILDREN

The Census, produced by the Department of Corrective Services, does not contain any information regarding whether an inmate is a parent and the primary carer of a child(ren) prior to incarceration.

Anecdotal evidence to the Committee, however, indicates that approximately 60% of women in prison are parents. Approximately 30 to 40% of them are sole parents (Sefton evidence, 17 December 1996).

During its visit to Mulawa Correctional Centre the Committee met with those inmates who had children. Of these women:

- 5 were pregnant;
- 27 had children under five years of age;
- 14 had more than one child;
- 3 of the women had children under 12 months;

- 19 had children between the ages of 5 and 12 years;
- 11 had children over 12 years of age, 8 of whom had more than one child.

Twenty four women had children living in the Sydney metropolitan area. Twenty nine had children living in rural areas. Three women had children who were separated from their siblings and living in either metropolitan or rural areas. A further three women had children living interstate. The whereabouts of the children of two women were not known. Five women had children who were in detention centres.

A document prepared by the Department of Corrective Services entitled, *Women in Prison With Drug-Related Problems* (Kevin, 1995) identifies “children” within the category of “other background characteristics” as part of the data collection. That report found the following in relation to the women interviewed who reported there was a relationship between their drug/alcohol use and their current episode of imprisonment (72%):

- 66% reported they had children;
- of these 14% stated their children were independent;
- women were more likely than men to be solely responsible for the support of their children; and
- after sole responsibility, the second most commonly identified guardians were the women themselves in conjunction with a partner (19%) was followed by the children’s grandparents (18%) (Kevin, 1995:13).

The Committee considers that the Department of Corrective Services should collect data on the number of inmates in prison who are parents and that such data be used to establish proper policies and practices to facilitate contact between these inmates and their children.

RECOMMENDATION 3:

That the Minister for Corrective Services collect data on the number of inmates in prison who are parents. Such data should be used to establish appropriate policies and practices that facilitate contact between these inmates and their children.

All of the women with whom the Committee spoke expressed anxiety and despair at being separated from their children. Although some were reasonably happy with the care arrangements of their children all were concerned at their children's distress over the forced separation. Some women spoke of their children being suicidal, of chronic bed and pant wetting, even by older children, and their profound apathy. One woman at Mulawa who was pregnant when she entered gaol and was separated from her baby following the birth, described how the child now suffers from chronic constipation, a condition stemming from a lack of bonding (Mulawa briefing, 28 October 1996).

The Committee was also told of the harassment and victimisation that many children whose mother is in gaol receive from their peers and at school, particularly when the case has a high profile. One woman described to the Committee how the media approached her daughters at school following her arrest.

A number of women were greatly concerned about the care arrangements of their children. Some were living in a situation of potential violence or abuse and others were with foster parents in substitute care. In some instances the biological or step-father of the children had launched custody proceedings in respect of the children while the mother was in gaol. The Committee was told that many women in New South Wales correctional centres were unable to be present at court for the custody hearings due to their incarceration and the problems associated with transportation by the Department of Corrective Services (this issues is discussed further in Section 5.2.2).

Most of the women expressed concern that their children were in substitute and foster care, often residing some distance from their mother and their familiar environment. Some felt that they were given little information about the welfare of their children and those women whose children had been made wards of the state because of their imprisonment were extremely concerned about reunification with their children.

Hounslow's report observes in relation to female prisoners

Given the weighty ideology of "motherhood" (as compared to "fatherhood"), it is more common for a female offender to be judged a "bad parent" simply by virtue of having offended. This link, illogical as it may be, is internalised by many women prisoners who become consumed with a sense of guilt in relation to their children. Concern for the welfare of their children is an over-riding preoccupation of many prisoners. Given the pre-existent responsibility of the daily care of children by their mothers, this worry is particularly burdensome for female prisoners, having as it does a very real material basis (Hounslow et al, 1982:5).

This concern was highlighted to the Committee by Mulawa's Official Visitor, Shirley Nixon, who explained in evidence that approximately one-third of all inquiries from female inmates relate to their children.

3.1.5 PREGNANT INMATES

The fact that a woman is pregnant does not prevent her from being sent to prison. On its visit to Mulawa the Committee met with five inmates who were pregnant at the time. Most of these women were in the advanced stages of their pregnancy. Some were on remand awaiting trial or sentence and others were serving sentences.

A number of commentators have noted that pregnant women in custody face unique problems. Huft *et al* observe that

Stress, environmental and legal restrictions, unhealthy behaviour and weakened or nonexistent social support systems - all common among female inmates - have an even greater effect on pregnant inmates (Huft et al, 1992:49).

The same authors argue that incarcerated women experience a higher incidence of complications during pregnancy, labour and delivery. Further

Infants of incarcerated women are more likely to have life-threatening problems at birth, contract serious illnesses, and be exposed to a negative social environment as they grow into childhood (Huft et al, 1992:50).

The Committee received evidence from Dr Ann Sefton, Medical Director, Women's Health Services, Corrections Health Services who testified in relation to women who are pregnant in prison. She advised the Committee that

Comparatively we have a lot of pregnant women in prison. The population tends to be younger compared with the general population. About five per cent of women are pregnant. I do not know what five per cent of the general community is, but that would make an awful lot of women (Sefton evidence, 17 December 1996).

Issues relating to pregnant inmates are examined in detail in Chapter Six.

3.2 THE FATHER'S EXPERIENCE

As the Inquiry has shown mothers, more so than fathers, are generally the primary carers of children just prior to their incarceration. Nevertheless, as the overseas research identified in Chapter One of the Report has shown, imprisonment of a father can have a serious impact on a child's behaviour and emotional well-being. Most of the fathers with whom the Committee spoke at the male correctional centres expressed genuine concern for the well-being of their children. Among the comments made by inmates to Committee members were:

- *my family's falling apart out there.*
- *society thinks that if you're charged, your family is guilty.*
- *it took my kids ages to come to terms with the fact that I'm in gaol.*

Many also spoke of the harassment that their children endured following their incarceration.

The 1996 NSW Inmate Census found that as at 30 June 1996, there were 6505 men in New South Wales Correctional Centres (including those serving periodic detention sentences) (Eyland, 1996:33). The most common major offence for the majority of inmates was "break, enter and steal" (875), closely followed by "drug offences", having been committed by 867 inmates. A total of 704 inmates had as their most serious offence "other steal" and 597 had "robbery major assault". No information is available regarding the number of inmates who are fathers.

All of the fathers were eager to have contact with their children on visits and by telephone. These issues are discussed in greater detail in Chapter Four. Chapter Six will also examine the option of father inmates having the care of their children.

3.3 THE EXPERIENCE OF THE ABORIGINAL PARENT

In order to consider the complex issues surrounding children of Aboriginal parents properly, the Committee considers it necessary to understand the experiences of Aboriginal people generally, including the breakdown of traditional family structure since European settlement, their involvement in the criminal and juvenile justice systems and their over-representation in correctional institutions. Further, the fact that so many Aboriginal children have been or are wards of the state (wardship being a major contributing factor to later involvement in the juvenile and criminal justice systems) is also highly significant to understanding issues surrounding children of imprisoned Aborigines.

The particular problems faced by Aboriginal children whose parents are in prison was examined in the 1982 *Children of Imprisoned Parents Report*. That report found that Aboriginal children are much more likely to have a parent imprisoned sometime during their lives than non-Aboriginal children (Hounslow *et al*, 1982:111). At the time of the release of that report, Aborigines made up 6% of the New South Wales prison population. They made up 1% of the general population. Today, some 15 years later they make up 12.4% of the New South Wales prison population although representing only 1.5% of the general population. Aboriginal and Torres Strait Islander men account

for just under 12% of male prisoners and Aboriginal women account for almost 18% of female prisoners. Aborigines and Torres Strait Islanders account for 25% of the women and 20% of the men serving aggregate sentences of three to six months in New South Wales prisons (Vinson, 1995:79).

There is now a large body of work which confirms that Aborigines are over-represented at all stages of the criminal justice system - in arrest rates, bail refusals and sentencing. This is true for adult males, adult females and juveniles. Aboriginal juveniles are grossly over-represented in the juvenile justice system yet under-represented in diversionary programs. They are also more likely than non-Aborigines to be a maximum classification in adult and juvenile institutions.

The over-representation of Aborigines in the penal system has also been well-documented. The effect of incarceration on indigenous Australians has been graphically described in the *Report of the Royal Commission into Aboriginal Deaths in Custody, Indigenous Deaths in Custody 1989-1996* (1996) *Keeping Aboriginal and Torres Strait Islander People Out of Custody*(1996) and most recently, *Bringing Them Home: the Report of the Human Rights and Equal Opportunity Commission into Stolen Children* (1997).

Cunneen and McDonald's *Keeping Aboriginal and Torres Strait Islander People Out of Custody* (1996) found that in New South Wales for the period 1988-1993

indigenous imprisonment has increased and so has the level of over-representation. The imprisonment rate of non-Indigenous people has also increased but this increase was much less than that of Indigenous people... (In the case of juveniles in New South Wales, indigenous people) are 22 times more likely to find themselves in custody... (Cunneen and McDonald, 1996: 30,39)

The Committee also understands that indigenous people are more likely to have a higher classification than non-indigenous people. This is true for both the adult and juvenile correctional population.

As numerous reports have highlighted, Aboriginal people's incarceration is intergenerational. It is not uncommon for generations of the same family to have experienced incarceration and for parents and their children to be incarcerated at the same time. Issues surrounding the incarceration of Aboriginal people are complex and not just merely linked to offending behaviour. The Committee has already identified in earlier reports that involvement by Aborigines in the criminal justice and penal system is related to discrimination, poverty and disadvantage and the destruction of Aboriginal culture since European settlement.

The Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families found that removing children from their parents has had a profound impact on Aboriginal communities with many stolen children becoming involved in the criminal justice and penal systems. Beginning with behavioural problems brought on by the early loss of a mother and exacerbated by the prolonged separation, grief and bereavement, many of these children have later become involved with the police, the courts and ultimately the prison system. The Report states

because of their behavioural problems there is a significantly increased risk that these second generation children will in turn be removed from their families or will have their children removed (Human Rights and Equal Opportunity Commission, 1997:226).

Aborigines remain under-represented in their access to non-custodial sentencing options and are more likely to receive a gaol sentence than non-Aboriginal offenders. Further, Aboriginal people are less likely to be granted bail than non-Aboriginal people (ATSIC, 1996).

The report of the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, *Indigenous Deaths in Custody, 1989-1996* provides the following information regarding Aborigines and the criminal and penal systems throughout Australia:

- *Indigenous people were 17.3 times more likely to be arrested than non-Indigenous people;*
- *Incarceration of Indigenous people in Australia increased by 61 per cent between 1988 and 1995. Incarceration of non-Indigenous people has increased by 38 per cent;*
- *Indigenous people in 1995 were 14.7 times more likely to be imprisoned than non-Indigenous people;*
- *Indigenous people are more likely to be imprisoned for assault, break and enter, motor vehicle offences, property offences and justice procedures offences. They are also more likely to be arrested for good order offences;*
- *Indigenous people are twice as likely as non-Indigenous people to be arrested in circumstances where assault occasioning no harm is the most serious offence. They are three times more likely to be imprisoned for such an offence. This indicates that provocative policing is continuing through the use of the trifecta (offensive language, resist arrest and assault occasioning no harm);*

- *The number of indigenous kids who are brought before Children's Courts (rather than dealt with in diversionary schemes) remains disproportionately high in comparison with non-Indigenous kids. The rate at which they then are imprisoned in comparison with non-Indigenous kids is even more pronounced (ATSIC, 1996: xiv, xviii).*

These issues are extremely pertinent to the children of indigenous people. From the Committee's findings earlier in the Report it can be inferred from these data that children of indigenous inmates are at increased risk of emotional and behavioural problems, homelessness, drug and alcohol abuse and involvement with the juvenile justice system.

On its visit to Mulawa Correctional Centre at Silverwater the Committee was told that about 25% of all inmates are indigenous. Of the 57 women with children with whom the Committee spoke, 12 (21%) were Aboriginal mothers. The children of nine of these women lived in rural New South Wales. Eleven of the women have children under 12 years of age. One woman was the mother of an eight month old baby. None of the women had been advised of the possible options regarding the future for the baby but when asked about the option of keeping their babies with them in prison they considered it a good alternative if they could not obtain release.

The Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children (1997) extensively examined the issues that arise when a child is separated from his or her parent, particularly the mother. Evidence to that Inquiry revealed that

...the early loss of a mother or prolonged separation from her before age 11 is conducive to subsequent depression, choice of an inappropriate partner, and difficulties in parenting the next generation. Anti-social activity, violence, depression and suicide have also been suggested as the likely results of the severe disruption of affectional bonds (Human Rights and Equal Opportunity Commission, 1997:181).

The issue of Aboriginal deaths in custody has been examined in a range of reports and inquiries. Despite the findings of those inquiries the numbers of those deaths have not decreased. The report of the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, *Indigenous Deaths in Custody, 1989-1996* identified that

The proportion of deaths occurring in the various jurisdictions has changed significantly since the Royal Commission. The proportion of deaths occurring in New South Wales and Victoria increased while they have decreased in Western Australia (ATSIC, 1996:xiii).

The reports documenting deaths in custody have noted that a number of the victims were parents. In one incident an Aboriginal mother of three was given a one month gaol sentence for drug offences involving cannabis. While detained at the Macquarie Fields Police Station awaiting transfer to Mulawa the woman hanged herself. Commenting on the matter the Chairman of the Aboriginal Legal Service stated that the Magistrate who sentenced the woman refused to allow the preparation of a pre-sentence report which would have alerted him to the fact that she had a medical history and was the mother of three children which may have made her eligible for a penalty other than full-time custody.

In their submission the Children of Prisoners Support Group identified the special needs of children of Aboriginal parents. The submission advises that 20% of the Support Group's referrals are Aboriginal people with a large majority of these being parents from country areas (Submission 19). The submission notes that

there is a need to provide accommodation in Sydney to allow children and families who wish to visit from country areas a place to stay overnight. There are also very few Aboriginal foster carers who are available to care for Aboriginal children whose parents are imprisoned. For example, earlier this year I was working with an Aboriginal woman from Narrabri who had a 12 year old daughter being cared for by her paternal grandmother. The daughter was experiencing great trauma with having her mother imprisoned and she could not travel to visit her. The mother applied for a Section 29(2)(c) which was eventually granted and allowed her to go back to Narrabri. However, until this came through we attempted to get her fostered in Sydney to enable her to see her mother. This was not possible as there was no-one who could care for this child.

RECOMMENDATION 4:

That the Attorney General, the Minister for Corrective Services and the Minister for Juvenile Justice establish a program to ensure that all options for court diversion and non-custodial penalties are thoroughly exhausted before incarceration of Aboriginal and Torres Strait Islander offenders is considered. The Committee urges that this recommendation be treated as urgent and that particular attention be paid to primary carers of children.

RECOMMENDATION 5:

That the Attorney General ensure that repeat offenders who are Aboriginal and Torres Strait Islander are not automatically excluded from any diversionary or non-custodial sentencing option.

RECOMMENDATION 6:

That the Attorney General, Minister for Corrective Services and Minister for Juvenile Justice ensure that Aboriginal and Torres Strait Islander Offenders are eligible for diversionary and non-custodial programs close to their communities by providing funds where necessary for community service programs or for Youth Conference outcomes.

RECOMMENDATION 7:

That following the implementation of the program stated in Recommendation 4 the Attorney General monitor the outcomes to determine whether the courts are utilising diversionary and non-custodial options for Aboriginal and Torres Strait Islander people and, in particular, primary carers.

RECOMMENDATION 8:

That the Minister for Department of Community Services recruit appropriate Aboriginal foster carers to care for Aboriginal children coming from rural areas to visit their parents in custody.

3.4 DRUGS AND ALCOHOL

The majority of prisoners in New South Wales Correctional Centres have a drug and alcohol problem. For many, their offending behaviour is directly linked to substance abuse. Most property offences for instance, are committed because of a person's addiction to drugs. A survey conducted by the Department of Corrective Services found that 67% of prisoners were drug or alcohol affected at the time of their offence: 34% were affected by alcohol; 23% were affected by other drugs; and 10% were affected by both. The most common drug used was heroin (Kevin, 1992).

Evidence presented to the Committee from a number of sources revealed that many of the parents in prison, especially the mothers, are in gaol because of offences related to their drug addiction. The Committee also heard that drug addiction was related to the very high recidivism rate among offenders when they are released from prison.

Evidence presented to the Committee from Dr Alex Wodak, Director, Alcohol and Drug Services, St Vincent's Hospital and Ms Kate Dolan, Research Officer, University of New South Wales described the findings of some recent research:

injecting drug users with children were more likely to report a prison history than injecting drug users without children... The chances of injecting drug users with children getting sent to prison were 2.3 times that of injecting drug users without children...Female injecting drug users who had been to prison were five times more likely to have dependent children than male injecting drug users with a prison history (Wodak evidence, 5 February 1997).

Recent research undertaken by Kevin in relation to 130 female inmates made the following findings:

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

The Committee also learnt during its visit to Mulawa Correctional Centre that most of the women with a drug or alcohol dependency or both are in acute withdrawal when they arrive at the prison (Mulawa briefing, 28 October 1996).

Kevin's research also revealed a profile of women who reported their crime was drug-related. They were characterised by the following:

- robbery and drug offences;
- repeat offenders;
- single;
- recipients of unemployment benefits;
- sex workers;
- co-habiting with a person who had a drug problem;
- a family history of drug problems; and
- few, if any supports.

Most of these women were also sole parents (Kevin, 1995:vii).

Kevin's study found that only 12% of the sample were referred to drug and alcohol counselling services in prison by the Court (Kevin, 1995:vii).

The Committee believes that prison as a sentencing option should be a last resort for all prisoners but particularly for most minor or non-violent offenders with drug addictions. It considers that prison for offenders with drug addictions may not be the most appropriate way of dealing with these people, particularly in light of the high recidivism rate among this group. The Committee will examine sentencing options for offenders, including drug offenders in Chapter Six.

A number of witnesses gave evidence in relation to the treatment programs available in and outside gaol for drug and alcohol affected people. Dolan explained to the Committee that there are 70 drug and alcohol counsellors working in New South Wales prisons (Dolan evidence, 5 February 1997). These counsellors service a prison population of over 6000 inmates.

Wodak explained to the Committee that

in terms of numbers, the most common way of treating drug users is by incarceration. It costs about \$43,000 to have somebody in a prison cell for a year in New South Wales (Wodak evidence, 5 February 1997).

The witness also noted that in spite of this, there is a shortage of detoxification facilities throughout New South Wales and demand for them far exceeds supply. This is especially the case outside the metropolitan area. Dr Wodak explained that detoxification is very cheap. He further explained that

Residential rehabilitation costs about \$5,000 to \$10,000 a year...and methadone costs about \$2,000 a year (Wodak evidence, 5 February 1997).

The Committee considers that a reappraisal of the issue of drugs and illegal behaviour will greatly assist children of inmates. Rather than adopting a punitive approach to drug abuse the Committee considers that there should be a greater emphasis on prevention, treatment and on-going support. It believes that any initiatives relating to drug abuse and offending behaviour should also focus on trying to keep families together.

Clearly, there are not enough drug or alcohol treatment services in the community. Waiting lists can be long and there are very few services in the non-metropolitan area.

The Committee further considers where a prison sentence is imposed on a drug offender proper detoxification and treatment facilities should be available in New South Wales prisons. It understands that at Mulawa a detoxification unit is being considered within a Multi-Purpose Unit, which is currently being refurbished. The Committee considers that the detoxification unit should be expedited and should include ongoing treatment for drug and alcohol dependent inmates.

In addition, the Committee believes it is critical that appropriate post-release drug and alcohol treatment services are established to assist inmates upon their release from prison and to minimise the chances of recidivism.

RECOMMENDATION 9:

That the Minister for Health expand the availability of detoxification and treatment services throughout New South Wales to make them more accessible to drug and alcohol dependent people and to provide the courts with appropriate options.

RECOMMENDATION 10:

That the Minister for Corrective Services and the Minister for Health establish drug and alcohol detoxification and treatment facilities in all New South Wales prisons. The facilities must be adequately resourced and staffed to meet the needs of inmates and their establishment should proceed as a matter of urgency particularly in relation to Mulawa.

RECOMMENDATION 11:

That the Minister for Corrective Services and the Minister for Health ensure that inmates who are released from prison have access to necessary and continuing treatment for either their drug or alcohol dependency or both (see Recommendations 36 and 37).

CHAPTER FOUR:

THE CHILD'S EXPERIENCE

CONTENTS:

4.1	INTRODUCTION	53
4.2	GOVERNMENT DEPARTMENTS	56
	4.2.1 Department of Community Services	56
	4.2.2 Department of Juvenile Justice	61
	4.2.3 Department of Education	62
	4.2.4 Department of Corrective Services	63
4.3	VISITS	65
	4.3.1 Biometric Identification Technology for Visitors	76
4.4	TELEPHONE CONTACT	78
4.5	CONCLUSION	79

4.1 INTRODUCTION

Any sentence which a parent might receive inevitably impacts upon the child(ren). However, a sentence of imprisonment has the most dramatic impact on a child. One witness, an inmate at Emu Plains Correctional Centre (Briefing, 3 October, 1996) told the Committee that

when a mother is given a gaol sentence, the child is given a life sentence.

This Chapter will examine the issue more closely and look at the roles of those government departments that deal with children when a parent is in custody; that is, the Departments of Community Services, Juvenile Justice, Education and Corrective Services.

This Report has already pointed out that children suffer a major loss experience when a parent, particularly a primary carer or custodial parent, goes to prison. The Committee notes that the loss of a parent, whether it is through death or separation and divorce, can have a profound effect on a child. The impact on children in these circumstances has been well documented with research identifying that for many, there is a period of considerable grief and trauma. Research has shown that without proper supports, many of these children often fail to get over this loss and may then under-achieve or engage in anti-social or self-destructive behaviour.

For a child whose parent is sent to prison there is an added dimension. As Centacare (tabled document) explains

*there is great sadness and distress similar to that experienced by children whose parents are separating, however, with the important difference ... that children whose parents are imprisoned, do not receive the same level of understanding or sympathy from friends, networks and the general community. **The experience carries a deep sense of shame and stigma** (emphasis added).*

The Committee heard that imprisonment of a parent can cause massive upheaval and dislocation for a child. In the case of the imprisonment of a sole carer (usually the case when a mother is imprisoned) it can mean a change in caregiver, home, school, community and friendship network (Centacare, tabled document). For some children it can mean entry into the substitute care system and the possibility that they will be made wards of the state.

Tim Keogh, Director of Psychological and Special Services with the Department of Juvenile Justice told the Committee in evidence that

there is research...that has shown that children whose parents are incarcerated usually report more behavioural and emotional problems that are related to separation and identification with the incarcerated parent. That is the whole idea of intergenerational transmission....(O)bviously the age of the child is a critical determinant in terms of issues of separation or loss, and therefore the need to be with the mother. The closer we are to birth, then the stronger the need is for opportunities to engagement in attachment with the mother. Of course, now there is significant research that shows that failure in that bonding and contact can be associated with the development of psychoses and major borderline personality disorders...Some of the research has shown that children of incarcerated parents are more likely than their peers to have substance-abusing parents, and to have been involved in child mistreatment, or to have been reported for child-abuse (Keogh evidence, 30 September 1996).

Many children of prisoners are forced to conceal the fact that their parent is in custody and are often advised to remain secretive “for their own good”. However, the Committee has heard that such deception can place an enormous burden on a child and compound the trauma of separation from the parent. One Committee witness explained how keeping the secret of his mother’s incarceration affected him and his brothers:

in my own case, we were actively counselled not to disclose to anyone in our community our plight or who our mother was. This had the effect of stopping us pursuing this topic amongst ourselves (my two brothers and I) and our foster parents. This also had the effect that we never resolved our problems or feelings. Instead of bringing us closer together as it could (have), this silence only pushed us apart (Submission 38).

Gabel’s study (1995:37,38) details overseas research that has been conducted on the behavioural problems of children of incarcerated parents. He provides the following chronology of information:

- *a 1965 study examined the effects of incarceration on male inmates and their families in England. Overall, the behaviour of about 20% of the children studied was felt to have deteriorated after their father’s imprisonment;*
- *a Californian study (1965) found that children with an incarcerated father were rated below average in various social and psychological areas more often than other children;*
- *a descriptive report examining the effects of deceiving children about the imprisonment of their father, argued that disobedience, temper tantrums and destructive or delinquent behaviour were often responses to this deception*

(1966) (other reports have since corroborated the harm caused by such deception - it has been argued that this practice may make it impossible for children to work through their feelings about their parent's incarceration);

- a 1977 clinical report, whose sample focussed on six lower and middle class white Boston families with boys between the ages of six and 13 years, found that of the 24 children 12 displayed aggressive or antisocial behaviour within two months of their father's incarceration. Male children between the ages of 11 and 13 seemed the most vulnerable to the effects of paternal separation, although younger children sometimes displayed temporary separation anxiety;
- a 1978 study assessed the changes that occurred in the families of 93 incarcerated black men. The social stigma of incarceration was generally found not to be a problem for these families because they tended to view incarceration as the result of prejudice against minority groups. Still, approximately two-thirds of these inmates' wives thought the incarceration had negative effects on the family;
- a 1981 study examined both male and female inmates' impressions of their children's behavioural response to parental incarceration. Two-thirds of these inmates reported that their child(ren) developed behavioural problems after their incarceration. The incarcerated men reported problems such as truancy, discipline and delinquency, while the women reported fearfulness, poor school performance and nightmares;
- in that same year a study focussing on families of 192 Afro-American male inmates in Alabama and Tennessee found that imprisonment had little or slight effect on about one half of the children, while having a major impact on about 30%. Further, approximately 11% of the children were said to have been greatly upset by the stigmatising remarks of the children in the community; and
- in 1986 an examination of 118 first-time male Jewish offenders in Israel reported that, according to their mothers, the majority of children's problems were school - or health - related. Relationships, discipline, aggressive behaviour and withdrawal also tended to be problem areas. The mother and family's coping resources were viewed as crucial to responding to these difficulties. It was also argued that the stigma of incarceration was particularly difficult to bear for children whose father had been convicted of a white-collar crime or sexual offence because most of these families had no prior contact with the criminal justice system.

Gabel's own research reveals that

maternal incarceration may place even greater burdens on children if the children lose their primary caretaker (temporarily or permanently). The children of incarcerated fathers typically continue to be cared for by their mother, but the children of incarcerated mothers are rarely cared for by their father (Gabel, 1995:39).

Many of the findings of all these studies parallel the anecdotal evidence presented to the Committee in testimony and in submissions.

As well as the behavioural problems experienced by children of incarcerated parents, the Committee heard evidence that these children are at high risk of becoming homeless, engaging in criminal activity and becoming involved in the juvenile justice system.

Chapter One described how children of prisoners are a forgotten group. They have not figured prominently in official policy. Recommendations that have been previously made to governments regarding this group have been largely ignored.

4.2 GOVERNMENT DEPARTMENTS

4.2.1 DEPARTMENT OF COMMUNITY SERVICES

When a parent is sent to prison, the Department of Community Services can play a significant role in decisions about the future of the child(ren). This role was explained to the Committee in evidence by Ann Shanley, Principal Program Officer, Child Protection with the Department of Community Services in the following terms:

The Department's role is in providing placements for children who have no extended family who could provide those placements or who are unable to reside with their primary carer in the prison system...If (an) informal arrangement is with an extended family member, then the department would not have a role other than if that extended family member was requesting a service from the department to get support or financial assistance to be able to care for that child. That would always be a good option for us and in fact they may get a regular allowance while they are looking after that child, or case coordination if they needed other sorts of assistance and referral to access other services. There are children for whom the department has the care whose parent subsequently goes into the prison system, and of course as guardians we have responsibilities in terms of access (Shanley evidence, 18 December 1996).

Evidence to the Committee indicated that as at December 1996, 106 children were in foster care in New South Wales purely because their primary care giver is in gaol (Shanley evidence, 18 December 1996). **There are no available official data regarding how many children are state wards because their primary carer is in prison.** However, evidence presented to the Committee indicated that 45 children of imprisoned parents have wardship status and are in the care of the Department of Community Services (McCormack evidence, 1 November 1996).

Shanley, of the Department of Community Services (evidence, 18 December 1996) told the Committee that a child of a prisoner is usually made a ward either because there had been previous abuse or neglect, or the parent's sentence was so long that he or she would not be able to resume the guardianship role whilst the child was growing up.

Numerous studies have shown that state wards are an extremely vulnerable group in society. They are at risk of homelessness, drug abuse and entry into the juvenile justice system. The Discussion Paper by the Community Services Commission, *The Drift of Children in Care into the Juvenile Justice System: Turning Victims into Criminals* (1996) found that wards are fifteen times more likely to enter the juvenile justice centres than other members of the juvenile population. The Discussion Paper observed that:

Wards may come into contact with the juvenile justice system:

- *as a result of homelessness, which may follow breakdown in care arrangements or rejection by carers. Such mobility may cause failure to appear in court or failure to make appointments;*
- *after committing crimes of survival such as fare evasion, theft, break, enter and steal;*
- *following a minor infringement but where offences escalate due to a lack of support, intervention and advocacy;*
- *as a result of offending behaviours which are linked to emotional disturbances such as property damage, substance abuse or assault (Community Services Commission, 1996:7).*

Clearly, from the evidence to this Inquiry, children who are made wards of the state because their primary carer is in prison present a serious risk of involvement in anti-social behaviour and entry into the juvenile justice system.

A number of inmates with whom the Committee spoke expressed a distrust and fear of the Department of Community Services. Many were concerned that if the Department was notified of their incarceration, it would take their children away and even upon their

release they would be unable to get their children back (Mulawa briefing, 28 October, 1996). The Committee also heard that foster carers, including grandparents were sometimes reluctant to return a child once a parent was released from prison.

Further, the Committee was told that unless a released inmate has proper housing the Department of Community Services would not return a child, yet to be eligible for priority housing from the Department of Housing, a person had to have their children with them. This issue is discussed in greater detail in Chapter Five.

For these reasons many inmates would leave their children with a friend or relative when their other custodial parent was not available. In some instances this proved to be an inappropriate placement, but according to some inmates, a better option than the Department of Community Services having the care of the child(ren).

Apart from this situation being potentially inappropriate for the child(ren) it is also illegal. Shanley explained to the Committee in evidence that

It is illegal for any child to be placed in non-relative care under 16 years of age for more than 28 days. (Section 42 of the Children (Care and Protection) Act provides that you can only place your child with non-relative care for up to 28 days in any 12 month period... (After 28 days the substitute carer) would have to then apply to the department for approval for that...I suspect very often that (the parents) do not know about that, and I suspect we never know about it either (Shanley evidence, 18 December 1996).

In addition to the distrust of the Department of Community Services, the Committee heard that some District Officers can have harsh or judgemental attitudes towards a parent, particularly a mother, who is in gaol. According to then Legal Aid Commission solicitor, Janet Wahlquist

It is has been my experience over the years that it often happens that DOCS becomes involved but does not have any policy to make sure, for example, that the child will continue to have contact with the mother, and it does not have any policy as to getting the input of the mother or the father, as the case may be...it is really left in the hands of individuals who are, so to speak, left holding the baby. They might have particular views which might be quite punitive...about the mother...It was certainly my experience...that a very large part of the reason that the children (of clients) were denied access to their mother was to do with the punitive attitude of the district officers who were dealing with their cases in that they had a view that the mothers were bad people and that therefore the children should not have access to the mothers (Wahlquist evidence, 1 November 1996).

RECOMMENDATION 12:

That the Minister for Community Services introduce a training course to overcome negative stereotypes of parents who are prisoners for all District Officers who work with children of those parents. The proposed training program should be implemented as a matter of urgency and without delay.

RECOMMENDATION 13:

That the Minister for Community Services ensure that District Officers arrange for children in their care to make regular visits to meet their parents in prison or detention. The visit should not be arranged however, when it is judged to be contrary to the child's best interests, or when the child expresses the wish to avoid such visits.

The Committee notes that the Department of Community Services will soon appoint someone to the specialist position of Children of Prisoners Officer. That person's role will be statewide and will work closely with Child Protection Officers and the policy unit of the Department. Currently, one District Officer from the care and protection area undertakes as part of her duties the role of Children of Prisoners Officer. That Officer gave evidence to the Committee (Moneley evidence, 18 December 1996) that she would work in that position one day per fortnight. The position, based at Auburn Department of Community Services, provides support and assistance to the children and parents (particularly the mothers) of those prisoners detained at Mulawa and Silverwater Correctional Centres.

The submission from the Officer advised that the role and responsibilities of this position are currently:

- *ensuring that children who are separated from their primary caregivers as a result of parental imprisonment receive the most appropriate, planned care and ongoing management;*
- *ensuring all aspects of parent access, the care situation and restoration to the natural parent are managed with sensitivity and openness to the needs of both parents and the children;*
- *ensuring parents are involved in case conferences as well as any Children's Court matters. Always keeping the parent fully informed of the child's progress;*
- *consulting and coordinating support services and financial assistance to any caregiver, that is, approve them as foster parents and therefore assist financially;*

- *liaising with other agencies such as the Children of Prisoner's Support Group as well as the Corrective Services Support Staff such as Welfare Offices, Psychologists etc;*
- *working with the District Officers in other Community Services Centres in which the child is placed;*
- *being a member of the Women and Children Committee that considers the applications of prisoners for a Section 29(2)(c) of the Prisons Act and provide advice accordingly (Section 29(2)(c) will be discussed in detail later (Submission 8).*

The Committee is pleased that the position of Children of Prisoners Officer will be made into a specialist full-time position and that the duties will be state-wide, covering all prisons. It hopes that the position will influence both Community Services practice and policy and assist in ensuring that children of prisoners no longer remain a forgotten and invisible group and that their needs can appropriately be met. However, it considers that, given the substantial number of children whose parents are in prison and that many of these people are incarcerated in gaols throughout New South Wales, the Committee does not believe that one Children of Prisoners Officer, based in Sydney, is adequate. As the Committee has heard throughout the Inquiry, many prisoners are from rural areas. Further, as the Committee will discuss in Chapter Five, police require an identified service such as a network of Children of Prisoners officers to refer children of arrested parents.

Currently, with only one designated Children of Prisoners Officer based in Sydney, the role will be limited.

RECOMMENDATION 14:

That the Minister for Community Services establish a comprehensive network of Children of Prisoners' Officers throughout New South Wales with at least one designated Officer in each administrative region (see Recommendation 31).

RECOMMENDATION 15:

That the Minister for Community Services direct the network of Children of Prisoners' Officers to have regular liaison with the Office of the Status of Children and Young People and the proposed Children's Officer in the Women's Unit of the Department of Corrective Services so that policies and procedures are constantly monitored and reviewed (see Recommendations 1 and 17).

4.2.2 DEPARTMENT OF JUVENILE JUSTICE

Evidence presented to the Committee from Dr Don Weatherburn of the NSW Bureau of Crime Statistics and Research reveals that *“parental criminality ... is one major risk factor for juvenile delinquency. That is well established”* (Weatherburn evidence, 5 February, 1997).

During the course of the Inquiry a number of witnesses suggested that the fact that a parent was in prison was significant to his or her child's offending behaviour. A number of inmates and ex-inmates told the Committee that their time in prison led to their children committing criminal acts, resulting in their incarceration as well.

The Committee heard for instance, from an inmate in Junee Correctional Centre that his imprisonment had a profound impact on the behaviour of his son, beginning with school expulsions and culminating in the son currently serving a custodial sentence at Keelong detention centre.

In his evidence, Adolescent and Family Counsellor, Mr George Fitter described the impact of a mother's incarceration on her son, his client and a young offender, to the Committee:

With the effect of imprisonment of the primary care giver, the lad said himself that when mum was locked up, all his boundaries and his right from wrong was all taken away from him, and also he was severely traumatised. He rated as more than 10 out of 10 the...sense of sadness he felt...He was very attached to mum prior (to her incarceration) and (her imprisonment) had a significant effect on his rebelling (Fitter evidence, 18 December 1996).

Mr Eric McCormack, Case Manager of Justice Action indicated to the Committee that children of prisoners and especially those who have witnessed the dramatic arrest of a parent, are at particular risk of engaging in offending behaviour. He stated

(Children of prisoners) suffer a lot of pressure from neighbours. People shun them; they do not want their children playing with those children in case it is contagious. So those children become somewhat ostracised and isolated and therefore tend to gravitate to other children of like nature. In some cases this provides some support in the early stages, but without support agencies this often deteriorates into antisocial, criminal and other misbehaviour - and this comes in not too long a period of time. We are seeing a section of the community, the children of prisoners, forming a very high proportion of those children that enter the criminal justice system (McCormack evidence, 1 November 1996).

This was supported by Committee witness, Ms Jan Cregan. In her research she explains that

the stigmatisation, isolation and alienation which families of prisoners and accused persons experience through their contact with the criminal justice system have both social and psychological aspects. The material and legal processes of dealing with accused people and their families contribute to an erosion of the 'normal citizen' or 'law abiding' identity of the family and its individual members, and they are consequently forced toward public and personal realignment with the 'criminal' identity of the accused family member. Processes that criminalise children in connection with their parents' own behaviour are likely to predict more direct contact as an adult. Where such contact must occur, it should avoid reproducing the customary procedures and relationships that exist between the State and accused and convicted persons, as these are inappropriate between the State and children, or any others not accused of criminal activity (Cregan correspondence, 11 June 1997).

In its Report, *Juvenile Justice in New South Wales* (1992), the Social Issues Committee recognised that a number of factors are associated with a young person's entry into the juvenile justice system. These include poverty and disadvantage, abuse, school disruption, failure to achieve and substance abuse. Significantly, these factors are also common to the adult prison population, including those inmates who are parents. As numerous studies have shown the majority of prisoners are from poor and disadvantaged backgrounds, have substantial drug addiction and/or alcohol problems, and in the case of female inmates in particular, have experienced abuse and violence.

This Report found that family breakdown and dysfunction are also substantial risk factors to young people entering the juvenile justice system. As the current Inquiry has shown, the imprisonment of a parent can cause massive family upheaval and stresses and, often results in the disintegration of the family unit; in the case of a custodial parent being imprisoned, upheaval is unavoidable.

The Committee hopes that with the implementation of the *Young Offenders Act*, many of the issues that can cause offending behaviour will be addressed.

The issue of children whose parents are in juvenile detention centres is discussed in Chapter Seven.

4.2.3 DEPARTMENT OF EDUCATION

The Department of Education can play a critical role in the life of a child whose parent is in prison. Numerous witnesses and submissions told of the deterioration of a child's

schooling when a parent is gaoled. Children whose primary carer is sent to prison are often forced to change schools because their substitute carer resides in a different area. A number of witnesses and submissions stated that school children can suffer the stigma of being the son or daughter of a prisoner by both peers and teachers alike. The submission from the Central Coast Family of Prisoners' Support Network stated

children feel the pressure of stigma, especially via the moralistically based institutions - the scouts, schools - even school peer support groups where the child is encouraged to reveal their problems. Teachers and other community leaders may unintentionally stereotype the child (Submission 34).

Moreover, a submission from a father, whose wife was serving an eight month gaol sentence for stealing and who has the sole care of his nine year old and six year old children, described the experiences of his children to the Committee:

my children attend a nearby school. I tell them if anyone asks where your mother is to say mum's in hospital but about a week ago some children at the school found out that (their mother) was in jail and kids are very cruel towards others. My children come home at times crying and distressed saying the other children are saying bad things about their mother. If it gets any worse I'll have to move them to another school hoping it doesn't happen there too (Submission 34).

Evidence was presented to the Committee regarding the psychological and behavioural problems that many children experience when their parent goes to prison. Such problems are often manifested at school and can result in failure to achieve scholastically and problems relating to discipline.

RECOMMENDATION 16:

That the Minister for Education develop guidelines for teachers and school counsellors to assist them to recognise children whose parents are in prison and respond in an appropriate and sensitive manner.

4.2.4 DEPARTMENT OF CORRECTIVE SERVICES

From 1981 until the end of 1996, the Department of Corrective Services did not play an active role in assisting children whose parent(s) is in prison. The year 1981 marked the closure of the mothers and children's unit at Mulawa Correctional Centre. No similar unit existed in New South Wales until the opening of the establishment of the Mothers' and Children's Program at Emu Plains Correctional Centre and the Parramatta Transitional Centre.

Largely, the Department's role has been to manage inmates in its correctional facilities and to formulate policies relating to inmates. Children of inmates have not, until the recent opening of the Mothers' and Babies Unit at Emu Plains Correctional Centre and the Parramatta Transitional Centre, figured highly in Corrective Services' policy and procedures. A brief overview of the history of mothers' and babies facilities in prisons is provided in Chapter Six.

The traditional failure to take children of inmates into account has had an impact on such issues as visits, telephone contact and the ability of parents in prison to take a positive role in decisions affecting their children.

The Women's Action Plan, released in 1994, recommended that:

a Woman's Services Unit be established during the 1993/1994 financial year to advocate and co-ordinate policy matters relating to women inmates in New South Wales (Department of Corrective Services, 1994:5).

With the establishment of that Unit in December 1994, policy relating to women inmates has begun to receive greater attention in the Department of Corrective Services.

The Committee recognises that former Commissioner for Corrective Services, Major General Neville Smethurst was responsible for a range of initiatives and programs that gave women in prison a higher priority than was previously the case. The Committee considers that Major General Smethurst's contribution as Commissioner was instrumental to the Department's recent move to allow inmate mothers to keep their children with them in prison.

The Committee strongly supports the work of the Women's Unit. The Committee notes that a Coordinator of the Mothers' and Children's Program has recently been appointed. The Committee considers that a Children's Officer should also be appointed to the Women's Unit in order that issues affecting children of inmates, particularly those who now reside with their mothers in Corrective Services facilities, are given a priority. That Officer would be responsible for ensuring that the needs of children of inmates in custody are being appropriately met. Further, the Officer should have regular liaison with the network of Children of Prisoners Officers in the Department of Community Services and with the Office of the Status of Children and Young People (See Recommendations 1 and 14).

RECOMMENDATION 17:

That the Minister for Corrective Services appoint a Children's Officer to the Women's Unit in the Department of Corrective Services to ensure that the needs of children residing with their mothers in Corrective Services facilities are being appropriately met. To facilitate this role that Officer would have regular liaison with the network of Children of Prisoners' Officers in the Department of Community Services and with the Office of the Status of Children and Young People (see Recommendations 1 and 14) .

4.3 VISITS

The issue of visits was one that was raised constantly throughout the Inquiry, especially among the inmates themselves. The Committee recognises the importance of visits by children with their parents to ensure that a child's contact with his or her parent is maintained and to maintain, as far as possible, the parent/child bond. Children need to know that their parents have not left their life completely, and that they still have a significant place in their parent's life. Maintaining meaningful contact with a child during a period of incarceration can assist in the reunification process with that child once the parent is released.

In his study, *Inside...Out: A Survey of Visitors to New South Wales Correctional Centres* (1996), Eyland identified a number of issues relevant to child visitors. From a sample of 1100 visitors he found that:

- 41% were directly caring for children;
- 52% brought children with them when they visited;
- 53% said facilities provided for children were either poor or non-existent, while 47% described the facilities in the range of fair to excellent;
- some of the most common comments were:
 - more should be done for children visitors e.g. play areas, toys, videos, appropriate food and drinks able to be bought, and baby formula warming facilities; and
 - more use should be made of outside areas/courtyards so that noisy children will not cause problems during visits.

The majority of people who spoke to the Committee on the issue of visiting felt that visits with children were unsatisfactory for a number of reasons. These included their frequency, the facilities set up for the visits, the security measures implemented for

certain visits and the impact that the prison environment had on the children. A major problem identified in the evidence was the difficulties for children living some distance from where their parent is imprisoned.

The submission from Barnados identifies a range of problems experienced by children when they visit a parent in prison. According to their submission

workers who have accompanied children to prisons report long waiting periods in conditions which can be most difficult for children. We have had experience of children being kept waiting for long periods of time at the gate of the prison, and subsequently inside the prison. This has been very unsettling to the children, and has cost organisations a great deal of money as staff time has been wasted. Young children are expected to wait in the one place and there is no activities for them such as a play area. Once inside, conditions are also difficult for children. Workers report that children in nappies have been stripped. Children cannot take possessions in with them and there is little for children to do, making visits very difficult and tense. Whilst security is understandable the children's dignity should be respected and privacy and activity provided (Submission 2).

Eyland (1996) identifies a number of studies that have examined the issue of children visiting their parents in prison. He notes that Hinds (1981) found

there was an immense insecurity associated with the knowledge that the parent was helpless and impotent and that this was devastating to the child's own self image (Eyland, 1996:13).

Current New South Wales policy on visits can, in fact, differ from prison to prison. Commenting on this situation Ms Violet Roumeliotis, Executive Officer for CRC Justice Support stated in evidence to the Committee

Although there is acknowledgement that there has been great movement and improvement in the area of policy regarding visiting, there is still a great gap between implementation and what actually happens at the coal face. This is of particular concern because, obviously, the department can record that it has effective policies, but the implementation is not something that can be greatly applauded...One of the major concerns is that the New South Wales correctional centres (visiting arrangements) are not standardised. This causes tremendous concern and tremendous inconvenience (Roumeliotis evidence, 1 November 1996).

Visiting times for male inmates are found in Appendix One. The document received from the Department of Corrective Services regarding these visits does not contain any information about whether there are specific child visiting days.

The submission from the Women's Services Unit of the Department of Corrective Services (Submission 12) provides the following information in relation to visiting arrangements for children at Women's Correctional Centres:

- **Mulawa Correctional Centre**

Children can come on the normal visiting days which are Wednesday to Sunday. Children under 16 years must be accompanied by an adult, children aged 16 to 18 years can come unaccompanied at the discretion of the Governor.

Each of the three areas have an all day visit day for children once a month on a Monday, inmates are entitled to this visit irrespective of whether the inmate is entitled to normal visits.

Access visits for children who are in care and special visits are by appointment at the discretion of the Governor.

Occasional children's/family days such as a Christmas day or gala day.

- **Norma Parker Correctional Centre**

Children can come on normal visiting days which are Saturday, Sunday and public holidays. Children aged under 16 years must be accompanied by an adult, children aged 16 to 18 years can come unaccompanied at the discretion of the Governor.

All day visiting day for children once a month.

Access visits for children who are in care and special visits are by appointment at the discretion of the Governor, emergency visits are also at the discretion of the Governor.

Occasional children's/family days.

- **Emu Plains Correctional Centre**

Children can come on normal visiting days which are Saturday, Sunday and public holidays. Children aged under 16 years must be accompanied by an adult, children aged 16 to 18 years can come unaccompanied at the discretion of the Governor.

Access visits for children who are in care and special visits are by appointment at the discretion of the Governor, emergency visits are also at the discretion of the Governor.

Occasional children's days during school holidays.

- **Grafton Correctional Centre**

Children can come on normal visiting days which are Friday to Sunday. Inmates are allowed a maximum of three half day visits per week (can be increased by application).

Occasional all day visiting day for children (only one so far).

Access visits for children who are in care and special visits are by appointment at the discretion of the Governor, emergency visits are also at the discretion of the Governor.

Although the Committee supports the practice of all day visits between mothers and their children, it considers that having such visits fall on a weekday, eg. Mulawa's all day visit is on a Monday, would prejudice those children who attend school. Rather, it considers that all day visits should fall on weekends and public holidays.

Ann Gilhooly gave the following evidence in relation to visits at the women's correctional facilities:

In Mulawa ... the standard contact visits are allowed with children accompanied by an adult. The minimum time for those visits is one hour, but visits can vary in length depending on the number of people who are present in the visiting facility: how crowded it is, how much need there is to move people through. In practice, a number of visits would exceed that minimum and I am told in some cases a visit of four hours or more is not uncommon ... Visiting hours (for all day visits) are from 8:30am until 3:00pm. We have provided the play areas there with toys, and fruit and drinks are also provided for children on those days ...As for Emu Plains and Norma Parker, the normal visiting days are all day Saturday, Sunday

and public holidays. Mid-week visits are allowed, but they are by arrangement. Women with very young or newborn babies are all-day visits with their children as necessitated ... Access visits can be arranged at the request of another agency - for example, if DOCS are concerned about the welfare of the child, they can bring the child in, or come in themselves to discuss this with the inmate. We also hold special children's days during the school holidays ... The Department (of Corrective Services) also facilitates the Children of Prisoners Support Group in arranging special visits - for example, child-only visits. This was piloted last year in a number of correctional centres for both males and females (Gilhooly evidence, 30 September 1996).

In her evidence to the Committee, Official Visitor to Mulawa Correctional Centre, Ms Shirley Nixon identified a number of problems in relation to visits from children to their inmate parent at Mulawa. She told the Committee

one (of the problems) is knowing that they can have visits, as not every person who goes into Mulawa is an experienced inmate and sometimes it is days before they realise that is possible. Then how to arrange the visits and how to be available - to be informed when the family or child is visiting and then having a visit that feels like a visit by having officers present on the day of the visit that are not, as some are, invasive, almost punitive in their control of the visit. The women worry that when their children see them there is not a relaxed atmosphere, it is strange and already they have been separated and there is a bit of a problem if they cannot cuddle them, which is sometimes not possible depending on the officers present and if they look funny, that is, wear funny clothes according to the children. The women worry a lot about there being any real communication during the time of the visit (Nixon evidence, 17 December 1996).

Similar observations were made by Ms Gloria Larman, Executive Officer of the Children of Prisoners Support Group, in her evidence to the Committee. She further commented on the issue of distance and the cost of visits for some families

The distances to some gaols are huge, a couple of days, depending where the visitors are living. If they are living in Sydney and going to Grafton or Junee, it is a whole weekend and it is very expensive. The CRC Justice Support run a bus that goes to Junee, but it still costs something like \$25 per person to go on that bus. So, with the cost of adults and the cost of kids, it can be a very expensive business. The majority of people who visit institutions are usually on social security. So maintaining contact is a huge problem, as is maintaining phone calls because if you are in a country gaol all the phone calls are STD. If you

are Aboriginal and you are stuck out at Bourke or anywhere like that and you have to come to a Sydney gaol, or go from Bourke to Junee to visit, it does not happen (Larman evidence, 20 September 1997).

Larman's evidence also noted that the inconsistency of visiting has a considerable impact on children and causes an enormous amount of stress. By way of anecdotal evidence she explained to the Committee

The dad of one girl...was moved to Goulburn and there was no way that she was able to visit him. We finally got him moved up to a city gaol. That was the one thing that was playing havoc with her, and there was nothing that anybody could do. All the counselling or other services in the world were not going to change that. The only thing that would change the way she was feeling was to move dad to Sydney so that she could see him. Eventually that happened, and then her behaviour changed (Larman evidence, 30 September 1996).

A number of witnesses told the Committee it is often the case that visits do not take place even though visitors have travelled considerable distance and at considerable expense to see an inmate. Violet Roumeliotis explained in evidence:

We have numerous complaints of women ringing and saying "I travelled three hours to Goulburn and when I got there they would not let us in." Maybe they had industrial problems or were understaffed, but they just would not let those women in (Roumeliotis evidence, 1 November 1996).

Ms Roumeliotis conceded that, because there are different types of gaols, such as remand and working gaols, the needs of the inmates, the programs and security have to be met. Nevertheless she argued that there should be some way in which visiting hours could be standardised across the board and people could have the dates and times that prisons are open set out in writing. If this were the case people would

know that if you get there, you will be guaranteed (entry), unless there is some sort of terrible emergency...If situations come when they cannot get in, they should inform services like ours who are getting information out to people (Roumeliotis evidence, 1 November 1996).

Another problem identified to the Committee regarding visitors' access to inmates was that prisoners are often transferred from one gaol to another and this information is not passed on to families. One inmate at Junee Correctional Centre told Committee Members that his wife had to make eight telephone calls before she finally discovered where her husband had been transferred to. He stated that the inability of his family to find out where he had been placed had a severe effect on his daughter (Briefing, 11 March 1997).

In her evidence to the Committee, Ms Anne Gilhooly, Director, Women's Services Unit, Department of Corrective Services stated that

Financial assistance (to women's prisons) for inmates' visitors can be obtained from the department...and that is facilitated by the welfare officer at each correctional centre...Special case visits - where there is a need to bring the child in to see the mothers - are arranged as required...In instances where the carers of inmates' children have financial difficulties or perhaps physical difficulties in bringing the children to the centre, Mulawa has provided transportation for those carers, provided they are within the Sydney metropolitan area (Gilhooly evidence, 30 September 1996).

Information supplied from staff at Mulawa Correctional Centre indicated that the travelling fund from the Department of Corrective Services is \$1,000 per New South Wales region (Mulawa briefing, 28 October 1996). The Committee considers this sum to be manifestly inadequate.

A submission from a volunteer worker who escorts children on public transport to and from prisons to visit their parents highlighted the difficulties that children face on long distance journeys and when they reach the gaol. Similarly, a submission from a grandparent, who takes her grandchildren to visit their father in prison noted the stresses placed on children when having to travel and then wait sometimes considerable periods for the visit to occur. She writes

I take (my grandchildren) frequently to see their dad as they need to have as much contact with him as possible. The conditions waiting to get into RIC at Long Bay (are) disgusting. You have to stand outside a steel door to get in, with very little cover if it is raining. When this door is finally opened you then proceed to get pushed and shoved by visitors to get to the front desk to give your particulars. You then have to wait in another room before you can go through the actual visiting room. The emotional trauma the children go through just to get in to see dad is bad, they are cranky, fighting, playing a power game with you (eg if you chastise them (they say) "Wait until I tell dad you were cranky with us")...At most of the gaols there are machines which have chocolates, coke and junk food, if you can afford to buy these, the kids usually get hypo when they get to see dad. It would be better if they had orange juice and milk. At times you come across one of the officers (who) is very rude to you and makes you feel as if you are the one who has committed the crime (Submission 5).

In relation to visits, the Committee notes that security is a high priority of the Department. Visitors are routinely searched and subject to metal detectors. The Committee also heard that sniffer dogs are sometimes used to detect drugs. According

to Ms Rebecca Gilsenan, Project Officer with the Women's Services Unit of the Department of Corrective Services, "the regulations by which children are admitted into gaols are the same as for adult visitors" (Gilsenan evidence, 30 September 1996).

Evidence to the Committee noted that children can be directly subject to these security measures. They can also indirectly be affected by security measures when conditions are placed on the visiting status of their parent. Official departmental policy is that denial of visits cannot be used as a measure of discipline within prisons. However, Mr Lawrence Goodstone of the Department of Corrective Services told the Committee in evidence "as to whether individual officers choose to play mind games with inmates, one never knows exactly what goes on" (Goodstone evidence, 30 September 1996).

In relation to the security measures imposed on children the Committee was told by some witnesses that babies had their nappies searched for drugs or contraband. Inmates at Mulawa further stated to the Committee that their children are searched regularly by prison officers. In her evidence to the Committee, Gloria Larman commented

Another issue is the use of passive and active dogs to do searches. They (the Department) are talking about using passive dogs on children and active dogs on adults. It sounds alright, but how do you separate adults from children? (Larman evidence, 30 September 1996).

The Department staff from whom the Committee received evidence were unable to comment on the security processes of allowing children in gaols.

Evidence from inmates revealed that many of the security measures can frighten and intimidate the children and consequently lead to an unpleasant visit (Mulawa briefing, 28 October 1996).

The Committee noted on its site visit to the Industrial Training Prison at Long Bay Correctional Centre that, as a security measure, children are not allowed to bring in toys. A sign posted on the gate to the visiting area read:

<p>Notice 12/12/96 Area Manager Area A Industrial Training Centre All visitors to note that no toys of any kind will be allowed in the Centre</p>

No toys are provided for children at the Industrial Training Centre.

Despite the numbers of visits that parents and, in particular, mothers in prison may have, many of these visits with children can be subject to a number of restrictions. The Committee was told for instance, that on certain visits the women cannot have any physical contact with their children. On its visit to Mulawa the Committee heard that on particular visiting days the inmate mothers have to wear a special prison suit and are not able to get up from their chair. Should they do so the visit is terminated (Mulawa briefing, 28 October 1996).

This issue was discussed by Roumeliotis in her evidence to the Committee. She stated

In maximum security facilities, for example, if a child is playing in a play area...(and) falls over or argues with another child and the parent gets out of the chair as a spontaneous response to see what is happening, that visit is terminated. If the child wants to go to the toilet, as soon as the child goes to the toilet the visit is terminated. These are very draconian measures to take. We understand that there needs to be a balance between security and drug couriering, but you cannot have an open visiting policy when such measures are in place (Roumeliotis evidence, 1 November 1996).

The Committee considers that any sanctions imposed on a prisoner should not disadvantage the child. Children should be entitled to have contact with their parents on their visits.

Mulawa's Official Visitor, Ms Shirley Nixon provided the following example in evidence to the Committee to highlight the problems of non-contact visits between inmate mothers and their children:

A child ran to its mother, the mother responded, the officers overreacted and the department had to do quite a bit of fast footwork to make sure that woman did not take further action because she was actually hurt in front of her children (Nixon evidence, 17 December 1996).

A number of other witnesses identified the trauma that children may suffer from being unable to have physical contact with their parent. For many it can compound feelings of rejection and loss which may have already begun when the parent was incarcerated.

For certain inmates visits are held behind a glass partition. Known as boxed visits, they are used in cases where the inmate has previously had drugs smuggled into the prison or is suspected of such action. Boxed visits are held with adults and children alike. At Mulawa the Committee heard some disturbing evidence in relation to the experiences of children visiting their mother on a boxed visit. The Committee was told of one incident in which a two year old child suffered bruising to his forehead when he tried to get through the glass partition to his mother. Another woman told how she was placed on a boxed visit with her eight week old baby. The child had no physical contact with his mother at all.

Boxed visits with children take place even though, according to Violet Roumeliotis of CRC Justice Support

we know that on parent/child days there are no incidents of drugs being found...It seems that imprisoned parents respect that and have not used their children - or none that we are aware of (Roumeliotis evidence, 1 November 1996).

The Committee heard considerable evidence about visiting environments in prison and Members were able to view first hand the visiting areas of a number of prisons. Both the evidence and the Committee's own observations found that few prisons in New South Wales have particularly "child-friendly" visiting facilities. The Committee was told:

It is a basic human right that children should visit with their parents in warm and comfortable facilities that have adequate resources. We have found that although the correctional centres say they have policies that say there should be resources in play areas, videos and chairs, in fact, there have been many visits when kids turn up and the video is locked and they cannot put the video on; or the chairs are all stacked up, and it is a very uninviting and very impersonal atmosphere (Roumeliotis evidence, 1 November 1996).

A number of witnesses variously commented that most visiting areas "lack privacy", are "noisy", "cramped", "sterile", and even "dangerous". Some inmates also mentioned that when their adolescent children visit, it is often difficult to have a private discussion on a sensitive matter when the area is so noisy and has lots of younger children running around. Again, the Committee was told that it is often important for parents to spend some "quality time" together. When their and other inmates' children are in the visiting area, this is usually impossible, as there are few activities and amusements for children.

On its visits to New South Wales Correctional Centres the Committee noted that the adequacy of visiting areas for children can vary. Many are concrete areas with little or no access to a grassed area where the children can run around. While some of the Correctional Centres contain children's gym equipment, the Committee was told that in certain prisons this could be dangerous. An inmate at one male correctional facility told the Committee that the behaviour of some inmates and their partners during visits can often be inappropriate when children are present. He advised that such behaviour had become so improper that he felt compelled to suspend his visits with his daughter.

The Committee understands that following the recommendations arising from the survey of visitors to New South Wales Correctional Centres (Eyland, 1996) \$500,000 has been provided for an upgrade to visit facilities during 1996/97; changes will focus on visitors/child friendly facilities. This includes the provision of disabled access and

play areas for children (Eyland, 1996:iv). The Committee supports this initiative and calls on the Minister for Corrective Services to undertake the upgrades as a matter of urgency.

The visiting "process" can be a difficult and often traumatic experience for children. Evidence to the Committee indicated that this can often be as a result of the attitudes of some custodial staff. The Committee was told that families can sometimes be treated as if they were inmates, with little respect or regard for their rights.

The visitors survey by Eyland, however, found that the majority of visitors stated that they were always or often politely treated by departmental staff. Procedures rather than staff were blamed for problems such as delayed visiting times (Eyland, 1996:iv).

Nevertheless most of the Committee's evidence on this issue was that attitudes by some custodial staff required improvement. According to Gloria Larman of the Children of Prisoners Support Group, who has organised all day children's visits in prisons

I think certain prison officers have a lot to answer for where kids are concerned. They should not be working anywhere near children, because their values and their attitudes come through on (children's all day visit) days (Larman evidence, 30 September 1996).

RECOMMENDATION 18:

That the Minister for Corrective Services review the visiting arrangements in all New South Wales Correctional Centres as a matter of urgency. Action should be taken to:

- standardise the visiting hours;
- develop a scheme to notify families when visiting arrangements are altered;
- provide appropriate funds to assist families to visit inmates in correctional centres that are some distance away from their home;
- ensure that when school days or public holidays interfere with all-day visits alternative arrangements are introduced; and
- provide child-friendly and appropriate visiting areas.

RECOMMENDATION 19:

That the Minister for Corrective Services institute a training program for all staff to develop positive methods of interaction with the families, particularly the children, of inmates.

RECOMMENDATION 20:

That the Minister for Corrective Services prohibit invasive security checks of children under the age of 16 years.

RECOMMENDATION 21:

That the Minister for Corrective Services ensure that children are not prevented from visiting their parent in custody because of any disciplinary action taken against the parent. In the event that drugs are brought into a prison via a child the prisoner responsible for the action is to be disciplined and the child should not be disadvantaged by a suspension of visits to a parent.

RECOMMENDATION 22:

That the Minister for Corrective Services ensure that children are at all times permitted to have contact with their parents when on visits to prisons and that the practice of 'boxed visits' be discontinued when children are involved.

4.3.1 BIOMETRIC IDENTIFICATION TECHNOLOGY FOR VISITORS

The Committee understands that the Department of Corrective Services has recently introduced the use of biometric identification technology for visitors to New South Wales prisons. This technology is used to electronically thumb print visitors and people working at the prison. The information is then kept on a data base.

The technology has been introduced in the wake of the escape of inmate George Savvas from the Goulburn Correctional Centre. The Minister for Corrective Services has stated that the use of a biometric system would help to verify the identification of persons entering and leaving correctional centres (Correspondence, 30 June 1997).

A number of groups have expressed concern at the introduction of biometric technology for prison visitors, particularly as it impacts on children.

Information supplied to the Committee by Mr John Murray of Justice Action noted the following concerns:

In New South Wales, Corrective Services are struggling to maintain any cohesive stance of this issue... Firstly... children and young people wouldn't have to be processed, then it turned (out) that they would, then it changed that they would process children over 12 with parental permission...the alternative would be boxed visits. The latest permutation is that it will stop drugs entering the system...I cannot believe that a biometric finger printing device is also a useful drug detector (Correspondence, 16 June 1997).

Other concerns relate to privacy issues and the storage of and access to the information. The Minister has stated that

At no stage is any fingerprint image taken or stored. The software does not allow for the visitor's fingerprint to be re-constructed once the algorithm has been created. In that way the potential for abuse or invasion of privacy is eliminated. For the same reason, the data cannot be used by any outside agency or unauthorised person. The Department is also taking action to regulate privacy safeguards within the Prisons (General) Regulation 1995. Consultations are currently taking place with the Privacy Committee and other interested groups about the protections built into the system to avoid distribution of data to other agencies and about other privacy concerns (Correspondence, 30 June 1997).

Although the Committee acknowledges these safeguards it is strongly opposed to the fingerprinting of children and young people of any age when they visit a parent in prison. It considers that the practice is unnecessary and invasive and could have a distressing effect on a child. The Committee considers that the move to fingerprint visitors, particularly children, is to treat these people in a manner suggesting they are potential or actual criminals. The Committee therefore calls on the Minister for Corrective Services to cease all biometric technology fingerprinting of child visitors to prisons, irrespective of parental consent, as a matter of urgency. Children have a right to maintain contact with their parents in prison. Such contact should be facilitated in the least disruptive manner to the child.

RECOMMENDATION 23:

That the Minister for Corrective Services direct that the use of biometric identification technology as it applies to child visitors to prisons be terminated as a matter of urgency.

4.4 TELEPHONE CONTACT

Telephone contact between an inmate and his or her child is significant to the maintenance of the parent/child relationship. The number of telephone calls to which a prisoner is entitled varies from prison to prison.

Many of the women with whom the Committee spoke at Mulawa and Emu Plains were dissatisfied with the telephone arrangements at the gaols. Although phone cards are now issued to prisoners time limits are placed on calls. At Mulawa, for instance, calls are limited to six minutes. It was submitted to Members that this was not long enough particularly when a mother was talking with her adolescent child who may be experiencing problems. Further, many of the women are mothers to more than one child who all needed to speak with her when she called. At Junee Correctional Centre, New South Wales's private gaol, calls are limited to 12 minutes.

Another issue brought to the attention of the Committee is that there can often be a lack of privacy during a telephone conversation. One inmate at Mulawa told the Committee that she often has to discuss personal and sensitive matters with her two adolescent daughters but this can prove difficult when there are other people around waiting to use the telephone.

For urgent telephone calls, prisoners usually enlist the services of welfare officers. Families may also telephone welfare officers if they need to contact an inmate urgently. Incoming calls from children to their inmate parent are not, as a rule, permitted.

The Committee considers that children of inmates should not be denied the right to have contact with their parent by telephone, nor should the time during which they can speak to the parent be restricted. The Committee believes that such contact can be critical to preserving a child's bond with his or her parent and may assist the child with issues surrounding separating from a parent.

RECOMMENDATION 24:

That the Minister for Corrective Services institute regulations to ensure that uniform policies governing telephone contact are adopted across New South Wales Correctional Centres.

RECOMMENDATION 25:

That the Minister for Corrective Services increase the number of telephones in each correctional centre to maximise the opportunities for children to speak with their inmate parent.

RECOMMENDATION 26:

That the Minister for Corrective Services direct the Children's Officer (see Recommendation 17) to prepare a protocol for use throughout the prison system so that children have telephone access to their inmate parent in the event of an emergency or in a crisis. The protocol should also make provision for children to have reasonable telephone access to their parents at other times. Consideration should be given to the use of hand-held telephones for this purpose.

RECOMMENDATION 27:

That the Minister for Corrective Services increase the time limits for STD calls between inmate parents and their children to 15 minutes.

RECOMMENDATION 28:

That the Minister for Corrective Services ensure that all telephone conversations between inmates and their children take place in private.

4.5 CONCLUSION

The Committee recognises that unavoidable sadness and dislocation will result from a child's separation from a parent because of imprisonment. However, it believes that there are a number of ways in which the trauma of such separation can be alleviated. To this end, the relevant government departments identified above, can play a critical role in ensuring that contact between a child and an inmate parent is maximised. The Committee recognises that this can only be successfully achieved if children of prisoners are made a serious priority of government policy.

CHAPTER FIVE:

GOVERNMENT DEPARTMENTS

CONTENTS:

5.1	THE POLICE	83
5.2	THE COURTS	88
	5.2.1 The Criminal Courts	88
	5.2.2 The Family Court	93
5.3	POST-RELEASE	94
5.4	DEPARTMENT OF TRANSPORT	97
5.5	DEPARTMENT OF HOUSING	98
5.6	DEPARTMENT OF SOCIAL SECURITY	102
5.7	CONCLUSION	105

A parent's experience with each aspect of the criminal justice and correctional system can significantly impact on the child. The following discussion will examine these issues and look at the role of the police, the courts and aspects of the corrections system. The final section of the Chapter will examine the role of the Departments of Housing, Social Security and Transport in assisting families to reunite once an inmate is released from prison.

5.1 THE POLICE

The police are usually the first point of contact for children whose parents are involved in the criminal justice system. Police procedures and their responses to an investigation or an arrest can have a critical impact on a child. Very little research has been undertaken in this area and consequently there are no formalised rules, policies or procedures in place to deal with the situation of the children of an arrested person. It is up to the discretion of the arresting police officers to decide what action he or she will pursue in relation to the child of the arrested person.

Butler's report, *Mending the Broken Bond* (1994) documents the experiences of women and their children when the woman is arrested. Butler's research reveals that arrests can occur at anytime of the day or night and at any venue, including the individual's home (1994:11). Women who were interviewed by Butler provided the following information regarding their arrest:

- Ruth:** *The children were present. I was feeding them breakfast. It all happened so quickly I couldn't even get to say goodbye to them. My little boy didn't understand what was happening and just kept asking for mummy. He wanted to come with me and he was crying...my family said he just kept asking for me and walked around carrying my photo.*
- Natasha:** *The police arrived at my home at night and dragged my son out of bed...he's frightened now of police. I was out in the back of the bullwagon and my son was put in the front. I had no time to talk to him about anything.*
- Clare:** *They came in and surrounded the place. They were threatening me that if I didn't give information, they would take my son and I would never see (him) again and that sort of stuff. My son was in the back bedroom with my husband...when they went in the room, my son was on the bed in a little rocker and they actually put a gun to my husband's head in from of him...at 9-10 months, that's going to affect him. And it did affect him because later when he was just over one, and my cousin was playing with a gun, just a toy, he started freaking out and screaming (Butler, 1994:11,12).*
-

During the Inquiry the Committee was told that arrest procedures can cause considerable distress to children. The Committee heard for instance

Once parents are arrested...the arrest itself is an extremely traumatic procedure in most cases for children. It often involves police rushing round the house with guns drawn and so on (McCormack evidence, 1 November 1997).

Anxiety and fear about actual or possible separation from their mother are common feelings among children whose parents have been arrested. Butler's study highlights the terror of many children when faced with the possibility that their parent will be incarcerated. Her interview with Sandra, for instance, clearly demonstrated this:

Sandra: *my eldest daughter was five going on ten, and she used to worry, really worry that I was going to go to jail. She used to freak out about it. Sometimes at night she would be in bed crying and going 'oh, you are going to jail, mummy' and I would say 'We don't know that yet. Your father is just assuming it. We don't know'. I knew, but I didn't want to tell her that (Butler, 1994:12).*

Butler's report notes that

The impact of arrest is not confined to the point of arrest or even if the child/children are present at the point of arrest. All the women stated that their arrest had a negative impact on their children. The impact was centred on the forced separation of mother and child, or the impending separation for those women on bail awaiting conviction or sentencing (Butler, 1994:12).

The *Law Handbook* provides the following discussion regarding the arrest of a person who has children:

If the child is present when the parent is arrested, the parent is expected to make a decision straight away about who should care for the child. Parents are given little if any time to explain to their children what has happened, or to say goodbye. If the parent can not identify someone to care for the child, the DCS is responsible for arranging care for the child. Generally, the arresting police officer will contact DCS, who will send a district officer to collect and arrange care for the children. The Department may arrange foster care, or placement with a private agency like Barnardos. If the child is not present when a parent is arrested, they cannot tell the child what is happening. The police may not become aware that care needs to be arranged for a child. There is no defined procedure about who should contact either the friend or relative the parent wants to care for the child, or the DCS. This means that children can come home

from school without knowing that their parent has been arrested, and then be left to fend for themselves until they find someone to care for them (Redfern Legal Centre, 1995: 997-998).

Evidence to the Committee from Senior Constable Julie Ann Carroll confirmed that this is the case. According to the witness

There is not any differentiation between someone who is a primary care giver as opposed to another member of the community who is not, but the circumstances would dictate how we would deal with them. It would all depend on the seriousness of the crime, the risk to the community, and so on...If you had someone who came into custody (following arrest) who had a child, and the child was with that person, you would allow that person to make as many inquiries as possible to arrange themselves for the care of the child. If it came to a situation where arrangements could not be made by the person who had been placed in custody, we would make those arrangements ourselves and bring in the Department of Community Services to attend to the needs of the child (Carroll, evidence, 22 November 1996).

As Senior Constable Carroll conceded the decision about what to do with a child at the point of contact with an offender is a matter for the personal assessment and decision of the arresting officer.

Although weapons may be produced at an arrest, there is no specific policy on this issue should a child be present.

The Committee notes that, in a range of circumstances, a police officer has the discretion to either arrest and charge a suspected offender or to issue him or her with a court attendance notice. In the case of a court attendance notice, the determination of bail is dispensed with. In her evidence Constable Carroll informed the Committee that there is now a greater push towards using court attendance notices in the Police Service. She also reported that the Police Service is examining field court attendance notices which would mean that the person would not be required to attend the police station. A police officer would merely issue a notice on the spot.

The Committee encourages this approach particularly when children of suspects are involved. As the Committee heard, many people lose everything upon arrest. Their families are scattered, they have no time to deal with their possessions, or to secure their rent, mortgages or accommodation. Court attendance notices allow people to make any necessary arrangements, including the care of their children, before going to court.

RECOMMENDATION 29:

That the Minister for Police provide continuing instruction and training to all police officers throughout New South Wales on the use of court attendance notices, particularly in situations where the accused is a primary carer of dependent children, and the offence in question does not involve violence.

RECOMMENDATION 30:

That the Minister for Police immediately implement a pilot project throughout New South Wales to evaluate the effectiveness of field court notices particularly in relation to the benefits of dispensing with the procedures associated with the arrest of primary carers of dependent children. The pilot project should be assessed within 12 months.

Following an arrest a person can be charged with an offence(s) and then subject to a bail determination by the police. Section 32 of the *Bail Act, 1978* sets out a number of criteria which must guide an officer in his or her decision to grant or refuse bail to a charged person. These criteria are measured against the likelihood that the person will appear at court. Among that criteria is s. 32(1)(a)(1) which provides that the officer must have regard to:

the person's background and community ties, as indicated by the history and details of the person's residence, employment and family situations and the person's prior criminal record (if known).

Constable Carroll told the Committee that

if someone is a primary care giver for three young children, it can be implied that that person is not going to abscond (Carroll evidence, 22 November 1996).

When a person is refused bail by the police he or she must be brought before a magistrate as soon as possible. In the interim that person is held in the police cells. The Police Commissioner's Instructions provide that in such a situation the police are to give visiting access to relatives or friends. This is especially the case for Aborigines or child offenders who may be held in police lock-ups.

In relation to telephone contact from the police cells, there are instructions that provide that the police officer should make the initial contact with the person receiving the call. The wishes of the person detained and whether the contact is desirable are matters to be taken into account.

The Committee understands that the Department of Corrective Services now has responsibility for some cells across the state. The Committee considers that every effort should be made by Corrective Services Officers to enable inmates in the cells to have contact with their children.

The Committee heard that when bail has been refused for female offenders the Police Service is responsible for their transportation to suitable facilities. Because such facilities are limited this has considerable implications for children of female inmates who may live some distance from where the facility is located.

The Committee considers that there should be clear guidelines and rules for police officers in relation to the children of arrested people. The Committee believes that responsibility for arranging suitable care for children of arrested people should not be left up to the initiative or discretion of individual police officers. There should be standard procedures that must be followed when children are present or involved in the arrest of a parent.

Recommendation 14 provides that the proposed Children of Prisoners Officer position in the Department of Community Services should be expanded to a network staffed by a number of officers throughout New South Wales. The Committee considers that this Unit should be appropriately resourced and staffed and that it operate on a 24 hour basis to ensure that suitable arrangements for the care of children whose parents are taken into custody, at any time of the day, are made by qualified and experienced people.

Regular liaison should be maintained between the Police Service and the network of Children of Prisoners workers to ensure that policies and procedures are developed and implemented and that the respective roles and responsibilities of the police and the Children of Prisoners workers are fully understood.

RECOMMENDATION 31:

That the Minister for Police and the Minister for Community Services collaborate to ensure that a strong liaison is developed between the Police Service and the network of Children of Prisoners' Officers within the Department of Community Services so that police officers make appropriate reference to the Children of Prisoners' Officers for the benefit of children when a parent is arrested. The Minister for Community Services should ensure that access to the network of Children of Prisoners Officers is available at all times (see Recommendation 14).

5.2 THE COURTS

5.2.1 THE CRIMINAL COURTS

Strictly speaking there is no requirement for a Court to take into account the fact that an offender's children will suffer hardship should he or she go to gaol, when sentencing. However, section 80AB of the *Justices Act* provides that a Magistrate shall not sentence a person to full-time imprisonment unless satisfied, having considered all possible alternatives, that no other course is appropriate. Information supplied to the Committee by former New South Wales Chief Magistrate, Mr Ian Pike notes that

As a general rule, maximum penalties for particular offences are set out in legislation and it is left to the sentencing judge or magistrate to consider the facts of each case and determine what sentence (if any) should be imposed in the particular circumstances of the case. However, although the process of sentencing involves an exercise of discretionary judgment, that discretion must be exercised judicially. This then both limits and guides the exercise of the discretion (Correspondence, 4 February 1997).

Citing findings in the case of *R v Stewart* (1994) 72 A Crim R 17, Mr Pike further explained the situation when the court sentences an accused with children:

Generally the circumstances that hardship is likely to be caused to the family members of a person facing imprisonment, is not a matter that should be taken into account in sentencing. It may however be taken into account where the hardship is exceptional, when the offender is a young mother or when the children will be deprived of parental care. There must be adequate evidence of hardship and each case must be determined in relation to the gravity of the offence and other relevant circumstances of the particular case (Correspondence, 4 February 1997).

As the former Chief Magistrate implies in this statement, it is not mandatory, but rather a matter for the court's discretion whether or not to take into account the hardship that may be suffered by an accused person's family, because of a particular sentence.

A number of cases were brought to the attention of the Committee with regard to sentencing women with children or pregnant women. In the Western Australian Court of Criminal Appeal case of *R v Stewart* the appellant was a 25 year old mother of three children (one eight year old daughter and twin four month old sons) and three months pregnant at the time of the sentencing. She had been sentenced to concurrent terms of 12 months and 22 months imprisonment respectively in relation to possessing 452 grams of cannabis and 89.5 grams of cannabis resin both with the intent to sell or supply.

The appellant had two prior convictions for the possession of cannabis for which small fines were imposed. She had not previously been sentenced to a term of imprisonment. She claimed not to be an addict but was a casual user of the drug. At the time of sentencing the appellant's de facto husband was caring for the children. He was the father of the twins and the unborn child.

The pre-sentence report deemed that the appellant was suitable for probation. Nevertheless the court upheld the sentencing judge's decisions in a judgement 2:1 and confirmed the custodial sentence.

The majority held in relation to the issue of the children's welfare that there was no suggestion that the father could not adequately care for the children or that they are not, or have not, been properly cared for by him. The court found that in this case, there was no evidence that any exceptional hardship would be caused to the children. According to Franklyn J (at 21)

The children are being cared for by the de facto husband and, other than not having their mother present, there is no suggestion of any lack or that they are otherwise than well cared for. The pregnancy which gave rise to the birth of the twins and the present pregnancy were each entered into after arrest and, one must assume, with knowledge that there was a high probability of a custodial term being imposed.

The dissenting opinion was provided by Wallwork J. He argued (at 28)

It is my view that in this case the learned sentencing judge overlooked, or undervalued, or underestimated matters personal to the applicant and her three young children. Those matters had to be balanced against the seriousness of the offences and such matters as any injury, loss or damage resulting from the offences. In my view it was established that "no other form of punishment or disposition available to the court" was appropriate to use the words of s.19A of the Criminal Code. One very important consideration was the applicant's responsibility for, and the right to look after, her children. It might be suggested that the applicant had forfeited her rights to look after the children during the period of her sentence of imprisonment, because of the seriousness of the offences. However, that involves a weighing of the interests of herself, her children and society. The children are entitled to her care and affection. This in my view was truly an exceptional case in the sense that at the time of sentencing two of the children were only four months old and the third child was only eight years of age. I do not underestimate the fact that the offences of which the applicant was convicted were serious, but that is only part of the question.

The Tasmanian Supreme Court has recently considered the question of children when

sentencing a parent. In the matter of *R-v-Plumstead* (unreported 13 March 1996) the accused was convicted of one count of assault. One of the co-accused was her husband, also the father of her children. In passing sentence Justice Wright noted that Plumstead had some prior convictions but had not previously been convicted of an offence involving violence.

He also commented that he had already sentenced the husband to three years imprisonment for his part in the assault. In imposing a three year probation order Wright J stated

If I send you to gaol your children will be deprived of both parents at an early and important age; such a result is undesirable if the parental care being received by the children is of a reasonable standard. The pre-sentence report, which I have found most helpful, discloses that you are a good and caring mother to your children and that in many ways your character has changed for the better since your marriage to Mr Plumstead.

In the matter of *R v McConachy* (unreported 26 February 1997) Crawford J considered the impact on the children if he was to imprison the parents. The accused had lodged false income tax returns with the Australian Taxation Office for the years ending 30 June 1991 and 1992. They had no prior convictions. The accused have five children, who at the time of sentence were aged 15 years, ten years, six years, four years and six months. In passing sentence Crawford J stated

If they both go to prison the children will suffer substantially...The commission of these crimes amounted to substantial criminal conduct...(F)ive children will be left without Mr and Mrs McConachy's care if they are both sent to prison. It is therefore an extreme and unusual case and I do not see it contrary to the public interest, indeed it is in the public interest that those children continue to have the care and support of one of the parents.

Mr McConachy was sentenced to imprisonment of 18 months, to be released after four months upon entering into a recognizance in the sum of \$5000 to be of good behaviour for a period of three years. Mrs McConachy was given a sentence of fifteen months imprisonment but to be released forthwith upon her entering into a recognizance in the sum of \$5000 to be of good behaviour for a period of three years.

In a recent unreported judgment (27 November 1996) the New South Wales Court of Criminal Appeal considered the effect of a custodial sentence on the mother of a three year old boy. The appellant had been convicted of embezzlement in the sum of \$107,000 from her employer and was sentenced to a minimum term of one year and an additional term of four months. She was also required to enter a recognizance which included as one of its conditions that, on her release from prison, she pay a substantial

monthly sum for an extended period. Two conditions of the recognizance were imposed at the appellant's suggestion. The first was that she would assign the benefit of her long service leave to her ex-employer.

One of the issues before the Court of Criminal Appeal was the significance of the evidence that her incarceration was having a serious effect on her child. Evidence was presented to the Court showing that the incarceration of the appellant had caused serious family dislocation and intense personal stress to the child. Gleeson CJ stated on this issue

without question this is a very sad circumstance. It needs to be remembered, however, that it is by no means uncommon for hardship, and sometimes grave hardship, to be caused to third parties by sentencing a person to prison. Judges and magistrates are routinely required in the course of their duty to sentence to prison parents of children, people who are carers of others who are weak or vulnerable, employers upon whom workers depend for their livelihood, and others, in a variety of circumstances, whose incarceration will cause hardship to third parties.

In upholding the decision of the trial judge the Court of Criminal Appeal found, inter alia, that the problem concerning the child was one to be dealt with administratively under s.29(2)(c) of the *Prisons Act, 1952*. (That section provides that a female prisoner can be conditionally released before the expiration of her custodial sentence to care for a child. It is discussed in greater detail later in the report). Evidence was presented to the court that the administrative authorities had

under active consideration the position of the appellant, and the possibility of granting appropriate administrative relief under s29(2)(c).

The Court subsequently held that it was not a case in which the Court should interfere with the sentence of the District Court.

The Committee notes that the appellant was eventually released under s.29(2)(c) to Parramatta Transitional Centre and eventually reunited with her son.

The Committee was told that the process of reunification came after the child suffered enormous emotional and psychological trauma, culminating in him having to be hospitalised. Experts advised that this was the direct result of being separated from his mother who was imprisoned for a non-violent first offence.

The Committee does not accept the reasoning of the Court of Criminal Appeal in this case on the issue of the hardship caused to the son by the mother's imprisonment. The Committee believes that irrespective of the pending administrative decision concerning s.29(2)(c) it was within the Court's power to consider the impact of the appellant's sentence on her son. Delaying this decision only served to cause further hardship to the child, not least of which was not knowing whether he would be reunited with his mother. **A child, especially a small child, is not just "weak and vulnerable" but in a period of life when the removal of a parent may cause major developmental damage, possibly for life.**

Section 429A of the Australian Capital Territory *Crime Act, 1900* sets out the matters to which the court shall have regard when sentencing an offender. Among those matters is subsection "m" which provides

the probable effect that any sentence or order under consideration would have on any of the person's family or dependents.

The Committee strongly supports the inclusion in the *Justices Act* of a provision based on s.429A(m) of the ACT *Crime Act*. There is no equivalent section in NSW legislation. That s.429A(m) is mandatory means that judges and magistrates in the ACT are required to consider what effect their decision may have on the children of those people brought before them.

The Committee believes that the Courts should consider the impact of incarceration of a parent and, in particular, a primary carer, on a child(ren) when determining a sentence. It also believes that such considerations should not be influenced by the existence or possible outcome of an application under s.29(2)(c) or the existence of mothers and babies' units in prisons (discussed later).

The Committee recommends that the Attorney General introduce provisions into the *Justices Act* based on s.429A of the ACT *Crime Act, 1900* as soon as possible.

The Committee considers that in order to assist the court with its determinations on sentencing in cases where children are involved there should be mandatory reports available, prepared by the Department of Community Services, on the likely effect of imprisonment of a parent on a child. Such reports should be in addition to any reports provided by the Probation and Parole Section of the Department of Corrective Services.

Further, the Committee considers it urgent that the Attorney General should develop appropriate material for members of the Magistracy and Judiciary in relation to the impact which a custodial sentence of an accused person may have on his or her dependent children.

Chapter Six discusses the sentencing options available to the Courts. **The Committee considers that custodial sentences of less than six months should be served as a community based sentence except when the safety of the community demands otherwise.**

RECOMMENDATION 32:

That the Attorney General immediately introduce legislation based on s. 429A of the Australian Capital Territory *Crime Act, 1900* and in particular, incorporating subsection “m”, which provides that when sentencing a person the court shall have regard to the probable effect that any sentence or order under consideration would have on any of the person’s family or dependents.

RECOMMENDATION 33:

That the Attorney General ensure that prior to sentencing an offender the courts are provided with reports from the Department of Community Services on the impact of a custodial sentence of a parent on any dependent children of that parent.

RECOMMENDATION 34:

That the Attorney General develop material and implement training for members of the magistracy and judiciary to enable them to take into account the impact which a custodial sentence of an accused person may have on his or her dependent children.

5.2.2 THE FAMILY COURT

During its visit to a number of correctional facilities, particularly Emu Plains and Mulawa Correctional Centres, inmates expressed concern about the breakdown of relationships and the subsequent custody applications partners were making in respect of the children. The conditions of incarceration means that inmates have extreme difficulty instructing a solicitor to defend the custody application and of appearing in court. Two female inmates with whom the Committee spoke had lost custody of their children to their partners and were unable to appear in court. One woman stated that inmates may be eligible to be released to go to court but that the inmate must pay for the cost of the transport herself.

The Committee considers that the seriousness of custody issues and their enormous impact on children requires that each party should be able to have access to a solicitor and to be present at the court. It therefore recommends that the Minister for Corrective Services ensure that any inmate involved in a custody dispute be able to access legal assistance and be provided with transport to attend any court proceedings regarding the case.

RECOMMENDATION 35:

That the Minister for Corrective Services ensure that any inmate involved in a custody dispute in relation to their children has access to legal assistance, is granted leave and is provided with transport to attend any court proceedings regarding the case.

5.3 POST-RELEASE

The Committee took considerable evidence regarding the circumstances of inmates upon release. Overwhelmingly, witnesses commented that this was a critical time for a woman, in particular in terms of her reunification with her family and her rehabilitation. In her work, *The Prison and the Home* (1994) Aungles provides the following information which would seem to confirm that the post-release period is more difficult for the inmate mother than the inmate father. Citing Koban's study she writes

Women were more likely, on release, to return to a splintered family than were male prisoners (Aungles, 1994:32).

Aungles' study found that women tend to keep the household together when a male partner and father is imprisoned. Drawing from Gowler and Legge's work she maintains:

Women will be available to:

- *maintain the home for the child and the "absent father" that is a necessary part of the prisoner's continuing sense of "self";*
- *care for prisoner's children; and*
- *ensure that the man's personality will be maintained through the material and emotional work that women do in maintaining contact between children and their fathers (Aungles, 1994:132).*

This situation is rarely the same for women who go to gaol and so, the experience upon release is extremely difficult.

In her study, *Mending the Broken Bond: The Post-Release Experience of Imprisoned Mothers*, Butler (1994:27) reported that of the 20 women interviewed, all identified the initial period of post-release as being a particular time of social shock and re-adjustment. Further, according to Benjamin

Release from prison, rejoining with family and rejoining the greater community are the last stages of the trauma experienced by separated families before the difficulties of coping with the future begins (Benjamin, 1990:168).

Once released from prison there are few, if any, supports available to a mother to assist her in re-integrating into the community and reuniting with her family.

From her research Baldry identifies what women themselves have reported as being their most pressing problems upon release:

- accommodation especially with children;
- work or financial support;
- someone who gives personal support;
- acceptance and direct help when needed;
- help re-establishing the family;
- managing drug/alcohol addiction;
- negotiating relationships with family members;
- feeling part of society again (Baldry, 1996:8).

Many of the women with whom the Committee Members spoke identified similar issues.

The Committee found that a number of prisoners with whom Members spoke had been in gaol on a previous occasion. In fact, in most prisons that the Committee visited, the recidivism rate was high amongst both parents and those without children. The Committee heard that most of the re-offending occurred within the first few months of leaving prison.

According to Committee witness, Dr Don Weatherburn of the NSW Bureau of Crime Statistics and Research

although the literature of controlling or reducing recidivism is dismal, the little literature that there is suggests that maintaining community ties is absolutely essential - maintaining the bond between the prisoner and his family, that is their partner and/or children. Efforts to strengthen or retain

those bonds are probably central to any attempt to try to reduce recidivism (Weatherburn evidence, 5 February 1997).

Women who spoke for Butler's study illustrate the difficulties that arise upon release from prison:

Sandra: *The first couple of days you are kind of oblivious to anything apart from the fact that you are really home, then after that it starts to dawn on you that things have changed and the kids are not quite like they used to be and...its after the elation of getting out of jail wears off that you really start to notice that things are not the same anymore.*

Di: *The first eight weeks were the hardest . . . I'll never forget them . . . then I was really used to being in jail. In jail I thought I had all the problems in the world. But I didn't. I had them when I got out. That's when I had my problems. And then all I wanted was jail because it was routine for me. But if I had done my time with my son, it would have been much easier. Even getting out (Butler, 1994:27).*

According to Butler, the overwhelming finding of her report was that although the women were re-united with their children following their release, it was a difficult and often traumatic experience for both the mothers and the children. The author argues that

The systems in place do nothing to facilitate the aim of restoration of families. In fact, it may be argued that the systems positively prejudice against this aim (Butler, 1994:5).

A number of witnesses and submission detailed the resentment and hostility of many children towards their mother once she was released from gaol, which has a very detrimental effect on the renewal of a normal mother/child relationship. One witness, a former inmate described to the Committee her experiences after her release in the following terms:

His personality has changed from a soft-natured, good-natured little boy to a child that just continually breaks the law...Within six weeks (of my imprisonment)...he hit the streets...He seemed to fit in there and he bonded very much with those (street) kids. I am still finding breaking that bond is very hard. For him and I to re-bond and for him to break the bond with the street kids is so very hard because he seems to think he has to show loyalty to these boys because they helped him through the time when he had no-one...I still have not got my son back. Even though I am out and I have tried everything possible, I still have not bonded again with my son (P evidence, 19 December 1996).

Currently, there is no formalised release plan for women (or men) in gaol. According to the former director of the Corrective Services Department's Women's Advisory Unit, Bernadette O'Connor,

it is very important that the preparation for release start on the day that the people are received, whether they are received for three months or six months or six years (O'Connor evidence, 21 October 1996).

RECOMMENDATION 36:

That the Minister for Corrective Services require a post-release plan for all inmates to be developed and in particular, for inmates with children, to assist in the re-integration of the inmate into the community and the reunification with his or her family. The plan for each individual should commence when the inmate is inducted into the designated correctional facility.

RECOMMENDATION 37:

That, as soon as possible, the Minister for Corrective Services establish post-release support services for inmates released from gaol throughout New South Wales, especially services which assist family reunification.

5.4 DEPARTMENT OF TRANSPORT

The issue of transport was raised frequently during the Inquiry. Much of the information centred around the fact that public transport to and from most New South Wales prisons is very limited. The Committee was told that often taxis have to be taken between railway stations, bus stops and prisons. For many families who are visiting or for inmates themselves following release, a taxi fare represents a considerable expense.

In her book, *Prisons and Women*, Hampton describes the difficulties with transportation to and from Mulawa Correctional Centre

Visitors have to rely on their own often limited resources to make their way to prison, and from outlying areas this can be expensive and time-consuming. The Mulawa complex is quite a long distance from the nearest railway station, Auburn and the bus along Silverwater Road is an industrial service running hourly weekday peak periods, but not on the weekend (Hampton, 1993:114).

Inmates leaving the prison following release experience similar problems with transport when there is no-one to meet them at the gate. The Committee understands that the situation is exacerbated for country inmates who have to make their own way back to often remote areas from prisons.

RECOMMENDATION 38:

That the Minister for Transport ensure that adequate and accessible public transport is available to and from New South Wales Correctional Centres. Such public transport should be established to facilitate:

- visits between inmates and their children; and
- the reunification process between an inmate and his or her children following release.

5.5 DEPARTMENT OF HOUSING

Evidence was presented to the Committee regarding the problems many prisoners face in securing accommodation once they are released from prison. This has serious ramifications for their children as well, who may have been with a relative, friend or in the substitute care system during the period of their parent's incarceration. The Committee's research has revealed that problems for children are exacerbated when the mother, normally the sole carer, is sent to prison. For fathers, it is commonly the case that their partner and the child's mother has managed the household in his absence, including retaining the accommodation where he resided prior to his incarceration.

Lewis' study, *Women Ex-Prisoners - Their Health, Utilisation of and Satisfaction with Health Services* (1995), examined the issue of accommodation for released prisoners. She found that homelessness is common for the period immediately following release from gaol (1995:22). Citing the Thomson's 1984 study Lewis observes that:

- 34% of post-release women were living with their parents;
- 27% were in hostels or a half-way house; and
- 39% had no fixed address (Lewis, 1995:22).

A research paper undertaken by the English National Association for the Care and Resettlement of Offenders (NACRO) found that many people who were released from prison face considerable difficulties in finding accommodation they can afford and dealing with stigma and discrimination in competing for scarce housing (1997:5). That same study found that homelessness is a strong contributing factor in re-offending. In conclusion the NACRO study stated that

Housing is fundamental to achieving a stable, settled life, finding employment, being able to build relationships and to the effective integration of individuals into the community. Without access to the personal and community support networks and services that stable housing brings, individuals can become excluded from their community and in these circumstances, the likelihood of becoming involved in crime considerably increases (NACRO, 1993:6).

The Committee was told during the Inquiry that many people with housing lose their accommodation as a consequence of their contact with the criminal justice system and, in particular, when they are held on remand or given a custodial sentence.

The Committee received evidence from a representative of the Department of Housing, Ms Liz Mackdacy, regarding the role of the Department in relation to people released from prison and their housing needs. Ms Mackdacy provided the following testimony:

Essentially, there are no specific policies in a broad sense that target people who are either currently in prison or about to be released in terms of housing provision, other than some consideration is given to their circumstances prior to and on release. In general, prisoners are treated no differently from other clients of the Department of Housing, that is, low-income earners who are in some form of housing stress or housing need (Mackdacy evidence, 18 December 1996).

Nevertheless, Ms Mackdacy highlighted a number of areas which may be relevant to the assistance available to ex-prisoners and their children. She explained for instance, that if applicants are in prison at the time a housing allocation is offered to them their allocation will be deferred until their release. Further, she maintained that clients of the Department of Housing who are in prison or who have just left prison are eligible for public housing and may be placed on the general waiting list for public housing. If the client was previously an applicant for public housing, once their circumstances are known by the department, they are entitled to have their eligibility for that assistance backdated to the time of their application.

According to Mackdacy, they are not disadvantaged in terms of time waiting for public housing because of being in prison (Mackdacy evidence, 18 December 1996).

Mackdacy told the Committee

When the stay in prison is longer than three months, generally the tenant is asked to surrender the tenancy. However, in practice it is usually the case that we would not pursue those matters unless there is a term of imprisonment greater than six months. If the tenancy is surrendered because of that situation, the tenant would be eligible for immediate re-housing on release. If there are other household members involved, be

it children, a spouse or some sort of partner, the tenancy can be transferred to one of those members of the household and they can then take on the responsibilities of that tenancy (Mackdacy evidence, 18 December 1996).

Ex-prisoners, particularly those with children may come within the Department of Housing's immediate housing assistance policy. Mackdacy's evidence identified a number of circumstances where immediate housing assistance may be used for an ex-inmate. These include

the imminent threat of homelessness on release or discrimination against the application for housing in the private sector - which is not an uncommon situation - or that their only means of accommodation is somewhat substandard; it might be in a caravan park, a car, a tent, a whole range of shelters that are inappropriate. The provision of assistance may come in a variety of forms under that particular policy. It might include priority housing, which would enable the applicant to access public housing. It might also take the form of financial assistance to access the private rental market, if that is an appropriate option in those circumstances (Mackdacy evidence, 18 December 1996).

In her book, *Prisons and Women* (1993) Hampton examines the issue of accommodation following release from gaol from the perspective of ex-inmates. She writes

When you're released to face your old problems, you have even fewer resources than before in terms of housing, friends, sense of self, with the added stigma of being an ex-prisoner to complete your sense of isolation (Hampton, 1993:159).

Through personal interviews with women inmates, including mothers, Hampton illustrated the stresses faced by these women when trying to secure accommodation after their release. According to Hampton

Many women experience relationship breakdowns and family disintegration due to their prison sentences and this contributes to the growing numbers released from prison without adequate or suitable accommodation, forcing them to live on the streets or in already overstretched crisis refuges. Little or no action has been taken by the Department of Housing to address what is an escalating problem for this group. Priority applications from this group are not seen as urgent until the women are released and are clearly homeless. As well, women who have previously been tenants of the department and who voluntarily surrender their property on entering prison have not been given due consideration. They are generally led to believe that they will be able to

re-obtain a house without great difficulty if the period in question is within 12 months. However, these women find that they receive no greater priority than any other applicant and they return to the end of the official waiting list if they are unsuccessful. Women are thwarted in their attempts to secure adequate accommodation prior to release through inconsistent and inadequate government policies directly affecting female prisoners (Hampton, 1993:185).

As the Committee observed earlier in the Report, many children of prisoners enter the Department of Community Services substitute care system when their primary carer is imprisoned. Although many of these imprisoned carers are entitled to reunification with their children upon their release they must prove that they have secure accommodation before this can occur. However, the Committee heard that some ex-prisoners are not given priority housing until they have custody of their children. Commenting on this issue Mackdacy of the Department of Housing stated in evidence

We are at pains to try to avoid that situation, given the immediate need of families and households in those sorts of circumstances. Again, the immediate housing assistance policy, be it in the form of priority housing or rent assistance, can be granted on the grounds that a parent has an urgent need for accommodation whilst awaiting the outcome of a custody claim (Mackdacy evidence, 18 December 1996).

The Committee notes that the Department of Housing has a client service team in the vicinity of Long Bay Correctional Centre which visits the prison and meets with groups of prisoners to provide them with relevant housing information or, if necessary individual prisoners to assist them with an application or consider previous applications and tenancies (Mackdacy evidence, 18 December 1996).

RECOMMENDATION 39:

That as part of a prisoner's post-release plan (see Recommendation 36) the Minister for Corrective Services ensure that all inmates, and particularly those with children, have suitable accommodation upon their release.

RECOMMENDATION 40

That the Minister for Housing ensure that inmates who are the primary carers of children receive priority housing from the Department of Housing once they are released from prison.

RECOMMENDATION 41:

That the Minister for Housing and the Minister for Corrective Services establish a Department of Housing client service team for all prisons in New South Wales and in particular, Mulawa and Emu Plains Correctional Centres.

5.6 DEPARTMENT OF SOCIAL SECURITY

Financial security is one of the most pressing needs of a released prisoner, particularly one with children. The Committee found the information on social security entitlements for released prisoners difficult to obtain. Conflicting advice was given on these entitlements and the Committee is concerned that as a result of this confusion, prisoners seeking the same information may be put at a disadvantage.

The Committee understands that once a prisoner is released from prison, there are a number of social security benefits which they may receive. While in prison, all social security payments are stopped and eligibility for resumption of these payments depends largely on the benefits an inmate received prior to imprisonment.

In some, but not all, cases Department of Social Security staff visit the goal several weeks before the prisoner is released and make an assessment of the prisoner's entitlements. A Special Benefit Payment of \$321.50 is paid upon release to those prisoners who have been in prison for more than seven days, are over 21 years of age, and have no other source of income. For juvenile offenders under the age of 18 years, a Special Benefit may be paid at the rate of \$145 for those sentenced juveniles living at home, or \$239.30 for convicted juveniles unable to return home. For sentenced adults in the community aged between 18 to 20 years, the entitlement is \$174.30 or \$264.70 respectively. This payment is a once-off one week payment at twice the rate of a regular unemployment benefit and is paid to the released prisoner in recognition of the need to help them re-establish themselves in society.

Accessing Social Security can be a very difficult process for an ex-inmate. In her evidence Maree Peters stated

when you get out the only identification you have got is your prison release papers. The majority of my clients ring me up - and it has happened to me too - and say, "That's not enough ID. Have you got a Medicare card or something like that?" (Peters evidence, 1 November 1996).

The Committee found that many released prisoners do not have financial security and that employment and work opportunities are limited because of the apprehension of some employers about hiring ex-prisoners. The Committee strongly agrees that a prisoner needs the financial assistance provided by the Department of Social Security.

Evidence was heard by the Committee that some prisoners have difficulties in understanding the procedures for applying for Special Benefits and longer term unemployment benefits such as the Newstart allowance. The Committee believes that the Department of Social Security should provide clear guidelines on the eligibility of prisoners upon their release from custody and during their conditional release or community based sentences.

The Committee also believes that the Department of Social Security should provide all information on social security entitlements for prisoners in various languages and that each prisoner should have access to this information in their first language.

RECOMMENDATION 42:

That the Premier urge the Federal Minister for Social Security to ensure that clear guidelines are provided to prisoners on the social security benefits to which prisoners are entitled upon their release or when subject to community-based sanctions.

RECOMMENDATION 43:

That the Premier urge the Federal Minister for Social Security to provide all information on social security entitlements for prisoners in their own languages.

The Committee is particularly concerned for the financial security of prisoners with children. The Inquiry was advised that at the Mulawa Correctional Centre it can take up to six weeks for a woman to receive a full social security benefit following her release from prison. The Committee heard that it is therefore not surprising that the recidivism rate is highest within the first month of a prisoners release (Mulawa briefing, 28 October 1996).

The Committee has been advised that while in prison, a mother whose child is with her in gaol, or on s.29(2)(c) will receive the Child Support Payment of \$126.39 per fortnight with increments for additional children. The Committee found the situation in relation to social security entitlements of female prisoners released under s.29(2)(c) to be complex and unclear. The Committee is aware of some difficulties with the provision of social security benefits to sentenced women in New South Wales who are granted release to care for one or more child under s.29(2)(c) of the *NSW Prisons Act, 1952*. Women released under s.29(2)(c) in New South Wales are not entitled to the Sole Parents Pension (previously known as Supporting Parents Benefits).

The Committee considers that a major impediment arises in determining community based sanctions for women, particularly those with children, in situations where the Department of Community Services is required to pay the equivalent of the Sole Parent Benefit because access to Social Security payments is denied. Evidence presented to the Committee suggested that women need much greater assistance if they are to be successful in re-establishing their lives and their families. The Committee believes this matter requires the urgent attention of the Federal Minister for Social Security.

Recommendation 44:

That the Premier urge the Federal Minister for Social Security to urgently address the payment of the Sole Parents Pension to women conditionally released under s.29(2)(c) of the *NSW Prisons Act, 1952* or sentenced to community-based orders.

The Committee understands that an inmate loses his or her entitlements to Medicare upon entering prison so identification to the DSS by way of a Medicare card can be impossible. Peters advised the Committee that when a person enters prison he or she loses their bank account because of the taxes that come out of it. As Peters explained, "if you don't keep putting money in it you lose it" (Peters evidence, 1 November 1996).

The Medicare entitlements for those women who leave prison under s.29(2)(c) is also unclear. The majority of these women are released so they may care for one or more child in the home environment. As the primary carer of the children the Committee believes that these women are entitled to the basic public services as others in the community, including adequate health care.

The Committee is also concerned about the health care entitlements of children and babies of sole parents on prison release programs. In most cases the child is registered with the mother for Medicare entitlements. The Committee heard anecdotal evidence that children were receiving health care from doctors who were prepared to treat the child without a Medicare card. The Committee believes it is the fundamental right of every child to receive adequate health care and is disturbed by this *ad hoc*

approach to service provision. The Committee is concerned that a child of a mother conditionally released under s.29(2)(c) or sentenced to a community order, will be denied basic health care such as immunisation.

RECOMMENDATION 45:

That the Premier urge the Federal Minister for Health and the Federal Minister for Social Security to allow women released from New South Wales prisons under s.29(2)(c) of the NSW *Prisons Act, 1952* or sentenced to a community-based order to obtain social security benefits and Medicare entitlements.

RECOMMENDATION 46:

That the Premier urge the Federal Minister for Social Security to liaise with the Federal Minister for Health to ensure that babies and children of parents released under s.29(2)(c) of the NSW *Prisons Act, 1952* or other community-based sentences are entitled to Medicare.

5.7 CONCLUSION

The Committee considers that the range of government departments which effect an accused person and a prisoner have an obligation to implement practical policies that can assist the children of these people. It believes that the application of the recommendations contained in this chapter will go a long way in improving the situation of many children whose parents are taken into custody.

CHAPTER SIX

OPTIONS AND ALTERNATIVES

CONTENTS:

6.1	PRISON AS A LAST RESORT	110
6.2	USE OF NON-CUSTODIAL SENTENCING OPTIONS	112
	6.2.1 PERIODIC DETENTION	113
	6.2.2 HOME DETENTION	117
	6.2.3 GRIFFITHS BONDS	119
	6.2.4 COMMUNITY SERVICE ORDERS	120
	6.2.5 NET WIDENING	121
6.3	MOTHERS' AND BABIES/CHILDREN'S UNITS	122
6.4	THE NEW SOUTH WALES MOTHERS' AND CHILDREN'S PROGRAM	126
	6.4.1 FULLTIME RESIDENCE PROGRAM	132
	6.4.2 OCCASIONAL RESIDENCE PROGRAM	133
	6.4.3 CHILDREN OF PRISONERS ON REMAND	135
	6.4.4 CLASSIFICATION	137
	6.4.5 CONDITIONAL RELEASE	139
6.5	OPTIONS FOR PREGNANT PRISONERS	142
6.6	FATHERS	145
6.7	COMMUNITY CORRECTIONS DIVISION	146
6.8	CONCLUSION	148

The Committee has noted earlier in the Report, that children of both female and male inmates can suffer profound loss if a parent is incarcerated. Nevertheless, the bulk of the testimony received by the Committee concerns mothers and children, given that it is usually the mother who is the primary carer prior to her incarceration. This Chapter will therefore largely examine the options available to the mother of children when she is imprisoned. However, some examination of the significance of fathers as parents and primary carers will also be undertaken.

During the course of the Inquiry the Committee spoke with a considerable number of prisoners who are parents. Both mothers and fathers expressed typical parental love and concern for their children. However, it was the mothers who experienced the most profound sense of loss and pain at being separated from their children. Needless to say many of these inmates expressed a strong desire to be reunited with their children even if this meant having the children with them in prison. However, some prisoners were adamant in their belief that their children not be exposed to the prison environment. This issue will be discussed in detail later.

In 1985 the New South Wales *Taskforce on Women in Prison* made a number of recommendations in relation to the children of women prisoners. Among these recommendations were that:

- *facilities for mothers to live with their babies and infants should exist within the prison. In principle, release on licence or under s.29 must always be considered a first option. This facility must be limited to women remanded in custody and for those women for whom release on licence (an option no longer available in New South Wales) or 2.29 may not be immediately available; and*
- *mothers with children in prison must be supported by an independent childcare worker who is not an employee of Corrective Services (NSW Taskforce on Women in Prison, 1985:24).*

That same Taskforce, in reporting the findings of the Department of Corrective Services Profiling Study, observed that:

there was a strong positive reaction to the idea of mothers and young children staying in gaol together (72%). This reaction was similar amongst mothers and childless inmates as well as across the two institutions (Mulawa and Norma Parker) (Women in Prison Taskforce, 1985: 205).

The Taskforce (1985:209) set out a number of principles that should form the basis of policy and procedures in government departments, particularly YACS, Youth and Community Services, as it was then known, Corrective Services, Police, Attorney Generals and non-government agencies. Those principles were that:

- *a child has the right to frequent contact with his or her imprisoned mother in conditions conducive to the maintenance of a mother/child relationship;*
- *a baby or infant has the right to be cared for by her or his own mother, even if the mother is in prison; and*
- *neither a criminal record nor the use of illegal drugs is synonymous with inability to parent. (There must be a distinct delineation between, on the one hand, a person's anti-social behaviour or use of illegal drugs and, on the other, her ability and right to care for her own children (NSW Taskforce on Women in Prison, 1985).*

The Committee notes that the recommendations of the Women in Prison Taskforce relating to women with children have only recently begun to be implemented with the establishment of the Emu Plains Mothers' and Babies' Unit and the Parramatta Transitional Centre.

The Report of the Howard League recommended that imprisonment for mothers should only be used in "exceptional circumstances" and that sentencing options "should above all do the family no harm".

6.1 PRISON AS A LAST RESORT

It should be noted that all witnesses to the Committee indicated that imprisonment of a mother should always be a last resort. Consequently, it was considered, the sentencing of a mother to prison with her child should also be an option of last resort by the courts.

Anecdotal evidence to the Committee has suggested that some magistrates and judges are not using prison as an option of last resort for offenders who are mothers. In her evidence Dr Eileen Baldry told the Committee that there is

obvious evidence over the last eight to ten years that the number of women in prison has been growing significantly....I think there is ample evidence around Australia and internationally that it is unnecessary. It is unnecessary because many of the women being sentenced to imprisonment could go elsewhere, and many of the women being sentenced to imprisonment are being sentenced on certainly what could be called offences that are non-threatening to society (Baldry evidence, 21 October 1996).

Dr Baldry further commented to the Committee that facilities for children in women's prisons only provide an appropriate response to the needs of young children of female inmates "if there is no other way for a mother who has been sentenced to be with her child" (Baldry evidence, 21 October 1996).

The Executive Officer of the Children of Prisoners Support Group told the Committee that women were still being incarcerated for petty crimes:

Last year a woman that I was working with...got 12 months for having a small amount of marijuana in her possession. The amount of marijuana she had in her possession was so small that no-one could believe the sentence....This happened last year. She had a prior charge, but again it was for a small amount (Larman evidence, 30 September 1996).

The Committee was told of a woman who was sent to prison for one week only. As this particular woman was breastfeeding a small baby, she had to express milk for the baby while in gaol and arrange for it to be transported to the baby (Sefton evidence, 17 December 1996). The Committee fails to see the benefit to society of such a sentence. The severity caused by the disruption to a breast fed baby is inexcusable.

Further, Associate Professor George Zdenkowski argued that in developing policies in relation to the children of imprisoned parents, imprisonment should be a sanction of last resort (Submission 1). However, he drew attention to the considerable attitudinal and practical barriers to the greater use of non-custodial sentences.

A feature of the *Women in Prison Taskforce Report* (1985) was a claim that New South Wales should aim to reduce its women's prison population and one measure of progress would be to approximate a comparable per capita number of inmates to the Victorian system. This number would be between 90 and 100. There were nearly 200 women in New South Wales gaols at the time. That fact that over 350 are now in the prison system is a stark indication of the failure to apply "prison as a last resort".

RECOMMENDATION 47:

That the Attorney General ensure that, through judicial education, magistrates and judges always use the option of prison as a last resort when sentencing an offender who is the parent of dependent children irrespective of the existence of mothers' and children's units in prison.

RECOMMENDATION 48:

That the Attorney General monitor the sentencing patterns of magistrates and judges to ensure that prison is being used only as a last resort for parents of dependent children.

6.2 USE OF NON-CUSTODIAL SENTENCING OPTIONS

In his submission Zdenkowski argues in relation to drug offenders, who make up a large proportion of the prison population, courts in New South Wales are hesitant to hand down non-custodial sentences because they feel that the community expect such offenders to be dealt with harshly. He contrasts the approach adopted by the ACT Supreme Court with the New South Wales Supreme Court and states

...there is a stream of authority in the ACT Supreme Court which takes the view that it is not necessarily appropriate to be punitive in relation to a heroin addict, either for the drug taking or in relation to property offences where that is indirectly a method of trying to support the habit (Submission 1).

Committee witness and former head of the Department of Corrective Services, Professor Tony Vinson has also addressed the issue of non-custodial sentencing options for certain offenders, including those with children. Citing the example of the significant numbers of fine defaulters and people serving short sentences in gaol he argues that there needs to be re-thinking on the use of community based sentencing options (Vinson, 1995:78).

Vinson states:

At present we use prisons for those whose offending is persistent rather than of the most serious kind...Perhaps some of the early "selling" of alternatives in Australia went along too unquestioningly with the idea that failure to comply with "lenient" community based sentences should result in almost automatic progression of the ladder ... Citizens' primary interest in property offences is that further offending should be prevented. Because someone has reoffended after experiencing a community based penalty, does not mean that custody is the most effective measure. Hence the recent English recommendation that custody should be used only where (the current) offence warrants it. In other cases there should be an emphasis on flexible options which allow the courts to choose the most appropriate community based penalty (Vinson, 1995:80).

He argues that failure to comply with a community-based sentencing option should not automatically result in imprisonment and should be encouraged to utilise the option of community based penalties on more than one occasion (Vinson, 1995:81).

Vinson considers that the selective but greater use of alternative punishments would go some way to avoiding major problems for the community, the families of prisoners and the offenders themselves.

The Committee endorses this approach, particularly in the case of primary carers of children. It considers that when sentencing a parent, the courts should embrace the concept of the best interests of the child, and to this end, avoid the imposition of a custodial sentence in all appropriate circumstances.

The Committee firmly believes that non-custodial penalties should not be seen or used as a “soft option”. They do not mean that an offender has gotten away with an offence. Sentences such as community service orders, periodic detention and home detention are all serious penalties which curtail the liberty of an offender and the use of such options should reflect the gravity of the offence, in the level of curtailment involved.

Zdenkowski maintains that appropriate judicial education is one possible way to overcome judicial officers’ attitudinal barriers to giving non-custodial sentences. The Committee supports this method.

RECOMMENDATION 49:
 That the Attorney General develop and implement an education program for judges and magistrates to encourage the use of non-custodial sentencing options for drug and other non-violent offenders. The research to develop this program should be undertaken by the New South Wales Judicial Commission.

6.2.1 PERIODIC DETENTION

Periodic detention was introduced into New South Wales in 1971 as an alternative to full-time imprisonment. Periodic detention requires an offender to remain in custody for two days of each week for the duration of a sentence (NSW Law Reform Commission 1996: 212). The maximum sentence for periodic detention is three years. Periodic detention is undertaken in two stages: a residential and non residential component. An offender becomes eligible for the second, non-residential stage after serving one third of the sentence or three months, whichever is the greater. Offenders serving periodic detention may be required to undertake community work or attend training or counselling during their detention.

While most programs operate on the weekend, mid-week detention is available for some male offenders at Silverwater. Mid-week schemes for women would accommodate parenting needs, especially where older children were involved.

On 30 June 1996 a total of 1424 prisoners were subject to periodic detention, 100 of whom were females (Department of Corrective Services 1996:23). The number of periodic detainees who are primary caregivers is not currently known, although the Department intends to collect this information in the near future (Magrath and Blinkhorn evidence, 22 November 1996).

There are 11 periodic detention centres across New South Wales, and only two of these - Tomago near Newcastle, and Grafton - are outside the Sydney metropolitan area. This severely restricts the opportunity for offenders to have access to periodic detention in rural areas.

A number of submissions to the recent inquiry on Sentencing conducted by the NSW Law Reform Commission noted that if periodic detention was to be an effective sentencing option, it should be more readily available throughout New South Wales (NSW Law Reform Commission, 1996:112).

The limited availability of periodic detention may have a particularly negative effect on Aboriginal offenders (NSW Law Reform Commission, 1996:112). A report on indigenous deaths in custody, prepared by the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, noted the general unavailability of non custodial sentences for Aboriginal offenders:

The commitment of state and territory governments to the principle of 'imprisonment as a last resort' seems dubious with 'truth in sentencing' and other related legislative policies appearing to predominate. Aboriginal and Torres Strait Islander offenders remain under-represented in their access to non-custodial options, where such options actually exist (Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 1996: xvi).

There are currently three periodic detention centres which cater for women in New South Wales. Emu Plains is exclusively available for women and Mannus in Tumbarumba and Tomago near Newcastle cater for both men and women. At present, none of these centres offer mid-week detention, although the Department of Corrective Services is currently considering a proposal for mid-week detention at Emu Plains. The Department of Corrective Services is also considering making periodic detention available for women in Broken Hill and Wollongong. None of the centres provide child care facilities (D'Silva personal communication, 20 June 1997).

In most cases, the need to travel long distances and care-giving responsibilities tend to make many women ineligible for periodic detention. Under s.5 of the *Periodic Detention of Prisoners Act, 1981*, a court must consider the suitability of an offender prior to ordering a sentence of periodic detention. Two of the factors considered in determining suitability are 'travel' and 'commitments'. If a caregiver cannot arrange suitable care for her children or would be required to travel a long distance to the centre, she is unlikely to qualify for this particular option (D'Silva, 1996: 59).

George Zdenkowski noted that, compared to men, the availability of periodic detention for women is limited as "they are not spread as far as for men" (Zdenkowski evidence, 5 February 1997).

In some cases, the fact that women have children precludes them from periodic detention. The Executive Officer of the Children of Prisoners Support Group told the Committee of a case in which a woman was not recommended for periodic detention because she had children, eight and nine years of age:

When her pre-sentence report was written, she was deemed to be not eligible for weekend detention....we recommended that she was suitable for weekend detention, because she could go out to Emu Plains, serve her two days on the weekends, look after the kids during the week. And her parents would manage the children for the two days. She won her appeal on these grounds. But according to the pre-sentence report that was done by probation, she was deemed unsuitable for weekend detention because she had children.....so something is wrong with the process of assessing these women, in particular, for their suitability for various options (Larman evidence, 30 September 1996).

The limited availability of periodic detention for women has been noted in previous research. In 1991, a demographic analysis was conducted of women on periodic detention in Merinda, which at the time, was the only periodic detention centre available for women. The study revealed that 72% of the 47 women on periodic detention had primary care-giving responsibilities for children (Potas *et al*, 1992: 26).

The study also examined the failure rates for different age groups on detention (the failure rate is the proportion of offenders who do not complete their term of periodic detention within a specified period of time). The failure rate for women in the 21-30 year age range was significantly higher than for all other age groups. The author of the study suggested that as this age group was the most likely group to have children, the higher failure rate was probably due to the added responsibilities associated with parenthood. It was also suggested that the failure rate could be significantly decreased if child care facilities were available or if detainees were not required to travel long distances (24% of detainees had to travel two or more hours to attend).

The study also noted that work options for these women were extremely limited, 'being confined predominantly to stereotypical domestic and care-giving roles' and it is recommended that work options be broadened if the full potential of periodic detention is to be realised (Potas *et al*, 1992: 26).

The limited availability and flexibility of periodic detention for women was also noted by Brand in his 1993 review of alternatives to imprisonment for female offenders. Brand supports the recommendations made by the 1985 Women in Prison Taskforce to improve the suitability of periodic detention for women with responsibility for young children and/or who live outside the metropolitan area. These include allowing the period of detention to coincide with school hours and allowing women on periodic detention to report to institutions other than gaols, such as a college or drug rehabilitation centre.

RECOMMENDATION 50:

That the Minister for Corrective Services implement the mid-week periodic detention program for women at Emu Plains Correctional Centre, currently under consideration, as a matter of urgency.

RECOMMENDATION 51:

That the Minister for Corrective Services explore the possibility of introducing child care facilities at periodic detention centres for women in order to ensure that a periodic detention sentence is realistically available to women.

Recommendation 52:

That the Minister for Corrective Services expedite current plans to expand the periodic detention program across New South Wales with a particular focus on establishing centres for female offenders.

RECOMMENDATION 53:

That the Attorney General introduce legislation to allow for the requirement of attendance at a drug and alcohol treatment centre as an alternative to imprisonment, with appropriate safeguards.

6.2.2 HOME DETENTION

Home detention permits an offender to serve part or all of a sentence in the offender's home, under strict supervision and subject to conditions (NSW Law Reform Commission, 1996: 144). A pilot home detention scheme has operated in New South Wales since 1992. The scheme was given a legislative base recently with the introduction in February 1997 of the *Home Detention Act, 1996* (NSW). The legislation provides for the scheme to be reviewed 18 months after its commencement.

The Act allows certain offenders sentenced to a term of imprisonment of up to 18 months to serve the sentence in their homes rather than in prison. The Act attempts to avoid the possibility of sentencing offenders to home detention who would not be at risk of imprisonment, by requiring that a sentence of imprisonment be passed before home detention can be ordered (Figgis, 1997: 27).

Since the Act came into force, 31 people have been released to Home Detention supervision: twenty five males, six females and four people from a non-English speaking background. None of the home detainees are Aboriginal or Torres Strait Islanders. Eleven home detainees have parental responsibilities with one expecting another child in the near future. Five of the detainees are from the Central Coast or the lower Hunter and none are from rural areas (Correspondence from the Department of Corrective Services, 30 May 1997).

Home detention can be used as a "front door" or "back door" program. Front door programs use home detention as a sentencing option for courts as an alternative to incarceration. Back door programs allow offenders already in gaol to be released early to serve the remainder of the sentence at home. In New South Wales, home detention is only currently available as a front door program (NSW Law Reform Commission, 1996:334).

Home detainees are monitored by a combination of random telephone checks, visits by supervising officers and electronic devices (surveillance bracelets). Supervision is conducted by a probation and parole officer. Under the Act, the Probation and Parole Service is also responsible for assessing the suitability of offenders to participate in the program (NSW Law Reform Commission, 1996:151).

The Act requires the assessing officer to consider the suitability of the offender's proposed residence for home detention. If the offender does not have a suitable residence, including a telephone connection, the Act requires the Probation and Parole Service to make all reasonable efforts to secure appropriate accommodation for the duration of the order.

The potential exclusion of poor or homeless offenders from the home detention scheme because of the requirement for a suitable residence was raised in several submissions

to the New South Wales Law Reform Commission's recent Sentencing Inquiry. The Committee notes also that problems regarding accessibility to a home detention program may arise for those living in isolated and remote rural areas. While acknowledging that the Act does attempt to ensure homeless offenders are not excluded, the Commission argues that the provision did not go far enough and recommends that consideration be given to allocating resources such as a telephone to ensure people are not excluded from the program (NSW Law Reform Commission, 1996: 153).

The requirement for a suitable home to be eligible for home detention also raises issues about the availability of the program for Aboriginal offenders, whom may not live in a traditional western-style fixed place of residence (Figgis, 1996: 23. See also, Moyle 1994). In Queensland, the Corrective Services Commission has adopted a broader definition of 'home', which enables Aboriginal offenders to serve home detention in a rehabilitation centre:

It appears that Aboriginals suffer special disadvantages in relation to the definition of home. In one sense Aboriginal people have strong kinship and familial ties with their communities. Yet in some communities, there is heavy consumption of alcohol, and a risk that an inmate on the program will break the stringent rules of home detention by drinking alcohol. The solution in North Queensland has been to release Aboriginals to rehabilitation centres (Moyle 1993-1994: 32).

The New South Wales scheme does allow for offenders to undertake home detention in a residential drug and alcohol program. At the time of writing this Report, this option was being considered for one home detainee.

The Committee has been told that magistrates and judges are not utilising the option of home detention as frequently as they could. As well as the possible unsuitability of the offender for home detention this may be due to a number of factors including a lack of knowledge as to the existence of the program, a failure of probation and parole officers to refer to it in their reports as a possible option and the attitudinal barriers as highlighted above.

According to a recent fact sheet prepared by the Department of Corrective Services, data from past years suggest that many courts are continuing to imprison significant numbers of offenders for short periods without reference to Home Detention. It also notes that surveys are being conducted to determine the number of eligible offenders being imprisoned by these courts without being assessed for Home Detention. Information from these surveys will be used to inform the ongoing dialogue with the courts intended to promote the widest possible use of Home Detention consistent with the aims of the legislation (Department of Corrective Services, Feb-May 1997).

RECOMMENDATION 54:

That the Attorney General ensure that information about the Home Detention Program be included in the judicial education program proposed in Recommendation 49.

RECOMMENDATION 55:

That the Attorney General ensure that the definition of 'residence' in the *Home Detention Act, 1996* is not limited to a family home but includes appropriate treatment and counselling services.

6.2.3 GRIFFITHS BONDS

A Griffiths Bond allows an offender to be released from custody while the court assesses their behaviour and capacity for rehabilitation before imposing a sentence (NSW Law Reform Commission, 1996: 87). In evidence to the Committee, Zdenkowski argues that these bonds 'have often been used in a very productive and positive way' (Submission 1).

One of the key advantages of Griffiths Bonds is that they allow offenders to demonstrate their capacity for rehabilitation by participating in a program of drug or alcohol rehabilitation before a sentence is imposed. In other circumstances, if a custodial sentence is likely, it allows caregivers an opportunity to organise their child care responsibilities before incarceration, including completing a period of breastfeeding.

RECOMMENDATION 56:

That the Attorney General introduce legislation to give a statutory base to Griffiths Bonds, an option now available under common law.

RECOMMENDATION 57:

That the Attorney General extend the application of Griffiths Bonds to include the deferral of sentences during pregnancy and further, until after breastfeeding, when admission to the Mothers' and Children's Program is not possible.

RECOMMENDATION 58:

That the Attorney General ensure that the judicial education program proposed in Recommendation 49 includes material about Griffiths Bonds.

6.2.4 COMMUNITY SERVICE ORDERS

Community Service Orders (CSO) punish offenders by placing restrictions on their time and liberty and requiring them to carry out up to 500 hours of community service (NSW Law Reform Commission, 1996: 96). CSOs were introduced in New South Wales in 1980 as an alternative to imprisonment (Bray and Chan, 1991:5).

Section 6(2) of the Act compels the judicial officer to obtain a report from a probation officer indicating that work is available and that the person is suitable to perform community service work. Magistrates and judges tend to rely very heavily on the recommendations in these reports (Bray and Chan, 1991:24).

The limited availability of CSOs for women offenders with care-giving responsibilities was raised as an issue by Zdenkowski:

It is sometimes said that primary caregivers are not suitable for community service orders because of child care problems...Prison may be the result. It is unsatisfactory, indeed unjust, not to award a CSO, where this is otherwise an appropriate penalty because of a lack of child care facilities. Provision of appropriate child care support should be explored (Submission 1).

The 1985 Taskforce on Women in Prison noted that female offenders who are also mothers of young children can experience difficulty in providing sufficient time free from the responsibilities of parenthood to perform the community work ordered, particularly where limited family or social support is available. They may therefore be considered unsuitable or refuse to undertake an order because of these time restrictions. It was also thought that women with heavy drug habits were likely to be excluded from the scheme. From a study of 270 files, the Taskforce found that:

Heroin users, particularly those with heavy habits were generally considered unsuitable by the Probation and Parole Officers for a community service order. Given that most women offenders have drug problems, it was thought that at least some prisoners may have had CSOs excluded as an option because of these habits (Taskforce on Women in Prison, 1985:140).

According to the Department of Corrective Services' Probation and Parole Service, work opportunities have been developed to facilitate access to CSOs by women with children and/or have drug problems. Some work permits women to work during school hours when child care is less of a problem while other work can be undertaken by women accompanied by the children or at home.

RECOMMENDATION 59:

That the Attorney General direct the NSW Bureau of Crime Statistics and Research to collect and publish data on whether there is a discrepancy in Community Service Orders being given to men and women.

6.2.5 NET WIDENING

The possible 'net widening' effects of non-custodial sentences is a significant concern in the literature on sentencing.

Many commentators have noted when intermediate sentences are introduced in order to divert some offenders from custody, these intermediate sentences will sometimes be ordered for people who would not have been at risk of a custodial sentence in the first place. Sentencers tend to use sentences which are meant as alternatives to imprisonment as alternatives to more lenient sentences. When this happens, home detention is no longer diverting offenders from jail, and the number of people in the corrections system increases. This phenomenon is known as 'net widening' (widening the net of corrections to catch more people) (Figgis, 1996:18).

The NSW Law Reform Commission argues that the possibility of net widening should not prevent the development of non custodial sanctions and that appropriate judicial education is the best way to reduce this possible effect (NSW Law Reform Commission, 1996:327).

The Taskforce on Women in Prison made the following recommendations to deal with the potential problem of net widening:

In approaching the issue of 'alternatives' to imprisonment, the Task Force recommends that the Government of NSW develop sentencing options which:

- a) *Do not rely for their ultimate enforcement on the continued existence of the prison;*
- b) *Act to effectively divert offenders from the prison;*

- c) *Are not based on a similar philosophy as that which directs the use of imprisonment, or be required to satisfy the same confused aims as those required of prison (Taskforce on Women in Prison, 1985:133).*

6.3 MOTHERS' AND BABIES'/CHILDREN'S UNITS

During the 19th century it was common practice for women in prison to have their children who could be with their mother in prison. In comparing the situation for imprisoned mothers in the 19th century to the 20th century, Benjamin writes

It was then customary for convict women to have their children with them in prison, yet in the 20th century, that practice is now seen as either undesirable for the children or as a privilege to be applied for and won by the mother, rather than accepted as appropriate and natural for the families concerned (Benjamin, 1990:166) .

There is some disagreement among commentators about the absolute benefits of establishing women and babies'/children units in prison. Although most of these commentators agree that in most circumstances children should not be separated from the mother or primary care giver, there are some differing views about how this might best be achieved. Inmates themselves, also differ as to the advantages and disadvantages of the having children in prison. For instance, research from the Women in Prison Taskforce found that

Reasons (for the re-establishment of a mothers and babies unit) mostly centred on the potential advantages for the child. Of those women who felt mothers and children should be together, 49% said it was the best way to maintain the relationship or that bonding was needed. Some (25%) said that it would be desirable if a different section of the gaol or proper facilities were available, and others (12%) felt that separation was bad for the children. Arguments for not allowing children to stay with their mothers in prison were association with disadvantages for the child. Almost two-thirds of the women with this view considered prison to be a bad environment in that it was a violent, abnormal and restrictive place (Taskforce on Women in Prison, 1985:206).

According to Maher the establishment of mothers and babies facilities in prisons is not without its difficulties and complexities. She argues that

The mere presence of such a facility does not automatically guarantee women the right to have their children with them. Such decisions are

inevitably made by the prison administration, sometimes in consultation with a specialist panel or committee, and according to widely differing and often highly subjective criteria... There is also the question in relation to the fundamental dilemma of women's imprisonment...If full parental rights are extended to women as mothers, as opposed to all imprisoned parents, such a practice can ultimately serve to reinforce the gender stereotypes that contribute to a women's oppression within the criminal justice system...Few would argue with the assertion that prison is not the ideal place for a child to grow up in. Apart from being a total unnatural environment, imprisoned mothers are often subject to internal discipline and punishment through their children (Maher, 1988:108).

Buckley has also argued that analysing the issue of children's facilities from the perspective of female prisoners and prisons only, is dangerously "woman-centred." She states

from an ideological perspective, it reinforces the definition of the social role of women based on their capacity to bear and raise children (Buckley, 1990:13).

The Committee was told that one of the negative repercussions of mothers' and children facilities in prison is that imprisonment as a sentencing option for mothers or expectant mothers would not be used as a last resort by the courts. Such an outcome was considered in an English report of the Howard League for Penal Reform (1979:5), where it was stated that "the attempt to humanise prisons may make the courts less reluctant to use them".

In her study, Hartz-Karp provides an example of this. She reports that

In Western Australia, in 1981, an Aboriginal woman was sentenced to prison on the strength of the prosecution's case that imprisonment imposed no great hardship since the woman could keep her child in prison. Contrary to the expectations of the court, however, the mother was not allowed to retain her child. The infant was considered ineligible for the prison programme on the grounds that he was too old (ie 18 months) and that alternative arrangements could be made for his care (ie with his grandmother) (Hartz-Karp, 1983:175).

The Committee has heard from some witnesses that children should not be exposed to any prison environment for lengthy periods of time. While in Brisbane, for instance, women at the Brisbane Women's Correctional facility (where mothers are allowed to keep their children) expressed concern that some of the older infants were beginning to respond to muster and were lining up with the other prisoners. From these women's

perspective this behaviour demonstrated that these children were becoming institutionalised and accustomed to prison life, not merely to life with their mother.

One woman at Brisbane Women's Correctional Centre who had her six month old baby with her in prison had made a decision that the baby leave the prison to be cared for by her mother. She explained that she was concerned that her daughter was becoming "environmentally deprived" by being in a prison setting. The restricted and cloistered nature of life in prison meant that the woman considered that her child was being deprived of the normal stimulants that a child of her age would normally experience.

In commenting generally on the establishment of mother and infant facilities in prison, Hartz-Karp maintains that

Since the focus of our justice system has been on individual punishment, prisoners' families have been treated as a peripheral concern, or not a concern at all. With changing penal ideologies, however, from punishment to rehabilitation to the recent concern for prisoner self determination and community reintegration, the importance of maintaining family units has received greater notice. Added to these changes in penal policy, the increasing concern about mother/infant relationship to child development, it is understandable that the Criminal Justice System has begun to concern itself with the maintenance of mother/infant ties during the mother's term of imprisonment. One way of addressing this problem has been to introduce mother/infant residential programmes in women's prisons (Hartz-Karp, 1983:172).

The Committee has heard that merely placing a child with its mother in prison does not automatically assist the mother in her rehabilitation - an outcome which inevitably affects her relationship with her child. Ann Farrell, an academic who has done extensive research on the issue of children of prisoners and who spoke to the Committee in Brisbane argues that most prison systems consider that by placing a mother and baby together "everything will be okay". However, she maintains this is not the case without the proper supports. According to Farrell

inmate mothers need support, that is, emotional, practical, material and informational support, from 'significant others' (within and/or outside the prison) to cope with the dual roles of prisoner and mother... This support includes emotional, practical, material and informational support (Farrell, 1995:37).

From her research she found that there are two kinds of support needed by the inmate mother for both herself and her child(ren):

In the first place, the dimension of support includes the little-researched area of inmates' access to support from other inmates and from custodial and non-custodial staff for emotional and informational support in order to cope with the task of parenting their children...Secondly, the dimension of emotional, practical, material and informational support...includes inmate mothers' access to family and other support from beyond the confines of the ecological niche of the prison...The dislocation accompanying incarceration and the nature of the prison environment...accentuated the need for sources of support that will help the inmate mother cope with the dual role prisoner/mother (Farrell, 1995:37-38,39).

In her evidence to the Committee, Dr Ann Aungles considered that three issues need to be resolved in relation to mothers and babies units. These are that:

To what extent mothers and babies unit alter sentencing patterns - whether women are more likely to be sent to gaol because gaol seems to be a humane alternative;

To what extent single fathers have responsibility for young children;

The impact of a mothers and babies unit when other children are in the family (Aungles evidence, 17 December 1996).

Additionally, witness Jan Cregan commented to the Committee

I am not clear about the effect on the children, because as I understand it the proposal is to take children away from parents in gaol by the age of 12 or 18 months. I do not think there is anything in the psychological literature to indicate what sort of lasting effects a child would suffer if that child were allowed to develop in a social environment such as a women's gaol, where he or she would have not only the care of their own mother but often have a lot of co-parents in the other inmates and a lot of peers amongst other children in the unit. I do not know what lasting effects it might have to disrupt relationships formed at that very young age. I do not think there is any answer to that question at the moment (Cregan evidence, 17 December 1996).

A number of commentators have examined the issue of the best interests of the child in relation to mothers' and babies' units in prison. Hartz-Karp (1983:175) for instance, observes that

...if the sanction of imprisonment is to be used for mothers or mothers to be, then facilities for infants in prison should approximate free world conditions..., be accessible to community facilities and community contact, with educational and vocational programmes for mothers, and access to day care or play groups for children.

This approach was supported by a number of witnesses and submissions to the Committee.

6.4 THE NEW SOUTH WALES MOTHERS' AND CHILDREN'S PROGRAM

The history of New South Wales policy in relation to incarcerated mothers keeping their children while in custody has been inconsistent and chequered. The relative vacuum in policy for imprisoned mothers and children is traceable to 1981. At that time, then Corrective Services Minister, Rex Jackson authorised the closure of the Mothers' and Babies' Unit at Mulawa which had been established in 1979. Maher reports that

In August 1980, there was an incident at Mulawa which has variously been described as a 'riot' or a 'peaceful sit in'. Considerable controversy surrounds the exact nature of the incident and as a consequence, a management decision was taken by the Department that resulted in the Unit being transferred to the perimeter of the Silverwater Complex. The operations of the Unit were suspended on Christmas Eve 1981 by Rex Jackson, in an apparently spontaneous outburst of concern that children should not live 'behind barbed wire' (Maher, 1988:107-108).

The Mothers' and Babies' Unit at Mulawa and Silverwater has remained closed since that time.

However, a Mothers' and Children's Program has recently been established at Emu Plains Correctional Facility, known as Jacaranda Cottages, and at the Parramatta Transitional Centre. These facilities are based on the Mothers' and Children's Program (Department of Corrective Services, 1996). That Program includes the following options:

- release pursuant to section 29(2)(c) of the *Prisons Act, 1952*;
- caring for the child or children full time while in custody (the Fulltime Residence Program); and
- occasional accommodation for children such as on weekends and school holidays (the Occasional Residence Program).

Currently two children resided in Jacaranda Cottages and one child at the Transitional Centre.

Following the opening the unit at Emu Plains gaol and the Women's Transitional Centre at Parramatta, the Minister for Corrective Services, Hon. Bob Debus, MP stated

A limited number of pre-school age children will now be able to live with their inmate mothers...(this) offers an option for the children of those women for whom there is no alternative to fulltime custody. It also brings New South Wales into line with other Australian states, where similar programs have been operational for some years now (Media Release, 20 December 1996).

The special facility at Emu Plains is a purpose built minimum security unit which at capacity will be able to accommodate 40 women inmates and 16 children, who are housed in double rooms with their mothers. The Women's Transitional Centre at Parramatta, although not exclusively for mothers and their children, is also equipped for the accommodation of children.

Additional to these centres is Guthrie House, at Marrickville in Sydney's Inner West. Guthrie House is a half-way house for women who have been involved in the criminal justice system. Women can be accommodated at Guthrie House with their children. A small percentage of residents at Guthrie House are serving custodial sentences:

The service has been approved by the Department of Corrective Services as a suitable community setting for women with dependent children to serve a portion of their prison sentences under the NSW Prisons Act 1952, s.29(2)(c) (Guthrie House, 1996:2).

A range of services are offered at Guthrie House including drug and alcohol programs, parenting and employment skills.

The establishment of mothers' and children's facilities within New South Wales female correctional facilities can be seen as part of a recent move (already accepted in a number of other jurisdictions for some time) towards the notion that offending behaviour by a parent does not necessarily mean that the parent is incapable of performing his or her parental duties, or that the child should be punished as well as the parent. Previously it was the case that

A parent's criminal act and subsequent imprisonment (were) viewed as a deliberate relinquishment of parental rights and, therefore, as sufficient grounds for legal termination of those rights (Beckerman, 1991:173).

According to the policy setting out the Mothers' and Children Program

The contradiction between providing such a program for women and the commitment to developing policies which do not reinforce gender stereotypes is acknowledged. However, women's statistical dominance in the correctional system as primary care givers and the best interests of children whose primary care giver is imprisoned make this contradiction a necessary one. Secondary benefits of the program include the likely reduction in re-offending behaviour of participants and alleviation of the distress and anxiety associated with forced separation from children (Department of Corrective Services, 1996:1).

The Guiding Principles of the Mothers' and Children Program are as follows:

- the best interests of the child are the paramount consideration;
- imprisonment in itself is neither evidence of a mother's lack of desire, nor of her ability to perform her parental duties;
- participation in the fulltime residence program is the option of last resort, to be utilised when there are no satisfactory alternatives for the placement of the child or children available;
- children residing in, or spending time, at a correctional centre are the sole responsibility of their mothers; and
- participation in the fulltime residence program must never be used as part of the hierarchy of privileges and sanctions (Department of Corrective Services, 1996).

The Committee considers that the third point of the principles requires clarification. The Committee agrees that participation in the full time residence program should be the option of last resort but believes that the placement of the child with the mother should always be considered the most "satisfactory alternative" before placement with someone else is examined. Naturally, the best interests of the child should be paramount in all circumstances.

Six objectives guide the operational framework of the Mothers' and Children's Program. These are to:

- ensure that the placement of any child at a New South Wales correctional centre meets the best interests of the child;
- ensure that the Mothers and Children's Program is fair and equitable;

- provide a safe and supportive environment in which selected inmate mothers can care for their pre-school aged child or children;
- ensure that the environment in which inmate mothers care for their children reflects the aspirations of child rearing according to community standards;
- ensure that the staff of correctional centres in which children reside have a high level of understanding of the specific needs of mothers caring for their children in the correctional centre context; and
- ensure that the needs of women who are primary carers of children are given recognition in the classification, placement and case management processes.

As noted earlier, some women inmates with whom the Committee spoke expressed concern that the prison environment could have a negative impact on a child's development irrespective of whether he or she is with the mother. In its Policy and Operational Framework for the Mothers' and Children's Program, the Department of Corrective Services has, as its first objective:

Ensure that the placement of any child at a New South Wales Correctional Centre meets the best interests of the child (Department of Corrective Services, 1996:4).

The Department defines "best interests of the child" as according to principles of good care, including community of care, stability of placement, maintenance of family and significant relationships, and time to achieve permanent arrangements for the child (Department of Corrective Services, 1996:4).

The following are the strategies which the Department of Corrective Services must implement to achieve the first objective:

- develop selection criteria for the program which reflects the guiding principles of the policy;
- ensure that the membership of the Mothers' and Children's Program Committee includes an advocate for the child;
- ensure that a report on the best interests of the child is prepared for the consideration of the Mothers' and Children's Program Committee in making decisions and recommendations;
- establish that the mother has legal custody of the child or children and that the mother was the primary carer of the child prior to imprisonment before considering the placement of the child or children with the mother in a correctional centre;

- ensure that no concerns exist regarding the mother's ability to adequately care for the child or children;
- the age limit for the fulltime residence program is determined by the commencement of school, rather than chronological age; the age limit is of flexible application, and wherever possible separation of mother and child should not occur at exactly the same time as commencement of school;
- the age limit for the occasional residence program is up to and including fourteen years; the age limit is of flexible application (The Committee considers that this flexibility should allow children to participate in the program who are up to the age of 18 years);
- ensure the child's transition to a new care giver is as gradual as possible when participation in the Mothers and Children's Program is terminated; ensure that every effort is made to sensitively facilitate a child's transition in an emergency situation;
- ensure that suitable emergency placement options (one within the correctional centre and two external) are arranged for all children residing at a correctional centre in case the mother cannot care for her child or children any longer through illness or security/management reasons; and
- in an emergency situation where the mother is unable to care for the child or children the child or children should be placed with the nominated alternative carer within the correctional centre until the mother is able to resume caring for the child or until the nominated carer external to the correctional centre is able to commence caring for the child (Department of Corrective Services, 1996).

The fourth objective of the Program concerns provision of an environment that reflects the aspirations of child rearing according to community standards. To reach this objective the Department is required to fulfill a number of criteria. These are to:

- provide facilities and equipment for children which reflect appropriate community standards;
- ensure that the care, discipline and attendance to the needs of the child (including health care needs) remains the sole responsibility of the mother;
- devise a Health Care Protocol for children residing at correctional centres;
- ensure that the provision of health care for children residing with their mothers in a correctional centre is provided by health care providers in the wider

community. Corrections Health Service will be involved only to the extent of providing emergency First Aid to children;

- ensure that women have access to the same range of health information and referral as primary carers of children in the wider community;
- encourage and enable mothers to ensure that the normal interactions of childhood with family members and significant others are maintained for the child;
- ensure that staff employed in sections of centres where children reside wear civilian clothing;
- develop partnerships with community agencies to provide opportunities for children to participate in off-site programs, including culturally relevant activities, and foster development of support from community organisations;
- encourage and enable mothers to use the local community child care facilities so that they can choose to continue education or employment in the Corrective Services Industries or any other workplace which they might attend under the Department's Pre-release Leave Policy; and
- encourage and enable mothers to utilise services and activities for children in the local community (Department of Corrective Services, 1996).

The Committee commends this objective and the listed criteria and considers that all the requirements should be fulfilled by the Department of Corrective Services.

The Mothers' and Children Policy does not specifically exclude any particular category of female prisoner. However, there are a number of "de-facto" exclusions.

Women serving long sentences are unlikely to be admitted to the Program because of the requirement that consideration be given to continuity of care of the child. A child of a prisoner serving a long sentence would face disruption when separated from its mother at school age, and the Department of Corrective Services argues that continuous care would be preferable for the child (Gilsenan personal interview, 12 February 1997).

Other prisoners are excluded in practice because they are in custody at Mulawa Correctional Centre. Mulawa houses inmates who are classified as needing high levels of supervision or special programs and includes remand prisoners. There are no facilities for children to reside at Mulawa. The Committee notes that the design of Mulawa allows for a module to be set aside as a Mothers' and Children's Unit. A module separate from the main complex but within the grounds could accommodate

children with their mother as a temporary measure before the resolving the issue of transferring an inmate to the Emu Plains Mothers' and Babies Unit or releasing her under s.29(2)(c).

According to the Policy, mothers and pregnant women are provided with information about the Mothers' and Children Program on reception, and the information is to be provided in a range of forms and community languages. Mothers who wish to participate in the Program are required to make an application. The application is considered by the Mothers' and Children's Program Committee and, following its determination the Committee informs the applicant of the outcome. A written report is provided to the applicant informing her of the outcome within two weeks of the decision being made (Department of Corrective Services, 1996).

Once accepted into the Program, every mother must sign an agreement indicating her acceptance of the conditions of participating in the Program. The conditions include:

- that the child may be removed if its interests are no longer served by residence in the centre;
- that the mother is fully responsible for the care of the child, and if the mother leaves the child in the care of another inmate, the mother is responsible for that decision if any harm comes to the child;
- that any suspicions of child abuse must be reported to the Governor or Officer in Charge who must notify the Department of Community Services;
- that the Department of Corrective Services is not liable for any injuries to the child unless or if its staff have been negligent, and that the State of New South Wales and its employees are indemnified against liability for any injury or damage caused by the mother;
- that the child and its property may be searched if it is suspected that contraband is concealed on it, but that the search must occur in the presence of the mother, and any removal of clothing will be done by the mother (Department of Corrective Services, 1996).

6.4.1 FULLTIME RESIDENCE PROGRAM

Decisions regarding participation in the Fulltime Residence Program are made by the Mothers' and Children's Program Committee which comprises the following members:

- representative of the Child Protection Unit or the New South Wales Child Advocate;

- governor/manager of the centre in which the inmate seeks to reside with her child; and
- representative of the Women's Services Unit, Department of Corrective Services. (Department of Corrective Services, 1996:2).

The criteria for eligibility into the Fulltime Residence Program is:

- that there is a place available for the mother and child;
- that the placement in the fulltime residence program is in the best interests of the child;
- that the mother is not eligible for release pursuant to section 29(2)(c) of the *Prisons Act*;
- that the mother was the primary carer for the child prior to imprisonment;
- that the mother has legal custody of the child;
- that the child is of pre school age;
- that the child is immunised according to standard immunisation requirements;
- that there is no demonstrated inability on the part of the mother to provide satisfactory care for her child;
- in the instance that there is demonstrated inability on the part of the mother to provide satisfactory care for her child but the Department of Community Services has given consent the child may be placed in the full time residence program.

Additionally, the possibility of continuous and stable care by one adult, the maintenance of other significant relationships (including siblings) and the physical and emotional health of the mother and child are to be considered (Department of Corrective Services, 1996).

6.4.2 OCCASIONAL RESIDENCE PROGRAM

The Occasional Residence Program allows for a child to be accommodated at the mothers and children's facility for short periods such as weekends and school holidays. The eligibility criteria, operational guidelines and procedures are basically the same as for Fulltime Residence with the following exceptions:

- women who are non-primary carers are also eligible, providing the written consent of the primary carer is obtained;
- the Governor, or delegate, of the relevant correctional centre is responsible for decisions made concerning participation (rather than the Mothers and Children's Program Committee); and
- children up to the age of 14 years will be eligible for occasional accommodation (Department of Corrective Services, 1996).

Decisions regarding participation in the Occasional Residence Program are made by the governor, or delegate of the relevant correctional centre (Department of Corrective Services, 1996:2).

The Committee commends the introduction of the Occasional Residence Program. This Program will assist with the maintenance of relations between older children and their mothers.

The Committee recommends that attention be given to ensuring that the Occasional Residence Program is also used to assist with a gradual re-establishment of the relationship between children and their mothers nearing the end of their sentences.

As noted earlier the Committee is firmly of the opinion that prison as a sentencing option for mothers should always be a last resort. The fact of the existence of a Mothers' and Children's Program should not influence a court either way in making a decision on sentencing. It also considers that when a mother is sentenced to prison, every attempt must be made to have the mother reunited with her child or children pursuant to s. 29(2)(c).

However, the Committee acknowledges that some mothers will inevitably be given a gaol sentence and may not be eligible for or successful in a s.29(2)(c) application. In those circumstances every possible effort needs to be made to lessen the trauma of that sentence on the child. To this end, the Committee considers that the Mothers' and Children's Program, including the Fulltime Residence Program and the Occasional Residence Program should be extended to Mulawa Correctional Centre as a matter of urgency. It notes that Grafton will now accept a baby with the mother but currently the prison has no special facilities. One Fulltime and Occasional Residence Program, with proper specialised facilities, is not sufficient to meet the needs of the children of imprisoned female inmates.

The Committee notes that the Mothers' and Babies' Program is to be evaluated annually. It considers that following the first such evaluation the extension of the Program should be put in place.

Although being based within the prison complexes, the facilities housing the mothers and children should be a discrete area, separated from the mainstream prison environment and providing all the amenities as Jacaranda Cottages and subscribing to the same policies, as discussed above.

RECOMMENDATION 60:

That, subsequent to the first annual evaluation, the Minister for Corrective Services extend the Mothers' and Children's Program, including the Fulltime Residence Program and the Occasional Residence Program, to Mulawa Correctional Centre. The establishment of the special facilities needed to properly accommodate children at Grafton Correctional Centre should also be expedited. Extension of the Program should not jeopardise an inmate's opportunity for conditional release under s. 29(2)(c) of the *NSW Prisons Act, 1952*.

6.4.3 Children of Prisoners on Remand

Prisoners on remand are those who have been refused bail and are awaiting trial, sentence or appeal. The length of time a person is on remand can vary, with some inmates being in custody for about a week and others for a number of years.

The Report by the NSW Ombudsman on Mulawa Correctional Centre noted that

remand inmates, just under half of whom are likely to be in custody for the first time, under a legal presumption of innocence but subject to the rigours of a secure environment while preparing for trial or awaiting sentence, form an extremely vulnerable segment of the prison population (NSW Ombudsman, 1997:37).

The Committee is concerned that inmates who are the primary carers of children are being refused bail by the courts. Should the police refuse bail a person must be brought before a magistrate as soon as possible for the court to make a determination. In relation to the experiences of women Hampton writes

court decisions regarding bail are based on several factors including the severity of the offence, the likelihood of the accused absconding or committing a further offence, previous convictions and community ties. As it would appear that women have committed less serious crimes and that far fewer female offenders have committed offences against the person such that their liberty might be perceived as a danger to the community, female remand figures of around 30% of the female prison population seem rather high. Of these, a large number of women may not be convicted of any offence and may not in any event finally receive a prison sentence (Hampton, 1993:88).

The Committee understands that during 1987 there was a bail officer for inmates at Mulawa Correctional Centre. The position has since been abolished. The officer was employed to assist women who were on remand to make applications for a re-determination of their bail status to the courts. Such an officer would liaise with solicitors who would then appear for the women in court. The abolition of that position has meant that many women at Mulawa are unaware that they may reapply for bail even though they are in custody. This undoubtedly has a negative impact on children of these inmates. The Committee strongly supports the re-establishment of the bail officer position to operate within the women's prison system.

Inmates on remand are not classified and are automatically held in maximum or medium security prisons (NSW Ombudsman, 1997:79) (the classification system is discussed in Section 6.4.4). This means that currently, they are not eligible for a number of programs including the Mothers' and Children's Program at Emu Plains Correctional Centre.

According to the Department of Corrective Services, it is impractical to hold remand prisoners with children at Emu Plains because the mother's absence from the prison for her court appearance would prevent her caring for her child (Gilhooly personal interview, 18 April 1997). The uncertainty about her length of sentence is another factor which the Department considers makes remand prisoners unsuitable for admission to the Mothers' and Children's Program.

However, the Department has suggested that once the new classification system comes into effect in the near future, it may be possible for long-term remandees to be eligible for the Mothers' and Children's Program (Allen personal interview, 18 June 1997).

The Committee considers that when it is in the best interests of the child to remain with their mother remand prisoners should not be excluded from the Mothers' and Children's Program.

The Committee does not accept that the necessity of transporting the mother to court is sufficient cause to exclude remand prisoners from the Mothers' and Children's Unit at Emu Plains. If the Department is concerned about the best interests of the children of inmates, then it should develop a policy to ensure that the needs of children of remanded prisoners are adequately met, including when the mother is required to attend court.

The Committee acknowledges that the uncertainty about a mother's length of sentence may be problematic. However, it would seem that from the child's perspective, it is better to remain with the mother until the sentence is known, rather than be separated from the mother in case she received a long sentence. This is an infrequent occurrence given that the average sentence for women is less than 12 months.

Moreover, sentenced prisoners who are facing further charges and who are similarly uncertain about the length of their sentence are currently not excluded from the Mothers' and Children's Program, indicating that these are insufficient grounds for exclusion from the residence programs.

RECOMMENDATION 61:

That the Attorney General provide a bail officer to operate within the New South Wales women's prison system to assist inmates with applications for bail. Priority should be given to those inmates who are the primary carers of children.

RECOMMENDATION 62:

That the Minister for Corrective Services allow women on remand to access the Mothers' and Children's Program.

6.4.4 CLASSIFICATION

The Department of Corrective Services has developed a new classification policy for women inmates which is due to be implemented in July 1997. When implemented that policy will replace the system that classifies prisoners in one of the following categories:

- A1** those who in the opinion of the Director General represent a special risk to good order and security and should at all times be confined in special facilities within a secure physical barrier that includes towers;
- A2** those who...should at all times be confined by a secure physical barrier that includes towers or some other highly secure perimeter structures;
- B** those who...should be at all times be confined by a secure physical barrier;
- C1** those who...should be confined by a physical barrier unless in the company of an officer;
- C2** those who...need not be confined by a physical barrier at all times but who need some level of supervision;
- C3** those who...need not be confined by a physical barrier at all times and who need not be supervised;

E1 and E2 those who have been convicted of escaping or attempting to escape from lawful custody. The Law Handbook explains (1995: 977) that these prisoners cannot be moved to minimum security institutions, enter work release programs, exercise day or week leave or enjoy other privileges given to category C prisoners.

Inmates on remand are not classified and are automatically held in at least medium security prisons (NSW Ombudsman, 1997:79).

Currently, classification is based on security risk. The new classification system will be based on the **needs** of women inmates and their **access** to programs which are designed to decrease the risk of recidivism. A publication of the Women's Services Unit, Department of Corrective Service states that

The introduction of new female specific classification policy ensures that female inmates no longer have to function under a security classification system which is designed with the profile of male inmates in mind. Women inmates in New South Wales fit the catch phrase of "High Need - Low Risk". Female offenders are less violent compared with male offenders, both inside and outside prison. In designing the new system, the Department has taken into account the fact that the vast majority of female inmates who are mothers are the primary carers of children, that many women in prison have survived domestic violence and abuse, that the majority of women in correctional centres have to deal with drug and alcohol related issues, that they may have a history of recidivism and that a disproportionate number female inmates are Aboriginal women (Department of Corrective Services, 1996:1).

Under the **current** system inmates eligible for the full-time Mothers and Children Program must be suitable for placement at Emu Plains Correctional Centre, a Minimum Security or C classification Prison. As noted above, remandees are not eligible for the program, irrespective of the length of their remand and they are detained at Mulawa Correctional Centre.

A report on Mulawa prepared by the New South Wales Ombudsman examined the classification system in some detail. That Report found that

It is most notable that only 4.1% of sentenced women are classified as requiring a maximum security environment, ie those classified as A2 or E1. The high proportion of unconvicted prisoners, 13.8%, also require this level of security because they are, at the moment, automatically classified as A2. Approximately one third of the total female prison population was classified as requiring medium security (NSW Ombudsman, 1997:79).

The Mulawa Report also noted that the then Deputy of Classification whose particular responsibility for the three women's institutions, stated that 98% of female prisoners could be classified as Cs within the current system, even with antecedent behavioural problems, because they posed no security risk (NSW Ombudsman, 1997:78).

The Committee notes that under the new classification system mothers who might normally be detained at Mulawa may be able to apply for inclusion in the Mothers' and Children's Program at Emu Plains. Women who are in custody for violent offences will not be eligible, at least in the early stages of their sentence.

6.4.5 CONDITIONAL RELEASE

Conditional release from a custodial sentence of a mother of a young child(ren) is available under section 29(2)(c) of the *Prisons Act, 1952*, which states that:

29 (2) Any prisoner may, in accordance with a permit granted to the prisoner by the Commissioner, be permitted to be absent from a prison on such conditions as may be prescribed and such conditions as may be specified in the permit, for a period, being:

(c) in the case of a female prisoner who is the mother of a young child or young children, for the purpose of enabling the prisoner to serve her sentence with her child or children in an appropriate environment determined by the Commissioner - such period as may be specified in the permit.

Nowhere in the legislation does it state that eligibility for conditional release under s.29(2)(c) depends on the fact that an inmate is in the last stages of her sentence.

As the section shows, conditional release under s.29(2)(c) is only available to mothers. Fathers, or other carers, such as grandparents are ineligible for release under this section.

A number of conditions attach to release under s.29(2)(c). These are that the prisoner has 24 hours supervision by an approved sponsor or sponsors; that she has appropriate accommodation, and that she refrains from entering licenced premises. Accommodation can include a drug rehabilitation centre, a transitional centre or refuge, or the prisoner's home.

An application for conditional release under s.29(2)(c) is considered first by the Department of Corrective Services' Mothers and Children's Program Committee, which makes a recommendation to the Commissioner. The Committee consists of a representative of the Department of Corrective Services' Women's Services Unit, the Governor or Manager of the centre from which the application arises, a representative

from the Child Protection Unit (DOCS). Previously it was the case that the Child Advocate sat on the Committee. With abolition of that position the Committee considers that there should be a representative of the Office of the Status of Children and Young People on the Mothers' and Children's Program Committee.

A member of the Mothers' and Children's Program Committee interviews the woman, to gather information such as whether the woman was the primary carer prior to incarceration and the current placement of the child. Psychological or psychiatric reports, parole reports and drug and alcohol reports are obtained where relevant. The Probation Service Office must assess the prisoner's home if that is to be the place of residence (Department of Corrective Services, Mothers' and Children's Program Committee, 1995:2-3).

The assessment is presented to the Mothers' and Children's Program Committee and discussed, and the applicant may be interviewed by the Committee, as may any relevant case worker. The Committee makes its recommendation to the Commissioner based on its perception of the best interest of the child. The Commissioner makes the final decision and he is not obliged to follow the recommendation of the Mothers' and Children's Committee.

The legislation allows conditional release under s.29(2)(c) at the discretion of the Commissioner. Nevertheless, there are no formal written policy guidelines setting out the circumstances and conditions which must be satisfied in order to obtain a s.29(2)(c) release. This Committee was informed, however, that the Commissioner requires that the woman be serving the last 12 months, or the last one half, of her sentence (Rist evidence, 30 September 1996), a rule that is not articulated in the legislation. Other informal considerations include that the mother is not abusing drugs or alcohol (though she may be on a methadone program), that she not be serving a sentence for a breach of parole conditions, and that she not be in prison awaiting an appeal (Gilsenan personal interview, 12 February 1997).

The Social Issues Committee is concerned that the absence of written criteria for eligibility for conditional release under s.29(2)(c) may lead to inconsistency in decisions. It could also lead to the impression that decisions under s.29(2)(c) are made on a subjective or *ad hoc* basis.

The Committee considers that some flexibility and sensitivity is required when making decisions under s.29(2)(c). However, for the reasons stated above, it considers that eligibility criteria for s.29(2)(c) be prepared, which appropriately balances the child's need for continuous and stable care by the primary care giver with the security of the community.

The Committee further considers that s.29(2)(c) be available for all female prisoners who are primary carers, and not just those who are nearing the end of their sentence.

By the end of the sentence, a great deal of damage to the parent-child relationship and to the child's emotional well-being has already occurred. Section 29(2)(c) should be a front-end option where it is in the child's best interest, and where the community's safety is not at risk.

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

Indeed, on a site visit to Emu Plains Correctional Facility, the Committee heard about a particular instance of the failure of s.29(2)(c). A prisoner ("S") with a two year old son had been sentenced to one year and four months for a non-violent, first offence. She had previously been the primary carer of the child. In the few weeks following his mother's incarceration, the child had displayed typical and extreme symptoms of separation anxiety and clinical depression - regression, loss of appetite, diarrhoea and vomiting, social problems and extreme sadness and listlessness - and was hospitalised as a result. The Committee was provided with statements from the child's social worker, child carer, and the medical doctor at the hospital at which he was treated, confirming the seriousness of the problem.

The child's mother made an application for conditional release pursuant s.29(2)(c) in July 1996. She received approval from Guthrie House to reside there with her son after conditional release was granted. By October that year, when members of the Standing Committee on Social Issues spoke to the prisoner and her welfare officer, she had not received a response to her application.

On 27 November 1996, the mother appealed against her sentence in the Court of Criminal Appeal. A number of grounds were raised in regard to the sentence, one of which was whether the term of imprisonment should be reduced due to hardship to the appellant's son. Her appeal was rejected.

In December, the prisoner was transferred to Parramatta Transitional Centre, where she became the first prisoner there to be given permission to have her child reside with her under the Mothers' and Children's Fulltime Residence Program.

The Committee is concerned that s.29(2)(c) releases are increasingly difficult to obtain. "S" and her child would seem to have been ideal candidates for s.29(2)(c). In fact, the Welfare Officer at Emu Plains Correctional Facility noted that "if 'S' can't get a section 29, no one can".

The decision to transfer “S” to Parramatta Transitional Centre effectively imprisons the child rather than releases the mother. Whilst preferable to separation, this was a less desirable option than release.

Evidence was received by the Committee that women released under s.29(2)(c) are not entitled to Medicare entitlements or social security benefits (Sefton evidence, 17 December 1996). Women released under this section are still classified as an inmate and therefore cannot access these benefits and entitlements.

The Committee considers that this is an unsatisfactory situation, especially when there are children involved. It therefore calls on the Premier to urge the Federal Ministers for Health and Social Security to rectify this situation so that children of women released under s.29(2)(c) are not economically disadvantaged or limited in their access to health care (see Recommendation 45).

RECOMMENDATION 63:

That the Minister for Corrective Services develop publicly available guidelines setting out the circumstances and conditions which must be satisfied for an inmate to obtain a conditional release under s.29(2)(c) of the *Prisons Act, 1952*.

RECOMMENDATION 64:

That the Minister for Corrective Services make suitable arrangements to expedite approvals for s.29(2)(c) of the *Prisons Act, 1952* recommendations, particularly for women in the latter stages of their pregnancy.

6.5 OPTIONS FOR PREGNANT PRISONERS

With the opening of the Fulltime Residence Program at Emu Plains Correctional Centre pregnant women may apply to have their baby with them in the prison following birth. However, as discussed above, this may depend on the inmate’s classification.

Women at Mulawa Correctional Centre will not be able to keep their new born child with them, should they be unsuccessful in gaining release under section 29(2)(c). Currently, women on remand will also be unable to keep their baby in prison, unless they are serving a long remand.

Women who are pregnant in gaol receive prenatal care which is shared by the visiting general practitioners and the Medical Director of Women's Health Services. The four visiting general practitioners have specialist women's health training. Nurses at the women's prisons are trained in aspects of women's health. Dr Sefton told the Committee that

A doctor would see them every one, two or four weeks, as in the normal community, depending on the stage of pregnancy. We have a women's health nurse at Mulawa and a women's health trained nurse at Emu Plains - not in a dedicated role, but they have midwifery and women's health training. A visiting obstetrician and gynaecologist attends fortnightly at the Emu Plains centre. The women would see a medical officer probably monthly, if not more, and the women's health nurse is responsible for their day to day care - arranging their blood tests, coordinating the various investigations that are required, and things like diet, dietary supplements, certificates for no work, a car for court, or whatever else arises. At about 32 or 34 weeks, if they are still with us, I like them to attend the antenatal clinic at the hospital where they are going to deliver, a booking-in visit so the hospital has a record of their antenatal care. We keep standard New South Wales antenatal records and copies are transferred to the hospital. They may have already visited the hospital prior to that time. If there are any special concerns or complications, they are referred to the specialist antenatal clinics at the hospitals in the immediate area, Westmead or Auburn, and if they are going to deliver they are booked at those hospitals. They may or may not come back to us, depending on other factors (Sefton evidence, 17 December 1996).

When a woman in prison visits an outside doctor, such as an obstetrician, or a hospital, she is accompanied by an escort. The Department of Corrective Services Hospital Escorts Policy lays down the guidelines for officers attending anybody being escorted to a hospital or clinical services, and it specifically addresses gender issues. It states that wherever possible a female officer will go with a woman and that the doctor in charge may ask the escorting officer to step outside any examination or procedure room, including a labour ward. Dr Sefton stated that it would be an extreme case for an officer to be present during a delivery and she could not recall such an incident occurring during her time at Mulawa (Sefton evidence, 17 December 1996).

RECOMMENDATION 65:

That the Minister for Corrective Services ensure that all pregnant women in custody receive appropriate and adequate ante-natal care and that such care be commensurate to that which a pregnant woman receives in the community.

RECOMMENDATION 66:

That the Minister for Corrective Services ensure that when a pregnant woman is escorted to an outside medical practitioner or hospital she is afforded appropriate privacy. Under no circumstances should a departmental escort be present during a woman's labour.

The Committee is most concerned about the effect of separation of a baby from his or her mother at birth. Numerous research studies have shown that the early stages of bonding between a mother and her baby are critical to the later development of the child. Interruption to that bonding can create emotional, behavioural and even physical problems for a child.

The benefits of breast feeding for babies are now well established. As well as assisting greatly in the bonding process, breast feeding has been shown to have both nutritional value and long term health advantages for children. Babies who are separated from their mother are denied the opportunity of being breastfed and the associated benefits.

The Committee is concerned that prison may **not** be being used as a last resort for pregnant women. A number of the women with whom members spoke expressed the view that their pregnancy seemed irrelevant to the sentencing magistrate or judge. Some felt that the courts tended to view their pregnancy as a ploy to being given a more lenient sentence. All of the women were extremely stressed about what would happen to their babies following their birth.

RECOMMENDATION 67:

That the Attorney General encourage magistrates and judges to use the option of sentencing a person who is pregnant to a term of imprisonment as a last resort and only in extreme circumstances.

RECOMMENDATION 68:

That the Minister for Corrective Services ensure that pregnant inmates serving a custodial sentence may apply for release under s.29(2)(c) of the *Prisons Act, 1952* at the time of and following the birth of their child and that the appropriate post-release supports are available to those women who are successful in their application to assist them with the care of the baby (see Recommendations 36 and 37). In carrying out this recommendation the best interests of the baby must be paramount.

RECOMMENDATION 69:

That the Minister for Corrective Services ensure all pregnant inmates, whether on remand or serving a sentence, who are not released under s.29(2)(c) of the *Prisons Act, 1952* are given access to the Fulltime Residence Program. In carrying out this recommendation the best interests of the baby must be paramount.

6.6 FATHERS

As the Committee has discussed throughout the Report this Inquiry is about children whose mother or father is in prison. The majority of the evidence concerned children whose mother was imprisoned. Nevertheless, the Committee discovered during the Inquiry that a number of fathers who are in prison were the primary carers of children prior to their incarceration. In one case, a mother was killed in a car accident during the time when the father was in gaol, making him the primary carer. Nevertheless, he has been unable to seek release under section 29(2)(c) because of gender requirements of that section, nor is he able to be transferred to a mothers' and babies' facility to care for his son.

The Committee considers the gender specifications in the legislation and in the Mothers and Children Program an anomaly which should reflect the needs of children to be with their "primary carer". In certain instances, such as the one identified above it would be in the best interests of a child to be with his or her father, as the primary carer.

During the study tour by the Chair of the Committee and the Senior Project Officer, a site visit was undertaken to the Horserød Prison which is a mixed gaol in Denmark. Situated on the site of that prison is a unit that houses both female and male inmates and their children. Inmates on remand and serving sentences are eligible to apply to have their children with them in the family unit. At the time of the visit there were five children. Children can remain in the unit until they are three years of age. The Chair and Senior Project Officer spoke with inmates and staff at the prison all of whom expressed support for the parents and child unit.

Once a parent is admitted into the family unit he or she must sign a contract that drugs or alcohol will not be used. If drugs or alcohol are found the inmate is transferred to a prison of higher classification and their child is required to leave. Random urine tests are taken to ensure that drugs are not being used. The Chair and Senior Project Officer were advised by the staff that inmates rarely breach the contract. Sex offenders are specifically excluded from the family unit. Parents in the family unit are entitled to leave the unit to undertake activities with their children in the local area, including walks in the forest and use of the local swimming pool. They can also take them to the local kindergarten.

The Danish authorities expressed the view that if it is in the best interests of the child to be with his or her primary carer, then it makes no difference whether that person is the father or the mother.

The Committee supports this approach. It therefore calls on the Minister for Corrective Services to examine the option of allowing imprisoned fathers to be detained with their children at Jacaranda Cottages on the site of Emu Plains Correctional Facility or that they be eligible to apply for conditional release under s.29(2)(c) of the *Prisons Act*.

RECOMMENDATION 70:

That the Minister for Corrective Services examine the option of allowing imprisoned fathers, as primary carers, to be detained with their children at Jacaranda Cottages on the site of Emu Plains Correctional Centre.

RECOMMENDATION 71:

That the Minister for Corrective Services examine the feasibility of amending s.29(2)(c) of the *Prisons Act, 1952* to make provision for the conditional release of approved male primary carers.

6.7 COMMUNITY CORRECTIONS DIVISION

The Committee believes that the establishment of a Community Corrections Division in the Department of Corrective Services would be of benefit to children whose parents are in the criminal justice system. It appears to the Committee that security is the overriding consideration in determining the policies of the Department and in the allocation of resources and the Department's priorities reflect this role. Consequently, the general community perception of the role of the Department of Corrective Services is that of a gaoler. This has implications for the community's attitude towards community-based orders. For many, it is viewed as a "soft option" for offenders. In fact, community-based sentencing options represent a very serious infringement on the liberty of the offender and an opportunity to serve their sentence and be rehabilitated in their own community. There is also the opportunity of many remaining with their children.

Currently, the management of offenders in the community is the responsibility of the Probation and Parole Service. The Committee understands that caseloads of probation and parole officers are extremely heavy and resources are very limited. The Committee

is concerned that this situation may result in the unsatisfactory management of offenders in the community - a situation which may perpetuate the perception that community corrections do not work.

The Committee considers that a Community Corrections Division should be established within the Department of Corrective Services that would be responsible for managing offenders sentenced to:

- Probation;
- Community Service;
- Home Detention; or
- Griffiths Bonds.

The Committee also considers that women released under s. 29(2)(c) could be appropriately managed by the Community Corrections Division. Other inmates given pre-release could also be managed by this Division.

The Committee believes that the Community Corrections Division should be headed by a Deputy Commissioner, responsible directly to the Commissioner for Corrective Services. It also considers that in order to encourage staff of corrective services to get as wide as experience as possible within the system and as a means of career promotion, there should be a rotation system whereby custodial staff could interchange positions with community corrections staff and vice versa.

RECOMMENDATION 72:

That the Minister for Corrective Services 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.

RECOMMENDATION 73:

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 and the management of inmates released under s. 29(2)(c) of the *Prisons Act, 1952*

RECOMMENDATION 74:

That the Minister for Corrective Services ensure that the Community Corrections Division is adequately resourced and sufficiently staffed to effectively manage offenders in the community effectively.

RECOMMENDATION 75:

That the Minister for Corrective Services institute a policy to maximise staff experience in the Department of Corrective Services. Custodial and community staff should be able to rotate their positions so to enhance their career options.

6.8 CONCLUSION

The Committee is very clear that at all stages of the criminal justice system the needs and rights of the child of an accused or sentenced person must be recognised. To ignore the care and protection of these children is for the state to impose cruel and unusual punishment on innocent children.

CHAPTER SEVEN

CHILDREN & PARENTS IN THE JUVENILE JUSTICE SYSTEM

CONTENTS:

7.1	SENTENCING A YOUNG OFFENDER: THE <i>CHILDREN (CRIMINAL PROCEEDING) ACT, 1987</i>	153
7.2	COMMUNITY SERVICE ORDERS	154
7.3	HOME AND PERIODIC DETENTION	154
7.4	THE <i>YOUNG OFFENDERS ACT, 1997</i>	157
7.5	DETENTION	158
	7.5.1 THE <i>CHILDREN (DETENTION CENTRE) ACT, 1987</i>	158
	7.5.2 YASMAR JUVENILE JUSTICE CENTRE	160
7.6	MOTHERS AND CHILDREN IN JUVENILE JUSTICE CENTRES	161
7.7	YOUNG MEN IN CUSTODY	165
7.8	TELEPHONE CONTACT AND VISITS	165
7.9	POST-RELEASE	167
7.10	JUVENILE DETAINEES WHO HAVE PARENTS IN PRISON	168

The Committee determined at the outset of this Inquiry that the Terms of Reference would include young offenders in the juvenile justice system. The term "imprisoned parents" has been interpreted to include children in detention centres who are parents and children in detention centres who have a parent in an adult correctional centre.

During the Inquiry the Committee took evidence from a number of witnesses with expertise in juvenile justice and also visited Mt Penang, Kariong and Yasmar Detention Centres where Members held briefings with staff and inmates.

The Committee has previously undertaken considerable research into juvenile justice. The Reports, *Juvenile Justice In NSW* (1992) in particular, *Youth Violence* (1995) and *Children's Advocacy* (1996) dealt extensively with issues affecting young people in the juvenile justice system. Those reports consistently found that young people in detention centres have a range of complex problems often brought about by poverty and disadvantage, violence and abuse, family dysfunction, drug and alcohol dependency, failure to achieve at school, unemployment and prior contact with the welfare system.

In this Inquiry, the Committee has heard similar evidence. However, in light of the scope of the Inquiry the Committee has also heard that such problems are further compounded for those young offenders who are parents.

As at 31 May 1997 there were 470 young offenders in New South Wales detention centres. Of that total there were 442 boys and 28 girls in custody. The average length of custodial sentence for the 1996/97 period was 241 days.

No formal statistics are kept on the number of young people in custody who are parents. At a Committee hearing however, Ms Elaine Phillips, Project Officer with the Department of Juvenile Justice, estimated that about 8% of the children in detention centres are parents.

In November 1995, the Department of Juvenile Justice undertook a survey among detainees to determine the number who were parents. Information from the submission prepared by Mr Tim Keogh, Director of Psychological Services, Department of Juvenile Justice, indicates that the survey was distributed to all nine Juvenile Justice Detention Centres in New South Wales to gain data on incarcerated parents during the month of November 1995. The questionnaire asked clinical staff to rate these parents on their parenting skills, background (especially abuse experienced), psychiatric problems, the incidence of violent crime, and to what extent their children would be "at risk". There was a 100% response rate (Submission 16).

The results of the survey revealed that 34 detainees were parents:

the majority of the children lived with the mother of the child, a few with grandparents or substitute care. None of the children were placed with

the biological father. The parenting skills of all parents were rated as low. The majority of the parents had a history of physical violence in their backgrounds, while 50% had also experienced sexual abuse. Of the 50% of centres where staff indicated they considered the young parents had psychiatric problems, half again of the detainees were deemed to have such problems. The majority of the 34 parents had committed violent crimes. Given that other research has shown also that there is an over-representation of young people with alcohol and other drug problems in the Juvenile Justice Detention Centres, it is likely that a large number of these clients would also have an alcohol or other drug problem ...

... where the issue of risk to the children was concerned, the results from four of the centres rated the majority of the children "at risk"; in one centre half of the children were rated "at risk"; at one other centre less than one half of the children were deemed to be "at risk" and the remainder of the staff indicated they did not have enough information to make a judgement (Submission 16).

One of the major findings of the survey was that incarcerated parents appear as a group to have received inadequate parenting themselves. Keogh's submission, which discusses the survey, observes that

incarcerated parents appear as a group to have received inadequate parenting themselves. This seems to be linked to the development of delinquent and criminal behaviour. There thus appears to be a cycle set up whereby inadequate parenting is both modelled and internalised across generations. This in turn contributes to future generations susceptibility to criminality (Submission 16).

Keogh's submission cites research to confirm the survey's findings of a link between incarcerated parents and criminality in their children. From his own research and that of other studies Keogh concluded that it seems valid to hypothesise that the children of the 34 incarcerated youth interviewed for the survey are at risk of behavioural and emotional problems and later of, incarceration themselves.

RECOMMENDATION 76:

That the Minister for Community Services and Juvenile Justice ensure that statistics are maintained on the number of young offenders who are parents in order that appropriate policies and programs are developed for these young people and, in particular, their children.

7.1 SENTENCING A YOUNG OFFENDER: THE *CHILDREN (CRIMINAL PROCEEDING) ACT, 1987*

Section 33 of the *Children (Criminal Proceeding) Act, 1987* provides that the Children's Court shall not sentence a young person to a control order unless it is satisfied that it would be wholly inappropriate to deal with that person by way of a non-custodial or community-based sentence.

The issue of sentencing young offenders was dealt with extensively in the Committee's report, *Juvenile Justice in New South Wales* (1992). The Committee unanimously determined in that Report that incarceration should only ever be used as a last resort and only for the most serious or violent offenders. In most other cases, alternative community-based sentencing options should be applied. The Committee was firmly of the view that any community-based sentencing option should not be seen as a "soft-option" but a serious punishment for an offence committed.

Evidence to the Juvenile Justice Inquiry revealed that many community-based options, including Community Service Orders, are not given to a young offender because some magistrates, particularly those in rural areas, are not aware of them, or that there are not sufficient or appropriate resources to ensure that such orders are properly supervised. The Committee reiterates the recommendations contained in the Juvenile Justice Report regarding the use of community-based sentencing options for young offenders in all but the most serious of cases. It considers that magistrates should always use detention as a last resort, especially in the case of juveniles who are the primary carers of children or who are pregnant. The Committee also considers that greater use should be made of Griffiths Bonds for pregnant young offenders especially. This would ensure that the baby, once born, could have the benefit of early bonding and breastfeeding and that the mother would not be put in any danger during her pregnancy by being in custody.

The Committee also reinforces its concern in that Report regarding the sentencing of rural young offenders, who are often incarcerated some distance from their local communities. The Committee recommends that magistrates in rural areas make every effort to find local solutions to issues of sentencing young offenders and particularly those with children, to avoid the removal of young offenders from their communities because of incarceration.

RECOMMENDATION 77:

That the Attorney General ensure that, through judicial education, and consistent with the provisions of the *Children (Criminal Proceedings) Act, 1987*, community-based sentencing options should always be a first response of magistrates when sentencing a young offender and that custodial sentences be used only as a last resort. This should particularly be the case for young offenders who are pregnant or the primary carers of children.

RECOMMENDATION 78:

That the Attorney General ensure, through judicial education, that children's magistrates in rural areas make every effort to find relevant solutions to issues of sentencing young offenders and particularly those with children, so as to avoid the option of incarceration and the removal of young offenders from their communities.

7.2 COMMUNITY SERVICE ORDERS

Community Service Orders are the most serious sentencing option before the imposition of a custodial sentence. During the Juvenile Justice Inquiry the Committee heard disturbing evidence that those regions in New South Wales with the least likelihood of a Community Service Order were also the regions with the highest over-representation of Aboriginal young people in detention.

Since completing that Report the number of hours to be completed has increased from 100 hours to 250 hours. This increase was put in place to ensure that there be a realistic alternative to custody for serious offenders.

As the increase in the hours of Community Service Orders only became effective last year, it is too early to tell whether they have had a significant impact on reducing the number of people in custody or whether they have instead resulted in "net widening", that is individuals receiving this more severe penalty when they would have normally received a lesser penalty (Cain personal communication, 4 June 1997).

7.3 HOME AND PERIODIC DETENTION

Home Detention for young offenders has become a sentencing option in South Australia following recent amendments to the *Young Offenders Act, 1993*. According to a document prepared by the Department for Family and Community Services the aims of the South Australian Home Detention Program are:

- to provide the Youth Court with a Home Detention program for young offenders which reduces the incidence of repeat offending;
- to divert young people/offenders from institutional incarceration while providing control and restriction of their liberty; and
- to enhance the opportunities for educational, vocational, recreational and family and community involvement (Department of Family and Community Services, 1996:6).

The Program considers the following to be the advantages of home detention:

- youths can retain closer contacts with family and extended family as well as other community supports in order to enhance the development of more positive relationships, skills and strategies for overcoming offending habits and behaviours in a more natural environment than that found in an institutional detention centre;
- home detention offers the possibility of a high tariff penalty which constitutes a significant loss of freedom for the offenders, while ensuring community protection;
- home detention alleviates most of the damaging, dysfunctional effects of institutional incarceration on young people, enabling better utilisation of rehabilitative opportunities; and
- home detention provides flexibility to accommodate special needs individuals (Department of Family and Community Services, 1996:6).

“Special needs individuals” are Aboriginal youths, pregnant young women and intellectually and physically disabled young offenders.

This Committee however, considers that for young offenders home and periodic detention may **not** be a suitable alternative. This issue was raised by the Committee in the Report, *Juvenile Justice in New South Wales* (1992).

In that Report, the Committee noted that home detention may assist some young offenders to remain with their families or other support networks. However, as the Committee also found, many young offenders come from backgrounds of abuse or disadvantage and may have no permanent place of abode. For such young people, the option of home detention would be inappropriate. It also considers that home detention has the potential for “net-widening” as young people are pushed up the sentencing

hierarchy and it may become an easy option for some magistrates. Further, the Committee considers that young offenders may be stigmatised by their community if they are known to be detained in their home.

The Committee expressed a number of concerns in the Juvenile Justice report in relation to periodic detention. The Committee wrote:

whilst the Committee accepts that periodic or weekend detention may offer an alternative to the full time detainment of a young offender, it believes that a number of factors would have to be considered before such an alternative is implemented. These include:

- *introducing appropriate programs to ensure that the periodic detention has a proper rehabilitative component;*
- *establishing appropriate facilities for detainees. Currently, there are no facilities other than the main Juvenile Justice Centres to accommodate periodic detainees and the Committee strongly opposes mixing such detainees with more “hardened” or “sophisticated” young offenders. Although in some Juvenile Justice Centres where the design permits, separate sections could be used for periodic detention;*
- *ensuring that young offenders from rural areas are not disadvantaged by the distance of the periodic detention facilities from their communities; and*
- *ensuring that young people from disadvantaged areas or backgrounds are not disadvantaged by the use of periodic detention. In this regard, the Committee is mindful that young people themselves would no doubt have to be responsible for turning up to the facility to serve their sentence. This may pose difficulties for young people without a stable income or family support, and especially for young homeless people (Standing Committee on Social Issues, 1992:135).*

The Committee believes that there are enough community-based sentencing options in the legislation for young offenders. The Committee is concerned that further options may result in net-widening with the result that young offenders may be inappropriately given these very heavy sentences. It believes that the community-based options contained in the legislation are effective when there is appropriate and intensive support and supervision by the Department of Juvenile Justice. It also considers that pregnant

young women, those with children and in particular, the children themselves, will be far better off with the option of an effective community-based sentence rather than a custodial one.

RECOMMENDATION 79:

That the Minister for Juvenile Justice ensure that, when a magistrate makes an order for supervision of a community-based sentencing option, the supervision should be consistent with, and relevant to, the circumstances and needs of the young offender.

7.4 THE YOUNG OFFENDERS ACT, 1997

The New South Wales Parliament recently passed the *Young Offenders Act*. The objectives of the Bill are:

- (a) *to establish a scheme that provides an alternative process to court proceedings for dealing with children who commit certain offences through the use of youth justice conferences, cautions and warnings, and*
- (b) *to establish a scheme for the purpose of providing an efficient and direct response to the commission by children of certain offences, and*
- (c) *to establish and use youth justice conferences to deal with alleged offenders in a way that:*
 - (i) *enables a community based negotiated response to offences involving all the affected parties, and*
 - (ii) *emphasizes restitution by the offender and the acceptance of responsibility by the offender for his or her behaviour, and*
 - (iii) *meets the needs of victims and offenders.*

Children who may be dealt with under the *Young Offenders Act* include those who have committed or are alleged to have committed summary offences or indictable offences that may be dealt with summarily. Further, a child is not precluded from being dealt with by a conference merely because the child has previously committed offences or been dealt with under the Act in relation to other matters.

The Committee supports the provisions of the *Young Offenders Act* and considers that it may provide an appropriate alternative to young people who have children and those who are pregnant.

RECOMMENDATION 80:

That the Minister for Juvenile Justice ensure that young offenders with children and, particularly those who are pregnant, are made thoroughly aware of their opportunity to elect to have their matter determined by a Youth Conference.

The Committee considers that there are too many young people in custody. It hopes that with the introduction of the Youth Conferencing Scheme the numbers in custody and the rate of recidivism will be reduced.

7.5 DETENTION

7.5.1 THE *CHILDREN (DETENTION CENTRE) ACT, 1987*

The *Children (Detention Centres) Act, 1987* sets out a number of responsibilities that the Department of Juvenile Justice has in relation to young people in custody in detention centres. Section 4 provides *inter alia* that:

- satisfactory relationships are preserved or developed between persons on remand or subject to control and their families;
- the welfare and interests of persons on remand or subject to control shall be given paramount consideration; and
- it shall be recognised that the punishment for an offence imposed by a court is the only punishment for that offence.

Further, Section 14 provides, *inter alia*, that the Department must ensure that adequate arrangements exist to maintain the physical, psychological and emotional well being of detainees.

The *Children (Detention Centres) Regulation* states that each detainee must be supplied with medical and dental services necessary to maintain the detainee's health and well being.

Clearly, these provisions place a firm obligation on the Department of Juvenile Justice to ensure that both pregnant young women and mothers in custody receive appropriate care and attention.

Section 24(1) of the *Children (Detention Centre) Act* allows for the absence or conditional release of a detainee in a detention centre. That section provides that *Subject to the regulations the Director-General may, by order in writing:*

- (a) *grant a person subject to control leave to be absent from a detention centre for a purpose specified in subsection (1A);*
- (b) *remove a person subject to control from a detention centre and place the person in the care of such person as may be specified in the order; or*
- (c) *discharge a person subject to control from detention of the Director-General has made arrangements for the person to serve the period of detention by way of periodic detention or made suitable arrangements for the supervision of the person during the period of detention.*

Subsection (1A) provides the purposes for which leave may be granted under section 24(1)(a). These include:

- attending a funeral of a close relative visiting a close relative who is seriously ill;
- applying for employment or being interviewed in relation to a job application;
- engaging in employment of a kind specified in the order;
- applying for enrolment in an education course or vocational training or being interviewed in relation to an application for such a course;
- attending an education course or vocational training at a place specified in the order and;
- any other purpose that the Director-General considers to be directly associated with the welfare or rehabilitation of the person concerned.

Although this last provision may enable a young person who is pregnant, for instance to leave the centre for medical examinations, pre- and post-natal classes and for the birth of the child, the Committee considers that a discrete provision should be in place to ensure that this occurs.

RECOMMENDATION 81:

That the Attorney General amend s.24(1A) of the *Children (Detention Centre) Act, 1987* to include an express provision that leave may be granted to pregnant young detainees to allow them to pursue an activity that is relevant to the birth and well-being of their baby.

Under the Juvenile Justice mentor scheme it may be possible for a young woman to be accompanied by her mentor to pregnancy-related appointments or classes outside of the detention centre. Should the young woman be a classified person or on remand it may be possible for her to attend these appointments with a Departmental escort, who would be with her at all times. The Committee understands however, that all remandees are handcuffed when they leave the environs of the detention centre.

Detainees on remand awaiting trial, sentence or appeal, or classified persons are generally not entitled to be absent from the detention centre or to conditional release under s. 24(1). This is the case, irrespective of the length of time that the detainee is required to serve on remand.

The Committee considers that the classification system in Juvenile Justice Centres needs to be altered to reflect the needs of the inmates, as well as security issues. Such a system should allow remanded detainees, including pregnant young women, to be eligible for appropriate leave.

RECOMMENDATION 82:

That the Minister for Community Services revise the classification system for juvenile detainees to reflect their needs and provide access to programs without compromising security requirements. The new classification system should ensure that young people on remand or classified persons, especially those who have children or who are pregnant, are eligible for appropriate leave.

7.5.2 YASMAR JUVENILE JUSTICE CENTRE

Yasmar Juvenile Justice Centre, situated at Haberfield in Sydney, is the Department of Juvenile Justice's girl specific detention centre.

Information provided by the Department of Juvenile Justice reveals that, in the 20 month period from September 1994, 18 young women admitted to Yasmar were pregnant, while 26 young women had recently given birth. The average age of all these young women was 15 years six months. Of the 53 young women who disclosed

they were pregnant or had young children during the period September 1994 to May 1996, 16 were Aboriginal, nine were Vietnamese, 22 were Anglo Celtic and five were South Pacific Islanders.

On its visit to Yasmar Members met with one young woman who had a daughter and another who was pregnant. The child of the inmate was 15 months and the mother has been in custody since March 1997. She is due for release in October 1997. Her child resides with the father in northern New South Wales. Since the young woman was placed in custody she has not seen her daughter. She was unaware that the Department of Juvenile Justice may provide financial assistance for family in country regions to visit a young person in a detention centre in Sydney. Such assistance includes transportation and accommodation.

The Committee also met with another young women who was four months pregnant. She was pregnant at the time of her sentencing and the magistrate was made aware of this by her counsel. The young women felt that this issue was not taken into account at the time of sentencing.

7.6 MOTHERS AND CHILDREN IN JUVENILE JUSTICE CENTRES

The submission from the Department of Juvenile Justice states that

To date, no young woman being detained in a Juvenile Justice Centre has been able to keep her child with her (Submission 14).

However, the submission notes that the Department of Juvenile Justice is currently preparing a policy on mothers and young women who are pregnant in custody. An issues paper is being prepared which outline three major policy aspects dealing with:

- arrangements around the time of the birth;
- the establishment of a mother and child unit; and
- a visitations program with the designation/establishment of indoor and outdoor play areas for children visiting mothers in custody (Submission 14).

According to the Department of Juvenile Justice submission the policy proposes the establishment of a mother and child unit at Yasmar. It is submitted that Yasmar Juvenile Justice Centre is the most convenient and practical location because it provides a program specifically designed for young women, who would be able to participate in the program and not be isolated (Submission 14).

The Department of Juvenile Justice states that

the proposed policy allows for a young woman to have her baby with her following birth while in custody, if she wishes, unless she has been assessed as unsuitable to have her baby with her in the Juvenile Justice Centre by the Department of Community Services. This is particularly pertinent in view of the high incidence of self injuries behaviour among incarcerated young women, and its relationship to past histories of abuse. The Department of Juvenile Justice supports maintenance of contact between a detained mother and her child... The practice is to be formalised and a detailed procedures manual will be developed regarding the maintenance of the relationship between the detained mother and her child (Submission 14).

Included in the policy is a proposed model for programs for young women in custody who are pregnant or mothers. The Juvenile Justice Submission states that a pilot program would be established, coordinated by a designated officer (Social Worker), which would:

- (i) enhance parenting skills;
- (ii) enhance independent living skills; and
- (iii) facilitate more independent physical contact between incarcerated mothers and their children.

The proposed model would include the following:

1. Care of the pregnant young woman
2. Parent program:
 - Child development classes
 - Parent education classes
 - Independent living skills
3. Visiting program
 - all day physical visitations with the mother in a location structured for age appropriate play and interaction;
 - the visitation needs of mothers and children will be met through facilities that encourage and enhance the visitation experience;

- *ongoing support and education program for guardians who are caring for the young woman's children; and*
- *transportation for the children to Yasmar who are living some distance from the Juvenile Justice Centre (submission 14).*

The submission further provides that

If the child is in local foster care visits would occur more regularly, e.g. daily after school. For other children, regular visiting programs are available. Weekend and extended residency could also be available. Visiting will be made more suitable for children by providing physical space (indoor and outdoor) conducive to quality and regular visiting (Submission 14).

The proposal for the Mother-Child Residency Program has as its goal to generate, maintain and develop the mother-child bond. The overriding factor and basis for all decision-making in the Program will be the best interests of the child. According to the Juvenile Justice submission

this will be assessed by comparisons with program eligibility criteria and, when necessary, through partnerships with local child welfare authorities. Though yet to be developed, eligibility criteria for mother should include considerations such as:

- *the existence of a positive, ongoing relationship with her child;*
- *the mother's physical and mental health (excluding disabilities)*
- *the consent of court/child welfare authorities, where applicable; and*
- *the willingness of the mother to facilitate visits between the child and other significant family members, where directed to do so by court or child welfare authorities (Submission 14).*

A woman convicted of child abuse and/or neglect will not be eligible to participate in the program until her custody rights are reinstated by the courts, she has received treatment, and/or she has participated in a series of regular visits with her child. Further, any alcohol or non-prescribed drug use will result in the termination of eligibility (Submission 14).

In relation to the child, eligibility considerations (in addition to the best interests of the child) may include:

- the child's health;
- the consent of court/child welfare authorities, where applicable;
- regular physical and mental health assessments;
- an age limit;
- potential disruption to the child's life (as confirmed by appropriate professionals, the mother and other family); and
- the consent of the child, whenever possible (Submission 14).

The Committee considers that the establishment of a mothers' and children's program at Yasmar may be beneficial to securing the bond between a mother and her child. It believes that the program may also be advantageous in its provision of parenting skills for young mothers who may have themselves been products of family separation and dysfunction. The Committee also supports the visiting program.

However, the Committee reiterates its concern expressed earlier in the Report, that **the existence of mothers' and children's programs in correctional facilities should in no way influence a magistrate when sentencing a young female offender.** Irrespective of the existence of such a unit, incarceration must be used only as a last resort. When sentencing a young mother or primary carer magistrates must have regard to the impact any sentence might have on a dependent child.

RECOMMENDATION 83:

That the Minister for Juvenile Justice introduce the Mother-Child Residency Program at Yasmar Juvenile Justice Centre as a matter of urgency.

RECOMMENDATION 84:

That the Attorney General provide judicial education to inform magistrates and judges that the existence of the Mother-Child Residency Program should not influence them in their sentencing decisions in regard to young women with children and young pregnant women. Detention should always be a sentencing option of last resort.

RECOMMENDATION 85:

That the Minister for Community Services and Juvenile Justice ensure that, in cases where young offenders are the primary carers of children, the Department of Community Services prepare a report for the presiding Magistrate about the effect that any sentence may have on the children. Such a report should be prepared in addition to any report prepared on the young offender by officers of the Department of Juvenile Justice.

7.7 YOUNG MEN IN CUSTODY

Currently, there is no official, written policy for young men in detention centres who are fathers. The Submission from the Department of Juvenile Justice states that, in spite of this

the Department of Juvenile Justice endeavours to fulfil (its) statutory mandate allowing detainees to have access to their children...The issues surrounding young men in custody as parents are not unimportant, but major traumas involving bonding, parenting and separation are much more common among incarcerated mothers. However, the Department's commitment to non-discriminatory practice will require dealing with the needs of young men in custody who are fathers and may wish to have their child with them. The Department will be considering the appropriateness of establishing play area facilities for fathers and children at, say, Mount Penang or Reiby Juvenile Justice Centre in the future (Submission 14).

The Department of Juvenile Justice has advised the Committee that arrangements for young people who are parents in custody vary from Centre to Centre. Special efforts are made to place young men who are fathers as near as possible to their children. The Committee was told that a young man on a Control Order, for instance, has been placed at Cobham (normally a remand centre) to allow him to be near his infant daughter and partner. Cobham Juvenile Justice Centre has arranged for this young person to attend a camp for young fathers organised by the Nepean Adolescent Health Service (Submission 14).

7.8 TELEPHONE CONTACT AND VISITS

Policies regarding telephone contact and visits can vary from centre to centre. On their visit to Mt Penang and Kariong Juvenile Justice Centres members spoke with a number of young men who were fathers. Although each of these Centres has an official policy

of two five minute telephone calls per week for each inmate, the Committee was advised that enforcement of this policy differs for each Centre. An extra call per week is permitted in special circumstances (Kariong and Mt Penang Briefing, 20 February 1997). At neither centre are inmates required to pay for their calls.

A number of detainees at Mt Penang, Kariong and Yasmar explained to Committee members that the number and time limit of telephone calls is insufficient to maintain meaningful contact with family members, particularly children. The Committee considers that in order to preserve the relationship with both a father or mother and their child, the Department of Juvenile Justice needs to ensure that detainees have appropriate access to telephone calls.

Visiting policies also vary among detention centres. The Committee understands that there is some flexibility in visiting arrangements. Visits are permitted to both Kariong and Mt Penang all day on Saturdays and Sundays. There is some flexibility at Kariong where visits can occur at other times if adequate notice is given and staff are available.

The submission from the Department of Juvenile Justice provides the following information in relation to visits:

(As well as the normal visits) additional visits by children to Mount Penang (largest Juvenile Justice Centre) are permitted as are home visits to encourage greater contact. Currently, the practice with young women in custody is that every effort is made to facilitate visits by the children of detainees. At present one young woman is visited by her son for one full day every week and the Department picks up and brings the child to Yasmar and returns him to his foster parents. However, this has to date been done in an ad hoc way and the proposed model includes a visiting program (Submission 14).

On their visit to Kariong and Mt Penang Members noted that neither Centre is conveniently located for visitors without cars. They are some distance from Sydney by train, and a further bus trip is required from the station. This is a long and difficult trip for visitors bringing the inmate's children, particularly children in prams.

Families from remote areas or who are financially disadvantaged are assisted by the Department with money for transport. Some centres have on-site cottages for visitors to stay overnight if they have long distances to travel to get to the centres.

RECOMMENDATION 86:

That the Minister for Juvenile Justice institute regulations to ensure that uniform policies governing telephone contact are adopted across New South Wales juvenile justice centres.

RECOMMENDATION 87:

That the Minister for Juvenile Justice increase the number of telephones in each juvenile justice centre to maximise the opportunities for children to speak with their detained parent.

RECOMMENDATION 88:

That the Minister for Juvenile Justice increase the time limits for STD calls between inmate parents and their children to 15 minutes.

RECOMMENDATION 89:

That the Minister for Juvenile Justice ensure that all telephone conversations between detainees and their children take place in private.

RECOMMENDATION 90:

That the Minister for Juvenile Justice ensure that visits by children of detainees be of unrestricted length and number, as long as sufficient notice is given, and staff are available for supervision. Visiting areas should be child-friendly and have appropriate facilities for children.

RECOMMENDATION 91:

That the Minister for Juvenile Justice expand the number of residential accommodation units for visitors and, in particular for the children of detainees, at all Juvenile Justice Centres. Such units are to be used for those visitors who are required to travel long distances to visit a detainee.

7.9 POST-RELEASE

The issue of post-release was dealt with extensively by the Committee in its Report, *Juvenile Justice in New South Wales*. At that time the Committee considered that post-release support and supervision of young offenders was inadequate. Since that time a number of initiatives have been undertaken in this area. Among these is the

Barnardos post-release options program which aims to assist young offenders of non-English backgrounds leaving detention to make a successful return to their community through culturally appropriate intervention.

The Committee considers that post-release support is essential for young offenders with children. It is required to help them adjust to life back in the community and to their role as parent in the community. Such post-release support may be critical in preventing re-offending behaviour. The Committee recommends that a specialist post-release program be developed that would be included in the Mother-Child Residency Program and that would assist young offenders who are parents and those who are pregnant.

RECOMMENDATION 92:

That the Minister for Community Services and Juvenile Justice include a specialist post-release service in the Mother-Child Residency Program to provide appropriate and continuing assistance to young offenders who are parents or who are pregnant at the time of their release from a juvenile justice centre.

7.10 JUVENILE DETAINEES WHO HAVE PARENTS IN PRISON

Evidence to the Inquiry has shown that many detainees in Juvenile Justice Centres have a parent or parents in adult prisons. The submission from the Department of Juvenile Justice notes that the Department of Corrective Services deals with requests from parents in Correctional Centres to receive visits from their child who is a juvenile detainee on an individual basis. This is to ensure security considerations are taken into account as well as the best outcome for both child and parent (Submission 14).

Permission may be given for detainees of a Juvenile Justice Centre to visit their inmate parent in a New South Wales prison. The Department of Juvenile Justice arranges transport in such instances. These visits are organised on a case by case visit (Submission 14). It is unlikely that the Department will allow a detainee to visit a parent who is imprisoned some distance from the Juvenile Justice Centre where a return visit on one day is impossible.

RECOMMENDATION 93:

That the Minister for Corrective Services ensure that adult inmates are incarcerated in facilities that are near to those where their child is detained in order to facilitate visits between them, wherever such arrangements are possible.

7.11 CONCLUSION

The Committee recognises that the issue of young offenders in juvenile justice centres is complex and requires the implementation of sensitive policies. Such policies must always have the best interests of the child at its core. They must also include the needs of the detained parent many of whom have suffered from abandonment or inadequate parenting. The Committee considers that the implementation of the recommendations contained in this Chapter will assist in alleviating the trauma of children of detainees and the distress of detained parents and help to break the long-term cycle of offending behaviour.

CHAPTER EIGHT

CHILDREN OF INTERNED PARENTS

CONTENTS:

8.1	VISITS	175
-----	--------------	-----

Australia is one of the few countries that detains its illegal immigrants as a matter of course. In countries such as Canada, the US, Great Britain and New Zealand illegal immigrants (and their children) live in the community until their case is decided and are detained only for the purpose of identification or if the person is considered to be a risk to society (Abbott evidence, 6 February 1997). While the Committee recognises that the management of immigration detainees is a Commonwealth responsibility, evidence presented led members to conclude that the detention of immigration detainees - both adults and children - is unnecessary.

Westbridge Detention Centre at Villawood holds between 80 and 140 detainees at any one time, 90% - 95% of whom are males. The length of stay of detainees varies considerably. Some detainees have their applications approved in two months; others are detained for up to three years.

Children may be detained at Villawood if they are illegal immigrants who entered the country with their parents or alone. In February 1997, there were four children residing at Villawood, aged between five days and ten years. At any one time, there have been up to ten children detained at Villawood. Pregnant women are escorted to hospital for the birth, and then returned to detention when it is safe to do so. There have in the past been instances of children of detainees living in the community while the parent/s are detained, though there are not currently any families in this situation (Abbott evidence, 6 February 1997).

There are numerous problems associated with the detention of children with their parents. Psychologically, children who are detained may undergo behavioural changes caused by the stressful living conditions in the detention centre, and their unknown future. According to the Australian Red Cross observers such changes may include loss of appetite, insomnia, crying, withdrawal, increased dependency, and/or listlessness. The child may, in addition, sense the tension and stress its parents feel as a result of the parents' uncertainty about the future, boredom, and lack of support in caring for their children whilst in detention (Abbott evidence, 6 February 1997). The Refugee Council of Australia has expressed concern about the detention of children who are refugees or asylum seekers and in particular concern about Australia's compliance with the United Nations Convention on the Rights of the Child. The Refugee Council believes that

it is not acceptable to deny children certain basic rights because they are not citizens or permanent residents, especially if this denial results in a child being put at risk (Refugee Council of Australia, 1997:12).

Evidence received by the Committee has led them to conclude that the services available to children and their parents in the Detention Centre are insufficient to ensure that the children's needs and basic rights are currently being met. While the Committee is concerned with the lack of services per se, it is also concerned that, in many instances, the lack of these essential services puts the Centre in contravention of

Australia's obligations to the UN Convention on the Rights of the Child. The Committee, for example, understands that since October 1996 there have been no educational facilities available for the children detained at Villawood (Abbott evidence, 6 February 1997) - a situation which contravenes Article 28 of the UN Convention relating to the child's right to primary education. The Committee understands that the position of a primary teacher for Villawood was advertised in March last, and hopes the position will be filled quickly.

RECOMMENDATION 94:

That the Premier urge the Prime Minister to ensure that the educational rights and needs of children held in Westbridge Detention Centre are met through the immediate employment of a teacher.

The Committee was also informed that, in contravention of the UN Convention's Article 31, structured recreational, artistic or cultural activities are currently unavailable to children at the Detention Centre. While the Committee fully appreciates the difficulty in providing such facilities when there may be only one child speaking a particular language, it is concerned with the potential lack of stimulation and play opportunities available for those children. As was pointed out to the Committee, that child may suffer from isolation with the only opportunity the child has for communication or interaction being with its parents (Abbott evidence, 6 February 1997).

RECOMMENDATION 95:

That the Premier urge the Prime Minister to ensure that the needs of children held in Westbridge Detention Centre to access recreational, artistic and cultural activities be met.

The Australian Red Cross gave evidence to the Committee that it believes Article 24 of the Convention, which requires the highest attainable standard of health and treatment for children, is not met at Villawood. Access to health services at Villawood is not satisfactory, according to the Red Cross, as access to a General Practitioner can only be made through the Centre's nurse. Additionally, there are problems in obtaining an interpreter, even by telephone, which can make it difficult for parents to convey their concerns either to the nurse or the GP. The Committee heard of a recent case where parents at Villawood requested and obtained a psychiatric assessment of their child who was displaying behavioural problems following incarceration. Despite waiting over two months, the parents had not received a copy of the report, and the behavioural difficulties of the child continued without any professional treatment being offered (Abbott evidence, 6 February 1997).

RECOMMENDATION 96:

That the Premier urge the Prime Minister to ensure children detained at Westbridge Detention Centre have their health needs met through ready access to a General Practitioner and the provision of adequate interpreting services.

Children who are not detained with their parents face similar difficulties as children of other prisoners. They may develop emotional and behavioural problems, have problems communicating with their parents, attend school erratically, and have difficulty finding appropriate accommodation and care. The Committee was informed of instances where older children have been required to take responsibility for younger siblings. In some cases this has required older children curtailing full-time studies to work and provide for the physical and financial needs of the younger members of their family (Australian Red Cross, Submission 15).

Whether the children of immigration detainees are incarcerated or not, they all face problems peculiar to their situation - the loss of cultural and religious networks that had been fostered by parents, the breakdown of cultural values and a resultant alienation and loss of identity.

8.1 VISITS

Visits to detainees in Stage One of the Centre (that is, those who are maximum security because they have previously absconded or are considered a risk to the community) are permitted between the times of 9 a.m. - 11.30 a.m, 1.30 p.m. - 5.30 p.m., and 7.00 p.m. - 9.00 p.m. Visits to Stage One detainees may be limited to 20 minutes, although this restriction is not often enforced.

The Committee considers visits of twenty minutes duration to be too short to enable meaningful communication particularly in those situations where the parent is meeting with several children. It would therefore like to see the time limit abolished and no time restrictions placed upon on visits to Stage One detainees.

Visits to Stage Two detainees may take place between 9.00 a.m and 9.00 p.m, and there is no time limit on visits. In the Committee's opinion the longer hours and lack of time restraint makes it easier for children of Stage Two detainees to maintain their relationship with their parent/s.

RECOMMENDATION 97:

That the Premier urge the Prime Minister to abolish the 20 minute time limit on visits by their children to Stage One detainees at Westbridge Detention Centre.

APPENDIX ONE

**NEW SOUTH WALES CORRECTIONAL CENTRES
FOR MALE INMATES:**

VISITING DAYS AND TIMES

AS AT 10 MARCH 1997

INSTITUTION	VISITING DAYS	VISITING TIMES
Bathurst C.C. X Wing	Sat, Sun, PH Sat, Sun, PH	8.30 - 11.15 & 12.00 - 3.15 9.00 - 3.15
Berrima C.C.	Sat, Sun, PH	9.00 - 3.30
Broken Hill C.C.	Sat, Sun, PH	10.00 - 3.00
Cessnock C.C.	Sat, Sun, PH	8.30 - 3.30
Cooma C.C.	Sat, Sun, PH	9.00 - 11.00 & 1.00 - 3.00
Glen Innes C.C.	Sat, Sun, PH	9.00 - 3.00
Goulburn C.C.	Sat, Sun, PH	8.30 - 2.00
Grafton C.C. Medium Minimum	Sat, Sun, Mon, PH Sat, Sun, PH	9.00 - 11.30 & 12.30 - 4.00 9.00 - 4.00
John Morony C.C.	Sat, Sun, PH	8.30 - 3.30
Junee C.C.	Sat, Sun, PH	9.00 - 4.00
Kirkconnell C.C.	Sat, Sun, PH	8.30 - 4.00
Lithgow C.C.	Sat, Sun, PH	8.30 - 4.00
Long Bay Hospital	Sat, Sun, Mon, PH	9.00 - 11.15 & 1.00 - 3.30
Maitland C.C.	Sat, Sun, PH	9.00 - 1.45
Mannus C.C.	Sat, Sun, PH	8.00 - 3.00
Oberon	Sat, Sun, PH	8.30 - 3.00
Parklea C.C. Sentenced Remand	Sat, Sun, PH Mon - Fri Sat, Sun, PH	8.30 - 2.00 12.00 - 1.30 8.30 - 2.00
Parramatta C.C. Legal (only)	Sat - Thurs Fri	9.00 - 3.00 9.00 - 3.00
Reception Industrial Centre	Sat, Sun, Mon, PH	9.00 - 11.30 & 1.00 - 3.00
Remand Centre Legal (only)	Sat - Thurs Fri	9.00 - 3.00 9.00 - 3.00
Silverwater C.C.	Sat, Sun, PH	8.15 - 3.00
Special Care Centre <i>By appointment</i>	Sat, Sun, PH <i>Mon & Fri.</i>	9.00 - 3.00 9.00 - 3.00
Special Purpose Centre	Sat, Sun, PH	8.00 - 11.30 & 1.00 - 3.00
St Heliers C.C.	Sat, Sun, PH	8.30 - 3.00

INSTITUTION	VISITING DAYS	VISITING TIMES
Tamworth C.C.	Sat, Sun, PH	9.00 - 3.00
Training Centre	Sat, Sun, PH	9.00 - 2.30

Source: Department of Corrective Services, July 1997

SUBMISSIONS RECEIVED

THE COMMITTEE RECEIVED A TOTAL OF
38 WRITTEN SUBMISSIONS

SUBMISSIONS RECEIVED

No.	ORGANISATION/AUTHOR OF SUBMISSION:
1	Associate Professor George Zdenkowski, Faculty of Law, The University of New South Wales
2	Mr T McKnoulty
3	Mr G Schorel
4	Mr J Thompson
5	Ms B Wayne
6	Mr T Cowie
7	Justice Action, Ms S Hopkins
8	Auburn Community Services Centre, Ms T Moneley
9	Barnardos Australia, Ms L Voigt
10	Redfern Legal Centre, Ms I Gubbay
11	Centacare, Father J Usher, Director
12	Department of Corrective Services, Women's Services Unit, Ms B O'Connor
13	Council of Social Service of New South Wales, Mr G Moore
14	Department of Juvenile Justice, Mr K Buttrum, Director-General
15	Australian Red Cross, Mr P Hart, Executive Director
16	Department of Juvenile Justice, Mr T Keogh, Director of Psychological Services
17	Mr P Muller
18	Ms C Gissane
19	Children of Prisoner's Support Group Co-Op Ltd, Ms G Larman
20	CRC Justice Support Inc., Ms E West, Executive Officer
21	Ms J Wahlquist
22	Department of Justice, Ms L Moore, Probation & Parole Officer, Community Corrections, Hobart Office

No.	ORGANISATION/AUTHOR OF SUBMISSION:
23	Department of Corrective Services, Mr J Page, Assistant Commissioner Personnel and Education
24	Central Coast Family of Prisoners' Support Network, Ms L Buehler, and Newcastle Family of Prisoners Support Network
25	University of Wollongong, Department of Sociology, Ms A Aungles
26	Campsie Children's Court, Mr J Crawford, Children's Magistrate
27	Humanly Possible, Ms K Russell, Director
28	Mr G Hancock
29	Catholic Women's League, Sydney Archdiocese, Mrs J Carolan, President
30	Redfern Legal Centre Publishing Ltd, Mr L Ogle
31	Family Support Services Association of NSW Inc., Ms M Gledhill, Executive Officer
32	Prisoners' Aid Association of New South Wales Inc., Mr C Baird, Managing Secretary
33	Confidential Submission
34	Mr S Polniak
35	Mr D Hawkins, L Gilliland, Ms J Long
36	Confidential Submission
37	Mr G Kable
38	Mr J Murray

WITNESSES AT HEARINGS

WITNESSES AT HEARINGS

MONDAY, 30 SEPTEMBER 1996

MS ANN GILHOOLY	Department of Corrective Services Director, Women's Services Unit
MS REBECCA GILSENAN	Department of Corrective Services Project Officer, Women's Service Unit
MS LIOBA RIST	Department of Corrective Services Senior Project/Policy Officer, Women's Services Unit
MR LAWRENCE GOODSTONE	Department of Corrective Services Senior Planning/Project Officer
MS ELAINE PHILLIPS	Department of Juvenile Justice Acting Senior Policy Officer
MR TIM KEOGH	Department of Juvenile Justice Director, Psychological Services
MS ANNA-MARIA CIKO	Yasmar Juvenile Justice Centre Clinical Psychologist
MS GLORIA LARMAN	Children of Prisoners' Support Group Executive Officer

MONDAY, 21 OCTOBER 1996

MS MADELEINE LOY	Emu Plains Correctional Centre Welfare Officer
DR EILEEN BALDRY	University of New South Wales Lecturer, School of Social Work
MS BERNADETTE O'CONNOR	Former Director, Women's Services Unit, Department of Corrective Services

FRIDAY, 1 NOVEMBER 1996

MS JANET WAHLQUIST	Former Solicitor, Legal Aid Commission
MR ERIC MCCORMACK	Justice Action, Co-Ordinator
MR JOHN MURRAY	Justice Action, Researcher
MS VIOLET ROUMELIOTIS	CRC Justice Support, Executive Officer
MS MAREE PETERS	CRC Justice Support Women's Ex-Inmate Support Worker

FRIDAY, 22 NOVEMBER 1996:

PROFESSOR TONY VINSON	University of New South Wales Head, School of Social Work
MR FRANK HAYES	University of Wollongong Tutor, School of Sociology
SENIOR CONSTABLE JULIE CARROLL	NSW Police Service Projects Officer, South Region Command
MS MOIRA MAGRATH	Department of Corrective Services District Manager, Blacktown Probation and Parole Office
MS KIM BLINKHORN	Department of Corrective Services District Manager, Wollongong Probation and Parole Office
SUPERINTENDENT STEVE D'SILVA	Department of Corrective Services Director, Periodic Detention Administration

TUESDAY, 17 DECEMBER 1996

MR NIGEL SPENCE	Centacare Director, Children and Youth Services
MR WILLIAM JOHNSTON	Centacare, Social Policy Officer

DR ANN AUNGLES

University of Wollongong
Lecturer, Department of Sociology

MS JAN CREGAN

Macquarie University
Researcher, National Centre for HIV Social
Research

MS SHIRLEY NIXON

Mulawa Correctional Centre, Official Visitor

DR ANN SEFTON

Department of Corrective Services
Medical Director, Women's Health Services,
Corrections Health Services

WEDNESDAY, 18 DECEMBER 1996

MS TAMENA MONELEY

Department of Community Services
Acting Assistant Manager

MS LYNNE BANCROFT

Department of Community Services
Acting Manager, Substitute Care

MS ANN SHANLEY

Department of Community Services
Principal Program Officer, Child Protection

IN CAMERA WITNESS

MR GEORGE FITTER

Marist Community Services
Adolescent Family Counsellor

MS LIZ MACDACY

Department of Housing
Manager, Client Service Co-Ordination Unit

WEDNESDAY, 5 FEBRUARY 1997

DR DON WEATHERBURN

NSW Bureau of Crime Statistics and Research
Director

**ASSOCIATE PROFESSOR
GEORGE ZDENKOWSKI**

University of New South Wales
School of Law

DR ALEX WODAK

St. Vincent's Hospital
Director, Drug and Alcohol Service

Ms KATHY DOLAN

National Drug and Alcohol Research Centre, UNSW
Research Officer

THURSDAY, 6 FEBRUARY 1997

Ms LOUISE ABBOTT

Australian Red Cross, Tracing Officer

COMMITTEE BRIEFINGS

COMMITTEE BRIEFINGS

ADELAIDE, SOUTH AUSTRALIA

FRIDAY, 1 DECEMBER 1995

Ms Maria Bordoni	Manager, Adelaide Womens' Prison
Mr Bill Trevorrow	Living Skills Unit, Adelaide Womens' Prison
Ms Jan Boyce	Manager of Programs, Adelaide Womens' Prison

EMU PLAINS CORRECTIONAL CENTRE, EMU PLAINS

THURSDAY, 3 OCTOBER 1996

Ms Lee Downes	Governor
Mr Paul Leyshon	Deputy Governor
Ms Marilyn Wright	SAS
Ms Veronica Tobin	Programs Manager
Ms Gillian Regar	Psychologist

PARRAMATTA TRANSITIONAL CENTRE, PARRAMATTA

THURSDAY, 3 OCTOBER 1996

Ms Lioba Rist	Acting Manager
---------------	----------------

MULAWA CORRECTIONAL CENTRE, SILVERWATER

MONDAY, 28 OCTOBER 1996

Mr Dave Farrell	Commander, Central Region Department of Corrective Services
Ms Judy Leyshon	Acting Governor
Ms Deidre Cooper	Programs Manager

CHILDREN OF PRISONERS' SUPPORT GROUP, SILVERWATER

MONDAY, 28 OCTOBER 1996

Ms Gloria Larman Executive Officer

LONG BAY CORRECTIONAL COMPLEX, MALABAR

TUESDAY, 28 JANUARY 1997

Mr John Klok Regional Commander
Mr Brian Blowes Staff Training Officer
Ms Debra Anthony Acting Manager, Programs, Industrial Training Centre
Mr John Abdel-Ahad Welfare Officer, Industrial Training Centre
Ms Alys Woodward Senior Welfare Officer, Metropolitan East

BRISBANE, QUEENSLAND

THURSDAY, 13 AND FRIDAY, 14 FEBRUARY 1997

Mr Peter Severin Assistant Director, Custodial Corrections Directorate
Mr James O'Neil Acting General Manager,
Brisbane Womens' Correctional Centre
Ms Pam Pussaari Acting Manager, Programs,
Brisbane Womens' Correctional Centre
Mr James Mullen General Manager, Sir David Longland Correctional Centre
Mr Peter Coyne Manager, Programs,
The Helana Jones Community Correctional Centre
Mr Rod Drew Regional Manager, Southern,
Community Corrections Directorate,
The Helana Jones Community Correctional Centre
Mr Peter Smales Manager, Women's Community Custody Program,
The Helana Jones Community Correctional Centre
Dr Ann Farrell Centre for Applied Studies in Early Childhood, Faculty of
Education, Queensland University of Technology

MT. PENANG JUVENILE JUSTICE CENTRE, KARIONG

TUESDAY, 20 FEBRUARY 1997

Mr Terry Gould Centre Manager

KARIONG JUVENILE JUSTICE CENTRE, KARIONG

THURSDAY, 20 FEBRUARY 1997

Mr Jim Renehan Acting Manager

JUNEE CORRECTIONAL CENTRE, JUNEE

TUESDAY, 11 MARCH 1997

Mr Yme Dwarshuis Offender Development Manager

YASMAR JUVENILE JUSTICE CENTRE, HABERFIELD

TUESDAY, 27 MAY 1997

Ms Anna-Maria Ciko Clinical Psychologist

Ms Kath Powell Acting Manager

PLEASE NOTE:

During the course of the Inquiry, the Committee spoke with over **60** inmates and **15** children of inmates.

VISITS OF INSPECTION

VISITS OF INSPECTION

27 May 1997	Yasmar Juvenile Justice Centre Haberfield, New South Wales
11 March 1997	Junee Correctional Centre Junee, New South Wales
20 February 1997	Kariong Juvenile Justice Centre Kariong, New South Wales
20 February 1997	Mt. Penang Juvenile Justice Centre Kariong, New South Wales
14 February 1997	Sir David Longland Correctional Centre Wacol, Queensland
13 February 1997	Brisbane Women's Correctional Centre Woolloongabba, Queensland
13 February 1997	The Helana Jones Community Correctional Centre Albion, Queensland
28 January 1997	Long Bay Correctional Complex Malabar, New South Wales
28 October 1996	Mulawa Training & Detention Centre for Women Silverwater, New South Wales
28 October 1996	Children of Prisoners Support Group Silverwater, New South Wales
3 October 1996	Emu Plains Correctional Centre Emu Plains, New South Wales
3 October 1996	Parramatta Transitional Centre Parramatta, New South Wales
1 December 1995	Adelaide Women's Prison Adelaide, South Australia

APPENDIX SIX

OVERSEAS STUDY TOUR

JANUARY 1996 - FEBRUARY 1996

OVERSEAS STUDY TOUR

JANUARY - FEBRUARY 1996

From 12 January to 2 February 1996, the Chair of the Standing Committee on Social Issues, the Hon. Ann Symonds, and Senior Project Officer, Ms Alexandra Shehadie, undertook an overseas study tour for the purpose of gathering information and research for the Inquiry into Children's Advocacy and the Inquiry into Children of Imprisoned Parents. Meetings relevant to the Children of Imprisoned Parents Inquiry are listed below:

ENGLAND, LONDON:

- **LONDON PRISONS COMMUNITY LINKS:**
Ms Una Padel, Co-ordinator
- **SAVE THE CHILDREN, UK AND EUROPEAN PROGRAMMES DEPARTMENTS:**
Ms Judy Lister, Divisional Director
Ms Rosy Adriaenssens, Assistant Divisional Director
Ms Ann McTaggart, Save the Children Co-ordinator
Mica, Child of Imprisoned Mother
- **FEDERATION OF PRISONERS FAMILIES SUPPORT GROUP:**
Ms Janet Harber, Chairperson
Ms Lucy Gampell, Co-ordinator
- **H. M. PRISON SERVICE, FAMILY TIES UNIT:**
Ms Audrey Wickington, Director of Programs
Mr Bob Dawes, Head of Women and Young Offenders Section
Ms Julia Morgan, Governor
Ms Jackie Gee, Policy Officer, Women's Section
Mr Steve Douthwait, Governor

SWEDEN, STOCKHOLM:

- **SAVE THE CHILDREN FEDERATION, SWEDISH AND EUROPEAN DEPARTMENT:**
Ms Ann-Marie Persson, Head of Swedish Section
Ms Mie Melin, Swedish and European Department
Ms Charlotta Olsson, Swedish and European Department
Ms Simone Ek, Swedish and European Department (primarily UN convention)
Ms Lena Thorn, Librarian, Swedish and European Department
- **KVA FÄRINGSÖ, OPEN PRISON FOR WOMEN:**
Mr Dag Bunke, Director

DENMARK, HELSINGOR:

- **HORSERØD PRISON:**
Ms Helle Hald, Director
Ms Annemarie Lund, Deputy Director
Ms Annette Esdorf, Head, Department of Prisons and Probation,
Ministry of Justice
Ms Ann Dragsted, Psychologist, Department of Prisons and Probation,
Ministry of Justice
Mr Oskar Ploughmand, Psychologist Division for Policy on Children and Family,
Ministry of Social Affairs

UNITED STATES OF AMERICA, BOSTON:

- **ST MARY'S WOMEN AND INFANTS CENTER:**
Ms Joyce Murphy, Director
- **CORNERSTONES SECURE SHELTER:**
Ms Eileen Pickering, Director

- **AID TO INCARCERATED MOTHERS (AIM):**

Ms Jean Fox, Executive Director

UNITED STATES OF AMERICA, NEW YORK:

- **JOHN JAY COLLEGE OF CRIMINAL JUSTICE, LAW AND POLICE SCIENCE**

DEPARTMENT:

Professor Zelma Henriques