Inquiry into the Management of Offenders in Custody and in the Community

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Special Inquirer

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

During the early months of 2005 events occurred which prompted the holding of an Inquiry under the *Public Sector Management Act 1994*, section 11 ("The Inquiry").

(a) Two offenders escaped from Karnet Prison Farm;

(b) A life sentenced prisoner assaulted a female member of the prison staff at Bunbury Regional Prison; and

(c) An offender, who on parole had committed further offences including murder, was sentenced.

On 5 April 2005 the Premier of Western Australia the Honourable Dr Geoffrey Gallop MLA directed that an Inquiry be held under the *Public Sector Management Act 1994* section 11 concerning the corrections system and the Department of Justice in accordance with the Terms of Reference then established.

The Minister for Justice, the Honourable Mr John D'Orazio MLA also directed the Inspector of Custodial Services to conduct an Inquiry under the *Inspector of Custodial Services Act 2003* section 17 to be held in association with the Inquiry. The Inquiry was to report by 1 October 2005. For reasons subsequently appearing the date was extended to 18 November 2005.

This Report is to be presented with and to be read with:

- The Closing Submissions of Counsel Assisting in relation to issues arising from Public Hearings of the Inquiry; and
- The 24 October 2005 Report by the Inspector of Custodial Services, Professor Richard Harding.

The Inquiry inquired into the matters referred to in the Terms of Reference by:

- holding public sittings;
- interviewing officers of the Department of Justice and other relevant persons; and
- the investigation by its staff of the corrections system, the Department of Justice and other relevant matters.

The Inquiry examined the events that led to the holding of the Inquiry, namely, the "offending prisoners" ((a)-(c) above) and what had transpired in relation to them.

(a) During the examination the Inquiry determined how the events had happened and considered the deficiencies in the corrections system that have led to them.

(b) The events involving the offending prisoners illustrated five problems associated with a corrections system:

  (i) Some prisoners may escape;

  (ii) Some prisoners may cause injury to prison staff, other prisoners or (if they escape) members of the public;

  (iii) In the community, a substantial number of offenders may re-offend during processes such as parole;

  (iv) Decisions which must be made within the corrections system will, in a significant number of cases, prove incorrect; and

(v) When such things happen, there will frequently be a public outcry which, if not dealt with as it should be, will lead to injustice and further mistakes in the administration of the corrections system.

These are matters that must be accepted and taken into account in the administration of the corrections system. Provision must be made to reduce the effects of them. Recommendations have been made for that purpose.

The Inquiry has examined the prison system in Western Australia and how it is administered. No issues have arisen in relation to "break outs" from prisons or group or other disturbances within prisons. The administration of facilities has been satisfactory in that regard. I have therefore been able to concentrate upon the general aspects of prison administration.

(a) There are thirteen prisons (eleven for male and two for female prisoners). The number of prisoners held at each facility varies. There are approximately 3,500 of whom approximately 600 are prisoners held on remand. The number of female prisoners is approximately 200.

(b) One prison, Acacia Prison, is conducted by a private company, the other prisons are publicly managed.

(c) The male prisons are classified: maximum security, medium security and minimum security. The female prison (Bandyup) is classified maximum security. Minimum security prisons contain only minimum security prisoners whereas maximum and medium security prisons can contain prisoners of every classification.

(d) Four prisons, described by the Inspector of Custodial Services as "Aboriginal Prisons", contain 75% or more Indigenous prisoners. They are Broome, Roebourne, Eastern Goldfields and Greenough Regional Prisons. The Aboriginal prisons are situated in regions substantial distances from the Perth Metropolitan area.

(e) Prisoners in Western Australia are "managed" rather than "warehoused". The previous "warehouse" philosophy (in which prisoners were controlled by being closely contained and punished for non-conformity) is no longer used in Australia. Unit management of prisoners was introduced in the late 1980s and the current system of case management has been progressively put into operation over a period of approximately seven years.

The objectives of managing prisoners are:

- to lead prisoners to conform to prison regulations;
- to follow the rehabilitation plans established for the prisoners; and
- to avoid re-offending by prisoners on release.

The objectives are to be achieved by interaction rather than by punishment. A relationship (respect and trust) is established between prison officers and prisoners. This is done by the officers recognising the issues affecting individual prisoners and attempting to assist them to deal with them.

These objectives have been achieved to a substantial extent.

- Since the disturbance in Casuarina Prison on 25 December 1998, there has been no significant disturbance in any facility.
- Prisons have to a substantial but varying extent been administered on the basis stipulated by Head Office.

To the extent that the desired relationship is achieved, the administration of the prison can be conducted in a more relaxed, less restrictive and more co-operative manner.

The four main areas concerned with prisoner management are:

(a) The classification and placement of prisoners (each prisoner is classified as suitable to be placed in a maximum, medium or minimum security prison).

(b) The case management of each prisoner (each prisoner is allocated to a particular prison officer who has primary responsibility for his management).

(c) The rehabilitation of prisoners by programs and courses (health, educational, work skills and treatment programs).

(d) Procedures directed to reducing the likelihood that the prisoner will offend on release (education and training courses, work and home leave and parole).

These four matters have been pivotal in the administration of corrections.

- They (particularly classification and case management) have not operated in an ideal way. They were brought into operation before they were ready and without the essential staff training.
- They are being improved. Recommendations have been made for their further improvement.

Three main problems have arisen from the use of the current system of corrections administration.

(a) Prisoners have escaped from minimum security prisons;

(b) Prisoners have injured prison staff and other prisoners; and

(c) Public outcry following escapes and injuries has been dealt with in ways that have caused injustice to staff and prisoners not involved, and damage to the system.

Escapes

- Prisoners hardly ever escape from maximum or medium security prisons. The relevant escapes are from minimum security prisons.
- Prisoners would have little difficulty escaping from minimum security prisons. They are to a substantial extent open prisons.
- It is essential to have open prisons. They are part of the process of re-socialisation of prisoners to reduce the risk of re-offending on release. In addition, they require less resources to administer.
- The current system dictates that only those prisoners who will not escape and will not injure others will be located in minimum security prisons. The classification system is intended to ensure that such prisoners can be identified and selected.
- The classification system is not and cannot be perfect. With the best of care, mistakes are still made. Due to such mistakes, two of the offending prisoners (Mr Cross and Mr Edwards) were placed in a minimum security prison and escaped.
- The number of escapes varies. It is approximately fifty each year, but is reducing. They mainly occur at one "Aboriginal Prison", Broome Regional Prison. Most of the escapes cause little damage. The escapees either return to the prison or are recaptured within a

short timeframe. The escapes where damage has occurred (actually or potentially) have occurred at the two minimum security prisons (Karnet and Wooroloo). There are approximately four escapes each year from these prisons.

- Recommendations have been made for the alteration of the classification system to help reduce the likelihood of escape.
- Nevertheless it must be accepted that some escapes will occur. Government and the public should assess performance on that basis.

Injury to staff and prisoners

- There is a small Special Handling Unit (SHU) for high-risk prisoners. It can contain sixteen prisoners but at various times has not been fully occupied.
- Prisoners are no longer kept in shackles or moved in lockstep. Unit Management and the case management relationship do not require it. Prisoners and prison staff interact (to varying extents) with greater freedom.
- Prisoners have always been able to injure other prisoners and occasionally prison officers. Because of the management philosophy and the present manner of administration, a prisoner has opportunity to injure others including prison staff.
- Injury occasionally is caused to prisoners and, less frequently, to prison officers. Officers generally have indicated that they are able to anticipate and manage confrontational situations.
- Occasionally serious injury happens. It happened in the case of the offending prisoner (Mr Keating) notwithstanding that special care was taken in his management.
- This has happened seldom but in this case it was very serious. Recommendations have been made to reduce the likelihood of this occurring.
- It cannot be completely prevented. It must be accepted that (shackles and lockstep apart) it will occasionally occur.

Public Outcry

- When escapes or such injuries happen there will be public outcries. This is understandable and should be accepted.
- If public outcries are not responded to in a proper way, injustice to individuals and damage to the prison system may be caused. This has happened.
- Injustice was caused to a Department officer in the Community and Juvenile Justice Division in relation to the Mitchell case, which damaged staff morale;
    - an important prisoner classification system was put into operation when it was not ready and when officers had not been trained to do it; and
    - fences are being put around minimum security prisons, the suitability of which is at least undetermined.
- Recommendations have been made for the adoption of a protocol for responding to public outcry, which will avoid or at least reduce such injustice and damage.

The events that mainly have attracted public interest and public outcry have been cases in which prisoners have escaped or have caused injury to prison staff or other prisoners. These events have occurred because, under the management philosophy adopted widely in Australia for the administration of corrections, it is possible for them to occur. They occur mainly in

relation to minimum security prisoners who have been seen as appropriate to be placed in open prisons. Recommendations have been made to ensure, as far as may be achieved, only prisoners suitable to be placed there are placed in minimum security prisons and that precautions taken to prevent injury to prison staff and prisoners are strengthened.

The recommendations made relate both to prisoners serving life or indeterminate sentences ("lifers") and to other longer term prisoners. The purpose of the recommendations is to scrutinise more closely the prisoners who will be placed in minimum security prisons and to change the circumstances in which prisoners may be placed there. It is intended that they will lead to increasingly careful scrutiny of prisoners in respect of whom it is judged they are "worth the risk" to be placed in a minimum security prison or placed on a pre-release program for lifers.

Recommendations have been made to clarify and strengthen the procedures to reduce the rate of re-offending by prisoners after release. The seriousness of the problem cannot be overstated.

- The function of re-socialisation by home and work leave from prison and of parole is examined and clarified.
- The importance of parole and the respective roles of the Parole Board and the Community and Juvenile Justice Division are confirmed.
- Recommendations are made for the clarification and strengthening of what is done by the Parole Board and the Community and Juvenile Justice Division.
- Particular attention is directed to what the Community and Juvenile Justice Division can and should do and the need to reorganise and strengthen it.

The Inquiry considered the general standard of administration of the corrections system.

- In examining "the offending prisoners" and other matters, the Inquiry examined generally the manner in which the corrections system is administered.
- In many respects, the administration of corrections in Western Australia has been good. Having regard to the limitations placed upon staff by circumstances such as, for example, projects brought into operation prematurely, general deficiencies in training, under-resourcing and other problems, the achievements of many dedicated and capable officers in the system has been remarkable.
- In other respects however, the standard of administration has not been as good as it could have been. This has been recognised by senior management. If the recommendations made in this regard are carried into effect, improvement can be expected.

There are three general aspects of the corrections system that require attention:

- It should be recognised that the prison system needs to be a Regional Prison system and it should be administered as such. When prisons are located in particular regions of the State they should be structured so as to be (with relevant limitations) able to deal with all three classifications of prisoners. Transport of prisoners from one region (or prison) to another should be reduced to the greatest extent possible.
- Prisons should be administered and the procedures followed (classification, case management, programs and re-socialisation) should be adjusted to take account of the nature of the prisoners in each prison. Administration should proceed on the basis

that, in particular cases, what is administered in an Indigenous prison system may not be relevant in other facilities. General rules will not be appropriate for all prisons; the "Aboriginal Prisons" should be structured and administered to meet the legitimate needs of the prisoners in them.

- It should be accepted that the prison system will include minimum security prisons (open prisons). These are an essential part of a modern prison system as adopted in Australia and elsewhere. It should be accepted that the function of such prisons is mainly the re-socialisation of prisoners appropriate for the purpose. The berths available in minimum security prisons should be increased to take those prisoners classified as minimum security who are appropriate to be placed in a minimum security prison.

The Inquiry then examined the Department of Justice.

- It concluded that in some respects its overall performance had been good. Without stating the matter exhaustively:
  - It had overcome internal problems that had existed before the appointment of the former Chief Executive Officer, Mr Alan Piper in 1998.
  - There have been no serious disturbances in prisons since the disturbance in Casuarina Prison on 25 December 1998.
  - It had carried into effect the substantial changes involved in the adoption of unit and case management within prisons.
  - It had maintained a significant number of capable and motivated administrators.
  - It achieved the integration of the private prison, Acacia Prison, for 600 medium security prisoners in 2001.
- However, in other respects, the administration has not been as good as it could have been. Without stating the matter exhaustively:
  - Decision-making was concentrated at Head Office level rather than at Superintendent level in the prisons.
  - Staff training was not sufficiently provided.
  - Important aspects of the administration, in particular classification and case management, were not carried into effect as well as they could have been.
  - Staff morale, especially at field level, was lower than ideally it should have been.
  - The general standard of administration was not as good as it should have been.
  - The standard of administration was affected by matters outside the control of those in charge of the administration of corrections.

The main recommendations made by the Inquiry in relation to the Department of Justice include:

(a) The Department of Justice (now a Mega-department) should be divided into two departments:

  (i) the Department of the Attorney General; and

  (ii) the Department of Corrections.

(b) The Corrections Department should include the Prisons Division and the Community and Juvenile Justice Division. The Department of the Attorney General should include the remaining Divisions of the Department of Justice.

(c) Recommendations are made in relation to the particular sections of the Department of Justice and the allocation of them.

(d) The administrative structure of the two Divisions of the Department of Justice should be changed.

(e) The administrative control of individual prisons should (with appropriate limitations and subject to procedures to ensure proper accountability) be vested in the Superintendent.

(f) Head Office section should perform the functions appropriate to the Head Office of a Division and those functions necessary to supervise and service the individual prisons. Recommendations as to these functions are made.

(g) The definition and allocation of those functions should be determined and should be reviewed periodically as required.

(h) This change in administrative structure will require the provision of resources and training facilities for Superintendents and other officers in the prison system.

(i) A training facility should be established. In the interim, administrative arrangements should be made to facilitate changes in the administrative structure and the training of officers accordingly.

(j) Recommendations have been made or suggested as to administrative changes required and how they may be carried into effect.

(k) It is envisaged that the conversion of the Department of Justice into two Departments and the changes in the administrative structure of the two Divisions will be able to be effected administratively. It is desirable that changes be made without avoidable delay. However, it may be desirable in due course to enact legislation which contains a comprehensive consolidation of all matters relevant to the Department of Corrections and which incorporates any legislative changes desirable in giving effect to the other recommendations made by the Inquiry. In that event a new *Corrections Act* should be drafted and enacted. If that is to be done, regard should be had to the submissions made by Counsel Assisting the Inquiry and to the Report of the Inspector of Custodial Services. The drafting and enactment of that legislation should not delay the administrative changes that have been recommended.

In the course of examination of "the offending prisoners", the corrections system and the Department of Justice, the Inquiry has made recommendations for structural and administrative change and a number of recommendations in relation to other matters. It has examined several aspects of the corrections administration including the work of Community and Juvenile Justice Division. It has also considered:

- The Management of Indigenous Offenders
- The Management of Female Offenders
- The Management of Juvenile Offenders
- The Management of Mental Health Issues
- The Management of Drug Abuse

- Vulnerable and Predatory Offenders
- Training and Professional Development
- Bail and Remand
- Prison Disciplinary Processes
- Misconduct and Complaints
- Supermax Prison
- Prisoner Transportation

A series of recommendations have been made in relation to each of these matters.

The Inquiry has recommended that a Public Protocol be established for dealing with the public interest ("the public outcry"), which arises when escapes and other events occur in the prison system.

(a) It is inevitable that escapes and other events will occur.

(b) When that occurs there will be legitimate public interest (and public outcry) in relation to it.

(c) In the past, the response to such public outcry has on occasions led to injustice to individual officers of the service, damage to the administration and detrimental effects on officer morale. Steps should be taken to prevent that recurring.

(d) The Inquiry has recommended that a procedure for dealing with such events be adopted and publicly announced, which will result in the proper examination of what has occurred and what should be done and will do so in a way which avoids the undesirable effects which previously have been produced.

The Inquiry has recommended that Government should publicly support and explain the work done by the officers of the corrections system. It should seek the support of the Community for the work that is being done.

At the commencement of the Report, I said that, for the immediate and medium future, the concentration of the corrections system must be on three things:

- Minimum security prisons
- Reducing re-offending
- Indigenous offenders and their gross over-representation

The problems of minimum security prisons can be contained. Such prisons are a necessary part of the modern prison system. But it is there that the common problems can occur: escape, injury and public indignation. Those problems can be contained, at least within acceptable limits, by ensuring that only suitable prisoners are placed there. I have made the necessary recommendations.

Re-offending remains to be dealt with. I have recommended that it be done by concentrating the efforts of the Community and Juvenile Justice Division and focussing them upon it. Properly resourced, it can reduce re-offending substantially. Provided that it concentrates upon it.

Indigenous offenders remain. Why they offend so much is beyond the scope of this Inquiry. But something must be done. Having offended, they must be dealt with: they are 40% and more of the prison population and even more of the re-offending population. The process has

started. I have recommended that it be seen as, in the relevant sense, an Indigenous problem, to be solved by understanding it as such. They have, and assert, a different culture. Accordingly they have needs that differ from those of non-Indigenous offenders. What causes them to act or react may be different; at least that may be so to the extent that Indigenous leaders claim. Accordingly 'Aboriginal Prisons' and what is done for Indigenous offenders in prisons will have to be different, if prisons are to do any good. Indigenous offenders must be dealt with in their way. I have made recommendations to commence the process towards this end. But much remains to be done. And, in the end, much of it remains to be done by them.

The immediate future is a time for action rather than for analysis. Western Australia has been well served, to a remarkable degree, by analyses. Various parts of the corrections system have been the subject of reports. Committees have been formed and have discussed many of the problems. I have benefited greatly from what they have done. It is now the time for action. For action to produce results it must be properly informed. What has been done to date has provided much information. The analyses and committees to date have made available as much information as can be expected. To continue further with analyses and committees would perhaps help to achieve a more perfect solution. But the perfect can prevent the achievement of the good. And delay it. Those assisting the Inquiry have provided a large amount of information, beyond what initially I had envisaged. I have incorporated in the Report what they have done and the information they have provided to me. It will I believe be an invaluable source of information for the future. On the basis of it, it has been possible to indicate the areas for action, and, in broad terms, what can be done. The concentration should now be upon action.

SUMMARY OF RECOMMENDATIONS

THE EVENTS WHICH GAVE RISE TO THE INQUIRY

Recommendation 1

Government should take steps, by way of educational campaigns:

- **to make the public aware of the inherent benefits and limitations of any corrections system;**
- **to inform the public of the possible consequences of the inherent limitations of the system; and**
- **to enlist the support of the public in improving the functioning of the corrections system. (Paragraph 3.59)**

THE PRISONS SYSTEM

Recommendation 2

The overarching philosophy of managing rather than warehousing offenders should be retained in Western Australia. (5.5)

Recommendation 3

The Department should develop unequivocal objectives for the corrections system that form the basis of all policies and actions of the Department. (5.11)

Recommendation 4

Government should consider enacting a *Corrections Act* that brings together the administrative components currently contained in the *Prisons Act 1981*, *Sentence Administration Act 2003* and other cognate legislation. In this regard, recommendations 96 to 103 contained in the Closing Submissions of Counsel Assisting should be adopted. (5.34)

Recommendation 5

The *Corrections Act*, if enacted, should set out in the legislation itself the objectives and principles of the *Act*. Those objectives and principles would be specific to the operational issues involved in offender management. (5.34)

Recommendation 6

The Department's Capital Investment Plan should be finalised and presented to Government for endorsement immediately and, when appropriate, inclusion in forward estimates. In this regard, Government should take into consideration, recommendations of the Inspector's Directed Review. (5.46)

Recommendation 7

The planning for future infrastructure needs should be undertaken by the Department on a systematic and regular basis, taking into account projections of prisoner numbers, sentencing trends and other relevant information. (5.46)

Recommendation 8

Planning for future infrastructure in predominantly Indigenous areas should be based on a "Regional Prison" model, where such prisons contain prisoners of all levels of classification and determine the facilities and services according to the needs of Indigenous offenders. (5.46)

Recommendation 9

Ongoing consideration should be given to the use of developing technology, such as the electronic monitoring project at Wooroloo Prison Farm, as a means of supplementing or replacing current custodial regimes to:

- **alter and simplify the structure of future custodial facilities; and**
- **reduce the rate of escapes from minimum security facilities. (5.46)**

Recommendation 10

The Department should develop a strategy to expand the capacity of open prisons, initially to accommodate the number of offenders currently classified as minimum security and to provide for future requirements in relation to projected numbers of minimum security prisoners. (5.74)

Recommendation 11

Government should avoid making decisions in relation to capital expenditure, such as the further fencing of minimum security prisons, until adequate needs based planning has been undertaken by the Department. (5.74)

Recommendation 12

Government should not fence further minimum security prisons until a review of the operation of the fences at Karnet and Wooroloo Prison Farms is conducted, following two years operation of the new fences. (5.74)

Recommendation 13

The Department should develop a simplified, consistent policy and procedures framework across the organisation that allows for officers involved in the corrections system to know what is required of them. (5.74)

Recommendation 14

The Department should undertake a full review of the processes used to gather, analyse and disseminate intelligence information to ensure such intelligence appropriately informs decision-making. (5.193)

Recommendation 15

The Department should fully implement the recommendations of the Consultant's review "Report on the Practices relating to the Creation, Management and Disposal of Prison Management Files within Prisons". (5.195)

PRISON INDUSTRIES

Recommendation 16

The *Corrections Act* should stipulate that the Commissioner may direct any sentenced prisoner to work, and that remand prisoners can be offered the opportunity to work. (5.207)

Recommendation 17

The Department should explore opportunities to increase and develop its prison industries, including by commercial and charitable arrangements. (5.207)

ASSESSMENT AND CLASSIFICATION

Recommendation 18

Where clinicians or consultants are involved in the treatment of offenders, clear guidelines should be provided in relation to their roles. In this regard, the Department should adopt recommendations 61 to 64 contained in the Closing Submissions of Counsel Assisting. (7.40)

Recommendation 19

The Department should, in accordance with the conclusions of the Inquiry, review the present classification process to ensure that it tests, with an acceptable degree of certainty:

(i) Whether the prisoner is appropriate to be classified as a minimum security prisoner (not merely whether he is likely to escape);

(ii) Whether the prisoner is suitable for placement in a minimum security prison; and

(iii) Whether the placement of the prisoner at a minimum security prison would cause public affront.

In this review, Government should have regard to the recommendations in relation to classification made by the Inspector and adopt recommendations 1 to 15 contained in the Closing Submissions of Counsel Assisting. (7.72)

CASE MANAGEMENT

Recommendation 20

The Department should, in accordance with the conclusions of the Inquiry, take the necessary steps to reintroduce and promote case management throughout the Prison System. This process should involve all those, at prison and head office level, involved in case management. The recommendations of the Inspector and recommendations 16 to 29 contained in Closing Submissions of Counsel Assisting should be adopted in this regard. (7.117)

Recommendation 21

The requirements in relation to case management should be clear and flexible enough to be appropriate for the differing requirements of individual prisons. (7.117)

Recommendation 22

Superintendents should determine the requirements of case management unique to prisons, with the involvement of case management supervisors. (7.117)

Recommendation 23

In the operation of the case management process, the Department should ensure:

(i) Adequate monitoring by Head Office.

(ii) Performance assessment using appropriate benchmarks and agreed performance indicators.

(iii) Formal training for officers is developed at the proposed training facility.

(iv) That appropriate resources are provided to allow case management to be adequately maintained.

(v) That the unique needs of certain prisoners, including indigenous offenders, should be accommodated.

(vi) That officers and Superintendents have the ability to deal effectively with discipline issues arising from the case management process.

(vii) That there is sufficient prisoner input in the development of the case management process to ensure its applicability to a modern prison system. (7.117)

COURSES AND PROGRAMS

Recommendation 24

The Department should establish and resource a function to determine and, on an ongoing basis, review what programs should be presented and the results produced by them. It should review the methods available to achieve an effective monitoring, assessment and reporting system against developed criteria for success. (7.124)

Recommendation 25

The Cognitive Skills Program should be offered widely throughout the corrections system to improve relationships between offenders and officers. (7.124)

Recommendation 26

Programs in relation to health education should be offered widely throughout the corrections system to improve offenders' management of their health issues. (7.124)

Recommendation 27

The Programs offered by the Department in relation to substance abuse and violent offending should be continued. (7.124)

Recommendation 28

The Programs offered by the Department in relation to sexual abuse should be reviewed to determine whether the beneficial effect of such programs could be established. (7.124)

Recommendation 29

Educational resources should be directed to courses that improve the fundamental abilities of the offender, including literacy and numeracy skills. (7.132)

RE-SOCIALISATION OF OFFENDERS

Recommendation 30

The Department should establish a peak representative body for non-government not-for-profit agencies that operate for the benefit of people involved in the justice system. (7.141)

Recommendation 31

The Department should establish a functional unit that oversees non-government organisation sector services purchased by the Department. The unit will:

- **Undertake strategic planning for the sector, in partnership with the peak representative body, including a regional planning process to review the level and capacity of exiting services**
- **Develop consistent quality assurance/monitoring processes for application in all Non Government Organisation sector service agreements (including the development of service specifications for services purchased by the Department and performance measures associated with these);**
- **Manage or oversee management of all departmental non-government sector agreements; and**
- **Undertake purchasing processes for new non-government organisation sector services. (7.142)**

Recommendation 32

The Department should expand the Community Re-entry Coordination Service to provide a state-wide re-entry service for all prisoners requesting access to the program. (7.144)

Recommendation 33

The Department should undertake planning to determine availability of community-based services for prisoners in each region and implement strategies to increase post-release services for offenders through

- **Direct funding to Non Government Organisations to provide a service for offenders;**
- **Increasing capacity of existing Non Government Organisation services to service offenders, for example through the provision of training and advice; or**
- **Collaboration with other government agencies to improve access to community services for offenders (for example this may occur through specialist advice or training for government employees). (7.147)**

Recommendation 34

The Department should expand the Transitional Accommodation and Support Services Program. (7.148)

Recommendation 35

The Department should establish:

- **An integrated Sentence Management Unit to promote an integrated case management system and oversee sentence management for offenders across prisons and the community;**
- **A integrated Programs Management Unit to oversee the development, implementation and evaluation of programs provided by the Department for offenders in prisons and offenders managed in the community; and**
- **An integrated unit for the management of services; including education, health (including psychological) and drug and alcohol services. (7.164)**

AUTHORISED ABSENCES

Recommendation 36

The Department should continue to use absences from the prison for the purpose of re-socialising offenders, including life and indeterminate sentenced prisoners, such as work and home leave and other opportunities outside of the prison. (7.173)

Recommendation 37

The *Corrections Act* should state in general terms the purpose for granting absences from the prison. Superintendents should have more authority and flexibility to grant absences from prison, with the authority for certain absences resting with the Commissioner rather than the Minister or Governor. (7.185)

PAROLE

Recommendation 38

A system of parole should be maintained and supported in Western Australia and the Department, in collaboration with relevant research bodies, should undertake a comprehensive, long-term study on the impact of parole on recidivism. (7.227)

Recommendation 39

Government should review the basis on which parole is considered to simplify the procedures involved. In this regard, recommendation 59 contained in the Closing Submissions of Counsel Assisting should be adopted. (7.236)

Recommendation 40

Government should consider greater involvement of the Parole Board in the sentence management of offenders. In this regard, recommendations 48 and 51 contained in the Closing Submissions of Counsel Assisting should be considered. (7.267)

Recommendation 41

A Parole Board should be maintained but will require significant improvement to its:

(i) Resources, including separate funding and a secretariat within the Department of the Attorney General to assist with its decision making and functioning;

(ii) Legislation, particularly in relation to its ability to inform the public of its decisions and to extend its membership if considered important for public confidence;

(iii) Handling of victims' issues

(iv) Accountability, through measuring and reporting on its effectiveness through the use of statistics and performance indicators aimed at assessing the reduction in re-offending; and

(v) Communication with the public to improve understanding of its functions.

In this regard, recommendations 45 to 47 contained in the Closing Submissions of Counsel Assisting should be adopted. (7.292)

RE-SOCIALISATION AND RE-OFFENDING

Recommendation 42

Recommendations 30 to 40 contained in the Closing Submissions of Counsel Assisting should be adopted, subject to:

(i) The Minister continuing to make the decision as to whether a life or indeterminate sentenced prisoner commences a re-socialisation program;

(ii) The Minister retaining a discretionary right at the end of the program as to whether the life or indeterminate sentenced prisoner should be released; and

(iii) The role of the Parole Board in relation to the release of life or indeterminate sentenced prisoners, and the right of the Minister to involve the Board, should be included in legislation. This also involves the Minister having the discretion to publish any advice from the Board if it is considered in the public interest to do so. (7.312)

Recommendation 43

Government should consider whether pre-release programs for life and indeterminate sentenced prisoners could be run through certain secure prisons for those offenders not yet considered suitable for minimum security placement. (7.322)

COMMUNITY CORRECTIONS

Recommendation 44
The principal offices held within Community and Juvenile Justice should be identified and their functions formulated in a *Corrections Act*, should it be enacted. (7.326)

Recommendation 45

The Community and Juvenile Justice Division should inform staff of policy and procedural amendments in a clear and timely manner, ensuring accessibility to all staff. For example, the Division should update the online Community Corrections Manual as soon as changes are made. All instructions and directives to staff should be centrally recorded and available to staff online upon issue. (7.327)

Recommendation 46

In consultation with the Western Australian Police Service, the Department should establish a trial of the Juvenile Justice Team role in conferencing for first time and minor young adult offenders. (7.337)

Recommendation 47

The Department should investigate the potential specialisation of the role of community corrections officer. In particular, the creation of an entry-level position and a senior field officer position should be considered. In this regard Recommendations 87 to 90 contained in the Closing Submissions of Counsel Assisting should be considered. (7.351)

Recommendation 48

The Department should develop an 'in-reach' program where CCOs visit prisoners who are eligible, or may become eligible, for parole prior to their release (perhaps 6-12 months) to conduct a thorough risk assessment and engage them in release plans, including access to relevant community-based programs and services. (7.375)

Recommendation 49

The Department should review its system of recruitment and appointment of CCOs and JJOs to reduce the number of contract staff and improve continuity in the management of offenders within the community. In this regard, recommendations 82 and 86 contained in the Closing Submissions of Counsel Assisting should be considered. (7.386)

Recommendation 50

It should be a requirement that all new CCOs and JJOs have completed core operational training before assuming operational duties. (7.393)

Recommendation 51

The Department should, as a matter of priority, determine and apply an appropriate "benchmark" for the workload of a CCO and JJO. In this regard, recommendations 80 and 91 contained in the Closing Submissions of Counsel Assisting should be considered. (7.404)

Recommendation 52

The Department should investigate mechanisms to manage high-risk and high need offenders more intensively in collaboration with other relevant agencies. This may include development of an interagency case management mechanism, supported by a formal multi-agency agreement. (7.418)

Recommendation 53

The proposed Department of the Attorney General should investigate mechanisms available to support victims of crime and ensure coordination of victims' issues across the criminal justice system. (7.421)

Recommendation 54

The Department should undertake an immediate review of staff safety within the Community and Juvenile Justice Division and broaden the *Safety and Security Strategy* to include other Directorates within the Department that deal directly with offenders and, in particular, Community and Juvenile Justice. (7.454)

Recommendation 55

Government should consider the equalisation of community justice service provision in regional areas compared to metropolitan areas. The Department should assess various options for ensuring this in consultation with local communities. (7.460)

Recommendation 56

The Department should investigate strategies to recruit and retain suitable community justice service staff in regional areas. This should include consideration of the need to increase the number of section 50D positions. (7.462)

A NEW JUSTICE SYSTEM

Recommendation 57

Government should establish a specific body with a strategic policy function in relation to the criminal justice system, which will be granted the authority and the duty to:

(i) Review the areas of the community in which crime occurs to identify the types of crime or potential groups of offenders in respect of which action should be taken to reduce the rate of offences;

(ii) Identify the means by which this reduction in crime can be achieved; and

(iii) Ensure that Departments and other Governmental instrumentalities take appropriate action as it shall propose to achieve that objective.

By direction of Government, government instrumentalities should report to this established body at designated intervals as to:

(i) The action taken; and

(ii) The results achieved by the action.

The body should report to the responsible Minister or Cabinet periodically on:

(i) The action taken in respect of its strategies during the year;

(ii) The results that are apparent as having been achieved;

(iii) The further action necessary to be taken; and

(iv) Such further authority as it requires to achieve its objectives. (7.484)

Recommendation 58

The "Justice System" policy function should also have the capability to conduct research into aspects of the criminal justice system and collate statistics relevant to the delivery of justice services. This will enable those involved in the "Justice System" and Government to measure how the strategies developed and current trends are affecting crime in Western Australia. (7.486)

THE DEPARTMENT OF JUSTICE

Recommendation 59

The following strategies should be developed and implemented on a Department-wide basis:

- **A Workforce Plan;**
- **A Succession Plan;**
- **An Occupational Health and Safety (OHS) Framework**
- **Operational Standards; and**
- **A Performance Management System**

The Department should have regard to the recommendations of the Inspector in relation to these initiatives. (8.26)

Recommendation 60

Government should provide adequate resources to ensure that the Department has the capacity to plan for future workforce needs. (8.27)

Recommendation 61

The recommendations of the Inspector in relation to 12-hour shifts and their impact upon matters such as the management of offenders (including juveniles) in custody are supported and should be considered by Government as a matter of priority. (8.34)

Recommendation 62

Government, prior to the position of Director General of the Department of Corrections being filled substantively, should progress amendments to the Salaries and Allowances Tribunal legislation to allow the flexibility to attract a candidate with the necessary leadership qualities and strategic vision. (8.40)

Recommendation 63

The Department should work with the Department of the Premier and Cabinet to ensure that senior positions within the Department, including prison superintendents, specialist managers and community justice supervisors, are appropriately classified and remunerated to allow for high calibre applicants to be attracted to these pivotal positions, both from interstate and overseas. (8.41)

Recommendation 64

The Department should progress the recommendations of the Inspector in relation to the development of an Age Management Strategy. (8.48)

Recommendation 65

The Department should develop a creative and innovative regional recruitment strategy (inclusive of non-uniformed departmental officers) to provide a suitable package of attraction and retention benefits similar to those of other regional public sector employees such as teachers, police, nurses and prison officers. (8.55)

Recommendation 66

The Department should develop and implement a proactive strategy for managing employee health and welfare with particular regard to stress-related issues deriving from the corrections environment. (8.63)

Recommendation 67

To promote the integration of information management across the justice system, Government should ensure that innovative information system models in relation to the delivery of justice services are considered, despite the restructure of the Department of Justice. (8.64)

Recommendation 68

The Department should implement controls to ensure that budget allocations, system design specifications and contract management deliver information systems that enable high quality and timely reporting, research and evaluation. (8.80)

Recommendation 69

The Department should establish and implement improved formal policies and procedures for the creation, management and disposal of offender management records; and take steps to ensure that professional standards are maintained consistent with State Government legislation and policies. (8.85)

Recommendation 70

Information gathered through performance measurement should be used as a management tool for driving improvement throughout the corrections system. In this regard, recommendation 110 and 113 contained in the Closing Submissions of Counsel Assisting should be considered. (8.93)

Recommendation 71

Performance reporting and monitoring, along the lines of the performance measures applicable to Acacia Prison, should be developed and introduced across all prisons in Western Australia. Appropriate accountability mechanisms need to be put in place to ensure that poor performance is identified and rectified. (8.96)

Recommendation 72

All areas of the corrections system (including public prisons and community and juvenile justice services offices) should be subject to sanctions and rewards linked to compliance with performance standards, with appropriate accountability mechanisms in place to ensure that poor performance is identified and rectified. Accountability for the performance of prisons or community and juvenile justice offices should rest ultimately with individual prison superintendents or community and juvenile justice supervisors respectively. In this regard, recommendation 114 contained in the Closing Submissions of Counsel Assisting should be considered. (8.98)

Recommendation 73

The Department of Justice should be abolished and the Divisions contained in it divided into two separate Departments:

1. A Department of the Attorney General; and

2. A Department of Corrections. (8.107)

Recommendation 74

Where legislation is required in relation to structural recommendations, Government should move to enact such legislation in a timely manner. (8.107)

Recommendation 75

The Department of the Attorney General should be responsible for the administrative support of all of the independent courts and oversight agencies referred to in the current Ministerial division, together with the Public Advocate and the Public Trustee. The Department of the Attorney General should support the secretariat of the Parole Board and would carry responsibility for strategic policy in relation to the criminal and civil justice systems as a whole. (8.109)

Recommendation 76

The Department of Corrections should be responsible for the administration of the management of offenders, and for the development of policy designed to achieve the aims of offender management. (8.109)

Recommendation 77

Each Divisional Head should have functions and powers formulated and formally stated. In this regard, recommendations 104 to 108 contained in the Closing Submissions of Counsel Assisting should be adopted. (8.112)

Recommendation 78

The internal structure of the Department should be such that the roles and functions of Head Office and prisons should be clearly distinguished. The Superintendent should be granted all necessary functions and powers to effectively administer the prison. In this regard, recommendations 115 and 116 contained in the Closing Submissions of Counsel Assisting should be considered. (8.126)

Recommendation 79

To carry out recommendations, an implementation committee should be established by Government, which should comprise, *inter alia*:

- An independent Chairperson appointed by Government;

- **Representation from the Department of the Premier and Cabinet and other relevant agencies to ensure all necessary advice is available to the Committee;**
- **(If he or she be known) the proposed Head of the Department of Corrections;**
- **(If he or she be known) the proposed Head of the Department of the Attorney General; and**
- **The existing Heads of the Prisons Division and the Community and Juvenile Justice Division. (8.132)**

Recommendation 80

The implementation committee should ensure that recommendations, including those to divide the functions of the Department, should be progressed in a careful and structured manner to preserve beneficial linkages and avoid unnecessary duplication of functions. (8.132)

THE MANAGEMENT OF INDIGENOUS OFFENDERS

Recommendation 81

For the purpose of reducing Indigenous overrepresentation and reoffending, Government should establish standing Regional Indigenous Justice Advisory Groups (RIJAGs), reporting to the Attorney General, for each Human Services Directors General Group Regional Managers' Forum (a similar model could be the current Aboriginal Reference Group developing the Kimberley Custodial Plan).

Each RIJAG should have a Coordinator and secretarial support, which would be attached to the Department of the Attorney General.

The role of these Groups would be to:

- **Assume the role of the former Aboriginal and Torres Strait Islander Commission in the implementation and monitoring of the *Aboriginal Justice Agreement*;**
- **Cultivate a specialist-capacity in their region to produce evidence-based policy and project advice on Indigenous overrepresentation in the justice system;**
- **In partnership with HSDGG Regional Managers, explore opportunities for whole-of-government responses to Indigenous offenders' criminogenic and non-criminogenic needs;**
- **In partnership with HSDGG Regional Managers, explore opportunities for Indigenous community groups to enter into commercial and non-commercial agreements to provide 'community-owned' corrections-related services; and**
- **Establish Women and Young Offenders sub-Committees. (9.48)**

Recommendation 82

The Chair and one other member (preferably a male and female) from each RIJAG should collectively form a State Indigenous Justice Advisory Group (SIJAG). The primary role of the SIJAG will be to advocate for the RIJAGs by working in partnership with Cabinet and the Human Services Directors General Group. (9.48)

Recommendation 83

The Department should give effect, as matter of policy at the highest level, to increasing Indigenous employment in the corrections system. In this regard, as a matter of urgency, the Chief Executive Officer of the Department should appropriately resource and implement the *Aboriginal Employment Strategy 2005-2010*. (9.51)

Recommendation 84

The current Aboriginal Policy and Services Directorate should be located in the proposed Department of the Attorney General, and develop a greater capacity to effectively project manage the implementation of the *Aboriginal Justice Agreement*. (9.59)

Recommendation 85

The *Corrections Act* should require the Department to specifically contemplate the unique cultural needs of Indigenous offenders in the development, delivery and evaluation of policies, programs and services. (9.59)

Recommendation 86

In light of the high proportion of Indigenous offenders in custody, planning for all custodial facilities should ensure appropriate consideration is given to the needs of Indigenous offenders. (9.59)

Recommendation 87

Each Prison Superintendent should establish a standing Indigenous Services Committee to coordinate and monitor the implementation of the Department's Indigenous strategies. (9.59)

Recommendation 88

The Department should review the current classification system to determine its appropriateness for the management of Indigenous offenders. (9.68)

Recommendation 89

Planning for future regional custodial facilities with predominantly Indigenous prisoners should be specifically constructed to meet the needs of Indigenous offenders and to provide for the delivery of services to prisoners at all classification levels, so that the need to transfer prisoners to other facilities out of their country due to overcrowding is minimised. (9.77)

Recommendation 90

At least one new custodial facility should be established in the Kimberley immediately. In this regard, Government should consider the recommendations of the Inspector's Directed Review. (9.77)

Recommendation 91

A custodial facility should be established to replace Eastern Goldfields Regional Prison as a matter of priority. In this regard, Government should consider recommendations of the Inspector's Directed Review. (9.77)

Recommendation 92

The programs and educational courses delivered to offenders, and particularly those directed to re-socialisation, should be adapted to suit Indigenous offenders. The Department should significantly increase its expertise and capacity in the Programs Branch to develop, deliver and evaluate programs for Indigenous offenders, particularly to meet the needs of women and young offenders. (9.95)

Recommendation 93

The Department of Corrections should enter into commercial and non-commercial agreements with Indigenous community groups for the provision of correctional services to Indigenous offenders such as work camps, Women's Pre-Release centres, juvenile correction camps, community supervision agreements, offender programs and other services. (9.105)

Recommendation 94

The Department should consider increasing the use of low security facilities for Indigenous offenders, such as work camps (including women's work camps), in all areas. In this regard, Government should consider recommendations of the Inspector's Directed Review. (9.108)

Recommendation 95

In the short term, existing facilities at Broome Regional Prison, and in particular facilities for maximum and medium security prisoners and female prisoners, be upgraded to enable humane treatment. (9.109)

THE MANAGEMENT OF FEMALE OFFENDERS

Recommendation 96

The Department should take steps to improve access to, and facilities for, visits between women and their children. (10.27)

Recommendation 97

Prison staff working with women should be specially selected on the basis of their willingness and suitability to work with women. (10.30)

Recommendation 98

Prison staff working with women should receive additional training in the management of gender specific issues such as a history of physical and sexual abuse, separation from, and anxiety about, children. (10.30)

Recommendation 99

Prison staff working with Indigenous women should receive specific cultural training. (10.30)

Recommendation 100

Appropriate accommodation, specifically designed for women (including those with babies or young children) should be included in the plans for new custodial facilities in the Kimberley and the Goldfields. (10.33)

Recommendation 101

When constructing new custodial facilities, the Department should ensure that women in the regions have adequate and equitable access to programs, education, employment and recreation. (10.33)

Recommendation 102

The Department should take action to increase the suite of programs at regional prisons to avoid the need to transfer women from those areas to Bandyup for programs. (10.33)

Recommendation 103

Government should consider the establishment of separate remand accommodation for women. (10.42)

Recommendation 104

The classification of women remand prisoners should be reviewed to enable suitable low risk remand women to be placed at Boronia. (10.42)

Recommendation 105

The Department should conduct research into the circumstances where the various types of bail are the most effective to determine whether the use of Personal Bail Undertakings can be extended in relation to women. (10.52)

Recommendation 106

Specialist bail coordinators should be appointed at all courts and at Bandyup to assist women to prepare for bail and arrange surety while still at court. (10.52)

Recommendation 107

The education and employment skills made available to women should reflect the nature and likelihood of employment in the communities to which they will return and women offenders and communities should be consulted on their needs. (10.85)

Recommendation 108

Appropriate therapeutic accommodation should be provided at Bandyup for women suffering from mental illness or a significant behavioural disorder. (10.91)

Recommendation 109

The Department should undertake research to determine the causes of the high failure rate of Indigenous women in relation to community based orders. (10.136)

Recommendation 110

Any Departmental Indigenous policy or strategy should include separate reference to the needs of Indigenous women, and not simply as a subset of those for women in general or those for Indigenous men. (10.136)

THE MANAGEMENT OF JUVENILE OFFENDERS

Recommendation 111

The Department should identify the current gaps in juvenile justice services in regional and remote Western Australia and develop mechanisms to ensure equity of access to services similar to the metropolitan area. (11.5)

Recommendation 112

Government should allocate recurrent funding to support the establishment of a separate regime for the management of juvenile female detainees. (11.12)

Recommendation 113

Government should provide appropriate tertiary mental health services for young offenders. (11.20)

Recommendation 114

The Human Services Directors General Group, in its deliberation regarding a 'declared place', should consider the needs of mentally impaired accused juveniles, with particular regard to S7(c)(i)) of the *Young Offenders Act 1994.* (11.25)

Recommendation 115

Government should implement a preferred model for the provision of sustainable accommodation solutions for young people exiting custody and should determine which Department is responsible for putting it into effect. (11.34)

Recommendation 116

The Department should consider the management of juvenile justice being consolidated within the Department of Corrections to form a cohesive juvenile justice function. (11.38)

Recommendation 117

Government should consider expanding the function of the proposed juvenile remand centres in Kalgoorlie and Geraldton. (11.48)

THE MANAGEMENT OF MENTAL HEALTH ISSUES

Recommendation 118

Government should move to implement the Attorney General's blueprint for the improvement of mental health services to offenders in custody and in the community. (12.52)

Recommendation 119

Staffing and resources for prison mental health services should be increased to a level that is able to meet the high mental health needs of prisoners. (12.52)

Recommendation 120

The Department's Health Services Directorate should work closely with the State Forensic Mental Health Service to develop an appropriate mental health screening instrument and process and a training program for general nurses performing this initial screening process. (12.52)

Recommendation 121

Prison officers should receive training in the proposed mental health screening process to the extent that it is relevant to their involvement in the prison suicide/self harm risk management process. (12.52)

Recommendation 122

Intermediate Care Units, staffed by mental health personnel including psychiatric nurses, occupational therapists and clinical psychologists, should be established in the major prisons and selected regional prisons to provide psychiatric rehabilitation to prisoners with serious but stable mental illness or chronic psychiatric disability who do not require admission to a secure hospital such as the Frankland Centre. (12.52)

Recommendation 123

Court Liaison Services should be increased in metropolitan Courts of Petty Sessions and in regional courts through accessible and practicable videoconferencing. (12.52)

Recommendation 124

The Department should increase efforts to recruit and develop Indigenous Court Liaison Officers to assist with assessment, referral for treatment and appropriate disposition of Indigenous defendants. (12.52)

Recommendation 125

Culturally appropriate mental health services for Indigenous defendants and offenders should be significantly enhanced, including the development of effective services at all stages of the justice system. (12.52)

Recommendation 126

The Department should develop services following consultation with Indigenous communities, which should also be invited to develop their own unique solutions to problems and have control and governance over program development. (12.52)

THE MANAGEMENT OF DRUG ABUSE

Recommendation 127

Government should provide adequate resources to facilitate the expansion of the urine testing program, particularly random testing, to determine the prevalence of drugs in the system and better cater for service needs. (13.48)

Recommendation 128

The Department should develop a comprehensive drug policy and procedures manual immediately to overcome current inconsistencies in testing and disciplinary procedures. (13.48)

Recommendation 129

Entry level and existing prison officers should receive specific and ongoing training in recognising and managing the effects of drug use. (13.48)

Recommendation 130

The Department should expedite its review of its policies and procedures relating to the searching of departmental staff and service providers entering prisons. (13.53)

Recommendation 131

The Canine Section should be appropriately resourced to enable all visits sessions to be monitored. (13.53)

Recommendation 132

To improve the overall effectiveness of its Drug and Alcohol Action Plan, the Department should:

- **provide prisoners on the pharmacotherapy program with complementary programs and counselling;**
- **develop an appropriate suite of therapeutic programs to cater for the needs of both short and long-term prisoners with substance abuse problems;**
- **make available appropriate therapeutic programs at all stages of the sentence with appropriate liaison with outside agencies and that funding to non-government agencies currently providing programs be increased;**
- **develop programs to deal with the issues arising from alcohol and solvent abuse; and**
- **develop strategies in conjunction with the State Forensic Mental Health Service to assist prisoners with the problems arising from the combination of substance abuse and mental illness. (13.67)**

Recommendation 133

The Department should establish a Corrections Drug Strategy Unit, with responsibility for management of the Drug and Alcohol Action Plan, which should be appropriately staffed and resourced to co-ordinate the Department's drug and alcohol strategy across prisons, community and juvenile justice services. (13.82)

TRAINING AND PROFESSIONAL DEVELOPMENT

Recommendation 134

Increased priority should be placed on training and professional development throughout the Department. (15.09)

Recommendation 135

The Department should establish an appropriately resourced and staffed, dedicated training and professional development facility. (15.09)

Recommendation 136

The Department should appoint a dedicated training officer for each prison to facilitate a high standard of training for all staff. (15.11)

BAIL AND REMAND

Recommendation 137

The Department should make provision for the appointment of a number of Bail Coordinators to be located at courts as well as prisons to ensure the efficient processing of offenders who have been granted bail and to thereby reduce the remand prisoner population. (16.27)

Recommendation 138

To enable the facilitation of bail of an offender within the metropolitan area, an offender should be held at a central lock up facility and not transferred to prison as a remand prisoner for a reasonable period (for example, 24 hours) after being granted bail by the court. (16.27)

Recommendation 139

Bail coordinators appointed to work within prisons should monitor those remand prisoners that are unable to satisfy their bail conditions and, if required, arrange for those prisoners to appear before the court (by video link or in person) after 5 days of their reception to have their bail conditions reviewed. (16.27)

Recommendation 140

A committee should be established to review, on an ongoing basis, procedures that will achieve a reduction in the number of prisoners held on remand. The committee could include representatives of the Supreme Court, the Western Australian Police Service, the proposed Departments of the Attorney General and Corrections, and any provider of prisoner transport services. (16.28)

PRISONER DISCIPLINARY PROCESSES

Recommendation 141

The proposals developed by the Department for the amendment of the prisoner disciplinary process be determined and progressed. (17.18)

MISCONDUCT AND COMPLAINTS

Recommendation 142

A Directorate should be established in the Department, reporting directly to the Departmental head, which should be focussed on a strategic approach to preventing corruption and encouraging higher standards of professionalism, ethics and integrity. In this regard, recommendations 111 and 112 contained in the Closing Submissions of Counsel Assisting should be considered. (18.15)

SUPERMAX PRISON

Recommendation 143

The recommendations of the Inspector and recommendations 65 to 78 contained in the Closing Submissions of Counsel Assisting in relation to the establishment of a High Risk Security Unit for special risk prisoners should be considered by Government. However, if and when it is decided to build such a facility, construction should not occur before higher priority regional and training infrastructure needs, as outlined in this report, are addressed. (19.15)

PRISONER TRANSPORTATION

Recommendation 144

The Department should review prisoner transportation for regional areas to determine whether it is likely to be unprofitable, increasing the risk of it being carried out unacceptably, and therefore whether it should be brought back in-house by the Department at the completion of the extended contract. (20.7)

Recommendation 145

The Department should decide on whether the metropolitan based prisoner transportation service is to be undertaken by the private or public sector a sufficient time before the expiry of the extended contract, to enable arrangements to be made in an orderly manner. (20.7)

Recommendation 146

The Department should develop strategies to assist prisoners, particularly from regional and remote areas, to return home following their release from custody. (20.11)

A PUBLIC PROTOCOL

Recommendation 147

To avoid inadvisable political responses to media pressure, the Department should develop a protocol similar to the Western Australia Police Service, to ensure that information provided to the media about offenders, or incidents involving offenders:

- **is complete and accurate;**
- **is provided in a timely manner; and**
- **preserves the rights to privacy of those involved, including victims, offenders and departmental officers. (21.31)**

Recommendation 148

The Department should abolish the Special Profile Offender list. (21.37)

CHAPTER 1 THE REASONS FOR THE CONCLUSIONS

> *"I ask the reader, if he finds in this work anything superfluous or erroneous, to correct and amend it or to pass it over with eyes half closed, for to keep all in mind and err in nothing is divine rather than human".*
>
> (Bracton on The Laws and Customs of England 1210-1268.)

1.1 On 5 April 2005 the Honourable Dr Geoff Gallop MLA, Premier of Western Australia, directed that an Inquiry be held into the Management of Offenders and associated matters. (The Direction given by the Premier and the Terms of Reference are set out in Annexure 1.) The Direction required that the Report on such matters be delivered by 1 October 2005. In the circumstances to which reference will be made, that date was extended until 18 November 2005. On 8 April 2005 I discussed with the Premier and the Honourable Mr John D'Orazio MLA, Minister for Justice, what the Inquiry involved. I was then able to proceed with the Inquiry.

1.2 The Inquiry was initiated under section 11 of *the Public Sector Management Act 1994*. (The terms of the relevant legislation and the provisions governing the procedure to be followed and other relevant matters are set out in Annexure 2.) At the same time the Minister for Justice directed that the Inspector of Custodial Services inquire into and advise upon certain related matters. (The Direction given by the Minister for Justice is set out in Annexure 3.)

1.3 This Report includes the following parts:

- an Executive Summary (in which are set out the Conclusions which have been reached);
- a list of the Recommendations made;
- a Summary of the Reasons on which the Conclusions are based (this, the present part, contains that Summary).

1.4 The Report will be presented and should be read in association with the following documents:

- the Closing Submissions of Counsel Assisting the Inquiry (The recommendations of which are attached as Annexure 5); and
- the Report made by the Inspector of Custodial Services, Professor Richard Harding, to the Minister for Justice[1].

1.5 In deciding the form that this Report should take and what should be included in it, I have been faced with two things: a surplus of riches and a Ministerial request.

- During the Inquiry I was presented with over 800 pages of research and recommendations.

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[1] Office of the Inspector of Custodial Services (2005) *Directed Review of the Management of Offenders in Custody in Western Australia.*

- The Minister for Justice requested that he be able to flourish my Report in one hand.

1.6 On 10 and 11 October 2005, Counsel Assisting the Inquiry, presented his closing submissions. These submissions cover 475 pages of closely reasoned analysis of the subject of the Inquiry.

1.7 During the Inquiry I have held detailed discussions with the Inspector of Custodial Services. I have drawn upon his experience and I have contributed to them what I have been able to do. On 24 October 2005 the Inspector presented to me a Report of 343 pages containing a detailed exposition of the Prison System and the changes that should be made.[2]

1.8 The total of these is 818 pages. I am more than grateful to the Inspector and to Counsel for what they have done. Each of the documents is monumental. They will together provide a launching pad for further work upon the corrections system in this State.

1.9 I had expected assistance. They each have presented that and much more. I am tempted only to make the comment of the Beaver facing the monument of the Hoover Dam.

1.10 What I had proposed to prepare could perhaps have been flourished by the Minister. That together with one of the documents given to me would be difficult; together it would be impossible.

1.11 Accordingly, I have changed what I had proposed. I am able to confine my final Report to a statement of my conclusions and my reasons for them. I have reduced my reasons to what is necessary to explain what I have concluded. The Terms of Reference raise two essential issues:

- the structure of the Department of Justice; and
- the administration of the corrections system.

1.12 On analysis, it is clear that they can and should firstly be dealt with by administrative action if that be possible.

1.13 The structure of the Department of Justice can and should be changed.

1.14 It can and should be divided into two Departments: the Department of the Attorney General and the Department of Corrections.

1.15 The administration of the corrections system requires change:

- the standards and style of the administration should be changed;
- new systems should be used in the administration of corrections; and
- the method of administration of corrections should be changed from one which concentrates functions and powers at top level to one placing greater emphasis upon administration at Superintendent and Manager level. This can be done by administrative action.

1.16 The basic problems that arise from the structure of the Department arise because:

- it is too complex; and

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[2] *Ibid*

- the proper administration of the corrections system requires that it have a Department (a Minister and a Chief Executive Officer) devoted exclusively to it.

1.17 The solution requires that there be a separate Department of Corrections.

1.18 The basic objectives of the corrections system are simple. They are in the main two: to prevent escapes; and to reduce re-offending. Each of these can be achieved, but the means of achieving them has consequences. What needs to be decided is: which of the means and their consequences, should be chosen?

1.19 Escapes can be prevented. If every prisoner is locked in a secure prison and kept locked there until the end of his sentence, there will be no escapes. But there are consequences: the cost of the their system will increase substantially; persons who deserve to be treated better will be treated worse than justice requires; and when they are released, more of them may re-offend.

1.20 Re-offending can be reduced. It can be reduced through both the prison system and the community corrections system. Persons who have been prisoners, on release, commit more crimes by a large measure than those who have not. Bad treatment in prison will increase re-offending (prisoners treated brutally will become brutes); better treatment is the main hope for the reduction of re-offending. But better treatment may increase the rate of escapes and prisoners who escape will re-offend, even commit murder.

1.21 The present solution is to treat prisoners better, but with safeguards. Prisoners are not locked up; they are managed. But management involves consequences: there will be some escapes, some injuries and some re-offending. The task of a prisons system is to reduce the consequences as far as they can be reduced. The issue for the community is to decide what consequences it will accept in order to have a proper prisons system.

1.22 In the community corrections system, offenders are managed outside the prison environment. They may be offenders who have been released from prison and are being supervised while they re-establish themselves in the community. They may also be offenders who have never been imprisoned and are serving a community-based sentence. Management of these offenders in the community also involves consequences: there will be some re-offending and this must be reduced as much as possible.

1.23 It is the purpose of this Report to explain what a corrections system involves, to outline the main steps that can be taken to reduce any adverse consequences and to suggest which of the steps that theoretically are open, are practical and should be adopted.

1.24 What has emerged from the Inquiry is, in outline, as follows.

1.25 The Western Australian Corrections System has two main objectives:

- to keep its prisoners (approximately 3,500 in number) in prison safely but securely; and
- to reduce the number of offenders (on some counts up to 50%) who re-offend on release from prison or at the end of their community-based sentence.

1.26 To do this, it has adopted the modern form of offender management ('the management system').

1.27 The management system is the system that is seen generally, as the appropriate system and should be maintained.

1.28 However there are four things that must be accepted as incidents of an offender management system.

- There will be some escapes from prisons.
- Some prisoners will assault or otherwise injure prison staff, other prisoners or the public.
- Some offenders who are being re-socialised (being trained, by parole or otherwise, not to re-offend) will re-offend.
- In managing offenders, corrections officials must make decisions as to what an offender will do and sometimes those decisions will be wrong.

1.29 When these things happen, there will be 'public outcry' and, unless properly managed, the public outcry will produce public action that is bad rather than good.

1.30 The action required involves:

- that the management system now used in the prison system be improved and refined; and
- that the administration at Departmental level be changed and improved.

1.31 For the immediate and medium future, the concentration must be on three things:

(a) minimum security prisons: ensuring that the prisoners place there are suitable to be there;

(b) reducing re-offending: ensuring that the Community and Juvenile Justice Division is focussed on reducing re-offending and resourced for the purpose;

(c) dealing with Indigenous offenders: reducing the gross over-representation of Indigenous people among offenders.

1.32 In this Report, I shall:

- examine the recent events that gave rise to the Inquiry ('the Offending Prisoners') and the lessons to be drawn from them;
- detail the way in which the corrections system has been conducted and what should be done to improve its conduct;
- examine the way in which the Department of Justice has been structured and operated and the results of it; and
- make recommendations in relation to a number of parts of the corrections system.

CHAPTER 2 INTRODUCTORY MATTERS

THE NATURE OF THE REPORT

2.1 First it is necessary to understand what the Report as a whole is intended to be. It is intended to be comprehensive but within the limits imposed by the width of the Terms of Reference and the time available to complete it. What is done must depend upon what it is possible to do. The Terms of Reference of the Inquiry are wide and the time available for it is, in the relevant sense, short. What has been done is to be understood accordingly.

2.2 The Terms of Reference require, *inter alia*, the examination of the whole of the corrections system of Western Australia and a number of related matters; the assessment of the organisational structure, role and performance of the Department of Justice in its relevant aspects; and the development of a plan of 'implementable strategies' for the future. The Report on these matters was required to be presented by 1 October 2005. During September 2005 it appeared that the material to be made available to the Inquiry by the Inspector of Custodial Services could not be made available until later. In these circumstances, the time for the presentation of this Report was extended until 18 November 2005. The extension of time was necessary to permit the incorporation into the Report the opinions and findings of the Inspector which, in the Inquiry, by the Terms of Reference I am required to "seek and have particular regard" to (Annexure 1).

2.3 The time allowed for the Inquiry is, in the relevant sense, short. The Nagle Inquiry into the Prison System of New South Wales[1] occupied approximately one year and ten months. The Fitzgerald Report upon the *Prisons Act 1981* of Western Australia[2] was commissioned in May 1997 and concluded in April 1998. The Woolf Inquiry into Prison disturbances in Britain[3] occupied ten months.

2.4 To refer to these matters is not to criticise the Terms of Reference or the scope of the Inquiry. It is to mark the parameters of what is to be done and to ensure the understanding of it. A prudent Government will no doubt at regular intervals undertake an exhaustive review of those aspects of Government that impinge upon public welfare. The corrections system is one of these. However it is apparent that, if events have happened which indicate that there may be deficiencies which require more immediate and practical attention, Government should initiate an Inquiry directed to more immediate matters and to less elaborate examination. As the time and the Terms of Reference indicate, this is such an Inquiry. Accordingly, this Report is not intended to be exhaustive in the sense of being fully detailed or fully documented. It is not an academic treatise. It is intended in a practical way to direct attention to the matters that, in accordance with the Terms of Reference, should be brought to the attention of Government.

2.5 However, subject to the constraints of the Terms of Reference and of the time allowed, it is intended to be, and I believe it is, a full examination of those aspects

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[1] Nagle, JF (1978) *Report of the Royal Commission into New South Wales Prisons,* Government Printer, NSW.
[2] Fitzgerald RE (1998) *Review of the Prisons Act (1981): Final Report,* Ministry of Justice Western Australia, Perth.
[3] Rt. Hon. Lord Justice Woolf and His Honour Judge Stephen Tumim (1991). *Report of an Inquiry into Prison Disturbances April 1990,* Home Office, London.

of the corrections system, the Department and other matters that have been made the subject of the Inquiry and it is comprehensive for the purposes intended.

2.6 Second, the Report is, and is necessarily, reasoned rather than dogmatic. It would be easy but wrong for it to present its conclusions without elaborating its reasons. That makes it necessary (unfortunately) that those who wish to understand the conclusions and access the recommendations must read the reasons for them. There are a number of reasons for this. The Terms of Reference raise a large number of issues. To some at least of the main issues there is no dogmatic answer: facts do not compel the acceptance of one answer rather than another. Any answer given will be a matter of judgement: it will be arrived at by weighing the available reasons and selecting, as a matter of judgement, which of the available answers is best and practical.

2.7 The form of correction systems and the methods adopted in the administration of them are not static but evolving. It is proper that the Report indicate not merely what is appropriate now but also the reasons why the form and the administration of the present corrections system are what they are so that future changes can be provided for.

2.8 An important part of the Inquiry has been the examination in detail of the events that have led to the Inquiry. This has led to the detailing in public sittings and otherwise of the way in which the corrections system has dealt with the four offenders to whom reference has been made. This examination has been valuable: it has provided both examples of the working of the system and insight into the standards and modes of operation of the Department of Justice. This material and the inferences which may be drawn from it should be recorded for two reasons: so that Government and the public can know what has occurred and why; and so that there will be a store of information for the future.

2.9 Counsel Assisting the Inquiry has in his extensive submissions recorded what took place and has made submissions as to the conclusions that should be drawn. His submissions provide valuable insight into the issues and the available (often alternative) solutions. In this Report I shall make reference to them. His submissions will be presented to Government together with the Report.

2.10 The Inspector of Custodial Services has also prepared a long and detailed report on matters within the Terms of Reference he was given. The Inquiry is required by its Terms of Reference "to seek and have particular regard to the opinions and findings of the Inspector of Custodial Services" in particular matters. I have had the advantage of reading and discussing the Inspector's conclusions and his reasons for them. In the main, he and I are generally of similar views and I have so indicated. In some matters, where it is appropriate to do so I have recorded my own reasons for the conclusions to which I have come. It is to be expected that I should do so. It has been arranged that the Inspector's report to the Minister for Justice will be presented to the Premier with this report. His report and the Closing Submissions of Counsel Assisting the Inquiry are to be read with this Report. They, together with the present document, explain why I have reached the conclusions set out in the Report.

2.11 Third, in an Inquiry as to a corrections system, there will inevitably be differences of opinion. It is necessary in the course of such an Inquiry to decide what are the facts. To do this it may be necessary to decide which witnesses' recollection of

what happened is correct. It is necessary to decide what conclusions should be drawn from the facts and on that views may differ. During the Inquiry views differed as to (I take one example) the nature and development of the prisoner classification system. If my findings or conclusions differ from those of particular witnesses, that does not mean that what they have said should be or has been put aside. However, I am satisfied that the facts I have found and the conclusions which I have drawn are sufficiently correct to justify what is said in the Report.

2.12 Fourth, it is one of the purposes of the Report, one of its important purposes, to draw attention to the nature of a modern corrections system and the limitations that are inherent in it. If a State decides to have a modern traffic system, it will understand that accidents will occur and that there will be deaths inherent in it. Each year, despite its best efforts, some 180 persons are killed on the roads in Western Australia[4]. If, as it has properly decided to have, the State is to have a modern 'managed' corrections system, it must understand that that system will involve things such as I have indicated: an occasional escape from prison and occasionally an assault or other incident. I shall refer in detail subsequently to this and to what can be done to limit the harm that may flow from it. But it is important that Government and the Public understand these things. If these things are not understood and not borne in mind when escapes or assaults occur, what will be done in response to them will be likely to do harm rather than good. I shall refer to some examples of this.

2.13 Fifth, the Report does not offer solutions to all of the problems that face the State corrections system. There are some problems to which there are no solutions. The problems of a corrections system are of this kind. There are no 'magic wands', no paradigms the application of which will solve these problems and solve them permanently. The problems of a corrections system are problems involving the management of people. Such problems change with changes in the community from which they arise. The change from alcohol to drugs has changed the incidents of offender management; changes in technology will change the way in which prisons are constructed and may be managed. To present this Report as a final solution or to expect it to be such would be to misunderstand the problem. In dealing with the problems of the corrections system, to draw upon Sir Isaac Newton, one does not disperse the darkness finally; one's function is to make the darkness more visible. This Report outlines the main problems of the Western Australian corrections system as it now exists, indicates the (alternative) directions for the improvement and further development of it and makes recommendations as to what can and should be done.

2.14 Sixth, I have taken a practical course in recommending what should be done. The Inspector of Custodial Services has made recommendations which deal not merely with the main changes that he believes should be made. He has made recommendations as to the detail of the steps to be taken. He has felt able to make recommendations as to (I take as examples) the negotiations that should be entered into to discuss "partnership arrangements for the management in country of minimum security female prisoners" (Recommendation 41); and the location of a magistrate in the East Kimberley area (Recommendation 58)[5]. Counsel

[4] Western Australia Police Service (2005) *Fatal Traffic Crashes and Fatalities 1st January to 31st December 2004.*

[5] Office of the Inspector of Custodial Services (2005) *Directed Review of the Management of Offenders in Custody in Western Australia.*

Assisting the Inquiry has, in his 118 recommendations, made recommendations as to (I take as examples) the form to be taken by ten or more subparagraphs of a section of legislation that may be enacted if a particular form of reorganisation of the corrections system is carried out (Annexure 5).

2.15 Detailed recommendations of this kind will be found invaluable by those who come to decide the form that changes should take. The Inspector and Counsel have, I infer, felt able to make recommendations in such detail because of the intimate and special knowledge which they each have of the legal system of this State and in particular the detail of the prison system and matters relating to it.

2.16 I have concluded that I should not attempt to formulate what should be done in such detail. I understand the Inquiry to be directed to major matters such as the "organisational structure" appropriate to support the corrections system, the main component parts of the system and the form of the principles on which it should be administered. The Inquiry envisages a "plan" and "strategies" and invites me, if I "consider it appropriate", to indicate the "structure" for offender management.

2.17 It would be wrong for me by detailing them, to restrict how major recommendations of this kind should be implemented. The detailed procedures by which the major recommendations can and should be carried into effect have in many respects not been the subject of detailed examination during the Inquiry. I have, by discussions with officers and others, satisfied myself that the general recommendations that I have made are feasible and can be carried into effect. There are various alternative ways available. The Inquiry has not established, and I do not claim the local expertise to conclude that one alternative should be preferred to another. That is a matter that should be decided by those who know the facts (sometimes facts which have not been examined in the Inquiry).

2.18 I have had the advantage of discussing with the Director General of the Department of the Premier and Cabinet, the administrative procedures that are available (and will be necessary) to carry into detailed effect the recommendations that may be adopted. He has raised the possibility of an implementation committee arrangement that can be used. I have made the recommendations that I have upon the basis that, by these or other suitable administrative procedures, the detailed choices to be made as to how they are to be carried into effect will be decided and put into effect in that way.

2.19 I do not mean by this that I regard any of the recommendations as to matters of detail that have been made by the Inspector or Counsel to be wrong. I have arranged that the Inspector's Report and Counsel's submissions will be presented with this Report and, in permanent form, will be available for use with it. As I have indicated, they will provide valuable assistance to those who come to implement the recommendations that in due course are adopted. Except to the extent to which, expressly or by implication, I otherwise indicate, I express no opinion on them.

2.20 The procedures that I have recommended have been framed in forms that are simple and practical. I am conscious that, what is to be done in the administration of corrections must, in the main, be done by officers at ground level and often in the course of day-to-day dealing with offenders. As the existing detailed prescriptions made by the Director General's Rules have demonstrated, procedures that are complicated can be impossible (at least impractical) to

operate. They will not be used. In what I have recommended (I refer as examples to, for example, classification, case management and the courses to be presented), I have taken that approach.

2.21 This has led to repetition. In order to explain what should be done, it has, as I have said, been necessary to explain what is the present position of the corrections system and the Justice Department and how it came about. In suggesting what now should be done and why, I have for practical reasons tried to present each of the various sections in a form which is self contained. I have tried to reduce the need to refer back to what has been said at earlier stages of the Report. To do this, repetition has been necessary. I believe that this will assist the practical use of the Report and of the sections of it.

2.22 The recommendations will be referred to in the Executive Summary and listed in the list of recommendations.

2.23 Seventh, I have directed this Inquiry to three objectives:

- to answer the questions posed by the Terms of Reference;
- to assemble, for use in the Inquiry and subsequently in the administration of corrections, the information now available; and
- to prompt the discovery and (if it is not now available) the preparation of material which will assist in the administration of the corrections system.

2.24 When I commenced the Inquiry it became evident that a great deal of material (information, statistics and the like) that would assist the Inquiry did not exist. More accurately, it had not been found or not drawn together into a form which would assist in the Inquiry. Counsel Assisting the Inquiry developed a detailed plan to elicit, during public sittings and otherwise, information which was available within the Department of Justice and within the experience of officers in the Prisons Division and the Community and Juvenile Justice Division. The record of his closing submissions demonstrates the success of the plan and the value of what was done. That information is now available.

2.25 During discussions within the Inquiry with those assisting me we identified material that needed to be discovered and statistics and information which were not available and needed to be made available. Those assisting the Inquiry obtained the co-operation of officers of the Department and others to produce a deal of material which otherwise would not have existed.

2.26 In the result, a large amount of information is now available which was not, or was not readily available for use. The objective of the Inquiry, to create a store of information for use by Government and officers administering the corrections system, has been achieved to a substantial extent. That material has been collated, and will be available for future research.

THE PROCEDURE FOLLOWED IN THE INQUIRY

2.27 The procedure to be followed in an Inquiry and, in particular, in an Inquiry such as this must be adapted to the Terms of Reference, the relevant legislative provisions and the time available to complete it. Sections 11, 12 and 13 and the

Third Schedule to the *Public Sector Management Act 1994* govern the procedure that may be adopted. Section 13, as far as is relevant, provides:

> *"S.13(3) A special inquirer shall act on any matter in issue at the special inquiry concerned according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms, and is not bound by the rules of evidence, but may be informed on any such matter in such manner as the special inquirer considers appropriate.*
>
> *(4) A special inquirer may, in respect of a matter not dealt with by this Act, give directions concerning the procedure to be followed at or in connection with the special inquiry concerned, and a person participating in that special inquiry shall comply with any such direction."*

2.28 In Annexure 4 I have referred in more detail to the course that I have followed. I direct attention to what is there said.

2.29 I have not been bound by the rules of evidence. However, I have been conscious of the necessity to ensure that, in assessing evidence, I act upon such material as is properly and sufficiently probative of the facts in question. I have acted accordingly.

2.30 The material before me has not been subjected to the kind of cross-examination that has been of assistance in more formal Royal Commissions or Inquiries. Accordingly, I have scrutinised the material appropriately. In speaking and dealing with persons who have provided material, I have been conscious that what is said is to be weighed with care.

2.31 In the first Public Sittings of the Inquiry, I drew attention to the need to ensure that the Inquiry did not cause damage to those who should not be damaged (Annexure 4). That need has been emphasised during the Inquiry and I have acted accordingly.

2.32 I have not detailed my reasons for my conclusions to the extent that I would have recorded them if this Report had been a Judgement delivered in litigation in a Court. However, I record that, insofar as I have expressed conclusions as to the facts and as to the actions of bodies or persons, I am satisfied to the proper extent that those conclusions are correct.

THE INSPECTOR OF CUSTODIAL SERVICES

2.33 In conducting the Inquiry, I have "consulted and had regard to" the opinions and findings of Professor Richard Harding, as required by the Terms of Reference. I acknowledge the assistance that I have derived from having done so.

2.34 The Inspector is an independent statutory officer whose functions and powers are now defined by or derived from the *Inspector of Custodial Services Act 2003*. His opinions and findings, as far as they have been made available to me, have been set out in, *inter alia*, the material published by him prior to this Inquiry, in what he has published since, in the various discussions which I have had with him and his officers during the course of the Inquiry and the final report which he has prepared.

2.35 At the time of the institution of the Inquiry, the Minister for Justice confided to the Inspector various tasks, some touching upon and some going beyond this Inquiry. (The Terms of the Minister's direction as to what was to be done are set forth in Annexure 3). The Minister directed and arranged that what was to be done should be done to assist me in this Inquiry. I need say no more than that what the Inspector has done has been of assistance to me, to the extent contemplated by the Minister and beyond.

2.36 The task confided to the Inspector by the Minister for Justice covers a wide ambit. The formal reports prepared by the Inspector have understandably been prepared and made available to me at differing times. I have incorporated my conclusions as to what has been dealt with to the extent that it has been possible to do so. In the event, the Inspector has been able to finalise the material which was relevant to this Inquiry only by 24 October 2005. What he had to do took, and understandably took, more time than initially had been made available to him. The matter was discussed with the Minister for Justice. The result has been that it has been necessary to seek an extension of the date for presentation of this Report until 18 November 2005. The Premier has granted that extension.

2.37 By the terms of the legislation by which this Inquiry is regulated, I am required to prepare a Report and to present it to the Premier.

2.38 By the terms of the legislation by which the Inspector is governed, he is required to prepare his report and to present it to the Minister for Justice. Each of the statutory requirements has been complied with, as it must be.

2.39 The Inspector and I have been conscious of the desirability of avoiding duplication. We have during the course of our Inquiries consulted on matters common to our Inquiries on a number of occasions; those assisting me in my Inquiry have consulted with the staff of the Inspector. In the event, there has been little difference in the conclusions reached by us on matters of substance. Where appropriate, I have formally adopted findings and opinions expressed by the Inspector. To make easier the reading of the Reports, I have where practicable, referred to the corresponding portions of his report.

2.40 Statute requires that there be two reports separately presented to separate Ministers. However the two reports will be issued and should be read together. As is the case with Submissions of Counsel Assisting the Inquiry, the Inspector's report and his detailing of facts, events and (often alternative) possible solutions to problems have enabled me to avoid the separate detailing of them in this report. I have arranged that the Inspector's report will be presented in association with this Report.

2.41 To prevent duplication but also to prevent misunderstanding, I note the following. In accordance with the direction given to him, the Inspector has in his report dealt with matters relevant to this Inquiry and with some that go beyond it. In relation to the latter I express no opinion. In respect of the former, distinctions are to be made. Some of these I am to investigate and on them to express my own conclusions, after taking into account what the Inspector has said. That I have done. There are matters of detail on which it is not necessary and not desirable that I express an opinion (they will be matters which I have not investigated) and on these I express no opinion. Where, expressly or by implication, the conclusions I have reached differ from his I have indicated my reasons for them.

2.42 Some of the matters on which he has reported are matters as to which I am required to "have particular regard" to what he has said because, as I infer, he has particular knowledge, experience or expertise in relation to them which I am not expected to have or because he is expected to undertake investigations relating to them which I am not expected to undertake. (I take as two examples of these the day to day operations of individual prisons and the prison facilities appropriate to the Kimberley area). I am expected to have such regard to his views because I am not expected to investigate them or to investigate them in detail. The Inspector has, I infer, been directed to do what he does, *inter alia*, so that it will not be necessary for me to do so. In relation to such matters I have, understandably, not differed from what he has said except to the extent which I have indicated. In respect of matters that I have not investigated I am of course not able to express an opinion.

2.43 In general, I record my appreciation of the courtesy that the Inspector has extended to me, in this and other respects, during the course of the Inquiry. I am grateful to him and to his officers for their assistance. However the views that I express are, of course, my own.

THE EXECUTIVE OF THE DEPARTMENT OF JUSTICE

2.44 The Inquiry has received considerable assistance from the Director General of the Department of Justice and all his Executive Directors.

2.45 At the commencement of the Inquiry I expressed to Mr Alan Piper, then the Director General of the Department of Justice, the wish that he assist me by, *inter alia*, setting out in detail his personal view of the structure of an ideal department and other matters. He agreed to do so.

2.46 On 4 April 2005, shortly before the commencement of the Inquiry, Mr Ian Johnson was appointed as (Acting) Executive Director of Prisons. As such he was the senior officer of the Prisons Division of the Department. I infer that this was done because Government saw the need to have changes made in the administration of the prison system and because it did not wish to delay until my Report was received and considered the making of such changes as could and should be made in the interim. I infer that it intended that Mr Johnson should do what was appropriate in that regard during the course of the Inquiry.

2.47 Mr Alan Piper, as Director General of the Department of Justice, had agreed to inform me of any changes which were proposed to be made or made in relation to matters relevant to the Inquiry during the course of the Inquiry. He subsequently proceeded on leave and in due course left office. That agreement was adopted by Mr Colin Murphy, the officer appointed to act as Director General following Mr Piper's departure from that position. Following his own appointment, Mr Johnson agreed to inform me of any such changes, within the purview of his activities.

2.48 Mr Johnson has informed me of various matters. He has in addition discussed with me such matters within the Terms of Reference as have arisen for consideration or for action by him. I have also met on several occasions with Ms Jackie Tang, Executive Director of the Community and Juvenile Justice Division of the Department. She too has discussed with me matters within the Terms of reference and in particular, matters relating to the management of offenders in the community. In general I record my appreciation of the courtesy

that has been extended to me by Mr Murphy, Mr Johnson and Ms Tang in this and other respects. I am grateful to them for their assistance.

2.49 It is perhaps inevitable that, during the period of an Inquiry, changes will be made, by those within the Department and otherwise. Needs may arise which require action. Inquiries made by the Inquiry may underline deficiencies that can be remedied. Things may be done which ideally should have been done before. It is useful to be able to respond to an Inquiry: 'We have done that already'. That is understandable.

2.50 It is not possible to examine what may have been done in response to the Inquiry. The Inquiry must deal with what has come before it. If necessary it can invoke the naval principle that what has been done: "on its watch" should be to its advantage.

2.51 Following his ceasing to be Director General, Mr Alan Piper agreed to give evidence to the Inquiry. He discussed relevant matters with Counsel Assisting the Inquiry. Subsequently he gave evidence at a Public Sitting of the Inquiry. I express my appreciation of what he has done.

2.52 Each of the officers has given me the advantage of their views in relation to issues that have arisen. I have taken their views into account. However, the conclusions that I express are, of course, my own.

ACKNOWLEDGEMENTS

2.53 In the preparation of this Report, I have had the support and assistance of a number of people. A list of the Inquiry staff is included at Annexure 7 to the Report.

2.54 What the staff has done has gone far beyond the support and assistance that an Inquirer could ordinarily expect. They have helped to produce the large amounts of material that has been included in this Report, without which having been done, the Report would not have been possible.

2.55 I record my professional appreciation of what they have done, but also my personal thanks for the great efforts they have made over the many days and nights.

CHAPTER 3 THE EVENTS WHICH GAVE RISE TO THE INQUIRY

"Things will go wrong and people will make mistakes: That is Reality"

3.1 The Inquiry was not initiated in a vacuum. During the months preceding the action of the Premier in setting up the Inquiry, two prisoners escaped from custody and a prison employee was held hostage and assaulted by a prisoner. In August 2003 a parolee had committed murder. These events made it appropriate that consideration be given to the corrections system in Western Australia and the way in which it was being administered.

Incidents provoke a Public Outcry

3.2 On 15 April 2005, at the first public sittings of the Inquiry, I announced that these events, or a selection of them, would be examined in detail to ascertain whether they disclosed deficiencies or defects in the present corrections system and, if so, what should be done to remedy them. (The statements made at the first public sitting are set out in Annexure 4). It is appropriate that these events be examined publicly. They were serious. It is proper that Government and the public should know in detail what happened, the basis on which the corrections system was being administered, and how what happened could, and did, happen. But equally important, the events showed the background against which any modern corrections system, including the present system, must be judged. The examination of them casts light on the nature of the procedures in fact followed in the corrections system and upon the judgements and decisions that inevitably they involve. It has provided the opportunity to probe in detail what has happened within the Western Australian system.

3.3 Accordingly the Inquiry has examined the details of four of the events that occurred (those relating to the prisoners Messrs Cross, Keating, Edwards and Mitchell) the 'offending prisoners'. Evidence in relation to these events was produced and the inferences that should be drawn from them were examined at the public sittings of the Inquiry.

3.4 These four cases were selected from a number of incidents that had occurred in recent times, some of which were referred to the attention of the Inquiry. Each of them might have been selected for detailed examination. These four were selected because they illustrate particular aspects of and particular deficiencies and defects in the existing corrections system. I shall, in this Report, refer to aspects of them that in the main are relevant for present purposes. The details of the cases are set forth at length in the document prepared by Counsel Assisting the Inquiry in his closing submissions. What Counsel has done has enabled me to avoid detailing these and other matters in this Report. I shall refer to or rely upon the relevant portions of those submissions. (The text of the public sittings of the Inquiry and of these cases appears in the Inquiry's internet site: http://www.justiceinquiry.dpc.wa.gov.au).

3.5 I shall examine these four cases in outline to indicate what they show about the present corrections system, the way in which it operates in theory and what in fact occurs. I shall in particular refer to what is apt to result from the way in which in fact it has operated. I shall later refer, on the one hand, to the benefits of the system and on the other hand, to the price which, by reason of the way in which it operates, is paid for these benefits.

3.6 The cases illustrate the five things that must be recognised as inherent in the present prison system. They are:

- the possibility of prisoner escape;
- the possibility of assault by prisoners on prison staff and other prisoners;
- the possibility of re-offending by offenders who (by parole and otherwise) are being re-socialised and reformed;

- the fallibility of the judgements which must be made in managing prisoners; and
- the 'public outcry' problem.

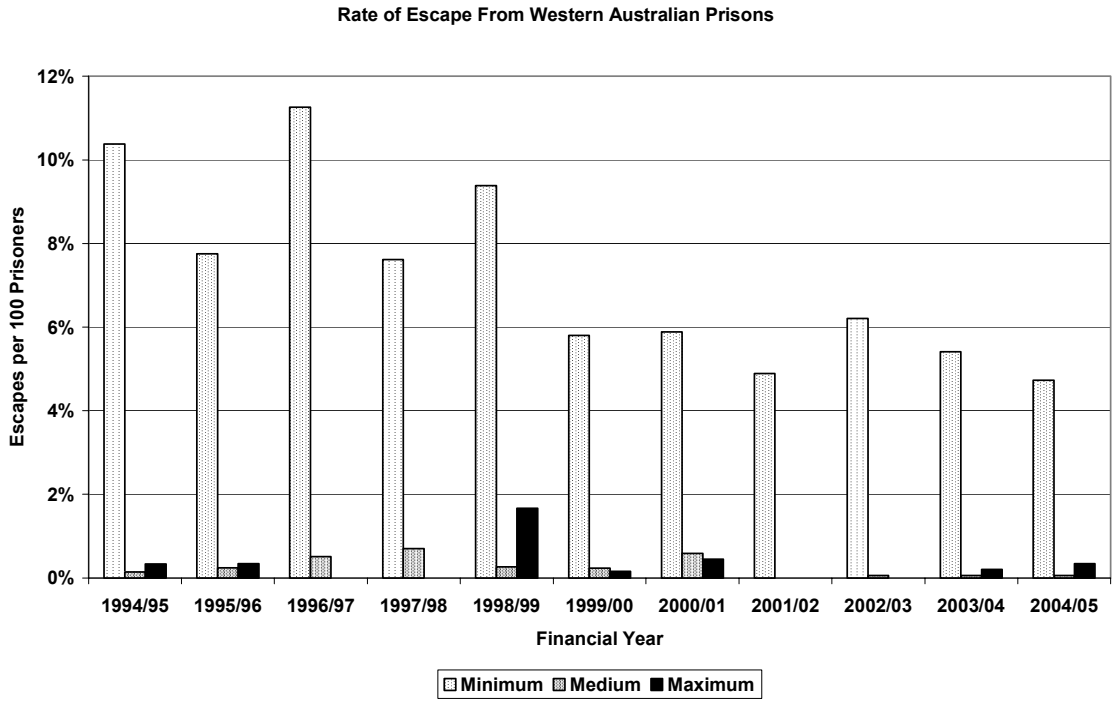
3.7 Unless these are recognised in dealing with the corrections system, what is done will be of little use.

ESCAPES

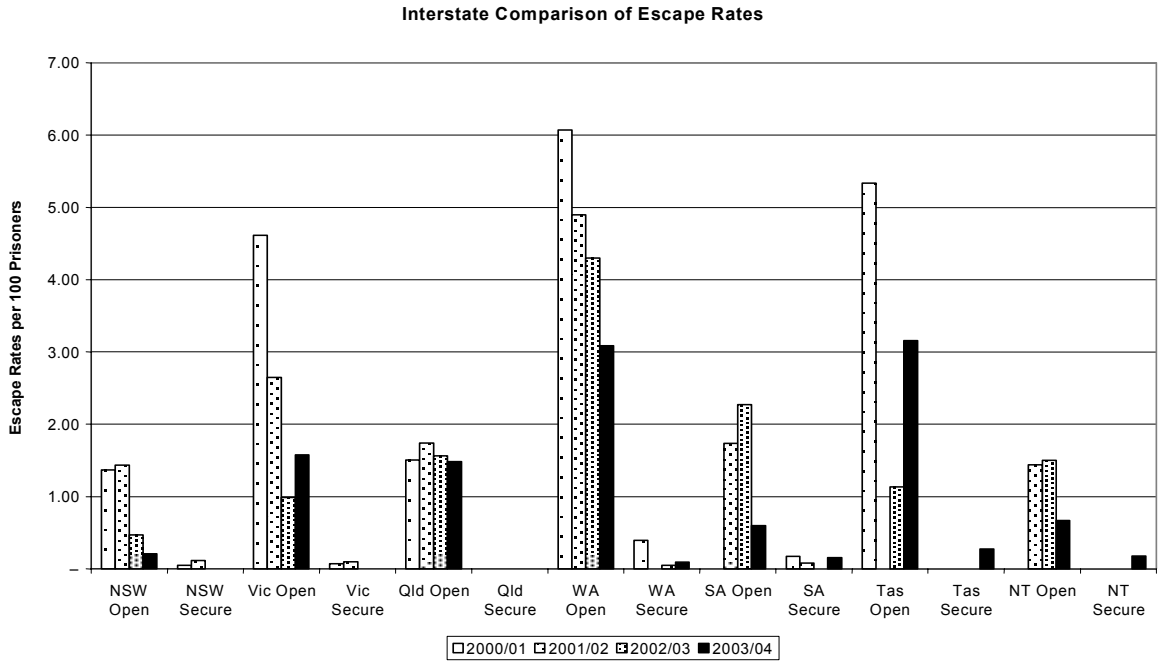
3.8 In order to understand the escapes that occur and to appreciate the significance of them in a prison system it is necessary to understand:

- the prisons from which they were made; and
- the nature of the "escapes" that are made from such prisons.

3.9 In Western Australia, prisons and prisoners are given one of three classifications: maximum security, medium security and minimum security. Prisoners are graded according to whether they should be held in a maximum, medium or minimum security prison. Minimum security prisoners can and do escape.



Source: Department [or Ministry] of Justice Annual Reports 1996/97 to 2003/04



Source: Department of Justice

3.10 As prisons are presently constructed, the main metropolitan minimum security prisons for men, Karnet and Wooroloo, have no walls or fences (of such a nature as would prevent a determined escape). During the operation of them, prisoners are allowed or invited to work or otherwise to be in areas that have no physical containment and with supervision that may be minimal or, on occasions, non-existent. Others such as Broome Regional Prison have boundary fences that do not prevent escapes. Accordingly, almost all the escapes that occur are from minimum security prisons. Escapes from minimum security prisons are an unwished-for but foreseen consequence of the manner in which minimum security prisons are administered.

3.11 There have been very few escapes from maximum and medium security sections of prisons. Accordingly, little need be said of them. (I put aside the recent escape of prisoners whilst held in the security areas at the Supreme Court of Western Australia in Perth whilst under private control. Those escapes have been dealt with by a separate report and provision has been made or is being made to deal with the reasons for them.)

3.12 It is necessary that, if the State is to have a modern managed corrections system, there be minimum security prisons of this kind. They are an essential part of it.

3.13 Escapes are of different kinds. All escapes are breaches of the law and should be prevented. But, in deciding what is to be done in constructing and managing prisons, it is important to recognise that some escapes are of more significance than others.

3.14 Escapes are of different significance according to two things: the place from which they are made; and the purpose for which they are made.

3.15 If an escape is from a secure prison, the issue is simple: there should be no escapes from secure prisons, so what went wrong? If the escape is from a minimum security prison, the issues raised are different: prisoners who will escape should

not be in minimum security prisons, so why was the escapee placed there? This was the issue, and the thrust of the disquiet, which arose in the case of the 'offending' prisoners who escaped. But there are escapes and escapes. A prisoner may escape to re-offend or, at least with the intention never to return; he or she may escape for a temporary purpose (to drink, to meet with friends or relations or to attend to family or cultural obligations). The latter is typical of many Indigenous prisoners in regional areas; the former is generally the pattern of escapes by non-Indigenous prisoners. There are of course cases that do not conform to these patterns. But the distinction is common. Published statistics show that escapes from minimum security prisons are of the order of 45 each year[1]. But such statistics are misleading if the differences between the kinds of escape are not recognised. Many of the escapes are from Indigenous prisons, from Broome Prison in particular.

3.16 The Inquiry arranged for records to be collated of 'escapes' from that prison. The prison officers and the police officers confirmed that, in many of the 'escapes' from Broome Prison, the escapees either returned to the prison of their own accord or were found in the vicinity awaiting (or not avoiding) recapture for return to the prison. The police officers assisting the Inquiry collated details of 'escapes' from various prisons over a substantial period. In a great number of events described as 'escapes' the escapee was absent from confinement for a short period (measured often in minutes or hours rather than days). The inference was that the 'escape' was for a particular or temporary purpose.

3.17 The escapes by the 'offending prisoners' (Mr Cross and Mr Edwards) were different. They were also from a minimum security prison, but because of their offending history, the public outcry that arose understandably asked why those prisoners had been placed in a minimum security prison. In the discussion that ensued, the statistics of escapes became relevant. The discussion did not sufficiently recognise that the escapes by these prisoners were of a kind different from the great majority of escapes and that the inferences to be drawn from them, such as the alterations, if any, which needed to be made to the minimum security prisons, should take account of the fact that escapes from Karnet and Wooroloo were very few in number.

3.18 The prisoner, Mr Paul David Cross, escaped with the intention not to return. He escaped by walking from the area of the minimum security prison at Karnet; he obtained firearms; and, had he not been recaptured in time, it is believed he would have committed further offences. He had a long record of serious and violent crime. He had been involved in earlier years in a number of armed robberies. His current sentence at the time of his escape would not expire before 10 December 2012 (although he would have become eligible for parole on 18 April 2006). The prison system required that he be periodically 'assessed' and that in that assessment a judgement be formed as to whether he would or would not be likely to escape. If it was judged that he would not, he was open to be classified as a minimum risk prisoner and to be placed in a minimum security prison. Assessments of this kind are an incident of the prison system as it was operative, and as it now operates.

3.19 Those who assessed Mr Cross in October 2004 concluded that he was not apt to escape. Therefore he was classified as minimum security and in due course placed

[1] Department of Justice (2005) *Monthly Performance Report August 2005*, Prisons Division.

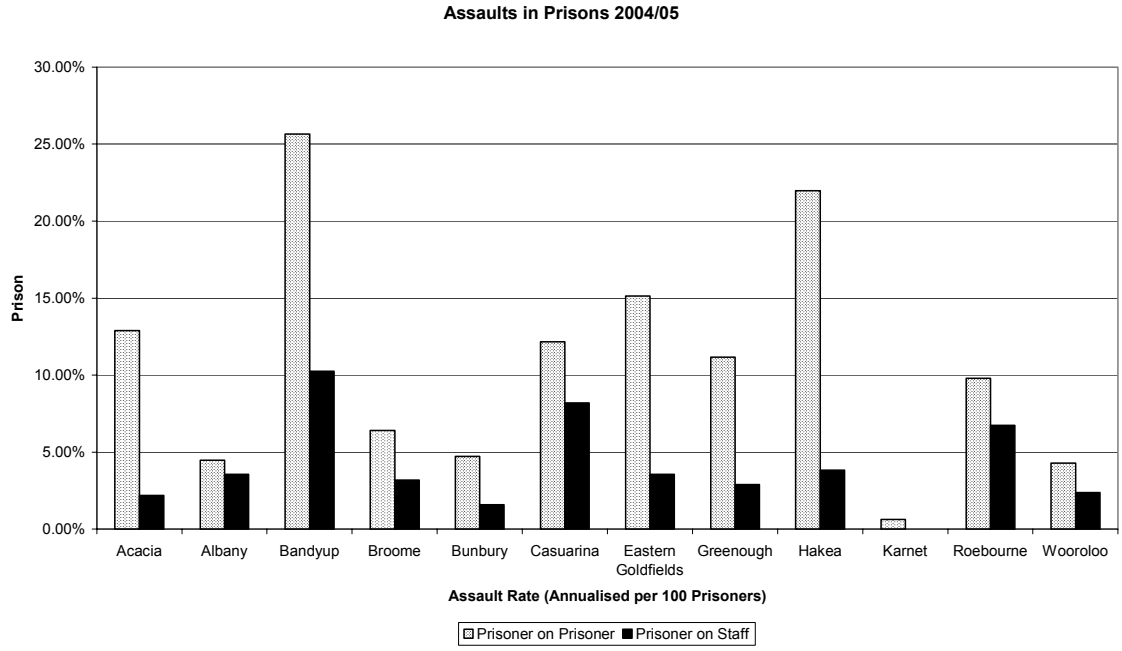
in Karnet, a minimum security prison. That assessment was wrong. Within four months (on 11 March 2005) he did escape.

3.20 It is plain, and it is recognised, that the assessment that is required by a prison system may prove to be wrong. It is recognised that, on important and other occasions, such assessments have been wrong. The wrong person may be put in a minimum security prison. No person applying thought to the matter would think otherwise. A prisoner may manipulate the system; the assessment procedure may be carried out with less than the necessary care of judgement; or it may be carried out with appropriate skill and care but yet, in the result, prove wrong. The reasons why it proved wrong in the case of Mr Cross are detailed in the written submissions prepared by Counsel Assisting the Inquiry. At least, what occurred has been recorded in detail. But the fact remains that, in any prison system involving the classification and management of prisoners and their treatment accordingly, assessments of that kind must be made and prisoners are *prima facie* to be relocated according to the result of them. That is to be recognised and it is to be improved.

ASSAULTS AND OTHER INCIDENTS

3.21 The prisoners in any class of prison (I exclude the special case of the small number of prisoners in the Special Handling Unit at Casuarina Prison) are ordinarily not handcuffed or similarly restricted; they are not generally restricted to movement, only if escorted. They may (I speak in general terms, subject to the qualifications which those familiar with the prison system will understand) move through the prison open areas and mix with officers, other staff and fellow prisoners. Their movement is to that extent unrestricted.

3.22 Accordingly, prisoners have the opportunity to (and sometimes do) commit assaults or otherwise threaten prison officers, other staff and fellow prisoners. They can cause other damage. In maximum or medium security prisons and, of course, in minimum security prisons, where their movements are to a significant extent unrestricted, this can occur. It is an incident of the prison system. In some prisons there are methods of watching prisoners' activities. But, notwithstanding due surveillance, prisoners have the opportunity to commit assaults and the like.



Source: Department of Justice *Prisons Division Monthly Performance Report* June 2005

3.23 The prisoner Paul Stephen Keating was an example of this. He held hostage and seriously assaulted a female staff member. He had more than once previously been convicted of escape and of vicious crimes. He was apt to attack or otherwise threaten the safety females. He had done this on a number of occasions. He had been managed in various restrictive regimes in the prison system but, following treatment and detailed assessment by prison psychologists and others, he had been allowed into mainstream. He had been classified as a medium security prisoner and was placed at Bunbury Regional Prison, a medium security prison. He had been recommended for minimum security and placement on a pre-release program and that recommendation had been supported by experienced officers and prison consultants.

3.24 Within the boundaries of Bunbury Prison he was not constrained physically (in the sense of handcuffs or the like) and he could move about without necessarily being accompanied by or supervised by a prison officer. He was allowed to be in the education section of the prison as a cleaner and there was in the vicinity a female prison employee whom he knew. Accordingly he could, without difficulty (and on 16 March 2005 did) seize her and attack her.

3.25 The possibility that he could (and would) do such a thing was, or must have been, obvious to those responsible for determining how he should be managed. But, being classified as a medium security prisoner, he was according to the prevailing prison system, to be dealt with in the way that I have described. So dealt with, the risk of an assault was foreseeable.

3.26 The risk of assault or other serious incident is an inevitable part of a managed prison system. In a Special Handling Unit or in a Supermax Prison, that risk can be avoided if, in such a unit, the prisoner cannot move or be moved except while handcuffed, marched in line or otherwise directly supervised. Outside of such facilities, that does not occur. Medium and, ordinarily, maximum security prisoners are allowed to move about, at least in the areas provided for them,

without restraint or surveillance of this kind. In the case of a minimum security prisoner in a minimum security prison, it is so generally.

3.27 Accordingly, the risk of assault or the like can be removed only if a new management system is adopted for prisoners such as Mr Paul Keating.

RE-OFFENDING DURING RE-SOCIALISATION

3.28 After being released from prison, some prisoners re-offend. Views differ as to how the rate of re-offending is to be calculated. Estimates of the rate of re-offending (recidivism) have ranged up to 65 percent[2]. Whatever be the exact rate, the rate of re-offending is unacceptably high. The penologists and others have attempted to evolve procedures by which the rate of re-offending can be reduced. (To suggest prevention is to ignore reality.) The method (or the main method) now used is the (as it is described) re-socialisation of prisoners. Re-socialisation involves that they be so treated, in prison and immediately after leaving prison, that it is easier for them to become reintegrated into the community and to avoid those things that lead them to re-offend. I shall refer to these in more detail later.

3.29 The problem posed by re-offending, is too serious to be treated otherwise than seriously. (Reference was made to it, as such, by the Attorney General during evidence at the public sittings of the Inquiry)[3]. The rate of re-offending is high, not only in Western Australia but elsewhere. Statistics and the inferences to be drawn from them are to be treated with care but they may provide an introduction to the dimensions of the problem. The (gross) annual rate at which crime is committed by citizens of this State is of the order of 0.1 offences reported per head of population[4,5]. Estimates of the rate of re-offending by prisoners following release from prison vary up to 60% or more. Each year the number of prisoners released from prison into the community in this State is of the order of 7,000.[6] They are of course of differing kinds. Some kinds of offenders are unlikely to re-offend or to re-offend in a way that is of significance in considering recidivism. But the overall extent of re-offending provides a reason why it must be recognised that re-offending does occur; the fact that it occurs should not occasion surprise or outcry. It is a problem to be dealt with. The Department of Justice does, to an extent, seek to deal with it.

3.30 The main methods of re-socialisation are: the training of prisoners while in prison; the grant of home leave, work leave and the like during their time in prison; and their early release into the community subject to the restrictions and conditions of a parole or other conditional system of supervision and help. The second two of these three procedures envisages that the prisoner will, while being re-socialised, be out of prison.

3.31 Some prisoners re-offend while out of prison during their re-socialisation. The prisoner Mr Russell Mitchell is an example of re-offending during re-socialisation. He was granted parole. He breached parole and, whilst on parole, committed

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[2] Department of Justice (2005) *Does Parole Work?* (unpublished).

[3] Transcript of Public Hearing 17/1/05 p 535

[4] 231,387 offences were reported to Police in 2004/05 (cited in Western Australian Police Service (2004/05) *Monthly Reported Crime Statistics*)

[5] The Western Australian Population as at end March Quarter 2005 was 2.004 million (Australian Bureau of Statistics *(*2005*) Australian Demographic Statistic,* Cat 3101.0. 22 September 2005).

[6] 6,933 prisoners were discharged in 2004-05 (Department of Justice (2005) *2004-05 Discharge Statistics)*

burglary and then murder. Mr Mitchell was in prison for various serious crimes committed over the period from 1992. He had, under the classification system in force, been judged appropriate for minimum security and, on 8 December 2002, he had been judged to be suitable for parole. Presumably the judgement then made was that, *inter alia*, it was sufficiently unlikely that he would offend whilst on parole that he could be released into the community under supervision and with assistance. That judgement proved wrong. While on parole he committed various crimes and, as it was later discovered, on 18 August 2003 he committed murder. On 19 August 2003 his parole was suspended and on 20 August 2003 he was returned to custody. On 2 March 2005 he was sentenced to life imprisonment for the murder that he had committed. (The details of his offences including the murder are recorded at length in the Closing Submissions of Counsel Assisting.) The possibility that he might re-offend was known when he was released on parole. It was a risk inherent in the parole system. Parole records and statistics show that of those given parole a large number re-offend in various ways while on parole and that the offences committed are of sufficient seriousness to lead to, in many cases, parole being cancelled or suspended.[7]

3.32 The risk of re-offending in this way can be removed only if the process which allows offenders to resocialise while in the community is abolished. Re-socialisation is too important a process to be abolished but the Inquiry has found that it should be improved.

THE UNCERTAINTY OF JUDGEMENTS

3.33 The case of the prisoner Mr Brian William Edwards provides a further illustration of an important aspect of prison management, the fallibility of the judgements that must be made.

3.34 In 1979 Mr Edwards escaped from prison and committed two brutal murders. He was committed effectively to prison for life. Some 25 years later, he was judged to have changed or at least to have changed sufficiently to be placed upon a pre-release program. Prisoners sentenced to prison for life or for an indeterminate term approximating life (I shall use the term 'lifers' to describe such prisoners) would, were their sentence served according to its terms, never be released. Legislation in various parts of Australia, including Western Australia, provides a qualification for this. In Western Australia the legislation provides that by a pre-release program a lifer may be released into the community on parole and his sentence put to an end. Prior to release on parole, a practice has developed for prisoners to complete pre-release programs. The pre-release program involves: that the prisoner be judged appropriate for the program; that for a period he follow a program designed to improve him and to test his improvement; and that if he is judged to have completed that program satisfactorily, he may, in the discretion of the relevant Minister, be released.

3.35 The pre-release program is based on two assumptions: that it is possible with sufficient certainty to choose the prisoners appropriate for pre-release programs (those who will not escape, who have changed, or will be changed by the program, sufficiently to be released into the community); and that the community, through its representatives, will accept the price of that procedure, namely that inevitably

[7] The Parole Board issued 406 cancellation or suspension orders in 2003-04 (Parole Board of Western Australia (2004) *Parole Board Annual Report for Year Ended 30 June 2004)*.

in some cases the choice may be wrong and the lifer on such a program may re-offend.

3.36 Mr Edwards was chosen for the pre-release program and placed in Karnet, a minimum security prison. This was done because, as the evidence disclosed, he had been sufficiently well behaved in prison for a sufficiently long period to be described, by one of those involved in his assessment, as a 'model prisoner'.

3.37 The assessments made, namely that he had changed and that he would not escape, proved wrong. On 11 March 2005 Mr Cross escaped. Mr Edwards anticipated (or so he claimed) that, as the result of the public outcry that would occur, he would be sent back to a maximum or medium security prison. He felt in this a sense of injustice and he saw in this a sufficient reason or excuse for escaping. On 28 March 2005 he escaped. He was recaptured on 8 April 2006. He and other lifers who had been made minimum security (but who had not escaped) were also were returned to a secure prison.

3.38 The decisions involved in placing him on the pre-release program and so in the minimum security prison resulted from three things: assessments made by experienced prison officers that he had changed sufficiently to warrant his inclusion in a pre-release program; the assessment made by the Parole Board, with appropriate assistance, that the relevant Minister should be advised to place him on such a program; and the considered decision of the Minister that that should be done. The processes by which these judgements were made were examined in detail.

3.39 The processes used were within the acceptable limits and at each level the processes were applied with due care. They each proved wrong. This should cause no surprise; dismay but not surprise. The assessments made required that a prediction be made of what a human being (a prisoner) would do. To expect that such a prediction will never be wrong is to ignore reality. Given the damage that may be done if the prediction is wrong, one may expect, and require, that the processes followed and the care used will be of the highest order available. But it should not surprise that, even in such a case, the prediction may prove fallible. Unless the possibility of error is accepted, the processes must be abolished: no lifer should ever be released. By this I do not infer that the processes should not be improved if they can be improved; they should. Or that proper care should not be taken.

3.40 Some prisoners may be placed in minimum security with no real risk if minimum security imprisonment is reserved for those for whom it serves no functional purpose, that is, those who clearly have no risk of re-offending and no desire to do other than to 'complete their time'. The basic function of placement in a minimum security facility is as part of the process by which prisoners who are to be released are to be led not to re-offend. If it is not accepted that a judgement that a long term prisoner (in respect of whom there may be doubt) is suitable to be placed at minimum security can occasionally be wrong, then no such prisoner can be dealt with in that way. The Edwards case illustrates that judgements may be wrong. In anything done in relation to the prison system, that must be central.

3.41 There was a public outcry following the escape of Mr Edwards. There were reasons for it; some were reasoned, some purely (and understandably) emotional. Some who claimed to speak for the public interest did not accept that there should be a system by which lifers could be released into the community in that way. At

least one effect of what occurred was that that assumption was brought into question, and the decision made to return the remaining lifers to secure imprisonment. Few who spoke as part of the public outcry appeared to accept that what had happened should be seen as an illustration of the fact that judgements can occasionally be wrong.

THE PUBLIC OUTCRY

3.42 The significance of public outcry and the attention that should be given to it has been an issue during different parts of the Inquiry. Some have urged that public outcry at the escape of a prisoner or the like should be ignored or discounted and that what is done to a prisoner who has escaped (or to others who come to be dealt with because of his escape) should be determined simply by the merits of the particular prisoners and their history in the prison system. To do that would be to ignore the reality of modern life. Government must react to such an outcry. But it must decide how it reacts to it. It must ensure that it has, or creates, the opportunity to react properly. On several of the occasions that came before the Inquiry, Government felt obliged to react sooner rather than in due course and the result has been as I have recorded. I shall refer to this issue again in respect of other matters. It is sufficient to record the effect that it had in the present case and to indicate that if escapes and assaults are inherent in the prison system, the public outcry that will result from them is also part of it.

3.43 It must be dealt with as one of the deficiencies of a prison system. Any proposal for change of the system must take into account the likelihood of public outcry and the effect of it.

3.44 It was anticipated that the escape of Mr Cross and subsequently of Mr Edwards would lead to a public outcry. It did. It does not require cynicism to anticipate that, if two prisoners with records such as they had were placed in a minimum security prison from which they could readily escape, those claiming to speak in the public interest would be likely to do so. There was a public outcry that the system could allow such a thing to occur. That outcry did not involve a discussion of the merits of the system generally or of the circumstances in which such events could and did occur. But an outcry should have been anticipated and, in my opinion, it is understandable that such an outcry should occur.

3.45 Two things followed that public outcry. The life sentence prisoners on pre-release programs felt injustice at, as they saw it, being returned to a secure prison to placate public outcry against something for which they were not responsible; and the decision was made, to erect or proceed with the erection of fences around minimum security prisons.

3.46 The existing prison ethos (at least as understood by long-term prisoners including those involved in this case) was that prisoners who were assessed as appropriate for the pre-release program had a form of expectation that they would be placed in a minimum security prison be considered for parole or similar treatment under the pre-release program and, if successful, would be released into the community. Several long-term prisoners had, like Mr Edwards, been placed at Karnet. Following the escape by Mr Edwards, they were immediately returned to a secure prison. No assessment was made of the merits of each case. Understandably, they took the view that the Department did what it did to placate public outcry or at least in anticipation of such a public outcry following the escape by Mr Cross.

Others wondered whether that was why it was so and whether it showed the Department of Justice was excessively influenced by political or media pressure.

3.47 The material placed before the Inquiry has indicated that those in the Department of Justice who made the decision to transfer these prisoners to a secure facility stated at the time that their reason was that it was feared by them that other prisoners might take the view which Mr Edwards had taken and might also attempt to escape. What was done was seen by the Department as a proper precaution to remove the possibility of such escapes. But, as the information given to the Inquiry has shown, that response to the Mr Cross case was seen by prisoners as a breach of the prison ethos or understanding and, importantly, had a significant effect upon the reaction of long-term prisoners. It was raised with the Inquiry during its discussion with prisoners.

3.48 The relationship between the public outcry (actual or feared) and the decision to fence minimum security prisons requires closer examination. I shall refer subsequently to the detail of it.

3.49 Following what occurred, the Minister for Justice understandably acted on the view that the structure of minimum security prisons generally should be reconsidered. A decision was taken to have fences erected at Karnet and Wooroloo and in due course at other minimum security prisons. The decision (to erect fences or to proceed with the erection of them) was taken against the view expressed by the officers in question. The fences, if erected, would on the then Government estimates, cost several million dollars: subsequently the estimates of costs ranged up to 12 million dollars or more. The fences were to be erected at prisons from which there had been only a very small number of escapes and, in the view of relevant officers, they would not prevent escapes from minimum security prisons by those who wished to escape. The decision was made without significant discussion of its merits within the Department.

3.50 As was said by the Inquiry at the time when it was revealed to it, the decision was one that was open to Government to make. In the circumstances, it was understandable that there should be some action in reaction to the public outcry. But what occurred is an illustration of the fact that, as a consequence of such public outcry, things may be done that, to put the matter no higher, might have been done differently had they not been done immediately following the public outcry.

3.51 The outcome of these cases illustrates the dangers that can (and often will) arise when public outcry occurs. Those who have the control of the corrections system and the care of it should accept and expect that, when cases such as these occur, there will be a public outcry. It is legitimate that there should be: members of the public may be disturbed that what then occurred can occur and are entitled to make clear, by public outcry and to Ministers and Departmental officers, that the events should be scrutinised. And it is understandable – and perhaps expected as part of modern life – that there may be some who, for reasons of either self, or the public interest, will raise or take part in the public outcry. The public interest in the proper management of offenders requires that this be recognised and that appropriate preparations be made in advance to deal with the problems which public outcry will create. If such preparations are not made, what is done in response to what occurs may do harm rather than good.

3.52 These cases illustrate the dangers. What happened in each case was what can happen and, because of the nature of a corrections system, occasionally will happen. A reasoned response would have been to make that clear, plainly and publicly. But a reasoned response may not be enough; it may be unrealistic to think that it will be so in all cases. Positive action may be necessary and legitimate. But what is done should be done after due examination and consideration; it should not be a hurried response. That is why it is necessary to have in place in advance a protocol or a procedure for dealing with such a situation when it arises.

3.53 As has been emphasised, it is not the purpose of the Inquiry to attribute praise or to allocate blame; it is to record the facts. In this case no procedures had been put in place to deal with public outcries. The decision was taken to spend a sum of large and undetermined size to erect fences around minimum security prisons. The measure had not been properly investigated; the only consideration of it was by an officer who recorded that it should not be taken. That opinion was the opinion of an officer directly experienced in the utility of measures in such prisons. The decision was taken in haste, in the sense that there was no due investigation of its advantages and disadvantages or whether it would prevent what (if any) escapes. Perhaps because it was taken in haste, it was taken on the basis of misunderstandings.

3.54 The Minister (as I accept) believed that the erection of fences had been recommended. It had not: the only advice that can be found was to the contrary. He believed that the erection of fences was decided by the Director General, Mr Alan Piper, in the sense that Mr Piper was a proponent of it. An examination of the documents and the evidence given by, *inter alia*, Mr Piper, makes it clear that what was done did not result from a conclusion reached by Mr Piper that fences were the remedy for what had happened. And it does not appear that officers experienced in the matter believed that fences would prevent escapes or relevantly reduce them. As was remarked, fences would at best mean that those minded to escape would escape during the day rather than at night.

3.55 What emerges from this is not a criticism. It is an illustration of the fact that public outcries will occur, that they should be provided for in advance and that, if that is not done, those who have to deal with public outcries may not do what is best for the prison system. To this I shall refer subsequently when I discuss (as I shall describe it) a 'Public Protocol'.

3.56 As I have indicated, these four cases show that escape, assault, re-offending during re-socialisation, errors of judgement resulting in public outcry are factors which are part of a modern corrections system. But they are important for a further reason. Each of them happened because the offender was in a position to escape or offend and he was in that position notwithstanding that the procedures prescribed by the offender system had been followed.

3.57 Mr Cross was in a minimum security prison because the classification and case management systems saw him as appropriate to be there. Mr Edwards was there because the procedures for judging lifers judged him appropriate to be there. Mr Keating could take a female staff member hostage and assault her because those concerned with his classification and management enabled him to engineer the situation. Mr Mitchell was on parole following the due application of the statutory procedures. The cases illustrate the limitations inherent in the procedures that are

a necessary part of the corrections system. They may produce unwanted results. It is necessary, if it is possible, that the procedures be improved. I shall come to that in considering the corrections system as a whole.

3.58 What occurred in relation to the cases outlined above requires a further conclusion. The corrections system is an important public institution. It serves an important public function. It deserves, and needs, public confidence and support. Without public support, a Corrections Department and its officers will not have the confidence to do what should be done. As the case of Ms Eva Kovak demonstrated, if we have headlines such as "Minister Calls for Scalps"[8] when a prisoner acts as Mr Mitchell did, officers will feel (as was said by several of them) "fear" rather than support and the corrections system will be less than it should be[9].

3.59 Those who have the control and the care of the corrections system should take steps, by way of positive campaign:

- to make the public conscious of what are the public benefits and the limitations of the corrections system;
- to secure the understanding by the public and those who speak for them, of what may occur because of those limitations; and
- to enlist the support of the public and those who speak for them in supporting and improving the functioning of it.

Recommendation 1

Government should take steps, by way of educational campaigns:

- to make the public aware of the inherent benefits and limitations of any corrections system;

- to inform the public of the possible consequences of the inherent limitations of the system; and

- to enlist the support of the public in improving the functioning of the corrections system.

3.60 My suggestions to address the potential problems caused by a public outcry are outlined later in this Report.

[8] T1592
[9] T1995

CHAPTER 4 THE CORRECTIONS SYSTEM

"To understand what it did wrong it is necessary to understand what it is"

4.1 My conclusions are:

- that the corrections system should be administered by a single Department (the Department of Corrections);
- that the method of administration of the prison system should be changed by changing the allocation and exercise of powers between Head Office level and the Prisons (Superintendent) level;
- that five aspects of the corrections administration should be changed:
  - to alter the process by which prisoners are classified and allocated to prisons;
  - to improve the case management system;
  - to revise the system by which programs are provided to prisoners;
  - to reduce re-offending by strengthening the parole process; and
  - to alter the structure and functions of the Community and Juvenile Justice Division

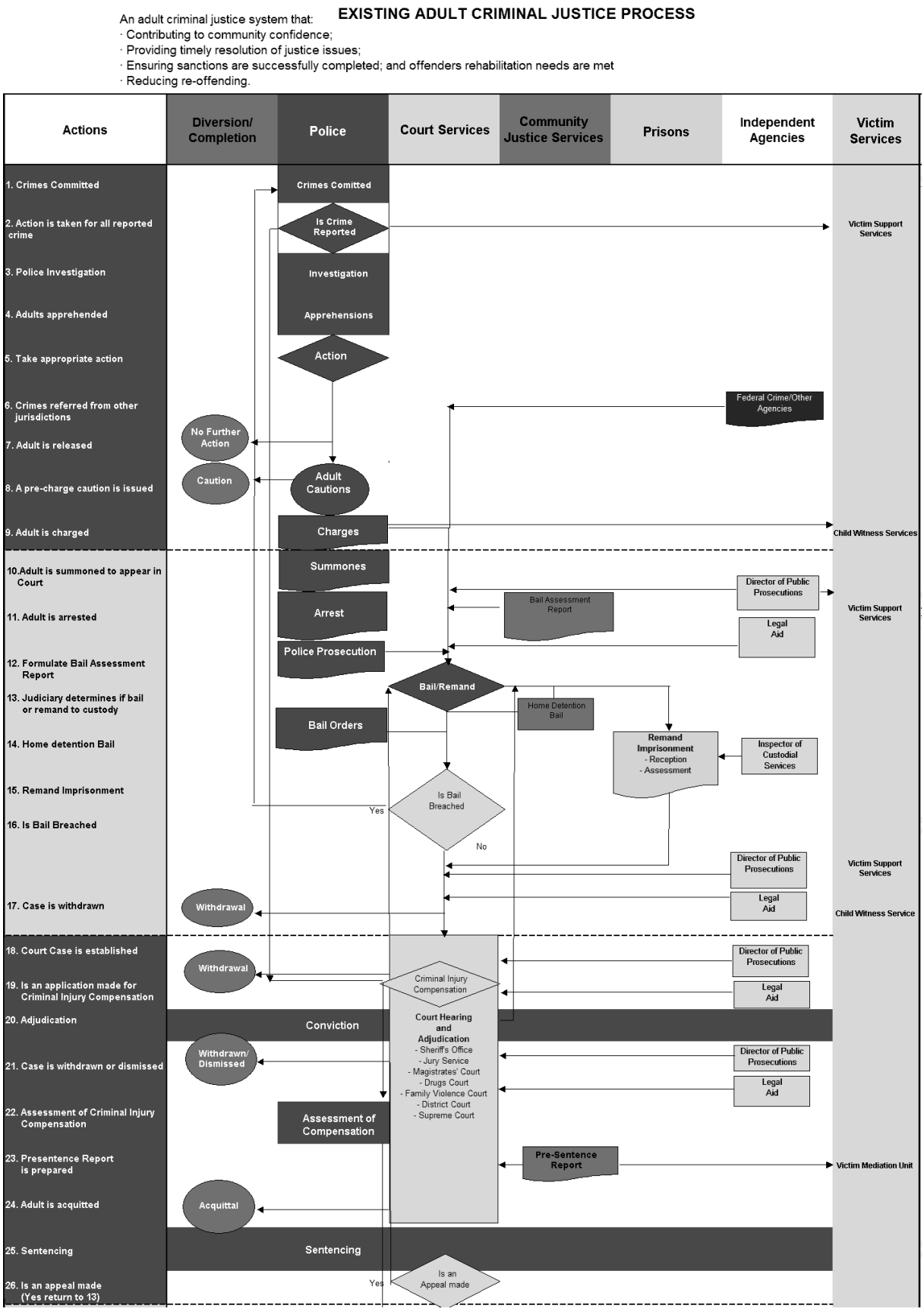
4.2 The changes involved are substantial. To explain the reasons for them I shall:

- outline the basis on which a modern corrections system must be structured;
- discuss particular aspects of the Western Australian corrections system and the Department which administers it;
- outline and discuss the four main aspects of the prison system
  - classification;
  - case management;
  - prisoner programs;
  - re-socialisation and re-offending; and
- Discuss further the reasons for my conclusions.

CORRECTIONS

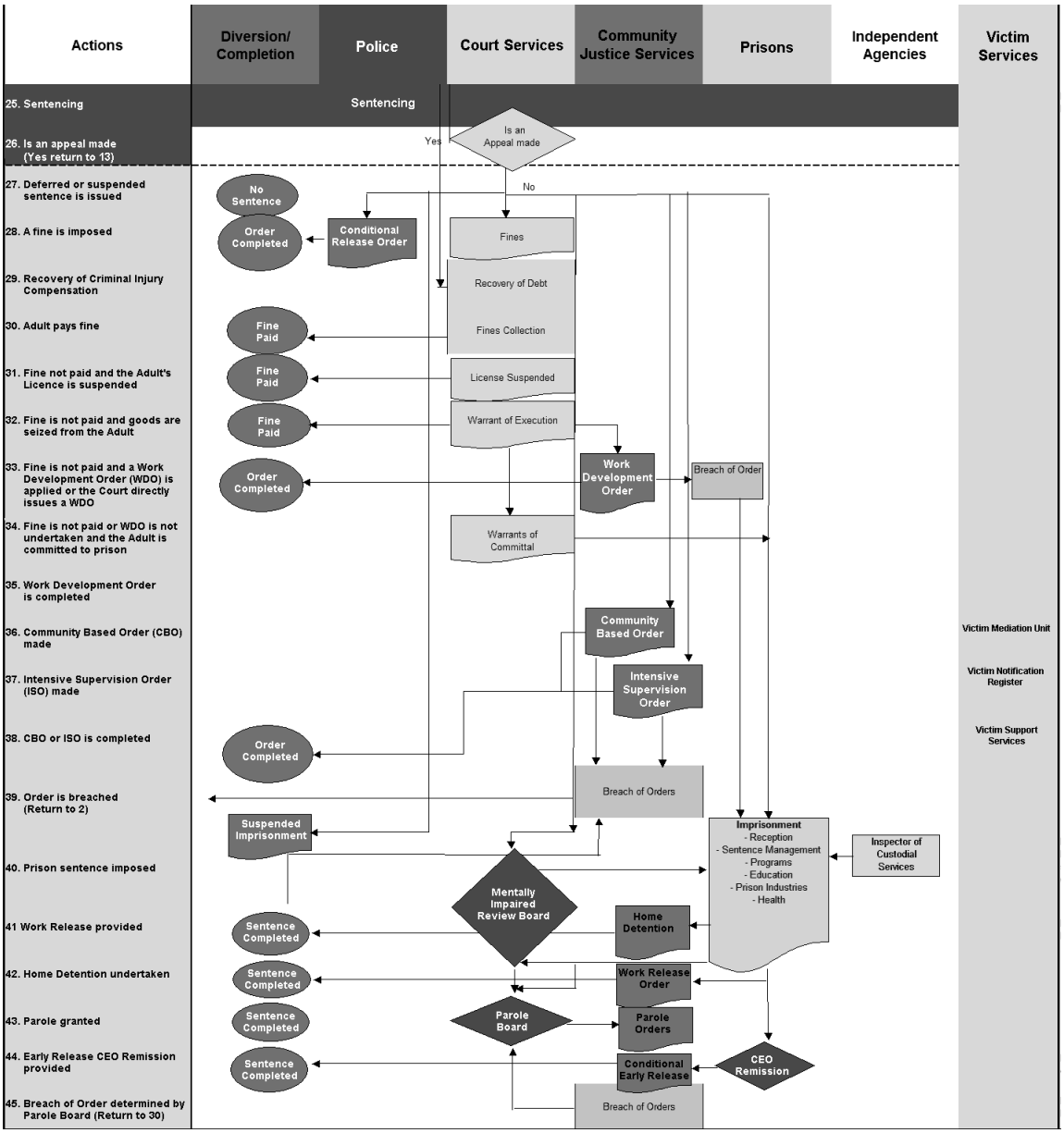
4.3 There is a distinction between a Justice System and a Corrections System. A Justice System is not concerned only with corrections; corrections are part, but part only, of an overall Justice System such as exists in most modern States and in particular, in Western Australia. In order to understand the corrections system, what it is and what it should be, it is necessary to place it in its context.

4.4 Every modern community has two problems: crime is prevalent; and (in the sense to which I have referred) those who have been in prison are, by a significant measure, more likely to commit crimes than those who have not. Therefore the State evolves a Justice System to deal with each of these problems.



The Criminal Justice Process – to Sentencing

Source: Adapted from material provided by Department of Justice



The Criminal Justice Process – Corrections

Source: Adapted from material provided by Department of Justice

4.5 A Justice System, whether it is a comprehensive Justice System or a collection of parts, seeks to do three things: to prevent crime being committed; to deal with those who have committed crime; and to prevent them from committing crime again. In principle this Inquiry is directed essentially to the second and third of these (managing offenders and re-offending). However, to deal with offenders it is necessary to understand the three of them and, to an extent, to deal with them.

4.6 In Western Australia, Government is conscious of the need to prevent crime being committed. Government has set up a body whose function is to consider and advise on this matter: the Office of Crime Prevention[1]. Government has not (or

[1] The Office of Crime Prevention is currently within the Policy Division of the Department of the Premier and Cabinet reporting to the Minister for Community Safety.

not yet) set up a comprehensive structure to attempt comprehensively to achieve that purpose. There are already in existence separate bodies or organisations whose objectives (in whole or in part) involve preventing crime being committed. The Police Service traditionally has that as one of their objectives; the Community and Juvenile Justice System seeks to do that (amongst other things) in relation to Juveniles; and the Department of Indigenous Affairs seeks to achieve that as an incident of what it does in relation to Indigenous people. There is not (or not yet) a body whose objective is the prevention of crime generally and which is directed to evolve and pursue an active program to achieve that objective.

4.7 Government is also conscious of recidivism (re-offending). It is a serious problem. Of those who have been in prison, a large percentage re-offend. Of those who re-offend, many re-offend early and often. In the UK, 58% of all adult prisoners, 72% of 18-20 year-old male prisoners, and 85% of 14-17 year-old male prisoners were re-convicted within 2 years of release[2]. In Western Australia, 63% of prisoners released on parole and 68% of prisoners released to freedom are rearrested within three years[3]. What can be done to prevent re-offending is not clear; what has been done has been effective only to a limited extent.

4.8 Those with whom essentially the Inquiry is concerned within the first of the Terms of Reference are "offenders" that is, those who have committed crimes. Prisons are concerned only with a portion of this class. Those who are sentenced to prisons or apt to be so sentenced constitute only a comparatively small proportion of those who, as offenders, have committed crimes.

4.9 Attempts have been made to calculate the incidence of crime in modern communities.[4, 5]

- Not all crimes committed in the community are reported to Police. Surveys undertaken in 2002, found that in Western Australia, as few as 20.9% of sexual assaults, 27.9% of robberies and 29.1% of assaults were reported to Police. Other crimes were more commonly reported, with 83.7% of burglaries and 96.9% of motor vehicle thefts being reported;
- There were 244,537 crime reports completed by police during 2003, which contained information relating to 310,347 separate offences;
- During 2003 there were 78,909 apprehensions involving 31,490 distinct persons who were charged with a total of 101,482 offences;
- During 2003 the higher courts finalised 9,920 charges, involving 3,229 distinct persons. 78.5% of these charges resulted in a conviction. The lower courts finalised 115,873 charges, which were laid against 43,126 distinct persons. 96.5% of these charges resulted in conviction.

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[2] Social Exclusion Unit (2002) *Reducing re-offending by ex-prisoners*, Social Exclusion Unit, Office of the Deputy Prime Minister, London.

[3] Department of Justice (2005) *Does Parole Work?* (unpublished)

[4] SCRGSP (Steering Committee for the Review of Government Service Provision) 2005, *Report on Government Services 2005*, Productivity Commission, Canberra.

[5] Fernandez, JA et al (2004) *Crime and Justice Statistics for Western Australia: 2003*, University of Western Australia Crime Research Centre, Perth.

4.10 The corrections system generally and the prison system in particular is, as it has been described, "the last resort" of a proper Justice System. The conventional approach, with which I agree, is that convicted offenders should, unless it is inappropriate, be diverted from the Prison System, that is, dealt with by means other than imprisonment.

4.11 The legislation in Western Australia provides a number of options for dealing with offenders other than that of prison. Section 39 of the *Sentencing Act 1995* sets out the wide range of sentencing options available to a court in Western Australia. These are:

- release without sentence;
- conditional release order;
- fine;
- community based order;
- intensive supervision order;
- suspended imprisonment; and
- imprisonment - fixed term; prescribed term; or life term.

4.12 In considering the options other than imprisonment, two questions at least must be asked:

- whether there are sufficient options; and
- whether the administrative procedures available make the options effective.

4.13 The material before the Inquiry does not indicate that there is a deficiency of options required for dealing with Offenders. The substantial number of the offenders who are brought towards or to the Courts are dealt with by use of non-prison options:

4.14 Fines were the most common sanction used by the lower courts in 2003, accounting for 67.5% of convicted charges, followed by non-custodial orders (18.8%), custodial sentences (7.7%) and dismissals (6.1%). Imprisonment was the most common penalty handed down by the Higher Courts. Prison sentences were imposed on 59.2%; non-custodial sentences on 37.8% and fines on 2.9% of all conviction charges.

4.15 With exceptions (mainly related to distinctions between what relates to criminal and what is concerned with the general good), Judges have not indicated a lack of suitable options.

4.16 The extent to which the options work efficiently to achieve their objectives is less clear. Some of these options involve Community Service Orders, ie obligations placed upon offenders to do work or otherwise act in the community without imprisonment. The community correction system (set up under the *Sentence Administration Act 2003*, and delivered by the Department's Community and Juvenile Justice Division) has a role in monitoring and assessing the performance of offenders under such orders. I shall subsequently consider in more detail the performance of the community corrections system. It is sufficient at this stage to refer to some of the material that has been gathered in this regard.

4.17 Essentially the objective (at least one of the main objectives) of sentencing options is the reduction of re-offending. Experience has shown that those who have been in prison are more likely to re-offend than those who have not and, it is assumed, this is in part a result of having been in prison. The assumption is that, if an offender is not sent to prison, his likelihood of subsequently re-offending will be less. Whether a person who re-offends does so because he has been in prison or whether he has been in prison because he is the kind of person who (from circumstances or otherwise) is more likely to offend remains to be determined.

4.18 Whether this latter assumption is correct is not clear. Information provided to the Inquiry by the Department of Justice showed that Offenders on Intensive Supervision Orders (48%) were more likely to offend whilst on an order than parolees (37%) or offenders on Community Based Orders (38%)[6]. In the United States of America, there has been a detailed examination of whether those dealt with by non-prison options have thereafter offended less. Stated generally, the conclusion there has been that options do not achieve that objective; more accurately the conclusion has been that the extent to which that objective is achieved is less than has been hoped for or at least assumed[7].

4.19 Whether results obtained in relation to the American experience should be accepted as indicating what will happen in this country is not clear. Foreign results are transferable only to a limited extent; they may suggest ideas but not results. Particularly is this so in a jurisdiction where, as in Western Australia, a large component of offenders consists of Indigenous persons. For the purpose of determining effectiveness of justice mechanisms to prevent re-offending, Indigenous offenders are different.

4.20 There are some details of the Western Australian experience that suggest that a variety of sentencing options should be maintained. Judges concerned with sentencing have expressed the view that, in general, the options now available are sufficient.

4.21 It is necessary not merely to have options but to monitor the results achieved by them. To an extent the Community and Juvenile Justice Division monitors the Orders which are made by Courts for, as an example, community work as an alternative to prison. The Community and Juvenile Justice Division (now part of the complex of provisions made by the State to deal with crime) operates at two stages. At the first stage, it provides options for dealing with those who have committed crime. It monitors and assists those who have been placed on Community Based Orders. At the second stage, it provides assistance to those who have been dealt with for committing crimes to assist them to avoid re-offending. I shall subsequently refer in more detail to the community justice system and suggest the desirability of moving to an overall or more comprehensive Justice System.

4.22 In this context, I come to discuss the prison system as such.

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[6] Department of Justice (2005) *Community Based Order and Parole Order Breach and Reoffending Analysis.* Information prepared for the Inquiry by Department of Justice.

[7] Sherman LW et al (1997) *Preventing crime: what works, what doesn't, what's promising: A Report prepared for the United States Congress by the National Institute of Justice*, http://www.ncjrs.org/works/.

CHAPTER 5 THE PRISON SYSTEM

THE CONCEPTUAL APPROACH TO A PRISON SYSTEM

5.1 As the *Fitzgerald Report* properly indicated, prison systems are best understood and managed by reference to "Outcomes", that is, the objectives that they are directed to achieve. The objectives the Department has established for its prison system are:

- **Custody** - Prisoners are to be kept in custody for the period prescribed by the Court at a level of custody (security) commensurate with the risk they pose to the safety and security of the community and others;
- **Duty of Care** - Prisoners' care and well-being are to be maintained;
- **Reparation** - Prisoners are to continue to contribute to the community through work and make good the harm done by their offending behaviour;
- **Reduce Re-offending** - Prisoners are to engage in programs and activities that reduce re-offending.

5.2 What a prison system is at any time will depend on what are the objectives that, at the relevant time and in the relevant society, members of the society wish the prison system to achieve. The objectives of the prison system have changed from time to time and have differed from place to place.[1]

5.3 Western Australia's first public building, the Round House, which was built in 1831 two years after the colony was founded, served as place of detention, court house, and place of execution. Although Western Australia was not originally established as a penal colony, it soon sought and was granted the cheap labour convicts could provide. On 1 June 1855 the first convicts transferred into what was later to become Fremantle Prison. Incarceration, solitary confinement, and corporal and capital punishment were all practised at Fremantle Prison during its history.[2] Between 1838 and 1931 Rottnest Island was a penal establishment for Indigenous people. Some 3,700 Indigenous men and boys, from many parts of the State, were imprisoned there and 369 of them died.[3]

5.4 Prisons have evolved from the brutality of punishment (as in the early days of transportation of convicts to New South Wales and the sadism on Norfolk Island during 1825-1836) through the 'warehousing' of prisoners (essentially confining them from the beginning to end of their sentence), to the present system of 'managing' prisoners.[4]

5.5 The management system is the system now generally accepted in Australia, England, Canada, New Zealand and various parts of the United States of America. In some parts of the world, the warehousing philosophy is, in one form or another,

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[1] Irwin, J (2005) *The Warehouse Prison - Disposal of the New Dangerous Class* California State University, Fresno.

[2] Department of Housing and Works, Fremantle Prison, Fremantle Prison: The prison and W.A. History. http://www.fremantleprison.com.au/history

[3] *Rottnest Island Penal Establishment for Aboriginal People*. http://www.rottnestisland.com/rotto/history_and_heritage/penal_aboriginal/

[4] Cullen, B & Dowding, M & Griffin, J (1988) *Corrective Services in New South Wales,* The Law Book Company Limited, Sydney.

still pursued[5]. However it is the management system that is, and should be, adopted in this State.

Recommendation 2

The overarching philosophy of managing rather than warehousing offenders should be retained in Western Australia.

5.6 Western Australia has been said, at times, to be or to have been in the forefront of the evolution of prison systems. The Government of Western Australia, by legislative and executive action, has in general adopted the management philosophy. For the reasons that will appear generally in this Report, in my opinion the management system is the system appropriate to a society such as exists in Western Australia.

5.7 The State would not wish to, and should not, return to earlier systems. But a balance must be maintained between management and discipline. In a system based on punishment, discipline is more easily maintained. In a management system, which emphasises persuasion rather than punishment, the maintenance of discipline and staff safety raises different problems. To this I shall refer later. Those problems can be accommodated.

5.8 In considering the form of a prison system, in explaining how it is to operate and in evaluating its operations, it is necessary first to examine its components and underlying conceptual components. Unless its conceptual components are correct and are correctly understood, the system will not work as it should. Those concerned in operating it will not know why they are doing what they are doing; they will not know the objectives they are trying to achieve. As happened in relation to prisoner classification and case management they will take the steps that the Director General's Rules prescribe, but will not make them work.

5.9 The components of a prison system conventionally are seen as:

- the objectives to be achieved by the system;
- the strategy (the general means) for the achievement of the objectives;
- the tactics by which the strategy is to be put into effect; and
- the logistics (the resources required for the achievement of those objectives).

5.10 This formulation adopts or develops the language used in the *Fitzgerald Report* and in some portions of the documents formulated by the Department of Justice.

5.11 The conceptual components of the Western Australian prison system accord in general with the conventional understanding of what they should be. However, they are assumed rather than articulated. It would assist in the training of those administering the prison system, and their day to day operation of it, if these components, the differences between them, and their respective functions were stated in terms and emphasised. As the experience of the Department of Justice has shown, problems arise when the distinctions between objectives and means is not understood and maintained. A statement of the conceptual components of the prison system and its objectives should form a prominent part in the Annual Statements of the Department of Justice and be part of the training of its officers.

[5] Irwin, J (2005) *The Warehouse Prison - Disposal of the New Dangerous Class*, California State University, Fresno.

Recommendation 3

The Department should develop unequivocal objectives for the corrections system that form the basis of all policies and actions of the Department.

THE OBJECTIVES OF THE PRISON SYSTEM

5.12 It is important that the objectives of a prison system, and in particular of a prison system which deals with Indigenous people, be clearly formulated and clearly understood by those who are to administer it. Concentration upon the means to be employed can, and sometimes does, obscure what is to be achieved by the use of those means.

5.13 The objectives of a modern prison system may be stated in various ways[6]. For present purposes they may be stated as follows:

- to punish the offender for his offence;
- to vindicate and uphold the law;
- to keep the offender in prison securely;
- to keep the offender and those involved with him safe;
- to habilitate and rehabilitate the offender; and
- to provide reparation to society and to those injured.

5.14 In view of public reactions and responses to the prison system and to some of the incidents of them, it is important that Government emphasise some things in relation to the objectives of a prison system that, though plain to penologists, are understandably not always apparent to those who are affected by the operation of the system.

5.15 A society ordinarily sees punishment as a necessary objective of the conviction of an offender. It is not necessary for present purposes to consider the extent to which this should be so. It is presently an objective of a modern prison system. But it is important to emphasise that the fact of imprisonment itself is a punishment, and a punishment the effect of which is substantial. Those who have been in prison and those who have seen the effects of imprisonment will recognise this. Accordingly, it is not necessary that a prison system be directed in particular to increasing unnecessarily the burden of that punishment. Subject to what I shall say, imprisonment is ordinarily a punishment sufficient in itself. But there is, as it has been described, the "country club" criticism.

5.16 The management system envisages that, as an element in the management of prisoners, they will be provided with amenities. In many, if not most, prisons, the prisoners are provided (in addition to the ordinary elements of subsistence) with television, radio, access to a telephone, library or reading facilities, and sporting amenities. Classes are provided for them which may, according to circumstances, include classes in art, literacy and computer training. In some prisons, prisoners may, from their earnings in prison purchase goods available inside and, in some places, outside the prison.

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[6] Law Reform Commission New South Wales (1996) *Discussion Paper 33: Sentencing*, http://www.lawlink.nsw.gov.au/lrc.nsf/pages/DP33TOC

5.17 Government should ensure that a proper balance is maintained between a prison system that is and will be seen as a sufficient punishment for the crime committed, and one that provides the amenities necessary to the modern management prison system. Those who would otherwise be critical of such a prison system should accept that the provision of amenities of appropriate kinds is, within limits, a necessary part of a modern and humane prison system.[7] In a proper prison system, such amenities (as well as parole systems and the like) are used as incentives to procure proper conduct by prisoners while in prison. They are reduced or withdrawn if prisoners do not act appropriately. A regime of this kind is part of the overall means of managing prisons in the kind of prison system now accepted as appropriate. In the end, notwithstanding such amenities, the resulting prison regime is a punishment of a significant kind. It is far from a "country club".

5.18 An objective of a prison system should be the vindication of the law. In principle, the community will not see law as vindicated, and so will be less inclined to observe it, unless those who break it are dealt with and punished. It is necessary that a proper balance be maintained between, on the one hand, the proper management of the prison system and what that requires and, on the other hand, the maintenance of the public acceptance that the law is vindicated by an appropriate punishment of breaches of it.

5.19 This is a matter that has assumed importance in the public discussion of whether serious offenders such as lifers should be granted parole or otherwise allowed out of prison. In principle, the sentence imposed is the sentence required to, *inter alia*, vindicate the law. On that basis, if the prisoner does not serve the sentence imposed, there has been an insufficient vindication of the law. Members of the public may see it as such. But there are other principles and other practicalities. If a prisoner will not re-offend but will do good, justice may require that he be released before the end of his sentence. Practicalities such as the cost and effectiveness of the prison system, may support such a course.

5.20 A Government should accept that there are some offences so serious that vindication of the law requires that the offender never be released, notwithstanding that the offender will not re-offend. Those administering the prison system should not lose sight of the fact that the community may require, and properly require, that such an offender be not released. There is always a danger that (acceptable) vindication may cloak (unacceptable) malice or revenge. It is the duty of those deciding such matters, at Ministerial and Departmental levels, to ensure that their decisions are made on principle. If decisions are made (or seen to be influenced) merely to placate a public outcry, public support for the prison system will be lost and, as in the Edwards case, confidence in it, by staff and prisoners, will be destroyed.

5.21 It is accepted that prison security and prison safety are together essential objectives of a prison system. To these objectives I shall refer in detail subsequently.

5.22 It is also accepted that one of the objectives of a modern prison system should be the habilitation and rehabilitation of the prisoners. Habilitation involves, in a

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[7] See Article 10, *International Covenant on Civil and Political Rights*. United Nations General Assembly resolution 2200A (XXI) of 16 December 1966; *Basic Principles for the Treatment of Prisoners*. Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990; the *Standard Guidelines for Corrections In Australia.* (2004); and Coyle, A (2002) *A Human Rights Approach to Prison Management,* International Centre for Prison Studies, London.

general sense, the raising of prisoners to what they should be; rehabilitation involves the restoration of those who are less than they have been. Both of these objectives can and should be pursued to the proper extent. For instance, prisoners who cannot read or write should be taught to do so or at least offered the possibility. The literacy and numeracy of Indigenous prisoners and their health standards are matters to which attention should be directed. Those who have been damaged by prison will be more likely to re-offend if, when released, they are less able to cope with community life than otherwise they were able to do. The following quotes illustrate this:

> *"…70% of sentenced prisoners who exited prison were charged with a new offence (82% Aboriginal and 58% non Aboriginal)…*
>
> *…the majority of Western Australian prisoners have limited educational and employment histories. Offenders in the sample had on average only limited educational achievement with 88% reporting year 10 or below. Of these, 78% indicated that they did not achieve a Year 10 level. In addition only 27% of prisoners indicated that they were employed prior to being imprisoned and 44% had never or rarely had employment…*
>
> *"…almost half (47%) of the sampled offenders had some form of physical health problems. The data indicated that these problems were primarily Hepatitis C, Asthma, Cardiac problems, Epilepsy and Diabetes…".*[8]

5.23 The Western Australian prison system seeks to achieve habilitation and rehabilitation. Its approach to these matters will require further consideration. What is done and the need to do it may not be universally accepted or understood in the community. The Department should see the continuing education of the public in this regard as one of its purposes.

5.24 In a modern prison system, significant resources are devoted to this objective. Some of the facilities provided to prisoners are sometimes thought to be superior to those that are available to the ordinary citizen. I shall subsequently refer to some of the aspects of the programs available. It is sufficient to say that expenditure of this kind, within proper limits, is both justified and justifiable on various grounds. In a practical sense, facilities for this purpose assist in maintaining quiet and security within the prison. They may also, equally importantly, help to reduce re-offending by prisoners after they leave the prison. And they may fulfil the humanitarian objectives of a State to do what is appropriate to improve the condition of those who need help.

5.25 Reparation and similar objectives involve compensating the State and those who have been injured by crime. The State now provides adequate measures of this kind. It is therefore a matter on which specific recommendations are not needed. How far reparation can effectively be extracted from offenders requires continuing monitoring. If hardship is to result from crime, it is in principle better to be borne by the offender than by the victim. But to enforce reparation where it cannot be

[8] Department of Justice (2002), 'Adult Recidivism Research Project – Key Offender Characteristics', *Research Bulletin #2*, Perth.

enforced may do harm rather than good. Reparation is a proper objective. What should be done to achieve it is more difficult to determine. .

THE STRATEGY

5.26 It is necessary that those controlling a prison system determine the overall strategy to be adopted in achieving the agreed objectives of the system. In any overview of a prison system, as this Report is, it is important that, having formulated clearly the objectives to be achieved, attention be directed to the strategy, ie, the main approach or approaches to be adopted to achieve each of the objectives. I agree generally with the emphasis that was placed on this in the *Fitzgerald Report*.

5.27 In other times and at other places the strategy to be adopted in the controlling of a prison system has varied. The strategy to be adopted in achieving containment ("warehousing") will be different from that to be adopted in achieving a management system of prisons. In the present context, the objectives, which in the main require particular attention in the formulation of strategy, are those fundamental to the management system. These are: security, safety, habilitation and rehabilitation and reducing offending. I shall concentrate mainly on these. As I shall indicate, the strategy that underlies what is to be done in the present prison system, *viz* the management of prisoners, is directed to achieving these objectives.

TACTICS

5.28 If the objectives and the strategy of the prison system are formulated, it is necessary to determine the tactics for achieving this, ie, the means of achieving the proper management of the prisoners.

5.29 Prison management involves basically that prisoners will be fed, housed and accommodated. A prison system must, of course, be administered effectively (to achieve its objectives), efficiently (using no more resources than is necessary) and timeously (without delays). The day to day administration of a prison must be carried out at an acceptable level. Nothing has emerged during the Inquiry to suggest systemwide corruption or intentional misconduct; at least, it has not appeared that the day to day administration of the prisons raises problems of that kind. But the management of a prison system goes beyond mere honesty in its day to day administration. It seeks to do other things. It is in these things that problems have arisen and in respect of which changes are required.

5.30 The now conventional tactics for doing what a prison system requires are in the main four:

- the **classification** of prisoners, ie, the determination of the degree of security required for the safe and secure custody of the prisoners;
- the **management** of prisoners on an individual case management basis
- the **habilitation** and **rehabilitation** of prisoners by engaging them in courses within the prison and
- the **re-socialisation** of prisoners who (by parole or by other means) are to return to ordinary community life to reduce re-offending.

5.31 The Department has properly concentrated its main efforts upon them. I shall consider each of them in examining the present system.

LOGISTICS

5.32 When objectives strategy and tactics have been settled, it is necessary to agree upon the logistics of the operation of the prison system. It is necessary to determine what resources are required to achieve the objectives by the tactics agreed upon. To do what these things require, it is necessary that the prison system have the necessary resources of people, procedures and money. These require that a prison system have, *inter alia*, sufficient staff, agreed procedures appropriate to the achievement of the objectives by the agreed strategy and tactics; training in the application of the procedures necessary for these things; and sufficient money to finance what is to be done.

5.33 As I have said, I have emphasised the conceptual components of the present modern prison system because, as the history of the prison system in Western Australia shows, it is important that those concerned with the system both those concerned with the policy and the development of it and those concerned with the day to day administration of it have clearly in mind the distinction between ends and means. It is equally important that those concerned with the day to day administration of the system understand not only what is to be done but why it is to be done. It is important that (as has happened in the present case) the means to achieve the agreed ends do not become ends in themselves or that the performance of the things prescribed to be done be not seen as sufficient. It is not enough to prescribe by Rules the detailed steps to be taken in the case management of prisoners if the case officers are not told (and convinced) of why they are taking them. What is to be done is to be done for the purpose of achieving the objectives of the prison system. In the formulation of administrative procedures and the training of personnel, what is involved should be made clear. I agree with the proposal of Counsel Assisting the Inquiry that, in legislation and in administrative directions, the objectives to be achieved should be stated in clear terms. It should be shown that the means prescribed for them are directed to the achievement of those objectives.

5.34 The majority of recommendations in this report can be progressed without the need for significant legislative change. Whilst some amendments to the *Prisons Act 1981* and other statutes will be required, many recommendations can be implemented administratively. However, Government may wish to enact a new *Corrections Act*, to incorporate clear objectives and better integrate the management of offenders in custody and in the community. This will, of course, depend largely on the legislative agenda of the Government during the coming year, however administrative action in relation to recommendations can proceed ahead of any legislative change.

Recommendation 4

Government should consider enacting a *Corrections Act* that brings together the administrative components currently contained in the *Prisons Act 1981*, *Sentence Administration Act 2003* and other cognate legislation. In this regard, recommendations 96 to 103 contained in the Closing Submissions of Counsel Assisting should be considered.

Recommendation 5

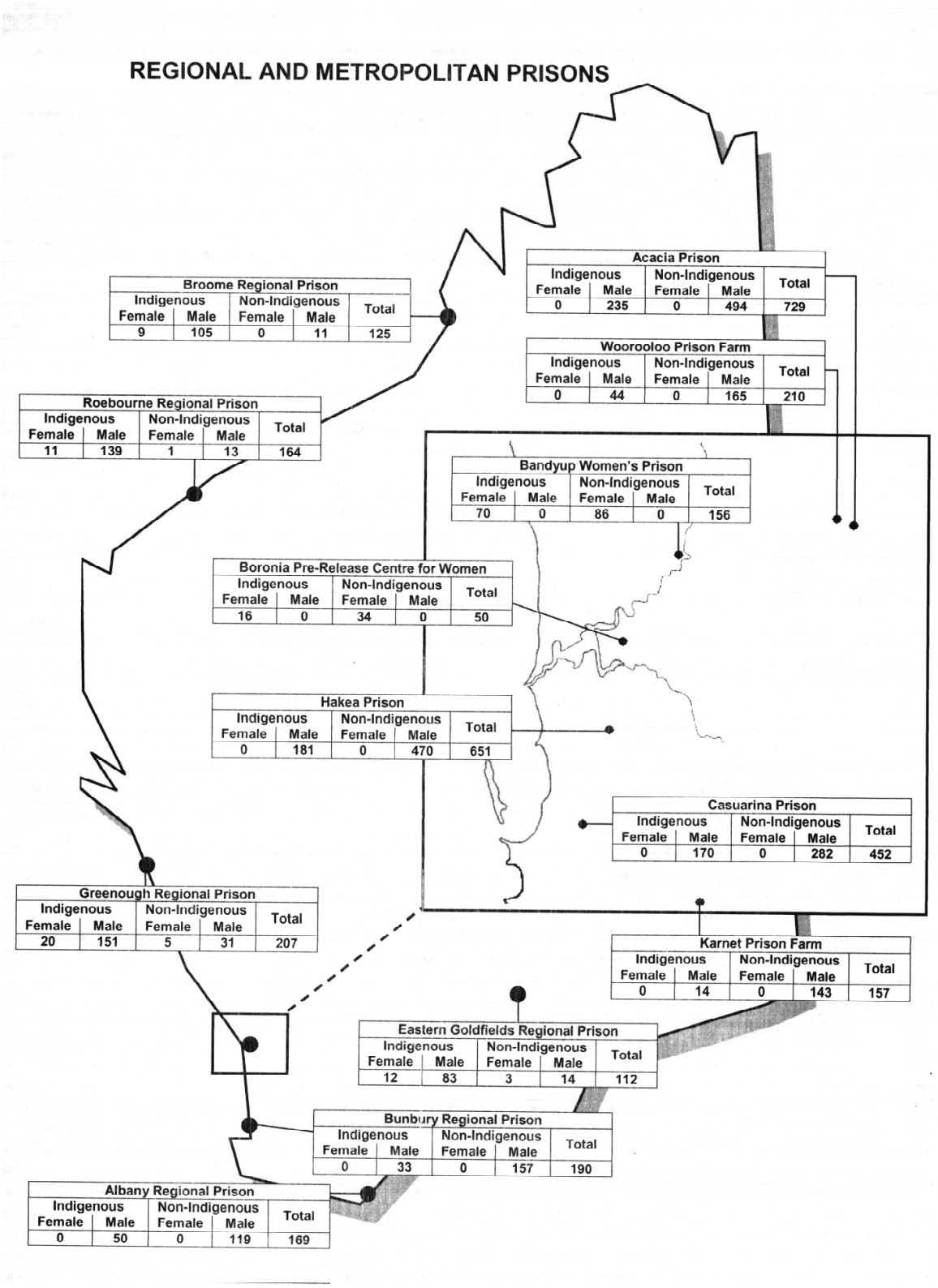
The *Corrections Act*, if enacted, should set out in the legislation itself the objectives and principles of the *Act*. Those objectives and principles would be specific to the operational issues involved in offender management.

5.35 I have placed emphasis upon these matters because, in this State, the processes prescribed for the administration of the legislation regulating the prison system did not make clear these distinctions. In the structuring of the Department of Justice in relevant respects, the allocation of duties and powers has not been carried out in a way that observes these distinctions. The Departmental personnel charts, as they existed at the commencement of the Inquiry, do not appear to be based upon these distinctions. The experience of Departmental officers and others has suggested that the administration of the Department did not proceed in a way that recognised the distinctions appropriately.

5.36 The emphasis should be changed. In matters of administration, form (and power) should ordinarily follow function. The functions, which have been imposed by legislation upon the Department of Justice and the prison system, have not followed conventional or classic administrative lines. It has apparently been felt necessary that functions normally performed at prison level be performed or at least be regulated by those at Head Office. On occasions, particular arrangements or re-arrangements at Head Office level have been set up to perform those functions appropriate to be dealt with at prison level. Officers have pointed out that, from time to time, Departmental structures have been created that in due course have been seen to be inappropriate for the function for which they have been created. I shall refer to these matters in more detail when I come to examine the structure of the Department.

PLANNING FOR CUSTODIAL FACILITIES

5.37 In Western Australia there are 12 public prisons and one private prison. There is for female prisoners one public prison (Bandyup) and a Pre-Release Centre (Boronia). Female prisoners are also accommodated in the regional prisons at Broome, Eastern Goldfields, Greenough and Roebourne. The rest of the prisons are for males. The details of the prisons, the number of prisoners in each of them and the categories of prisoners are shown in the accompanying Figure 1. I shall deal here with male prisons. Female prisoners will be dealt with separately.

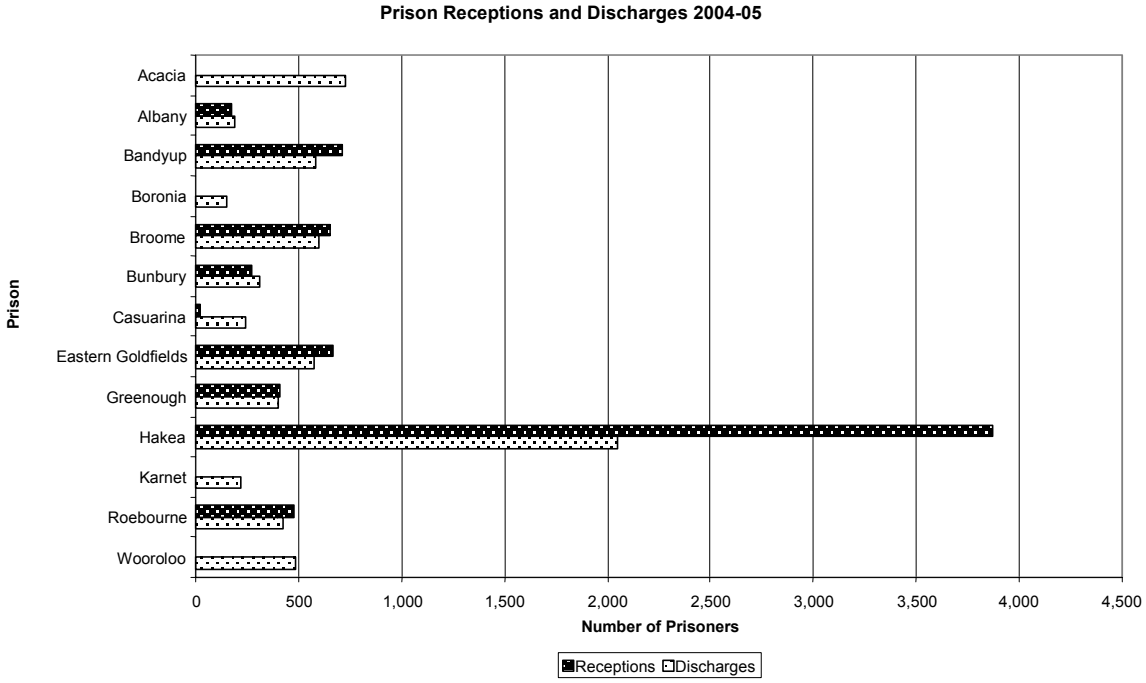


Prisons in Western Australia

Source: From information provided by the Department of Justice.

5.38 The number of prisoners on a particular date does not indicate the number of prisoners who, during each year, pass through the prison. This latter number is of importance in understanding how, on a day to day basis, each prison works and what is to be done within it. Thus, the staff and other facilities required at the

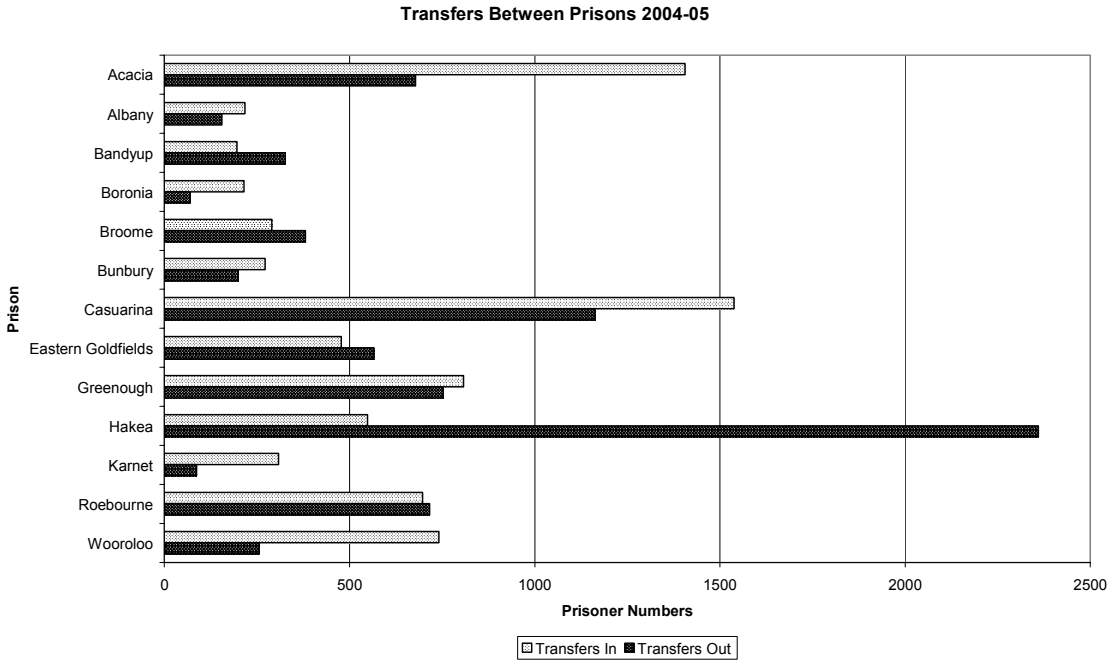
Hakea Receival and Assessment Centre are determined not by the number of prisoners at the prison on any day, but by the number of prisoners who, during the relevant periods, pass through the prison and require to be serviced by its facilities.



Prison Receptions and Discharges 2004/05

Source: From information provided by the Department of Justice.

5.39 The number of prisoners who pass through the various prisons each year as a result of transfers between them is also substantial.



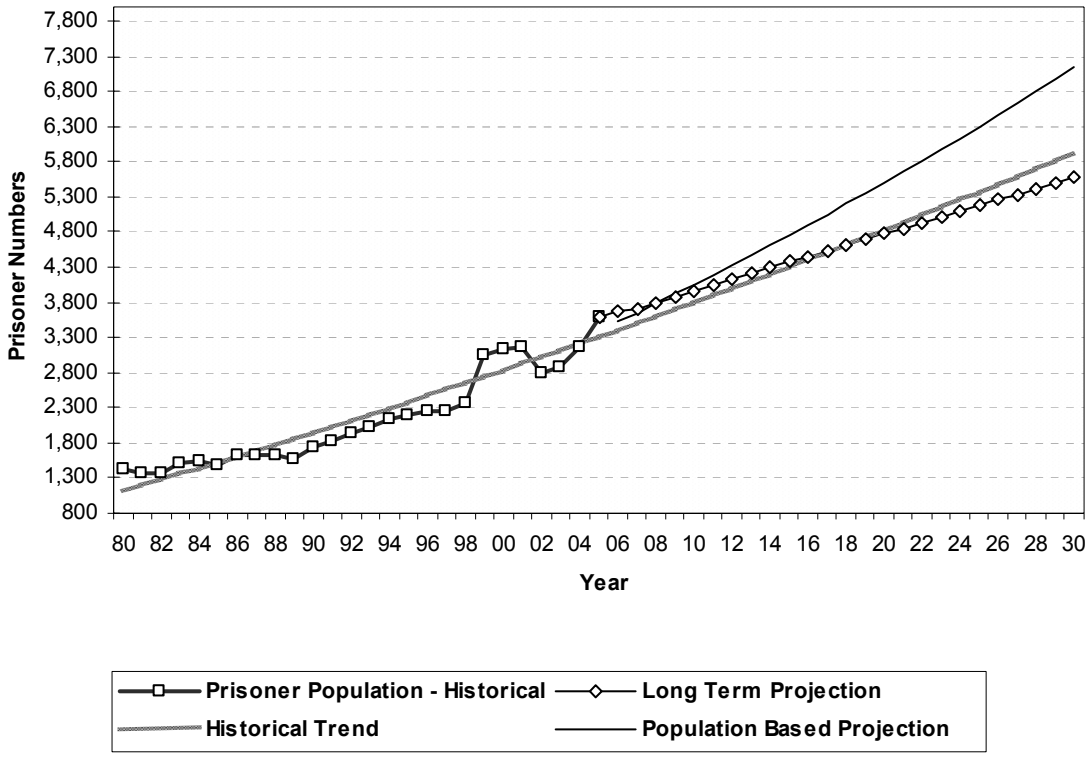
Transfers Between Prisons 2004/05

Source: From information provided by the Department of Justice

5.40 Acacia Prison is presently under the control of a private contractor. It has been announced by Government that the position of that prison and the control of it is to be reconsidered at Government level. The Inquiry has visited that prison and discussions have been had with those operating it. Reference has been made to the contractual arrangements under which the prison is operated; in particular, to the conditions imposed stipulating the standards of performance and reporting required of the operator. The prison has been the subject of examination and detailed reporting by the Inspector of Custodial Services. The work of the Inspector has been considered and has been discussed with him as part of the Inquiry.

5.41 The position of Acacia Prison is one of the matters upon which the Inquiry is to *"*seek and have particular regard to the opinions and findings of*"* the Inspector. In view of what is to be done in relation to it, the Inquiry has not itself examined in detail the management of the offenders within that prison. In general, the Inquiry's examination of the position at Acacia Prison has not disclosed anything warranting that it differ from the views expressed by the Inspector.

5.42 The number of prisoners in the prison system is increasing. This has imposed, and will continue to impose, pressure upon the use of present facilities (the need to extend the number of available occupancies, the need to "double-bunk" and the like).



Prison Population 1980-2005 with Projections to 2030

Source: Adapted from information provided by the Department of Justice

5.43 The increasing number of prisoners will involve the need, to program the construction of additional custodial facilities. The existing and future problems in this regard have been recognised by the Department of Justice and are emphasised from time to time in the Reports and other publications of the Inspector of

Custodial Services and are generally understood. The Department has published its views as to the long term development of the prison system. In a draft report currently being considered by the Department, it notes:

> *"…the prison system is currently experiencing:*
>
> - *a serious undersupply of accommodation in the Eastern Goldfields and Kimberley regions;*
> - *limited capacity to manage very high security offenders;*
> - *an undersupply of minimum security beds in the Perth metropolitan region; and*
> - *a shortage of appropriate secure women's accommodation in the metropolitan area to cater for a highly variable women prisoner population.*
>
> *…Prison population growth has already created acute bed shortages. This has led to double-bunking and overcrowding, with a range of consequences for the prison system, including:*
>
> - *an inability to place prisoners in prisons close to their home residence, where support can be provided by families and community;*
> - *increased tension within the prison population, which impacts on safety and security for prisoners and staff;*
> - *an inability to deliver programs and services to support re-entry to the community; and*
> - *increased incidence of self-harm, suicides and escapes…."*
>
> *"…There is an urgent need for a continuing program of refurbishment and renewal, driven by:*
>
> - *continually changing demands on services;*
> - *the need to meet building code standards;*
> - *general overuse of facilities; and*
> - *the need to phase out facilities that have reached the end of their lifespan."*[9]

5.44 The Department has also examined the various factors that are likely to have an effect in the future. Of particular significance are those changes and improvements taking place in policing that are resulting in the apprehension of more offenders, particularly in regional and remote areas. As police clearance rates improve, more people are brought before the Courts and, if found guilty of an offence warranting punishment by imprisonment, more prisoners result. As the Department notes in its report:

> *"The trend for an increased rate of growth in the prisoner population is likely to continue. This is due to:*

[9] Department of Justice (2005), *Prisons Capital Investment Plan 2005-2030*, Draft September 2005, Unpublished.

- *ongoing WA Police initiatives including:*
  - *'Frontline First';*
  - *domestic and family violence crackdown; and*
  - *Crime Link Unit, targeting repeat offenders.*
- *addressing Gordon Inquiry recommendations;*
- *changes to the Criminal Code;*
- *the continued impact of the DNA legislation; and*
- *implementing Skinner Report recommendations regarding high risk offenders on parole."*

5.45 The Inspector of Custodial Services has, prior to the Inquiry, referred to the necessity for the expansion of prison facilities. In his Report to the Minister for Justice, he has expressed in detail his conclusions as to the need for additional prison facilities, both generally and in relation to Indigenous prisoners. This is a matter which, having regard to the time available for this Inquiry, it is not possible for the Inquiry to consider in detail. I have elsewhere referred to the issues of general policy that require attention and to what should be done in relation to them. It is sufficient here to record that:

- given the ongoing increase in the number of prisoners and the length of prison sentences, it is necessary to commence immediately the planning for, and the construction of, additional prison facilities;
- ongoing attention should be given to the creation of means by which Indigenous offenders may be diverted from the prison system and otherwise dealt with in a manner appropriate to Indigenous people; and
- it is necessary, in the light of the increase in the proportion of Indigenous offenders within the prison system, that special planning be undertaken to provide prison facilities appropriate to the needs of such prisoners.

5.46 The form of prisons generally has been considered in the Department's examination of future needs and in the Report of the Inspector of Custodial Services. It is not envisaged by the Terms of Reference that this Inquiry examine in detail the future forms of prisons generally or that it make recommendations as to the details of prison construction. However the following conclusions should be drawn:

- The form of ordinary prisons should continue to be determined by the planning processes used by the Department.
- Planning of changes in existing prisons and for new prisons should proceed upon the 'Regional Prisons' basis. Regional Prisons should be so constructed that there is provision for containing prisoners of all levels of classification so that there is no need to transfer prisoners to other areas or prisons because of the lack of facilities in the region for the containment of prisoners of that classification.
- Ongoing consideration should be given to the use of developing technology to supplement or replace the present form of containment in ordinary prisons.

- Technology should be seen as a means of altering and simplifying the structure of prisons generally.
- Technological advances should be used for the purpose of reducing the rate of escapes from minimum security prisons. The proposal for the electronic monitoring of prisoners examined in relation to the Wooroloo Prison should be further pursued.

Recommendation 6
The Department's Capital Investment Plan should be finalised and presented to Government for endorsement immediately and, when appropriate, inclusion in forward estimates. In this regard, Government should take into consideration, recommendations of the Inspector's Directed Review.

Recommendation 7
The planning for future infrastructure needs should be undertaken by the Department on a systematic and regular basis, taking into account projections of prisoner numbers, sentencing trends and other relevant information.

Recommendation 8
Planning for future infrastructure in predominantly Indigenous areas should be based on a "Regional Prison" model, where such prisons contain prisoners of all levels of classification and determine the facilities and services according to the needs of Indigenous offenders.

Recommendation 9
Ongoing consideration should be given to the use of developing technology, such as the electronic monitoring project at Wooroloo Prison Farm, as a means of supplementing or replacing current custodial regimes to:
- **alter and simplify the structure of future custodial facilities; and**
- **reduce the rate of escapes from minimum security facilities.**

- Prisons should be (on a temporary basis) identified as prisons housing mainly Indigenous prisoners and other prisons. The four prisons identified by the Inspector of Custodial Services as "Aboriginal" prisons should be identified as and dealt with as "Regional Prisons in Indigenous Areas". Prisons should be so classified if and while they contain 75% or more of Indigenous persons.
  - The form of such Regional Prisons in Indigenous Areas should be determined according to the needs of the Indigenous prisoners being held in the particular prison.
  - It is not possible for this Inquiry or generally, (nor is it desirable), to select a single model for such prisoners. The Inspector of Custodial Services has an ongoing investigation (in consultation with Indigenous groups and others) in relation to the form of prison that will be best suited to Indigenous prisoners. He has examined in detail the requirements of the Kimberley area. The model for other Indigenous prisons may be different from that proposed by the Inspector for the

Kimberley. This is a matter in respect of which proposals will in due course be made by the Inspector.

- It should be accepted that Indigenous prisons may be (and probably will be) of a form different from the form of ordinary prisons. The nature of "escapes" from Indigenous prisons should influence the form of such prisons.
- The use of work camps and similar models has been proposed by the Inspector. for the Kimberley This is one of the matters that should be examined.

5.47 I have in particular discussed with the Inspector of Custodial Services his proposals in relation to the construction of further facilities in the Kimberley area.

5.48 I agree with the conclusion of the Inspector that a general expansion of prison facilities is and will be necessary. I agree with his conclusion that additional facilities should be provided for Indigenous prisoners. I shall refer subsequently in more detail to the needs of Indigenous prisoners. It is sufficient at this point to say that Indigenous prisoners represent 40%, approaching 50%, of the prison population of the State. It is therefore necessary that, to the extent that Indigenous prisoners have particular requirements, those requirements should be met to the extent that is appropriate. Were Indigenous prisoners to constitute the only prisoners in the prison system or in prisons in a particular area, what should be done to meet their needs would be more easily determined. I shall refer subsequently to Indigenous culture, the claims, which that culture may make, and the extent to which those claims should be met.

5.49 More difficult problems arise where Indigenous prisoners constitute (as in some prisons in the south-western areas of the State) a substantially smaller percentage of the prisoners in a prison. In such a case, it is necessary to consider the extent to which Indigenous culture continues to make claims that Indigenous prisoners properly claim should be satisfied and the extent to which Indigenous culture in respect of such prisoners plays such a role. It is further necessary to consider how far the claims made by Indigenous culture in such a mixed prison can and should be accommodated in the administration of the prison.

5.50 These and similar issues arise in considering what can and should be done in relation to Indigenous prisoners. These are issues that, for their consideration, would require greater time, facilities and experience than is available to an Inquiry such as the present. This is, in particular, a matter in respect of which I shall pay special regard to the opinions of the Inspector of Custodial Services.

5.51 The Inspector, in his proposals in respect of the Kimberley and Eastern Goldfields, area has dealt with Indigenous prisoners who, as I infer, have relevantly strong relations to the Indigenous culture and who will constitute the great majority of the prisoners in prison in the relevant area. In respect of his recommendations, I am not in a position to form a conclusion or to differ from the conclusions reached by the Inspector and I do not do so.

5.52 Experience requires that, in making recommendations, regard be had to priorities. A list of the work to be done in relation to prison facilities should be established and the priority of each of the matters in the list should be indicated. I have indicated elsewhere my conclusion as to the need to deal with the unacceptable situation existing in the prison at Broome. I agree with the conclusions expressed

by the Inspector that substantial work is necessary to prevent the actual and impending overcrowding and the disruptions which are apt to result from such a situation.

5.53 The material before the Inquiry does not require the conclusion that the work in respect of the Kimberley proposals should have a priority higher than the priority of these two matters. I have had the advantage of discussing with the Inspector what he understands to be the arrangements made or to be made in relation to the Kimberley proposals. I do not of course recommend that those proposals be put aside or altered. However it remains my conclusion that the matters to which I have referred have a priority above that which is involved in the Kimberley and Eastern Goldfields proposals.

THE OPERATION OF PRISONS

5.54 It is not envisaged that, in this Inquiry, I should examine in detail the day to day administration of each prison and report on what occurs in each of them. Reference is made in the various Reports made by the Inspector as to the conditions in each prison and the detailed administration of them. The Inspector has visited individual prisons from time to time. He has (and has shown me the details of) an extensive checklist that he employs in examining each prison. In his inspections, he goes beyond what could be envisaged as part of this Inquiry. He has provided to me details of the information which from time to time he has gathered bringing up to date his formal published Reports. These are matters that, as envisaged by the Terms of Reference and the directions given by the Minister for Justice to the Inspector, I am to pay "particular regard". The directions given to the Inspector by the Minister were, as I infer, given for this purpose.

5.55 I shall refer to particular aspects of prisons at particular places but I agree in general with the thrust of what has been said by the Inspector in his Reports as to the day to day operation of them. It is the view of the Inspector, as expressed in his Reports and as confirmed in our discussions, that each prison is generally being administered appropriately having regard to the circumstances of it. I mean by this that, isolated incidents apart, (I shall refer elsewhere to prisoner grievances) there are few instances of, eg, corruption, abuse of prisoners by officers, improper discrimination or other things which in the past have been features of maladministration in prison systems. I do not mean that the Inspector has not detected instances of the conduct of individuals that should not have occurred nor that there are not systemic improvements that could be made. In respect of each prison, regard should be had to the updated Reports that have been made by the Inspector. But there has not been seen such maladministration as should lead me to go beyond the view which he has expressed. I have referred elsewhere to the grievance procedures and the submission of the Corruption and Crime Commission.

5.56 Having said this, I note two things. First, during the Inquiry and from its outset, I have invited submissions from all interested parties, including prisoners and those who may wish to speak for them. I have indicated how submissions may be made. There have been a large number of submissions. There have been none that would warrant the Inquiry undertaking an examination in depth of particular prisons or of prisons generally beyond what the Inquiry has done.

5.57 Second, I have afforded to prisoners the opportunity of speaking with me of, *inter alia*, such matters as these. I have visited or reviewed a number of prisons. In visiting prisons, I have spoken at proper length and separately with five groups: Superintendents; senior officers; uniformed officers, service staff; and prisoners. I have received no evidence of significant maladministration. Some reference has been made to, eg, difficulties or delays in obtaining forms for complaints to the Ombudsman, acts amounting to rudeness or more by prisoners and by officers and delays in doing what is to be done. But there have been no such complaints or comments as would warrant my departing from the view to which I have referred.

5.58 I have referred to the prisons that exist and some aspects of the operation of them. I shall now make some more general observations as to the prison system generally.

5.59 In general, the Western Australian prison system, like all prison systems, must consider three questions:

- what it is;
- what it seeks to be; and
- what it should be.

5.60 (I speak of these matters in general terms. In a treatise, exceptions and qualifications would be made. This Report is to be read by those who will follow the thrust of it and add what a treatise would add as far as it is necessary to determine the practical steps are to be taken.)

5.61 The Western Australian prison system is a system that has two fundamental features; it provides prisons for a very large area; and it provides for a population that is not homogenous but importantly disparate.

5.62 The State covers a very wide area, 2.5 million sq km or about a third of the Australian continent. It must place prisons in different regions. It must do this for functional reasons, not reasons of convenience. In other States, prisons are placed in regional towns because it is convenient to have prisons in the country rather than in the city and convenient to transport prisoners from the cities to these prisons. In this State regional prisons are in, eg, Broome or the Eastern Goldfields area because that is where the crime is committed and the offenders are. If prisons are not placed in the areas where the crime is, prisoners must be transported from their areas to prisons in Perth and elsewhere and back again. The problems which arise from the need to transport prisoners from regional areas to areas where there are facilities to hold them, are well recognised. If a regional prison in the Broome or Derby areas is not equipped to hold, for example, maximum or medium security prisoners, they must be transported from those areas ("their country") to Perth and other areas where the full prison facilities are available.

5.63 The principle of keeping prisoners close to their homes is widely accepted. It helps them to maintain contacts with their families. They behave better in prison and are less likely to re-offend after their release if close family ties are preserved. This fact has been recognised in the *Standard Guidelines for Corrections* in Australia, which states:

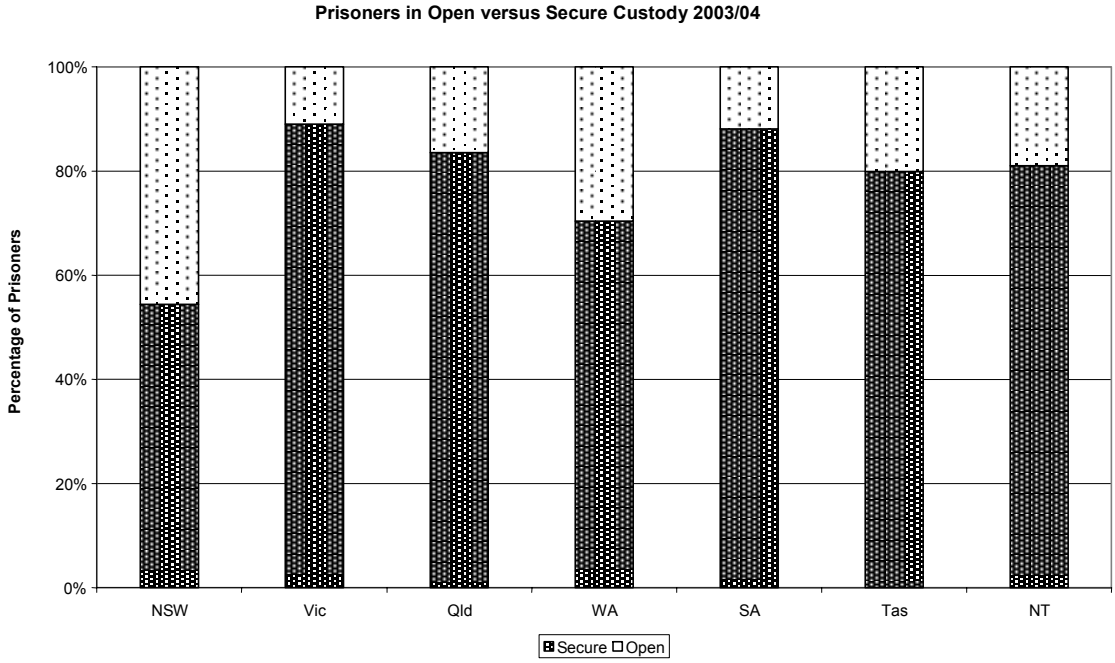
> *"1.39 The placement and assignment of prisoners to prisons should also include the principle of enabling prisoners to reside as closely as possible to their family, significant others, or community of interest."*

5.64 The system must accept that it is not a centralised system to which prisoners are transported to central prisons as required. It is and should be accepted to be a Regional Prison System containing Regional Prisons that have the facilities necessary to deal with prisoners from those areas in those areas. The Inspector has referred to questions of this nature in his Report.

5.65 A distinction can be made between the two different populations of prisoners: Indigenous prisoners and non-Indigenous prisoners. Indigenous people are 3.4% of the State population but 40% (and rising) of the prison population. In the medium future that is likely to continue. The differences are not merely individual; the differences involve matters that affect how a prison system is to be structured and operated. The accommodation of the two types of prisoners may be different; the application of classification and case management systems will be different; courses and procedures to reduce re-offending will apply differently to each group. What Indigenous culture requires in the management of prisoners will have important differences of that required by non-Indigenous society. The system must cope with the pressures from those differences from that required by non-Indigenous . The Department must decide what it is to do to cope with these problems.

5.66 It should decide as a matter of policy that the prison system is to a large extent an open prison system. Modern prison management has open, or minimum security prisons as an essential part of its approach. They are used in all Australian States to ranging extents[10]. (The interpretation of the definition of "open custody" varies and comparisons are to be made with caution). They are desirable: for many prisoners, containment does not require a secure prison. They are part of the resocialisation procedures to reduce re-offending. And they can sometimes greatly reduce the cost per prisoner. They can be particularly suited to Western Australia because of the differences between Indigenous prisoners and others as to escapes. The minimum security prisons can be built at much less cost than secure prisons and more quickly. Statistics, if accepted, show that this State has more open custody (or minimum security) prisoners than most States but less than some, eg, New South Wales. Open prisons are particularly suited to the 40% and more Indigenous prisoners.

[10] The Council of Australian Governments National Corrections Advisory Group - defines 'Open Custody' as "*a custodial facility where the regime for managing prisoners does not re-quire them to be confined by a secure perimeter irrespective of whether a physical barrier exists"(* Data Collection Manual 2004-2005).



Australian Prisoners in Open versus Secure Custody 2003/04

Source: Report on Government Services 2005

5.67 This State appears to have not decided whether it is to be an "open prison" State. Its present position appears contradictory. It has some open prisons but has decided to put fences around them. It has more than twice as many minimum security prisoners as it has places for them in minimum security prisons. Of a total prisoner population of around 2900 – 3000 (I exclude remand prisoners), some 1015 prisoners have been classified as minimum security. (I shall assume for this purpose that this means they are suitable for such placement). There are three minimum security prisons: Karnet (162), Wooroloo (230) and Broome (88 but currently housing substantially more) and minimum security units attached to the medium security prisons at Bunbury (30) and Greenough (36). Boronia is the minimum security facility for women. The balance are housed in more secure prisons. The Inspector of Custodial Services has recommended the creation of more places but does so on the basis that his recommendation is at least a medium or a long term recommendation.

5.68 This is a matter to be addressed without delay. The events involving Messrs Cross, Edwards, Keating and Mitchell, which have caused public outcry recently have almost all occurred in relation to minimum security prisons and prisoners and this will continue to be so.

5.69 A Departmental Conference at Departmental Head level (with Superintendent participation) should be held:

- to formulate the steps to be taken to expand the minimum security prisons to house initially the prisoners classified for them;
- to articulate the future strategy in relation to minimum security prisons; and
- to put in place procedures to advance the implementation of that strategy.

5.70 Those controlling the Western Australian prison system must accept that it is a dual prison system consisting of "Indigenous" prisons and "General" Prisons and must structure and administer it accordingly.

5.71 Some of the prisons are, as the Inspector of Custodial Services has shown, already Indigenous prisons (four of the eleven male prisons): the Indigenous prisons are situated in areas different from the areas which non-Indigenous prisons are situated; and what needs to be done to administer an Indigenous prison and to deal with the (legitimate) needs of Indigenous prisoners is different from what is required in other prisons.

5.72 If the prison system had only Indigenous prisoners, it would be fundamentally different. (I do not mean by this that Indigenous prisons are not subject to the law: they are. I am speaking of the way in which prisoners are to be managed). The structure of prisons needed to contain such prisoners is different; the investigations by the Inspector of Custodial Services in the Kimberley area and what he has recommended in relation to work camps and the like emphasise this. Their attitude to "escape" is different and so what is required to contain Indigenous prisoners in open prisons is different. There are significant differences in the application to Indigenous prisoners of the main components of prisoner management: classification, case management, programs and re-socialisation. It is clear from what has been said at Broome by senior police officers, prison officers and the Indigenous prisoners themselves that the Director General's Rules and what they require to be done are unsuited to the needs and the legitimate claims of Indigenous prisoners. The Rules, in stipulating what must be done by officers, make no substantial provision for the differences.

5.73 It is not to be inferred from this that the problem is simple; or that it can be solved by a simple adaptation of a 'two systems' approach. It needs careful thought. There are (I speak with due deference) officers within the Department who think deeply; some of them have given evidence to the Inquiry. What should be done to manage Indigenous prisoners requires that officers know who such prisoners are and what their culture demands of them. As they complain – and officers consulted have admitted – less than enough is known of who they are, what they require and to what extent, in an efficient and just prison system, what they require should be accommodated.

5.74 There are further and substantial difficulties. Indigenous prisoners are not homogenous; they differ, sometimes significantly. And, apart from the four "Aboriginal prisons" referred to by the Inspector of Custodial Services where they are in the great majority, in most prisons the administration must cope with the differences. In case management, what is likely to persuade an Indigenous prisoner to act properly may be different from what the case manager will do in respect of other prisoners. These matters are not unrecognised within the Department. But they do not feature prominently in what is being done. There has been little evidence that, as they should be, they are in the forefront of the planning of changes for the immediate future. Each of these matters requires attention in deciding how General prisons are to be administered when they have a substantial number of Indigenous prisoners:

- Regional prisons
    - The development of Regional Prisons should be adopted as the policy of the Department as part of the medium term strategy of the prison system.

- The prisons at Broome (or the alternative centre selected in the Kimberley area), Eastern Goldfields, Greenough and Roebourne should be identified as Regional Prisons in the functional sense referred to.
- The prisons should be developed on the basis that these will have full prison facilities to avoid the necessity of moving prisoners of maximum, medium or minimum security from those prisons to other areas because of lack of appropriate facilities.

- Open Prisons
  - The development and maximal use of (minimum security) prisons should be adopted as the policy of the Department as an immediate and continuing strategy.
  - The Department should re-examine prisoners now classified as minimum security prisoners and reclassify them in accordance with the classification principles subsequently referred to.
  - The construction of open prisons should be undertaken to provide places sufficient to accommodate all of the prisoners so classified. This should be a short term priority.
  - The Inquiry has been informed that Government is committed to the erection of fencing at Karnet and Wooroloo Prisons. (Similar fencing should not at this stage be erected at the Broome Prison). The erection of containing fences around open prisons will have a substantial effect upon the nature of open prisons in this State and the administration of them. Therefore it is important that the effect of them be investigated and assessed. If the erection of the proposed fencing is to be completed, the Department should schedule, for a date 2 years hereafter, a conference of relevant officers (the Executive Director, Prisons, selected relevant senior officers of the Department, and the Superintendents of Karnet and Wooroloo Prisons) to determine:
    - the cost incurred in constructing the fences;
    - the increase/reduction in the running costs of the prisons due to the fences;
    - the effect which the existence of the fences has had on the two prisons as minimum security prisons and on the effectiveness of minimum security prisons as part of the system generally;
    - the number of escapes from the two prisons during the evening period and the effect upon escapes of the existence of the fences. The relevant senior officer and the two Superintendents should be instructed to maintain ongoing records and observations on relevant matters during the period; and
    - the erection of such fencing and generally the form of construction of such open prisons should then be reviewed.

Recommendation 10

The Department should develop a strategy to expand the capacity of open prisons, initially to accommodate the number of offenders currently classified as minimum security and to provide for future requirements in relation to projected numbers of minimum security prisoners.

Recommendation 11

Government should avoid making decisions in relation to capital expenditure, such as the further fencing of minimum security prisons, until adequate needs based planning has been undertaken by the Department.

Recommendation 12

Government should not fence further minimum security prisons until a review of the operation of the fences at Karnet and Wooroloo Prison Farms is conducted, following two years operation of the new fences.

- Indigenous Prisoners
    - As indicated, Government should adopt as its policy that, in selected areas, prisons should be constructed or developed which are, in the form of their construction and management, adapted primarily to the needs of Indigenous prisoners.
        - this should be done in areas where it is anticipated that there will be a substantial (75% or more) majority of Indigenous prisoners;
        - if Government formally decides that prisons in the Kimberley area shall be constructed in the form recommended by the Inspector of Custodial Services, that form should be adopted as a basic model for the construction of all such prisons;
        - the form of other Indigenous prisons should be determined following appropriate consultation by the Department with the Indigenous people in the area from which the prisoners are likely to come; and
        - insofar as the prison provides places for minimum security prisoners, the form of that part of the prison should take account of the experience of officers of the nature, purpose and extent of escapes by such prisoners.
    - In relation to the management of prisoners who are Indigenous:
        - reference should be had to the recommendations made subsequently;
        - the procedures adopted in the management of prisons generally (classification, case management, programs for prisoners and reduction of re-offending) should continue to be applicable but

they should be remodelled insofar as they are to be used for Indigenous prisoners;

- the classification procedure should be revised as far as it seeks to determine likelihood of escape to adapt it to the attitude of Indigenous people to escapes and the nature and purpose of escapes by them as disclosed by experience.
- for the purposes of the case management procedures:
  i. ongoing consultation procedures should be set up, with (appropriate) Indigenous persons and others, to determine what are the demands made of Indigenous prisoners by their Indigenous "culture" and effective mechanisms;
  ii. there should be a review at Head Office level every five years to decide to which of such demands effect should be given at prison level and in what way; and
  iii. prison officers, particularly those engaged in case management, should be trained to know and understand the demands made on such prisoners by their "culture" and what is required for effective case management of Indigenous people.
- the courses and programs presented to prisoners (particularly those directed to rehabilitation) should be readapted to suit Indigenous needs. Particularly should this be so if courses for violence control and cognitive thinking are to be presented; and
- particular attention should be given to the form of procedures directed to reducing the (presently serious) rate of re-offending by Indigenous prisons. The procedures should be modified following consultation with Indigenous families and elders and their assistance gained if possible. .

- In achieving the adaptation of projects and procedures to the prison system as a system for dealing with Indigenous prisons:
  - It is necessary that the Department give effect, as a matter of policy at senior level, to the arrangements made by Government in respect of the increasing employment of Indigenous people.

THE ADMINISTRATIVE STRUCTURE OF THE PRISON SYSTEM

5.75 I come now to examine in outline the administrative structure of the Department that at present administers the prison system and the effects it has had upon how it has been administered.

5.76 There are four main aspects of the administrative structure of the Justice Department and the prison system which require to be understood:

- The Prisons Division is one of a number of Divisions in a "mega-department".
- The Director General manages a number of Divisions and is the Chief Executive Officer responsible for the management control and security of all prisons and the welfare of all prisoners.
- The relationship between the "Head Office" aspects of the Department of Justice and the Prisons
- The position of the Superintendents.

5.77 The Department of Justice is a mega-department. It administers or services (as it is convenient to describe them) several Divisions, each of which, under other Governmental structures, might form separate departments or semi-departments. These include, amongst others:

- The Prisons Division and the Community and Juvenile Justice Division
- The Registrar General's Division
- The Courts and Tribunals and other Divisions (which I shall describe as the "Attorney General's Division").

5.78 That structure was set up initially in 1993. It was not set up for reason of function; there is no functional relationship between its various Divisions. Following this, "*The Delivery of Better Government*", the 2001 Public Election Commitment by the Labour Administration, involved an "undertaking to halve the number of departments and to reduce the number of Chief Executive Officers (CEO) and Senior Executive Service (SES) positions". In general terms, the Government was seeking to contain the number of separate departments and CEO and SES positions.

5.79 "*The Machinery of Government*" (MoG) Report, "*Government Structures for better Results*" endorsed by Cabinet in June 2001, articulated this policy in detail. In the case of the Department of Justice, the MoG Report found that recent alterations to that Department were still being "*bedded down*" therefore no further changes to the Department structure and organisation were then required[11].

5.80 There are three features (in my opinion undesirable features) of the structure of the mega-department worth noting:

- It places the judicial arm of government (the Courts and their Minister, the Attorney General) in an undesirable relationship with parts of government whose actions it may have to judge;

[11] Submission to the Inquiry from the Department of the Premier and Cabinet.

- It creates an over-complex relationship between the two Ministers involved (the Attorney General and the Minister for Justice); and
- It has placed the person who is the Departmental Head of all of the Divisions of the Department in the position of active administrator of the prisons system and the Community and Juvenile Justice system.

5.81 There is, in the present structure of the Department of Justice, a feature that requires to be noted, namely, its relationship to the Attorney General and his portfolio duties. The Attorney General is, in Cabinet, a separate Minister. He had traditionally the role which has been peculiar to Attorneys General, that of advising in Cabinet upon legal matters and of, in the relevant sense, representing the Courts. That role has developed and perhaps changed. The former Chief Justice of South Australia, the Honourable L J King AC QC has recently stated the position of the Attorney General as follows: (In *The Attorney General, Politics and the Judiciary, 1999*.)

> *" the office of the modern Attorney-General in Australia is an essentially political office, the role of which is far removed from the traditional role of the Attorney-General of England. In consequence, many of the functions which were thought to be responsibilities of the Attorney-General to be exercised independently of politics, must now be understood to be subject to Cabinet control and direction and the Attorney-General must be understood to be primarily a politician with political responsibilities to a government and political party. Nevertheless there remains unimpaired the Attorney-General's function as political guardian of the integrity of the administration of justice, which gives rise to the unique role and responsibility of the Law Minister. The importance of this role in our constitutional system, although not as pervasive as it once was, remains undiminished in importance. The faithful discharge by Attorneys-General of this role is an indispensable ingredient of the political and constitutional foundations of our system of independent and impartial justice."*

5.82 The Attorney General has traditionally been responsible as part of his portfolio for, *inter alia*, the Courts and relevant Tribunals. It is proper that the person being or having the role of Attorney General be the Minister for the Courts and the relevant Tribunals. The Courts and such Tribunals stand in a special position in Government. Their independence, actual and perceived, is an important part of the rule of law in a modern democratic society. They should be, and the administrative structures should be so arranged that they are seen to be, independent of those parts of the State the actions of which they may be required to judge. Independence in this regard is not a single concept. It is a state produced by (and perceived as the result of) the influences that may be brought to bear upon Courts and what they do. The possibility of influence will be judged by the public when they see what the Courts have to do, their finance and their administration.

5.83 It is undesirable that the Minister whose function is to safeguard the Courts' independence should be in a position where he is responsible for, for example, officers of the prisons system, the correctness of whose actions the Courts may have to determine. The finance allocated to a mega-department is to provide for the Courts and for the other Divisions of the Department that, notwithstanding modern forms of budgetary allocations, may compete with them for resources.

And the Chief Executive Officer who is in principle the senior administrative officer of the Courts is the Chief Executive Officer of the Divisions that (in his name or otherwise) may be sued in the Courts. This is of relevance in considering the changes (if any) that should be recommended to the present structure of the Department of Justice.

5.84 In a more conventional structure, the Department of which the Attorney General is the Minister, would have its own "Departmental Head" ie, the Administrator responsible for the operation of the important legal functions which it performs. The Department would provide the guidance and resources necessary for the operation of the Courts and other bodies within its scope; it would, as it is sometimes described, "service" those bodies.

5.85 The present administrative structure of the Department of Justice and its relationship to the Attorney General and to the Minister for Justice are complex and difficult to rationalise. It is not necessary for me to set out all of the complexity of it. But if a decision be taken to change the Department of Justice from a mega-department to one of a more conventional kind, regard will necessarily be had to some of the factors involved. I shall refer to them briefly.

5.86 In the structure of a department, ideally two things are desirable: a simple line of responsibility to Ministerial level; and the avoidance of overlapping of Ministerial roles.

5.87 The "responsibility" of a Minister has three aspects: legislative; administrative; and Cabinet. In earlier and simpler times, the legislation by which a department or statutory body was set up would ordinarily (or at least often) confer no legal powers and duties upon the Minister having the oversight of it. He would be responsible for it in the Cabinet or political sense. He would be responsible in Cabinet for the conduct of the Department in accordance with the policy of the Government of the day; the legal control of what it did and the detail of its administration would be given to the Departmental Head and the officers below him. More recently, a Minister may be given legal powers of control over their Department and of the administration of it. In the *Prisons Act*, *1981*, the Minister is given "*control*" over the officer who is the Chief Executive Officer, who in turn is "*responsible for*" the prisons and prisoners: section 7(1).

5.88 In the *Prisons Act*, both the Chief Executive Officer and the Minister have a role in relation to the approval of leave of absence from prison (Section 87).

5.89 In the mega-department form of the Department of Justice, the Attorney General has the Cabinet responsibility for the Divisions that ordinarily would form part of a Department of the Attorney General as such. He does not have, in general, legal and administrative responsibility for the Prisons Division or the Community and Juvenile Justice Division of the Department of Justice. The *Prisons Act*, is the responsibility of the Minister for Justice: Government Gazette No 44 (11 March 2005). The Chief Executive Officer of the Department of Justice is the Departmental Head of each of the Divisions but, in the relevant sense, is responsible to the Minister whose legislation he is for the time being administering.

5.90 In a Department of a conventional form, the responsibility for the Department and the relevant legislation is vested in a single Minister. He appears to be responsibility for the Department of Justice in the terms recorded in the

Government Gazette. In more recent times, different approaches are sometimes adopted. In the complex of the present mega-department, two Ministers are involved, the Attorney General and the Minister for Justice. Each Minister is given responsibility, in one or more of the senses to which I have referred, for various aspects of the operation of the Department. If the Department be changed from a mega-department it will be necessary to make decisions as to how the responsibility for the various aspects or functions of the Corrections Department are reassigned amongst the two Ministers. Reference is made to matters of this kind in the Submission of the Department of Premier and Cabinet. It will be necessary to ensure that the functions appropriate to an Attorney General be assigned to the relevant Minister.

5.91 In principle, the present structure is not satisfactory. If practicalities be put aside, it should be changed. I am conscious that to date it has not produced (or produced in public) conflicts between Ministers or administrative impasses. This may be due to, for example, the good sense of the Ministers involved or to the administrative skills of the officers who have conducted the administration of the mega-department.

5.92 There are advantages in the administration of the corrections system by a single department under a single Minister. As I shall outline subsequently, corrections systems are developing. They are required to deal with important aspects of the indigenous problem. New structures require different methods of management. Changes will be required, because of developing technology. And corrections systems require sympathetic handling. The corrections system needs a single Minister whose role is to drive the changes that will need to be made. It is important that there be, at Ministerial level as well as at administrative level, a single person who is accountable for the conduct of the corrections system and what it does.

5.93 The duties and functions of the Director General of the Department of Justice are relevant in considering the "organisational structure, role and performance" of the Department in my Terms of Reference. They derive from, inter alia, the operation of the Public Sector Management Act 1994, and the *Prisons Act* and other associated legislation.

5.94 The Director General is the head of the Department of Justice: he is the CEO appointed to it in accordance with the requirements of the *Public Sector Management Act*: see sections 44 et sec. There are two aspects of his position: one arising from the fact that the Department is a mega-department; and the other related to the specifications of the *Prisons Act*.

5.95 As I have indicated, the Department of Justice, as a mega-department, has the several Divisions to which I have referred. The Director General of the mega-department, is responsible for the several Divisions that form parts of the Department of Justice that ordinarily would form parts of the two Departments: the Department of the Attorney General and the Department of Justice. In relation to the Divisions ordinarily part of a Department of the Attorney General, he is a Chief Executive Officer who has a hierarchy of administrators below him who, as part of the, for example, Courts Division of the Department, administer their Division. In principle he is not involved, or need not be involved, in the detailed administration of those Divisions of the Department of Justice. However, by reason of the drafting of the *Prisons Act*, he is, *inter alia*, the Departmental Head

of the Prisons Division but also the Administrative Head of that Division. His relationship to the Prisons Division of the Department of Justice is in principle different from his relationship to the other Divisions of the Department of Justice.

5.96 The structure of the *Prisons Act* adds to and confirms the complications of the position of the Director General. That Act ordinarily might be expected to provide for three main levels: the Departmental Head (CEO); the Head of the Prisons Division (the Executive Director of Prisons); and Superintendents. Under such an arrangement, the Departmental Head (CEO) would also have the responsibilities and the powers appropriate to the Departmental Head of the overall Department of Justice; his relationship to the Heads of the Prisons and the Community and Juvenile Justice Divisions would be analogous to his relationship with for example, Divisional Head of the Division of Courts. In fact by reason of the structure of the *Prisons Act*, the Department Head (CEO) is closely involved in the administrative operation of the Prisons Division.

5.97 Subject to the control of the Minister, the control of the *Prisons Act* and the prison system is vested in the Director General: (Section.7). There is a statutory provision that an officer below the Director General may be appointed (the Executive Director, Prisons). In an ordinary departmental hierarchy that officer might be expected to have the duties and the powers of a Head of a Division. But the Act does not specify what are the functions of that officer or the powers and duties of the office. The Director General, as head of the Prisons Division, is authorised to delegate to that officer such powers as he determines but there is no requirement that particular powers or duties be delegated to the officer and there is no provision expressly limiting the extent to which the Director General may intervene in the exercise of power by that officer. The structure of the Act is such that the Director General may, in effect, bypass that officer.

5.98 A similar position exists in relation to prison superintendents. The Act provides for Superintendents to have the effective control of individual prisons: (Section 36). However, the Superintendents are subject to the control, not of the Executive Director, Prisons as such, but of the Director General. In practice, the Director General exercised his administrative control down to Superintendent level and below. By Rules and otherwise, he directed how officers were to do the main things to be done by them in, for example, prison classification, case management, the conduct of programs and other matters. See, for example, Rules 13 and 14. To this extent, by executive action, he bypassed the administrative functions which ordinarily might have been expected to be exercised by the Executive Director, Prisons as Divisional Head in a mega-department, and by prison as the persons to whom the legislature had, subject to Departmental Head control, given the conduct of individual prisons.

5.99 This combination of the structure of the Prisons Act and the exercise by the Director General of his power to delegate contributed in a significant measure to the operations of the Prisons Division. In order to understand what changes are necessary in relation to the *Prisons Act* and the Prisons Division, it is appropriate to examine more carefully what occurred.

5.100 In the context provided by the mega-department structure and the *Prisons Act*, the Director General came to occupy and in due course to exercise a dominant role in the Prisons Division. This led to an extensive Head Office involvement in what was done even at prison level.

5.101 As Mr Alan Piper suggested in his evidence to the Inquiry, it is necessary that a Departmental Head have overall "control" of the Department of which he is the senior officer. But there is a distinction between what is involved in "control" in the legal sense and what is expected in an administrative sense in relation to the exercise of it. The power of control is, in principle, to be exercised to give effect to the intended administrative structure of the Department, not to supersede it. A Departmental Head must have functions and accordingly powers of various kinds. Subject to Ministerial action, he must control the policy of his Department. He must ensure that, at Head Office level, the Department performs the functions a Department is to perform. But, as a matter of principle, he will be expected to leave the exercise of administrative functions to the Divisional Head and to other appropriate officers lower in the hierarchy. He will of course have the general oversight of the exercise of the administrative functions of the Department. To do this he must, should special circumstances require, intervene in individual administrative decisions of those in the administrative hierarchy below him. But that is the exception and should not be the rule.

5.102 What occurred resulted in the concentration of administrative power in the upper levels of the Department. Two things may be taken by way of example. The former Director General was appointed to the position of Director General of the Department on 14 February 1998. He remained in office until his retirement was announced on 29 July 2005. In giving evidence before the Inquiry he referred to (as he saw the position) the confused and unsatisfactory position in the Department of Justice when he came to occupy that position. His evidence suggested that in order to change that position, it was necessary to intervene in the way in which the Prison Division was being administered. The legislation gave to the Director General, as Chief Executive Officer under the *Prisons Act*, control of the prison system. The practicalities of administration no doubt involved that he should delegate the exercise of many of his powers and functions (both administrative and substantive). But delegation does not involve that the Director General cannot and should not himself intervene to exercise, or in respect of the exercise, of the powers and functions which are delegated. It is open to him to intervene. As I have said, in fact he did intervene, both in what the Executive Director, Prisons did and in what was done by officers at lower levels. There developed a concentration of power at Head Office level and, as it was suggested, an unfortunate tendency by officers of the Prisons Division to whom powers had been delegated, to withhold or delay action when interference was feared or to delay action unless and until approval of a superior (and in particular the Director General himself) could be ascertained. Problems of this kind were referred to more than once during the Inquiry.

5.103 There developed also the reliance upon delegated Rules and prescriptions. It is necessary for a Departmental Head to articulate the objectives of his Department (for example, the safety of prison officers and prisoners) and to indicate the general strategy and tactics by which those objectives are to be pursued. That is not enough. It is necessary that those in charge of a prison system at Head Office formulate to an appropriate extent the administrative procedures by which they are to be carried into effect and specify in terms what is to be done. It is appropriate that there be Rules to specify how things are to be done and to provide guidelines for officers to follow.

5.104 The administrative procedures prescribed must be able to be understood, to be applied, and to be adhered to. Complaints were made during the Inquiry that illustrate the deficiencies that occurred in relation to each of these. Prison officers are required to comply with:

- Acts of Parliament;
- Regulations made under Acts of Parliament;
- Director General's Rules;
- Policy Directives;
- Operational Instructions;
- Superintendent's Circulars;
- Standing Orders;
- Local Orders;
- Unit Orders.

5.105 As at the commencement of the Inquiry, the Director General's Rules alone numbered 17 and extended over multiple pages. The Policy Directives issued by the Director General numbered 55 and again extended over multiple pages. One of the previously superseded Rules referred to in evidence, namely Rule 2B (subsequently replaced by Rules 13 and 14) extended over some 50 pages. Officers complained, with some apparent justification, that it was not possible for officers required to make day to day decisions to have available ("to have a pocket large enough to contain") all of these Rules; and that they had difficulty in reconciling even, for example, the provisions of the important Rules 13 and 14.

5.106 The complaints that were made went further. Instances were given in which officers at prison levels were not able to act as the administrative procedures established by the Rules required. For instance the Director General's Rules laid down steps to be taken in relation to, *inter alia*, prison classification and case management and the manner and times for the doing of what is to be done. It was said that it was not practicable to adhere to these Rules and that, in particular, what was done in practice was done in different ways in different prisons. In relation to classification of prisoners it was said that officers at Head Office level felt it necessary to press for results different from those that would have been produced by the Rules at prison levels. It was said that at prison level decisions were made which otherwise would not have been made.

Recommendation 13

The Department should develop a simplified, consistent policy and procedures framework across the organisation that allows for officers involved in the corrections system to know what is required of them.

5.107 Intervention from Head Office level led to uncertainty and delay in the making of decisions that should have been made by officers at lower levels. The detailed prescription of what was to be done was not understood or not able to be put into effect at prison level. The result was that in a number of instances, officers ignored the provisions of relevant Rules and conducted operations within prisons

in a manner different from that provided by the Rules. It was said that this disregard of the Rules laid down for the conduct of prisons was known to officers at Head Office and was acquiesced in. The effect of this upon the morale of officers and upon their attitudes to the management approach in the conduct of prisons is important. An administrative system that is not being conducted according to what is prescribed at senior level is, in a relevant sense, a system that is out of control.

5.108 As I have said elsewhere, it is not the purpose of the Inquiry to attribute blame. In the administration of the Department of Justice events occurred which should not have occurred. Whether, and to what extent, these resulted from factors outside the prison system or outside the control of those involved in it, is not clear. The Inquiry is concerned with the performance of the Department, in the sense of whether it was administered as well as it could or should have been. Its performance is to be judged in the end by what happened. There were complaints by many prison officers and at other levels that there was an excessive and undue concentration of administrative power at the top of the Department. It was said that this gave the result that performance could not be and was not what it should have been. The inference was that interventions were beyond what they should have been.

5.109 It is not possible in such an Inquiry as this to pursue, as in formal litigation, the correctness of the complaints that were made. I do not make a formal finding upon what was said in the sense of findings that there was serious misconduct or maladministration. There was no suggestion of any such things. But the complaints were made by several officers in different contexts and at different levels. And it was evident during the Inquiry that what happened had had a bad effect on staff morale. It is proper to conclude that there had been, in an administrative sense, an undue concentration of power and resources at Head Office level and that that had had a bad effect upon officers at prison level and otherwise.

THE RELATIONSHIP BETWEEN HEAD OFFICE FUNCTIONS AND INDIVIDUAL PRISIONS

5.110 That leads to the relationship between the Head Office functions of the Department and the individual prisons. It is necessary to consider what functions are and should be performed at Head Office level, what should be performed at prison level and what should be the relationship between the two.

5.111 Prisons are not isolated entities. Prisoners and, staff will be transferred from and to individual prisons. Finance and facilities are provided by other arms of Government. However in a functional sense, each prison is, to an extent, a separate and self-contained unit. The functions that it performs are functions that are to be performed at prison level and the knowledge and expertise necessary for the proper performance of these functions are things that essentially are to be found at prison level, with an appropriate level of advice, managed and co-ordinated centrally. The manner in which prisoners are to be dealt with and managed in particular prisons is generally accepted to require particular and special skills, skills learned mainly from practical experience, and often peculiar to the area in which the prison is situated. The way in which prisoners are dealt with

will vary according to the circumstances of the individual prisons. Therefore, on a day to day basis, how prisons and prisoners are dealt with is, or at least should be, essentially determined by the Superintendent of the particular prison. The form of the administrative structure should follow these functional requirements.

5.112 However, the Head Office of any prison system has important functions. It is expected to provide to each prison various facilities and perform for each prison various functions. It is important that both those at Head Office and prison level understand clearly what is to be provided by Head Office and how the facilities and functions to be provided are to be provided. It is important that, at each level, those concerned understand what are the desirable limits to the interference by the one in the operations of the other. It is important that each level operate in close co-ordination with the other.

5.113 The functions and facilities to be provided by Head Office to individual prisons will, of course, vary according to the circumstances of Government. It is not appropriate that I attempt to formulate a model of an administrative structure for the prison system and suggest that it is a model appropriate in Western Australia. The precise structure appropriate at any given time will vary according to the political and other views of the Government of the time; Divisions will be added and will disappear as circumstances require; and scope is to be given to the Departmental Head to determine what structure accords with his view and style of administration.

5.114 However, there are some functions that a Head Office should provide and some that it should not seek to provide. The functions to be performed for prisons by Head Office will normally include the following:

- The adoption and articulation of the objectives to be achieved by the prison system. These will include the objectives to which I have referred, such as the security of the prisoners in prison; the safety of prison officers and those concerned in the prison system; the habilitation and rehabilitation of prisoners; and the preparation of prisoners for return to the community.
- The determination of the strategy for the achievement of these objectives. The present strategy is the management system to which I have referred. The component parts of the management strategy should be, in principle, spelled out sufficiently and procedures (administrative and otherwise) by which they are to be delivered should be articulated at Head Office level and understood throughout the prison system.
- The provision of the resources necessary for the achievement of these objectives by the strategy selected. Resources in this sense include: the persons necessary to do what is required; the administrative and other procedures necessary for the purpose; and the original and ongoing training of the persons who are to achieve the objectives.
- The provision of the finance that is necessary. It is of course the function of a Minister to ensure the ongoing provision at Cabinet level of the finance necessary for proper functioning of his Ministry. It is the function of the Minister and the Department or Section Head to provide budgets for examination and perusal by Members of Parliament and the Government by whom the provision of funds is made.

- The oversight of the operation of individual prisons and persons employed within prisons. It is necessary, for example, that there be sufficient uniformity in the administration of prisoners. The Head Office's function is to achieve the required degree of uniformity. There are factors which require uniformity; prisoners are transferred from one prison to another and from one region to another and common fairness between prisons requires that differences be not such as to create a sense of unfairness. A sense of unfairness amongst prisoners is apt to generate tension or even the kind of disturbance that occurred in the Casuarina Prison on 25 December 1998[12]. But uniformity for merely administrative or bureaucratic reasons can result in inefficient management of prisoners and staff discontent. This is illustrated (or at least it was claimed) in respect of the attitude of Head Office to officers involved with (as the Inspector of Custodial Services has described them) "Aboriginal Prisons". The degree of uniformity required will depend on the circumstances of the Prison System and the proper discretion of the individual Superintendents. What will be appropriately required at Albany will not be appropriately required in Broome. The extent to which prison administration in Aboriginal Prisons must be uniform with prisons in other areas will be limited.
- The maintenance by monitoring of a sufficient oversight of what is done to and in respect of individual prisoners. Superintendents should be given a proper and sufficiently wide degree of discretion to determine what is done in the prison administered by him/her but it is necessary to ensure, for example, that what is done is within the guidelines established by Government and that there is no abuse of power by individual prison officers. What can be achieved by the Inspector of Custodial Services, by the Ombudsman and other authorities is not alone a sufficient safeguard to achieve this purpose. It is necessary that there be at Head Office a functional area for ongoing monitoring of what is done by Superintendents and other officers. The monitoring is not to be so onerous as to impede unduly what he/she is to do. A formula for monitoring the operation of a prison has been formulated and applied in relation to Acacia Prison. I am assured by the Inspector of Custodial Services and others that this formula may, with appropriate variations, be adapted for the purpose of ensuring appropriate monitoring and oversight of what is done at superintendent level.
- The provision of planning for the future. Proper administrative principles require that, in an organisation such as a prison system, there should be formulated and kept under review a plan of its activities (capital and otherwise) for an appropriate period (5 to 10 years) into the future. Such a plan exists within the Department of Justice.
- Technology appraisal and development. This is and will be increasingly an important function of an organisation that administers prisoners. Technology and general research are necessary. These should be seen by Head Office as part of the functions and services which it provides to the prison system generally.

[12] Smith, LE (1999) *Report of Inquiry into the Incident at Casuarina Prison on 25th December 1998*, Department of Justice, Perth.

- Ethical Superintendence. In a large organisation, particularly an organisation of a Governmental kind, it is necessary that there be ongoing supervision of the ethical standards and practices of those in the organisation. It is part of the function to be performed at Head Office level. The supervision should be accountable directly to the senior officer of the organisation.

5.115 By enumerating these functions I do not mean that there may not be functions beyond these that can be seen as essential parts of a Head Office organisation. There will be functions (such as functions in relation to programs and the like) that may need to be performed or provided through Head Office as the occasion arises.

5.116 There will, of course, be the over-riding function of leadership. It is necessary to emphasise the importance of leadership to the success of an administrative organisation. The importance of it was illustrated in the present Inquiry. Complaints were made that proper leadership had not been provided. As I have said elsewhere, it is not possible, in the time and within the scope afforded by this Inquiry, to examine each complaint made in this regard, to determine the truth or otherwise of it, and to assess the effect of what is established upon the functioning of the Department. Therefore, in fairness, I make no formal finding generally upon the individual complaints made. But during the Inquiry it became clear that some complaints were common to various parts of the administrative structure. And it was clear, from what was said by various persons, that the morale of the administration had been seriously affected by what was done. There was indeed a lack of confidence and perhaps resentment in relation to the Head Office administration. From this it is proper to draw the inference at least that a state had been reached which would not have been reached under successful leadership. In drawing this conclusion I do not attribute praise or blame. What occurred may have occurred for reasons attributable to others; lack of finance; bad legislation; unwarranted intervention or unfortunate conduct may have caused what occurred. But leadership has been seen to be a substantial part at least of the cause of what occurred.

5.117 The function of the Superintendent is, or should be, central to the administrative structure of a Prison Service. He/she is in control of what is done in securing and caring for the prisoners in his prison. The information necessary to do what is done (the personal knowledge about each prisoner necessary to provide for his classification, case management and the like) will be held by the Superintendent and officers at prison level. It is proper that power should follow the function that the Superintendent must perform.

5.118 To an extent this was recognised by the *Prisons Act*. The Superintendent was given "the charge and superintendence of the prison" and he was made "responsible to the Chief Executive Officer for the good government, good order and security" of the prison (section 36(1)). The ordinary principles of statutory interpretation would suggest that, though the Chief Executive Officer was given "the management, control and security of all prisons" (section 7(1)); the powers so granted to the Chief Executive Officer should be exercised to give effect to the grant to the Superintendent of that control of the operation of the individual prisons and not to impair it.

5.119 In practice, the administration of the Act went in the opposite direction. As I have indicated, what was to be done in relation to administrative matters was, to an extent, concentrated at Head Office level. What was to be done by officers in the

prisons in relation to matters such as classification and case management was, in a number of respects, not left to the discretion and direction of the Superintendent but was laid down in detail by the Rules made by the Director General. And in some respects the Superintendent was bypassed. Reporting by prison officers in, for example, classification and case management was in various respects directed to be made to officers at Head Office level and otherwise rather than to or through the Superintendent.

5.120 The result has been that, in the sense to which, Counsel Assisting the Inquiry, has referred, having regard to the circumstances of it Superintendents have in some respects stood aside from responsibility for such matters.

HOW THE PRISON SYSTEM OPERATES

5.121 I have referred to the structural aspects of the Department and the prison system. I shall now outline the four main aspects of the operation of the prison system:

- Classification and location of the prisoners
- Case Management
- Courses and programs for prisoners
- Resocialisation and re-offending

5.122 It is necessary to understand what is now done within the prison system. The present practices have deficiencies and to understand what they are, it is necessary to know how they came about. The changes that will be recommended will not involve the rejection of all that is now done but, in a sense, will build upon it.

5.123 Each of these four matters is important. I will recommend changes in respect of each of them. Therefore it is necessary to record, at least in outline, why the changes are necessary.

5.124 As was said by the former Director General, Mr Alan Piper, and other officers, during the period before Mr Piper's appointment (14 February 1998) the administration of the prison system was less than satisfactory. There had been a riot in the Fremantle Prison on 4 January 1988.[13] Prisons were or were becoming overcrowded. In due course (25 December 1998) there was a serious disturbance in Casuarina Prison caused, it was said, by the state of the prisoner and officer relationships. [12] The level of escapes was unacceptably high. Changes were necessary.

5.125 Four changes were made:

- A new prison was constructed at Acacia to accommodate some 600 medium security prisoners and to be administered by private enterprise. It was believed that in this way pressure on the public prison system would be relieved.
- Alterations were made at Casuarina prison.
- Consideration was given to the prevention of escapes by the evolution of a different method of security classification of prisoners.

[13] McGivern J (1988) *Report of the Enquiry into the Causes of the Riot, Fire and Hostage Taking at Fremantle Prison on the 4th and 5th of January 1988,* Corrective Services, Perth.

- A new approach was evolving for the management of prisons and the prisoners in them.

5.126 These changes did not operate in isolation. As Ms Kim Doyle, an officer of the Department of Justice, indicated each of them affected the other.

5.127 Understandably, the Government of the day wished the number of escapes to be reduced. There were few escapes from secure prisons. Escapes were from minimum security prisons. Therefore to reduce escapes it was necessary to determine which prisoners should be placed in minimum security prisons. It was necessary to develop a new system for the classification and placement of prisoners.

5.128 Ms Jacqueline Tang and Ms Doyle, officers of the Department of Justice, developed a system which, they believed, would ensure that (as far as could be expected) only those prisoners who were unlikely to escape would be classified as minimum security prisoners and located in low security prisons. The development, testing and verification of that system of classification was not completed. It was overtaken by events.

5.129 During the same period, there were changes in the approach to the management of prisons and prisoners. In earlier times prisoners had in general been "warehoused". This approach and the effect of it on the relationship between prison officers and prisoners (the relationship of "them and us") was illustrated in the *Report of the Nagle Inquiry into the New South Wales Prison System*.

5.130 The new approach may be described as a Management system which includes both Unit Management and Case Management.

5.131 "Unit Management" is an administrative approach to prisoner management which was introduced into Western Australian prisons in the 1990's. The principle underlying unit management is that an institution should be subdivided into units and that many of the day-to-day needs and issues surrounding a prisoner can, and should, be dealt with at a unit level.

5.132 The Department's *Integrated Prisons Regime* (IPR) *Brochure* describes unit management as:

> *"a key method for managing prisoners by improving the mechanisms of how administration, staff and prisoners communicate between each other to ensure that there is consistency in management, delegation of authority and improved communication for all. Through these elements it is envisaged that more issues will be dealt with at the unit level, in a timely manner thereby reducing grievances and improving the living conditions for all concerned."*

5.133 "Case Management" is the system by which individual prisoners or groups of prisoners are allocated to particular officers as "case managers", who assist in the management of the sentence of individual prisoners. *The IPR Brochure* describes the purpose of "Case Management" as

> *"to provide integrated and coordinated services that help offenders to address their offending behaviour and prepare for a successful return to the community. Central to effective case management is the cooperative relationship between the prisoner and the allocated case officer. It is an interactive process with assigned officers responsible*

for encouraging offenders to meet the requirements of the individual management plan (IMP)."

5.134 The new approach looked to two things: the method to be adopted in the internal management of the prison ("unit management") and the relationship to be developed between prison officers and prisoners ("case management"). Viewed conceptually, the one dealt with prison management, the other with the management of prisoners. Each developed from the "management approach" to prison management.

5.135 The Unit Management approach is conveniently described in a publication of the American Correctional Association[14].

> *"Unit Management: a management system which subdivides an institution into units. The Unit Management System has several basic requirements:*
>
> - *Each unit holds a relatively small number of inmates. Ideally there should be fewer than 150 but not more than 500 inmates*
> - *Inmates are housed in the same unit for a major portion of their confinement*
> - *Inmates assigned to a unit work in a close relationship with the multi-disciplinary staff team which are regularly assigned to the unit and whose offices are located within the unit.*
> - *Staff members have decision making authority for the institutional programming and living conditions for the inmates assigned to the unit with broad rules, policies and guidelines established by the agency and/or the facility administrator.*
> - *Inmates' assignments to a unit are based on the inmate's need for control, security and programs offered. Unit management increases contact between staff and inmates, fosters increased interpersonal relationships, determination of compliance, non-compliance and non-applicability of standards and the agency response and leads to more knowledgeable decision making as a direct result of staff dealing with a smaller, more permanent group. At the same time, the facility benefits from the economies inherent in centralised service facilities such as utilities, food service, healthcare, educational systems, vocational programs and recreational facilities".*

5.136 Unit Management was not appropriate in all respects to the circumstances of the Western Australian prison system. In this State the concepts of unit management and case management grew together. Particular emphasis was placed upon case management and the development of a new relationship between prison officers and prisons.

5.137 The adoption of each of these, the new classification system and the new management approach required two things; the proper staffing and training of the officers involved; and the resourcing and financing of the changes which were to take place. As appears from the evidence of Mr Piper, Ms Tang and others, neither of these was provided. The result was that, in the view of at least most of

[14] American Correctional Association *Glossary of Terms*. www.aca.org

the officers concerned, neither initiative was implemented as it should have been and each of them was adopted in a form that was different from what was envisaged. That, in turn, had an effect upon the way in which the prison system was administered.

5.138 The new classification system was put in to operation before it was ready, without the required staffing and training and without the necessary finance. Its commencement was precipitated by an accidental event. On 14 June 2001, three prisoners escaped from Karnet Prison Farm. They were dangerous prisoners, each with a long history of offending. There was, not unnaturally, a public outcry. The then responsible Minister, the Attorney General, responded to it in a way that, judged by what now is known, was understandable, but in the event was less than ideal. He directed that the new classification system be immediately put into operation "across the board". The result was that, as the officers concerned have indicated, the system was put into operation inappropriately. The officers who had to put it into operation were not properly trained – some said not even instructed – in what had to be done. It is not surprising that some of the classification decisions that were made, and the way in which they were made were not what they should have been. This in turn had effects upon the classification of some at least of the offenders the subject of the Inquiry.

5.139 During the same period, the new management system was brought into operation. In some prisons, a form of unit management was developed. But positive steps were taken to bring into operation a case management system and, where unit management was adopted, the management of prisoners within individual units has proceeded on a case management basis.

5.140 The Director General presented in detail the steps to be taken in the course of case management: see in particular DGR 14. But case management involves not merely compliance with prescribed steps, but an understanding of the relationship to be developed between prison officer and prisoner, and the means by which it is to be developed. This requires training. However, training and the resources necessary to implement the case management system were not available.

5.141 Notwithstanding the difficulty created by lack of resources and training, the officers of the Department implemented the new management system. It involved, in the main, the four things to which reference has been made:

- the assessment and classification of each prisoner
- the case management of each prisoner by a prison officer
- the provision of programs or training for individual prisoners for the purposes of habilitation and rehabilitation and their ultimate resocialisation and
- the preparation of each prisoner for re-entry into the community.

5.142 These are central to the present prison system and I shall consider them in more detail.

THE CLASSIFICATION OF PRISONERS

5.143 The classification of prisoners involves no mystique. It is the selection of the prisoners who are appropriate to be placed in the particular kinds or classifications of prisons. As I have indicated, prisons in Western Australia are given

classifications: maximum, medium and minimum security. This classification can be misleading. It does not mean that each prison is either maximum, medium or minimum, in the sense that each is sent only (respectively) maximum, medium or minimum security prisoners. The classification is to an extent artificial; as one experienced officer suggested, it evolved as a matter of history. The classification of each prison has resulted essentially from a departmental decision.

5.144 There does not appear to be a single test or criterion that, in all cases, is employed by the Department to determine what classification is to be given to a prison. In some cases, a prison classified as maximum security has the appropriate secure walls and/or fences and has appurtenant to it also an armed response unit to deal with the escape of a prisoner. However, an armed response unit is not available in respect of every prison which has been classified as a maximum security prison. A medium security prison has the relevant secure walls and fences but, at least ordinarily, does not have available an armed response unit. Officers in such a prison will have available to them for use within the prison appropriate instruments and, perhaps, weapons.

5.145 A minimum security prison is one which does not have the relevant walls and fences and which is, in general, an "open" prison. In some cases, for example, Broome Regional Prison, the prison may have a fence of some form around it. In DGR 14 there are descriptions of maximum, medium and minimum security prisons. The description of minimum security prisons will require amendment to the extent that the decision of Government to place fences around minimum security prisons is put into effect. To this decision I shall refer in other respects.

5.146 A prison classified in a particular way does not have in it only prisoners of its formal classification. A maximum security prison may have also medium security prisoners and, on occasion, minimum security prisoners. A medium security prison may, on occasion, have in it minimum security prisoners. This is normal. In a minimum security prison there will, of course, be only minimum security prisoners. The following table shows the number of prisoners classified at each rating.

Security Rating of Prisoners Held in Western Australian Prisons 2004/05

Prison	Minimum	Medium	Maximum
Acacia Prison	63	666	1
Albany Regional Prison	36	95	38
Bandyup Women's Prison	17	105	34
Boronia Pre-Release Centre For Women	50		
Broome Regional Prison	108	15	3
Bunbury Regional Prison	64	125	2
Casuarina Prison	42	218	192
Eastern Goldfields Regional Prison	86	17	8
Greenough Regional Prison	57	142	8
Hakea Prison	52	312	287
Karnet Prison Farm	157		
Roebourne Regional Prison	75	81	8
Wooroloo Prison Farm	210		1
Total	**1,015**	**1,777**	**583**

Source: Department of Justice (2005) *Prisons Performance Monitoring System*

5.147 Because prisons and prisoners were classified in this way, two things became necessary: to devise a method of classifying prisoners; and to decide what prisoners should be placed in minimum security prisons. These two are related but not the same. In many cases what was involved was not understood.

5.148 The classification of a prisoner is a matter of importance. It is important to the prisoner: it is no small thing for an individual to be subject to the constraints and the rigour of a maximum security prison. It is important to the public because a prisoner classified as minimum security may easily escape and/or may cause damage to prison staff, prisoners and others.

5.149 In practical terms – I put aside parole expectations and the like and look to the physical treatment of prisoners – there is a difference in the treatment of a prisoner if he is placed in a maximum or a medium security prison but the difference is not great. Transfer and transit matters apart, he is while in prison not subjected to restrictions of kinds that are relevantly different. The essential difference in treatment is between the secure prisons and the minimum security prisons.

5.150 The existence of a classification system accordingly makes it necessary to decide the significance of minimum security prisons. In many cases it also was not understood. In practical terms, classification is concerned with the two questions:

- is a prisoner appropriate to be classified as a minimum security prisoner; and
- (if so) should he/she be selected to be placed in one of the minimum security prisons.

5.151 As I have said, not all prisoners are placed in a prison of their classification. At all relevant times there have been more prisoners classified as minimum security than there have been places (about 550) in minimum security prisons. In theory, it may be that it is desirable that the minimum security places be expanded to meet the number of minimum security prisoners. If that occurs, it is likely to occur in the medium future or beyond. Therefore it is necessary to examine why one prisoner and not another should be classified for and placed in a minimum security prison.

5.152 There is no single reason. Prisoners in minimum security prisons cost less. It has been suggested that the Department pressed for more to be minimum security prisoners for this reason. That alone should not determine the matter. Nor is minimum security placement merely a reward for good conduct in prison. Some prisoners have assumed that it is. It should be made clear that it is not. The possibility of such a placement may promote good conduct and, as a factor, that cannot be ignored. But minimum security placements should be seen as functional. They should serve two purposes: to house those prisoners who do not need to be held in a secure prison because they are unlikely to escape, and to provide a means of resocialisation.

5.153 The function of prisons is to keep prisoners in custody. Some prisoners will not remain in custody unless they are in a secure prison and therefore they need a secure prison. But others (perhaps a majority) will remain in custody without restraints of that kind. As was said by officers during the Inquiry, many prisoners 'want merely to do their time' and be released. For these, there is no need for a secure prison.

5.154 Other prisoners require resocialisation: they need help to avoid re-offending on release. The accepted view is that it will help a prisoner to avoid re-offending if

he or she is assisted to get used to life outside the prison. For this purpose, home leave, work leave and the like are used. The freedom provided by a minimum security prison is accepted as helping in the process of resocialisation. Whether that is so is not clear; it is another of the beliefs of penology for which there is no firm proof, at least proof that is compelling.

5.155 The reduction of re-offending is important and there are no compelling proofs of what will produce it. There is enough to support the belief to act upon it. In a sense, the choice of those who should be given a place in a minimum security prison is a choice between those who do not need it and those who, for the important purpose of re-socialisation, do need it. The system of classification determines whether a person is appropriate for consideration for a minimum security placement. It does not determine whether, being eligible, he should be placed there. When there are, as now, more prisoners classified for minimum security than places for them, the distinction is important.

5.156 Prior to the adoption of the present management system, the classification system was different. It was more general and (as it has been described) more subjective. Its basis was described by witnesses as in part "a gut feeling"; it depended on the experience and the resulting judgement of prison officers see former DGR 2B and the corresponding provisions of DGR 13 which, in many respects, replaced DGR 2B.

5.157 Subject to an override, prisoners were required to spend a specified period of their sentences in maximum, medium or minimum security. Ordinarily, the "1/3 1/3 1/3" rule applied: DGR 13(9). DGR 13 provided that each prisoner should be classified "at the lowest level of security" "necessary to the good government, good order and security of prisons and the security of the community": DGR 13(7). The criteria for determining such an assessment were detailed in DGR 13(7)(2). In substance, within these general criteria, it was left essentially to the individual officer making the assessment underlying the relevant classification. He would act upon his own experience and on such information as he had concerning the prisoner. In some cases, what he knew concerning the prisoner, particularly repeat prisoners, was substantial. The officer's assessment was, in practice, subject to consideration by an officer at Head Office level who would be concerned with both the correctness of the assessment and the need to maintain an appropriate degree of uniformity of classification within the prison. This process of assessment had similarities to the process which then existed or had previously been employed in other jurisdictions.

5.158 On the adoption of the new philosophy of prison management, a new classification system was required. The Director General's Rules were altered. The main provisions were contained in a new DGR 14. Its purpose was to inaugurate "the case management of prisoners": DGR 14(1).

5.159 The procedure that the Director General's Rules specified envisaged that each prisoner would be assigned one of three security ratings: DGR 14(10)(1). These ratings depended upon the risk of escape by the prisoner. The maximum security rating was to be given to a prisoner "presenting a high risk of escape" and/or a" high risk to the safety of the public in the event of an escape". The medium security rating was to be given to a prisoner presenting a low to medium risk of escape and/or a moderate risk to the safety of the public in the event of an escape. The minimum security rating was to be given to a prisoner presenting a low risk of

escape and/or a low risk to the safety of the public in the event of escape, requiring a low degree of supervision and control within the prison. In practice, the prisoner's rating was determined according to the risk of escape.

5.160 It was therefore necessary to adopt a test or procedure for determining, in respect of each prisoner, what risk of escape he presented. Ms Tang and Ms Doyle, developed a test for this purpose. It is necessary to understand the assumptions that, consciously or unconsciously, underlay what they did.

5.161 Ms Tang and Ms Doyle examined a number of escapes on the basis that there would be factors common to those escapes and that those factors would be found in escapes generally. It was, I infer, thought that, by identifying factors common to the escapes examined, and by finding such factors in the case of individual prisoners, it would be possible better to predict whether an individual prisoner would be likely to attempt an escape. It was assumed that, if the individual prisoner exhibited the identified factors, he would be judged to be more likely to escape.

5.162 Ms Tang and Ms Doyle, in the course of considering the matter, proposed to test their conclusions by reference to Bandyup Women's Prison (approximately 160 prisoners).

5.163 From the evidence of Ms Tang and Ms Doyle and otherwise, it appears that they had not completed their consideration of the matter. Some 400 further files had been examined. Other tests were to be made to "validate" the proposed procedure; it was tested against experience in Bandyup Prison. It was intended that the method of classification that they were considering would be further tested, that it would be independently evaluated and that it would be modified as far as was found necessary. (A more detailed account of what was done is set out in the concluding submissions of Counsel Assisting the Inquiry).

5.164 These further procedures did not take place; at least they did not take place in the manner that was desired. This occurred because on 14 June 2001 three prisoners escaped from Karnet Prison (a minimum security prison) and a public outcry resulted. The prisoners, Simon James Santo Crimp, Leo David Sutcliffe and Adam Troy Goddard had been classified as minimum security prisoners under the old classification system. Each of them had been found guilty of serious crimes. There was a "public outcry" in the course of which statements such as "Killer on the run" and otherwise were published, statements that typically are made when a serious offender escapes from a minimum security facility. The Attorney General met with departmental officers to consider what reaction should be made to these escapes and to the public outcry. He was presented with a departmental report and had a discussion with those advising him, both departmental officers and others. As was to be expected, the Attorney General issued a Media Statement (dated 19 June 2001). As far as is here relevant, the statement did two things, it "instructed the Ministry to implement the new system of Classification of Prisoners across the board"; and it made statements in relation to that "new system".

5.165 The statements made were less than fully accurate in the sense that they did not accurately convey what was the position in relation to the "new system". To say this is no criticism of the Attorney General. In evidence before the Inquiry he explained what he did. (A detailed account of the evidence is contained in the closing submissions of Counsel Assisting the Inquiry). But what happened caused

the Department to bring into operation prematurely and in a premature form, the system of classification of prisoners that in its present form now operates.

5.166 Understood in terms of principle, the proposals developed by Ms Tang and Ms Doyle involved three things:

- the identification of factors which, if properly taken into account, would evidence or help to predict the individual prisoner's likelihood to escape;
- the giving to each of these factors a proper weighting: in this case a number to be added up and totalled for the purpose of making the assessment; and
- the determination of the range of numbers which, when totalled up, should be taken to predict whether the prisoner should be classified as maximum, medium or minimum security.

5.167 The Classification Review checklist (is for reclassification of existing prisoners. A similar but somewhat different checklist is used to derive an Initial Security Rating) considers:

- *the seriousness of the current offence;*
- *any history of escapes/attempted escapes;*
- *any offences committed whilst at large and*
- *any history of institutional violence).*

This is then supplemented by scoring:

- *any serious offence history;*
- *the effective sentence left to serve;*
- *whether there are any further charges pending);*
- *any disciplinary convictions during the current sentence; and*
- *the most severe discipline reconviction during the previous 12 months*

This is further supplemented by scoring a series of subjective "stability factors":

- *family relationships,*
- *industrial/educational performance; and*
- *program performance during the present term of imprisonment.*

The various scores are totalled to give an overall custody rating score:

Total Score	Custody Rating
11 or more points on Items 1-4	Maximum
14 or more points on Items 1-12	Maximum
7-13 points on Items 1-12	Medium
6 or fewer points on items 1-12	Minimum

5.168 There are obvious limits to what can be claimed for the system. The methodology used in evolving the classification test does not compel the conclusion that the components of the test (the factors identified and the weighting given to them) will lead to an accurate prediction of what the individual prisoner will do or is sufficiently likely to do. This is not a criticism of the methodology. Methodologies used in this context or for this purpose are not expected to compel conclusions. But I refer to the methodology and the limits of its effectiveness, for the purpose of emphasising the limits upon what, in this area, can be expected. This will be of significance in determining the extent to which reliance can be

placed upon the test in the placement of prisoners whose future actions may be in question.

5.169 The classification procedure depends upon the answers given to particular questions asked in the classification process. Those answers, the way they are obtained and the interpretation are, to a degree, dependent upon, or influenced by factors that are subjective rather than objective.

5.170 The weighting to be given to the answers obtained and the significance of the total number derived can be adjusted or, as has been suggested, manipulated. Thus, as was explained in evidence by Ms Tang, if the Department wished to have more prisoners classified as minimum security (and so more prisoners sent to a minimum security prison) that result could be achieved by adjusting the weighting or the total accordingly.

5.171 To say these things is not to reject the classification process that was evolved. It is said that it is validated because, during the period of its use, there have been fewer escapes than before. There have been fewer escapes overall and in particular, fewer escapes in the non-Aboriginal prisons. It has not been formally shown that changes in the number of escapes have been due to the adoption of this system of classification. However there has been widespread support for the classification system from those concerned with the operation of it. Their view has been that it works better to achieve its purpose than what previously was available. It is fair to assume that it does. Ms Tang and Ms Doyle were each of the view that improvement of the process could be achieved by further work upon it.

5.172 The classification process is now used by the Department to determine which prisoners are eligible for and, to an extent, should be placed in minimum security. Its operation is subject to an "override" process by which an officer, for stated reasons, can depart from the result produced by the process. The override process has been used in a comparatively small but significant number of cases. Essentially, its operation depends upon the 'gut feeling' of the officer, to the extent that he can justify that feeling by the reasons that he gives for the use of the override.

5.173 I shall subsequently indicate what in my opinion are the limitations of this classification system and the changes that should be made.

THE MANAGEMENT OF PRISONERS ACCORDING TO THE CASE MANAGEMENT PROCEDURES

5.174 The Department adopted the case management strategy to assist it to achieve the objectives of the present system. That strategy was, to an extent, in advance of the view that it had previously adopted and which was adopted elsewhere. By DGR 14, the Director General prescribed steps to be taken in the application of the case management procedure. But that Rule did not explain the components of the system or the requirements and the consequences of it.

5. 175 Essentially the case management system required four things:

- a change from the 'warehousing' approach to a more co-operative approach to the management of prisoners;
- the establishment of the tactics (the techniques) by which that approach was to be carried into effect;
- the gathering of the information relating to each prisoner necessary to enable that co-operative approach to be carried into effect successfully; and
- The resourcing and training of the officers who were to carry that approach into effect.

5.176 In order to understand the case management strategy it is necessary to refer to what each of these involves.

5.177 The case management system envisages that, by the appropriate treatment of prisoners by prison officers, there will be created a special relationship between them (I shall describe that relationship as involving reliance and trust). The way in which the prisoners are treated in prison and the operation of the prison will be based on the existence of that relationship. Given that relationship, the restraints and restrictions imposed on prisoners in secure prisons can be less; the extent of the freedom allowed in minimum security prisons can be adjusted accordingly. Considered against strategies formerly in force, the change is substantial. It is something that is not easily achieved.

5.178 This type of management regime requires the establishment and maintenance of that relationship. What is involved in a personal relationship and in particular this kind of relationship cannot be described in a formula of words. But there are some things that are involved. These include:

- dealing with the problems which prisoners have;
- understanding prisoner's reactions; and
- the adoption of appropriate disciplinary techniques.

5.179 The case management approach involves, in a sense, a social service approach by prison officers to prisoners. It recognises that prisoners have personal problems, that family affairs may (by deaths or otherwise) create problems for them and that in prison, emotional pressures may create problems for prisoners. Such problems have the tendency to lead prisoners to act in undesirable ways and even to riot or to attempt to escape. The case management approach is based on the view that, if such problems are removed or relieved, prisoners will act in more acceptable ways. It is seen as the function of prison officers to anticipate the existence of, to

learn of, and remove such problems and generally to reduce the tensions inherent in prison life. To do this, the relationship of reliance and trust is important.

5.180 It has been emphasised by prison officers and those experienced in prison management that the proper management of prisoners in this way requires that prison staff be able to recognise how prisoners think and what they are apt to do in given circumstances. These are things which require both training and proper information. To these matters I shall refer.

5.181 The adoption of case management and the relationship that it requires necessitates the adoption of disciplinary techniques different from those in "warehouse" prisons. These disciplinary techniques were not formulated and prison officers were not trained in the use of them.

5.182 Where the relationship between prison officer and prisoner is of the older style, discipline may be strict and readily enforced. The prisoner does what he is told to do or he is punished. Where the relationship is one of persuasion rather than punishment, the discipline that can be enforced is different and what can be done in the enforcement of it changes. Prisoners can do what, in earlier times, would not be tolerated and prison officers cannot use the methods of discipline as directly and readily as before. Neither prison officers nor prisoners have perfect personalities. Officers have in discussion instanced cases in which prisoners have tested the limits of patience, by requests that they have pressed or by threatening complaints to officials such as the Ombudsman, the Inspector of Custodial Services and others. There is sometimes pressure on officers to act in a way which is apt to affect the continuation of the relationship of reliance and trust.

5.183 Such things are a routine part of a management system and in particular, a case managed prisoner regime. They may be the result of the tensions and abrasions that necessarily arise. At least the occurrence of them should be anticipated and provided for. Officers have indicated that they recognise the need to exercise discretion in what is done. But a small number of prisoners so inclined can alter the tenor of the relationship achieved within a prison. This is incidental to the case management system which may, in the future, require that steps be taken from time to time to maintain a proper balance.

5.184 The evolution of a disciplinary regime to deal with such matters has been recognised. The procedures adopted are based, in the first instance, upon the view that privileges given to prisoners are to be earned and may be withdrawn. Television, radio, telephone and visiting privileges may be withdrawn for misconduct, if the offence related to a visit or use of the telephone. If that fails, the prisoner may be transferred, for specified periods, to less comfortable cells or to different units. The fact that favourable classification, or ultimately parole, may become less likely is made clear to prisoners. Formal charges may be laid before the superintendent, and, if needed, a visiting justice. If necessary, criminal charges may be brought for example serious assaults upon prison officers or other prisoners.

5.185 But there are difficulties in the operation of such a disciplinary regime. What is done to discipline a prisoner must be appropriately recorded: emphasis is properly upon accountability. As officers have said, what h been done by the prisoner and the consequences for him must be set down in writing. But it is not easy, for example, to record, in the electronic system or by manual recording on prison notes, the manner in which a prisoner said what he said or the circumstances of it.

The difficulties involved in the recording of matters such as these have sometimes led to officers not recording what has happened and, perhaps, dealing with what has happened in another way. Officers also need to evolve methods of dealing with "dumb insolence". It is necessary that a proper balance be achieved and maintained between, on the one hand, the proper treatment of prisoners and on the other hand the maintenance of "the good government, good order and security of" a prison (*Prisons Act* section 36(1)). In some cases it is not clear that this balance has been achieved. Some have developed the skills required by experience. But the evolution of a disciplinary regime suitable for individual prisoners upon the introduction of case management requires more. It remains necessary that there be a conscious examination of the disciplinary problems arising from the case management system.

5.186 It is necessary that this matter be emphasised. The case management system is a valuable system. If it succeeds, the regime of prison life that results is a regime good both for prison officers and for prisoners. But it can be destroyed. It is not difficult to envisage how this can be done. A small number of difficult prisoners – of whom there are inevitably some – may reject or ridicule the relationship of respect and trust on which case management is based. Experienced officers can sometimes, perhaps always, deal with such a situation. But the danger is real. It is necessary that, in the training of officers for case management, attention be directed to this danger and the techniques for dealing with it.

5.187 It was recognised at the outset of its use that if the case management system was to be successful, the resourcing and training of prison officers was essential. As was recognised at the time, at least three things were required. First, it was necessary to change the approach to management of prisoners previously adopted. To change the attitude of staff was important and was not easily achieved; as I have said, it was no small thing. Second, for a prison officer to be able to understand, to anticipate, and to deal with prisoners involved a more detailed understanding of the thinking and reactions of prisoners. And third, such an understanding needed to be both acquired and taught. Particular techniques were necessary to establish and deal with prisoners in such a relationship of reliance and trust. In particular, a prison officer must be able to deal with the small number of difficult prisoners inevitably to be found in a prison system who will cause disruption.

5.188 Resources for the training of officers must be available. When the case management approach was proposed by departmental officers, they stressed that provision for such training was necessary. Unfortunately training was not provided. Officers have suggested reasons why this was so: the need to concentrate on the filling of the new Acacia Prison; the withdrawal of the necessary finance; and the pressure to adopt the new approach to classification and case management earlier than would have been advisable. The lack of training had a significant effect. The case management system was brought into operation at a stage before it was ready, at least before the appropriate and necessary preparations had been made for it. As one officer said, he learned to do some parts of the new process required by himself attempting to find out how to use the computer program; another said that there had been no training at all.

5.189 I have explained the classification and case management systems and the circumstances in which they came into operation. In order to understand their

limitations and the difficulties involved in the operation of them, two further things must be understood:

- the need for each system to have available all relevant information; and
- the practical difficulty of operating the case management system in the manner prescribed.

5.190 Both systems envisage that the prison officer will have available to him as much information about each prisoner as is required; see generally DGR 14(9)(1)(4). In relation to a first offender, the assembling of this information is commenced by the information process started at the Assessment Centre. That information should be added to from time to time during the further interviews held at specified intervals as prescribed by DGR 14.

5.191 In fact, no procedure was established by DGR 14 to ensure that the information that was necessary to enable the classification and case management processes to be carried out was available. Such a procedure needed to be established. The absence of it could lead to serious results. What happened in relation to Mr Keating is an example. Strong views had been recorded as to his propensities suggesting that he should not be permitted to be in the presence of female staff. Details of the event relating to Ms "X" were not available or, if available, were not sufficiently recorded to make clear the implications of it. The way in which Mr Cross was dealt with indicates that, because of deficiencies in the information available, those who should have been dealing with him overlooked him or did not fully appreciate his history.

5.192 Information relating to a prisoner comes from several sources. In practice all information is not gathered in, or available from, a single source. In earlier times, information relating to prisoners was recorded in paper files kept by the Department, individual prisons and prison officers. Steps were taken to assemble the material. There is in existence 'TOMS' (Total Offender Management System). This is an electronic system designed to assemble information known about an offender. It is envisaged as the main (or perhaps total) aggregation of information and it envisages that all appropriate information acquired in relation to a prisoner should be referred to in, or added to TOMS. Officers have said that this frequently does not happen. TOMS is, in practice, treated by some officers as incomplete and by others unreliable. In practice it has not yet fully achieved the purpose envisaged for it. (There is a full discussion of the sources of information available to officers in the final submissions of Counsel Assisting the Inquiry).

5.193 In practice, as I have indicated, other sources of information exist. Information described as "intelligence information" is kept by the Department. It can be an important source of information. This is confidential, in the sense that it is not readily available or made available to all officers. It is understandable that information of this kind should be collected and that reference to it should be appropriately restricted. The information comes, in some cases, from observation by prison officers but in other cases from prisoners themselves. During the Inquiry it has appeared that on occasions reference that might have been made usefully to such information was not made. It is not clear when and by whom reference may be made to such intelligence information.

Recommendation 14

The Department should undertake a full review of the processes used to gather, analyse and disseminate intelligence information to ensure such intelligence appropriately informs decision-making.

5.194 The position of intelligence information requires careful consideration. A procedure should be established to ensure these things:

- that intelligence information is gathered together in an appropriate way.
- that access to it should be appropriately restricted.
- that the information is available to those who should take it into account in their decision making.
- that those who should know of the existence of intelligence information about a prisoner are made aware of the fact by an appropriate notation on TOMS or otherwise.
- that those who should have direct access to intelligence information should be identified and should be provided with the means of access; and
- that those who should not have direct access to it should be required to obtain from a selected officer an indication of whether the information is of significance in relation to the decision to be made and, if it is, the authorised officer should be involved in the making of the decision.

5.195 It is not yet practicable to require that all information be recorded or noted on TOMS. Officers should be encouraged to work towards the achievement of a single source of information and should be trained for the purpose. In the meantime the record keeping system in relation to prisoner information should be reconsidered. During the Inquiry it was found that the record keeping of the Department in relation to prisoners was unsatisfactory and unacceptable. It was, for example, necessary to refer to the files of Messrs Cross, Edwards, Keating and Mitchell. It was to be expected that, having regard to the significance of the incidents involving these offenders, their files would have been available. It was found that some of them were missing. Despite detailed requests to the Department they were not produced. The absence of files relating to prisoners is unfortunate where questions have arisen as to the manner in which the prisoners have been dealt with by officers of the Department.

5.195 A police officer experienced in prison procedures, Detective Sergeant Gary Saunders investigated the record keeping of the Department in relation to prisoners. The position there disclosed is unsatisfactory. The record keeping system should be changed.

Recommendation 15

The Department should fully implement the recommendations of the Consultant's review "Report on the Practices relating to the Creation, Management and Disposal of Prison Management Files within Prisons".

5.197 DGR 14 provided in detail what should be done in relation to case management. In practice, what was provided was in many cases not followed or it was carried out in different ways.

5.198 Officers gave reasons why the Rule was not followed. Some suggested that, in a practical sense, it could not be followed. Others suggested that the result could be better achieved in other ways.

5.199 DGR 14 provided that all prisoners with an IMP should have a case officer allocated to them and that the prisoner was to be notified of his case officer within three days of arriving at the receiving prison. It contemplated that the case officer would make contact with the prisoner within seven working days after notification for an initial interview and that each month, or as otherwise directed by the IMP Case Conference, the case officer would meet with the prisoner to discuss progress. Provision was made by DGR 14 for the recording of these procedures. Case Conferences were to be held and recorded. The prisoner's IMP would be updated at intervals. Arrangements were made for the case management of lifers under the pre-release procedures.

5.200 What was done varied in different parts of the Department and at different prisons.

5.201 The results arrived at by the scoring system were, in some of the cases investigated by the Inquiry, not arrived at in the "objective" manner envisaged by the system. What occurred in relation to particular prisoners was examined in detail during the Inquiry. I shall not recount in full the details of what emerged. Mr Keating was moved from maximum security at Casuarina to medium security at Bunbury and was recommended for minimum security and ultimate pre-release procedures. It is difficult to have confidence in what was done. Mr Cross, a prisoner with a record involving violence, was assessed as appropriate for minimum security in anticipation that he would satisfactorily complete the Violent Offender Treatment Program. He had not started that program and could not do so for some months. Yet he was immediately classified as minimum security and placed in a minimum security prison (Karnet) from which he escaped. It is difficult to understand how, if as was apparent, he needed to undertake a program to reduce his propensity for violence, he could, by the application of the classification testing procedure, be classified as minimum security when he had not undertaken the program. It is equally difficult to understand that, in such circumstances, he could actually be transferred to a minimum security prison before he had undertaken the program. I shall refer elsewhere to the light that this case casts on the nature of the classification test and its concentration upon a prisoner's likelihood of escape.

5.202 In some prisons, prisoners are not allocated to individual case managers at the times or in the numbers contemplated by DGR 14. Some officers said that individual case management would not work; they suggested as reasons (I take some of the examples given) the twelve hour working shifts (the prison officers on such shifts are regularly absent from the prisoners to be managed for several days each week), the regular absence of officers from prisons on leave and otherwise; and the lack of sufficient staff to do what, by way of paperwork and otherwise, the system requires.

5.203 Notwithstanding these discrepancies and departures from the DGR 14, the principles underlying the classification of the case management system have in general been accepted and, with some exceptions, uniformed officers have

expressed the desire to give effect to them. In some cases the Rule is applied. In Albany Prison it was claimed that, because of the circumstances existing there, prisoners could be allocated and dealt with as the Rule provides. But in many cases the principles were applied in ways adapted or adopted by the particular prisons or officers. The fact that, as it was said, this was known by Head Office is of significance in assessing the extent to which the prison system was effectively controlled.

WORK AND COURSES FOR PRISONERS

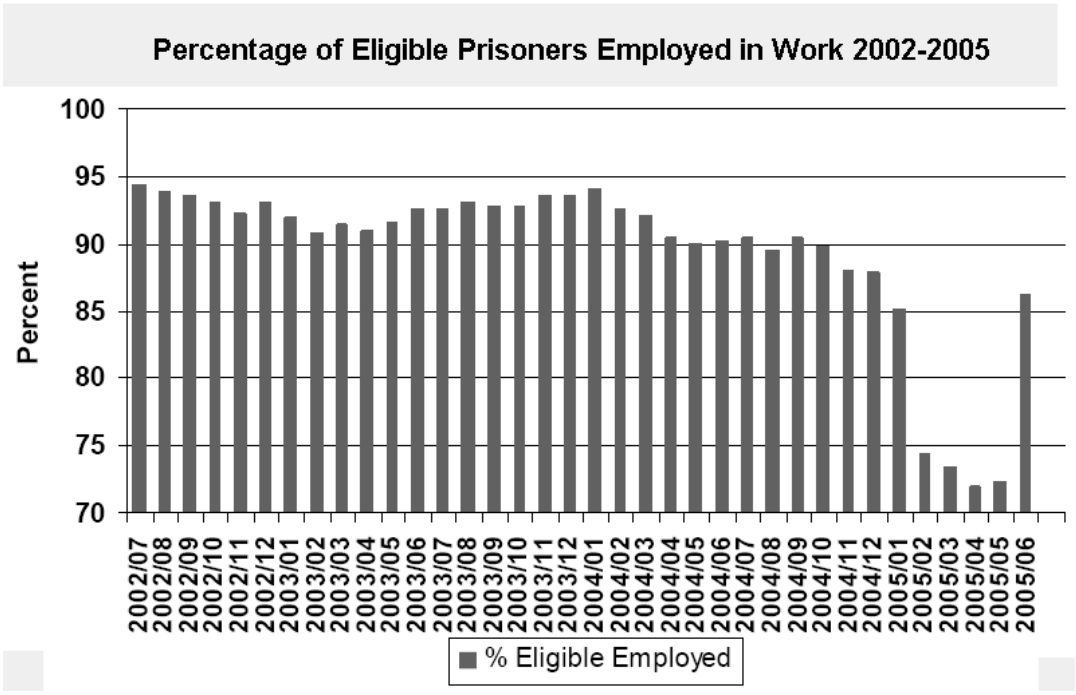
5.204 In Western Australia a substantial sum is spent each year on providing courses for prisoners. The Department of Justice delivers these courses through the Prison Division's Offender Services and Sentence Management Directorate. In 2004-05 the Directorate had a budget of $16 million[15] and employed 243 full time equivalent staff[16]. The Offender Programs Branch had a net expenditure of just over $4 million, and a paid full-time equivalent of 60 staff. Approximately $1.85 million was spent on sex and violent offender treatment programs and $0.6 million on substance abuse programs. The Education and Vocational Training Unit had a net expenditure of just over $4.5 million and paid 103 full-time equivalent staff. It will be appropriate at a later stage to consider in more detail what courses are provided, why they are provided and what benefits should be obtained from them. I shall confine what I say at this stage to more general questions.

WORK

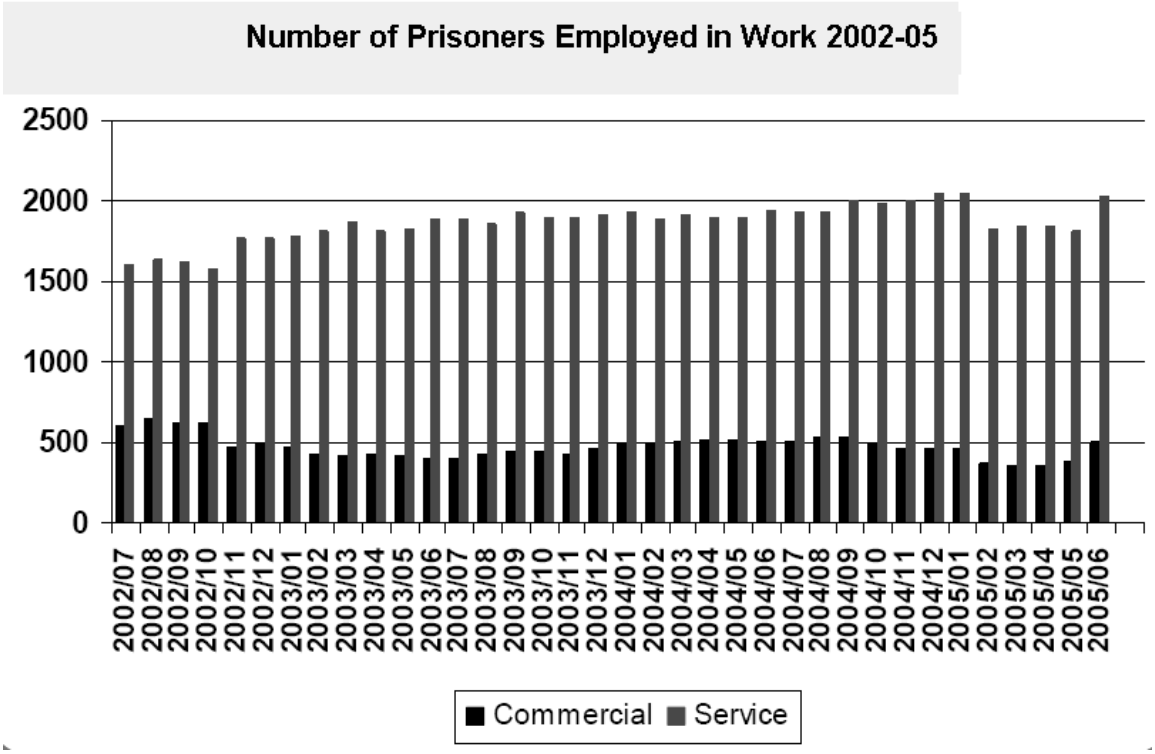
5.205 A distinction is to be drawn between work and courses. On one view, prisoners should be required to work while in prison (special considerations apply in relation to remand prisoners). Two reasons are given: work keeps prisoners occupied and the routine of work minimises the likelihood of prison disruptions; and the proceeds derived from what they do (making furniture for sale is an example) help to defray the cost of their imprisonment. Most prisoners are engaged in "service" work. A much smaller number are engaged in "commercial" work, which derives income for the prison system.

[15] Department of Justice (2005) *Net Cost Summary Report - Prisons Division July 2005,* Department of Justice, Perth.

[16] Department of Justice (2005) Prisons Division FTE's Paid During May 2005.



Source: Prisons Division Monthly Performance Report June 2005.



Source: Prisons Division Monthly Performance Report June 2005.

5.206 The need, at least the desirability, that prisoners be occupied is important. It appears that the experience of prison officers confirms the view that idle hands can create mischief. Several officers referred to the advantage of prisoners having a regular daily routine that occupies their time. But that alone would not justify the expenditure; it is relevant but not sufficient.

5.207 Senior officers at the prisons have supported work programs for prisoners and have said that they help in the management of prisoners. In some prisons, of which Hakea is one, lack of funds has reduced the number of prisoners who can

be put to work. Prison officers have advocated, apparently with cause, that funds should be provided to allow prisoners (in addition to those on routine tasks such as cleaning, food preparation and the like) to be routinely employed. This should be done.

Recommendation 16

The *Corrections Act* should stipulate that the Commissioner may direct any sentenced prisoner to work, and that remand prisoners can be offered the opportunity to work.

Recommendation 17

The Department should explore opportunities to increase and develop its prison industries, including by commercial and charitable arrangements.

COURSES

5.208 The Department provides a large number of courses that can be undertaken by prisoners. Broadly, they fall into two categories: education (or vocational training) courses; and "treatment" courses (or "programs"). I shall discuss these separately.

Education

5.209 Education courses were first introduced into Western Australian prisons in 1899 when prison Chaplains held weekly classes for juveniles and illiterate prisoners in Fremantle Prison.

5.210 During the 1890's, changes in the British prison system heralded the reforms that were brought about as a result of the Gladstone Inquiry in 1895. The first professional educator to teach adults in prisons in Western Australia was appointed in 1902.[17]

5.211 In 2005, the Department is an accredited provider of technical and further education providing a wide range of vocational and other educational course. The Department has listed the courses provided and these are set out in the table below. Not all of the courses are available at all prisons or to all prisoners. The Inquiry heard criticism about the availability of relevant courses at some prisons. The Inspector has also made comment about this in some of his reports on individual prisons.

[17] Department of Justice (2002) *Adult Education in WA Prisons- an Overview of the last 100 Years.*

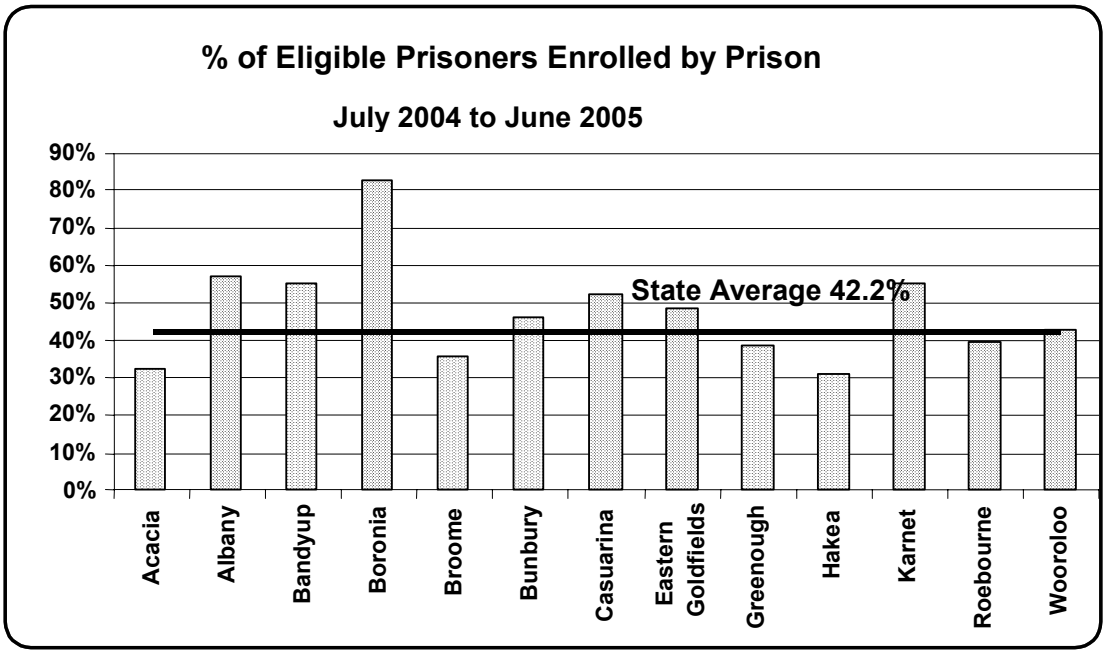
Education & Vocational Training Unit – Training Pathways for V.E.T. Semester one, 2005

Course	Acacia	Albany	Bandyup	Boronia	Broome	Bunbury	Casuarina	Eastern Goldfields	Greenough	Hakea	Karnet	Roebourne	Wooroloo
Administration Training	P	P	P	P	P	P	P	F	P	P	P	P	P
Agriculture/Bush fire safety		P			X						P	F	P
Art and design	F	F	F	P	F	F	F	F	P	U	P	F	
Asset maintenance		P	F	P		U	F	P		P	U		P
Automotive									F		P		P
Bakery							P						
Certificate General Education for adults	F	F	F	F	F	F	F	F	F	F	F	F	F
Clothing production/Textiles		F	P	P			F	F				P	
Food-processing						U							
Furniture production/ Cabinetmaking /Carpentry	F	F		P		F	F			U	P	U	P
General building construction	X	P			F	U	F	P	F	U		P	P
Hospitality (kitchen operations)	F	F	F	F	P	F	F	F	F	P	F	F	P
Human/Community services	X	X	P	X	X	X	X		X	X	P	X	P
Information technology	F	F	F	F	F	F	F	F	F	F	F	F	F
Introduction to a general education	F	F	F	F	F	F	F	F	F	F	F	F	F
Landcare/Horticulture	F	F	P	P	F	F	F	U	F	P	F	F	P
Meat processing (abattoirs)											F		P
Metals and engineering		F	P		F	F	P	U	F	P	P	P	P
Music industry skills		P	P		P	F	P			P		F	
New opportunities for women			F	F	F			F				F	
Small business management	X	X	X	P		F	F		X	X	F	X	P
Sports/recreation industry training	P		P	P		U	P	U		P		P	P
Textile care (laundry)			P			F			U	P			P
Textile fabrication (canvas and sailmaking)							P						
Transport and distribution (forklift)		F		F	F	F	F	F	F		F	F	F
Upholstery		F											

F=Fully Face to Face; P=Partially Face to Face; X= External; U=Under Negotiation

Source: Information provided by the Department of Justice

5.212 Not all of the courses are available at all prisons or to all prisoners. The Inquiry heard criticism about the availability of relevant education and courses at some prisons. The Inspector has also made comment about this in some of his reports on individual prisons.



Source: Prisons Division Monthly Performance Report June 2005.

5.213 Enrolment in vocational and education courses varies from prison to prison. Acacia, Broome and Hakea prisons have the lowest enrolments.

Programs to Correct Offending Behaviour

5.214 In addition to education and training courses, the Department provides a range of treatment or intervention programs that are intended to correct offending behaviour and reduce re-offending.

5.215 In 1996, the then Policy Projects & Programmes Directorate of the Offender Management Division produced a strategy document entitled "*Future Directions Report, Towards Integration*". [18]

5.216 The Future Directions report concluded, from a review of the scientific literature, that although chronic offenders were in the minority, they engaged in multiple types of offences and problematic behaviour. The review identified the following predictors of re-offending and recidivism:

- Age - the 18 to 25-year-old age bracket is a higher recidivism risk group;
- Gender - males are more likely to re-offend than females and more likely to commit violent offences;
- Aboriginality – Indigenous offenders have a higher recidivism risk;

[18] Western Australian Ministry of Justice (1996) *Future Directions Report, Towards Integration.*

- Family factors -strong family relationships reduce recidivism risk;
- Educational and employment achievement - low educational and employment achievement increase the risk of recidivism;
- Criminal history - a prior criminal history increases the risk of re-offending;
- Offenders with high so called "criminogenic needs" (procriminal attitudes, criminal associates, substance abuse, antisocial personality, poor problem-solving skills, hostility and anger) are more likely to re-offend; and
- Predictors for adult and juvenile re-offending are virtually identical.

5.217 The review noted that the 'Justice Model' of corrections had become popular in the 1970s after publication of a research conclusion that "nothing works" in reducing the tendency to re-offend. The Justice Model gave few opportunities for offender rehabilitation or change. It relied largely on incapacitation of offenders, by simply incarcerating them.

5.218 However, the review found that more recent research had shown that the conclusion which underpinned the Justice Model was flawed. The model was being replaced internationally by approaches based on the "what works" philosophy.[19]

5.219 The *Future Directions Report* concluded that strategies that followed "what works" could significantly reduce recidivism and recommended the adoption of risk-need intervention programs for offender management using the following principles:

- risk - a higher level of service should be reserved for a high-risk cases;
- need - intervention and service should be matched to criminogenic need (the defects that contribute to criminal behaviour); and
- responsivity - the style and mode of intervention and service should match the learning styles and abilities of offenders.

5.220 The report recommended that objective recidivism risk-needs assessment instruments and systematic, data-driven intervention strategies should replace the arbitrary human judgement and discretion-based approaches to classification because of potentially high levels of bias. However, a professional override should be available to reflect and incorporate current circumstances.

5.221 The *Future Directions Report* identified significant program gaps in the Department's existing treatment services. There was a need for:

- generic programs targeting hygiene, life skills and health education;
- programs to assist in the resolution of acute and chronic family issues;
- culturally based programs for Indigenous offenders;
- programs to address the needs of the developmentally delayed;

[19] Sherman LW et al (1997) *Preventing crime: what works, what doesn't, what's promising:* A Report prepared for the United States Congress by the National Institute of Justice,

- programs to target higher recidivism risk offenders in denial and refusing intervention;
- programs targeting criminal and antisocial behaviour based on a cognitive behavioural approach (correcting thinking errors and enhancing problem-solving skills);
- peer support programs promoting pro social behaviour including communication skills and relationship enhancement; and
- programs to prevent relapse and to support the maintenance of recidivism reduction gains;

5.222 The report noted that treatment programs were generally less effective if they were delivered in an institutional environment rather that in the community. To be consistent with the "what works" philosophy of demonstrating achievement, the report also recommended that external evaluation (and an evaluation budget) should be built into program design to establish and monitor program efficacy.

5.223 The Department largely adopted the recommendations in the Future Directions report and commenced a range of activities designed to implement it.

5.224 Similar approaches based on the "what works" philosophy have been adopted in all Australian States and in most other developed countries throughout the world. These are reflected in various Standards.

5.225 The Guiding Principles for the Management of Prisoners articulated in the *Revised Standard Guidelines for Corrections in Australia*[20] state that within prisons:

> *"Prisoners should be provided with opportunities to address their offending behaviour and actively encouraged to access evidence-based intervention programs, education, vocational education and work opportunities."*

5.226 Similarly, the Guidelines state that, in community corrections:

> *"Structured programs should be made available to offenders on an individual or group basis through community based correctional agencies are relevant to their criminogenic needs, responsivity, abilities, and cultural background; are integrated with their prison experience (if any); and assist them to live in the community without further offending…"*;
>
> *"Offenders should be able to expect continuity of interventions, opportunities for rehabilitation, and consistency of management approach when they move from a custodial environment into one of community-based supervision, or vice-versa."*

5.227 In March 2005, The National Accreditation of Offence Related Programs Working Group of the Corrective Services Administrators Conference established the *Australian Offender Program Standards*.[21] A set of national standards (which are to be incorporated into the *Revised Standard Guidelines for Corrections in Australia*) for the content and delivery of offender programs that are intended to contribute to the development of a national accreditation framework for offence related programs.

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[20] *Revised Standard Guidelines for Corrections in Australia,* 2004

[21] National Accreditation of Offence Related Programs Working Group of the Corrective Services Administrators Conference (2005) *Australian Offender Program Standards*, March 2005.

5.228 According to the Australian Offender Program Standards an Offender Program is:

> *"a structured intervention that addresses the factors directly linked to offenders' offending behaviour."*

5.229 The Department has adopted these principles. In its policy document "*Cornerstones of Prison Management*", it states that for rehabilitation:

> *"Prisoners are to be encouraged to engage in programs, education and activities that seek to reduce the risk of re-offending and increase their potential for reintegration into the community."*

5.230 Within this context, the Department's strategic objectives include among their long-term goals:

> *"to provide intervention strategies that are informed by research and demonstrated to make a difference in reducing the rate of re-offending".*

5.231 The Offender Services Branch of the Department's Prison's Division has now developed or purchased treatment programs to address the following areas of offending behaviour

- cognitive skills;
- drug addiction and substance abuse;
- anger management and violence; and
- sex offending.

5.232 In addition, the Department offers, or has contracted others to provide, programs that provide information on health, community awareness and family relationships.

5.233 The treatment intervention programs are of varying intensities.

- Low intensity programs, which usually last for 10-20 hours, aim to provide information and raise awareness of issues that underline aspects of offending behaviour. These programs provide a minimal intervention for offenders who are, in any case, at low risk of re-offending. Low intensity programs are used only in the addictions area.
- Medium intensity programs, which last for 50-70 hours, aim to provide information, skills and insights that are relevant to a particular type of offending behaviour. These programs target medium risk offenders.
- High intensity programs, which last for 100 hours or more, aim to provide information, develop defence-related insights and skills and address the often entrenched and complex psychological problems that underlie offending behaviour. They operate through a combination of cognitive behavioural work and therapeutic group process. They target high-risk offenders and are expected to reduce re-offending in all but the most entrenched offenders.

5.234 The Department has provided details of the treatment courses it provides through the Prisons Division:

Cognitive Skills Programs

- **Reasoning and Rehabilitation Program** (76 hours, medium intensity) -- aims to replace well-established maladaptive thinking patterns with cognitive skills that can promote pro social behavioural choices;
- **Legal and Social Awareness Program** (66 hours, medium intensity) -- for offenders with recognised or borderline cognitive impairment.

Addictions Offending Programs

- **Drug Awareness Workshop** (five hours, low intensity) -- relapse prevention skills and through-care options;
- **Female Group Program** (seven-day group program run over 2-3 weeks, low intensity) -- stress management, communication skills, relationship issues, self-esteem building, relapse management, and building community supports;
- **Female Relapse Prevention Program** (four-day group program run over 2-3 weeks, low intensity) -- information, problem solving and skills development relating to the prevention and management of relapse;
- **Individual Counselling** (average duration eight hours);
- **Indigenous Men Managing Anger & Substance Use Program** (IMMASU) (50 hours, medium intensity) -- designed for indigenous men in remote areas who have offending records characterised by violence and alcohol use;
- **Managing Anger and Substance Use Program** (MASU) (50 hours, medium intensity) -- for men with both anger and substance use issues;
- **Moving On From Dependency Program** (120 hours plus follow up sessions, high intensity) -- for highly motivated male and female offenders with high risk/need;
- **NASAS Alcohol and Substance Use Program** (36 hours, low intensity) -- culturally appropriate substance use treatment designed for indigenous offenders (from the Noongar Alcohol and Substance Abuse Service).

Violent Offending Programs

- **Building Better Relationships Program** (based on the Duluth model) (82 hours over 8-9 weeks, medium intensity) -- designed for male domestic violence offenders;
- **Individual Counselling** (average duration 10-15 hours) -- for prisoners who are not able to be included in group treatment programs;
- **Violent Offending Treatment Program** (450 hours over 24 weeks in a residential setting, high intensity) -- designed for high risk male violent offenders;

- **Women's Anger Management Program** (72 hours over 15 weeks, medium intensity) -- for female offenders with a violent offence who are due for release in the next 12 months;.

Sex Offending Treatment Programs

- **Community Based Program** (six-month group program three hours per week for a total of 75 hours, medium intensity) -- to reduce sexual re-offending and relapse prevention among low to medium risk sex offenders who have community-based orders such as probation or parole;
- **Community Based Intellectually Disabled Program** (six-month group program, three hours per week for a total of 75 hours, medium intensity) -- for sex offenders with an intellectual disability who are living in the community;
- **Community Based Individual Counselling** (average duration 10-15 hours) -- for community-based offenders who are not able to be included in group treatment programs;
- **Community Based Maintenance Program** (24 hours, medium intensity) -- designed for male sex offenders who have completed one of the prison based programs to maintain previous treatment gains when back in the community;
- **Indigenous Medium Program** (180 hours over 18 weeks, medium intensity) -- designed to be culturally relevant for indigenous sex offenders;
- **Individual Counselling** (average duration 15-20 hours) -- generally for prisoners who are not able to be included in group treatment programs;
- **Intellectual Disability Program** (192 hours over 16 weeks, medium intensity) -- for medium risk sex offenders with low levels of intellectual ability;
- **Intensive Program** (460 hour residential program over six months, high intensity) -- for male sex offenders who posed the greatest risk of re-offending and will cause the greatest amount of damage to victims;
- **Medium Program** (160 hours over 16 weeks, medium intensity) -- designed for medium risk sex offenders who have committed repetitive sex offences involving some level of aggression against a small number of victims.

External Programs

- **Milliya Rumurra Health Education Program** (54 hours over 12 weeks, medium intensity) -- community awareness and family and health problems, for medium risk indigenous offenders;
- **Milliya Rumurra Living in Harmony Program** (30 hours over 12 weeks, low intensity) -- to provide skills and information regarding anger and gender issues, personal beliefs and becoming responsible, for medium risk indigenous offenders.

In 2004-05 the Department provided the following treatment programs to prisoners:

Treatment Program	Total	Albany	Bandyup	Boronia	Broome	Bunbury	Casuarina	Eastern Goldfields	Greenough	Hakea	Karnet	Roebourne	Wooroloo
Brief Intervention – Substance (3 to 4 hours)	**438**		25							413			
Cognitive Skills – Legal & Social Awareness (46 hours)	**2**		2										
Cognitive Skills – Legal & Social Awareness (66 hours)	**13**						13						
Cognitive Skills – Reasoning & Rehabilitation (76 hours)	**152**	19	10			32	21		30		10	10	20
Individual Forensic Counselling – varying length (20 to 200 hours)	**3**	3											
Sex Offending Indigenous Medium Intensity (180 to 192 hours)	**17**								17				
Sex Offending Individual Counselling (24 hours)	**7**		1	1		1					4		
Sex Offending Individual Counselling (3.75 to 7 hours)	**3**								3				
Sex Offending Intellectual Disability – Medium Intensity (192 hours)	**5**						5						
Sex Offending Intensive (450 hours)	**19**					9	10						
Sex Offending Medium Intensity (160 hours)	**50**					10					40		
Substance Offending – Drug Awareness (5 hours)	**73**	10									19		44
Substance Offending – MASU (15 hours)	**2**							2					
Substance Offending High Intensity – MOFD (120 hours)	**18**					18							
Substance Offending High Intensity – MOFD(120 hours)	**97**	10	18				37						32
Substance Offending High Intensity – MOFD(120hours)	**9**										9		
Substance Offending Individual Counselling (4-6 hours)	**3**	1	1								1		
Substance Offending Low Intensity – FGRP (20 hours)	**8**			8									
Substance Offending Low Intensity – FGRP (35 hours)	**16**		16										
Substance Offending Medium Intensity – IMMASU (50 hours)	**147**				42			10	62			33	
Substance Offending Medium Intensity – MASU (50 hours)	**90**	21				9	9		10		21		20
Violent Offending – Women's Anger Management (27 hours)	**1**			1									
Violent Offending Individual Counselling (3–10 hours)	**2**								1			1	
Violent Offending Intensive (450 hours)	**28**	9					19						
Violent Offending Medium Intensity – BBR (82 hours)	**6**												6
Violent Offending Medium Intensity – CALM (48 hours)	**23**						12						11
TOTALS	**1232**	**73**	**73**	**10**	**42**	**79**	**126**	**12**	**123**	**413**	**104**	**44**	**133**

(Acacia has been excluded)
Source: Information provided by the Department of Justice

EVALUATION OF TREATMENT PROGRAMS

5.235 The importance of objective, independent evaluation of treatment programs was recognised by the Department in its the *Future Directions* report in 1996. There is an extensive scientific literature on evaluation frameworks for such programs. The various approaches have been summarised a recent publication produced by Correctional Service of Canada[22]. This identifies five broad types of evaluation studies in correctional settings:

- *Randomised experimental design* - where individuals are drawn at random from an initial sample for allocation to experimental and control groups. Random allocation experiments provide the best evidence about the effectiveness of a treatment. Unfortunately randomised experimental designs form only a small proportion of the published reports on correctional research, the reason being that decisions to allocate offenders to different interventions are

[22] McGuire J (2005) *Development of a Program Logic Model to Assist Evaluation, Compendium 2000 on Effective Correctional Programming,* Correctional Service of Canada.

predominantly made by courts of law. As a result most researchers resort to using what are known as *quasi-experimental designs.*

- *Control of extraneous variables* - these studies use close matching of groups (for example in scores on predictive instruments) and control for the effects of major external influences.
- *Equivalent control group design* - the treatment group is compared with a sample that is broadly equivalent on key variables and also on pre-assessment measures.
- *Single-group pre-post designs* - program participants are assessed prior to and after participation in the program; or *non-equivalent control group* designs in which groups are compared with a control sample which may differ from them in some important respects.
- *Correlational designs* -- look for an association between program participation and alterations in rates of offending at a specific point in time. These are seen to be the weakest forms of evidence.

5.236 The importance of collecting in-depth information on re-offending and making comparisons between actual recidivism for groups of offenders, and the projected rate of re-offending based on predictive scales is well recognised. The outcome criteria used to assess recidivism may consist of: arrest; re-conviction; parole violation or breach of supervision or probation; reincarceration following new convictions; recall to prison whilst on licence; or re-admission to a secure hospital. Most research on re-offending focuses simply on the event itself gauged by one of these methods. Relatively few studies take into account the type or level of seriousness of the offence or, with repetitive offending, its distribution over time.

5.237 It is only recently that the Department has come to try to measure results of its intervention programs using actual recidivism data. It has been hampered in this regard by the poor linkages available within the various information systems it maintains. I shall discuss the deficiencies in its information systems and what can be done to improve them elsewhere in this report.

5.238 There is also seen to be value in using intervening variables (those targeted by the program such as assessments of knowledge, attitudes, thinking patterns, affective states, behavioural skills, and personality dimensions); or features of lifestyle such as numbers of criminal associates or levels of conflict with significant others.

5.239 Intervening variables, when selected with care, have the advantage that they can provide more immediate feedback on the effect produced from a treatment program instead of having to wait sometimes years to determine if a treated individual will re-offend. The Department has started to develop an understanding of which intervening variables can use to evaluate its treatment programs.

OFFENDER PROGRAMS EDITH COWAN

5.240 Despite the recognition of the importance of evaluation of treatment programs being recognised by the *Future Directions* report in 1996, it was not until 2001 that the Department established Offender Programs Edith Cowan (OPEC) to evaluate Prisons programs and predictive tools and rehabilitative efforts. OPEC

has since been constructing a database on offenders identified as candidates for violent, sexual, substance, relationship or cognitive skills intervention programs.

5.241 The Inquiry has noted that the officer assigned to OPEC has been located within the Department's Programs Branch with responsibility to the Manager of that Branch. This arrangement appears to be contrary to the intention of the *Future Directions* recommendation about objective independent evaluation. It could at, some time in the future, compromise that officer's ability to report critically on evaluations. A location independent of the Branch should be considered in future.

5.242 OPEC has commenced evaluation of some of the Department's programs. However, it has been hampered by the lack evaluation forethought in program design. None of these evaluations are based on controlled studies and most have been confined to correlational design approaches, or, more recently, to limited pre-post studies of intermediate variables in some programs. As a result the Department is as yet unable to demonstrate conclusively that its treatment programs are effective in reducing re-offending.

SEX OFFENDER TREATMENT

5.243 In February 2002, the first systematic evaluation of a Departmental intervention program was reported, a retrospective evaluation of the Sex Offender Treatment Unit conducted by Greenberg at the Crime Research Centre of the University of Western Australia. The quantitative evaluation involved a comprehensive review of 2,165 convicted male sex offenders referred to the Unit between 1987 and October 2000. [23]

5.244 The results were disappointing. Examination of the treated and untreated recidivism rates revealed there to be no significant beneficial effect of treatment but Greenberg could not conclude with certainty that treatment was ineffective because of methodological limitations of the evaluation. The results did reveal that, although the proportion of offenders that recidivated was similar across the untreated, prison and community treated groups, the "survival time" (the time take before the individual re-offended) between these groups varied, suggesting that treatment may extend the time it takes an offender to re-offend. The importance of longer, more intensive community based post release follow-up and maintenance treatment was reinforced by these findings.

5.245 The Department reacted defensively to Greenberg's report.[24] In a response prepared at the time the report was released, the Department was at pains to point out that Greenberg's use of "any subsequent re-arrest for any offence" as a measure of recidivism gave a poor indication of the effectiveness of the sex offending treatment program. The response (quite rightly) claimed that sex offender recidivism should focus on the degree to which sex offenders commit further sex offences. However, even when this and all other factors were taken into account the beneficial effect of the program was marginal. Re-offending appeared to be delayed, but re-offending in the treated group was only about 3% lower than re-offending in the untreated group.

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[23] Greenberg, DM, Da Silva, J & Loh, N (2002) *Evaluation of the Western Australian Sex Offender Treatment Unit (1987-1999): A Quantitative Analysis*. Crime Research Centre, The University of Western Australia, Perth.

[24] Department of Justice (2002) *A response to Greenberg, Da Silva & Loh (2002): Evaluation of the Western Australian Sex Offender Treatment Unit (1987-1999): A Quantitative Analysis*.

5.246 Greenberg's findings reinforced the need to design intervention programs in such a way that they can be effectively evaluated.

INDIGENOUS SEX OFFENDER TREATMENT

5.247 The Indigenous Sex Offender Treatment Program, has been made available to small groups of sex offenders at Greenough Regional Prison since 1994 and more recently to small numbers of sex offenders at Eastern Goldfields and Acacia prisons. OPEC has begun following program participants. Of the 107 participants followed, 79% have been "at risk" in the community for an average of 1,729 days and have not sexually re-offended. The remaining 21% sexually re-offended after an average time at risk in the community of 1,118 days. It is possible to conclude from these observations that participation in the program did not prevent re-offending. However, the absence of appropriate method of evaluation means it is not possible to determine whether the program had any effect on the incidence, severity or time of onset of re-offending among aboriginal sex offenders.

VIOLENT OFFENDERS TREATMENT PROGRAM

5.248 A preliminary (and limited) evaluation has been undertaken of the Violent Offender Treatment Program. A sample of 148 offenders was examined - 111 non-indigenous and 37 indigenous male violent offenders of whom 40 (27%) were serving Governor's Pleasure sentences.

5.249 In prison violence was assessed before and after participation in the program.

In-Prison Offences Before and After Violent Offender Treatment Program

In-Prison Offences	Before	%	After	%
Non re-offender	45	30%	78	53%
Non violent re-offender	53	36%	45	30%
Violent re-offender (no harm)*	31	21%	19	13%
Violent re-offender (with harm)**	19	13%	6	4%
Total violent re-offenders	50	34%	25	17%

*No harm is defined as no physical harm to a victim
**With harm means physical violence inflicted on a victim
Source: Information provided by the Department of Justice

5.250 The in-prison results appeared to be encouraging. Whilst 34% of inmates had committed a violent offence in prison before participating in the program, only half of this number committed violent offences after participating in the program.

5.251 However, of the 99 offenders who have since been released into the community (with an average time "at risk" in the community of 376 days), 39.2% have re-offended violently. Moreover, in aggregate, 52% or the program participants subsequently re-offended violently, either within the prison or after release into the community.

COGNITIVE SKILLS

5.252 The Reasoning and Rehabilitation program and Cognitive Skills program produced by T3 Associates was introduced in public prisons during 2001. It is the most widely used of all treatment programs. Approximately 850 prisoners had been enrolled in the program in public prisons by the end of 2005. Acacia Prison and the Community Justice Division also use the cognitive skills program.

5.253 The Department's main expectations when it introduced the cognitive skills program were to:

- Assist prisoners to cope with the prison experience;
- Assist with making prisoners more manageable;
- Reduce the risk of self-harm and suicide; and
- Enhance the benefit of subsequent specialist intervention.

5.254 The Inquiry has been told that the cognitive skills program has been well received within the prison environment. Prison officers and prisoners spoke highly of the program.

5.255 In August 2005, an evaluation of 323 of the individuals who had participated in this program in the public prison system was completed. The evaluation was constrained by a number of limitations, including the absence of pre and post program testing data, and a number of individuals in the sample who failed to complete the program.

5.256 The evaluation found that the program was not being delivered as originally intended by the Department:

- more than 10% of participants were individuals who pre-testing revealed already had well developed cognitive skills;
- the program was usually delivered late in the sentence rather than soon after imprisonment, limiting the opportunity for a positive impact on coping with imprisonment; and
- almost 40% of the prisoners attended the program *after* they attended other programs, limiting the potential to achieve one of the Department's main expectations that 'cognitive skills programs would enhance the benefit of other specialist programs'.

5.257 Nonetheless, the evaluation was able to demonstrate that:

- Participants saw the program as useful. 87.6% of respondents considered the program met 'most' or 'almost all' of their needs and 97.4% thought the program helped 'satisfactorily' or a 'great deal' with problem solving.
- The frequency of prison charges among 287 prisoners who had participated in the program was significantly lower after they had completed the program. Seventy-eight of the participants had fewer charges after the program and 46 had more charges. The mean number of prison charges, per 1,000 days in prison, was 2.89 before the program, and 1.72 after the program. (There were 163 cases with no charges before or after the program.)
- Self-harm also appeared to be significantly reduced. Eighty-six self-harm threats and acts were recorded prior to and 41 after the program. The difference between these was statistically significant. There were 32 participants with fewer self-harm incidents after the program, 11 with more, two with one incident before and after. (242 had no incidents before or after the program.)

- The evaluation was unable to reach a conclusion on the impact of the program on recidivism among the 199 prisoners who completed the program before release into the community because of an absence of comparative data. At the time of the evaluation these individuals had been "at risk" of re-offending for an average of 383 days in the community. Seventy-two participants re-offended to give a re-conviction rate of 36%. There was, however, statistically significant evidence suggesting a decrease in the severity of re-offences, compared with the most serious offence resulting in the relevant imprisonment.

5.258 The evaluation also found important differences between indigenous and non-indigenous participants. Although the mean score for the Cognitive Skills Initial Assessment and for the acquisition of problem solving skills was similar for both indigenous and non-indigenous groups, improvements in rates of prison charges, self-harm incidents, and community re-offending were better in non-indigenous participants.

5.259 The Cognitive Behavioural Rating Scale is the current measure of problem-solving skills and scores are derived from a semi-structured cognitive behavioural interview conducted by the course facilitator, in part so that rapport is established and the participant's strengths and weaknesses can be considered personally and in depth. The Inspector of Custodial Services has expressed concern regarding the objectivity of this testing approach,

- 'the scoring may be rather subjective and a critic might say that it would be a perverse coach who would assess a prisoner as having worse cognitive functioning at the end of a program'. [25]

COURSES PROVIDED BY COMMUNITY JUSTICE DIVISION

5.260 The Department's Community Justice division is also involved in offender treatment programs. In 2004-05, it had spent about $1.2 million on Community Justice programs, and this figure is set to rise to over $2.0 million in 2005-06.

5.261 In 2001, the Auditor General conducted a performance examination of Community Justice's management of offenders on Community Based Orders and Intensive Supervision Orders.[26] He was critical of, *inter alia*, the treatment program areas of this supervision.

5.262 The Auditor General found that the three most frequently used programs for offenders subject to Community Based Orders and Intensive supervision Orders were:

- Substance abuse counselling (31 per cent);
- Psychological counselling (28 per cent); and
- Psychiatric services (15 per cent).

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[25] Office of the Inspector of Custodial Services (2004) *Cognitive Skills Training in the Western Australian Prison System August 2004*, Report No. 23, Perth, p 32.

[26] Office of the Auditor General of Western Australia (2001) *Implementing and Managing Community Based Sentences,* Office of the Auditor General, Perth.

5.263 Less frequently used programs include the Sex Offender Treatment Program, Domestic Violence Perpetrators Program, Skills Training for aggression control, financial management, parenting skills and gambling related counselling.

5.264 The Auditor General found that waiting times of up to three months were not infrequent for most programs and criticised the limited access to program outside of the metropolitan area. He recommended enhancement of the Program menu and ongoing research to assess the effectiveness of programs and service delivery and to identify trends.

5.265 Also in 2001, the Department launched a Reducing Imprisonment Initiative, aimed at reducing the rate and cost of imprisonment. The initiative was articulated in a Cabinet Submission in July 2001. Improved efficiency and effectiveness of community treatment program interventions was seen as a means of reducing the use of imprisonment, earlier release of prisoners and increasing the success rates in the completion of community based orders.

5.266 Reforms of treatment intervention programs delivered by the Community Justice Division were implemented as a result of the Auditor General's Report 2001[27] and the Reducing Imprisonment Program. The development of the Programmatic Interventions Initiative commenced in 2001 and involved a number of strategies. These included extensive consultations, a review of existing programs and the creation of the Community and Juvenile Justice Division-based Programs Branch to provide coordination, strategy development and promote practice development. In March 2004, the first appointments to the position of Senior Programmes Officer commenced.

5.267 The reforms marked a strategic shift in the provision of community based rehabilitation programs. Specifically, there was to be a greater emphasis on making treatment options available based on the needs of individual offenders rather than program needs solely being driven by offence based programs. The reforms also emphasised the need to diversify teaching and learning styles in accordance with individual needs.

5.268 The objectives for the reform of programmatic interventions as stated in the project plan are:

- Improve and monitor efficiency and effectiveness in the identification and delivery of offence-related treatment program interventions, resulting in the timely release of prisoners, the early completion of community based orders and a reduction in the number of indigenous offenders in prison.
- Provide sentencing authorities with increased community sentencing options.
- Provide enhanced community based opportunities for offender rehabilitation.
- Ensure processes are in place to assess the impact and outcomes of these interventions, and ultimately
- Via the provision of effective intervention programs, decrease the recidivism of CJS clients, thereby contributing to a safer community.

[27] *Ibid.*

5.269 The Department established a Reform of Programmatic Intervention Services project which aims to establish an integrated and comprehensive approach to therapeutic program provision within Community Justice Services. A Community Justice Services Programs Branch has been established as an expansion of the existing Warminda Intensive Intervention Centre. The main changes have been:

- A modularised foundation program is designed to engage those offenders previously considered 'not treatment ready' or 'pre-contemplative' (of the need for change).
- Location Education and Training Offices are introduced to offenders who participate in the programs.
- A generic Program Assessment Package has been implemented incorporating pre-and post-tests for program participants.
- The Department is seeking to establish partnerships in program delivery with other community-based agencies and establishing links with other re-entry supports such as welfare services.

5.270 A number of specific program recommendations were included in the reform proposal, these are establishment of programs for: [28]

- sex offenders;
- drug users;
- "Healing" "Men's Wellness" programs for Indigenous clients;
- Indigenous women ;
- repeat driving/ drink driving offences;
- victim empathy;
- criminogenic needs of female offenders;
- needs of other minority cultural groups;
- condition violators; and
- relapse prevention

5.271 The foundation programs developed by the Community Justice Division are:

- 'Time for a Change' -- a brief program intended to motivate those offenders who have not recognised the need to change and opportunities for a more rewarding lifestyle;
- 'Emotional Management' -- focusing on the management of all emotions, but with particular reference to anger;
- 'Preventing Slip-Ups' focusing on identifying situations that placed the offender at risk of 'relapse', particularly in respect to substance abuse;
- 'Social Perspectives and Empathy' -- seeks to develop the offenders skills and ability to see another person's point of view and in particular to have empathy for the victim(s); and
- 'Communication and Relationships' -- seeks to promote more stable relationships as a means to prevent further offending.

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[28] Department of Justice (2003) *Programmatic Intervention Services in Community Justice Services: A Proposal for Reform,* Department of Justice, Perth.

5.272 There are also a number of intensive programs:

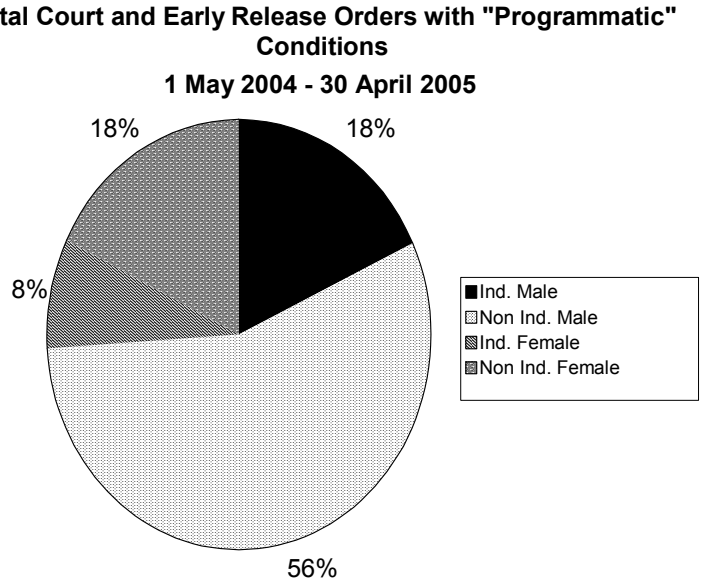
- 'Breaking Out' -- an intensive community-based program delivered over a six-month period for high risk drug offenders, (currently being piloted);
- 'Reasoning and Rehabilitation' -- 3 long cognitive skills program widely used in Western Australian prisons as well as internationally;
- Domestic Violence Perpetrator Programs (contracted to non-government agencies) -- 6-month long programs for those offenders who have been violent to a partner or spouse.

5.273 The Community Justice Division's staff are also developing programs specific to aboriginal offenders, including:

- brief intervention program materials for use in remote aboriginal communities;
- a medium intensity program for aboriginal men who perpetrate family and domestic violence in the Kimberley

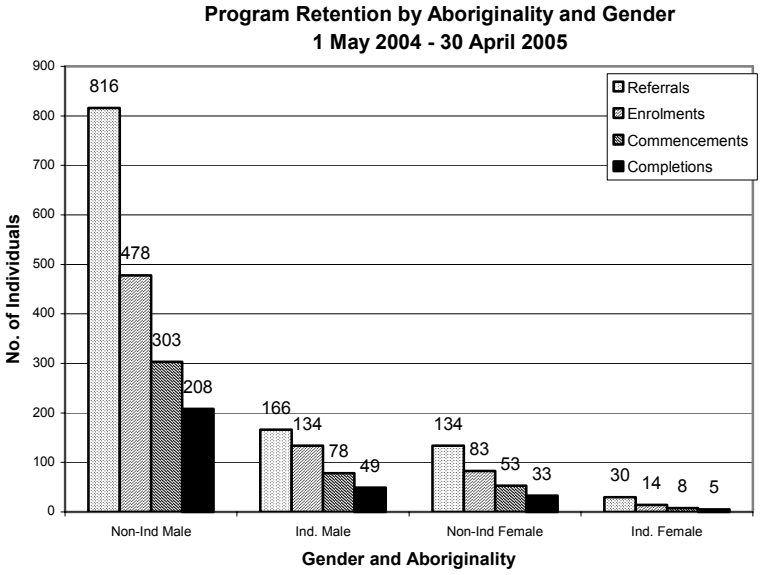
5.274 In September 2005 the Department completed an interim report of the implementation of these reforms.[29] Whilst it was too early to expect definitive results, the report showed that considerable progress had been made. It also illustrated some difficulties that have to be overcome, including:

- a disproportionately low number of Indigenous offenders are receiving program conditions on their Court or Early Release Orders;



- A lack of the coercive power which can be applied to prisoners, program completion rates of offenders being managed in the community are low, with many individuals failing to complete the program to which they have been referred;

[29] Department of Justice (2005) *Interim Report, Review of Programmatic Interventions,* Department of Justice, Perth.



- Difficulties in the various locations where programs are being delivered. In some cases program officers are struggling to cope with demand, while in others they are unable to fill the places offered; and
- Little progress made with the development of treatment programs specifically tailored for the needs of indigenous people.

5.275 None of the treatment programs being delivered by the Community Justice Division have yet been evaluated for effectiveness in reducing re-offending. However the Division has approached the design of its programs with some care and has identified intervening pre and post testing instruments and data collection procedures that should enable early assessments to be made. The first of these is not expected until 2006.

VALUE OF COURSES

5.276 In broad terms, all of these courses have been seen to have three objectives: they occupy the time of offenders in prison, they improve offenders while they are in prison or under supervision in the community; and they fit them better for their return to society at the end of their sentence and so may reduce the rate of re-offending. In view of the substantial expenditure of time and resources in providing the prison both prison and community courses, it is proper to ask whether they achieve these objectives. This question has been asked in this State and elsewhere. The conventional phrase is: Do they do any good? There is a danger that those measuring public expenditure against results will urge that they do not; at least that there is only limited evidence that they do.

5.277 The role of prison and community courses for offenders is too important to be dismissed with a simple answer. It is necessary to make distinctions;

- there are different kinds of courses having different results;
- there are different kind of prisoners needing different courses; and
- the measurement of the results of courses is too difficult to expect simple answers to be given.

5.278 Some of the courses have as their objective and their justification improvement of the prisoner. Some at least of these are important. I take as examples those relating to health, literacy and numeracy and substance abuse. It should be accepted as important that the State take the opportunity that imprisonment or community supervision provides to provide that assistance to offenders who need it.[30] On occasions, this has been questioned; an offender's illiteracy or his diabetes does not come from his sentence, so why should the State give help to remedy them when similar remedies are not as available to persons who are not under sentence?

5.279 A public good may result from courses of such kind: an ex-prisoner on release may be less likely to offend if he can read and so obtain employment. His diabetes may not require public health treatment. Or, his attitudes and insights into his life might be such that he is less likely to return to criminal behaviour. Such reasons may be sufficient.

5.280 There is a more important reason for attempting the betterment of offenders in this State. Some Indigenous people need assistance beyond that needed by non-Indigenous people of the same socio-economic status. It is not necessary here to discuss the important question of what obligation the State has to remedy the situation of such Indigenous or whether it derives from public interest, justice or simple decency. There is a consensus that something should be done. There are occasions on which it can best be done. Indigenous people are almost forty percent of the prison population; in 2004-05 1344 out of 3372 prisoners are Indigenous. Not all require help, or the same help. But prison and community supervision provide a proper opportunity to give appropriate help to those who can be helped.

5.281 Justifications of this kind are not limited to Indigenous people. The community has an interest and, it may be, a duty, to help those who are poor and sick. A large proportion of offenders are poor, not sufficiently educated have mental health problems. Between 400 and 500 of those in prison are likely to have a diagnosed mental illness, others have limited intellectual capability and many have a history of substance abuse.

5.282 Whether and to what extent these things cause crime has been argued. But those who are well are more likely to obtain employment on release from prison. If they can, for a time, control their substance abuse, they may not re-offend. Prison, and community supervision with the threat of imprisonment for non compliance, provides the opportunity to deal, or to attempt to deal, with such matters and to apply to them a compulsion that is not otherwise available.

5.283 Re-offending is an important problem. No single solution to it has been found. Few things have been found to reduce the rate of it substantially. The training of prisoners while in under the Department's management, ie, the improvement of them, is one of the few things that have been thought to have a significant effect upon re-offending. (I shall refer later to re-socialisation procedures and the supervision and assistance that can be given during parole). Appropriate courses have been claimed to be important for this purpose.

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[30] Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Public Health Service. U.S. Department of Health and Human Services (1998), *Treatment Improvement Protocol (TIP) Series 30: Continuity of Offender Treatment for Substance Use Disorders from Institution to Community*.

5.284 One of the essential difficulties in assessing the worth of courses is evaluation. It is difficult to determine satisfactorily whether a course achieves the objectives or produces the results that will justify expenditure on it. There are at least two problems: accumulation of the evidence on which a judgement of the course can be made; and the difficulty of assessing the weight to be given to, and the inferences to be drawn from, that evidence.

5.285 The Department has been conscious to some extent of the need to determine (or attempt to determine) the value of their courses and of the difficulty of doing so. They have made some progress. Indeed a recent review of the situation in Australia generally suggests that they might well be doing as well as, or even be ahead of, other States in this regard.[31]

5.286 The Inquiry has discussed this matter with Professor Alfred Allan of Curtin University, who has previously been involved in such matters. He suggested that assessment of programs and projects generally is inherently difficult and that, if it is to be attempted, a program for assessing effectiveness must extend over a substantial number of years. Professor Allan referred to work that has been undertaken for the Department by a former colleague. He could not offer with confidence an opinion as to the effectiveness of the courses now provided or the procedures for the measurement of them.

5.287 Tests of the effectiveness of courses have been made in other places. Reference has been made to these in discussions elsewhere of the utility of the courses provided in the Western Australian Prison System. The results claimed by others are of use in this State only if they are comparable and reliable. It is difficult to judge reliability at a distance. Results achieved from studies of, eg, Inuits in Canada and Indigenes in the USA are transferable to a prison system having some 40% of Australian Indigenous people only with care and qualification. The transferability of particular overseas results must be judged, if they are available, by those who have expertise in the field. Such references as can be found in the literature in this regard do not provide compelling evidence in relation to any of the tests here in question.

5.288 I have referred to these matters because of the importance which courses can have in relation to re-offending and otherwise. I shall refer elsewhere to other aspects of them and what should be done. It is sufficient now to record my conclusion that, subject to what will be said elsewhere, proper courses should be continued. It is not sufficient to say that, according to the existing state of knowledge and the existing methods of assessment there is no compelling evidence that such courses 'do any good'. Courses with objectives of the present kind are still offered in other jurisdictions in Australia and elsewhere. The views now expressed by penologists do not warrant the conclusion that such courses serve no useful purposes. Appropriate courses should be continued but the presentation of them should be carefully monitored and the programs for assessing their results should be maintained and reviewed.

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[31] Howells, K et al (2004) *Correctional Offender Rehabilitation Programs: The National Picture in Australia*, Report for the Criminology Research Council prepared by the University of Adelaide, Australian Institute of Criminology, Canberra.

THE RE-SOCIALISATION OF OFFENDERS AND RE-OFFENDERS

5.289 A key aspect of prisoner management deals with the timely release of prisoners and the assistance given to them to help their re-integration into society and to avoid re-offending. I have used the term "re-socialisation" to refer to these matters.

5.290 Re-socialisation of a prisoner has two main objectives: to make it easier for him to live in the community on his release; and to reduce offending. These two overlap. If he can live better in the community, he will not be frustrated or be likely to return to drugs, alcohol or former criminal associates. If that can be achieved, he will be less likely to re-offend.

5.291 At this point I shall deal essentially with this position as it now is. I shall later make recommendations as to what should be done. I shall make one preliminary observation. There has been and is an interlocking focus on re-socialisation and the reducing of re-offending. A number of separate things are being done. The results of some of these can be measured. It is no criticism of what has been done to date to say that the time has now come when these things should be drawn together into an integrated attack upon re-offending. What is to be done should be brought under a co-ordinated control. The means to be used should be definitively stated and procedures should be established to measure the results. Reference will be made to some of the things that are now being done under, eg, the Community Re-entry Co-ordination Service. The recommendations which will be made later will deal with disparate matters, parts of the means to be used. In due course they and what is now being done should be drawn together and pursued as part of an integrated program.

5.292 Re-offending poses a serious problem to the community. In fact, the majority of crimes are committed by people who have offended before[32]. For many prisoners, life consists of alternating episodes of imprisonment, release and re-offending. Successful re-socialisation of offender currently in the justice system has an important potential to bring about reductions in offending.

5.293 The Productivity Commission *Report on Government Services 2005* sets out re-offending statistics for Australia. Among the States for which data on re-offending were available, Western Australia had the highest rate of prisoners returning to corrective services (either prison or community corrections) within two years of release. Western Australia also had the highest rate of offenders who had returned to corrective services within two years of completing a community corrections order. The table below sets out the relevant statistics gathered by the Productivity Commission.

Table: Prisoners and offenders who were released or completed an order in 2001-02 who returned with a correctional sanction within two years (%)

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
Prisoners returning:									
– to prison	44.7	na	27.7	44.9	29.7	33.7	na	36.0	na
– to corrective services	49.2	na	40.2	51.8	51.2	43.8	na	38.9	na
Offenders returning:									
– to community corrections	na	na	11.2	19.7	14.7	13.3	na	16.7	na
– to corrective services	na	na	18.0	35.3	21.1	32.6	na	31.3	na

na Not available.

Source: Commonwealth Government of Australia, *Report on Government Services* 2005, Pirion/J.S.S McMillan, Vol 1 c12

5.294 The Social Exclusion Unit of the United Kingdom Home Office has identified nine key social factors that influence re-offending:

- education;
- employment;
- drug and alcohol misuse;
- mental and physical health;
- attitudes and social control;
- institutionalisation and life skills;
- housing;
- financial support and debt; and
- family networks.[32]

5.295 The Unit found that these factors have a large impact on the likelihood of a prisoner re-offending, emphasising that employment reduces the risk of re-offending by between a third and a half and having stable accommodation reduces the risk by a fifth.

5.296 It is interesting to note that Victoria's Community Corrections Service Redevelopment Program has had some successes in reducing re-offending through concentrating efforts on those factors that impact on re-offending. In May 2001, the Victorian State Government announced the injection of $334.5 million over four years to overhaul corrections in Victoria- the Corrections Long Term Management Strategy. This provided $72.5 million for rehabilitative and diversionary programs to reduce re-offending. Within this amount, $42.3 million was allocated to redevelop Community Correctional Services. This has included a raft of initiatives, including building capacity within community correction offices and additional support to the non-government organisation sector to support prisoners on release. It included additional programs and services to support housing employment and education.

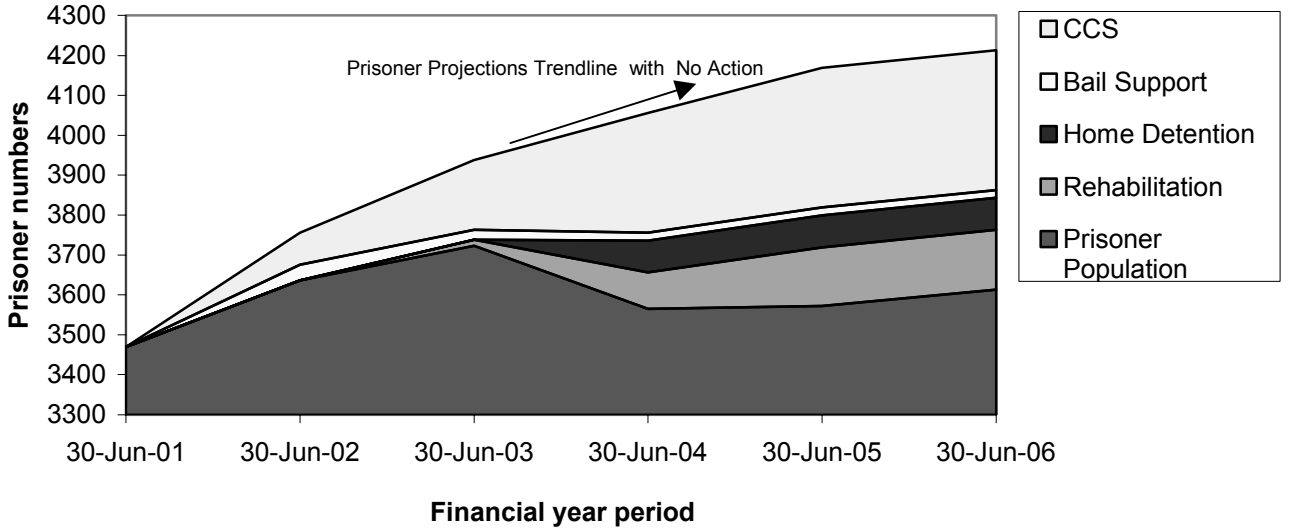
5.297 In Victoria, successful completion of community correction orders is 74%. This has been increased substantially from 65% completion rates prior to the

[32] Social Exclusion Unit (2002) *Reducing Re-Offending by Ex-Prisoners*, Social Exclusion Unit, Office of the Deputy Prime Minister, London.p 2.

introduction of the Corrections Long Term Management Strategy. This is in comparison with Western Australian completion rates for adult Community Based Sentences, which have remained stable over the last 6 years at around 50% for Intensive Supervision Orders and 60% for Community Based Orders.

5.298 Figure 1 below depicts the impact of initiatives on projected prisoner numbers in Victoria. It portrays prison bed diversion directly attributable to CCS Redevelopment – 390 beds at 30 June 2005.

Figure 1: Impact of Corrections Long Term Management strategy diversion & rehabilitation initiatives on projected prisoner numbers



Source: Victorian Community Corrections – Personal Communication

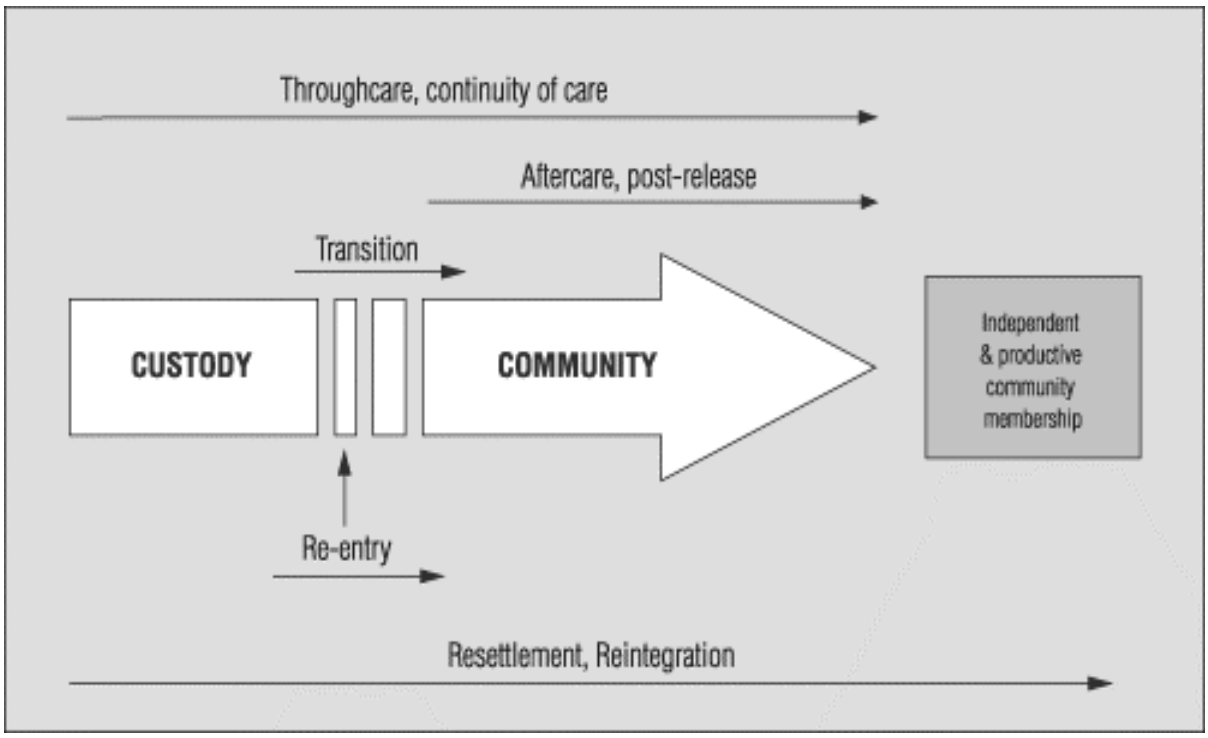
5.299 Of particular note here, in Victoria, under the housing pilot, the re-incarceration rate for participants after 3 months was 3.5% (versus 32.4% for the control group). After 9 months the respective figures were 14.9% and 50%. The employment program also produced remarkable successes in reducing re-offering, with a 27% reduction in re-offending rates for participants compared to a control group of non-participants.

5.300 Re-integration of prisoners into mainstream community life has promising potential to increase community safety – a powerful argument for resourcing this approach adequately. It is important that prisoners unique risks and needs are addressed whilst they are in custody and also on release into the community.

5.301 By ensuring a comprehensive continuum of services (throughcare), individuals are better able to respond in a non-criminal way when confronted with the challenges in community life that were previously related to their offending. [33] The figure below, reproduced from the Australian Institute of Criminology report *Interventions for Prisoners Returning to the Community*, sets out the processes involved in providing a throughcare model for the re-integration of prisoners into the community.

[33] Boraycki, M (2005) *Interventions for prisoners returning to the community*. Australian Institute of Criminology, Canberra.

Figure 2: A model of throughcare for prisoners



5.302 In 2002 the Attorney General of Western Australia visited Europe to consider strategies that reduce re-offending of prisoners, particularly looking at improvements in services and support to prisoners to assist their release into the community.[34] A number of initiatives were implemented following recommendations following this visit, not the least of which was the Community Re-entry Coordination Service.

5.303 However, from my analysis of the system, there is still a way to go in achieving a true throughcare model in the justice system in Western Australia.

5.304 In the next year over six thousand prisoners will be released from Western Australian prisons[35]. Whilst the re-offending rates remain as they are, those prisoners will go on to commit a large proportion of crimes in Western Australia.

5.305 It is now time in Western Australia to re-double efforts in reducing re-offending through implementing a throughcare system. An important element of this system will be enhanced re-socialisation services for offenders.

5.306 As with other aspects of the prison system, the problem is not whether something should be done but what will be effective.

5.307 What is now done falls into four groups:

- Interventions in prison to educate prisoners before they leave prison so that they will be able - and better motivated - to cope;

[34] McGinty, J (2002) Reducing Re-offending – focussing on re-entry to the community, 27 July – 11 August 2002, p 1

[35] Estimate based on statistics provided by the Department of Justice on the numbers of sentenced and unsentenced prisoners release from Western Australian prisons over the financial years 2003-04 and 2004-05.

- Allowing prisoners the opportunity (by home leave, work leave and the like) to learn to live in the community;
- Parole;
- Transition supports to assist prisoners to resettle/reintegrate into the community, such as promoting accommodation, family ties and employment; and Interventions and supports during parole.

5.308 I have referred elsewhere to courses and education in prisons and to the effect which they may have in achieving these objectives.

5.309 I have also referred elsewhere to the case management process within prisons and the extent to which this can be modified to achieve these objectives.

5.310 Some assistance in relation to these matters is provided by the Department and others whilst an offender is in prison. In some, but not all prisons, prisoners do industrial work which helps them to develop employment skills. Some prisoners in Karnet work in an abattoir, the skills of which can and are used on release. In Hakea, the "industrial area" in which the prisoners were employed exists, but, at the time of discussion, the use of it had been significantly reduced. There was no evidence across the prison system generally that the need to develop industrial work to provide employment skills was recognised, or if recognised, that determined efforts were made to do what was required.

5.311 The Community Justice Division, in preparing programs for parole prisoners on occasions examines the obtaining of employment, accommodation, the restoration to domestic life and other things. It may be part of the program for the prisoner presented to the Parole Board. Officers of the Division are conscious of the relevance of such matters. However, it did not appear from the material provided to the Inquiry that there was a concerted campaign to, eg, obtain employment or housing for outgoing prisoners. What may be done as a part of the parole process will not be as effective as a conscious and directed campaign.

5.312 The Department does currently provide a number of specific services which broadly aim to assist the re-entry of offenders back into the community, including:

- Programs within prisons and the community;
- Support to the non-Government Organisation Sector under the Community Re-entry Coordination Service;
- Authorised Absences from prison;
- Re-entry Officers in the Midwest, Goldfields, Kimberley and Pilbara;
- Prison-based Community Corrections Officers in metropolitan prisons; and
- The Transitional Accommodation and Support Service.

5.313 Steps are taken by non-government organisations in this area but they are less than fully organised or comprehensive.

5.314 The recently implemented Community Re-entry Coordination Service has provided a relatively large injection of new funding into the justice non-government organisation sector. At a cost of $1.4 million per annum, eight community groups in metropolitan and regional Western Australia have been funded to provide support to offenders for up to three months before leaving

prison and six months afterwards. The information I have received shows that this is essentially a case-coordination service, linking offenders to services, rather than actual provision of services in and of themselves. I have also been informed that the he Program primarily targets prisoners serving finite terms of imprisonment or prisoners eligible for CEO parole who are to be released without supervision. Priority is given to prisoners who wish to engage on an ongoing basis rather than an intermittent or once-off basis. The Program operates on a voluntary basis.

5.315 Of interest, I am informed that Indigenous clients are participating in this program at an increasing rate. The Department's information shows that by the June 2005 quarter, over half of all formal clients were Indigenous (54.3%). This is an encouraging indication of the relevance of the Program for Indigenous people.

5.316 Unfortunately, reliable information on the effect of this Program on the rates of recidivism is not yet available. Information of this kind is necessary. Statistics to date show that overall 22.1% of clients who participated in the program returned to prison. The general rate of return to prison for prisoners in Western Australia is 42.1% after two years of release. Unfortunately it is not reasonable to compare these figures as the populations are not equal in terms of recidivism risk and the clients of the Community Re-entry Coordination Service had not all completed a two-year post release period. The statistics, however, are encouraging.

5.317 This Program does not provide a service for all prisoners. During the 2004-05 financial year, 802 prisoners formally participated in this program. This is far less than the over six thousand prisoners who were released from prison in 2003/04 (2883 unsentenced and 3157 sentenced). Realistically, this service may not be applicable or helpful for all prisoners. However, the figures do indicate that many prisoners, who would benefit from reintegration services, are released from prison without the kinds of support this service provides.

5.318 During the Inquiry non-governmental organisations made submissions. Bodies of various kinds were involved, for example Outreach, (a body partly funded by the Department of Justice), the Uniting Church of Australia and other organisations. The view was expressed, with some enthusiasm, that such bodies would be interested to provide greater assistance to prisoners on release. There is a growing appreciation in the community of what can be done and is done by non-government bodies. They can, in circumstances where Government cannot, establish relationships with prisoners. The organisation of such bodies would, as they indicated, require official assistance in the form, at least, of secretarial or similar facilities and funding at a proper level.

5.319 In view of the extent and the apparent intractability of the problems of re-offending, advantage can and should be taken of the willingness of such bodies and persons to provide assistance. I shall refer to the particular mechanisms I propose to achieve this when I consider the changes that should be made.

AUTHORISED ABSENCES

5.320 The *Prisons Act 1981* recognises the desirability of providing means for gradually reintroducing to community life the prisoners who have been out of touch with it for substantial periods. For this reason provisions such as home leave, work leave and the like have been used within the prison system. The Department has made

use of these. A substantial number of prisoners are given each year leave of this kind.

5.321 The provisions of the *Prisons Act 1981* allowing for the 'authorised absence' of offenders from prison are as follows:

Section 94

- Section 94 enables the Minister to approve certain programs in relation to:
  - community work;
  - charitable or voluntary work;
  - work associated with the operation of the prison;
  - sport;
  - religious observance, or,
  - other activities
  - and prisoners, subject to minimum classification by the chief executive officer (i.e. the Director General), may be permitted by the superintendent to be absent for those purposes. In the case of life sentence prisoners (but not indeterminate sentence prisoners), the Governor must approve the absence from the prison;

Leave of Absence

- Under section 87(2), the Director General may grant leave of absence to certain prisoners for the purposes of seeking or obtaining gainful employment outside the prison or for engaging in voluntary or charitable work. Section 87(3), the Director General may similarly grant leave of absence to certain prisoners for the purposes of visiting a friend or relation. This is commonly referred to as "Home Leave". In relation to life sentence prisoners (but again not, paradoxically, in relation to indeterminate sentence prisoners), the Governor must approve the grant of leave of absence under either section 87(2) or (3);

Permit of Absence

- Under section 83(1), the Director General, with the approval of the Minister, may grant a permit for absence for other purposes including visiting ill relatives or attending funerals or for other purposes. Again, in relation to life sentence prisoners (but not indeterminate sentence prisoners), the Governor must approve the grant of such a permit (section 86).
- A substantial number of prisoners are given each year leave of this kind. The numbers of prisoners who apply for leave and permits of absences are set out below:

Applications for Authorised Absences from Prison 2003/04[1]

	Grant of Permit (s 83)			Grant of Leave of Absence (s87)	
	Funeral	Illness	Other	Home Leave	Special Leave
Applications Approved	544	54	25	71	0
Applications not approved	427	17	5	20	0
TOTAL	971	71	30	91	0

5.322 Reintroduction into community life with supervision and assistance is one of the functions performed by the parole service.

PAROLE

5.323 The most important method of re-socialisation is the parole system. Parole can be defined as the,

> *"Discharge of prisoners from custody prior to the expiry of the maximum term of imprisonment imposed by the sentencing court, provided that they agree to abide by certain conditions, with the intention that they serve some portion of their sentence under supervision in the community, subject to recall for misconduct."* [36]

5.324 It is important to note that a parole period forms part of an offender's sentence.

5.325 For present purposes, prisoners who leave prison, post sentence, may be divided into three main groups:

- prisoners released directly to freedom ('finite' prisoners);
- prisoners released on re-entry release orders; and
- prisoners released to parole.

5.326 A finite prisoner serving a fixed term that is not a parole term is discharged from that sentence at the end of the term and must be released then.[37]

5.327 Re-entry release orders (RROs) were introduced in 2003 to replace Work Release Orders. As in the case of a parole order, a RRO forms part of an offender's sentence. An RRO enables a prisoner (both parole and non-parole prisoners) to be released if he or she is not serving a life term or indefinite imprisonment, has served 12 months continuously in custody and is within 6 months of their earliest eligible date for release.[38]

5.328 RROs enable prisoners to be released to:

(i) seek and engage in gainful employment;

(ii) for vocational training;

(iii) to engage in gratuitous work for an organisation approved by CEO

(iv) to undertake activities that will facilitate the prisoner's re-entry into the community, such as educational, vocational or personal development programs or courses; or undergo counselling in relation to behavioural matters.

5.329 Once released, offenders serving RROs are supervised and case managed by community corrections officers.

5.330 The following discussion sets out a description of parole.

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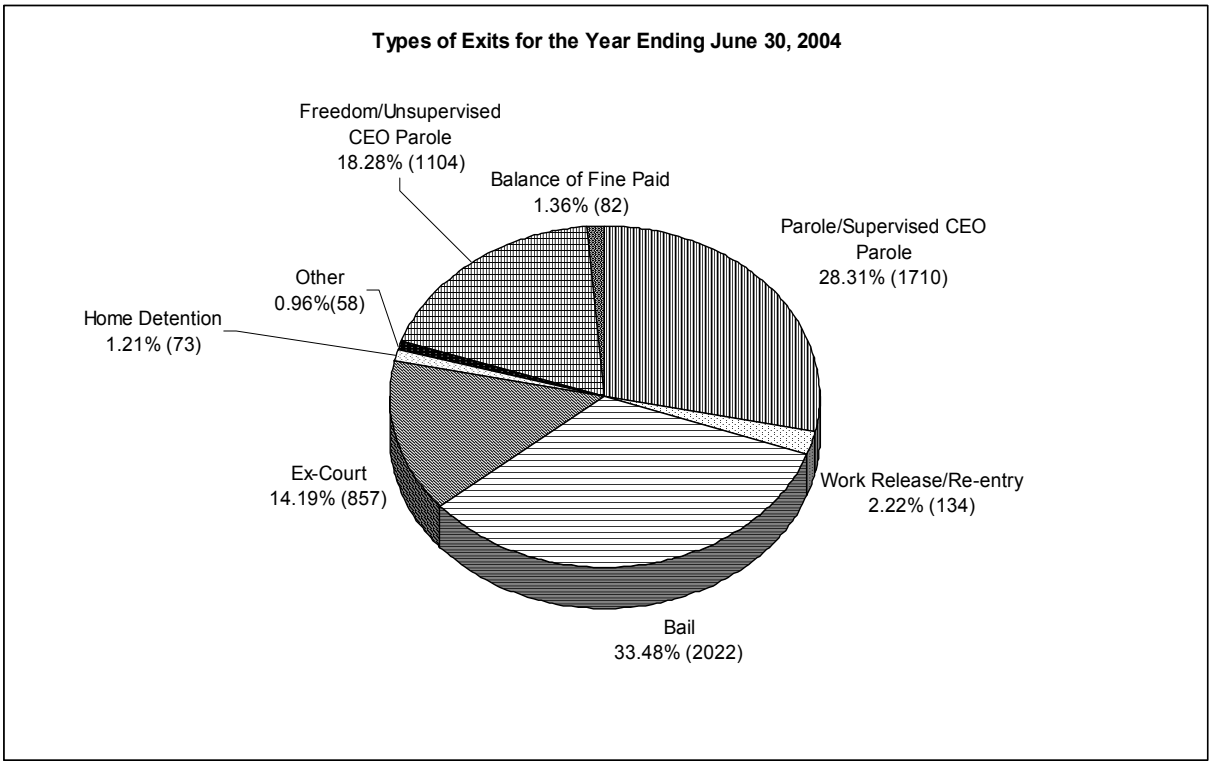
[36] S Mackey (1979) 'Parole – Background, Machinery and Statistics" in NACRO, *Parole – the Case for Change'* (London, 1979), quoted in *The Report of the Royal Commission into New South Wales Prisons* (NSW Government Printer, Sydney, 1978, p 602.)

[37] *Sentencing Act 1995* , s 95

[38] *Sentence Administration Act 2003,* s 50

5.331 The total number of persons released from prison during the period 1 July 2003 to 30 June 2004 was 6040 (both unsentenced and sentenced). The chart below provides a breakdown of the numbers of prisoners released by exit-type, including pre-sentence exits.



Note: "Other" includes Mental Health, Extradition, Deportation, Interstate transfer, Supervised Release Order, Died in Custody, Other.[39]

5.332 A court sentencing an offender to a fixed term may order that the offender be eligible for parole in respect of that term by making a parole eligibility order.[40] Such an order cannot be made if the fixed term or aggregate of fixed terms is less than 12 months.[41]

5.333 A prisoner serving a parole term is eligible to be released on parole,

> *"(a) if the term served is 4 years or less - when he or she has served one-half of the term; or*
>
> *(b) if the term served is more than 4 years - when he or she has served 2 years less than the term."* [42]

Types of Parole

5.334 There are in Western Australia, in practice four different types of parole, each of which are determined by different authorities:

- CEO Parole;
- "Auto" parole;
- Parole granted by the Parole Board in the case of fixed terms; and

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[39] Department of Justice, Annual Statistical Report: Adult Custodial, 1 July 2003 –30 June 2004, p 20
[40] *Sentencing Act 1995*, s89 (1)
[41] *Sentencing Act 1995*, s 89(2)
[42] *Sentencing Act 1995*, s 93(1)

- Parole granted by the Governor on advice from the Executive Council.

5.335 In relation to each category of parole, however, the statutory considerations which must be taken into account by the different authorities are the same, as prescribed by section 16 of the *Sentence Administration Act 2003;*

> *"In this Part a reference to parole considerations in relation to a sentence of imprisonment that a prisoner is serving or has yet to serve and in respect of which the prisoner may be released on parole is a reference to these considerations -*
>
> *(a) the circumstances of the commission of, and the seriousness of, the offence for which the sentence was imposed;*
>
> *(b) the behaviour of the prisoner when in custody serving the sentence in so far as it may be relevant to determining how the prisoner is likely to behave if released on parole;*
>
> *(c) whether the prisoner has participated in programmes available to him or her when in custody and if not the reasons for not doing so;*
>
> *(d) the prisoner's performance when participating in any such programme;*
>
> *(e) the behaviour of the prisoner when subject to any release order (as defined in section 89 of the Sentencing Act 1995) made previously;*
>
> *(f) the likelihood of the prisoner offending when he or she is on parole;*
>
> *(g) the likelihood of the prisoner complying with the standard obligations and any additional requirements of a parole order;*
>
> *(h) the degree of risk that the release of the prisoner would appear to present to the personal safety of people in the community or of any individual in the community;*
>
> *(i) any other consideration that is or may be relevant to whether the prisoner should be released on parole;*
>
> *(j) any remarks by a court that has sentenced the offender to imprisonment that are relevant to any of the above matters."*

CEO Parole

5.336 CEO Parole, enables parole to be granted by the Chief Executive Officer of the Department (i.e. the Director General) in the case of a prisoner serving a short term (i.e. 12 months or less).

5.337 In the case of such prisoners, the Chief Executive Officer must make a parole order to release the prisoner when he or she has served one-half of his or her term, unless the offender is a "prescribed prisoner". The Director General is required to make an order for every prisoner without the need for the prisoner to apply for release.

5.338 The Director General has the discretion to determine whether prescribed prisoners should be released on CEO Parole. A prescribed prisoner, is a prisoner who:

- is serving a term for a serious offence (defined in Schedule 2 of the *Sentence Administration Act 2003* and generally sexual or violent offences);

- has served a term for a serious offence in the preceding 5 years; or
- was subject to an early release order that was cancelled in the preceding 2 years.

5.339 Release of all other prisoners eligible for CEO Parole is mandatory.[43]

5.340 In its practical operation, the decisions in relation to CEO Parole are made not by the Director General but by the Manager Parole Release, pursuant to a delegation from the Director General (see A.Rabbitt, T676). At all times relevant to the Inquiry, the Manager Parole Release was Ms Angela Rabbitt.

5.341 The statistics provided to the Inquiry (see MI00624) reveal, the total number of prisoners eligible for CEO Parole in its first year of operation was 438, with an average of 36.5/month. For the period 31 August 2003 to 30 June 2004, 271 offenders or 78% were released at their Earliest Eligible Date.

5.342 Since 31 August 2003, the total number of offenders eligible for release on CEO parole is 348. 271 or 78% of these offenders were released on their Earliest Eligible Date (EED), 64 (or 18%) were deferred and 13 (4%) were denied. Since 1 July 2004, the total number of offenders eligible for release on CEO Parole is 382. 319 or 84% of these offenders were released on their Earliest Eligible Date, 59 or 15% were deferred and 4 or 1% were denied.

Auto Parole

5.343 "Auto-parole" is the process whereby offenders are released on parole by an order of the Parole Board Secretary, on advice from the Sentence Management Division of the Department of Justice, without formal consideration by the Parole Board. Auto-parole exists as a result of a delegation by the Parole Board pursuant to s108 of the *Sentence Administration Act* 2003. Section 108 empowers the secretary or a member of the Board to make a parole order in accordance with guidelines issued by the Board except in respect of a prisoner serving a parole term of at least 2 years for a serious offence. Serious or prescribed offences are listed in Schedule 2 of the *Sentence Administration Act* 2003.[44]

5.344 In 2004-05, parole orders granted by the Auto-parole process comprised 30% (425) of the total number (1531) of parole orders made by the Parole Board.[45]

Parole Granted by the Parole Board

5.345 The third category of parole, those orders made by the Parole Board, applies generally to all prisoners (other than life and indeterminate sentence prisoners), who are subject to parole terms and are not eligible for CEO or Auto-parole.

5.346 In relation to such orders, the CEO must give the Board a written report on the parole considerations relating to a prisoner within a reasonable period of time

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[43] Prisoners who have been sentenced for:
- serving term for escape from lawful custody;
- prisons act offence; and
- contempt of court;

are not eligible for CEO parole (these offences constitute a 'prescribed terms' within the meaning of s22 of the *Sentence Administration Act* 2003).

[44] See generally the evidence of A.Rabbitt, at T685-687

[45] Parole Board, *Annual Report 2004-05*

before the date when the prisoner is eligible to be released on parole.[46] Such reports are in practice prepared by assessment officers or report writers at Prisons and may also be prepared by Community Correction Officers.

5.347 If the Parole Board decides that it is appropriate to release the prisoner on parole, it must make a parole order in respect of the prisoner.[47] In doing so, the Board is to have regard to the 'parole considerations' of the prisoner, any report made by the CEO under section 17 and any other information about the prisoner brought to its attention. The release date must not be earlier than the prisoner is eligible for release according to section 93(1) *Sentencing Act* 1995.

5.348 If the Board decides that it is not appropriate to release the prisoner on parole, it is not precluded from subsequently reconsidering whether the prisoner should be released on parole.[48]

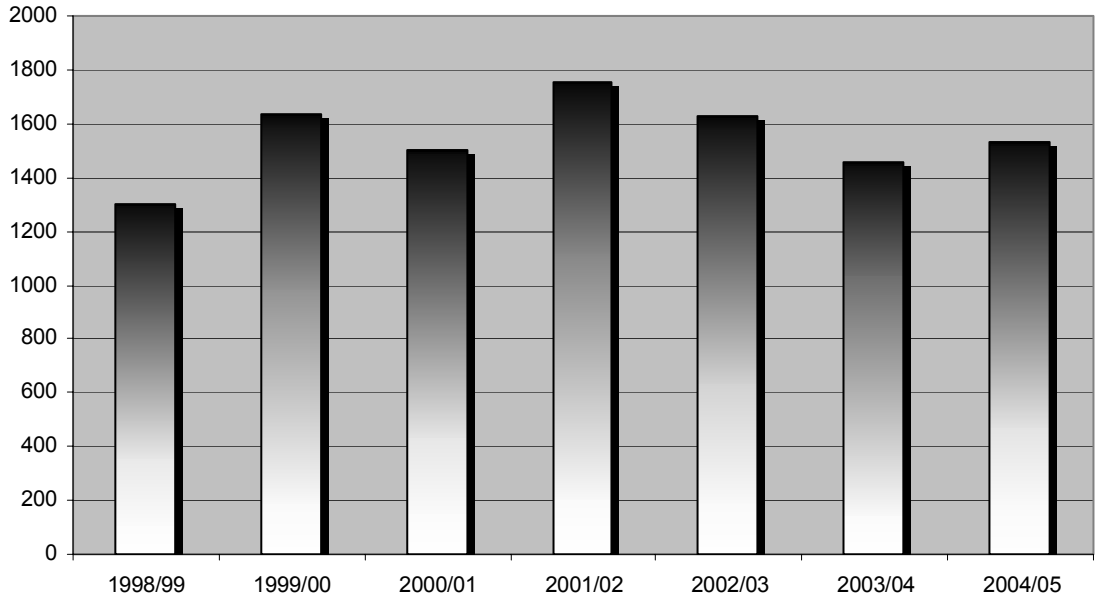
5.349 If the Board does not make a parole order in which the release date is the day when under section 93(1) the prisoner is eligible to be released on parole, written notice of the decision must be given to the prisoner as soon as practicable and must include the reasons for the decision. The prisoner has a right to make submissions to the Board regarding the decision.[49]

5.350 A prisoner granted parole is ordinarily released subject to conditions imposed by the Parole Board. Some conditions are standard; others are specially framed for the individual prisoner. During the parole period, officers of the Community Justice Division of the Department monitor the performance of the conditions and in addition provide such counselling or assistance as is appropriate and can be provided. Parole may be suspended or revoked for non-compliance with parole conditions or reconviction and the prisoner may then be returned to prison to complete his sentence.

5.351 The following chart displays the number of parole orders issued by the Parole Board during the period 1998/99 to 2003/04, as reported by the Board. These figures include orders issued following consideration by the full Parole Board and orders issued by the Board's Secretary (Auto-parole).

[46] *Sentence Administration Act* 2003, s17
[47] *Sentence Administration Act* 2003, s20
[48] *Sentence Administration Act* 2003, s 20
[49] *Sentence Administration Act* 2003, s 20

Parole Orders issued by the Parole Board[50]



Lifers & Indeterminate Sentenced Prisoners

5.352 A different procedure in the nature of parole is provided in relation to lifers. (The details are dealt with at length in the Closing Submissions of Counsel). There are at any one time in the Western Australian prison system approximately 200 prisoners whose sentence is such that, if served according to its terms, they would not be released. Statutory provision is made for such prisoners to be considered for release. The provision is described as a pre-release program.

5.353 Only the Governor has the power to parole prisoners serving life or indefinite imprisonment terms.[51] The Parole Board must give the Minister a written report about a prisoner sentenced to life imprisonment, indefinite imprisonment and strict security life, at the following review dates,[52]

[50] Parole Board, *Annual Reports 1998/9 – 2004/05*
[51] *Sentencing Act 1995,* ss 90- 91, 98
[52] *Sentence Administration Act 2003,* s 18

Type of sentence	When report is due	When subsequent reports are due
Life imprisonment for an offence other than murder or wilful murder	7 years after the term was imposed	Every 3 years after that
Life imprisonment for murder	At the end of the minimum period set by the court under s90(1) of the *Sentencing Act 1995*	Every 3 years after that
Life imprisonment for wilful murder	At the end of the minimum period set by the court under s90(2) of the *Sentencing Act 1995*	Every 3 years after that
Strict security life imprisonment (except where prisoner ordered to be imprisoned for the whole of his/her life under s91(3) of the *Sentencing Act 1995*)	At the end of the minimum period set under s91(1) of the *Sentencing Act 1995*	Every 3 years after that
Indefinite imprisonment	One year after the day on which the sentence began	Every 3 years after that

5.354 If the report recommends that the prisoner be released, the report must discuss:

(a) the parole considerations relating to the prisoner;

(b) the period for which the prisoner should be on parole*;* and

(c) the additional requirements (if any) to which the prisoner should be subject while on parole.

5.355 The report may recommend whether the Governor should exercise any power to release the prisoner and the requirements or conditions that should apply to the prisoners release.

5.356 The Governor may make a parole order in respect of a prisoner serving life imprisonment but only if the prisoner has served the minimum period set by the court under section 90 of the *Sentencing Act 1995* and a report about the prisoner has been given by the Board to the Minister as described above.

5.357 Any release date is set by the Governor and must be between 6 months and 5 years.[53]

5.358 Similar provisions apply in respect of a prisoner serving strict security life imprisonment and persons imprisoned indefinitely, except that in the case of a prisoner serving strict security life imprisonment the Minister must table a copy of every parole order, and a written explanation of the circumstances surrounding it, in Parliament.[54]

5.359 The Governor has the power, at any time, to release offenders who are in custody during the Governor's pleasure. Section 14 of the *Sentence Administration Act*

[53] *Sentence Administration Act* 2003, s 25
[54] *Sentence Administration Act 2003,* s 26(4)

2003 enables the release of a person held at the Governor's pleasure under section 282 of the *Criminal Code* by means of a parole order made by the Governor. The Parole Board will first provide a report to the Minister. The Governor sets the release date and the parole period must be between 6 months and 5 years. An explanation of every parole order made in this manner must also be tabled in Parliament.[55]

Pre-release programs

5.360 The Parole Board's role in relation to life and indeterminate sentenced prisoners is purely advisory; its only role is the requirement to give the Minister a written report at the time of the statutory review date. By implication, particularly from the nature of the report required, the purpose of the Parole Board's reporting function is to consider the appropriateness of release, by way of parole. There is no statutory function prescribed for the Parole Board, however, beyond that reporting function.

5.361 Over time, however, various practices and processes have developed between the Parole Board, the Department and the Executive Government, which have increased the Parole Board's involvement in process of preparing prisoners on life and indeterminate sentences for release. In particular, there has developed a system in Western Australia of Pre-Release Programs for such prisoners.

5.362 Pre-Release Programs for such prisoners are a pre-requisite to consideration by the Parole Board (and accordingly, the relevant Minister) of the appropriateness of the prisoner's release. The notion of a "Pre-Release Program" has no single legislative basis, but rather describes a collection of administrative arrangements and approvals that have been brought under the umbrella of a single process. Some of those administrative arrangements and approvals require the approval of various authorities, such as the Minister for Justice or the CEO; some do not. The whole area surrounding which approvals are required is a "patchwork" of provisions which do not contain any particular consistency.

5.363 Ms Rabbitt, the Manager, Parole Release described the nature of the programs as follows (T691-692):

> *"Basically, a pre-release program is about the resocialisation of a long-term sentenced prisoner who has been in custody for a long period of time, who may have become institutionalised, who needs to really have a gradual re-entry back into the community. The purpose of that program is really about the resocialisation of that individual back to the community. A pre-release program is structured such that there is a graduated degree of freedom given to that prisoner over a period of time which one - both gives that prisoner the opportunity to slowly re-enter society and test themselves within that setting as well as for us to be able to monitor and supervise them in that process of re-entry into society. The length of a pre-release program can vary. It depends on the individual's circumstances. Really, it's designed to meet the individual needs of a prisoner so it can vary from - usually from around somewhere like nine months in length to up to two years in length."*

[55] *Sentence Administration Act* 2003, s14(5)

5.364 The need for "resocialisation" or "pre-release" programs is therefore needed in order to acclimatise long-term prisoners to matters that members of the general community take for granted. Ms Rabbitt gave some examples such as: getting used to being around crowds; getting used to traffic; obtaining a driver's licence and making decisions for themselves.[56]

5.365 It is Departmental policy that a Pre-Release Program is generally only conducted in a minimum security facility to provide the prisoner greater self-determination in a less institutionalised environment and to enable access to authorised absences, such as home leave and work placements.

5.366 One of the reasons for a formal process for the approval of Pre-Release Programs, as alluded to above, is that there are a number of statutory approvals that apply in order to enable the kind of activities referred to above. These include 'authorised absences' detailed previously in my report such as section 94 programs which are approved by the Minister for a variety of purposes including community work or sport and 'home leave'. Participation in such schemes is approved by a number of different authorities, depending on the type of prisoner, for example 'home leave' is granted for life sentenced prisoners by the Governor, but for the Director General grants such leave to other prisoners, including prisoners serving an indeterminate sentence.

5.367 This patchwork of approvals involves various potential decisions by the Department, the Minister and the Governor. There appears to be no particular reason as to why some approvals are required at some levels, and other approvals in relation to other levels. The administration of the *Prisons Act 1981* has been committed by the Governor to the Minister for Justice. Accordingly, in order to obtain the necessary approvals for a Pre-Release Program the approvals must be referred to the Minister for Justice.

5.368 The administration of the *Sentence Administration Act 2005*, however, has been divided between two Ministers: the Attorney General and the Minister for Justice. Those parts of the *Sentence Administration Act* 2005 dealing with parole have been committed to the Attorney General, and the balance to the Minister for Justice. This has the result that while the approvals for a Pre-Release Program are the responsibility of the Minister for Justice, the approval for release, following such a program, is the responsibility of the Attorney General.

5.369 The process for the approval of Pre-Release Programs, as it presently operates is as follows (see generally A.Rabbitt, T705-706):

- 18 months prior to a prisoner's statutory review date, assessment officers or report writers at the relevant prison prepare a Parole Eligibility Report and, recommendation as to the prisoner's suitability for a Pre-Release Program;
- The Manager, Parole Release, reviews the Report and forwards it to the Executive Director, Prisons with the recommendation as to the prisoner's suitability for a Pre-Release Program;
- If endorsed by the Executive Director, Prisons, the Report and supporting material are then forwarded to the Parole Board;

[56] See Hearing Transcripts at T693-694.

- If the Board agrees with the Department's recommendation in relation to a Pre-Release Program, it will request that the Department prepare a draft Pre-Release Program, indicating the length of the program plus any special requirements that it considers appropriate;
- The prison assessment staff will then develop the Pre-Release Program, determining the number of stages, the core and the ancillary components of the program. During the course of that process, the prison will usually liaise with the likely receiving prison anticipated for the Pre-Release Program;
- The draft Pre-Release Program is then returned to the Manager, Parole Release, who prepares a summary of the program, prepares the necessary approvals (such as Executive Council Minutes) and forwards the draft program to the Executive Director, Prisons;
- The Executive Director, Prisons will then endorse the grant of leave of absences which are required as part of the Program, after which the Manager, Parole Release forwards the draft Pr-Release Program, together with the necessary supporting documentation, to the Parole Board;
- If satisfied with the contents of the draft Pre-Release Program, the Parole Board resolves to report to the Attorney General and Minister for Justice recommending the prisoner's participation in the Pre-Release Program.
- The report once prepared is considered at the next Parole Board meeting following its preparation and is forwarded, in the first instance, to the Attorney General;
- The documentation, once noted by the Attorney General, is returned to the Board and forwarded to the Minister for Justice;
- If the Minister for Justice approves the program, it is then forwarded to the Governor in Executive Council for approval of the various components of the program;
- Once that has occurred it is returned to the Parole Board to note the approval or otherwise. If approved, the Board will set a review date, generally at the end of the program;
- The documentation is then returned to the Manager, Parole Release to prepare the necessary decision slip, including the reduction of the prisoner to minimum security;
- The decision slip and approvals are then made available to the prisons concerned, which can then effect the transfer and the Pre-Release Program can commence.

5.370 Insofar as the approval of Pre-Release Programs is concerned, the number of prisoners who have participated in Pre-Release Programs since 1986 has been 156.[57] This equates to an average of approximately 8 prisoners per year approved for Pre-Release Programs, although the rate of approval will not have been constant over that time. For example at the time of Edwards' escape there were

[57] See Hearing Transcripts at T617.

(including Edwards) 15 prisoners at minimum-security prisons on Pre Release Programs.

5.371 There were, on 14 July 2005, 198 prisoners in Western Australia serving sentences of life or indeterminate imprisonment. Those prisoners will all be eligible to be considered for a Pre-Release Program at some point in the future. The number of persons to whom the process referred to above will apply is therefore not inconsiderable.

5.372 Once on a Pre-Release Program, the prisoner's progress will be monitored by the prison concerned and the prisoner subject to periodic reports as to their progress on the program. Depending upon the particular case, the matter may be returned to the Parole Board during each stage of the Pre-Release program. Generally, however, the prisoner's case is not reviewed unless the prisoner breaches the program or after all stages of the program have been successfully completed.

5.373 Upon the successful completion of the Pre-Release Program, the entire reporting and approval process commences again, this time with the Minister being the Attorney General. However, the successful completion of a Pre-Release Program does not necessarily guarantee release. An assessment process is undertaken on completion of the program, the Parole Board makes a recommendation and the Attorney-General and Governor must agree.

5.374 There are three aspects of or arising from the pre-release procedures:

- the prisoner on a pre-release program will spend the time he spends in prison during the program in a minimum security prison;
- he has no right and should have no formal expectation that, if he successfully completes the program, he will be released; and
- placing a prisoner on a pre-release program may cause a public outcry.

5.375 I shall refer to these when I consider the changes that should be made.

CHAPTER 6 COMMUNITY JUSTICE SYSTEM

"What can be measured gets done"

6.1 The problem facing the Community and Juvenile Justice Division (CJJ) is simple but difficult. It is to reduce re-offending. How this is to be done is difficult because it involves influencing the behaviour of human beings. There is no single way of doing it and the ways which appear available are at best only partially successful. Yet something must be done. CJJ is the organisation by which it is to be done. CJJ is one of the most important parts of the corrections system.

6.2 The Division has been the subject of increasing scrutiny in recent years with investigations by the Auditor General in 2001[1] and 2005[2] and by Skinner in 2003[3]. The Inquiry has had to decide what it should do. It has received, from officers of the Department and otherwise, a large amount of information. Those assisting the Inquiry have gathered much more. Officers from the Department, particularly officers from CJJ, have been anxious to assist. The wish to improve what is done has been evident. It would be wrong merely to list recommendations. The problem requires both explanation and discussion. Explanation in an Inquiry such as this requires that the structure and operation of CJJ and what is to be done be stated more simply than they are. A full statement of CJJ, what it does and the problem facing it, would require more than a Report: it would require the qualifications and exceptions of a treatise. What is confirmed in this part of the Report must be understood in that way.

6.3 I shall record in some detail what CJJ now does so that the scope of it can be seen and appreciated. In doing this I shall make recommendations. Some recommendations will be for the present, some will be for the medium term. And it is inevitable that some will claim: We do that already or we are going to. At the end I shall make some general observations.

6.4 The structure of the Division and the details of its operation are recorded at length in the submissions of Counsel Assisting the Inquiry (pages 311 to 475). What Counsel has recorded enables me to go directly to the essential issues.

- Functions of the Community and Juvenile Justice Division.
- How well are the functions being performed?
- Are they worthwhile?
- What should be done?

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[1] Auditor General of Western Australia (2001) *Implementing and Managing Community Based Sentences.* Performance Examination Report No. 3 May 2001.

[2] Auditor General of Western Australia (2005) *Follow-Up Performance Examination: Implementing and Managing Community Based Sentences.* Report No 2 - May 2005.

[3] Skinner, A. (2003) *Review Report: Report on the Review of Case Management Practices for the Supervision of 'High Risk' Offenders within the Community by the Department of Justice*, Department of Justice, Perth.

FUNCTIONS OF THE COMMUNITY AND JUVENILE JUSTICE DIVISION

6.5 CJJ is responsible for all adult and juvenile offenders under supervision in the community, through an order imposed by the court or a releasing authority. Juvenile custodial services also fall within this directorate. The Department's planning and review function and internal investigations unit are also located within CJJ.

6.6 I understand that the Department's stated priorities in this regard are to:

- contribute to the protection of the community through the management of juvenile and adult offenders in the community and in custody; and
- reduce re-offending, by guiding juvenile and adult offenders toward adoption law-abiding lifestyles.[4]

The essential functions of the Division are to:

- manage juvenile offenders subject to community based orders and custodial terms;
- manage offenders serving community corrections orders (including community-based orders, intensive supervision orders, work and development orders, home detention (as a condition of bail), re-entry release orders and parole);
- provide advice to courts and other releasing authorities;
- support measures to divert minor offenders away from criminal justice system;
- establish policies and standards for the delivery of offender management services;
- provide for the protection of victims, facilitates opportunities for restorative justice, restitution and ensures that the needs of victims are met; and
- in partnership with community groups, prevent and reduce crime by providing meaningful alternatives to criminal activities.

6.7 The Division comprises approximately 920 full time equivalent staff. Approximately 490 of those staff are involved in managing adult offenders and 430 manage juvenile offenders.[5]

Juvenile Justice

6.8 I have referred elsewhere to the Juvenile Justice System. In a sense the Division has operated with some measure of success in this regard. It has diverted many possible offenders from offending and from the criminal system. It has identified and isolated the small group (approximately 200) of juvenile offenders by whom the bulk of continuing offences are committed.

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[4] Department of Justice (August 2005) *Overview of Community & Juvenile Justice (CJJ)*.

[5] Department of Justice, *Community and Juvenile Justice Strategic Plan 2004-2009*.

Managing Adult Offenders Serving Community Corrections Orders

6.9 The Community Justice Service Directorate (CJS) of CJJ deal with the group of offenders chosen by the courts as appropriate for diversion from the custodial system to community orders. CJS monitors the observance of such orders and, to the extent that it can, provides counselling to help them do it, or refers them to external services.

6.10 CJS manages significantly more offenders than the Prisons Division. See below the comparison of the daily prison population with the daily community corrections population in 2002/2003 and 2003/04 (MI00940).

Average Daily Population of Offenders Managed by Community Corrections and Prisons

Year	Average Daily Prison Population	Average Daily Community Corrections Population	Prisoners as a % of Community Corrections
2002/2003	2843	5216	54.50%
2003/2004	3006	5146	58.41%

Source: Productivity Commission (2005) *Report on Government Services 2005,* ch.7a

6.11 Community-based sentences were among a range of measures introduced in the mid 1990s (supplementing and replacing traditional "probation" orders) in order to address high imprisonment rates and community concerns about public safety. Such orders were expected to be more effective in setting an appropriate punishment for offenders and in assisting their rehabilitation. The following adult community based orders are currently managed by CJS.

Pre-Sentence Orders (PSO)

A court may order a PSO when it considers that whilst an offence warrants a term of imprisonment, a PSO would allow the offender to address his or her criminal behaviour and that if the offender were to comply with the order a term of imprisonment may not be necessary. The court must order at least one of the following: that the offender attends a program; completes community work; is supervised by CJS or is subject to a curfew. At the completion of the order, the offender must reappear before the court to determine whether a sentence of imprisonment is warranted.

Community Based Order (CBO)

The court must include at least one of the following requirements for a Community Based Order:

- supervision by CJS for a period of between 6-24 months;
- attendance at a program directed at addressing the offender's criminal behaviour;
- performance of unpaid community work.

Intensive Supervision Order (ISO)

The conditions of this type of order are more stringent than community based orders. The offender must be supervised for a period of between 6-24 months. The Court may impose any of the following requirements:

- attendance at a program directed at addressing the offender's criminal behaviour;
- performance of unpaid community work;

- a curfew requirement to restrict the offender's movements in periods when there is a high-risk of re-offending.

Parole

Parole is a form of conditional release which allows the offender to serve the remainder of their sentence in the community under the supervision of CJS. The Parole Board makes release decisions for prisoners serving more than 12 months imprisonment and who have been granted eligibility for parole by the sentencing court. Prisoners serving less than 12 months imprisonment may be eligible for Chief Executive Officer parole. The releasing authority determines what conditions are attached to the order and can return offenders to prison if they breach parole conditions or re-offend.

Work and Development Orders for fine defaulters

This order is the last option before imprisonment for fine default. It enables an unpaid fine to be converted to community corrections activities and applies when an offender is unable to pay the fine. A court or the Fines Enforcement Registry may subject an offender to such an order.

Re-entry Release Order

A Re-entry Release order, which is similar to parole, may be available for a prisoner who has served at least 12 months imprisonment and are within 6 months of their release date. They must be assessed as presenting a 'low-risk' to the public safety. Offenders must perform between 6 and 18 hours community work each week and engage in employment, vocational training or work for a charitable or voluntary organisation.

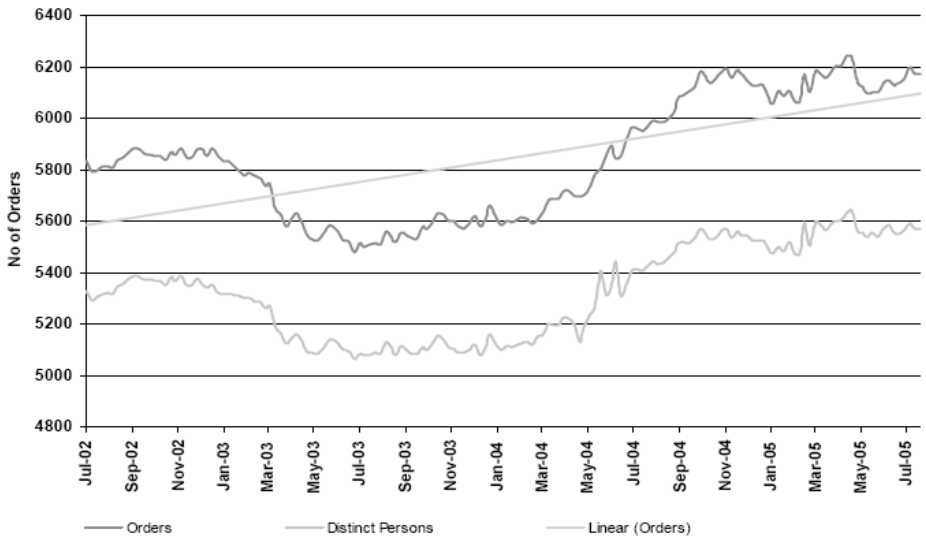
Bail

Community bail covers a range of options that may be imposed by the court on defendants considered not to pose such a risk that they need to be remanded in custody, yet may require additional conditions to be monitored by CJS. These conditions may include living where directed, a curfew, and/or receiving drug treatment. For those defendants considered to need restrictions on where they live, they could be assessed for two bail options:

- bail with a condition of home detention; or
- release to bail in a community hostel.

6.12 The following graph shows the increasing number of offenders serving community corrections orders over the past few years, with approximately 5600 persons serving just under 6200 such orders in July 2005.

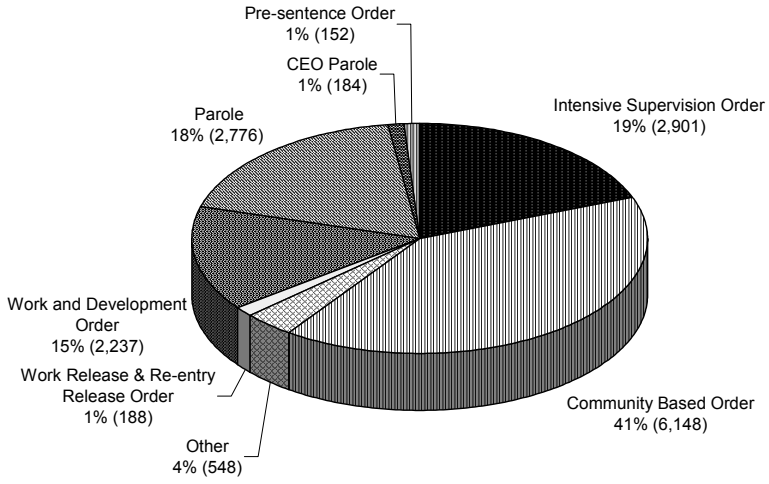
Community Justice Services (Adult): Week Census of all Orders and Distinct Persons Supervised



Source: Community Justice Services Weekly Statistics as at 21 July 2005

6.13 The following chart provides a comparison on the number of offenders serving various types of community corrections orders in 2003/04.

Distinct persons supervised by CJS, by order type 1 July 2003 – 30 June 20046



Source: Department of Justice (2005) Annual Statistical Report: Adult Community Corrections 1 July 2003 to 30 June 2004, p 10

Note: 'Other' includes Interstate Probation Orders, Home Detention and Monitored/Conditional Bail.

6.14 The management of offenders on community corrections orders, including parole, is the Division's most important area of operation. Releasing authorities, including the Parole Board, make release decisions in relation to eligible

[6] Department of Justice (2005) *Annual Statistical Report: Adult Community Corrections 1 July 2003 to 30 June 2004,* p 10.

prisoners, who are then supervised by CJJ. The Division, by analogy to what it does in respect of other community corrections orders, monitors the observance by offenders of the conditions of their community order and it gives them such counselling as it may.

6.15 Community Correction Officers (CCOs) are responsible for the supervision of offenders in the community and the provision of advice to sentencing and releasing authorities based on their professional assessment and analyses of the offenders they manage. CCOs use counselling and therapeutic interventions to effect positive change in the behaviour of offenders. CCOs aim to reduce offending and protect the community by directing offenders towards law-abiding lifestyles.

6.16 The *Community Corrections Practices and Procedures Manual* sets out the following principles of practice.

> *"Assessment, Advice and Case Management:*
>
> *Offenders will be assessed to assist Sentencing and Releasing authorities to determine the most appropriate outcome. Advice will be objective, balanced, relevant, timely and accurate.*
>
> *Offenders will be assessed to establish effective management strategies.*
>
> *Offenders will be managed on the basis that they are accountable for their actions relative to the level of maturity, development and social circumstances.*
>
> *The management of juvenile offenders should always reflect an age appropriate level of expectation and obligation, and parents/responsible adults will be encourage to be involved and empowered in the management of young persons.*
>
> *Emphasis will be given to the development, promotion and use of appropriate intervention and diversion processes.*
>
> *Offenders will be encouraged/directed to access treatment, rehabilitative and developmental programs according to their individual needs/requirements.*
>
> *Community Expectations:*
>
> *Constructive working relationships with families, the community and other agencies will be developed to promote crime prevention and other effective offender supervision, in keeping with restorative justice principles.*
>
> *Community work required to be performed by offenders should be socially useful, meaningful, and should as far as practicable enhance the skills of the offender and benefit the community.*
>
> *Victims Rights and Community Safety:*
>
> *Victims will be treated with courtesy, compassion and respect. The rights and privacy of victims will be protected.*

Victims will be given the opportunity to participate in the process of dealing with offenders to the extent that relevant legislation and policy provides.

Offenders will be managed in the least intrusive manner which promotes the reduction of re-offending, taking into account the rights, needs and performance of the offender, victim/community protection and restoration."[7]

Provide advice to Courts and other releasing authorities

6.17 Another primary function of CJJ is the provision of assessment and advice to courts to assist the judiciary with sentencing decisions and to the releasing authorities to inform release decisions.

6.18 CJJ provides advice to courts and releasing authorities in the following situations:

- bail assessments;
- oral and written Pre-Sentence Reports;
- the provision of case management update reports to specialist diversion courts;
- the provision of advice (oral and written) during court breach prosecution;
- the facilitation of the completion of pre-sentence specialist reports;
- the provision of written advice to the Manager Parole Release (acting on behalf of the CEO) for release to CEO Parole; and
- the provision of written advice to the Parole Board and Supervised Release Review Board.

6.19 I note that the advice function provides a professional assessment of the nature and possible causes of a person's offending behaviour and the action required in order to reduce the potential for recidivism. The reports are intended to be an objective assessment based on interviews with the offender and other parties, which may include family members, victims, police, employers and/or treatment agencies if there are medical, psychiatric, psychological, addictive or other problems.

Support measures to divert minor offenders away from criminal justice system

6.20 An additional function of the Division involves the provision of support to divert minor offenders away from the criminal justice system, court or custody. In practice, this involves the provision of advice to courts in relation to the suitability of an offender being ordered to participate in a diversionary scheme, and the monitoring or case management of offenders placed on such schemes, for example, drug-testing offenders diverted by the Drug Court.

[7] Department of Justice (2003) *Community Corrections Practice and Procedures Manual*, at 1.1.

Establish policies and standards for the delivery of offender management services

6.21 Another function of CJJ involves establishing policies and standards for the delivery of offender management services generally. The Planning, Policy and Review Directorate undertakes this function, which includes:

- policy advice and coordination;
- strategic planning;
- research development and coordination;
- legislative development;
- evaluation;
- performance measurement and review;
- statistical reporting and analysis; and
- information systems development and support for CJJ and Prisons.

6.22 These services are provided to the offices of the Attorney General and Minister for Justice, other Government departments and operational areas of the Department that provide services to adult and juvenile offenders.

6.23 I will refer to the appropriate function and location of such a directorate in a later part of my report.

Provide for protection of victims, facilitate opportunities for restorative justice, restitution and ensure that the needs of victims are met

6.24 The Division also provides for the protection of victims, facilitates opportunities for restorative justice, restitution and reparation and ensures that the needs of victims are met.

6.25 The *Victims of Crime Act 1994* and the Department's *Victim Policy* guide the provision of such services.

6.26 The Community Justice Services' *Victim Offender Contact Policy* establishes guidelines for victim contact and all contact between victims and sentenced offenders, under the jurisdiction of the CJJ is co-ordinated through the Victim-Offender Mediation Unit (VMU). Adult outputs/services include:

- Victim Offender Mediation;
- Victim registration and notification; and
- Assessment and Case Management of offenders and prisoners.

The Victim-Offender Mediation Unit:

- provides the opportunity for meaningful reparation/compensation and protection for victims;
- ensures victims have information about the availability of other support services, including Victim Support Services and the Victim Notification Register, and are informed about the possibility of providing submissions to releasing authorities;

- encourages offenders to take responsibility for their actions and provide them with an opportunity to have a say in the level of contact (if any) with the victim/s of their offence/s;
- provides an opportunity for the offender to make amends to his or her victim; and
- provides an opportunity for the victim to have his/her rights restored in a way that is meaningful.

In partnership with community groups, prevent and reduce crime by providing meaningful alternatives to criminal activities

6.27 Programs provided under this function are isolated to services for young people.

6.28 The Department has an acknowledged role in working with young people to minimise the incidence of offending and prevent young people from entering the formal justice system. The Department's state-wide Juvenile Justice Community Funding Program provides funding support aimed at encouraging the involvement and participation of non-government organisations in the delivery of services to young people between the ages of ten and seventeen years who have offended or are at risk of offending.

6.29 Non-government community based organisations offer considerable expertise in this regard and have demonstrated the capacity to participate in the direct provision of services to meet the needs of young people who are subject to court orders, diversionary programs, being reintegrated back into the community after detention or are potential offenders.

6.30 The program places emphasis on preventative initiatives designed to address the developmental needs of young people and the factors causing or leading to anti social or criminal behaviour.

6.31 Emphasis is placed on projects that provide direct services to young people. There is an expectation that funded services will act as a conduit for young people to other community resources and develop local networks that will facilitate an integrated and cooperative approach towards addressing the needs of young people who have offended or at risk of offending.

6.32 The 2005-06 budget for the program is $1.47 million.

Legislative Structure

6.33 There is currently very little legislative basis underlying the community corrections system and the Community and Juvenile Justice Division.

6.34 The *Sentence Administration Act 2003* enables the Minister for Justice to establish Community Corrections Centres (section 85). There are various functions and powers conferred on the Chief Executive Officer (i.e. the Director General) in relation to community and juvenile justice. Those functions and powers are variously dispersed throughout the *Sentencing Act 1995*, the *Sentence Administration Act 2003* and the *Young Offenders Act 1994* and may be the subject of delegation by the CEO "to any person" (*Sentence Administration Act 2003*, section 95(1)). In practical terms almost all of those functions are performed by delegates.

6.35 The various roles within the prisons system (namely the Director General, the Executive Director, Superintendent and Prison Officers) are defined, *albeit* not particularly well articulated, in the *Prisons Act 1981*. Each of those roles is at least the subject of statutory recognition. The same cannot be said for the various roles within the Community and Juvenile Justice Division of the Department. For example, the operation leader of the Community and Juvenile Justice Division, the Executive Director, a position currently held by Ms Jackie Tang, finds no reference in any legislation. The position is simply a public service position under the *Public Sector Management Act 1994*. It has no legislatively defined function or status.

6.36 The principal 'front-line' position within community corrections is the CCO. The functions of a CCO are defined throughout the *Sentence Administration Act 2003,* and principally in section 88 of that *Act*. Unlike Prison Officers, who are engaged under section 13 of the *Prisons Act 1981* and must take an oath of office, the provisions in relation to the engagement of CCOs are simply those that apply with any other staff.

6.37 CCOs are, nevertheless, given significant statutory powers, including:

- the power to make lawful orders or directions to *any* offender subject to a pre-sentence order or community corrections order (section 76(2) of the *Sentence Administration Act* 2003);
- the power to use reasonable force to compel an offender to obey an order or direction given to that offender if the CCO believes on reasonable grounds that the use of force is necessary to prevent the offender or another person being killed or seriously injured or to prevent serious damage to property (section 88(3) of the *Sentence Administration Act 2003*); and
- the power to use reasonable force to compel a person to leave a community corrections centre (section 88(4) of the *Sentence Administration Act 2003*).

6.38 While a CCO is at least identified in legislation by name, the equivalent position in Juvenile Justice, the Juvenile Justice Officer (JJO) is not so clearly identified. That position, rather, is reflected in the *Young Offenders Act 1994* by the appointment, on a case by case basis, of "an officer of the Department" to be the "supervising officer" of an offender serving a youth community based order (section 77), an intensive youth supervision order (section 108) or supervised release order (section 139).

6.39 As I have elsewhere observed, in addition to the lack of legislative provisions establishing the principal offices held within Community and Juvenile Justice, there is currently no legislative articulation of the purpose or aims of a corrections 'system' in Western Australia as a whole, and the role of community corrections within it. New Zealand has recently enacted, for example, the *Corrections Act 2004* (NZ) which sets out the purpose and principles guiding their corrections system.

Policy Structure

6.40 The current policy structure of the Community and Juvenile Justice Division comprises instructions issued by the General Manager CJS, upon delegation from the CEO, and the Community Corrections Practices and Procedures manual which sits underneath the instructions providing operational guidance to staff.

6.41 The *Sentence Administration Act 2003* provides that the CEO, with the approval of the Minister, may issue written instructions for the management, control and security of community corrections centres and offenders (section 86). The CEO must ensure that relevant instructions are published in such a manner as to bring them to the attention of departmental staff, offenders and people visiting centres (section 86(5)). The CEO has delegated this power to the General Manager, CJS. In practice, the process of issuing such instructions appears to be ineffective. The Inquiry has been advised that such instructions are usually sent via email from the Director of North and South to managers of CJJ branches for dissemination to CJJ operational staff. The instructions are subsequently formally issued by the General Manager and placed on the Department's intranet site 'Just Net'. The formalising of the instructions can take several months. For example, instruction number 15/2004 was issued in September 2004 in order to formalise the use of A-CAMM process following the Skinner review. However, A-CAMM had become operational within centres on 1 June 2004.

6.42 Where relevant, instructions are incorporated into the Community Corrections Practices and Procedures. The process of incorporating the General Manager's instruction into the manual that staff use on a daily basis is unacceptably slow. The Inquiry was advised that instead of instructions being immediately inserted into the manual, which is available online and in hard copy, new instructions are incorporated only following a review of the manual. The Inquiry notes that the manual is currently being comprehensively reviewed for the first time in 4 years.[8] This means for example that the use of the A-CAMM tool and a number of other significant policy changes following the Skinner review have not yet been incorporated into the manual.

6.43 It is noted that the Professional Practice Standards Unit (PPSU) will soon assume responsibility for ensuring the manual is updated. However, this process will only take place on a 6 monthly basis.

6.44 The issue of the clarity and timeliness of updating instructions for staff is particularly crucial because of the transient nature of the CJJ workforce. One CCO noted that there is an,

> *"uncoordinated plethora of new instructions, directives and tasks generated by the Directorate, usually without prior consultation with field staff who are required to implement them, often no established purpose and with no commensurate increase in resources to carry out these tasks" - made CCOs role more process driven, leaving less time to carry out case management that is fundamental duty in his work."*[9]

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[8] Submissions and evidence provided by Ms S. Holland and Mr W. Greble.

[9] Submission of Mr W. Greble.

6.45 The Inquiry notes that the CJS and Policy, Planning and Review Directorates have recently developed draft *Operational Standards for Community Justice Services*[10]. The draft standards were developed partly in response to a request from the Minister for Justice to outline how issues of community safety are managed in CJJ. It was decided that community safety would be incorporated into a generic standards document. The Department recognised that whilst policies, procedures and instructions are outlined in staff manuals, it would be beneficial to produce corporate documents that outline guiding principles or desired standards to be reached. The standards would also provide performance measures to ensure that the Department is accountable for its goals. The standards will be available to external stakeholders. The standards provide linkages to the relevant chapters within the Community Corrections Manual.

HOW ARE THE FUNCTIONS BEING PERFORMED?

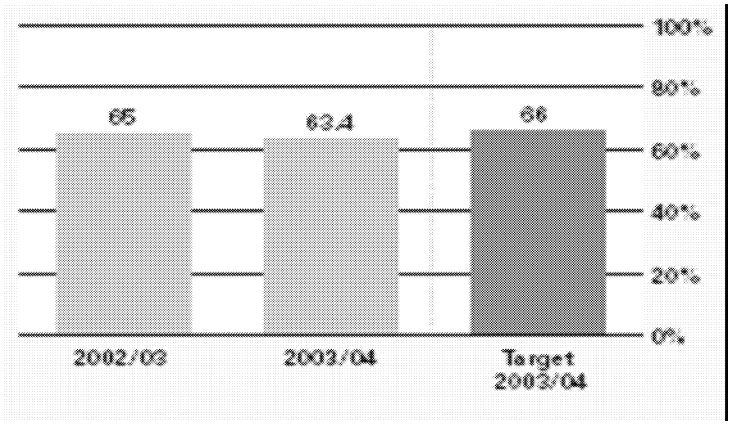
Key Performance Indicators

6.46 The Division has suffered for some time in being able to address what its ultimate aims are and for devising mechanisms for determining whether it meets those aims. Measuring the performance of its operations has been a constant problem. The current key performance indicators are:

- completion rates of offenders serving community corrections orders; and
- cost per day of managing an offender through community supervision.

6.47 According to the Department's Annual Report, 63.4% of offenders successfully completed community corrections orders in 2003/04.

Successful Completion of Community-Based Orders



Source: Department of Justice, *Annual Report 2003-04*

6.48 The indicator is derived by calculating the number of orders completed as a proportion of all orders validly terminated, completed or expired.

[10] Department of Justice (2005) *Operational Standards for Community Justice Services* (unpublished).

6.49 The CJJ business plans also use successful completion of community orders as the quality performance measure for adult community corrections. In the *Community and Juvenile Justice Budgeting and Planning 2002-2006* (MI00965) the following targets were identified:

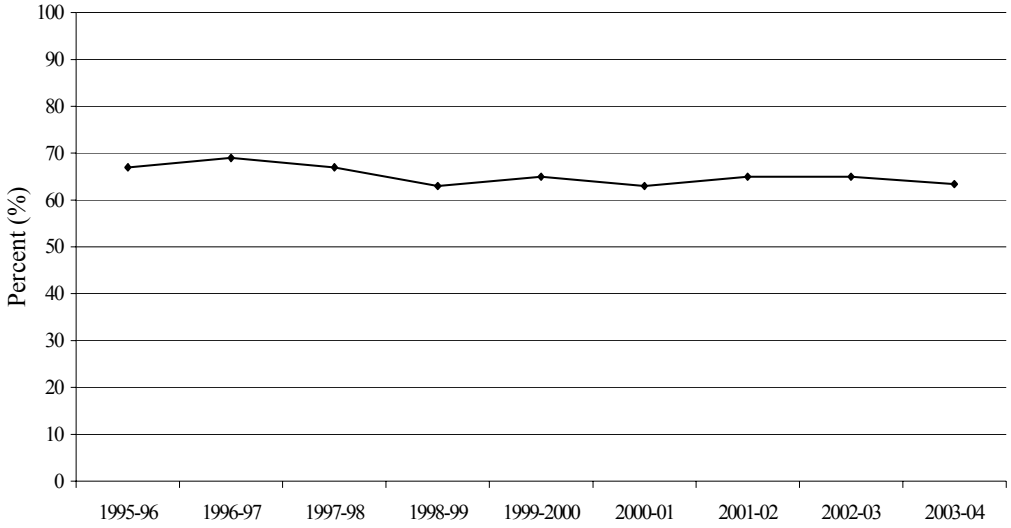
2001/2002	2002/2003	2003/2004	2004/2005	2005/2006
65%	70%	70%	70%	70%

6.50 These targets were revised several years later, as actual performance had decreased to 64% and in the "*Community and Juvenile Justice Business Plan 2004-2009*" (MI00967) the targets were readjusted:

2003/2004	2004/2005	2005/2006	2006/2007	2007/2008
64%	67.7%	67.7%	67.7%	67.7%

6.51 The actual performance over the last years is as follows in the graph below (MI00968).

Successful Completion of Community Correction Orders 1995-96 to 2003-04 (%)



Source: Department of Justice (2005) Adult and Juvenile Offenders: Key Performance Indicator Trend Analysis, Paril 2005, p. 3.

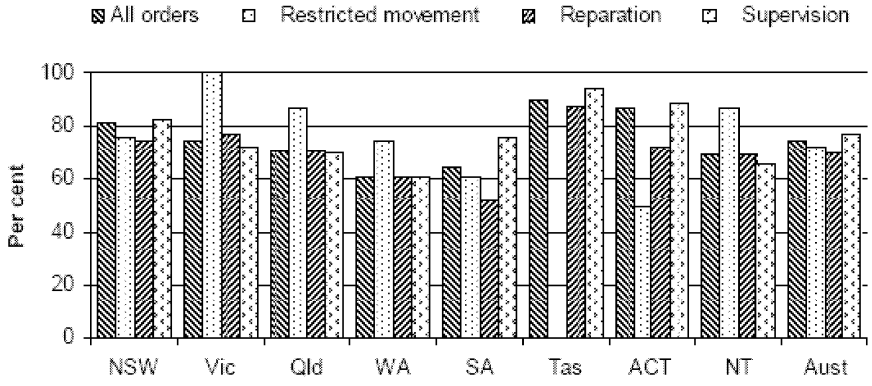
6.52 It is difficult to comment on the utility of such an indicator, as successful completion of a community order does not mean that an offender has addressed his or her offending behaviour and will not recidivate. For example, a high rate of 'completion' may be the result of poor breaching policies or minimal detection of crimes committed. The Productivity Commission noted that:

> *"completion rates are affected by differences in the risk levels of offender populations and risk assessment and breach procedure policies. High-risk offenders subject to higher levels of supervision have a greater likelihood of being detected when conditions of orders are reached. High breach rates could therefore be*

interpreted as a positive outcome reflecting more intensive management of offenders. A high completion rate may therefore mean either exceptionally high compliance or a failure to detect or act on breaches of compliance."[11]

6.53 It is useful to compare the successful completion rates of offenders serving community corrections orders in other States, although it is noted that the nature of orders varies across jurisdictions. The *Report on Government Services* defines 'completion of community orders' as the percentage of orders completed during the year that were not breached for failure to meet the order requirements or because further offences were committed. The following graph shows that in 2003-04, Tasmania reported the highest percentage of successful completion of community orders, at 90.3% completion and Western Australia the lowest at 61.2%.

Successful Completion Of Community Corrections Orders 2003-04



[a] Tasmania did not have restricted movement orders in 2003-04. [b] The ACT and Victorian rates are based on only a very small number of restricted movement orders per year. Therefore, they are not indicative of long term trends and may fluctuate from year to year.

Source: Productivity Commission (2005) *Report on Government Services 2005,* p 7.19

6.54 Related to completion rates is the rate at which offenders re-offend following the completion of community orders. It is noted that the Productivity Commission reported that, in 2001-02, Western Australia had the highest rate of offenders who completed community corrections orders (including parolees) who then subsequently returned to corrective services within two years of completing the order. Of those completing community corrections orders in 2001-02, 19.7% were convicted of subsequent offences and returned to community corrections within 2 years, a total of 35.3% returned to either prison or community corrections. It is noted that the rate of return to a correctional sanction within two years of completion of a community order is considerably lower than the rate of return to corrective services for prisoners.

[11] Productivity Commission (2005) *Report on Government Services 2005,* p 7.18

Prisoners and offenders who were released or completed an order in 2001-02 who returned with a correctional sanction within two years (%)

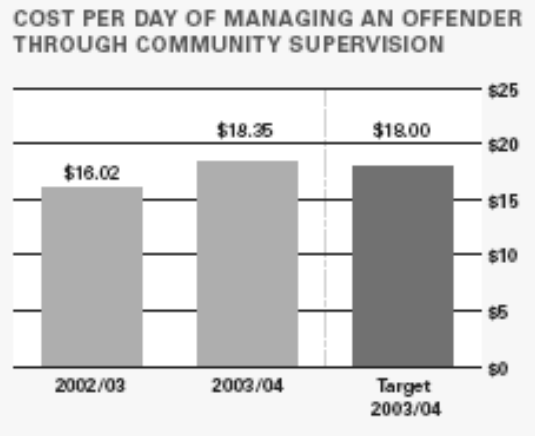
	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
Prisoners returning:									
– to prison	44.7	na	27.7	44.9	29.7	33.7	na	36.0	na
– to corrective services	49.2	na	40.2	51.8	51.2	43.8	na	38.9	na
Offenders returning:									
– to community corrections	na	na	11.2	19.7	14.7	13.3	na	16.7	na
– to corrective services	na	na	18.0	35.3	21.1	32.6	na	31.3	na

na Not available.

Source: Productivity Commission, (2005) *Report on Government Services* 2005, Pirion/J.S.S McMillan, Vol 1 c12

6.53 The second key performance indicator, the cost per day of managing an adult offender per day through community supervision, is calculated by dividing the total accrual cost of managing an adult offender through community supervision by the daily average number of offenders supervised, then dividing this by 366 days. According to this calculation in 2003/04 it cost $18.35 to manage an offender serving a community corrections order.

Cost Per Day of Managing an Offender Through Community Supervision



Source: Department of Justice, *Annual Report 2003-04*

6.54 The Department's *Annual Report 2003-04* provides an explanation for the cost increase. It states that a lower actual cost for the output managing an offender through community supervision combined with a decrease in the average number of persons on community orders by 360 to 5,143 resulted in a 1.9% higher unit cost against the 2003/04 target.[12] Budgets are set and monitored according to the functional structure of the Division. Each business unit provides inputs that are used to derive percentage allocations to outputs, reflecting the focus of work effort. The allocated percentages for each unit are recalculated every year to provide a true reflection of the cost of activities.

[12] Department of Justice, *Annual Report* 2003-04, p 160

Other performance measures reported by the Productivity Commission

6.55 The Productivity Commission records a number of other performance measures in relation to community corrections. These include offender/staff ratios and the proportion of community work actually undertaken compared with the amount ordered.

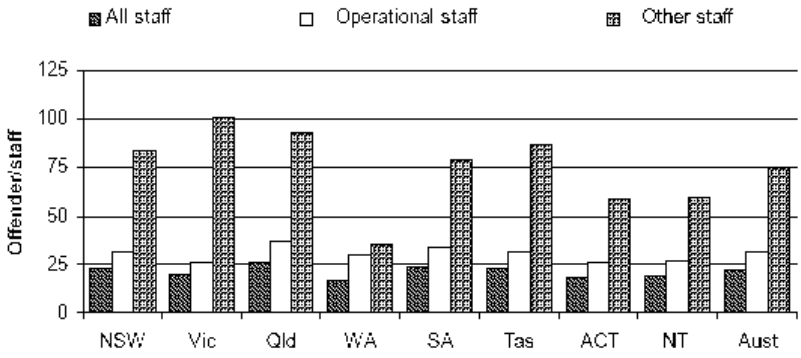
6.56 The 'offender-to-staff ratio' is defined as the number of offenders per full-time community corrections staff employed (measured at a point in time); reported separately for operational staff (who are involved in the direct supervision of offenders) and other staff. This provides a measure of the efficiency of resource management.

6.57 The Productivity Commission notes that:

> *"A high ratio suggests better performance towards achieving efficient resource management. However, efficiency indicators are difficult to interpret in isolation and need to be considered in conjunction with effectiveness indicators. A low ratio may, for example, represent more intensive levels of supervision and program provision, commensurate with the risk and offence-related needs of the particular offender population aimed at producing greater efficiencies in the longer term. Offender-to-staff ratios are also affected by differences in geographic dispersion and isolation factors that limit opportunities to reduce overheads through economies of scale."*[13]

6.58 The following graph shows that the offender-to-staff ratios for community corrections ranged from 26.6 offenders per staff member in Queensland to 16.4 in WA in 2003-04. Queensland also reported the highest ratio of offenders to operational staff (37.2) and ACT reported the lowest (25.2). The ratio of offenders to other staff ranged from 100.7 in Victoria to 35.3 in Western Australia.[14] Western Australia's expansive geographical size and dispersed population may offer some explanation for the low ratio.

Community Corrections Offender-to-Staff Ratios, 2003-04



Source: Productivity Commission, (2005) *Report on Government Services* 2005, Pirion/J.S.S McMillan, Vol 1 c12

[13] Ibid, p 7.30

[14] Ibid

The Productivity Commission defines 'offender community work' as the ratio of hours of community work expected to be worked compared to the number of hours actually worked. It is noted that community work enables offenders to provide some form of reparation to the community for their actions.

6.59 The 'offender community work' ratio is based on the number of community work hours to be served on all orders registered during the year, divided by the number of hours actually worked by all offenders during the same period regardless of whether the current order was made in that year or during previous years. The ratio indicates the extent to which corrective services were able to administer the community work components of the orders registered.[15]

6.60 Queensland reported the lowest ratio of orders to worked hours at 1.7 and the Northern Territory the highest ratio at 2.3, indicating that Queensland was best able to administer the community work components of community corrections orders. In terms of the average hours worked per offender, WA and NT reported the lowest number of hours (40) worked and ACT the highest (59).

Community work undertaken by offenders 2003/04

	NSW	Vic	QLD	WA	SA	Tas	ACT	NT
Average hours ordered per offender	na	na	74	83	98	na	125	94
Average hours worked per offender	na	58	43	40	50	na	59	40
Ratio of ordered to worked hours	na	na	1.7	2.1	2.0	na	2.1	2.3

Source: Productivity Commission (2005) *Report on Government Services 2005,* table 7A:19

6.61 In May 2001, the Auditor General released a report entitled '*Implementing and Managing Community Based Sentences*'[16]. In this report, the Auditor General looked at the performance measures for community-based services. A number of concerns were identified including:

- lack of reliable data about the long-term rehabilitative effects of community based orders;
- little or no evaluation of the effectiveness of treatment programs;
- limited use of information about offenders and their orders in planning; and
- a need for more performance measures for case managers and CJS as a whole.

[15] Productivity Commission (2005) *Report on Government Services 2005*, p 7.21

[16] Auditor General of Western Australia (2001) *Implementing and Managing Community Based Sentences.* Performance Examination Report No. 3 May 2001.

6.62 The Auditor General's 2005 follow-up report found:

- case management of adult offenders serving community based sentences has improved. It is better resourced at the branches, better supported and monitored at the centre, and places public safety as the top priority;
- the proportion of successfully completed community based sentences has remained stable in recent years;
- more than 40 per cent of offenders fail to complete their orders and are returned to the courts for re-sentencing;
- new information and performance measurement systems are still under development; and
- until they are fully implemented at the end of 2005, or later if there are delays, CJS will be limited in measuring the effectiveness of its operations and outcomes.[17]

6.63 The Auditor General's 2005 report recommended that, the Dearptment should "carry forward its initiatives relating to CBSs with particular attention to:

- reducing the proportion of contract, casual and acting community corrections staff;
- staffing branches according to the case workload and supervision ratios;
- providing and evaluating more rehabilitative treatment programs;
- auditing case management for consistency and compliance; and
- measuring the quality of services and their impact on offenders".[18]

6.64 I note that while progress had been made towards addressing the concerns raised in the Auditor General's reports, full implementation has still not been achieved in most areas.

6.65 Following the Auditor General's report to Parliament, CJJ launched a wide-ranging project in 2004 to develop a set of performance measures for community justice services. The development of these measures involved a detailed consultation process with a wide range of staff across the Department of Justice. The proposed *Performance Measures for Community Justice Services* (this document is still in draft form) will present a framework for monitoring performance for the purpose of providing information on the efficiency and effectiveness of Community Justice Services in order to:

- provide clear definitions of objectives with a focus on high-level outcomes;
- provide feedback to staff on achievement of Divisional level outcomes;

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[17] Auditor General (2005) *Follow-up Performance Evaluation: Implementing and Managing Community Based Sentences* p 3

[18] *Ibid*, pg 3.

- identify outcomes that require further attention;
- provide clear, measurable and focussed objectives, which are directed towards the needs of and the outcomes desired for our customers;
- examine workload and allocation resources across the Division; and
- ongoing learning and improvement.

6.66 As part of this draft outcomes/outputs framework was developed. This is summarised in the table below. The Department's performance in achieving each of the outputs is measured by a range of different indicators. The Inquiry supports the development of these new performance measures. Again, while the Inquiry notes the progress that has been made in progressing this initiative, the performance measures remain as a consultation draft and the CJS Division has still not implemented the key recommendations from the Auditor General's report of May 2001.

6.67 It is also noted that the implementation of the new performance measures is reliant upon the roll-out of the Division's new information management system, Community – Business Information System (C-BIS), because it will provide for the collection of the statistics required. The new system was expected to be fully implemented by October 2005, however delays have occurred. As the achievement of comprehensive and meaningful performance measurement is critically dependent on the successful implementation of C-BIS, the Inquiry urges the Department to give the highest priority to ensuring its implementation is not further delayed.

Draft Performance Outcomes – Community Justice

OUTCOME 1: Prevention	OUTCOME 2: Diversion	OUTCOME 3: Well informed Courts and releasing authorities.	OUTCOME 4: Offender management and rehabilitation	OUTCOME 5: Victim supports
Community Justice Services, in partnership with community groups, aims to prevent and reduce crime by providing meaningful alternatives to criminal activities.	Young people and adults who have offended are offered services that are aimed at reducing or eliminating their further involvement with the criminal justice system.	The courts and releasing authorities receive quality assessments and information on offenders, which assists those authorities to determine an appropriate disposition.	Offenders accept responsibility for their offending behaviour, make reparation to the community where appropriate, fulfil the court or releasing authorities requirement and adopt a law abiding life style.	Community Justice Services acknowledges the important role of victims in the criminal justice system, by providing for their protection, and the opportunity for restoration, restitution and reparation between victims and offenders where appropriate.
OUTPUTS (Services)	**OUTPUTS (Services)**	**OUTPUTS (Services)**	**OUTPUTS (Services)**	**OUTPUTS (Services)**
Youth activities. (*eg funding for youth groups)* Community planning and coordination. *(eg Safer WA*) Voluntary / self referral intervention	Cautioning follow-up Family and individual support *(eg Killara, and cautioning response)* Diversionary education program *(eg court diversion service and cannabis education)* Family group counselling.	Assessments to Courts Advice to courts and releasing authorities. Case management of offenders on specialist Court programmes Bail monitoring	Case management. Supervision Counsel Youth supports Management of community work	Mediation (*eg offender/victim*) Victim registration and notification Juvenile Justice Teams
PERFORMANCE MEASURES (examples)	**PERFORMANCE MEASURES (examples)**	**PERFORMANCE MEASURES (examples)**	**PERFORMANCE MEASURES (examples)**	**PERFORMANCE MEASURES (examples)**
- Percentage of crime prevention and reduction funding allocated to areas of high need. - Number of juveniles participating in crime prevention programs.	-Percentage of persons who undertake diversion service from the criminal justice system (primary/secondary and tertiary diversion) who are not subsequently involved in the criminal justice system.	-Percentage of pre-sentence and court reports that comply with agreed standards. -Percentage of members of the judiciary and releasing authorities who report that advice from CJS helped to inform their decision-making.	-Percentage of offenders whose contact with the Criminal Justice System ceased in the previous two years who have returned to corrective services. -Numbers of offenders in employment within 6 months of release from prison to a community order.	-percentage of victim/offender mediation agreements and contracts satisfactorily completed. -percentage of victims satisfied with victim services.

Internal Indicators

6.68 I have been advised that a range of branch-level performance indicators are also compiled. These are distributed weekly to centre managers to measure the 'health' of each centre. For example these include, the number of overdue case reviews and the number of hours of community work undertaken compared to the number ordered. The Policy, Planning and Review directorate is currently reviewing the number and range of these indicators to ensure their suitability in providing information to branch managers on the health of their centre.

6.69 Evidence was provided to the Inquiry that although such indicators were measured, there were generally no consequences or action taken where branch performance was poor. This is of concern; particularly where poor performance is a maybe an indication of a larger problem. For example it may indicate inadequate level of resourcing, as demonstrated in the public hearings concerning the case of Mr Mitchell.

CONCLUSION

6.70 It is difficult to measure the performance of CJJ due to the absence of adequate performance indicators. However, if one employs the current two key performance indicators, successful completion of community based orders and cost per day of managing an offender through community supervisor, CJJ is not meeting its targets.

6.71 The position, however, as discussed by Ms Tang in evidence (T2020-2022), is far more complex than that. Ms Tang commented upon the difficulty of setting the targets for performance measurement. She noted that there is ongoing discussion within the Division as to how to address this issue, with questions of how the targets set, criteria for selecting them, the adjustment process and who is responsible for setting and monitoring such indicators, being considered.

6.72 One of the answers to these issues is that the focus on only two key performance indicators for community corrections, outside the context of the management of offenders as a whole, is to miss the broader issues involved in that task.

6.73 Key performance indicators, and an appropriate research capacity to measure them, are therefore of fundamental importance to the performance of the Department generally. As I have discussed above, that process has been ongoing within Community and Juvenile Justice. I seek to encourage that process.

6.74 As I discuss later, responsibility for developing and maintaining such indicators and accountability for those indicators would the responsibility of the Deputy Commissioner for Community Justice. However, where managers of community corrections branches are delegated operational responsibilities, they should be accountable for meeting the related performance criteria.

IS IT WORTHWHILE?

6.75 Once a person has been drawn into the processes of the criminal justice system there are several approaches which may be adopted in regards to their offending behaviour. There are different objectives for the implementation of different approaches such as retribution, rehabilitation, restoration, or reduction in re-offending. In abstract terms, clear differences can be drawn between those of a 'negative' nature (such as retribution) and those of a positive nature (such as rehabilitation).

6.76 The justice system applies different mechanisms with which to achieve these objectives, with community-based corrections being a key mechanism.

6.77 Community corrections play a major role in reducing offending in our community. Recent work in the UK and Canada demonstrates the potential positive effect of community management on recidivism. (Ellis and Marshall 2003, Grant and Gillis 1999).

6.78 The mission of community corrections, as a specific form of justice intervention, can be informed by the intended objective of the intervention (see Worrall 1997). The philosophy of community corrections generally include two main objectives.

- Community Incapacitation: in which the main emphasis is on concepts of community safety and offender control. This includes intensive monitoring and supervision of offenders in community settings. The aim of community corrections, from this perspective, is to keep offenders under surveillance and thereby deter them from re-offending.
- Community rehabilitation: in which efforts are made to change offender behaviour in positive ways as well as improving community relationships by the use of supportive, participatory measures. The aim of community corrections, from this point to view, is to prevent recidivism through behaviour modifications via some type of therapeutic or skills based intervention. The emphasis is on personal development and enhanced capabilities.

6.79 Recent changes in the overarching political environment have lead to an increasing emphasis on 'negative' (for example surveillance) type mechanisms within the criminal justice system in general and the community justice system in particular rather than emphasising more positive and rehabilitative ones.

6.80 There are limits to the capacity of 'negative' controls through the criminal justice system. One of these is that they do not achieve rehabilitative objectives. The other important consideration is financial.

6.81 The use of imprisonment is considerably more expensive than community corrections. Any trend toward greater reliance on prisons relative to community corrections will cost considerably more than otherwise might be the case. Likewise any trend towards overall increased in the numbers of people in community corrections, i.e. net widening (which can occur through inadequate measures for diversion) will also represent a significant unwarranted increase in expenditure on corrective services. My later

comments in relation to increasing efforts in diversion are relevant here. My later comments in relation to the benefits gained from solid re-socialisation are also relevant.

6.82 While it is a less expensive option than prison, for community corrections to be useful in fulfilling the objective of reducing re-offending, emphasis must be placed on specialist training, development of expertise, intensity of case management and types and volumes of therapeutic interventions and other services available. If we are unable to increase the extent to which this can occur, the net result is that re-offending will stay the same or increase, putting increasing pressure on a community justice system already under a great deal of strain.

6.83 Given the significantly higher numbers of offenders managed by the Department in the community, and the fact that they are managed in, and as part of, the community, the potential risk to the community associated with such offenders is far greater than that posed by the prison population.

6.84 Offenders being managed in the community, who after all are the same people as the prison population (at least in the case of parolees), on the other hand have no impediment to further offending other than their own will and the way in which they are managed by the Department. I agree that the strength of the Community and Juvenile Justice division is therefore of paramount significance in the achievement of the Department's aims as a whole.

6.85 When the public spending on Community Corrections, however, is compared with Prisons, the disparity is reversed. Again comparing the recurrent expenditure on prisons and community corrections and the expenditure per offender for the year 2003/2004.

Expenditure of Community Corrections and Prison Services, 2003/04

	Prisons	Community Corrections	Prisons as a % of Community Correction
Annual Expenditure	$172,000,000	$33,740,000	509.78%
Expenditure per Offender per day	$157.30	$18.73	838.83%

Source: MI00940 closing submission of Counsel Assisting, para 656

Note: These figures do not take into account the significant capital costs involved in the prison system.

6.86 I confess to a certain scepticism in the public costing and more particularly to the doubt that, in comparisons of this kind, apples may be matched with oranges. However, making all necessary allowances, the comparison is instructive. I agree with the submission that these comparisons demonstrate that, to the extent that the management of offender's in the community can produce a better result than imprisonment, significant investment in community corrections is overwhelmingly in the public interest.

6.87 I propose that a renewed emphasis is required on community corrections. In particular we need to spend more on risk reduction and rehabilitative mechanisms in order to be in a position to spend less on prisons and achieve the overarching goal of reducing offending.

6.88 The recommendations I have made elsewhere pertaining to increasing emphasis on resocialisation are relevant here.

6.89 The professional role of the community corrections officer is key here. I have made recommendations in regard to supporting this role elsewhere.

CHAPTER 7 THE MAIN CHANGES TO BE MADE

7.1 I have to this point:

- Described the basics on which a modern prison system is built.
- Summarised the component parts of the Western Australian prison system as they are meant to be.
- Described the ways in which, in general, that prison system has developed and been administered.

7.2 I come now to make recommendations as to the changes which should be made to improve the functioning of it.

CLASSIFICATION AND PLACEMENT OF PRISONERS

7.3 The classification system now used in the prisons requires change for the following reasons:

- it is an important part of the mechanism for the administration of a prison system;
- the results it has produced to date are less than fully satisfactory; and
- those concerned with the formulation and administration of it do not offer prospect of improvement of it in its present form.

7.4 It has four main deficiencies:

- It does not provide sufficiently reliable predictions of escape
- It does not take proper account of the likelihood of injury to prison staff, prisoners and the general public.
- It does not deal with the effect of public outcry.
- The way in which it is applied allows for misapplication.

7.5 The changes in the system which are necessary will require the evolution of different approaches in respect of:

- the criteria adopted by the classification test; and
- the way in which it is to be applied.

7.6 I shall consider each of these matters, indicate reasons for them, and formulate the changes to be adopted.

The importance of the classification system

7.7 The system now adopted (and the test used in the application of it) is based upon the work done by *inter alia*, Ms Tang and Ms Doyle and developed by Mr Bandy and others. It was to an extent developed in Director General's Rules 13 and 14 (now reformulated as DGR 18). Whatever the formal provisions relating to classification, it is as various officers have said, directed essentially to

determining whether the prisoner is likely to escape. It is this which decides (or at least substantially decides) the kind of prison to which a prisoner is committed.

7.8 This is important to the prisoner, to prison staff and to the public. For the purposes here relevant, there is little practical difference in the treatment of a prisoner while in prison between maximum and medium security prisons. However, life in a secure prison (maximum or medium security) is different from life in a minimum security prison. As those who have seen prisons will know, it is no small thing (and on one view, no small injustice to a prisoner) to be placed in a secure prison when he should be placed in an open prison. The effect of misclassification and consequent misplacement on a prisoner's progress towards parole and the like can be significant.

7.9 The proper placement of a prisoner is important to prison staff and to the public generally. A secure prison differs from an open prison in three important respects: these are (I use the terms for brevity) escape; injury; and public affront.

- Escape from a secure prison area is difficult: there have been very few in the past twenty years. (I exclude the special case of escape from the security arrangements at the Supreme Court of Western Australia). Escape from an open prison is easier. There are (even in the special case of the prison at Broome be excluded) each year now a number of "escapes" from minimum security prisons.
- Injury to prison staff or prisoners is possible, but less likely in a secure prison: prisoners are more closely controlled and able to be watched. In open prisons, control and surveillance exist only to a limited extent, not enough to stop physical assault.
- It is what is done by those who have come from an open prison that attracts public attention. What was done by Cross and Edwards caused the public outcry which gave rise to this Inquiry.

7.10 When escape, injury and public affront occur, the question which (understandably) is asked is: how did the prisoner come to be in the position to do what he did? Often the answer is: because he was classified suitable for an open prison. It is the classification system which is at the centre of what is done and what results from it.

7.11 In a practical sense the test of a classification system is whether it results in persons being placed in a minimum security prison who should not be there. Stated more precisely, the test is whether it results in prisoners being placed there who not only should not be there but who, if they offend while there, will cause unacceptable damage. (I mean by this will cause personal or public damage on escape or cause injury to prisoners or to prison staff),

The Results of the Present Classification System

7.12 We come now to review the results obtained by the use of the present classification system and to consider whether they justify the continued use of it.

7.13 As the classification system is of such significance in the operation of the prison system, I shall discuss what can be expected of it and the results that it has produced.

7.14 My conclusions are:

- The present classification system has important limitations
- It should not be used in its present form as the sole test of classification and placement.
- Its results are sufficient to justify its use in the modified form to which I shall refer.

7.15 As I have indicated, the issue, in practical terms, with which the classification system must deal is: Is the prisoner suitable to be placed in a minimum security prison? That is not decided alone by whether he is likely to escape; there are other factors (personal injury and public outcry) which should be taken into account. The present test does not test for these or take them into account. A proper classification test should test for all of them.

7.16 Escape is one of the things to be assessed. I shall refer later to the possibility of refining the present test. In its present form, it has two main limitations:

- It does not predict the likelihood of escape with sufficient accuracy.
- The procedure for applying it is not completely satisfactory.

7.17 In order to judge the effectiveness of a classification system, it is necessary to examine more closely what in practical terms it is expected to do. In principle, the present classification system is to be applied to all prisoners in, or coming into, the prison system. Of these prisoners, the classification of many of them (perhaps the majority) will be hardly in doubt. These are prisoners of whom it has been said: "All they want is to complete their sentence and leave the prison system". It is, in practical terms, in respect of the balance of prisoners entering the prison system that the value of a classification system is to be tested. These are prisoners whose past conduct has been serious and in respect of whom the prediction of their future conduct will be sufficiently uncertain.

7.18 The value of a classification system lies essentially in the extent to which it is able to predict what will happen in respect of those prisoners and accordingly to judge whether they should be placed in a minimum security prison. It is not clear how many prisoners of this type have been subjected to the test since its commencement in 2002 or thereabouts and in respect of how many of them the predictions have been right or wrong. Its crucial value lies in not assigning the wrong prisoners to the wrong prisons; in particular, in not assigning to minimum security prisons prisoners who should not be there. Its important function lies in dealing with the difficult cases in respect of which the classification is not obvious and in which, if there is an error, unacceptable damage may result.

7.19 In its performance of this function, its value is not determined alone by whether its application results in the majority of these difficult cases being assigned correctly. It lies in ensuring that, as the result of its assignment of them, it has not been wrong in an unacceptable number of cases. This

distinction is important. It may be tested by the examples taken during the Inquiry. Assume that during the period of the operation of the classification system 100 prisoners were classified by it as appropriate for minimum security and that only one of these should not have been so assigned. Assume that that prisoner escaped and in accordance with his previous character committed murder. The question to be answered is whether a classification system which results in one murder in a hundred cases is an acceptable classification system. There will always be errors and some of those errors may produce unfortunate results. But the assessment of the classification system must take account of factors such as these.

7.20 As I have said, it is not possible to determine the results of the present classification system by identifying all of the relevant cases to which it has been applied and determining whether, in the sense to which I have referred, it has produced accurate results. However, it is proper to test the results produced by considering the four cases which led to the setting up of this Inquiry. They provide illustrations of the use of the present classification system and the limitations of it. At the risk of repetition, I shall refer to what happened, to illustrate the questions that arise from a classification system.

7.21 At the commencement of the Inquiry a number of prisoners were referred to its attention. They were prisoners whose classification was not obvious. Of these, four were selected for close examination: the others might also have been selected. The detailed examination of three of these four prisoners suggests that the decisions that these prisoners were (in effect) apt for minimum security were each wrong . Having regard to the circumstances in which the decisions were made, what resulted must place a serious qualification upon the value of the system as it now stands. The importance of each of these decisions lies in, or is accentuated by, the way that they were made. It is therefore necessary that I refer in some detail to what occurred. (The details of these prisoners are set out in the submissions of Counsel Assisting the Inquiry).

7.22 The prisoner Cross had a long and violent criminal record. He had been sentenced many times for offences including some 18 armed robberies and various escapes. He had committed armed robberies in various jurisdictions: Western Australia, Victoria, and the United Kingdom. In 1977 he escaped from prison in Victoria and moved to WA where he committed further offences and was imprisoned for six months. He was sentenced again in 1980 and escaped. He was recaptured and subsequently released to parole in 1983. He breached parole by moving to England where he re-offended in 1984 and was imprisoned for some nine years. In 1994 he was extradited to Victoria and returned to prison. In 1995 he was extradited to Western Australia and in 1997 was released on parole and again committed armed robberies. On 27 November 1997 he was sentenced to 15 years and placed in Casuarina Prison (maximum security). His earliest parole eligibility date was 18 April 2006.

7.23 On 28 October 2004 he was judged "as presenting a low risk of escape and/or a low risk of safety to the public in the event of an escape": DGR 14:10.1.3. On 29 October 2004 that assessment of the sentence planner, Mr Pierre, was confirmed by the Bunbury Regional Prison Unit Conference. On 4 November 2004 it was endorsed at Head Office level by a very experienced officer, Ms Kim Doyle.

7.24 On 11 March 2005 Mr Cross escaped from Karnet Prison. On 21 March 2005 he was recaptured. The risk to the safety of the public that he presented may be judged from the fact that, whilst at large, he committed at least two burglaries, stole and altered a double barrelled shotgun and on recapture had a stocking mask, gloves and a knife.

7.25 The way in which Mr Cross progressed from maximum to minimum security is significant. He was originally classified under the pre-existing classification system as maximum security and the serious and violent nature of his offences was noted. But by 10 April 2001 (some four years after he had breached parole by re-offending) it was recommended that he be reduced to medium security and transferred to the medium security prison at Bunbury. Despite the inauguration of the new classification system, he was neither assessed nor given an IMP between 2001 and 2004. In October/November 2004 he was assessed under the AIPR system, reduced to minimum security, and transferred to Karnet.

7.26 His classification to minimum security did not involve misconduct by the officers concerned: each officer did honestly what he was supposed to do. The care and skill displayed were not of the highest possible order. It would not be expected to be. But it was not suggested that it was greater or less than could be expected of officers ordinarily involved in classifications. The reasons given by Mr Cross to support his transfer to Karnet Prison are as follows: He said he had completed seven years in maximum and medium prisons; that he wished to participate in the meat industry traineeship at Karnet in order to enhance his opportunities for gainful employment on release; that the transfer would facilitate his obtaining a driver's licence and a forklift licence; that it would facilitate visits by his family; and because he believed he needed the experience of a minimum security prison to bridge the gap between his position and the community. It may be concluded that those involved saw it appropriate that, in the circumstances, Mr Cross be moved to minimum security without unnecessary delay. But what was done in his case might well have been done in applying the classification test in similar circumstances to other prisoners. In the event, the sentence planner was asked: "Could you please do an IMP reflecting Karnet as discussed". The sentence planner, Mr Pierre, did a reassessment of him which produced a result of 7 (medium security) and Mr Pierre recommended that, by way of over-ride, he be rated as minimum security. This was approved on review by a review committee in a routine way and by a very capable officer, Ms Kim Doyle.

7.27 It is reasonable to gauge how far it is safe to rely upon the results produced by the classification system by its application to Mr Cross. While in prison he had attempted escape and broken parole. He had breached parole in 1997 by committing armed robberies. He has spent little time out of prison in the past twenty years. Yet he could rate 7 (almost minimum security) by an application of the test. He was considered appropriate for an over-ride to minimum security, apparently because, inter alia, he was seen as a model prisoner. The results produced by the application of the test to Mr Cross were, in common sense, less than satisfactory.

7.28 The results of the classification or proposed classification of Paul Stephen Keating were even less satisfactory. His case illustrates how the test, though applied regularly and in accordance with its terms, may result in an appalling situation.

7.29 Mr Keating had a very bad record. In June 1977 (at the age of approximately 18 years) was imprisoned for sexual assault. In March, June and August 1979, he escaped from custody. In September he attempted to escape from Fremantle Prison. In January 1981 and April 1983 he assaulted other prisoners. In November 1984 he escaped from custody and committed sexual offences; as a result he was directed to be detained at Governor's Pleasure and was placed in maximum security. In October 1986 he threatened and committed indecent acts against a prison psychologist at knife point. In January 1988 he was involved as one of the ringleaders in the Fremantle Prison Riot where five officers were held hostage and was placed in the Special Handling Unit at Fremantle Prison. In 1992 he sexually assaulted a female officer in Casuarina Prison and received a further term of imprisonment.

7.30 In January 1998 he threatened a female facilitator of the sex offenders treatment program in Casuarina causing her to fear for her safety. In February 2000 he was involved in an incident when he approached a female member of the sex offenders treatment unit, armed with a knife, and caused her concern to the extent that she formally reported the incident.

7.31 Thereafter he received considerable attention from psychologists and others within the prison system. He undertook a sex offenders treatment program and received extensive therapeutic counselling from psychologist Ms Gianetti, to the extent that Mr Harrison reported him as having a low risk of re-offending and Ms Gianetti, on 18 November 2003, recommended that he needed no further treatment unless assessed necessary by Mr Harrison. These officers supported his reclassification to minimum security and that he be placed at Bunbury Regional Prison. That view was maintained at the public sittings of the Inquiry.

7.32 Mr Harrison and Ms Gianetti supported the proposal that he be put on a pre-release program which could have led to his release into the community. Such a proposal was made or to be made on three separate occasions. However the Attorney General refused assent to his being placed on the pre-release program.

7.33 In January 2005 Ms Gianetti again reported that Mr Keating had a low risk of re-offending. It was in this context that, on 16 March 2005, while acting as a cleaner in the education section of the prison, he held hostage and sexually assaulted a female education officer.

7.34 The Keating case is important in assessing the results apt to be produced by the present classification system and those concerned with it. It illustrates three things: that the application of the test can produce a result which is wrong; that such a result can be produced notwithstanding that the classification process has been followed, not merely by ordinary officers of the Department but by those claiming special skills; and that the margin of error inherent in the results which it produces is substantial

7.35 To an objective member of the public (and to an Inquiry reviewing the matter in retrospect) Mr Keating's record and his evident propensities were such that it is difficult to understand how it could be said with sufficient confidence that he was so unlikely to misconduct himself in a minimum security prison that the risk should be taken to place him there. If the matter be placed no higher, it was plainly wrong to conclude that "*it was worth taking the risk"*.

7.36 As the closing submissions of Counsel Assisting the Inquiry have emphasised, strong dissenting views had been expressed about the likely future conduct of Mr Keating. What had been said by Professor Howell and by Dr Thomas-Peter was recorded. Those concerned with the classification of Mr Keating gave careful consideration and attention to the process and made their decision, not quickly, but following a substantial period of investigation. The persons concerned included not only some prison officers but two experienced psychologists. No complaint can be made that the system was not properly applied. But, in the event, the judgement that Mr Keating was appropriate for minimum security was wrong. If there ever was a case in which the classification of a prisoner was made with the benefit not merely of the ordinary judgement of prison officers but with the full benefit of what the system could provide, this was such a case.

7.37 That leads to the third matter. The usefulness of a classification test is tested according to, *inter alia*, the degree of accuracy or error which it can be expected to produce. The Keating case illustrates how great an error can be produced by it. The view that he should be classified as minimum security was, as I have said, not merely proposed and repeated by officers of the Department but also by the two senior psychologists. If it can be wrong, the extent to which it can be relied upon to produce a correct result must be questioned. As I have said elsewhere, it is not the purpose of the Inquiry to attribute personal blame. The Inquiry is concerned with the performance of the Department, in the sense of whether it was administered as well as it could have been. Its performance is to be judged in the end by what happened. There were complaints by prison officers at other levels that there had been excessive and undue concentration of administrative power at head office level. It was said that this produced the result that performance was not what it should have been. Evidence was given by the Mr Simpson who had until last year been Executive Director of Prisons.

7.38 When an officer considers a case such as that of Mr Keating (and his case is not the only case of its type in the prison system), it is essential that the officer have clearly in mind what is to be determined. A layman would, I think, phrase the matter in a manner such as the following: Mr Keating had, by what he had done previously, demonstrated his character, ie, the attributes, abilities and traits which assist in determining what he is likely to do. If he continued to have that character, he was unfit to be placed in medium or minimum security. He would be fit to be so placed only if it appeared that his character (in this sense) had changed; and therefore it is necessary to determine what (if anything) shows that his character has changed. It is not necessary for me to rely upon a lifetime with psychiatrists and psychologists to understand the different terms in which they might have phrased the matter but, essentially, the question remains the same: why has the conclusion been drawn that his character or propensities had changed.

7.39 It may be that a psychologist, facing such a question, might say: "I can give no reason for saying that he has changed and so should be in minimum security other than my trained intuition". A psychiatrist or a psychologist would not be criticised for saying that. But that means that, in testing a prisoner's suitability for minimum security according to the test which the classification system requires, reliance is placed not upon numbers but only on an intuition as to which others might differ. (In this case several had differed). Ms Tang and Ms Doyle might say that Mr Keating's classification was not determined by the application of their test but by Mr Harrison's intuition. If that be true it means that in such a delicate case, the method followed by the Department in making a classification is to put the classification test aside and to decide the matter otherwise. That, if it were so, would be less than satisfactory.

7.40 The roles of psychologist's in the Keating's case also demonstrated the difficulties associated with the same person both providing assessments in relation to risk of re-offence, making recommendations in relation to management and being involved in management decisions. The mixture of those roles in Keating's case placed Mr Harrison in an impossible position and one that should not be repeated. It emphasises the need to clearly delineate and separate the assessment of risk by clinicians and the decisions in relation to the management of those offenders.

Recommendation 18

Where clinicians or consultants are involved in the treatment of offenders, clear guidelines should be provided in relation to their roles. In this regard, the Department should adopt recommendations 61 to 64 contained in the Closing Submissions of Counsel Assisting.

7.41 Brian William Edwards had, earlier in his life, escaped from prison and while at large, committed two brutal and unprovoked murders of persons whom he did not know. He received the death sentence which was subsequently commuted to strict security life imprisonment. If his character, that is, his propensity to act in a particular way, was to be judged by what he had done and the reasons he gave for the murders that he had committed, he was a person who, as his sentence indicated, could not be trusted to be in the community. He was classified as appropriate for a minimum security prison and transferred to Karnet Prison upon the basis that he had changed and that he was unlikely to escape. He did escape. The reason he gave for escaping was that, because Cross had escaped from the minimum security prison, he, feared that he might be returned to a secure prison.

7.42 His case illustrates the extent of uncertainty inherent in judgements made by the use of the system. He was judged suitable for minimum security presumably because, it was judged he had changed and, was therefore, unlikely to escape. The reason given for his escape, if accepted, is significant. His reason was, in a relevant sense, not compelling. It was simply that he believed he might be returned to a secure prison for a time which was not definite. Whether he would have been is not clear. But his character was such that he judged that possibility as being a sufficient motivation for escaping. That was the extent to which he had changed.

7.43 The remaining offender, Russell Mitchell, also had a long history of serious crime involving violence. He had, by application of the classification system, been classified as minimum security. On the basis of that classification he was recommended, for and granted, parole. Within months after the grant of parole he re-offended by committing robberies and later murder. His case also illustrates the extent of the uncertainty involved in placing an offender with a history of violent crime in a minimum security prison. The judgement made using the classification system, and subsequently relied upon by the parole system was that he had so changed that he could be trusted to be on parole in the community. In a short time that proved wrong.

7.44 I have dealt with these four cases because my conclusion is that the present classification system, an important feature of the prison system, requires such change as can be made to it. They illustrate that the classification produced by the test can be wrong in such a number of cases as to make placing reliance upon it to locate prisoners in open prisons something which requires caution. This is to be taken into account in deciding what the changes that are to be recommended.

7.45 The procedure for applying the test is also not completely satisfactory. The Inquiry has examined in detail the way in which the test has been applied in different cases and in different circumstances. It has had evidence as to how generally it is dealt with. The procedure allows for differences in the way in which it is applied by different officers and these produce varying results. The detailed evidence as to the applications of the test in the case of Messrs Keating and Cross is of concern in relation to the results produced by officers honestly applying the test. It indicates that different officers conscientiously applying the test to the same prisoner can arrive at (importantly) differing results; and that (notwithstanding the attempt to have a more objective test) the elements of subjective judgement involved in the testing will produce differing results.

7.46 Initially the test is applied by experienced officers at Hakea Prison in relation to the male offenders who enter through that prison. But later (where subjectivities become important) assessments can be made at officer level. The classification procedure provides for a review at Committee and higher level. But reviews at those levels may be influenced by what has been the subjective conclusion reached by the officer making the original assessment and by what he knows of the prisoner. In the case of Mr Cross, it appears likely that those dealing with the case on review would have been affected by the opinion of Mr Pierre (who made the original assessment) that Mr Cross was “a model prisoner”.

7.47 I do not mean by this that there is no merit in the system which has been evolved: the contrary is the case. However, what has occurred in relation to prisoners placed in, or judged appropriate for, minimum security leads to the conclusion that it has not been completely successful in relation to those in respect of whom the system would be expected to be successful. It requires modification

The Possibility of Improving the Present Classification System

7.48 Both of the officers concerned with the evolution of the present system, Ms Tang and Ms Doyle, when asked, indicated that they thought the system could be improved. The classification system should be re-examined to take into account two matters:

- Placing greater reliance upon factors such as age and ethnic origin; and
- Revising the test so that it is applied only to prisoners whose likelihood of escape is in real doubt.

7.49 The present test is applied to all prisoners and to all prisoners in the same way. It is not clear to what extent the test takes account of factors such as age and ethnic origin. The information to be obtained by officers for the purpose of the test will no doubt to an extent take account of age and ethnic origin. It does not appear in the material provided to the Inquiry whether and to what extent these factors operate. There was a suggestion that they do not.

7.50 It was suggested by some officers that the likelihood of escape is affected by the factors to which I have referred, age and ethnic origin: that younger prisoners are more likely to escape than older prisoners; and that Indigenous prisoners have a high escape rate. Tests have not been formulated to be applied separately and to prisoners of different classes.

7.51 The Department should examine the evidence presently available to determine whether the rate of escape among prisoners of different classes is different and accordingly whether different classes should be tested separately and different tests used to predict the likely rate of escape by different classes of prisoners.

7.52 Having regard to the experience at Broome Regional Prison it appears at least possible that the propensity to escape of Indigenous prisoners (at least Indigenous prisoners in that area) is different from that of non-Indigenous prisoners.

The Alterations to the present Classification Procedure

7.53 The classification procedure should:

- Test the prisoner's suitability for placement in an open prison (not merely whether he is likely to escape);
- Do so with an acceptable degree of certainty;
- Not produce public affront; and
- Be as simple to apply as may be.

7.54 Where a procedure produces an unacceptable level of error, the procedure should be improved; or (accepting that it will continue to be used) the undesirable consequences of it should be reduced.

7.55 The consequences of error in the classification system will be that there will be more escapes than is acceptable. What should be done? An escape from a prison, though of course a breach of the law, may not have consequences which require a far reaching alteration to the prison system. I have referred

to the history of escapes by Indigenous prisoners at Broome Regional Prison and to details of other escapes as collected by police officers. Details of what has occurred have been collated as part of the material of the Inquiry. A prisoner may escape with the intention not to return to the prison and to re-offend. But, as in almost all cases with Indigenous prisoners in the Broome area, the consequences of an escape were different. As the evidence indicated, prisoners escaped to drink, to meet friends or to discharge family or cultural obligations. The escapees either returned or were readily returned to the prison. In many other cases examined escapees were returned within hours, sometimes even minutes. In only a small minority of cases did they escape with the intention of not returning or in circumstances in which they were not recaptured and soon returned.

7.56 Damage is done by escape in two main cases: if the prisoner while absent offends, and/or if his escape leads to public outcry and the damage which can result from it.

7.57 Accordingly, a procedure for determining whether a prisoner should be placed in minimum security should look to four things: escape, damage in or out of the minimum security prison, public outcry and the ease and effectiveness of it in application.

7.58 The present procedures for classification should be changed in the following way:

- The purpose of placing a prisoner in minimum security (reducing re-offending) should be understood and he should not be placed there unless he serves that purpose
- The criteria which should determine whether he is so placed should include: escape, damage and public outcry.
- The procedure for applying the classification test should be changed
- The persons by whom it is applied should receive appropriate training.

7.59 Those who determine whether a prisoner should be placed in minimum security should understand what purposes are to be served by doing so. As I have said elsewhere, there are more prisoners classified as minimum security prisoners than there are places for them in prisons classified as minimum security prisons. The number of prisoners in the prison system (excluding remand prisoners) is of the order of 2900. Of these, some 1000 have been classified as minimum security prisoners. Karnet and Wooroloo Prison Farms are the two prisons classified as minimum security prisons for men. (I put aside Broome as a special case not here relevant). The number of prisoners ordinarily held in these two prisons are in the order of: Karnet 157, Wooroloo 210. The balance of prisoners classified as minimum security prisoners are held in other prisons.

7.60 The Inspector of Custodial Services has recommended that the number of minimum security prison beds be increased. However, as he has indicated, that is at least a medium term recommendation. For practical purposes, the number of prisoners classified for minimum security will continue to exceed by a substantial number the number of beds available in minimum security

prisons. There are minimum security prisoners in prisons other than minimum security prisons. It is to the classified minimum security prisons, Karnet and Wooroloo, to which particular attention has been directed by the Department and in the Inquiry.

7.61 As I have said the purpose of minimum security classification and placement is essentially to serve the purpose of the prison system: to assist re-socialisation of prisoners who will benefit from re-socialisation; and to deal with prisoners who do not need to be in secure prisons. An officer considering the classification of a prisoner should direct attention first to whether a minimum security classification and placement will serve such purposes.

7.62 He should next consider whether such a classification and placement would give rise to dangers: escape, damage to prison officers, prisoners or the public, or public affront.

7.63 The likelihood of escape should be determined by use of the present testing process (or such improvement of it as may have been evolved) with the additions to which I shall refer. As an illustration of how a process may be developed, the following example may be useful.

1. The Department should examine available information to determine whether separate tests (which will produce more accurate results) should be adopted for:
   - Indigenous prisoners
   - First offenders
   - Persons imprisoned previously
   - Prisoners of younger age (Suggestion: 18-25)
2. The classification officer should apply the present test. If the result of that is that the prisoner is not approved for minimum security, the officer should not proceed further. The prisoner should be classified in accordance with the test result. The officer should not use the over-ride power unless he certifies (by a box tick) that the prisoner is, by reason of physical incapacity, unable to escape.
3. If, upon the application of the present classification test, the result is that the prisoner is unlikely to escape, the officer making the classification should determine whether he has "a real doubt" whether the prisoner is likely to escape.
   - For the purpose of doing this, the officer should consult the Information System and (in the appropriate manner) the Intelligence System. He should (by a box tick) indicate whether he has done so.
   - For that purpose, the officer should consult the prisoner's case manager. He should (by a box tick) indicate whether he has done so.
4. If, taking these matters into account, the officer determines that he has "a real doubt" that the prisoner will escape, the test should not proceed further. The prisoner should not be classified for minimum security.

   This stage of the test is intended to impose an additional restriction upon the capacity of the officer to classify the prisoner as minimum security.

The existing test has an unacceptable risk of being wrong. The purpose of the additional restriction is to reduce the likelihood that, by reason of such an error, the prisoner can be wrongly located in a minimum security prison. Accordingly, the prisoner must satisfy the classification test, ie, it must be found that he presents "a low risk of escape" by the application of the testing procedure. The additional restriction includes two things: that in addition there not be a real risk of escape; and that, in deciding that, the classification officer is to be assisted by the experience and intuition of two officers apt to be able to form a judgement concerning the prisoner, viz, the classification officer himself and his case manager.

The additional restriction envisages that there may be "a low risk" of escape and yet there may be "a real doubt" that the prisoner is likely to escape. This makes it more difficult for the prisoner to be classified as minimum security.

5. If the test is to proceed the classification officer should then determine whether he has "a real doubt" that, if placed in minimum security, the prisoner will cause physical injury to prison staff, another prisoner or a member of the public.

   In so determining, the officer shall consult the information system and (in the appropriate manner) the intelligence system. He should (by box tick) indicate that he has done so. He should take into account all of the information there disclosed.

   The officer should take into account his personal experience of the prisoner

   The officer should note:

   - Whether the crime for which the prisoner was sentenced involved serious physical injury (particular crimes may be identified by regulation)
   - Whether during his period in prison the prisoner has caused serious physical injury to an officer or a prisoner (ordinary inter-prison disputes may be put aside)
   - Any other instance of serious physical injury by the prisoner (out of prison)
   - Any credible threat of serious physical injury made by the prisoner.

   If any of these matters is noted, the prisoner's IMP should be marked "Special Consideration Required".

   The prisoner should be given the opportunity to explain any of the matters noted if the officer concludes that, unexplained, they will lead to the conclusion that there is a real risk of injury.

   The officer should then record whether, in his judgement, there is "a real doubt" whether, in a minimum security prison, the prisoner would cause physical injury to prison staff, another prisoner or a member of the public.

   If the officer records (by box tick) that there is such a real doubt, the tests should not proceed further.

6. If the test is to proceed, the officer should then determine whether the classification of the prisoner as minimum security or the placement of him in a minimum security prison would cause (in the sense to which I shall refer) public affront. A register should be kept by the Executive Director of Prisons Division, or his or her delegate. On that register should be:

   - The names of all lifers in the prison system
   - The name of any other prisoner who has escaped and while absent from prison re-offended by committing an offence for which he would be liable to a sentence of three years or more.
   - The name of any other prisoner in respect of whom the Executive Director of Prisons Division (or delegate) has certified that public affront would be caused if he was placed in minimum security or if he escaped.
   - A prisoner otherwise eligible for minimum security should not be so classified or replaced if his name is on the register unless the Executive Director, Prisons certifies in writing that he should be so classified or placed in a minimum security prison.
   - A prisoner whose name is placed on the register shall be notified of the fact within one month.
   - He shall have the right to make representations to the holder of the register
   - The representations may be made at any time but not more than twice each year.
   - The Minister shall be notified of any name placed on or removed from the register.

7.64 It is legitimate in deciding whether a prisoner should be placed in a minimum security prison where he may escape or do injury to others, that officers take into account whether a reasonable member of the public would be affronted by him being so placed or by his escape from such a prison. As experience shows, reasonable members of the public are in fact affronted by, ie, take objection to, what they see as the wrong placement of prisoners in this way. There is of course the danger that, when a prisoner is treated in such a way, what occurs will be merely a media outcry or an outcry which is not based on reasonable or rational grounds. The fact that media or unreasonable reactions occur should not cloud the fact that reasonable members of the public (and Ministers and Members of Parliament) are entitled to take objection when placements of this kind are made.

7.65 It is important that the basis of a reasonable public reaction of this kind be understood. Such a case may arise when a prisoner who has been convicted of a crime which gives rise to public resentment is placed in minimum security from which he may escape. If the procedures have been properly followed, he will have been so placed only because the officers assessing him are satisfied that he will not escape and will not re-offend. But, even if that assessment is made, it may yet be reasonable for a member of the public to object to the prisoner being dealt with in that way. There are, for example,

cases in which the original offence has been so serious that it may be judged that the law is not vindicated if the offender is released. More important, a reasonable member of the public may, and may reasonably, doubt that the judgement that the prisoner will not escape or re-offend so free from the is so free from the possibility of error that the risk should be taken. As has been suggested, the experience in relation to the Cross, Edwards and Keating may well justify a doubt by a reasonable member of the public whether the judgements made by the prison system in a particular case are correct. The fact that, as I have indicated, judgements of this kind within the prison system are inherently liable to error, provides a basis for a reasonable person to conclude that on occasions such a risk should not be taken.

7.66 I am conscious that views may differ as to whether, in the case of a particular prisoner, reasonable people will be affronted by what is done in his classification. What is said by those who express opinions may not be reasonable. Some in public life may claim to be affronted for reasons which are political rather than reasonable. But the possibility that there are those who make claims for inappropriate reasons should not prevent the legitimate claims of those who act reasonably being given effect. It is not to be supposed that those who must judge whether, in a particular case, there will be a proper public affront, will not be able to make such distinctions or will be pressured to do what is not right

7.67 But such considerations make it necessary that judgements as to public affront be made by an appropriate person. If a prisoner who otherwise would have been placed in minimum security is, by reason of the apprehension of public affront, not to be so placed, it should be upon the written direction of the Executive Director of Prisons Division. A decision of this kind derives from the public interest. That public interest should be judged by a person who is seen to be publicly responsible and who has had experience in making such a judgement.

7.68 Because classification judgements are important to prison officers, prisoners and the public, the officers making them should be trained, experienced and fully informed. I have considered whether I shall recommend that they be made only by, eg, officers who have been formally trained for this purpose, are certificated for this purpose, or otherwise specially selected. I have taken into account the views expressed by the Inspector of Custodial Services generally and by Counsel Assisting in particular. I have concluded the following.

- The procedure may take account of the practical necessities
- For a proper training and/or certificated system to be set up and placed in operation, time will be required
- It cannot be predicted what form of training and/or certification will be adopted. Ideally, if there is to be training and/or certification, it should be done through the Training Institute to be recommended.
- In the interim (which may be significant) classification must be continued.

- The selection of officers appropriate to do classification exercises should be for the prison Superintendent (or at least his opinion should be taken). The knowledge and skill needed for classification in Roebourne Prison will be different from that in Bunbury Prison; an officer who does not know the particular cultural information needed for classification in an Indigenous prison will be unsuitable even if trained for other prisons.
- To date, the officers actually making classification decisions in prisons have been of varying classes and experience
- For the present, the classification decisions should be made by the officer/s selected by the Superintendent
- The officer/s should be informed of the recommendations made by this Report and accepted and should act accordingly.
- The officers selected for training to do classifications should be selected by (or with the advice of) the prison Superintendent.

7.69 Classification of prisoners is important. But it must be kept in perspective.

7.70 It is a means, not an objective. The objective is: that only prisoners suitable for the purpose should be placed in minimum security. Classification is one, but only one, of the means by which that objective can be attained. Common sense and experience, even experienced should be used.

7.71 If classification is to be determined by (or more correctly, with the assistance of) a test, that test must be practical. To adapt the law governing industrial procedures, what is to be done must be able to be understood by the officer using it, able to be applied on a day to day basis, and able to be applied by an officer paying such attention to it as can be expected of an officer managing prisoners in a prison.

7.72 It must do what is the purpose of the classification of prisoners to do, viz, to reduce the risks inherent in the prison system. Escapes will occur; injury will happen. The amendments to the classification system are intended to reduce the likelihood of escape and/or damage by choosing more selectively the prisoners to be placed in minimum security. In doing this, it may reduce the number of prisoners who will be eligible to be placed in minimum security. Recent experience in relation to prisoner escapes and injury to prison staff has shown that, to adapt the words of the Minister for Justice: It is necessary to "restore the balance".

Recommendation 19

The Department should, in accordance with the conclusions of the Inquiry, review the present classification process to ensure that it tests, with an acceptable degree of certainty:

(i) Whether the prisoner is appropriate to be classified as a minimum security prisoner (not merely whether he is likely to escape);

(ii) Whether the prisoner is suitable for placement in a minimum security prison; and

(iii) Whether the placement of the prisoner at a minimum security prison would cause public affront.

In this review, Government should have regard to the recommendations in relation to classification made by the Inspector and adopt recommendations 1 to 15 contained in the Closing Submissions of Counsel Assisting.

THE CASE MANAGEMENT PROCESS

7.73 I have referred elsewhere to the procedures now in operation in the case management of prisoners. I come now to what should be done to improve them.

7.74 To date the case management system has worked well to the extent that during the three years or so since its formal introduction, there have been no serious disturbances in prisons and the officers concerned in the administration of the case management system have, to a great extent, accepted its concepts. This has resulted from the dedication of some senior officers and the willingness of most prison officers to accept change and to do what is necessary to bring it about. But, as officers of the Department have indicated, the present case management process was brought into operation prematurely and without the necessary training and resources. It is now necessary to remedy these deficiencies.

7.75 The case management process has three aspects:

- Its objectives;
- The means to be used to achieve its objectives; and
- The matters which require attention to support its use.

7.76 The objectives of the case management process must be formulated and articulated. Its objectives are:

- To have the prisoner do what his IMP prescribes for him;
- To persuade him to act properly while in prison; and
- To avoid re-offending on release

7.77 The objective of case management is the management of individual prisoners. Management involves the selection of the purpose for which the prisoner is managed. The case management officer must know what those objectives are and do what he does in order to achieve them.

7.78 The means to achieve the case management objectives: To enable a case management officer to do what he is to do, he should know what are the means by which he is to do it. Steps must now be taken to identify what is to be done, to inform him of them, and to train and resource him so that he may use them to achieve his objectives.

7.79 Case Management is based on the principle that the prisoner is to be led to do what he should to by persuasion rather than by punishment. Punishment is available but as a last resort. To achieve by persuasion there must be a proper relationship between the prison officer and the prisoner. I have described that relationship as: respect and trust. The training of a case management officer involves that he knows the ways in which that relationship can be established and maintained.

7.80 There is no single means by which the relationship can be established. The means to be used will vary according to the parties, the place and the occasion. Young prisoners are persuaded differently from old prisoners; Indigenous prisoners differently from non-indigenous prisoners.

7.81 It is generally accepted that the objectives of case management will be achieved or approached by the kind of problem-solving to which reference has been made in the evidence and elsewhere in this Report. If a case manager can anticipate and deal with the problems and the tensions arising in prison life, the prisoner whom he manages will be more likely to do what is required of him.

7.82 But the means (the techniques) to achieve these results warrant further examination. It is not sufficient merely to require that the case management officer establish "rapport" or such a relationship with the prisoner: see generally DGR14. The officer should be assisted by the examination of the means by which he may achieve it.

7.83 There is no single way of selecting the techniques which will best achieve good case management in individual cases. Much will depend on the prisoner and the circumstances. It should be recognised that, in the end, the experienced intuition of a case management officer will frequently best decide what is to be done. This must be taken into account in the form of training adopted. However, assistance can be achieved at two levels: at the level of principle; and from experience.

7.84 There are general techniques which will be of assistance in understanding and practicing case management. An understanding of the psychology of persuasion and the like should be provided.

7.85 A statement of the relevant principles and techniques should be formulated for use by case management officers. For this purpose, the Department should convene a conference of: the officer in charge of case management at Head Office level; the Superintendents of each prison; and a selection of practising psychologists and psychiatrists whose views will be of assistance. It should be part of the agenda of the conference to formulate a statement of the principles to be applied by case management officers in the management of prisoners.

7.86 A procedure should be established to enable case management officers to learn of, and draw upon, the experience of other case managers. Experience has shown that the development of skills by adults is best achieved by the

"exchange of experiences" technique rather than by didactic teaching. The Superintendent at each prison should convene an initial conference of officers in his prison who will be engaged in case management. The conference should be at a place away from the prison and should be scheduled for one day. The purpose of the conference should be (and should be stated to be) to achieve the development of knowledge by the exchange of the experiences of case managers in the management of prisoners. The conference should commence with a short statement (by one of the case management officers) of the objectives of case management and the purposes of the conference. Officers should then be invited to speak as to their experiences, the problems which have been encountered and the solutions which have been found for them. At the end of the conference an informal summary should be prepared.

7.87 The Superintendent of each prison should arrange for a conference of his case management officers on a formal basis. A formal conference for this purpose should be held each year. Informal discussions should be promoted on a continuing basis.

7.88 Each year a conference should be held at Superintendent level of the officers in each prison directly concerned in case management supervision. That conference should be on an "exchange of experience" basis so that there may be made available at each prison the expertise developed in other prisons.

7.89 The Department (at Head Office level) should publish periodically a newsletter relating to case management affairs. The newsletter should state clearly the objectives of case management. It should detail the general procedures formulated as the result of the conference referred to. It should include references to the experiences and conclusions of case managers at Superintendent level. It should provide a means of exchanging ongoing experience in relation to case management, develop continuing interest in the process and provide motivation for the development of the process by individual officers. The Department should develop a Handbook for use by case managers.

- The Handbook should state the objectives of case management as formulated
- It should list the techniques developed at the initial conference by the consultants and others
- It should refer to the informal techniques developed by case officers
- It should provide, on a step by step basis, the formal procedures to be followed by a case manager.

7.90 At present the formal steps to be taken in case management are those directed by the original Director General's Rule 14: see DGR 14.12 The requirements of DGR 14.12 were too rigid and too detailed. The evidence before the Inquiry established that, in many prisons, they could not be or were not followed. A detailed prescription of this kind should be as simple and as uncomplicated as may be.It is the nature of case management that what is done is to a significant extent individual to the case management officer and the prisoner. However it is necessary that procedures exist for ensuring that what is done conforms with general guidelines and that the steps which should be taken are taken.

7.91 Rule 14 prescribed:

- The steps to be taken to achieve the objectives of case management
- The updating of the factors relevant to classification and the reclassification of prisoners
- The formulation initially and the reformulation periodically of the IMP prepared in respect of the prisoner

7.92 It is administratively convenient that each of these be done as part of a single process. The procedure provided in DGR 14.12 requires amendment to ensure that the prescribed procedures are not unnecessarily rigid and practical in each prison. The reformulation of the procedure in this respect should be undertaken in consultation with prison superintendents and case management officers to ensure that it is sufficiently flexible and practical.

7.93 Provisions directed to the ongoing management of individual prisoners are prescribed in general terms and for all prisons. It is not appropriate to have a single provision to govern all prisons. The steps to be taken at Roebourne Prison will be different from those at Hakea Prison. Such matters should be determined at Superintendent level having regard to the circumstances of the individual prison. Each Superintendent should publish a directive in respect of the procedures to be followed in case management in his prison.

7.94 It is not possible or practical to prescribe a single model applicable for this purpose. However, by way of example, a Superintendent's Directive might deal with the following matters:

- It should provide for the number of prisoners to be assigned to each case management officer. It is probable that a Superintendent may wish to allocate a different number of prisoners to different case managers. The number allocated should be small.
- The case manager should be required to establish contact with the prisoners managed within seven days of their arrival at the prison. The case management officer should make formal contact with each prisoner at intervals of not more than seven days (it is envisaged that there will be informal contacts in addition).
- The case management officer should report to a case management committee established within the prison at intervals of not more than one calendar month to report the state of the case management relationship with each prisoner managed. The committee should have authority to advise and, if necessary, direct the case management officer in the management of individual prisons.
- Each case management officer should be required (in addition to the records made in the ordinary course in prison records) to maintain a personal diary relating to case management. That diary should record the dates of his formal meetings with prisoners and any matter which in his opinion requires to be recorded. The diary should be kept upon an informal basis but

should be available for production at the meetings of the case management committee.

- The case management committee should report to the Superintendent quarterly. It should report to him more frequently in respect of any matter which in its opinion warrants a special report.
- Provision should be made for the report by Superintendents to the officer in charge of case management at Head Office during conference proceedings established and, if appropriate, at more frequent intervals.

7.95 In the operation of the case management process, other matters require attention.

- Monitoring
- Assessing progress
- Training
- Resourcing
- Development of procedures for prisoners with special needs
- Disciplinary procedures
- Achieving a proper balance between officers and prisoners
- Prisoner participation
- Ethics, grievance procedures and similar matters

7.96 Monitoring: It is necessary that there be a procedure for monitoring relevant aspects of case management. These include:

- That the process is carried out within proper guidelines and for the purposes established
- That the case management procedures in an individual prison do not fall below an acceptable standard
- That there is no abuse or misconduct involved

7.97 There is no single process by which these can be achieved. An officer should be appointed at Head Office level whose function is to monitor the case management process in these respects. He should do so in whatever manner is at the relevant time appropriate but should:

- Have periodic inspections and discussions with case management officers in individual prisons
- Discuss (on an informal basis) with individual superintendents the incidents of case management in individual prisons
- Inform himself of the usages of grievance procedures and the like
- Maintain contact with the work of the ethics review section at Head Office.

7.98 In order to assist in that monitoring process and to ensure that it is not impeded by excessive formality the following should be done:

- An officer should be appointed in each prison to keep a record of what occurs in the process of case management. He/she should record, without formality, the ongoing "pluses and minuses" of the process and other matters appropriate for comment. That record should be understood to be for information and not for formal record.
- A person from the monitoring section at Head Office level should speak, without formality, with the relevant person at prison level at least once every half year.
- There should be an annual meeting of officers concerned with the recording of such matters at prison level and the officers at Head Office level to discuss what has been occurring. That conference should ideally be part of the periodic conferences of case officers.
- Minutes should be kept of the meeting of officers concerned with the recording of such matters at prison level and the officers at Head Office level to discuss what has been occurring. That conference should ideally be part of the periodic conferences of case officers.
- The minutes of the meeting of officers annually should constitute the record of the annual experience of the prison system in relation to case management. It should be kept by the monitoring section of the Head Office.

7.99 Assessment of performance: The performance of the case management process should be assessed at each prison and overall. In principle, two aspects require assessment:

- Whether the process is achieving its stated objectives
- The efficiency with which it is achieving those objectives.

7.100 It is recognised that it is difficult to assess performance of such processes. In relation to case management:

- Benchmarks should be established which can be identified and (to an appropriate extent) managed
- It should be recognised that benchmarks alone are not sufficient to enable an accurate assessment of performance to be achieved. Some benchmarks may be used.
- The overall performance of case management may be judged by the number of disturbances or disruptions which have occurred in the prison and by the overall extent of misconduct by prisoners within the prison.

7.101 Material for assessing performance in relation to individual prisoners will include:

- The incidence of misconduct by the prisoner; and

- The extent to which he has acted in accordance with his IMP, eg by undertaking and completing courses.

7.102 It is essential that there be a procedure for evaluating whether the case management procedures are successful. If officers or prisoners do not think that it is worthwhile, it will not succeed. At best, the motions will be gone through. Neither officers nor prisoners will adopt the system if they do not think that it is succeeding.

7.103 The establishment of such a process is difficult. It involves not merely the formulation of the objectives to be achieved by case management but the establishment of a method of evaluating the extent to which they have been achieved. The second of these is the more difficult. It involves the establishment of the indicia by which the achievement of the objectives may be inferred and the measuring of the extent to which those indicia have been established. Having regard to the nature of case management, the evaluation process should be such that the results of it will be apparent to both officers and prisoners and acceptable by them.

7.104 An evaluation process, indicating bench marks and other indicia should be established at Head Office level in consultation with the Superintendent of each prison. An evaluation according to the program should be made by the Superintendent each year and reported to Head Office level.

7.105 Training is essential to the success of the case management process.

- Training should be a formal part of the Program of the Training facility to be established.
- Training should include explanation of the objectives of case management and the identification and training in the use of the means by which those objectives are best achieved.
- Initial training should be given at the Training facility on the induction of the officer.
- Professional training, on the “exchange of experiences” basis, should be given on a continuing basis in the manner above referred to. Training at that level is best given by officers rather than by outside consultants.

7.106 I have referred elsewhere to the general topic of training for prison officers. This has been reviewed with the Acting Executive Director of Prisons, Mr Ian Johnson. It is envisaged that a training facility in the nature of an "Institute" will be set up to deal generally with the training of all officers of the Department of Justice involved in the prison system. It is envisaged (or at least feared) that the setting up of such an Institute will take some time. The establishment of proper training arrangements in respect of case management should not be delayed until that facility is set up. After the facility is functioning, training in respect of case management should form part of its activities. In the meantime, particular training arrangements should be made.

7.107 In principle, a general training procedure can be set up only after the formulation of the objectives of case management, the general procedures for carrying out the objectives, and (to an extent) the techniques which may be used in that regard. I have indicated a sequence of conferences and envisaged

that it may be necessary to achieve the formulation of the objectives, the procedures and the techniques by such a series of meetings.

7.108 It is desirable that the training procedures be commenced sooner rather than later. Accordingly, pending the completion of such conferences, a committee should be constituted to initiate planning for the arrangements to be made for training. That committee should consist of an appropriate officer from Head Office level (preferably an officer now involved in training), an officer (nominated by the Executive Director of Prisons) to provide input from prison level and an outside consultant intended to be used in relation to training of officers generally. The conference should prepare a program for the training of case management officers to be undertaken during a period of up to two years, pending the establishment and proper functioning of the Training facility. The Committee should provide a (draft) program for the training programs and identify those (preferably amongst the ranks of prison officers) who may be involved in leading discussion during these training periods.

7.109 At a conveniently early stage, arrangements should be made to secure the participation in such conferences of appropriate prisoners. Case management is a process in which what is done is, to an extent, done by rather than to prisoners. The views of (sensible) prisoners can obviously assist in determining what will operate by way of persuasion to lead prisoners to do what the case management system envisages. There are of course sensitivities involved in this, both at officer and prisoner level. But prisoner participation should be one of the items on the agenda at the conferences envisaged.

7.110 It is essential that the case management process be properly resourced. What is done, by reason of prescription and otherwise, occupies time. If what is to be done requires the addition of staff to the complement of a prison, additional staff should be provided. Training will involve occasional absence from duty by case management officers. Provision should be and relied upon by trade union officers in their discussions with the Inquiry. It is assumed that this practice will continue. It is not the function of the Inquiry to make definitive recommendations concerning the matter. Such absences may interfere with the efficiency of case management in some prisons. What is necessary will require consideration at Superintendent level.

7.111 The management of special needs.

- What is necessary to establish a relationship or to procure appropriate action withheld by a prisoner will depend upon, *inter alia*, the needs of the prisoner which must be accommodated. The case management of an illiterate prisoner will be different from the case management of a literate Indigenous prisoner. The development of case management skills will require the case management officer to understand the special needs of special groups of prisoners.
- For this purpose, case management officers assigned to Indigenous prisoners will require special training to anticipate understand and provide for the special needs of some Indigenous prisoners.

7.112 Disciplinary procedures: I have elsewhere referred to the disciplinary problems which may arise because of the adoption of the case management approach to prisoners. I have referred to what is or may become involved and the effect which disciplinary tensions of this kind may have upon the desire and the capacity of prison officers to continue with the case management process.

7.113 Experiences will differ in this regard. In some prisons there will be no disciplinary problem; with some officers, discipline may be easily maintained. Experience has shown to date that not all officers are comfortable in achieving conformity. Rigid rules are counter-productive and may not work.

7.114 The steering committee of the second conference dealing with the formulation of case management procedures should have as an item on its agenda whether disciplinary procedures have arisen and what should be done in relation to them.

7.115 It is important that a balance be maintained between the interests of prisoners and prison officers. A number of procedures are available, in one form or another, by which prisoners may complain or threaten to complain against what is done by prison officers. Officers referred to instances of actions of this kind. I have referred elsewhere to the tensions which may arise where persuasion is preferred, and punishment lies to an extent only in the deferment of privileges. There are mechanisms for dealing with the abuse of power by prison officers. It is necessary to ensure that a proper balance be maintained.

7.116 I have referred elsewhere to prisoner participation in aspects of prison management. Case management is particularly a process in which what is to be done is done not to, but for, prisoners and with their co-operation. Ideally, the procedures for case management will be best evolved if prisoners participate in the evolution of them. There are of course delicacies in such a course. I have elsewhere suggested prisoner participation.

7.117 Whether prisoners can effectively be involved in the evolution of case management processes will depend, inter alia, upon the circumstances of the prison and the prisoners. In relation to Indigenous prisoners in particular, their participation would facilitate the understanding by non-Indigenous officers of what is likely to persuade prisoners to the objectives of case management.

Recommendation 20

The Department should, in accordance with the conclusions of the Inquiry take, take the necessary steps to reintroduce and promote case management throughout the Prison System. This process should involve all those, at prison and head office level, involved in case management. The recommendations of the Inspector and recommendations 16 to 29 contained in Closing Submissions of Counsel Assisting should be adopted in this regard.

Recommendation 21

The requirements in relation to case management should be clear and flexible enough to be appropriate for the differing requirements of individual prisons.

Recommendation 22

Superintendents should determine the requirements of case management unique to prisons, with the involvement of case management supervisors.

Recommendation 23

In the operation of the case management process, the Department should ensure:

- **Adequate monitoring by Head Office.**
- **Performance assessment using appropriate benchmarks and agreed performance indicators.**
- **Formal training for officers is developed at the proposed training facility.**
- **That appropriate resources are provided to allow case management to be adequately maintained.**
- **That the unique needs of certain prisoners, including indigenous offenders, should be accommodated.**
- **That officers and Superintendents have the ability to deal effectively with discipline issues arising from the case management process.**
- **That there is sufficient prisoner input in the development of the case management process to ensure its applicability to a modern prison system.**

COURSES FOR PRISONERS

7.118 The key questions to be answered concerning courses for prisoners are:

- Do the courses "do any good"?
- What courses should be presented?
- Are they being conducted as they should?

7.119 Such answers as can be given to these questions are based more on inference than from fact. In general, there is little hard proof on which to base a judgement in respect of these courses. But it is necessary that a decision be made.

7.120 This leads to three further questions:

- Prison is an opportunity: what is to be done with it?
- What are the objectives: what is to be achieved by using it?
- How are these objectives to be achieved?

7.121 Prison provides an opportunity for good to be done by courses. Prisoners are a group which the community needs to deal with: they have health and similar needs and, left alone, a large number of them will re-offend. Being in prison they are available to be dealt with and a degree of compulsion can be applied to them.

7.122 What is to be done with the opportunity? Courses presented to prisoners may have a number of objectives. The two main objectives should be: health and similar matters; and the reduction of re-offending.

7.123 The courses now provided may be divided into four different categories:

- Health Services and Mental Health
- Habilitation Courses
- Rehabilitation Courses
- Re-socialisation courses

7.124 I have elsewhere referred to programs whose objectives are physical and mental health, literacy and numeracy and substance abuse. The justification for them is clear. The objectives to be achieved can be identified. These should be continued as I have suggested. It is necessary to improve the means by which that is done.

Recommendation 24

The Department should establish and resource a function to determine and, on an ongoing basis, review what programs should be presented and the results produced by them. It should review the methods available to achieve an effective monitoring, assessment and reporting system against developed criteria for success.

Recommendation 25

The Cognitive Skills Program should be offered widely throughout the corrections system to improve relationships between offenders and officers.

Recommendation 26

Programs in relation to health education should be offered widely throughout the corrections system to improve offenders' management of their health issues.

Recommendation 27

The Programs offered by the Department in relation to substance abuse and violent offending should be continued.

Recommendation 28

The Programs offered by the Department in relation to sexual abuse should be reviewed to determine whether the beneficial effect of such programs could be established.

7.125 The provision of health and mental health courses will be determined or at least influenced by the arrangements which are made for the provision of health and mental health services generally. There is a consensus that health and mental services should be provided. Such services constitute an important component of the care of prisoners. At present the provision of them (I speak in broad terms) is undertaken by a Division of the Prison Service maintained by the Department of Justice. Medical, psychiatric and psychological services are provided, to an extent, by officers within the Department and the Prison Service. Insofar as specialist service outside the capacity of the Department becomes necessary, arrangements exist for prisoners to be dealt with by Government health facilities and private practitioners.

7.126 There is currently a discussion of whether the provision of Health and Mental Health facilities should be undertaken by the Department of Health or through the Department of Justice in the present way. The matter is referred to in the Report of the Inspector of Custodial Services.

7.127 In considering that question, two issues arise:

- What arrangement will provide the best service for prisoners; and
- Having regard to the existing arrangements and resources, what procedure for the provision of such services is feasible.

7.128 I have had the advantage of discussing the issue with the Inspector of Custodial Services. He has expressed the view at this stage that the services should be provided by the Health Department. The Inquiry has consulted Dr Fong, the Head of the Department of Health, Dr Chapman and Dr Patchett, the officers in charge of the medical and the psychiatric services of the Department of Justice in the prisons and the Honourable Jim McGinty, Minister for Health. Their view is that, at least, the provision of such services by the Department of Health is not feasible.

7.129 The Inspector of Custodial Services has indicated that a Review of the matter is proceeding and will probably be concluded early next year. In forming a

conclusion in relation to such a matter, and in particular upon what procedure would provide the best service for prisoners, an Inquiry such as the present must give weight to the views of those whose expertise lies in the provision of such services. But such views, though given due weight, are not conclusive.

7.130 Pending completion of the Review it is not possible or practical for the Inquiry to form a conclusion as to how these services should be presented.

7.131 The standard of the services presently presented for prisoners is one of the matters in respect of which I am to pay particular regard to the opinions and findings of the Inspector. I have considered what has been said by the Inspector, in his Report, and otherwise in communication with me. I have examined carefully the submissions made by Dr Chapman and Dr Patchett and I have discussed, necessarily briefly, aspects of the services provided with officers at prison level. I have been informed of the work done by prison nurses and the availability of medical officers from time to time and on special occasions as required. I have inspected some of facilities available in prisons. In the circumstances, no recommendation can be made in respect of the matter other than that it should be kept under review pending the finalisation of what presently is being done by the Inspector of Custodial Services.

7.132 In relation to programs, the reduction of re-offending should be adopted as one of the main and explicit purposes. Prison provides the opportunity to identify what procedures may help to reduce re-offending and to apply them. To educate prisoners against re-offending has, I infer, been a general purpose of programs which have been presented. The focus to date has been general rather than specific. Those concerned with the formulation of programs should consider what courses will help reduce re-offending and how they will do it. That should be adopted as an immediate purpose.

Recommendation 29

Educational resources should be directed to courses that improve the fundamental abilities of the offender, including literacy and numeracy skills.

7.133 In these circumstances the Department should:

- establish and resource an office whose function is to determine and on an ongoing basis review what programs should be presented and the results produced by them. It should review the programs available which will achieve a monitoring and assessment of programs and what can be hoped to be achieved from them.
- direct the office to identify programs which achieve desirable results and devise means of monitoring and assessing the operation of them. It should review existing programs, identify the objectives sought to be achieved by them and evaluate how far they achieve those objectives. It should also undertake an ongoing formal review of existing programs and report each three years upon the utility of them.

- In the meantime, it should review and provide for the use of officers of the Department who concerned with courses and programs, the available literature dealing with such matters.

7.134 The following conclusions will be of assistance:

- The programs concerned with literacy and numeracy, health and mental functioning, should be continued. Those programs have justification from the nature of them.
- Programs are directed against drug abuse should be continued. A program to monitor the effects achieved by them should be set up and pursued.
    - It should test how far prisoners have ceased to use drugs while in prison. A record should be made of the prisoners who, when entering prison, are drug addicted. Records should be kept in respect of such prisoners to record whether, during their time in prison, they ceased to be addicted; and whether, on release, they remain addicted. A urine test at release should be compulsory.
    - It should test how far former prisoners were drug addicted or became drug addicted during the period of five years after leaving prison. This should be done by identifying each former prisoner on his re-entry to prison and recording whether he is at that time drug addicted. A urine test for the purpose should be compulsory. (Special arrangements may be necessary for remand prisoners).
    - The value of programs against drug abuse should be reviewed at the end of each three years.
- Programs of other kinds (programs directed otherwise to habilitation and rehabilitation, to re-socialisation and to the preventing of re-offending) should be reviewed.
- A list should be prepared of the programs proposed to be continued.
- The persons who formulate and/or present each program should state in terms what are the objectives to be achieved by the program.
- Such persons should indicate the evidence for the literature which they believe shows that the program achieves (or seeks to achieve) those objectives.
- The Department should obtain the opinions of the following persons as to whether, in their opinion, the program
    - Helps to achieve those objectives
    - Should be continued for (what) other purposes
    - The persons concerned are:
        - The program presenter
        - The superintendent or program officer (if any) of the prison or prisons in which they are presented
        - (If practicable) a selected prisoner who has completed the program.

- At the end of each three years there should be a review of such programs and the cost of presenting them by a committee of:
  - The program officer of the Department
  - The Superintendent or Superintendents of the relevant prisons
  - The program presenter
- If the majority conclusion of the committee is that a program should not be continued, the program should not be presented unless the Executive Director of Prisons directs that it should be.
- During each three year period, each Superintendent should consult informally with the program officer of the Department as to the ongoing experience of the programs presented in each prison.
- The courses to be included in a program at a prison should be determined after consultation with the Superintendent of the prison.
- Officers at Superintendent level should be consulted at least six months before the schedule of the programs is settled for the coming year. The schedule of the programs should be published to each Superintendent.
- Arrangements should be commenced to secure the participation of prisoners in determining the courses to be presented and the manner in which they are to be presented.
- Steps should be taken to convince prison officers and prisoners the desirability of participation in and the benefits of supporting the programs presented.

RE-SOCIALISATION OF PRISONERS: RE-OFFENDING

7.135 This is one of the most important aspects of the correction system. If offenders are not managed to avoid re-offending, they will merely have been managed. Little constructive will have been achieved.

7.136 A substantial defect in the administration of the prison system has been that procedures for reduction of offending have not been formulated cohesively or put into operation as a whole. What has been done has been done in parts.

7.137 The proper management of offenders involves, amongst other things, that prisoners be prepared for life in the community at the end of their sentences. The term 're-socialisation' is conventionally used to refer to what is involved. The objectives of dealing with prisoners in this way are essentially two:

- to make it easier for them to do what life in the community will require of them; and
- to reduce their re-offending.

7.138 These objectives overlap. The first is an important means of achieving the second.

7.139 At present, the means which the Department of Justice brings to bear upon these objectives are four:

- the non-government organisation services funded by the Department to assist prisoners;
- the improvement of prisoners by the programs, services and courses available to them whilst in prison;
- the various procedures (work leave, home leave and the like) to accustom them to life out of prison; and
- the parole system and what is associated with it.

NON-GOVERNMENT SERVICES

7.140 To some extent efforts are made by non-government bodies to re-socialise prisoners and assist them to return to community life. They visit prisoners in prison before their release, assist in employment and housing and generally help to create circumstances in which prisoners may be more likely to avoid re-offending. The Inquiry discussed with the bodies involved the work that they are doing and can do. The bodies were anxious to extend what they do but their resources are limited.

7.141 I recommend that, in addition to the small financial help provided to non-government organisations, the Department should organise formal meetings of the non-government bodies involved, should seek to set up an organisation involving them, should provide secretarial and similar assistance to enable an organisational structure to be established and should endeavour to incorporate the work done by them in the work done by the Department for parolees. These recommendations will assist in building capacity within the justice non-government organisation sector.

Recommendation 30

The Department should establish a peak representative body for non-government not-for-profit agencies that operate for the benefit of people involved in the justice system.

7.142 I also make a recommendation with regard to the departmental mechanisms for the management of non-government organisation services funded by the Department. I understand that the management of non-government organisations occurs on a somewhat ad-hoc basis across the Department. Contracts are managed in disparate areas across the Department and there is little capacity for guiding strategic directions or capacity building. I propose the consolidation of activities with regard to the operation of the non-Government Organisation sector within the Department.

Recommendation 31

The Department should establish a functional unit that oversees non-government organisation sector services purchased by the Department. The unit will:

- **undertake strategic planning for the sector, in partnership with the peak representative body, including a regional planning process to review the level and capacity of exiting services;**
- **develop consistent quality assurance/monitoring processes for application in all non-government organisation sector service agreements (including the development of service specifications for services purchased by the Department and performance measures associated with these);**
- **manage or oversee management of all departmental non-government sector agreements; and**
- **undertake purchasing processes for new non-government organisation sector services.**

7.143 In addition, formal consideration should be given at Division level to the expansion of funding to non-government organisations in the assistance given to parolees. This should comprise of two strategies; one being the expansion of case coordination services (as modelled in the Community- Re-entry Service) and the other through expansion of services available to offenders in the community.

7.144 With regard to the first of these recommendations, the comments I have outlined previously in relation to the restricted availability of the Community Re-entry Coordination Service are relevant. Unfortunately there is no formal information available comparing the potential or even actual demand for this service with the level of service provided. However, information provided to the Inquiry from the non-government organisation services funded through this program universally advise that a large gap exists between demand for services and those that are provided. I am not in a position to propose the exact scale of the expansion required to the Service. Work is required to be undertaken to determine the exact level of expansion indicated by level of demand for the service.

Recommendation 32

The Department should expand the Community Re-entry Coordination Service to provide a state-wide re-entry service for all prisoners requesting access to the program.

7.145 Evidence presented to the inquiry also indicates a gap in the availability of services in the community for offenders. The Community Re-entry Coordination Service is based on the premise that there are other community-based agencies to whom the Service can refer. A number of stakeholders have identified that there is a distinct shortage of community-based services for this client group. Of particular note are accommodation, suitable employment options and access to mental health and drug and alcohol services.

7.146 The Department of Justice alone cannot and should not be responsible for providing all services to promote re-entry for prisoners. Other relevant agencies must take on the responsibility of ensuring that services available to the community generally are accessible for offenders. However, it is recognised that in some circumstances, offenders have unique needs (and/or risks) that may require a specialist justice response.

7.147 I therefore recommend that the Department identify the availability and quality of community-based services for offenders in each region and implement strategies to improve service provision. This may occur through a variety of mechanisms such as:

- direct funding to non-government organisations to provide services for offenders. This should include arrangements with Indigenous communities;
- increasing capacity of existing non-government organisation services to service offenders, for example through the provision of training and advice; and/or
- collaboration with other government agencies to improve access to community services for offenders (for example this may occur through specialist advice or training for government employees).

Recommendation 33

The Department should undertake planning to determine availability of community-based services for prisoners in each region and implement strategies to increase post-release services for offenders through:

- **direct funding to non-government organisations to provide a service for offenders;**
- **increasing capacity of existing non-government organisation services to service offenders, for example through the provision of training and advice; and/or**
- **collaboration with other government agencies to improve access to community services for offenders (for example this may occur through specialist advice or training for government employees).**

7.148 In regards to the provision of additional services for offenders in the community, by far the issue of largest concern was the issue of access to accommodation services. As I have stated above, having a stable home in the community is one of the key factors in determining the chances of re-offending. Officers from the Department of Justice and non-government organisations agreed that the lack of appropriate accommodation for ex-prisoners is one of the largest gaps in current services. The Department does fund the Transitional Accommodation and Support Program, which provides supported accommodation services specifically for prisoners. Currently a total of 33 homes are available under this program state-wide. I have been informed by a number of parties that this is a grossly inadequate number. I therefore make a specific recommendation in regard to the provision of housing services. I am wary of proposing an exact level of expansion of this program without clear evidence before me of the exact scale of the problem. I trust that the Government will undertake an analysis of the problem and propose a level of expansion commensurate with the scale of the problem.

Recommendation 34

The Department should expand the Transitional Accommodation and Support Services Program.

7.149 The structure of information gathering procedures should be discussed with the Parole Board and with outside consultants to ensure that the information gathered is sufficient and that the method of gathering and collating it is statistically appropriate.

Community Justice

7.150 The relationship between the Parole Board and the Community and Juvenile Justice Division should be made clear to the officers concerned and should be the basis for what is done by each of them. The parole system involved two things: the selection of prisoners who are to be helped to avoid re-offending by a parole program; and the provision to the parolee. The role of community justice is key.

7.151 I have proposed an expansion to the current role of community corrections officers in regard to their management of prisoners to be released to the community elsewhere. I have also made a proposal for the establishment of a mechanism to manage high risk/high need offenders within an interagency framework.

7.152 Another key mechanism for the resocialisation of prisoners is the formation and support of agreements with Indigenous communities concerning the provision of correctional services. I have made recommendations to this effect elsewhere. I make these recommendations given effective outcomes have proven to be more likely for Aboriginal people when the offender's community is involved in their management.

7.153 The officer in charge of the Community and Juvenile Justice Division should present to the Departmental Head for approval on or before 30 June 2006 a plan detailing the following:

- the kinds of action which will be required for the proper counselling of parolees;
- the structure of the Community Justice Division which will be required to enable this to be done. The Instructor should provide in particular with differences between the professional and the administrative staff and the levels of the officers who are to be directly involved in direct contact with parolees;
- the way in which professional staff are to be recruited;
- the methods of training of staff, particularly professional staff;
- the number and categories of officers necessary to enable a Division to be structured in this way; and
- the costing involved in the reconstructing.

7.154 The Community and Juvenile Justice Division should set up a procedure for collecting and recording information to assist in determining the extent to which the activities of the Division in relation to parole have reduced re-offending.

7.155 At the end of three years from the commencement of these arrangements and every three years thereafter the Community and Juvenile Justice Division should confer formally with the Parole Board to determine what are the results of the Parole System in reducing re-offending; and what further changes (if any) should be made to the Parole System.

7.156 Regard should be had to the recommendations made by Counsel Assisting the Inquiry as to the detailed alterations appropriate to the Community Justice Division. I do not recommend that those submissions be put into effect according to their terms. Departmental officers familiar with the operation of the Department of Justice and the Community Justice Division should have an appropriate discretion to determine the details of the procedures to be adopted. The submissions of Counsel should be adopted as indicating the general direction of change and as providing suggestions as to the manner in which the changes may be effected.

The Official Functions of the Parole Board

7.157 I have referred to the Pre-Release procedures followed in respect of lifers. The Parole Board has not, by statute, a necessary function in this process. However as has been indicated, the Minister and the Department seek the views of the Parole Board to assist the Minister in deciding whether a lifer should be placed on a pre-release program.

- This aspect of the work of the Parole Board does not require examination beyond that already undertaken in respect of its official functions of the Board. It is within the statutory powers of the Parole Board to do what in this regard it does. I do not recommend statutory change for that purpose.

- I agree with the recommendations made by Counsel Assisting the Inquiry as to the changes to be made to the pre-release procedures.
- Insofar as in the pre-release procedures adopted advice is to be given by the Parole Board, I recommend that it be provided that the advice given by the Parole Board to the Minister is not binding on him.

PROMOTING THROUGHCARE

7.158 In addition to the specific mechanisms I have proposed above to promote the re-socialisation of prisoners, I further suggest measures of a more administrative nature to achieve this objective. These recommendations predominantly centre on the need for continuity in the provision of justice services, particularly between those areas dealing with the management of offenders in custody (namely the prisons division) and the management of offenders in the community (namely the Community and Juvenile Justice Division).

7.159 In part, my recommendations pertaining to the revised structure of the Department will enable the Department to begin to tackle this question. Mr Quinlan has drawn particular attention to this issue in his submission stating that 'from the evidence called at the Inquiry that even (or perhaps particularly) in the area of offender management, there are few examples where a "co-ordinated and integrated" approach has been achieved by the Department of Justice. Indeed there have been a number of examples of a lack of co-ordination.

7.160 Of particular importance in relation to coordination is that of continuity of the case management and sentence management procedures across prisons and the community. A more integrated case management system would provide for comprehensive planning and management of a prisoner from first contact with the correction system, through the entire sentence period (in prison and/or in the community) and to re-integration into the community, with the ultimate aim of avoiding re-offending.

7.161 In order to prevent the recurrence of offending, the factors that have precipitated it in the past need to be identified and addressed. In relation to offenders serving prison sentences, this is best addressed throughout the term of the person's sentence – whilst in prison and whilst in the community.

7.162 Case management systems in the prison and in the community seek to achieve this goal through the processes of assessment, planning, service coordination and service implementation. Well-integrated case management across prison and the community can promote achievement of this goal. This reduces the likelihood of ex-prisoners re-offending and so improves community safety. An integrated approach enables better planning to meet an offenders criminogenic needs and to minimise the risk they provide to the community at the appropriate time in a persons sentence.

7.163 I do not propose that case management ought to operate in the same way in prisons and in the community. I do propose that these systems should be integrated and some central oversight be established to guide policy and procedures in the direction I have outlined above. I therefore propose the establishment of a unit to oversee case-management and sentence management processes in prisons and the community. The role of this unit will include responsibility for the promotion of an integrated case management system. This

will include the articulation of a consistent philosophical approach to case management in prisons and the community.

7.164 Related to this is the need for continuity between prison and community corrections in the provision of programs and services (such as treatment services). I similarly recommend in relation to these services that the administration of these by the Department be integrated to promote throughcare.

Recommendation 35

The Department should establish:

- **an integrated Sentence Management Unit to promote an integrated case management system and oversee sentence management for offenders across prisons and the community;**
- **an integrated Programs Management Unit to oversee the development, implementation and evaluation of programs provided by the Department for offenders in prisons and offenders managed in the community; and**
- **an integrated unit for the management of services; including education, health (including psychological) and drug and alcohol services.**

7.165 A further key mechanism for achieving integration will be the overlap between the two systems provided for in my recommendation regarding Community Correction Officers in-reach into prisons 6-12 months prior to a prisoners release.

7.166 Recommendations I have made pertaining changes to the case-management process within prisons are relevant here.

AUTHORISED ABSENCES

7.167 The procedures for work leave, home leave and the like are of assistance. A prisoner who has been in prison for a substantial period may have forgotten or not learned what to do in ordinary community life. Officers said that a prisoner may need to learn how to open a bank account, to ride on a bus and to cope with other parts of daily living. It has been suggested that if a prisoner cannot avoid the frustration involved, he will revert to his former criminal associates or to drugs.

7.168 But these procedures are seen as directed mainly to re-socialisation. The reduction of offending is believed to be a product of what is done. To what extent these procedures reduce re-offending has not been measured and I think, not directly addressed.

7.169 Work leave can establish connections with useful employment. Home leave will create the family and kinship ties which assist in avoiding re-offending.

7.170 Two questions arise in relation to procedures of this kind:

- should the procedures be continued; and
- how should they be carried out?

7.171 No satisfactory statistics are collected and regularly published as to:

- how many prisoners are released on leave procedures and for what purposes;
- how far that procedure produces good, that is, reduces re-offending; or
- how far detriment results, how often prisoners on leave re-offend or otherwise cause harm. (Although it is noted that in 2003-04 there were only 9 suspensions or cancellations of permits or leave of absences, out of a total of 684 commenced).

7.172 It is reasonable to infer that there are some prisoners who will be helped by the leave procedures and who will do little or no harm. That is a matter as to which the best (if not infallible) judgements can be made by prison officers who know the prisoners and who will see them before they proceed on leave and after they return from it.

7.173 There will inevitably be prisoners who, on leave procedures, will do harm. That may happen either because the judgement of the prisoner's character and his propensities was wrong or because, during leave, circumstances arose which led to the prisoner's acting out of character. But the period of such leave is relatively short and the controls exercised are appropriate. The possibility of abuse should not prevent the beneficial use of the procedures. The evidence does not justify the conclusion that such harm is done as to warrant the curtailment of the leave procedures. I recommend that they be continued.

Recommendation 36

The Department should continue to use absences from the prisoner for the purpose of re-socialising offenders, including life and indeterminate sentenced prisoners, such as work and home leave and other opportunities outside the prison.

7.174 However, the processes and circumstances by which such leave is granted are both too restricted and too inflexible. The main provisions, for example sections 83 and 94; specify the circumstances narrowly.

7.175 There are purposes for which legitimately prisoners may usefully be permitted to be temporarily out of prison because it will help in the re-socialisation of them and may reduce re-offending. Schooling, socialisation and skills improvement (or aspects of them) are or in a practical sense may not be allowable.

7.176 In particular there are (as the Inquiry has been informed) purposes peculiar to some Indigenous prisoners which are currently not served by leave procedures as they are presently formulated. For example, the Inspector of Custodial Services refers to the provision of 'community leave of absence' for the settling of family affairs.[32] Leave of this kind would assist in the re-socialisation of prisoners and the maintenance of family and kinship ties important on their return to community.

[32] Office of the Inspector of Custodial Services (2005) *Directed Review of the Management of Offenders in Custody in Western Australia,* p 94

7.177 It is recommended that the purposes for which leave may be granted should be stated in the statute in general terms and not in specific terms. The legislation should permit a judgement to be formed by the responsible officer as to whether the leave sought will assist in the re-socialisation of the prisoner generally.

7.178 For example, the New Zealand *Corrections Act 2004* specifies that the Chief Executive can approve a 'temporary release from custody' where he or she considers that it will facilitate the achievement of one or more of the following objectives:

> *"(i) the rehabilitation of the prisoner and his or her successful reintegration into the community (whether through release to work (including self-employment), to attend programmes, or otherwise);*
>
> *(ii) the compassionate or humane treatment of the prisoner or his or her family; or*
>
> *(iii) furthering the interests of justice (section 62(2)(a))".*

7.179 However, in exercising such powers, the chief executive must consider:

> *"(a) whether the release or removal of the prisoner might pose an undue risk to the safety of the community while the prisoner is outside the prison;*
>
> *(b) the extent to which the prisoner should be supervised or monitored while outside the prison;*
>
> *(c) the benefits to the prisoner and the community of removal or release in facilitating the reintegration of the prisoner into the community; and*
>
> *(d) whether removal or release would undermine the integrity of any sentence being served by the prisoner (section 62 (3))".*

7.180 The specific purposes for release are then set out in regulations. This system could offer a potential model to generalise authorised absences in Western Australia.

7.181 At present, the assent of a senior departmental officer is require for some at least of the leave procedures. The table below sets out the level of approval required for each type of leave. The majority of approvals are required from the Minister or Governor. However, it is likely that those in contact on a closer level with a prisoner will be better able to judge whether the leave should be granted. Those at Head Office level will, if not inevitably, at least normally depend upon the recommendation and experience of those at prison level.

7.182 In 2003, the Department undertook a *Review of Policy Directive 9: Permit for Absence*, which related to permits granted under section 83 of the *Prisons Act.* The review recommended that authorisation for approval of attendance at funerals should be devolved to the Superintendent of each prison. Comments from stakeholders during the review noted that the greatest knowledge as to whether such applications should be approved is held at the local level. Where an application is made that requires Executive Council approval, for example for a prisoner serving life imprisonment, the review recommended that funeral applications be coordinated by the Coordinator Authorised Absences, at head office. This would enable approval from Executive Council to be sought easily.

7.183 Therefore it is recommended that the power to grant such leave should be vested in the Commissioner of Corrections and delegated in principle to those at Superintendent level in individual prisons, except where the leave is part of a Pre-Release Program for life and indeterminate prisoners. For example, a permit of absence to attend a funeral or visit a dangerously ill near relative for most categories of prisoners currently requires the approval of the Minister, and in some cases, such as life imprisonment, the Governor. My proposal would require that Superintendents would be empowered to grant such permits for all categories of prisoner.

Type of Leave	**Approvals Required**			
	Superintendent	**CEO/delegate**	**Minister**	**Governor**
Approved absences under activity programmes (s 94)	Minimum Security prisoners (including indeterminate prisoners)			• strict security life imprisonment • strict custody • safe custody • life imprisonment • term of imprisonment of more than 15 years
Leave of Absence Home/Work/Special leave (s 87)		Minimum Security prisoners	• a prisoner who has previously been granted leave of absence under section 87 but that grant has been cancelled or revoked; • A prisoner whose parole has been cancelled for any reason.	• strict security life imprisonment • strict custody • safe custody • life imprisonment • serving a term of imprisonment of more than 15 years • any prisoners not rated as minimum security
Permit of Absence (section 83) Ill relative/attend funeral/other			▪ all categories of prisoner excluding those requiring Governor's approval, (including indeterminate prisoners).	• strict security life imprisonment • strict custody • safe custody • life imprisonment • term of imprisonment of more than 15 years

7.184 It is necessary to maintain a balance between flexibility and the prevention of abuse. Some restraints are needed. As an illustration of how the process may work, special cases apart, notification of the intention to grant leave and the reason for the grant of it should be given by the appropriate officer at prison level to the appropriate officer at Head Office level before the leave is granted. A register should be kept at Head Office level of prisoners to whom the leave has been granted.

7.185 The Register kept at Head Office level should record prisoners to whom leave may not be granted without permission of the Commissioner of Corrections. That register should be available for inspection only at Superintendent level. The grant of leave to a particular prisoner may be vetoed by the Commissioner of Corrections for reasons stated by him in writing.

Recommendation 37

The *Corrections Act* should state in general terms the purpose for granting absences from the prison. Superintendents should have more authority and flexibility to grant absences from prison, with the authority for certain absences resting with the Commissioner, rather than the Minister or Governor.

7.186 However, the processes by which such leave is granted are both too restricted and too inflexible. The circumstances in which leave may be granted are too restricted and too inflexible: see generally Part VIII of the *Prisons Act 1981*). The main provisions: see eg, section 83 and section 94; specify the circumstances narrowly. They have general clauses " … for any other purpose which appears to the Minister to be sufficient": section 83(2)(c). But one's practical experience in the operation of legislation has been that to obtain a permission under such general clauses is time consuming and often unsuccessful. The kinds of leave mostly granted are work leave and home leave. There are purposes for which legitimately prisoners may usefully be permitted to be temporarily out of prison because it will help in the re-socialisation of them and may reduce re-offending. Schooling, socialisation and skills improvement (or aspects of them) are or in a practical sense may not be allowable. In particular there are (as the Inquiry has been informed) purposes peculiar to some Indigenous prisoners which cannot be served by leave procedures as they are presently formulated. Leave of this kind would assist in the re-socialisation of prisoners and the maintenance of family and group ties important on their return to community life. It is recommended that the purposes for which leave may be granted should be stated in the statute in general terms and not in specific terms. The legislation should permit a judgement to be formed by the responsible officer as to whether the leave sought will assist in the re-socialisation of the prisoner generally.

7.187 At present the assent of a senior departmental officer is required for some at least of the leave procedures. Sections 83 and 94 are limited to the Minister and the Chief Executive Officer but it is likely that those in contact on a closer level with a prisoner will be better able to judge whether the leave should be granted. Those at Head Office level will, if not inevitably at least normally, depend upon the recommendation and experience of those at prison level. Therefore it is recommended that the power to grant such leave should be given in principle to those at Superintendent level in individual prisons.

7.188 It is necessary to maintain a balance between flexibility and the prevention of abuse. Some restraints are needed. Special cases apart, notification of the intention to grant leave and the reason for the grant of it should be given by the appropriate officer at prison level to the appropriate officer at Head Office level 14 days before the leave is granted. A register should be kept at Head Office level of prisoners to whom the leave has been granted. Leave granted at Superintendent level should be limited in time to one month and should be renewable.

7.189 The Register kept at Head Office level should record prisoners to whom leave may not be granted without permission of the Executive Director of Prisons. That register should be available for inspection only at Superintendent level. The grant of leave to a particular prisoner may be vetoed by the Executive Director of Prisons for reasons stated by him in writing.

7.190 I now will consider the parole process.

PAROLE

7.191 The parole process primarily involves two bodies: the Parole Board and the Community Justice Division. Each is a necessary part of the parole process.

7.192 In the absence of a parole procedure, all prisoners released from prison would simply be released into the community without surveillance and without assistance. There would be no restraint upon their re-offending. It is the function of the parole process:

- to grant parole to eligible prisoners where appropriate;
- to detail the conditions on which they are to be released; and
- to suspend or revoke the parole if circumstances warrant it.

7.193 Prisoners released on parole are supervised by the Community and Juvenile Justice Division of the Department. That Division does essentially two things:

- monitors whether the terms of the parole are complied with; and
- case manages the offender - referring prisoners to services within the community and providing counselling to the offender.

7.194 During the Inquiry criticisms were directed at the parole process. Attention has been given to it in discussions with the Inspector of Custodial Services. It has been the subject of detailed submissions by Counsel Assisting the Inquiry. The Parole process and the way in which it is carried out are central to the prison system and the management of offenders. It has been evident that there is public misunderstanding of the nature of the parole process, the functions of the Parole Board and what can and should be done by the Parole Board and the Community and Juvenile Justice Division. Accordingly I shall state in detail my conclusions and recommendations and the reasons for them.

7.195 In order to understand the Parole process and the significance of it, it is necessary to have clearly in mind the function that it performs.

Purpose of Parole

7.196 The parole process is the most important of the procedures directed to the re-socialisation and reform of prisoners. Insufficient has been done to make the public aware of why it is so. Its function is generally not understood.

7.197 In order to determine whether parole 'works' it is necessary to identify the objectives of parole and assess to what extent these objectives have been met. It is widely acknowledged that the main of objective of parole is to reduce recidivism and rehabilitate the offender.

7.198 The 1991 Western Australian Joint Standing Committee on Parole commented that:

> *"The essential elements of parole have always been perceived from an administrative perspective as justice done and protection for society, balanced with the appropriate amount of rehabilitation and economic need."* [33]

7.199 The Parole system should not be:

- a means of rewarding prisoners for good conduct in prison; or
- a form of remission or reduction of the length of the sentence imposed.

7.200 Parole should not be a reward for good conduct while in prison. On the proper construction of the statutory provisions relating to parole that is not the purpose to be served by it. The section 16(b) of the *Sentence Administration Act 2003*, states that the following consideration is relevant in deciding whether parole should be granted:

> *"The behaviour of the prisoner when in custody serving the sentence insofar as it may be relevant to determining how the prisoner is likely to behave if released on parole".*

7.201 The Parole Board, in deciding whether to grant parole, takes account of the prisoner's conduct in prison and may refuse parole if there is bad conduct. That is not (and should not be seen to be) to reward good conduct. It is (and should be) done because good conduct in prison suggests that, with the assistance of parole, a prisoner is less likely to re-offend in the community.

7.202 Parole should not be used to restore the former system of remission. Previously, in some jurisdictions, the prison system allowed an automatically a reduction ('remission') in the length of the sentence imposed. That process has been rejected by the legislature in favour of, as it has been described, "truth in sentencing".

7.203 However, purposes can be served if prisoners are granted a reduction in the time served. It encourages good behaviour; and it helps the Prisons Department to 'clear the prisons earlier' and to reduce Departmental costs. However, it would be illegitimate (I believe contrary to law) to see such things as the purposes for the achievement of which the grant of parole is to be made.

7.204 In recent years parole has been criticised in a number of jurisdictions. Such criticisms have included:

- the procedures by which it is administered have led to questioning of its desirability;
- release at a time determined administratively undermines the sentence and authority of the court;
- the basis for making decisions about parole is flawed in relation to predicting recidivism and efficacy of rehabilitation; and

[33] Joint Select Committee on Parole (1991) Joint Select Committee on Parole Report, Parliament of Western Australia presented

- empirical evidence evaluating parole fails to provide reliable guidance as to its effectiveness.[34]

7.205 Numerous inquiries have been undertaken worldwide to consider the efficacy of parole, with the majority recommending the retention of parole. In 1996, the NSW Law Reform Commission concluded that parole was worth retaining. It noted that:

> *"...earlier release of offenders into the community, subject to recall for breach of conditions attaching to the release, and with some degree of support and supervision is preferable to unconditional and unsupervised release when the full term of imprisonment has been served".*[35]

7.206 The Commission did note however that offenders should only be released on parole when assessed as suitable "by reference to criteria which focus on the ability of the offender to, if released to behave lawfully." [36]

7.207 The following reports have been undertaken in Western Australia in recent years, all have advocated the retention of parole:

- Parker, K.H. *A Report on Parole, Prison Accomodation and Leave from Prison in Western Australia*, (1979);
- WA *Report of the Committee of Inquiry into the Rate of Imprisonment* (Perth, May 1981);
- WA, *Report of the Joint Select Committee on Parole* (Perth, Aug 1991); and
- WA Ministry of Justice, Review Committee chaired by Hon KJ Hammond (then) Chief Judge of the District Court, *Report of the Review of Remission and Parole* (1998).

7.208 In order to determine whether parole should be maintained it is necessary to assess the extent to which it fulfils its main objective to reduce recidivism and rehabilitate the offender.

Reducing Recidivism

7.209 As noted in a submission from Guy Hall, Senior Lecturer in Law, Murdoch University, parole seeks to reduce recidivism in two ways:

- by acting as a mechanism of surveillance and control of ex-prisoners; and
- to help prisoners reintegrate into the community.

7.210 According to the first strategy, ex-prisoners released on parole subject to conditions imposed upon them by the Parole Board. If the conditions are breached, for example by reconviction, parole may be suspended or cancelled, and the ex-prisoner returned to custody. Such a threat is aimed to deter parolees from re-offending.

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[34] Law Reform Commission New South Wales. Sentencing, Report 79, Dec 1996, Chapter 11. "Parole", Law Reform Commission New South Wales (1996) *Sentencing*, Report 79, Dec (1996)
[35] *Ibid*, p 2
[36] *Ibid*

7.211 In relation to the second strategy, at least for part of the parole period, community corrections officers supervise and case manage offenders in an attempt to link them with appropriate support services and assist them, for example through counselling, to address their offending behaviour.

7.212 It is proper to emphasise that if a prisoner is not granted parole, he will at the end of the two-year period be released from prison. He will not have had the advantages of having been supervised on parole. On release he cannot then be forced to accept the restraints of parole. He will be free to re-offend. The benefit to be obtained by giving to a parolee such early (conditional) release is that the community has the opportunity to attempt to dissuade him from re-offending.

7.213 The table below shows that 2,776 parole orders (including Commonwealth and interstate orders) were current between 1 July 2003 and 30 June 2004. Of this total, 959 were successfully completed; 574 orders were cancelled or suspended; 120 orders were terminated for reasons such as death and deportation; and 1,106 remained current at 30 June 2004. Therefore, of the total number of parole orders finalised during the period, approximately 63% were completed successfully.[37]

[37] Successful terminations as a proportion of total successful and total unsuccessful terminations (excluding other types of terminations).

Parole Orders
Orders Issued, Current and Terminated for the period 01/07/2003 to 30/06/2004
(including Commonwealth and Interstate orders)[38]

Number of orders	Aboriginal		Non Aboriginal		TOTAL
	Male	Female	Male	Female	
CURRENT AT 01-07-2003	300	36	814	64	1,214
ISSUED BETWEEN 01-07-03 AND 30-06-04 INCLUSIVE	493	41	954	74	1,562
CURRENT BETWEEN 01-07-03 AND 30-06-04 INCLUSIVE	793	77	1,768	138	2,776
Terminated/Expired between 1/07/03 – 30/06/2004 inclusive					
Successful Terminations					
By Compliance (State Orders)	267	24	608	60	959
By Compliance (interstate/Commonwealth Orders)	0	0	16	1	17
Total successful terminations	**284**	**26**	**665**	**61**	**976**
Unsuccessful Terminations					
By Cancellation (State Orders)	213	29	241	14	497
By Cancellation (Interstate and Commonwealth Orders)	0	0	2	0	2
By Breach (State Orders)	0	0	0	0	0
By Breach (Interstate/Commonwealth Orders)	0	0	0	0	0
By Suspension until Expiry Date (State Orders)	30	3	37	5	75
Total unsuccessful terminations	**243**	**32**	**280**	**19**	**574**
Other types of termination					
By death	2	0	3	0	5
Expiry – termination type not recorded	0	0	0	0	0
Expiry Reached, Unresolved Court Matters (State	7	2	20	4	33
Expiry Reached, Unresolved Court Matters (CW/IS)	0	0	0	0	0
Deported – State Orders	0	0	17	0	17
By Interstate Transfer (State Orders)	0	0	5	0	5
By Transfer to State Parole (Interstate/Commonwealth Orders)	2	0	2	0	4
By Interstate Transfer (Interstate/Commonwealth Orders)	1	0	3	0	4
Completed – Breached during term	14	2	31	0	47
Deported – Interstate/Commonwealth Orders	0	0	4	0	4
Terminated – Legal Error	0	0	1	0	1
Total other types of terminations	**9**	**2**	**45**	**4**	**120**
Total Terminations/Expiries	**536**	**60**	**990**	**84**	**1,670**
Current at 30/06/04	257	17	778	54	1,106

7.214 One method of evaluating parole's effectiveness in reducing re-offending, is to compare the statistics for recidivism of prisoners released on parole with those released after a finite sentence with no parole.

7.215 A study conducted by Broadhurst and Maller in 1991 is the most recent comprehensive study on recidivism in Western Australia. The study measured a

[38] Adapted from Department of Justice (2005) *Annual Statistical Report: Adult Community Corrections: Period 01 July 2003 to 30 June 2004* (not published), p 26

population of 16,400 prisoners released for the first time from Western Australian prisons between July 1975 and June 1987. The study concluded that those offenders released to parole "fared better" than those released to finite sentence or those released following time served for fine default.[39]

Recidivism by Release Type (Male only) 1975-87

Release Type	Aboriginal	Non-Aboriginal
parole	67%	32%
median time to face	14 mths	27 mths
n =	[188]	[2,194]
finite	77%	49%
median time to face	10.5 mths	17 mths
n =	[2,975]	[6,869]
fine	70%	46%
median time to face	22 mths	17 mths
n =	[232]	[1,162]

Source: Broadhurst, R. 'Evaluating Imprisonment and Parole: Survival Rates or Failure Rates?'

7.216 The study also found that recidivism rates dramatically increase as the number of terms served increases, however, that failure rate of offenders released to parole was less than the rate of failure in finite prisoners.

Recidivism by Release Type compared for 1st to 5th Return (Male Non-Aboriginal)

	Release Type	% Fail
1st Release	Finite	48%
	Parole	32%
2nd Release	Finite	63%
	Parole	57%
3rd Release	Finite	70%
	Parole	60%
4th Release	Finite	70%
	Parole	*83%
5th Release	Finite	76%

* analysis shows that failure curves cross over but the rate of parole failure is less than for finite prisoners.

Source: Broadhurst, R. 'Evaluating Imprisonment and Parole: Survival Rates or Failure Rates?'

7.217 Broadhurst and Maller also undertook covariate study which matched parole prisoners with non-parole prisoners on key variables so that age, time spent in prison, prior prison record and offence were comparable for each group.[40] As it could be argued that the Parole Board grants parole to those offenders who are most likely to succeed on parole. This attempted to remove the effect of such factors on the recidivism rates between the two groups. The study found that the recidivism rates of prisoners released to parole were lower than those released to finite terms when age, period in prison, sex, offence and prior incarceration were controlled (see chart below). The authors contended that, "these results establish a positive case that parole as a penal measure is more effective than a finite sentence".

[39] Broadhurst, R. 'Evaluating Imprisonment and Parole: Survival Rates or Failure Rates?' *In Keeping People Out of Prisons: proceedings of a Australian Institute of Criminlogy conference held 27-29 March 1990*, Sandra McKillop (ed.) Canberra: Australian Institute of Criminology, 1991, p 32.

[40] *Ibid*

Parole and Non-parole Prisoners—By Age and Time in Prison

	(a) AGE AND RELEASE TYPE		
	<20 Years	21-40 Years	40 + Years
Finite	66%	44%	37%
Parole	52%	30%	24%

	(b) TIME IN AND RELEASE TYPE	
	90-180 Days	181 + Days
Finite	48%	45%
Parole	37%	33%

7.218 Guy Hall, in his submission to the Inquiry, notes that this study was undertaken during a period where the "dominant purpose of parole was to help prisoners return to the community". He comments that in the 1980s the rehabilitation philosophy was rejected in favour of increased surveillance.[41] The Broadhurst and Maller study may support the assertion that an emphasis on assistance and treatment, rather than surveillance, is more effective at reducing recidivism.

7.219 The Department of Justice has recently undertaken a project measuring the recidivism rates of parolees compared with offenders released directly to freedom. The project matched data from prisons and community corrections databases (1998/1999 and 1999/2000) and courts databases (1998/1999, 1999/2000 and 2000/2001) in relation to individuals who exited prison from the first time either to parole or directly to freedom. All exits refer to sentenced offenders only.

7.220 Within the sample of 3595 offenders, 59% of individuals were released to parole, with remaining 41% released to freedom. Offenders were measured for re-offending for up to a three-year period subsequent to release. It is noted that most parole periods are a maximum of two years in length; therefore this study includes a period of time when parolees are not supervised.

7.221 The study found that the proportion of offenders who re-offend is slightly higher amongst offenders released to freedom.[42] The following table shows that 68% of offenders released to freedom re-offended within the three-year period following release, compared with 63% of parolees.

Rates of re-offending for parolees and prisoners released to freedom

	Freedom		*Parole*		*Total*	
	Frequency	*Percent*	*Frequency*	*Percent*	*Frequency*	*Percent*
No match	148	10%	176	8%	324	9%
Non-recidivist	316	22%	615	29%	931	26%
Recidivist	993	68%	1347	63%	2340	65%
Total	1457	100%	2138	100%	3595	100%

Source: Department of Justice (2005) *Does Parole Work?* (unpublished)

7.222 Differences were found between offenders released to parole and offenders released to freedom with respect to the average time taken to re-offend. The study

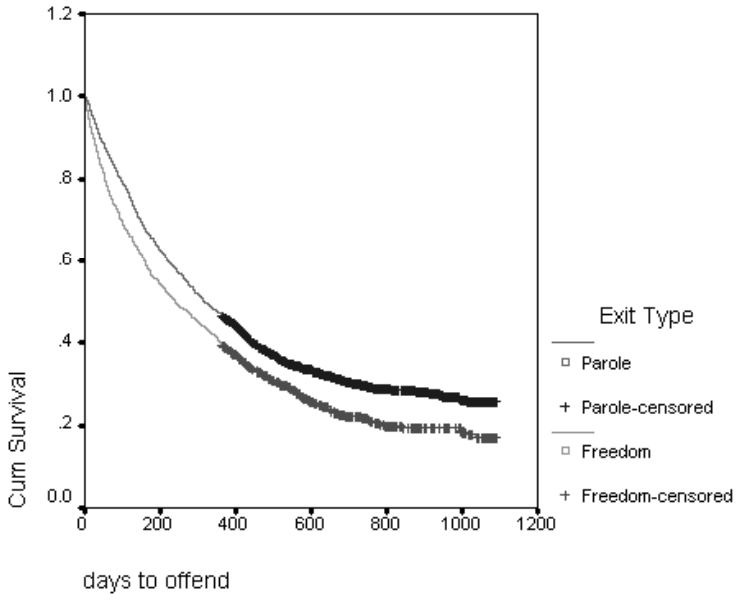
[41] Submission of G Hall, Senior Lecturer in Law, Murdoch University MI01108
[42] Department of Justice (2005) *Does Parole Work?* (unpublished), p 3

found that offenders released to freedom re-offended after an average of 207 days, compared to 230 days for offenders released to parole.[43] It was observed that offenders released to parole were less likely than offenders released to freedom to re-offend within 3 months of their release, but are more likely to re-offend following the initial three months post release.

7.223 The study noted that as offenders are released from prison or complete community orders at different times they were measured for 'survival' starting at different times. Therefore, the data has a number of start and end dates that resulted in the offender having between 1-3 years within which to re-offend or 'survive'. To account for this, a survival analysis was undertaken using the Kaplan-Meier method, which estimates the total time to fail (re-offend) for a group of offenders. This was presented in the form of a graph showing the percentage surviving versus time. Offenders are only measured in the curve for the time that they are followed.

7.224 The following Kaplan Meier curve indicates that offenders released to parole had significantly longer survival times that those released to freedom.

Times to reoffending for Parolees and prisoners released to freedom



Source: Department of Justice (2005) Does Parole Work? (unpublished)

7.225 The data also indicated that offenders on parole had significantly different survival curves to offenders released to freedom, in particular in relation to violent offences.

7.226 The study concluded that the data assessed indicated that parolees take longer to re-offend following release and appear to re-offend less than individuals released to freedom. However, it was noted that the study did not account for factors personal to the offenders which are known to increase the risk of re-offending, such as age, program participation and prior criminal history, as was accounted for in the Broadhurst and Maller (1991) study. It was noted therefore, that no definitive findings could be drawn from the study in relation to the effectiveness

[43] *Ibid*

of parole. It was also noted that the recent introduction of CEO parole may have affected re-offending patterns which was not accounted for in the study. The study recommended a further, more comprehensive examination of the issue. I wholeheartedly support this recommendation.

7.227 It is therefore difficult to determine whether parole reduces re-offending in Western Australia. On this basis I recommend that a system of parole be retained in Western Australia and that a comprehensive, long-term study be undertaken as to its impact on re-offending.

Recommendation 38

That a system of parole be maintained and supported in Western Australia and the Department, in collaboration with relevant research bodies, should undertake a comprehensive, long-term study on the impact of parole on recidivism.

7.228 In recommending the retention of parole, I note the findings of recent worldwide research which suggest that increased surveillance and control of parolees, in the absence of appropriate treatment, has a minimal or even negative impact on re-offending.[44] It is for this reason that I have recommended a model of throughcare which includes the development of 'activist supervision' of offenders serving community corrections orders later in my report. Such supervision involves field officers acting as a central point of contact to coordinate an offender's access to a variety of support services, monitors and reports on progress and provides 'counselling' services. More emphasis should be placed on the resocialisation of parolees, as this appears to be 'what works' in reducing re-offending.

7.229 Research should also be directed at assessing the efficacy of the strategies of surveillance and case management, employed in the management of parolees, in reducing offending.

Simplification of the Parole Process

7.230 Numerous comments were made to me about the complexity of the current parole system. As noted above there are four separate systems of parole that involve different releasing authorities. The system appears unnecessarily complex. Indeed, in its submission, the Department of Justice, argues that there are too many agencies involved in parole decisions. The Department contends that this increases the potential for confusion, responsibility shifting and delays in the release process.

7.231 Counsel Assisting proposed that the authority to determine release for prisoners eligible for CEO parole be vested in a position equivalent to the Secretary of the Parole Board, upon delegation from the Board. Such action would simplify the parole system, remove the Department's involvement in discretionary release decisions and reduce potential inconsistencies in decision-making.

7.232 There have long been concerns that the decision to release prisoners should not be in the hands of the department responsible for the management of offenders.

[44] For example see Gendreau, P, Goggin, C & Fulton, B. (2001) 'Intensive Supervision in Probation and Parole Settings', In C.R Hollin *Handbook of Offender Assessment and Treatment*, Chichester, Wiley.

There is a perceived danger that "managerial imperatives and political influences" would affect parole decisions.[45]

7.233 The Standing Committee on Legislation, for example, suggested that the Parole Board could determine the release of offenders serving less than 12 months by expanding the Board's 'auto-parole' regime.[46] Ms Rabbitt advised the Committee that there were not any administrative difficulties with the proposal. She stated:

> *"It would not make a great deal of difference. We currently use this process with auto parole people. The difference with the CEO references is that the process would stop at the sentence management directorate, where a decision would be made."* [47]

7.234 The Committee noted that the decision to release an offender was effectively made at Sentence Management Directorate level. The Committee concluded that because of resourcing implications, the decision to release offenders serving 12 months or less could not be vested in the Board. However, if the Board had the resources to consider all release matters in detail, the Committee may have recommended that the decision be vested in the Board. The Committee stated:

> *"It is apparent that the majority of the current 'auto parole' matters are not considered by the full Parole Board and the release decision is effectively made at an administrative level within the Sentence Management Directorate of the Department of Justice. If release decisions for prisoners serving sentences of less than 12 months were vested in the Parole Board with a process akin to "auto parole", the Committee considers it likely that the majority of the decisions would be made at an administrative level within the Department of Justice. As the Committee considers that those making release decisions should be responsible for them, it does not agree with the vesting of these release decisions in the Parole Board.*
>
> *The Committee's view could change if the Parole Board was enabled to consider all release matters in detail. However, the present resources of the Parole Board do not allow it to undertake this task. The Committee acknowledges that the Government is aware of the resourcing issues facing the Parole Board and is currently considering these issues. If there was to be a change to the resourcing of the Parole Board this may influence the Committee's conclusion in relation to the vesting of these release decisions in the Parole Board."*[48]

7.235 It is contemplated that the recommended additional resources for the Parole Board would be such as to enable it to make determine release on CEO parole. The advice provision role of the Sentence Management directorate of the Department could mirror the 'Auto-Parole' process. Transferring CEO Parole to the Secretary of the Parole Board would contribute to the independence of the Board and increase its jurisdiction, thereby reinforcing its status and importance.

7.236 Obviously there are additional issues to be considered in relation to such a proposal, I therefore recommend that a review should be undertaken to simplify the parole system more generally.

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[45] Hansard 2676b-2686a/1, Legislative Assembly, second reading of *Sentencing Legislation Amendment and Repeal Bill 2002*

[46] Standing Committee on Legislation (2002) *Report of Standing Committee on Legislation in Relation to the Sentencing Legislation Amendment and Repeal Bill 2002 and the Sentence Administration Bill,* Report 18 May 2003.

[47] *Ibid*, p 16.

[48] *Ibid*, p 21

Recommendation 39

Government should review the basis on which parole is considered to simplify the procedures involved. In this regard, recommendation 59 contained in the Closing Submissions of Counsel Assisting should be adopted.

PAROLE BOARD

7.237 The Parole Board is established by section 102 of the *Sentence Administration Act 2003*. The Board comprises seven members and is chaired by the judicial member nominated by the Attorney General and appointed by the Governor. A Secretary of the Board is appointed under Part 3 of the *Public Sector Management Act 1994.* The Minister may also appoint a person to be the deputy of a member appointed by the Governor, other than the judicial member. The deputy of a member may attend Board meetings when the member is absent and perform the member's functions.

7.238 Whilst a Court determines whether an offender will be eligible for parole, the Board is responsible for determining the release a prisoner once he or she has served custodial portion of their sentence. In making that decision the Board must take into account 'parole considerations'. The Board also has the power to amend, suspend and cancel parole orders.

7.239 The Parole Board has two main functions:

- the grant of parole to some long term prisoners towards the end of their sentence ("the official function"); and
- the giving of advice to the relevant Minister and to the Department upon proposals for Pre-Release Programs for lifers ('the unofficial function').

7.240 The Board also has the power to make, suspend or cancel Re-entry Release Orders.

7.241 The Parole Board's role is focussed on release decisions. The Board has little statutory role in sentence management, although when a decision is made to refuse to release a prisoner, the Parole Board often sets conditions that must be met to secure release. It has a slight case management role in this regard.

7.242 The Board is supported by a secretariat that is part of the Court Services Division of the Department of Justice. The Board reports to the Attorney General. The Board deals with approximately 4000 cases a year. [49]

7.243 It should be noted that members of the Parole Board also act as the Mentally Impaired Accused Review Board, established pursuant to the *Criminal Law (Mentally Impaired Accused) Act 1996 (*section 41*)*. The Board is an independent entity that deals with the detention and release of mentally impaired accused persons and is chaired by the judicial member appointed to the Parole Board. Other members of the Board are the three Parole Board members appointed by the Governor, a psychiatrist and a psychologist appointed by the Governor (section 42).

[49] The Parole Board considered 4157 matters in 2004-05.

Should the parole process be administered by the Parole Board?

7.244 During the Inquiry there has been some criticism of the parole process and the Parole Board. However, I recommend that the Parole Board be retained and improved.

7.245 If the Parole Board were to be abolished, it would be necessary to create another body to do what it does. There is nothing to suggest that the body substituted would follow a different process for deciding who should have parole; it would follow the same process. Further there is nothing to suggest that, following a process of the same kind, it would it better.

7.246 What the Parole Board does has not been sufficiently understood. The objective of the parole process is to reduce the rate of re-offending. Offenders, if given the help of the parole system (more accurately, prisoners who, if given the assistance of parole) will be sufficiently likely not to offend during the two year period of the parole. The Board decides whether in the case of an individual prisoner, parole should be granted and on what conditions.

7.247 The decisions that the Parole Board must make are not simple. They are inherently liable to be wrong. This is because it is difficult to predict human nature.

7.248 It is to be emphasised that the Parole Board has minimal involvement in what is done by a prisoner after he has been granted parole. The Community Justice Division undertake the supervision of parolees.

7.249 Because the Parole Board must make a judgement involving the (uncertain) predictions of what the prisoner will do while on parole, on many occasions, parole will be granted to prisoners who re-offend. In a large number of cases the choice made by it will be vindicated; the parolees will not re-offend. In many it will not; they will re-offend.

7.250 The information on re-offending is not fully comprehensive. The case of the 'offending prisoner' Mitchell is an example of the unpredictability of human nature. He was granted parole. Those who proposed him believed he could be led from re-offending. His family (I instance the evidence of Mr Alan Piper to the Inquiry and assume it to be correct) was prepared to assist him. They are said to have been interested sufficiently to complain to police and to the Community and Juvenile Justice Division that he should have more help. He appeared from time to time to respond to the parole. Finally he re-offended.

7.251 The *Review of the Parole Board, the Mentally Impaired Defendant's Review Board and the Supervised Release Review Board* ('the Frizzell Report'), undertaken by Mr Peter Frizzell in 2002, commented that the Parole Board only attracts attention when there is adverse media coverage. The criticisms levelled at the Board in these instances are frequently unwarranted as the circumstances are the circumstances are often beyond the control of the Board.

7.252 The ability of the Board to publish reasons where it is in the public interest, which I advocate later in my report, will go some way to addressing this issue. However, the Board needs to proactively educate those in the criminal justice system and wider community in relation to its role.

7.253 In this regard the 1991 Joint Select Committee on Parole recommended that an "extensive public relations and education program should be undertaken by the

(then) Department of Corrective Services with participation by the police, the judiciary and the Law Society".

7.254 In 2002 the Frizzell Report recommended:

> *"Recommendation 4: Board examine communication and education initiatives to better inform 'the justice system' and the general community of the independent nature of the three Boards."*
>
> *Recommendation 20: That the Boards be allocated the appropriate resources to address the marketing of the legislative responsibilities of each of the Boards and ensure that the public of Western Australia have an informed perspective about the roles of the different Boards.*
>
> *Recommendation 21: That the Department of Justice Executive, the Chairs and the Boards and the Manager of the Secretariat give consideration to the role they should each play in the promotion and profiling of the work of the Boards.*
>
> *Recommendation 22: That the Boards formally establish meetings and forums where issues of general operation and process can be canvassed and discussed with key interest groups and stakeholders."*

7.255 The Parole Board has resolved to defer implementation of these recommendations until late 2005 to enable the Legal Research Officer to report on the operation of the Victorian and New South Wales Boards.

7.256 It is noted that equivalent authorities in other Australian states and the United Kingdom have websites providing, at a minimum, basic information on their operations.

7.257 In relation to key stakeholders within the criminal justice system, the Frizzell Report recommended that:

> *"Recommendation 24: The Parole Board review its communication processes and embarks upon a comprehensive campaign that allows its stakeholders and customers to have access to an uncomplicated information package containing the requirements and interpretations relating to early release."*

7.258 The Review also recommended that all communication strategies relating to early release are designed and developed in culturally appropriate ways.[50]

7.259 The Board has also deferred implementing this recommendation. I note that the current parole information booklet provided to prisoners was prepared in 1997 and is no longer relevant considering major amendments to the parole system in 2003. This is of concern.

Proposed Sentence Management Function

7.260 The submission from the Department of Justice noted that there is no independent body to oversee the management of offenders serving sentences, particularly serious offenders. The Department argues that some person or body should have overall responsibility for the oversight of management of sentences, to ensure for example that decisions downgrading security classification of prisoners are appropriate.

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[50] Frizzell, P (2002) Review of the Parole Board, the Mentally Impaired Defendant's Review Board and the Supervised Release Review Board, Department of Justice, Perth, recommendation 26.

7.261 The Department proposes the following model:

(1) "Extend role of Parole Board to include sentence management.

- *Establishment of a Sentence Management Board – essentially the Parole Board, whose oversight could be brought forward to review Sentence Management Plans. It is recommended that this board be full-time, headed by a person of judicial rank and its' members be selected on merit. This could remain an independent body and positions would be statutory appointments.*

- *For prisoners serving sentences for other than 'serious offences' the current process of sentence and release approval could remain essentially the same as it is now. There could be a process whereby this Board periodically selects or is sent by the Sentence Management Unit IMP's for these 'other than serous offenders' for review.*

(2) New process for 'serious offenders'

- *For prisoners categorised as 'serious offenders' (see below), a sentence management plan or a pre-release plan could be considered by the Sentence Management Board in the first instance. If the Board endorses the release plan, it could be forwarded to a Serious Offenders Ministerial Review Council with a recommendation to that effect.*

- *This Council could be modelled on NSW's Serious Offender Review Council and include Judges, senior DoJ representatives and a community/victims representative. They could consider all Pre Release Prisoners in detail and provide advice for release or otherwise to the Minister. The members of this Council could be Ministerial appointees.*

- *This council would NOT need to be full time but would need to meet regularly to deal with Pre Release Prisoners and the ongoing supervision of serious offenders while they are on parole.*

- *The existing two-stage release process (approved Pre Release Plan and approved actual release) could be retained under this model.*

- *The NSW process, in which their Parole Board issues an 'intention to release notice' valid for 30 days to enable victims to object could also be adopted under this model.*

- *In the case of Pre Release Prisoners for serious offenders, this would provide enough notice for the convening of the Serious Offender Ministerial Review Council.*

- *The NSW model of defining 'serious offenders' in legislation should be adopted. Broadly, such a definition could include:*
  - *all life imprisonment sentences*
  - *all indeterminate sentences*
  - *all parole or non-parole sentences with an aggregate of 15 years or more (this is only a suggested figure); and*

- *offenders who belong to a class of person described by the regulations to be serious offenders for the purposes of this definition."* [51]

7.262 In a personal submission, Ms Angela Rabbitt, Manager Parole Release agrees that the Parole Board should be involved earlier in the sentence management of serious offenders. She recommends that the Board review all 'serious offenders' (which she defines as life, indeterminate sentenced prisoners, and prisoners with sentences of 10 years or more) from the beginning of their sentences on a regular basis, coinciding with the Department of Justice's reviews of Individual Management Plans, annually initially and then 6 monthly until approval to participate in a pre-release program is obtained.[52]

7.263 In her advice to the Department of Justice, Ms Gail Archer, Barrister, also commented that there was an absence of 'front end' sentence management of adult offenders.

7.264 I note that the Supervised Release Review Board is actively involved in sentence management of young offenders in custody from the commencement of their detention. However, the Supervised Release Review Board deals with only a few hundred offenders per year.

7.265 The Frizzell Report also considered this issue, commenting that the Parole Board would be better informed to make their final judgements if they were more informed during the sentence management of offenders. He noted that there were conflicting opinions within the system regarding whether the Parole Board should be involved in the oversight of longer-term offenders. Frizzell concluded:

> *"Recommendation 31: That due consideration be given to the closer working alliances the Parole Board and the Department of Justice will need to establish as the changes in the areas of prisoner assessment, case management and post release care unfold as part of the new reform package."*[53]

7.266 The Board currently receives offender files one month prior to the earliest eligibility date of prisoners within their jurisdiction. Professor Neil Morgan, community member of the Parole Board, commented that there was minimal time if the Board wanted to request a psychological assessment or settle an accommodation issue, so that the offender does not remain in custody past their earliest eligibility date. In relation to lifers and indeterminate sentenced prisoners, the Board becomes involved around eighteen months prior to their first statutory review date. Professor Morgan submitted that it would be preferable for the Board to be notified two to three years into a lifer's sentence of the details of their management plan. Professor Morgan advised that this would prevent for example, offenders being released without completing a program because it is not available within an appropriate timeframe prior to release.

7.267 Whilst I do not support the Department's proposal for the establishment of a Sentence Management Board or Serious Offenders Ministerial Review Council, I do agree that the Parole Board should play a greater role in the sentence management of serious offenders. For example, in relation to offenders serving non-parole period of 6 years or more, the Board could be provided with a report

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[51] Submission from the Department of Justice, MI01082.
[52] Submission from Angela Rabbitt, Manager Parole Release, MI01074
[53] Frizzel (2002), p31

from the Department in relation to the offender's management after the offender has served twelve months of the sentence. The Board may then be entitled to make recommendation to the Department as to the ongoing management of the offender.

Recommendation 40

Government should consider the greater involvement of the Parole Board in the sentence management of offenders. In this regard recommendations 48 and 51 in the Closing Submissions of Counsel Assisting should be considered.

Governance & Resourcing

7.268 The Parole Board is an independent entity that reports to the Attorney General and is supported by a secretariat that is part of the Court Services Division of the Department of Justice. The same secretariat also provides administrative support to the Supervised Release Review Board and Mentally Impaired Accused Review Board.

7.269 The secretariat is responsible to both the Department of Justice and the Chairs of Board. The Frizzell Report noted that the proximity of the Board to the Department of Justice has resulted in the perception of a lack of independence. The report commented that prisoners did not view the Board as separate from the Department.

7.270 Comments collected as part of that report indicated that there was "confusion and frustration with the interface between the secretariat and the three Boards"[54] expressed by the majority of Board members, staff of the secretariat and the Chairs of the Boards at the time. Mr Frizzell commented that as a result some 'grey areas' in terms of business management processes and personnel management and development has occurred. The report recommended that the Department of Justice, Boards and the Secretariat should establish an accountability framework to clarify lines of staff accountability. It appears that the implementation of this recommendation has not occurred.

7.271 Therefore, to reinforce the independence of the Parole Board, I recommend that the Minster responsible for its administration should be the Attorney General. This will necessarily mean that the Attorney General should also be responsible for the Supervised Release Review Board and the Mentally Impaired Accused Review Board.

7.272 The Parole Board has comparatively few resources of its own. The 2004/05 budget for the three boards was just over $1.3 million, which includes salaries, wages and allowances; Board fees and other administrative costs.

7.273 Because of the inadequate funding, the Parole Board is not able to do what it may wish to do to improve its decision making process and generally its functioning. It has in principle wide powers; for its purposes it has the powers of a Royal Commission. It can arrange for the assistance of consultants if necessary. However, it has minimal staff and it has been unable to establish for example, extensive statistical procedures. The Board, to a substantial extent, relies upon the information provided by the Department. To an extent that affects its real or

[54] *Ibid.*

apparent independence. The Commissioner of Corrections should consult with the Chairman of the Parole Board to prepare a statement of the resources of persons, procedures and finance necessary for its proper functioning and a budget should be presented.

7.274 For the information upon which it acts it is in practical terms dependent on the prison system, particularly the Community and Juvenile Justice Division. I do not mean that officers do not do what they should do, but the effect of the Parole Board being dependent on the Department have been noted by Counsel Assisting the Inquiry and others. Its information system should not duplicate the present sources. However, the Board should have such an independent power and capacity to obtain information as, in the opinion of the Chairman, is appropriate to establish its public independence.

7.275 The provision of resources on the one hand by the Parole Board and on the other hand by the Community and Juvenile Justice Division will overlap. I do not recommend that the Parole Board be resourced so as to be completely self-sufficient. In the larger matters, for example, long term statistic gathering, the resources should continue to be provided by the Community and Juvenile Justice Division.

7.276 The Parole Board should be resourced sufficient to maintain an efficient secretariat, to arrange for the conduct of investigations beyond those undertaken by the Community Justice Division if it should consider them necessary in particular cases, and the establishment of a more extensive internal record and statistical keeping procedure.

7.277 In addition, significant additional funding will be requested as result of my recommendations that broaden the role of the Board.

Improving functioning and public acceptance

7.278 Three things have been suggested to improve the Boards functioning and its public acceptance:

- Reasons
- Additional public membership
- Publication of relevant information

Power to publish reasons

7.279 Currently members, deputy members and the Secretary of the Board are prevented from disclosing information obtained in the course of their work by virtue of section 119 of the *Sentence Administration Act 2003,* except when ordered by a court or a judge to do so, or in circumstances approved from time to time by the Minister.

7.280 This provision should be amended to provide the Parole Board with the power to publish the decisions for its reasons when it considers it would be in the public interest to do so. It should not be obliged to do so in every case: that would be a heavy burden that would serve no purpose in many (perhaps almost all) cases. But it should do so in some cases. There are cases where the general public has an interest in knowing what has happened and why. (The case of Mr Mitchell would be one of these). There are cases in which the functions of the Parole Board are not understood and it is in the public interest that they be informed. There are

cases in which in a public outcry, (whether warranted or not) it is desirable to do what is appropriate to meet public interest. It should be open to the Minister to require that reasons be given for what has been done in respect of a parolee, whether in relation to the original grant of parole or subsequent action (cancellation of parole or failure to do so).

Membership

7.281 It is relevant that a body such as the Parole Board have the public confidence of responsible citizens. I do not mean that it must seek to avoid criticism which is uninformed or otherwise motivated; that cannot be achieved. It has now the basis for public confidence: its chairman held high judicial office and its Deputy Chairman is a distinguished Professor. No complaint has been made that its membership does not carry public confidence in its integrity and independence.

7.282 A number of issues were raised by Counsel Assisting in relation to the membership of the Board, these include that:

- the position of Chairman of the Board should be full-time;
- a position of Deputy Chairperson should be created;
- the membership of the Board should be increased.

7.283 I note that several of these issues were raised in the Frizzell Report and have not yet been implemented. I recommend that these issues be resolved.

Victims

7.284 I note that the Justice Minister, the Hon. John D'Orazio, announced in June 2005 that Cabinet had approved amending legislation to add a victims' representative to the Parole Board, the Mentally Impaired Defendants Review Board and the Supervised Release Review Board. I also note that the boards will be formally required to take into account submissions from victims of crimes perpetrated by offenders being considered for release. I wish to support these initiatives.

Collection and publication of relevant information

7.285 Currently the Board is required by legislation to report to the Minister annually on:

> (a) the performance of the Board's functions during the previous financial year;
>
> (b) the number of prisoners released on parole by the Board or the Governor during the previous financial year; and
>
> (c) the operation of this Act and relevant parts of the *Sentencing Act 1995* so far as they relate to parole orders (other than CEO parole orders), to RROs and to the activities of CCOs in relation to those orders during the previous financial year (section112).

7.286 The information presented in the Board's annual report is minimal. It is recommended that the Board be required to provide additional information.

7.287 It is recommended that the Parole Board be required to report annually to the Minister on the:

- performance of the Board during the previous financial year;
- number of prisoners eligible for parole;

- number of prisoners released on parole by the Parole Board, the Governor or the Secretary of the Board during the previous financial year;
- number of prisoners granted parole who refused to accept it;
- number of parole orders suspended or cancelled by the Parole Board during the previous financial year, and the reasons for the suspension or cancellation;
- number of parole orders completed;
- number of prisoners who were considered for parole and were refused;
- number of prisoners released on re-entry release orders by the Parole Board during the previous financial year;
- number of re-entry release orders suspended or cancelled during the previous financial year and the reasons for the suspension or cancellation;
- number of prisoners approved by the Board to undertake Pre-Release Programs;
- number of prisoners who breach Re-Release Programs; and
- number of prisoners who complete Pre-Release Programs.

7.288 I note that the Parole Board currently does not have knowledge of whether parole does reduce re-offending. It is important that it have information of this kind. The institution of an ongoing procedure for gathering this information and the maintenance of it will be a substantial undertaking. The Community and Juvenile Justice Division would undertake the data collection and interpretation process.

7.289 The structure of information gathering procedures should be discussed with the Parole Board and with outside consultants to ensure that information gathered is sufficient and the method of gathering and collating it is statistically appropriate.

7.290 At the end of three years from the commencement of these arrangements and every three years thereafter the Community and Juvenile Justice Division should confer formally with the Parole Board to determine what are the results of the Parole System in reducing re-offending; and what further changes (if any) should be made to the Parole System.

7.291 The development of such an ongoing data collection and interpretation mechanism should be in addition to my earlier recommendation to undertake a comprehensive, long-term study into the impact of parole on recidivism generally.

7.292 The Parole Board should publish in its annual report or in a pamphlet publication a statement of:

- the function and operations of the Parole Board;
- the information gathered by it and the Attorney General's Department on re-offending by prisoners released from prison, with or without parole.

Recommendation 41

A Parole Board should be maintained but will require significant improvement to its:

(i) Resources, including separate funding and a secretariat within the Department of the Attorney General to assist with its decision making and functioning;

(ii) Legislation, particularly in relation to its ability to inform the public of its decisions and to extend its membership if considered important for public confidence;

(iii) Handling of victim's issues;

(iv) Accountability, through measuring and reporting on its effectiveness through the use of statistics and performance indicators aimed at assessing the reduction in re-offending; and

(v) Communication with the public to improve understanding of its functions.

In this regard, recommendations 45 to 47 and 53 contained in the Closing Submissions of Counsel Assisting should be adopted.

Pre-Release Procedures for Life and Indeterminate Sentenced Prisoners

7.293 I have referred to the Pre-Release procedures followed in respect of lifers. The Parole Board has no statutory function in this process. Its only function is an unofficial one, to give advice when asked. It has no other involvement. However, as has been indicated, the Minister and the Department properly seek the views of the Parole Board to assist the Minister in deciding whether a lifer should be placed on a Pre-Release Program.

7.294 In relation to the pre-release procedures my conclusions are:

- The procedures should be simplified. I adopt the thrust of the recommendations of Counsel Assisting the Inquiry in this regard, adapted to what I have said in relation to pre-release;
- That the elements that currently constitute a Pre-Release Program should be collected together as part of a formal legislative structure;
- The decision whether a particular lifer should be placed on a Pre-Release Program should be made by the Attorney General;
- At the end of the pre-release period the decision whether the prisoner should be released into the community on parole should continue to be made by the Attorney General;
- The Attorney General should have the statutory right, before making each of such decisions, to consult with and have the formal written advice of the Parole Board as to what that decision should be. He should have the discretion to publicise the advice of the Parole Board if the public interest warrants.

7.295 Pre-release procedures concern a very small number of prisoners. There are approximately 200 lifers in the prison system. Few of these are appropriate for

release into the community under these procedures. Each year there are approximately 10 who are on or considered for pre-release procedures. To those prisoners they are important. Because of the notoriety of some of the prisoners, what is done attracts public attention and, on occasions, public outcry. It is therefore appropriate that the procedures be examined and strengthened.

Simplify Pre-Release Process

7.296 The procedures should be simplified. Ms Angela Rabbitt, Manager Parole Release, who has dealt with pre-release procedures for some time, was firm in her opinion that the procedures are too complicated and (as I infer) that the complications have led to problems in the operation of them. I accept the thrust of the simplification procedures suggested by Counsel Assisting the Inquiry, adapted to the retention of the Parole Board as I have recommended.

7.297 One of the major complicating factors involved in the release of life and indeterminate sentenced prisoners is that there are two Ministers involved. This is because the *Sentence Administration Act* 2005 has been divided between two Ministers: the Attorney General and the Minister for Justice. Those parts of the *Sentence Administration Act* 2005 dealing with parole have been committed to the Attorney General, and the balance to the Minister for Justice. This has the result that while the approvals for participation on a Pre-Release Program are the responsibility of the Minister for Justice, the approval for release, following such a program, is the responsibility of the Attorney General.

7.298 To simplify this process, I recommend that the Attorney General be appointed Minister responsible for both approving both participation on a Pre-Release Program and release on parole. As the Attorney General is the Minister responsible for the ultimate release of such prisoners it is recommended that responsibility for approving the entire Pre-Release process be transferred to his office.

Role of the Minister

7.299 The role of the Minister in initiating pre-release programs is important and requires consideration. It has been suggested that that role should be taken from the Minister and that it should be a statutory authority which decides whether a lifer should commence the procedures towards release. My conclusions are:

- there is no compelling reason for allocating the function to a statutory body rather than to a Minister;
- considerations of principle and public interest support the conclusion that the decision should continue to be with the Minister; and
- experience and practicality support that conclusion.

7.300 A decision whether a lifer should be considered for release is not determined by the application of legal principles or by the simple determination of facts. It depends upon the exercise of a value judgement. That value judgement can be made by a Minister or by a statutory body. My conclusion is that it is best made by a responsible Minister.

7.301 The decision involves two main elements:

- is the lifer suitable for release in the sense that, if released, there is a sufficient likelihood that he will not re-offend ('the re-offending question'); and
- would his release be contrary to the public standards for the treatment of serious criminals, in the sense that the community would conclude that the law had not been vindicated or that there would be a (legitimate) public outcry. ('the public question').

7.302 The re-offending question involves the making of the kind of judgement which is made by the Parole Board in granting Parole to ordinary prisoners. It can be exercised by a statutory body. But any answer to it has a substantial possibility of error. As the case of Mr Edwards showed, it may be wrong, not infrequently it is.

7.303 The public question is different. It involves an assessment by the person making the decision of what is or should be the standard adopted by the community to the treatment (including the release) of a prisoner whose sentence was that he be not released. There is no consideration that compels the conclusion that that decision will best be made by a Minister or by a statutory body. My (firm) judgement is that, as a matter of principle, the standard which should be adopted by the community should be set or articulated by a responsible Minister. His judgement of it will be more likely to be accurate than that of such persons as may, at the time, comprise the statutory body.

7.304 The main reason for preferring a statutory body is that such a body may be more independent and impartial and may appear to the public to be so. A Minister may, perhaps often, be subject to political pressure. It is not wrong that that be so. It will be wrong if the pressure is exerted for a wrong reason, for example, to achieve a purely political end or to improve publication of a newspaper or a program. The inference is that a statutory body would resist such pressure when it was wrong and that a Minister should not be put in a position where he has to do so. That view has some force. But it does not take proper account of present reality. The fact that, in the formal or legal sense, the decision to place Mr Keating on the road to release would have been made by a statutory body (the Parole Board) does not mean that the public outcry would not continue to be directed to the Minister. When a lifer escapes from an open prison, those who complain do not confine their complaint to the statutory body, which made the relevant legal decision. It will extend to the person the Minister whose function it is to ensure that escapes do not happen. As experience shows, that may not infrequently produce a reaction by the Minister that blame should be placed upon the statutory body. The result is apt to be not a concentration upon the Minister alone, but a larger process of blaming. This is understandable. Transferring the decision to a statutory body will not relieve the process of public questioning and blame; it will be apt to extend it.

7.305 In the end, I agree with the conclusion of the Minister for Justice, the Honourable Mr John D'Orazio, that such decisions should be made by a responsible Minister. There is a further reason affecting the practicality of the proposal that another statutory body be set up. To do that would cause damage to the Parole Board and the members of it. The proposal involves that, in order to alter the decision-making procedure affecting a small number of lifers each year, the Parole Board (which has functions wider and, I believe, publicly more significant) should be

abolished to make way for a new body. That body presumably would take over, not merely the unofficial advisory role in relation to pre-release lifers, but also the more significant work done in relation to parole generally. For Government to do that would inevitably be judged to be a condemnation of the Parole Board and those comprising it. That criticism would not be justified. A course which would produce that result should be avoided. Those who accept public office should be open to criticism for what they do wrong. They may properly expect that they will not be put in the position of criticism if they do not. They may legitimately expect that those who may do so will ensure that, no injustice will be done.

Entitlement to Release

7.306 Another significant issue arises in relation pre-release procedure. If the prisoner has complied with the terms of his (statutory) parole, the Minister has a discretion to grant or refuse his release. The issue is: should a prisoner who has successfully completed the procedures have a legal entitlement to release?

7.307 My conclusion is that he should not. The matter should remain in the discretion of the Minister, exercised on the facts and circumstances as they exist at that time. The Minister should not be bound by a decision taken at an earlier time (when the pre-release procedures started) and on the facts and circumstances as they then were known.

7.308 It has been put, correctly, that a lifer who has reformed and who has undergone the pre-release parole procedures will feel disappointed and aggrieved if, in the end, he is not released. It is put further that, if that be the position, he is apt to be less enthusiastic about undertaking reform and reforming procedures and may become difficult to manage within prison. But that involves a misunderstanding of the pre-release procedures. Their purpose is to provide the possibility of release to one who, because of what he was and did, has been sentenced to spend his life in prison. It is publicly desirable, that if he has so far changed, he should have the opportunity of release. Justice so requires. But what the legislature has provided for him is a right of a limited nature: his statutory right is not to be released on fulfilling parole; it is to have a responsible Minister decide whether he should be released.

7.309 Should that be changed? The change would require a statutory alteration. My conclusion is that such a change is not warranted.

7.310 Put simply, the issue is whether the final decision whether a life prisoners should be released into the community should be made when he is first put on the pre-release program or at the later date when he has completed it. *Prima facie*, that decision should be made at the time when all the facts are known.

7.311 There is another reason: the possible change in public standards or attitude between the commencement and the end of the pre-release procedures. That period could be up to five years. What may seem accepted at the beginning may not seem so at the end of the five years. The history of the present century has illustrated that the community attitude to the release of lifers may change. At the end of the last century, public standards have been different. The risk involved in releasing a lifer may have more readily been taken. What has happened during the past five years may have produced a change. At least as important, the escapes of three prisoners in 2001 and the history of the "offending prisoners" has shown the uncertainty of judgements made as to what prisoners will do if released.

The community may well have decided that lifers who would have been judged to be "worth the risk" and released previously should not be accepted as "worth the risk" after the events of 2001 and 2005.

7.312 The considerations favouring an entitlement of release from the earlier decision is essentially that that is fair to the prisoners. That consideration has some force. In fairness and, I believe in justice, a life prisoner should have a possibility of release. But fairness depends upon the view that, by being placed on pre-release, the prisoner has been given the expectation of release at the successful end of it. That expectation, if previously given, should not be given in future. It should be made clear to the prisoner when he seeks placement on a pre release program that his release will be dependent on the judgement made, at the end of the procedures, as to whether it safe and acceptable that he be released into the community.

Recommendation 42

Recommendations 30 to 40 contained in the Closing Submissions of Counsel Assisting should be adopted, subject to:

(i) The Minister continuing to make the decision as to whether a life or indeterminate sentenced prisoner commences a resocialisation program;

(ii) The Minister retaining a discretionary right at the end of the program as to whether the life or indeterminate sentence prisoner should be released; and

(iii) The role of the Parole Board in relation to the release of life or indeterminate sentenced prisoners, and the right of the Minister to involved the Board, should be included in legislation. This also involves the Minister having the discretion to publish any advice from the Board if it is considered in the public interest to do so.

Pre-Release Programs and Minimum Security

7.313 As referred to earlier, it is Departmental policy that a Pre-Release Program is generally only conducted in a minimum security facility to provide the prisoner greater self-determination in a less institutionalised environment and to enable access to authorised absences, such as home leave and work placements.

7.314 I note that the morning following Mr Edwards' escape, 29 March 2005, all prisoners participating in Pre-Release Programs in minimum security prisons were returned to maximum security. The decision to return these 14 prisoners was taken by Mr Keith Flynn, Acting General Manager, Public Prisons, in consultation with the (then) Director General, Alan Piper, as there was concern that other prisoners on Pre-Release Programs may become unsettled and 'make panic decisions' when they heard about the escape of Mr Edwards, who was participating in such a program at the time.

7.315 The reason for the concern that "panic decisions" may be made by these prisoners acknowledges the uncertainty surrounding the release prospects of lifers and indeterminate sentenced prisoners generally, largely because there is no necessary link between the successful completion of a Pre-Release Program and the ultimate release of a prisoner.

7.316 A decision was also made at the time to suspend all recommendations for the inclusion of life or indeterminate-sentenced prisoners in Pre-Release Programs.

This ensured that none of these prisoners were to be transferred to minimum security facilities for the period of the suspension. The reasons cited for the decision were:

- public concern regarding the placement of serious, violent and/or sexual offenders in a low security environment; and
- Departmental concern regarding the impact of recent events on these prisoners, and their uncertain release prospects increasing their risk of escape or involvement in further violent incidents.[55]

7.317 This decision has meant that a number of prisoners have had their Pre-Release Programs suspended, interrupting their progress towards release and potentially affecting their possible release date. During the Inquiry's hearings, two prisoners were release or approved for release on parole and a number were being considered for release. The decision has also affected life and indeterminate sentenced prisoners who were awaiting approval to participate in a Pre-Release Program.

7.318 I understand that the Department of Justice is awaiting the Inquiry's recommendations in relation to this issue before it resolves this issue.

7.319 There are a number of potential solutions to this issue.

- prisoners participating in Pre-Release Programs continue to be accommodated in a minimum security environment;
- a special facility be developed to accommodate prisoners on Pre-Release Programs; or
- such programs could be undertaken in a medium security environment.

7.320 Operational staff and non-government organisations gave substantial support to the option of Pre-Release prisoners continuing to be accommodated in a minimum-security environment. Ms Angela Rabbitt, Manager Parole Release, spoke of the reason for placing such prisoners in minimum security:

> *"What is the significance, if you like, of a minimum security environment to the resocialisation of a life term prisoner? To what extent does - is placement in a minimum security or an open environment necessary to achieve that end?---I think it's essential. I don't think you could have a prerelease program in anything but a minimum security environment. It's one - it gives the prisoner greater freedom on a daily basis within the institution itself in terms of some self-determination, in terms of the experiences that the person has in terms of work placement but, most importantly, in terms of being able to access the excursions to the community that the need to be able to access for resocialisation to occur and that can only happen from a minimum security environment. From a closed prison such as Casuarina, for example, even a medium security prison such as Acacia or Bunbury Regional Prison, for example, it compromises security of the prison to have a prisoner moving in and out from the community back to the prison - for some even unsupervised periods where they are in the custody of a sponsor but it's a community sponsor, so to speak. So you couldn't have a prisoner moving back and forth across a secure prison boundary in that manner. One, it would put the prisoner at risk of being pressured by other prisoners and would compromise the security of the prison itself, but also too, that prisoner would then be returning into*

[55] See document MI00646

a very closed environment so anything that they experience out in the community or learn whilst they are out in the community basically has to be put on hold when they come back into what is a very institutional setting where they are locked up at certain times and they have to stand by their doors and they are regimented and their food is provided to them rather than having to exercise some self-care function that they would be able to do in a more open prison environment.

So there are really two aspects to that, as you describe it; from the point of view of resocialisation there is an element of - to put it in crude terms - a person getting used to living without barbed wire around them?---Yes."[56]

7.321 One possible solution raised was that Pre-Release Programs could be undertaken in a medium security environment. There were a number of issues raised in relation to this proposal in the public hearings.

- Security risk – because prisoners participating in such programs leave the prison for home and work leave purposes, the security of a closed prison would potentially be comprised. For example, it was noted that such prisoners could be pressured into smuggling drugs into the prison. Additional staff and other procedures, such as segregation of Pre-Release prisoners, would have to be implemented to address this issue.
- Resocialisation – prisoners would not receive the resocialisation benefits of being housed in a minimum security environment, such as greater self-determination; and
- Proximity to community support – Ms Angela Rabbitt advised that prisoners undertaking Pre-Release Programs are generally placed at "the optimum point for them to have access to their community supports and their families and where they're eventually going to reside". She noted that it would be impractical to house them all in one point in the metropolitan area, which may be a substantial distance from their community supports, potentially reducing the effectiveness of the resocialisation process.

7.322 I note that it would be ideal for Pre-Release Programs to be undertaken in minimum security prisons, however if this is viewed as creating too much uncertainty, then the possibility of such prisoners undertaking Pre-Release Programs in special facility or medium security prison should be canvassed. It is unadvisable to leave such prisoners in 'limbo', as there is the possibility of them becoming a 'management problem' within the prisons.

Recommendation 43

Government should consider whether pre-release programs for life and indeterminate sentenced prisoners could be run through certain secure prisons for those offenders not yet considered suitable for minimum security placement.

[56] See Hearing Transcript at T699-700

COMMUNITY JUSTICE SYSTEM – THE CHANGES TO BE MADE

7.323 The matters detailed by Counsel in respect of the Mitchell case and others demonstrate that the the CJJ system requires change. In particular, what the Division does requires reconsideration. It is necessary to:

- improve the structure and the functioning of the Division;
- re-direct the work done in administering the community corrections orders, including parole; and
- achieve the result of avoiding and reducing the commissioning of crime.

7.324 The Mitchell case shows that a serious injustice has been done to the officer dealing with the Mitchell case. I agree with Counsel Assisting' submission that there were failures with the Department in the way that Mitchell was managed and they were endemic to the operation of community justice. They resulted from an over-worked, over-stressed and under-trained workforce. None of those were essentially Ms Kovac's fault, the only officer the subject of disciplinary proceedings following the tragic events in August 2003.

7.325 I now outline the main changes I propose for the management of offenders in the community.

LEGISLATIVE STRUCTURE

7.326 The proposed creation of a "Department of Corrections" elsewhere in this report, offers the ideal opportunity to enshrine the goals and principles of the new Department in legislation. This may be implemented, for example, by amalgamating those aspects of the *Sentence Administration Act 2003* which relate to community corrections and the *Prisons Act 1981* to form a 'Corrections Act', such as the New Zealand example. The New Zealand Act sets out the provisions relating to the establishment and operation of prisons and community corrections centres in the one Act, contributing to the notion that prisons and community corrections are part of a single corrections system and facilitating offender throughcare.

Recommendation 44

The principal offices held within Community and Juvenile Justice should be identified and their functions formulated in a Corrections Act, should it be enacted.

POLICY STRUCTURE

7.327 It is vitally important for the officers on the ground to be informed in relation to policy and procedural amendments. In his 2005 report, the Auditor General noted that unclear principles, guidelines and practices resulted in a lack of consistency in the management of offenders. Therefore, I recommend that the Department ensure that all staff within the Community and Juvenile Justice Division be informed of such amendments in a clear and timely manner.

Recommendation 45

The Community and Juvenile Justice Division should inform staff of policy and procedural amendments in a clear and timely manner, ensuring accessibility to all staff. For example, the Division should update the online Community Corrections Manual as soon as changes are made. All instructions and directives to staff to be centrally recorded and available to staff online upon issue.

DIVERSION

7.328 As I have stated elsewhere, the conventional approach, with which I agree, is that offenders should, unless it is inappropriate, be diverted from the corrections system in general and the prison system in particular (that is, dealt with by means other than imprisonment). I have also proposed that ongoing attention be given to the creation of means by which Indigenous persons may be diverted from the prison system and otherwise dealt with in a manner appropriate to Indigenous offenders.

TYPES OF DIVERSION

Primary Diversion: Diversion from the criminal justice system. These services aim to divert people (who may or may not have been charged with an offence) from courts and criminal proceedings.

Secondary Diversion: Diversion from court or conviction. These services are pre-conviction and pre-sentence services and aim to divert offenders from a conviction and/or from court.

Tertiary Diversion: Diversion from custody/detention. Tertiary diversion services are post-conviction, pre-sentence, and post-sentence services that aim to divert offenders from custody/detention.

7.329 Box 1 categorises the different types of mechanisms to divert offenders. I have referred to these types of diversionary mechanisms in my chapter on juvenile justice. It is evident that mechanisms for diversion operate in a more organised and formal manner in juvenile justice, than operates within adult justice.

7.330 I have been informed that there are some mechanisms in place for diversion at the stage of sentencing for adult offenders. The Department has supplied me with the following table outlining the initiatives for diversion that have been proposed by the Department and the initiatives that have subsequently been implemented.

Table – Diversionary initiatives showing target population and type of diversion

Initiative	Target group	Implementation stage	Type of Diversion
Indigenous Restraining Order Applications	Indigenous restraining order applicants and respondents	On hold, Unfunded	Primary Diversion
Conferencing for Adult Offenders	Adult offenders	Is being re-assessed. Currently unfunded	Primary Diversion
Police Cautioning for Adults	Adult offenders	Not proceeding	Primary Diversion

Initiative	Target group	Implementation stage	Type of Diversion
Intellectual Disability Court Diversion Programme	Adults with intellectual disabilities who have been charged with minor, non-violent offences	Pilot program commenced 28 July 2003	Secondary Diversion
Intrafamilial Child Sex Offenders	First time intra-familial sex offenders	Will not proceed	Tertiary Diversion
Court Diversion Service	Offenders who plead guilty to minor offences	On hold, unfunded	Secondary Diversion
Justice Mediation Program	Offenders who plead guilty to minor offences	Implemented on 12 May 2003	Secondary Diversion
Geraldton Alternative Sentencing Regime	Adults and juveniles convicted in the Geraldton Children's Court and Court of Petty Sessions	Implemented on 2 August 2001	Depending on the regime implemented may be secondary or tertiary (very small numbers)
Perth Drug Court	Offenders who plead guilty to a second drug related offence; drug dependent offenders who plead guilty to minor offences	Pilot project commenced 4 December 2000. Project now fully established.	Depending on the regime implemented may be secondary or tertiary (very few tertiary)

7.331 It appears from the information provided that the Department has implemented few diversionary mechanisms. Of notable exception are the establishment of the Perth Drug Court, the Intellectual Disability Court Diversion Program, Justice Mediation Program and the Geraldton Alternative Sentencing Regime.

7.332 I have also been informed that the Council of Australian Governments has funded the Drug and Alcohol Office to provide diversionary services for offenders to address substance misuse issues as a tertiary diversionary mechanism.

7.333 I also understand that the Joondalup Court holds a Family Violence Court operating on a tertiary diversion model.

7.334 Of note,

- There are no primary diversion initiatives for adult offenders;
- There are very few mechanisms for secondary diversion;
- Tertiary diversion mechanisms are limited in the persons to whom the service is available.

7.335 The minimal extent of secondary diversion mechanisms reduces the ability of courts to divert minor or first time offenders from the criminal justice system.

7.336 There is a key opportunity to promote the philosophies of restorative justice through secondary diversion mechanisms.

7.337 I have been informed that a trial of the implementation of the Juvenile Justice Team model (a secondary diversion mechanism) in conjunction with a trial of police cautioning for adult offenders (primary diversion) was proposed, but did not proceed. I propose that this is a worthy objective to pursue and efforts should be renewed in this regard. I recommend the establishment of a trial of the Juvenile Justice Team model, in the first instance for young adults who are minor

or first time offenders. Pending the outcome of this trial, consideration should be given to state-wide expansion of the model.

Recommendation 46

In consultation with the Western Australian Police Service, the Department should establish a trial of the Juvenile Justice Team role in conferencing for first time and minor young adult offenders.

7.338 I also wish to make some comments with regard to the operation of tertiary (post conviction) diversion mechanisms. The establishment of the Drug Court and the Joondalup Family Violence Court are commendable activities.

7.339 I understand that the Geraldton Court and other courts, particularly in regional Western Australia, have independently established mechanisms for court conferencing for adult offenders. Magistrates from these courts have informed the inquiry that they are eager to extend the volume of court conferencing they currently undertake. I understand that one of the key factors limiting the extent to which this can occur is the availability of Community Corrections Officers to support the case conferencing element of the program.

7.340 Also of note here is that culturally specific pre-sentence diversion programs for Indigenous offenders appear to have been successful in other jurisdictions and are not available in Western Australia.

7.341 I understand that the Attorney General has requested the Law Reform Commission of Western Australia to inquire whether the principles, practices and procedures pertaining to problem-oriented courts and judicial case management require reform, and in particular, and without detracting from the generality of this reference:

- the extent to which, and the circumstances in which persons are referred to problem-oriented courts and judicial case management;
- the extent to which problem-oriented courts and judicial case management fit within the traditional court model; and
- any related matter

7.342 The Commission has been requested to report on the adequacy and any desirable changes to the existing law, practices and administration in relation to these issues.

7.343 As such, I will not make specific recommendations with regard to the establishment and support of particular tertiary diversion initiatives. The judiciary has not pressed this as a major problem. However, I do propose that the Department should formally recognise the importance of diversion as a key offender management strategy. I further propose that, following the report of the Law Reform Commission, the Department assess ways in it can enhance the extent to which offenders, particularly those who have committed minor offences and first time offenders, are diverted from the justice system or diverted from custodial sentences. I would envisage that an important aspect of this support would be through the allocation of Community Corrections Officers to support the case conferencing process.

ROLE OF CCOS

7.344 Submissions I have received from CCOs lament the fact that they now primarily undertake monitoring and reporting rather than proactively assisting offenders to address their offending behaviour. There was a strong sense that CCOs used to do this in the past but that increasing reporting and compliance monitoring obligations and caseloads have restricted the extent to which this can occur. Comments included:

> *"…we spent 50% of our time in face-to-face contact with offenders. Only 10% of our time was spend on procedural or administrative matters. I now work in a department where we….spend less than 10% of our time in face to face contact with offenders. We spend up to 50% of our time on administrative and procedural matters…the Department values my professional judgement so much I spend 50% of my working life sitting at a computer carrying out duties that can at best be described as clerical.*[57]
>
> *"CCOs have been required to absorb all requests made to us for reports and reviews regardless of demand, but it is unreasonable to assume that we can carry out all these tasks with the resources currently given to us".*[58]
>
> *"Has there been a change in the work that is done by community corrections officers in terms of the balance between what I might describe as process issues and accountability issues and the direct engagement with the people that you are supervising*?

The answer received from William Greble was:

> *---Yes, it has moved heavily in the direction of the processes that need to be carried out for accountability purposes. That interferes with the amount of time, energy and commitment that field officers are able to give to the case management which in my view is one of the two core duties in my job as well as the provision of advice to sentencing and releasing authorities."*[59]

7.345 A significant amount of time within the Division is occupied in writing reports for courts and releasing authorities. Courts require reports to assist in deciding what orders or sentences are to be passed. These reports are required ordinarily by particular dates and therefore to an extent take precedence over the other work of the officers concerned.

7.346 Ideally a CCO having personal contact with a parolee will be best suited to making a report in respect of a parolee breach (by the Parole Board) or other sentence (by Courts on re-offending). Were the time of parole officers unlimited, they could both prepare reports and counsel their quota of offenders. Unfortunately their time is not unlimited. What they spend on writing reports cannot be spent on case managing parolees. And report writing requires skills quite different from the skills required in counselling.

7.347 A degree of separation of report writing from case management is desirable. It has, as I understand the observations made by officers of the Division, been

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[57] Submission from anonymous CCO, MI01012
[58] Submission of W Greble, MI00821
[59] Evidence of W Greble at T1807

thought of and I assume considered. The two functions might be separated in certain circumstances to enable CCOs to concentrate upon their counselling and monitoring duties.

7.348 This could occur for example through the specialisation of CCOs, whereby field officers could be formally divided into an entry-level position and a Senior Field Officer position. The Senior Field Officer could have a caseload with a greater degree or complexity or alternatively, perform a specialist function within a CJS branch, such as report writing, or acting as a supervisor for particular kinds of offenders for example sex offenders). I note that the nature of the specialisation may vary between branches, depending upon the 'catchment' area of the branch. Something should be done. What is to be done must be determined by those who have the administration of the Division. But a determination should be made.

7.349 Such specialisation would also assist the need to develop "on the job" experience and to create greater career development prospects for CCOs, which in turn may improve morale. The promotion of CCOs to the position of Senior Field Officer should be a merit-based selection, based on established criteria of skills and experience.

7.350 Counsel Assisting the Inquiry has made some recommendations in this regard. Recommendations 87 to 90 are:

> *Recommendation 87: The entry level position, which would be equivalent to the existing generic CCO position would be a position that is allocated caseloads and reports of a lesser degree of complexity, in accordance with the judgement of the Senior CCO of Senior Casework Supervisor.*
>
> *Recommendation 88: The position of Senior Field Officer, should perform one of two roles - 1: Fulfil the role of case officer for caseloads and reports of a lesser degree of complexity, in accordance with the judgement of the Senior CCO of Senior Casework Supervisor, or 2: Perform a specialist function within a CJS Branch, such as report writing, or acting a supervisor for particular kinds of offender (e.g. sex offenders etc.).*
>
> *Recommendation 89: The promotion of CCOs to the position of Senior Field Officer should be a merit based selection, based on established criteria of skills and experience.*
>
> *Recommendation 90: Sufficient additional funding should be provided to enable backfill to be provided for all CJS Branches for officers on training. The need to provide backfill for training purposes should form part of the workload model referred to above and an input into the projected need of the community justice service as a whole in establishing annual contract numbers. There should be no restriction on the capacity for Supervisors to claim backfill*

7.351 I therefore make a recommendation in this regard.

Recommendation 47

The Department should investigate the potential specialisation of the role of community corrections officer. In particular, the creation of an entry-level position and a senior field officer position should be considered. In this regard Recommendations 87 to 90 contained in the Closing Submissions of Counsel Assisting should be considered.

7.352 There is a need to emphasise the case management function of CCOs, including counselling. I note that CCOs have an almost conflicting role, on the one hand engaging offenders to assist them to change their behaviour, and on the other ensuring offenders comply with the conditions of their court order. The Australian Institute of Criminology contends that the recent trend emphasising the 'surveillance' function CCOs should be balanced with their 'social worker' function,

> *"Community Corrections Officers have tended to occupy dual roles of 'enforcer' and 'social worker'. The recent trend in USA has been towards emphasis of the surveillance function at the cost of the support… yet in order to help offenders manage their behaviour, workers should be 'agents of change', where both support and surveillance are directed at increasing reintegrative success".*[60]

7.353 Both aspects of what the Division does, in supervision and in counselling, are valuable. It is valuable for a field officer, for example, to monitor the urine samples provided by a potential drug abuser and, as no doubt it sometimes does, to harass him to observe the conditions. But counselling can potentially be even more important. The Mitchell case suggests that little can be done by the Division in this regard. The details of what his community corrections officer, Ms Eva Kovak, could and did do, suggest that as the Division is presently operating, counselling can form only a small part of what is done.

7.354 The Auditor General identified the following issues in relation to case management generally:

- the lack of a common understanding among CCOs of the priorities they were expected to follow;
- a lack of consistency in the management of offenders, resulting from the unclear principles, guidelines and practices;
- the delegation to CCOs of decisions about whether to breach offenders in the absence of clear principles and guidelines;
- the lack of supervision over how CCOs managed the offenders assigned to them (Attorney General (2005), p 5).
- I understand that, to some extent at least, these functions are performed by CCOs in Western Australia. However the extent to which they can be performed is severely constricted.

7.355 I wish to advocate 'activist supervision', where the field officer acts a central point of contact to coordinate an offender's access to a variety of support services,

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[60] Boraycki, M (2005) *Interventions for prisoners returning to the Community*, Australian Institute of Criminology, Canberra, p 22

monitors and reports on progress and directly provides services, such as counselling. This is also referred to as 'traditional case management'.

7.356 The following sets out what have been seen by some as the ideal stages in a case management model:

STAGES IN A CASE MANAGEMENT MODEL[61]

- **Intake:** involving orientation, discussion of sanctions, etc., and also involving crisis intervention where required.
- **Assessment:** to provide an understanding of the types of interventions required, so involving history taking or interviews and evaluation.
- **Classification:** to guide placement in institutions and services.
- **Referral:** to those services, dependent on offender risk and needs.
- **Intervention:** matching available resources and services to identified needs, but viewing the offender as responsible for program compliance and for changing their offending behaviour.
- **Monitoring:** used in conjunction with graduated sanctions. The need for monitoring and sanctions should ideally decrease over time as the offender assumes increased responsibility.
- **Evaluation:** to assess if prescribed services have been delivered and were effective.
- **Advocacy:** including testimony, arranging legal services, mediation of difficult life situations (eg. access to children) or finding solutions to other larger issues (eg. developing inter-agency connections).

Adapted from Murphy Healey (1999; after Enos & Southern 1996)

7.357 My final comment in relation to case management concerns the need for the articulation of a consistent philosophical approach to case management in prisons and the community, to promote continuity of case management for prisoners or 'throughcare'. I have discussed this issue earlier in my report in relation to 're-socialisation'.

CCO IN-REACH INTO PRISONS

7.358 The process of consideration of parolees is central to the parole system. As I have said elsewhere the parole system involves the consideration of factors including the likelihood of the prisoner re-offending and the degree of risk to the community presented by eligible prisoners.[62] Parolees are granted release by various authorities, including the Parole Board, and the Division gives the necessary assistance. As I shall suggest, the Division should be involved in the consideration process earlier and more intimately.

7.359 The Division should undertake a further development of the parole system. I have outlined my proposals in relation to this earlier in my report in relation to re-socialisation. The parole system is not an end in itself; it is a means to an end. The main end is the reduction of re-offending. If the Parole System is to be improved, releasing authorities need to be better informed in regard to the risks presented to the community by potential parolees.

7.360 CCOs are currently limited in the depth of advice they can provide to releasing authorities regarding prisoners eligible for parole. In compiling a report for the

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[61] *Ibid*, p 24
[62] Section 16, *Sentence Administration Act 2003 (WA)*

Parole Board, a CCO will, on most occasions, meet with the prisoner on only one occasion and ascertain the suitability of proposed accommodation. An A-CAMM risk/needs assessment is no longer required to be completed prior to release and does not generally form part of advice to the Parole Board (although the Inquiry understands that the practice of administering the A-CAMM for prisoners prior to their release is increasing).

7.361 The Division should be involved in the consideration of the risk presented by potential parolees earlier to ensure they have a more in-depth understanding. Arrangements should be made with the Prisons Division during the period of 6 - 12 months before eligibility for parole to enable CCOs to visit prisoners a regular basis.

7.362 CCOs are limited in the extent to which they can work with prisoners whilst they are in prison in planning for their release and development of release plans. Earlier in-reach will assist CCOs to identify and address the factors that have precipitated offending in the past. In relation to offenders serving prison sentences, this is best addressed throughout the term of the person's sentence – whilst in prison and whilst in the community.

7.363 The earlier in-reach of CCOs into prisons will also benefit the 'throughcare' of prisoners. Currently, case management of prisoners in Western Australia occurs through two disparate and separate case management processes – case management in prisons and case management in the community.

7.364 A more integrated case management system would provide for comprehensive case management for the offender through their entire contact with the justice system, from first contact with the correction system, through the sentence period, to reintegration with family and community after the prison term has ended, with the ultimate aim of avoiding re-offending. It would enable better planning to meet offenders' criminogenic needs and assist in resocialisation of prisoners safely into the community.

7.365 Case-managed throughcare can take a variety of forms including:

- outreach, or prison staff contacting the community for appropriate services;
- inreach, where community correctional staff commence work with offenders pre-release, and
- non correctional providers delivering case management.

7.366 In Western Australia, the justice system has combined some elements of all three of these forms of case managed throughcare:

- prison staff are responsible for some planning for release of prisoners, eg home leave;
- 5 prison-based CCOs operate in metropolitan prisons to assist in the release of high need/high risk offenders;
- community corrections officers prepare a report for the Parole Board which outlines a post release plan for those prisoners eligible for parole; and

- the Department funds NGOs through the Community Re-entry Coordination Service to provide a re-entry case coordination service for some prisoners.

7.367 However, the current system does not maximise gains that can be made from this important transition point:

- Prison-based and community-based case management systems operate separately and are not well integrated;
- Community corrections officers are limited in their ability to work with prisoners in planning for their release and providing well-informed reports to the Parole Board. They are thus not well-informed of the risk prisoners pose to the community or of the factors that will assist in their re-integration into the community (see above);
- Non-Government case coordination and services are limited; and
- Access to other government services is often limited.

7.368 It is important that the two main case management process, those that occur in prison and those that occur in the community are complimentary and build upon one another. That is, they operate on a model of throughcare.

7.369 In relation to the role of CCOs in case-managed throughcare, two models have been considered:

- Expansion of current prison-based community corrections officers; and
- Expanded community-based CCO in-reach into prisons.

7.370 The first of these models has been pursued in WA through the creation of 5 prison based CCOs in the metropolitan prisons.

- This model has also been pursued in Queensland, where the Department of Corrections where Assessment Unit Officers prepare all pre-release reports fro the Community Corrections Boards.
- This model also operates in NSW, where Parole Units have been established at prisons. Each Parole Unit is seen as a separate Community Corrections centre, and CCOs do all pre-release assessments and pre-release reports. Cases are allocated to CCOs approximately 15 months prior to parole eligibility date. The parole Board reviews offenders 3 months prior to their eligibility date to allow time for further review without holding the inmate past his/her eligibility date. CCOs are more actively involved with prisoners than in Queensland, doing some case management and actively seeking accommodation on their behalf. The Parole Units are staffed by CCOs with 3 or more years experience in the field. They are transferred into the positions for a 2-year period.

7.371 The main criticism of this model has been that it decreases consistency of case management across prisons and the community, by adding an additional layer of case management in the middle rather than melding the two systems.

7.372 The United Kingdom has promoted consistency between case management in prisons and the community through the establishment of Offender Manager positions, who provide end-to-end supervision of offenders (whilst in custody and whilst supervised in the community). The Offender Managers ensure offenders

meet the conditions of their sentence and receive the help they need to reduce re-offending. This ensures offenders are managed in a consistent, constructive and coherent way during their entire sentence. At every stage an offender manager has responsibility for planning the offender's supervision, whether they are in custody or in the community and for the interventions and services they receive, ensuring there is no breakdown and that none of the advances by an individual are lost. Decisions on breach and the provision of any review information to courts will be the responsibility of the offender manager.

7.373 I recommend that a CCO in-reach model be adopted in WA. Under this model, CCOs would visit potential parolees in prison during the six to twelve months prior to their release and engage them in developing appropriate release plans including access to relevant community-based programs and services. CCOs would undertake and assessment of offenders risks and needs prior to release. It would also assist in ensuring the best possible support regarding linking offenders with key re-entry services provided through the non-government sector under the Community Re-entry Coordination Service.

7.374 The introduction of such a model will require a re-think on the current role of prison-based CCO's.

7.375 Coordination between CCO and Non Government Organisation (NGO) re-entry service planning will also require consideration. Issues around maintaining the voluntary nature of non-government service provision and information sharing between government and non-government case planning will require investigation. Consideration ought to be given to mechanisms for integration of corrections case management with case planning conducted by non government organisations through the Community Re-entry Coordination Service (such as NGO participation in prison-based case conferencing).

Recommendation 48

The Department should develop an 'in-reach' program where CCOs visit prisoners who are eligible, or may become eligible, for parole prior to their release (perhaps 6-12 months) to conduct a thorough risk assessment and engage them in release plans, including access to relevant community-based programs and services.

HUMAN RESOURCE ISSUES

7.376 Counsel Assisting the Inquiry has made a number of valuable recommendations as to how the operations of the Division should be changed (Paragraph 853). These recommendations will provide a valuable basis for consideration by which the necessary changes are to be made. They involve detailed proposals concerning, *inter alia*, the unsatisfactory processes for recruitment and appointment of community corrections and juvenile justice officers[63], the training of such officers[64] and their excessive workloads[65]. I do not disagree with these recommendations, however I have not made recommendations at such a detailed

[63] See Annexure 5, para 838
[64] *Ibid*, para 679
[65] *Ibid*, para 830

level. This is an area in which the practical means for change are uncertain; there are alternatives. Therefore, I have provided only general directions to the Department.

RECRUITMENT & APPOINTMENT

7.377 It is necessary to adopt a different method of employment of field officers. The current recruitment and appointment issues are:

- the excessive use of contract staff;
- the problem of staff 'acting' in higher duties positions; and
- the operation of the 'pool' recruitment process.

7.378 These issues create very high turnover of inexperienced staff fulfilling the position of CCO. This has an adverse impact on the continuity of supervision of offenders being managed in the community and makes it difficult to train staff adequately and retain good staff.

7.379 The high rate of contracts has been the subject of comment by the Auditor General on a number of occasions. In a report entitled *Implementing and Managing Community Based Sentences*, in May 2001, the Auditor General concluded:

- "While the Ministry has sound policies and guidelines in relation to human resources practices, many of them have been ignored in the management of Community-Based Services staff, resulting in a largely inexperienced and transient workforce moving from office to office on short-term contracts.
- Approximately 52 per cent of Community Corrections Officers in the metropolitan area and 17 per cent in the non-metropolitan areas are on short-term contracts of four months or less.
- Almost half of Community Corrections Officers holding substantive positions were acting in higher-level positions throughout the Ministry.
- The impact of these practices on the delivery of community based sentences has been
  - differing standards of and inconsistencies in case difficulty in retaining good staff.
  - continually destabilising the effectiveness of some offices;
  - ad hoc and inconsistent basis staff training because of high staff turnover; and
  - difficultly in retaining good staff."[66]

7.380 Four years later, in a follow up report, dated May 2005, the Auditor General reported:

> *"Permanent and non-permanent CCOs – The reliance on non-permanent CCOs has risen, increasing the risks of less skilled case*

[66] Office of the Auditor General of Western Australia (2001) *Implementing and Managing Community Based Sentences,* Office of the Auditor General, Perth, p 7.

management and lower rates of successful completion of sentences. In February 2005, there were 120 allocated CCO positions of which 69 were held by acting, contract and casual staff. Of the 109 substantive CCOs employed by DoJ, only 53 were working as CCOs at the branches, the remainder acting in other positions."

7.381 As observed by the Auditor General, one of the causes of the significant number of contract CCOs is the fact that officers employed in substantive positions are often acting in other higher duties positions.

7.382 The presence of acting positions in the Community and Juvenile Justice Division, and in the Department generally, is endemic. Because of the lack of career development opportunities within the field environment, officers often seek more senior positions elsewhere within the Department. I also note that as positions become vacant in the top level of the organisation, staff in lower levels move up the ranks to fill these positions, causing a cascading acting structure.

7.383 These acting and contract problems have been exacerbated by the 'pool' recruitment process. The Department identifies and approves a certain 'pool' of applicants as appropriate for permanent employment as CCOs and JJOs. This process does not necessarily result in employment, either as a permanent CCO or as a contract worker. All it does is "deem the person suitable to be offered employment some time in the future".[67] In practice it takes a long period of time to identify suitable pool candidates, by which time the persons who applied for the positions have found employment elsewhere.. This has the result that on most occasions the pool 'dries up' almost immediately. The Department then resorts to compiling a 'contract' or 'back-up' pool, where candidates are asked to submit an expression of interest. Applicants are not interviewed and often have no experience. They are appointed temporarily with no long-term job security. Once this 'backup pool' has dried up, branches has been forced to approach university students to sign contracts. This often means that those initially 'merit-selected' are not employed, and people who have not been 'merit-selected' end up being employed.

7.384 One of the other factors contributing to the need to employ contract workers, is the fact that officers are 'tied' to a substantive position within an office or branch. Therefore if an officer is acting elsewhere, that position can only be filled by a contract worker for the duration of the substantive CCO's "acting" appointment or seconding another substantive CCO to act in that position.

7.385 I have outlined what the Inquiry has been informed is the basis of what is intended to happen. I suspect that, though as outlined it has not work in practice, officers succeed in making it work, at least to an extent. But that should not continue.

7.386 I recommend the replacement of the pool process with a system which annually employs CCOs on a permanent basis, to perform the functions of CCOs in a broader 'catchment' area rather than appointing a single officer to a specific position, as advocated by Counsel Assisting, is one possible solution. In any case it is imperative that the Department develop a new system of recruitment and appointment to reduce the number of contract staff, to improve continuity in the

[67] Evidence of S.Holland, T1739

management of offenders and ensure that the staff employed are the most appropriate for the position.

Recommendation 49

The Department should review its system of recruitment and appointment of CCOs and JJOs to reduce the number of contract staff and improve continuity in the management of offenders within the community. In this regard, recommendations 82 and 86 contained in the Closing Submissions of Counsel Assisting should be considered.

TRAINING

7.387 It is necessary to provide proper training for field officers. The field officers in contact with offenders serving community orders are, in the main, the most inexperienced officers - officers who have had little or no training for the important function of influencing the conduct of the offenders under their care. The fact that so many operational staff are on short-term contracts, and are needed to meet pressing business requirements, has the result that training is not comprehensively provided to all CCOs or JJOs. Unlike prison officers, it is not a requirement for a CCO or JJO that they must be trained before commencing in an operational role.

7.388 There appears to be little emphasis on skills for counselling offenders, an important aspect of work with offenders serving sentences in the community. Monitoring conditions of community corrections orders can help, particularly where it involves an element of encouragement or even harassment. But in the end the system aims to influence the behaviour of offenders by encouraging them to adopt law-abiding lifestyles. That involves the establishment of a sufficient relationship between the prisoner and the CCO and the capacity to influence him/her. These things required are not merely skill and patience but a particular kind of personality. That must be developed and requires a degree of experience.

7.389 In the Community Justice Services Division, those who are in contact with offenders and are able to influence them should be seen as the functioning (and so the important) part of the section. The remainder of the CJJ Division should be seen as essentially servicing and supporting the functioning part. That means that sufficiently trained and experienced officers should be the CCOs in contact with the parolees. Those officers should be specially trained, both on initial appointment and by updating in training and other proper educational procedures. The recruitment of that staff should be (if possible) from University or equivalent levels.

7.390 I acknowledge that the Department has attempted to address this problem. However the principle difficulties appear to be the inability to release staff to training caused by three issues: the unpredictability of the staff needs caused by high turnover, the absence of backfill for CJJ branches when staff are on training and the reluctance to 'invest' in persons who may well be temporary only.

7.391 It is noted that whilst the Department has significantly improved the amount of training available to staff, the inability to release staff to attend training hampers these efforts.

7.392 When one has regard to the statutory powers vested in a CCO, including the power to issue directions to an offender on a community corrections order and the power, in certain circumstances, to employ force, it is unacceptable that a person should be placed in the operational field without sufficient, or even basic, training. That a CCO may not, because of their training, know what statutory powers they in fact have as a result of their position, is a matter of potential danger, and real embarrassment, for the Department.

7.393 I propose that it should be a requirement that new CCOs and JJOs have completed core operational training *before* assuming operation duties.

Recommendation 50

It should be a requirement that all new CCOs and JJOs have completed core operational training before assuming operational duties.

WORKLOAD

7.394 The issue of workloads of community correction staff was one that was explored in depth during the public hearings of the Inquiry. It was a key factor considered in analysing the circumstances surrounding the management of the offender Mitchell.

7.395 A number of witnesses gave evidence attesting to the high workload pressures experienced by Community Corrections Officers and JJOs in general across the state. It is not an isolated or temporary problem. High and stressful workloads inevitably impact on the quality of the case management that Community Corrections Officer can provide for offenders.

7.396 Mr Greble, for instance, remarked,

> *"I and the other Community Corrections Officers [CCOs] at Perth Community Justice Services [CJS] are in serious need of better resources to enable us to cope with our workload problems. I emphasise that I do not have a time management problem. I am well organised, I am skilled at prioritising my work and I am supportive of other CCOs as they are of me, but the sheer volume of the work that CCOs are required to complete has resulted in very stressful work conditions, widespread demoralisation and serious limitations to the ability of CCOs in general to provide optimum service to the community or the offenders that we supervise."*

7.397 The upper management of the Department acknowledges the workload pressures on staff within community justice centres.

7.398 The Inquiry heard that there is no formal benchmark in relation to the workload of a CCO or JJO. An 'informal' benchmark of approximately 35 adult cases for CCOs and 20 juvenile cases for JJOs was cited by Mr Papandreou, Director South in evidence. However, the statistics show a far higher level of caseloads. Statistics provided by the Department revealed that CCOs are managing caseloads of between 25 and 92 offenders.[68]

[68] Department of Justice, *2004/05 Adult and Juvenile Caseloads by Branch* MI00976.

7.399 I note that caseloads in some areas are often significantly higher, this is particularly so in the regional areas. For example, during 2004/05 CCO caseloads were highest in the following offices:

- Meekatharra – 92 offenders per CCO
- Busselton – 82 offenders per CCO
- Carnarvon – 63 offenders per CCO[69]

7.400 This is curious given the additional efforts that are required to supervise offenders in regional and remote areas.

7.401 I note that the Department is currently undertaking an exercise to determine an appropriate 'benchmark' workloads for community corrections officers. I have been informed that this is being undertaken for the purposes of re-allocating existing resources and proposing to government increases in resources, rather than specifically to identify an appropriate maximum workload for individual community corrections officers.

7.402 While it may be accepted that the issue is a complex one, and that to simply focus on "caseloads" may be a "poor way of looking at … the equation" (T2027), that is no reason for avoiding it. The appropriate determination of a "benchmark" for the workload of a CCO and JJO is a first step towards addressing the workload pressures of the CCOs and JJOs and providing for a more equitable distribution of resources. It should occur as a matter of priority. As part of the "benchmarking" of workload for CCOs and JJOs should be the finalisation of a work-load model to better allocate resources to branches.

7.403 Such benchmarking should account for matters particular to regional areas, such as time spent travelling to service outlying clients and availability of local services. Such benchmarking should also take into account the levels of risk and need of particular offenders.

7.404 The application of such a benchmark will not occur without significant additional resources in community corrections. It will also not occur whilst the issues of recruitment and retention of staff remain unaddressed.

Recommendation 51

The Department should, as a matter of priority, determine and apply an appropriate "benchmark" for the workload of a CCO and JJO. In this regard, recommendations 80 and 91 contained in the Closing Submissions of Counsel Assisting should be considered.

INTERAGENCY CASE MANAGEMENT

7.405 I have referred earlier to the need for a number of relevant government agencies to collaborate at a high level to assist in the reintegration of offenders into the community, particularly those who have multiple risks and or needs and require input from a range of specialist services.. The following comments relate to the need for such integration at a case management level.

[69] *Ibid*

7.406 It is widely recognised that the adequate provision of throughcare requires corrections agencies, other government agencies and non-government organisations to work together, at an overarching policy level, but also at the level of providing services to individuals. The Australian Institute of Criminology notes that there are significant obstacles to the formation of effective interagency partnerships including:

- "no single agency accepting responsibility for offenders, allowing prisoners and ex-prisoners to fall into service gaps;
- coordinating the different agendas, practices and jargon or participating agencies;
- the duplication of resources; and
- poor system design, leading to poor implementation, poor communication between parties, and ultimately, to poor compliance by clients."[70]

7.407 One solution advocated by the Australian Institute for Criminology is the establishment of interagency case management teams. Such teams exist in the United Kingdom and other Australian states including South Australia.

7.408 The submission to the Inquiry from CJS[71] advises that the Department is exploring the introduction of a Multi-Agency Public Protection or a Community Safety Panel. The concept would involve regular meetings of agencies concerned with the management of registered sex offenders, violent offenders and other offenders who present the highest level of risk to the community.

7.409 CJS propose that these meetings would deal with:

- offenders who present a high or very high risk of causing serious harm and who present risks that can only be managed by a plan which requires close co-operation at a senior level due to the complexity of the case and/or because the unusual demands it creates; or
- if not high risk, the case is exceptional because of the likelihood of media interest and/or public scrutiny.

7.410 Such meetings would enable information sharing between the relevant agencies to ensure the best possible assessment of risk can be made in respect of these offenders. An agreed risk management plan would then be developed for each offender based on his or her risk assessment. Information shared at this panel would be confidential to the agencies represented and only used as agreed for the protection of the public. It is proposed that CJS be the lead agency. Senior officers from the key agencies would attend.

7.411 I note that interagency case management is currently utilised in other areas of government service provision. For example, the 'Strong Families' program, expanded in response to the *Gordon Inquiry into the Response by Government Agencies into Complaints of Family Violence and Child Abuse in Aboriginal Communities* involves interagency case coordination for families with complex needs. Whilst the Department for Community Development is responsible for

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[70] Boraycki, M (2005) *Interventions for prisoners returning to the Community*, Australian Institute of Criminology, Canberra, p 68

[71] Submission from Community Justice Services, 2 August 2005.

overall implementation of the program, the program is conducted as an interagency initiative in which key agencies take responsibility on a case-by-case basis. A monitoring group of senior representatives from the main participating agencies oversees statewide implementation. Local regional managers' forums provide leadership and support for the coordinators and are responsible for the implementation of Strong Families locally. A partnership agreement was established between the service delivery partners that sets out responsibilities for government agencies directly involved in service delivery . It also sets out the roles of other interested parties including more distantly-related government agencies and relevant non-government organisations. The agreement defines the roles and responsibilities of the various parties and facilitates information sharing to enable effective case management.

7.412 This program could be a potential model for the post-release management of offenders with complex needs.[72]

7.413 The United Kingdom established a system of Multi-Agency Public Protection Panels (MAPPPs) in 2001, which provide for interagency cooperation in assessing and managing violent and sex offenders released from prison in England and Wales. The *Criminal Justice and Court Services Act 2000* requires the Police and Prison and Probation Services acting jointly as the "Responsible Authority" in 42 areas throughout England and Wales to:

- establish arrangements for assessing and managing the risks posed by sexual and violent offenders;
- review and monitor the arrangements; and
- prepare and publish an annual report on their operations (section 67).

7.414 Police and Prison and Probation Services undertake this role in collaboration with local health, housing, education and social services agencies that have a statutory "duty to cooperate" (section 325). Recent legislative amendments enable the Home Secretary to appoint two "lay advisers" to each panel.

7.415 The Home Secretary has issued "Guidance on Multi-Agency Public Protection Arrangements" which outline to the responsible authorities how their MAPPA duties should be discharged, however the exact structure and decision-making processes of the MAPPPs are left to the discretion of the local area.

7.416 MAPPPs have a central role of risk assessment in deciding which people pose the highest risks, panels generally use actuarial risk assessment instruments as a starting point. However, professional judgement appears to remain an essential ingredient in all risk assessments. Once identified, a risk management plan is established for each high-risk offender. Such a plan may require the offender to abide by certain conditions for example:

- a requirement to live at a specific address and obey a curfew (electronically monitored);
- a prohibition to visit certain locations or contact certain individuals; and
- restrictions on the type of employment.

[72] Submission from the Department for Community Development MI01110

7.417 The plan may also involve the following types of actions:

- informing the victim;
- rehousing the offender;
- visiting the person;
- prompt follow-up in the event of failed visits to the probation officer; and
- setting treatment requirements.

7.418 Many MAPPPs have dedicated extensive efforts to establish information-sharing protocols between participating agencies. Most MAPPPs have established two entities to implement the law; a policy-making management body and an operations body. MAPPPs must pay particular attention to victim issues.

Recommendation 52

The Department should investigate mechanisms to manage high-risk and high need offenders more intensively in collaboration with other relevant agencies. This may include development of an interagency case management mechanism, supported by a formal multi-agency agreement.

VICTIMS

7.419 A submission I received advised that support to victims is also provided through the Counselling and Support Branch of the Court Services Division.[73] It was noted that the Department of Justice's victims policy is implemented inconsistently within the Department and no additional funding has been provided for its implementation. The former employee submits that victim services should not be provided by CJJ, as it is an 'offender division'. He contends that the needs of victims of crime will "always be subsumed under an offender mentality while located in an offender directorate". The writer submits that the Victim Mediation Unit and Justice Mediation programs currently located in CJJ, should be relocated to the Court Services Division. The submission reads:

> *"The culture of the DoJ is overwhelmingly offender focused and it is difficult to have victims issues profiled. This has changed in recent years but there is still considerable scope for improvement. In the desire to rehabilitate offenders in a humanitarian way, the victim perspective and rights are often subsumed or watered down. Victims of crime are also entitled to ethical and humanitarian considerations along with offenders."*

7.420 Attention to the needs of victims must be maintained. Courts and Community Justice both play pivotal roles in programs for victims. This includes provision for victim participation in justice processes such as diversion.

7.421 I propose that the Department of the Attorney General should be responsible for overall coordination of services available to victims of crime.

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[73] Anonymous submission, MI01097

Recommendation 53

The proposed Department of the Attorney General investigate mechanisms available to support victims of crime and ensure coordination of victims' issues across the criminal justice system.

PROGRAMS

7.422 I have made comments and recommendations in relation to programs for offenders in the community elsewhere, see 'Courses for Prisoners'.

INDIGENOUS ISSUES

7.423 Indigenous people are overrepresented in the community corrections system, although the rates of overrepresentation are not as high as those within prisons.

7.424 In part, this is due to the fact that Indigenous people are more likely to receive a custodial sentence. In 2003, for all offence types (except property offences) Indigenous people were more likely than non-indigenous people to receive custodial sentences.

7.425 Of important note, Indigenous people are less likely to be granted parole than non-Indigenous prisoners (51% versus 62%). Indigenous people are less successful in completing community-based orders. The Department's report *Managing Growth in Prison Populations* provided to the Inquiry states that Indigenous people in Western Australia have higher breach rates for community orders than non-Indigenous people (46% compared with 34%) and that the more intensive the supervision of the community order the more likely people will be breached (breach rates are 62% for more intensive orders compared with 43% for less intensive). The report states that Indigenous people are twice as likely to be imprisoned as an outcome of a breach of a court order and are twice as likely to breach Early Release Orders (40% vs 23%). In addition, the completion of community work hours indicates that Indigenous people are less likely to complete hours than non-Indigenous people.

7.426 The lack of success in completing community-based orders feeds into increased in the population of Indigenous people in prison. It may also have other consequences, such as continued re-offending (the most likely victims of whom are their communities), and increased pressure on police, hospital and court resources.

7.427 The statistics indicate a systemic problem in the system's ability to respond to the high rate of failure in completion of community corrections orders. The current community corrections system simply does not work for Indigenous offenders. In order to ensure that the core objective of managing offenders in the community is to be achieved (namely reduction in recidivism) the system needs to start working better for Indigenous people. The Department has an imperative to amend the system to ensure that it does work for Indigenous offenders. A dysfunctional community supervision process may even contribute to the likelihood of re-offending.

7.428 The reasons for lack of success are varied and complex and I have explored these to some extent on my chapter on Indigenous people.

7.429 The current system has elements reflecting both philosophies I have outlined above– incapacity and rehabilitation. However, in many regions of Western Australia, mechanisms designed under either of these philosophies are not operating well enough to be successful in achieving their ultimate objective of reducing re-offending. As a consequence, insufficient commitment to the implementation of either or both philosophies has not resulted in any reductions in re-offending and may, in fact, contribute to higher re-offending rates.

7.430 The system is limited in the extent to which it can 'incapacitate' Indigenous offenders – particularly those from regional and remote areas. As I have stated above, there are limits to which incapacitation can, in any case, achieve changes in offending behaviour. For example, whilst a community corrections officer in Meekatharra has a caseload of 94 offenders and responsibilities for managing offenders many hours drive away he/she will clearly not be able to achieve the most fundamental of incapacitation objectives – regular supervision. This situation is unlikely to effect any changes in an offender's behaviour, particularly when the situation in which the offending behaviour occurred initially has not been changed in any way.

7.431 The system is extremely limited in the extent to which it applies rehabilitative mechanisms that impact on offending behaviour of Indigenous people. I have referred elsewhere to the lack of Indigenous specific programs and services. See Indigenous chapter.

7.432 A further consideration is that community corrections orders may have harsher impacts on people from social and economic disadvantaged backgrounds, a characteristic of the majority of Indigenous offenders. This has a direct bearing on their ability to complete orders successfully. For example, a reporting requirement of three times a week for a single mother with no car and four children creates a greater hardship than for a single person with resources.

7.433 As raised earlier, there are substantial problems with the operation of community corrections for all offenders. Apart from the necessary cultural considerations these broader problems also contribute to the low rates of success of community corrections for Indigenous offenders. This arises particularly in regional areas, where resources in community corrections are fewer and other related services are scarce or non-existent.

7.434 There is a clear set of principles that have been identified to guide the provision of services for Indigenous communities, as described in my chapter on Indigenous offenders. The services delivered by community justice do not meet these principles so it is not surprising that, in the main, they are not effective.

7.435 Solutions are available. Solutions should revolve around the provision of culturally appropriate services and partnerships with families and communities. The scope for community involvement is extensive. For example, the Aboriginal Reference Group developing the Kimberley Custodial Plan has conducted wide-ranging consultation with communities throughout the Kimberly and this process has identified more than twenty local Indigenous communities and organisations throughout the Kimberley 'ready willing and able to commence negotiations with the Department of Justice' to deliver services for offenders. Elsewhere I have discussed the matter of payments to communities and recommended that the Department should enter into commercial and non-commercial agreements with Indigenous communities for the provision of correctional-type services. There is

every reason to believe that this community willingness is replicated throughout Western Australia and similar processes to that undertaken by the Aboriginal Reference Group should be undertaken in all other regions.

7.436 The Department has made some moves towards meeting these principles. The Department has developed the *Community and Juvenile Justice Division Aboriginal Justice Plan 2004*. While the aspirations, objectives and strategies seem to be extremely relevant, it is unclear how or when these will be achieved. Also, as part of its response to the Gordon Inquiry, the Department has been expanding the number of its Community Supervision Agreements in regional and remote communities.

7.437 As stated elsewhere, I have recommended mechanisms to strengthen this program.

7.438 Recommendations I have made with regard increasing support to non-government organisations programs and services are relevant here; see my chapter entitled, The Management of Indigenous Offenders.

7.439 Consultation with Community Justice staff elicited the following comments from community corrections staff specifically related to the community management of Indigenous offenders:

- lack of access to Indigenous cultural advice for community corrections officers in regards to managing Indigenous offenders;
- underutilisation and undervaluing of the cultural skills of Indigenous Community Corrections Officers (often Indigenous staff perform generic roles and their specialist skills are not drawn upon);
- lack of emphasis on recruitment of Indigenous staff; and
- lack of support for Indigenous staff employed by the Department.

7.440 I have made recommendations elsewhere concerning training and recruitment of community corrections officers. It is important to note that Indigenous people form a large proportion of community corrections clientele. This necessitates an ability of all community corrections staff to have an understanding of cultural issues. It also points to the necessity for local cultural knowledge. It would appear that the Department recognises the need for cross-cultural training for all of its staff, as I have discussed elsewhere. I trust that Departmental staff will seek to develop these skills in recognition that communication with Indigenous offenders forms a core part of their work.

7.441 My recommendations on the employment of Indigenous staff I have made elsewhere are also essential in increasing effectiveness of community corrections for Indigenous offenders (see Indigenous chapter). I have noted that there are only sixteen Indigenous Community Corrections Officers/Juvenile Justice Officers in WA.

7.442 Indigenous employees are an important resource for the Department. Their roles in direct management of offenders and in the provision of cultural advice to other staff should be promoted and supported. This may occur through a greater specialisation of work of Indigenous employees in community corrections.

STAFF SAFETY

7.443 A number of concerns were raised with the Inquiry in relation to the safety of community corrections and juvenile justice officers.

7.444 The following safety issues were raised in relation to CJS:

- safety of officers undertaking home visits;
- issues in relation to branch safety – for example, security guards stationed at CJS office branches are unable to use force where there is an incident;
- safety of clients in waiting rooms (particularly juvenile offenders); and
- the lack of protective behaviour training for staff.

7.445 CJS policy directs that officers are to undertake home visits in pairs. For a number of reasons, including lack of resources, workload issues and personal preference, CCOs do attend the homes of offenders under supervision by themselves.

7.446 In relation to CJS branch security, there are safety issues in relation to particular offices, for example, emergency exists and the separation from staff offices from interview rooms are sometimes a problem. The Department advised that a number of offices are being upgraded, however, timelines were unclear.

7.447 I note that there is no coordinated approach to occupational safety and health in CJS.

7.448 It has been established within common law that an employer has a duty to take reasonable care to protect an employee from the random and unpredictable criminal behaviour of third parties.[74] There is also a statutory duty under the *Occupational Safety and Health Act 1984*. Pursuant to section 9, an employer has a duty to "maintain a working environment in which the employees…are not exposed to hazards". In maintaining such an environment the employer must provide safe workplaces and systems of work, provide such training, information or supervision to employees as is necessary and consult with safety and health representatives.

7.449 There is no clear answer as to which position in the Department is responsible for staff safety. Whilst the Director General, as employer, has ultimate legal responsibility for safety, it is not clear who holds operational responsibility. It appears that the Executive Directors of the various business units are responsible.

7.450 Occupational Health and Safety (OH&S) consultant for prisons, submits that there is not a recognised accountable manager for occupational safety and health within the Department. This means that OH&S implementation has no driving force. Very few managerial JDFs include measurable OH&S outcomes compared to generalities, indicating that it is not a significant concern as it is not being monitored. The consultant recommends that JDFs of managerial positions include measurable OH&S outcomes.

7.451 The Department has general occupational safety and health policies and procedures on the Intranet site JustNet which apply to all employees. The various

[74] *Modbury Triangle Shopping Centre Pty Limited v Anzil* (2000) 205 CLR 254.

Divisions then have different policies and different operational procedures for example. prisons and CJS branches have differing policies depending on their location, business, needs etc.

7.452 In response to a number of recent incidents concerning staff safety within the prisons system, the Department has established a *Safety and Security Strategy* in response to a number of high profile incidents in the prisons system. The Department reports that the strategy will be resourced to ensure an immediate impact is made on improving safety and security within prisons. However it is aimed at developing more long-term solutions to reduce the likelihood of future incidents. The will comprise of the following core projects: intelligence, safety, prison facilities, prisoner classification and placement, computer security. This strategy does not apply to CJS.

7.453 Following the development of the *Safety and Security Strategy*, a Request for Tender was released to engage a consultant to review and implement an improved occupational health and safety management system for the Prisons Division. The consultant, Shawmac, commenced work on the review on 15 August 2005 and is expected to complete the review by the end of December 2005. The contract is valued at $75,000. The consultant is undertaking an occupational health and safety audit of safety processes and systems that are operating within all Western Australian Prisons, including the identification of key safety risks at each prison and work camp. The consultant will develop and lead a plan to implement a new occupational health and safety management system in prison at both the strategic and operational level. The review does not extent to the operation of CJJ.

7.454 The issues submitted to the Inquiry in relation to the safety of CJS staff raise serious concerns. I therefore recommend that the Department undertake similar measures to that which has been undertaken in the Prison Division in relation to staff safety within CJS and any other divisions that deal directly with offenders. I also recommend that the *Safety and Security Strategy* be broadened to include CJJ.

Recommendation 54

The Department should undertake an immediate review of staff safety within the Community and Juvenile Justice Division and broaden the *Safety and Security Strategy* to include other Directorates within the Department that deal directly with offenders and, in particular, Community and Juvenile Justice.

REGIONAL ISSUES

7.455 The following issues have emerged in relation to community justice services provided in the regions,

- lack of community justice services in remote areas;
- lack of coordination amongst correctional services in regional areas;
- recruitment and retention of staff;
- lack of coordination and support for specific initiatives; and
- availability of programs and community work.

7.456 In his report to the Inquiry, the Inspector of Custodial Services has identified a need for additional community justice services in remote regional areas. The Inspector's consultations found that gaps in community justice services in regions contributed to imprisonment patterns. The Inspector cites the example of Wyndham where there is no CJS branch, no work secured for offenders subject to community-based orders to undertake and no one to supervise offenders. He notes that this lack of services forces courts to impose fines, which are often go unpaid and are subsequently converted to prison sentences, or imprisoning offenders.[75] The Inspector notes that a similar situation exists in Derby and other remote areas.

7.457 The Inspector notes that this observation is supported by the long-established trend that Indigenous people are less over-represented in community corrections than in custodial settings. For example, as of 18 August 2005, 1,660 of the 5,550 distinct adults serving some kind of community order in Western Australia were Indigenous – only 30 per cent as opposed to the 40 per cent non-Indigenous prison population. While it is understood that the explanation for this is substantially attributable to decisions made by sentencers, it seems self-evident that the lack of community justice personnel and services in some predominantly Indigenous areas such as Wyndham must exacerbate this inequitable situation.

7.458 The Inspector also refers to the need for corrections planning at a regional level. He recommends that prisons in a regional area become the "administrative and strategic hub" for a range of custodial and correctional services available in that area.

7.459 I agree that the correction services in the regions must be integrated to effect 'throughcare' of offenders. I also agree that greater capacity for planning at a regional level is beneficial. It would, however, be essential to ensure that custodial services do not dominate. The recommendation I have make with regard to the establishment and role of Indigenous Justice Advisory Groups proposes the mechanism by which this should occur.

7.460 I have referred above to the issue of caseloads of community corrections officers in regional areas. Availability of quality correctional services in regional areas is essential if reduction in recidivism is to be effected. The recommendation I have made with regard to the establishment of a workload benchmark will go some way to achieving this. There is, however, the question of resources beyond those of direct supervision staff.

Recommendation 55

Government should consider the equalisation of community justice service provision in regional areas compared to metropolitan areas. The Department should assess various options for ensuring this in consultation with local communities.

7.461 The difficulty of recruiting and retaining staff in regional areas was raised with the Inquiry during its visits. This issue is exacerbated by the use of 'pool recruitment' for community corrections officers. For example, when a position in

[75] Office of the Inspector of Custodial Services (2005) *Directed Review of the Management of Offenders in Custody in Western Australia,* p 95

a regional CJS branch is offered to persons within the 'pool', it is common that no one accepts the position. Staff can be recruited locally, however this cannot occur until all persons in the pool have secured positions. The Auditor General identified the following ongoing issue in his follow-up report,

> *"There are persistent problems in filling vacancies in less-favoured regional branches.*
>
> *Persons in the CCO pools often reject non-metropolitan job offers. There are no special rewards, such as salary supplements or assured transfers to Perth, to make regional positions more attractive."*[76]

7.462 The Inquiry was advised that the Department of Justice does not offer incentives to attract staff to regional areas as used by other agencies.

Recommendation 56

The Department should investigate strategies to recruit and retain suitable community justice service staff in regional areas. This should include consideration of the need to increase the number of section 50D positions.

7.463 The submission from CJS reported that in recent years CJS has received significant funding for the establishment of a number of new initiatives and the expansion of current programs eg, Gordon Inquiry positions, Community Re-entry Program, Juvenile Justice Strategy, Justice Mediation Services and Specialist Court Services.[77] This funding has been provided to improve service delivery in regional and remote areas and consequently a significant increase in the number of staff has occurred. It was noted that more service demands and increases in staff are anticipated as further stages of these initiatives are rolled out over the next 5 years.

7.464 The submission advised that staff employed as part of these specialist initiatives are supervised by the existing CJS Regional Branch Managers. This has placed a considerable burden on the managers. This comment was supported by feedback received from regional branches. The Department recommends the addition of specialist Level 6 supervisors in the 4 northern CJS regions to assist managers and provide specialist staff with the level of professional supervision they require. The Department advises that the initiative has been submitted for budget consideration but has not yet been approved. Additional comments from staff within regional branches included that there is no consistent approach to the implementation of these new, regional initiatives and that each region interprets requirements differently. For example, a need for centralised training and support for these specialist officers was identified, as there is currently no consistency across regional areas in the training and role of these specialists.

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[76] Office of the Auditor General (2005) *Follow-up Performance Evaluation: Implementing and Managing Community Based Sentences,* Office of the Auditor General, Perth, p 10.
[77] Submission from Community Justice Services, 2 August 2005.

A NEW JUSTICE SYSTEM

7.465 In the past the law was reactive. It provided instruments to deal with crime after it was committed. A modern State is, or is becoming, proactive. It sees its functions to include the prevention of crime. Crime is now important to the extent that, with due respect to privacy and to human rights, it is recognised that pro-action is necessary. Following the 2001 State General Election, the Premier of Western Australia set up a body, the Office of Crime Prevention, to advise generally upon the prevention of crime.

7.466 The need for such action is referred to in the Report of the Inspector of Custodial Services. Counsel Assisting the Inquiry has, in his final submissions, referred to the need for whole of government policy in relation to the criminal and civil justice system. The need for coordination of crime prevention is also outlined in the publication "Preventing Crime" the State Community Safety and Crime Prevention Strategy published by the Government of Western Australia.

7.467 The time has come to commence a movement towards an overall system for dealing with the prevention of crime in the community as well as managing offenders following on from crime (I shall use the term "a Justice System"). Clause 4 of the Terms of Reference invites me "to develop a plan which will include implemental strategies to: improve the quality of offender management, both in custody and in the community …".

7.468 The delivery of justice services does not involve merely the conviction and imprisonment or management in the community of those who offend. An effective Justice System will involve three things:

- That persons be induced not to offend;
- That (if crime occurs) it will be dealt with; and
- That re-offending will be avoided.

7.469 is time to deal with the first of these.

7.470 If the extent of crime is to be reduced, an overall Justice System is required.

7.471 All are against crime. But that is not sufficient. It is necessary to decide what to do. This has been recognised by the current Government by the establishment of the Office of Crime Prevention and its development of a comprehensive crime prevention strategy.

7.472 There are no procedures that, as a paradigm, will prevent all crime. To see something as the cause of all crime and to attack it will not be effective. Another approach is necessary.

7.473 In its stated "goals", the crime prevention strategy has highlighted areas that require focussing on:

- To make the community (its families and its services) so strong that people will not have the need or the occasion to commit crime (Goal 1); and
- To target certain types of (potential) crime and reduce their instances (Goal 3).

7.474 The first is a longer term approach, which has already received attention. As a present and practical measure, the second should now be pursued.

7.475 To do this effectively, Government should attain the capability, either through existing mechanisms or through the establishment of a strategic "Justice System" policy function developed in the Department of the Attorney General, to enable the following steps to be taken:

- Areas of potential crime or high risk potential offender groups which can be dealt with as a manageable project should be identified;
- The procedures by which they can be dealt with should be formulated; and
- Methods should be chosen by which those procedures can be effectively enforced.

7.476 There are examples where that approach has been successful in this State. In a sense, its achievements in dealing with aspects of Juvenile Crime and the targeting of burglary offences are some of these.

7.477 The area of crime or potential offender groups chosen must be both identifiable and manageable. There are such areas. One is violent physical assaults by males. They are committed predominantly by males of a particular age range following substance abuse (alcohol and some drugs) and in particular places such as pubs and nightclubs. Other examples may be "good order" offences committed by Aboriginals and certain domestic violence crimes.

7.478 It is essential that the "Justice System" body then identify strategies and procedures to be adopted to deal with the targeted area. This will involve not merely general knowledge of the area of crime but identification of those agencies that will need to be involved in what is to be done and consultation with them.

7.479 The third and important step is enforcement. The procedures identified must be put into effect. (The crime prevention strategy emphasises the need for "actions to achieve" the stated goals). Unless effective procedures for implementation are achieved, efforts will fail.

7.480 There are two features of this:

- the procedures evolved will need to rely on what is available to be done by existing Government authorities. Such agencies may be:
- the proposed Department of the Attorney General;
- the Department of Corrections;
- the Department of Indigenous Affairs;
- the Department of Community Development;
- the WA Police Service; and
- others such as central policy making functions like the Office of Crime Prevention and the Social Policy Unit.

It will be necessary to ensure that what is to be done by those agencies is done effectively and without delay.

7.481 Understandably, each of these authorities will have its own limitation (what resources of persons and money should be devoted to particular projects) and its own priorities. It is a practical necessity that, when the area of crime is identified

and the means for dealing with it are formulated, the "Justice System" function have the means of ensuring that what is to be done is done. However, it would be to ignore reality to assume that no administrative difficulties will be faced.

7.482 The discussions with Mr Michael Thorn, the Director of the Office of Crime Prevention, and members of his staff during the Inquiry (18 August 2005) he indicated the willingness of the Office to undertake a role of this kind. However, it is a matter for Government to decide the most appropriate Minister to have carriage of the "Justice System" coordination and the administrative mechanism to achieve this result. The agency or mechanism which has charge of the proposal must have the administrative authority to ensure that other agencies (those whose services are to be used in doing what is to be done) will do what is required of it and in due time.

7.483 Such authority could not be sufficiently given by simple legislative power or administrative direction that what this body directs to be done is done. It is not cynical to say that the application of Cabinet and Ministerial authority may be necessary. Therefore, if the "Justice System" body determines that a particular project of this kind is of sufficient importance to be put into action, it should seek and obtain the approval of Cabinet and the responsible Minister, be it the Premier, Attorney General, Minister for Community Safety or Minister for Justice. Mechanisms such as Cabinet sub-committees or sub groups of the Strategic Management Council may be appropriate in this regard.

7.484 I make a recommendation in that form provisionally. I am conscious that those having knowledge of administrative techniques may conclude that there are better procedures for the purpose.

Recommendation 57

Government establish a specific body with a strategic policy function in relation to the criminal justice system, which will be granted the authority and the duty to;

1. **Review the areas of the community in which crime occurs to identify the types of crime or potential groups of offenders in respect of which action should be taken to reduce the rate of offences;**
2. **Identify the means by which this reduction in crime can be achieved; and**
3. **Ensure that Departments and other Governmental instrumentalities take appropriate action as it shall propose to achieve that objective.**

By direction of Government, the instrumentalities report to this established body at designated intervals as to:

1. **The action taken; and**
2. **The results achieved by the action.**

The body should report to the responsible Minister or Cabinet periodically on:

1. **The action taken in respect of its strategies during the year;**
2. **The results that are apparent as having been achieved;**
3. **The further action necessary to be taken; and**
4. **Such further authority as it requires to achieve its objectives.**

7.485 This recommendation should be seen as the commencement of a process for reducing the incidence of crime generally.

7.486 The "Justice System" body should also have the capability to conduct research into aspects of the criminal justice system and collate statistics relevant to the delivery of justice services. This will enable those involved in the "justice system" and Government to measure how the strategies developed and current trends are affecting crime in Western Australia. The Office of Crime Prevention has indicated that Government plans to increase its crime statistics capability, however no substantial action has been taken to date.

Recommendation 58

The "Justice System" policy function should also have the capability to conduct research into aspects of the criminal justice system and collate statistics relevant to the delivery of justice services. This will enable those involved "Justice System" and Government to measure how the strategies are developed and current trends are affect crime in Western Australia.

CHAPTER 8 THE DEPARTMENT OF JUSTICE

8.1 Paragraphs 2 and 3 of the Terms of Reference require me:

> "(2) To examine and report on the organisational structure, role and performance of those areas of the Department responsible for the management and placement of offenders in custody and the release of those offenders, being the Prisons Division, the Community and Juvenile Justice Division and Corporate Services Division.
>
> (3) To review and report on the effectiveness of the Department's performance, policies and procedures, including any Director General's Rules, policy directives and operational instructions."

8.2 These terms do not envisage that I measure the performance of the Department of Justice against an identified model and award to it (as it were) marks out of ten. They envisage that the Inquiry will consider what the Department has done, learn from it what are its strengths and weaknesses and decide whether what has happened indicates that there should be change.

8.3 My main recommendations will include the following:

- The structure of the Department of Justice should be changed. The mega-department structure should be dismantled and two Departments (the Department of the Attorney General and the Department of Corrections) should be set up.
- The internal structure of the Prisons Division should be changed to reallocate administrative functions and powers to Superintendent level.
- The Parole processes should be improved by strengthening the functions of the Parole Board and the counselling functions carried out by the Community Justice Division.
- The Community and Juvenile Justice Division should be altered to improve the recruitment function and processes of training of its Community Corrections Officers.

8.4 I shall examine:

- The performance of the Department of Justice.
- The main features of the structure of the Department.
- The alterations that should be made.

THE PERFORMANCE OF THE DEPARTMENT

8.5 The function of the Inquiry is to "examine and report on" the performance of the Department. It is not to criticise what has been done or those who did it. What is said is not criticism and should not be seen as such. The Inquiry is concerned to find what happened during an earlier period and to suggest what, at this later time, should now be done differently. What may have been right at an earlier time may not be right now.

8.6 To report on the performance of the Department, it is necessary to have regard to two things:

- the decisions then made; and
- why they were made.

8.7 The decisions made at the end of the last century were made in response to the problems which then existed. What could be done to accommodate those problems was limited by the parameters of the possible. The state of the Department and the corrections system as it then was, the resources available to make changes and the margins of choice imposed by the constraints of Government and other circumstances. These things have been considered but, of course, it is not possible to pursue them in detail.

8.8 A number of persons were involved in what was done by the Department. Some are no longer officers of the Department, some are. No judgement is made of the decisions made by those officers at the time. The Inquiry is concerned only with what happened while they were there.

8.9 Mr Alan Piper was Director General of the Department between 14 February 1998 and 29 July 2005. He left office for reasons which are not connected with the subject of this Inquiry. It was said that he structured the Department in a particular way. No judgement is made about the substance of the comments that were made. The Inquiry has drawn conclusions from what have been the results of the Department. What is said in the report must be understood in this way.

8.10 In some respects, the performance of the Department has been good:

- In 1998, there were significant internal difficulties in the Department. There were tensions, the nature of which were referred to by Mr Piper and by other officers during the Inquiry. For whatever reason the leadership of the Department had for some time not been stable. There had been changes at the senior level. These difficulties were removed or at least contained.
- During that period, the management of Corrections was changed. New systems of prisoner classification and placement and of case management were adopted and brought into operation. The new systems were not implemented in a satisfactory manner but they replaced the systems, which previously had been in operation. Detailed provision was made by the Director General's Rules. The systems were not universally operated in accordance with the Rules but have been followed to an extent in one form or another.
- A new prison, Acacia Prison, was brought into operation. Six hundred medium risk prisoners were identified and transferred to the new prison. The responsibility for the conduct of the prison was passed to a private operator.
- There have not been any substantial disturbances or disruptions in any Western Australian prisons since the riot in Casuarina Prison on 25 December 1998.
- The Department has attracted and/or maintained a significant number of skilled and highly motivated officers. The level of dedication and ability among officers appearing before the Inquiry has been impressive.

8.11 In other respects, the performance of the Department of Justice has been less than it could have been and less than ideal:

- The decision-making of the Department has been concentrated excessively at Head Office level.
- The functions and powers which should properly have been exercised by the Executive Director of Prisons and by the Superintendents of Prisons have been exercised by other officers. The Executive Director of Prisons and the Superintendents have in important respects been "bypassed".
- Staff morale in a number of prisons was not what would be expected in the circumstances. This was said by some to have been the result of the style of administration adopted in the Department. Whether complaints of the kind were justified has not been determined and no finding of fault is made in relation to the matters. But the Inquiry observed that staff morale was not good.
- The corrections system has not been administered on a regional basis but focussed on metropolitan prisons to a large extent.
- The prison system has not to an appropriate extent recognised or dealt with the needs of the four *Aboriginal Prisons* as described by the Inspector of Custodial Services, nor the needs of Indigenous offenders generally, in particular women and juveniles.
- The functions of the Community and Juvenile Justice Division in assisting parolees have not been properly resourced, developed or maintained.
- Necessary training facilities have not been provided.
- The procedures prescribed for prisoner classification and placement and case management have not been properly implemented to the extent needed.
- The fact that in several prisons the procedures prescribed by the Director General's Rules were not followed was not rectified.
- The general standard of performance observed within the Department in relation to matters such as prisoner classification and other matters has been lower than it should have been.
- Overall there have been deficiencies in the performance of the Department that require change.

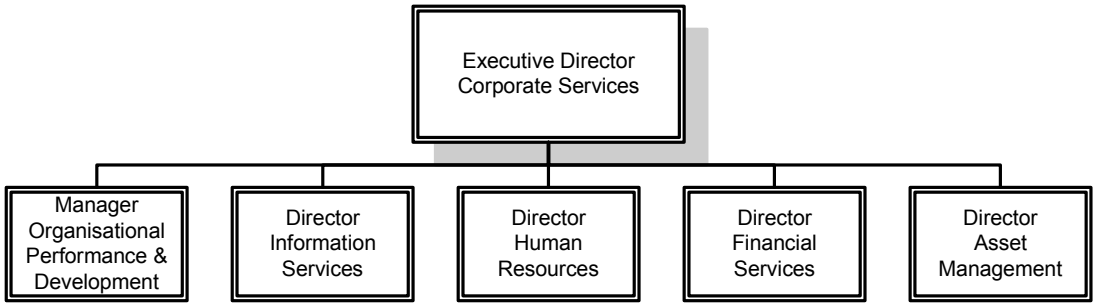
8.12 In considering the performance of the Department, I have addressed many of the important issues of the prison system and the community and juvenile justice system at length elsewhere in my Report and I do not propose to revisit those issues here.

8.13 However, there are some aspects of the performance of the Department's corporate services that I am to deal with insofar as they impact upon relevant aspects of offender management.

PERFORMANCE OF CORPORATE SERVICES

8.14 The Corporate Services Division of the Department is responsible for five functional areas as illustrated below.

Corporate Services Division 1998 - 2005



8.15 I am advised that at 1 July 2004 there were almost 260 staff in the Corporate Services Division, both permanent and temporary. The largest proportion of staff (125) was allocated to the Human Resources Directorate. The Information Services Directorate employed approximately 60 staff (this does not include contractors), the Financial Management Directorate employed approximately 50 staff and the other directorates (as well as the office of the Executive Director) each employed less than 10 staff.[1]

IMPACT OF FUNCTIONAL REVIEW IMPLEMENTATION

8.16 Given the Government's policy to move to a shared corporate services delivery model, I have determined not to pursue some aspects of the performance of the Department of Justice's Corporate Services Division. For example, those aspects of performance relating to transactional functions such as payroll, leave processing, bill payment and some recruitment processes will be taken over by a specialist Shared Services Centre and will no longer be the responsibility of the Department of Justice. When this occurs, between 100 and 140 staff in the Corporate Services Division are likely to be lost to the Department in the Human Resources and Financial Services areas. I understand that October 2006 is the current estimated time for transition to Shared Services.

8.17 The Department has commissioned Madison Red Pty Ltd to undertake a review of corporate support structure as it might exist following the implementation of the Shared Services model. The key driver for the review was to meet the efficiency targets set by Government and these savings, according to the report, are in the order of $3.6 million.[2] The savings are expected to be derived from economies of scale involving the collocation of staff from throughout the Department "so that like and related functions are grouped to create synergies and linkages across the

[1] Executive Performance Agreement for Executive Director, Corporate Services Division, 1 July 2004 to 30 June 2005. p.1

[2] *Review of the Corporate Support Structure of the Department of Justice Following the Transfer of Transactional Services to the Shared Services Centre (SSC),* Madison Red Pty Ltd, 25 July 2005. p.8

operational and strategic areas".[3] However, the savings were calculated across the entire Department and may not be realised if the Department is split to form a Department of Corrections and a Department of the Attorney General. The reason for the loss of these savings may be that economies of scale would be lost.[4]

8.18 In any event, the change to a shared corporate services delivery model will require a change for the Corporate Services Division to a more strategic role. This in turn will create an opportunity for significant organisational change. I regard it to be important that the nature and timing of that change be considered in the context of the organisational and structural change I am recommending.

PERFORMANCE ISSUES

8.19 My review is limited to the performance of the Corporate Services Division in those areas where significant performance issues arise in relation to the management of offenders. Those areas are the Human Resources Directorate and the Information Services Directorate. Accordingly, I do not propose to review other areas of the Corporate Services Division.

8.20 I do however propose to examine the Department's performance management and monitoring within this section of the report. While this function is not presently carried out by the Corporate Services Division, it is a Department-wide issue and it is appropriate to discuss it in this context.

HUMAN RESOURCE MANAGEMENT

8.21 During the course of this Inquiry criticisms were made by officers and others of the Human Resources Directorate including delays in recruitment of staff, poor employment practices (such as extended periods of month to month contract work) and the handling of industrial disputes. The lack of access and commitment to training for prison officers, community corrections officers and juvenile justice officers has also been raised as an issue with the Inquiry as has the need for more professional development for middle and senior management in the Department.

8.22 Some of these issues were raised during the Inquiry's public hearings and others have been raised in interviews with Department of Justice staff. Much of this has been described in the submission of Counsel Assisting the Inquiry. It is not proposed to repeat those details in this report.

8.23 The Madison Red report also confirms some of the submissions to the Inquiry in relation to Human Resources matters. Madison Red consultants concluded that Human Resources was one of the areas of the Department that was "deemed to provide an unsatisfactory level of service".[5]

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[3] *Ibid.* p.27

[4] One option to mitigate this loss of scale in a divided Department would be to have corporate support services provided by one agency on behalf of the other. This option could be explored by an implementation team.

[5] *Review of the Corporate Support Structure of the Department of Justice Following the Transfer of Transactional Services to the Shared Services Centre (SSC),* Madison Red Pty Ltd, 25 July 2005. p.22

Strategic Recommendations of the Inspector of Custodial Services

8.24 The Inspector of Custodial Services has also referred to Human Resources issues. These are the focus of two chapters of his Directed Review dealing with Prison Workforce Planning and Management (Chapter 7) and Training and Development (Chapter 8). These chapters provide a comprehensive coverage of issues relevant to the management of offenders in custody. Many of the 71 recommendations in these chapters are highly specific and are at a level of detail on which I should not comment. However, there is a range of strategic recommendations that are relevant to the broader management of offenders. These are to develop the following:

- **Workforce Plan** – To plan for workforce needs based on forecast prisoner populations;
- **Attraction and Retention Strategy** – To improve attraction and retention of a quality workforce by making the Department of Justice an 'Employer of Choice';
- **Aboriginal Employment Strategy** – To attract, recruit and improve retention of Aboriginal employees and to improve capacity of non-Aboriginal staff to work effectively with Aboriginals;
- **Women's Employment Strategy** – To improve recruitment and retention rates for women;
- **Age Management Strategy** – To target new younger members of the workforce, under represented groups in the workforce and retention strategies to usefully employ older (over 55) members of the workforce;
- **Succession Plan** – To identify key jobs and have strategies in place to ensure that they are not vulnerable to absence and turnover (particularly in view of the aging workforce);
- **Occupational Health and Safety (OHS) Framework** – To create a healthy and safe work environment by improving incident and hazard reporting, OHS committee arrangements and communications.
- **Correctional Training and Professional Development Academy** – To help develop good work practices by improving the standard of training for all corrections workers, encouraging 'life long learning', developing a corporate culture across Departmental Divisions and promoting professional development.
- **Operational Standards** – To provide standards for good practice, accountability and staff development.
- **Performance Management System** – To improve management of sub-standard performance (as distinct from management of disciplinary issues), performance feedback and the preparation of training and development plans.

8.25 The last two of these initiatives – development of Operational Standards and a Performance Management System - are closely linked and will be discussed below. Suffice to say, if I am to recommend that there be greater devolution of responsibility to Superintendents and Managers in the Department, I must also recommend that action be taken to develop the mechanisms by which these

positions will be held accountable for their performance. This involves the development of standards for good practice, accountability and staff development as well as the systems for managing performance against those standards.

8.26 The strategic initiatives proposed by the Inspector of Custodial Services have been identified in relation to the management of prisons and detention centres. However, they are equally relevant to the rest of the Department in addressing many of the Human Resource problems about which the Inquiry has heard. The first seven initiatives are representative of the strategic focus that should be the brief of the Human Resources Directorate following the move to the shared services model. Specific strategies have been proposed by me in relation to Aboriginal and female employees and correctional training in other parts of this report. In the present context I will make recommendations in respect of other strategic human resources issues.

Recommendation 59

That the following strategies be developed and implemented on a Department-wide basis:

- **Workforce Plan;**
- **Succession Plan;**
- **Occupational Health and Safety (OHS) Framework;**
- **Operational Standards; and**
- **Performance Management System.**

The Department should have regard to the recommendations of the Inspector in relation to these initiatives.

8.27 Progressing the strategic Human Resource initiatives requires adequate resourcing. I have been advised that under the Shared Services' staffing formula only 16.5 Full Time Equivalent staff will remain in the Human Resources Directorate of the Department of Justice. Furthermore, I have been told that the Department has no recurrent funding for ongoing strategic or policy functions in the Directorate. The Human Resources Directorate budget is said to be almost totally consumed in meeting day to day needs rather than undertaking forward planning. Similarly, there is limited capacity in other areas of the Department to undertake strategic Human Resources work. Accordingly, the adequacy of funding to meet the strategic Human Resources needs of the Department should be reviewed.

Recommendation 60

Government should provide adequate resources to ensure that the Department has the capacity to plan for future workforce needs.

Critical Issues

8.28 I consider it necessary to highlight five of the critical Human Resource issues that have a serious impact on the management of offenders. These are:

- 12 hour shifts;
- retention and attraction of senior personnel;
- ageing workforce;
- regional recruitment; and
- stress-related health issues.

12-Hour Shifts

8.29 Most Prison Officers work 12-hour shifts. That usually results in them being present in the workplace for 10 days out of 21 or about 150 days per year when holidays and other leave entitlements are taken into account. I have been advised that this limits continuity of prisoner case management and limits workplace flexibility. Provision of training is one of the areas negatively impacted by the 12-hour shift. This results in expensive overtime allowances being paid to train prison officers. The Inspector's report also cites research on patterns of deteriorating performance and increased aggression resulting from 12-hour shifts with more than 40 hours work per week. It concludes that on the basis of addressing issues of workforce health, safety and stress, the Department of Justice should negotiate a way out of 12-hour shifts.

8.30 The Inquiry has heard independently that 12-hour shifts failed to deliver a promised continuity of service in prisons and that a return to 8-hour shifts would be beneficial.

8.31 The 12-hour shift is jealously guarded by the Prison Officers' Union and I understand that the Union has warned that any changes "will inevitably lead to a very painful and protracted industrial dispute".[6]

8.32 The Inspector has made three recommendations in relation to 12-hour shifts which I consider provide a way forward through this contentious issue. The recommendations are in summary:

- that new prison officers should be appointed primarily on 8-hour shifts;
- that transition arrangements be made for existing prison officers to move to more flexible shift work; and
- that as a duty of care issue, employees working 12-hour shifts should be restricted in the amount of overtime allowable and should not be allowed to undertake secondary employment.

8.33 I note that the recommendation in relation to secondary employment would involve changes to the regulations of the *Prisons Act 1981*.

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[6] *Directed Review of the Management of Offenders in Custody, op. cit.* p.254

8.34 A change from 12-hour to 8-hour shifts would increase the efficiency of operation by the prison system in the respects identified by the Inspector of Custodial Services and others. That fact alone does not mean that the change should be made. Regard is to be had not merely to efficiency but also to the care, comfort and advantages of the officers concerned in this operation of the system. This matter concerns industrial conditions that prison officers of the Western Australian Prison Officers' Union regard as important. What is an appropriate balance between operational efficiency and the (claimed) interests of officers is a matter to be decided by Government. The need for a decision to be made upon the matter is becoming more pressing. A decision should be made in the near rather than in the medium term.

Recommendation 61

The recommendations of the Inspector in relation to 12-hour shifts and their impact upon matters such as the management of offenders (including juveniles) in custody should be considered by Government as a matter of priority.

Retention and Attraction of Senior Personnel

8.35 The problem of attracting and retaining key managers has a major effect on the performance of the Department in that many senior positions are not substantively filled. During the past ten years senior officers have come and gone more frequently than is desirable. The former Director General, Mr Piper, raised this issue during a public hearing of 8 September 2005:

> *"So if you look Australia wide the issue of attracting and retaining key executives in – with the functional knowledge and ability in these areas has been a problem from the beginning and I think it's philosophically an issue about what the Department should be and in my view the status of the key executive roles needs to be significantly improved."*

8.36 Mr Piper was of the view that remuneration for positions such as the Executive Director of Prisons was significantly less than what was required to attract and retain the calibre of leader necessary to effectively occupy the position:

> *"It's in the order of $60 to $70,000 lower than equivalent positions even in states like the ACT that doesn't have a prison. The ACT has a remand centre and it's building a prison. Its prisoners are managed in New South Wales. Those senior executives are paid more than that role is paid in this state. It's manifest in recruitment that when you look at who you might get and what the role demands it has been extremely difficult to fill those roles across the board and to maintain good people."*

8.37 The Inspector of Custodial Services has likewise raised classification and remuneration of senior personnel as a significant inhibitor to effective leadership and referred to unsuccessful reclassification applications that the Department made to the Department of the Premier and Cabinet (DPC). However, DPC, in a submission to the Inquiry, responded that the Department has focussed solely on the classification of positions rather than using mechanisms available in the public

sector such as Attraction and Retention Benefits (ARBs) to increase remuneration in appropriate circumstances.

8.38 The new Chief Executive Officer of the proposed Department of Corrections needs to have all the characteristics of an effective leader. This includes the strategic vision and energy to transform the Department into an organisation focussed on meeting its objectives of community safety and offender rehabilitation. This will require a leader that places equal importance and focus on managing offenders in the community and in custody, and that places the employees of the Department and their professional development at the centre of correctional management.

8.39 A consequence of splitting the Department is that the work value and responsibilities of the Chief Executive Officers of the two newly created agencies may at first sight appear less than those of the current Departmental head. This could result in reassessment of the new position of the head of the Department of Corrections relative to the current head of the Department of Justice. As such, splitting the Department may affect Government's ability to attract and retain a quality applicant for the position if innovative strategies are not implemented.

8.40 To enable Government to appoint a suitable Departmental Head, some flexibility will be required in relation to remuneration arrangements. The Inquiry has been informed of a proposal currently before Government suggesting changes to the Salaries and Allowances Tribunal legislation that will allow some discretion in the remuneration that can be offered to senior executives.[7] It would seem sensible that such flexibility should be available to Government when recruiting the Head of the Department of Corrections, to attract a high quality leader.

Recommendation 62

Government, prior to the position of Director General of the Department of Corrections being filled substantively, should progress amendments to the Salaries and Allowances Tribunal legislation to allow the flexibility to attract a candidate with the necessary leadership qualities and strategic vision.

8.41 The Department, in addition to its focus on seeking reclassifications for senior positions (including Superintendents and senior officers within Community and Juvenile Justice), should work with DPC to ensure that the classification and remuneration of key positions is sufficient to attract, possibly from interstate or overseas, and retain high calibre personnel.

Recommendation 63

The Department should work with the Department of the Premier and Cabinet to ensure that senior positions within the Department, including prison superintendents, specialist managers and community justice supervisors, are appropriately classified and remunerated to allow for high calibre applicants to be attracted to these pivotal positions, both from interstate and overseas.

[7] Letter from Mr Mal Wauchope, Director General, Department of the Premier and Cabinet, to the Inquirer, 20 September 2005.

Aging Workforce

8.42 The issue of the ageing workforce in the Department is one that will profoundly impact the management of offenders in coming years.

8.43 The need to manage Australia's ageing workforce has been widely acknowledged and a similar need has been identified in the Department.

8.44 It is said that the issue of an ageing workforce in the Department is largely confined to prison officers and juvenile detention centre officers. This becomes important in the light of the predicted increase in prisoner numbers over the next 10 years and the need for recruitment to keep up with both retirement and increased demand for Prison Officers.

8.45 The Department of the Premier and Cabinet's Workforce Analysis and Communications Branch has provided information to the Inquiry in relation to the age profile of the Department of Justice. This information indicates that across the Department of Justice, the average age of full time permanent employees at June 2004 was 45 years compared with the public sector wide average of 44 years. However, officers employed under the Gaol Officers Award were on average aged 47 years.

8.46 The seriousness of the situation can be seen when it us understood that 42 per cent of the workforce involved in custodial management are over 50 years of age and could be eligible for retirement in five years or less.[8]

8.47 The Inspector has made one recommendation in relation to the ageing workforce. It is to develop an Age Management Strategy that targets:

- new members of the workforce in the 25-35 age bracket;
- groups that are currently under-represented in the workforce, in particular Aboriginals and women; and
- strategies to retain and usefully employ existing members of the workforce in the 55 and over group.[9]

8.48 I wish to underscore that recommendation.

Recommendation 64

The Department should progress the recommendations of the Inspector in relation to the development of an Age Management Strategy.

Regional Recruitment

8.49 Additional issues have been raised during the Inquiry relating to the recruitment and retention of staff in regional and remote areas. For instance, I have been advised that recruiting staff through the pool recruitment process has been even less successful in regional areas than in the metropolitan area.[10] Successful pool candidates have not been keen to work in regional areas. Anecdotally, Community and Juvenile Justice Services branches in regional areas have to wait until all successful pool candidates have either begun in a position or have

[8] *Directed Review of the Management of Offenders in Custody, op. cit.* p.241
[9] *Ibid.* p.271
[10] Counsel Assisting in his closing submission to the Inquiry pointed out some of the deficiencies of the pool recruitment process in his submission as it applied in the metropolitan area. See page 316-320 of his submission.

declined a position before they are able to recruit locally. In the case of the most recent pool, these regional branches have been unable to do this as a new pool will become available before the previous pool has been finalised

8.50 I have recommended that the prison system should be accepted to be a regional prison system and that the structure of its administration should move towards such a system. A regional prison system will ideally involve prison facilities established in a region to contain prisoners of that area, and be administered by persons in and from the region who understand the problems to be met by facilities in the area. But what is more, recruitment should assist the movement towards a regional system. The recruitment of staff from the regions rather than from outside is an important step in that direction.

8.51 It is possible that in some cases a person living in a region may at the outset, be less skilled or otherwise suited for recruitment than a person from outside the region. Overall preference to such a person must be in accordance with public sector standards. But the Department should continue to favour, to the extent practicable, the employment of persons from the regions.

8.52 I understand that recruitment of specialist health services staff has also been more problematic in regional areas than in the metropolitan area. For instance on visiting Roebourne Regional Prison, members of the Inquiry team heard of difficulties the prison experienced in servicing psychiatric needs of prisoners and that the assessment of prisoner treatment needs had been delayed by the lack of Prison Counselling Service staff. These problems are not new, but they have been exacerbated by the current boom in the resources industry that has created a high demand for skilled employees in the Pilbara region.

8.53 The Department developed a Remote Area Incentive Strategy in 2003 which was partly implemented. The Inquiry has been advised that some of the implementation limitations were due to financial considerations and some to public sector wide policy restrictions. The need to loosen public sector wide regional recruitment restrictions may need to be reconsidered by the Department of the Premier and Cabinet and the Department of Consumer and Employment Protection.

8.54 The Inspector of Custodial Services has referred to some of the problems of attracting staff to regional prisons and he has referred to these problems in his Directed Review.[11] The Directed Review indicates that the *Prison Officers' 2005 Enterprise Bargaining Agreement* establishes Broome, Roebourne and Kalgoorlie-Boulder as Regional Incentive Prisons. This provides for incentive payments and an option of returning to the metropolitan area after two and a half years. It should be noted that these incentives are available to prison officers only and they do not address regional recruitment problems for other prison staff or community and juvenile justice officers. While a number of issues are raised in the Inspector's Directed Review, there are no specific recommendations in relation to regional recruitment. However, the Inspector lists a range of options for further investigation. These include provision of:

- an allowance for accommodation (as an alternative to Government Employees Housing Authority housing);

[11] *Directed Review of the Management of Offenders in Custody, op. cit.* pp.220-223

- a hardship allowance similar to that offered to teachers working in remote regions (extra payment, extra leave for length of service etc);
- increased training incentives; and
- subsidised health care.

8.55 I consider that difficult to recruit areas of the state will require more creative and innovative strategies than are currently being applied. While the new *Prison Officers' Enterprise Bargaining Agreement* provides some scope for providing increased incentives to Prison Officers, the same cannot be said for other essential Departmental staff.

Recommendation 65

The Department should develop a creative and innovative regional recruitment strategy (inclusive of non-uniformed departmental officers) to provide a suitable package of attraction and retention benefits similar to those of other regional public sector employees such as teachers, police, nurses and prison officers.

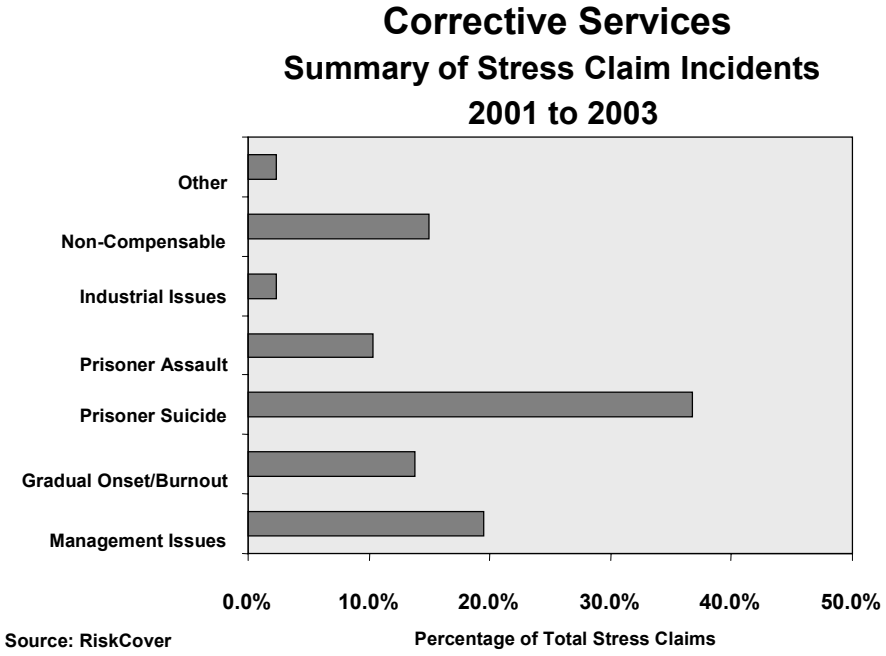
Stress Related Health Issues

8.56 Numerous instances of the stressful nature of offender management have come to my attention during the course of this Inquiry. Prisoner assaults, deaths in custody and heavy caseloads for those managing offenders in the community are just a few of the issues faced by officers of the Department.

8.57 This type of occupational stress has resulted in numerous claims for workers' compensation. For example, there have been more than 250 workers' compensation claims by corrective services officers in the Department each year for the past four years. On average 34 of these corrective services officer claims each year have been related to mental disorders or stress.[12] Stress-related claims were the second highest of the 10 major categories for compensation claims; the most common category being sprains, strains and dislocations.[13]

8.58 The following graph is illustrative of the variety of issues contributing to stress-related compensation claims. It includes categories such as Industrial Issues – referring to such matters as negotiations with management or strike related issues; Gradual Onset or Burnout - related to accumulation of stress due to multiple incidents leading to the worker being permanently unfit for duty; and Management Issues – referring to matters such as workload, lack of employer support and harassment of a worker by a supervisor.

[12] Department of Justice – Corrective Services, Claims by Nature of Injury, as at 30 June 2005, Insurance Commission of WA (RiskCover).
[13] Jones A, *Department of Justice Workers' Compensation Review*, Insurance Commission of WA (RiskCover), August 2005, p.11-13



8.59 Clearly, there are steps that can be taken to reduce or eliminate many of these causes of stress. Work has been undertaken such as the appointment of Staff Support Officers and programs to reduce prisoner suicides. More always remains to be done.

8.60 A review of the Department's workers' compensation by the Insurance Commission of WA (RiskCover) has demonstrated that where counselling and peer support services were provided without delay the average cost of compensation claims was reduced to around one third of the cost of claims where there was a delay in counselling. The duration of the claims involving early intervention was also reduced.[14]

8.61 In meeting its duty of care obligations to staff who are from time to time exposed to stressful situations in the workplace, the Department of Justice should be proactive in managing employee health and welfare. Of course, the aim should be to avoid work-related health problems altogether, but the Department should also aim to better manage those issues when they arise.

8.62 One area requires particular and urgent attention. The position of community corrections officers having direct contact with parolees. During the public sittings of the Inquiry a case of this kind was examined. A young female community corrections officer was required (in addition to other duties) to manage a caseload of some thirty parolees. This involved her monitoring the performance of, and counselling each of those parolees as well as, on occasions, conducting home visits. Three at least of her parolees were classified by the Department as "high risk", in the sense that has been detailed at length in the Department's procedures and the report by Mr Skinner.[15] "High Risk" is the

[14] *Review of Stress Claims Corrective Services 2001-2003,* RiskCover
[15] Skinner, A. (2003) *Report on the Review of Case Management Practices for the Supervision of "High Risk" Offenders within the Community by the Department of Justice*

second highest of the likelihood to again offend. One of the parolees, Mr Mitchell, did re-offend, by burglary and by murder.

8.63 In order to case manage the parolees assigned to her, the officer (like all other community corrections officers) was required to meet with her clients. The danger to her appears plain - if they re-offended, it might well be by re-offending against her. I make no formal finding that what is done in respect of community corrections officers involves a breach of the duty of the Department to take proper care to protect its employees. It is a matter requiring immediate examination to ensure that there are in place proper procedures to discharge the duty of the Department to take proper care for the safety of its officers.

Recommendation 66

The Department should develop and implement a more proactive strategy for managing employee health and welfare with particular regard to stress-related issues deriving from the corrections environment.

INFORMATION SERVICES

8.64 Creating a single Justice Department in 1993 was meant to result in "the establishment of an organisation … capable of developing and implementing co-ordinated and integrated criminal justice and associated policy and services". This mega-department was, *inter alia*, "to increase the capacity for policy analysis, policy development and coordinate strategic planning".[16] Effective policy analysis across the justice system requires that there be ready access to reliable information from various sources, the Courts, prisons and community justice and the like. The mega-department was meant to provide this. Twelve years after its establishment it does not.[17]

Recommendation 67

To promote the integration of information management across the justice system, Government should ensure that innovative information system models in relation to the delivery of justice services are considered, despite the restructure of the Department of Justice.

8.65 Some of the issues relevant to the Information Services Directorate of the Department of Justice have been raised in Counsel Assisting's submissions to the Inquiry. These centre on the lack of integration evident in the Department's information systems. Other issues that have emerged during the Inquiry include:

- poor completion and delivery of information systems for operational areas;
- lack of data integrity resulting from poor design of information systems and inadequate training of the staff who use them;
- limited accessibility of data for research purposes; and
- poor management of offender paper files and other records.

[16] Ministry of Justice Taskforce, *Report to the Hon Attorney General,* 31 March 1993
[17] Quinlan, P, *Closing Submissions of Counsel Assisting in Relation to Issues Arising from Public Hearings of the Inquiry,* p.449

8.66 These deficiencies mean that the Department has great difficulty in evaluating its performance, conducting research and producing reports to inform decision-making. Without timely access to good data and reports the Department cannot respond adequately to the needs of the criminal justice system. This has an undesirable effect on the management of offenders.

8.67 While responsibility for these matters does not rest solely with the Information Services Directorate, they are at least in part a reflection of its performance.

Progress to Date

8.68 I have been advised that the Department has spent and continues to spend substantial sums on information technology. Between 2000/01 and 2004/05 about $21.7 million or 4.2 per cent of the Department's annual expenses have, on average, been allocated to recurrent information technology expenses. In addition, over the same period the Department has spent on average approximately $7.3 million each year on information technology infrastructure purchases and approximately $7.9 million each year on information technology systems development.[18]

8.69 Some progress has been made. The Total Offender Management System (TOMS) commenced development in November 1998 and introduced more technology to prison management than had been the case previously. However, it has been said that a second phase, which was to deal with the management of offenders in the community was never funded. Funding was only ever provided for the first phase and the Inquiry has been told that the Community Based Service Information System (C-BIS) currently being built is effectively the second phase of TOMS.

8.70 One very recent initiative that aims to provide access to information from various parts of the Justice System has been the Common Party Layer. I am advised that this involves using a portal to provide a presentation window through which various Police, Courts, Prison and Community Justice systems can access information about individual offenders. However, it has not resolved the problems of access to integrated information for research and evaluation purposes. Nor does it resolve the difficulties created by the many smaller internal systems such as 'Registrar' that deals with training educational and offence-related courses.

Failure to Deliver

8.71 The Inquiry has heard of several important examples of new information systems failure to deliver their promised services.

8.72 For example, C-BIS software was to have been completed and operational by now. However, this systems development project has run well over budget and is yet to go live.

8.73 Another example of information systems not delivering a product within budget is the Prison Performance Measurement System (PPMS). I am advised that in this case, a company was engaged under an existing Departmental information systems time and materials contract to amend TOMS in order to enable data to be populated for reporting purposes. The Inquiry has been told that the programming

[18] Letter from Mr Bob Berg, Director Information Services, Department of Justice, to Mr Peter Byrne, Executive Director, Mahoney Inquiry, 9 Aug 2005.

delivered was not consistent with the reporting standard and consequently graphical reports have not been available for the PPMS.

8.74 Both of these examples demonstrate a failure by the Department or those engaged by it to deliver completed information systems under its contractual arrangements. In this respect there is a striking parallel with comments on the Department's information systems made by an Independent Commission of Inquiry in 1993:

> *"... the system is very expensive to maintain and operate. The return on investment is not satisfactory, with large investments over long periods (i.e. systems development) having limited or no return because they never reach the final stage of implementation."*[19]

Data Integrity

8.75 Data integrity relies on valid samples and clean data. The Inquiry has heard that some data collected by the Department for reporting purposes lacks integrity in both areas.

8.76 For example when the Inquiry requested access to PPMS data, it received a message stating the access had been denied because the Prisons Division Business Management Directorate had "justifiable concerns about the interpretation of these data". The concerns were related to the validity of the data that might lead the Inquiry to draw incorrect conclusions about the performance of public prisons. Some of the Prisons Division's concern was related to whether the data was missing or in some other way misrepresenting information, but some was related to validity of samples.

8.77 In the case of data on drug prevalence in public prisons, I have been advised that following a budget cut, the rate of drug testing on prisoners was reduced to the point that sample sizes were no longer valid and did not provide useful indications about trends in drug use. I understand that the Department has since sought advice from the Australian Bureau of Statistics to ensure that its drug prevalence testing is statistically valid.

Research Capacity

8.78 I have requested and received some excellent research analyses from the Department during the course of its proceedings. It was slow in coming because of the difficulties the research workers had in interrogating databases and the need to cleanse data that has been entered erroneously into systems.

8.79 The AIPR system is a major information system that is problematic for research purposes. Members of the Inquiry team have been told that the structure of the AIPR system does not enable good data interrogation. This causes it to be difficult and time-consuming to produce statistics.

8.80 The problems with data entry are a reflection of inadequate training of officers in the field and/or poor quality control. However the ability of information systems to be interrogated 8.81and produce good reports is a function of system design. The combined effect is a reduced capacity of the Department of Justice to produce good research reports to inform decision-making. I consider this is of critical

[19] Commission to Review Public Sector Finances, *Agenda for Reform,* Vol.2, August 1993. p.324

importance in relation to the management of offenders where attempts to address rates of re-offending need regular evaluation and related decisions need to be informed by timely research reports.

Recommendation 68

The Department should implement controls to ensure that budget allocations, system design specifications and contract management deliver information systems that enable high quality and timely reporting, research and evaluation.

Records Management

8.81 Records management practice in the Department of Justice has been found wanting. In the process of researching the cases of prisoners Messrs Paul Cross, Brian Edwards and Paul Keating, the Inquiry was informed that the original Unit and Assessment Files for all three prisoners were "missing" and could not be provided to the Inquiry. Neither could the original Offender Services Treatment Files for Mr Cross be located for the purposes of the Inquiry. Counsel Assisting has referred to this missing documentation in his closing submissions to the Inquiry.[20]

8.82 The Information Services Directorate subsequently commissioned a *Report on Practices relating to the Creation, Management and Disposal of Prison Management Files within Prisons* that was completed in July 2005 following visits to six prisons.[21] A series of recommendations was made in the report to establish formal policies and procedures for the creation, management and disposal of Unit Files.

8.83 I understand that as a consequence of the report, there is a proposal before the Acting Executive Director Prisons to establish a project team to develop and implement a process for management of records in keeping with the *State Records Act* and the needs of the Department.

8.84 However, problems of records management in the Department are not limited to the Prisons Division. Other instances of an inability to produce records in a timely fashion for the purposes of the Inquiry have also been noted. In the case of investigating the claims of Ms Eva Kovac for instance, her work diary could not be produced by the Victoria Park Community Corrections Office. In other cases, the Inquiry team sourced copies of Departmental documents from elsewhere in the absence of forthcoming information from the Department itself.

8.85 While the scope of the recent report commissioned by the Department to examine records management policies and practices has been limited to the Prisons Division, there is evidence of a wider systemic problem with records management across the Department. The consequences of failure to provide and maintain documentary evidence in relation to the management of offenders both in custody and the community are serious. It is therefore warranted that I recommend action be taken on a broader level than is proposed by the *Report on Practices relating to*

[20] Quinlan, P. *op. cit.* p.8
[21] Mockett, K, *Report on Practices relating to the Creation, Management and Disposal of Prison Management Files within Prisons,* July 2005

the Creation, Management and Disposal of Prison Management Files within Prisons.

Recommendation 69

The Department should establish and implement improved formal policies and procedures for the creation, management and disposal of offender management records; and take steps to ensure that professional standards are maintained consistent with State Government legislation and policies.

PERFORMANCE MANAGEMENT AND MONITORING

8.86 I am proposing that greater responsibility should be devolved to superintendent and manager/supervisor level. Accordingly, there should be greater accountability at that level. They should be held accountable for the performance of those areas for which they have responsibility. This will require effective measurement and monitoring of performance.

8.87 The Inquiry has heard that performance measurement is particularly lacking in some key areas of the Department. For instance, the Community and Juvenile Justice Division is awaiting the implementation of C-BIS to populate the data in its system. Similarly, the Health Services Directorate of the Prisons Division is only now engaged in developing a complete set of nationally benchmarked performance indicators.

8.88 Where performance indicators are currently utilised, their value is self-evident. While I have not undertaken a thorough analysis of the performance data reported by the Department, even a brief analysis clearly demonstrates that they are capable of identifying many of the issues that have emerged during the course of this Inquiry.

8.89 I understand that the Department frequently responds to issues identified by its performance measures. The Inquiry however, has observed that such performance issues once identified are not always dealt with promptly. For example, the need to increase prison capacity in the Kimberley and Eastern Goldfields regions has been long recognised, but is only now being addressed.

8.90 The Department must use the information gathered through performance measurement to guide its strategic planning and prioritisation. The same information can also be used to maintain standards and drive improvement at all levels.

8.91 Gaps in the existing performance measures need to be filled to ensure that they are comprehensive. I am advised that there are no measures in the Prisons Division's key performance reports for many aspects of its four correctional cornerstone objectives. For instance, in respect of the objective of Care and Wellbeing, there are no reported indicators in the Prisons Division Monthly Performance Reports relating to cultural needs, specific gender needs, health services, or care and wellbeing of Department of Justice staff and visitors.

8.92 Such gaps need to be addressed and appropriate performance measurements developed and reported if performance management is to be undertaken appropriately by the Department.

8.93 In this regard I note that in his Closing Submissions to the Inquiry, Counsel Assisting (at recommendation 113) has recommended that "the Deputy Commissioner (Professional Development and Offender Management) have responsibility, in consultation with the operational areas, for developing and maintaining the key performance indicators of the operational areas." This proposition should be considered, but I take no firm view on the matter.

Recommendation 70

Information gathered through performance measurement should be used as a management tool for driving improvement throughout the corrections system. In this regard, recommendations 110 and 113 contained in the Closing Submissions of Counsel Assisting should be considered.

Accountability

8.94 For key performance indicators to be effective, the Department needs to develop a clear set of targets and benchmarks, and a sound system of performance monitoring and accountability. This is consistent with the approach suggested for the Prisons Division by Mr Ian Johnson, Executive Director Prisons Division in his submission to the Inquiry. I note with approval his statement; "Only by setting clear targets for managers will improvements in performance be achieved."[22]

8.95 This philosophy is evident in the system of accountability governing prison superintendents in Victoria. Within Western Australia, the performance measurement model applied to Acacia Prison, the State's only private custodial facility, is another example. This model has the advantage of pre-existing approval from both the Western Australian Government and the Inspector of Custodial Services.

8.96 I understand that the level of monitoring and accountability within the public prison system is not as rigorous as that imposed upon Acacia Prison. The Department's contract management team includes two full-time monitors stationed at Acacia who verify the contractor's compliance with contractual requirements. No such monitors scrutinise the public prisons.

Recommendation 71

Performance reporting and monitoring, along the lines of the performance measures applicable to Acacia Prison, should be developed and introduced across all prisons in Western Australia. Appropriate accountability mechanisms need to be put in place to ensure that poor performance is identified and rectified.

8.97 If the contractor does not meet the specified Annual Performance Measures, I am advised that the Department may withhold a percentage of the annual contractual payment. In this way, the contractor is held accountable for the performance of the prison. The public prison system would benefit from similar levels of accountability. If, as I have elsewhere proposed, a greater degree of authority and autonomy is to be devolved to superintendents within the public prison system, it

[22] Johnson, I, *Personal Submission to 'Inquiry into the Performance of the Department of Justice with regard to the Management of Offenders in Custody and in the Community'*, 5 September 2005, p 10.

is proper that a higher level of responsibility and accountability should also be enforced.

8.98 In a more general context in all areas of community and custodial corrections, I note that Counsel Assisting the Inquiry (at recommendation 114) has recommended that the "accountable bodies for the key performance indicators be the level of the organisation at which the relevant delegations from the Commissioner of Corrections are made." This is consistent in principle with my recommendation.

Recommendation 72

All areas of the corrections system (including public prisons and community justice services offices) should be subject to sanctions and rewards linked to compliance with performance standards, with appropriate accountability mechanisms in place to ensure that poor performance is identified and rectified. Accountability for the performance of prisons or CJS offices should rest ultimately with individual prison superintendents or community and juvenile justice supervisors respectively. In this regard, recommendation 114 contained in the Closing Submissions of Counsel Assisting should be considered.

THE STRUCTURE OF THE DEPARTMENT OF JUSTICE

8.99 The structure of the Department is complicated and not suited to the needs of the corrections system.

8.100 There are two aspects of the Departmental structure:

- the external structure ("the mega-department"); and
- the internal structure ("the structure of the Divisions").

8.101 The Department of Justice is in form a mega-department. It has parts (which I shall describe as "Divisions"), which are appropriate to two or more separate Departments: an Attorney General's Department and a Corrections Department. The Department of Justice now includes Courts and Tribunals, the Public Trustee, the State Solicitors Office, the Registrar General, the Prisons Division (under the *Prisons Act*) and the Community and Juvenile Justice Division.

8.102 The Department has two Ministers: the Attorney General is the responsible Minister for the Department and some parts of its legislation; the Minister for Justice is responsible for other legislation.

8.103 The Chief Executive Officer of the Department has a mixture of functions, powers and positions.

- He has the functions and powers of a Chief Executive Officer under the *Public Sector Management Act 1994* extending over each of the Divisions of the Department.
- In respect of each of the Divisions (other than the Prisons Division, Courts Division and Community and Juvenile Justice Division) there is an Administrative Head who undertakes the administration of the Division. In principle, the CEO of the Department does not or should not have functions and powers in respect of those Divisions other than

those arising from the provisions of the *Public Sector Management Act*.

- In respect of the Prisons Division and the Community and Juvenile Justice Division, the position of the Chief Executive Officer is more complicated. He is effectively the administrative Head of these Divisions. Under the legislation relating to prisons, he has powers relating to substantive matters (concerning the rights and duties of prisoners) and direct administrative control over the Prisons Division.
- The Chief Executive Officer of the Department of Justice is by the terms of the *Prisons Act 1981*, the Director General (the Departmental and Administrative Head of the Prisons Division). The *Prisons Act* provides for the administration of the prison system. The Community Corrections Officers in the Community and Juvenile Justice Division are recognised by the *Sentence Administration Act 2003*.

8.104 Two main changes should be made:

- the internal structure of the Department should be changed; and
- the mega-department should be dismantled and two separate Departments (the Department of the Attorney General and the Department of Corrections) should be established.

8.105 The dismantling of the Department of Justice as a mega-department is not essential. I have concluded that it is desirable and should be undertaken.

8.106 There are reasons that support the continuation of the Department of Justice as a mega-Department. These include:

- It is the general policy of the present Government to reduce the number of Departments and the number of senior officers under the *Public Sector Management Act* and otherwise.
- Other areas of the Department of Justice in its present form have operated without substantial administrative difficulties.
- The dismantling of the Department will involve time and cost. I have been advised of the procedures involved in the submission made by the Department of the Premier and Cabinet.
- The changes which must be made to the external structure of the prison system and the *Prisons Act 1981* do not depend upon the change in the structure of the Department of Justice.

8.107 Notwithstanding these matters, there are sufficient reasons for changing the structure of the Department of Justice and the creation of the two Departments referred to.

- The corrections system and the activities associated with it are now sufficiently complex and widespread to require a separate Department, a separate Minister and a separate Chief Executive Officer.
- The corrections system, considered as a separate Department of Corrections, would continue to be one of the larger Departments of Government.

- The administration of the corrections system in its present form requires specialised experience and expertise. This is required both at senior level and at prison level.
- In the near future the corrections system will require development and change. It must cope with the changes involved in the structural change contemplated, the development of Indigenous and Regional prisons, changes in the administrative structure involved in the devolution of power to Superintendent level and the changes arising from the development of technology.
- The prison system needs a Minister who is required to give full time attention to the needs of the Department. It requires a Minister who will *drive* the changes to be made.
- It will require a Chief Executive Officer/Departmental Head who will give his full attention to the administration of the corrections system and carry out the changes to be made to it.
- The present administrative structure of the Department is unsatisfactory and should be changed. It has resulted in the excessive concentration of administrative functions and powers at senior levels.
- The changes which are necessary to alter the Departmental structure can be carried out administratively. I have had the benefit of discussions with the Director General of the Department of the Premier and Cabinet. He has informed the Inquiry of the procedures available for this purpose.
- If Government moves towards the creation of an overall Justice System the activities of the Department of Corrections will be extended.

Recommendation 73

The Department of Justice should be abolished and the Divisions contained in it divided into two separate Departments:

1. A Department of the Attorney General; and

2. A Department of Corrections.

Recommendation 74

Where legislation is required in relation to structural recommendations, Government should move to enact such legislation in a timely manner.

8.108 Overall, the corrections system needs important internal change. It needs to develop in ways which will require changes in its structure and approach to corrections management and it should make important changes in personnel management. These things need to have the time and drive of a single Minister and a Departmental Head devoted solely to it.

8.109 During the Inquiry officers have described the varying areas of "responsibility" of the Attorney General and the Minister for Justice in relation to aspects of the Department of Justice. At present there is no single line of responsibility apparent in respect of the various aspects of the Department. The concept of

"responsibility" is complex. A Minister may have a legal responsibility, an administrative responsibility or a Cabinet responsibility in respect of legislation or parts of legislation. He may have legal responsibility for an area of legislation in the sense that, in the Act he is the Minister to whom is given the general control or oversight of the legislation. The *Prisons Act* is of this kind. A Minister may be responsible in the administrative sense, in that he can do (and can be expected to influence) what is to be done administratively A Minister may be the Minister who, by Cabinet, is given the oversight of an area of Government and the responsibility for securing that the Department gives effect to Cabinet Policy in what it does. During the Inquiry it was not clear to those inquiring in relation to various matters, whether the legal or administrative responsibility for various functions or areas of operation lay with one Minister or the other. It is not desirable that the position should be so complicated as to result in uncertainty of this kind. It is desirable that the position be simplified.

Recommendation 75

The Department of the Attorney General should be responsible for the administrative support of all of the independent courts and oversight agencies referred to in the current Ministerial division, together with the Public Advocate and the Public Trustee. The Department of the Attorney General should support the secretariat of the Parole Board and would carry responsibility for strategic policy in relation to the criminal and civil justice systems as a whole.

Recommendation 76

The Department of Corrections should be responsible for the administration of the management of offenders, and for the development of policy designed to achieve the aims of offender management.

8.110 The internal structure of the Department, that is the administrative structure of the Prisons Division and the Community and Juvenile Justice Division, is unsatisfactory and should be changed.

- Its organisational structure does not require substantial change, as a Departmental model is appropriate.
- The administrative structure requires alteration by administrative action.

8.111 The functions that are to be exercised in the administration of individual prisons should be vested in and exercised at prison level. The functions to be exercised at Head Office level should be:

- the policy functions to be performed by a Department;
- those functions which need to be performed for the benefit of individual prisons but must be exercised at Head Office level. (To these I have referred elsewhere); and
- the Departmental Head should have the duty and accordingly the power to intervene in the exercise of the duties performed at prison level when, in the discharge of his duty of oversight of the prison system generally, it is necessary that he do so.

(I have stated the matter in an appropriately simplified form and upon the basis that the details of what has been said have been or will be stated elsewhere.)

8.112 There has been a general consensus that:

- the administration of the corrections system should focus at prison or community corrections office level and that the functions and powers at that level should centre upon the Superintendent or Supervisor.
- That is not what has been done. The functions and powers to perform them were collected excessively at top level.
- The views expressed by the Inspector of Custodial Services and the submissions of Counsel Assisting the Inquiry are, in general, to this effect.
- Officers of the Department have not expressed views different in principle.

Recommendation 77

Each Divisional Head should have functions and powers formulated and formally stated. In this regard, recommendations 104 to 108 contained in the Closing Submissions of Counsel Assisting should be adopted.

8.113 I have referred to the functions to be exercised at Head Office level as being those related to policy and functions that need to be performed at Head Office for the benefit of prisons or community corrections offices. I have referred elsewhere to the nature of the functions that should be performed at Head Office level and the purpose that they are to achieve. The detail of what is appropriate to be done at Head Office level will of course vary with the circumstances, the views of Government, and, to an extent, the personal style of the Departmental Head. As it has been suggested during the Inquiry, such matters are best left to the administrative good sense of those involved. But the principle remains that what is appropriate to be done at prison or community corrections office level should be concentrated there.

8.114 The concentration of administrative functions at Head Office level did not occur because of the legal structure of the prison system (in particular of the *Prisons Act 1981*). It occurred because of the way in which the legal powers granted by the Act to the Departmental Head were exercised.

8.115 In principle and subject to the complications arising from the fact that the Departmental Head given charge of the prison system was also the Chief Executive Officer at the Head of the mega-department, the Department of Justice, the prisons legislation allocated legal powers in a conventional way.

8.116 The Departmental Head (the Chief Executive Officer) was made "responsible for the management, control and security of all prisons and the welfare of all prisoners": section 7(1).

8.117 That provision gave to him the legal power to do what was necessary in the overall administration of the prisons set up by the Act.

8.118 The Superintendents were given "the charge and superintendence of the prison" to which each was appointed and each was to be "responsible to the Chief Executive Officer for the good government, good order and security of that prison": section

36(1). That provision gave to each Superintendent the legal power to do what needed to be done in the conduct of his prison.

8.119 But there is a distinction between the legal power to do an act and the way it is exercised in the course of administration. An officer may have the legal power to do an act but administratively he is unable to do it.

8.120 The Departmental Head, the Chief Executive Officer, exercised his legal powers to do what administratively should have been done at other levels of the administration.

- He did (or regulated by the Rules the doing of) what should have been left to the Superintendents to do.
- In some cases he established a line of reporting in relation to what was done at prisons level, which bypassed the Superintendent and led to officers at Head Office level. I do not mean, of course, that he did those things personally, I speak of the administrative structure which he set up and the way the powers came to be exercised.

8.121 The structure of the Act indicated that it was the legislative intention that prisons should be administered at prison level. The legal power of control of the system given to the Departmental Head was envisaged as being used to give effect to it. In general, that did not occur in the sense that the Superintendents did not control the Prisons as envisaged.

8.122 I do not mean by this that the legal power given to a Departmental Head should not be exercised to intervene at prison level when, in his overall oversight of the prison system, he sees it necessary to do so. But administratively that should not be used to exercise control generally.

8.123 The present administrative problems could be corrected by administrative action. Legislation is not strictly necessary.

8.124 The legislation now provides for or allows the allocation of functions and the exercise of powers in the proper form and at proper levels. The re-establishment of the appropriate administrative structure and the allocation of functions and powers could require that the Director General's Rules be amended. For example, at present Rule 14 provides for things to be done according to the Director General's Rule which should be left to the discretion of the Superintendent of an individual prison; and the Rules regulate the detail of what is done at prison level when what is done should be left to the judgement of those concerned. An administrative direction by the Departmental Head, carried into effect by the alteration of the existing administrative procedures, can achieve the desired effect. If Government does not support the establishment of a Corrections Act, improvement can still be made in this regard.

8.125 One matter should be recorded. The change recommended should not alter the legal powers of the Departmental Head. He will remain able legally to intervene administratively as has been done. If he does, he may again upset the proper administrative balance within the corrections system. As a lawyer concerned with the exercise of administrative power, I have considered whether I should recommend a legal change: the Act to place legal obstacles in the way of a Departmental Head who may wish to intervene to the extent that has occurred. The Director General of the Department of the Premier and Cabinet has given me

the benefit of his experience. He has expressed the opinion that the creation of a legal impediment is not necessary and that sound leadership will dictate that intervention of this kind would not be made and that should be sufficient. My conclusion is that his opinion should be adopted.

8.126 I come now to consider the steps which I should recommend be taken to give effect to the two main conclusions:

- That the Department of Justice be abolished and that the Divisions now contained within it be divided into two Departments: the Department of the Attorney General and the Department of Corrections.
- That the administrative structure of the prison system be changed.

Recommendation 78

The internal structure of the Department should be such that the roles and functions of Head Office and prisons should be clearly distinguished. The Superintendent should be granted all necessary functions and powers to effectively administer the prison. In this regard, recommendations 115 and 116 contained in the Closing Submissions of Counsel Assisting should be considered.

8.127 In what I say I note the assistance afforded by the Submissions made by Counsel Assisting the Inquiry, particularly in paragraphs 1011 and following. In what I say I speak subject to his special knowledge of matters relating *inter alia* to the structure of Government in Western Australia.

8.128 In relation to the Department of Justice, there are two main issues:

- how the change is to be carried into effect; and
- how the present Divisions of the Department of Justice should be allocated between the new Departments.

8.129 Subject to what I shall say, it appears that this is to be done by administrative action and will not require substantial legislative enactments to at least commence the process.

- In earlier times Departments of State were, in the sense here relevant, administrative structures created by administrative act of Government as a means of organising activities carried out by the executive arm of Government.
- On occasions, organisations have been created by Act of Parliament or by the terms of the Constitution. In such cases they may be given a legal existence the alteration of which may require the authority of a legislative enactment.
- The Department of Justice is of the former nature; an administrative based aggregation of Divisions of the Executive Government (some of which may be legal bodies established under particular legislative enactments). It is not brought into existence by a legislative enactment and is not dependent upon such an enactment for its existence. It has been created by administrative act under the *Public Sector Management Act 1994* and otherwise.

- If this be so, then the dissolution of the Department of Justice can be effected by an administrative Act and the two new Departments can be created in a similar way.
- If legislation is required in relation to specific matters, however, I recommend that such legislation be enacted.

8.130 In relation to the allocation of the existing Divisions, I recommend that the Divisions now representing the corrections system (the Prisons Division and the Community and Juvenile Justice Division) be allocated to the Department of Corrections. Subject to what I shall say, the remaining Divisions should be allocated to the Department of the Attorney General.

- The position of the Parole Board requires special consideration. If its allocation be determined only by its function, it may be part of the Department of Corrections. Its parole function is part of the corrections system (in the broad sense): it selects and provides for prisoners who may be led not to re-offend. It is part, an important part of the corrections procedures directed to reduce re-offending.
- However there are reasons why it should be associated with the Attorney General. It exercises functions that, in the conventional sense, are quasi-judicial. It conventionally derives its reputation for integrity and impartiality from the fact that persons who have held high judicial office accept appointment as Chairman. It has similarities to the Tribunals that ordinarily are within the supervision of the Attorney General. It is appropriate that it have his support. I recommend that it be allocated to the Department of the Attorney General.
- Counsel has referred to the Office of the Inspector of Custodial Services. He has proposed the allocation of his Office to the Department of the Attorney General to support this independence. The Inspector's function is related to the prison system. His functions are not quasi-judicial as are those of the Parole Board. His Minister is presently the Minister for Justice. He has, and should be seen to have, an independent status. But a status directly related to the prison system. Unless there be reason for dealing with the matter otherwise, I conclude that that office should be allocated to the Department of Corrections.

8.131 I have recommended that there be a Department of Corrections and that the *Prisons Act* or its replacement (and, insofar as may be appropriate other Acts dealing with the corrections system) be administered by it.

- I have recommended the name Department of Corrections. It is not fully appropriate: some of what is done by the Community and Juvenile Justice Division may not be best described by "Corrections". A name thought more acceptable to describe the totality of what is to be done may be chosen.
- Subject to what I shall say, the matters that require action to adjust to the operation of the corrections system may largely be dealt with administratively. As I have indicated, the *Prisons Act* provides for an Executive Director of Prisons who, in a sense, is envisaged as carrying

on the administration of the Act. A suitable provision is made for the important role of the Superintendent. For the reasons I have given it is not necessary to make a legislative provision to prevent undue centralisation of the prison administration or unacceptable intervention by senior officers.

- The departmental structure of the corrections system can be achieved by administrative action.
- There are some matters that, if dealt with, will require legislative intervention. For example, the power to grant leave from prison should be altered to extend the circumstances in which leave can be given and to provide for it to be given at Superintendent level. There are other matters that, if a general legislative rewrite of the *Prisons Act* were undertaken, would warrant attention. As I have indicated, a mixture of powers has been given to the Chief Executive Officer in his capacity as such and in his capacity as Department Head.
- Consideration should be given to whether the Director General's powers should be reviewed so that the number of cases in which the Department Head will be involved will be reduced.
- For the reasons to which I have referred to it is not desirable that I detail recommendations as to the final form that the administrative structure of the Divisions should take. There will be a Departmental Head and Divisional Heads of the various Divisions and Superintendents or Supervisors. Between those levels there will be other officer levels and groupings. What they will be will be influenced by, *inter alia*, the functions to be performed at Head Office level. I have elsewhere referred to the functions, such as the determination of policy, which necessarily will be performed at Head Office level and to the service functions, such as monitoring and supervision, which may be performed at that level. What those functions will be should be considered by those who determine the administrative functioning of the Department. When those things are determined, decisions can be made as to general administrative structure of the Divisions and the Department. However, certain observations may be made.
- The Senior Structure: The Department of Corrections will (if operating under legislation similar to the *Prisons Act 1981*) have at senior level a Departmental Head (A Chief Executive Officer based on the *Public Sector Management Act 1994*) and a Divisional Head of each of the Prisons Division and the Community Justice Division. The current Executive Director of Prisons: s.7; should continue to be the Divisional Head of the Prisons Division. I agree with the submissions of Counsel and what Mr Piper said that each Divisional Head should have his/her functions and powers formulated and formally stated in an act of delegation. It will be necessary for the Departmental Head and the Divisional Heads to determine the structure of the offices below them and at Head Office level. Reference has been made to this by Counsel: page 421 para 927 et seq. What has been recorded by Counsel will be of assistance to those who in due course deal with such things.

- The common consensus is that the role of Superintendent should be central in the administration of a prison. This will require that what Superintendents can and cannot do should be clearly stipulated and that the persons occupying the office be properly chosen, trained and supported. Whether all those currently occupying the positions are suitable should be a matter for the proposed Commissioner.
- The functions and powers of the Superintendents are stated in s.36 of the *Prisons Act 1981*. A markedly different statement of them is not essential. I suggest that procedures be established to:
    - establish formally the recognition of the central role of the office;
    - provide for ongoing exchanges between Superintendents by informal discussions at regular intervals;
    - provide formal training and certification procedures for Superintendents in the Training Facility; and
    - establish procedures for selection of Superintendents (including succession procedures which take account of the age and circumstances of existing Superintendents).
- I have considered, *inter alia*, the submissions made by industrial organisations as to the detailed structure of the Divisions. I have considered the submissions of Counsel on that matter (page 423 para 934 et seq.) I do not disagree with the submissions.
- I have elsewhere recommended changes to the structure and the administration of the Community Justice Division.
- Except to the extent to which it otherwise appears, I recommend that the further matters of detail be left to be determined by the new leadership group in due course.

8.132 To carry into effect the recommendations made, in particular those involving the dissolution of the Department of Justice and the setting up of its successors, administrative consultation and action will be required. The submission of the Department of the Premier and Cabinet, and discussions with the Director General of the Department, indicated generally the procedure appropriate to be adopted. An implementation committee should be established. I do not make recommendations as to the detailed procedures of that Committee. However, I make an observation as to the composition of it. It would appear advisable that the Committee include:

- a Chairperson appointed by the Government;
- representation from the Department of the Premier and Cabinet, State Solicitor's Office and Department of Treasury and Finance to ensure all necessary advice is available to the Committee;
- the existing Heads of the Prisons and Community and Juvenile Justice Divisions;

- (if he be known) the probable Head of the Department of Corrections or a person appropriately qualified to represent the Head of the Department of Corrections; and
- (if he be known) the probable Head of the Department of the Attorney General or a person selected by the Attorney General to represent the Head of the Department of the Attorney General.

Recommendation 79

To carry out recommendations, an implementation committee should be established by Government, which should comprise, inter alia:

- An independent Chairperson appointed by Government;

- Representation from the Department of the Premier and Cabinet and other relevant agencies to ensure all necessary advice is available to the Committee;

- (If he or she be known) the proposed Head of the Department of Corrections;

- (If he or she be known) the proposed Head of the Department of the Attorney General; and

- The existing Heads of the Prisons Division and the Community and Juvenile Justice Division.

Recommendation 80

The implementation committee should ensure that recommendations, including those to divide the functions of the Department, should be progressed in a careful and structured manner to preserve beneficial linkages and avoid unnecessary duplication of functions.

CHAPTER 9 THE MANAGEMENT OF INDIGENOUS OFFENDERS

"A prison system half Indigenous and more"

9.1 An Inquirer coming from outside the State, faces a problem which is peculiarly Western Australian: a corrections system whose main focus must be Indigenous. Nearly half of the adult prison population is comprised of Indigenous prisoners; four of its eleven prisons are Indigenous; almost all of the juvenile detention centre population is Indigenous; almost a third of Community Justice clients are Indigenous; and the highest rate of re-offending is by Indigenous offenders. To report on the management of (Indigenous) offenders requires a knowledge of Western Australian Indigenous people and the State in which they live. This cannot be obtained significantly in a short time, perhaps in a long time.

9.2 The Inquiry's Analysts have assembled material that an Inquirer alone could not have assembled. I am grateful for and dependent on that material. What I shall present has been substantially prepared by them.

9.3 The reasons why crimes are committed and recommitted by Indigenous people are beyond this Inquiry. Government, through the Department of Justice and otherwise, has attempted many things to identify and deal with this problem. But the main tasks remain: a prison system, nearly half Indigenous, must be remoulded to meet the needs of that half of its population; and the reasons why Indigenous people re-offend so often, must be identified and dealt with.

9.4 The Inquiry cannot solve the problem of Indigenous offenders. It can only identify and deal with the main things that flow from such into the corrections system. I trust that what is said in this portion of the Report will stimulate (further) action and provide material upon which to base it.

9.5 I am unable to deal with the management of offenders within the Terms of Reference unless I identify and deal with at least some of the main aspects of (as I shall describe it) the Indigenous overrepresentation problem. I shall do this by reference to the following:

- The dimensions of Indigenous overrepresentation in the justice system;
- The inapplicability of the prison system to Indigenous people; and
- What should the Department do with regard to the management of Indigenous offenders?

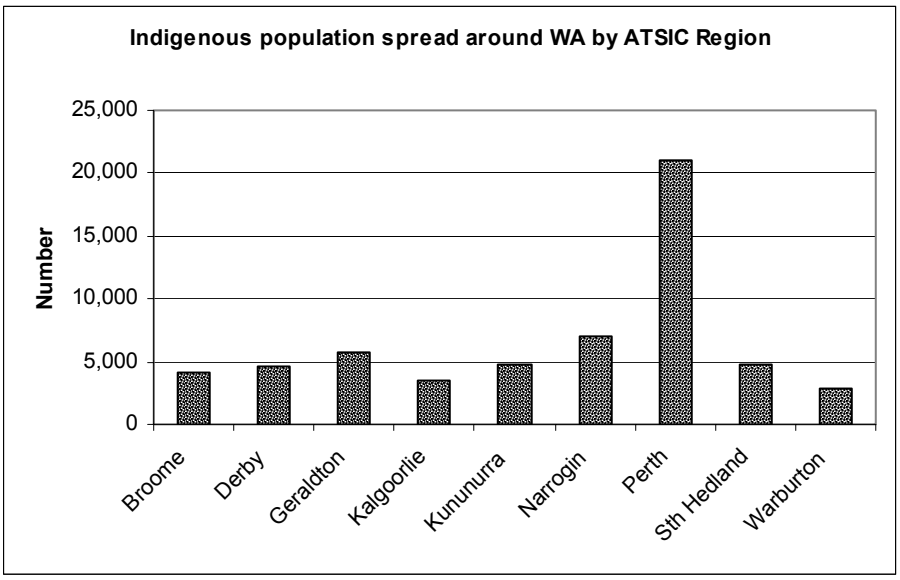
9.6 This chapter should be read in conjunction with the other chapters of the Report as the issues and recommendations discussed generally will also impact on the management of Indigenous offenders.

THE DIMENSIONS OF INDIGENOUS OVERREPRESENTATION

9.7 According to the Census 2001, the population in Western Australia was 1,906,114. The Indigenous population was 66,069, representing about 3.47% of the total Western Australian population. The land mass of Western Australia is approximately one third the size of Australia and its population is approximately one tenth of the national population resulting in a sparsely spread population over

a large area, even more so for the Western Australian Indigenous population. About two thirds of the Indigenous population live outside the metropolitan area.

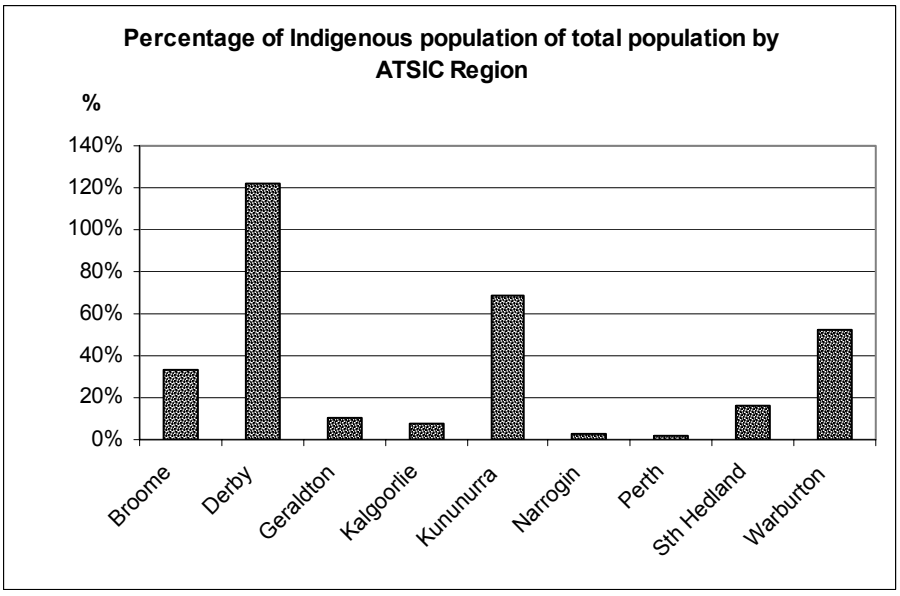
Figure 1: Indigenous population in WA by ATSIC Region



Source: Census 2001

9.8 While Indigenous persons only represent 3.5% of the total population in Western Australia, Figure 2 shows that Indigenous persons represent more than 30% of the total population in four of the nine regions: Broome, Derby, Kununurra and the Western Desert.

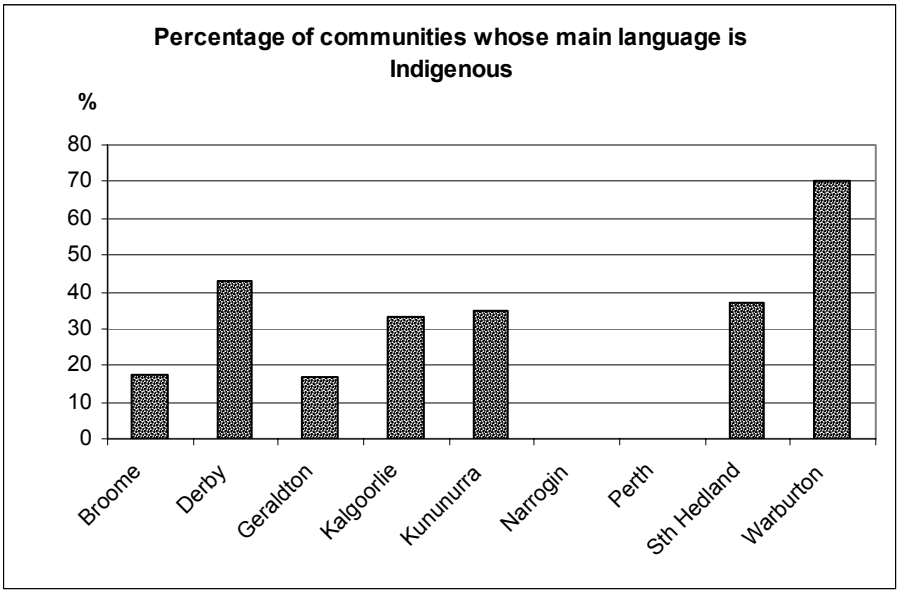
Figure 2: Percentage of Indigenous population of total population by ATSIC Region



Source: ABS Census 2001

9.9 The Department of Indigenous Affairs says that there are nearly 300 remote and town-based discrete Indigenous communities. In approximately 35% of these communities, the main language at home is an Indigenous language. In total, there are about 80 different Indigenous language groups across Western Australia. See Figure 3.

Figure 3: Percentage of discrete communities in WA whose main language is Indigenous, by ATSIC Region[1]



Source: Environmental Health Needs of Indigenous Communities in Western Australia 2004 Survey, 2005

9.10 The Western Australian Indigenous population is much younger compared to the non-Indigenous population. As at 30 June 1996, 40% of the population was under 15 years, almost double the figure for all non-Indigenous Western Australians (22%). Only 4% of the Indigenous population in Western Australia was aged 60 years or older, compared with 14% for all Western Australians over 60 years. This younger age structure reflects both the high birth and death rates of the Indigenous population (ABS Cat No 2034.5).

VICTIMISATION RATES

9.11 Victimisation rates in 2003 show that Indigenous persons were eight times more likely to be a victim of a violent offence. Indigenous females were more likely to be victims of sexual assault, abduction and other offences against the person, while Indigenous males were more likely to be victims of homicide, assault and robbery. The majority of victims are under the age of 35, females 72.6% and males 67.5%.[2]

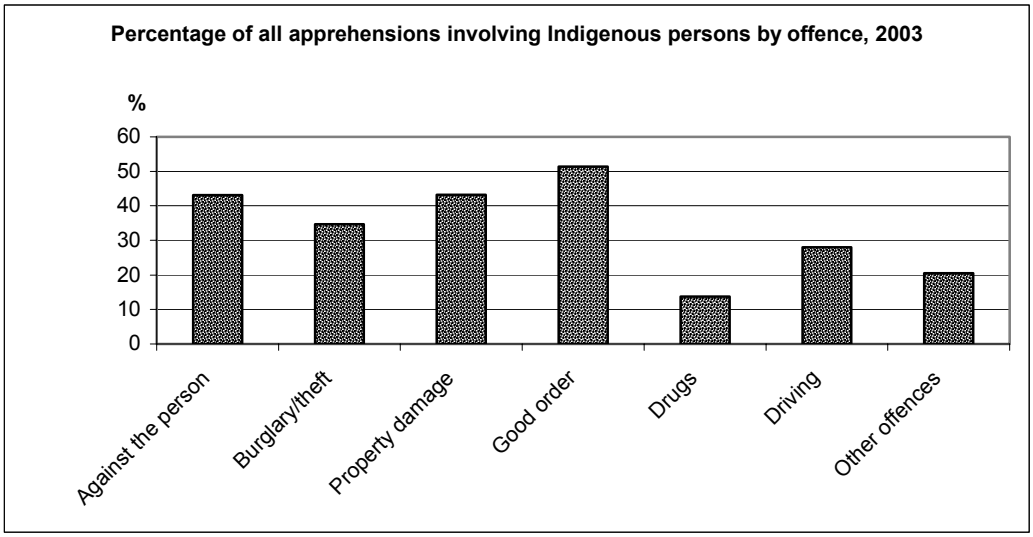
[1] While the statistics are not available, there is likely to be a number of Indigenous people in Perth, temporarily or permanently, whose main language is Indigenous.

[2] Fernandez JA et al (2004), *Crime and Justice Statistics for Western Australia: 2003*, University of Western Australia, Crime Research Centre Perth, p vi

ARREST RATES

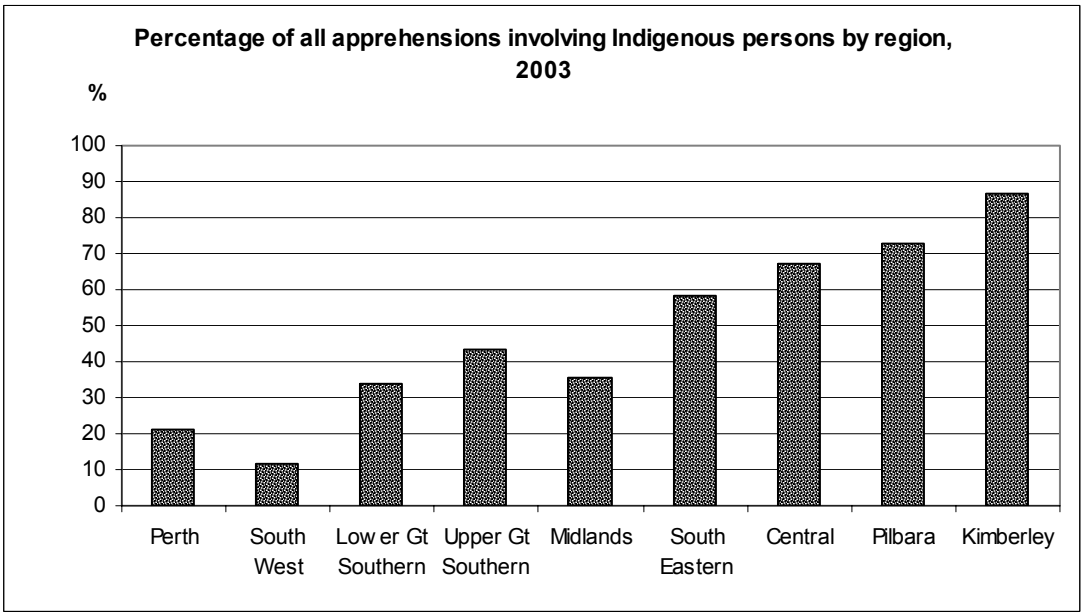
9.10 Arrest rates have continually increased over the last 13 years for Indigenous persons, particularly females, yet they have remained relatively steady for non-Indigenous persons. In 2003, Indigenous persons were arrested at almost 12 times the rate of non-Indigenous persons. Indigenous youth in the 10-14 year age group were 29 times more likely to be arrested. Figure 4 shows the percentage of all apprehensions of Indigenous persons by offence. Figure 5 shows that in 2003, the Kimberley and Pilbara regions had the highest rates of Indigenous apprehensions.

Figure 4: Percentage of all apprehensions involving Indigenous persons by offence



Source: Crime and Justice Statistics for WA: 2003, Crime Research Centre, December 2004

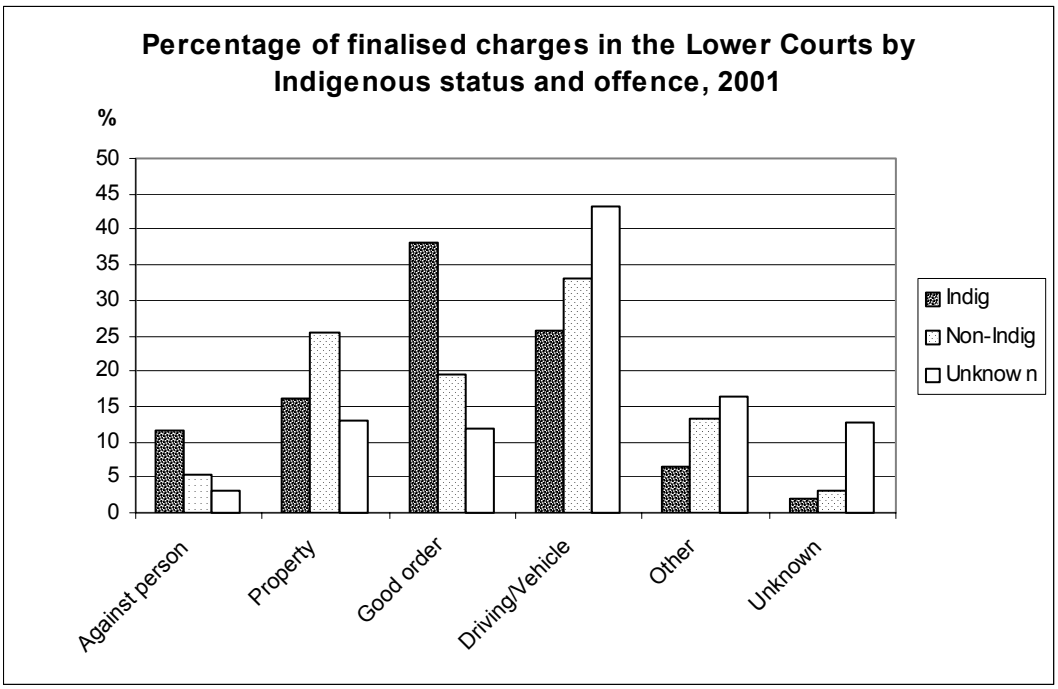
Figure 5: Percentages of all apprehensions involving Indigenous people 2003 (unknown Indigenous status is excluded)



Source: *Crime and Justice Statistics for WA: 2003*, Crime Research Centre, December 2004

9.11 In the Lower Courts in 2003, Indigenous persons comprised 22.3% of all finalised charges. Almost two fifths (38.1%) of charges against Indigenous people were related to good order offences. Driving and vehicle offences accounted for one quarter (25.8%) of Indigenous charges, while property and violent offences accounted for 16% and 11.6% of Indigenous charges, respectively. For all offence types except property offences, Indigenous people were more likely than non-Indigenous people to receive custodial sentences. For example, for violent offences, compare an Indigenous 'imprisonment rate' of 23.5% with a non-Indigenous imprisonment rate of 7.7%. For driving/vehicle offences, compare an Indigenous imprisonment rate of 12.5% with a non-Indigenous rate of 2.9%. Two thirds of driving/vehicle offences were related to driving without a valid licence. The remaining were drink-driving offences. For these, the Indigenous imprisonment rate was 13% compared to a non-Indigenous rate of 4%.

Figure 6: Percentage of finalised charges in the Lower Courts by Indigenous status and offence 2001

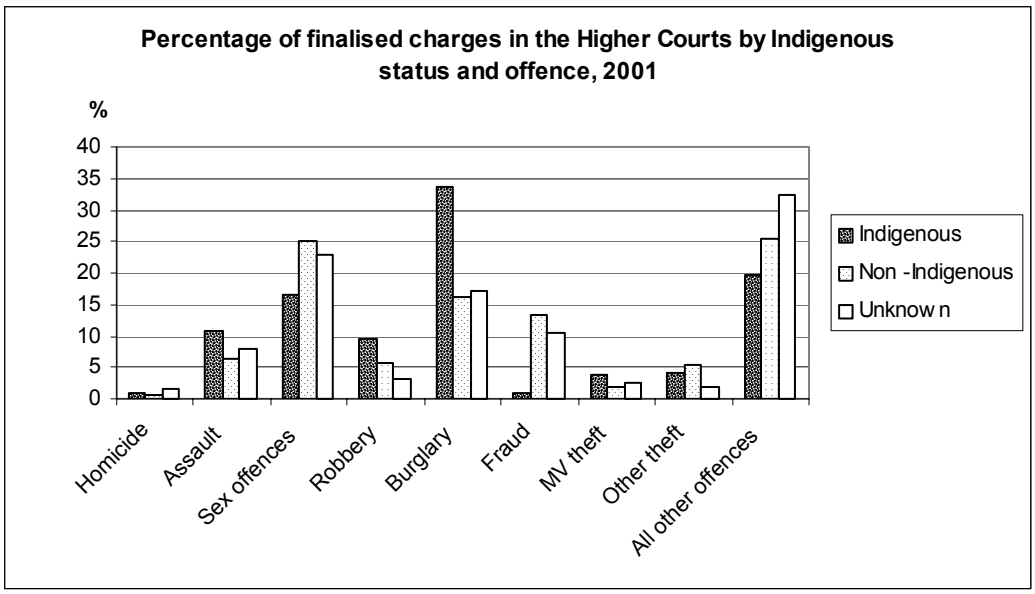


Source: Aboriginal involvement in the WA criminal justice system: A statistical review 2001, Crime Research Centre, 2003

9.12 In the Higher Courts in 2003, Indigenous persons comprised 27% of all finalised charges. Just over one third (33.8%) of Indigenous charges were for burglary offences (compared with 16.1% of non- Indigenous charges), 16.5% were for sex offences (compared with 25.2% for non-Indigenous people) and about 10.8% were for assault offences (compared with 6.2% for non-Indigenous people). Few Indigenous people faced court for fraud offences (compare 1.1% with 13.4%).[3]

[3] Loh, N and Ferrante, A (2003) *Aboriginal Involvement in the Western Australian Criminal Justice System: A Statistical Review,* Crime Research Centre, University of Western Australia, p19

Figure 7: Percentage of finalised charges in the Higher Courts by Indigenous status and offence 2001



Source: Aboriginal involvement in the WA criminal justice system: A statistical review 2001, Crime Research Centre,2003

9.13 In the Children's Court in 2001, Indigenous youth accounted for 37% of juvenile defendants, 44% of final appearances and 50% of all charges heard by the Children's Court. Eighty three per cent of charges against Indigenous youth, compared with 71% of charges against non-Indigenous youth, resulted in conviction. The most common penalties imposed by the Children's Court were non-custodial orders - 49% of charges for both Indigenous and non-Indigenous people. Less than one quarter of convicted charges received a custodial sanction. However, the imprisonment rate of Indigenous juveniles was higher than that of non-Indigenous juveniles: of convicted charges, 25% of those against Indigenous people received a custodial sentence; compared with 16% of those against non-Indigenous people. Significantly, the imprisonment rate of juvenile Indigenous females increased from 9% in 2000 to 17% in 2001.

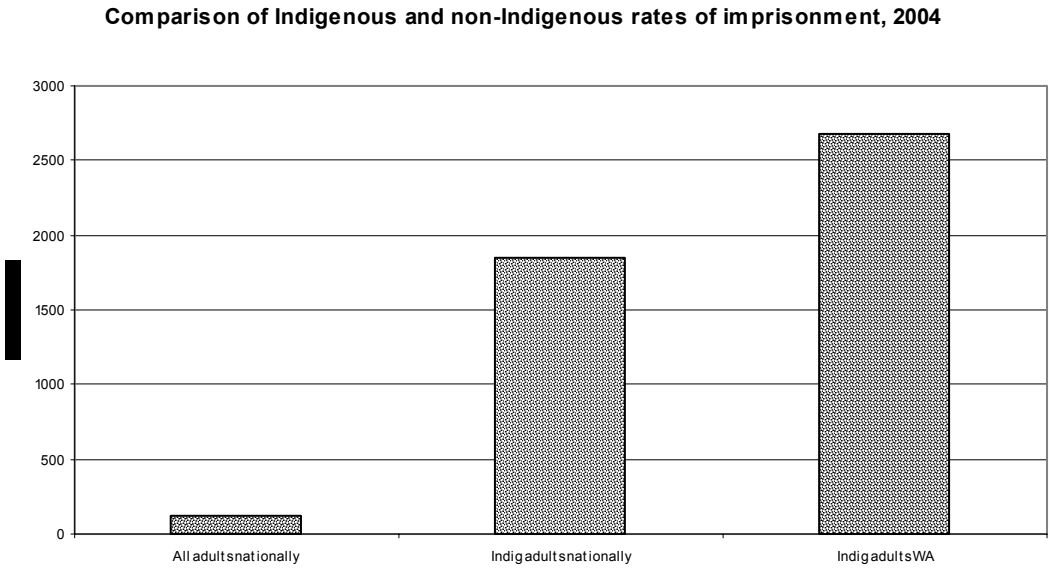
RATES OF IMPRISONMENT

9.14 As at 30 June 2003, Western Australia had the highest rate of Indigenous imprisonment in the country, 23 times greater than the national rate for all prisoners.[4] This makes Indigenous Western Australians one of the most imprisoned peoples in the world and the trend is increasing.[5]

[4] *Report on Government Services 2005*, p75

[5] Ferrante, A (2005) *Imprisonment: Facts, Figures and Issues*, Notes submitted to Mahoney Inquiry, Crime Research Centre, University of Western Australia

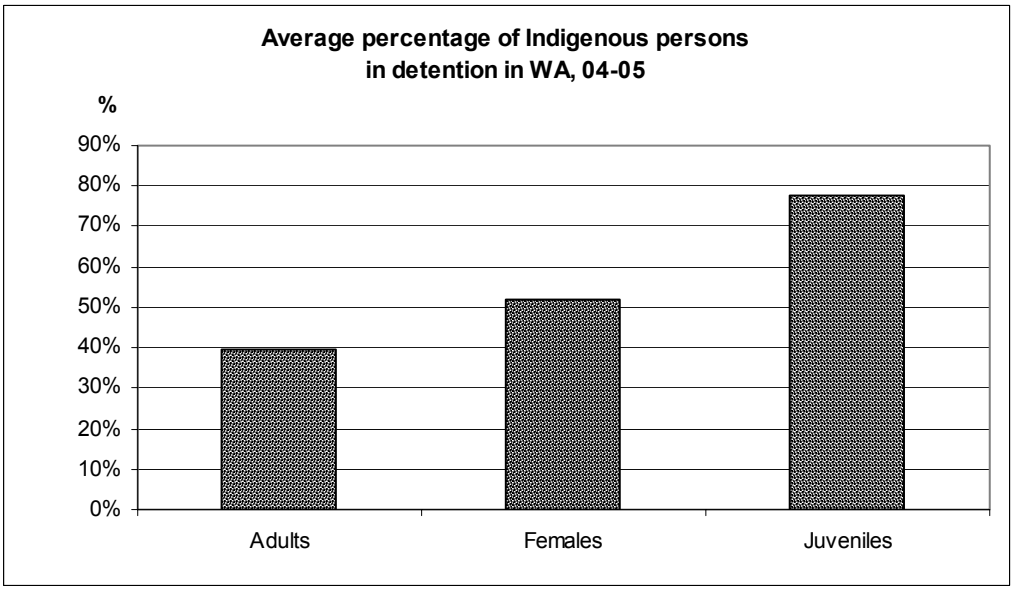
Figure 8: Comparison of rates of imprisonment of Indigenous and non-Indigenous persons, 2004



Source: Crime and Justice Statistics for WA: 2003, Crime Research Centre, December 2004

9.15 In 2004-2005, the average total prison population in Western Australia was 3,370. The average Indigenous prison population was 1,342 representing 40% of the total. The total average remand population was 528 compared to the average Indigenous remand population of 198 representing 37.5% of the total. The average female Indigenous prison population was 138 representing 52% of the total. The average juvenile Indigenous detention centre population was 99 representing 78% of the total.

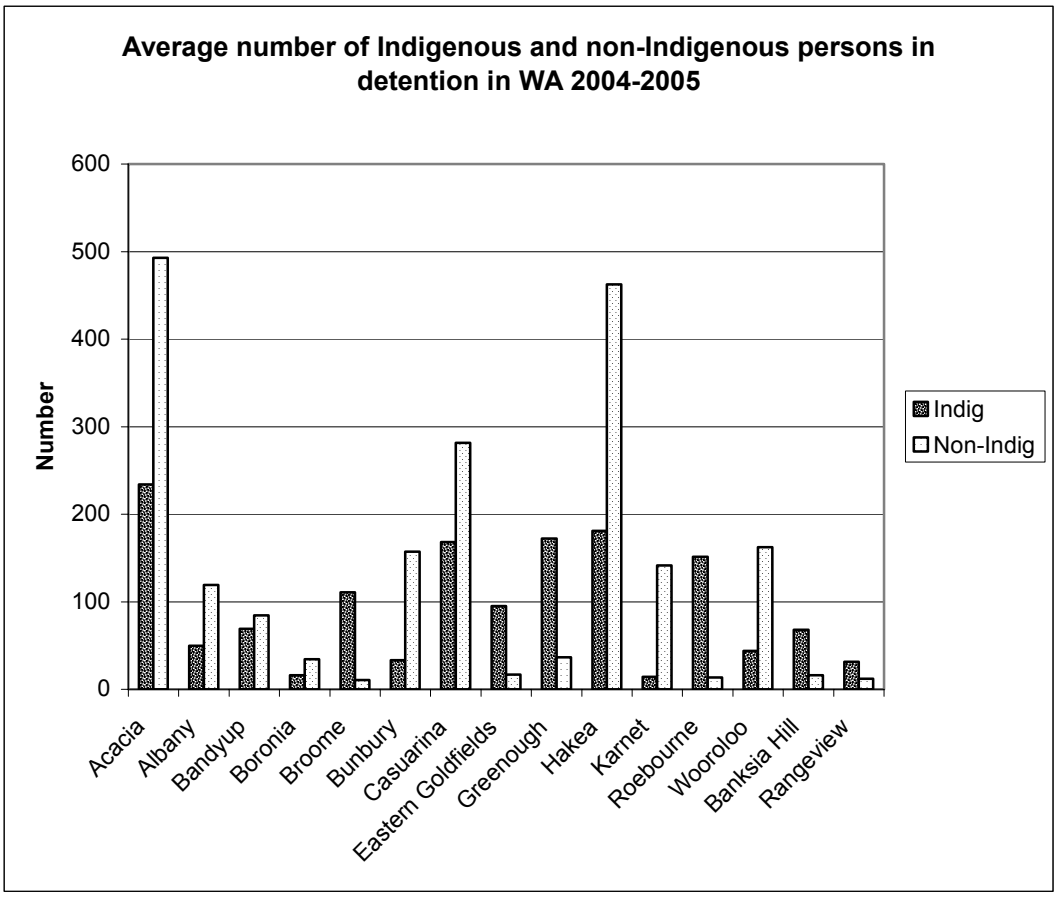
Figure 9: Average percentage of Indigenous adults, females and juveniles in detention in WA, 2004-2005



Source: Prison Population 2004-2005 – By Prison, Status, Aboriginality and Gender, July 2005

9.16 The Indigenous prison population is distributed throughout the State with roughly half of Indigenous prisoners in the metropolitan prisons and half in the regional prisons. In 2004-2005, the average number of Indigenous prisoners in metropolitan prisons was 726 and the average number of Indigenous prisoners in regional prisons was 613.

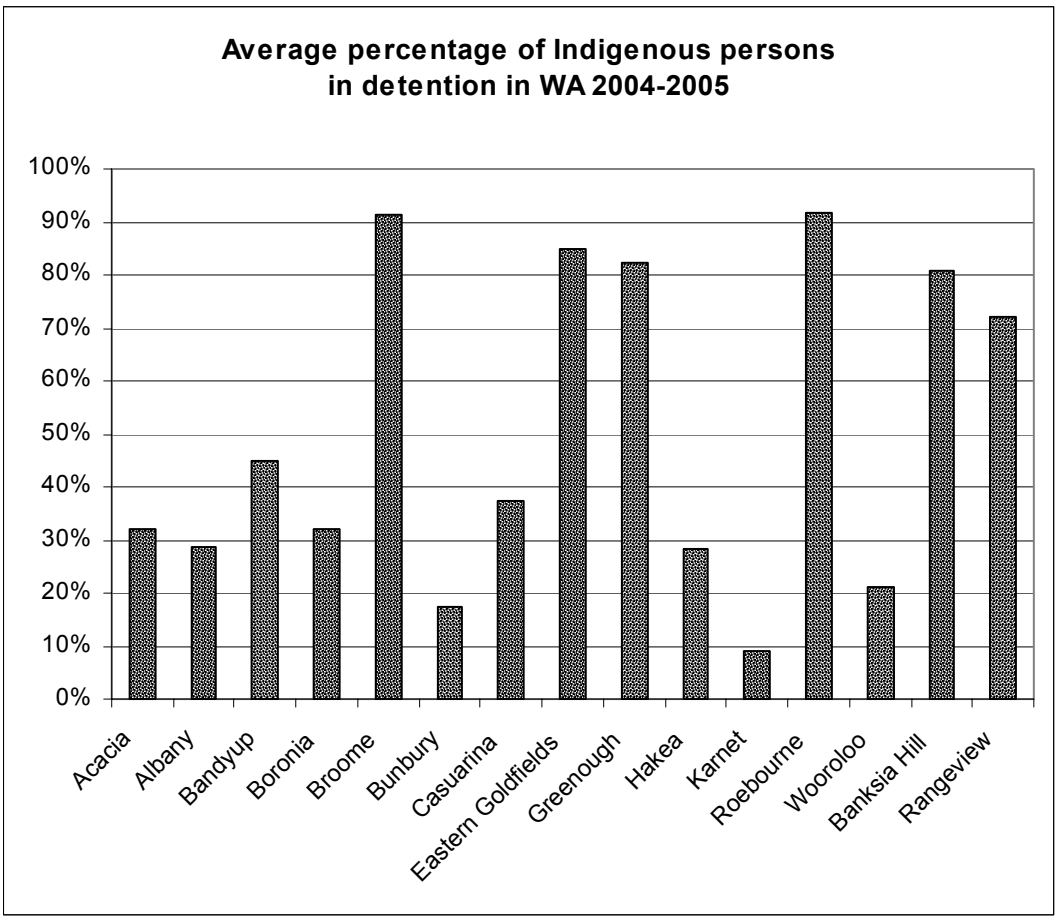
Figure 10: Average number of Indigenous and non-Indigenous persons by prison 2004



Source: Prison Population 2004-2005 – By Prison, Status, Aboriginality and Gender, July 2005

9.17 The Inspector of Custodial Services, in his Report *Aboriginality in Western Australian Prisons, July 2005*, has identified four prisons: Broome, Eastern Goldfields, Roebourne and Greenough, as the "Aboriginal Prisons" because "their population is 75% or more Aboriginal and because between them … (they) hold almost half (approximately 45%) of the Aboriginal Prison population at any one time." Under this definition, the juvenile institutions, Banksia Hill and Rangeview, are also "Aboriginal Prisons".

Figure 11: Average percentage of Indigenous persons by Prison, 2004-2005



Source: Prison Population 2004-2005 – By Prison, Status, Aboriginality and Gender, July 2005

9.18 In 2003, the Western Australian Indigenous juvenile detention rate was 578.4 per 100,000 Indigenous juveniles – the second highest in the country. This rate was 46 times greater than that for non-Indigenous juveniles and 1.8 times the national Indigenous youth average.[6]

9.19 The statistics show an even greater problem in terms of *throughput*. In 2004-2005, the total number of prisoner receptions was 7251. Indigenous persons represented 3379, which is 47% of all prisoners. This is slightly greater than the average population percentage for 2004-2005 of 40% – indicating a higher 'throughput' for Indigenous prisoners (for comparatively shorter sentences) than non-Indigenous prisoners.[7]

9.20 From June 2002 to March 2005, there was a consistent trend of increasing rates of Indigenous imprisonment from 31.1% (872 persons) to 41% (1442). In this period, Indigenous imprisonment experienced a 61.4% increase while non-Indigenous imprisonment increased 5.3%. This means that the increase in

[6] Fernandez JA et al (2004), *Crime and Justice Statistics for Western Australia: 2003*, University of Western Australia, Crime Research Centre, p vii

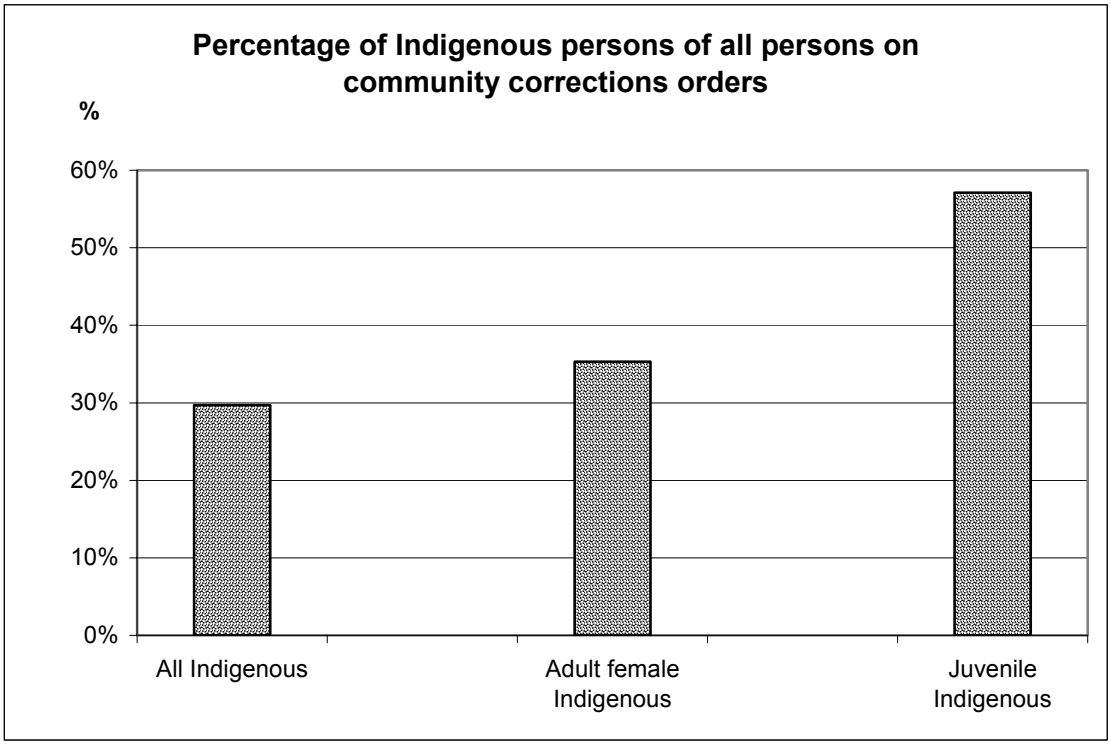
[7] Fernandez JA et al (2004), *Crime and Justice Statistics for Western Australia: 2003*, University of Western Australia, Crime Research Centre, p ix

imprisonment in Western Australia in the past three years is primarily Indigenous prisoners.

RATES OF COMMUNITY CORRECTIONS ORDERS

9.21 Indigenous persons represent 40% of the prisons population yet only 30% of all persons on community corrections orders. See Figure 12.

Figure 12:Percentage of Indigenous persons on community corrections orders[8]



Sources: Department of Justice, *Weekly Offender Statistics*, 18 August 2005 and *Monthly Graphical Report*, August 2005

9.22 A number of theories have been put forward to explain the so-called Indigenous overrepresentation problem. In a book entitled *Crime, Justice and Aboriginal Youth*,[9] Beresford describes three types of competing and overarching explanations for the causes of crime and makes a number of conclusions.[10] He finds that no one theory has been able to explain all incidences or forms of crime; that little consensus exists among criminologists as to the respective merits of the various theoretical explanations; that recent work (Burke, 2001) highlights the

[8] Total Indigenous/non-Indigenous persons on CCO's - 1650/5550
Total Indigenous/non-Indigenous adult females on CCO's – 435/1233
Total Indigenous/non-Indigenous juveniles on CCO's – 412/721

[9] Beresford, Q (2003) *Crime, Justice and Aboriginal Youth* in *Reform and Resistance in Aboriginal Education*, University of Western Australia Press, p194

[10] Firstly, the rational actor model of crime which understands human beings to possess free will and thus have the capacity to make rational decisions to engage in activities of their choice. This theory stresses the individualistic nature of offending. Secondly, the predestined actor model, which maintains that crime emanates from a range of factors – biological, psychological or social – that lie outside the control of the offender and which predetermine their propensity to commit crime. Thirdly, the victimised actor model, which proposes that the crime is in some way the victim of an unjust and unequal society.

value of integrating several theories to produce a synthesis of criminal behaviour and motivation; and that such an integration is highly relevant to explain the complex factors behind the widespread incidence of crime among Aboriginal youth.

9.23 In its submission to the Inquiry, the Department stated that broad societal factors "seriously increase the risk of Indigenous people committing a crime in the first place". It is not the function of this Inquiry to consider these underlying issues at any length. They were adequately described by the Royal Commission into Aboriginal Deaths in Custody in 1991. See the *Final Report of the Royal Commission into Aboriginal Deaths in Custody – Summary, Part C – The Underlying Issues Which Explain the Disproportionate Number of Aboriginal People in Custody*.

9.24 The Department also recognises that the justice system itself can impact on Indigenous people differently, sometimes with unintended consequences, including systemic discrimination and, as is the case, can play a part in the high rates of Indigenous overrepresentation.

9.25 For example, as the statistics show, non-Indigenous offenders are in a more favourable position before a sentencing court in that, in the same circumstances and for the same crimes, non-Indigenous people are more likely to be directed away from prison than Indigenous people. Non-Indigenous offenders are apt to have persons who will assist them in relation to bail and other matters that courts take into account in deciding whether to order imprisonment. Statistics indicate that Indigenous offenders are granted parole at a consistently lesser rate than non-Indigenous offenders. Further, more Indigenous persons are arrested. It may be that there is an element of discrimination against Indigenous people. That said, most of the Indigenous persons and those representing them with whom the matter was discussed suggested that, if it does exist, that discrimination now is significantly smaller than it was in previous times.

9.26 It is said, I believe correctly, that more Indigenous people are arrested because their offences are often committed in public whereas the equivalent offences by non-Indigenous persons may well be committed in places other than in the streets. For example, Indigenous persons represented more than 50% of all apprehensions in the State for good order offences in 2003. Insufficient and overcrowded housing is a fact for many Indigenous communities and may in part explain the tendency for their offences to be more public. What is seen will be arrested, what is not, may not be.

9.27 An examination of the details of crimes committed by Indigenous people shows that Indigenous people commit less serious crimes than non-Indigenous people and that their sentences are apt to be of the order of one year or so.

9.28 Whatever the theories argue, it is a basic fact that a number of Indigenous people commit crimes at a far greater rate than non-Indigenous persons; a greater proportion of Indigenous people are arrested; a greater proportion of Indigenous people have been convicted and sentenced; a greater proportion of Indigenous people are in prison; and a greater proportion of Indigenous people are victims of crime.

9.29 Statistics are available evidencing each of these matters. I have referred to the material gathered by the Crime Research Centre of the University of Western

Australia and others. The position in relation to various matters has changed with time. However, the statistics provide an indication of these matters sufficient for present purposes.

9.30 The numbers set out in relation to these matters, taken alone, can lead to misunderstanding of the number of crimes committed by Indigenous people. According to the Department of Justice submission to this Inquiry, in understanding why more Indigenous people are convicted and sentenced one must consider two matters: firstly, that crime is intimately related to broad social and economic disadvantage and secondly, that the justice system itself can impact on Indigenous overrepresentation rates.

9.31 Two further anomalies should be noted. First, Indigenous people are over-represented among those fined and who are imprisoned for not paying their fine. Departmental figures suggest that 58% of fine defaulters who are in prison are Indigenous. In early March 2005, there were 153 fine default prisoners, 119 had a most serious offence category of "traffic" or "justice/good order".[11] Of the 153, 83 were Indigenous. The reasons for this may lie, in a significant measure, in the attitudes of Indigenous people in remote areas to traffic and good order laws, where the police officer, who quite likely has not spent any great length of time in the region, may view these issues with a greater priority than the locals. Mr Piper, former Director General, raised this issue during a meeting with myself and Counsel Assisting the Inquiry.

> ***"PIPER, MR:*** *... regardless of the intention of the law the administrative penalties embedded in the law are entrapping Aboriginal people unintendedly. For example, I'm a remote Aboriginal person, I buy a car, I drive it out of Kalgoorlie, I go to Warburton, I don't actually understand what a licence is. I have $200 change, my brother-in-law takes it, it ends up in South Australia. In a years' time when I get a licence notice posted - I don't have a letterbox, I don't speak English and I don't get the notice so, you know - and you see it all the time; two, three years later people are then subject to the escalating penalties of administrative enforcement. Or I'm an Aboriginal person in a community where no-one will test me to get a driver's licence, so I don't have a driver's licence but if I go to Kalgoorlie I get convicted for driving without a licence or, because identity is an issue, you get stopped and use my name, the police don't know the difference; it's logged against me, I get a fine, I don't pay it because I don't get the notice, I go to prison.*
>
> *The worst of it is motor vehicle licensing but there is a substantial dragnet effect across the Aboriginal communities of the impact of all of those administrative - the failure to deliver services in the first instance, because there's no-one you can go to and knock on the door and say, "What does this mean?" and the impact of administrative law.*

[11] Business Management Directorate: Prisons Division "*Statistical Overview of the Prisoner Population*", Department of Justice, May 2005 p35

> ***QUINLAN, MR:*** *I had a magistrate - anonymity will remain - in a northern regional area say to me that he couldn't apply the Supreme Court decisions in relation to sentencing tariffs for driving under suspension in his area because if he did he would have locked up the entire Aboriginal population in the town three times over, so it's a - - -*
>
> ***PIPER, MR:*** *But what happens is that there are still a significant number of prosecutions that are not fair or valid because of - I mean, these are the first Australians who - the one that got me was someone who failed to vote in the republican referendum - you know, ended up in prison.*
>
> ***QUINLAN, MR:*** *Exquisite irony."*

9.32 Second, social and economic disadvantage can also create extra difficulties in fulfilling community corrections orders for example by not having access to convenient transport to fulfil the reporting requirements. Indigenous people appear over-represented in respect of "breach" and similar matters. They have a higher breach rate for community orders (46% versus 34%); are twice as likely to be imprisoned on a breach of a court order; are less likely to be granted parole (62% versus 51%); are twice as likely to breach early release orders (40% versus 23%) and have a higher rate of return to prison (48% versus 30%).[12]

9.33 It has been suggested, that if Indigenous offenders were diverted away from the courts and dealt with by Indigenous tribunals or similar bodies, the number of Indigenous persons in prison would be much less. (I draw attention in this regard to the proposals made by the Inspector of Custodial Services as to the form of the Custodial and other arrangements which should be made in relation to Indigenous offenders in the Kimberley area and the use of such proposals of work centres and the like. The Department has established an Aboriginal Reference Group to assist it with its deliberations and this process should be commended. It may be a model that could be adopted for other regions in the state including the Eastern Goldfields, the Pilbara, the Gascoyne and the South West.)

9.34 The Department currently funds a number of diversion programs for offenders; including the Drug Court, the Justice Mediation Program; the Joondalup Family Violence Court; and the Geraldton Alternative Sentencing Regime (GASR). The first three have very poor levels of access by Indigenous offenders (7%, 10% and 4% of all referrals respectively). The access issues are often systemic, for example a recent Departmental evaluation of the Drug Court suggested that Indigenous offenders access to the Drug Court could be substantially increased if it allowed referrals for alcohol and solvent use. Another relatively simple mechanism to improve the program's accessibility to Indigenous clients is through the use of Indigenous employees who are involved in the implementation and can assist in identifying the barriers presented by existing processes.

9.35 Notably, Indigenous access in the fourth program, the GASR, is much higher at just under 50%. The GASR is described as a specialist problem-solving court

[12] Department of Justice *Managing Growth in Prison Populations*, draft briefing by Policy Planning and Review Directorate April 2005

program, which endeavours to promote the rehabilitation of offenders with substance abuse, domestic violence and other offending related behaviours. It offers a team based approach to offender rehabilitation and was developed by the Geraldton Court in collaboration with government and non-government stakeholders. An evaluation of the GASR, revealed higher rates of completion of orders (70+%) compared to state-wide 2002/2003 completion rates for Intensive Supervision Orders (53%) and Community Based Orders (62%).[13] As the name suggests, this program is only available at the Geraldton Magistrates Court at this stage.

9.36 The WA Drug and Alcohol Office also administers a Commonwealth-funded $5 million diversionary program under the Council of Australian Governments' Illicit Drug Diversion Initiative. One of the programs is an Indigenous-specific diversionary program called the Indigenous Diversion Program (IDP). This program aims to provide an early intervention court diversion program that specifically targets persons who have committed minor offences and who have alcohol and/or other drug problems. It is currently being provided in Broome and Carnarvon. In Broome, an Indigenous worker travels on the Magistrates Circuit and provides drug assessments, referral and treatment services to persons appearing in court who wish to be involved in the IDP. In Carnarvon, an Indigenous worker based in the town provides the same services but does not travel on the Magistrates Circuit. This is a lot of work for just two individuals. The Drug and Alcohol Office have informed the Inquiry that data on the access and effectiveness of the Indigenous Diversion Program is not yet available.

9.37 There are also other systemic problems of access for Indigenous offenders. To take another example, an offender is more likely to be given a non-custodial sentence or direction if he has a stable home environment (in the sense in which that is understood in the non-Indigenous community). But the ordinary home environment of an Indigenous offender will often not be of this kind. In the result, the non-custodial option will not be exercised in his favour.

9.38 These options are, in their terms, available for dealing both with Indigenous and non-Indigenous offenders. However, as has been suggested, in practice such options are not as readily available to Indigenous offenders. It would seem that Indigenous offenders are accessing diversionary programs to a limited degree in Geraldton, Carnarvon and in parts of the Kimberley region. This represents only a small proportion of all adult Indigenous offenders in the state. Matters of this kind (the provision of non-custodial options more adapted to the circumstances of Indigenous persons and the like) should receive ongoing attention by Government. However, the fact remains that now (and no doubt for the immediate future) a disproportionate number of the prisoners in Western Australian prisons are and will be Indigenous persons. In a comprehensive examination of the Indigenous problem, that should lead to two kinds of inquiry:

- What should be done to reduce or otherwise deal with the disproportionate rate between Indigenous and non-Indigenous offenders; and
- What should be done to meet the legitimate needs of those Indigenous persons who are in prison.

[13] Cant R, Downie R and Henry D, *Report on the Evaluation of the Geraldton Alternative Sentencing Regime*, Report for the Department of Justice, August 2004, p II.

9.39 Each of these is important and will require the ongoing attention of Government.

9.40 Determining why Indigenous persons offend more frequently and why more of them are in prison is important. It requires, inter alia, an examination of the social, historical and other reasons why the condition of Indigenous people and their relationship to non-Indigenous people are what they are.

9.41 The Western Australian Government has demonstrated a commitment to address these broader issues. In October 2001, the Government of Western Australia signed with Indigenous representatives an important agreement and commitment, formally recognising the need of Government and others to work in partnership to ensure that the appropriate outcomes will be achieved. I trust that those in the area of Justice will act in this way. In the past 12 months or so, the Department has begun to implement the principles of this commitment through the signing of the *Aboriginal Justice Agreement*. The Department informs the Inquiry that 27 local or regional justice plans are in various stages of development with Indigenous communities across the State, and that planning has commenced for 4 corridor plans for the Perth metropolitan area. This process should continue to be supported and the Department needs to ensure the implementation of the aspirations that arise from these plans.

9.42 A major issue confronting the implementation of the partnership principle is the lack of clarity on what precisely does it mean for the WA Government to work in partnership with Indigenous people. In seeking an answer to this question, Blagg offers the conceptual distinction between 'community-based' and 'community-owned' justice initiatives.

> "*Community-based services simply relocate the service to a community setting, rather than reformulate the fundamental premises upon which the service is constructed. Expressed another way, the community setting becomes a kind of annex to the existing structures of the system. Unfortunately, many justice agencies have tended to mistake community-based for community-owned and have, often unwittingly, appropriated the notion of community justice to further unreconstructed administrative and legislative agendas. Aboriginal notions of justice reform should not be confused with processes simply designed to either extend the reach of the existing justice system or make the existing justice system run more smoothly. They may, in fact, challenge some dominant assumptions about the role of law and justice mechanisms in Aboriginal communities … community consultations in remote areas conducted by the Law Reform Commission of WA revealed a number of instances where community-defined priorities differed significantly from those of law and justice agencies*."[14]

9.43 The primary, and probably the only way, to ensure that the Department's strategies are culturally relevant is to ensure that Indigenous individuals, extended families and communities are given the opportunity to be structurally involved in the planning, delivery and evaluation of such services. Where this has occurred, such as the Geraldton Alternative Sentencing Regime project, good outcomes are more likely. The Department can achieve this structural involvement in a range of ways such as: employing Indigenous persons; through contracting Indigenous

[14]Blagg H (2005) *A new way of doing justice business? Community justice mechanisms and sustainable governance in Western Australia*, Law Reform Commission of Western Australia, Background Paper No 8, p1

organisations to provide services; and by ensuring genuine involvement of informed Indigenous groups. For this reason, some of the key Indigenous-specific recommendations of the Inquiry are to facilitate these three processes, namely: the urgent implementation of an Indigenous employment strategy; that greater attention is given to contracting Indigenous groups to provide relevant services; and the establishment of standing Indigenous justice-related groups to work in partnership with government agencies at the local, regional and state-level. The Inspector of Custodial Services has made similar recommendations in relation to the establishment of standing regional reference groups including recommending that the Aboriginal Reference Group, which was established to assist in the development of the Kimberley Custodial Plan, become a standing group. He too strongly supports the greater recruitment and retention of Indigenous persons by the Department. Recommendations 2 and 3 of the Royal Commission into Aboriginal Deaths in Custody also required governments to establish Aboriginal justice advisory committees.

9.44 Two subtle but significant differences between the Inquiry's and the Inspector's recommendations is that these regional groups should firstly, have a whole-of-government perspective in relation to Indigenous overrepresentation and re-offending rather than be confined to custodial services issues and secondly, that in all regions they are Indigenous groups with the capacity to coopt expert advice as required.

9.45 The Department is also undertaking a number of other activities that may impact on the Indigenous overrepresentation rates and its efforts should be acknowledged. In the Western Australian Law Reform Commission Paper: *A Background Paper on Aboriginal People and Justice Services: Plans, Programs and Delivery (December 2004)*, these matters are referred to. But it has been said in the Paper that: "The strongest single theme in this Paper is the gap between the promises of paper policies and what is happening on the ground".

9.46 A mechanism currently in fashion at the Commonwealth and State level to get better outcomes from services provided to Indigenous communities is the greater application of performance indicators and benchmarks in policies, strategies and plans. For example, see the work being undertaken by the Council of Australian Governments and the Productivity Commission on the *Overcoming Indigenous Disadvantage Framework*. In a background paper for the WA Law Reform Commission of WA, Marks states that at both the federal and state levels significant progress has been made in developing the basis for a benchmarking approach to monitoring and evaluating programs and policies for reducing Indigenous disadvantage:

> "*Indigenous disadvantage in the area of law and justice is central to the significant problems facing Indigenous Australians. It impacts directly and adversely on community cohesion and progress and on Indigenous Australians personal security and sense of wellbeing. Reducing disadvantage in law and justice matters, including through the acknowledgment and recognition of the role of customary law, is a priority human rights obligation. A benchmarking approach has significant potential to contribute to this goal in respect of law and justice matters*."[15]

[15] Marks, G (2004) *The value of a benchmarking framework to the reduction of Indigenous disadvantage in the law and justice area*, Background Paper No 3, Law Reform Commission of Western Australia, p34.

9.47 Evidence provided to the Inquiry suggests that the Department could greatly improve its benchmarking of Indigenous strategies, including the following important work:

- Aboriginal Justice Agreement
- Department of Justice Aboriginal Employment Strategy 2005-2010
- Prison's Divisions Strategic Plan for Aboriginal Services 2002-2005
- Prisons Divisions Indigenous Education and Training Policy 2005
- Community and Juvenile Justice *Aboriginal Justice Plan 2004*
- Community Justice Services Programs Branch – *Approach to Servicing Aboriginal Offenders*, August 2005
- Court Services Aboriginal Strategic Plan 2005-2009
- Department's activities in response to the Gordon Inquiry

9.48 The principles and standards outlined in the *Statement of Commitment to a New and Just Relationship* is designed to provide such guidance to government agencies and Indigenous communities. The strategies should be:

- Based on shared responsibility and accountability of outcomes;
- Formalised through agreement;
- Based on realistic and measurable outcomes supported by agreed benchmarks and targets;
- Sets out the roles, responsibilities and liabilities of the parties; and
- Involves an agreed accountability process to monitor negotiations and outcomes from agreements.

Recommendation 81

For the purpose of reducing Indigenous overrepresentation and reoffending, Government should establish standing Regional Indigenous Justice Advisory Groups (RIJAGS), reporting to the Attorney General, for each Human Services Directors General Group Regional Managers' Forum (a similar model could be the current Aboriginal Reference Group developing the Kimberley Custodial Plan).

Each RIJAG should have a Coordinator and secretarial support, which would be attached to the Department of the Attorney General.

The role of these Groups would be to:

- **Assume the role of the former Aboriginal and Torres Strait Islander Commission in the implementation and monitoring of the *Aboriginal Justice Agreement*;**
- **Cultivate a specialist-capacity in their region to produce evidence-based policy and project advice on Indigenous overrepresentation in the justice system;**
- **In partnership with HSDGG Regional Managers, explore opportunities for whole-of-government responses to Indigenous offenders' criminogenic and non-criminogenic needs;**

- **In partnership with HSDGG Regional Managers, explore opportunities for Indigenous community groups to enter into commercial and non-commercial agreements to provide 'community-owned' corrections-related services; and**
- **Establish Women and Young Offenders sub-Committees**.

Recommendation 82

The Chair and one other member (preferably a male and female) from each RIJAG should collectively form a State Indigenous Justice Advisory Group (SIJAG). The primary role of the SIJAG will be to advocate for the RIJAGs by working in partnership with Cabinet and the Human Services Directors General Group.

9.49 Another mechanism to improve the Department's outcomes on the ground is to increase the employment of Indigenous people in the planning, delivery, monitoring and evaluation of services that impact on Indigenous people. According to data provided to the Inquiry by the Department, as at 26 May 2005, there were 225 Indigenous employees representing 4.7% of all Departmental employees, 122 had permanent status. There were 58 Indigenous employees in the Prisons Division, including 32 Indigenous Prison Officers and there were 73 Indigenous employees in the Community and Juvenile Justice Division, including 16 Indigenous Community Corrections Officers/Juvenile Justice Officers. To highlight a significant gap, there were only 2 Indigenous employees employed at Level 5 or above in the Prisons Division and only 2 Indigenous employees employed at Level 7 or above in the Community and Juvenile Justice Division. Many of the Indigenous employees that the Inquiry spoke to expressed frustration at not being listened to in trying to get the Department to work in ways that would more effectively engage with Indigenous clients, which frustration sometimes resulting in workers compensation claims or even resignations. Greater efforts could be made by the Department to retain its Indigenous employees.

9.50 While the Department has not had an Indigenous employment strategy for more than four years, the Prisons Divisions' *Strategic Plan for Aboriginal Services 2003-2005* set an employment target 'to have the percentage of Aboriginal employees reflecting the proportion of Aboriginal clients'. In September this year, the Department's Corporate Executive endorsed-in-principle an *Aboriginal Employment Strategy 2005-2010* subject to the development of an Implementation Plan. In this strategy, the Department states that "Aboriginal issues are a core component of Departmental business" and that its employment policies can contribute to improving social and economic outcomes for Indigenous people. The Strategy has two overriding purposes:

- To improve the employment status of Aboriginal people within the Department, and
- To improve the quality of products and services to Aboriginal communities, individuals and families.

9.51 Amongst other things, the Strategy has set a target of 10% of all permanent employees will be Indigenous by 2010, which means it will have to offer on average more than 50 permanent positions per year for the next four years to Indigenous persons. This, it seems to me, would be a remarkable achievement if it occurred. Nevertheless, there is room for significant improvement in increasing the rate of, and retention of, Indigenous employment in the Department.

Recommendation 83

The Department should give effect, as matter of policy at the highest level, to increasing Indigenous employment in the corrections system. In this regard, as a matter of urgency, the Chief Executive Officer of the Department should appropriately resource and implement the *Aboriginal Employment Strategy 2005 -2010*.

9.52 I now turn my attention to what should be done to meet the legitimate needs of those Indigenous persons who are in prison, because that is what is required by the essential Terms of Reference of this Inquiry and by the circumstances and the time limits of it.

THE APPLICABILITY OF PRISON RULES TO INDIGENOUS PEOPLE

9.53 There is a need for the Department to pay particular attention to the impact of the corrections system on Indigenous offenders because of two things: Indigenous persons constitute a very large proportion of the persons in prison and in community corrections (last year Indigenous persons represented more than 30% of the total population in ten of the fifteen prisons, including juvenile institutions, and more than 75% of the total population in six of the fifteen prisons), and because their needs (their claims) are different from those of non-Indigenous prisoners.

9.54 As I have indicated, the philosophy of the management of prisoners involves that prison officers will seek to ascertain the needs/claims of their prisoners and will see to do what is proper to meet them. But this requires further analysis; particularly so in relation to Indigenous prisoners. Prisoners have needs of various kinds. They require food and shelter; they may claim to need recreation, cell amenities, access to educational courses or weekly visits. One of the functions of those who manage prisoners under the management philosophy is to decide which of the prisoners' claims should be met. Claims which are fundamental needs will be met: food and water must be provided. Other claims, such as cell amenities and the like, may be met because to meet them will help in the proper management of the prison. Whether claims to educational access or visiting rights will be allowed will be a matter for judgement and decision by the Administrators.

9.55 In the Inquiry it has been urged that this analysis is of particular importance in relation to Indigenous prisoners. It has been urged that, by reason of what I shall describe compendiously as their "culture", Indigenous prisoners have claims which are different from the claims of other prisoners and that those claims (or some of them) should be met by the prison administrators.

9.56 Material has been presented to explain what these claims are. It has been said that Indigenous cultures imposes obligations upon Indigenous people which are different from the obligations imposed on others, that those obligations are enforceable in various ways, under Indigenous culture, and that Indigenous people (whether or not they be at the time prisoners) will suffer consequences if they are not observed. Some of these obligations are known: Prison Superintendents and the Department know of the claim/obligation of Indigenous people to attend certain funerals. It is urged that there are other cultural obligations which are or should be known. The obligation to attend certain ceremonies or gatherings has been instanced. It has also been urged to the Inquiry that (perhaps seriously, perhaps humorously) that there are other obligations of which the Inquiry may not be told but which should be accommodated. It has been complained that those administering prisons do not know enough and should know more of these matters. To this end, the Department has engaged a Perth-based Indigenous contractor to deliver Indigenous cross-cultural awareness workshops to all staff. Almost 20% of all staff had undergone the training as of August 2005. Some prisons have found the need to supplement this training with their own similar style of course that has been developed by local Indigenous people and presents issues that are relevant to their region and their Indigenous prison populations. These local courses are to be encouraged.

9.57 It has been urged that some at least of these claims should be accommodated. It is plain that, while the prison system for Indigenous people remains essentially as it is, every cultural obligation cannot be met, but some of them can and should be met. One example may be taken, namely the cultural obligation to attend certain funerals. The evidence before the Inquiry is that an Indigenous person who does not attend such a funeral (whether he be in prison or not) will be, under the culture, subjected to community sanctions. If this be so, then the consequences of not observing the cultural obligation is or may be so serious that it is proper that prison authorities make provision to allow the prisoner to observe it.

9.58 The material before the Inquiry does not allow the full definition of which cultural obligations should or should not be accommodated in this way. The complaint has been made that prison authorities have not to date paid enough attention to such obligations and that they should (by having on staff Indigenous people and otherwise) reduce the complications associated with facilitating such matters.

9.59 In my opinion this should be done. Steps should be taken to ascertain what are the claims which rise from Indigenous culture, to determine which of them are of such a nature that they should be accommodated in the administration of the relevant prisons, and to do this by the ongoing involvement of Indigenous persons in the prison administration.

Recommendation 84

The current Aboriginal Policy and Services Directorate should be located in the proposed Department of the Attorney General, and develop a greater capacity to effectively project manage the implementation of the *Aboriginal Justice Agreement*.

Recommendation 85

The *Corrections Act* should require the Department to specifically contemplate the unique cultural needs of Indigenous offenders in the development, delivery and evaluation of policies, programs and services.

Recommendation 86

In light of the high proportion of Indigenous offenders in custody, planning for all custodial facilities should ensure appropriate consideration is given to the needs of Indigenous offenders.

Recommendation 87

Each Prison Superintendent should establish a standing Indigenous Services Committee to coordinate and monitor the implementation of the Department's Indigenous strategies.

9.60 In so recommending, I am conscious of the practical difficulties that may arise. As the Inspector of Custodial Services has pointed out, there are "Aboriginal Prisons" and other prisons. In the former, the accommodation of the incidents of Indigenous culture may be more easily achieved. In other prisons, where Indigenous people are a smaller or small proportion of the prisoners, it may be more difficult to meet the claims of Indigenous prisoners and not to meet the (less cultural) equivalent claims of other prisoners. It will be necessary to give to those administrators at prison level a sufficient discretion (and to train them to have a sufficient judgement) to deal with these matters so as to avoid, for example, unfairness or dissention among prison populations. Nevertheless, learned experiences in meeting the needs of Indigenous prisoners in the 'Aboriginal prisons' may in fact assist the other prisons to develop Indigenous-specific rules and processes that could be applied in their peculiar environments.

9.61 I come now to another aspect: the extent to which the procedures established for the management of prisoners are appropriate to the management of Indigenous prisoners.

9.62 The management of prisoners in the Western Australian Prison System is regulated in detail by, inter alia, the Rules promulgated by the Director General. In important respects, some of these Rules may not be appropriate to the management of offenders who are Indigenous and, in their literal terms, cannot be applied to them. I shall take by way of examples the Rules as to classification and placement of prisoners; and the Rules as to case management of prisoners.

9.63 The Rules by which prisoners are classified are important both to the treatment of an individual prisoner (it is better to be in minimum than maximum security); and to the way in which prisons are operated. As I have previously indicated, the present classification system determines the classification of a prisoner (maximum, medium or minimum security) according to whether he satisfies tests directed to ascertaining whether he will escape.

9.64 Evidence has been presented to the Inquiry that suggests the reason why an Indigenous person may attempt to escape, particularly in Broome, is often due to the need to resolve urgent family matters. The Inspector has recognised this and

has recommended that Superintendents have the power to enable short leave of absence to deal with "urgent family matters".

9.65 I have referred in detail to the circumstances of the escape of prisoners from Broome Regional Prison. These details indicate clearly that the motivation of escapees in the Aboriginal Prisons may be different from the motivation of those escaping elsewhere. A test designed to predict what a non-Indigenous person will do in relation to escape may not accurately make such a prediction in relation to an Indigenous person. I am informed that the inapplicability of these Rules to Indigenous prisoners has been emphasised by the Superintendent of the Broome Regional Prison to the Department. This has been confirmed generally by material provided by the Indigenous interest groups who have spoken to the Inquiry.

9.66 The case management provisions are, in their terms, applicable to all prisoners. They are appropriate to non-Indigenous prisoners whose values and motivation for acting are those of the wider society. They may not, in general, be appropriate to Indigenous persons. Indigenous persons, especially those from the Kimberley area and even those from the south west area of the State may be different: their needs and their motivations may be different and the values by reference to which they may act are part of or at least influenced by Indigenous law, custom and values.

9.67 The general complaint has been made (the validity of it has been conceded by many officers) that prison officers generally do not understand or appreciate the Indigenous customs and culture. Accordingly, it is claimed (and appears reasonable to accept) that insofar as prison officers are required in case management to understand the problems of Indigenous prisoners and to foresee and forefend such problems, they are in a position of disadvantage or even impossibility. To refer to the terms previously used in relation to case management, many prison officers do not, to the extent that case management requires, understand the thinking and motivation of Indigenous prisoners. In discussions with prison officers and prisoners, examples have been given. Indigenous prisoners referred to the significance for them of attendance at funerals ("funeral" for this purpose, may involve attendance beyond the interment of the deceased and involve presence lasting for days rather than hours). It was said, and confirmed by the observations of the Superintendent at Broome, that the significance of family ties in this regard is not fully appreciated by ordinary prison officers or by the terms of the legislation under which prisoners may be allowed to leave prison for the purpose of attending to such ceremonies. For reasons such as these, the methods of case management prescribed by Rules are not applicable to most, if not all, Indigenous persons, yet, it is said, departure from the Rules may lead to sanction of an officer by the Department.

9.68 It follows from considerations such as these that it is necessary that the Rules governing the classification and the management of prisons should be revised to take account of the different position of (the large number of) Indigenous prisoners.

Recommendation 88

The Department should review the current classification system to determine its appropriateness for the management of Indigenous offenders.

WHAT SHOULD THE DEPARTMENT DO IN REGARDS TO THE MANAGEMENT OF INDIGENOUS OFFENDERS?

9.69 I come now to the management and treatment of Indigenous persons in prison. I shall discuss this by reference to two matters: the state of Indigenous prisons; and what should be done generally in relation to Indigenous prisoners.

9.70 The Terms of Reference require that I have particular regard to the opinions and findings of the Inspector of Custodial Services. In his report, prepared for the purpose, *inter alia*, of this Inquiry, the Inspector has said:

> "*The State has four regional "Aboriginal prisons", called so because their population is 75% or more Aboriginal and between them Broome, Eastern Goldfields and Roebourne and Greenough hold almost half (45%) of the Aboriginal prison population at any one time. Apart from security upgrades, these prisons have, for the most part, been neglected by the Department of Justice for many years. The Inspectorate's Annual Report of 2000-01 reported substandard and unhygienic conditions for Aboriginal prisoners, particularly in the Aboriginal prisons. These include appalling accommodation, sleeping arrangements that are unhealthy and even dangerous, threadbare blankets, decaying real estate, filth, cockroaches, inadequate recreation opportunities, virtually no access to fresh air, humiliating arrangements for medical care and inadequate attention to dietary needs. Not all of these conditions are found equally in all prisons, but they are present in some or other of them to varying degrees. Quite simply, these conditions would not be tolerated if non-Aboriginal prisoners were the majority. Non-Aboriginal cultural values prevail in the management of these prisons. Aboriginal male prisoners, despite or perhaps because of it being "their" prison, are perceived to be ignorant and incorrigible and undeserving of opportunities for rehabilitation that other groups have access to*."

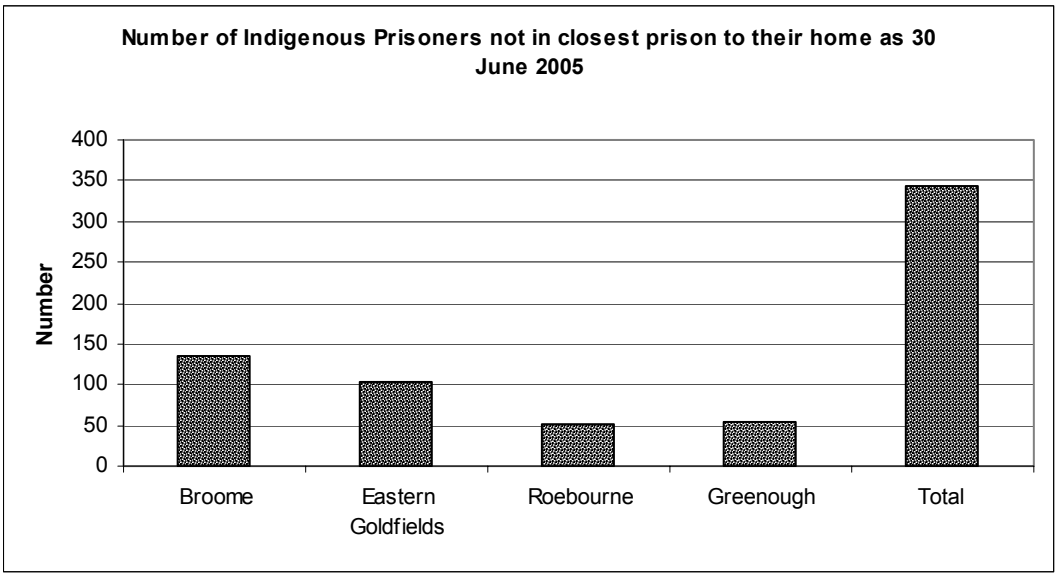
9.71 I have visited all of the four "Aboriginal prisons". In respect of Broome and Eastern Goldfields, at least, what I have seen does not differ in important respects from what the Inspector has said. I would however, add one further comment to what he has said.

9.72 During my visit to the Broome Regional Prison, I visited the section in which women prisoners are held and I talked with the women who are there. It is appropriate to apply to their accommodation the term used by the Inspector, "appalling". The women are kept in the same prison as the male prisoners. Their section, which includes both minimum security prisoners and others of higher security, is necessarily kept locked. This section is small, with some small (double or multi-bunked) cells for minimum security prisoners and a small yard open to the weather. The small number of higher security female prisoners are kept together in one cell. They are locked in that cell when the entrance to the women's section is opened. It is a situation to which, although I do not attribute blame, it is proper to attach the term "shame".

9.73 The facilities for maximum and medium security males at Broome Regional Prison is no better.

9.74 There is insufficient custodial infrastructure in the regions to enable Indigenous offenders to be placed in the prison closest to their home. As at 30 June 2005, there were 135 Indigenous offenders from the Kimberley region placed in prisons other than the Broome Regional Prison; there were 102 Indigenous offenders from the South Eastern region placed in prisons other than the Eastern Goldfields Regional Prison; there were 51 Indigenous offenders from the Pilbara region placed in prisons other than Roebourne; and there were 55 Indigenous offenders from the Central region placed in prisons other than Greenough. In total, there were 343 Indigenous offenders placed in prisons other than the one closest to their home.

Figure 13: Number of Indigenous prisoners not located in the closest prison to their home



Source: Department of Justice, *Census of Male Prisoners* as at 30 June 2005

9.75 The lack of capacity may contribute to the very high numbers of prison movements in the four major "Aboriginal prisons" resulting in greater transport expenses for the Department and greater stress on prisoners and their families.

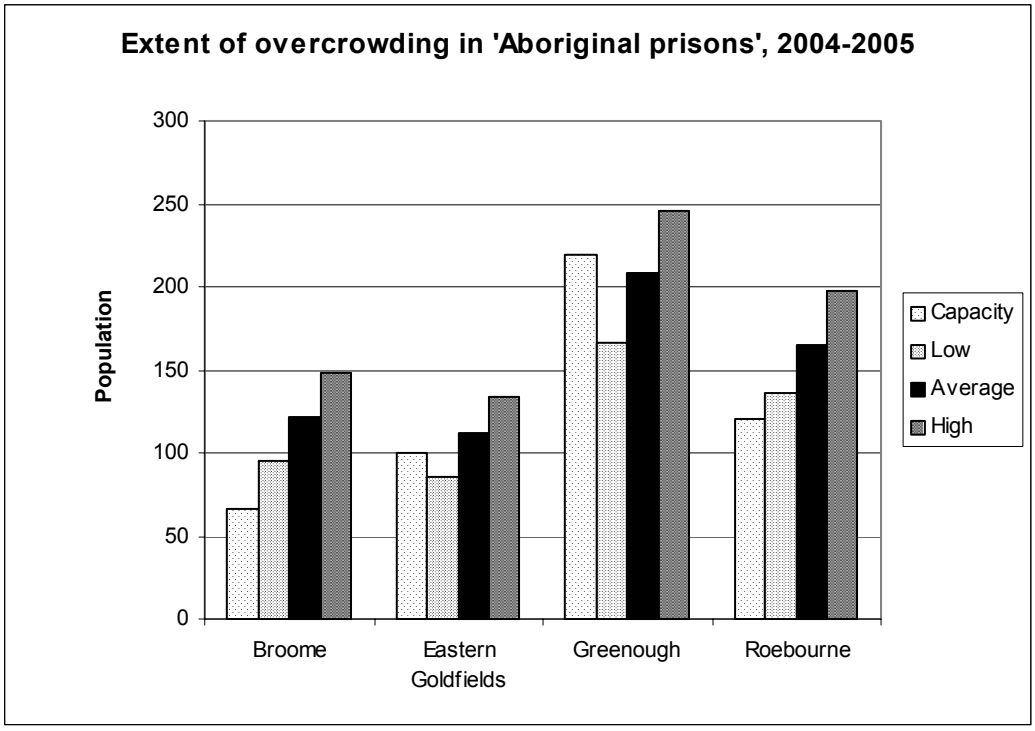
Table 2: Indigenous Prisoner Movements for the 'Aboriginal Prisons' 2004-2005

	Transfers In	Transfers Out
Broome Regional Prison	282	361
Eastern Goldfields Regional Prison	406	458
Roebourne Regional Prison	656	668
Greenough Regional Prison	703	650
TOTAL	2,047	2,137

Source: Department of Justice, *Prisoner Movements 2004/05*

9.76 The extent of overcrowding on average prison population numbers for 2004-2005 was significant in Broome, Eastern Goldfields and Roebourne Prisons. This results in 3 or 4 prisoners being located in a cell designed for 1 or 2 prisoners. This can cause significant management problems.

Figure 14: Extent of overcrowding in 'Aboriginal prisons', 2004-2005



Source: Department of Justice, *Prison Population – By Prison, Status, Aboriginality and Gender, 2004-2005*, July 2005

9.77 There is an even larger number of Indigenous people in the seven prisons other than the four "Aboriginal prisons". In 2004-2005, the total average number of Indigenous people in the four 'Aboriginal prisons' was 530. The average number of Indigenous people in the remaining prisons was 813, excluding the juvenile institutions (average number 99). In those prisons Indigenous people are often a substantial minority. In 2004/05, the total average number of Indigenous

prisoners held in Acacia, Casuarina and Hakea was 583, representing 32%, 37% and 28% of each prison's total population respectively.

Recommendation 89

Planning for future regional custodial facilities with predominantly Indigenous prisoners should be specifically constructed to meet the needs of Indigenous offenders and to provide for the delivery of services to prisoners at all classification levels, so that the need to transfer prisoners to other facilities out of their country due to overcrowding is minimized.

Recommendation 90

At least one new custodial facility should be established in the Kimberley immediately. In this regard, Government should consider the recommendations of the Inspector's Directed Review.

Recommendation 91

A custodial facility should be established to replace Eastern Goldfields Regional Prison as a matter of priority. In this regard, Government should consider recommendations of the Inspector's Directed Review.

9.78 I have sought to ascertain (in addition to what is provided for prisoners generally) what should be done for prisoners who are Indigenous. I have for this purpose spoken with Superintendents and officers in certain prisons. I have asked for practicalities rather than generalities. I have discussed what I have derived from those discussions with Indigenous persons and their representatives. There has been a general consensus that what should be done is as follows:

- Indigenous people from conflicting groups should be placed separately in the prisons; at least, attention should be given to whether the separation of the different groups is required. Antagonism may exist between different groups or different families and this may lead to physical and other differences. On the other hand, regard is to be had to the desire of members of a group to be together. In Broome, where each prisoner is allowed to choose the cell to be occupied by him, it has been found that in one cell there have been 5 - 6 Indigenous persons of the same group and in the cell next to it one or two Indigenous persons of a different group.
- Culturally appropriate courses, of literacy, numeracy, and addressing the criminogenic and non-criminogenic needs of Indigenous offenders, should be provided. Not infrequently Indigenous persons exhibit comparatively low standards of (Western style) education in this regard. The incapacity to read or count is disabling, not only generally, but in relation to the management of prison activities by signs and the like. Courses of this kind should be seen as the means of resocialising prisoners in the sense to which I have elsewhere referred.
- Appropriate healthcare courses and assistance should be provided for Indigenous persons. The health standards of many Indigenous persons is

lower than is desirable. For obvious reasons, standards should be improved. Indigenous prisoners have a particular need in this regard.

- Anti-drug programs should be provided. The present social condition of Indigenous people is due to a significant extent, to drugs such as alcohol, cannabis and amphetamines. Petrol sniffing among the younger Indigenous persons is prevalent. Problems associated with such drugs are, to a significant extent, the problem of Indigenous prisoners, when they come to prison and sometimes within the prison. Appropriate help should be provided.

9.79 Indigenous prisoners should be placed in prisons in or near to "their country". The importance of this has been stressed in the material provided to the Inquiry. The effect is said to relate not merely to the difficulty of family visits in places outside "the country" but to the emotional and psychological effects which divorce from country is apt to have upon individual Indigenous prisoners.

9.80 The present position in relation to the Kimberley area illustrates these underlying problems. There are in the Kimberley area some 10,000 Indigenous persons. The prison in the Kimberley area, Broome Regional Prison, accommodates prisoners essentially of minimum security status. The provision there in relation to maximum and medium security prisoners is inherently unsuitable and is directed to the custody essentially of transitory prisoners. In practice, prisoners of maximum or medium security status in the Kimberley area are transferred out of the Kimberley area to other places, eg, to appropriate prisons in southern areas or to Roebourne and Greenough. The problems arising from the transportation and placing of prisoners in this way are significant. The number of maximum or medium security prisoners in the Kimberley area is comparatively small and immediate consideration should be given to arrangements under which they can be held in that area. For more detail, see the Inspector's Directed Review.

9.81 Proper arrangements should be made for the visits to Indigenous prisoners by members of their (immediate and extended) family and associates. At the Broome Prison, arrangements exist for such visits to be made at any time during the substantial part of the day. During such visits mutual contact, mutual meals and the like are allowed. I am informed by prison officers at the prison that no significant difficulties arise from the fact that these extended arrangements occur.

9.82 In 2002, the Prisons Division of the Department developed a comprehensive three-year strategy to guide its delivery of services to Indigenous offenders (*Strategic Plan for Aboriginal Services 2002-2005*). The Strategy contained a set of guiding principles, an Indigenous-specific service delivery approach and seven key objectives with relevant actions. Indigenous staff and stakeholders were involved in the development of the Strategy and consequently it contains a wide-ranging list of strategies in relation to Indigenous imprisonment, including all of the issues I have just described.

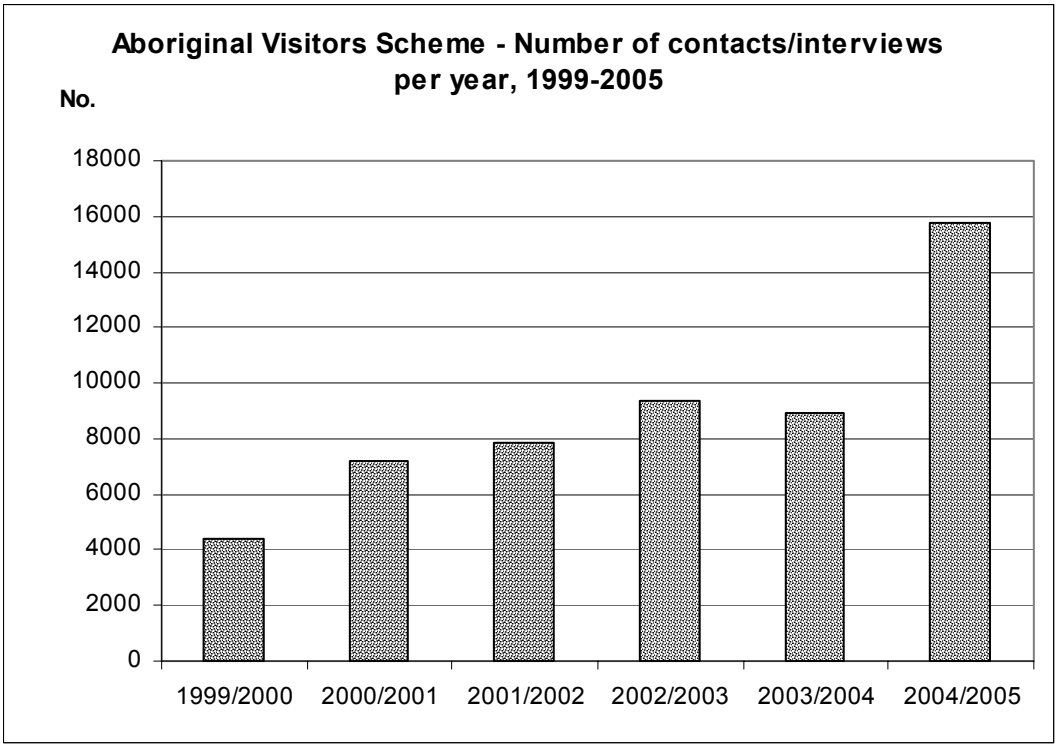
9.83 On a simple statistical measure, the Strategy has failed over its three-year period to achieve its stated primary outcome, which was to achieve "a reduction in the over-representation of adult Aboriginal people in the prison system". In fact there has been an increase in the overrepresentation as the following statistics highlight. On 30 September 2002, the Indigenous prison population was 893 and 31.7% of the total prison population. On 30 June 2005, the Indigenous prison population was 1,411 and 40.5% of the total prison population.

9.84 While recognising that the issues are complex, the reasons for this failure are not clear. Was it due to the lack of implementation of the strategies; was it because the selected strategies were ineffective; was it because the primary outcome was never going to be achievable; or were there other reasons? This is important to discover and the answers should be clearer once an evaluation of the Strategy has been undertaken when it concludes at the end of this year.

9.85 Nevertheless, the Strategy is a valuable source of information as to what some of the standards and the issues particularly relevant to Indigenous offenders are. I do not mean that, if these things are done, the position of Indigenous prisoners will be ideal: it will not. If these things are done, they will assist in remedying the difficulties that arise, not from their social and economic disadvantage only, but from their ethnic origin. There will, of course, be, in particular cases, further needs that remain to be met.

9.86 An Indigenous-specific service in the Prisons also worthy of mention is the Aboriginal Visitors Scheme (AVS). It is administered and funded by the Department but retains some autonomy to enable the Visitors to maintain the trust and confidence of the prisoners. There is a very high demand for the services of AVS, which has increased three fold since 1999. Last year, the 40-50 part-time casual Indigenous employees, usually from the local community, recorded more than 15,800 interviews and contacts with Indigenous adults and juveniles in custody at prisons, detention centres and police-lock ups throughout WA.[16]

Figure 15: Aboriginal Visitors Scheme – Number of contacts/interviews per year, 1999-2005



Source: Department of Justice, Aboriginal Policy and Services Directorate, 2005

[16] Department of Justice, *Annual Report 2003/04*, p109

9.87 The role of a Visitor from the AVS is to provide independent counselling and welfare-related assistance to Indigenous prisoners. In the prisons where this system is operating well, the Visitors have a good relationship with the Superintendent and the Prison Officers, and most often are able to see issues resolved swiftly and informally. The Inquiry was often told how useful the Visitors' knowledge of the prisoners' families and communities had been in assisting Prison Officers' to understand and develop ways to manage Indigenous prisoners when they were having problems. This is an extremely valuable scheme in the management of offenders and the good work of the Aboriginal Visitors is acknowledged. It is understood that the Visitors have not had a pay rise since 2001. This would no doubt have some impact on their work output and needs to be addressed by the Department urgently.

REDUCING RE-OFFENDING

9.88 The rate of re-offending by Indigenous offenders is high – one research project found that 82% of sentenced Indigenous offenders were charged with a new offence following exit from prison.[17] The primary mechanism implemented by the Department to reduce re-offending is through the delivery of therapeutic and non-therapeutic offender programs and services in both prisons and the community correction systems. Evidence to the Inquiry indicates that there is a great deal of room for improvement in the development, planning, delivery and evaluation of these types of services for Indigenous offenders.

9.89 Certainly, the Department acknowledges that the special needs of male, female and juvenile Indigenous offenders are to be addressed if there is to be any impact on the overrepresentation rates of Indigenous offenders, including formally recognising that it needs to embrace new ways of working with Indigenous offenders.

> *"These include actively respecting and reinforcing Aboriginal culture; collaborating with Aboriginal people to provide culturally appropriate services and programmes; establishing and maintaining strong, effective linkages between prisons and local Aboriginal communities and organisations; supporting Aboriginal prisoners in maintaining strong ties with their families and communities and, most importantly, recognising that empowering Aboriginal people to develop and effect their own solutions is the only sustainable answer to the high Aboriginal imprisonment rate."*[18]

9.90 Programs development and delivery has substantial budgets in both the Prisons Division and the Community and Juvenile Justice Division. The total budget available for men, women and juvenile programs across both the Prisons Division and the Community and Juvenile Justice Division in 2005-2006 is $28.7 million – representing the Prisons Division budget for offender programs and Work Camps of $8.4 million and a Community and Juvenile Justice Division budget for a range of offender programs and services of $20.3 million. However, current

[17] Department of Justice, "*Adult Recidivism Research Project – Key Offender Characteristics*", Research Bulletin #2, Community and Juvenile Justice Division, December 2002.

[18] Prisons Division, *Strategic Plan for Aboriginal Services 2002-2005*

Departmental strategies to meet Indigenous-specific crimonogenic and non-criminogenic needs are remarkably limited given the high demand and budgets that are allocated for these purposes.

9.91 A current Departmental review[19] of the Department's programmatic interventions clearly states that "there are no programs tailored for Indigenous clients under the Branch's newly developed Program Menu". In fact, across both Divisions, adults and juveniles, only one therapeutic program has been developed and delivered specifically for Indigenous offenders since 1998 - the Indigenous Sex Offenders Treatment Programme (ISOTP). The ISOTP is provided only in prison and its efficacy has not been evaluated. The Department has also developed a non-therapeutic Indigenous-specific skills acquisition program - the Indigenous Men's Managing Anger and Substance Use Program (IMMASU), which is also only available in prison.

9.92 Indigenous offenders can also access mainstream programs. However, Departmental evidence indicates that referrals, enrolments, commencements and completions are disproportionately low and that there is no evidence available to determine the effectiveness of those that do complete. This lack of appropriate programs for Indigenous offenders may in part explain the high rates of recidivism. The Departmental programmatic review currently underway has also found evidence that the justice system has evolved in recognition of the lack of Indigenous-specific programs, in particularly that:

- The proportion of Indigenous offenders with programs conditions on sentencing and early release orders is low;
- The proportion of Indigenous program referrals is low; and
- Current demand for Indigenous programs has not been fully monitored or estimated.

9.93 It is noted that the Prisons Division and Community and Juvenile Justice are jointly developing an Indigenous-specific Family Violence Program in Broome targeting male offenders.

9.94 In response to the Gordon Inquiry,[20] the Department is implementing three initiatives, two of which come under the scope of this Inquiry and fall under the responsibility of the Community and Juvenile Justice Division. They are:

- Provision of therapeutic programs to violent offenders, victims and other members of remote communities;
- Expansion of the Community Supervision Agreements; and
- Expansion of the Victim Support Services for Indigenous victims (this initiative is provided by Court Services and is not discussed here).

9.95 Commencing 1 July 2003, in total the Department of Justice is receiving $3.8 million over four years to implement these three initiatives; specifically, it is receiving $1.8 million over four years for provision of programs to perpetrators and victims in remote communities and $835,000 over four years for the

[19] Department of Justice, *Review of Programmatic Interventions*, Interim Report – Prepared by Community and Juvenile Justice, September 2005, p10

[20] Gordon, S Hallahan, K, Henry, D (2002) *Putting the picture together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities,* Department of Premier and Cabinet, Western Australia.

expansion of the Community Supervision Agreements for regional and remote communities. Despite significant efforts by the Coordination Unit, the Department was not able to provide to the Inquiry the original funding submission to Treasury or any documentation indicating the terms of the funding agreement.

Recommendation 92

The programs and educational courses delivered to offenders, and particularly those directed to re-socialisation, should be adapted to suit Indigenous offenders. The Department should significantly increase its expertise and capacity in the Programs Branch to develop, deliver and evaluate programs for Indigenous offenders, particularly to meet the needs of women and young offenders.

PROGRAMS TO REMOTE COMMUNITIES

9.96 Work towards the provision of therapeutic programs to violent offenders, victims and other members of remote Indigenous communities began in early 2003 with the signing of a Gordon Implementation agreement between the Department and the Department of Treasury. The original intention of the project was to develop Indigenous-specific program materials for violent Indigenous offenders, their victims and other members of remote Indigenous communities. These programs were to be delivered only in the remote communities. Evidence to the Inquiry indicates that to date not one program has been provided to a remote Indigenous community under this initiative.

9.97 Further evidence to the Inquiry, including a recent evaluation of the Department's Response to the Gordon Inquiry[21] indicates that while the projects "have potential to have significant positive impacts and provide opportunities to undertake important and commendable work", this potential has not yet been realised. It wasn't until February 2005, that a project manager was appointed and at a Corporate Executive Committee meeting on 15 Aug 2005, Ms Jackie Tang, Executive Director, Community Justice Services proposed the establishment of an intra-agency Gordon Implementation Working Group to improve impact on the ground.

> *"To date, it is difficult to see any impact on the ground given the time needed to recruit officers and the unrealistic expectation that one officer can cover program delivery in the entire Kimberley region."*[22]

9.98 Also, the major findings from the recent evaluation support the Inquiry's conclusion that the Department's management of this initiative could have been better.[23] Essentially, the initial intention and scope of the project was too ambitious; a strategic business plan for the project was not developed; and there was insufficient project management or coordination. For example, the Inquiry understands that in the first year of this initiative, the Department spent only

[21] Aquilina, H and Delfante, L, (2005) *Evaluation of the Implementation of Department of Justice Projects in Response to the Gordon Inquiry*, Final Draft Report.

[22] Department of Justice Corporate Executive Committee Minutes, 15 August 2005.

[23] Aquilina, H and Delfante, L (2005) *Evaluation of the Implementation of Department of Justice Projects in Response to the Gordon Inquiry*, Final Draft Report, p4

$32,000 of the $450,000 budget. This has resulted in ongoing confusion and tension between staff and managers, in head office and in the regions. In total these management problems complicated and hindered and already challenging task.

9.99 One Level 6 Aboriginal & Regional Programs Consultant (ARPDO) and four Level 5 Regional Program Development Officers (RPDOs) were recruited for this project. The role of the RPDOs was to build relationships with key members of remote communities; identify the needs for the communities; and to develop and deliver appropriate programs. The role of the ARPDOs was to provide the professional supervision to the RPDOs. It is understood that the original intention was to recruit two ARPDOs – one to provide the supervision for the Kimberley and Pilbara regions, and another for the Gascoyne and Eastern Goldfields regions – however only one was ever recruited. Only two of the RPDOs are Indigenous, which is remarkable given the fundamental need to build relationships with remote communities to implement this program. Nevertheless, it seems that the RPDOs to varying degrees have been developing relationships with key members of remote Indigenous communities but have not had the support to take the project to the next phase, which is the delivery of programs.

9.100 The Inquiry has been advised that the program objectives have fairly recently been 'rationalised' to improve the likelihood of an impact on the ground. A draft set of program materials have been developed, which are non-therapeutic and are now described as 'Brief Interventions'. It is expected that an evaluation framework is being developed to simultaneously monitor and measure the effectiveness of these materials.

EXPANSION OF COMMUNITY SUPERVISION AGREEMENTS

9.103 A Community Supervision Agreement (CSA) is a contract where remote Indigenous communities monitor offenders resident in their communities on behalf of the Department of Justice. In 2002, the Gordon Inquiry made the following relevant recommendation:

"Recommendation 100: The Inquiry endorses the provision and expansion of the Aboriginal Community Supervision Agreements providing that:

- *appropriate financial and logistical supports are in place for the community,*
- *appropriate community members are given access to offenders' criminal records,*
- *appropriate training is provided for community members to manage offenders."*

9.101 Following receipt of extra funds ($1.8 million over four years), the Department has created three new Community Supervision Agreement Officer positions to manage these agreements in the Kimberley, Pilbara and the Goldfields. Due to the vast expanses and the number of remote communities in the Kimberley, one position was devolved into the East and West Kimberley and an additional officer appointed for the Murchison. Evidence to the Inquiry indicates that while this program has had much more impact on the ground than the Offender Programs initiative, there is rooms for improvement, particularly in ensuring communities have the capacity to sustainably provide this service.

9.102 Essentially, concerns raised to the Inquiry indicate that the Department could do more to support the communities to undertake this important work such as training and ensuring sufficient community capacity. For example, the Inquiry understands that the budget for the Community Supervision Agreement Officers throughout the Kimberley in 04/05 was $16,000. Further, it is understood that the current rate of payment to communities is $60 per week per offender. This is insufficient, particularly when compared to the cost of imprisonment. My recommendations include greater attention by the Department to facilitating more sustainable agreements with Indigenous groups.

9.103 A further question remains: what is the future for Indigenous prisoners?

9.104 For the foreseeable future, there will be in the Western Australian justice system a substantial number of Indigenous people. Accordingly, three matters must be addressed:

- what are the needs/claims of Indigenous prisoners?;
- which of them should be accommodated?; and
- how should they be accommodated?

9.105 As I have indicated, it is necessary to know what these needs/claims are and the nature of them in the culture. I have indicated the desirability of ensuring that Indigenous people take a proper part in making this known. It is then necessary for Government to decide to which of these effect should be given in the system; which of them are merely claims and which are of such significance as to be needs to which effect should be given. But, these things decided, it is necessary that Government work in partnership with Indigenous people to decide how best to give effect to them. Government will need to assist Indigenous people to develop structures and processes to enable sustainable partnerships, including the opportunity to enter into commercial and non-commercial agreements for the provision of correctional-type services.

Recommendation 93

The Department of Corrections should enter into commercial and non-commercial agreements with Indigenous community groups for the provision of correctional services to Indigenous offenders such as work camps, Women's Pre-Release centres, juvenile correction camps, community supervision agreements, offender programs and other services.

9.106 At present, the form of the legislation governing prisoners and of the Rules of the Director General have apparently been framed upon the basis that the one set of provisions should apply to all prisons. That view should now be re-examined. A prison system has two aspects: the form of the prison and the method of administration. In the case of a prison essentially for Indigenous offenders, each of these will be different from a prison for non-Indigenous offenders. In managed prisons of the modern kind, the form of a prison is directed to preventing escape and injury. The administration of it is based upon the four matters to which I have referred: classification and placement of prisoners, case management, courses within the prison and re-socialisation for leaving the prison. In respect of most, if

not all, of these what should be done will be different according to whether the prison is an Indigenous or a non-Indigenous prison.

9.107 It follows from this that, in principle, a prison for Indigenous offenders should be different, both in form and in administration, from a prison for non-Indigenous offenders. This is not to say that the standards should be different, it is to say that there may need to be different processes and structures to achieve the same outcomes as that intended for non-Indigenous offenders.

9.108 I have spelled this out because of what has been proposed by the Inspector of Custodial Services. I have had regard to his findings and opinions in this regard and have had the opportunity of reading and discussing them with him. He has proposed for the Kimberley area, where there are some 10,000 Indigenous people, prisons different in form and administration. He has envisaged a small secure prison for medium and maximum security prisoners; minimum security prisoners should be dealt with, not by conventional open prisons, but by accommodation more akin to labour camps. He has envisaged that such prisons should, to a significant extent, be administered by or with the assistance of tribal elders and similar persons. I do not repeat what he has said. I agree in principle with what in this regard he has proposed.

Recommendation 94

The Department should consider increasing the use of low security facilities for Indigenous offenders, such as work camps (including women's work camps), in all areas. In this regard, Government should consider recommendations of the Inspector's Directed Review.

9.109 Experience indicates that there is, between the proposal and performance, at least a gap in time. The existence of such proposals should not prevent or delay what should be done to remedy the deficiencies to which the Inspector has pointed in relation to Aboriginal prisons or the improvement, in relation to Indigenous prisoners, of the conditions in other prisons. I am conscious that, for example, rectification of the difficulties pointed to in relation to the Broome and Eastern Goldfields prisons will require expenditures and that those expenditures will be in addition to the expenditures necessary to give effect to the Inspector's proposals and the other matters to which reference has been made. It is sufficient to say that the fact that proposals have been made by the Inspector should not be accepted as a reason why the serious deficiencies in the Broome Prison to which the Inspector has referred should be delayed or put aside.

Recommendation 95

In the short term, existing facilities at Broome Regional Prison, and in particular facilities for maximum and medium security prisoners and female prisoners, be upgraded to enable humane treatment.

9.110 Notwithstanding what I have suggested, the Indigenous overrepresentation problem will remain. It exists because of the social, historical and cultural factors to which Western Australia is subject. It is not to be expected of this Inquiry or this generation that it will be solved by them. But it is to be expected that by what is now being done and by what is here envisaged, progress will be made towards what can legitimately be expected of this generation

CONCLUSION

9.111 It is without question that the management of Indigenous offenders is core business for the Department of Justice. According to the Department of Justice Budget Papers 2005/06, the Department is well aware of the extent of the problem and the nature of the solutions that are required.

> *"The number of Aboriginal people in prison has increased by 47% since June 2002. The proportion of Aboriginal people in prison as at 5 May 2005 was 40.9% of the daily average prisoner population (remand and sentenced). Strategies to date have not been sufficiently culturally relevant and further development of specific strategies to maximise the available opportunities to appropriately keep Aboriginal people out of prison are required."*[24]

9.112 The Inquiry finds that the Department is generally working towards developing culturally appropriate structures, processes, programs and services, and is starting to harness the core resources of the Department to more effectively meet this demand. However, a number of stakeholders, including most departmental representatives, acknowledge that there is opportunity for an increase in the number of strategies and much improvement in the effectiveness of strategies to reduce Indigenous overrepresentation and re-offending. The highest levels of the Department and the Government must continue to drive this goal.

9.113 The primary, and probably the only way, to ensure that the Department's strategies are culturally relevant is to ensure that Indigenous individuals, extended families and communities are given the opportunity to be structurally involved in the planning, delivery and evaluation of such services. Where this has occurred, such as the Geraldton Alternative Sentencing Regime project, good outcomes are more likely. The Department can achieve this structural involvement in a range of ways, such as employing Indigenous persons, through contracting Indigenous organisations to provide services and by ensuring genuine involvement of informed Indigenous groups. For this reason, some of the key Indigenous-specific recommendations of the Inquiry are to facilitate these three processes, namely: the urgent implementation of an Indigenous employment strategy; that greater attention is given to contracting Indigenous groups to provide relevant services; and the establishment of standing Indigenous justice-related groups to work in partnership with government agencies at the local, regional and state-level.

9.114 Finally, the Department needs to explore in a more sophisticated manner what works in relation to reducing Indigenous re-offending. There are no golden solutions but rather patience, persistence and genuine partnerships will have an impact. To date, the Department has not been sufficiently effective in relation to developing and providing Indigenous-specific programs and services and its

[24] Department of Justice, *Budget Statements 2005/06*

current plans in this area are at best likely to have an impact only on a small number of the overall need. The proposed regional Indigenous justice advisory groups will be integral in the pursuit of effective solutions.

CHAPTER 10 THE MANAGEMENT OF FEMALE OFFENDERS

10.1 The number of women prisoners in Western Australia is small. Their problems are important. They differ from the problems of male prisoners, some in principle and some in detail.

10.2 In considering the manner of conducting the Inquiry I concluded:

- That a summary should be prepared of the relevant facts and issues;
- Attention should be directed to the main features of women in prison and appropriate recommendations made; and
- A more detailed and lengthy analysis should be gathered recording relevant statistics facts and issues, this is detailed below:

SUMMARY

10.3 The rate of imprisonment of women in Western Australia has increased significantly over the past ten years. In 1993 there were 90 women sentenced prisoners, comprising 5% of the total prison population.[1] By July 2005, that number had increased to 262 (located as set out in the table below) - approximately 7.5% of the prison population and an increase of about 136% compared to the increase in around 55% for men during the same period.

PRISON	INDIGENOUS	NON-INDIGENOUS
Bandyup	72	82
Boronia	13	40
Broome	7	1
Eastern Goldfields	10	1
Greenough	21	3
Roebourne	10	2
TOTAL	133	129

10.4 The offending behaviour of women differs from that of men. Women are less likely to have committed violent offences and are more likely to have been involved in offences related to drugs and property. Having said that, the number of women imprisoned for more serious crimes and serving longer sentences has increased over the past 10 years. This is particularly the case for Indigenous women who are more likely to have been convicted of some form of assault than their non-Indigenous counterparts.

10.5 The 2002 Department of Justice Profile of Women in Prison in WA June 2002 (the 2002 Profile)[2], which analysed the characteristics of a group of women

[1] Report of an Unannounced Inspection of Bandyup Women's Prison 2002, page 4

[2] See Appendix A

offenders between 1992 and 2000, also noted an increase of 53% in charges against Indigenous women and that they represented around 50% of women in prison, although only 2.4% of the state population. In terms of cross-jurisdictional comparisons, WA has the highest rate of indigenous imprisonment at 23 times higher than the national average.

10.6 Although a minority group, women offenders present the system with a range of complex problems and needs which are different from those of the men in custody. In its submission[3], the Department has advised me:-

> *"Women prisoners overall have pervasive histories of victimisation, high levels of mental health and alcohol and substance abuse issues. Aboriginal women in particular suffer high levels of post-traumatic stress and grief issues related to their experience of violence, abuse and loss.*
>
> *Women in prison are significantly disadvantaged, with generally lower levels of education, paid employment and income compared to the Western Australian female population as a whole. For Aboriginal women prisoners, these disadvantages are multiplied significantly. Of particular importance is the combination of drug and alcohol issues, pervasive histories of victimisation and mental health issues within this clearly, highly vulnerable population, a population that consists of individuals with few skills and resources, and quite often, sole responsibility for young children."*

10.7 There are eleven male prisons; one female prison (Bandyup and the adjunct to it, Boronia). Women prisoners are also kept in small numbers, sometimes for temporary purposes, in the four prisons described by the Inspector of Custodial Services as "Aboriginal Prisons": Broome, Eastern Goldfields, Greenough and Roebourne. It has been proposed that some women prisoners in the 'Aboriginal prisons' have chosen to be there because they will be closer to their "country" or family.

10.8 Although significant in terms of the proportion female imprisonment, the numerical increase of women in custody is still far smaller than for men. Their needs have tended to be neglected, or at least given less attention. Women in regional prisons are particularly disadvantaged. They are housed in units that were adapted to accommodate them in a male-dominated prison with the result that, in spite of the best of intentions by prison management and staff at those prisons, women live in substandard and restrictive accommodation and receive a lower level of services such as programs, education, employment and recreation.

10.9 Bandyup is the second highest receival prison in the state after Hakea. The Superintendent notes in her submission that in 2004/05, of the 902 women who left Bandyup, 600 were released to freedom, a large proportion of whom serve short sentences. In addition to those serving short sentences, Bandyup holds long term prisoners and those serving indefinite sentences; remand prisoners and women with special needs (mental health issues, intellectual impairment), some of whom may have been transferred from a regional prison because of lack of

[3] August 2005

appropriate facilities. As at 5 September 2005, the sentence demographics for women were as follows[4]:

PRISON	MAXIMUM	MEDIUM	MINIMUM	TOTAL
Bandyup				
Sentenced	6	74	6	86
Remand/Sentenced	5	18	3	26
Remand	10	17	0	27*
TOTAL	21	109	9	139
Boronia				
Sentenced			39	39
Remand/sentenced			3	3
TOTAL			42	
Broome				42
Sentenced			9	9
Remand/sentenced			1	1
TOTAL			10	10
Eastern Goldfields				
Sentenced		2	5	7
Remand	2		2	4
TOTAL	2	2	7	11
Greenough				
Sentenced		10	4	14
Remand/sentenced		2		2
Remand		5		5
TOTAL		17	4	21
Roebourne				
Sentenced		5	6	11
Remand		2		2
TOTAL		7	6	13
STATE TOTAL	23	135	78	236

*Four of the remand prisoners at Bandyup were eligible for bail but failed to meet bail requirements.

[4] It is noted that there were no maximum or medium security prisoners at Broome on the date in question. As stated elsewhere, such prisoners are transferred as soon as possible because of the current substandard high security women's accommodation.

10.10 Prisoners on remand constitute a substantial proportion of women in prison. As at July 2005, they were of the order of 25% of the total. Officers at the main women's prison, Bandyup, stated that prisoners on remand constituted up to 50% of the approximately 160 prisoners at the prison at times.

10.11 The Inspector of Custodial Services has inspected Bandyup and other prisons from time to time. I am to pay special regard to his conclusions and findings in that respect. He has indicated, in his Reports and in discussions with the Inquiry that the conditions at the main prison, Bandyup, have now improved to an acceptable standard. Nothing observed during the visit of the Inquiry to that prison warranted a conclusion different from that of the Inspector.

10.12 During discussion with women prisoners at Bandyup Prison, the Inquiry invited comment as to changes that might be required. Reference was made to:

- more adequate health assistance;
- more, and more flexible, visiting privileges; and
- the desirability of Indigenous prisoners to be nearer their family groups and "country".

A number of other issues were raised with the Inquiry by departmental and prison staff.

VISITS

10.13 Prisoners complained to me about the lack of visits with their children.

10.14 The 2002 Prisoner Profile reported that 88 (63%) of the women surveyed had 221 children under the age of 18. Fifty five (39%) of these women cared for 138 children immediately prior to their current period of imprisonment and 43 (31%) had 83 children who were not in their care immediately prior to imprisonment. Almost half (48%) were single mothers. Of the 138 children separated from their primary carer by imprisonment, 36% were under 6 years and 36% were aged 6-12 years.

10.15 National and international research has highlighted the disruption and harmful effect of imprisonment of a parent – particularly a mother – on the lives of children[5]. Many children in long-term foster care are likely to have had at least one parent arrested or incarcerated during their lifetimes.

10.16 It is known that the children of women in prison have a greater tendency to exhibit many of the problems that generally accompany parental absence including: low self esteem, impaired achievement, motivation and poor peer relations and that this can lead to anti-social behaviour and conflict with the criminal justice system.

10.17 Location and distance have a direct impact upon the ability of mothers to communicate with their children and studies have also found a strong link between the maintenance of strong family ties while in prison and parole success.

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[5] *National Evaluation of the Prisoners and Their Families Program April 2005* : Commonwealth Attorney General's Department; *Women's Prison Association* for UK Home Office 1996

10.18 The primary means of enabling women prisoners to maintain contact with their children is through social visits. In its Prisons Division Monthly Performance Report for June 2005, the Department states –

> *"The amount of time prisoners spend in social visits is considered a positive indicator of rehabilitation as it provides some information about the extent to which prisoners maintain contact with people significant to them."*

10.19 The Bandyup Superintendent has advised me that one of the overwhelming rehabilitative issues identified for women is regular and meaningful contact with their children, families and/or communities.

10.20 The following table shows the monthly average number and duration of social visits per prisoner across the prisons where women are housed for 2004/05.[6]

Monthly Average Number and Duration of Visits per Prisoner 2004/05

PRISON	Monthly average number of visits	Monthly average visit time (hours)
Bandyup	**2.93**	**3.57**
Boronia	**7.11**	**24.52**
Broome	**5.56**	**30.64**
Eastern Goldfields	**4.16**	**8.32**
Greenough	**1.94**	**3.21**
Roebourne	**1.22**	**2.44**

10.21 The Inspector has been critical of the lack of adequate nursery facilities at Bandyup, the "sterility" of the visits area which is not "child-friendly" and that there are no visits in the late afternoon to enable school-age children to visit. In 2002 he reported that 60% of mothers saw their children less than once a month. In 2005 he commented again on the "cramped" visits area. This is in stark contrast to the purpose built 'family friendly' visits area at Boronia. At regional prisons, the facilities for mothers with babies are generally considered unsuitable by prison staff.

10.22 In light of the Department's acknowledgement of the importance of visits as a "positive indicator of rehabilitation", the number and length of visits at Bandyup and the other prisons housing women (with the exception of Broome, where visits are daily and unrestricted) is surprisingly low and of concern. Although Bandyup is the primary maximum security women's prison, and access to visits is unlikely to be as flexible as at Boronia, the figures do not seem to indicate a strong commitment to maintenance of family ties.

[6] Prisons Division Monthly Performance Report July 2005

10.23 In its submission the Department has said –

> *"Supporting children and families of women prisoners requires the planning and provision of appropriate community standard mother-child residential and visiting facilities and associated programs, supports and services as well as employment of appropriate professional and custodial staff, screened for their suitability against new competency standards adopted within the Department of Justice for working with women, children and families."*

10.24 I agree with the Department's assessment of what is needed but note that it does not state what it has done to implement its views. There appears to be no certainty that, for example, budgeting for the provision of "appropriate community standard mother-child residential and visiting facilities" which the Department states "must be provided", has been included in any long term plans or that there is any commitment to improve the lack of facilities in the short term.

10.25 The importation of drugs during visits is a risk for the prison system and the Department has a comprehensive strategy for dealing with the problem (see below). However, given the Department's view about the importance of visits in maintaining relationships with children and families, and the universally accepted premise that fractured relationships and difficulties in rebuilding them, are a significant factor in re-offending, I have determined that the Department needs to show greater commitment to getting the balance right. On the information available, there seems to be a bias towards addressing the operational risk of visits at the expense of the longer term benefit of maintaining relationships and preventing children from following in the footsteps of their parent(s).

10.26 Improvements might include the provision of better-designed visits centres with domestic style furnishings and pleasant décor and which also afforded women some privacy with their children. Activities for children and the capacity for women to provide drinks and food for children who are tired and hungry after an often lengthy journey to the prison could be provided. Accommodation to allow overnight stays for children could be increased and evening visits made available. The Department could also consider the provision of special buses to the prisons to reduce the length and stress of the journey.

10.27 As discussed below, to make visits less stressful, the presence of a drug dog at all visits sessions would provide a less intrusive means of surveillance. The Department could also consider scanning technology as a means of detecting drugs, syringes or weapons. Prison staff play an integral in the 'success' and 'friendliness' of visits. It is essential, therefore, that the staff of visits areas acknowledge the importance of the maintenance of family contact for offenders, and that they are trained in dealing appropriately with visiting members of the community and children.

Recommendation 96

The Department should take steps to improve access to, and facilities for, visits between women and their children.

STAFF MANAGEMENT OF WOMEN IN PRISON

10.28 Bandyup has now reached agreement with WAPOU that the ratio of female to male staff should be 60:40 at the facility in line with research conducted by the UK Chief Inspector of Prisons. Although there have been suggestions that only female staff should be employed in a women's prison – and certain positions such as reception staff are only occupied by female officers - the Superintendent at Bandyup said in her submission that it is important that male officers are also employed -

> *"…as there is a need for women prisoners to interact and experience positive relationships with men and to realise that there are good men in the community. Further, it is our experience that …. women prisoners are generally more respectful to male officers whereas they abuse, swear at, denigrate, and assault female staff members at a much higher rate than they do males."*

10.29 In his 2001 Report the Attorney General stated "research and experience suggest that to enable the best management of female prisoners staff need to be trained in gender equity and appropriate management of female offenders." I note that staff working at Boronia were selected following a formal application and interview process.

10.30 In my view it is also essential that staff receive comprehensive training in dealing with the special needs of Indigenous women.

Recommendation 97

Prison staff working with women should be specially selected on the basis of their willingness and suitability to work with women.

Recommendation 98

Prison staff working with women should receive additional training in the management of gender specific issues such as a history of physical and sexual abuse, separation from, and anxiety about, children.

Recommendation 99

Prison staff working with Indigenous women should receive specific cultural training.

DISPLACEMENT OF INDIGENOUS WOMEN

10.31 The women prisoners in the regions are almost all Indigenous, and primarily mothers, with the same needs as Indigenous men to be placed as close to their children, family and 'country' as practicable. Even placement in Roebourne Prison which has better – though still substandard – facilities for women is a significant displacement (almost 2000 kms away from the East Kimberley) for

Kimberley women and I met one medium security woman in Broome who would rather stay in the 'cage' in Broome to be near her family than to be transferred to Roebourne. I was also informed that two prisoners recently transferred from Boronia to Roebourne for visits preferred to stay in Roebourne because they could see their children, than return to the superior conditions in Boronia.

10.32 The difficulty in providing custodial facilities in Western Australia close to the remote communities where many prisoners live is acknowledged. Historically, the regional prisons were located to cater for this as far as practicable. However, the fact that regional prisons must also cater for women has not been addressed to full effect in the Department's long term planning.

10.33 The number of women prisoners is increasing at a far greater rate than the number of male prisoners. The low numbers of women in the regions should not be taken as an indication of low demand for female specific facilities as not all women are currently able to be located in their locality. For example, at 30 June 2005 11 women from the Kimberley and 8 from the Pilbara were placed outside the region because of their high security rating or because treatment programs were unavailable[7]. Increased provision of appropriate maximum and medium security accommodation for women in the regions would mean that they would be able to maintain contact with their children and community, increasing the chance of successful resocialisation.

Recommendation 100

Appropriate accommodation, specifically designed for women (including those with babies or young children) should be included in the plans for new custodial facilities in the Kimberley and the Goldfields.

Recommendation 101

When constructing new custodial facilities, the Department should ensure that women in the regions have adequate and equitable access to programs, education, employment and recreation.

Recommendation 102

The Department should take action to increase the suite of programs at regional prisons to avoid the need to transfer women from those areas to Bandyup for attendance at programs.

[7] Department of Justice Prison Census 30 June 2005

REMAND

10.34 For the month of July 2005, Bandyup held a daily average of 40 remand prisoners (20 Indigenous and 20 non-Indigenous) out of an average daily muster of 153 (72 Indigenous and 81 non-Indigenous). In other words, about a third of Indigenous women and a quarter of non-Indigenous women in Bandyup were on remand. The inclusion of women who have ongoing matters before the courts (sentenced/remand prisoners) can increase this figure to 50%. Some of these women have been remanded because they have been unable to obtain bail and are released within two weeks of admission to prison. I discuss the bail issue further below.

10.35 It is an internationally accepted principle that where practicable, remand prisoners should not be placed in contact with convicted prisoners against their will [8]. The Smith Report into the 1998 riot at Casuarina Prison said that "the mixing of remand and sentenced prisoners in an unstructured way is undesirable and is in contravention of United Nations codes" (there were 67 remand prisoners out of a total of 529 in Casuarina at the time of the riot).[9]

10.36 The Ombudsman recommended in 2000 that "the Ministry [the Department] as a matter of priority provide separate facilities for female remand prisoners".[10] The recommendation was also made in recognition of the fact that remandees - and particularly first time remandees - are considered to be the group at highest risk of self harm and suicide and are apt to be suffering the effects of substance abuse or withdrawal symptoms.

10.37 The Auditor General also noted in 1999 in his follow-up report on remand prisoners (and bail) that "prison life is not only difficult, it is potentially dangerous. Overcrowding, the relatively uncertain period of confinement and a lack of structured activity….contributes to boredom, inactivity, and subsequent risk of suicide, self-harm and assault amongst remand prisoners."

10.38 Although contrary to the principle that remand prisoners should be kept separately from sentenced prisoners, the Superintendent of Bandyup advised me that integration of all prisoners is considered to be of benefit to remand prisoners who are as a result able to "access all the services available to a sentenced prisoner population".

10.39 Nevertheless, she also conceded that "….female remand prisoners, specifically are labour intensive and require considerable interventions and staff time to resolve issues and allay anxieties". She listed a number of immediate issues which faced these prisoners such as "collecting children from school that day, longer term care of the children, vacant accommodation and lapsed rental, personal property unattended, high levels of anxiety, drug withdrawal, access to bail and chronic health needs."

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[8] Rule 8(b) of Standard United Nations *Standard Minimum Rules for the Treatment of Prisoners* and *Guideline 1.11* of *Standard Guidelines for Corrections in Australia* (2004)

[9] at page 54

[10] Recommendation 10.10

10.40 The management of a large group of remand prisoners with high needs, who are usually held at high security has a significant impact on prison resources. If they were held in a separate facility, it would be possible have a specialised group of officers who have been trained to manage the particular problems of remand prisoners such as heightened risks of self harm and substance abuse. I am also concerned that the lack of discrete remand facilities for women is discriminatory given the higher level of facilities available for men in remand at Hakea.

10.41 For the reasons stated above I am of the view that there should be separate remand accommodation for women either within the Bandyup prison complex or in a separate facility.

10.42 Concerns with the application of the Management and Placement checklist for remand prisoners were also drawn to my attention. It tends to over-classify women remand prisoners. Remand prisoners should be classified minimum on the basis that, for the most part, women present a low risk of escape and have been remanded in custody because they have been unable to meet bail conditions. However, the majority of remand prisoners – both male and female - are rated maximum or medium security. In the Inquiry's view the current remand classification should be reviewed. The result has been an inability to place low risk remand prisoners in Boronia.

Recommendation 103

Government should consider the establishment of separate remand accommodation for women.

Recommendation 104

The classification of women remand prisoners should be reviewed to enable suitable low risk remand women to be placed at Boronia.

BAIL

10.43 As discussed above, up to 50% of women at Bandyup can be on remand. I have been advised that during the 12 months to September 2005, there were 873 transfers or discharges from Bandyup. Of those, 178 women were released to bail; 47 within the first few days of arrival and 39 within two weeks of being remanded into custody.

10.44 For many offenders remanded with a low level of surety, the only time they spend in custody is the time between arrival and release on bail. This is because many are acquitted and those found guilty receive a non-custodial sentence such as a community based order or a fine. For sentenced/remand prisoners, the granting of bail against their outstanding matters enhances their chances of being progressed through the security ratings, and possibly to minimum in certain circumstances.

10.45 I have been told of the relative ignorance of many offenders in relation to their right to request bail. Many do not know how to make a request or, overawed by the complex language and procedures of the courts, are afraid or too shy to seek bail, and find themselves unnecessarily in prison.

10.46 The presumption of innocence and access to legal representation and the ability to prepare their own defence is integral to this right. By being remanded in custody, the ability to prepare their defence and continue working to pay for legal representation is restricted. Remand should therefore be a last option reserved for those considered to be a flight risk or a threat to the community.

10.47 Women offenders are still highly represented in the 'crimes of poverty', such as minor property and dishonesty offences, and many of the offences are non-violent in nature. Surety is generally $2000 or less and, in such cases, it is open to the courts to seek a Personal Bail Undertaking in lieu of surety. In dealing with these matters, a more proactive approach by the courts through the granting of a Personal Bail Undertaking in most cases could result in fewer women being remanded into custody for short periods of time. This would relieve the pressure on the prison population at Bandyup and minimise the disruption and potential harm to the families of the offenders – a problem that can have more serious concerns for women than for men

10.48 The more lenient approach to bail is based on the premise that women generally present a lower flight risk and threat to the community than men, and that their responsibility as primary carers of small children and possibly elderly parents is also apt to lessen the flight risk. Research conducted to date on breaches of bail by all defendants (both men and women) by the Auditor General in 1997[11] and 1999[12] found that:

> *"Personal bail with a surety; used in 16 per cent of instances, was the most effective with a breach rate of 11 per cent. Far less successful were personal undertaking and personal bail, which had breach rates of 22 per cent. These types of bail were used in 79 per cent and five per cent of instances, respectively."*

10.49 The Auditor General recommended that the Department and the courts "analyse and consider the circumstances where the various types of bail are most effective" and consider "opportunities to increase the use of up front payment of personal bail."

10.50 The Auditor General noted an improvement of 5% in the breach rate of bail in his 1999 follow-up report. He attributed the decrease to a more effective use by Magistrates of bail conditions and better information provided by the courts to defendants. However, he did not distinguish between the relative success rates of men and women defendants.

10.51 I have been told by the Department that it does not track 'performance' of defendants on the various type of bail. It does not, therefore, have data on the success rate by women, and I am unable to determine conclusively that extension of the use of Personal Bail Undertakings for women would be appropriate. Equally I do not rule out that possibility.

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[11] *Waiting for Justice – Bail and Prisoners in Remand* Performance Examination Report No.6 October 1997

[12] *Waiting for Justice – Bail and Prisoners in Remand* Follow-up Performance Examinations

10.52 I acknowledge the detrimental effect and cost of unnecessary imprisonment on prisoners and their families and recommend that the Department undertake research to determine the validity of the greater use of Personal Bail Undertakings where flight risk is considered small and bail is set at $1000 or less.

Recommendation 105

The Department should conduct research into the circumstances where various types of bail are the most effective to determine whether the use of Personal Bail Undertakings can be extended in relation to women.

Recommendation 106

Specialist bail coordinators should be appointed at all courts and at Bandyup to assist women to prepare for bail and arrange surety while still at court.

SUBSTANDARD FACILITIES AND LACK OF SERVICES FOR WOMEN IN REGIONAL PRISONS

10.53 Conditions of women prisoners at the Broome Regional Prison are not acceptable. I refer to my conclusions expressed elsewhere.

10.54 The conclusions of the Inspector in relation to women prisoners in the other Aboriginal Prisons are contained in his Report. I have given appropriate regard to those conclusions. The Inquiry has not received evidence warranting departure from the Inspector's conclusions.

10.55 A common feature of all the regional prisons is inadequacy and low standard of facilities and services available for women. Accommodation has generally been adapted from units designed for males and is cramped and restrictive because of the need to separate men and women offenders in the prison. The potential management difficulties in a mixed prison mean that women are restricted in their access to employment, education and recreation (primarily because of lack of staff to supervise them outside their unit and the availability of staff to provide essentially segregated educational courses and programs).

10.56 The need to house maximum and medium security women received from court on remand, or in transit to other prisons albeit for short periods of time, results in an even lower standard of accommodation for higher security women. This is particularly the case at Broome, where the maximum security section is a cramped 'cage' comprising of a very small exercise area and a three-bed cell.

10.57 Women in regional prisons require a range of accommodation for all security ratings and regimes which allow the same level of access to self-care, education, employment and programs, health services and visits as available for men but which also recognises their particular needs in relation to services and privacy.

PROGRAM AVAILABILITY

10.58 The Inspector has commented on the "shortfall of programs, particularly violence prevention programs in regional prisons for Indigenous prisoners." He has expressed concern that "control of programs has been centralised" and that there are "significant gaps in the delivery of the right program."

10.59 Programs for women delivered at Bandyup, Boronia, Broome and Greenough include Cognitive Skills, Substance Abuse Programs, Women's Anger Management and Management of Anger and Substance Use and Prison to Parole. The content of programs and the assessment process for inclusion on the programs has been discussed elsewhere in this Report.

10.60 At Bandyup, the view of a group of female prisoners I talked was that some of the treatment programs in relation to substance abuse were beneficial, particularly the more intensive program. However, on the information provided by the Superintendent and also by Offender Programs, very few women access, or are eligible for programs. For example, only about 50-60 prisoners per year were eligible for the suite of programs offered at Bandyup.

10.61 In general terms, program participation by women was quite low either because there were insufficient numbers of prisoners eligible to make it economical to run the course - perhaps because the women were in prison for too short a time - or because of the unavailability of staff to deliver programs. Almost without exception, prison officers were not involved in program delivery at any prison. I was also told that lack of suitable program rooms at regional prisons is a particular problem.

PROGRAM SUITABILITY

10.62 In relation to the types of program which should be provided to women, the Superintendent of Bandyup stated in her submission to the Inquiry:-

> *"The world over, women prisoners present with very high needs but do not necessarily present a high risk to the community. As such, adherence to Maguire's 'What Works' philosophies, that target scarce program resources to those who present the greatest risk to the community, mean that women miss out on considerable program opportunities. These opportunities would relate to women's needs that would reduce their likelihood of re-offending such as confidence and self worth, drug misuse, coping skills, problem solving, access agencies, independent living skills and self development."*

10.63 However, the view of a number of observers was that the programs available to women in Western Australian prisons do not generally fulfil those criteria because insufficient attention is still being paid to the criminogenic needs of offenders which tend to be focused on the needs of male offenders who constitute the majority of the prison population.

10.64 Delivering the "right" program is of paramount importance. However, as has been discussed elsewhere in this report, the Department appears to be unable to advise with any confidence that its rehabilitation programs are working, because it does not, as a matter of routine conduct any evaluation of the programs before

they are presented, during their delivery or after their completion, nor is funding provided for this purpose.

10.65 In its submission, the Department conceded that the programs it offers to women are:

> *"the same programs that are offered to men, or else are 'tinkered with' for provision to women. Less often are programs created specifically for women prisoners (or specifically Indigenous women). In addition, evaluation tools do not necessarily measure outcomes that are meaningful from a gender (or cultural) perspective and from the point of view of the impact on prisoners' lives."*

10.66 It identified "the development of a comprehensive women's program strategy that includes: criminogenic, therapeutic and mental health, health and wellbeing, personal development and recreation, family and community, education, training, work, religious and cultural" as "the next priority" after the provision of appropriate facilities in the regions for women.

10.67 Given the Department's commitment to provide appropriate rehabilitation programs for women, I do not make a formal recommendation.

EDUCATION, TRAINING AND EMPLOYMENT

10.68 The 2002 Prisoner Profile found that 28% of non- Indigenous and 58% of Indigenous women interviewed had either never attended school or had left by the age of 14. In the general community, the percentage with this level of education was far higher: 14% of non-Indigenous and 21% of Indigenous women. Twenty three percent of Indigenous women prionsers had an education level of primary school or less, compared with 7% of non-Indigenous women.

10.69 In the six months prior to imprisonment, 60% of non-Indigenous women and 88% of Indigenous women were unemployed. Fifty one per cent of Indigenous and 7% of non-Indigenous women had never had a paid job.

10.70 These figures are consistent with other research conducted into the characteristics of all prisoners. This confirms that prisoners generally have low levels of education and a poor employment history.

10.71 Two measures of the Department's performance are that prisoners "make reparation by contributing to the community through work and other activities that make good the harm they have done by their offending" and that they "gain knowledge and skills … to assist them to reintegrate into the community and to reduce the likelihood of re-offending."[13] The provision of education, training and meaningful employment is one of the strategies used to assist prisoners to achieve these goals.

[13] Monthly Performance Reports Outcomes 3 and 4

10.72 The Report on Government Services 2005 states that 40.7%[14] of prisoners in Western Australia were engaged in vocational education and training (39.7%), secondary education (0.2%) and higher education (1.8%)[15]. The Report also state that 92.5%[16] were employed in service industries (74.3%) and commercial industries (18.2%).

10.73 The Department's Monthly Performance Report for June 2005 states that between July 2004 and June 2005 83% of the eligible[17] prison population was employed and 42.7% of those eligible[18] to participate were engaged in education. For the prisons that house women, the monthly average of levels of engagement in education and training and employment between July 2004 and June 2005 are set out below. I am unable to determine how many women were involved in education or were employed at the regional prisons which also house men.

PRISON	**EDUCATION and TRAINING**		
	%Eligible	No.(%) Eligible Prisoners Enrolled	Average monthly hours of tuition per prisoner[19]
Bandyup	91.5	79 (55.4)	17.9
Boronia	98	41 (82.6)	61.3
Broome	90.2	40 (35.9)	6.4
Eastern Goldfields	85.4	47 (48.9)	34.48
Greenough	91.4	73 (39.0)	24.7
Roebourne	96.8	61 (39.3)	20.5
PRISON	**EMPLOYMENT**		
	%Eligible	No.(%) Eligible Prisoners Employed	Average daily hours worked
Bandyup	79.54	102 2 (81.33)	6.86
Boronia	82.68	40.5 (99.79)	6.27
Broome	87.38	102.2 (95.71)	4.28

[14] Table 7A.20

[15] Some prisoners were engaged in more than one form of education

[16] Table 7A.19

[17] 84.77% were eligible for employment

[18] 91.16% were eligible for education. Remandees serving less than 28 days are not eligible

[19] Based on the annualised hours divided by months reported at page 49 of the June 2005 Monthly Performance Report

PRISON	EDUCATION and TRAINING		
Eastern Goldfields	80.94	82.4 (92.43)	7.07
Greenough	71.09	140.5 (94.30)	7.28
Roebourne	86.72	141.3 (97.92)	7.17

10.74 The objective of the Department's Education and Vocational Training Unit, which has won a number of awards for the standards of its programs and its innovative approach, is to "enable and encourage all offenders to acquire further skills and knowledge in the areas of academic, vocational and personal development in order to develop the skills necessary to participate as constructive members of the community[20]. The Inspector has commented that education and training "is generally delivered in a highly professional way despite often-inadequate conditions".

10.75 Boredom can lead to self harm and suicide[21] or to violence on a small or large scale[22]. However, education and training should be more than a 'time filler' which "enabled oversight (prisoners were located at particular places) and the routine of class attendance simplified staff rosters."[23] It should equip prisoners who have had negative experiences of both education and employment with skills to enable them to cope in the community and, hopefully, thereby reduce their re-offending and subsequent return to prison.

10.76 The NCVER project also found prisoners were concerned that completed courses and work experience would not be useful if criminal records affected their chances of employment after release [24]. The report also noted "While their intentions might include employment, home ownership and other rights, ex-offenders are often returning to communities that are hostile in both open and covert ways to these endeavours" and that there were significant barriers to prisoners continuing studies after release because of conflicts with "job and accommodation seeking needs and family time"

10.77 The Inspector has commented that employment opportunities for women "are particularly restricted" and that Indigenous women were more likely to be unemployed. He also observed that because women "may not see employment as destiny, particularly when they have children to care for etc, work in women's

[20] The NCVER project at page 19

[21] Dr Alison Liebling, *Suicide in Prison*

[22] *The Smith Report* on the Casuarina Prison Riot in 1998

[23] National Centre for Vocational Education Research (NCVER) entitled *To train or not to train: The role of education and training in prison to work transition 2004*

[24] National Centre for Vocational Education Research (NCVER) entitled *To train or not to train: The role of education and training in prison to work transition 2004*

prisons should not be conceived of only and primarily in terms of skilling and training for future employment. Principally it should be educative and stimulating in the most catholic of senses."

10.78 Most prisoners are employed in prison-related 'domestic' work such as cleaning, catering, gardening, laundry and maintenance. This is particularly true for women, whose only 'commercial' option appears to be in textiles, making clothes for prisoners, and soft toys and other small textile contracts. There are a number of traineeships at Bandyup and Boronia but few at any of the regional prisons.

10.79 Section 94 projects were successful at Boronia, Broome and Greenough but seemed to depend very much on the efforts of prison management and individual staff members in establishing good relationships with community groups and local industries to negotiate community work opportunities. As recommended by the Inspector in his Directed Review, the expansion of the work camp program to include women would provide an alternative and constructive form of employment in the regions.

10.80 The rehabilitative model of meaningful activity in a 'structured day' seems to be widely accepted at both departmental and prison management level and education participation appeared to be relatively high. This is a credit to education staff in the regional prisons and their innovative approaches to make education in particular more attractive.

10.81 However, it was suggested that there are conflicts between operational considerations and education and training, particularly in the higher security prisons and the Inspector has commented on "an unhealthy competition between education and industries." I was also told by some prison staff that women tend to be unmotivated in relation to education and preferred to earn a higher level of gratuity by working. The change to the gratuity system has gone some way to reduce the bias towards work at the expense of education, although it is still possible to earn more working than studying. At Greenough it was alleged that, because there were insufficient women in the women's wing to perform the work needed for the functioning of the unit, education was frequently a second choice.

10.82 Of particular concern was the lack of appropriate education facilities at the regional prisons and the restrictions on educational opportunities for women in mixed prisons with segregated access to the education centres at all the regional prisons except Broome.

10.83 In relation to the 'attractiveness' of education to Indigenous women – given the often negative experiences many prisoners have had of 'school' - I was concerned that, with the exception of Broome, there was a distinct lack of Indigenous educators and that this continued failure by the Department to employ Indigenous people in these areas may well deter some Indigenous prisoners from education and training.

10.84 Prisoners were asked what type of activity they would like and for the most part interest was in the practical skills and subjects. I believe that most prisons are trying to provide relevant practical options – with varying rates of success. However, I am unable to say whether the work and education offered to prisoners is actually relevant and useful after release because there is currently no data on this aspect of released prisoners' lives other than anecdotal 'success' stories told informally to prison staff.

10.85 The existence of employment opportunities in the environments to which prisoners are returning is an integral part in assessing the practicality of skills being offered. For Indigenous offenders from remote communities, the likelihood of obtaining employment or continuing education is negligible, especially for women who are the mothers of dependent children and the carers of extended families. Although open to criticism that work and education in prisons is already gender stereotyped, the inclusion of sewing, cooking, art and crafts, budgeting and parenting skills as education programs, and FoodSafe and FoodCents courses appeared to be popular and to be of practical benefit after release.

Recommendation 107

The education and employment skills opportunities be made available to women should reflect the nature and likelihood of employment in the communities to which they will return and women offenders and communities should be consulted on their needs.

MENTAL HEALTH ISSUES[25]

10.86 The Acting Director of the State Forensic Mental Health Service (SFMHS), Dr Patchett, estimates that currently there are between 400 and 500 prisoners in Western Australia in need of psychiatric treatment. He also said that there is sufficient anecdotal evidence to suggest that "the mentally ill are arrested and appear in court at higher rates than other people in the general population." Although specific data is not available, the proportion of women prisoners with mental health problems is considered to be the same, if not higher, than it is for men.

10.87 The Superintendent of Bandyup advised that between 13 December 2004 and 5 August 2005, there were 689 consultations with mental health staff, comprising 149 (21.4%) new referrals and 549 (78.6%) follow-up appointments.

10.88 She noted that women with mental health issues are difficult to engage in activity. Many cannot maintain even the simplest jobs and are "not capable of sustaining attention for periods sufficient to be able to engage in activities such as education." They are also a vulnerable population who are often the targets of bullying and standover tactics. Equally, they can also be impulsive and "lash out without warning and assault staff and other prisoners". She recommended that "resources for separate facilities for the mentally impaired be committed to Bandyup including the appointment of an Occupational Therapist."

10.89 Funding for mental health services in prisons "has lagged far behind" recurrent annual expenditure for community mental health services[26]. In his Report on the investigation into mental health and Dangerous and Severe Personality Disorders services for prisoners in England, tabled in July 2005, the Attorney General acknowledged that to "fully meet the mental health needs across the prison sector

[25] See also Chapter 11 on prison health services

[26] Submission from Dr Patchett

it is estimated that the required clinical expertise is 3-4 times greater than currently exists".

10.90 He also agreed that the prison system "is not always best placed to address the needs of offenders who have a mental illness. Often, in the interest of ensuring security, effective mental health treatment is secondary to prisoner management". The Attorney General recorded the government's commitment to significantly increasing the level of mental health services to offenders.

10.91 Dr Patchett recommended the establishment of "intermediate care units in the prison setting to provide a stage in treatment and rehabilitation that dovetails into other components of a comprehensive service. …… Intermediate care units need to be staffed by mental health personnel." In particular, he recommended the establishment of an "Intensive Care Unit" at Bandyup and "smaller focussed Intermediate Care Units in one or more of the regional prisons, each one perhaps servicing two or three prisons."

Recommendation 108

Appropriate therapeutic accommodation should be provided at Bandyup for women suffering from mental illness or a significant behavioural disorder.

PREVALENCE OF DRUGS

10.92 It is estimated that 80% of the prison population (both men and women) has a range of problems arising out of the use of alcohol or drugs or a combination of both.

10.93 A study by the Australian Institute of Criminology entitled Drugs and Crime: A Study of Incarcerated Female Offenders published in 2004[27] ("the AIC study") found that:–

> "*addicted women are more likely to suffer from depression and low self-esteem, more likely to combine drugs and alcohol, and to begin and sustain an addiction through association with an addicted male associate…..Women also face distinct issues related to their social roles as women, mothers and carers that affect their drug abuse, offending and treatment options*."

10.94 Importantly, the AIC study found "a strong link between drug and alcohol abuse and offending among [these] incarcerated women" and that women "..tended to have extensive criminal histories and prior contacts with the criminal justice system. The majority also reported chronic and persistent drug use." [28]

10.95 The drugs issue was raised specifically by the Superintendent of Bandyup in her submission to the Inquiry on the basis that women at Bandyup are "a strong drug seeking group and will go to great lengths to access drugs".

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[27] Research and Public Policy series, No 63, Holly Johnson, 2004

[28] at page 53

10.96 The demand for drugs within the prison environment tends to increase the incidence of violence and assault and the risk of serious health problems through needle-sharing. This is of particular concern for women prisoners who have the highest rate of Hepatitis C in the community – 58% compared to around 1% in the community as a whole. [29]

10.97 Bandyup also has the highest rate of assaults by prisoners on other prisoners (25.66%) and on staff (10.27%). The rate of assault on other prisoners at Boronia is also quite high at 9.97%, and is higher than the rate at the male minimum security prisons – Karnet (0.64%) and Wooroloo (4.29%). The average annualised rate for all prisons is 12.96% for assaults on other prisoners and 3.94% for assaults on prison staff.[30]

10.98 Paradoxically, the rate of positive urine tests at Bandyup is relatively low at 8.16% for random tests and 11.82% for targeted tests.

THE USE OF PADD DOGS (PASSIVE ALERT DRUG DETECTION)

10.99 It is considered that the presence of dogs prior to visitors entering the prison is an effective deterrent to the importation of drugs and a less intrusive means of monitoring visitors than widespread searches. Although a Passive Alert Drug Detention dog has been regularly available at Bandyup, I understand that this is not now the case.

10.100 Staff of the Canine Section were also concerned that there were frequently insufficient staff at Bandyup to allow the monitoring of prisoners received from court who are, anecdotally, suspected of importing considerable quantities of drugs. If the anecdotal evidence is correct, this raises concerns, not only about the importation of drugs but also in relation to the risk to the prisoner from possible abuse of drugs at the vulnerable time of admission to prison.

THE LACK OF PROGRAMS

10.101 On the information before me, there was little evidence of extensive use of programs at Bandyup to reduce demand for drugs, to provide support to those on the pharmacotherapy program or assist in relapse prevention. As at 13 May 2005, only 5 prisoners at Bandyup had participated in the intensive Moving on from Dependency program between 7 February and 9 May 2005. No date was set for the next running of this program. Given the large number of prisoners passing through Bandyup with acknowledged substance abuse problems, and the availability of program rooms in the new Education Centre, the lack of education, treatment and counselling programs at the primary women's prison in the State is of concern.

10.102 Between April 2004 and April 2005, 641 prisoners were registered on the pharmacotherapy program. Women represented 25% of the group and Indigenous women represented 25% of the female participants. The women's program is only available at Bandyup and the few women in the regions who are eligible for

[29] The rate for male prisoners is around 33%. Statistics provided by the Department of Justice Health Services Directorate

[30] Monthly Performance Report June 2005

the therapy are transferred to Bandyup. I have been advised, however, that although there is a full time Prison Addictions Service Team (PAST) nurse at Bandyup seven days a week, the staffing levels and funding available do not permit PAST nurses to provide the complementary counselling which should accompany pharmacotherapy programs.

10.103 There were no programs for women at Eastern Goldfields or Roebourne. This is of concern given the high incidence of alcohol abuse among Indigenous women. Greenough and Broome were able to offer substance use programs to women, provided there were enough in the prison for a sufficient length of time to run the program.

10.104 It is also of concern that there are no specific alcohol abuse programs given the findings of the 2002 Prisoner Profile that 70% of Indigenous and 58% of non-Indigenous women reported alcohol abuse in the 6 months prior to arrest. In my view, treatment of this form of addiction should receive a higher priority.

10.105 In my view, the lack of substance abuse programs is a missed opportunity to assist prisoners to manage and reduce their addiction. Reduced demand for drugs has tangible benefits for the prison system and for the community in terms of the potential reduction in offending.

Two things warrant further comment:

- The number and special needs of Indigenous women prisoners and
- Reoffending

THE NUMBER OF INDIGENOUS WOMEN PRISONERS

10.106 The material indicates that Indigenous Women prisoners constitute more than 50% of the total women prison population. Reference has been made generally to Indigenous social conditions, the family circumstances of Indigenous women, the incidence of domestic violence and, the prevalence of alcohol and drugs and mental health issues.

10.107 Reception data provided by the Department of Justice shows that for 2004/05, Indigenous women represented 60.7% (628) of all women (1034) received into prison, despite constituting 3.45% of the state-wide female population of Western Australia. Indigenous men 44.3% (2751) of all male receivals (6217).

10.108 The Human Rights and Equal Opportunity Commission Social Justice Report 2002 (updated in March 2003) (the "Social Justice Report") states that the imprisonment rate for Indigenous women increased by 255.8% between 1991 and 2001 compared to an increase of 147% for all female offenders and 68.7% for male offenders[31]. In the year to June 30 2003, the imprisonment rate for Indigenous women was 454 per 100,000 of the adult population – the highest in Australia.[32]

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[31] Chapter 5, *Women and Corrections – A Landscape of Risk*

[32] Morgan N and Mottram J, Background paper No 7, *Indigenous People and Justice Services: Plans, Programs and Delivery,* LRCWA

10.109 The Social Justice Report also reported that 76% of all Indigenous prisoners had been in prison before. In Western Australia, where the proportion of young Indigenous women and girls in the juvenile justice system is around 90%, contact with the justice system is likely to be a lifelong experience.

10.110 A Western Australian study by Cuneen found that 20% of Indigenous women - compared with 3.5% of non-Indigenous women - were in prison for public order offences and that that there was an 85% likelihood that an Indigenous woman would be arrested again after her first arrest.

10.111 The *Social Justice Report* linked the high incidence of violence in the lives of Indigenous women with their own violent offending:

10.112 "*The relationship between Aboriginal women and violence also highlights how the separation between 'victim' and 'offender' is not clear at all. In reality many Aboriginal people in the criminal justice system are both offenders and victims, for example, some 78% of Aboriginal women in prison have been victims of violence as adults*.[33]

10.113 It also suggested that many Indigenous women have had a less than satisfactory response from police when trying to report incidences of domestic violence and that "anecdotal evidence suggests increased arrest for violence is the result of Indigenous women who behave violently to protect or defend themselves, because they know that would not receive police protection."

10.114 The *Social Justice Report* referred to "the consequences to the community of the removal of Indigenous women are significant and potentially expose children to risk of neglect, abuse, hunger, and homelessness."

10.115 The impact of separation from their children has been discussed above in relation to women in general. However, given that over 60% of women received into Western Australian prisons are Indigenous that 70% of them are mothers; and that most Indigenous women are in prison for short terms, it seems safe to conclude that there is at any given time a large group of Indigenous children in the community whose lives are disrupted and who may well be in State care.

10.116 The recent Aboriginal Child Health Survey (the Survey) conducted by the Telethon Institute of Child Health Research in WA noted that:

> *"the impact of death separation and divorce on the lives of Aboriginal children is striking. Around 6% of Aboriginal children aged 0 to 3 years were being cared for by someone other than their original parent(s), the proportion increasing to 20% for children aged 12 to 17 years."*

and that:

> *"Just over two in every five children (41%) were living in households that had been affected by the forced separation or forced relocation of at least one primary or secondary carer or grandparent…. "*

[33] ibid. section (f)

10.117 The Survey found that 24% of Indigenous children between the ages of 4 and 17 years were assessed as being

> *"at high risk of clinically significant emotional or behavioural difficulties. This compares with 15% of children in the non-Aboriginal population……The factor most strongly associated with high risk of clinically significant emotional or behavioural difficulties in children was the number of major life stress events (e.g. family break-up, arrest or financial difficulties) experienced by the family in the 12 months prior to the survey."*

10.118 Research has shown that children destabilised in this way can themselves become offenders.

10.119 Many Indigenous women fear that they will lose their homes and their possessions because of their imprisonment. Without accommodation, eligibility for parole becomes restricted. Some may lose their children and most will find it difficult to find employment or meet community justice requirements.

10.120 There are limited mother/baby facilities in the regional prisons. In Bandyup, with an average population of 150, existing 'nursery-style' accommodation can only cater for 4 mothers and their babies – although we have been advised that the current accommodation may be increased in the near future.

10.121 If convicted of a serious offence, Indigenous women are far more likely than non-Indigenous women to be in a prison away from their families and children because of the limited ability for regional prisons to hold maximum and medium security prisoners. Transport difficulties for children and families from remote communities limit access to visits in regional prisons and severely restrict the possibility of family visits for women from the regions in Bandyup or Boronia.

Special needs of Indigenous women

10.122 If women are a forgotten minority in the prison population then Indigenous women are further marginalised. The *Social Justice Report* noted that in spite of their high representation in the justice system, "…Aboriginal women remain largely invisible to policy makers and program designers with very little attention devoted to their specific situation and needs….It is a consequence of a rights and policy structure which identifies groups of needs and rights holders such as women and Indigenous people, but fails to provide for the needs of people who dwell at the intersection of these groups."

10.123 It is essential therefore, that any project or initiative that involves accommodation or a service for Indigenous women specifically identifies this group as a primary client or consumer before proceeding to design, resource and implement a strategy.

10.124 The need for appropriately designed policies, practices and procedures also applies to initial risk assessments and case management. The current AIPR process falls into the 'intersectional' abyss referred to above. A system that takes into account the different risks inherent in female offending generally and in offending by Indigenous women in particular, should be developed, piloted and evaluated.

10.125 To perform this important management function, it is essential that staff recruited to work with Indigenous women receive formal cultural training that is also relevant to local Indigenous families and communities. Integral to this is the need for the Department to be proactive in its attempts to recruit and retain Indigenous women to work in the prisons at all levels.

Re-Offending By Indigenous Women

10.126 It is not within the scope of the Inquiry to pursue and determine remedies against the commission of offences by Indigenous people. That is a matter of vital concern to the State and requires ongoing attention.

10.127 As with male offenders, re-offending is a serious matter of concern for Indigenous women. The information prepared by the Department of Justice suggests that over 70% of women prisoners have offended more than once and a substantial number have had multiple convictions.

10.128 The following Table depicts the success rate for Indigenous women in relation to community based orders[34]:

SUCCESSFUL COMPLETION RATES (%) 1/7/03 to 30/06/04				
Type of order	***Indigenous***		***Non-Indigenous***	
	Female	***Male***	***Female***	***Male***
***ISO**–All*	*38.16*	*34.48*	*57.38*	*54.48*
***ISO**–without work*	*41.18*	*41.18*	*54.29*	*58.33*
***ISO**-with work*	*32.00*	*29.66*	*61.86*	*50.80*
***CBO**–All*	*55.71*	*50.56*	*65.34*	*63.62*
***CBO**–no supervision/no work*	*69.57*	*45.95*	*84.21*	*71.88*
***CBO**–supervision/work*	*45.21*	*36.97*	*61.67*	*57.14*
WDO	*65.43*	*70.11*	*68.99*	*65.26*
Parole	*44.83*	*53.89*	*76.25*	*70.37*
CEO Parole	*62.5*	*79.25*	*100.00*	*80.95*
Home Detention Prison order	*77.78*	*79.41*	*81.82*	*91.67*
Monitored /Conditional bail	*50.00*	*56.52*	*73.08*	*74.81*

ISO=Intensive Supervision Order CBO=Community Based Order WDO= Work and Development Order

[34] data provided by the Department of Justice *Annual Statistical Report Adult Community Corrections Period 01 July 2003 to 30 June 2004*

10.129 Although the success of Indigenous women compares favourably with that of Indigenous men in relation to Intensive Supervision Orders and Community Based Orders, they are the least successful of all groups in relation to all other types of order. There is a particularly marked difference in successful completion of parole and CEO parole orders by Indigenous women compared to non-Indigenous women.

10.130 As with male offenders, comparatively little is done directly to reduce the rate of re-offending by women prisoners. Unfortunately, there is very little research available which might assist the Inquiry – or the Department itself – to determine the causes of the high failure rate of Indigenous women in relation to community-based orders. The lack of research and reliable evaluations of initiatives in all areas is a core problem for the Department.

10.131 It could perhaps be suggested with reasonable confidence that for women from remote communities, breaches of community-based orders could sometimes be attributable to the imposition of logistically unrealistic conditions; lack of transport to get to reporting points, lack of infrastructure to provide the programs and reporting points in the communities; the pressures of reconnecting with family and children and having to make amends for failing to meet community and cultural obligations. Similar factors affect 'urban' Indigenous women where difficulties in obtaining accommodation for a young family are likely to be a higher priority than complying with the conditions of a community-based order.

10.132 In its submission to the Inquiry, the Office of Crime Prevention noted a strong link between juvenile and adult offending. Although no research has been conducted in WA, a recent study in NSW found that nearly 70% of juveniles who appeared for the first time before the Children's Court in 1995 reappeared in a court in the next 8 years. For young Indigenous offenders, the likelihood of reappearing was 9 times greater than for non-Indigenous juveniles. Queensland research in 2003 found that 79% of juveniles progressed to the adult corrections system.

10.133 It is likely that the situation in WA is not dissimilar. Given that over 80% of female juvenile offenders in custody in WA are Indigenous, the likelihood of re-offending and progression to the adult system is high for this group of young women. The Office of Crime Prevention also said that the current approach which 'treads softly' by diverting first time offenders is effective in many cases but it "…should be more capable of identifying those young people who are most likely to re-offend and then intervening appropriately and early. For many children and young people effective intervention comes too late….this is particularly the case for young people…."[35]

10.134 More concentrated attention should be given to what is done in prison to reduce re-offending such as a range of specific initiatives that address the needs of Indigenous women - for example, programs that look at the underlying causes of violent offending such as substance abuse and domestic violence. A suite of programs should also be made available at all prisons so that women do not have

[35] For further discussion of the management of young offenders and strategies to reduce re-offending has been considered in Chapter 12

to be transferred to a facility away from their children and community to participate in a program.

10.135 Education and practical skills offered should recognise the lack of employment opportunities in remote communities and provide skills that will assist individual community members and in the running of the community to enable the offender to make amends for past damage to people and property.

10.136 Although the Department of Justice is developing strategies to address the problem, the number of Indigenous women in prison continues to increase. It seems safe to conclude, therefore, that the Department's current strategies – and any cross-agency strategies that the Department may be involved in - do not appear to be working. Unfortunately, by the time the criminal justice system becomes involved, many of the inherent problems facing women - poverty, homelessness, sole care of children, poor health, substance abuse, domestic violence, unresolved grief and loss, unemployment and lack of education - are likely to have become a chronic and complicated range of needs. This leaves the Department of Justice to deal with the problems that a wide array of government services has been unable to alleviate or address. As stated elsewhere in this report, there needs to be a more holistic approach to the problems affecting Indigenous people in general.

Recommendation 109

The Department should undertake research to determine the causes of the high failure rate of Indigenous women in relation to community based orders.

Recommendation 110

Any Departmental Indigenous policy or strategy should include separate reference to the needs of Indigenous women, and not simply as a subset of those for women in general or those for Indigenous men.

CHAPTER 11 THE MANAGEMENT OF JUVENILE OFFENDERS

11.1 It is now accepted that it is a function, to an extent a duty, of a State to assist in the care of Juveniles. The State of Western Australia has accepted that duty and has made extensive provision for it. In general what it does falls into two main divisions: what is done for families and for juveniles as part of families; and what is done for those juveniles who come into contact with the Justice System. These two overlap. The first is dealt with by the Department for Community Development; the second is part of the Community and Juvenile Justice Division of the Department of Justice.

11.2 It is with the latter that the Inquiry is principally concerned.

- The Terms of Reference require that I examine and report on aspects of the Department of Justice and the performance of those areas of it "responsible for the management and placement of offenders in custody and the release of those offenders being … the Community and Juvenile Justice Division …"
- The Terms of Reference also require that I develop a plan, which will 'include implemental strategies to: improve the quality of offender management, both in custody and in the community...'
- The Juvenile Justice System occupies an important part in the system of Community Development and Criminal Justice dealing with the prevention of crime and those involved with it. In Western Australia, particular attention has been given to it.

11.3 The overall picture of the Juvenile Justice System is:

- Most of the juveniles coming into contact with the Justice System are diverted from the court process.
- There are currently three levels of diversion available to juvenile offenders and Indigenous access to all three levels is at a far lower rate. This results in Indigenous youth being 'fast tracked' to the more serious consequences of the juvenile justice system. For example, Indigenous youth receive only 28% of all cautions issued by Police but represent over 80% of the total population in juvenile detention. Also, 80% of non-Indigenous juveniles are diverted whereas only 55% of Indigenous juveniles are diverted.
- The juveniles who are not able to be diverted are small in number. Many are dealt with by being referred to a Juvenile Justice Team or by being sentenced to a community corrections order.
- In 2004/05, the total number of receptions into juvenile detention was 1406. 95% (1338) of these were formally detained in custody without conviction. Of these, 749 were granted bail but were unable to meet the bail conditions, usually a responsible adult. And of these, only 13% subsequently received a custodial sentence. This remarkably high rate of detention for unconvicted young people seems to be inconsistent with the principle of imprisonment as a sanction of last resort.
- The two juvenile detention centres in WA have Indigenous populations that are greater than 80%, making these centres Indigenous 'prisons' if we

followed the Inspector's definition of an 'Aboriginal prison'. In the Indigenous chapter, I have discussed many of the implications of these high proportions for the way the Department should develop policy, plan, deliver and review services in these characteristic prisons but also for Indigenous offenders generally. Given the higher duty of care for young people, these issues may be even more relevant here.

- Some juveniles are assisted by the newly established Intensive Supervision procedures, which are available in 3 metropolitan and one regional site.
- Anecdotal evidence to the Inquiry indicated there is a group of about 200 juveniles commit serious and/or repeat offences and are, in the view of those working in the Juvenile Justice area, responsible for a large percentage of juvenile crime.

11.4 In addition to the problems ordinarily met in a Justice System, the Western Australian Juvenile Justice System is faced with two further problems, at least, there are two challenges:

- The size of the State and its regional nature
- The over-representation of Indigenous offenders

11.5 The largest part of the population, including the juvenile population, is concentrated in the south-west of the State. The services provided are mainly available in that area. The quality and the extent of the services which can be provided in the regional areas are less than can be, or at least now are in regional areas, supplied. The services in regional areas should be improved. Access to diversion was a particular issue highlighted during the Inquiry.

Recommendation 111

The Department should identify the current gaps in juvenile justice services in regional and remote Western Australia and develop mechanisms to ensure equity of access to services similar to the metropolitan area.

11.6 The main aspects of the Juvenile Justice System to which I give attention are, *inter alia*:

- Sentencing procedures
- The treatment of juveniles in custody
- Mental illness and disabilities
- Departmental arrangements
- Bail and Remand

SENTENCING PROCEDURES

11.7 The Inquiry has discussed with the Honourable Dennis Reynolds, President of the Children's Court of Western Australia the operations of that Court. Justice Reynolds has expressed the general opinion that the court system, though not ideal, is working reasonably well. This is also the view of the Inspector of Custodial Services, Professor Harding. Justice Reynolds felt in particular that the powers of division available to him were sufficient. He is currently conducting a trial of tertiary diversion case conferencing, for those juveniles ineligible for referral to a Juvenile Justice Team. He stated that should this proceed well, legislative changes may be required to formalise arrangements. Problems have arisen in relation to the remand of juveniles from regional areas and Justice Reynolds has suggested use in court proceedings of video links and an increasing capacity within the Department to support supervised bail arrangements.

TYPES OF DIVERSION

Primary Diversion: Diversion from the criminal justice system. These services aim to divert people (who may or may not have been charged with an offence from courts and criminal proceedings.

Secondary Diversion: Diversion from court or conviction. These services are pre-conviction and pre-sentence services and aim to divert offenders from a conviction and/or from court.

Tertiary Diversion: Diversion from custody/detention. Tertiary diversion services are post-conviction, pre-sentence, and post-sentence services that aim to divert offenders from custody detention.

11.8 Justice Reynolds has proposed that video links will enable the holding of the Children's Court in regional Magistrates Courts. Serious Children's Court matters are not able to be dealt with in these courts without video conferencing because there is no jurisdiction for the regional Magistrates Courts to hear such matters. This has given rise to incidents where children from regional and remote areas are sent to Rangeview Remand Centre in Perth, so that their matter(s) can be dealt with by the Children's Court. The most recent example of these is the 'ice cream boy', a 15 year old who was flown from Karratha to Perth and spent 12 days in detention for stealing an ice cream. Justice Reynolds stated at the time "I am staggered that he has been brought down here for attempting to steal a hazelnut roll ice-cream – that is a bit over the top to say the least". He stated that police, justice and welfare agencies need to work together better in future to help young people in remote areas.

11.9 Video conferencing should be extended to young offenders in regional Magistrates Courts. This will help to ensure that young offenders are dealt with in a timely and appropriate manner. The need for remand can be determined in the regions rather than being decided in Perth.

THE TREATMENT OF JUVENILES IN CUSTODY

11.10 Justice Reynolds and the Chairman and Secretary of the Supervised Release Board provided information as to the operation of the Juvenile Detention Centres. Justice Reynolds referred to the fact that juveniles may remain locked in their rooms at the custodial centre for 12 hours a day, as a result of the 12-hour shift arrangements that operate at both Banksia Hill Detention Centre and Rangeview Remand Centre. He commented that this arrangement does not maximise opportunities for mentoring juveniles. The Inspector of Custodial Services has commented on the impact of the 12-hour shift arrangements and has made recommendations in regard to prison officers at adult prisons. I have referred to this issue elsewhere. The difficulties that arise in juvenile detention centres due to the operation of the 12-hour shift are of equal importance.

11.11 An issue of importance exists with regard to the lack of facilities for girls and young women in juvenile detention centres. Young females reside in separate units within the detention centres, but are managed under the same regime as males. Some press attention has been given to this issue recently, arising from an alleged sexual encounter between a 17-year old male detainee and a 13-year old female detainee at Banksia Hill Detention Centre.

11.12 Capital works funding has been set aside for the building of separate accommodation facilities for girls and young women. Additional recurrent funding has not been forthcoming to provide gender specific services and programs. Establishment of a successful environment for the management of girls and young women in custody requires such a program.

Recommendation 112

Government should allocate recurrent funding to support the establishment of a separate regime for the management of juvenile female detainees.

MENTAL ILLNESS AND DISABILITIES

11.13 A serious issue concerns the management of those offenders with serious mental illness and those offenders who are detained under the *Criminal Law Mentally Accused Act 1996*.

11.14 The rate of mental illness amongst young people in detention centres is up to seven times higher than in the general population. Juveniles in detention centres have the highest prevalence of mental illness of people who are incarcerated, with 38% (16) of juveniles at Rangeview Juvenile Remand Centre and 33% (25) of juveniles at Banksia Hill Juvenile Detention Centre recording mental health alerts on 30 June 2005.[1]

[1] The juvenile data on mental health includes self-harm and behavioural problems that slightly inflate the numbers compared to adult prevalence. Juvenile Custodial Services report an increasing number of young people in detention require the services of the visiting psychiatrist.

11.15 Dr Patchett, Director of the State Forensic Mental Health Service says that, at present, there is a deficiency in the availability of suitable tertiary mental health facilities for young offenders in custody. This has been corroborated by evidence received by the Inquiry from the psychiatrist treating young people in detention.

11.16 The State-wide adolescent in-patient unit at Bentley Hospital does not have sufficient security provisions to ensure the containment of young offenders.

11.17 At the present time, the Frankland Centre at Graylands Hospital Campus is occasionally used for this purpose. However, those involved are very reluctant to admit young people to this centre. The Frankland Centre is an adult in-patient facility, operating as a hospital at its centre, but as a maximum secure facility on its perimeter. There are no separate accommodation facilities for young people. They are accommodated on wards (which operate in an open manner internally) with adult detainees.

11.18 It is relevant to note here that a general Principle articulated in section 7(c)(i) of Western Australia's *Young Offenders Act 1994* is that:

> *"Detention of a young person in custody, if required, is to be in a facility that is suitable for a young person and at which the young person is not exposed to contact with any adult detained in the facility, although a young person who has reached the age of 16 years may be held in a prison for adults but is not to share living quarters with any adult prisoner."*

11.19 Also of relevance is Article 37 of the United Nation's Convention on the Rights of the Child, which states that:

> *"Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances."*

11.20 Irrespective of the particular legislation under which a juvenile is detained at the Frankland Centre, detention would appear to be in conflict with the intentions of the *Young Offenders Act* and the United Nations Convention on the Rights of the Child. A submission regarding the establishment of a separate facility for the treatment of juvenile offenders has been prepared for the Offender Health Council, a joint Department of Health and Department of Justice body that oversees health policy for offenders. The Joint Department of Health and Department of Justice Mental Health Taskforce, which prepared the submission, recommends the establishment of a 10 bed secure facility for young offenders. I envisage this would be a sensible resolution of this problem.

Recommendation 113

Government should provide appropriate tertiary mental health services for young offenders.

11.21 Mentally impaired juvenile offenders are detained in custody under the *Criminal Law (Mentally Impaired Defendants) Act 1996*. The custody order imposed on a young person may be definite and there is a lack of a suitable therapeutic environment. This is for a juvenile who has been found not guilty of a crime due to mental impairment. The Department is seeking a means of releasing a young person who has been detained for some time.

11.22 In pursuance of his interest in the mentally ill, the Minister for Health and the Attorney General commissioned Professor C. D'Arcy J. Holman to consider the operations and effectiveness of the *Mental Health Act 1996* and the *Criminal Law (Mentally Impaired Defendants) Act*. Professor Holman has made these comments in his review of the *Criminal Law (Mentally Impaired Defendants) Act*[2]:

> *"Although section 24(1) of Part 5 of the CLMID Act provides for a MID who is subject to a custody order to be detained in a declared place, and section 23 defines a declared place as "a place declared to be a place for the detention of MIDs by the Governor by an order published in the Gazette", no such place has ever been gazetted. .... The result is that in making an order to detain a MID, a judicial officer has only two choices: an authorized hospital or a prison/detention centre. The abhorrent result is that a large number of MIDs are sent to prison, where due to their vulnerable mental state or intellectual disability, they are at much increased risk of being physically, sexually or mentally abused. The review regards this situation as deplorable and considers that it is an abuse of fundamental human rights to commit a person with mental impairment to a custodial environment where their safety is severely compromised and prospects for rehabilitation are slim.*
>
> *... The history is one of chronic ineffectual response by successive governments and the Stakeholder Committee feared that unless there was a very strong undertaking by the Government to implement declared places, meaningful reform of the administration of the CLMID Act would be thwarted. Accordingly, among the most significant proposals in this synthesis is the following proposal to remove the distinct option of any non-specific prison or detention centre being used for the deposition of MIDs.*
>
> ***The Way Forward: Declared Place***
>
> *The review is likely to recommend the deletion of references to a prison or a detention centre from subsection 24(1), such that any general prison or general detention centre is not a legal place of detention of a MID subject to a custody order.*
>
> *This proposal is not intended to ban all prisons and all detention centres from use as a place of custody for MIDs. Some may become declared places, where appropriate facilities exist, for example in a special unit or wing identified for the purpose, where MIDs are kept*

[2] Holman CDJ, Titmus JS, Rapp J. (2003) The Way Forward. Synthesis of the Review of the *Criminal Law (Mentally Impaired Defendants) Act 1996*. Perth: Government of Western Australia.

separate from mainstream prisoners. Also, the definition of a "declared place" should refer to "assessment" as well as "detention". (page 29)

The Stakeholder Committee and CLMIDWP {Criminal Law Mentally Impaired Defendants Working Party} have upheld the principle, put forward in several submissions, that a MID should not be detained involuntarily for a period that is longer than the maximum jail sentence that the person may have received if found guilty without mental impairment. This principle is already acknowledged…, The principle does not, however, extend at present to the duration of a custody order, which is potentially unlimited. Subsection 24(1) in part 5 of the CLMID Act states that a MID is to be detained until released by an order of the Governor. The review accepts that this aspect of the legislation is in violation of a fundamental human right and that the concept of 'Governor's pleasure' is outmoded.

The Way Forward: Duration of Custody if Mentally Unfit to Stand Trial

The review is likely to recommend the placement of a limitation on the duration of a custody order made in respect of a MID who is unfit to stand trial, such that the MID may not be detained involuntarily, by virtue of the custody order alone, for a period longer than the maximum term of imprisonment provided by the statutory penalty for the alleged offence."

11.23 I support these proposals.

11.24 I understand that the Human Services Directors General Group, a committee established by Government to coordinate human services policy, is currently investigating the issue of the establishment of a "*declared place*" (a legal place of detention of a mentally impaired accused under the *Criminal Law (Mentally Impaired Defendants) Act*.

11.25 I further suggest that establishment of a declared place, currently under consideration by the Human Services Directors General Group, has regard to section 7(c)(i) of the *Young Offenders Act*.

Recommendation 114

The Human Services Directors General Group, in its deliberation regarding a 'declared place', should consider the needs of mentally impaired accused juveniles, with particular regard to section 7(c)(i) of the *Young Offenders Act 1994.*

SERIOUS AND REPEAT OFFENDERS

11.26 The Community and Juvenile Justice Division has identified the comparatively small number of repeat offenders. It endeavours to reduce the rate of re-offending by that group of repeat offenders by dealing with those who are in detention before their release as well as those in the community.

11.27 In the community, programs such as the Intensive Supervision Program are available. These programs are comparatively recent but results from elsewhere indicate that they assist in reducing the rate of re-offending. However, they are available only to offenders in particular geographic areas who have family support and commitment to participate in the program: Midland, Mirrabooka, Cannington and shortly, Kalgoorlie. The Inquiry is informed that the total number of places available in the Intensive Supervision Program is approximately [60].

11.28 Attention is paid to juvenile offenders while they are in detention. It is not clear that re-socialisation programs analogous to those available for adult offenders are suitable for or available to juvenile offenders while they are in detention. Some juveniles released from custody are therefore released without intensive support. There is a high risk that many of these young people will go on to re-offend and become entrenched in the adult justice system. I propose that the Department expand efforts in the resocialisation of juveniles exiting custody.

DEPARTMENTAL ARRANGEMENTS

11.29 The Department for Community Development deals, *inter alia*, with families generally and in the course of doing so it provides assistance to juveniles, irrespective of whether they are in contact with the law. However, in principle, juveniles who have problems by reason of the juvenile justice system are not dealt with as such by the Department for Community Development.

11.30 There are sometimes demarcation difficulties between the issues of welfare and of justice, and thus between the responsibilities of the Community and Juvenile Justice Division of the Department of Justice and the Department for Community Development. These are not without significance but do not appear to have prevented each System doing what it should do. Justice Reynolds refers to difficulties that sometimes arise when considering whether what is to be done is to be done by reason of a juvenile justice problem or by reason of a family welfare problem.

11.31 Demarcation difficulties of this kind appear inevitable. There is no model that will not have such difficulties. There is no compelling reason why matters should be dealt with by a single Juveniles Department, as occurs in some other States of Australia. The Departments of Justice and Community Development should continue to build upon close working relationships.

11.32 Demarcation difficulties were referred to by the Department for Community Development and the Department of Justice. Both Departments referred to a long-standing lack of suitable accommodation options for children released from detention. Neither Department has taken sole responsibility for solving this problem. It has been referred to by the Juvenile Justice Officers and other professionals working in the field. It requires some immediate attention.

11.33 This arises particularly where the juvenile in question is an 'open case' with the Department or a ward of the State. The Department for Community Development outlined a proposal for expanding accommodation options for these children put forward in 2003, but was not successful in attracting funding. The Department for Community Development, in its submission to me recommended that the Department of Justice establish a specialised facility for these children.

11.34 A solution should be found for this problem. Solutions should preferably be based upon supporting families and communities to parent children, rather than the building of new institutions. In investigating solutions for Indigenous children, there should be full consultation with Indigenous communities.

Recommendation 115

Government should implement a preferred model for the provision of sustainable accommodation solutions for young people exiting custody and should determine which Department is responsible for putting it into effect.

11.35 Children who are involved in the justice system are often difficult to manage in a school environment, and suitable placements have been difficult to establish. A particular problem arises in relation to juvenile offenders who, on leaving the detention facility, must return to school. Arrangements are made for their placement in an appropriate school. Where they have no family accommodation, accommodation must be found for them, otherwise they may not attend school. Judge Alton Jackson of the Supervised Release Board and others have raised this issue. This problem may become greater over the next few years as the school leaving age will be raised in 2006 to the end of the year in which young people turn 16 and in 2008 to the end of the year in which they turn 17.

11.36 The Balga Works program has been established to address this issue in the north metropolitan area. Young people in school placements are offered supported accommodation. This is a private initiative of the teaching staff. Government should direct the justice and education systems to support education placements such as this.

11.37 In submissions, reference has been made to the administrative arrangements within the Department of Justice for the management of juvenile offenders. The management of juvenile offenders in custody is carried on within a directorate separate from that which manages juveniles in the community. Juveniles in the community are managed through a general community justice directorate, with responsibilities for the management of both adult and juvenile offenders. The management of juveniles in the community and the management of juveniles in detention occur within separate function areas. Difficulties have arisen including (as they have been described by officers):

- Lack of focus for the development of whole of system strategic direction for juvenile justice;
- Loss of awareness of juvenile specific philosophies and practices;
- Lack of clear leadership and guidance for officers, especially for those working within the community justice services; and
- Lack of continuity of service provision from detention to the community.

11.38 Officers have recommended that the management of juvenile justice be consolidated within the Department to form a coherent juvenile justice group that, administratively, juvenile community justice officers be managed through the Community Justice Division, and that professional development, policy and strategy development and leadership and management operate through a juvenile justice specific stream.

Recommendation 116

The Department should consider the management of juvenile justice being consolidated within the Department of Corrections to form a cohesive juvenile justice function.

BAIL AND REMAND

11.39 The attention of the Inquiry has been drawn to the continuing high rate of remand of young offenders in Western Australia and to what appears to be problems which have arisen in relation to remand procedures. Ideally, a high proportion of those detained would follow the conventional course: be judged and then sentenced to detention. However, a significant proportion of all juveniles in detention are on remand. Further, after being held on remand, many receive only a non custodial order. Tables 1 and 2 set out the relevant statistics. Table 1 depicts the number of juveniles received at the remand centre on remand or on arrest. Table 2 depicts the number of these juveniles who subsequently commenced a period of sentenced detention. The discrepancy is substantial.

Table 1: Receptions Juveniles on remand and on arrest aged 10 - 17 (age calculated as at reception date)

Status as at Reception	2001/2002	2002/2003	2003/2004	2004/2005
REMAND	575	433	514	447
ARREST	761	904	995	890
TOTAL	1336	1337	1509	1337

Table 2: Sentenced periods of detention commenced, juveniles aged 10 - 17 (age calculated as at sentenced imposed date)

	2001/2002	2002/2003	2003/2004	2004/2005
Finite	0	1	0	1
Juvenile Detention	228	217	225	218
Parole	9	2	1	0
NOT RECORDED	3	11	15	23
TOTAL	240	231	241	242

11.40 The rates for remand from the courts have decreased whilst the rates of young people in the remand centre on arrest have increased.

11.41 Two reports were commissioned, one in 1999 and one in 2001, which investigated and proposed solutions to the issue of high levels of remand.[3] [4] The numbers of juveniles being held on remand have fluctuated considerably over the last few years, though with little overall decrease in the number of young people held in custody on remand since these reports were commissioned. This appears to continue as an issue to be addressed.

11.42 Some of the problems with the use of remand for children from remote areas can be dealt with through the use of video conferencing to enable the operation of the Children's Court in regional Magistrates Courts.

11.43 A proportion of those in the remand centres are there because they cannot meet the conditions set of their bail. As with adult offenders, juvenile offenders are held in detention on remand if they are either refused bail or unable to meet bail requirements. The latter case may occur because, for example, the offender has no family member who can or are prepared to act as surety.

11.44 The Director of Juvenile Custodial Services, has informed the Inquiry that the Department has initiated a Supervised Bail Program for young juveniles for whom bail has been set, but who cannot meet the conditions of bail (namely that a responsible adult cannot be identified to supervise the bail) and are therefore are in custody at Rangeview Remand Centre. She has said that the Supervised Bail Program operates reasonably well in the metropolitan area, but that it has been more difficult to organise appropriate bail arrangements for those living in regional and remote areas. Efforts should be continued to extend that program effectively in regional and remote areas. Table 3 sets out the numbers of juveniles who have participated in the Supervised Bail Program over the past four years.

[3] Western Australian Ministry of Justice (1999) *Report of the Review of Admission to the Juvenile Remand Centre*.

[4] Western Australian Ministry of Justice (2001) *Slice of Remand*. Ministry of Justice, Policy and Legislation Division.

Table 3: Number of juveniles participating in the Supervised Bail Program

	Number unsentenced admissions to remand centre	Number of juveniles in supervised bail program - metro	Number of juveniles in supervised bail program - regional	Total supervised bail	Days saved supervised bail
2000/01	1776	-	-	208	2346
2001/02	1360	169	43	212	4160
2002/03	1364	275	48	323	4916
2003/04	1533	346	40	386	7073

11.45 The Inspector of Custodial Services has made some recommendations in relation to bail for young people in regional areas (particularly in relation to the Kimberley and the Eastern Goldfields). He has stated in his Report that the problems of finding suitable bail arrangements have been exacerbated for the Bail Supervision Unit in the Kimberley by the suspension of bail facilities in regional areas. The Inspector recommends the development of partnerships with local communities to supervise young offenders on bail and he specifically recommends the establishment of community-run facilities to house these young people.

11.46 If bail is set, however, every effort should be made to ensure that the young person is accommodated in his or her home in their community, rather than reside in a custodial facility. The Supervised Bail Program, which seeks to find a responsible adult to supervise the young person in their community, is a preferable model to that of removing young people from their community. I recommend that specific attention be given to supporting the Supervised Bail Program in regional areas.

11.47 The Inquiry has heard submissions relating to the proposed establishment of two new juvenile remand centres, one in Kalgoorlie and one in Geraldton. It is commendable that the Government is seeking to ensure children on remand are located as close to their families and community as possible. Proximity to land and family are important concepts in the administration of justice services.

11.48 The Inquiry is informed, however that the proposed total capacity of these centres will be 24 young people (12 in each centre). Currently the average population of unsentenced juvenile detainees from Geraldton and surrounding areas is 3.4 and the average population from Kalgoorlie and surrounding areas is 3.3, far below the proposed 12 places in each centre. The old adage of "*build them and they will come*" seems apt. It has been proposed to the Inquiry that the function of these centres be expanded to include management of offenders with short-term custodial sentences, for pre-release or for detainees from the local area to facilitate family connections. That proposal should be examined.

Recommendation 117

Government should consider expanding the function of the proposed juvenile remand centres in Kalgoorlie and Geraldton.

11.49 The material collected by the Inquiry demonstrates that much has been attempted and done in respect of juvenile offenders. As has been said earlier, the results achieved are encouraging.

CHAPTER 12 THE MANAGEMENT OF MENTAL HEALTH ISSUES

12.1 Mental health is central to a prison system. It can be observed that:

- those in prison have mental health problems to a disproportionate extent; and
- those who leave prison with such problems are less able to cope and may see crime and drugs as easing their difficulties, even if temporarily.

12.2 That is now recognised. The issue is: what can be done?

12.3 That issue has been addressed to some extent but, of course, not solved. Psychiatrists and psychologists have examined it at length and the Government has done what its priorities allow. These things have been extensively documented.

12.4 It is not the function of an Inquiry to solve the issue or to add to the documentation already available. There is a temptation to organise original research, publish the results and make recommendations which will meet the needs of mentally ill prisoners or prospective prisoners. That cannot be done by an Inquiry. Mental health is central but only one of the matters to which the Inquiry must refer.

12.5 The Inquiry has arranged for the preparation and presentation to the Inquiry of two detailed reviews of the position generally and as it is in Western Australia. It has had the great benefit of detailed papers prepared by Dr Patchett, the Acting Director of the State Forensic Mental Health Service, Department of Health and by Dr Ralph Chapman, the Director of Health Services, Department of Justice. Their reviews are part of the material presented here.

12.6 The Inquiry has drawn together other material dealing with the position in this State. Its purpose is to:

- draw attention to the problems which the mental health of offenders creates;
- focus upon some of the practical difficulties which exist;
- make recommendations, necessarily of a general character, as to what may be done towards a solution of some of these difficulties; and
- provide a starting point for further examination of the problem.

12.7 It will do this by including in this Report the material brought together by the Inquiry and by preserving as part of the Inquiry's records the reviews prepared by Dr Chapman and Dr Patchett.

12.8 The resources which Government (Federal and State) feel able to commit to mental health problems generally are less than is necessary to relieve the most urgent symptoms. The resources committed to those in the prison system are less than is necessary. By focussing attention upon what is needed, more may become available.

12.9 Mental Health is relevant in the prison system at three stages:

- when a prisoner is admitted to the system. (How should he be classified, where he should be relocated and what, on his IMP, should be specified as his treatment);

- while he is in prison (Is what he does due to bad character or mental illness); and
- when he leaves prison (What can be done to prevent him re-offending).

12.10 Something is done at the first stage:

- The officers at Hakea prison believe that the medical procedures operating there will indicate whether the prisoner requires attention for mental illness. If the prisoner is identified as requiring assistance he will be referred to a consultant.
- The testing procedures are said to be those used for psychiatric testing generally.
- Diagnosis is difficult in good circumstances. The circumstances on admission are not best suited to diagnosis. The uncertainty of what is diagnosed at that stage should be borne in mind (and emphasised). The necessity for later reconsideration of the prisoner's basic condition should be taken into account in specifying what routinely is to be done for the prisoner at later stages of the imprisonment.

12.11 Less is done during his time in prison:

- His conduct is not subject to routine analysis. It could hardly be. Psychologists are employed and psychiatric help is available when the need of it is recognised and called for.
- However, a prisoner's conduct, his tensions and why he does what he does may result from character or from problems which neurotic or psychotic conditions can produce.
- Prison officers cannot be expected to recognise in a prisoner's conduct the signs and symptoms which together indicate a particular mental illness. However, it should be part of the routine training of an officer to recognise conduct as unusual and to inquire whether it is such as to warrant a detailed consideration of the cause of it.
- When the officer has doubt, he should refer the prisoner for professional examination. Professional examination should be available.
- If there appears a likelihood that mental help should be given, that should be noted on his prison record.

12.12 The Inquiry has not identified anything significant which is done on release of a prisoner to determine his mental condition and what help he may need to avoid re-offending:

- It is not practical to recommend that, for example, every outgoing prisoner be psychiatrically examined.
- However, if the prison record shows that mental help was required, the prisoner should, before release, be professionally examined to determine what can and should be done to assist him to avoid re-offending.

12.13 In deciding what can and should be done, regard should be had to the general situation that now exists in the community in relation to the care of mental patients. I note that:

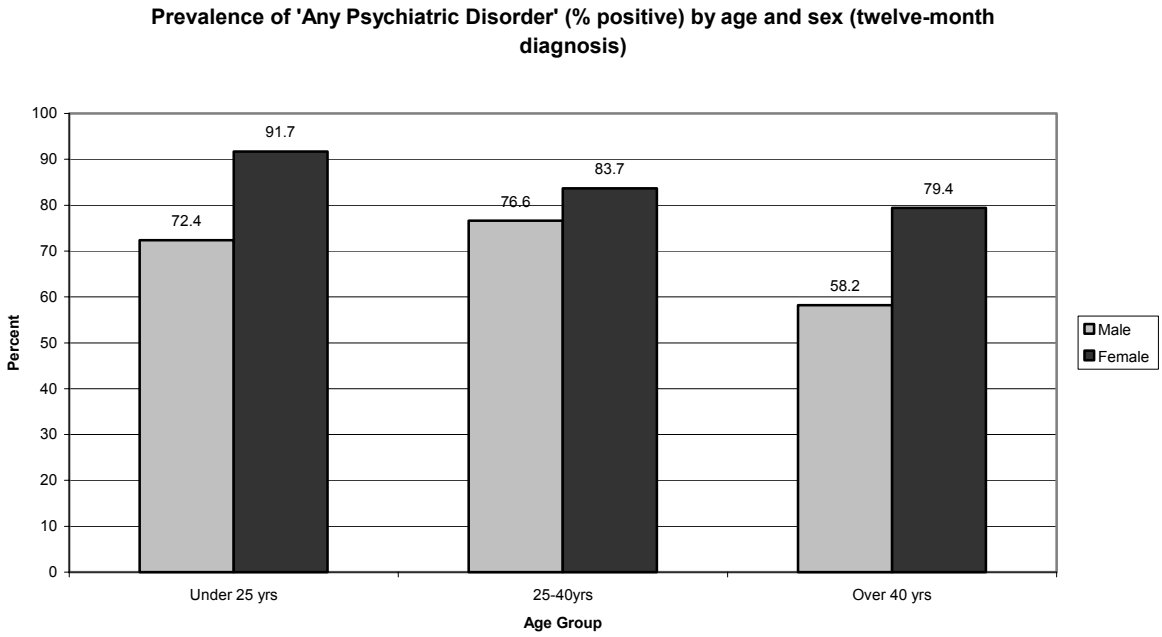
- the Government psychiatric institutions which formerly housed those having sufficiently serious mental illness have, in general, been closed;
- the institutions proposed as substitutes (day hospitals and similar facilities) have been largely unsuccessful;
- the "half way houses" envisaged when Government psychiatric institutions were closed, have not been provided; and
- it has been said that prisons are now the psychiatric hospital equivalents.

12.14 The material brought together by the Inquiry follows.

OFFENDER MENTAL HEALTH SERVICES

12.15 The Inquiry has been advised that approximately 80% of the prison population suffers from a diagnosed mental illness, behavioural disorder, intellectual impairment or drug or alcohol induced mental illness.

12.16 There has been no specific research undertaken in Western Australia on the prevalence of mental illness among offenders. However, the Butler and Allnutt study "*Mental Illness among New South Wales Prisoners*" conducted for New South Wales Corrections Health Service in August 2003 made the following findings, which generally support the prevalence figure of approximately 80%.



Source: Bulter, T & Allnut, S (2003) *Mental Illness Among New South Wales' Prisoners.* New South Wales Corrections Health Services 2003.

12.17 The Department's Director Health Services, Dr Ralph Chapman, has advised the Inquiry that mental health services to prisoners at all prisons are completely inadequate. In his view, prisoners need the full spectrum of psychiatric and psychological intervention ranging from weekly consultations with forensic

psychiatrists, to daily interventions by a mental health nurse, and access to occupational therapists to organise activities for those unable to participate in prison employment or education. However, community services are also so stretched that scheduled prison consultations may not take place. Mr Chapman had, however, been unable to obtain additional funding to enhance the current level of service.

Submission from the State Forensic Mental Health Service

12.18 The Acting Director of the State Forensic Mental Health Service, Dr Patchett, has provided a submission to the Inquiry in relation to the provision of mental health services to offenders in custody and in the community. He states that,

> *"while 5% of the general population suffers from mental illness, studies un custodial settings indicate that somewhere between 8% and 19% of prisoners have significant or functional disabilities and another 15%-20% will require some form of psychiatric intervention during their incarceration."*

12.19 Although no studies have been commissioned in Western Australia, application of the above estimates to the current prison population equates to between 400 and 500 prisoners in Western Australia in need of psychiatric treatment. He has also told the Inquiry that there is "robust international evidence" to suggest "the mentally ill are arrested and appear in court at higher rates than other people in the general population." Although specific Western Australian studies have not been conducted, it is therefore estimated that 5% (4500) of the 90,000 appearing before the courts each year are "probably mentally ill when they attend court."

12.20 The rate of funding for mental health services in prisons "has lagged far behind" expenditure on community mental health generally. Recurrent annual expenditure for community mental health services almost doubled between 1992 and 2002 from $122 million to $223 million. By comparison, the Department of Justice Health Services Directorate had a budget of $14million for 2004/05 for the provision of all health services to prisoners, including mental health services.

12.21 Dr Patchett has drawn the Inquiry's attention to 'Penrose's Law'. Lionel Penrose in 1939 –

> *"cited an apparently inverse relationship between the number of mental hospital beds and the number of prisoners in any given society, the implication being that patients turned out of mental hospitals ended up in prisons…He [Penrose] concluded "Attention to mental health may help to prevent the occurrence of serious crimes, particularly deliberate homicide."*[1]

12.22 Penrose's law was confirmed in Australia by Biles and Mulligan in 1973 and the following table shows its application to Western Australia. The number of available psychiatric beds per 100,000 adults has halved and the estimated number of mentally ill prisoners has effectively doubled.[2] Dr Patchett states, "since 2000

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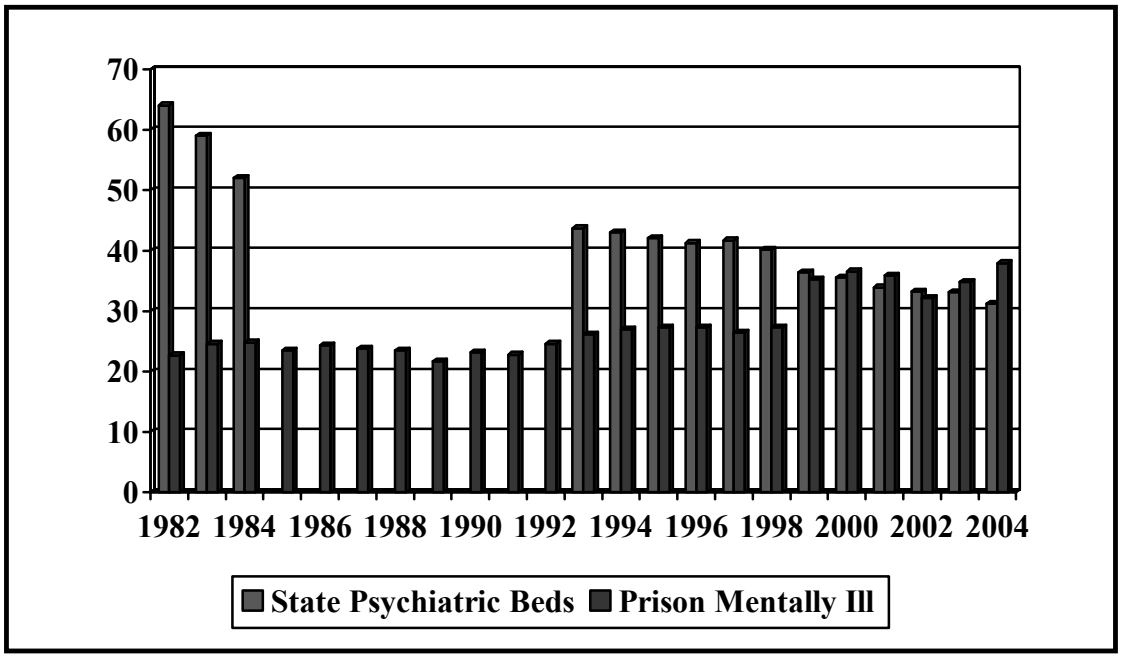
[1] Biles, D & Mulligan, G (1973) 'Mad or bad? The enduring dilemma.' *British Journal of Criminology,* 13, p 275-279.

[2] Ibid.

there have been essentially equal numbers of seriously mental ill in the state's prisons as there have been in the state's hospitals."



Penrose's Law in WA: Rates per 100,000

Source: Biles, D & Mulligan, G (1973) 'Mad or bad? The enduring dilemma.' *British Journal of Criminology,* 13, p 275-279.

CURRENT SERVICES PROVIDED BY THE DEPARTMENT OF HEALTH

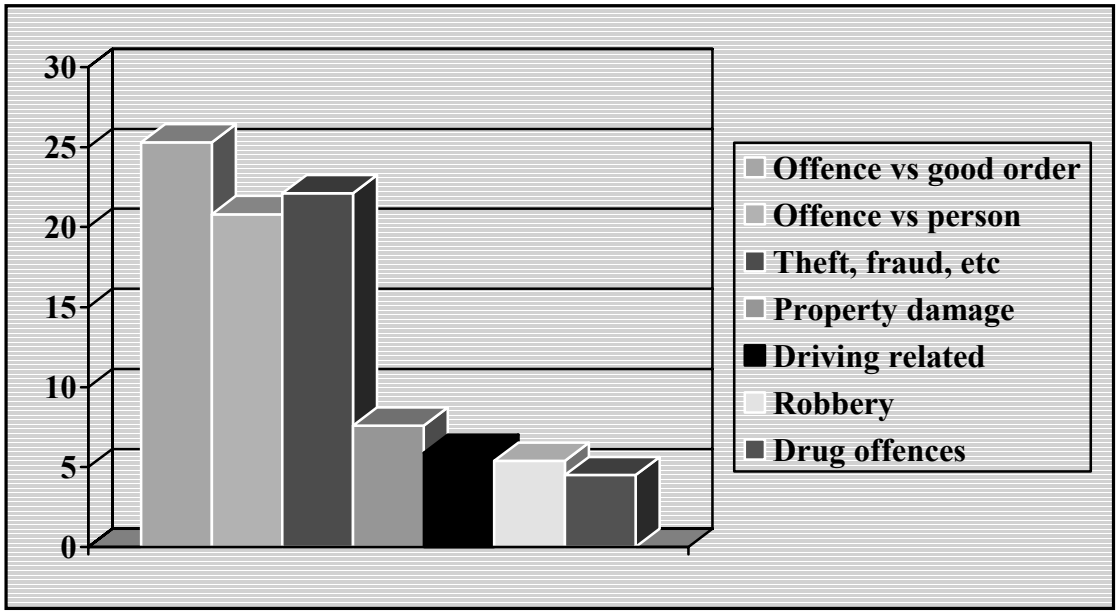
12.23 Current mental health services to offenders provided by the Department of Health include:

- Maximum secure inpatient hospitalisation in the 30-bed Frankland Centre at Graylands Hospital for people referred by the courts for psychiatric assessment; those declared unfit to stand trial; those found not guilty "by reason of unsoundness of mind" under the *Criminal Law Mentally Impaired Accused Act 1996* ('CLMIA Act'); and prisoners transferred as involuntary patients under the *Mental Health Act 1996*.
- The State Forensic Mental Health Service also provides 18 sessions per week by a consultant psychiatrist and a psychiatric registrar at metropolitan prisons (excluding Boronia) and services to Albany, Eastern Goldfields, Greenough and Roebourne as required. North Western Mental Health Services provides services to Broome and prisoners at Bunbury are transferred to Casuarina if they require psychiatric consultation.
- Ten minimum secure inpatient beds in the Plaistowe Ward at Graylands for the "rehabilitation and graduated reintegration back into the community for mentally Disordered Offenders on Custody Orders and prisoners who have been granted parole or who have finished finite sentences . Both groups are released back into the community through psychiatric rehabilitation plans and coordinated discharge plans."

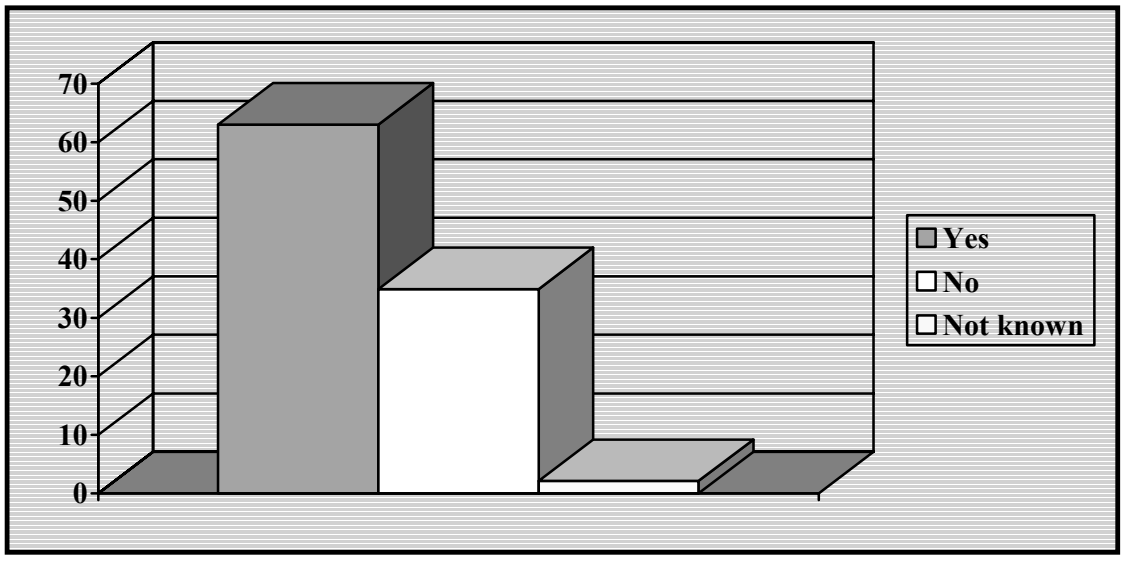
- Court Liaison Services delivered by the Community Program of The State Forensic Mental Health Service which attends the Perth and Fremantle Courts of Petty Sessions and provides on-call availability to the Supreme, District and Children's Courts and 5 smaller metropolitan courts together with assessments by video-conferencing to regional courts.

12.24 The following figures depict the court-related work of the Community Program, for the calendar years 2002.

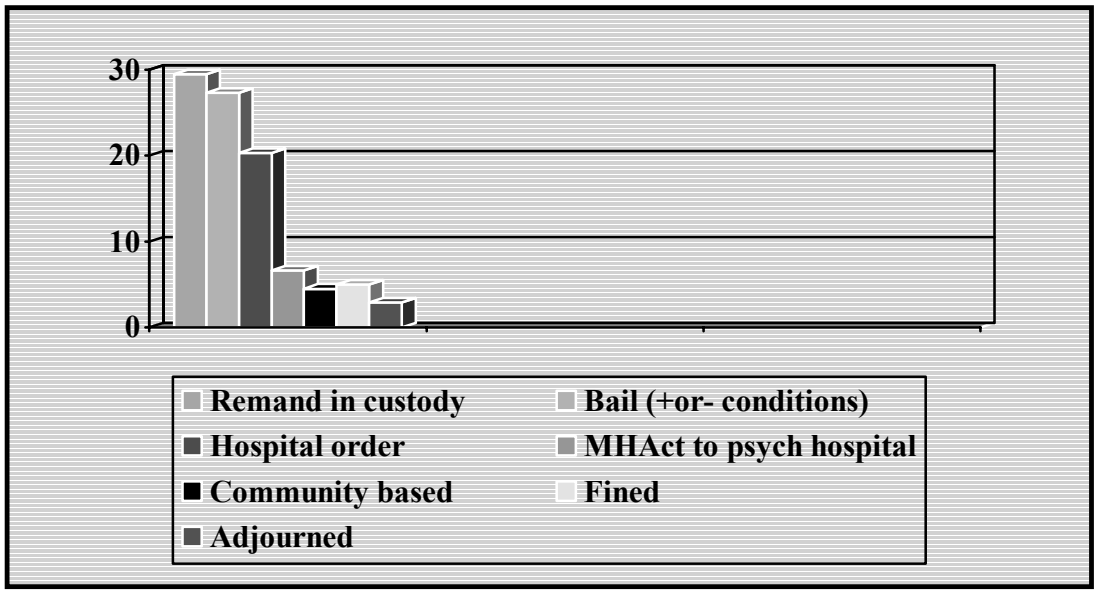
Current charge at time of assessment by Court Liaison Service (%)



Offenders known to Mental Health Services (%)



Outcome of Court Process (%)



12.24 The graphs show clearly that the majority of referrals are to Mental Health Services; and that most are charged for offences against good order or against the person or for theft. The majority of referrals are remanded in custody or made subject to a hospital order.

12.25 The Community Program of the State Forensic Mental Health Service provides case management for 60 serious offenders with serious mental illness who are in custody or on conditional release from Custody Orders or are on parole.

12.26 It also undertakes a consultative service in the form of assessments and management advice on complex cases where offending and/or violence is an issue; education on mental health and issues to community-based justice services throughout the State and may accept management of difficult cases.

CURRENT SERVICES PROVIDED BY DEPARTMENT OF JUSTICE

12.27 Primary mental health services to prisoners are provided by the Department of Justice through its Health Services Directorate. These include:

- initial mental health assessment and screening of all new admissions by general and mental health nurses and general practitioners; and
- mental health services in Crisis Care Units at Casuarina, Hakea, and Bandyup and to the infirmary at Casuarina.

12.28 In addition to those with a diagnosed mental illness, it is estimated that around 60-65% of prisoners have some form of behavioural disorder. These prisoners are for the most part seen by members of the Prison Counselling Service, which reports to Offender Services directorate of the Department of Justice rather than to the Health Services Directorate following the recommendation of a review in 2001.

12.29 The Prison Counselling Service comprises 29 counsellors employed in prisons as follows:

- one counsellor at each of the regional prisons;

- one counsellor assigned to both Karnet and Wooroloo prisons (where there is low demand); and
- 22 counsellors who service the remaining metropolitan prisons.

12.30 A primary role of the Prison Counselling Service is suicide assessment and management, other counselling needs are serviced as required.

12.31 Dr Patchett advised the Inquiry that, in his view, the level of psychological services - including psychometric assessment and psychological treatment - is currently inadequate in all prisons. This view is in line with the findings of the Inquiry in relation to the level of service available at regional prisons.

12.32 In summary Dr Patchett advised that "enhanced mental health services to the courts, to the prisons and in the secure forensic inpatient facility are urgently required to address the shortfalls" and identified the following deficiencies in the current mental health services to offenders both in custody and in the community:

Prisons

- Drug and alcohol services for forensic patients are few.
- The delivery of psychiatric services to regional prisons is inadequate and only marginally effective. With the exception of Broome Prison (serviced by North West Mental Health Service), regional prisons only receive general practitioner and general nurse primary mental health care, augmented by infrequent in-reach clinics by psychiatrists of the State Forensic Mental Health Service. Those clinics currently operate in each regional prison for only one day each month. There are no comprehensive mental health teams to provide mental health nursing, occupational therapy, clinical psychology and social work services.
- Treatment and rehabilitation of stable but chronically mentally ill prisoners in dedicated units in the prison does not exist.
- Discharge planning is currently very poorly coordinated and inadequate.
- Systems for detecting mental illness in prisoners and for training prison officers in skills required for detecting mental illness are inadequate.[3]
- Culturally secure mental health services for Aboriginal and other ethnic minority groups in prison are inadequate.
- The State Forensic Mental Health Service does not have the capacity to provide assessment and treatment for special areas of need in Forensic Mental Health. Special service programs are required for sex offenders, violent offenders and select population groups around offences like arson and stalking. As a consequence there is not a standardised and systematic risk assessment and management process around these groups of offenders.

[3] The Inquiry notes the advice from the Director Health Services that he is working in conjunction with Dr Patchett to pilot a new screening tool developed for UK prisons (CANFOR) early in 2004.

Community Justice

12.33 The State Forensic Mental Health Service Court Liaison Service is unable to -

- provide comprehensive assessment and diversion services at all times to all metropolitan and regional courts;
- extend the videoconferencing service to regional courts; and
- deal safely and appropriately with Indigenous offenders .

12.34 The State Forensic Mental Health Service Community Program is unable to meet the demand for the comprehensive safe care of seriously unwell offenders from the Inpatient program of State Forensic Mental Health Service, prisons, general mental health services and Community Justice Services.

12.35 The State Forensic Mental Health Service Inpatient Program is currently seriously short of the required number and range of beds at the Frankland Centre where there has been no increase in capacity since it opened in 1993. There is an urgent need for at least 30 medium secure beds and 20 more minimum secure beds to meet the requirement for systematic rehabilitation and graduated reintegration back into the community.

12.36 Culturally secure services to ensure successful reintegration back into communities of origin are grossly inadequate.

Young offenders

12.37 There is currently no dedicated secure inpatient unit for juvenile offenders. Psychiatrically disturbed young offenders (as young as 14 years in the past) have been placed in the Frankland Centre with adults, some of whom have extensive criminal records.

Summary

12.38 Specific recommendations suggested by Dr Patchett include:

- enhanced metropolitan and regional court liaison services including the recruitment and development of Aboriginal Court Liaison Officers to assist with assessment, referral for treatment, and appropriate disposition of Indigenous offenders;
- an improved system for screening, assessment and evaluation of mental illness at reception in prison;
- the establishment of Intermediate Care Units in the major metropolitan prisons and smaller focussed Intermediate Care Units in one or more of the regional prisons, each one perhaps serving two or three prisons;
- an increase in the number of beds in medium and minimum secure hospital facilities through the establishment of a 30 bed medium secure unit and a 10 bed minimum secure unit, run by the State Forensic Mental Health Service and based at the Graylands Health Campus in conjunction with the current 30 bed maximum secure Frankland Centre;

- the construction of a 10-bed Young Offenders Secure Unit located within the Frankland Centre secure perimeter on their Graylands Health Campus, but geographically separate from the adult beds at the Frankland Centre;
- Community Mental Health Centre Model for Prison Mental Health Care under which:
    - primary mental health care is provided as it is in the general community, by general practitioners and nurses (general and mental health) with the assistance of the Department of Justice Prison Counselling Service to address issues of humane containment.
    - secondary mental health care is provided by the equivalent of Community Mental Health Centre as occurs in the general community; and
    - tertiary mental health care (hospitalisation) is provided to prisoners through referral to the Frankland Centre for appropriate inpatient treatment;
- significant enhancement of culturally appropriate and secure mental health services to Indigenous offenders at all stages and settings of forensic mental health care: community of origin, court, prison, hospital and discharge back to the community of origin; and
- the establishment of a state-wide network of Aboriginal Liaison Officers, recruited from the communities themselves to establish links with the local communities, with local health services where available, with government organisation that visit communities, with non-governmental organisation active in the community and with specialist mental health and forensic mental health services as required.

"Not for Service: Experiences Of Injustice And Despair In Mental Health Care In Australia"

12.39 A similar bleak picture of the current state of national mental health services was painted in the recently released joint report "*Not for Service: Experiences Of Injustice And Despair In Mental Health Care In Australia*" by the Mental Health Council of Australia, the Brain and Mind Research Institute and the Human Rights and Equal Opportunity Commission.

12.40 The report was a national compilation of people's experiences of interaction with the mental health care system which "described a crumbling health care system", and confirmed that the "process of de-institutionalisation has not been accompanied by corresponding supports for mentally ill people to live in the community. This has left many people with serious illnesses without the help that they need and deserve."[4] The Report included experiences of people in contact with the criminal justice system.

[4] Mental Health Council of Australia (2005) *Not for Service: Experiences of Injustice and Despair in Mental Health Care in Australia,* Mental Health Council of Australia, Canberra, Foreword – Human Rights Commissioner.

12.41 The Executive Director of the Brain and Mind Research Institute pointed to:

> *"persistent and disturbing reports of fundamental service failures. These reflect disorganised and dislocated health and welfare systems and lack of commitment to the provision of quality mental health care, particularly in the public sector. Community-based care depends not only on organised health services but co-ordination of welfare, housing, police, justice and emergency care services. "*

12.42 The Executive Summary of the Report states:

> "*In the short-term, the system as it currently operates may result in a failure to provide basic medical and psychological health care, inappropriate use of short term seclusion, confinement or over-reliance on sedating medications. Longer-term, the impact may include deteriorating mental health and wellbeing, suicide, higher rates of homelessness, prolonged unemployment, incarceration or increased financial burden and poverty. Failure to attend to the urgent needs of those with severe mental disorders on a systemic basis may also lead to infringements of the wider rights of the community to reside in a safe and secure environment. For many people, ongoing financial and personal support from family and friends is the only real safeguard against these outcomes.*"

12.43 The Report made a number of recommendations, including the following of relevance to this Inquiry:

- that national prevalence studies be undertaken to determine the extent of mental health problems and mental illness to enable informed, on-going policy decision making;
- that funding to support integrated alcohol and drug mental health services be prioritised;
- that nationally consistent guidelines be developed for the assessment, sentencing and provision of specialised mental health care for the mentally ill in contact with the justice and/or detention systems and that specialised legal services, diversionary and reintegration programs be made available;
- that programs and additional resources to attract and retain staff in mental health care services be implemented; and
- that training programs to integrate the drug and alcohol and mental healthcare workforces be undertaken.

12.44 On a national comparison, Western Australia leads per capita spending and also has the highest number of clinical staff working in 'ambulatory' mental health services. However, WA was "perceived to have made few efforts to deal with the problems faced by regional and remote communities"[5] and there were widespread concerns about the lack of resources to deliver treatment and support services and to provide early intervention[6].

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[5] Ibid, p 52-3.

[6] Ibid, p 617.

12.45 In its response to the Report, the WA Government advised that it had allocated additional funding over the next three years for a "comprehensive package of mental health reform initiatives" and that the Government's aim, under its *Mental Health Strategy 2004-2007*, was to "meet demand for services, improve access to appropriate inpatient services, increase intermediate care options, provide more community support services and improve safety for consumers, staff and the community."

12.46 The reforms include: expansion of community supported accommodation services for people with severe mental illness; provision of a further 12 acute secure beds on the Graylands Hospital complex; the enhancement of community health services; the recruitment of 475 new mental health staff; and "whole of government and community-wide partnerships to enhance our capacity to promote mental health and respond to mental illness.[7]

Report on the Investigation into Mental Health and Disturbed and Serious Personality Disorder Services for Prisoners in England

12.47 The Government's strategies for mental health services for prisoners are outlined in a report by the Attorney General following a study visit to England this year.

12.48 In his Report, tabled in July 2005, the Attorney General, the Hon Jim McGinty MLA, acknowledged that "the proportion of prisoners with mental health problems and their need for treatment is recognised in many forums as increasingly urgent issues" and referred to the following known statistics:

- a prevalence rate of 20% requiring mental health services and more than half of these requiring hospitalisation during a year;
- an exit rate of 1000 prisoners per annum requiring community mental health services;
- long term management of 100 prisoners with disturbed and serious personality disorders (DSPD) and specialised programs for 40-50 such prisoners; and
- services for 18-20 people detained under the *Criminal Law Mentally Impaired Accused Act*.[8]

12.49 He also stated that, "The prison system is not always best placed to address the needs of offenders who have a mental illness. Often, in the interest of ensuring security, effective mental health treatment is secondary to prisoner management".

12.50 He expressed the view that to "fully meet the mental health needs across the prison sector it is estimated that the required clinical expertise is 3-4 times greater than currently exists" and stated that the "Western Australian Government intends to significantly improve mental health services for prisoners". "A blueprint" for the future is seen as including the following elements:

- mental health services for prisoners "underpinned by the National Statement of Principles for Forensic Mental Health";

[7] Ibid, pages 929-932.

[8] McGinty, J (2005) *Report on the Investigation into Mental Health and DSPD Services for Prisoners in England by the Attorney General*, Jim McGinty, MLA; Minister for Health and Electoral Affairs. Government of Western Australia, Perth.

- detailed specification of demand for mental health services for prisoners;
- increased forensic hospital facilities;[9]
- increased capacity to provide mental health assessments at different stages of the justice system (community mental health, police, courts, community justice, young offenders and prisons) by qualified mental health practitioners and greater co-ordination between the services;
- prison mental health services with adequate facilities, multidisciplinary teams and a varied and productive range of therapeutic activities, reflecting multiple conditions and learning abilities and providing appropriate rehabilitative residential options in the prison setting for the most vulnerable groups;
- establishment of a new program and management regime in a new forensic mental health facility for DSPD prisoners;
- planning for new services to be progressed under a joint management group comprising representatives from prisons, community and juvenile justice and the courts and from the Department of Health; and
- additional effort to attract and train staff to work within the forensic mental health context.

CONCLUSION

12.51 On the basis of submissions received by the Inquiry, it is clear that there is a need to expand and enhance the level of mental health services to offenders – including accommodation shortfalls. The Attorney General has advised the Government's intention to address this shortfall. He has also included strategies for better co-ordination between the arms of justice and identified the need for research into specific areas of demand.

12.52 The recommendations made by the Acting Director, State Forensic Mental Health Services, Dr Steve Patchett suggest similar, but more specific, improvements.

Recommendation 118

Government should move to implement the Attorney General's blueprint for the improvement of mental health services to offenders in custody and in the community.

Recommendation 119

Staffing and resources for prison mental health services should be increased to a level that is able to meet the high mental health needs of prisoners.

[9] The Inquiry notes the provision of $40million in the draft capital investment submission for 2005-2006 for the construction of a Department of Health run secure mental health facility within a metropolitan prison complex.

Recommendation 120

The Department's Health Services Directorate should work closely with the State Forensic Mental Health Service to develop an appropriate mental health screening instrument and process and a training program for general nurses performing this initial screening process.

Recommendation 121

Prison officers should receive training in the proposed mental health screening process to the extent that it is relevant to their involvement in the prison suicide/self harm risk management process.

Recommendation 122

Intermediate Care Units, staffed by mental health personnel including psychiatric nurses, occupational therapists and clinical psychologists, should be established in the major prisons and selected regional prisons to provide psychiatric rehabilitation to prisoners with serious but stable mental illness or chronic psychiatric disability who do not require admission to a secure hospital such as the Frankland Centre.

Recommendation 123

Court Liaison Services should be increased in metropolitan Courts of Petty Sessions and in regional courts through accessible and practicable videoconferencing.

Recommendation 124

The Department should increase efforts to recruit and develop Indigenous Court Liaison Officers to assist with assessment, referral for treatment and appropriate disposition of Indigenous defendants.

Recommendation 125

Culturally appropriate mental health services for Indigenous defendants and offenders should be significantly enhanced, including the development of effective services at all stages of the justice system.

Recommendation 126

The Department should develop services following consultation with Indigenous communities, which should also be invited to develop their own unique solutions to problems and have control and governance over program development.

CHAPTER 13 THE MANAGEMENT OF DRUG ABUSE

13.1 Drugs and alcohol are a problem in the community. They are equally a problem in prisons. Drugs in prison are a breach of the law and should not be tolerated. Equally important, they cause harm, inside the prison but also outside the prison. A prisoner who leaves prison drug dependent is more likely to re-offend.

13.2 The Inquiry has sought evidence as to what can be done. Two things have been attempted: to prevent drugs entering the prison; and to deter prisoners from using them.

13.3 Alcohol is a significant issue in relation to health consequences of offenders and the nature of their offences. However it is not a management problem within the prison system because it appears more difficult to obtain and to conceal. I shall concentrate on the problems caused by the importation of drugs.

13.4 According to prison officers, the main ways in which drugs enter the prison are:

- over the fence (inserted in oranges, tennis balls and other projectiles);
- brought in by prisoners;
- brought in by visitors; and
- brought in by officers

13.5 The methods available to prevent or limit drugs being brought into a prison are:

- trained dogs; and
- strip searches.

13.6 Trained dogs can detect all (perhaps all but one) of the relevant drugs. There are not yet enough dogs. I am told that visitors bringing drugs, if they suspect dogs will be present, will return on a day they are absent.

13.7 The prison system is unwilling to press strip searches on all visitors on all occasions and does not have the resources to do so.

13.8 If a prisoner uses a drug, it can be detected by a urine test. In principle, if urine tests were applied to all prisoners and sufficiently frequently, the use of drugs could be detected. As indicated subsequently, urine tests are now used, not by administration to all prisoners but in ways which are thought to be sufficiently effective. Reference is made subsequently to the matter in more detail.

13.9 If drugs are used in prison, some prisoners will leave prison with a drug dependency or at least still accustomed to the use of drugs. That in turn will affect their likelihood to re-offend. As is indicated subsequently, the relationship between crime and drugs is close. Ideally, upon release all prisoners should be tested for drugs by a urine test. The results should be recorded on the offender's record in the prison. This is material of assistance in determining whether a prisoner is likely to re-offend.

13.10 As subsequently indicated, efforts are being made to increase the effectiveness of tests for the use of drugs. For the reasons referred to, a test is needed which is simple, easily applied and cheap. None has as yet been evolved. When needed, a test for the presence of alcohol was evolved which requires merely blowing into a

tube. There are some 3500 prisoners in Western Australia, over 76,000 in the United Kingdom and more elsewhere. It is surprising that a simple test has not been evolved for application to the market which is available for it.

13.11 Material related to drug use in and out of prison has been gathered by the Inquiry and recommendations have been made based on it.

13.12 A large proportion of offenders are suffering from the effects of long term substance abuse or may be withdrawing from drugs or alcohol addiction on admission to prison. Newly received prisoners in withdrawal are at a heightened risk of self-harm. The demand for drugs within the prison environment tends to increase the incidence of violence and assault and the risk of serious health problems through needle-sharing. For example, there is a disproportionately high rate of Hepatitis C among prisoners – 58% for women, 33% for men compared to around 10% for the community as a whole.

13.13 Linked to the problems caused by substance abuse is the high incidence of mental health issues presented by a similar proportion of prisoners. The combination of substance-related health problems and behavioural disorders and its effect on prison security, prisoner and staff safety, and offender management generally is both costly and resource intensive.

13.14 The link between substance abuse and regular offending is now clear. The consequential risks and cost to the community of offenders with unaddressed substance abuse problems are significant.

Research and statistics

13.15 The Australian Institute of Criminology (AIC) has analysed the results of urine tests of police detainees in sites across Australia. The following results were published in its 2004 *Annual Report on Drug Use Among Police Detainees: Drug Use Monitoring in Australia*[1] –

> *"47% of all detainees said they had used drugs prior to their arrest and 10% indicated that they were looking for illegal drugs prior to arrest;*
>
> *71% of all detainees reported obtaining illicit drugs in the 30 days prior to arrest;*
>
> *69% of males aged 18-20 and 71% of males aged 21-25 tested positive;*
>
> *cannabis was the most commonly detected with 60% of all males and 52% of all females testing positive;*
>
> *East Perth had the highest national rate (44%) for methylamphetamines;*
>
> *73% of detainees who reported heavy drinking in the past 30 days tested positive to at least one other drug;*
>
> *more than 50% of those who had used an illicit drug or alcohol in the past 12 months were dependent on alcohol and other drugs;*

[1] Executive Summary, pages 1-3

14% of those who self-reported illicit drug use were currently in treatment and 10% said they had been turned away because of lack of places;

61% of detainees charged with a property offence tested positive to illicit drugs (excluding cannabis or alcohol);

54% had a prior arrest in the past year and 18% of all detainees had been in prison in the past year; and

detainees who tested positive to methylamphetamine or heroin had the highest average number of arrests in the past year."

Trends in recent illicit drug use for adult males 1999-2004

13.16 The AIC found that use of amphetamines had stabilised after a steady increase across all test sites; at East Perth, heroin was consistently decreasing however, there had been a sudden increase in cannabis in the latter half of 2004.[2]

13.17 Males were found to be more dependent on alcohol (29% and 19%) than females who reported slightly higher drug dependency (55% compared with 51%). East Perth and Brisbane recorded the highest level of drug dependency (56%)[3].

Studies of prisoners

13.18 The AIC conducted studies of samples of male[4] and female[5] prisoners in 2003 and 2004 respectively. The salient points of those reports are summarised below.

Male prisoners

13.19 The prisoners interviewed had a high level of contact with the criminal justice system and 62% reported current regular illegal drug use in the six months prior to arrest. Cannabis (53%) and amphetamines (31%) were the most regularly used drugs. The most common offences committed by regular offenders were property offences. Regular multiple offenders represented 15% of the prisoners interviewed.[6]

13.20 For offenders with any history of property offences, drug use and criminal careers began with the onset of offending. Amphetamine users were more likely to be engaged in violent offending. Regular and non-regular violent offenders and those charged with homicide reported alcohol abuse. Regardless of drug type, addicted offenders reported more property offences.[7]

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[2] at page 16

[3] at page 17

[4] *Drugs and Crime A Study of Incarcerated Male Offenders* Research and Public Policy Series No. 52

[5] *Drugs and Crime A Study of Incarcerated Female Offenders* Research and Public Policy Series No. 63

[6] Executive Summary at page xv

[7] ibid page xvi

13.21 Fifty one per cent of those interviewed attributed all or most of their criminal offending to illegal drugs and alcohol and 62% said they were intoxicated at the time of the offence.[8]

Women prisoners

13.22 Of the women interviewed, 75% considered themselves 'regular' offenders. Eighty per cent had experimented with illegal drugs and 66% had used illegal drugs in the 6 months prior to the time of their arrest. Sixty two per cent were regular users at the time of arrest and the rate of escalation from 'ever' using drugs to current 'regular' drug use was 78%. Fifty three per cent of those interviewed had received some form of treatment for drug or alcohol use at some stage in their lives. Alcohol dependency was three times higher for Indigenous women than for non-Indigenous women (54% compared to 17%). Twenty five per cent were in receipt of treatment at the time of the interview. Eighty Seven per cent of incarcerated women were the victims of abuse.9 The AIC study also found –

> *".....addicted women are more likely to suffer from depression and low self-esteem, more likely to combine drugs and alcohol, and to begin and sustain an addiction through association with an addicted male associate.....Women also face distinct issues related to their social roles as women, mothers and carers that affect their drug abuse, offending and treatment options. These include:*
>
> *early experience of sexual and physical abuse;*
>
> *mental health issues;*
>
> *social stigma related to drug abuse and offending;*
>
> *caring for children and other relatives;*
>
> *poverty associated with being single parents; and*
>
> *disease and abuse associated with sex work."*[10]

13.23 In addition, the AIC reported (at page 53) that "This study provides conclusive evidence of a strong link between drug and alcohol abuse and offending among [these] incarcerated women" and concluded that,

> *"Drug use clearly played a significant role with respect to both the offence that led to the current incarceration and the criminal histories of these women prisoners. ...Women were more likely to attribute their offending to drug addiction or drug intoxication. This indicates that drug treatment should be widely available for women offenders, and that drug treatment programs may aid significantly in efforts to reduce criminal offending by women."*[11]

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[8] ibid page xvi

[9] Executive Summary

[10] at page 11

[11] at page 57

13.24 An AIC Trends and Issues paper entitled *The Female Criminal: An Overview of Women's Drug Use and Offending Behaviour in October 2003* identified mental illness as a "co-related" risk factor "for women's drug use and criminality" and that women "are twice as likely as men to report extreme high levels of psychiatric distress and at higher levels than men for depression "

Indigenous offenders

13.25 A study by the AIC into Indigenous male offending and substance abuse[12] compared the 'drug histories' of Indigenous and non-Indigenous offenders and found that Indigenous offenders were more likely to have used alcohol, tobacco and inhalants in their lifetime and more likely to have recently used alcohol, cannabis and inhalants. Those in police detention were, however, more likely to have recently used alcohol, cannabis or amphetamines.

13.26 ndigenous offenders were twice as likely to be alcohol dependent and 69% (compared with 27% of non-Indigenous offenders) reported alcohol intoxication at the time of the most recent offence.

13.27 Indigenous male offenders are younger, more likely to be married, less educated and mostly unemployed. A large number were involved in property crime and a higher proportion had breached court orders.

13.28 The Department's 2002 *Prisoner Profile* (referred to in the chapter relating to women offenders) found that Indigenous women were more likely to have an alcohol addiction (70% compared to 58%) and reported slightly more frequent use of drugs and alcohol in the six months prior to arrest (82% compared with 78%).

THE DEPARTMENT OF JUSTICE DRUG STRATEGY

13.29 There is currently no accurate data on the prevalence of drug-related problems among prisoners in Western Australia. However, anecdotally, it is estimated that 80% of the prison population (both men and women) have a range of problems arising out of the use of alcohol or drugs or a combination of both. In 2003 the Department developed the *Justice Drug Plan 2003* (the 2003 Drug Plan) after a 'Roundtable' discussion by national experts, initiated by the Attorney General, the Hon Jim McGinty MLA.

13.30 In the *Foreword* to the 2003 Drug Plan, the Attorney General, states –

> *"It is estimated that the economic impact of crimes associated with drug use costs the Western Australian community nearly $220 million each year. It is impossible to estimate the social cost of the broken lives that drug-related crime leaves in its wake.*
>
> *……..With a significant amount of all crime in the State attributed to drugs, the justice system must do everything it possibly can to prevent relapse and re-offending.*

[12] Trends and Issues No.293 February 2005

It is critical that the cycle of relapse into drug use and re-offending is broken. Given the disturbingly high number of offenders with a lifetime of chronic drug problems, the Department of Justice has the opportunity to play a pivotal role in helping offenders turn their lives around.

However, the Department of Justice is not working with offenders for their individual benefit – but more critically, for the future wellbeing of the whole community as a result of reduced re-offending.

There is clear evidence that:

Drug treatment reduces criminal activity;

Those who attend treatment do better than those who do not; and

Treatment does not need to be voluntary to be effective.

This Drug Plan is dynamic and will continue to evolve and change with experience."

13.31 Arising from the Roundtable, the Department developed a range of strategies, both medical and non-medical, to reduce supply and demand for drugs by offenders and to minimise harm to users and others from substance abuse. These included the following key elements:

Law, Justice and Enforcement

- Expand the number of dogs and handlers and introduce multi-purpose dogs.
- Deploy drug detection dogs to prisons where drug testing indicates higher levels of drug use.
- Deploy a permanent dog at Bandyup.
- Double random drug testing in the metropolitan prisons from twice to four times per year.
- Introduce instant urine tests.

Support and Treatment

- Introduce a comprehensive pharmacotherapy program.
- Expand treatment programs for high-risk offenders with an additional 15 programs involving 150 offenders.
- Introduce two new drug free units.
- Investigate the efficacy of a prison-based therapeutic community.
- In partnership with government and non-government agencies introduce a comprehensive transition program for offenders re-entering the community to address health, housing, drug problems and counselling, training, employment and education needs.

Prevention and early Intervention

- Introduce harm reduction measures to reduce the prevalence of blood-borne communicable diseases.

Monitoring

- Establish a comprehensive monitoring framework to measure the success of the key strategies.

13.32 The Drug Plan also notes:

> *"The cost effectiveness of treatment and rehabilitation of drug dependent people is supported by the work of the National Addictions Centre, UK; National Drug and Alcohol Research Centre, University of New South Wales; and the National Institute of Drug Addiction, Washington, USA.*
>
> *The evidence shows that:*
>
> *Treatment improves health outcomes, reduces criminal activity and reduces the use of illicit drugs;*
>
> *People who attend treatment do better than those who do not enter treatment;*
>
> *Treatment does not have to be voluntary to be effective; and*
>
> *Among drug users there is a $4 to $12 return on every dollar spent on treatment, measured in terms of reduction in health care and crime costs.*
>
> *The "return on investment" is greater for drug-dependent offenders than for those who are no-offending drug dependents. And, because of the long-term health and social costs, the cost-benefits are greater for treatment of young offenders."*[13]

13.33 Dedicated funding for 4 years, comprising $2.135 million in the first year and $2.067 for the next three was made available. Funding included $957,000 for pharmacotherapies, $487,000 for drug detection dogs, $600,000 for offender programs and $100,000 for monitoring the Plan.

13.34 The Department's draft *Drug and Alcohol Action Plan 2005-2009* notes a number of achievements, including:

- increased number of dogs and handlers;
- a pilot saliva drug test which was found to be too inaccurate for prison purposes;
- piloted review of drug testing at Maddington Community Justice Services to develop a policy that would integrate drug testing as an effective case management tool for juvenile and adult offenders in the community;
- the continued operation of the Perth Drug Court ;

[13] at page 8

- a joint project with the Drug and Alcohol Office to pilot an Indigenous drug diversion program in Carnarvon and Broome and the continued operation of the Pre-Sentence Opportunity program and the Supervised Treatment Intervention Regime in Bunbury, Rockingham and Northam;
- development of a 'foundation' program to reduce the risk of drug use through Community Justice Services;
- continuation and extension of the pharmacotherapy program across several prison sites;
- the provision of 13 additional intensive programs for high risk recidivists;
- initial and ongoing training for new prison officers;
- establishment of drug free units at Bandyup and Albany;
- improved testing guidelines and procedures for Blood-Borne Viruses with emphasis on cultural sensitivity;
- a joint project with the Australian Bureau of Statistics to assist the Department to determine the prevalence of drugs by increasing the frequency of tests and number of prisoners tested; and
- evaluation of initiatives, eg the pharmacotherapy program.

OFFENDER MANAGEMENT ISSUES ARISING FROM SUBSTANCE ABUSE PROBLEMS

13.35 The following issues were raised with the Inquiry in relation to the operation of the management of offenders with substance abuse problems.

DETECTION

13.36 Queries about the effectiveness of the Department's current urine testing strategy as a means of detecting and deterring prisoners from drug use have been raised in the course of the Inquiry.

13.37 Urine testing has been the principal means of drug use detection for a number of years. The 2003 Drug Plan states that 5% of all prisoners are randomly tested twice a year. Each prison is required to undertake a specific number of tests with the "primary purpose" of reinforcing amongst prisoners that "if they use drugs in prison they are likely to be detected and that sanctions will be imposed".

13.38 A standard urine test costs around $8 but we have been advised that the state-wide annual budget for urine testing is only $250,000. Given that some prisoners in drug free units are tested weekly; that the annual turnaround of prisoners is around 7000, and that the cost of confirmatory tests performed if drugs are detected in the basic analysis can be significantly higher than the basic test; the current budget does not appear to allow for extensive testing.

13.39 The infrequency of testing has been confirmed by the Manager of the Department's Prison Drug Strategy who also advised that a 5% sample is too small to provide any meaningful data of trends or actual drug prevalence for service planning purposes. In addition the results of the tests, which are for the

most part very low, do not appear to depict the extent of the prevalence of drugs which I have been told exists in all prisons.

13.40 For example for the year ended June 2005, 1264 random tests were conducted and 9.46% of prisoners tested positive. In addition 5242 targeted tests were conducted with an 11.08% positive rate. The highest rate of positive random tests was 17.72% at Bunbury and the lowest of zero at Boronia and Wooroloo. The highest rate of positive targeted tests was 28.57% at Broome and the lowest 3.52% at Boronia.

13.41 To address the situation the Manager of the Prison Drug Strategy doubled the frequency of random sampling at Bandyup and Casuarina from twice to four times a year, Hakea had already doubled their sample. She also worked with the Australian Bureau of Statistics to design a more meaningful prevalence test. The design was piloted in June 2005 with a sample of 610 prisoners across the State and a second similar size sample is planned for December. The results of the June 2005 sample found a total prevalence of 10%, ranging from 25% at Broome to zero at Boronia. The rate at the regional prisons was higher than for metropolitan prisons. Indigenous prisoners, both men and women had a higher rate than non-Indigenous prisoners and the prevalence across all men sampled was higher than for women (10.3% compared to 4.9%). The Department intends to continue with the test designed by Australian Bureau of Statistics.

13.42 In terms of determining an appropriate sample size, I have been advised that in the UK, 10% of all prisoners are tested every month and that 5% of Victorian prisoners are tested monthly. In Western Australia, Acacia Prison also tests 5% of its prison population every month as a condition of the contract. It is inexplicable that the same requirement should not apply to superintendents of public prisons. The Manager of the Prison Drug Strategy is of the view that 5% of all prisoners should be tested every month.

13.43 There are difficulties with urine testing in that it can be resource intensive and it is known that prisoners who have suffered sexual physical abuse may be unable to provide a sample in front of another person for psychological reasons. For this reason, other forms of drug testing have been considered.

13.44 Saliva testing has been piloted in a sample of 1200 offenders from Acacia, Bandyup, Hakea, Wooroloo and the Drug Court. This form of testing was favourably received by both prisoners and prison staff as it is less intrusive and simpler to conduct. However, it is significantly less reliable than urine testing and was therefore considered to be an ineffective measure of drug prevalence.

13.45 Sweat patches were also rejected after a trial in community justice centres in 2001 on the basis that it appeared to be very easy for the patches to be removed and in light of the difficulties experienced by the PathCentre in obtaining accreditation.

13.46 Boronia is to pilot an “instant” urine test, which means that only positive readings will need to be sent to analysis. This form of instant test would have the immediate management benefit of identifying prisoners who had recently used drugs and would also avoid the necessity of sending ‘negative’ samples for analysis.

13.47 I queried the apparently small budget allocated to urine testing in the Department’s Drug Strategy and was advised that funding was not a major obstacle in broadening this strategy. It appears that the lack of prison resources is

a problem, particularly when tests are conducted in the presence of two officers. It is conceded that the requirement for two officers to be present has been adopted because of perceived problems with the 'chain of evidence' when a prisoner is charged following a positive test result. To assist in the better management of future testing procedures, the Manager would also like to introduce a state-wide policy and procedures manual to standardise the currently inconsistent standing orders and local standing orders.

13.48 It was also suggested that many officers have not received adequate drug awareness training and are inclined to adopt a zero tolerance approach which results in a prison charge, rather than trying to understand the reasons why a prisoner may be using drugs and applying a 'caution' or some other form of 'diversion' if appropriate. In this regard I note that to address this situation, the Manager of the Prison Drug Strategy has, since November 2002, provided a full day's training for entry level prison officers in conjunction with the police and the Drug and Alcohol Office. The Manager has also trained officers at Wooroloo, Bandyup, Hakea, Greenough, Roebourne and Eastern Goldfields.

Recommendation 127

Government should provide adequate resources to facilitate the expansion of the urine testing program, particularly random testing, to determine the prevalence of drugs in the system and better cater for service needs.

Recommendation 128

The Department should develop a comprehensive drug policy and procedures manual immediately to overcome current inconsistencies in testing and disciplinary procedures.

Recommendation 129

Entry level and existing prison officers should receive specific and ongoing training in recognising and managing the effects of drug use.

Drug Detection Dogs

13.49 It is considered by some that the use of Passive Alert Drug Detection dogs is a less intrusive means of monitoring visitors than personal searches. It is the general view of staff of the Canine Section that the presence of dogs prior to visitors entering the prison is an effective deterrent to the importation of drugs. As a consequence, if dogs and handlers were available at each visit session, it would be likely that the importation of drugs by visitors could be significantly reduced. It was also suggested to me that the presence of dogs would be an effective means of monitoring prisoners received from court who are, anecdotally, suspected of importing considerable quantities of drugs. If the anecdotal evidence is correct, the availability of a dog could be effective in reducing the importation of drugs and the risk from the possible abuse of drugs at the vulnerable time of admission to prison.

13.50 During the past financial year, the Canine Section searched 43,717 visitors. The dogs indicated 3,761 people and contraband was found in 163 cases. The 2003 Drug Plan referred to increasing the number of dogs and handlers by four and deploying a permanent drug dog at Bandyup. The Department's 2005-2009 Action Plan confirms that strategy and I have been told that recently an additional four dogs and handlers have been added to the Canine Section enabling the monitoring of visits at Albany, Acacia, Wooroloo, Greenough, Bunbury and Karnet. However, a dog is no longer regularly available at Bandyup because of an injury incurred by the dog's handler. On the basis of information provided to me by the Superintendent of Bandyup that women prisoners tend to be "a strong drug-seeking group", I am of the view that the Department should take steps to make a dog and handler permanently available at Bandyup.

13.51 In relation to searching, I note that Policy Directive 26 provides for the searching of persons entering a prison. Operational Instruction 17 outlines the procedure for searching Department of Justice personnel and service providers. Items that may be brought into a prison are restricted and may be examined. Operational Instruction 17 provides that persons entering a prison may be searched in accordance with Local or Standing Orders but that frequency must be no less than 5% of all persons entering maximum and medium security prisons. Drug dogs may be used.

13.52 I have been told by the Department that some prisons do not meet the 5% minimum. This may be for operational reasons, such as a shortage of female officers available to conduct searches of female staff. It may also be because the searching of prison staff is a sensitive area in which prison officers may be reluctant to become involved. I have been told that the Department is currently reviewing this aspect of its procedures with the aim of establishing a standards and compliance model.

13.53 Statistics on the level of searching and the outcome of staff searches are recorded by each prison. However, there is no central record available on TOMS. In my view, searches of all persons entering prisons are an integral element of the Department's Drug Plan and, although a sensitive issue, the Department should expedite its review of strategy and set up a central record of statistics on staff searching in the interests of transparency and accountability.

Recommendation 130

The Department should expedite its review of its policies and procedures relating to the searching of departmental staff and service providers entering prisons.

Recommendation 131

The Canine Section should be appropriately resourced to enable all visits sessions to be monitored.

SUPPORT AND TREATMENT

The Pharmacotherapy Program

13.54 One of the initiatives of the 2003 Drug Plan was the establishment of a pharmacotherapy program under which methadone was to be provided for up to 150 prisoners at any time. The program commenced in September 2003, and in the first 18 months up to 300 prisoners per day were being treated at Hakea, Casuarina, Acacia and Bandyup and Bunbury. For 2004/2005, 418 prisoners were engaged in the pharmacotherapy program. Offenders are eligible for the program if they were on a community methadone program prior to admission to prison or have been assessed as suitable by the Prisons Addictions Services Team.

13.55 The program was evaluated in June 2005 by the Crime Research Centre which found that it had been "largely successful in pioneering the routine and systematised provision of pharmacotherapies in Western Australian prisons". It reported that the "most common view held by health authorities, the senior management of the Health Services Directorate, the Prison Addictions Services Team (PAST) workers and prisoners themselves is that the introduction of the pharmacotherapy program is a massive step forward in providing health care to drug dependent prisoners".

13.56 The main criticisms were that it had been introduced too quickly, without sufficient consultation and support from associated medical and custodial areas and that there were "major areas of confusion and misinformation …around the provision of complementary programs, the enforcement of consequences for bad behaviour and the role of the PAST nurse in the Health Centre." The lack of complementary programs was identified as a concern by all stakeholders interviewed in the course of the review.

13.57 The evaluation also identified concerns about the "restriction of the maintenance pharmacotherapies to methadone" and the "variable level of supervision during dosing" and made a number of recommendations that the Department is currently considering.

13.58 The lack of complementary programs was drawn to my attention in the course of the Inquiry and I understand that the Department is now looking at program options to address this deficiency.

Education and treatment programs

13.59 The Department provides a suite of substance abuse programs of varying lengths and intensity together with programs for Indigenous men and women that combine underlying issues of violent offending, anger management and substance abuse. Offender Services has advised the Inquiry that its substance abuse programs "have a primarily rehabilitative focus, but have an immediate additional benefit of enhancing prison safety and security by reducing drug use and associated violence and the threat of blood-borne diseases."

13.60 The general departmental approach is to target medium to high risk offenders with more intensive programs such as the 100-hour Moving on from Dependency program, developed in conjunction with, and accredited by, the WA Drug and

Alcohol Office. This program is based on intensive cognitive behaviour therapy principles to motivate change in drug use.

13.61 Funding was provided under the 2003 Drug Plan to run 15 additional programs for a total of 150 high risk prisoners. A Brief Intervention Service was also offered to remand and short term prisoners at Bandyup and Hakea. However, I understand that this program is no longer available at Hakea.

13.62 The Indigenous Men Managing Anger and Substance Abuse program is run at some of the regional prisons but there were no programs available at Eastern Goldfields or Roebourne when the Inquiry team visited.

13.63 Individual counselling is offered where appropriate to prisoners who may not be able to participate in other programs and the Prison to Parole Program run by non-government organisations such as Cyrenian House, Holyoake and Palmerston is available subject to the limited resources of those organisations.

13.64 In relation to substance abuse programs, as stated above, programs are not currently running at Hakea, Eastern Goldfields, and Roebourne. Greenough ran the Indigenous men's program twice a year and the corresponding course for Indigenous women and non-Indigenous prisoners once a year with 10 prisoners if numbers were available.

13.65 Broome was able to offer the Indigenous men's program through non-government organisations. The Prison to Parole program was available at Boronia, and Bandyup reported that 5 prisoners had participated in the *Moving on from Dependency* program between 7 February and 9 May 2005. No date had been set for the next running of this program. The following number of prisoners participated in substance abuse programs in 2004/05 (provided by Offender Services (Programs)):

Prison	No. of participants	Average prison population*
Albany	42	158
Bandyup	35	153
Boronia	8	50
Broome	42	127
Bunbury	27	188
Casuarina	46	423
E.Goldfields	17	114
Greenough	72	201
Hakea	413	647
Karnet	50	157
Roebourne	33	159
Wooroloo	96	159

*'average prison population' does not reflect actual program demand

13.66 In spite of the acknowledged prevalence of substance abuse related problems among prisoners, the availability of programs, and the number of prisoners who participate in the programs seems quite low. For example the Monthly

Performance Report for June 2005 shows that the average monthly prisoner participation rate in offence-related programs for 2004/05 was 384 out of a daily average of 3372.

13.67 In my view, in light of the acknowledged association between drug use and offending, the lack of programs to address substance abuse is a missed opportunity to assist prisoners to manage and reduce their addiction while in prison at the expense of the tangible benefits for the prison system through the minimisation of the demand for drugs in prison and for the community in terms of the potential reduction in offending.

Recommendation 132

To improve the overall effectiveness of its Drug and Alcohol Action Plan the Department should:

- **provide prisoners on the pharmacotherapy program with complementary programs and counselling;**
- **develop an appropriate suite of therapeutic programs to cater for the needs of both short and long-term prisoners with substance abuse problems;**
- **make available appropriate therapeutic programs at all stages of the sentence with appropriate liaison with outside agencies and that funding to non-government agencies currently providing programs be increased;**
- **develop programs to deal with the issues arising from alcohol and solvent abuse; and**
- **develop strategies in conjunction with the State Forensic Mental Health Service to assist prisoners with the problems arising from the combination of substance abuse and mental illness.**

Alcohol and solvent abuse

13.68 The 2002 *Prisoner Profile* – the data currently available to the Department - indicated that 70% of Indigenous women reported alcohol abuse in the six months prior to arrest. Indigenous men interviewed by the Australian Institute of Criminology for *Trends and Issues No.293* in February 2005 were twice as likely to be alcohol dependent and 69% (compared with 27% of non-Indigenous offenders) reported alcohol intoxication at the time of the most recent offence. The incidence of solvent abuse among offenders is also high, though more recently, cannabis has become the most commonly used drug in conjunction with alcohol.

13.69 The Department now has a drug "and alcohol" strategy for 2005 –2009 and identifies as one of its objectives as part of a whole of government approach to "work with the community to achieve a 'drinking culture' that is consistent with decreasing the problems associated with hazardous and harmful alcohol use" and to "reduce the illegal supply of alcohol and reduce alcohol-related crime". The 2005-2009 Action Plan also refers to the continuation of research into various aspects of alcohol dependency such as the impact of imprisonment, the effect of

treatment programs on re-offending and the need to develop brief interventions for alcohol education and awareness in regional areas. However, to my knowledge, there are currently no specific programs or interventions to assist prisoners to address alcohol or solvent abuse. This is of concern, particularly for Indigenous offenders whose offending is frequently linked with alcohol abuse.

Mental Health

13.70 There is a recognised link between the use of illicit substances and mental illnesses and behavioural disorders. Although this will be apparent to health professionals dealing with the problems presented by prisoners, there are currently no therapeutic programs designed to deal with these complex problems.

13.71 The Drug and Alcohol Office highlighted the need for better co-ordination between drug and mental health services following the abolition of the Joint Services Development Unit which provided that linkage. Some informal relationships have been formed but alcohol and drugs should be an integral part of the Department's proposed new mental health strategy. I also note that the correlation between drug abuse and mental illness was identified by the recent national report on mental health services, with recommendations for the development of national policies and strategies for integrated drug and alcohol and mental health services, and the provision of corresponding funding to become a high priority.[14]

The effect of substance abuse programs on re-offending

13.72 The NSW *Select Committee on the Increase in the Prisoner Population in 2000* stated that women offenders have "a high recidivism rate, often because they are unable to manage their drug problem when they are released and because they have limited access to supports to help them cope with life outside."[15] There is little doubt that the same comment applies to men.

13.73 Given that the available research draws strong links between substance abuse and offending, and regular drug and alcohol use and multiple offending, the prison system has a unique opportunity to assist offenders to address their drug and alcohol problems through a variety of interventions. Based on the Attorney General's acknowledgement in the *Foreword* to the *2003 Drug Plan* that drug treatment reduces criminal activity; that those who attend treatment do better than those who do not; and that treatment does not need to be voluntary to be effective, I am concerned that the level of programs provided, and the number of prisoners engaged, remains low.

13.74 This may be because the current programs are too long for short term prisoners or because they are not scheduled early enough in the sentence. Poor case management and delays in program assessments will also contribute to the lack of suitable programs for short term prisoners.

13.75 I was told at Broome Prison that the drug and alcohol programs provided to Indigenous prisoners were for the most part well received by offenders and appeared to be effective. However, without the support and understanding of the

[14] Recommendations 2(c) and 3(d)

[15] Chair's Foreword, page xi

communities to which they were returning, the programs were unlikely to have any long term effect. Little is currently done to involve communities in programs. This may be an issue more appropriate for a multi-agency approach.

13.76 In relation to the pharmacotherapy program, it is recognised that one of its main effects is the reduction in the demand for illicit drugs. As a consequence, there is likely to be a corresponding reduction in acquisitive offending associated with obtaining the means of supporting addiction to those drugs. The Department's PAST Manager advised that research indicates that engagement in the methadone program with supportive maintenance for over a year is an effective means of reducing offending.

13.77 The Crime Research Centre review of the pharmacotherapy program found that there was strong working relationship between the PAST and the Community Program for Opioid Pharmacotherapy and that links had been developed with community drug support organisations such as Next Step, the Perth Women's Centre and community pharmacies. The problem of prisoners being released without sufficient identification to obtain pharmacotherapies from community chemists had also been resolved. However, there was insufficient specific evidence about the actual effect of the program on re-offending and the current recidivism figures capture only offences for which the individual is charged rather than all offences committed. They are also based on the assumption that acquisitive offending is driven by the need to obtain drugs. The Crime Research Centre evaluation recommended that the Department develop a data capture program that will assist in its proper assessment of the effect of pharmacotherapies on recidivism.

The management of offenders in the community

13.78 The Drug and Alcohol Office told me that the Department had developed a comprehensive strategy but that more was needed because of the extent of the interface between drugs, alcohol and the justice system and the waiting lists for programs, particularly residential programs, in the community. Forty to seventy per cent of the contacts with the Drug and Alcohol Office were 'justice clients' but communication between treatment agencies and the Department was poor.

13.79 Importantly, the Department currently provides no funding for the treatment of offenders in the community. All services - including those provided by non-government organisations - were funded by the Drug and Alcohol Office. The release of prisoners in the regions was a particular problem because of the lack of regional treatment services.

13.80 The Department has acknowledged that the Drug and Alcohol Office provides the majority of substance misuse counselling to offenders managed within the community, usually via contracted service providers. The Department also agrees that the current level of service is inadequate to meet need and recommends that a strategy to investigate the demand and provide options for extra provision of substance abuse counselling that would result in an improved service to community justice clients be developed.

13.81 Approximately two thirds of clients undergoing treatment were successful. The justice system had a unique opportunity to influence the rehabilitation of offenders with substance abuse issues because it was known that coerced clients were more successful than non-coerced clients. However, it was suspected by the Drug and

Alcohol Office that community corrections officers frequently did not act on reports from treatment agencies that an offender was not attending or engaging in a required program. This was primarily because of overwhelming workloads but also because it appears that community corrections officers have been directed to deal with process rather than therapeutic interventions.

Management of the Drug Strategy

13.82 I have been advised that a Manager of the Department's Drug Strategy has recently been appointed. However, she is the only person in the 'unit' and manages the entire drug strategy in relation to prisons and prisoners. There is currently no overarching departmental co-ordination that includes Community and Juvenile Justice Division and I was told that there was currently no drug strategy specifically for juveniles. The Drug and Alcohol Office also advised me that constant changes in contacts in Community and Juvenile Justice Division and the lack of a specific alcohol and drug 'co-ordinator were particularly frustrating when dealing with the Department. Given the extent and impact of effects of substance abuse across the criminal justice system, and on the community, the lack of staff and co-ordination is unacceptable.

- **Recommendation 133**
- **The Department should establish a Corrections Drug Strategy Unit, with responsibility for management of the Drug and Alcohol Action Plan, which should be appropriately staffed and resourced to co-ordinate the Department's drug and alcohol strategy across prisons, community and juvenile justice services.**

CHAPTER 14 VULNERABLE AND PREDATORY PRISONERS

14.1 Prison is a place where, if left uncontrolled, the strong can bring pressure on the weak and the predatory can find the prey available.

- It is necessary to control what can be controlled. Prison officers can and do control what they can.
- The control of vulnerable and predatory prisoners is a matter common to prisons generally. Reference is made by the Inspector of Custodial Services to the *International Handbook of Good Prison* Practice, "*Making Standards Work*" and to the practices adopted in the United Kingdom Prison Service.[1]

14.2 In Western Australian prisons there are, in general, smaller numbers of prisoners in individual prisons and for this reason, prison officers are able to control prison violence more readily. As the Inspector said at page 2 of his Report cited above "the structural opportunities for 'alternative' (i.e., prisoner dominated) control regimes to arise are more limited."

14.3 The Inspector noted that the number of prisoners in protection in metropolitan prisons was: male prisoners 259 of 2765 prisoners; female prisoners 2 of 95 prisoners.[2] As at 7 November 2005, the number of protection prisoners in the metropolitan area was 281 including 4 women (metropolitan prison population, including women was 2494).

14.4 Vulnerable prisoners may be held in a separate protection unit. In the past sex offenders were the primary group considered in need of protection. However, other prisoners such as the young and the old, those with diseases such as HIV, and those with mental or intellectual disabilities are now also considered to be vulnerable. This group of prisoners are not always held in a segregated unit and the *International Handbook* states that segregation of vulnerable prisoners is not the preferable way of managing such prisoners. Some vulnerable prisoners may spend time in a Crisis Care Unit. At Acacia Prison there is a geriatric wing which is sometimes used for the protection of elderly sex offenders. The Inspector also commented on the increasing number of intellectually disabled offenders and that he had found "some suggestion that an overlap is developing between those who are in protection and those who should be in crisis care."

14.5 Equally there are different types of 'predatory' prisoner. For some, bullying was a way of life outside prison and also a means of survival. Imprisonment is unlikely to change that characteristic. For others, the nature of their offending will influence the way they behave in prison towards other prisoners or prison staff. The Department's anti-bullying strategy, set out in *Operational Instruction 15*, notes that bullying may be "well organised, for instance in relation to the supply of drugs or protection, or less structured, for example as a response to boredom."

14.6 Officers have been able to 'manage' vulnerable and predatory prisoners.

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[1] Office of Inspector of Custodial Services (2003) *Vulnerable and Predatory Prisoners in Western Australia: A Review of Policy and Practice,* Report No 15, Perth, p 12.

[2] Ibid, p 5.

14.7 Officers may obtain information from and about such prisoners and may move prisoners within and between prisons. Protection prisoners may be managed in a separate protection unit. A 'predatory' prisoner is likely to be managed in mainstream or, if necessary, in a segregated area such as the Special Handling Unit at Casuarina. If found guilty of an offence against another prisoner, he or she may also spend time in a punishment or multi-purpose cell.

14.8 It is not possible to prevent degrees of "bullying" or the like within the prisons. The Inspector said in his Report,

> *"However, at this stage the WA Prison system, though not quarantined entirely from gang formation, is not subject to the kind of prisoner power struggles that result in substantial numbers of prisoners seeking a way out, by way of protection. In this regard, Western Australia is more fortunate than some other Australian prison systems, particularly New South Wales, and in a different league altogether from the situation in some of the large prisons in the USA."* [3]

14.9 In relation to *Operational Instruction 15*, the Inspector noted,

> *"The Department exhibited a strong theoretical understanding of these issues and the philosophy underlying Operational Instruction No. 15 is well-founded. However, that Instruction was in practice almost universally irrelevant to the everyday management of publicly managed prisons…staff…had no idea what they were supposed to do to implement it…they were unaware of the ways of recognising early warning signs as to intimidation and bullying…Of course, predictably, they had received no training about these matters…."* [4]

14.10 The challenge for the Department is how to manage such prisoners not only in the interests of the safety of individuals and the 'good order' of the prison, but also because of the link which it has identified between unaddressed and unmanaged bullying behaviour in prison and the heightened risk of re-offending upon release from prison.

14.11 The problem has been recognised and reviewed in detail by the Inspector in the Report referred to above.

14.12 The Inquiry has had regard to the findings and conclusions of the Inspector. It is not necessary to repeat what he has said. The Inquiry has no evidence warranting its differing generally from his conclusions.

14.13 The Inspector should, within the scope of his statutory powers, continue to review and report upon this matter. It is not necessary for the Inquiry to make recommendations beyond those that are made or envisaged in the Inspector's Report.

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[3] Office of Inspector of Custodial Services (2003) *Vulnerable and Predatory Prisoners in Western Australia: A Review of Policy and Practice,* Report No 15, Perth, p 89.

[4] Office of Inspector of Custodial Services (2003) *Vulnerable and Predatory Prisoners in Western Australia: A Review of Policy and Practice,* Report No 15, Perth, p 93.

CHAPTER 15 TRAINING AND PROFESSIONAL DEVELOPMENT

15.1 The issue of training and professional development for Departmental staff has been raised in several contexts in the course of this Inquiry:

- the lack of training for Community Corrections and Juvenile Justice Officers;
- the lack of training for Prison Officers; and
- the lack of professional development for supervisors and managers.

15.2 This lack of training has had grim consequences for implementation of initiatives such as case management and for supervision of offenders in the community by inexperienced corrections officers. Lack of professional development has also had serious consequences for senior managers in the Department whose time has too often been occupied with operational matters because of the lack of management and decision-making skills at middle management level. It may also serve to exacerbate the under-representation of Aborigines and women in middle and senior management positions in the agency.

15.3 Information provided by the Department of Justice confirms concerns that have been raised with the Inquiry. For example, the final report of the Staff Profile Survey indicates deficiencies in training and professional development amongst community justice staff. A low proportion of staff responding to the survey had engaged in any kind of professional development and 16 per cent of operational respondents with less than six months experience reported having undertaken no training at all.[1]

15.4 A *Department of Justice Review of Training* commissioned in 2004 concluded that "training services are inconsistently and inequitably deployed across the Department". The Review commented on the Department's lack of focus on training effort to address organisational priorities.[2] It recommended ways to achieve cross-divisional efficiencies, establishment of a Training College and the appointment of a Training Board and a Director of Training. I am advised that these recommendations have not been progressed for want of financial resources.

15.5 The Department's training expenditure has increased dramatically over the past three years from $422 per Full Time Equivalent (FTE) employee in 2003 to $2097 per FTE in 2005.[3] This reflects the intake of large numbers of prison officer recruits in 2004 and 2005. While training of new recruits is critical, there is evidence to suggest that ongoing training needs are not being met. For example, the Inspector of Custodial Services has reported that over 80 per cent of the prisons workforce has not requalified in some of the mandatory areas such as 'use of force' and 'emergency procedures'.[4]

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[1] *Staff Profile Survey: A report on the Community Justice Services Performance Measure 4.11 – Number and percentage of operational staff who are appropriately trained and receive professional development and supervision,* April 2005. p.3

[2] Bond, A (2004) *Department of Justice Review of Training – Final Report,* Cordecom Pty Ltd, 25 June 2004. p.6

[3] *Profile of the Western Australian Government Workforce,* Department of the Premier and Cabinet, 2003, 2004, 2005.

[4] Office of the Inspector of Custodial Services (2005) *Directed Review of the Management of Offenders in Custody,* p.285.

15.6 In his *Directed Review of the Management of Offenders in Custody*, the Inspector of Custodial Services devoted his eighth chapter to training and development. He referred in his Review to the inadequacy of the Nyandi Training College facilities that are utilised by both the Prisons Division and the Community and Juvenile Justice Division. He also criticised the limited scope of training on offer to prison officers and referred to the need to attract better qualified trainers. [5] The Inspector went on to recommend the establishment of a Correctional Training and Professional Development Academy for all corrections staff and appointment of a Director of the Academy. These recommendations are largely consistent with those of the *Review of Training*.

15.7 Counsel Assisting the Inquiry has also recommended that a Corrections Training Academy be an "essential component of the Department of Corrections structure". I note that he has proposed that it be an amalgamation of the training units currently operating within the Department of Justice including both custodial training and community corrections training.[6]

15.8 The Corporate Executive Committee of the Department of Justice have responded to training issues that emerged in public hearings by calling for a "more practical approach" to implementing the recommendations of the 2004 *Review of Training*.[7] I have been advised that this "more practical approach" is intended to be one that can be achieved from within existing resources and is still in the process of being developed. Clearly, the issue of resources has affected the capacity of the Department to respond to training and professional development needs at all levels. This must be addressed.

15.9 Simply put, there is a need for a much greater priority to be placed on training and professional development in the Department of Justice to meet the high standards that are required of its staff delivering or supporting the delivery of correctional services. Resources need to be dedicated to the provision of better training facilities under the direction of a senior Departmental executive.

Recommendation 134

Increased priority should be placed on training and professional development throughout the Department.

Recommendation 135

The Department should establish an appropriately resourced and staffed, dedicated training and professional development facility.

15.10 While I have referred elsewhere in my Report to the need for proper training arrangements in respect of case management, the issue of providing training at the prison level requires further attention here.

[5] Ibid.

[6] Quinlan, P, *op. cit.* p.465 and 473.

[7] Department of Justice, Corporate Executive Committee Meeting Minutes, 20 June 2005.

15.11 The Inquiry has heard that the lack of training officers and the lack of an adequate training budget at prison level has limited the capacity of Superintendents to ensure that high standards of training are maintained. The problems of access to adequate training facilities and personnel in regional areas are even greater than those in the metropolitan area. However even in the State's largest public prison (Hakea) with approximately 350 staff, I am advised that the training budget is only in the order of $2,000. This lack of commitment to training is a concern in the corrections environment where issues of safety and security are paramount. The Department has a duty to ensure that operational staff at prison level are equipped appropriately with the knowledge and skills to carry out their work safely and efficiently. At the prison level, I consider this would be facilitated by the appointment of dedicated training officers.

Recommendation 136

The Department should appoint a dedicated training officer for each prison to facilitate a high standard of training for all staff.

CHAPTER 16 BAIL AND REMAND

16.1 Defendants either not granted bail or unable to met bail requirements are held in custody as remand prisoners. Persons on remand provide a problem for the prison system. There is however, an opportunity for the Department to improve the facilitation of bail and reduce remand prisoner numbers.

16.2 As at June 2005, the daily average remand prisoner population in Western Australia was 598 of a total prisoner population of 3,528, approximately 17% of the prison population. The number of remand prisoners held at any point in time can change considerably due to factors such as the level of crime, extent of police enforcement, court backlogs, changes to legislation and changing population demographics. Statistics do show however, that remand prisoner numbers are steadily increasing.

16.3 The cost of detaining remand prisoners is significant. Costs associated with transporting remand prisoners between courts and prisons, the prison reception process, providing accommodation and managing this category of prisoners put tremendous pressure on Department resources. Such pressure would certainly ease if remand prisoner numbers were to be reduced.

16.4 The main areas that arise in relation to bail and remand[1] and to which this Inquiry has been directed are:

- reducing remand prisoner numbers;
- improving the facilitation of bail; and
- transportation of remand prisoners between courts and prisons.

16.5 The Inquiry has had the benefit of discussion of the matter with the Chief Justice of Western Australia, the Honourable Justice David Malcolm AC and with the (then) Acting Chief Justice, the Honourable Justice Murray. I record my appreciation of their courtesy.

16.6 Detective Inspector Jeff Ellis, Detective Senior Sergeant John Wibberley and Detective Sergeant Gary Saunders have also prepared substantial material in relation to the practical operation of the bail and remand system for the Inquiry. I have drawn upon the material that they have provided.

16.7 The most recent examination of bail and prisoners in remand in Western Australia was prepared by the Auditor General in October 1997[2]. At that time it was reported (amongst other things) that:

- 20% of defendants breach bail of whom 20% remain at large after one year;
- 53% of those who breach bail are not charged for that offence. For those that are charged, forfeiture of defendant and surety bail amounts often does not occur because of inconsistent administrative practices;

[1] The deficiencies of the bail and remand process specifically in relation to Indigenous, juvenile and women offenders have been referred to elsewhere in this report.

[2] Office of the Auditor General Western Australia (1997) *Waiting for Justice*: *Bail and Prisoners in Remand*, Performance Examination Report No. 6, Office of the Auditor General Western Australia, Perth

- the rapid increase in remand prisoner numbers is causing added pressure on a prison system which is already close to its capacity; and
- improving the facilitation of bail could reduce the number of remand prisoners.

16.8 Since that report, consideration has been given to reducing court back logs, amending the bail legislation, reducing the remand prisoner population, and accommodating remand prisoners in lower security facilities to overcome some of the difficulties of bail and the remand process. To date, the measures taken to address the deficiencies of bail and the remand process have been beneficial. However, in my view there is still an opportunity for the Department to improve the facilitation of bail and reduce prisoner numbers.

The granting of bail

16.9 The court will decide whether an offender should be bailed or remanded in custody while they await having their matter(s) finally dealt with by the court.

16.10 Factors the court will consider when making a decision in respect of bail include the:

- nature and seriousness of the alleged offence;
- risk of the defendant failing to appear in court as required;
- risk of the defendant committing further offences;
- risk of the defendant interfering with witnesses;
- likelihood of a conviction; and
- likelihood of the defendant being sentenced to a term of imprisonment.

16.11 Under Part C 3A Schedule 1 and Schedule 2 of the *Bail Act 1982*, if a defendant is on bail for a "serious offence" (an offence described in Schedule 2 of the *Bail Act 1982* or non-compliance with a protective bail condition) and has allegedly committed another "serious offence" there needs to be exceptional reasons why the defendant should not be kept in custody.

16.12 Ongoing attention is given by the courts to the reduction of time between an offender's first appearance and having that offender's charges finally dealt with by the court. Indeed, the sooner a defendant can have his charges dealt with, the less time he will spend on remand. Whilst this is a matter central to the bail and remand process, it is not a matter which is before the Inquiry.

Effectiveness of bail

16.13 In his 1997 review of bail and prisoners in remand, the Auditor General set out some of the conditions attached to a grant of bail and the effectiveness of each of those conditions:

"There are three types of bail:

- *personal undertaking to appear in court, but where no bail amount is set;*
- *personal bail, where the defendant agrees to forfeit a sum of money if bail is breached; and*

- *personal bail with surety, where the defendant and another person (surety) each agree to forfeit a bail amount if bail is breached."*

Ninety four per cent of defendants are granted bail at their first court appearance or bail is extended if the police granted it at the time of arrest. Of these, 79 per cent are considered a low risk of absconding or behaving unlawfully whilst at liberty and thus are released on a personal undertaking. Sixteen per cent were granted personal bail with surety while personal bail alone was used in only 5 per cent of instances.

A bail condition may be imposed if it is considered it will sufficiently remove the risk of the defendant absconding or behaving unlawfully. There are two broad types of conditions: those designed to ensure the appearance of the defendant at court and those concerned with the defendant's conduct whilst at liberty…

Where bail was granted, conditions were imposed 14 per cent of the time. In half of these instances a surety was also required."[3]

16.14 In respect of breaches of bail, the Auditor General found that:

"The breach rate varies amongst the different types of bail. Personal bail with a surety; used in 16 per cent of instances, was the most effective with a breach rate of 11 per cent. Far less successful were personal undertaking and personal bail, which had breach rates of 22 per cent. These types of bail were used in 79 per cent and five per cent of instances, respectively.

Twenty per cent of defendants who breach bail remain at large after one year. Breaching bail not only delays justice but also is costly. Court matters have to be postponed, causing a court downtime and inconvenience to witnesses and prosecution. The cost to the Police System in re-apprehending defendants is equivalent to about seven police officers per annum."[4]

16.15 An improvement of about 5% in the breach rate of bail was reported in a follow up report prepared in 1999 by the Auditor General[5]. In that report, the factors attributed to this improvement were the more effective use by Magistrates of the available bail conditions and better information provided by the courts to defendants. The Auditor General recommended that the Department and the courts "analyse and consider the circumstances where the various types of bail are most effective". Indeed, to ensure the bail system remains effective, it would be appropriate for the Department to evaluate from time to time the circumstances where the various types of bail and bail conditions are most effective.

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[3] *Ibid*, pg 10.

[4] *Ibid*. Pg 1.

5 Office of the Auditor General (1999) *Waiting for Justice: Bail and Prisoners in Remand Follow-up* Performance Examination Report No. 7, Office of the Auditor General Western Australia, Perth

REDUCING REMAND PRISONER NUMBERS

Inability to satisfy bail conditions

16.16 A problem faced by many remand prisoners is finding a person with sufficient and appropriate assets to act as surety, even when the stipulated surety amount is relatively small. The inability to obtain a person to act as surety is a common problem, in particular, for Indigenous remand prisoners.

16.17 In some Australian states, defendants unable to meet bail conditions are automatically brought before the court within five days for their bail terms to be reviewed. This provides the court with an opportunity to reconsider the appropriateness of the bail in light of the defendant's inability to meet the requirements. In Western Australia however, there is presently no provision for this automatic review.

16.18 Further, many prisoners are in custody only because of an inability to promptly arrange bail. Hakea Prison figures indicate that between February 2004 and July 2005 an average of about 33% of remand prisoners were released within 24 hours once their bail had been arranged. Statistics also show that a further proportion of remand prisoners granted bail by the court are released within two weeks of being taken into custody.

Number of prisoners released from Hakea within 24 hours following receival as a new prisoner

Month	New remand	Remand in custody	Bail granted	Completed bails	To bail within 24 hours	%
Feb-04	244	140	104	95	27	28.4
Mar-04	238	161	77	77	24	31.2
Apr-04	190	132	58	66	19	28.8
May-04	201	133	68	63	18	28.6
Jun-04	194	124	70	64	16	25.0
Jul-04	226	143	83	95	29	30.5
Aug-04	218	143	75	71	29	40.8
Sep-04	209	139	70	71	27	38.0
Oct-04	220	143	77	91	34	37.4
Nov-04	272	195	77	66	37	56.1
Dec-04	246	161	85	105	28	26.7
Jan-05	227	151	76	79	25	31.6
Feb-05	223	156	77	70	24	34.3
Mar-05	236	163	73	77	30	39.0
Apr-05	228	159	69	73	22	30.1
May-05	219	156	68	55	18	32.7
Jun-05	197	139	58	65	18	27.7
Jul-05	189	134	55	70	24	34.3
TOTAL	3977	2672	1320	1353	449	33.4

16.19 All prisoners, including remand prisoners are required to undergo the prison induction process. That process involves being strip searched, deloused and assessed by prison officers, medical and psychological staff.

16.20 The Inquiry has been told that it is only after an offender has undergone the induction process that his/her bail (if granted) will be progressed. Further, it is said that it is a common occurrence for a person who is prepared to act as a surety for an offender to arrive at prison well before that offender has been delivered from court and then have to wait for the prisoner induction to be completed before the bail process can begin.

16.21 For an offender to be transferred and inducted to prison only to be released within a short period of their reception is an inefficient and unnecessary process.

IMPROVING THE FACILITATION OF BAIL

16.22 Improving the facilitation of bail would go a long way towards reducing the anxiety and disruption to defendants and family members.

16.23 It is said that one reason for the delay in arranging bail is because many defendants do not understand the bail system. Consequently, they are unprepared to meet the terms of bail following their court appearance and before being sent to prison.

16.24 A way to improve the facilitation of bail would be to create several new Bail Coordinator positions to be based at Courts around the State as well as at prisons. The Bail Coordinator's role would be to make every attempt to facilitate bail for a defendant as soon as possible after bail has been granted by the Court. I note that in May 1996, the Department created a position of Bail Coordinator. It was originally envisaged that the coordinator's role would include assisting defendants to arrange bail whilst in lockup but if unsuccessful, then to help arrange bail from remand. To date however, the coordinator has been fully occupied in assisting defendants in remand to arrange bail.

16.25 In the metropolitan area, if it is not possible for the defendant's bail requirements to be met by close of business on the day they appear before the court, it would be appropriate for the defendant to be transported to a central lock up facility. A Bail Coordinator should also be appointed to that location to take over assisting the offender to organise bail. The Inquiry has been informed that the Western Australian Police are currently planning the building of a central lock up facility. Consultation between the Department and the Western Australian Police, in relation to bail release, should occur in these initial planning stages.

16.26 If, after a reasonable period (for example, 24 hours) in lockup, a defendant's bail requirements have still not been met, it would then be appropriate for that person to be transferred to prison as a remand prisoner.

16.27 It would also be appropriate for a prison based Bail Coordinator to assist a remand prisoner, unable to raise a small surety, to be brought before the court within, say five, days so that they could apply to have their bail conditions changed.

Recommendation 137

The Department should make provision for the appointment of a number of Bail Coordinators to be located at courts as well as prisons to ensure the efficient processing of offenders who have been granted bail and to thereby reduce the remand prisoner population.

Recommendation 138

To enable the facilitation of bail of an offender within the metropolitan area, an offender should be held at a central lock up facility and not transferred to prison as a remand prisoner for a reasonable period (for example, 24 hours) after being granted bail by the court.

Recommendation 139

Bail coordinators appointed to work within prisons should monitor those remand prisoners that are unable to satisfy their bail conditions and, if required, arrange for those prisoners to appear before the court (by video link or in person) after 5 days of their reception to have their bail conditions reviewed.

REVIEW OF BAIL AND REMAND PROCESS

16.28 If the number of remand prisoners is to be reduced, co-operation and input will be required from the various groups whose activities affect or are affected by the bail and remand system, including police, courts, prisons as well as any company contracted to provide prisoner transport. At present, there is no active body to consider the reduction of the remand prisoner population. It is recommended that a committee be set up to review, on an ongoing basis, procedures that will achieve a reduction in the number of prisoners held on remand.

Recommendation 140

A committee should be established to review, on an ongoing basis, procedures that will achieve a reduction in the number of prisoners held on remand. The committee could include representatives of the Supreme Court, the Western Australian Police Service, the proposed Departments of the Attorney General and Corrections, and any provider of prisoner transport services.

CHAPTER 17 PRISONER DISCIPLINARY PROCESS

17.1 In a modern prison system, prisoner discipline and prison officer accountability are important. The relationship and to an extent the tension between them are matters of ongoing interest and concern.

17.2 The order and good government of a prison must be maintained and those who work in it must be safe. They are at risk. In the Fremantle riots in 1988, officers were seized and held hostage. Under the prisoner management system, officers walk and talk with prisoners who have been convicted of physical assaults and worse. A prisoner may rape or assault female prison staff. And from time to time prison officers are physically assaulted and worse.

17.3 Disciplinary processes have been in place for some time. Under the *Prisons Act 1903*, visiting justices of the peace had the power to hear complaints of prison offences committed by prisoners (section 33). The visiting justice could impose a period of solitary confinement with bread and water and loss of remission for minor offences (section 34). Aggravated prison offences could be heard by a magistrate or two visiting justices (section 35) who could impose a wider range of sanctions including a suspended sentence, confinement in a punishment cell with irons if male; to be fed bread and water for up to 14 days; corporal punishment and loss of remission for up to 12 months.

17.4 Minor and aggravated prison offences were defined and the procedure for the hearings, the recording of punishments and controls over the 'gaolers' in relation to the administration of punishments were prescribed in the Act (sections 37-44). Apart from the nature of the punishments that could be imposed, disciplinary procedures seem to have changed little.

17.5 To be effective, disciplinary procedures have to do two things: to identify what conduct could be punished; and to specify how the punishment could be authorised.

17.6 Part VII of the *Prisons Act 1981* (sections 69-82) specifies, for this purpose, the offences for which a prisoner may be punished: see sections 69 and 70. "Minor" prison offences are offences such as disobeying a rule or standing order, swearing, pretending illness or injury or wilfully damaging property. The offences are specified in (necessarily) wide terms. There is some conduct which is subversive of discipline which can be described no more precisely than as acts or omissions "...of insubordination or misconduct subversive of the order and good discipline, good government of the prison" (section 69(i)). "Aggravated" prison offences include assault, escape, use of drugs, alcohol or solvent, possession of a weapon see (sections 69 and 70).

17.7 The problem that arises is: what is the best method for determining whether the offence has been committed and how it should be punished? The options available include the determination by, for example, the superintendent of the prison, that the offence has been committed and that it should be punished as he decides within the provisions of the Act, the hearing of a charge by a visiting justice and commencement of a prosecution in a court of summary jurisdiction. The administrative decision by a superintendent has advantages and disadvantages. It is summary, and in the hands of a good officer acting properly,

it can be both just and quick. But, if it lacks safeguards, there may be abuse. Proper processes are beneficial to all parties. Procedures are available to prevent abuse by an administrative officer. The requirement that the procedure for determination and punishment be recorded by videotape is one possible safeguard not currently available in the hearing of prison charges.

17.8 The *Prisons Act* has adopted the alternative procedure: It provides for a quasi-judicial procedure. This also has advantages and disadvantages. The formalities of a quasi-judicial procedure may help in avoiding abuse. But it may involve delay and greater cost. The proceeding may be held before a visiting justice, and there will often be delay until that officer is available. As heard in evidence before the Inquiry, where matters have been referred to an outside court, it is necessary to transport the prisoner to court for the hearing.

17.9 Charges may be heard by a prison superintendent or by a visiting justice appointed under section 54. A visiting justice must be a magistrate or a justice of the peace. A superintendent may impose a lesser penalty such as a caution, a reprimand, cancellation of gratuities, or confinement to the prisoner's "sleeping quarters" for no more than 72 hours (section 77). A visiting justice has wider powers and can impose a penalty of separate confinement in a punishment cell or "sleeping quarters" for a period not exceeding seven days, restitution or confiscation of property. Up to three periods of 7 days' confinement may be imposed (section 78). Where a charge is heard by a magistrate or two visiting justices, a penalty of 6 months' cumulative imprisonment or a maximum of four periods of seven days in a punishment cell may be imposed. The adequacy of the range of penalties which may be imposed by superintendents and visiting justices has been questioned.

17.10 The procedure for hearing charges is, in general, determined by the superintendent or the visiting justice in accordance with the procedure prescribed by the Act and the Regulations. The superintendent or visiting justice is not bound by the Rules of Evidence and may admit any evidence which in his opinion is relevant (section 75(2)). A prisoner is not to be represented by a legal practitioner (section 76). However, if the prisoner does not "comprehend sufficiently the nature or circumstances of the alleged offence or the nature of the proceedings", a person may be appointed to assist him (section 76). There is in general no right of appeal.

17.11 The Ombudsman considered the procedure. In his 2000 *Report on Deaths in Prisons in Western Australia* the Ombudsman concluded that "prisoners can and have been seriously disadvantaged by deficiencies in the disciplinary system." As a result of the Ombudsman's concerns the Department commissioned an independent review of the disciplinary process by a Magistrate, Mr Paul Heaney. Mr Heaney recommended a number of changes to the legislation and to the procedures.

17.12 The Ombudsman recommended that the Department implement Mr Heaney's recommendations and that it use magistrates or experienced legal practitioners as visiting justices at all prisons. For some time, magistrates heard charges at a number of metropolitan prisons. However due to pressure on court resources and delays in hearings because magistrates were not replaced when visiting prisons, and because of concerns raised as to their safety, magistrates ceased visiting prisons for the purpose of hearing charges.

17.13 The Department of Justice commissioned a further review of the disciplinary process in consultation with the Chief Magistrate and the Solicitor General. As the result of the review, proposals were made which include the following:

- the redefinition of prison disciplinary offences through amendment to the *Prisons Act 1981* to reflect the nature of prison charges as follows –
  - □ behaviour/actions constituting prison misconduct and prescribed in regulation for hearing by a superintendent;
  - □ specified offences 'at the lower level of seriousness' for hearing by a (visiting) magistrate; and
  - □ criminal offences for referral to police and hearing by an outside court.
- expansion of the range of penalties and sanctions available to include imposition of a fine, loss of nominated privileges, and imposition of additional prison work;
- introduction of a prisoner's right to administrative review of a superintendent's decision by a senior departmental officer on the basis of improper process or excessive penalty;
- introduction of automatic judicial review within 24 hours of a superintendent's decision to order that a prisoner be segregated;
- specified offences will include assault, possession of, and trafficking in, illicit drugs and will be heard in accordance with the *Justices Act 1902*. This will allow prisoners legal representation and access to a right of appeal. The charge may be heard in open court if the magistrate so decides and penalties of up to 6 months imprisonment can apply; and
- charges not defined as 'specified offences' may be referred to the police at the discretion of the superintendent.

17.14 These proposals have not yet been endorsed by the Minister. The Inquiry does not differ from the proposals which have been made. They have not been the subject of detailed examination by the Department before the Inquiry. If offenders are charged with matters of sufficient seriousness to be heard in accordance with the *Justice's Act 1902* and to allow penalties to be imposed of a substantial rather than of a prison (administrative) nature, it is appropriate that legal representation be allowed and appeal should be possible. A right of review of a superintendent's decision by a senior Departmental officer where there is improper process or excessive penalty is not inappropriate.

17.15 Insofar as there is a proposal for automatic judicial review of a superintendent's decision to order the segregation of a prisoner, more difficult questions arise. It is wrong to "over-judicialise" administrative procedures.

17.16 The judicial process is not always the best process for determining disputes or questions that arise for determination between parties. It is appropriate where, *inter alia*, the matter is to be determined according to a particular principle, and where the determination of it requires judgement or experience such as will be had by a judicial or quasi-judicial officer, and/or the safeguards of judicial procedures

outweigh their disadvantages. There are some offences for which a prisoner should be dealt with by judicial means: physical assault, possession of drugs or other offences warranting serious penalty are of this kind. Offences which are essentially "prison" offences, such as being "idle, negligent or careless in his work" (section 69(b)), are not suitable for that procedure. I note that review by the Chief Magistrate applies only to a segregation order and then only on the basis that the penalty is excessive.

17.17 It has been suggested to the Inquiry that the complaint made in respect of prisoner disciplinary processes relates not to the nature of the process but to the manner in which the process is carried out. Suggestions have been made that, whether the process be summary before a superintendent or less summary before a visiting justice, what has been done has on occasion not been done in a fair manner. In such a case, it is necessary to ensure, not merely the proper procedure, but the proper conduct of the person in question.

17.18 If that be the suggested deficiency in the process, then, to the extent that it is, changes must be directed to the person rather than the process. It may be that the video recording of the process, before a superintendent or a visiting justice, could be an appropriate remedy.

Recommendation 141

The proposals developed by the Department for the amendment of prisoner disciplinary process be determined and progressed.

CHAPTER 18 MISCONDUCT AND COMPLAINTS

18.1 In approaching its Terms of Reference the Inquiry considered the extent to which it was authorised to and should examine the operations of the Department of Justice and in particular the complaints made alleging misconduct within it. It is required to deal primarily with aspects of "Offenders in Custody" and "those areas of the Department responsible for" the particular matters detailed in the second paragraph of the Terms of Reference. It is to review and report on the effectiveness of the Department's performance policies and procedures. Its function includes the examination and evaluation of matters of principle involved with offenders as stated. It does not in general extend to the conduct of particular or individual officers (except to the extent to which matters relevant to the Inquiry are involved). The Inquiry is not directed or authorised to deal with, for example, complaints or the manner of dealing with them, except insofar as they relate to the matters in the Terms of Reference. Notwithstanding this, where submissions have been received, the Inquiry has considered them and acted in respect of them to the extent that it was proper for it to do so. It has concluded that, the Terms of Reference apart, what it was authorised to do could not be determined by a formula of words and that each matter should be considered separately when it arose.

18.2 Standards of ethics and integrity are particularly important in a justice agency where there is ample opportunity for abuse of power. Much of the work of justice agencies is done behind closed doors and with less public scrutiny than most other government agencies. An integral part of offender management is effective grievance, complaint and disciplinary systems.

18.3 As envisaged by the Terms of Reference, the Inquiry consulted with the Inspector of Custodial Services concerning, *inter alia*, administration of the prison system and the day to day operation of prisons.

18.4 It did this to ascertain whether there was, in what was done, systemic misconduct or maladministration or otherwise matters of a kind which would warrant it, within the Terms of Reference, examining particular events. The conclusions of the Inspector, as referred to in his report, were that he had "ongoing concerns" regarding the effectiveness of the prisoner complaints system.[1] I note also that the State Ombudsman is currently conducting an own motion investigation into the operation of the internal grievance procedure. In what the Inquiry had found, there was no reason to differ from the Inspector's conclusions.

18.5 At the commencement of the Inquiry, discussion was held with the Commissioner of the Corruption and Crime Commission of Western Australia (CCC), the Honourable Kevin Hammond and officers of the Commission. Subsequently by letter (11 May 2005) the Inquiry sought the assistance of the Commission in furnishing to it any relevant information. On 23 August 2003 the Inquiry received a response to its request. A summary of the Commission's submission is contained in the Closing Submissions of Counsel Assisting at paragraphs 945 to 948. The Inquiry is indebted to the Commission and to officers of the

[1] Harding, R, (2005) *Directed Review of the Management of Offenders in Custody*, p 19.

Commission who subsequently discussed with it the material referred to in the letter and other matters.

18.6 The submission of the Commission raised two matters. The first is the Department of Justice procedure for dealing with complaints made to it.

18.7 In this State, elaborate procedures have been set up to allow complaints to be made in respect of, *inter alia*, the Department of Justice. These include:

- The Ombudsman may accept complaints from, *inter alia*, prisoners.
- The Inspector of Custodial Services has a statutory duty to inspect prisons and detention centres every three years. He has examined in detail the operations of the prison system and, on occasions, has received complaints from prisoners. He forwards these complaints to the appropriate body.
- The Corruption and Crime Commission requires the Chief Executive Officer of the Department of Justice to report all conduct which is reasonably suspected to constitute misconduct within section 28 of the *Corruption and Crime Commission Act 2003*.
- The Office of Health Review receives complaints about Health Service providers; complaints have been received from prisoners.
- The Equal Opportunity Commission investigates complaints of discrimination within the Department of Justice.

18.8 Internal investigation and complaint procedures have been established. These include:

- The Internal Investigations Unit conducts Internal Investigations.
- The prison system administers a grievance process.
- Juvenile Justice Division operates an internal grievance process.
- Indigenous prisoners can and do raise issues with members of the Aboriginal Visitors Scheme.
- Prisoners complain to with the Independent Prison Visitors.
- The Community Justice Division administers a Complaints Management Policy and Procedure.
- Government has required in the *Premier's Circular 11 March 2004* that all Government bodies ensure that their Complaints Management System complies with the principles of the Australian Standard on Complaints Handling (AS4269).

18.9 There does not appear to be a grievance process specifically for offenders in the community corrections system (as distinct from the prisons system).

18.10 The Commission has directed criticism at the Departmental procedures of dealing with complaints.

- It has informed the Inquiry that, by its reference to "serious issues concerning the integrity of the organisation's operations" it did not suggest that the moral "integrity" of the Department was in question. It was referring to the procedure involved and what had been done or not done by the Department consequent upon the findings of its Internal Investigations Unit.
- Accordingly the Commission had not examined the details of the 54 prison related and 87 Department-wide allegations referred to by it.

18.11 The Inquiry is conscious that the Department of Justice is at present a mega-department and that its procedures extend beyond the prison system. Its complaint procedure deals with complaints which may relate to both matters within and matters outside the scope of the Inquiry.

18.12 The Inquiry has made a recommendation in relation to the complaint procedure: it has recommended that there be established within the Department of Justice a body such as a Professional Standards Directorate overseen by a Senior Executive Director responsible to the Chief Executive Officer of the Department. The matter has been dealt with in the submissions of Counsel Assisting the Inquiry and is referred to in a personal submission by Mr Ian Johnson, Acting Executive Director of Prisons.

18.13 Both the CCC and the submissions of Counsel Assisting the Inquiry recommend that the Department establish a Professional Standards Directorate to facilitate a shift towards a more strategic focus and grouping together functional units such as:

- standards (ethics and integrity) development;
- internal investigations;
- complaints management;
- grievance management;
- management audit; and
- liaison with external oversight bodies.

18.14 The Inquiry discussed with officers of the CCC a second matter, namely whether the ("substantiated") complaints made to the Department of Justice authorise or warrant a further inquiry: whether matters of the kind referred to in the complaints are present in the prison system to an extent which suggests that there are systemic or other serious defects in the system. It concluded that it should not.

- The Department of Justice is a mega-department covering a number of separate Divisions.
- It publishes the result of its "Internal Investigations" in its annual report. In the report (2003-4) it recorded, in a number of categories, the number of complaints received and the number "substantiated". The complaints most immediately relevant to the Inquiry are those in relation to "assault". In the period 1 July 2003 – 30 June 2004, thirty-four such complaints were received and one was substantiated. More complaints were received and substantiated in respect of "serious misconduct": this category included, *inter alia*, breach of the Department's computer facilities policy, neglect of duty, unapproved secondary employment and other more serious matters.
- The "major categories of misconduct" 1 January 2004 – 18 May 2005 referred to by the Commission include "Assault/Threats/Bully" complaints established by the Department and referred to the Commission under its legislation. Details of what was involved did not appear.
- In the circumstances discussed with officers of the Commission, the Inquiry concluded that it should not take an approach different from that taken after discussions with the Inspector.

18.15 It is important that complaint procedures be available, accessible and properly administered. In the past, some prisons in other jurisdictions have been bad and some officers have not achieved the appropriate high standard of conduct. But two things are to be borne in mind.

- Complaints may or may not be justified. They may be an aid to secure justice or may be used for other purposes. Experience in some areas has shown that many are made but few are proven. In this case, the rate of "substantiated" complaints is sufficiently high to warrant the recommendation that the level of "substantiated" complaints in relation to the prisons system be kept under review to ensure that, they are not an indication of systemic misconduct or enough individual misconduct to warrant further action.
- Care should be taken in drawing inferences from a finding that complaints have been found "substantiated". Findings made by investigative bodies, even after curial procedures, are not infrequently wrong. Findings made by complaints procedures are liable to error to no less an extent. Findings depend on human testimony and human testimony, though honest, are apt to be wrong. An inference should be drawn from "substantiated" complaints only with caution. I do not infer from what has been said that what has been found warrants intervention by the Inquiry.

Recommendation 142

A Directorate should be established in the Department, reporting directly to the Departmental head, which should be focussed on a strategic approach to preventing corruption and encouraging higher standards of professionalism, ethics and integrity. In this regard, recommendations 111 and 112 contained in the Closing Submissions of Counsel Assisting should be considered.

CHAPTER 19 SUPERMAX PRISON

"The perfect may drive out the good"

19.1 The Inspector of Custodial Services has been directed to inquire into and advise upon, *inter alia*, "whether a 'Supermax' facility should be constructed to accommodate dangerous prisoners or those whose presence in the prison system poses special risks". I am not asked in my terms of reference to deal with that question. I am asked to examine and report on, *inter alia*, the management of offenders. That raises for my consideration an issue which has similarities to the issue posed for the Inspector: whether a form of secure containment is required and what form it should take.

19.2 I shall consider three questions:

- What purposes would be served by a secure prison of this kind?
- Whether those purposes would be served in the present prison system and to what extent; and
- Whether they warrant construction of a facility more secure than the present Special Handling Unit (SHU).

19.3 The purposes which have been suggested are:

- punishment;
- keeping prisoners in;
- keeping others out;
- preventing dangerous prisoners injuring others; and
- to improve the amenity of the prisoners.

19.4 Each of these has a role in deciding what should be done.

19.5 In principle, prisons should not be designed to punish. They should not be (I use examples from New South Wales) future Lismore or Katingal facilities. But the 'no punishment' principle must not be misunderstood. Two issues at least will arise from it: discipline and hypocrisy.

- The management approach to prison administration involves (at least it is often used) that privileges are to be earned and are to be withdrawn for bad conduct. When bad conduct involves, for example, danger to others, it may be appropriate to transfer the prisoner to a secure unit. Officers will see that as a means of securing the good order of the prison. The prisoner may understandably see his transfer from open to closed confinement to be a consequence of and so a punishment for his conduct. He is treated worse because of what he has done.
- Associated with this is the need to avoid hypocrisy. The management approach, particularly the unit management system of administration; involves the maintenance of a relationship of respect and trust between officers and prisoners. That relationship will not be maintained if the prison administration says one thing, but by the use of special units, does another. A prisoner transferred to the SHU at Casuarina will be tempted to think he is being punished. Officers who have been abused

> or placed in jeopardy by him would be less than human if they did not see the transfer as punishment. Persons may readily see hypocrisy as being involved. It is important that it be made clear that the transfer is for security purposes and not for punishment. Positive steps must be taken by this means to make easy the task of officers in maintaining the desired relationship with prisoners.

19.6 To what extent are special units necessary to prevent escapes? I am concerned here with whether a special unit is required beyond the containment effect by a maximum security area. During the present management regime there have been very few escapes from maximum security areas. (I exclude the escapes from the Supreme Court facilities which involved special features and have been the subject of a separate Report). However, I accept that there are some prisoners, apparently a small number, who may pose an escape risk beyond that able to be coped with by a maximum security area. In the Casuarina prison (where the SHU is situated) precautions are taken in dealing with some prisoners in the maximum security area when they are moved and transported. But even in that (secure) prison there are some prisoners judged appropriate for the SHU because, *inter alia*, of their potential for escape.

19.7 The Inspector of Custodial Services has properly pointed to the possibility that persons outside the prison may break in to help a prisoner escape. Terrorists or organised criminals might do this. This has not occurred in Australia and seldom in a comparable country. (There was an occasion where love rather than crime led to the landing of a helicopter within a prison area. But that was an open space.) Rescues of that kind would not readily be possible in the SHU.

19.8 Some prisoners may injure others. Mr Keating is an example. In former times, prisoners might be allowed out of cells only under 'lockstep' supervision or the like. At present this is not done and even in maximum security areas prisoners move about freely. In general, the danger is managed. Officers have referred to their capacity to anticipate problems from individual prisoners and to prevent damage by intervening or even by transferring prisoners. But it should be accepted that there will be some prisoners whose potential for injury cannot be handled in this way. A prisoner may have mental problems. A prisoner may have a bad history of violence. (Mr Keating is an example). He may (as some prisoners in the SHU have) have temporary problems leading to violent behaviour. It is necessary to have a special unit in reserve.

19.9 In discussions with the Inspector, reference was made to the need to maintain an appropriate level of amenity for prisoners in such a facility. I have seen the SHU. The cells have a limited amenity area available. I am not satisfied that the SHU contravenes minimum standards.

19.10 A SHU is necessary. Is a unit beyond the SHU required?

19.11 It is not needed at the present time. The SHU can accommodate 16 prisoners. Not all the accommodation has been occupied. The amenities for existing prisoners (the availability of recreation areas and the possibility of prisoners mixing in recreation areas) are limited. It is suggested that the prisoners in 8 units should not mix with the prisoners in the (separate) other units. The Inspector has suggested that in a new Special Unit, the amenities should, as I simplify what he has said, be better or different. I do not disagree with that conclusion. However

the existing amenities are not so far below what is desirable to require, on that ground alone, a new facility to be substituted at once.

19.12 In considering the (different) issue on which he is required to report, the Inspector has referred to another important matter, namely, the increase in prison numbers. He has concluded that the number of prisoners in total will increase substantially in the medium term; between 2010 and 2025 the prison population will rise from 3930 to 5495. On that assumption, the number of prisoners requiring placement in special units will rise to between 20 and 28. Accordingly, the existing SHU will not provide sufficient accommodation. Unless the work upon a Supermax facility is commenced earlier rather than later, it will not be available when it is needed. Accordingly, the Inspector has recommended the construction of a Supermax facility in due time.

19.13 If the basis of this conclusion is to be accepted, subject to what I shall say I agree with that recommendation. An increase in the number of prisoners appears likely. I have regard to the findings of the Inspector in that regard. Priorities are important in the development of the prison system. The priority to be given to the erection of the Supermax will require careful consideration. It is affected by the uncertainties affecting all predictions, including predictions as to the number of prisoners, the number requiring special control and the future role of new technology. There is no such uncertainty in relation to the needs of the regions and training within the Department. Therefore, the construction of a Supermax should not occur before these higher priority regional and training infrastructure needs are addressed.

19.14 The Inspector has made detailed recommendations as to the form of the proposed Supermax, its construction and its operation. That has not been within the Inquiry and I express no opinion on that matter. In discussions with the Inspector, he and I agree that, in a Supermax, provision must be made for prisoners to be removed from it when their circumstances warrant and for the ongoing review of their suitability for removal from it; and that the prison officers conducting the Supermax should be rotated back to the ordinary prison section at appropriate intervals.

19.15 In his Closing Submissions, Counsel Assisting recommended the establishment of a High Maximum Facility to accommodate serious and difficult to manage prisoners. When it is determined that such a facility is required, consideration should be had to Counsel's recommendations relating to how such a facility should operate.

Recommendation 143

The recommendations of the Inspector and recommendations 65 to 78 contained in the Closing Submissions of Counsel Assisting in relation to the establishment of a High Risk Security Unit for special risk prisoners should be considered by Government. However, if and when it is decided to build such a facility, construction should not occur before higher priority regional and training infrastructure needs, as outlined in this report, are addressed.

CHAPTER 20 PRISONER TRANSPORTATION

20.1 It is necessary that prisoners be transported from one place to another. The State of Western Australia is so large and the population so dispersed that prisoners are on occasions transported for long distances and in small numbers. This has given rise to problems and, in some cases, situations which require urgent review.

20.2 In a definitive review of prison transportation it would be necessary:

- to review and define what prisoner transportation services are to be carried out; and
- to decide what is the efficient and acceptable method of achieving it.

20.3 The transportation services are various. They involve, amongst others, transportation of prisoners between prisons, from and to courts, from regional areas to metropolitan areas and, on special occasions, from prisons to country areas or communities for special purposes such as funerals.

20.4 In earlier times, transportation of prisoners was carried out by the Department of Justice. In 2001, the then Government contracted for prisoner transportation services to be provided by a private contractor, Australian Integration Management Services Corporation (AIMS). The contract provided for transportation of prisoners in both metropolitan and regional areas.

20.5 Prior to the establishment of the Inquiry, Government agreed to extend the AIMS contract until 30 July 2008. Because of these circumstances, the Inquiry has not examined the particular terms of the AIMS contract. It has not undertaken a detailed review of how far AIMS has satisfied its contractual obligations. It has, in accordance with the Terms of Reference, had regard to the findings and conclusions of the Inspector of Custodial Services set out in his Report[1] and in discussions with the Inquiry.

20.6 During the Inquiry, certain things arose which should be referred to attention.

- During visits to regional prisons, particularly prisons described by the Inspector of Custodial Services as 'Aboriginal' prisons, it was suggested to the Inquiry that prisoners were transported under conditions that, if accurately described, are not acceptable. It was suggested that prisoners had been transported over long distances in the back of vehicles without adequate regard to air-conditioning and sanitary provisions; and that more prison officers than necessary had been required by the contractor for the supervision of prisoners on the occasion of their transport for special occasions such as 'funerals'. In the supervision of the contract, steps should be taken to ensure that what is done is both consistent with the terms of the contract and of an acceptable standard.

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[1] Office of the Inspector of Custodial Services (2005) *Directed Review of the Management of Offenders in Custody in Western Australia*

- The arrangements made by AIMS for the transport of prisoners from court to Hakea Prison were the subject of complaint by prison officers. Reference is made to the arrangement earlier in this Report. It was said that the times or circumstances in which prisoners on remand were transported to Hakea Prison caused unnecessary interference with work arrangements at the prison and caused inconvenience in respect of the provision of bail for remand prisoners. The existing transport arrangements should be discussed between the Superintendent of Hakea Prison and the relevant officer of AIMS to determine whether the transport arrangements can be changed so as to avoid or minimise these difficulties.
- It is not the function of the Inquiry to make firm recommendations as to whether transportation of prisoners should be carried out by Government or by private bodies (as submitted by the Western Australian Prison Officers Union). However, if the transportation arrangements are committed completely to a private body, difficulties are apt to arise.
- It is to be accepted that a private body will undertake such a contract only if it can do so profitably overall. But there are two aspects of the project which should be provided for: a contract which is profitable overall may involve the contractor in parts of it which separately are not profitable; and the standard of the services provided may be reduced to ensure profitability overall. The transport of prisoners from, for example, remote areas to prisons further south may be alone an unprofitable part of the overall transport contract and the reduction in the cost of it may cause a reduction in standards. Care should be taken to ensure that that has not occurred and that, if there be a renewed contract, it will not happen in the future.
- Transport within the metropolitan area is different from, and may be properly dealt with separately from, transport in other regions. Government should decide whether the two are to be dealt with together or separately. That decision should be made a sufficient time before the end of the present contract to enable any transition involved to be carried out in an orderly manner and with proper planning by the Department.

20.7 Accordingly, I recommend that prior to the completion of the extended AIMS contract, the Department review prisoner transportation for regional areas to determine whether it should be undertaken by the private or public sector.

Recommendation 144

The Department should review prisoner transportation for regional areas to determine whether it is likely to be unprofitable, increasing the risk of it being carried out unacceptably, and therefore whether it should be brought back in-house by the Department at the completion of the extended contract.

Recommendation 145

The Department should decide on whether the metropolitan based prisoner transportation service is to be undertaken by the private or public sector a sufficient time before the expiry of the extended contract, to enable arrangements to be made in an orderly manner.

20.8 The Inquiry was also advised that transportation arrangements for offenders: upon release from prison, both on early release orders or to freedom; those bailed from court; and those released from custody after sentencing has taken place; are inadequate. A submission from Mr Keith Shiers, General Manager of Community Juvenile Services outlined a number of the current concerns. It was noted that the delayed return to the person's usual place of residence sometimes results in that person committing further offences and/or being in breach of bail conditions.

20.9 People bailed from court pose particular problems in regional areas as the person may have been taken some distance from their homeland to appear in court and then are released on bail with no transport arrangements to enable them to return home. There is no requirement for Community Justice Services to be involved in making these arrangements, however, often the person presents at a Community Justice Service office asking for assistance.

20.10 The Department advised that it will consider a range of strategies including extension of current transport arrangements to additional regional areas and to persons released directly from court as well as the development of partnerships with non-government agencies for transport arrangements. The Department has also convened an internal working party to address the specific problem of Indigenous people being stranded following appearances at court and on release from custody.

20.11 I note that the Inspector of Custodial Services has specifically recommended that the Department, "should provide for the transportation of released prisoners directly back to their home communities and not leave them stranded some considerable distance from their homes."[2] The Inquiry received a number of comments from stakeholders in relation to this issue and supports the Inspector's recommendation. I therefore recommend that the Department develop strategies to assist prisoners, particularly from regional and remote areas, to return home following their release from custody.

Recommendation 146

The Department should develop strategies to assist prisoners, particularly from regional and remote areas, to return home following their release from custody.

[2] *Ibid*, pg 156.

CHAPTER 21 A PUBLIC PROTOCOL

21.1 The following are incidents of a modern prison system:

- There will be escapes from minimum security prisons: the number of escapes should be reduced by ensuring that the wrong prisoners are not placed in them.
- There will be injury to prison staff and prisoners: the prisoner classification and case management systems should be improved to reduce the risk of injury.
- Prisoners will re-offend: improving the functioning of the parole system and the rehabilitation and resocialisation process prior to release should be undertaken to reduce the rate of re-offending.
- The uncertainties involved in the decisions made in classification and in case management should be reduced. These uncertainties should be recognised in deciding what to do with prisoners.
- There will inevitably be a 'public outcry' in relation to such issues. I will now discuss the 'public outcry' issue.

21.2 My conclusions are:

- public outcries are inevitable;
- they can do good;
- they have done harm and, unless properly dealt with, will continue to do harm; and
- harm will be avoided (or at least reduced if the prison system adopts a public protocol for responding to them.

21.3 Public outcries are inevitable. When there is an incident in the prison system (a serious escape, physical injuries, or public affront by, for example dealing inappropriately with life prisoners) there is likely to be a public outcry. The public is entitled to know the cause of the incident, for example, how a prisoner such as Mr Cross or Mr Edwards escaped.

21.4 Public outcries may do good. It is a fact of life that public outcries may be raised for mixed reasons, which may include political advantage or the promotion of publications or programs. The outcry which led to this Inquiry has revealed the less than satisfactory way in which prisoners have been selected for location in relatively open prisons.

21.5 But public outcries may produce harm including:

- serious injustices to individual officers;
- decisions which damage the prison system; and
- lack of confidence in the system and those responsible for it.

21.6 This Inquiry has revealed several instances of harm caused by responses to public outcries. I shall summarise three of them. Each of them is described in detail in the submissions of Counsel Assisting the Inquiry. What is there detailed will indicate the basis of what I say and provide a full account of them.

Prisoner Classification System

21.7 In 2001, three prisoners, multiple offenders, escaped from a minimum security prison. There was a public outcry. It was right that there should be.

21.8 The Attorney General felt it necessary to respond to the outcry. It was right that he should do so. It appears that the information provided to him did not contain a full and frank statement of the facts and the options available for dealing with the situation which was revealed. (In saying this, I speak by reference to what appears in the documentation and with the benefit of hindsight. I do not criticise those who may have been involved in preparing the documentation or providing to the Minister such other information as he may have had).

21.9 The Minister's response was to put into operation a new prisoner classification system. Given the short time within which the response was made and the information he had, what he did was not wrong; at least, it was understandable.

21.10 But the result was damage to the prison system:

- the new classification system was brought into operation too soon and before it was ready;
- it needed training to work properly, however the training provided was inadequate;
- it competed with the new private prison at Acacia and the commissioning of it;
- there was not enough money; and
- the way in which the system was applied in the four cases examined by this Inquiry may well have contributed to what happened when, in March this year, further prisoners escaped.

21.11 Ideally the Attorney General should not have been obliged to respond until he had had time to assess what was required and unless he had been provided with a full and frank statement of what had happened, why it had happened and what were the available options for dealing with it. The result was that, though those concerned did what they thought was right, substantial damage was done to the operation of the prison system.

Fencing of Minimum Security Prisons

21.12 In March 2005, Messrs Cross and Edwards escaped from a minimum security prison. There was a public outcry; it was expected. Understandably, Government felt the need to respond. It did this by, *inter alia*, deciding to fence minimum security prisons.

21.13 Government decided that large sums should be spent to erect fences around the two minimum security prisons, Karnet and Wooroloo prisons, and to fence minimum security prisons as they were built.

21.14 When the decision to erect the fences was made, the Minister for Justice (as I accept) believed that fencing had the support of the officers responsible for the two prisons and that the decision was proposed by the Director General, Mr Alan Piper. It was not so. The documentation and other information was investigated and detailed by Counsel Assisting the Inquiry. The proposal to build the fences was not supported by those who could best judge the effects of it. The conclusion to be drawn from the evidence given by Mr Piper indicates that the proposal to fence was not his proposal and that, legal niceties apart, he did not make the decision.

21.15 Whether fencing of the prisons will prevent or reduce escapes from minimum security prisons is, at the least, doubtful. Experienced officers have suggested that it will not and that it will damage the philosophy on which such prisons are based. The result cannot be predicted with certainty.

21.16 But the important decision was put into operation at once and without a full and frank discussion of the position relating to why about the escapes had occurred and the available solution. It was made, understandably and with good intention. However, it appears that the Minister was mistaken as to the support given for the proposal by officers and by the Director General.

21.17 In each of these cases, what occurred would, in all probability, not have occurred if:

- the response which had to be made was made after an opportunity to be properly informed and for consideration of the options; and
- the Minister had had the kind of information which he should have had.

Disciplinary Action Against Staff

21.18 The third case was different. It involved injustice to an officer and significant damage to the morale of staff within the important Community and Juvenile Justice Division.

21.19 A parolee, Mr Mitchell, breached parole when he committed burglary and murder. There was an understandable outcry.

21.20 The then Minister for Justice was reported to have called for action to be taken against staff, "*Minister calls for scalps*". The newspaper article noted that it was "too early to say how many people would be sacked". [1] I make no judgement as to whether the report was accurate. It is the fact of the report which is important.

21.21 The community corrections officer supervising Mr Mitchell, Ms Eva Kovak, was investigated by the Department at the direction of the then Director General. She was charged with having done wrong. The charge was that she had failed to advise her supervisors that Mr Mitchell had not obeyed her directions. The charge was unjustified. Several of her superiors, the persons who knew what had happened, gave evidence that she was not required by Departmental policy to do what it was charged she should have done, that good practice did not require that she do it, and that in any event she had done it. Ms Kovak resigned before a

[1] The West Australian, *Minister Calls For Scalps,* Thursday 21 August 2003

finding was made. Counsel Assisting the Inquiry examined the matter at length. His submissions, with which I agree, are to the effect that Ms Kovak suffered "a significant injustice" and that she "served as the 'scapegoat' for the Department's problems as a whole".[2]

21.22 These events followed from the report to which I have referred. If the Minister had been able to withhold response until an appropriate statement of the position had been presented, it may be assumed that the statement on which the report was based (whatever be its content in fact) would not have been made.

21.23 The effect of what happened was not limited to Ms Kovak. Officers who gave evidence spoke of the reaction that was produced amongst community corrections officers. It introduced "fear" into the section. The term "fear" was used, with, I believe, some force. The effect that it had on their confidence in the prison system was clear. When it was claimed that "scalps" were to be provided, disciplinary action was taken against a community corrections officer that they knew to be unsubstantiated. I infer that, as Counsel has submitted, they concluded that Ms Kovak had been made a "scapegoat" because of what the Minister had been reported to have said.

21.24 Mr Piper has given evidence as to why he authorised the disciplinary investigation. It is not necessary that I make a finding in relation to the circumstances. I accept that he acted as he said. But the impression created by what was done was understandable.

21.25 The Western Australian corrections system is a valuable and a necessary asset. The core of the corrections system is its staff. It is the horse not the harness which moves the system along. The corrections system will not do what it should do if its people do not do what is asked of them. Prisoners will riot or escape if prison officers do not properly manage them: a Fremantle or Casuarina riot could happen again. To manage prisoners, prison officers must walk and talk with them within their prisons. They must talk with murderers and violent robbers. It needs only one "Keating" each decade to bring home what the staff of prisons are required to do. Community corrections and juvenile justice officers deal with murderers. An experienced community corrections officer may be given the management of 30 or more ex-prisoners including a number classified as "high risk" according to the classification system used within the Community Justice Division. Officers are required to deal with them and, on occasions, to visit their place of residence. The present community corrections system will not work if parole officers do not do this.

21.26 If officers do not have confidence in and the support of the corrections system, their dedication will go. If the will of officers to do what they must do is destroyed, the corrections system will be less than it should be. An officer can manage his prisoners or can go through the motions of doing it. As the submissions of Counsel show, if officers do not have the support of training, they may go through the motions.

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[2] Closing Submissions of Counsel Assisting, at page 370, para 793).

21.27 It is important that the dangers which can arise from public outcry are minimised. Those dangers include:

- that those who respond (Minister or Chief Executive Officer) will feel forced to reply too quickly; and
- that they reply without the advantage of the facts.

21.28 A protocol should be established to ensure that, when a response is made, it is made in due time and with knowledge of the facts. I agree with the evidence of the Attorney General and the Minister for Justice that, where there is an outcry, a statement should be made by the Minister or by the Chief Executive Officer.

21.29 It is noted that the 'public outcry' issue can also adversely affect prisoners. For example, the Inquiry is aware of one prisoner who indicated that Parole Board decisions in relation to his case have been reported in the media before he received notification of the decision. Media references in such circumstances may well be prejudicial to the objective management of prisoners and may cause distress to the victims and their families. In this situation the Department should ensure that it releases information to the media at the appropriate time and does not release information that will prejudice the management of an offender.

21.30 It is recommended that the following steps be taken:

- It should formally be announced, by the responsible Minister and the Chief Executive Officer, that, because of the injustice that may be caused to officers and the misunderstanding that may be created by statements made upon the occasion of prisoner escapes and similar incidents, Government has set up a procedure to ensure that that does not occur. When such an incident occurs, a public explanation will be made as soon as it can be made and a full and frank statement of the facts will be issued. In order to avoid damage such as has occurred in the past, a statement will be made as follows:
  - when there is an escape or other incident warranting a public statement, the Chief Executive Officer of the proposed Department of Corrections will at once confirm that a full statement will be made on a date then announced (not more than 2 days after the event);
  - the Chief Executive Officer will prepare and make available to the responsible Minister a statement signed by him:
    - detailing the alternative options which may be taken in the circumstances; and
    - containing a full frank and accurate statement of what has happened;
  - the statement will be publicly available;
  - the statement will be made by the Minister or the Chief Executive Officer as the circumstances require; and
  - prior to the issue of the statement, no other statement will be issued.

21.31 Government and the Department should be accountable. But accountability does not require that a response be made that may cause damage or injury to others. In three cases in the past four years damage has been done and serious injustice has resulted. It is necessary that Government and the Department establish a procedure to ensure that it will not happen again. Government may be pressed to make a response unprepared and prior to the availability of the formal statement to which I have referred. It should not do so. It is recommended that Government adhere to this protocol and that it announce that it is doing so in pursuance of a recommendation of this Inquiry so that injustice to individual officers, damage to the morale of Departmental officers and damage to the corrections system will not be repeated.

Recommendation 147

To avoid inadvisable political responses to media pressure, the Department should develop a protocol similar to the Western Australia Police Service, to ensure that information provided to the media about offenders, or incidents involving offenders:

- **is complete and accurate;**
- **is provided in a timely manner; and**
- **preserves the rights to privacy of those involved, including victims, offenders and departmental officers.**

SPECIAL PROFILE OFFENDERS

21.32 The extent of the 'public outcry' issue is also evidenced by the Department's use of a 'Special Profile Offenders' list. The Inquiry was advised that a Special Profile Offender (SPO) is one whose,

> *"High media profile, actions or whose management has already given, or may give rise, to interest from the press, political parties, the Department Executive, Social Action Groups, Lobby Groups, Victims, or the Police"*[3].

21.33 There were 80 prisoners on the list provided to the Inquiry in September 2005.

21.34 There is no formal procedure for advising a prisoner that he or she is an SPO. However, a prominent alert to a prisoner's 'SPO' status, accessible by all prison staff, appears on the Total Offender Management System. We have been told that identification as an SPO should not affect classification or limit a prisoner's placement or eligibility for programs, authorised absences or section 94 activities. Its primary purpose is to alert the Minister for Justice and senior managers in the Department to movements by this prisoner to court, hospital or other authorised absences to enable them to better respond to media queries.

21.35 However, the Inquiry considers that a prisoner's SPO status does have an impact on the prisoner's management and is not merely a notification system for the Chief Executive Officer and Minister. For example, the Inquiry was advised that a female prisoner who is eligible for transfer to Boronia Pre-release Centre for Women was prevented from going on the basis that she is an SPO. An Individual

[3] Letter to the Inquiry from Acting Director Security Services, 19 September 2005.

Management Plan for Mr Keating mentions that he is a 'Special Profile Offender' in the context of his management.

21.36 There appears to be some confusion within the Department as to the purpose of the SPO classification.

21.37 In light of the above examples, the Inquiry is of the view that the SPO system has unwittingly evolved from its original purpose to become a further form of 'unofficial' classification with potentially significant adverse consequences for some prisoners. Having discussed this concern with the Acting Director Security Services at the Department, it appears that the premise and purpose of the Special Profile Offender list, and any unintended consequences of inclusion on the list is to be reviewed. Whilst the Inquiry accepts that there is a need to notify the Minister and senior personnel within the Department in relation to the movements of prisoners with high media profiles, it questions the need for such a list as it currently operates.

Recommendation 148

The Department should abolish the Special Profile Offender list.

Annexure 1

INQUIRY INTO THE PERFORMANCE OF THE DEPARTMENT OF JUSTICE WITH REGARD TO THE MANAGEMENT OF OFFENDERS IN CUSTODY AND IN THE COMMUNITY

I, Dr Geoffrey Ian Gallop, Premier; Minister for Public Sector Management, pursuant to section 11 of the *Public Sector Management Act 1994,* direct and appoint his Honour Dennis Leslie Mahoney AO QC **(Inquirer)** to enquire in respect to the management of offenders in custody and in the community in accordance with the terms of reference set out below.

In addition to the powers given to the Inquirer under section 11 of the *Public Sector Management Act 1994,* I have directed my Ministers to submit to and assist the Inquiry by providing all documents, reports and plans as requested and being available to appear before the Inquiry as and when required.

The terms of reference are to be addressed concurrently with any request for a report or reports made by the chief executive officer of the Department on the direction of the Minister for Justice under section 9 of the *Prisons Act 1981*.

Terms of Reference

1. To examine and report on all processes and procedures involved in the assessment, placement, management and rehabilitation of offenders in custody, and into such aspects of the management as, to the Inquirer in his discretion, may appear appropriate. In considering this term of reference the Inquirer is to seek and have particular regard to the opinions and findings of the Inspector of Custodial Services.

2. To examine and report on the organisational structure, role and performance of those areas of the Department responsible for the management and placement of offenders in custody and the release of those offenders, being the Prisons Division, the Community and Juvenile Justice Division and Corporate Services Division.

3. To review and report on the effectiveness of the Department's performance, policies and procedures, including any Director General's Rules, Policy Directives and Operational Instructions.

4. To develop a plan which will include implementable strategies to:

    - improve the quality of offender management, both in custody and in the community;
    - improve and enhance community and staff safety within the corrections system;
    - provide, if the Inquirer consider it appropriate, an alternative management structure for offender management either within the Department or otherwise.

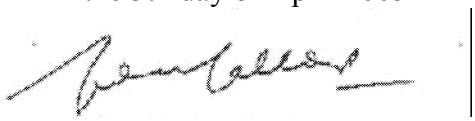
5. To make any other observations and proposals for my consideration as the Inquirer in his discretion may deem appropriate.

6. To proceed with expedition.

Annexure 1

The Inquiry is required to report its findings and recommendations to the Minister for Public Sector Management by 1 October 2005.

DATED the 5th day of April 2005



DR GEOFFREY IAN GALLOP
PREMIER; MINISTER FOR PUBLIC SECTOR MANAGEMENT

Annexure 2

LEGISLATION ENABLING A SPECIAL INQUIRY

The following sections of the *Public Sector Management Act 1994* govern the establishment and operation of a special inquiry called by the Minister for Public Sector Management.

11. Minister may direct holding of special inquiry

(1) The Minister may, in writing, direct a suitably qualified person or suitably qualified persons to hold a special inquiry into a matter relating to the Public Sector, and the person or persons shall comply with that direction.

(2) A direction shall not be given under subsection (1) to the Commissioner.

12. Powers of persons conducting special inquiries

(1) A special inquirer or a person authorised in writing by him or her may for the purposes of the special inquiry concerned —

(a) enter the premises of any public sector body;

(b) by notice in writing require a person to produce to him or her any book, document or writing that is in the possession or under the control of the person; and

(c) inspect any book, document or writing produced to him or her and retain it for such reasonable period as he or she thinks fit, and make copies of it or any of its contents.

(2) The provisions of Schedule 3 apply to and in relation to a

13. Procedure and evidence at special inquiries

(1) An individual, public sector body or other body may be represented at a special inquiry by a legal practitioner or other agent.

(2) A special inquirer shall act independently in relation to the performance of his or her functions.

(3) A special inquirer shall act on any matter in issue at the special inquiry concerned according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms, and is not bound by the rules of evidence, but may be informed on any such matter in such manner as the special inquirer considers appropriate.

(4) A special inquirer may, in respect of a matter not dealt with by this Act, give directions concerning the procedure to be followed at or in connection with the special inquiry concerned, and a person participating in that special inquiry shall comply with any such direction.

(5) A special inquirer does not have power to make an award of costs.

14. Reports of special inquiries

A special inquirer shall —

(a) within such period as the Minister requires, prepare a report on the conduct and findings, and any recommendations, of the special inquiry concerned; and

(b) immediately after preparing a report under this section, provide the Minister with a copy of the report.

Annexure 3

TERMS OF REFERENCE FOR THE DIRECTED REVIEW OF INSPECTOR OF CUSTODIAL SERVICES

On the 5 April 2005, the Inspector of Custodial Services was directed by the Hon John D'Orazio MLA, Minister for Justice, under section 17 of the *Inspector of Custodial Services Act 2003* to inquire into and advise upon the following matters:

- the policies and practices of the Department of Justice with regard to the classification of convicted prisoners;
- the policies and practices with regard to the placement of prisoners at and within particular prisons and their subsequent transfers within the prisons system;
- in the light of projections as to prisoner numbers and mix, the question whether the existing prison facilities and their regimes and programs across the State are appropriately calibrated to achieve particular emphasis upon the availability of regional and remote resources;
- in that context, whether innovative approaches to custodial management and types of custodial facilities can be developed;
- whether a "supermax" facility should be constructed to accommodate dangerous prisoners or those whose presence in the prison system poses special risks;
- the identification of infrastructure needs and prioritisation of requirements for the next decade; and
- likely staffing needs, including the questions of custodial and civilian staff, and operational and management structures.

Annexure 4

INQUIRY INTO THE PERFORMANCE OF THE DEPARTMENT OF JUSTICE WITH REGARD TO THE MANAGEMENT OF OFFENDERS IN CUSTODY AND IN THE COMMUNITY

Before the Honourable Dennis Leslie Mahoney AO QC

Held at Perth on Friday, 15th April 2005

Counsel assisting - Mr Peter Damien Quinlan

Executive Director - Mr Peter Byrne

HEARING COMMENCED AT 10.03 AM

MR MAHONEY QC: Ladies and gentlemen, this is the first public sittings of the inquiry which on the 5th of April this year was set up by the Honourable Dr Geoffrey Gallop, the Premier of Western Australia, in collaboration with the Honourable Mr John D'Orazio, the Minister for Justice.

It is appropriate that I make some preliminary observations in relation to the inquiry. The function of the inquiry is to examine the management of offenders in the manner and within the parameters set out in the terms of reference. Those terms of reference will be exhibit 1 in the inquiry and copies of them will be available at the end of the sitting. For reasons to which I shall refer, I do ask that those who are interested read carefully the terms of reference. It is possible to misunderstand written documents and I do ask that people will read the terms of reference so as to understand what is in question in the present case.

I will be assisted in the inquiry by Mr Peter Quinlan of the Western Australian Bar - he will be counsel assisting the inquiry - and by Mr Peter Byrne who will be the Executive Director.

Let me first state in summary form what the inquiry is about. As will be seen from the terms of reference the main purpose of the inquiry is to formulate and suggest a plan for the management of offenders in this State. That purpose is important. Important for the protection of the public, to safeguard the position of those concerned with the control of offenders, to ensure the proper treatment of offenders and for the future good of the community generally.

In order that the inquiry can achieve its purpose it is appropriate that it consider basically three things. What has happened in the past; what are the present arrangements for the management of offenders; and what in future should be those arrangements. These are in very broad outline the matters which the inquiry will consider.

Let me say what the inquiry is not about. The inquiry is not, as such, about praise and blame. The main purpose of the inquiry is, as I have said, to formulate a plan for the future management of offenders. This is an important matter for the State and it is too important for the inquiry to be led aside by attempting to assign praise and blame for what has happened in the past, for examining every error or misconduct or alleged error or misconduct which has arisen in the past. The past is important, of course, but the past is only prologue. It is a prologue for the future and the future is where we all live. It is the future which is important. The past is important but, for present purposes, only if we can learn from it.

That does not mean that the inquiry is to ignore what has happened. It is proposed to learn from what has happened; what, if any, have been the deficiencies of the present arrangement of offenders either in the system or in the personnel concerned. As I have said, to pursue every past event would waste both time and money. To an extent these matters have been investigated already by others.

Our provisional plan - and I emphasise "provisional" - is to select certain past occurrences and to investigate them. We will investigate them in detail and examine what can be learned from them. We are already establishing a group of investigators for the purpose. We shall do this in order essentially to see what can be learned from them as to the deficiencies, if any, of the present system and to a proper extent the inquiry will examine these matters in future public sittings.

However, there are or may be legal restrictions on what can be done. I refer to this immediately at this stage. The courts have, and rightly, insisted that there must be no improper interference with the proper treatment of those who are or perhaps may be before the court on trial or otherwise. What effect that will have upon our operation, upon who we may investigate and what we may detail publicly is a matter to be considered. I have already sought the advice of the State Solicitor and advice has been received from him and from the Deputy Solicitor. I have had from them the benefit of a large bundle of cases which I will have to consider.

What effect this principle will have upon the work that we are to do is a matter which must be determined, but subject to this we will follow the course to which I have referred. I emphasise that the plan which I have suggested is provisional only. The inquiry was set up only 10 days ago and we have, of course, not had the opportunity to investigate the relevant matters as they will have to be investigated, but it is only when our investigations have proceeded that we will be able to formulate more firmly what the work of the inquiry is to be.

I wish to record that as the terms of reference show, and as I have been assured, this inquiry has the full support of the Honourable the Premier, Dr Gallop and the Honourable Mr D'Orazio, the Minister of Justice. They have indicated that I am to conduct an independent inquiry, and for that purpose I am to have direct access to them and to such other Ministers as may be of assistance.

The Premier has, as the terms of reference show, directed that his ministers are to be available for the work of the inquiry, and I direct attention to what has been said in this regard in the terms of reference. In order to prevent misunderstanding of the terms of reference I say, as the Premier has already made clear in Parliament and the Minister for Justice has emphasised to me in clear terms, that the work to be done by the Inspector, to which reference is made in the terms of reference, is to be carried out as part of this inquiry. It is to be coordinated with the work which I am to direct to be done. It is not a separate inquiry but is to be subject to my direction and control.

I propose to invite in this inquiry the cooperation of the community in the investigations to be made and the formulation of the inquiry's report. As I have said, the management of offenders is important for the protection of the community in the interest of those concerned in the justice system and for the effective and fair treatment of offenders. Therefore in due course I shall invite interested parties to make submissions in writing to the inquiry as to the management of offenders in the State.

As you will understand, I trust, this does not mean that I shall adopt or be able to adopt all or any of the submissions that have been made. However, I am conscious that there are those in the community, particularly those who have been concerned with the management of

offenders, who may be able to offer valuable information and valuable insights and I ask their assistance.

I invite the assistance and the cooperation of the media and those who have public influence. I hope to have available facilities which will ensure that the media and other interested parties have, without delay, immediate access to transcripts of the public sittings of the inquiry and other public documents so that such matters may be reported accurately and without delay.

The functions which such persons perform in the community are important but they have a particular importance in the present context. The management of offenders involves the protection of the public, as recent events have made clear. I do hope that I will not be misunderstood when I say that this is too important a matter to be treated otherwise than seriously and accurately.

What is published and what is said about the work of the inquiry may well affect the extent to which the inquiry can have, for example, the cooperation of the public and of those who may have information which may assist in the work of the inquiry. We will have the assistance of a - is it the correct term these days? - media person, a media person, Ms Byrne, who will be able to assist the media in what it does.

Communications by and with the inquiry should be made through counsel assisting the inquiry, Mr Peter Quinlan, and the executive director of the inquiry, Mr Peter Byrne. Details of the telephone numbers and means of communication with the inquiry will be made available in due course. Mr Byrne has been so efficient in the setting up of the apparatus of the inquiry that the telephones have not been able to keep pace with him and we have not yet the numbers that we can give you. But in due course when we have our telephone communications in order arrangements will be made for delivery of the details to the media and to any person otherwise interested.

I have stressed that communications should be through the counsel assisting and the executive director and the media person. Is it permissible to make a small joke? I trust that those members of the media who have tried unsuccessfully to obtain a statement from me - and did so very courteously - will not think me discourteous when I say that all statements must come through the apparatus of the inquiry.

It may be that some persons may wish to appear or to be represented at public sittings of the inquiry. Any person who so wishes should inform counsel assisting the inquiry of his or her wishes and of the grounds upon which the claim - - on which the claim to be represented is based. That should be done in writing. Appearance and representation are ultimately matters to be determined by the inquiry after consideration of the relevant circumstances and parties will be notified in due course.

It has been the unfortunate experience in inquiries and legal proceedings in some places that damage has been caused to persons who are innocent of any error or misconduct but have been called to appear in such proceedings. In some cases the fact that a person has given evidence or information to an inquiry, or has been asked questions, has been seen and even used as a basis for inferring that that person has been guilty of error or misconduct. It is important that that does not occur in the present case and I shall do what I can to ensure that it does not. It should be understood that the fact that a person has given evidence or information to this inquiry, or that questions have been asked of a person, does not mean as such that an allegation of error or misconduct is suggested against him or her.

It will be appreciated that a deal of investigation will need to be carried out before the inquiry can determine finally what is to be the course of the proceedings before it and when, for example, further public sittings are to be held. In particular, it will be necessary to consider

the legal matters to which I have referred. It is now, as I have said, only 10 days since the inquiry was set up. This is the first public sittings to be held. It will take some little time before these matters can be determined. Therefore, at the end of these proceedings this morning I shall adjourn the further sittings, the public sittings of the inquiry to a date to be fixed. The work of the inquiry will, of course, go on as it has already commenced. The secretary of the inquiry will announce in due course the date on which public sittings are to be resumed.

Annexure 5

RECOMMENDATIONS SUBMITTED IN CLOSING SUBMISSIONS OF COUNSEL ASSISTING THE INQUIRY

Assessment and Case Management

Recommendation 1

The objective scoring instrument, employing the Custody Rating Score as a component, should be retained as part of the assessment for security classification.

Recommendation 2

The Department should carry out or arrange qualitative research to validate Custody Rating Score, in relation to the outcomes to be achieved by the classification system and to determine whether there can be improvements in either the factors included or their weighting.

Recommendation 3

Research should be conducted as to whether the classification tools can be modified so as to take account of the propensity to violence or the propensity to serious harm as an independent input into the classification tool.

Recommendation 4

All assessments at all prisons be carried out by specialist trained Assessment Officers, under the supervision of an Assessment and Case Management Coordinator, referred to collectively as the Assessment and Case Management Team.

Recommendation 5

Basic training in relation to assessments (and the operation of the assessment system) should be essential training for all prison officers.

Recommendation 6

A specific qualification in assessments should be required for Assessment Officer, which includes training in relation to assessments of offenders generally (i.e. across the Department) and specific to prisons. No person should be permitted to hold a position in an Assessment and Case Management Team unless they hold such a formal qualification or accreditation.

Recommendation 7

All members of the Assessment and Case Management Team should have access to information held in relation to prisoners by the intelligence analysis section.

Annexure 5

Recommendation 8

There should be specific rules in relation to when inquiry with the intelligence analysis section is mandated as part of an assessment (including any override to minimum security).

Recommendation 9

There should be a defined checklist of the sources of information to which an Assessment Officer is required to refer as part of an assessment and that information should be collated and recorded in the prisoner's Assessment File.

Recommendation 10

The Assessment and Case Management Coordinator, being the leader of the Assessment and Case Management Team, should be a senior officer with overall responsibility for assessment and case management at a prison. These should be dedicated and funded positions.

Recommendation 11

Sentence Management should properly be regarded as the central, oversight function, and should not be confused with the local co-ordination role. Accordingly, the title of the position of Manager, Sentence Management should be reinstated.

Recommendation 12

All approvals in relation to security classification and individual management plans (other than in relation to pre-release programs for life and indeterminate sentence prisoners and Special Risk prisoners) should be made at the local level, either by Assistant Superintendents (in the case of sentences up to 3 years) and the designated Superintendent (for sentences in excess of three years).

Recommendation 13

The function of the Manager, Sentence Management, and the central Sentence Management Branch, should be a monitoring role of the quality and consistency of Assessment and Case Management across the prison system. It should also retain responsibility for the determination of appeals from local decisions made in relation to assessment and case management.

Recommendation 14

Criteria for the application of security classification overrides should be developed. Professional overrides of security classification should necessarily be based on matters that are not reflected in the scoring instruments themselves.

Annexure 5

Recommendation 15

The criteria for the present minimum security classification should be reflected in a definition such that it includes.

"Prisoners who can reasonably be trusted in open conditions. Defined as presenting a low risk of escape and whose escape would not represent a danger to society or a part of it in the event of an escape."

Recommendation 16

Case Management, within all Prisons, should be re-established and substantially recast.

Recommendation 17

The philosophy behind case management should be developed by a committee consisting of representatives from:

- **Prisons Executive;**
- **Superintendents;**
- **Assistant Superintendents;**
- **Sentence Management;**
- **Assessment Officers;**
- **Unit prison officers (i.e. the pool from which case manager would be drawn); and**

Community Corrections.

Recommendation 18

The philosophical approach to case management, once developed, should be articulated and supported at the highest level in the Department.

Recommendation 19

The Training Academy should develop and provide a formal qualification in Case Management as a basic requirement of prison officer training.

Recommendation 20

A Case Officer should wherever possible be an officer on the Unit in which the prisoner is accommodated.

Recommendation 21

The report components of the AIPR software should be reviewed to make the reports more responsive to issues raised in Individual Management Plans and to reflect the overall philosophies of case management.

Annexure 5

Recommendation 22

The only "process" requirement of a Case Officer should be the preparation of quarterly contact reports (both Primary Contacts and Regular Contacts). Case Officers should not be responsible for completing Classification Reviews or IMP reviews. Those tasks should be the responsibility of an Assessment Officer on the Assessment and Case Management Team.

Recommendation 23

In completing an IMP review, the Assessment Officer should be required to:

1. **Confirm the presence of the appropriate Case Contact Reports; and**
2. **Take responsibility for seeking and documenting the input of the Case Officer as part of the IMP review.**

Recommendation 24

The IMP Review process should serve as both an occasion to check the progress of the prisoner against the IMP, but also to monitor the timeliness and quality of the Case Contacts by the relevant Case Officer.

Recommendation 25

The allocation of Case Officers and the overall control and supervision of case management should remain with the Assessment and Case Management Coordinator, being the leader of the Assessment and Case Management Team.

Recommendation 26

The Assessment and Case Management Coordinator should be responsible to the Superintendent for monitoring the key performance measures of the process requirements of the case management system.

Recommendation 27

There should be developed proper and appropriate benchmarking for the case management process, including such matters as appropriate Case Officer caseloads and the timeframes for the preparation of various reports.

Recommendation 28

The benchmarking for the case management process should be included among key performance indicators for a prison against which the performance of the Superintendent would be measured. The Superintendents of the prisons take responsibility for the implementation and support of case management at their prisons and are accountable for them being achieved.

Annexure 5

Recommendation 29

That monitoring and continuous improvement of the quality of case management in prisons should be carried out by a custodial professional practice and standards unit.

Parole and Life and Indeterminate Sentence Prisoners

Recommendation 30

The elements that currently constitute Pre-Release Programs should be, in the case of life and indeterminate sentenced prisoners and other prisoners for whom such a program is deemed necessary, should be collected together as part of a formal legislative structure. The new program should be renamed a "Re-Socialisation Program".

Recommendation 31

Re-Socialisation Programs should only be concerned with those measures required in order to equip a prisoner for re-entry into the general community.

Recommendation 32

Re-Socialisation Programs should involve components such as:

1. **Supervised contact with the community;**
2. **Day leave for the purposes of voluntary and paid employment in the community;**
3. **Home Leave;**
4. **Re-integration measures, including assistance in accessing health services, social security, accommodation services etc.;**
5. **Requirements and conditions as to satisfactory performance on the Re-Socialisation Program.**

Recommendation 33

It should be made explicit that Re-Socialisation Programs are not to be used for the purpose of treatment intervention programs or counseling that addresses the specific issues and the risk factors in a prisoner's offending behaviour (other than maintenance therapy). A pre-requisite for participation in a Re-Socialisation Programs should be that the prisoner has addressed their risk of re-offence to the satisfaction of the releasing authority.

Recommendation 34

A Re-Socialisation Program should therefore only be approved for prisoners in relation to whom it has been decided that it is for them to be released into the community.

Annexure 5

Recommendation 35

A prisoner should only be placed on a Re-Socialisation Program, in the context of a specific, provisional release date. That is, the decision to release should be made as part of the formulation of the Re-Socialisation Program.

Recommendation 36

Any breach of the Re-Socialisation Program would be grounds for termination of the Program and the release decision.

Recommendation 37

There should be a specific determination as to the successful completion of the Program, in terms of compliance with all requirements or conditions of the Program.

Recommendation 38

In the case of a prisoner who successfully completes their Re-Socialisation Program they should be released on the provisional release date, save for exceptional circumstances.

Recommendation 39

The should be statutory criteria for the re-socialisation and release of a person serving a life (or strict security life) sentence, which should be:

1. **Whether the offender is a danger to society or part of it; and**
2. **Whether the community's interest in punishment and deterrence has been met by the period served by the offender.**

Recommendation 40

There should be statutory criteria for the re-socialisation and release of a person serving sentence of indefinite imprisonment, which should be whether the offender is a danger to society or part of it (having regard to the criteria in s98(2) of the *Sentencing Act* 1995) and no other matter.

Recommendation 41

The Parole Board should be reconstituted and replaced with an Offenders Review Tribunal.

Recommendation 42

The Offender's Review Tribunal should be an independent body with the same status and powers as provided to the Parole Board under part 9 of the *Sentence Administration Act* 2003, but should have its own secretariat that is independent of the Department of Corrections.

Annexure 5

Recommendation 43

To reinforce the independence of the Offenders Review Tribunal, the responsible Minister for its administration should be the Attorney General.

Recommendation 44

The Offenders Review Tribunal should be independently funded, including being funded to call for independent reports in relation to particular prisoners and to conduct inquiries of its own.

Recommendation 45

The Chairperson of the Offenders Review Tribunal shall be a judicial member with the same qualifications as currently prescribed for the judicial member of the Parole Board under s103(2) of the *Sentence Administration Act* 2003. The Chairperson of the Tribunal should be a full time position.

Recommendation 46

There should be a Deputy Chairperson of the Offenders Review Tribunal.

Recommendation 47

The other membership of the Offenders Review Tribunal, should reflect the range of persons identified in s103(1) of the *Sentence Administration Act* 2003 in relation to the Parole Board, save that:

1. **The members appointed by the Governor (as per s103(b)) shall include a member of the community representing, or working with, victims of crime; and**
2. **The membership of the Tribunal should be increased, so as to enable the Tribunal to determine cases in simultaneous situations.**

Recommendation 48

The Offenders Review Tribunal should have the same powers as the Parole Board in relation to parole terms (Part 3, Division 4 of the *Sentence Administration Act* 2003) save for the following additional matters:

1. **In relation to any offender serving a sentence where the non-parole period is 6 years or more the Department shall provide the Tribunal with a report in relation to the offender's management as soon as practical after the offender has served 12 months of the sentence. The Tribunal is entitled to make recommendations to the Department as to the ongoing management of the offender; and**
2. **In relation to any offender serving a sentence where the non-parole period is 6 years or more, the Tribunal may, in its discretion, require the prisoner to complete a Re-Socialisation Program prior to release on parole.**

Annexure 5

Recommendation 49

In relation to life and indeterminate sentence prisoners, the Offenders Review Tribunal would have the power to order that an offender be released on parole subject to the successful completion of a Re-Socialisation Program determined by the Tribunal. The decision in relation to the release is to be determined based on the statutory criteria identified above in relation to life and indeterminate sentence prisoners respectively.

Recommendation 50

The first review date required for the consideration by the Offenders Review Tribunal of the release of an such offender on parole subject to the successful completion of a Re-Socialisation Program should be the date currently set by s18(4) of the *Sentence Administration Act* 2003.

Recommendation 51

In addition to the review date set by the *Sentence Administration Act* 2003, the Department shall provide the Tribunal with a report in relation to the offender's management as soon as practical after the offender has served 2 years of the sentence. The Tribunal is entitled to make recommendations to the Department as to the ongoing management of the offender.

Recommendation 52

Where the Offenders Review Tribunal declines to make an order for the release of such an offender on parole, the Tribunal shall be required to determine the next review date, having regard to the reasons for refusal.

Recommendation 53

In reaching a decision whether to order that an offender be released on parole subject to the successful completion of a Re-Socialisation Program the Offenders Review Tribunal shall be required to notify the victims of the offence and to have regard to their views (if any) in reaching its conclusion. Such a provision should be modelled on s145 of the *Crimes (Administration of Sentences) Act* 1999 (NSW).

Recommendation 54

The Attorney General shall have the power to make Statements of Policy in relation to the determination of decisions in relation to life and indeterminate sentence prisoners (and in relation to Parole decisions generally), to which the Offenders' Review Tribunal shall be required to have regard. This could be modelled on s28 of the *State Administrative Tribunal Act* 2004.

Annexure 5

Recommendation 55

Where the Offenders Review Tribunal either makes, or refuses to make, an order that an offender be released on parole subject to the successful completion of a Re-Socialisation Program it shall be required to provide written reasons for that decision.

Recommendation 56

The Offenders Review Tribunal shall otherwise be entitled to publish reasons for its decisions where it is in the public interest to do so.

Recommendation 57

A decision of the Offenders Review Tribunal either making, or refusing to make, an order that such an offender be released on parole subject to the successful completion of a Re-Socialisation Program shall be subject to a right of appeal to the Court of Appeal.

Recommendation 58

The persons having the right to seek review of a decision of the Offenders Review Tribunal to the Court of Appeal shall be:

1. **The offender;**
2. **The Attorney General;**
3. **The Commissioner of Corrections.**

Recommendation 59

The provisions of the Sentence Administration Act 2003 in relation to the CEO Parole shall be transferred to the Registrar of the Offenders Review Tribunal.

Recommendation 60

In relation to an appeal from a decision of the Offenders Review Tribunal, the Commission of Corrections be required to notify the victims of the offence and the Court of Appeal required to have regard to their views (if any) in reaching its conclusion.

Serious and Difficult to Manage Prisoners

Recommendation 61

The role of assessing risk of re-offending and dangerousness by clinicians and the decisions in relation to the management of those offenders should be delineated and kept separate. The same person should not perform those roles.

Annexure 5

Recommendation 62

Treating practitioners should not be engaged in treatment of prisoners and be responsible for making recommendations in relation to their management and, in particular, their release.

Recommendation 63

The substance of all contacts with prisoners by psychological staff should be documented and form part of the offender's records

Recommendation 64

There should be greater provision for oversight and supervision of clinical psychological staff, to provide a review mechanism and check on the quality of treatment.

Recommendation 65

There should be established a High Maximum Facility to accommodate those serious and difficult to manage prisoners on a longer term and more stable basis than is currently available with the Special Handling Unit.

Recommendation 66

The High Maximum Facility be one which:

1. **Is a self-contained, separate institution and subject to the management of its own Superintendent;**
2. **Has operational staff on a rotational basis to promote the integrity of security and protection and occupation health and safety;**
3. **Provides as far as possible a normalised internal living environment;**
4. **Is able to provide, within the facility, the full range of services required for prisoners;**
5. **Is able to accommodate a range of prisoners in such a way as to separate individuals who would in combination pose a risk to themselves or others, without detracting from the normalised environment.**

Recommendation 67

The High Maximum security facility be used exclusively for a separate classification, namely High Maximum, and management regime to apply to such prisoners.

Annexure 5

Recommendation 68

The High Maximum category be for prisoners presenting an extreme risk of escape or risk of extreme dangerousness to staff, other prisoners, the prison system or the community and whose risk cannot be managed safely within an existing maximum security facility

Recommendation 69

The approval authority for High Maximum be the Deputy Commissioner (Adult Custodial Corrections).

Recommendation 70

There should be a separate "management" category of Special Risk in recognition of the fact that some serious and difficult to manage offenders will inevitably progress to minimum security and to release.

Recommendation 71

The Special Risk category be for prisoners whose antecedents or unusual pattern of offending is such that the general assessment and case management tools would be inapplicable to them and that they should be managed in a different way in order to maintain public confidence in the corrections system.

Recommendation 72

The Special Risk category be managed by a Special Risk Management Committee.

Recommendation 73

The Special Risk Management Committee be the approval authority for all security classifications and individual management plans for Special Risk offenders.

Recommendation 74

An individual management plan in relation to a Special Risk offender be able to include additional conditions or security requirements that do not apply generally.

Annexure 5

Recommendation 75

In order to maintain the continuity of management of Special Risk offenders the Special Risk Management Committee should comprise:

1. **The superintendent of a nominated maximum security prison;**
2. **The superintendent of a nominated medium security prison;**
3. **The superintendent of a nominated minimum security prison;**
4. **The Deputy Commissioner (Adult Custodial Corrections); and**
5. **The Deputy Commissioner (Community and Juvenile Corrections).**

Recommendation 76

Special Risk offenders should, in the absence of some extraordinary circumstances, be managed throughout their sentence in the prisons managed by the superintendents who are members of the Special Risk Management Committee. Where, in extraordinary circumstances, a Special Risk offender serves a portion of their sentence at other than a nominated prison, the Superintendent of that prison may be co-opted to the Special Risk Management Committee for the purposes of managing that offender

Recommendation 77

The Special Risk Management Committee be the subject of particular Terms of Reference. Such Terms of Reference are to include:

1. **Entry and exit criteria for categorisation as a Special Risk Prisoner;**
2. **Review requirements;**
3. **The kinds of additional management conditions which may form part of the individual management plan of a Special Risk Offender.**

The Management of Offenders in the Community

Recommendation 78

The Department should, as a matter of priority, determine an appropriate "benchmark" for the workload of a CCO and JJO.

Recommendation 79

The Department should finalise a workload model to better allocate resources to case-management, in particular for the use of the CCO Coordinator.

Recommendation 80

It should be a requirement that all new CCOs have completed core operational training *before* assuming operational duties.

Annexure 5

Recommendation 81

The appointment as a CCO should be formalised by an instrument of appointment, which identifies the legislative status of the role and that it has duties, powers and privileges attached to it.

Recommendation 82

The pool process should be replaced with a system for recruiting which annually employs CCOs on a permanent basis, to perform the functions of CCOs in a broader "catchment" than in a single office. The annual number of FTEs engaged for CCO positions should be set at a level that meets both the annual attrition rate and a significant proportion of the relief needed. The annual intake of permanent CCOs should, as recommended above, complete core operational training *before* assuming operation duties

Recommendation 83

The placement of permanent CCOs not attached to particular branches should be managed by a head office co-ordinator, the CCO Coordinator, in consultation with the Supervisors from each branch and in accordance with guidelines designed to promote stability of placement.

Recommendation 84

Contract staff should be kept to a minimum level and reserved for those operational needs that are genuinely unforeseeable. There should be minimum period for which a contract employee may be employed. A minimum period of 3 months is recommended.

Recommendation 85

The employment of any contract CCOs should, in the absence of unforeseeable operational need:

1. **Be employed on an annual basis in accordance with the projected need of the community justice service as a whole;**
2. **Be employed prior to and participate in the core operational training for new CCOs for that year;**
3. **Be allocated to CJS centres on the basis of need by the CCO Coordinator, in consultation with Supervisors from each branch.**

Recommendation 86

Field workers within Community Corrections, should be formally divided into an entry level position and a senior field officer position.

Annexure 5

Recommendation 87

The entry level position, which would be equivalent to the existing generic CCO position would be a position that is allocated caseloads and reports of a lesser degree of complexity, in accordance with the judgement of the Senior CCO of Senior Casework Supervisor.

Recommendation 88

The position of Senior Field Officer, should perform one of two roles:

1. **Fulfil the role of case officer for caseloads and reports of a lesser degree of complexity, in accordance with the judgement of the Senior CCO of Senior Casework Supervisor, or**
2. **Perform a specialist function within a CJS Branch, such as report writing, or acting a supervisor for particular kinds of offender (e.g. sex offenders etc.).**

Recommendation 89

The promotion of CCOs to the position of Senior Field Officer should be a merit based selection, based on established criteria of skills and experience.

Recommendation 90

Sufficient additional funding should be provided to enable backfill to be provided for all CJS Branches for officers on training. The need to provide backfill for training purposes should form part of the workload model referred to above and an input into the projected need of the community justice service as a whole in establishing annual contract numbers. There should be no restriction on the capacity for Supervisors to claim backfill

Recommendation 91

The Department develop an 'in-reach' program where CCO's visit prisoners who are eligible, or may become eligible for parole prior to their release (perhaps 6 months) to engage them in release plans, community support programs and other programs to help their re-entry into the community.

The Structure of the Department of Justice

Recommendation 92

The Department of Justice be divided into two separate Departments:

1. **A Department of the Attorney General; and**
2. **A Department of Corrections.**

Annexure 5

Recommendation 93

The Department of the Attorney General, being the Department committed to the Attorney General, would be responsible for the administrative support of all of the independent courts and oversight agencies referred to in the current Ministerial division, together with the Office of the Inspector of Custodial Services, The Public Advocate and the Public Trustee. The Department of the Attorney General, would, consistent with proposed Recommendation 43 above, support the secretariat of the Offenders' Review Tribunal. Finally, the Department of the Attorney General would carry responsibility for strategic policy in relation to the criminal and civil justice systems as a whole.

Recommendation 94

The Department of Corrections, being the Department committed to the Minister for Justice (or Minister for Corrections), would be responsible for the administration of the management of offenders, and for the development of operational policy designed to achieve the aims of offender management.

Recommendation 95

There should be legislation introduced that brings together the administrative components that are currently dispersed throughout the *Prisons Act* 1981 and the *Sentence Administration Act* 2003. These *Acts* should therefore be reformed and collected in a single *Corrections Act.*

Recommendation 96

The *Corrections Act* should set out, in the legislation itself, the objectives and principles of the *Act.* Those objectives and principles would be specific to the operational issues involved in offender management. For example, the objects clause might provide:

"The purpose of this Act and the corrections system is to improve the safety of the community by—

(a) ensuring that the community-based and custodial sentences and related orders that are imposed by the courts and the Offenders Review Tribunal are administered in a safe, secure, humane, and effective manner; and

(b) assisting in the rehabilitation of offenders and their reintegration into the community, where appropriate, and so far as is reasonable and practicable in the circumstances and within the resources available, through the provision of programmes and other interventions; and

(c) providing information to the courts and the Offenders Review Tribunal to assist them in decision-making."

Annexure 5

Recommendation 97

The general principles which might be included in the *Corrections Act* might read as follows:

"(1) The principles that guide the operation of the corrections system are that—

(a) the maintenance of public safety is the paramount consideration in decisions about the management of persons under control or supervision;

(b) victims' interests must be considered in decisions related to the management of persons under control or supervision;

(c) in order to reduce the risk of reoffending, the cultural background, ethnic identity, and language of offenders must, where appropriate and to the extent practicable within the resources available, be taken into account—

(i) in developing and providing rehabilitative programmes and other interventions intended to effectively assist the rehabilitation and reintegration of offenders into the community; and

(ii) in sentence planning and management of offenders;

(d) offenders must, where appropriate and so far as is reasonable and practicable in the circumstances, be provided with access to any process designed to promote restorative justice between offenders and victims;

(e) an offender's family must, so far as is reasonable and practicable in the circumstances and within the resources available, be recognised and involved in—

(i) decisions related to sentence planning and management, and the rehabilitation and reintegration of the offender into the community; and

(ii) planning for participation by the offender in programmes, services, and activities in the course of his or her sentence;

(f) the corrections system must ensure the fair treatment of persons under control or supervision by

(i) providing those persons with information about the rules, obligations, and entitlements that affect them; and

(ii) ensuring that decisions about those persons are taken in a fair and reasonable way and that those persons have access to an effective complaints procedure;

(g) sentences and orders must not be administered more restrictively than is reasonably necessary to ensure the maintenance of the law and the safety of the public, corrections staff, and persons under control or supervision;

(h) offenders must, so far as is reasonable and practicable in the circumstances within the resources available, be given access to activities that may contribute to their rehabilitation and reintegration into the community; and

(i) contact between prisoners and their families must be encouraged and supported, so far as is reasonable and practicable and within the resources available, and to the extent that this contact is consistent with the maintenance of safety and security requirements.

(2) Persons who exercise powers and duties under this Act or any regulations made under this Act must take into account those principles set out in subsection (1) that are applicable (if any), so far as is practicable in the circumstances."

Recommendation 98

The co-ordination of both Community Corrections and Custodial Corrections; would be amongst the primary responsibilities of the principal statutory office holder under the *Corrections Act*.

Recommendation 99

The principal statutory office holder under the *Corrections Act* be a position identified in the legislation as the Commissioner of Corrections. The Commissioner of Corrections be a position appointed and removed by the Governor.

Recommendation 100

The Commissioner of Corrections would be responsible for the administration of the *Corrections Act* and the pursuit of the objectives and principles of the *Act*. Subject to certain exceptions, the Commissioner of Corrections would be the repository of all of the statutory powers under the *Corrections Act*, in relation to both Custodial institutions (Prisons) and Community Corrections. This would include the powers currently vested in the CEO under both the *Prisons Act* 1981 and the *Sentence Administration Act* 2003. The powers, however, would extend beyond those currently conferred and, in particular would include, the responsibility for the employment of all staff, including prison officers and CCOs.

Recommendation 101

The Commissioner of Corrections would also be appointed as CEO of the Department of Corrections under s45 of the *Public Sector Management Act* 1994. That appointment is to be separate and distinct from the Commissioner's functions under the *Corrections Act*.

Recommendation 102

As a matter of administration, that the Department of Corrections relevantly be the "department" for the purposes of the *Young Offenders Act* 1994 and that the Corrections Act enable the Commissioner of Corrections to fulfil such functions as may be conferred upon him or her as the chief executive officer of a department under the *Public Sector Management Act* 1994.

Annexure 5

Recommendation 103

The Corrections Act, should make provision for the appointment of Deputy Commissioners and Assistant Commissioners to be respectively charged with the operational responsibility of such aspects of the *Act* as such Commissioner may from time to time direct.

Recommendation 104

In that regard, the *Corrections Act* should specifically require that the powers of the Commissioner under the *Corrections Act* shall be, as far as possible, delegated to those officers having operational responsibility for their areas of responsibility.

Recommendation 105

In the first instance it is recommended that there be appointed three Deputy Commissioners, principally responsible for the three operational areas of the Department, namely:

1. **Deputy Commissioner (Community and Juvenile Corrections);**
2. **Deputy Commissioner (Adult Custodial Corrections); and**
3. **Deputy Commissioner (Professional Development and Offender Management).**

Recommendation 106

The three proposed Deputy Commissioners should be afforded the same status.

Recommendation 107

The Deputy Commissioner (Professional Development and Offender Management) would be responsible for standards and service delivery across the entirety of correctional operations.

Recommendation 108

A Corrections Training Academy, being an amalgamation of the training units currently operating within the Department of Justice, be established as an essential component of the Department of Corrections structure.

Recommendation 109

While professional development across the organisation is the responsibility of a single Deputy Commissioner reporting to the Commissioner of Corrections, individual units would be responsible for monitoring custodial and community corrections standards respectively.

Annexure 5

Recommendation 110

The Internal Audit, Internal Investigations, complaints and grievance oversight functions would remain separate from any operational area and be under the control of an Assistant Commissioner (Professional Standards). Those functions would remain autonomous and the Assistant Commissioner would report directly to the Commissioner for Corrections.

Recommendation 111

The Internal Audit, Internal Investigations, complaints and grievance oversight functions be separated from professional development so as to provide a clear distinction between the investigation of misconduct and the development and continuous improvement of standards.

Recommendation 112

The Deputy Commissioner (Professional Development and Offender Management) have responsibility, in consultation with the operational areas, for developing and maintaining the key performance indicators of the operational areas.

Recommendation 113

The accountable bodies for the key performance indicators be the level of the organisation at which the relevant delegations from the Commissioner of Corrections are made.

Recommendation 114

The statutory role and function of the local operational head in relation to each aspect of corrections, namely the Superintendents (in the case of custodial institutions) and the Supervisors (in the case of community centres), should be specified and identified in equivalent terms. It is these positions to which the principal operational responsibilities of the Commissioner of Corrections should, in the ordinary course, be delegated and which must be accountable for meeting the performance criteria. Amongst the performance criteria to be developed should be requirements for Superintendents and Supervisors to have regard to and involvement with the community in relation to the administration of their facilities.

Annexure 5

Recommendation 115

The *Corrections Act* should specifically recognise, as the equivalent role in relation to each aspect of corrections the principal field position, namely prison officers (in the case of custodial institutions) and CCOs (in the case of community centres). The specific statutory powers conferred on each officer, as currently found in the *Prisons Act* 1981 and *Sentence Administration Act* 2003 respectively, would therefore be contained in the *Corrections Act*. A number of those powers, such as the power to use force or give lawful directions to offenders, would remain independently vested in the position of the officer (as opposed to simply delegations). The legislation should provide that the officer is responsible to the Commissioner for Corrections for the exercise of those powers

Recommendation 116

That the necessary legislative changes to support the suggested changes in structure be attended to as a matter of priority.

Recommendation 117

There be established a higher-level steering group and implementation team to have carriage of the change program recommended by the Inquiry. The implementation committee should be chaired independently of the Department and include representatives from the Department of the Premier and Cabinet, Treasury, Adult Custodial Corrections, Community and Juvenile Corrections, the Department of the Attorney General and the State Solicitor.

Annexure 6

Witness List				
Name	**Organisation**	**Title**	**Date Appeared**	**Transcript**
Gary Robert Saunders	Western Australian Police	Detective Sergeant, Police Prison Unit	10 June 2005 3 August 2005	94-100 1080-1087
Alma Jean Kenworthy	Department of Justice	Coordinator of Prison Placement	10 June 2005 13 June 2005	100-122 273-285
Andrew Neville Pierre	Department of Justice	First Class Prison Officer, Bunbury Regional Prison	10 June 2005	123-181
David John Pattendon	Department of Justice	A/Operations Manager, Bunbury Regional Prison	10 June 2005	181-198
Graham John Bond	Department of Justice	Operations Manager, Karnet Prison Farm	13 June 2005	200-230
John Maxwell Garwood	Department of Justice	Senior Prison Officer, Bunbury Regional Prison	13 June 2005	232-249 285-289
Craig Kenneth Johnston	Department of Justice	First Class Prison Officer, Bunbury Regional Prison	13 June 2005	250-271
Kim Frances Doyle	Department of Justice	Manager Sentence Management	13 June 2005 14 June 2005 3 August 2005 4 August 2005	289-300 302-378 1122-1137 1139-1162
Denis Earl Bandy	Department of Justice	Manager Assessment, Hakea Prison	14 June 2005 16 June 2005	378-392 394-440
Brian Ellis	Department of Justice	Manager Strategic Development	16 June 2005 17 June 2005	440-467 469-505
Linda Marie Louise Leske	Department of Justice	Contracts Officer, Custodial Contracts	17 June 2005	506-518 539-561
James Andrew McGinty		Attorney General; Minister for Health; Electoral Affairs	17 June 2005	519-539
Garry John Wibberley	Western Australian Police	Detective Senior Sergeant	14 July 2005 15 July 2005	653-660 662-669
Angela Rabbitt	Department of Justice	Manager Parole Release	15 July 2005 18 July 2005	670-750 752-776
Malcolm Alexander McGregor	Department of Justice	Prison Officer Karnet Prison Farm	18 July 2005	777-787
Barry John Cram	Department of Justice	Director Offender Services	18 July 2005	788-795
Michelle Anne Hicks	Department of Justice	Manager Program Coordination & Standards	18 July 2005	795-816
Keith Percival Flynn	Department of Justice	Acting General Manager Public Prisons	18 July 2005	816-827
Frederick James Dunstan	Department of Justice	Superintendent Wooroloo Prison Farm	18 July 2005	827-843
Christine Deborah Ginbey	Department of Justice	Acting Manager Strategic Services	19 July 2005	845-895
Andrew Deans McClue	Department of Justice	Superintendent Karnet Prison Farm	19 July 2005	895-904 931-937
John D'Orazio		Minister for Justice and Small Business	19 July 2005	904-930
Brian Anthony Thomas-Peter	Raeside Clinic, Brimingham, UK	Director, Physiological Services	3 August 2005	1050-1080
Sean Devereux	Department of Justice	Senior Prison Officer, Emergency Support Group	3 August 2005	1087-1096
Mark Raymond Glassborow	Department of Justice	Prison Officer, Casuarina Prison	3 August 2005	1097-1122
David John Hide		Former Prison Officer	4 August 2005 5 August 2005	1162-1189 1192-1203
Witness Name Suppressed	Department of Justice	Suppressed	5 August 2005	1203-1231
Alan Roy Parke	Department of Justice		5 August 2005	1231-1262

Annexure 6

Witness List				
Name	**Organisation**	**Title**	**Date Appeared**	**Transcript**
Michael Robert Henderson	Department of Justice	Superintendent Bandyup Women's Prison	5 August 2005 8 August 2005	1262-1287 1289-1305
Christine Anne Laird	Department of Justice	Manager, Educational and Vocational Training	8 August 2005	1306-1321
John Maxwell Garwood	Department of Justice	Senior Prison Officer, Bunbury Regional Prison	8 August 2005	1322-1341
Andrew Leslie Smith	Department of Justice	Superintendent Bunbury Regional Prison	8 August 2005	1342-1359
Leslie John Harrison	Department of Justice	Principal Clinical Consultant	9 August 2005	1362-1448
Steven John Walters	Department of Justice	Project Manager Custodial Applications	10 August 2005	1451-1457
Jacqueline Terese Tang	Department of Justice	Executive Director Community & Juvenile Justice	10 August 2005 2 September 2005	1457-1503 2005-2040
Terence William Simpson		Former General Manager Prison Services	10 August 2005	1504-1536
Sonia Anne Gianatti	Department of Justice	Manager Offender Services Casuarina Prison	10 August 2005 11 August 2005	1536-1549 1551-1580
Eva Leona Kovak		Former Community Corrections Officer	30 August 2005	1668-1723
Sharon-Lee Holland	Department of Justice	Senior Community Corrections Officer, Victoria Park	30 August 2005 31 August 2005	1723-1763 1765-1781
Matilda Ruth Prowse	Department of Justice	Manager Community Justice Services Training Unit	31 August 2005	1781-1799
William Estes Greble	Department of Justice	Community Corrections Officer	31 August 2005	1799-1832
Lydia Marie Mason		Former Community Corrections Officer	31 August 2005	1832-1854
Nicholas Papandreou	Department of Justice	Acting Director Community Justice Services North	1 September 2005	1857-1884
Janice Shirley Snook	Department of Justice	Acting Manager Parole Board	1 September 2005	1884-1980
Neil Andrew Morgan	University of Western Australia	Professor, Law School	1 September 2005	1909-1942
Michael Patrick Cullen	Department of Justice	Manager, Profession Practice & Standards Unit, Community Justice Services	2 September 2005	1944-1977
Michael Herbert Johnson	Department of Justice	General Manager, Community Justice Services	2 September 2005	1978-2004
Alan Piper	-	Former Director General, Department of Justice	8 September 2005	2042-2121

Annexure 7

Inquiry Team

Hon Dennis Mahoney AO QC	Special Inquirer
Peter Quinlan	Counsel Assisting
Nicola Findson	Instructing Solicitor
Lisa Ward	Legal Officer
Peter Byrne	Executive Director
Michele Howard	Manager, Finance & Administration
Elaine North	Executive Assistant to Inquiry
Patricia Owens	Inquiry Administration Assistant
Kathryn Robertson	Inquiry Administration Assistant
Rodney Savill	Administration Officer
Gordon Robertson	Principal Analyst
Jane Burn	Senior Analyst
Anna Clippingdale	Senior Analyst
Kevin Dolman	Senior Analyst
John Lukin	Senior Analyst
Mitch Sefton	Analyst
Kieran Artelaris	Analyst
Inspector Jeff Ellis	Investigator
Detective Senior Sergeant John Wibberley	Investigator
Detective Sergeant Gary Saunders	Investigator

Annexure 8

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