

## WOMEN AS VICTIMS

In addition to the specific responses here described, Family and Children's Services advises of its support for and contribution to the implementation of recommendations 76 to 94 through the Restraining Orders Reference Committee, and to all recommendations relating to violence against women through membership of the Family and Domestic Violence Taskforce.

Additionally, the Ministerial Taskforce on Families in Western Australia has studied the Report of the Chief Justice's Taskforce and reinforced the broad thrust of its recommendations pertaining to family and domestic violence in its report *WA Families - Our Future*.

**Recommendation 64:** *"The Attorney General be made responsible for domestic violence policy and the design, co-ordination and monitoring of prevention strategies. (5.145)*

**Response:** The recommendation that a designated Minister is made responsible for these matters is supported, though not the recommendation that this necessarily be the Attorney General. The carriage of responsibility for domestic violence is currently (1997) with the Minister for Women's Interests.

**Recommendation 65:** *"The Victim Support Service (VSS) be resourced to provide a specific domestic violence program for victims who come in contact with the criminal justice system." (5.130)*

**Response:** The Ministry of Justice's Victim Support Service provides a range of services to the victims of domestic violence. This service is being progressively expanded to country regions. Legal Aid's Domestic Violence Legal Unit has provided the VSS with information about its function. Liaison between these two services is critical to ensuring professional legal advice is available on issues arising from violence, for example criminal charges, criminal injuries compensation and family law issues. The recommendation will be further addressed by the Government's Action Plan on Family and Domestic Violence.

**Recommendation 66:** *"An independent, non partisan body be established to monitor the treatment of victims of domestic violence within the community and to ensure coordination of all governmental departments and private agencies who offer services to victims. Membership should be composed of, but not limited to, individuals from church organisations, marriage guidance associations, refuges, legal aid, community legal centres, health services, and other relevant community groups and public agencies." (5.137)*

**Response:** In April 1997 the Domestic Violence Prevention Unit has advised of the following:

An Implementation Advisory Committee (IAC) was established in September 1995 comprised of representatives from all relevant Government and non government agencies providing statewide services in the area of domestic violence.

The IAC has responsibility to provide advice on the implementation of the Family and Domestic Violence Action Plan to the Justice Coordinating Council, through the Domestic Violence Prevention Unit, and to ensure effective implementation of the 51 Strategies and Commitments outlined in the Plan.

**Recommendation 67:** *"The State of Western Australia adopt the following declarations, charters and recommendations and strive to ensure that all laws, governmental policies, procedure and services abide by and meet the guidelines set out therein:*

- *National Committee on Violence Against Women Recommendations: October 1992*
- *UN Declaration of Basic Principles of Justice Relating to Victims of Crime 1986*
- *UN Declaration on the Elimination of Violence Against Women, when declared.*
- *Western Australian Charter of Victims' Rights (5.141)*

**Response:**

In April 1997 the Domestic Violence Prevention Unit has advised of the following:

The Family and Domestic Violence Action Plan recognises that family and domestic violence is a crime and victims and their families should expect full protection from the justice system and be offered crisis and ongoing support services as required. For this reason the Plan highlighted the need to:

- maintain and improve services and support to all victims;
- place a greater emphasis on programs for perpetrators and potential perpetrators;
- change community attitudes through a long term community education campaign;
- build on existing structures and encourage "grass roots" partnerships; and
- recognise the particular difficulties faced by Aboriginal women and their families in dealing with family violence.

These strategies were endorsed by Cabinet on 11 September 1995 and launched by the Premier in November 1995.

**Recommendation 68:** *"The University Law Schools incorporate within their curriculums specific units to address domestic violence." (5.94)*

**Response:**

The Law School at the University of Western Australia advises that domestic violence is considered in the context of 3rd and 4th year optional units, Criminology and Family Law. Murdoch University Law School advises that domestic violence is considered to varying degrees in the following units:- Feminist Legal Theory, Criminal Law and Procedure (a compulsory unit), Family Law and Children and the Law.

**Recommendation 69:** *"The Law Society of Western Australia provide continuing legal education programs and professional outreach which will educate lawyers on the special needs of victims of domestic violence." (5.95)*

**Response:** See response to Recommendations 16 - 25.

**Recommendation 70:** *"The Evidence Act be amended to take account of multiple intra familial sexual abuse so that in an appropriate case it will be a matter for a jury to determine whether the evidence of a sibling assists in the determination of the credit of a complainant." (8.58)*

**Response:** The Ministry of Justice will co-ordinate the preparation of advice to the Attorney General following consultation with relevant parties, in particular the DPP, in respect of this matter.

**Recommendation 71:** *"Guidelines be made available to the judiciary, lawyers and juries that clarify matters such as intrinsic biases in sexual assault trials and which emphasise that sexual assault is a crime of violence and violation of human rights. The guidelines be culturally and regionally sensitive." (5.38)*

**Response:** The Ministry of Justice will further research this recommendation.

**Recommendation 72:** *"Aboriginal women educators be appointed to go into the field and educate women through community based programs concerning sexual abuse and family violence." (4.99)*

**Response:** This recommendation is addressed in the Government's Action Plan on Family and Domestic Violence which is being co-ordinated by the recently established Domestic Violence Prevention Unit.

**Recommendation 73:** *"There be an evaluation of how Victim Impact Statements are used and their impact upon victims of domestic violence in court." (5.101)*

**Response:** The Ministry of Justice has approved two applications from law students to evaluate Victim Impact Statements in Western Australia.

The Review of the Operations of the Effectiveness of the Victims of Crime Act made a number of recommendations in relation to Victim Impact Statements, including that the Ministry of Justice examine ways of collecting data on Victim Impact Statements presented in WA, courts in order to monitor their use and to assist in future evaluations of their effectiveness. These are being progressed through an implementation committee.

**Recommendation 74:** *"The response by the police in matters involving violence against women should be the same as that involving any other violence in our society." (6.22)*

**Response:** The Police Service<sup>3</sup> reports working with other agencies to establish procedures and policies on all matters raised in this recommendation.

<sup>3</sup> Police Service refers to the Western Australian Police Department

Further, the recommendation is addressed in the Government's Action Plan on Family and Domestic Violence.

The Legal Aid Domestic Violence Legal Unit would be able to provide training of this nature to the Police Service however the unit is not in a position to be able to cover costs associated with an ongoing training project of this nature. Discussions are currently being held with the Police Service to this end.

**Recommendation 75:** *"The Attorney General have carriage of the policy on violence against women. The committee calls on Government to start a committed, co-ordinated and concentrated campaign of awareness."* (5.7)

**Response:** See response to Recommendation 64 above.

**Recommendation 76:** *"A review of the system of restraining orders be undertaken and Dr Ralph's 'Report on the Effectiveness of Restraining Orders for Protecting Women from Domestic Violence' be accepted and the recommendations of the report be implemented."* (4.98) (6.21) (A. Robins and V. French cannot endorse this recommendation, not having seen the Report.)

**Response:** An inter-agency committee chaired by the Ministry of Justice and including a Magistrate reported to the Attorney General on this recommendation in July 1995. The *Restraining Orders Bill* was passed by the Legislative Council 26 March 1997. Second reading in Legislative Assembly 8 April 1997 and is awaiting the second reading debate. The new legislation will provide for:

- a distinction between Violence Restraining Orders (relating to protection from violence) and Misconduct Restraining Orders (relating to damage to property or disorderly conduct).
- firearms to be seized where a Violence Restraining Order is made against a person;
- telephone applications for Violence Restraining Orders by victims in isolated locations and at times outside normal working hours; and
- alternate service of Violence Restraining Orders if service is not effected within 48 hours.

**Recommendation 77:** *"That a system be developed whereby complainants, defendants or applicants for restraining orders are provided with a list of organisations or persons who could be of help to them (such as provided by the list from the Family Court)."* (1.4.2.12)

**Response:** The recommendation is supported by the Ministry of Justice and action will be taken to give effect to it in conjunction with implementation of the proposed new legislation relating to restraining orders.

*Recommendation 78: "That applications for restraining orders be heard in chambers or in a closed court." (1.5.33)*

**Response:** See response to Recommendation 76.

*Recommendation 79: "All those charged with the protection of a woman who has made an application for a restraining order, must speed up their response. The safety of the victim and her children, if she has any, must be given the highest priority." (6.25)*

*Recommendation 80: "Courts/Justices must use whatever means necessary to speed the restraining orders to the Police." (6.25)*

**Response (79-80):** These recommendations have been the subject of a pilot Total Quality Management Project in the Joondalup Court. The proposed new legislation relating to restraining orders is expected to give further effect to both Recommendations (see response to Recommendation 76 above).

*Recommendation 81: "A number of copies of the Restraining Order or Interim Restraining Order be made and supplied to the woman so that she can alert people in her environment to the danger she is in." (6.25)*

**Response:** See response to Recommendation 76.

*Recommendation 82: "Police Standing Orders be amended to express the clear direction that responsibility for obtaining restraining orders lies primarily with the Police. Police training must be clear and unambiguous on the criminal status of domestic violence and the responsibility of Police to lay charges and to initiate restraining orders. Police training and directions must make clear that this responsibility is not discretionary in any way. Most specifically the decision to charge a perpetrator and initiate an order against him must not be an issue for the discretion of the victim." (6.25)*

**Response:** Police Policy and Procedure (PAP/13) Family and Domestic Violence, clearly states that family and domestic violence shall be treated as seriously as other forms of violent crime in the community; the law is to be applied where there is evidence that an offence has been committed; and the Police should provide every assistance to victims requiring Restraining Orders. This may include making application on behalf of the victim for their protection.

*Recommendation 83: "A 'red alert' high priority be given to service of restraining orders to domestic violence and sexual assault." (6.25)*

**Response (79-83):** Police Policy and Procedure PAP/13 (revised) states that "the highest priority is to be given to the service of Restraining Orders in relation to Domestic Violence".

*Recommendation 84: "Where a restraining order is made in circumstances concerned with personal violence or threats there should*

*be automatic revocation of the defendant's Firearms Licence and confiscation of any firearms." (6.25)*

**Response:** Recent amendments to the *Firearms Act* have given effect to this recommendation. Police and Procedure PAP/13 (revised) refers to Section 24 (2) *Firearms Act* which allows police to seize firearms and ammunition if it is believed that the person licenced or authorised to possess it may cause harm to another.

**Recommendation 85:** *"That induction of and training for, clerks of courts include training for support to women victims to assist them to make successful and speedy applications." (6.28)*

**Response:** Training sessions have been conducted with counter staff based at the Court of Petty Sessions Perth (Central Law Courts) and focused on providing appropriate responses and assistance to victims of domestic violence when applying for restraining orders. Plans are under way to expand the training to include officers from all metropolitan and country courts.

**Recommendation 86:** *"That counselling facilities similar to those available at the Family Court be established at Courts of Petty Sessions for the assistance of parties to Restraining Order Applications." (6A.6)*

**Response:** The provision of victims rooms and other facilities will be included as part of the planning for all future court building projects. Counselling support for victims of domestic violence is available from the Victim Support Service (Ministry of Justice) and from other agencies. This matter will be further considered by the Domestic Violence Prevention Unit in the implementation of the Action Plan on Family and Domestic violence.

**Recommendation 87:** *"That the Judiciary receive ongoing and compulsory education to ensure that notions of presentation do not unwittingly discriminate against women who are applicants for restraining orders for domestic violence." (6.31)*

**Response:** This recommendation will be referred by the Attorney General to the Chief Justice for his advice.

**Recommendation 88:** *"That women who wish to be represented by an advocate at Court hearings for restraining orders have the right to be so represented, and be encouraged to take up this right." (6.32)*

**Response:** The Domestic Violence Legal Unit provides an advocacy and advice service at the Central Law Courts and at other metropolitan courts where defended matters are heard. Any further extension of the service is subject to availability of additional funds.

**Recommendation 89:** *"That Restraining Orders for personal/domestic violence be differentiated from those not related to violence, by being named Protection Orders (Family Violence) or Violence Orders." (6.34)*

**Response:** See response to Recommendation 76.

**Recommendation 90:** *"That legislation be passed to ensure portability of such Restraining Orders made in Western Australia to other jurisdictions." (6.36)*

**Response:** The *Justices Amendment Act 1994* has given effect to this recommendation.

**Recommendation 91:** *"That, within the new category of Orders taken out for personal/domestic violence, there be a priority classification for the most urgent cases." (6.37)*

**Response:** The purpose of Violence Restraining Orders referred to in this recommendation is to provide a quick and effective response to a situation of violence. Priority response will be attached to these orders. See also response to Recommendation 76.

**Recommendation 92:** *"The Justices Act be amended in relation to Mode of Service to allow for a variety of means of serving summonses - including FAX, electronic mail, multiple copies to be sent to the workplace, last known address, etc." (6.40) (A. Robins and V. French wish to record their disagreement with this recommendation.)*

**Response:** The proposed new restraining order legislation will permit alternate service.

**Recommendation 93:** *"The Justices Act be reviewed with a view to altering practices, so that restraining orders may be obtained after hours by telephone in special circumstances." (6.42) (A. Robins and V. French wish to record their disagreement with this recommendation.)*

**Response:** See response to Recommendation 76.

**Recommendation 94:** *"Where it is desirable, but not possible, to obtain a restraining order after hours, police should be able to detain alleged perpetrators for the purpose of protecting the woman until such time as the police can obtain the order." (6.43)*

**Response:** Access to telephone orders (see response to Recommendation 76) should obviate the need for such detention.

**Recommendation 95:** *"A system of duty magistrates or justices be available to hear applications and make orders after hours." (6.44)*

**Response:** The intent of this recommendation will be addressed in the implementation of the proposed new restraining orders legislation. See also response to Recommendation 76.

**Recommendation 96:** *"Bail conditions be set that the perpetrator not be allowed to return home or have contact with the victim if there is any likelihood of violence re-occurring." (6.47)*

**Response:** The *Bail Act 1982* provides that a Judicial Officer may impose conditions on a defendant's conduct and place of residence to ensure

that a defendant does not endanger the safety, welfare or property of any person. Under recent amendments to the *Bail Act*, bail will be denied if the suspect is already on bail on a stalking charge.

*Recommendation 97: "Detention to be used as necessary to ensure that perpetrator/alleged perpetrator does not commit further violence or threaten the victim." (6.48)*

**Response:** Existing powers of arrest are adequate. Where appropriate the court may order remand in custody or impose a custodial sentence.

*Recommendation 98: "Judicial Officers have compulsory training to ensure an understanding of the nature and danger of private violence." (6.49)*

**Response:** This recommendation will be referred by the Attorney General to the Chief Justice for his consideration.

*Recommendation 99: "Applications be able to be made by affidavit, rather than by the victim's personal appearance in court, especially at subsequent hearings where the defendant is more likely to be present." (6.51)*

**Response:** This matter addressed in the proposed new restraining orders legislation. (See response to Recommendation 76).

*Recommendation 100: "Magistrates and justices be more specific in their instructions to the defendant." (6.53)*

**Response:** This recommendation will be referred by the Attorney General to the Chief Justice for his consideration

*Recommendation 101: "Police be required to investigate the possibility of laying charges where the evidence given in an application for a restraining order is of serious threats or actions of sexual or physical violence." (6.54)*

**Response:** Victims of crime are encouraged to report such matters to the police at the earliest time to ensure all available evidence can be gathered to support allegations.

*Recommendation 102: "A situation of domestic violence invoke Breach of Peace procedures only if this is the best or most immediate legal means to protect a woman who is in danger of violence." (6.57)*

**Response:** The Action Plan on Family and Domestic Violence provides an overall strategy for Government agency response to family and domestic violence. Again, this matter is covered in Legal Aid's domestic violence training program.

*Recommendation 103: "On an ex parte application for a restraining order, if the Magistrate considers that an offence has occurred, the complainant is to be referred to the Police Unit whose duty it will be to represent the complainant at the confirmation hearing." (6.60)*



**Response:** The Report of the Restraining Orders Review Committee (see Recommendation 76) has recommended that Police Officers take a more proactive role in making applications for Protection Orders.

**Recommendation 104:** *"Discretionary powers of Police in connection with alleged assaults on women be the subject of ongoing review by the Victims Advisory Committee which reports directly to the Attorney General. (6.62)*

**Response:** This recommendation has been referred to the Chairperson of the Victims Advisory Committee for consideration and advice.

**Recommendation 105:** *"Police Standing Orders to require station records to clearly disclose the number of complaints and attendances for a particular household and the time lag between receipt of a complaint and Police attendance." (6.63)*

**Response:** The use of Family Incident Reports reflects the intent of the recommendation.

**Recommendation 106:** *"That the Armadale Domestic Violence Project be adopted Statewide by the Police Department." (6.65)*

**Response:** The Action Program on Family and Domestic Violence addresses this recommendation. It should be noted that the recommendation is not fully supported by Aboriginal people.

**Recommendation 107:** *"Police Standing Orders give increased priority to complaints concerning breaches of restraining orders." (6.67)*

**Response:** This matter was addressed by the Restraining Orders Review Committee (see response to Recommendation 76). It was also the subject of consideration by the Family Unit of the Youth, Family and Ethnic Affairs Branch of the Police Service.

**Recommendation 108:** *"Increase penalties (present maximum: \$1,000 or 6 months in gaol) for breaches of restraining orders." (6.68)*

**Response:** The Criminal Law Amendment Act 1994 increased the penalty for breach of a restraining order to 18 months imprisonment or a fine of \$6,000. In addition the Act prescribed the offence of breach of a restraining order as a "serious offence" under Schedule 2 to the Bail Act 1982.

#### PROTECTION OF ABORIGINAL WOMEN FROM VIOLENCE

**Recommendation 109:** *"Court services and/or the Police Department develop a strategy to better inform those people going through the process of obtaining restraining orders of the realities and practicalities of the steps of the process, in order to minimise the trauma which can result from a complete lack of knowledge or understanding of these processes." (4.128)*

**Response:** This recommendation will be addressed in the implementation of the proposed new restraining orders legislation.

**Recommendation 110:** *"An appropriately and sensitively staffed unit be established within the courts, wherever possible, for the purpose of giving a detailed explanation to both the victim and the perpetrator after a restraining order is issued of what the restraining order means for both parties." (6.71)*

**Response:** This recommendation in its present form is not supported by the Ministry of Justice. The Ministry does not see the need for a special unit for this purpose, nor would it seem practical. Rather the function would be better performed by appropriate training of existing court staff.

**Recommendation 111:** *"An active policy be initiated, of recruitment of Aboriginal women and men to the Police Force, not as Police Aides but as Officers." (6.72) (4.151)*

**Response:** In May 1996, the Police Service launched an advertising campaign to encourage female applicants and members from culturally and linguistically diverse backgrounds to apply for police positions. As a result, 30 per cent of all applicants are now female.

In addition, the Western Australian Police Service formed strategic partnerships with industry groups. These partnerships have resulted in the introduction of a Certificate 1 Preparation for Public Sector Employment (Police) Program and a Program entitled "Preparation Course for Vocations in Law Enforcement". Both courses assist adult learners from indigenous and culturally diverse backgrounds to acquire the necessary skills to apply for positions within the Police Service.

Part of the recruitment program includes the implementation of Entrance Evaluation and Physical Performance Evaluation that has benchmarks and standards to ensure reliability and equity. These courses will assist and encourage more Aboriginal people, particularly Aboriginal women, into the recruitment system.

**Recommendation 112:** *"The role and powers of Police Aides be subject to regular review in recognition of the unique nature of the Police Aide function and possible difficulties inherent in it for both the Aides themselves and the Aboriginal community." (6.73)*

**Response:** The Aboriginal Affairs Branch of the Police Service, in association with local regional police offices, undertakes a continual review of the function and role of police aides in both metropolitan and country regions. The focus of Aboriginal Police Aides, now titled Aboriginal Police Liaison Officers, is now a liaison role.

**Recommendation 113:** *"Interpreters need to be skilled in explaining legal terminology and legal processes to Aboriginal women. A general facility with an Aboriginal language or dialect is not enough." (6.74)*

**Response:** The Aboriginal Legal Service currently makes arrangements for the provision of interpreters for Aboriginal persons. Revised Ministry information brochures will also assist in improving understanding of legal terminology and process. A Ministry of Justice Language Services Plan is currently being developed.

**Recommendation 114:** *"Police Training include a compulsory and ongoing cross-cultural awareness component to increase serving officers sensitivity to the reality and relevance of cultural difference and to optimise the use of Police powers to protect Aboriginal women and their families from violence." (6.75) (4.154-156)*

**Response:** The Police Service advises that training at in-service level includes a compulsory and ongoing cross-cultural component. The cross cultural awareness training now delivered within the Police Service is modelled on the Ministry of Justice package. Cultural awareness training relating to all other cultures is provided by the Department of Training. Both of these units aim to develop a greater sensitivity and awareness by police officers to other cultures. Newly transferred officers receive a period of cultural orientation delivered by respected members of the local Aboriginal community.

**Recommendation 115:** *"Mediation between partners be acknowledged to be inappropriate where there is a history of abuse or continuing violence in the relationship. However, women and their abusers both require culturally sensitive, ongoing counselling to move beyond violence." (6.76)*

**Response:** This recommendation is supported by the Ministry of Justice through its Aboriginal Alternative Disputes Resolution Service, but not in its current wording. Opportunities for appropriate alternative dispute resolution in cases of domestic violence involving Aboriginal people require further consideration.

**Recommendation 116:** *"Courts and Police must take into sufficient account the reality of inter-family feuding as a frequent accompaniment to domestic violence. Aboriginal women who invoke the legal system to stop domestic violence are often at risk of further violence from the defendant's family. It is essential that support is given to the woman to continue, especially so if she is subjected to harassment or threats." (6.77)*

**Response:** Inter-family feuding, frequently accompanied by incidents of domestic and family violence, is addressed by the Police Service in a number of ways including the employment of Aboriginal Police Aides and the establishment of the Special Government Committee on Aboriginal/Police and Community Relations comprising representatives from Aboriginal communities, police and other relevant Government agencies. The Action Plan on Family and Domestic Violence addresses this recommendation.

**Recommendation 117:** *"Courts and police must together ensure the swift service and enforcement of a restraining order, or interim order, as soon as it is issued." (6.79)*

**Response:** Procedures have been piloted at the Joondalup Court which give effect to this recommendation as it relates to the serving of orders. See also response to Recommendation 76.

*Recommendation 118: "Courts of Petty Sessions identify restraining orders to be served on Aboriginal people and have these Orders directed to the Aboriginal Affairs Unit of the WA Police Force (where that Unit is available), so that they can be served in the most expedient manner possible." (4.126)*

**Response:** While the intent of the recommendation is acknowledged and practiced by the Police Service whenever possible, the limited resources of the Aboriginal Affairs Branch necessarily restrict this practice.

*Recommendation 119: "The State has a responsibility to prosecute in sexual assault cases. (5.47)*

**Response:** This recommendation is to be referred to the Director of Public Prosecutions for comment.

*Recommendation 120: "The Review of the Bail Act be supported and serious consideration be given to the safety needs of the victims of sexual assault." (5.51)*

**Response:** A number of procedural amendments to the *Bail Act* have been drafted although a priority has not been obtained for the introduction of the Bill in 1997. Consideration is currently being given to a complete review of the *Bail Act*.

*Recommendation 121: "Safe places be established for the protection of women and children victims of assault to be funded by the Commonwealth." (4.101)*

**Response:** This recommendation is addressed in the Government's Action Plan on Family and Domestic Violence.

*Recommendation 122: "Stalking legislation be introduced in Western Australia as a matter of urgency." (8.54)*

**Response:** This recommendation was effected by the *Criminal Law Amendment Bill* which was enacted on 20 January 1995. In November 1996 Cabinet approved amendments to the stalking legislation to include situations where there was no malicious intent but nevertheless a person's behaviour causes apprehension and fear, and to extend the forms of communication that constitute stalking behaviour.

The new offence of unlawful stalking is also prescribed in the *Criminal Law Amendment Bill 1994* as a "serious offence" under Schedule 2 to the *Bail Act 1982* so as to deny a suspected offender's right to bail if they are alleged to have committed a serious offence while already on bail on a charge of stalking.

As in the case of unlawful stalking, the Bill also prescribes the offence of breach of a restraining order as a "serious offence" under Schedule 2 to the *Bail Act 1982*.

*Recommendation 123: "Current Police policies or programs which recommend counselling or mediation for the victims of domestic violence be immediately amended to ensure compliance with the National Committee on Violence Against Women's Mediation Guidelines." (5.87)*

**Response:**

This recommendation is addressed in the Government's Action Plan on Family and Domestic Violence and legislative amendments proposed in respect of restraining orders. In addition, current police training provides for a proactive role to be played by police officers when attending instances of domestic and family violence. In particular, officers are encouraged to seek evidence of a crime having been committed.

*Recommendations 124: "The WA Evidence Act 1906 Section 9 be amended to allow the court to find a victim of domestic violence not compellable to testify against the alleged abuser where it is found that preserving the safety of the victim outweighs the prosecutor's need for her evidence." (5.116)*

**Response:**

The Ministry of Justice will co-ordinate the preparation of advice to the Attorney General following consultation with relevant parties in respect of this matter.

*Recommendation 125: "There be judicial recognition of the need for expert evidence to inform juries of the realities of domestic violence." (8.49)*

**Response:**

This recommendation requires the endorsement of the Judiciary.

*Recommendation 126: "There be Practice Directions issued by the Family Court requiring that notice of an abusive relationship be given, or confirmation that no allegation of violence is made, or could be made, before parties are directed to counselling or mediation. Further that moves, to provide the Family Court with advice of Restraint Orders, be formalised." (7.114)*

**Response:**

This is primarily a matter for the Judiciary (Family Court). Proposed amendments to the Family Court Act and the proposed Restraining Orders Bill also are of relevance.

*Recommendation 127: "The Director of Public Prosecutions (DPP) provide information to victims and their families and support workers on the realities of the judicial process to prepare them for the trial. This information should be gender and culturally sensitive and utilise a wide range of media including print, video, public lectures and training for victim support workers." (5.29)*

**Response:**

This recommendation has been referred to the Director of Public Prosecutions for comment.

*Recommendation 128: "All prosecutors (Police and DPP) attend more extensive cross-cultural awareness courses and other training courses (e.g. as to the availability of support structures)"*

*to make them aware of victims' rights and needs. Aboriginal women be employed as lecturers." (4.78)*

**Response:**

Currently a review of all in-service training in the Police Service is in progress, where the issue of cultural awareness training will be addressed and included as a compulsory unit.

In respect to prosecutors operating within the Office of the DPP, this recommendation has been referred to the Director of Public Prosecutions.

*Recommendation 129: "Properly remunerated Aboriginal women counsellors be appointed, funded by the Ministry of Justice, Department of Community Development, Health Department and all other Government Departments relevant to Aboriginal people, to counsel women who have been assaulted." (4.97)*

**Response:**

The Victim Support Service of the Ministry of Justice provides support to victims of crime seeking assistance. This service is being progressively expanded to country regions.

The Health Department of Western Australia advises that the State Health Purchasing Authority contracts with providers from the public and non-Government sector for the delivery of responsive and culturally appropriate services for women.

In respect to the needs of Aboriginal women who have been subjected to an assault, female hospital Aboriginal Liaison Officers and Aboriginal health workers are employed in a variety of settings and locations to assist Aboriginal women identify and articulate needs and concerns. Sexual assault centres have been established in metropolitan and country centres and endeavour to provide culturally appropriate counselling and support services to Aboriginal women.

*Recommendation 130: "Victims of sexual abuse be referred as quickly as possible by police to appropriate helping agencies such as Aboriginal Women's Refuges or the Sexual Assault Referral Centres which agencies should have Aboriginal women on staff." (4.159)*

**Response:**

Current police practice is consistent with this recommendation. On receiving a complaint of sexual abuse, victims are referred immediately to appropriate agencies for support.

*Recommendation 131: "Shire officers be involved to assist victims of violence - also be involved in remedial measures - e.g. safe houses; work for offenders." (4.102)*

**Response:**

It is acknowledged that, in the more remote areas of the State, shire offices are often the only authorities available to assist victims of violence and to provide remedial measures for offenders.

However, the Department of Local Government points to the need for additional financial assistance Family and Children's Services and the Supported Accommodation Assistance Program if local government authorities are to provide an effective service in this area. This is

particularly so for the smaller authorities located in more remote areas.

**Recommendation 132:** *"Prior to sentencing in relation to domestic violence or sexual assault matters, the court inform the victim that she has the option of tendering a Victim Impact Statement." (5.133)*

**Response:**

The Director of Public Prosecutions works with the Victim Support Service of the Ministry of Justice to facilitate the option of tendering victim impact statements in courts. The *Sentencing Act* provides a statutory basis for tendering victim impact statements and thereby provides victims with a positive and active role in the criminal justice process.

**Recommendation 133:** *"A process be established for monitoring and recording of the points of distribution of victim statements. The process should require people requesting statements to provide written justification of need, and details of how they will ensure the confidentiality of statements." (5.27)*

**Response:**

The Ministry of Justice has advised that the Chief Justice has determined that Victim Impact Statements should have the same status as Pre-Sentence Reports, that is, that they should be treated as documents of the Court.

S.26(1) of the *Sentencing Act 1995* deals with the availability of Victim Impact Statements.

**Recommendation 134:** *"A review be undertaken of gender bias in the criminal injuries compensation system, with a particular emphasis on the kinds of assaults suffered by women in the home." (7.72)*

**Response:**

A review of the *Criminal Injuries Compensation Act 1985* and its application is being undertaken by the Ministry of Justice. As part of the review process, submissions were received from:

- The Domestic Violence Action Groups of WA;
- The Women's Legal Service;
- The Domestic Violence Legal Unit;
- The Law Society; and
- Legal Aid

The above recommendation and the submissions received from the relevant agencies are under consideration by the Review.

**Recommendation 135:** *"Criminal Injuries compensation be publicised as a right and that women victims be made aware of the provision which waives the three year time-line." (5.55)*

**Response:**

Currently information pamphlets are provided to police stations, hospitals and various government and non-Government agencies dealing with victims. The pamphlet advises that the Assessor of Criminal Injuries may grant time extensions, though this is discretionary. The Victim Support Service of the Ministry of Justice

continues to publicise criminal injuries compensation and supports clients in making applications.

*Recommendation 136: "That minimum awards for criminal injuries be reviewed regularly to take account of the improved understanding of psychological, social and economic suffering and loss caused by a sexual assault." (5.54)*

**Response:**

The legislation does not set any minimum award. Each award is determined on its merit and all awards are appealable and therefore subject to review.

*Recommendation 137: "A State data collection program be developed to record incidents of reported and non-reported sexual assault and to monitor the outcomes of those reports. This State data collection program would become one of a range of data bases that already exist within Western Australia." (5.17)*

**Response:**

This recommendation is addressed in the Government's Action Plan on Family and Domestic Violence.

The Health Department advises that its State Health Purchasing Authority supports the development of State data collection and is keen to work co-operatively with other agencies in facilitating effective strategic responses to the issue of assault and violence against women.

*Recommendation 138: "Aboriginal community based panels of key women be appointed by the Communities to be part of the Justice Ministry - but supervised by Aboriginal persons within the Ministry - to assist in the apprehension and control of offenders against women and children. The panels to have the responsibility of laying charges, whether or not there are complaints received from the victims, with the power to make recommendations to the courts concerning the disposition of the matters - for example, cautions and appropriate counselling." (4.96)*

**Response:**

This recommendation, as written, is not supported by the Ministry of Justice.

*Recommendation 139: "The State Government request the Commonwealth Government to pass legislation to make female genital mutilation a crime." (8.67)*

**Response:**

The Standing Committee of Attorneys General supports the enactment of legislation to address the issue of female genital mutilation. State legislation is under consideration.

#### PARTICULAR LAWS

*Recommendation 140: "That legislation to provide for recognition of de facto relationships be implemented as soon as possible and that such legislation make provision for support and maintenance rights as well as property entitlements." (7.102)*



**Response:** This recommendation will be given effect to, in part, by legislation relating to de facto relationship property matters which is currently under consideration.

*Recommendation 141: "That means be found whereby the disadvantages of non-referral of power in relation to ex-nuptial children do not outweigh the perceived advantages of non-referral of power." (7.110)*

**Response:** The *Family Court Bill 1997*, among other matters, provides that where previously the mother of an ex-nuptial child was given sole guardianship and custody rights to the exclusion of the father, the Bill proposes that the parents have equal responsibility.

*Recommendation 142: "That the State Government conduct a review of the effects of industrial relations laws upon women's position in the workforce, including the right to parental leave and permanent part-time work." (7.47)*

**Response:** The Department of Productivity and Labour Relations advises that, in consort with other States, it is currently endeavouring to establish a mechanism whereby comparative data on the relative progress of female and male employees under enterprise and workplace agreements in a decentralised labour market can be monitored. At the present time, however, it is not possible to accurately comment on these issues.

The provisions of the *Minimum Conditions of Employment Act* (1993) give an employee, male or female, the right to up to 52 weeks unpaid leave in respect of the birth of a child to the employee or the employee's spouse, or the placement of a child with the employee with a view to the adoption of the child by the employee. The entitlement is not extended to casual employees due to the nature of casual employment, viz where there is no permanency attached to the hiring of an employee, it cannot be expected that the employee has a right to return to a casual job 52 weeks later.

*Recommendations 143: "The State and Federal Government undertake a joint project to assess the real value of women's unpaid work and consider the means to recognise and remunerate women who are currently denied pay and other conditions provided by the law as the minimum protection for "workers" in Australia; and there be a comprehensive study of State and Federal laws to identify those areas of law where women as unpaid workers are denied protection or discriminated against because of their status as the unpaid working class." (7.137)*

**Response:** This recommendation falls outside the charter of the Department of Productivity and Labour Relations which has responsibility for employees defined under the *Industrial Relations Act 1979*. Specifically, section 7(1) of that Act excludes any person in domestic service in a private home unless that person is employed "to do work for hire or reward." The Government does not intend to review existing industrial laws in regard to this matter.

**Recommendation 144:** *"A thorough review of laws relating to workers compensation and damages for personal injury be conducted in order to identify comprehensively those parts of the law which discriminate directly or indirectly, against women, and to formulate recommendations which can lead to the necessary legislative changes." (7.60)*

**Response:** Recommendation 144 is to be referred to Work Cover Western Australia for advice.

**Recommendation 145:** *"Sections 199, 200 and 201 of the Criminal Code (Western Australia) concerning abortion be repealed." (7.80) (H Wallwork and R Fitzgerald wish to record their opposition to this recommendation)*

**Response:** This recommendation is not consistent with Government policy.

**Recommendation 147:** *"A new offence of procuring for prostitution by coercion, force or violence be legislated. It should be an aggravating circumstance if the offence involves procurement of a minor." (7.122)*

**Response:** Not supported as there is already provision under *The Criminal Code* that makes this conduct an offence.

**Recommendation 146:** *"All provisions in the Criminal Code ('the Code') and the Police Act referring to prostitutes and related activities be repealed." (7.121) (H Wallwork and R Fitzgerald wish to record their opposition to this recommendation)*

**Recommendation 148:** *"The provisions of the Local Government Act granting Local Councils power to prohibit prostitution be repealed." (7.123)*

**Recommendations 149:** *"That premises having more than three sex workers working from them (including massage parlours and escort agencies) be categorised and zoning regulations for such premises be developed by the Department of Land Administration for the establishment or continued operation of such premises." (7.124)*

**Response(146,148,149):** The Minister for Police has received approval from Cabinet to investigate and develop proposals for the regulation of the industry

**Recommendation 150:** *"The sex industry come within the provisions of the Occupational Health, Safety and Welfare Act and Regulations, or a Code of Practice should be enacted based on recommendations from a tripartite committee involving sex workers, managers of premises and the Department for Occupational Health, Safety and Welfare." (7.125)*

**Response:** Worksafe Western Australia advises that the sex industry is covered by the *Occupational Safety and Health Act* wherever there is an employer-employee relationship. Under section 19 of the Act the employer has a duty to protect the safety and health of all employees in the industry. Obviously due to the nature of the industry, guidance would be needed from the Health Department to ensure the well-being of employees and

clients. Worksafe Western Australia is currently developing a Code of Practice for hepatitis and HIV/AIDS in the workplace. The sex industry is being considered in the preparation of the draft code.

**Recommendation 151:** *"Legislation be drafted extending the prohibition against sexual harassment and sexual vilification to beyond the workplace, along similar lines to the racial harassment laws recently enacted." (7.53)*

**Response:** Under the *Equal Opportunity Act 1984* (the Act) discrimination involving sexual harassment is unlawful in the areas of education and accommodation as well as employment. Provisions relating to racial harassment in the areas of employment, education and accommodation were introduced in the *Equal Opportunity Amendment Act 1992*.

Under the Act, sexual vilification (language or actions sexist in nature as distinct from sexual harassment or sex discrimination) is not an unlawful ground of discrimination.

**Recommendation 152:** *"The Equal Opportunity Act, 1984 (WA) be maintained in its current form and the Commission be given adequate resources to administer the legislation." (7.141)*

**Response:** The *Equal Opportunity Act, 1984 (WA)* remains in the same form as at the time of the Report's release. Additional resources were requested to implement the findings of the "Investigation and Conciliation: Report of the Steering Committee into Processes Under the Western Australian Equal Opportunity Act 1984" which recommended improvements to the investigation and conciliation processes practised under the Act. However, the proposal for funding was not endorsed by the Cabinet Estimates Committee.

**Recommendation 153:** *"The Criminal Code be amended with respect to self defence as envisaged in the Model Criminal Code of the Standing Committee of Attorneys General." (8.1) (8.31)*

**Recommendation 154:** *"A new defence of self-defence be created to take account of the reality of the lives of women who kill their abusers." (8.31)*

**Recommendation 155:** *"In Western Australia provocation be retained as a defence." (8.46)*

**Recommendation 156:** *"The law as to provocation be reformulated so that it no longer requires suddenness and proportionality and the need for a specific trigger be deleted and the test becomes a subjective test." (8.37)*

**Responses (153-156):** The Criminal Law Amendment Bill which amends *The Criminal Code* provisions relating to defence of person and property is currently before Parliament.

**Recommendation 157:** *"The penalty for murder no longer be a mandatory life sentence." (8.50)*

**Response:** Government policy has endorsed the life sentence by increasing the period prior to review in the *Criminal Law Amendment Act 1994*.

## POLICE OFFICERS

*Recommendation 158: "The Commissioner of Police initiate Affirmative Action strategies so that the membership and promotion within the police force reflects the composition of the community, with specific recruitment and promotion policies aimed at women and Aboriginal people. The Equal Opportunity Commission audit the processes and outcomes of this strategy." (5.74)*

**Response:** The Police Service complies with all Equal Employment Opportunity requirements, and where suitable applicants are available, they are recruited. The Police Service has recently launched a national ethnic recruiting poster.

*Recommendation 159: "The Police Department adopt Affirmative Action strategies to ensure that every station has access to a trained police woman." (5.11)*

**Response:** Practicality prevents the complete adoption of the recommendation. Where there is an urgent need for access to a woman police officer, invariably they are made available, particularly in the metropolitan area and most larger country towns.

*Recommendation 160: "All police officers be required to undergo regular gender awareness training to sensitise them to the difficulties women face in making a report of sexual assault. The Department be required to make the training a performance indicator and report on its measurement in the Department's annual report." (5.12)*

**Response:** Police recruits are provided gender awareness training during their police academy behavioural science training. There are currently no specific units available at in-service level on the subject of gender awareness. The sensitisation of police officers to the difficulties women face in the making of reports of sexual assault is addressed by the Sexual Assault Referral Centre who present such information to recruits and, in some instances, serving police officers.

*Recommendation 161: "There be better cross-cultural awareness education for all serving police officers to be assessed in the same way as the other components of their courses." (4.154)*

**Response:** Cultural awareness training is now delivered at recruit or pre-service level and is also delivered in the Officer Development Course which caters to the Sergeant/Senior Sergeant/Inspectors group. The course is modelled on the Ministry of Justice course. The Police Service now has a strategy in place that sees a newly transferred officer receive a period of cultural orientation delivered by respected members of the local Aboriginal community.

*Recommendation 162: "There be more extensive police promotion and training programs to reflect Aboriginal issues in all their components and satisfactory completion of those programs be required before promotion is recommended." (4.155)*

**Response:** A review of the entire in-service training system of the Police Service is under way, including linking training to promotion. Aboriginal issues and cross-cultural awareness will be included in relevant units to be known as the Police Training and Development Program.

**Recommendation 163:** *"There be a full police training facility established in the Kimberleys." (4.151)*

**Response:** The issue of the establishment of a full police training facility in the Kimberley region would need to be further examined before providing comment. The issue of appointing field training officers is being researched.

**Recommendation 164:** *"Police policies, training, orders and regulations reflect the seriousness of domestic violence complaints and take account of the urgency and danger involved therein." (5.82)*

**Response:** Policy and Procedure 13 (PAP/13) - Family and Domestic Violence has been revised to emphasise the seriousness of this matter. It defines Domestic Violence, refers to police powers, outlines procedures to be followed including officer safety, use of Telephone Interpreting Services, witness protection and firearms seizure. Commissioner's Operating Procedures are to be revised to include revised PAP/13.

Police training reflects the serious nature of domestic violence and this is reinforced by the presentation of training units on domestic violence and crisis intervention. The Domestic Violence Prevention Unit is developing a generic training package on domestic violence which will be used by the police.

**Recommendation 165:** *"Police Officers be required to make a written report of all calls which involve domestic violence, whether or not an offence report will be made." (5.83)*

**Response:** In October 1995, Family Incident Reports were introduced on mainframe computer for all police officers to record all reported incidents of family and domestic violence.

**Recommendation 166:** *"Police Officers be required, when responding to domestic violence calls, to provide all victims with a brochure which clearly outlines all community resources available for victims, inform them of their legal rights, and provide a comprehensive list of emergency numbers." (5.84)*

**Response:** See reference to recommendation 128. Also, a brochure has been produced by the Police Family Unit containing appropriate community service contact numbers.

**Recommendation 167:** *"Police Officers be required to actively collect evidence, interview witnesses, and investigate allegations of crimes involving domestic violence." (5.90)*

**Response:** Police Service Policy and Procedure 13 (PAP/13) states that family and domestic violence shall be treated as seriously as any other form

of violent crime in the community. Training conducted by the Police Family Unit treats family and domestic violence as a concern for the whole community.

*Recommendation 168: "The DPP and the Police Department institute specialist training in taking evidence from victims of sexual assault and ensure that an appropriately trained woman be present during taking of evidence to assist the prosecution and to provide support to the victim." (5.23)*

**Response:** Specialist training in the taking of evidence from victims of sexual assault is generally the case in the metropolitan area. Major advances have been made through the co-operative efforts of police and the Sexual Assault Referral Centres, which deal specifically with evidence gathering.

This recommendation is to be referred to the Director of Public Prosecutions for comment.

*Recommendation 169: "Expert witnesses be specifically asked to provide evidence on the psychological effects of sexual assault and resultant injury to victims. (5.25)*

**Response:** This recommendation is to be referred to the Director of Public Prosecutions for comment.

*Recommendation 170: "Current police routine orders, policy or instructions which recommend counselling or mediation for victims of domestic violence be immediately amended to conform with the National Committee on Violence Against Women's Mediation Guidelines." (5.87)*

**Response:** All of the recommendations of the National Committee on Violence Against Women are currently under examination and will be reflected in policy changes to be implemented later this year. The general thrust of the Committee's recommendations have been accepted by the Australasian Commissioners of Police.

*Recommendation 171: "Police implement procedures for keeping victims informed of the progress of a complaint." (5.14)*

**Response:** Set police procedures ensure this occurs. The Police Victims of Crime Unit has been specifically formed to deal with this issue.

*Recommendation 172: "The Commissioner of Police be required to publish an annual report which informs the public and the Government of the number of crimes involving domestic violence, the type of crime involved, the police response to the crimes as far as arrests made and charges laid, and provide the routine orders and regulations which police are to follow when responding to crimes involving domestic violence." (5.85)*

**Response:** Specific statistics on crimes involving domestic violence are not kept. Recording is by offence type, rather than by way of description of an incident. See also Recommendation 165.

*Recommendation 173: "The Police Department develop mechanisms for ensuring that only police officers suited to work with Aboriginal people are posted to locations with substantial Aboriginal populations." (4.157)*

**Response:** The Police Service, through its Psychological Services Branch, has developed a 'profile' for use in identifying officers best suited to work with the Aboriginal Community. The 'profile' is now applied to the transfer process where applicable.

*Recommendation 174: "The Police Service more closely examine the needs of Aboriginal women in remote communities for police services and develop a strategy towards improving service delivery to such women and Communities." (4.158)*

**Response:** The Police Service is represented on the Implementation Advisory Committee on Domestic Violence which will oversee the development of Regional Domestic Violence Plans and address the local needs of regional communities including the needs of Aboriginal women. The Police Service was an active participant in a research project which examined and measured family violence in the east and west Pilbara and east and west Kimberley. This project has been finalised and the report published.

*Recommendation 175: "Police officers be given more training to deal with cases of violence toward, and sexual abuse of, Aboriginal women and girls. The training must be directed at giving victims supportive, sympathetic and culturally appropriate treatment." (4.156)*

**Response:** Generic training on the issue of violence toward and sexual abuse of women and girls is provided by the Sexual Assault Referral Centre. The training includes the promotion of supportive and sympathetic treatment of victims. No specific case is made for Aboriginal women and girls in this program.

*Recommendation 176: "There be far more care taken in explaining the conditions and default provisions concerning bail to Aboriginal women." (4.131)*

**Response:** Conditions and default provisions are explained by the police to Aboriginal and non-Aboriginal women. There may need to be a joint educational role between the Police Service and the Aboriginal Legal Service on this recommendation. The recommendation is supported by the Ministry of Justice, consistent with its Justice Charter service guarantees.

*Recommendation 177: "The Bail Legislation be amended to provide a discretion in the court whether to order forfeiture of bail." (4.131)*

**Response:** The recommendation is supported by the Ministry of Justice. However, based on current advice the court already has this power.

*Recommendation 178: "When Aboriginal women are appointed to the Police Force, efforts be made by the Department to support them in their positions." (4.153)*

**Response:** The Police advise that the thrust of this recommendation requires clarification.

*Recommendation 179: "An education unit be established to educate Aboriginal people as to why women are appointed as police officers." (4.152)*

**Response:** This recommendation requires clarification. The role as it stands can be carried out within police/community structures if the need exists.

*Recommendation 180: "Further funding be provided to increase community policing by Aboriginal persons - including patrols within the communities." (4.100)*

**Response:** In late 1994 the State Government approved substantial financial support for a range of Aboriginal community justice initiatives. At the same time the Government confirmed full recognition status on the (then) interim Aboriginal Justice Council. Further details on the community justice initiatives can be obtained from the Western Australian Aboriginal Affairs Department.

*Recommendation 181: "That further research be undertaken to determine the reasons for differences in sentencing outcomes for women and men as a further source of input into sentencing policy." (9.3.22)*

**Response:** Implementation of the Ministry of Justice's Information Plan will enable this kind of research to be undertaken.

*Recommendation 182: "That efforts be made to stimulate public debate on sentencing principles and options, with the view to ensuring equity and justice in sentencing including:*

- a) stimulation and funding of research on the sentencing of women in Western Australia, and judicial attitudes;*
- b) publication of 'position' papers describing and evaluating a range of approaches to the sentencing of women; and*
- c) promotion of discussion within the ranks of the judiciary, the magistracy, and the legal profession about (i) sentencing principles and practice; (ii) attitudes to the sentencing of women; and (iii) sentencing options." (9.4.11.)*

**Response:** The Ministry of Justice supports Recommendation 182(a) and (b) Part (c) requires the endorsement of the Judiciary.

The *Sentencing Act 1995* allows for a greater range of sentencing options which are of benefit to women. The *Criminal Law Amendment Act 1994* contains a set of sentencing principles and makes provision for the Court of Criminal Appeal or the Full Court of the Supreme Court to issue guideline judgments. These judgments can be used by courts in all jurisdictions in order to make sure sentences handed down in different courts for similar crimes are comparable.



*Recommendation 183: "That the proposed State Sentencing Bill include a principle of sentencing to the effect that the court in determining whether or not to impose a custodial sentence on an offender who is a primary care giver in a family take into account, the effect of the sentence on the offender's family or dependents and the effect on the offender of the sentence on her or his family or dependants." (9.4.18)*

**Response:** This recommendation is not supported. Sentencing principles contained in the *Criminal Law Amendment Act 1994* which came into effect in January 1995 are appropriate. It would be inappropriate for a principle of sentencing to create any advantage in law for any particular class of people.

*Recommendation 184: "That the findings of the Crime Research Centre study, which examined the attitude of the courts in Western Australia to Social Security offending by women and, as they arise, other research findings and statistical information on sentencing outcomes, be disseminated to members of the judiciary." (9.4.14)*

**Response:** The Ministry of Justice Information Plan will enable statistical information on sentencing outcomes to be made more readily available to courts.

*Recommendation 185: "That the Ministry of Justice review the preparation of pre-sentence reports in view of a study conducted by the Crime Research Centre which reported evidence of gender bias complicated by the factor of race." (9.4.4)*

**Response:** The Ministry of Justice conducts on-going training for Community Corrections staff addressing the issue of gender and racial bias in the preparation of pre-sentence reports (PSRs). Ongoing monitoring of PSRs is undertaken to determine future training needs of PSR writers.

*Recommendation 186: "That the Ministry of Justice examine the feasibility of establishing a minimum security facility for women prisoners in the Perth metropolitan area." (9.5.3)*

**Response:** The Ministry of Justice is currently examining the feasibility of this proposal.

*Recommendation 187: "That the Ministry of Justice recognise the desirability of women prisoners being managed by women staff and of at least one member of the senior administration of Bandyup Women's Prison being a woman." (9.5.5)*

**Response:** The recommendation is supported (in principle) by the Ministry of Justice. An agreement with the Western Australian Prison Officers' Union is in place whereby 60% of the staffing complement at Bandyup Prison is female. At present women hold senior positions at Bandyup Women's Prison.

*Recommendation 188: "Appropriate Aboriginal advisers be consulted by judicial officers on matters relating to culture where that is relevant - e.g. on questions of penalty." (4.75)*

**Response:**

The Ministry of Justice Aboriginal Community Corrections and Juvenile Justice Officers are available in some courts to provide advice to the judiciary on request. Additionally, Aboriginal Fines Officers and Aboriginal Court Advisory staff have been appointed by the Ministry.

*Recommendation 189: "That there be a review of the whole system of fines and default of payment of fines and the replacement of fines where possible by culturally appropriate sentencing options, e.g. work orders to be performed with Aboriginal or local government organisations." (4.133)*

**Response:**

The *Fines, Penalties and Infringement Notices Act 1994* was proclaimed on 1 January 1995. The provisions of the Act allow a flexible time to pay arrangement and provide for alternative methods of enforcement such as suspension of motor drivers licence/vehicle licence, execution on goods and work and development orders.

Where facilities exist, Aboriginal offenders are given culturally appropriate placements for community work. Appropriate placements for Aboriginal offenders continues to expand and there are currently 40 Aboriginal communities contracted to provide supervision of offenders subject to community supervision orders. Aboriginal Fines Officers are now located at Geraldton, Roebourne, Kununurra, Kalgoorlie and Perth.

*Recommendation 190: "When fines are imposed the courts take more account of the ability of the offender to pay the fine e.g. if the offender's only source of income is social service payments, is a fine ever appropriate? What is the effect of a fine on the provision of necessities for the offender's children?" (4.134)*

**Response:**

The *Sentencing Act* requires the courts to take account of offenders' financial circumstances and allows for such information to be provided in pre-sentence reports (although this already occurs in many cases). Counsel for the defendant will continue to present this information. Under the *Sentencing Act* the court is not to fine an offender if, after paying victim compensation, the offender will be unable to pay the fine within a reasonable time.

*Recommendation 191: "That in the administration of community based orders and the development of legislation, special consideration be given to the particular difficulties experienced by women offenders, and, in particular, Aboriginal women offenders, in meeting their obligations under the order." (9.5.13)*

**Response:**

The recommendation is included in the Ministry of Justice Aboriginal Plan. Community corrections supervision is sensitive to the needs and particular problems of women offenders, including Aboriginal women. The majority of community corrections field staff are women and most community work placements are flexible and can accommodate the needs of women. Increasingly, community corrections have arrangements with Aboriginal communities and organisations for supervision assistance.

*Recommendation 192: "That the quality of health care services provided to prisoners at Bandyup be reviewed with particular reference to:*

- the extent to which existing services cater to the special health care needs of women, and those who have been victims of child sexual abuse or domestic violence; and*
- the desirability of 24 hour per day nursing coverage." (9.5.9)*

**Response:**

The specific health needs of women who have experienced sexual or domestic abuse are recognised by the Ministry of Justice. The extent of the problem and appropriate responses to it will be evaluated in a systematic review of health needs and health care priorities to which the Joint Justice/Health Interdepartmental Council is committed. Work has already commenced on this initiative as part of a comprehensive evaluation of health services to people in the custody of the Ministry. Since May 1996 there has been 24 hour nursing coverage at Bandyup Women's Prison.

*Recommendation 193: "That the Ministry of Justice establish a family support centre at Bandyup Women's Prison to assist in the maintenance of family relationships." (9.6.2)*

**Response:**

This recommendation was implemented by the Ministry of Justice on 1 July 1995.

*Recommendation 194: "That means of maintaining family and community contact by women prisoners, particularly those from the country who are imprisoned in Bandyup, be investigated." (9.6.4)*

**Response:**

The recommendation is supported by the Ministry of Justice. The Review of Services to Adult Women Offenders has identified a number of strategies to assist women prisoners maintain family/community contact. These include introducing greater flexibility into the prison visiting system and a review of the mother/baby policy to allow mothers from remote localities to keep their babies past the age of twelve months.

Recent amendments to the Director General's Rule 3A - *Decision Making and Management Concerning Prisoner Mothers or Female Primary Care Givers and Their Children* - has provided improvements to the prisons' visiting arrangements to ensure women are given every opportunity to maintain family relationships and parenting responsibilities.

*Recommendation 195: "That the means to expand the range of employment, vocational, educational and other developmental programs for women prisoners, and to expand their participation rate in those programs be examined by the Ministry of Justice ." (9.5.11)*

**Response:**

This recommendation is supported by the Ministry of Justice and was considered in the Review of Services to Adult Women Offenders

which recommends the building of a Skills Development Centre at Bandyup so that the range of offenders programs can be expanded.

**Recommendation 196:** *"That corrective services staff participate in a program of gender awareness training which complements the existing program of cross cultural awareness training." (9.5.15)*

**Response:**

Gender awareness issues are included in the equal opportunity awareness sessions currently administered by the Ministry of Justice. The Review of Services to Adult Women Offenders has recommended that gender awareness training be incorporated into the induction program of all prison officers and Community Corrections staff.

**Recommendation 197:** *"That properly resourced pre- and post-release community reintegration programs specifically tailored to the needs of women be developed and offered to women prisoners and ex-prisoners, and that a package of relevant information be made available to women prisoners at the time of their release." (9.6.7)*

**Response:**

The Ministry of Justice Offender Management Division identified the care and management of long term prisoners as a particular concern. This included a recognition that pre-and post-release needs of long term offenders is an important consideration in their management.

The provision of any such services to women in custody was considered in the Review of services to Adult Women Offenders and which recommends a number of initiatives to integrate women back into the community at the end of their sentence.

**Recommendation 198:** *"That a system to advise relevant persons of an offender's release date be established." (1.5.3.2)*

**Response:**

The *Victims of Crime Act* makes provision for victims to be informed, upon their request, of the release or escape of the perpetrator and procedures for this have been set in place. In addition, the Victim Mediation Unit has reached a recent agreement with the Police Service to locate child sexual abuse victims as part of the protective mediation process. Where possible the Unit monitors and manages victim/offender contacts. The Ministry also allows the provision of relevant information to the non-custodial parent of a child victim.

## CHAPTER 4 STRATEGIC PRIORITIES FOR 1996/7

### 1. GENDER AND CROSS CULTURAL AWARENESS EDUCATION / TRAINING

A main priority for 1996/97 will be the on-going education in gender and cross cultural awareness education of Government agency staff, Justices of the Peace and the Judiciary.

A generic accredited training package for service providers working in the area of family and domestic violence is currently being developed by the Domestic Violence Prevention Unit to provide a common understanding of domestic violence and to upgrade training across Government.

Government agencies will continue to run specific programs to meet individual agency needs and attention will be given to incorporate appropriate cross-cultural training components. In particular, the Ministry of Justice and the Police Service will continue to give cross-cultural awareness training a high priority and it is anticipated that gender awareness programs will be introduced into induction programs for Prison Officers and Community Corrections staff.

All Justices of the Peace will now be required to attend and pass an academic unit conducted by Edith Cowan University over a period of 15 weeks before undertaking their duties. Components of the course include domestic violence situations and restraining orders, cross cultural awareness and Aboriginal contemporary justice issues and philosophies.

The Judicial Education Committee has identified the need to develop a program to increase Judicial awareness to the special needs of disadvantaged sectors of the community. Aboriginal cross-cultural awareness and gender issues awareness are two areas that have a high priority and require funding to enable a Judicial education program to be developed. The Ministry of Justice will fund the Judicial Education Program in 1996/97 to the amount of \$50,000.

### 2. WOMEN OFFENDERS

During 1996/97 the Ministry of Justice will commence implementation of the recommendations of the Review of Services to Adult Women Offenders. Of particular relevance to Report of the Chief Justice's Taskforce on Gender Bias are the following recommendations:

- evaluate the feasibility of establishing a 28 - 30 bed minimum security facility for women offenders outside the perimeter at Bandyup Women's Prison.
- increase the provision of suitable skills development/training programs and the building of a multi-purpose Skills Development Centre at Bandyup.
- develop programs for women prisoners that address their specific needs including pre and post release preparation, community integration and drug/alcohol addictions in recognition of their importance to the successful rehabilitation of the offender.
- provide more flexible visiting arrangements for women prisoners to ensure they are given every the opportunity to maintain family/child relationships.

- improve prison health services to women including the contracting of the Aboriginal Medical Service to provide culturally appropriate medical services to Aboriginal prisoners and the provision of ante-natal care and services within the prison complex at Bandyup.
- increase the number of community based programs suitable for women to ensure those with family responsibilities are given the opportunity to successfully complete their Community Service Orders.

### 3. DOMESTIC VIOLENCE COMMUNITY EDUCATION

Although attitudes are changing there is still a perception in many parts of the community that family and domestic violence is acceptable behaviour. If there is to be effective change, a long term community education campaign must be conducted to highlight the physical, social, emotional and financial impact family and domestic violence has on our community.

A comprehensive long term (10 year) community education program to change existing attitudes and behaviours towards domestic violence is a high priority of the Government's Action Plan. The Domestic Violence Prevention Unit has commissioned a market research project to develop an appropriate community education program. This report will be released in early 1997.

### 4. PILOT ABORIGINAL PLANS

In order to address concerns regarding family and domestic violence in Aboriginal communities government agencies will work with Aboriginal people to develop strategies to address family violence. This will involve providing opportunities for Aboriginal families affected by family and domestic violence to access culturally appropriate alternative dispute resolution services.

The Domestic Violence Prevention Unit will support the Aboriginal Women's Taskforce to consult, foster and auspice the development of Aboriginal community problem solving and self help initiatives that target family violence. Information will be disseminated to Aboriginal organisations and assistance provided to local groups to access funds for ongoing education and prevention programs. Funding has been allocated for community awareness and education for the 1996/97 financial year.

### 5. DOMESTIC VIOLENCE PERPETRATOR PROGRAMS

A Ministry of Justice working party has recently reviewed and made recommendations on the provision of programs for convicted domestic violence perpetrators in a draft report. The primary focus of domestic violence perpetrator programs is to prevent and reduce the incidence of domestic violence thereby securing the future safety of victims from further violence perpetrated against them. Domestic violence perpetrator programs are a community preventative approach which assists violent men to take responsibility for their behaviour, and to recognise that it is unacceptable.

The working party has developed a best practice model for the provision of programs and recommended that Aboriginal communities be involved in tailoring the delivery of culturally appropriate programs. It has also recommended that the provision of domestic violence treatment programs be contracted out to the private sector.

The Ministry of Justice is committed to providing culturally appropriate domestic violence perpetrator programs. These are expected to be initially available to offenders in the Perth metropolitan area and in Albany, Bunbury, Geraldton and Kalgoorlie. Funding has been allocated in the 1996/97 budget for the commencement of this service.

## 6. LEGISLATIVE REFORM

Relevant legislative reform currently under consideration or being drafted includes:

- The *Sentencing Act 1995* will allow for a greater range of sentencing options which should benefit women.
- Amendments to the *State Family Court Act* are being drafted to reflect major amendments to the Commonwealth *Family Law Act*, and include provisions relating to ex nuptial children.
- *WA Criminal Code* is being examined with a view to the clarification of provisions in relation to subjective and objective elements regarding defence of property and person.
- On 14 July 1995 the Standing Committee of Attorneys general endorsed "model" legislation prepared by the Model Criminal Code Officers' Committee as the basis of uniform legislation to criminalise the practice of female genital mutilation. That model legislation will form the basis of a submission to Cabinet for the enactment of those provisions in Western Australia.
- Legislative reform relating to Restraining Orders has been endorsed by Cabinet and the proposed legislation will be introduced in the 1996 Spring Session of Parliament.
- The Government is currently considering amending the stalking legislation to deal with situations where there was no malicious intent, but nevertheless the person's behaviour causes apprehension and fear.
- The *Criminal Injuries Compensation Act* is currently being reviewed and will consider, among other things, the recommendations of the Taskforce.

## APPENDIX

### (1) WOMEN IN THE LEGAL PROFESSION

16. *"The Law Society of Western Australia and the Western Australian Bar Association take the lead in promoting women's participation in the profession by ensuring women's full and equal participation in their councils and committees." (2.4)*
17. *"The Law Society of Western Australia closely monitor and encourage women's participation in the profession by publishing guidelines on Equal Opportunity, assisting the profession to adopt a systematic approach to selecting new practitioners, providing training and equal opportunity for key groups and mentoring schemes for women." (2.5)*
18. *"The Law Society develop a gender neutral format for questioning applicants for positions as Articled Clerks and encourage all firms to use it." (2.38)*
19. *"The Women Lawyers' Association of Western Australia establish a mentoring scheme whereby experienced female lawyers offer their assistance to younger women." (2.9)*
20. *"Continuing legal education courses on gender and discrimination issues be conducted by the Law Society to educate current practitioners." (2.2)*
21. *"That education of lawyers in gender bias should be a compulsory prerequisite to admission/practice certificates." (3.13)*
22. *"The Law Society adopt a code of conduct addressing gender bias and establishing procedures for its elimination." (2.6)*
23. *"The Law Society of Western Australia Professional Conduct Rules be amended to include the following rule under Chapter 3: Maintaining Professional Integrity:*  
  
*"A practitioner shall not, in the performance of professional duties, by words or conduct, knowingly or with callous indifference, disparage, humiliate or discriminate against parties, witnesses, counsel or others on account of race, gender, ethnicity, religion, national origin, disability, marital status, sexual orientation, or age.*  
  
*This does not preclude legitimate advocacy when race, gender, ethnicity, religion, national origin, disability, marital status, sexual orientation, age or other similar factors are issues in proceedings." (5.123-125)*
24. *"The Western Australian Law Society include in its Professional Conduct Rules a provision that sexual harassment is unprofessional conduct." (2.7)*



25. *"Law firms be encouraged to include flexible working hours, permanent part-time work, job sharing, flexible work location, career break schemes and child care leave." (2.3)*

(2) APPOINTMENTS TO JUDICIARY

26. *"That a Judicial Appointments Commission be established by legislation to which nominations or applications for judicial and magisterial positions are made." (3.1)(3.91)*
27. *"That the Commission consist of at least 50% women, 2 of whom should be the President of the Women Lawyers' Association and the President of the Women's Advisory Council and some community representatives who are aware of gender bias issues." (3.2)*
28. *"The Commission be required to consult widely to obtain comments on prospective judges and magistrates. Consultation should be sought with the following:*
- (a) Women Lawyers' Association;*
  - (b) Law Society;*
  - (c) The Bar Association*
  - (d) Head of Jurisdiction;*
  - (e) Solicitor General;*
  - (f) Community Representatives." (3.3) (3.9)*
29. *"Priority be given to appointments of women to the judiciary and magistracy and urgent priority be given to the appointment of women judges to the Supreme Court and to the Family Court of Western Australia." (3.5) (3.91)*
30. *"That selection of women for judicial appointment include legally qualified women in the following categories:*
- (a) practitioners;*
  - (b) women in academic positions;*
  - (c) women already appointed as tribunal members, registrars, magistrates and District Court judges." (3.6)*
31. *"There be a set of criteria to be considered in the appointment of judges and magistrates to include not only relevant legal skills but also personal qualities and experience - either within or outside the practice of law which will be relevant for those positions (including experience in dealing with human relationships e.g. raising children, community involvement, academia)." (3.9)*
32. *"A target to be set seeking a certain number of women to be appointed as judges and magistrates within a certain time." (3.7)*

33. *"Where a man and a women are considered equally qualified preference be given to the women until there is a significant representation of women on the bench." (3.8)*
34. *"That the Governor in Council be required by legislation to choose judges and magistrates from candidates recommended to the Attorney-General by the Commission." (3.4)*
35. *"That part-time judicial and magisterial positions be available, together with*
  - (a) flexible working hours or holidays; and*
  - (b) flexible and appropriate pro-rata arrangements relating to the non-contributory pension." (3.10)*
36. *"That judges and magistrates upon appointment be immediately provided with educational materials in relation to their functions including materials relating to the avoidance of gender bias." (3.11)*
37. *"That a program be established for current and prospective judges and magistrates to receive continuing education in gender issues." (3.12)*
38. *"As part of the Chief Justice's judicial education program, specific training should be incorporated to address domestic violence and appropriate judicial response to it." (5.97)*
39. *"That a Judicial education program be introduced in relation to an awareness of the female victim perspective as victims/witnesses in sexual assault cases." (1.5.3.2)*
40. *"That the Judiciary be educated on the Aboriginal female perspective in courtroom situations." (1.5.3.5)*
41. *"Aboriginal women Justices of the Peace be appointed in courts where there are a considerable number of Aboriginal women defendants, subject to the general limitation that only Magistrates and Judges should be able to impose imprisonment." (4.71)*
42. *"All Justices of the Peace and other judicial officers attend cross cultural awareness courses which include information as to the rights of Aboriginal women in Aboriginal society, otherwise the judicial officers not be allowed to sentence Aboriginal women defendants. Aboriginal women be consulted as to the content and conduct of these courses." (4.74)*