

CHIEF JUSTICE'S
TASK FORCE ON GENDER BIAS

FINAL REPORT

OF THE WORKING GROUP CONVENED
TO EXAMINE ISSUES IN RESPECT OF
“PUNISHMENT OF WOMEN”

1. SUMMARY OF RECOMMENDATIONS⁵⁶

Need for further research

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.

Pre-sentence reports

That the Ministry of Justice review the preparation of pre-sentence reports in view of a study conducted by the Crime Research Centre⁵⁷ which reported evidence of gender bias complicated by the factor of race.

Fine default options for Aboriginal women

That attention be given by the Ministry of Justice in consultation with relevant Aboriginal organisations and, on a local level, with Aboriginal communities, to the design of programmes to operate as meaningful alternatives to imprisonment of Aboriginal women for fine default.

Approaches to the Sentencing of Women

That efforts be made to stimulate public debate on sentencing principles and options, with a view to ensuring equity and justice in sentencing including:

- a) stimulation and funding of research on the sentencing of women in WA 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.

Social security fraud

That the findings of the Crime Research Centre study⁵⁸ 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.

Section 16 of the Crimes Act (Commonwealth)

That the proposed 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 the sole care-giver in a family take into account the effect of the sentence on the offender's family or dependants, and the effect on the offender of the effect of the sentence on her or his family or dependants.

⁵⁶ Section numbers in this Summary relate to those in the body of the report.

⁵⁷ Wilkie, M. *Sentencing Women: Pre-Sentence Reports and Constructions of Female Offenders*, Research Report No. 9, 1993, Crime Research Centre, University of Western Australia.

⁵⁸ Wilkie, M. *Women Social Security Offenders: Their Experiences of the Criminal Justice System ;in Western Australia* , Research Report No. 8, 1993, Crime Research Centre, University of Western Australia.

Prison Facilities and Regimes

That the Ministry of Justice examine the feasibility of establishing a minimum security facility for women prisoners in the Perth metropolitan area.

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.

Prisoner Health and Welfare

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 for 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.

Prisoner Programmes

That means to expand the range of employment, vocational, educational and other developmental programmes for women prisoners, and to expand their participation rate in those programmes be examined by the Ministry of Justice.

Community Corrections

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.

Awareness of gender issues

That corrective services staff participate in a programme of gender awareness training which complements the existing programme of cross cultural awareness training.

Impact of Imprisonment

That the Ministry of Justice establish a family support centre at Bandyup Women's Prison to assist in the maintenance of family relationships.

Access to Support Networks

That means of maintaining family and community contact by women prisoners, particularly those from the country who are imprisoned in Bandyup, be investigated.

Post-release support

That properly resourced pre- and post-release community reintegration programmes 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.

2. INTRODUCTION

Overview

2.1 This report examines the extent to which gender bias may exist in the *Punishment of Women*. It commences with an overview of relevant statistical information. Elements of the sentencing process, the administration of custodial and non-custodial sentences, and pre- and post-release issues affecting the reintegration of women into the community once their sentences have been completed are then examined and recommendation made.

Working Group

- 2.2 The membership of the working group formed to examine these issues comprised:
- Dr Robert Fitzgerald, Executive Director, Strategic & Specialist Services, Ministry of Justice - Chairperson;
 - Mr Russell Daily, Policy Officer, Strategic & Specialist Services, Ministry of Justice;
 - Ms Valerie Doherty, Chief Superintendent, Western Australian Police Department;
 - Mr Peter Sirr, Executive Director, Outcare; and
 - Ms Meredith Wilkie, Lecturer, School of Law, Murdoch University.

3 STATISTICAL & BACKGROUND INFORMATION

Women and Crime

- 3.1 Females are less likely than males to be involved in criminal activity. For example, in 1991, women and girls made up fewer than 20 % of the approximately 40,000 Western Australians arrested at least once⁵⁹. However, among both males and females, Aboriginals are much more likely to be arrested than non-Aboriginals. While Aboriginals in Western Australia constitute fewer than 3% of the general population, Aboriginal women and girls made up 28 % of females arrested in the first six months of 1992⁶⁰.
- 3.2 The under-representation of women is not spread evenly across offence groups. The involvement of women and girls in 'robbery/extortion', for example, was as low as 3.5% of charges laid in the first six months of 1992, while 22 % of charges relating to 'breaking and entering/fraud/theft' were laid against females⁶¹.

Sentencing data

- 3.3 Table 1 shows that the proportion of male offenders sentenced to imprisonment (versus other penalties) is double that of women.

59 Source: Broadhurst, Ferrante and Susilo 1992: page 26 (Crime and Justice Statistics for Western Australia 1992): Table 2.1

60 Source: Broadhurst, Ferrante and Loh 1993: Table 2.1

61 Source: Broadhurst, Ferrante and Loh 1993: Table 2.2

Table 1: Use of Imprisonment by Sex and Level of Court - January to June 1992⁶²

Sex	Higher Courts	Lower Courts	TOTAL
Females	29.0%	2.9%	3.8%
Males	46.6%	5.6%	8.5%
Total	44.8%	5.1%	7.7%

- 3.4 However, overall there is no significant distinction between the sexes in the application of alternatives to imprisonment (at least as to type - there is no information as to quantum) as Table 2 indicates for adult offenders. Just over 50 % of offenders of each sex who are not imprisoned are fined. On the other hand, some gender differences are evident in respect of the sentencing of juvenile offenders (Table 3).

Table 2 : Alternatives to Imprisonment by Sex - January to June 1992⁶³

Penalties	Females	Males	TOTAL
Dismissed	5.6%	2.0%	2.7%
Fine	54.2%	53.7%	53.8%
Non-custodial	40.2%	44.3%	43.5%
Total - n	(3,416)	(14,386)	(17,802)

- 3.5 Table 4 indicates that penalties for each sex vary when different types of offending are considered separately and all charges are included in the calculation (Tables 1 and 2 describe penalties for distinct persons). The "risk" of a prison sentence depends on the offence type and the level of court as much as upon sex. For example, in the higher courts, female offenders against justice or good order are as likely as males to be imprisoned while female drug offenders are very much less likely than their male counterparts to be imprisoned. Overall, males are more likely to be fined than females, but there are significant variations in this pattern depending on offence type and level of court (Table 4).

62 Source: Crime Research Centre

63 Source: Broadhurst, Ferrante and Loh 1993, page 28: Crime Research Centre

Table 3: Children's Court Penalties by Sex - January to June 1992⁶⁴

Penalties	Females	Males	TOTAL
Dismissed	42.7%	34.6%	36.0%
Fined	20.8%	26.3%	25.3%
Non-Custodial	33.7%	31.6%	32.0%
Custodial	2.9%	7.5%	6.7%
Total - n	(689)	(3,177)	(3,866)

- 3.6 The use of alternatives to imprisonment⁶⁵ also varies depending on offence type. While for driving offences (lower courts only), order and justice offences (both levels) and drug offences (lower courts) there is not a great difference between the sexes in the use of non-custodial penalties (good behaviour bond, probation and community service orders), there is a large difference in the case of other offence types. For example, in the higher courts, 50 % of female offenders against the person were given a non-custodial sentence compared with 13 % of males, and 71 % of female drug offenders received such a penalty compared with 27% of males. In general, the lower courts are less likely than the higher courts to distinguish between males and females in the application of these penalties.

Community Based Corrections

- 3.7 During 1992/93 a total of 13764 Work and Development Orders⁶⁶ (WDOs) were commenced, 20 % by women. Successful completion rates were similar for both sexes. Table 5 shows that during the period 1 January to 30 June 1993, of those who defaulted on payment of fines, one in four Aboriginal women were imprisoned compared with one in eighteen non-Aboriginal women. The comparable ratios for males were 1:4 for Aboriginals and 1:11 for non-Aboriginals.
- 3.8 During the same period, 1811 Community Service Orders (CSOs) were commenced including 17 % by women. The successful completion rate was higher for females than for males.

⁶⁴ Source: Crime Research Centre

⁶⁵ Source: Broadhurst, Ferrante and Loh 1993, page 41: Includes: **Good Behaviour Bond** which is an undertaking to be of good behaviour for a given period; **Community Service Order** which is a sentence which requires offenders to perform a stated number of hours of work in and for the community; and **Probation** which is the conditional suspension of sentence requiring a convicted offender to undertake a period of personal supervision in the community whilst observing the conditions of the Probation Order.

⁶⁶ **Work and Development Order** is an alternative to imprisonment for people who are in default of a fine. The programme requires that the offender perform a specified number of hours of community work and personal development.

Table 4: Penalty by offence type (%), court level and gender - January to June 1992 (all charges)⁶⁷

Offence	Court level	Fine		Non-custodial		Custodial	
		Female	Male	Female	Male	Female	Male
Person	Higher	10.7	11.1	50.0	13.2	39.3	75.7
	Lower	53.9	58.9	34.0	23.9	12.0	17.2
Property	Higher	1.5	6.4	40.4	29.2	58.1	64.4
	Lower	30.0	48.9	53.6	31.6	16.4	19.5
Order	Higher	-	14.1	36.4	25.2	63.6	60.7
	Lower*	84.6*	83.6	9.7	7.4	5.7	9.1
Drugs/ other	Higher	25.0	20.9	71.4	27.3	3.6	51.9
	Lower*	87.2	93.5	9.3	4.0	3.5	2.5
Driving	Higher						
	Lower*	25.1	25.5	74.3	69.6	0.7	4.9
Total	Higher	5.6	9.8	45.3	23.1	49.1	67.2
	Lower*	47.0	58.7	42.5	31.2	10.5	10.1

* Lower court figures exclude those "dismissed".

- 3.9 6 % of prisoners who commenced Parole Orders⁶⁸ during 1992/93 were women. Successful terminations of parole during this period were similar for men and women (79 % and 81 % respectively).

⁶⁷ Source: Statistical Report of the Western Australia Department of Corrective Services, 1 July 1992 to 30 June 1993: Crime Research Centre

⁶⁸ Parole is a sentence of imprisonment where a maximum term has been specified and either a minimum term set, or an order for eligibility for parole made. Offenders released on parole are subject to strict supervision and conditions.

Table 5: Fine default imprisonment and WDO's by race and gender, 1 January - 30 June 1993⁶⁹

	Imprisoned	WDO issued	Ratio
Non-Ab'l Males	422	4527	1:11
Ab'l Males	306	1168	1:4
Non-Ab'l Females	56	1006	1:18
Ab'l Females	123	478	1:4
Total	907	7179	1:8

3.10 Very few women are involved in Home Detention and Work Release Orders⁷⁰. Low numbers of women participating in these programs may be due to the number of women prisoners serving sentences at the shorter end of the scale, thereby rendering them ineligible for participation.

3.11 Lower rates of successful completion for Aboriginal relative to non-Aboriginal female offenders on the three most common orders are shown in Table 6.

Table 6: Successful completion rate of CCOs by Aboriginality for 1992/93 - Female Offenders⁷¹

Race	WDO	Probation	CSO
Aboriginal	59.02%	68.18%	58.49%
Non-Aboriginal	84.30%	79.74%	77.08%

Prisoner Data

3.12 During 1992-93, 12 % of the 5866 prisoner-receivals into the Western Australian prison system were females. The reception status of 3251 prisoner-receivals was sentenced and the remaining 2615 were unsentenced (remand)⁷². The average daily prison muster in

⁶⁹ Source: Ministry of Justice

⁷⁰ Home Detention may be imposed as a condition of bail, where a person may otherwise be remanded in custody. The programme also provides for the release of offenders who are subject to a prison sentence of less than 12 months and who have served at least one month, or one third of their sentence, whichever is the longer, in custody. Sentenced prisoners are required to complete at least 8 hours per week of unpaid community work or personal development. Community Based Work Release enables prisoners who have served more than 12 months of imprisonment to undertake a programme designed to promote their successful reintegration into the community. The order requires that the prisoner devote a minimum of 14 hours a week to community work and personal development. Source: Statistical Report of the Western Australia Department of Corrective Services, 1 July 1992 to 30 June 1993.

⁷¹ Source: Ministry of Justice

⁷² Source: Statistical Report of the Western Australia Department of Corrective Services, 1 July 1992 to 30 June 1993

Western Australia for 1992-93 was 1872.90, of which 98.27 (5.2%) were female. Of the female prisoner-receivals in 1992-93, 65% were Aboriginal. However, on average, only 44.9% of the total adult female prison population on any given day were Aboriginal reflecting the shorter sentences that most Aboriginal women serve.

Police Lockup Data

3.13 Data on sentenced prisoners received into Police Lockups are not reliable, and should therefore be interpreted with caution. These are shown in Table 7. In summary, the data show that in 1992-93: 23% of all lockup receivals of sentenced prisoners were female; over 95% (472) of female lockup receivals were Aboriginal women; and 25% of Aboriginal receivals (which comprised 88% of all receivals into Lockups) were female.

Financial , Marital & Familial Status of Women Prisoners

3.14 A census of the 95 prisoners held in custody at Bandyup Women's Prison on the night of 30 June 1993 found that 50 % described themselves as single, 27 % described themselves as either married or in a de facto relationship, and the remaining 23 % indicated that they were either divorced, separated or widowed. The majority of women prisoners (66 %) were reliant on a pension or benefit prior to imprisonment⁷³. 51% had one or more dependent children⁷⁴.

Table 7: Lockup receivals of sentenced prisoners by gender and race (1992-93)⁷⁵

Gender/Race	Total 92-93	Proportion (%)	Prop by Race (%)	Prop by Gender (%)
Female Non-Ab'l	21	1%	8%	4%
Male Non-Ab'l	243	11%	92%	14%
Female Ab'l	472	22%	25%	96%
Male Ab'l	1443	66%	75%	86%
TOTAL	2179	100%	N/A	N/A

Prison Facilities

3.15 At 30 June 1993 the total capacity of the prison system was 2188 beds, including 2038 general purpose male and female beds, the remaining being "special purpose" beds for observation, solitary confinement, and management. Of the 2038 general purpose beds, 104 were designated female maximum security and 54 were classed as female minimum/open security. The latter were located at Broome, Eastern Goldfields,

⁷³ Smith V N, 1991, Bandyup Women's Prison: Survey of Prisoner Employment, Training and Personal Needs.

⁷⁴ Smith op cit.

⁷⁵ Source: Ministry of Justice. Due to the lack of reliable data where prisoners serving a sentence are released to a WDO, all figures used in reference to lockups receivals who exited to a WDO within 2 days are not included. Should the individual have exited to a WDO after a longer period in custody, it is safe to assume other non-convertible fines are being eliminated, or a WDO has not been taken up as an option by the individual..

Greenough and Roebourne Regional Prisons. Bandyup Women's Prison is the State's only exclusively female prison and is the only prison for women in the Perth metropolitan area.

- 3.16 All prisons accommodating female prisoners provide for extended visits of children with their mothers held in custody. Nursery facilities are available at Bandyup (4 mother and baby cells in a separate "house", Greenough, and Roebourne for mothers with young babies. Bandyup also has special "self-care" facilities⁷⁶ designed to accommodate long term prisoners.

Recidivism

- 3.17 Defining recidivism as a return to WA prisons for any offence, the probabilities of ultimately returning to prison were estimated by Broadhurst and Maller⁷⁷. The rates for Aboriginal and non-Aboriginal males and females are shown in Table 8. Clearly, rates of recidivism vary according to gender and race, with lower rates for females and non-Aboriginals.

*Table 8: Recidivism by race and gender.*⁷⁸

RACE & GENDER	RECIDIVISM RATE
Aboriginal males	76 % approximately
Aboriginal females	69 % approximately
Non-Aboriginal males	45 % approximately
Non-Aboriginal females	36 % approximately

Need for further research

- 3.21 The data reported above show differences in the sentencing of women and men. Although the differences do not, in themselves, provide evidence of gender bias, they raise interesting questions. Further research similar to that undertaken by Wilkie⁷⁹ on the sentencing of offenders convicted of Social Security fraud may assist in explaining how the difference have arisen.

- 3.22 *Recommendation: 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.*

⁷⁶ At the time of writing these were closed.
⁷⁷ Broadhurst and Maller ANZJ Crim 1990
⁷⁸ Broadhurst and Maller op cit.
⁷⁹ Wilkie, op cit.

4 SENTENCING OF WOMEN

Pre-sentence reports

- 4.1 An enquiry into gender bias in pre-sentence reports conducted by the Crime Research Centre at the University of Western Australia⁸⁰ reported some evidence of gender bias complicated by the factor of race. The report found:
- pre-sentence reports were generally more sympathetic towards female offenders against the person and drug offenders than males - presenting them as victims of their circumstances and making efforts to mitigate their offences (p. 81); and
 - on the other hand, pre-sentence reports were generally marked by a harsher attitude to female property offenders; this harshness compared both with other female offenders and with male property offenders (p. 82).
- 4.2 The report suggested that the principal reasons for this harshness were:
- the higher proportion of Aboriginal women among female property offenders than in the other groups (p. 83); and
 - the reaction of Community Corrections Officers to the breaching by females of two social rules: one against offending and the other against property offending by women (pp. 83, 86). The latter attitude was not evident with respect to violent or drug offending, both of which could be explained by women's victimisation by others (pp. 81 - 82).
- 4.3 Since judges may be influenced by the presentation of the offender in the pre-sentence report (p. 84), systematic bias against offenders because of their race and/or sex combined with the type of offence alleged (i.e. rather than a justifiable and objective assessment of the individual offender) of the kind suggested by this study is a cause for concern.
- 4.4 *Recommendation: That the Ministry of Justice review the preparation of pre-sentence reports in view of the study conducted by the Crime Research Centre which reported evidence of gender bias complicated by the factor of race.*

Fine default options for Aboriginal women

- 4.5 Women in prison are more likely to be received into prison as a result of non-payment of fines than men are. Broadhurst et al⁸¹ reported that of those received into prison during the period January to June 1992, 70.7% of Aboriginal women received, 56.5% of non-Aboriginal women received, 41.0% of Aboriginal men received and 39.2% non-Aboriginal men received were imprisoned⁸² for fine default. Aboriginal women, constituting just 1.4% of the WA population, made up 11.5% of people received into prison for fine default in the period: 8 times the expected proportion. In the same period

80 Wilkie, op cit.

81 Broadhurst et al 1993: 51

82 Note that these are receivals not census figures.

only 6.6% of Work and Development Orders issued were issued to Aboriginal women⁸³. Almost two-thirds (63%) of WDOs were issued to non-Aboriginal males. Of Aboriginal women issued a WDO, only 63% successfully completed the order between 1 January 1992 and 30 January 1992. This compares with an 85.6% completion rate for non-Aboriginal women and 80.4% for non-Aboriginal men.

- 4.6 It cannot be assumed that programs, such as the WDO program, designed for the majority of fine defaulters (non-Aboriginal males) will be suitable for, and equally accessible to, other groups. The data suggest that the program is not designed to take account of any particular needs or circumstances of women or of Aboriginals. The problem is particularly acute for Aboriginal women.
- 4.7 *Recommendation: That attention be given by the Ministry of Justice in consultation with relevant Aboriginal organisations and, on a local level, with Aboriginal communities, to the design of programmes to operate as meaningful alternatives to imprisonment of Aboriginal women for fine default.*

Approaches to the Sentencing of Women

- 4.8 The sentencing data outlined in the second section of this chapter indicate that different factors may be taken into account in the sentencing of women than are deemed relevant in the sentencing of men. Moreover, it appears that different types of offending are regarded differently depending on the sex of the offender, with the apparent result that some female offenders - notably property offenders - are treated more harshly than other female offenders and, in some cases, are treated more harshly than males convicted of similar offences. While the background to the data reported here requires further investigation, the approach which appears to be taken in some courts of punishing some female offenders "doubly" because of their offence against community stereotypes about appropriate feminine behaviour, is unacceptable.
- 4.9 There are two approaches to the sentencing of female offenders, each of which is potentially equitable and just, and likely to have adherents, but leading to quite different outcomes. The first approach is that of strict and formal equality pursuant to which female offenders are sentenced according to the same criteria as male offenders. This is a "gender-blind" approach which has the advantages that inferior characteristics are not attributed to female offenders and that female offenders will not be more harshly treated because of social expectations about women's behaviour. The second approach is one which seeks to achieve actual equality. This approach treats different people differently and could take into account women's relative poverty, different offending motivations and greater likelihood of responsibility for dependants. On the other hand, this approach potentially invites sentencers to refer to social stereotypes of women as less capable, less rational and more childlike.
- 4.10 All members of the community should have an opportunity to participate in a well-informed debate about the most appropriate approach. Options should be limited to the two set out above. The current approach - evidenced by sentencing data and those few empirical studies which have been conducted - which sees men's sentencing as

83 Broadhurst et al 1993: 66-69

punishment for offending but women's as either treatment or as double punishment (ie for breaching social standards of femininity) is unacceptable.

4.11 Recommendation: That efforts be made to stimulate public debate on sentencing principles and options, with a view to ensuring equity and justice in sentencing including:

- a) stimulation and funding of research on the sentencing of women in WA 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.*

Social security fraud

4.12 Social security offending is one category of property offending in which women and men, relative to their representation among beneficiaries and pensioners, are, approximately equally involved. A Crime Research Centre study⁸⁴ examined the attitude of the courts in Western Australia to social security offending by women in the period mid-1988 to mid-1992. With respect to the use of imprisonment, women and men were about equally likely to be ordered actually to service a prison sentence (F = 17.8%; M = 16.2%). When suspended prison sentences are added, however, women were much more likely to be so sentenced (F = 27.5%; M = 21.3%). As for non-custodial sentences, men were much more likely to receive a fine (F = 25.5%; M = 50.3%), while women were much more likely to receive a supervised penalty (F = 38.1%; M = 21.3%).

4.13 The study identified the following concerns:

- actual differences in the social security offending of women compared with men - such as in motivation and reasons for high overpayment amounts - were being ignored by the sentencing courts;
- actual differences in the family circumstances of female as compared with male social security offenders - such as being the sole care of dependent children - were being largely ignored by the sentencing courts; and
- imprisonment was not being used as a sentence of last resort as required by section 17A of the Crimes Act 1914 (Commonwealth).

4.14 Recommendation: That the findings of that study and, as they arise, other research findings and statistical information on sentencing outcomes be disseminated to members of the judiciary.

Section 16 of the Crimes Act (Commonwealth)

4.15 Section 16A(2)(p) Commonwealth Crimes Act requires sentencing courts dealing with federal offenders to have regard to "the probable effect that any sentence or order under consideration would have on any of the person's family or dependants". In Sinclair,⁸⁵ the WA Court of Criminal Appeal interpreted that provision as merely restating the

84 Wilkie op cit.

85 Sinclair v R (1990) 51 Australian Criminal Reports 418

common law which permits the effect on dependants to be taken into account only in exceptional circumstances. His Honour Malcolm CJ held that this section of the Crimes Act was not intended to change the criminal law. In relation to the same principle, in Burns⁸⁶, His Honour Anderson J. stated that, "It seems to me that where the crime is of a kind as regards which the predominant sentencing consideration is general deterrence, the circumstances of the dependants must be truly exceptional before compassion for them can have any worthwhile effect on sentence. I would add the further comment that it seems to me that it is a consideration that would operate anyway with less force in a case where an extended term of imprisonment is inevitable. Whilst it is a consideration that might frequently operate on a decision whether or not to pass a custodial sentence at all, it would not often persuade the court to make a lengthy sentence somewhat shorter."

- 4.16 The effect of this interpretation on the sentencing of women is in need of examination. One reason cited by Wilkie ⁸⁷for her findings in respect of women social security offenders is the interpretation of section 16A(2)(p) of the Commonwealth Crimes Act adopted by the Western Australian Court of Criminal Appeal in the case of Sinclair⁸⁸.
- 4.17 The slightly different view expressed by Owen J. in Burns cited above is also pertinent: On page 4 of his Reasons for Judgment in that case he stated: "One issue that arose during argument was whether the interests of family and dependants was relevant only to the choice between custodial and non-custodial options or whether, in the former, it applies also to the length of the term. In my opinion the issue is of equal relevance to the term of imprisonment as it is to the initial decision whether or not to imprison. ... In my view there is nothing in the cases under the common law and nor is there anything in the statutory language which would justify such a distinction. The length of separation brought about by a custodial sentence may be equally as relevant to the likelihood of harm accruing to a child as would the fact of separation itself."
- 4.18 *Recommendation: That the proposed 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 dependants, and the effect on the offender of the effect of the sentence on her or his family or dependants.*

5. SENTENCE MANAGEMENT

Prison Facilities and Regimes

- 5.1 Women make up only around 5% of the average daily muster in Western Australian prisons, but comprise over 11% of all receivals reflecting the shorter sentences of female prisoners. Many of these women satisfy the criteria for minimum security prison placement. However, in the Perth metropolitan area, because there is no local minimum security accommodation, these prisoners must be held in maximum security at Bandyup Women's Prison. This disadvantages women prisoners in respect of placement and programme options. Their visitors are also subjected to closer searching requirements than would be the case in a minimum security prison.

86 Burns v R, unreported, CCA SCT of WA No 228 of 1993

87 Op cit

88 Op cit

- 5.2 The location of Bandyup Women's Prison on the north-east fringe of the metropolitan area also can pose difficulties for some families wishing to visit women prisoners due to lack of public transport facilities and the prison's distance from the city itself. This problem is compounded in the case of women prisoners with young children.
- 5.3 *Recommendation: That the Ministry of Justice examine the feasibility of establishing a minimum security facility for women prisoners in the Perth metropolitan area.*
- 5.4 The current staffing of Bandyup Women's Prison includes both male and female prison officers. At regional prisons which accommodate small numbers of women prisoners, the majority of prison officers are male. In general, it is desirable that women prisoners be supervised by female officers because of the vulnerability of women and the better understanding that female officers may be expected to have of the needs of women prisoners. It is also desirable that the Superintendent of Bandyup be a woman, or if this is not the case, then at least the Assistant Superintendent should be a woman.
- 5.5 *Recommendation 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.*

Prisoner Health and Welfare

- 5.6 A significant number of women prisoners suffer from health problems or have a history of problems related to substance abuse. Many women in the prison system have been identified as victims of child sexual abuse and domestic violence.
- 5.7 Currently, a registered nurse is in attendance at Bandyup Women's Prison for 14 hours per day. This compares with 24 hour per day nursing coverage at the metropolitan area maximum security male prisons.
- 5.8 An audit of health services provided to prisoners at Bandyup conducted in August 1992 by the Health Department of Western Australia at the request of the then Department of Corrective Services, found that, *"This is a well run service, with the nurses operating along community health lines and making time to walk around, speak to prisoners and spend time in different areas of the prison."* On the other hand, an unpublished 1993 survey of women prisoners at Bandyup undertaken by the Legal Aid Commission suggested that the adequacy of health services should be further examined.
- 5.9 *Recommendation: 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 for 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.*

Prisoner Programmes

- 5.10 The shorter average length of sentence for women prisoners compared to the average length of sentence for men affects adversely the provision of, and participation rate of women in employment, vocational, educational and other developmental programmes. The range of these programmes and facilities available to women prisoners is also limited by the relatively small number of women prisoners, particularly in regional prisons.

5.11 Recommendation: That means to expand the range of employment, vocational, educational and other developmental programmes for women prisoners and to expand their participation rate in those programmes be examined by the Ministry of Justice.

Community Corrections

5.12 Given the relatively small number of women participating in community corrections, historically, programmes and supervision models have been designed predominantly for male offenders. Women completing a community based order often find that family commitments compete with their obligations under their order, and that the supervision and work requirements of their orders do not recognise these commitments. In view of their comparatively lower rate of successful completion (see Table 6 above), particular attention needs to be paid to difficulties experienced by Aboriginal women. Some of the specific issues which impact on women offenders subject to community based orders include:

- the minimum number of hours to be performed per week in WDOs (currently, a minimum of 14 per week);
- the need for more flexible hours within which community work may be performed;
- the location of programmes and Community Corrections Centres;
- the availability of public transport to and from such centres; and
- the availability of childcare facilities.

5.13 Recommendation: 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.

Awareness of gender issues in offender management

5.14 Apart from legislative and administrative changes, an effective means of addressing unintended gender bias in the administration of custodial and community based orders is to make provision for prisons and community corrections staff to undergo training to raise their awareness of gender issues in offender management.

5.15 Recommendation: That corrective services staff participate in a programme of gender awareness training which complements the existing programme of cross cultural awareness training.

6. COMMUNITY REINTEGRATION

Impact of Imprisonment

6.1 The imprisonment of a mother resulting in her temporary separation from the family, particularly where young children are concerned, may impact adversely on the welfare of her family. To some extent this impact may be ameliorated by visits, telephone calls and other forms of contact, including home leave, between the prisoner and her family. However, more should be done to facilitate this contact. Although on-site support services are provided for families and friends visiting male prisoners at the all-male

Casuarina and Canning Vale Prisons, similar facilities are not provided at Bandyup Women's Prison.

- 6.2 *Recommendation: That the Ministry of Justice resource a family support centre at Bandyup Women's Prison to assist in the maintenance of family relationships.*

Access to Support Networks

- 6.3 The support of the family and other social networks plays an important part in the successful reintegration of newly released offenders. Women from regional areas, including Aboriginal women, who for security reasons are classified maximum security and held at Bandyup, are denied regular contact with, and support from their family and members of their home communities. Aboriginal women from regional areas may also suffer cultural isolation in the middle of a city based prison.

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

Post-release support

- 6.5 Surveys conducted by Outcare and others indicate that newly released ex-prisoners experience specific difficulties upon release and that specialist counselling services are of major importance to them. In general, appropriate post-release assistance is not readily accessible. State and federal assistance programs of a generic nature can be accessed by ex-prisoners, but providers of these services commonly have difficulties coping with ex-offenders, and are sometimes resistant to dealing with them. Ex-prisoners are often excluded from "specific target" programs. Because women are a small minority of the ex-prisoner population, it is even more difficult for them to access services specifically designed to meet their needs. Adding to this problem, non government organisations such as Outcare have experienced difficulty obtaining funding grants and subsidies for services which specifically target women ex-prisoners.
- 6.6 Other post-release support services available for women offenders are limited to those provided by Community Corrections Officers, which are primarily supervisory in nature, and those offered by the non government sector. The major non government body which offers support to women ex-offenders is Outcare. In 1991-92 women offenders constituted 12% of the total client population serviced by Outcare, but most of the assistance provided was pre- rather than post-release.
- 6.7 *Recommendation: That properly resourced pre- and post-release community reintegration programmes 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.*