

CHIEF JUSTICE'S TASKFORCE
ON
GENDER BIAS

30 JUNE 1994



JUDGES' CHAMBERS,
SUPREME COURT,
PERTH, W.A. 6000

30 June 1994

The Hon Mr Justice D K Malcolm AC
Chief Justice of Western Australia
Chief Justice's Chambers
Supreme Court
Barrack Street
PERTH WA 6000

Dear Chief Justice

On behalf of the Taskforce, I have pleasure in submitting to you the Report on Gender Bias.

I wish to express the appreciation of the members of the Taskforce to the Executive Officer Ms Dianne Hodgen who has worked many extra hours in her own time to ensure that this Report reached you on schedule.

I also wish to thank all those who have contributed directly and indirectly to the Report.

The members of the Taskforce and the other persons who have contributed to the Report approached the task with much enthusiasm. This is probably due in part to the fact that as is apparent from the Report, there is a large part of the law and the administration of justice which does not provide the necessary protection for the rights of women and their dependants.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Henry Wallwork'.

H Wallwork
Chairperson

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TERMS OF REFERENCE

- (1) *To investigate the extent to which gender bias exists in the law and the administration of justice in Western Australia and to make recommendations for its elimination;*
- (2) *To carry out such investigations and make recommendations in relation to the substantive law, the judiciary, the practice, procedure and administration of courts and tribunals and the organisation and work of the legal profession;*
- (3) *To consult with such agencies, organisations, groups and persons as the Taskforce thinks fit including, in particular, the Monitoring Committee on violence against women; and*
- (4) *To report to the Chief Justice on the progress of the work of the Taskforce by 31 December 1993 and to provide a full report by 30 June 1994.*

TASKFORCE ON GENDER BIAS

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DISCLAIMER

These are the views of a majority of the Executive of the Taskforce. They do not necessarily represent the views of all the members of the Taskforce or the contributors on every issue.

SUMMARY OF RECOMMENDATIONS

EDUCATION

1. That a community legal education system be developed to deal with the vast lack of knowledge by women in relation to their legal rights and the protection of them. (1.4.2.12)
2. The law as to human rights, citizenship and Court processes be taught in all schools, commencing in upper primary and the students be given an understanding of gender issues in the law. (4.81) (7.34)
3. That feminist legal scholarship be included at Universities within all compulsory introductory subjects in law programs such as Legal Process (University of Western Australia), Australian Legal Systems (Murdoch University), Legal Framework (Curtin University of Technology) and Introduction to Legal Studies (Edith Cowan University - Legal Studies). The aim of such inclusion is to introduce all students to the history and basic principles of feminist legal scholarship. The legal system's tolerance of and failure to deal with violence against women, should be included.

Where appropriate feminist legal scholarship be integrated into all compulsory and elective subjects. (7.41) (2.34)

ACCESS TO JUSTICE

4. That more resources be made available for women to access information about and support from the legal system. (1.4.2.12)
5. That the need for specialist women's legal services and centres be acknowledged and supported. (1.4.2.12)
6. That Community Legal Centres be better resourced to cater for legal advice and court representation of women, including 9am to 5pm office hours; toll free number to a lawyer. (1.4.2.12)
7. That the use of support workers such as para-legals be greatly expanded to improve women's access to justice. (1.4.2.12)
8. That special attention be given to the needs of women in country or remote areas where they have additional difficulties in accessing the justice system. (1.5.3.5)
9. An over-riding recommendation is that the State and Federal Governments, adequately fund and assist the development of the Women's Legal Service of Western Australia, established in November 1993, and that the legal profession support this initiative.(7.20)

10. More Aboriginal people, particularly Aboriginal women, be encouraged to obtain law degrees and be supported in their studies in order to provide more Aboriginal women lawyers.

Other efforts should be made to increase the numbers of Aboriginal lawyers and other persons to represent Aboriginal persons in courts and to increase the number of legal positions and the number of Aboriginal women as para-legals (including at private firms); also the education and quality of service of legal representation for Aboriginal women by the provision of specific courses at Universities and at post-graduate level. (4.72) (4.112)

11. More resources should be made available to the Aboriginal Legal Service for the creation of a separate women's issues unit within the Service to enable the ALS to better serve the needs of Aboriginal women; also for an "after hours" crisis service. (4.114)
12. A separate Aboriginal Women's Legal Service should be established in order to overcome the conflict of interest situations which often prevent the ALS from acting for aboriginal women and to fully service the legal needs of Aboriginal women. (4.115)
13. Aboriginal persons (including counsellors) be available for Aboriginal women to discuss legal processes with, before they get to court. (4.76)
14. Greater efforts be made by Government departments to ensure that information on legal issues and the rights of Aboriginal women are produced and accessed by Aboriginal women. (4.111)
15. That all political parties examine their selection procedures for systematic discrimination against women and consider and implement strategies to enable women to participate equally in the political process. (7.29)

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)

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) (3.91)
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 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 woman are considered equally qualified preference be given to the woman 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)

THE COURTS

43. That an immediate review of recruitment practices in relation to court personnel be undertaken. (1.5.3.2)
44. The gender balance of court personnel should be examined and the courts be required to adopt an affirmative action policy as a matter of urgency. (5.36)
45. On the job training for Court personnel include a component on domestic violence and that component emphasise the importance of serving the needs of victims in a sensitive manner. (5.96)

46. Vulnerable witness mechanisms currently available should be adapted to the special needs of sexual assault victims as witnesses, including closed court TV, video and screens. (5.33)
47. The immediate redefinition of areas in courtroom precincts for witnesses/defendants and applicant/respondents be more practical. More appropriate planning of new court buildings or those to be renovated particularly in the country areas should be undertaken to address this problem. (1.5.2.3)
48. Appropriate accommodation within the court building be made for victims of domestic violence. (5.135)
49. Separate and private waiting areas should be provided within the Courts for families and supporters of women victims waiting for a hearing and making applications for restraining orders. (5.34)
50. That the particular difficulties and needs experienced by Aboriginal and non English speaking women as they access the criminal justice system be recognised and accommodated in all courts' procedures, planning and practices. (1.5.3.5)
51. A Permanent Committee, with some members being judicial officers (one from the Supreme Court), be established to monitor the operation of the courts as they affect Aboriginal people and to work in with the proposed Aboriginal Justice Advisory Committee. On the committee should be an equal proportion of Aboriginal women and men. (4.70)
52. Court services and the Police Department give more credence to expressed concerns by Aboriginal people concerning their personal safety when having to attend court. (4.129)
53. Staff at information booths in the Courts be trained to ensure they are sympathetic and helpful to court visitors. (1.5.2.3)
54. Aboriginal women be placed in court offices at all levels (including as support and resource persons) in particular where Aboriginal women are involved in court proceedings and processes. All court staff be given ongoing cultural awareness training. (4.73)
55. That para-legal staff be provided to assist women with Court procedure and to offer them emotional support. (1.5.3.5)
56. That a less exposed and enclosed witness box for victims in sexual assault cases be provided in relevant courts. (1.5.3.2)
57. That voice amplification facilities be installed in all courts. (1.5.3.2)

58. That provision of child care facilities be acknowledged by the relevant authorities as an essential service in courts. The Family Court facility should be followed as a model. The provision of suitably trained persons to be available for children during the time parents are present in the court should be of the highest priority. (1.5.2.3)
59. That information booths similar to the one housed inside the counselling area of the Family Court, be made available immediately in every court foyer in full view and contain essential information for the court visitor. (1.5.2.3)
60. That there be access to toilet facilities within the court environment in country areas. (1.5.2.3)
61. The Ministry of Justice be required to produce a Disabilities Plan for all courts. (5.42)
62. The courts and the criminal justice system in Western Australia recognise and acknowledge that there is a need to incorporate Alternative Dispute Resolution processes into the resolution of disputes which involve Aboriginal people. (4.85)
63. That proper refreshment facilities be made available at Courts. The refreshment machine in the Supreme court is not considered appropriate. The coffee shop facility at Sir Charles Gairdner Hospital is a desirable model. (1.5.2.3)

WOMEN AS VICTIMS

64. The Attorney General be made responsible for domestic violence policy and the design, co-ordination and monitoring of prevention strategies. (5.145)
65. The Victim Support Service be resourced to provide a specific domestic violence program for victims who come in contact with the criminal justice system. (5.130)
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)

67. The State of Western Australia adopt the following declarations, charters and recommendations and strive to ensure that all laws, governmental policies, and procedure, and governmental 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)

68. The University Law Schools incorporate within their curriculums specific units to address domestic violence. (5.94)
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)
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)
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)
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)
73. There be an evaluation of how Victim Impact Statements are used and their impact upon victims of domestic violence in court. (5.101)

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.

This means:

- (1) That where a person has suffered an assault Police should be required to investigate with a view to determining what sort of charge should be laid against the assailant.
 - (2) Where the woman has a fear for her safety, the alleged offender should be arrested and bailed upon condition that he not return to the property, or held overnight pending his appearance in court. Otherwise, rather than the alleged offender, the woman is forced to find alternative accommodation, often with children to protect.
 - (3) As with other charges, the police should ensure that where charges have been laid, bail conditions should be imposed which ensure that the alleged offender does not:
 - (a) endanger the safety of the woman;
 - (b) interfere with her as a witness, or other witnesses;
 - (c) commit a further offence against her;
 - (d) in appropriate cases, prevent the alleged offender from having any contact with the woman, or returning to her place of residence (even when he owns it).
 - (4) Police should take responsibility for applying for restraining orders, in conjunction with laying criminal charges, when that also appears to be appropriate or where there is insufficient evidence to charge the assailant. (6.22)
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)
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).
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)

78. That applications for restraining orders be heard in chambers or in a closed court. (1.5.33)
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)
80. Courts/Justices must use whatever means necessary to speed the restraining orders to the Police. (6.25)
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. (eg: her neighbours, workplace, children's teachers, etc) (6.25) (A. Robins and V. French wish to record their disagreement with this 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)
83. A "red alert" high priority be given to service of restraining orders for domestic violence and sexual assault. (6.25)
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)
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)
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)
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)
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)
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)

90. That legislation be passed to ensure portability of such Restraining Orders made in Western Australia to other jurisdictions. (6.36)
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)
92. The Justice 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.)
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.)
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)
95. A system of duty magistrates or justice be available to hear applications and make orders after hours. (6.44)
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)
97. Detention to be used as necessary to ensure that perpetrator/alleged perpetrator does not commit further violence or threaten the victim. (6.48)
98. Judicial Officers have compulsory training to ensure an understanding of the nature and danger of private violence. (6.49)
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)
100. Magistrates and justices be more specific in their instructions to the defendant. (6.53)
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)
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)

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)
104. Discretionary powers of Police in connection with alleged assaults on women be the subject of ongoing review by the Victims of Crime Committee which reports directly to the Attorney General. (6.62)
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)
106. That the Armadale Domestic Violence Project be adopted state-wide by the Police Department. (6.65)
107. Police Standing Orders give increased priority to complaints concerning breaches of restraining orders. (6.67)
108. Increase penalties (present maximum: \$1,000 or 6 months in gaol) for breaches of restraining orders. (6.68)

RECOMMENDATIONS SPECIFIC TO THE PROTECTION OF ABORIGINAL WOMEN FROM VIOLENCE

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)
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)
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)
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)
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)

114. Police training include a compulsory and ongoing cross-cultural awareness component to increase serving officers' sensitivity to the reality and relevance of cultural differences and to optimise the use of Police powers to protect Aboriginal women and their families from violence. (6.75) (4.154-156)
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)
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)
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)
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)
119. The State has a responsibility to prosecute in sexual assault cases. (5.47)
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)
121. Safe places be established for the protection of women and children victims of assault to be funded by the Commonwealth. (4.101)
122. Stalking legislation be introduced in Western Australia as a matter of urgency. (8.54)
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)
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)
125. There be judicial recognition of the need for expert evidence to inform juries of the realities of domestic violence. (8.49)

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)
127. The 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)
128. All prosecutors (police and DPP) attend more extensive cross-cultural awareness courses and other training courses (eg as to the availability of support structures) to make them aware of victims' rights and needs. Aboriginal women be employed as lecturers. (4.78)
129. Properly remunerated Aboriginal women counsellors be appointed, funded by the Ministry of Justice and Department of community Development; Health Department and all other Government Departments relevant to Aboriginal people to counsel women who have been assaulted. (4.97)
130. Victims of sexual abuse be referred as quickly as possible by police to an 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)
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)
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)
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)
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)
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)
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)

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 (eg. A data base exists at SARC relating to incidents when doctors are involved with sexual assault cases - it records the number of cases, broad age categories, sex, whether the police were involved or not, whether the assault was recent or in the past, and ethnic background; there are further data bases at SARC relating to counselling statistics and at the Armadale Domestic Violence Intervention Program.) (5.17)
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)
139. The State Government request the Commonwealth Government to pass legislation to make female genital mutilation a crime. (8.67)

PARTICULAR LAWS

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)
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)
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)
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 the law where women as unpaid workers are denied protection or discriminated against because of their status as the unpaid working class. (7.137)
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)

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.)
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.)
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)
148. The provisions of the Local Government Act granting Local Councils power to prohibit prostitution be repealed. (7.123)
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)
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)
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)
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)
153. The Criminal Code be amended with respect to self defence as envisaged in the Model Criminal Code of the Standing Committee of Attorney's General. (8.1) (8.31)
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)
155. In Western Australia provocation be retained as a defence. (8.46)
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)
157. The penalty for murder no longer be a mandatory life sentence (8.50)

POLICE OFFICERS

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)
159. The Police Department adopt Affirmative Action strategies to ensure that every station has access to a trained police woman. (5.11)
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)
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)
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)
163. There be a full police training facility established in the Kimberleys. (4.151)
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)
165. Police Officers be required to make a written report of all calls which involve domestic violence, whether or not a offence report will be made. (5.83)
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)
167. Police Officers be required to actively collect evidence, interview witnesses, and investigate allegations of crimes involving domestic violence. (5.90)
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)

169. Expert witnesses be specifically asked to provide evidence on the psychological effects of sexual assault and resultant injury to victims. (5.25)
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 Nation Committee on Violence Against Women's Mediation Guidelines. (5.87)
171. Police implement procedures for keeping victims informed of the progress of a complaint. (5.14)
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)
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)
174. The Police Department 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)
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)
176. There be far more care taken in explaining the conditions and default provisions concerning bail to Aboriginal women. (4.131)
177. The Bail Legislation be amended to provide a discretion in the court whether to order forfeiture of bail. (4.131)
178. When Aboriginal women are appointed to the police force, efforts be made by the Department to support them in their positions. (4.153)
179. An education unit be established to educate Aboriginal people as to why women are appointed as police officers. (4.152)
180. Further funding be provided to increase community policing by Aboriginal persons - including patrols within the communities. (4.100)

PUNISHMENT OF WOMEN

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)
182. 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. (9.4.11)
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 dependants, and the effect on the offender of the effect of the sentence on her or his family or dependants. (9.4.18)
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)
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)
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)
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)
188. Appropriate Aboriginal advisors be consulted by judicial officers on matters relating to culture where that is relevant - e.g. on questions of penalty. (4.75)

189. 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)
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)
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)
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)
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)
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)
195. That 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)
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)
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)
198. That a system to advise relevant persons of an offender's release date be established. (1.5.3.2)

INTRODUCTION

The Taskforce was established by the Chief Justice of Western Australia to investigate the extent to which gender bias exists in the law and the administration of justice in Western Australia and to make recommendations for its elimination.

It can be seen from the terms of reference that it is accepted by the Chief Justice that gender bias does exist in the law and the administration of justice. Women have been aware of this for a long time.

On 31 March 1777 Abigail Adams wrote to her husband John Adams who was shortly to become the President of the United States of America:

"I desire you should remember the ladies and be more generous and favourable to them than your ancestors ... If particular care and attention is not paid to the ladies, we are determined to foment a rebellion, and will not hold ourselves bound by any laws in which we have no voice or representation."

In his submission to the Australian Senate Standing Committee on Legal and Constitutional Affairs in 1993, the Chief Justice of Western Australia said amongst other things, that he had been convinced from what he had heard and read and learned that there is a need for all Judges, himself included, to be made aware of unconscious bias in decision making and of bias in the substantive law in its application to women.

In the Australian Law Reform Commission Discussion Paper "Equality Before the Law" (July 1993) it is stated:

"The Commission understands 'gender' as the 'social construction of male/female identity...an integral part of the process of social classification and organisation' (A Bullock & O Stallybrass (ed) Fontana Dictionary of Modern Thought Fontana Press London 1988, 348). A social construction arises from the commonly held values, beliefs and perspectives of an identifiable group of people. It develops over time and becomes part of the culture of the group. Gender describes more than biological differences between women and men. It includes the ways in which those differences, whether real or perceived, have been valued, used and relied upon to classify women and men and to assign roles and expectations to them. The significance of this is that the lives and experiences of women and men, including their experience of the legal system, occur within complex sets of differing social and cultural expectations.

Gender bias arises from stereotyped assumptions about the roles of women and men. When the bias disadvantages women, women, as a group, are treated as, or believed to be, less entitled, less valuable or less worthy than men. "Gender bias" is used in this paper in a systemic sense. This means that the concern is with gender bias within a culture or in social institutions. For example, the

legal system is affected by gender bias if it adopts or perpetuates stereotyped roles for men and women, perceptions about the superiority or inferiority of either sex or misconceptions about the realities experienced by men and women (Law Society of British Columbia Gender Bias Committee Gender Equality in the Justice System Law Society of British Columbia, Vancouver 1992 Vol 1, 1-2).

The Commission does not assume that only women suffer discrimination or disadvantage in the legal system or that Australia's legal system is fundamentally flawed. Many individuals and groups, both men and women, are affected by inequalities in access to law and by discrimination of various kinds. Australia has a strong legal tradition that includes a commitment to justice and the rule of law. No legal system, however, is perfect. Every Legal system can be improved. Women have been said to experience disadvantages and unequal results from the legal system, on the basis of gender. Concern about this apparent inequality led to this reference. The identification and elimination of gender bias against women will not reduce the ability of men to enjoy their human rights and fundamental freedoms. On the contrary, it will help to ensure that both women and men have full enjoyment of these rights and freedoms on the basis of equality".

In the United States and Canada the issue of gender bias has concerned the judiciary for some time. In 1982 in New Jersey, Chief Justice Wilentz established a task force "to investigate the extent to which gender bias exists in the New Jersey judicial branch and to develop an educational programme to eliminate any such bias". Since 1982 over 20 other States have created similar task forces.

Professor Mahoney, the co-author of the work "Judges and Equality" (1987) and the Director of the United Nations sponsored International Project to Promote Fairness in Judicial Processes" said in 1992 that:

"Gender bias takes many forms. One form is behaviour or decision making by participants in the justice system which is based on, or reveals reliance on, stereotypical attitudes about the nature and roles of men and women or of their relative worth, rather than being based upon an independent valuation of individual ability, life experience and aspirations. Gender bias can also arise out of myths and misconceptions about the social and economic realities encountered by both sexes. It exists when issues are viewed only from the male perspective, when problems of women are viewed only from the male perspective, when problems of women are trivialised or oversimplified, when women are not taken seriously or given the same credibility as men. Gender bias is reflected not only in actions of individuals, but also in cultural traditions and in institutional practices".

The Maryland Task Force into gender bias in the administration of justice decided that gender bias exists in the following circumstances:

"When people are denied rights or burdened with responsibility solely on the basis of gender.

When people are subjected to stereotypes about the proper behaviour of men and women which ignore their individual situation.

When people are treated differently in situations where gender should make no difference.

When women or men can be subjected to a legal rule, or policy or practice which produces worse results for them than for the other group".

THE TASKFORCE'S APPROACH TO THE REFERENCE

Members of the Taskforce were initially asked to indicate matters of concern in the law and the administration of justice in Western Australia relating to gender bias. The Executive then appointed eight sub-committees to investigate and make recommendations on those subjects. The members of the Taskforce were appointed to sub-committees relevant to the areas in which they had expressed an interest.

The sub-committees were chaired by members of the Executive Committee. The original members of the sub-committees were all the members of the Taskforce. Since that time, some of the sub-committees have also consulted widely within the community and sought the views of persons familiar with and expert in the various areas of concern.

The result of that process is contained in the following sections of the Report.