

CHAPTER 11 EVALUATION OF THE MINISTRY'S CURRENT SUICIDE PREVENTION STRATEGIES

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**EVALUATION OF THE MINISTRY'S SUICIDE PREVENTION STRATEGIES
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SUMMARY OF RECOMMENDATIONS

- 11.1 At risk prisoners are currently managed largely in accordance with the system in place at the end of 1998 as outlined in Chapter 9¹. Although there appears to have been a significant improvement in the Ministry's suicide prevention strategies system since the introduction of *ARMS* in December 1998, having considered the new initiatives and the concerns raised in submissions to my inquiry, in my view there remain a number of residual problems which have not been addressed by *ARMS*.

IDENTIFICATION AND ASSESSMENT PROCEDURES

- 11.2 As stated in Chapter 9², the new format assessment forms introduced in late 1996 and modified in 1997 attracted almost universal criticism from nursing staff in submissions to my inquiry. The direction that nursing staff *must* classify a prisoner's level of risk as high, medium or low attracted even greater opposition. Broadly speaking the concerns raised by the nursing staff can be categorised as follows:-

- lack of consultation and training;
- time constraints;
- the blame culture.

Lack of consultation and training

- 11.3 The lack of training and orientation programs for health staff has been considered in some detail in Chapter 6.³ Similarly the lack of consultation at all levels was drawn to my attention as an illustration of both the low priority of health when compared with security considerations, and the lack of planning of new health initiatives such as the Crisis Care Unit at Casuarina. The systemic problems caused by lack of training were raised by the Coroner in a number of inquests⁴ and also by health staff.
- 11.4 I am inclined to agree with nursing staff that it was unfair and unreasonable to require them to implement the new assessment forms without notice or prior consultation and without training in interviewing techniques. This concern in conjunction with the time constraints caused by prison operational considerations (see below) has the potential to place prisoners at risk and cause management problems. In this regard I note that the Longford Inquiry into the Esso gas explosion in Victoria found that Esso was at least partially liable for deficiencies in the safety system because it had failed to provide its staff with adequate training.
- 11.5 In general terms, in the past, prison staff in all areas have been provided with minimal opportunity for training and professional development in essential aspects of their job requirements. I am pleased to note that the current Director Health Service has begun to organise regular training sessions for health staff and that the Ministry recently held a Health Services Conference for staff from all prisons around the State.
- 11.6 In relation to the initial assessment of a prisoner's risk of self harm, it should be noted that the majority of prison nurses do not have a background in mental health nursing or behavioural diagnosis. Concerns about the complexity and insensitivity of the questions which must be put to prisoners on admission to prison seem to me to be a reflection of the fact that nursing staff were provided with very little training in how to ask those questions in an indirect way without appearing provocative or intimidating to, or causing distress for, the prisoner being interviewed. Although I am aware that the more experienced members of the nursing staff already adopt a more indirect approach, others, particularly new staff, may not feel sufficiently confident to depart from the strict wording of the form and may provide an incomplete picture of the prisoner in question. It is clear to me that the value of the initial assessment of a prisoner's risk status will depend on the expertise of the nursing staff asking the questions and,

importantly, the preparedness of the prisoner to disclose information. The Ministry should therefore endeavour to employ nursing staff with an appropriate mental health background to perform this initial assessment.

- 11.7 However, in spite of my concerns about aspects of the assessment procedure, I believe that it would be counter-productive to place too much emphasis on the results of the initial assessment. It seems to me that the primary value of the first interview is to establish as far as possible if a prisoner shows any *obvious* suicidal or self-harming tendencies *at that time*. An indication of a prisoner's medium to long term risk status is more likely to be gained from observation over a period of time by a person experienced in this type of psychological assessment than from the responses provided by a distressed and possibly terrified prisoner on arrival at a prison. For this reason a more accurate picture of the prisoner's vulnerability will be obtained if the initial assessment is followed by the opportunity for comprehensive orientation and induction in a specialised facility – such as that proposed at Hakea – when subsequent assessments and monitoring of progress during the 'settling in' period are a part of the routine.

RECOMMENDATION 11.1

That the Ministry provide all health services staff with appropriate and ongoing training in the assessment of prisoners to establish any self harm or suicidal tendencies – both on admission to prison and during the term of imprisonment.

Time constraints

- 11.8 Most new prisoners are received at prisons from the courts at the end of the day. Although the new risk assessment forms take longer to complete than the previous version (particularly without proper training), nursing staff told me that pressure to complete the forms in less time than they felt comfortable with comes from prison officers who, it is alleged, are anxious for the initial medical assessment to be completed so that they can finish their operational duties before the end of their shift. It has been suggested that this is one of the consequences of the 12-hour shift system for prison officers.⁵
- 11.9 As this same issue was raised by the Select Committee into the *Misuse of Drugs Act 1981* and conceded by the Ministry in its *Drug Management Strategy Project* (the *DMSP*)⁶ I have no reason to doubt the claims made by the nursing staff. In my view this apparent conflict between health and operational considerations should be resolved by the Ministry as a matter of urgency given the importance of the initial assessment in the management of newly admitted prisoners - an issue which was emphasised in RCIADIC **Recommendation 156**. The operational attractiveness of having all prisoners processed by a certain hour – to facilitate the evening lockup and the end of the shift – must not come at the expense of insufficient time to complete the risk assessment process.
- 11.10 In relation to the early identification of prisoners suffering the effects of substance abuse on receipt into prison, the *DMSP* recommended that nursing personnel should be afforded “*immediate access to newly arrived prisoners following the completion of essential reception tasks as a priority function of the reception process*” (Recommendation 22). I fully support that recommendation.
- 11.11 Although the opening of the new dedicated receipt prison at Hakea will help resolve the problem for new male prisoners in the metropolitan area, it will not assist staff at female or regional prisons. If, in the interests of the welfare and well-being of prisoners, the Ministry identifies the need to examine the effect of the 12-hour shift system under which prison officers work on the welfare and safety of prisoners, it should, in my view, ‘grasp the nettle’.⁷

RECOMMENDATION 11.2

That the Ministry take all steps necessary to ensure that prison regimes are organised to permit sufficient time for the initial medical and risk assessment process to be completed properly.

'Blame culture'

- 11.12 Nurses told me that they were reluctant to make a final classification on the level of risk presented by a prisoner because they were concerned that they would be criticised and blamed if it was subsequently found to be inaccurate - for example if a prisoner classified as low risk committed suicide. As a consequence, some either did not 'tick the box' at all or always classified a prisoner as high risk. Both approaches are unhelpful – the latter particularly so - because it may produce false positives which appear to exaggerate the problem of self harm. From the prisoner's perspective it may well result in placement in a medical observation cell even though he/she genuinely had no suicidal thoughts.
- 11.13 I have been told by the Ministry's senior psychiatrist that it is a widely accepted clinical principle that a prisoner who subsequently commits suicide or serious self harm might quite properly have been classified as a low risk at the time when he/ she was seen by the FCMT or nursing staff. An assessment of risk can generally only reflect the way a prisoner is feeling at the time of assessment. It is reasonable to recognise that a prisoner's level of stress and associated risk of self harm could be subsequently affected by the intervention of other factors which could be any one or a combination of the prison stressors identified by Dr Liebling.⁸ Some prisoners will feel better by simply talking to a health professional but lose their ability to cope later when they are alone. Others will not reveal their thoughts or intentions at all. If, as I believe to be the case, the view expressed by the senior psychiatrist is accepted by senior Ministry health professionals, it is unfortunate that many of the nurses we spoke to did not appear to be aware of it.
- 11.14 However, the frequency of concerns in submissions and interviews with staff at all levels and from all areas of the prison system about the 'blame culture' and the lack of actual moral support provided at a senior level, lead me to believe that the concerns of nursing staff about their possible 'liability' are not without some foundation.
- 11.15 Howells and Hall made particular reference to the external and internal pressures which give rise to the 'blame' culture⁹:-

“This blame culture appears to have grown over time and in response to both internal and external pressures. The external pressures include the Royal Commission into Aboriginal Deaths in Custody (and the response to it), the Ombudsman, the Coroner and the Death Watch Committee. From the perspective of staff many of these bodies appear antagonistic and intent upon finding a person responsible for a death in custody. Not surprisingly there is an atmosphere of suspicion and defensiveness when these external bodies interact with the system.

.....It is also the perception that when “a failure” occurs the system responds by attempting to identify an individual to blame rather than by detailed scrutiny of policies and procedures.”

- 11.16 Although Howells and Hall found “considerable mutual support” among staff, they also reported a lack of the same level of support from the Ministry, particularly in relation to appearing before the Coroner:-

“One non-custodial staff member noted that the Superintendent and Assistant Superintendent stayed on at the coronial enquiry while he gave his evidence to provide him with support.....

However, there were some criticisms noted. The most prominent was that staff felt abandoned when they faced a coronial court. While the Government or the Ministry is represented it is clear that this representation is not for the benefit of staff. Indeed, one interviewee commented that at one point in an inquest the Crown Solicitor representative "turned on me"?

11.17 In this regard I note that members of WAPOU have been represented by a Union-appointed lawyers at only one inquest since February 1999 – that into the death of Neil Holt. Other members of staff - such as those nurses who are members of the ANF are occasionally represented by an ANF-appointed lawyer. Apart from having the effect of lowering staff morale and confidence, a perception that they will not be supported by the Ministry at an inquest has distinct disadvantages for the quality of care provided to prisoners.

11.18 Some staff referred to the activities and media profile of the Deaths in Custody Watch Committee as contributing to the blame culture but, almost universally, officers and staff at all levels registered greater concern about the reaction and attitude of "Head Office" (meaning the head office of the Ministry of Justice in Westralia Square) following a death in custody. Sadly, most appeared to be of the view that they would be abandoned by 'Head Office' and made a scapegoat if it was possible for some element of blame to be attributed to their actions or omissions. In fact the initial reluctance by many officers to provide me with their views appears to have been their concern that they would be victimised by the Ministry for doing so, rather than suspicion of my procedures. In this regard, I cannot be entirely satisfied that prisons in Western Australia could be considered for the most part 'healthy' for either staff or prisoners.

11.19 Howells and Hall also commented on a further consequence of the 'blame culture' at page 38-39:-

"One of the recurrent themes identified in our interviews is the perceived reactive nature of the Ministry's management of at risk prisoners. There is a wide spread perception by the staff that, in the absence of a long term strategy and philosophy for managing self harm, hasty and ill thought out reactions occur to serious incidents..... The "blame culture" as one respondent called it, has the effect of excessively focussing staff attention on bureaucratic and legalistic aspects of care rather than human and organic aspects. This often results in the safest option being chosen for staff rather than a creative response to the needs of the individual.

In our view, the perceived "blame culture" explains some of the problematic staff reactions to at risk prisoners: a concentration on record keeping rather than information giving; the high use of observation cells; excessive referrals to, and reliance upon FCMT staff; an emphasis on getting information on prisoners rather than interacting with them in a more informal manner; and the lack of support provided to staff during a coronal enquiry....."

11.20 In my view the Ministry should take steps to become more intuitive to prison 'atmosphere'. To this end I suggest that senior prison administrators and staff based at 'Head Office' should also become more proactive in their relationships with prison officers.

MANAGEMENT STRATEGIES

- 11.21 Prisoners are now managed according to the principles of the *At Risk Management System (ARMS)* which has been in operation since December 1998. Although I accept that it is virtually impossible to prevent all prison suicides, it seems that the steps taken by the Ministry during 1999 were largely successful in reducing the number of deaths in spite of the unacceptably high musters - particularly at Casuarina - and the strict regime imposed on prisoners for several months following the riot on Christmas Day 1998. I have been told by the Manager of the FCMT that, on the basis of a recent review of the system at Hakea, Bandyup, Eastern Goldfields and Broome, the *ARMS* concept has been embraced by most staff. I have also been told by the Director, Health Services, however, that he has noted at some prisons a relatively poor standard of record-keeping in the Prisoner Risk Assessment file kept in the units.
- 11.22 It is encouraging to hear that the concept of *ARMS* has been widely accepted. In my view the reduction in the number of suicides in 1999 – four compared to 12 in 1998 – may also suggest that the changes to the Ministry's suicide prevention strategies have been successful. It may also be attributable to the widespread promotion by senior staff of the principle that at risk management is the global responsibility of *all* staff and not just the province of health staff. The seven apparent suicides between 6 January and 25 June 2000 (five since 7 May) are, however, a reminder that the system cannot become complacent. The Ministry appears to share this view and has established a Taskforce to investigate the recent deaths and their causes. The project will include an evaluation of *ARMS* to identify the elements which can be improved and means of heightening awareness of suicide in prison.

Poor prisoner/officer relations

- 11.23 Strained and occasionally obvious hostile relationships between prisoners and prison officers were evident in most of the prisons I and my staff visited in the course of this inquiry. This issue was also a constant theme in submissions and interviews. Although I am certain that a certain amount of *'them and us'* is inevitable in the prison environment, the stress which can be created and engendered by the actions and attitudes of a small number of officers can ultimately pervade the whole system, with the result that prisoners will see all, or most, officers as adversaries. For example, I have strong reservations about the success of *ARMS* at Casuarina – the prison with the most problematical prisoners and the highest rate of self harm and suicide – in the aftermath of the lockdown regime and the new 'barrier' type of control. In my Annual Report for 1998/1999¹⁰ I commented on my observations of "barriers" between officers and prisoners:-

"...I had a number of concerns about the situation at Casuarina in terms of both the current functioning of the prison and what might occur in the future. Underlying these concerns was my long-held concern about the need for a high degree of positive interaction between prisoners and prison staff of all types if the concept of unit management is to have any real meaning. My observations at Casuarina left me with a significant sense of unease about the future culture of the prison. This unease was that once the "yards" were in place and operating, not only would there be physical barriers between prisoners and prison staff but also attitudinal barriers that have been allowed to develop because of the lockdown regime – of such a nature and magnitude that the kind of positive interaction that is desirable will not be possible to the necessary degree."

- 11.24 The Ministry was alerted to a growing deterioration in prisoner/officer communication by Howells and Hall and acknowledged at page 14 of its *Report on Suicide Prevention Strategies for Prisons in Western Australia* (December 1998) that a known 'stressor' for prisoners is:-

"Lack of positive contact with staff

Positive interaction between prison officers and prisoners is a key to the prevention of suicide and the management of vulnerable and distressed prisoners. Prisoners will not reveal their feelings and intentions unless a good relationship exists (Howells and Hall 1998:38)." (my emphasis)

- 11.25 The Dear et al study of self harm also found that the final trigger for most prisoners who had self-harmed was an internal prison event which may have been caused by interaction with officers or with other prisoners. As a prisoner's daily life is for the most part influenced by and under the control of prison officers, daily contact that is negative, indifferent or hostile, is less likely to result in a positive relationship and also increases the potential for that contact to become a trigger for self harm or suicide.
- 11.26 The effect of a "*lack of positive contact*" has been noted in a number of IIU and coronial investigations – the first in relation to the death of David Metcalf in 1991 - following the death of a prisoner, with the repeated recommendation that officers need to be trained to become more intuitive to the needs of at risk prisoners.¹¹ It is, therefore, of concern that it was not until 1998, after a dramatic increase in the number of deaths and consideration of the Howells and Hall study, that the Ministry appears to have accepted that there were serious deficiencies in its existing risk management strategies and to have recognised that this was at least partly attributable to a deterioration in prisoner/prison officer relations. By that time the problem had been left for so long that it became necessary to reinforce by means of the *formal* procedures and *written* instructions in the *ARMS* manual that the care and management of vulnerable prisoners is the responsibility of **all** prison staff - a responsibility which I would have thought was automatically an *integral* and essential component of the obligations of anyone involved in the management of a person held in care.
- 11.27 It is not clear whether the Ministry's failure to respond to recommendations made over a number of years (certainly between 1992 and 1998) was because it disagreed with the principle of the recommendations; because it lacked, and could not obtain, funding or resources to implement the recommendations; or whether its inaction stemmed from indifference, a lack of co-ordination or negligence. To the extent that it has largely been unable to provide me with documentation outlining its responses to various recommendations, I am inclined to the view that the Ministry's inaction was the product of apathy, lack of co-ordination and an unwillingness to deal appropriately with difficult problems, particularly when solutions required expenditure of scarce funding.

Lack of trust/unwillingness to confide in prison officers

- 11.28 Howells and Hall stated:-

"The organisational culture or environment is critical to the prevention of self harm and suicide. Good staff-prisoner interaction is a necessary pre-requisite in this task. Prisoners will not reveal their feelings and intentions unless a good relationship exists. Similarly, prisoners will be unlikely to identify other prisoners at risk. Hence a major concern in long-term planning must be how to enhance staff prisoner interaction."

- 11.29 An inevitable by-product of a deterioration in prisoner/officer relations is that prisoners will become unwilling to confide in or seek help from a prison officer for themselves or for other prisoners and prison staff may only discover after the death of a prisoner that other prisoners were aware that he/she had threatened suicide or was acutely vulnerable through having taken drugs. This lack of communication by other prisoners in whom a fellow prisoner has confided came to light following investigation into a number of prisoner suicides.
- 11.30 For example, it emerged that Sean **Hayes** (Remand Centre, August 1997) had told his cell-mate of problems with his girl friend and his intention to take his own life, but the cell-mate did not advise anyone of the discussions. In the case of Douglas **Yorkshire** (who died from a drug overdose in Canning Vale in January 1994) neither of the two prisoners, who allegedly physically assisted him back to his cell after he had taken drugs and who were unable to rouse him before returning to their cells for lockup, told officers of Mr Yorkshire's condition. Anthony **Wood**, who electrocuted himself at the Remand Centre in January 1997, had apparently discussed his intention at length with two other prisoners. Although it is reported that the two prisoners attempted to keep Mr Wood occupied and to help him when he was feeling distressed, they did not advise prison staff of their concerns.
- 11.31 Christopher **DeGois** who committed suicide in Casuarina in November 1997, was known to be at risk of self harm by prison staff, although he had assured prison officers on the day of his death that he was feeling positive and would not self harm. Later that evening, after a telephone conversation with his brother, he told two prisoners of his suicidal intentions. The prisoners subsequently said that they did not advise prison staff because they did not think he was serious.
- 11.32 Prisoners have told IIU investigators looking into the death of a prisoner – and also members of my staff in the course of this inquiry – that they were also reluctant to tell prison staff of their concerns because the most likely result would be for the prisoner in question to be placed in a medical observation cell, a prospect feared and detested by the majority of prisoners.
- 11.33 In findings following the inquest into the death of Mr Yorkshire, the Coroner stated:-

“It has been a recurring theme in this and other Inquests that prison inmates see the prison system as an adversary and that to perpetuate a deception upon prison officers, who are instruments of the prison system, is to achieve a success in the continuing contest.

There is also a well understood but unwritten rule that inmates would not inform on each other to prison officers and that so far as was able, inmates would protect fellow inmates from detection for infringements of prison discipline or illegal activity.”

- 11.34 The only significant response by the Ministry to this issue appears to have been in June 1998 in its comments on the Coronial findings in the case of Anthony Wood:-

“This matter of prisoners feeling confident about talking to prison officers of concerns that they have for their peers’ well being is a complex one that needs to be addressed on a number of fronts. Prisoners in most instances feel reluctant to either engage, or be seen to be engaged, in earnest conversations with prison officers. This is a cultural issue that can be addressed through carefully planned training and education, for both prisoners and prison officers.

The prison officer induction-training schedule allocates 2 of the 10 weeks training period to the development of communication skills. However verbal communication and interpersonal skills are not assessed in the initial selection process and if a base level of skills is not present it is difficult to enhance what does not exist.”

11.35 The review went on to recommend:-

“That prisoner induction and, peer support programs actively promote the need for prisoners to talk with prison officers about concerns they [have] regarding prisoners (including themselves) who may self-harm.

That future ‘update’ or ‘refresher’ prison officer training programs target the development of ‘active listening’ and verbal communication skills.

That verbal communication and interpersonal skills are highlighted as essential selection criteria for prison officers.”

11.36 I do not disagree with these observations. In my view, the breakdown of communications between prisoners and prison officers has serious implications for the effective management of at risk prisoners and is an indictment of the system of Unit Management in Western Australian prisons, an *essential* feature of which was supposed to be constructive interaction between prisoners and prison officers. I would also observe, however, that the issue must not be seen only as one of encouraging prisoners to talk to prison officers. Equally, or perhaps more, important is the need for prison officers to take the initiative and actively engage prisoners in general conversation to break down the barriers and encourage positive interaction. To do this officers must be both willing and able (through natural ability or through training) to overcome the current obvious obstacles to communication with prisoners.

11.37 The recent Howells, Hall and Day study “*The Management of Suicide and Self-harm in Prisons: Recommendations for Good Practice*”¹² stated at page 162:-

“Good staff-prisoner interaction is a necessary prerequisite for suicide prevention. Prisoners are unlikely to reveal their feelings and intentions to staff unless a good relationship exists. Similarly, prisoners will be unlikely to identify other prisoners as at risk. Identifying barriers to help-seeking is an important task, particularly when working with young people in detention. Hence a major concern in long-term planning must be how to enhance staff-prisoner interaction. The selection of officers who are “people-oriented”, modelling of expected behaviour by senior staff, and effective case management have an important part to play in developing an appropriate atmosphere and culture. In view of the importance of this issue, consideration needs to be given to monitoring institutional atmosphere in prisons, to using social environment assessment instruments and to setting management objectives to improve staff rapport. There is considerable agreement in the published literature on suicide in prisons that good staff training (at all levels) is essential for an effective system.”

11.38 The Dear et al study of self harm pointed to the value of self-disclosure of distress and depression as a means of preventing self harm by prisoners but cautioned that there should be “*no disincentives for making such disclosures (eg, automatic placement in an observation cell) and a reasonable likelihood of appropriate and timely assistance.*” In other words, prisoners can be assured that officers will take them seriously and will do something to help them, rather than leave them in obvious distress as occurred in relation to Wesley Doorey.¹³

11.39 In response to my request for information on the progress of the recommendations of the review of Mr Wood’s death, the Ministry advised:-

“Currently upon being received into any prison, offenders receive information as part of their induction, which includes the encouragement to bring any problems to Prison Officers’ attention as a first response.

An enhanced Peer Support Program was introduced into all prisons with newly created positions of Prisoner Support Officers being responsible for the establishment of and ongoing training in the Peer Support Programs. This enables prisoners to recognise fellow prisoners who are ‘at risk’ and to support them through appropriate attentive listening and communications skills.

The program encourages prisoners to talk to Prison Officers when concerned about self-harm and other problems. There are Prisoner Support Officers in all prisons except the minimum-security prisons at Karnet, Pardelup and Wooroloo.”⁴

- 11.40 The particularly good relations which are evident between officers and prisoners at Albany Regional Prison have been remarked upon in a number of studies. For example, in their 1997/8 review of the Ministry's suicide prevention strategies Howells and Hall observed:-

“In our interviews, we did note some differences between prisons. For example Albany Prison appeared to promote and encourage positive rapport between prisoners and officers, and senior staff explicitly address the “us versus them mentality.....”” (page 38)

- 11.41 The Custodial Services Inspection team which inspected Albany Prison in September 1999 wrote, *inter alia*, in their report:-

“What we were told by Prisoners

There was mutual respect between officers and prisoners (we observed this).

Officers had a good attitude towards prisoners (we agreed).

What we were told by Staff

Officers were prisoner focused (this was true).

Prisoners were able to bring their problems to officers (we agreed and saw this as evidence of a good relationship with prisoners).

It was part of the Albany prison ‘culture’ to mix with prisoners.

Staff and Prisoner Relationships and Unit Management

Unit Management was focused on the solving of prisoner problems.....The case management of all prisoners was a significant achievement that undoubtedly contributed to the generally excellent relationship between prisoners and staff. This achievement was the more notable as it had been accomplished with a prisoner population that included prisoners with records of extreme violence and history of intractable behaviour at other prisons.

Conclusion

.....The management of the prison was focused on meeting the needs of prisoners, the interaction between staff and prisoners was commendable – the widespread practice by officers of calling prisoners by their first name being an example of this.

Prisonersfelt safe and said that the ‘relaxed atmosphere’ of the prison was due to staff treating them with respect and dealing with their complaints promptly.”

- 11.42 These comments mirror my own observations during my visit to Albany and are in sharp contrast to my comments on the situation at Casuarina post-riot in my 1998/99 Annual Report.¹⁵
- 11.43 In my view, until the longstanding barriers and the lack of trust between prison officers and prisoners are effectively dismantled, so that prisoners and prison officers feel comfortable talking to each other, it is unlikely that the full potential of ARMS will be achieved. Ultimately, the success of ARMS will depend on three factors - the selection of suitable prison officers with advanced communication and conflict resolution skills and a willingness to use them; their ability to put into practice the principles of the ARMS system; and the provision of adequate training both initially and on an ongoing basis.

The issue of training has been a continuing theme throughout this report. However, it is also one which I cannot avoid repeating both because of its importance and because of its clear inadequacy in all areas of the Western Australian prison system.

- 11.44 The effectiveness of *ARMS* will also depend on the Ministry's willingness to transfer those officers who may be unsuited to the role envisaged in *ARMS* to areas where they have less contact with prisoners and to encourage those who appear unsuited to the care of persons in custody to leave the prison service altogether. I should say that this is a view that was put to me in more than one submission from serving prison officers.

RECOMMENDATION 11.3

That, recognising the importance of good prisoner/prison staff relations, the Ministry review its selection and recruitment process for all prison-based staff to ensure that sufficient priority is given to high level communication and interpersonal skills as basic requirements for all staff dealing with prisoners.

Conflicts between health and security considerations

- 11.45 As discussed at length in Chapter 6 the tension between health and prison staff over the relative priority of health and custodial issues has been raised with me in submissions and interviews. Examples given to me included:-

- decisions and recommendations of health staff and FCMT regarding the placement - or continued placement - of a prisoner in an observation cell being over-ridden by clinically unqualified prison staff;
- placement of prisoners in the Infirmary and the Crisis Care Unit being controlled by prison operation staff rather than by health professionals;
- recommendations by FCMT staff regarding the use and continued use of restraints on prisoners in observation being ignored; and
- pressure being placed on health staff to complete risk assessments to fit in with operational duties at the end of a shift.

- 11.46 Disagreement between prison disciplinary and health staff in the management of at risk prisoners, particularly those in the observation cell area is of concern because it can only disadvantage the prisoner. Ultimately, it is difficult to comprehend a system which allows the medical and clinical judgement of qualified health personnel to be over-ridden by *unqualified* prison staff. At very least, conflicts of this nature - which would be well known to prisoners - create uncertainty and a lack of confidence in health services, which means that prisoners may not seek help when they need it. This problem was highlighted by Howells and Hall, who commented at (at page 24 of their report):-

“In our interviews we were impressed by the good communication that generally exists between operational and health staff, particularly at the unit level. However, there is a need for greater co-ordination and for joint planning, and to build upon the general level of good will which exists amongst staff working in prisons. In any case, the most effective method of achieving the organisation's goals is to have a highly integrated work force.”

- 11.47 The importance of maintaining the balance between security, control and justice as a test of a 'healthy' prison was referred to in HM Chief Inspector's report on suicide and self harm in UK prisons. The Chief Inspector quoted from the report of Lord Woolf following the Strangeways Prison riot in 1991, which stated:-

“... “Security” refers to the obligation of the Prison Service to prevent prisoners escaping. “Control” deals with the obligation of the Prison Service to prevent prisoners being disruptive. “Justice” refers to the obligation of the Prison Service to treat prisoners with humanity and fairness and to prepare them for their return to the community in a way which makes it less likely that they will reoffend. There are two basic rules if these requirements are to be met. They are: i) sufficient attention has to be paid to each of the requirements; ii) they must be kept in balance.”

- 11.48 The guidelines in the *ARMS* Manual clearly promote a ‘global’ responsibility which, in my view, means that neither security nor health is the dominant consideration but that an at risk prisoner’s management should be a combination of the two. Although I support the Ministry’s change in focus from the solely ‘medical’ management of at risk and vulnerable prisoners and its promotion of the view that the care and management of such prisoners is the responsibility of **all** prison staff, it is essential that prison officers do not see this approach as an indication that they do not need to consult or be advised by appropriately qualified health staff.

RECOMMENDATION 11.4

That the Ministry’s operational rules require that:-

- (a) the Director, Health Services and relevant health staff are consulted and involved in proposals and decisions relating to the health of prisoners and the management and placement of prisoners considered at risk; and that**
- (b) decisions made by qualified health professionals must not be over-ruled by unqualified prison staff.**

SUPPORT SERVICES FOR AT RISK PRISONERS

- 11.49 Prisoners in need of treatment, counselling and/or support are able to seek help from the FCMT, medical and nursing staff, the visiting psychiatrist, the Prisoner Support Officer and Peer Support Group, members of the Aboriginal Visitors Scheme, chaplains and prison officers. From my observations while visiting prisons around the State, I would also like to acknowledge the positive – and largely unsung - role played by many prison Education Officers and Industrial Officers in helping prisoners – whether ‘disturbed and vulnerable’ or not. The Education Officer seems to be seen by prisoners as a non-judgmental ‘someone to talk to’ who, through the provision of practical therapeutic and life-skills programs – sometimes with little or no support from prison management and the Ministry – are able to assist prisoners to cope with their imprisonment and life in the community on their release.¹⁶ The same can be said for Industrial Officers who seem to be able to relate to prisoners at a much more personal and relaxed level than do many prison officers. The extent to which members of a prisoner’s family are involved by prison staff in managing prisoners still has, in my view, a long way to go to reap the maximum benefit in terms of suicide prevention strategies.¹⁷

The Forensic Case Management Team

- 11.50 The Ministry has advised me that it has increased the resources of the FCMT since 1998 and now has a total of 36.2 FTEs (including the Manager (1 FTE), a clinical specialist (0.5 FTE) and 1.25 FTE for occupational therapy). In addition there are 12 FTE for Prisoner Support Officers (one at each prison except Casuarina and Hakea which have two, and 0.5 of an FTE at both Karnet and Wooroloo). **Table 11.1** summarises the coverage by FCMT at each prison:-

TABLE 11.1 Forensic Case Management Team services as at 18/10/2000

Prison	Days/Week	On duty coverage	FTE's
Albany/Pardelup	Mon-Fri	Full time	1
Bandyup/Nyandi	Mon-Fri	3 Full time; 1/3 days Plus 0.5 O/T	4
Broome	Tues	2.5 hours per week	0.25
Bunbury	Mon-Fri	1/23 hours; 1/15 hours	1
Casuarina	Mon-Fri	Full time Full time O/T*	11
Eastern Goldfields	Eastern Goldfields Mental Health Services-	As required	0
Greenough	Mon-Fri	1 Full time; 1/19 hours	1.5
Hakea	Mon-Fri	Full time	12.25
Karnet	1 day per week		0.2
Riverbank	1 session per week plus on-call from Bandyup as needed and 0.5 of the O/T at Bandyup		0.5
Roebourne	Fortnightly	8 hours per fortnight	1
Wooroloo	Serviced by FCMT from Bandyup		0

* The Occupational Therapist position will be shared with Hakea when the Assessment Centre is operational

- 11.51 The Ministry has advised me that “[T]here are difficulties in maintaining all of these FTE at the optimal level due to recruitment difficulties in regional locations, difficulties in attracting Occupational Therapists and other budgetary considerations.” Nevertheless, the number of FTE available to the FCMT is now greater than it has ever been – approximately 5 times the 1994 level. I have also been advised that the Ministry has recently agreed to deploy additional FCMT staff if the muster at the main prisons reaches a predetermined level.
- 11.52 In my view the introduction of the concept of an increase in FCMT establishment if prisoner numbers exceed a certain predetermined level – a proposal made by my predecessor in relation to nursing staff in his 1995 report on health care at Bandyup¹⁸ - will lead to a significant enhancement of the support services available to prisoners and will also relieve the unrelenting pressure to which all health staff seem to be subjected.
- 11.53 I am uncertain whether current staffing levels will now enable the FCMT to monitor and regularly review acute at risk groups such as long term prisoners and those assessed as vulnerable based on the principles of ARMS, young prisoners and those suffering the effects of substance abuse who are not classified as ‘at risk’. In my view, the inability of the FCMT to provide support other than as crisis management is a serious, and possibly for some prisoners a fatal, flaw in the Ministry’s management strategies.
- 11.54 In this regard, if members of the FCMT were ‘on duty’ at the weekends - instead of ‘on call’ - it may provide an ideal opportunity for the running of preventative and self-help programs¹⁹ as well as ensuring that prisoners who need to be seen by the FCMT could be. The situation described by one prisoner in his submission to my inquiry might be avoided :-

“Let me first point out to you that I am a minimum rated security prisoner in a maximum facility. Now I am back in obs (last two nights) and will be spending tonight Monday night in there as well. As yet I have seen no mental health care professional (psychiatrist or special needs team) and will not be seeing them until tomorrow. The reason for this is there is nobody in this capacity on weekends and public holidays in this case four (4) days running.....”

- 11.55 I was, therefore, pleased to receive the Ministry's advice on 14 November 2000 that a Saturday roster of FCMT is to commence at Casuarina, Hakea and Bandyup from 25 November 2000. Extension to include a roster on Sundays will be considered if found to be necessary.

RECOMMENDATION 11.5

That the Ministry provide the FCMT with sufficient resources to enable it to:-

- (a) become involved in harm minimisation and self- help educational programmes for prisoners; and**
- (b) monitor and regularly review long term prisoners, those with severe behavioural disorders and/or suffering from the effects of substance abuse.**

Psychiatric Services

- 11.56 The provision of psychiatric services for the assessment and treatment of prisoners with a clinical psychiatric illness who may also be at risk was discussed in Chapters 4 and 10. Essentially, there is a very limited psychiatric service available to prisoners²⁰ at most prisons. At Casuarina there were until recently three psychiatric sessions²¹ per week plus a further session per fortnight. The number of weekly sessions has now been increased by the addition of two sessions by a psychiatric registrar. The number of weekly sessions has been increased from three to four at Hakea. At Bandyup there are now two sessions per week. From interviews with health staff, it seems that the frequency of psychiatric clinics at most prisons is considered to be inadequate to meet the demand for psychiatric counselling, with the result that at prisons where the clinic is fortnightly – such as Karnet - a prisoner may have to wait four weeks to receive specialist help.
- 11.57 Preliminary health statistics currently being prepared by the Director, Health Services to assess prison health service needs, show that approximately 40% of prisoners have some form of psychiatric disorder (including depression) and around 9% of those prisoners have a serious psychiatric illness. Although a prison 'stressor' or environmental factor is considered to be the trigger in the majority of prisoner suicides, the presence of a psychiatric disorder has been found to be relevant in only a minority of cases.²² The Director, Health Services estimates that a psychiatric disorder could be a precipitating factors in approximately 30% of prisoner suicides in Western Australia.
- 11.58 Whether relevant in the context of suicide or not, it is quite clear from the analysis of 'Medalerts'²³ by the Director, Health Services that the incidence of psychiatric disorder among prisoners is increasing – a pattern which he has been advised is common to other jurisdictions in Australia. In the light of a changing prisoner profile, the range of psychiatric services available to prisoners - which is considered by health staff to be already inadequate - will be placed under increasing and, perhaps, untenable pressure.

RECOMMENDATION 11.6

That the Ministry review the adequacy of its psychiatric services to prisoners and provide sufficient resources to cater for identified needs.

Prisoner Support Officers and the Prisoner Peer Support Group

- 11.59 The Ministry considers that an additional means of support for disturbed and vulnerable prisoners is available through the Prisoner Support Officer and the Prisoner Peer Support Group. Although this system is a valuable initiative, submissions to my inquiry (and my own observations) raised concerns about the practical operation of peer support groups, including:-
- Prisoner Support Officers are not on duty at the weekends;
 - there is only one Prisoner Support Officer at each prison regardless of size;
 - Prisoner Support Officers should not be exclusively Aboriginal;²⁴
 - peer support prisoners are not actively involved in the reception process of new prisoners;²⁵
 - Prisoner Support Officers and peer support groups have told me that they frequently encounter hostility and suspicion from prison administrative staff and prison officers, some of whom do not appear to accept that they have a positive contribution to make; and
 - the Peer Support Group rarely meets with the prison superintendent and is only infrequently involved in planning of new prisoner initiatives.
- 11.60 Although the peer support programme is clearly a valuable initiative, there are, in my view, a number of obstacles to its optimum use. First, where the system is allowed to be proactive, the Ministry must resist the temptation to place too much responsibility for prisoner welfare on prisoners at the expense of re-emphasising the role of prison officers and other Ministry support structures. Second, I am not convinced that enhancement of the programme will be sufficient to overcome the innate distrust which appears to exist between prisoners and some prison officers.
- 11.61 In my view, peer support prisoners can only *assist* prison officers and other personnel in the performance of their duty of care towards prisoners. Greater expectation or reliance than that is to place an unfair burden on prisoners who have no such duty of care other than as one human being to another and (usually) no training for the role. It is also an inappropriate delegation of an integral part of the primary function of a prison officer. The key to establishing (or re-establishing) prisoner confidence in prison officers lies in greater emphasis on the importance of the communication and interpersonal skills of prison officers.
- 11.62 Although I am pleased to note that there is now an FTE for a Prisoner Support Officer at every prison, and that there are now two at Casuarina and Hakea, in my view the system could be improved by the following initiatives:-

RECOMMENDATION 11.7

That the Ministry:-

- (a) encourage the Peer Support Groups to make suggestions for improvements to the reception and orientation process for new prisoners;
- (b) pay peer support prisoners a gratuity for performing the role;
- (c) ensure that prison superintendents have regular meetings with the Peer Support Group and the Prisoner Support Officer and encourage their involvement in the planning of new initiatives aimed at improving prisoner welfare; and
- (d) ensure that the prison superintendents, administrative staff and prison officers accept the concept of peer support as a serious and integral part of prisoner welfare.

USE OF EXTERNAL SUPPORT GROUPS AND PRISONERS' FAMILIES

The Samaritans

11.63 I agree with the views expressed in a submission to my inquiry from The Samaritans who stated:-

"The particular value of The Samaritans lies in:

- *their specialised experience of befriending people who are thinking of suicide;*
- *their neutrality, meaning that some prisoners may open up to them in a way they would not do with staff;*
- *their non-religious status making them acceptable to people of all (and no) religious persuasions.*

There would seem to be too much distress and sadness in evidence in our prisons for an organisation with the ethical slant of The Samaritans to willingly remain distanced from the situation. It is our attitude that the real issue is not simply to prevent suicide, but to help eliminate the despair which causes the attempt. The shame of this situation is not simply the statistics for deaths in custody, but the despair and human agony that these statistics represent. In this day and age, this often seems to be overlooked."

11.64 In January 1998 The Samaritans made a number of proposals to the Ministry to facilitate its formal involvement in prison suicide prevention strategies, namely:-

- visits on a regular basis to befriend prisoners who are suicidal or in need of the support Samaritans can offer;
- confidential telephone access by prisoners to a Samaritan Centre - either by link up with the cell intercom system to an unmonitored telephone line or by use of call restricted mobile telephone or by a separate direct line using strategically placed handsets;
- selection, training and supporting listener schemes for Prisoner Support Officers and peer support groups;
- talks to prison staff about the Samaritans;
- assisting in staff training;
- supporting staff and prisoners after a suicide; and
- representation on the Suicide Awareness and Post-Incident Care Team.

11.65 The Ministry initially advised The Samaritans of its reservations about these suggestions but in January 1999 it responded more positively by apparently accepting the following proposals:-

- a mobile telephone connected exclusively to the Samaritans' Emergency Line could be made available to prisoners in the Crisis Care Unit at Casuarina;
- the successful peer support training based on the Samaritan model at Casuarina can be developed for all locations where there is a Prisoner Support Officer;
- the involvement of The Samaritans in prison officer training; and
- The Samaritans will be involved in counselling prisoners after the death of a fellow prisoner.

11.66 However, I understand from the current Director of The Samaritans that there has been no further communication from the Ministry in relation to any of these proposals and that The Samaritans are not currently involved in any way in assisting prisoners. The Ministry has confirmed that this is the case - although funding to establish an accredited 'Listeners' program had been sought from the Commonwealth government. The proposal for the availability of a mobile telephone at Casuarina apparently faltered because of reception problems at the Casuarina site. It has not been considered for any other prison.

- 11.67 In my view it is indeed a pity that The Samaritans' proposals have not been progressed. I can only agree with the view of the Samaritans that it is unfortunate that a concept which has been routinely available in most prisons in Great Britain and Northern Ireland for some time has received such a negative reception in Western Australia.

Family contact

- 11.68 Having considered the literature on the subject and comments in submissions and interviews with prisoners, staff and health professionals, it seems to me undeniable that the involvement of family members through visits, telephone contact or special meetings should be an essential component of any suicide prevention or management strategy. Although I am also conscious that 'bad' family contact can be highly damaging to an at risk prisoner, I expect that the extensive censorship of mail, monitoring of telephone calls and supervision of visits would allow observant and conscientious prison staff to be alert to any ensuing problems.
- 11.69 It is of some concern to me, therefore, that to a large extent access to visits and telephone calls is still seen primarily as a privilege which can be administratively taken away as punishment for misconduct - even if the prisoner is not charged or convicted of any prison offence. In fact, it is often the *first* consequence of any alleged misconduct. The Ministry has advised me that its new draft Operational Instruction CW 13 will provide for two telephone calls for every seven day period as a minimum standard. As at 10 November 2000, however, the Instruction remains a 'draft'.
- 11.70 I also have the impression that some prison staff see visits primarily as potential breaches of security - particularly as a means of smuggling drugs into a prison - which should be kept to a minimum. This approach, in my view, ignores the possibility that a difficult or vulnerable prisoner may respond better to a family member than to prison staff. Obviously, if prison staff are made aware that a prisoner's problems actually stem from a family issue then this should be taken into account. However, I am more concerned that there is a 'mind-set' among some prison staff which does not recognise the assistance that the family *may* be able to provide.
- 11.71 In relation to telephone calls, the introduction of the Arunta automated telephone system, which enables a prisoner to have as many ten-minute calls to approved numbers as they can afford, has given prisoners greater access to the telephone - in theory at least. However, calls are charged at public call box rates which are expensive - especially for prisoners at regional prisons and those who are unemployed or receiving the lower levels of gratuity. In addition, prisoners may only use the telephones at certain times of the day - and obviously not after lockup - and there are, in general, too few telephones to cater for the numbers of prisoners wanting to use them. I also suspect that although 'welfare' calls can still be granted, many officers would not consider that as a *first* option to assist a distressed prisoner.
- 11.72 The Custodial Inspection Team which visited Albany in September 1999 commented on the high cost of telephone calls and found that each prisoner spent on average \$40 per month on telephone calls and that more than half this amount was provided to prisoners by their families. The team also noted, however, that for the three months June to August 1999, officers at Albany had initiated \$618 worth of calls. The team went on to recommend to the Director General that prisoners in Albany who were from outside the Albany area should be granted an automatic telephone credit of \$10 per month. I support this recommendation and would extend it to all prisoners who, because of their prison placement, are unable to call their immediate family at local rates.

- 11.73 Although I note that the new *ARMS* procedures emphasise the value of family involvement in the care of at risk prisoners, it remains to be seen whether this concept will be accepted – and put into practice - by a prison culture which sees visits and telephone contact with family as interference with the security and ‘good government’ of the prison, and as privileges which can be easily lost as a punishment rather than as a positive management tool.

RECOMMENDATION 11.8

That the expertise of all relevant community support organisations be utilised and that the assistance of family members be sought wherever possible in the management of at risk prisoners. In particular, the Ministry should re-open discussions with The Samaritans to establish whether and how that organisation could become involved in prisoner welfare.

RECOMMENDATION 11.9

That:-

- (a) the recommendation of the Custodial Inspection Team in relation to the cost of calls from Albany Prison be extended to all prisoners who, because of their prison placement, are unable to call their family at local rates; and**
- (b) that the number of telephones be increased in line with rising muster levels to provide all prisoners with a reasonable opportunity to contact their families.**

PLACEMENT OPTIONS

- 11.74 At the time of writing this report placement options remain largely the same as before at most prisons, but with the addition of a Crisis Care Unit at Casuarina in April 1999 and similar facilities planned for Hakea and Bandyup. However, increasing prisoner numbers and more extensive doubling-up have effectively reduced the little existing flexibility in alternative placement as a management strategy.
- 11.75 Although, increasingly, the behavioural problems of many of the more seriously disturbed and vulnerable prisoners are exacerbated by long term substance abuse, prison facilities are not designed to facilitate effective drug rehabilitation or detoxification. Prison health service resources are inadequate to perform this function or to offer separate or specialised accommodation for those prisoners suffering the physical symptoms of withdrawal - other than at Casuarina where prisoners suffering more acute withdrawal symptoms may be housed in the Crisis Care Unit.
- 11.76 As previously noted, there continue to be no special facilities for psychiatrically disturbed prisoners. It concerns me that a wing of the Infirmary at Casuarina, which was originally intended to provide accommodation for up to 13 psychiatrically disturbed prisoners, has *never* been used for that purpose. Soon after Casuarina opened, this wing was commandeered for the running of the residential Intensive Sex Offenders Treatment Programme (SOTP) in spite of the fact that the cells were specially designed for ‘infirmary’ use and that there are no office facilities in the wing for the course presenters. It seems to me that this usage of part of the Infirmary is a waste of precious health resources which could be used for psychiatrically disturbed prisoners as originally intended or as a detoxification unit.
- 11.77 It will have become obvious from comments earlier in this report that I view the use of medical observation cells for acutely at risk prisoners as inappropriate, potentially detrimental to their well-being and unlikely to offer any assistance in addressing the *causes* of a prisoner’s distress. My conclusions on the current use and operation of medical observation cells are:-

- (a) On the basis of universally accepted psychological research, a prisoner confined to an observation cell as presently configured and managed, will experience marked sensory deprivation which is more likely to aggravate any feelings of self harm than alleviate them.
 - (b) There is justification in the view of prisoners that placement in an observation cell is often punitive rather than therapeutic.
 - (c) Prisoners may not reveal their own or others' anxieties and problems because they do not want to be placed in an observation cell.
 - (d) Medical observation cells are frequently used for non-medical purposes.
 - (e) It is inappropriate that recommendations by a member of the FCMT or by a prison medical officer that a prisoner be removed from observation following examination can be, (and, are, on occasion) over-ridden by forensically unqualified prison staff.
 - (f) The use of a 'restraint' bed and the practice of leaving a prisoner without clothing and necessities such as fluids and access to toilet facilities is most probably in breach of not only the Ministry's duty of care to prisoners but also of its obligations under International Conventions.
 - (g) Some officers 'observing' prisoners in this area are untrained and unskilled in communication. Part of the Ministry's duty of care towards a prisoner is to ensure that *only* prison officers with appropriate skills and adequate training should be rostered in the medical observation area.
 - (h) If some form of distress or agitation - which may manifest itself in various behaviours such as swearing or adverse physical reaction - is the justification for placing a disturbed prisoner in an observation cell, it seems to me to be quite inappropriate for such behaviour (which might be considered a disciplinary matter in a 'normal' setting) to result in the prisoner being charged by officers who are supposed to be 'observing' him and 'caring' for his well-being.
- 11.78 It is of grave concern that, in spite of universal condemnation of the use of 'stripped' observation cells, placement in a medical observation cell is still the *only* alternative at most Western Australian prisons and that the Ministry has taken no steps to develop more therapeutically orientated options at most prisons. It is also quite clear that the Ministry's response in the 1995 and 1997 *Government Implementation Reports* that it had "*implemented*" RCIADIC Recommendation 181²⁶ through DGRs 6A and 6B relates only to the minimum standards for segregation recommended by the RCIADIC. In my opinion, the recommendation that "*Corrective Services should recognise that it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention*" appears to have been completely ignored. *Case Study 2* in Chapter 10²⁷ illustrates my point.
- 11.79 As stated at Chapter 10, paragraph 10.195, I have previously recommended the discontinuation of the use of medical observation cells as currently operated and was advised that there were no alternatives. A similar recommendation was also made after the inspection of Bunbury Regional Prison by the Custodial Inspection Unit. In my view, the Ministry's failure to *provide* alternatives, and the continued usage of a method which is universally condemned on practical, social and clinical grounds, is untenable.
- 11.80 Essentially, based on the evidence available to me and my own observations, I have formed the view that prisons in Western Australia are for the most part quantitatively and environmentally ill-equipped to deal with **all** categories of at risk prisoners.

RECOMMENDATION 11.10

That the Ministry as a matter of priority provide therapeutically appropriate placement options for all categories of at risk prisoner including:-

- (a) rehousing the Intensive Sex Offenders Treatment Programme to facilitate use of the vacated facilities within the Casuarina Infirmary as a detoxification centre for prisoners suffering the effects of substance abuse or to house psychiatrically disturbed prisoners;
- (b) developing and providing alternative therapeutic facilities for at risk prisoners in need of 'observation' at all prisons; and
- (c) discontinuing the confinement of at risk prisoners in medical observation cells as currently configured and operated at all prisons.

'BEST PRACTICE' PRINCIPLES FOR SUICIDE PREVENTION

11.81 Howells, Hall and Day²⁸ identified the following good practice principles for an effective suicide prevention strategy:-

Primary Prevention – early detection through risk screening on initial admission -

1. Have detailed protocols for identifying prisoners at risk, based on the research literature.
2. Have an identification system that incorporates the prisoner's response to ongoing stressors arising in the prison environment ("state" factors) as well as long-term vulnerability ("trait" factors).

Secondary prevention – *“development of a management plan to ensure the safety of the prisoner and address the dynamic risk factors that contribute to risk”* -

1. Have a range of crisis-management options.
2. Minimise the use of seclusion.
3. Provide therapeutic interventions for prisoners with a chronic, longer term risk.
4. Adopt a case-management approach with clearly defined reporting/communication mechanisms.

11.82 In my view, the principles developed by Howells, Hall and Day provide a good model on which to base a strategy for the prevention of suicide and self harm by prisoners. If they are accepted as 'best practice', how do the Ministry's current suicide prevention strategies as encompassed by *ARMS* measure up?

EVALUATION OF THE MINISTRY'S SUICIDE PREVENTION STRATEGIES AGAINST 'BEST PRACTICE' PRINCIPLES

11.83 Having considered the development of the Ministry's suicide prevention strategies and procedures for the identification, assessment, management and placement of at risk prisoners since 1991, it is quite clear that enormous progress has been made over the past 18 months. Essentially, *ARMS* incorporates all of the components listed by Howells, Hall and Day. However, my inquiry has revealed a number of residual problems or weaknesses in the effective implementation of the new approach.

Primary Prevention

“Detailed protocols for identifying prisoners at risk”

- 11.84 The Ministry's “detailed protocols for identifying prisoners at risk” are contained in the initial assessment form completed by nursing staff during the reception procedure. There is also the facility for prison officers or any other member of the prison staff to refer a prisoner, who is believed to be at risk, to the Prisoner Risk Assessment Group (PRAG) at any time after admission.
- 11.85 However, concerns about the nature of the questions in the assessment tool, restrictions on the time available to complete the form properly and the lack of training provided to nursing staff expected to make the preliminary judgement on a prisoner's risk status, are practical problems which the Ministry will need to address to ensure that its initial assessment procedures are effective.

“An identification system which incorporates the prisoner's response to ongoing stressors in the prison environment as well as long-term vulnerability”

- 11.86 Typically prison stressors are considered to include “*the loss of freedom, autonomy and personal safety; the removal from a familiar environment; restriction of movement; compliance with (at times incomprehensible) rules and regulations; subjection to an impersonal decision-making process (eg parole) loss of control over outside events; and violence and victimisation.*”²⁹
- 11.87 The ‘best practice’ strategy contemplated by Howells, Hall and Day seems to envisage an awareness by the correctional authority of, and a proactive response to address, identified problems which are likely to increase the distress of prisoners, including:-
- adjustment to prison life, particularly for first time prisoners;
 - loss of contact with family and friends;
 - inflexible prison regimes;
 - removal of personal decision-making;
 - the frustration of being subjected to ‘faceless’ external bodies;
 - helplessness to solve or be involved in outside family problems; and
 - violence and bullying from other prisoners and, occasionally, prison staff.
- 11.88 On the basis of my inquiry, I consider that although the Ministry may be ‘aware’ of stress-creating factors within the prison system a ‘proactive response’ to address identified problems is less likely. There are numerous examples throughout this Report of a lack of response to problems identified by the Coroner, the IIU, members of the health and prison administrative staff, and in studies commissioned by the Ministry. Some of the initiatives which have been introduced such as the multi-disciplinary FCMT and the PRAG are under-resourced or inadequately trained.
- 11.89 In August 1999 the AIC published an overview of “*Strategies for Managing Suicide & Self-harm in Prisons.*” It appears from the report that the Ministry advised the authors of the study that it had made the “*reduction of prison stressors a priority within its new suicide prevention framework*” through:-
- “*a new emphasis on the role of fellow prisoners and the extension of the peer support programs;*
 - *an increase in recreational activities, including greater access to radio and television for prisoners on remand and those identified as being at risk of self-harm; and*
 - *an upgrading of facilities to relieve overcrowding.*”

- 11.90 In my view, the measures outlined in the AIC's overview have not been fully implemented by the Ministry in *practice*. For example, some prisoners involved in the peer support program have told me that they are not taken seriously; and that they are denied access to prisoners during the reception process. Prisoner Support Officers feel that they are spread 'too thinly' to properly perform their function. Although there are now Prisoner Support Officers at all prisons and two at the larger prisons, I am not convinced that the peer support concept has been universally embraced by prison staff and administrators. To that extent, peer support is still not used to its full potential.
- 11.91 I have not encountered an increase in recreational activities at any prison which I visited - with the exception of the introduction of television sets for all prisoners at the Remand Centre in 1998. This initiative produced a marked decrease in incidents of self harm and there were no suicides between February 1998 and June 2000. Some prisoners in medical observation cells are now also able to watch television.
- 11.92 However, from my observations, prisoners are frequently bored and are not able to be fully occupied at any prison. Recreational facilities at other prisons such as Bandyup are stretched and incapable of meeting demands. Rooms previously used for recreational activities at that prison have been made into cells to accommodate a muster which is almost twice its capacity. Female prisoners held in regional prisons are poorly provided for in terms of both recreation and employment. The Bunbury Custodial Inspections Report completed on 30 July 1999 found that there were inadequate facilities for both passive and active recreational activities. Albany Prison, however, was found to have adequate and well-organised sporting activities in spite of the fact that there was no 'dedicated' Recreation Officer.
- 11.93 I agree that the Ministry has commenced a programme of "*upgrading of facilities to relieve overcrowding,*" and that the additional 'bed space' created and planned for at Hakea and Bandyup will – in the long term - alleviate pressure on accommodation. However, I am not entirely convinced that overcrowding *per se* is a prison stress. In my view, the stress is generated when the rising musters increase pressure on staff, prisoner services, and facilities, and no remedial action is taken.
- 11.94 Dr Liebling included violence or victimisation (by prisoners and prison officers) in her list of prison 'stressors'. I entirely agree.³⁰ However, my experience is that prisoners rarely make official complaints because of fear of recrimination from either prisoners or prison staff, and those that are made are rarely substantiated.
- 11.95 In relation to loss of family contact - to which Dr Liebling also refers - the majority of prisons tolerate but do not generally encourage visits or the involvement of family members in the management of a vulnerable prisoner. For the most part, visits are considered to be a privilege which are frequently lost as a form of punishment.
- 11.96 In my view, therefore, the Ministry's response to identified prison stressors will need to be significantly improved before it can claim that it is sufficiently "*proactive*" to be considered 'best practice' based on the Howells, Hall and Day model. On a positive note, however, the commencement of the new assessment process at Hakea is an important step towards assisting prisoners to adjust to prison life in the early stages of imprisonment - a time recognised as one when prisoners are most vulnerable. Depending on their length of sentence and individual needs, prisoners will undergo a series of assessments that will assist in their management. Importantly, they will also remain at Hakea for a period of up to three weeks' orientation prior to placement in a mainstream unit. This initiative is in line with RCIADIC **Recommendation 175**, based on a submission by WAPOU, that "*there be a short transition period in a custodial setting for prisoners prior to them entering prison routine.*"

Secondary Prevention

"A range of crisis management options"

11.97 As discussed above, the Ministry strategy for crisis management includes:-

- observation and support by officers and other prison staff;
- counselling and support by the FCMT;
- peer support;
- 'doubling-up' with a friend, family member or peer support prisoner;
- medical management through 'calming' medications; and
- isolation in a medical observation cell.

11.98 There were until very recently few specially designed 'self-help' or therapeutic programmes to train prisoners to cope with immediate distress – at least at the beginning of a sentence. The new Cognitive Skills program launched by the Minister for Justice on 12 June 2000 is designed to involve *"prison-based staff working closely with prisoners to help them improve their thinking skills so they become less impulsive and are better able to manage problems such as anger and violence."*³¹

11.99 Howells, Hall and Day refer to a system devised by Lester and Danto in 1993³² which comprises five *"therapeutic tasks that need to be accomplished"*:-

- *"evaluate the security of the crisis situation;*
- *develop a relationship with the person in crisis;*
- *help the person identify specific problems;*
- *assess and mobilise the client's strengths and resources; and finally*
- *develop an action plan."*

11.100 Howells, Hall and Day observe:-

"These tasks clearly require counselling or "active listening" skills. Lester and Danto recommended the use of counsellors with experience in dealing with both prisoners and with suicide. These authors recommended counselling training for prison officer staff, as well as for mental health workers, so that prison officers come to "own" the problem of suicide."

11.101 I am not convinced that the current level of prison officer training provides them with the *"counselling"* skills envisaged by either Lester and Danto or by Howells, Hall and Day. The role of counsellor is performed primarily by the FCMT which, as earlier discussed, is, in my view, insufficiently resourced to counsel all prisoners. It is also widely recognised that it is neither appropriate nor desirable for prison officers to be left out of this task. In my view, for the Ministry to achieve 'best practice' in 'secondary prevention', suitable prison officers need to be specially selected and given comprehensive training in counselling and interpersonal skill. In addition, the FCMT should be provided with sufficient resources to provide an ongoing counselling service to prisoners – not just in times of crisis - and to be on duty at the weekends to provide education programmes and to assist and support prison officers.

“Minimise the use of seclusion”

11.102 Yet again, Howells, Hall and Day draw attention to the contraindications of using observation cells which they also describe as “*suicide-proof by removing all opportunities for self-harm*” and located in “*the same unit or management area as punishment cells*” for crisis management of at risk prisoners:-

*“We suggest that the **routine** use of observation cells of this sort is a cause for concern, for the following reasons:*

- Prisoners may be confused and unclear as to whether they are being treated or punished when they are placed in an observation cell.*
- The environment may be hostile, often housing prisoners who are “acting out”, with officers consequently being required to exert physical control.*
- The presence of prisoners undergoing punishment results in an atmosphere that is punitive and coercive rather than therapeutic.*
- Observation is an isolating experience that is likely to exacerbate the level of distress and suicidal rumination (Howard League for Penal Reform, 1991)”.*

11.103 Howells, Hall and Day conclude “*Whilst these facilities may sometimes be useful in ensuring the safety of a proportion of prisoners identified as being at high risk, **it is important to have a wider range of crisis-management methods.***” (my emphasis)

11.104 At most prisons in Western Australia, observation cells are ‘stripped’ of all obvious opportunities for suicide and, other than at Casuarina where they are part of the Infirmary, are located in the same area as punishment cells. From my observations, all the reasons cited by Howells, Hall and Day for *not* using observation cells for crisis management of at risk prisoners apply to such cells in this State. Furthermore, such cells are *routinely* used at most prisons because there are few alternative placement options. Prisoners hate and fear being sent to an observation cell and, therefore, do not reveal levels of distress that may result in such a placement.

11.105 To date, the Ministry has been unmoving on recommendations from a number of sources that it discontinue using medical observation cells in their current form. My recommendation in September 1998 that the Ministry discontinue the use of medical observation cells at Casuarina was rejected on the ground that it was “*not a practicable proposition*”. I was assured, however, that placement in a medical observation cell is used as a last resort and for the shortest possible period of time. I was also advised that my comments would be passed to the At Risk Management Taskforce. Recommendations by the Coroner following the inquest into the deaths of a number of prisoners for the establishment of other, therapeutically oriented placement options have been ignored. Although there is a crisis care unit at Casuarina, medical observation cells are still used at that prison and at all others to a greater or lesser degree.

11.106 In my opinion, the Ministry has made little effort to either provide alternative management options or to minimise the use of seclusion as a crisis management strategy and cannot be said to have adopted ‘best practice’ principles in this regard.

“Provide therapeutic interventions for prisoners with a chronic, long term risk”

- 11.107 There are currently few therapeutic treatment or support programs for prisoners at any prison. Most ‘treatment’ programs occur at the end of the sentence with the focus on parole eligibility. In submissions to this inquiry, prisoners have suggested the introduction of self-help programs such as yoga, relaxation, meditation, problem-solving, decision-making and conflict resolution to assist in addressing the problems created by their poor coping abilities which frequently underlie suicide and self harm attempts. Few prisons are able to provide such programs although the introduction of the Cognitive Skills program is a significant step in the right direction.
- 11.108 The FCMT is insufficiently resourced to enable it to become involved in ongoing monitoring or routine reviews or in the presentation of the therapeutic programs referred to above. Long term prisoners in particular – a recognised ‘high risk’ group - are currently provided with no progressive or holistic sentence plan and are not given routine reviews by the FCMT.
- 11.109 The introduction of *ARMS* and the establishment of a PRAG at each prison has ensured that prisoners are monitored on a sliding scale of intensity rather than being dealt with as a high risk one day and left to their own devices the next (as happened to David Metcalf.³³) However, I could not say with any confidence that therapeutic interventions for prisoners with a long term risk are provided as a matter of *routine* rather than in response to an immediate crisis.

“Adopt a case-management approach with clearly defined reporting/communication mechanisms”

- 11.110 Howells, Hall and Day recommend that “a case-management system would comprise at least the following processes: –
- *Specification of criteria for the classification of prisoners at risk*
 - *Use of a standard risk-assessment procedure*
 - *Assessment of treatment and management needs of prisoners deemed to be at risk*
 - *A formal/ care management plan for each prisoner based on this assessment. This plan would need to be known by all staff having significant interaction with the prisoners*
 - *Specification of who would be the case manager for each prisoners. The case manager would normally, with consultation with other staff groups, have responsibility for coordination of the assessment and management process. The case manager would need to know the prisoner well.*
 - *A system for monitoring and reviewing progress. Part of the review process would involve dropping from the at risk list those prisoners who had improved.*
 - *Discharge planning. The case manager (or a delegated other professional) would take responsibility for liaison with, and “hand-over”, to other agencies.”*
- 11.111 As stated previously, *ARMS* and the PRAG provide for the monitoring of at risk prisoners until such time as the PRAG believes the risk has been reduced to a satisfactory level. The concept that the care of at risk prisoners is the global responsibility of all prison staff emphasised by *ARMS* should also ensure that prisoners are properly observed and elevations in current distress noted and acted upon. Although *ARMS* incorporates aspects of the components suggested by Howells, Hall and Day, and has significantly improved the Ministry’s system for the assessment and management of at risk prisoners, the model suggested by Howells, Hall and Day does seem, however, to envisage a longer term plan which might extend *outside* the prison system. I am not certain that *ARMS* envisages – or can provide - such a transitional extension of support.

11.112 I am also satisfied that the Ministry's previous sentence planning system was not capable of providing the complementary components of sentence management necessary to create certain outcomes for prisoners throughout their sentence and thereby relieve a significant prison stressor. This was a particular concern for long term prisoners who are identified by research as an identifiable high risk group throughout their sentence. The Ministry's new *Integrated Prison Regime* (IPR) appears to recognise the deficiencies of its earlier case management system. The Acting Manager Strategic Projects has advised me that:-

"The steps involved in Case Management include comprehensive assessment, service planning and delivery, regular monitoring and review. Central to effective Case Management is the co-operative relationship established between the prisoner and designated Case Officer. Case Management promotes the delivery of services in an integrated and seamless manner which facilitates the 'throughcare' of services for prisoners.

.....The key impacts that the Ministry is seeking from the Integrated Prison Regime Project in general, and the introduction of Cognitive Skills in particular, is greater involvement and ownership by prison staff in the delivery of rehabilitative interventions with prisoners and an improvement in the quality of the prison environment."

11.113 The principles of the new Case Management system are sound but whether it produces the desired results will depend on the commitment of prison administrators and prison officers to the practical application of those principles.

SUMMARY OF CONCLUSIONS ON THE MINISTRY'S SUICIDE PREVENTION STRATEGIES

11.114 I have concluded that:-

- (a) *ARMS* represents a significant improvement in the Ministry's suicide prevention strategy particularly in its promotion of the concept that suicide prevention and at risk management is the global responsibility of *all* prison staff.
- (b) There are insufficient therapeutically orientated management options to deal appropriately and comprehensively with at risk prisoners, particularly female prisoners, other than medical observation cells, the current use of which should be discontinued.
- (c) All prison staff are provided with inadequate training to enable them to properly perform this function.
- (d) Although there have been significant improvements in the allocation of staff and resources to the FCMT, it remains inadequately resourced to provide long term counselling and therapy to address the underlying causes of prisoner distress and stress which lead to suicide and self harm.
- (e) The peer support program does not operate to its full potential because of lack of prestige and opposition from some prison officers and administrators.
- (f) There should be greater involvement of community-based professional organisations and support groups to assist in suicide prevention strategies.
- (g) Family contact and support is under-utilised and diminished because of a reactive and inflexible approach to visits and use of telephones.

- (h) Suitable prison officers with a recognised ability to manage acute high risk prisoners in the Crisis Care Unit at Casuarina and medical observation cells generally should be selected and extensively trained in the necessary skills.
- (i) The Ministry's failure prior to 1998 to react promptly to problems and deficiencies in its procedures which were drawn to its attention through investigations into the deaths of the 41 prisoners who committed suicide between 1991 and 1999 shows an unacceptable lack of organisation and coordination.
- (j) The Ministry's lack of attention to the issues identified by these deaths represents a wasted opportunity to address those deficiencies; improve conditions for both prisoners and prison staff and possibly prevent future deaths in custody.

SUMMARY OF RECOMMENDATIONS

- 11.1 That the Ministry provide all health services staff with appropriate and ongoing training in the assessment of prisoners to establish any self harm or suicidal tendencies – both on admission to prison and during the term of imprisonment.
- 11.2 That the Ministry take all steps necessary to ensure that prison regimes are organised to permit sufficient time for the initial medical and risk assessment process to be completed properly.
- 11.3 That, recognising the importance of good prisoner/prison staff relations, the Ministry review its selection and recruitment process for all prison-based staff to ensure that sufficient priority is given to high level communication and interpersonal skills as basic requirements for all staff dealing with prisoners.
- 11.4 That the Ministry's operational rules require that:-
 - (a) the Director, Health Services and relevant health staff are consulted and involved in proposals and decisions relating to the health of prisoners and the management and placement of prisoners considered at risk; and that
 - (b) decisions made by qualified health professionals must not be over-ruled by unqualified prison staff.
- 11.5 That the Ministry provide the FCMT with sufficient resources to enable it to:-
 - (a) become involved in harm minimisation and self- help educational programs for prisoners; and
 - (b) monitor and regularly review long term prisoners, those with severe behavioural disorders and/or suffering from the effects of substance abuse.
- 11.6 That the Ministry review the adequacy of its psychiatric services to prisoners and provide sufficient resources to cater for identified needs.

11.7 That the Ministry:-

- (a) encourage the Peer Support Groups to make suggestions for improvements to the reception and orientation process for new prisoners;
- (b) pay peer support prisoners a gratuity for performing the role;
- (c) ensure that prison superintendents have regular meetings with the Peer Support Group and the Prisoner Support Officer and encourage their involvement in the planning of new initiatives aimed at improving prisoner welfare; and
- (d) ensure that the prison superintendents, administrative staff and prison officers accept the concept of peer support as a serious and integral part of prisoner welfare.

11.8 That the expertise of all relevant community support organisations be utilised and that the assistance of family members be sought wherever possible in the management of at risk prisoners. In particular, the Ministry should re-open discussions with The Samaritans to establish whether and how that organisation could become involved in prisoner welfare.

11.9 That:-

- (a) the recommendation of the Custodial Inspection Team in relation to the cost of calls from Albany Prison be extended to all prisoners who, because of their prison placement, are unable to call their family at local rates; and
- (b) that the number of telephones be increased in line with rising muster levels to provide all prisoners with a reasonable opportunity to contact their families.

11.10 That the Ministry as a matter of priority provide therapeutically appropriate placement options for all categories of at risk prisoner including:-

- (a) rehousing the Intensive Sex Offenders Treatment Program to facilitate use of the vacated facilities within the Casuarina Infirmary as a detoxification centre for prisoners suffering the effects of substance abuse or to house psychiatrically disturbed prisoners;
- (b) developing and providing alternative therapeutic facilities for at risk prisoners in need of 'observation' at all prisons; and
- (c) discontinuing the confinement of at risk prisoners in medical observation cells as currently configured and operated at all prisons.

- ¹ At paragraphs 9.48-9.56
- ² At paragraphs 9.7-9.9
- ³ At paragraphs 6.96-6.100
- ⁴ Chapter 10, paragraphs 10.132-10.137
- ⁵ See also Chapter 15, paragraphs 15.6 and 15.35
- ⁶ See Chapter 12 paragraphs 12.64-75
- ⁷ See also Chapter 15
- ⁸ Chapter 8, paragraphs 8.26-8.29
- ⁹ *Review of Ministry of Justice Services for Treatment and Care of Adult Prisoners at Risk of Suicide or Serious Self Harm* at pages 38-41
- ¹⁰ At page 42
- ¹¹ For example, David Metcalf in 1991, Darren Boyle, Ronald Hill and Ryan Kennedy in 1994; Carl Jackson in 1996 and Wesley Doorey in 1997
- ¹² *Australian Psychologist*, November 1999 pp157-165
- ¹³ See Chapter 10, paragraph 10.24-10.25
- ¹⁴ There are now part time Prisoner Support Officers at Pardelup, Karnet and Wooroloo.
- ¹⁵ See paragraph 11.23 above
- ¹⁶ See also Chapter 13 - *Programs*
- ¹⁷ See paragraphs 11.68-11.73 and 15.97-15.101
- ¹⁸ *Report on an Investigation into the administrative action relating to the health care provided to Ms W and Ms E at Bandyup Women's prison and related Administrative matters*; tabled in Parliament on 30 November 1995
- ¹⁹ See also Chapter 10, paragraphs 10.101-10.117
- ²⁰ See Chapter 4, paragraph 19 and Table 4.2
- ²¹ A session is approximately 3.5 hours
- ²² See Chapter 8, paragraphs 8.27
- ²³ A notation in the medical file of the presence of certain medical conditions such as asthma, cardiac problems, epilepsy, blood borne communicable disease, psychiatric disorder and self harm
- ²⁴ Although I am not aware of non-Aboriginal prisoners being refused assistance, the Ministry should recognise that this should be seen to be a support service for all prisoners regardless of ethnicity
- ²⁵ Prisoners have told me that requests for more exposure to, and interaction with, new prisoners in the reception process are generally refused
- ²⁶ See Appendix 1
- ²⁷ At paragraph 10.199
- ²⁸ *The Management of Suicide and Self-harm in Prisons: Recommendations for Good Practice*; Australian Psychologist; November 1999
- ²⁹ Dr Alison Liebling, *Suicides in Prison* at page 54
- ³⁰ See Chapter 15, paragraphs 15.17-15.30
- ³¹ See also Chapter 13, paragraphs 13.128-13.133
- ³² *Suicide behind bars*; Philadelphia
- ³³ See Chapter 10, paragraphs 10.7-10.12



CHAPTER 12 DRUGS IN PRISONS

INTRODUCTION

THE EXTENT OF THE PROBLEM

THE CONSEQUENCES OF DRUGS IN PRISONS

THE MINISTRY'S DRUG MANAGEMENT STRATEGIES

SUMMARY OF RECOMMENDATIONS

INTRODUCTION

- 12.1 DGR 3B identifies a prisoner as “*at risk*” if he or she is “*under the influence of, or suffering from withdrawal from, alcohol or drugs.*” History of drug or alcohol abuse is included in the list of “*Medical factors*” to be taken into account in the assessment of a prisoner’s vulnerability to suicide or self harm in the Ministry’s *At Risk Management Implementation Manual*. “*Drug-related offence*” is considered to be one of the *Psychological and Social factors* which should be taken into account, particularly in assessing younger prisoners.
- 12.2 In the context of my inquiry, three prisoners have died of a possible drug overdose since 1991 - Douglas Yorkshire (1994), Stephen Maslin (1997), and Craig Spencer (1997). Twenty two prisoners of the 29 who committed suicide between 1991 and 1999 and five of the six apparent suicides where the Coroner returned an open finding were known to have a history of illicit drug or alcohol abuse at the time of admission to prison. Seven of the 20 prisoners who died from natural causes were also found to have a history of substance abuse.
- 12.3 I have been told by the Ministry and by prison staff and prisoners that the number of prisoners entering prison with a history of illicit substance abuse is high and increasing.

THE EXTENT OF THE PROBLEM

Research and Inquiries

- 12.4 In April 1998 the Ministry completed its Drug Management Strategy Project (the DMSP) - a three-year plan for a “*comprehensive, integrated approach to addressing substance abuse issues within custodial centres and linking these to other sectors of the Offender Management Division*” - in recognition of the fact that there has been “*an escalation in the numbers of substance users within Western Australian prisons*” and in response to a “*growing awareness of substance abuse issues and the associated behaviour of offenders*”.
- 12.5 In October 1998, prior to the release of its *Position Paper on the Health Care of Prisoners and Detainees*, the Federal Vice President and Chair of the AMA’s Ethics and Public Health Committee, Dr Sandra Hacker, reported that national prison population studies showed that:-
- 68-83% have an alcohol or drug problem relating to their incarceration
 - 20-25% of inmates use heroin
 - 64-69% of inmates share needles
 - more than 70% smoke tobacco
 - 33-44% use marijuana
 - 33-66% are Hepatitis C carriers¹
 - 21-39% have attempted suicide.
- 12.6 The prevalence of drugs in the prison system and growing numbers of prisoners with a history of substance abuse appear to be supported by submissions and information received from a wide cross section of prisoners and prison and health staff during the course of my inquiry. However, it is of some concern that, in spite of an apparent awareness of the increasing availability of drugs within the prison community and the acknowledged impact on the security of the prisons and the management and safety of prisoners and prison staff, the most recent *statistical* analysis of the extent of the problem in Western Australian prisons available to the Ministry appears to be a study completed in 1988² which found that:-

- 52.4% of prisoners screened were either “concerned” or attributed the reason for their imprisonment to alcohol;
 - 24% described themselves as regular drug users prior to imprisonment; although only
 - 17% of those accepted that they had drug “problems”.
- 12.7 In June 1997 the Legislative Assembly of the Parliament of Western Australia established a Select Committee into the *Misuse of Drugs Act 1981* (the Select Committee) to:
- “examine mechanisms to prevent and ameliorate illicit drug problems through the application of effective legal sanctions; and
 - to provide educational, health services and community support structures to assist those who are affected by the use or abuse of illicit drugs.”
- 12.8 The Select Committee’s Interim Report – *Taking the Profit out of Drug Trafficking* – (the Interim Report) tabled in November 1997, considered the issue of drug use in prisons and the Ministry’s management strategies at the time. *Inter alia*, the Select Committee registered its surprise and concern that the Ministry did not appear to have current or reliable statistical data on the extent of the problem of substance abuse among prisoners before and during imprisonment and recommended that it:-
- “...in consultation with relevant law enforcement agencies, institute a State wide process for the mandatory and anonymous monitoring of drug use by offenders at the time they first enter the criminal justice system.”(Recommendation 60)
- 12.9 The Select Committee was also critical of the lack of detail recorded in the Ministry’s initial assessment of prisoners on admission³ and recommended that -
- “the assessment, management and treatment of offenders with licit and illicit drug problems be an integral part of all institutional and community based programs, across all stages of each offender’s contact with the Ministry of Justice.” (Recommendation 62)
- 12.10 The Select Committee looked at studies conducted in other jurisdictions and included in its Interim Report results of more recent research which indicated similar – and probably comparable - drug problems in prisons elsewhere. For example, a 1995 study in New South Wales⁴ found that:-
- 67% of prisoners said that they had been under the influence of drugs at the time of their most serious offence;
 - 66% attributed their imprisonment to their drug use: and
 - 74% admitted to having problems because of their drug use.
- 12.11 A report into levels of drug abuse by female offenders⁵ in NSW in 1995 reported particularly high levels of drug abuse among a sample of 130 women, including:-
- 62% reported being intoxicated at the time of offending;
 - 46% had consumed drugs (not alcohol);
 - 66% had consumed heroin;
 - 72% attributed their imprisonment to their drug use;
 - 50% had committed the offence to purchase drugs;
 - 25% worked in the sex industry;
 - 33% had used heroin daily over the previous 6 months.

- 12.12 A sample of 395 offenders screened in 1997 at reception to NSW prisons found⁶:-
- 20-40% were withdrawing from alcohol and/or other drugs;
 - 30-40% were receiving psychoactive medication;
 - 70-80% were intoxicated when they committed the offence for which they had been convicted;
 - 35-70% reported injecting drug use in the past 12 months.
- 12.13 A paper presented at the 1st National Public Health Conference on Health in Prisons in Sydney on 15 February 1999 claimed that 75-80% of prisoners in NSW are imprisoned on drug related charges.⁷ This Conference also noted as one of its resolutions “*the high correlation of alcohol, drugs and crime and the effectiveness of harm minimisation.*”
- 12.14 The Report on Suicide Prevention Strategies for Prisons in Western Australia commissioned by the Ministry in late 1997 noted the presence of a “*high number of prisoners with substance abuse*” and that these prisoners are “*particularly ‘at risk’ in the early days of imprisonment.*”⁸
- 12.15 The Smith Report on the Casuarina ‘riot’ on 25 December 1998 commented on the extent of the problem in Western Australia:-
- “Various indications, despite their inadequacies, point to growing drug use amongst offender groups, particularly in regard to opiates which are now fairly cheap and widely available. Drug use amongst offender groups is now so widespread it is probably more than likely that an offender entering a prison such as Casuarina (and other prisons) has a drug problem. It may be wise in fact to assume as a matter of course that prisoners are drug dependent rather than not.....”* (my emphasis)⁹
- “In prison the demand for drugs is evidenced in a number of ways. First the amount of illicit drugs in the prison, the number of overdoses due to opiates, and more recently the pressure to get psychoactive drugs from medical staff.”*
- 12.16 On the basis of information received during the course of my inquiry, I have reason to believe that the prevalence of drugs at Bandyup Women’s Prison is also significant. Certainly, from my experience, female prisoners made little attempt to deny their drug taking when speaking with me and members of my staff.

Changing prisoner profile

- 12.17 I have been told by a significant number of prison officers, health staff and by prisoners (particularly prisoners who have been in the system for some time) that there has been a change in the type of offender entering the prison system. Interviewees who raised this issue overwhelmingly attributed the changing prisoner profile to the increasing use of illegal substances by younger offenders.
- 12.18 There is apparently no clear indication from research to date whether drug abuse generates crime or whether those with a history of offending are more likely to engage in other criminal activity such as drug abuse. A 1995 study of violent property crime conducted by Dr David Indermaur of the Crime Research Centre at the University of Western Australia concluded:-

*“It is likely that the minority of drug users who do commit crime were already engaged in criminal activities before becoming addicted. It is, therefore, the lifestyle that underlies both crime and drug use which provides the most informative link.”*¹⁰

12.19 An American study conducted in 1995¹¹ concluded that:-

“...extensive research on the relationship between drug abuse and crime provides convincing evidence that a relatively few substance abusers who have a severe drug problem are responsible for an extraordinary proportion of crime.”

12.20 That report also observed that ‘drug abusing offenders’:-

“...are responsible for a relatively large amount of crime. Among them the most predatory – the heroin-using ‘violent predators’ – committed 15 times more robberies, 20 times more burglaries and 10 times more thefts than offenders who do not use drugs. Studies conducted among heroin users in Baltimore and New York demonstrated that active drug use accelerates the users’ crime rate by a factor of four to six.....drug-using felons are also a primary source of failure on parole; that is they constitute a disproportionate share of repeat offenders.....The ‘revolving door’ analogy epitomises the situation with offenders who use hard drugs.”

12.21 The Report by the Victorian Law Reform Committee on *Criminal Liability and Self-Induced Intoxication* stated:-

“During its public hearings and inter-state visits the Committee was presented with overwhelming evidence of a strong link between alcohol and drugs and crimes of violence, with up to 90 per cent of crimes of violence involving some sort of consumption of alcohol and/or drugs.” (Paragraph 5.21)

12.22 The submission to me by the Australian Nursing Federation also suggested that the type of drug-dependent prisoner was also linked to the availability of drugs in the system. For example, the presence of one or more heavy users among the prison population was likely to increase demand, availability, usage and, inevitably, management problems. Where there are primarily ‘social’ users, demand and usage will be less. Although this may sound self-evident, from a management point of view, the more that is known about the type of drug user, the better the Ministry should be able to allocate its resources. As discussed below (at paragraphs 12.76-82) the Ministry currently has no such planning ability.

Increasing recidivism

12.23 Using data from the police arrest database (arrests in Western Australia from 1984 to 1995) the Select Committee estimated the likelihood or probability of re-arrest for drug offenders and found that, overall, the probability of re-arrest for *any* offence was 53% (or one in two) for drug offenders with no prior record of arrest and 76% (or three in four) for those with a previous history of arrest¹². The Select Committee also found that the drug offenders without prior records generally took longer to be re-arrested for any offence than offenders with a previous history. Interestingly, the Committee’s research also showed that only 30% of first drug offenders and 50% of those with a previous history of arrest were likely to be re-arrested for another *drug* offence in their lifetime.¹³

12.24 On the basis of the available evidence – albeit largely anecdotal and not part of a formal study of the issue – it seems reasonable to conclude that at very least the drug problem in Western Australian prisons is greater than it was in 1988 and that it has given rise to a range of problems with consequences for prisoners and prison staff, the prison system as a whole, and ultimately, for the community.

THE CONSEQUENCES OF DRUGS IN PRISONS

- 12.25 The Victorian Law Reform Committee report on *Criminal Liability and Self-Induced Intoxication* noted at paragraph 5.13:-

“The neurobiological changes brought about by the use of intoxicants may include impaired self-control, hallucinations, unpredictable violent behaviour, fear, anxiety, psychotic behaviour and loss of memory. What effect intoxicants will have on a particular individual varies because ‘each psychoactive drug produces its own distinct array of neurobiological changes’...”

In summary, intoxicants have a substantial impact on human behaviour, but the nature of this impact varies between and within individual drug classes.”¹⁴

- 12.26 There is little doubt that offenders admitted to prison with a history of substance abuse; in withdrawal from, or under the influence of, ‘intoxicants’; or with drug-seeking tendencies present prison staff with a range of significant management problems, both short and long term. For example, a submission to my inquiry from a Health Services staff member stated:-

“For long term heroin addicts there are no medical alternatives other than abstinence in gaol. This presents us with serious health management problems in terms of illicit use of drugs in gaol, erratic supply of heroin of different strengths, needle-sharing which spreads blood-borne communicable diseases, prisoners sharing their prescribed medication, and the use of standover tactics by some prisoners to get other prisoners’ medication.”

- 12.27 The same submission highlighted the problems created by drug-dependent prisoners who have “*limited coping skills*” or are “*emotionally disturbed, or psychiatrically ill*” or have been “*assessed as being a suicide risk*”.

- 12.28 In summary, it seems to me that the presence of large numbers of drug-dependent offenders in the prison system causes at least the following management problems:-

- poor and deteriorating physical health and increased health risks to **all** prisoners and staff;
- increased risk and incidence of self harm and suicide;
- unpredictable behaviour; and
- increased potential for bullying, standover and violence.

- 12.29 Strategies to properly address the consequences of drugs in prisons - comprehensive treatment and rehabilitation programs and detection and deterrence mechanisms - are expensive and resource-intensive because, ideally, they require the introduction of additional management strategies and purpose-built facilities and the employment of specially trained staff.

Poor and deteriorating physical health and increased health risks

- 12.30 One of the major consequences of the use of injectable drugs by offenders both prior to admission and within the prison system is the increased risk of the transmission of blood-borne and sexually transmitted diseases such as HIV and Hepatitis A, B and C through the sharing of needles. In response to a parliamentary question on 9 September 1999, the Minister for Justice advised that between 20-40% of all new arrivals in prison tested positive to Hepatitis C; that a survey conducted by Health Services in 1997 found that approximately 13% of prisoners were Hepatitis C positive; and that there was no data on how many prisoners had contracted Hepatitis C while in prison.

- 12.31 During a panel¹⁵ discussion of the treatment of blood borne communicable diseases at a Health Services Conference for Western Australian prison health staff held in June 2000 it was stated that 37-66% of prisoners had a history of intravenous drug use (IDU) and that 10% commenced IDU and 42% reported IDU while in prison. Although the panel were of the view that IDU was less prevalent in prison than in the community, it was also considered that sharing of equipment was more likely.
- 12.32 The incidence of unprotected consensual and non-consensual sexual contact between prisoners increases the possibility of the transmission of blood-borne diseases. The real extent of sexual contact between prisoners is a further area where the Ministry has no statistical data. I also found that, even anecdotally, it was difficult to obtain an accurate view of this sensitive area because of the reluctance of most prisoners and others to talk about the issue.
- 12.33 It seems to me that the increased risk of transmission of blood-borne and sexually transmitted disease is an inevitable outcome in Western Australian prisons where there is no needle exchange program - so that needles and syringes can *only* be obtained as contraband items. The provision of condoms via vending machines has been progressively introduced since March 1998 when the first machine was installed in Canning Vale and has been available at all prisons throughout the State since the end of July 2000. The Ministry has told me that there have been no reported incidents or breaches of security involving condoms since the initiative was introduced and that, on the basis of the limited monitoring possible of this sensitive subject, there is a relatively high turnover of stock.
- 12.34 The AMA's *Position Statement* on prison health services confirms the medical view of the hazards of using injectable drugs in a section entitled *Harm Minimisation*:-

“Many prisoners and detainees have used injectable drugs. Imprisonment can increase drug use and the risks of transmission of blood-borne and sexually transmitted infections. Harm reduction programs are important in the prevention of the spread of HIV and Hepatitis C among injecting drug users. (9.1)

In order to protect staff, prisoners, detainees and the public, appropriate arrangements for access to needle and syringe exchange programs, sterilising equipment for tattooing and skin piercing, methadone maintenance therapy, specific education about HIV, Hepatitis C and other blood-borne and sexually transmitted infections, and access to condoms should be available.” (9.3)

Increased risk of self harm and suicide

- 12.35 By means of references in both DGR 3B and the *ARMS* Implementation Manual the Ministry clearly recognises that a prisoner's vulnerability to self harm and suicide is likely to be enhanced by a history of drug or alcohol abuse or by the fact that he or she was involved in a drug-related offence. The Report of the Ministry's *DMSP* refers to –

“.....an increasing concern over the incidence of substance abuse, and the perceived overdose rates within the community and prisons. This has been exacerbated by the death of several prisoners recently, that are attributed to substance use, whilst in custody”

- 12.36 Following the suicides of several prisoners with a substance abuse history soon after their admission to prison (16 of the 29 prisoners referred to in paragraph 12.2 were remand prisoners) questions were raised by the Coroner and prison health professionals about the adequacy of the Ministry's approach to the management of such prisoners. In particular, concerns were raised about the unavailability of methadone maintenance programs for all but a very small number of exceptions¹⁶ and the lack of appropriate resources and facilities to properly care for, support and accommodate prisoners suffering the effects of substance abuse.¹⁷
- 12.37 The Smith Report said that "*Drug use amongst prisoners is now so widespread.....[it] may be wise in fact to assume as a matter of course that prisoners are drug dependent rather than not.*"¹⁸ If this is true, one of the biggest management issues facing the Ministry is the extent to which it is able to deal with such prisoners and the amount of funding it is prepared to allocate to its strategies. For example, to reduce the risk of self harm by drug-dependent prisoners - particularly at an early stage of their first period of imprisonment or remand - they may well require placement in suitable detoxification facilities under the management and supervision of qualified staff who are able to monitor physical and other symptoms and provide ongoing support and counselling. It appears from my inquiry that the Ministry is currently unable to provide that degree of specialised care at any of its prisons.

Unpredictable behaviour

- 12.38 The Victorian Law Reform Commission Report stated:-

"It is difficult.....to accurately predict the response of an individual to particular intoxicants, not only because of the distinct impact of the intoxicants themselves, but also because of the existence of other factors extraneous to drug type. Some of those factors which have an impact upon an individual's psychological response to intoxicants include:

- (a) Dosage and how the intoxicant is taken.....*
- (b) Previous experience with drugs.....*
- (c) Genetic factors.....*
- (d) Psychological state....."* (Paragraph 5.13)

- 12.39 There is little doubt that, on admission to prison, all offenders, but particularly those who are drug-dependent, bring with them a range of complex behavioural problems. The physiological and psychological effects of some intoxicants may result in behaviour which even the user is unable to control or recall subsequently. Prison officers are not behavioural psychologists - nor should they be - and unpredictable behaviour by definition is one of the most difficult for them to deal with.
- 12.40 Although prisoners may cause management problems by being 'difficult' for a number of reasons - for which disciplinary measures are entirely appropriate - the behavioural problems related to drugs may have different consequences and call for a different approach. For example, the presence of drugs was identified by the Smith Inquiry¹⁹ as having "*a central place in any analysis of the riot*". The effects of drugs were seen as being "*a direct contributor to the unruly and defiant behaviour of the prisoners that culminated in the mob violence that was the riot.*"

- 12.41 Neil **Holt**, an 18 year old remand prisoner who died by hanging in Hakea Prison in January 1998, was described in the IIU investigation of his death as a serious “*management problem*” whose behaviour was both unpredictable and impulsive. His behavioural problems were largely dealt with as disciplinary matters by use of punishment, isolation and restraint, although his file indicates that he was a poly-drug user who was withdrawing from heroin on his admission to prison and had been diagnosed as suffering from ADHD. In spite of the inclusion of a history of substance abuse as an ‘at risk’ indicator in DGR 3B, and the knowledge that Mr Holt was a poly-drug user, he was not assessed as being at risk of self harm. Although he was seen by the FCMT while in a medical observation cell and prior to being released into close supervision, he was subsequently only seen “*informally*” by the FCMT.
- 12.42 In my view, *effective* management of ‘problem’ prisoners with a history of substance abuse, requires the allocation of resources in the form of specially trained staff; appropriate treatment programs and dedicated facilities.

Increased potential for bullying, ‘standover’ and violence

- 12.43 The presence of large quantities of drugs in prisons has implications for the “*good government, good order and security*” of the prison in that it leads to tension between prisoners based on those who have drugs and those who do not. Prison officers have told me that pressure from other prisoners to obtain drugs can be a major stressor for prisoners, particularly new prisoners. Prisoners’ families can be pressured to import drugs either for the use of a prisoner or because he or she is subject to standover tactics. Detection and the subsequent punishment (which may include loss of contact visits) can have a significant effect on the welfare and well-being of an already vulnerable prisoner.
- 12.44 Internal drug trafficking between prisoners tends to engender violence and bullying and causes an undercurrent in the prison system which is difficult to deal with because, like that in the community, the prison drug culture is based on activities which are essentially illegal. Because they are subject to severe sanctions by the system, prisoners will go to great lengths to conceal not only the trafficking and use of drugs but also the effects of any associated violence or retribution. For example, the inquest into the death of Dean **Lauder**, who committed suicide in Canning Vale in May 1998, revealed that he had attempted to arrange for a visitor to bring drugs into the prison because he “*owed*” another prisoner. When the visitor did not arrive at the prison, Mr Lauder was said to have been “*fearful of what might happen to him at the stage when he was released from solitary confinement if the drugs were not smuggled into the prison*” and to have told his sister “*I’m dead, I’m f----g dead.*”
- 12.45 The lack of reporting by victims and unavailability of witnesses mean that violence against prisoners creates an undercurrent which, in my view, is as disruptive to the good order and security of the prison system as open defiance and disobedience. It is also without doubt a significant stressor for prisoners and an accepted factor in suicides and self harm. Although I acknowledge the difficulties which both the Ministry and the police face when dealing with a ‘code of silence’, I am also aware that prisoners have little confidence that their complaints will be properly investigated even if they are prepared to take the risk of making a complaint. The existence of this sub-culture of unaddressed violence has serious repercussions for the ‘good order of the prison’. It also creates a prison stress which may increase the risk of self harm in a vulnerable prisoner.

- 12.46 I am satisfied from submissions and evidence to my inquiry that all of the above problems – deteriorating health, unpredictable behaviour, increased risk of health problems and self harm and suicide and greater potential for violence and bullying – are present in Western Australian prisons to a greater or lesser degree. The extent of the problems and their implication for staff working in the prison system will depend on the Ministry’s ability and willingness to introduce strategies to address the concerns and manage what is clearly an increasing problem. The possible outcome of *not* accepting the extent and consequences of the presence of drugs is reflected in the conclusion in the Smith Report that:-

“The riot on Christmas Day reflects the delay in tackling the growing drugs crisis in prisons and indeed the reactive crisis management that has come to characterise the operations of the Offender Management Division, particularly in terms of prisoner services.”²⁰

THE MINISTRY’S DRUG MANAGEMENT STRATEGIES

- 12.47 The AMA’s *Position Statement* states the following as essential components of a prison health service:-

“Adequate facilities for detoxification and for the management of alcohol and substance abuse must be available to prisoners and detainees.” (8.4)

- 12.48 At page 163 of its Interim Report the Select Committee stated:-

“A more comprehensive approach to responding to drug problems would contain the following elements:

- *supply reduction;*
- *demand reduction; and*
- *problem solving.*

The object of early intervention is to identify, assess and treat those individuals who have histories of serious drug abuse, and if who remain untreated are likely to create considerable management difficulties, sustain the demand for drugs within the correctional environment and add to the pressures for dealing in drugs within prisons.”

- 12.49 The Report of the DMSP conceded that the Ministry’s previous practices and policies “*were often isolated, not evaluated and lacked cohesion internally as well as with other Directorates.*” To address these deficiencies the DMSP report proposed that successful drug management strategies should place an equal emphasis upon a “*tripartite set of goals*”:-

- (i) reducing the supply of substances – through detection and deterrence;
- (ii) reducing the demand for substances – through medical management;
- (iii) reducing the problems of substance abuse – through non-medical management;

and made a number of recommendations designed to achieve those goals.

- 12.50 In April 1999 the Ministry conducted a review of the recommendations made in the DMSP report and of progress or otherwise in their implementation. In early 2000 the Ministry decided to adopt the report of the DMSP as “*a reference document contributing to the development of an Offender Management/Prison Services Drug Management Strategy*”. As part of my inquiry, I have examined the Ministry’s strategies and the extent of their implementation in practice.

(i) Reducing supply - detection and deterrence

Detection

- 12.51 In order to reduce the supply of drugs in prisons, an effective means of detection is essential. This is achieved by means of searches of prisoners, their cells, property and visitors; by urine testing; observation in visiting areas; random checks on prison staff; use of passive dogs, surveillance and intelligence reports. The Ministry appears to be of the view that the primary source of drugs in prisons is prisoners' visitors and aims its major detection initiatives at this point of entry. The *DMSP* report proposed additional measures to control and monitor visitors and visits, including amendment of the *Prisons Act* to allow prescribed bans on visitors who have committed drug offences; allowing contact visits only with approved/nominated visitors and by enhancing the level of supervision of visits using specialised staff trained in behavioural management and basic group management. I understand that none of these proposals has been implemented to date.
- 12.52 On the basis of submissions to my inquiry and interviews with a wide range of interested persons, and the large amount of drugs which is reputed to be freely available within every prison, I question whether the primary focus on visitors is effective.
- 12.53 A submission by the Howard League for Penal Reform to the UK Home Affairs *Select Committee on Drugs In Prison* (1998) contained the results of a survey of visitors to four UK prisons and young offender institutions "*in order to ascertain which drugs were predominantly smuggled into prison and for which drugs both prisoners and visitors were being punished.*" The survey found that "*less than one percent of the visiting population were found with drugs in their possession and in an overwhelming proportion of those cases (between 71 and 94 percent) cannabis was the offending drug.*" To my knowledge, the Ministry has never conducted a similar survey. As a consequence it has no similar empirical data on which to base its current detection focus.
- 12.54 Little proactive attention appears to be given to the possibility of trafficking by prison staff of all levels, or through, for example, deliveries and other means of entering a prison. Officers in the IJU have told me that, on the strength of intelligence information alleging involvement in drug trafficking by persons other than prisoners' visitors, it has recommended a number of avenues of investigation to the Ministry or to individual prison superintendents over the last two years. According to those officers no action was taken. However, I do not believe this assessment is entirely accurate as I am aware that the Ministry has, in conjunction with the police, taken steps to investigate suspected involvement in drug activity by persons other than prisoners' visitors. For example, a prison officer was recently convicted of attempting to import drugs into a prison.
- 12.55 One of the visiting justices who made a submission to my inquiry was of the view that current detection methods were unsuccessful and that there should be a greater focus on possible trafficking by prison staff. In the course of this inquiry I received (non-specific) allegations that some officers provide prisoners with drugs in return for some form of payment from the prisoners' families or in return for information. I also question whether other illegal items, such as mobile phones, which have been found in the possession of prisoners, could be imported by a prisoner's visitor without detection. From my own experience and observations, searching of persons who enter a prison, *other* than visitors to prisoners, is superficial and haphazard. I was pleased to hear that the 1999 review of the *DMSP* has resulted in a move to focus attention on all possible points of entry for drugs including prison staff and deliveries of goods.

Deterrence

- 12.56 Dr Wendell Rosevear, a doctor and visiting medical officer to correctional centres in Brisbane, and one of the members of the working party which formulated the AMA's *Position Statement* on prison health services wrote²¹ :-

“Placing a wall around a drug addict doesn't stop them from becoming an addict. When they continue to use drugs authorities feel a failure and respond with increasing power, denying the reality that only one person can stop someone using drugs and that is the person involved. Authorities think that by increasing the punishment consequences, they can effect change, but they deny the fact that drug addicts don't live in a world of consequences, they live in a world of instant relief.”

- 12.57 The focus of the Ministry's drug deterrence strategy has been primarily on “*disincentives to prisoners and significant others to reduce their willingness to participate in the illicit use of drugs and alcohol, and the introduction of such substances and associated paraphernalia into prisons...*”²² Disincentives might include separate confinement, loss of privileges, loss of remission, and – until mid December 1999 when empowering regulations were disallowed by Parliament - restitution of the cost of urinalysis testing. However if, as stated by a visiting justice in a submission to my inquiry, 95% of charges he heard were drug-related, the efficacy of the ‘stick’ philosophy in reducing the demand for drugs is questionable.
- 12.58 It is encouraging to note, therefore, that the *DMSP* report acknowledges that there might be other and more effective means of deterrence, such as “*incentives*”:

“There is growing acceptance, supported by “best practice” literaturethat incentives offered to prisoners act as strong inverse deterrents in managing substance use within prisons. Therefore, this will form an integral part of the proposed strategy, to balance the preponderance of the sanctions based policy framework, that has been operational to date.” (page 28)

*“.....Promotion of incentives is seen as the most effective method to encourage abstinence from substance usage during incarceration. The incentives regime should be complemented by sanctions directed at prisoners who choose to engage in substance use. **In this manner the prison setting utilises a pro-active prisoner management approach to encourage a pro-social environment and effectively “shapes” the behaviour.**”* (page 30)

- 12.59 Incentives might include extra or special visits, work placement, program availability, leave of absence and positive parole recognition. To this end recommendations in the *DMSP* report suggest the establishment of drug-free units with “*defined incentives in the structured day, which include privileges and program availability*” (Recommendation 5); and propose a “*standardised system of incentives for statewide implementation*” with “*increasing opportunities at decreasing security ratings.*” (Recommendation 6)
- 12.60 This is an enhancement of the current policy for placement in a self-care unit which requires that a prisoner must be drug-free but does not formally monitor the prisoner to verify his or her ongoing status. It is proposed that eligibility for placement in a drug-free unit would be subject to participation in intensive treatment programs and that incentives could include additional privileges (eg visits, greater access to electrical items) and provide a wider range of programs and recreational activities. Privileges could be increased in line with a decreasing security rating. It is unclear from the *DMSP* report whether funding has been approved for this initiative.

- 12.61 The apparent change in the Ministry's approach is encouraging. Although the 1999 review states that no further action other than the utilisation of existing self-care facilities on a pilot basis is intended I have been advised by the Ministry that Nyandi is to be established as a drug-free unit. The proposal is for an incentive-driven environment with both methadone and naltrexone programs and a testing regime. Prisoners detected using cannabis will be given one chance but will be required to undertake counselling. Any prisoners found with 'hard' drugs will be transferred back to a normal prison. It appears from the 1999 review that there has been no further positive action on a standardised system of incentives other than the development of draft DGRs.
- 12.62 There is widespread support for the establishment of drug-free units (or prisons) as part of a hierarchy of incentives to prisoners to become and remain drug-free. I fully support the recommendation in the *DMSP* report and urge the Ministry to provide the necessary funding.

RECOMMENDATION 12.1

That the Ministry allocate funds and resources to facilitate implementation of Recommendations 5 and 6 in the Report of the *Drug Management Strategy Project* as a matter of priority.

(ii) Reducing demand – medical management

- 12.63 Appropriate management of a prisoner suffering the effects of substance abuse on admission to prison requires knowledge of the extent of that prisoner's prior drug or alcohol use (the initial assessment) and a strategy for the medical management of that identified problem during the sentence (pharmacotherapies). The Select Committee was critical of the Ministry's efforts in both these areas.

Initial assessment - the welfare of the prisoner

- 12.64 The initial assessment of prisoners on admission is an essential health management tool for the identification of physical problems. It is also an important strategy in recognising a prisoner's likelihood of self harm during what is widely recognised as the time of greatest vulnerability. The importance of the first assessment was recognised by the RCIADIC which recommended in **Recommendation 156** that the initial medical assessment should be performed "*within 24 hours by a medical practitioner or trained nurse and by a medical practitioner within 72 hours if the initial assessment is performed by a nurse.*" The Government's response to Recommendation 156 stated that initial assessments were completed at most prisons within the recommended time frame.²³
- 12.65 Section 39(b) of the *Prisons Act 1981* provides that the prison medical officer shall "*on the request of the chief executive officer, examine a prisoner as soon as practicable after the prisoner's admission to prison and ascertain and record the prisoner's state of health and any other circumstances connected with the prisoner's health, as the medical officer considers necessary.*" *Health Services Policy 1.1* provides that all new prisoners must "*have a nursing assessment completed within 24 hours of receipt or the next time a nurse is available when there is no 7 day nursing cover*" and "*must see a medical practitioner at the next available medical clinic.*"
- 12.66 In its Interim Report the Select Committee stated its belief in the importance of the initial assessment and expressed concern about the adequacy of the Ministry's initial assessment procedure particularly in relation to the questions about a prisoner's previous substance abuse history:-

“.....it is to the mutual benefit of the prisoner, the prison system and the wider community if those prisoners with significant drug problems can be identified at the point of entry into prison. The next step in the process is to engage such individuals into an effective and relevant treatment process, with the initial object of psychologically and medically stabilising the prisoner. The payoff for the prisoner, and the prison community into which he or she is placed, is that with proper management of his or her drug problems the prisoner will not need to use drugs.....”

The routine comprehensive assessment of drug problems in offenders to determine their current drug usage and possible treatment needs does not apparently occur in WA prisons. Prisoners are routinely assessed with respect to their degree of risk for self-harm, with only 2 lines of information as an open ended question in relation to drug and alcohol use or dependency, Substance abuse history, on the Social Factors checklist form.” (page 161)

- 12.67 As a result the Committee recommended that the Ministry *“implement the use of more comprehensive drug and alcohol assessment questionnaires and other appropriate measures as part of the reception process each time a prisoner enters the State’s prison system.”*(Recommendation 63)
- 12.68 Although none of the submissions to my inquiry has raised concerns about the adequacy of the assessment procedure itself, several members of the nursing staff have complained about restrictions on the length of time which they are allowed to complete both the medical assessment form **and** the lengthy *At Risk Assessment* form, given that most new arrivals tend to arrive from court late in the afternoon when the nursing staff have other routine duties to perform (such as medication rounds and other nursing administrative duties). More importantly, many nursing staff told me that they are frequently placed under unreasonable pressure by prison officers to complete these important duties quickly to fit in with the officers’ operational duties at the end of the day.
- 12.69 The Government’s tabled response to the Select Committee’s Interim Report acknowledges the importance of *“comprehensive assessment”* in determining the *“individual criminogenic factors of each offender”*, and states that *“MOJ [the Ministry] has been examining alternative options to determine the most appropriate vehicle to achieve this outcome”*.
- 12.70 The DMSP report (at page 39) confirms the concerns expressed by nursing staff. It agrees that *“cell allocation and other daily prison management concerns take precedence over medical assessment”* and that it appears that *“there is no appreciation by custodial staff of the legitimate role of Health Services in the initial intake phase.”* The DMSP report concludes that this situation:-
- “.....can result in brief, rushed assessments by nursing staff, because this is usually one of the last functions in the reception process. The content of these assessments is crucial as there is a primary need for the risk assessment elements to be performed in a timely, considered manner. **This impacts on the effectiveness of the immediate management and placement of the prisoner with an increased probability of incidents.**”* (my emphasis)
- 12.71 Recommendation 22 in the DMSP report proposes that *“Nursing personnel should be afforded immediate access to newly arrived prisoners following the completion of essential reception tasks as a priority function of the reception process.”* The DMSP report does not, however, appear to consider the Select Committee’s concerns about the adequacy of the current questionnaire or recommend that it be reviewed to ensure that more detailed information about an offender’s substance use history is obtained on admission to prison.
- 12.72 Unquestionably, the initial assessment of prisoners on reception is vital to their subsequent management and forms an integral component of the Ministry’s duty of care to prisoners. Errors or omissions at this early stage in a prisoner’s sentence can be serious, if not fatal, because it is commonly accepted as the time when a prisoner will be feeling most hopeless, helpless and vulnerable.

- 12.73 The 1999 review of the *DMSP* report states that communication of a policy direction to all prisons “to ensure [that] access to new receivals by nursing staff at the earliest practical point” has been endorsed and compliance ensured “through active monitoring of reception processing activities”. The Ministry is also of the view that the establishment of the reception/reception centre at Hakea will ensure “direct functional relationship between health services and reception”.
- 12.74 It is to be hoped that the Ministry’s response to and implementation of *DMSP* Recommendation 22 will have the effect of re-emphasising the importance of the initial assessment process and resolve any conflict between health and prison staff. In my view it is of grave concern when such a conflict has the potential to interfere with the duty of care required of both parties and the ultimate treatment provided to prisoners. Because of concerns about this conflict I urge the Ministry to ensure that prison officers are fully informed of the rationale behind Recommendation 22.
- 12.75 In relation to the Select Committee’s concerns about the adequacy of the content of the assessment form, I am satisfied from my discussions with members of the nursing staff at all prisons that they are capable of asking – and do so - the ‘right’ questions even if those questions do not appear on the form itself. The limiting factor is the time constraint placed on them. The Ministry should, however, compare the content of its form with those currently used in the community to ensure parity. At the same time, I think that most health services staff would agree that they (and prisoners) would benefit from specific training in the area of substance abuse. Current training opportunities for health services staff in clinical fields of particular relevance to prisoners are minimal.²⁴

RECOMMENDATION 12.2

That in the interests of the welfare and better management of offenders entering prison in withdrawal or suffering from the effects of substance abuse the Ministry should:-

- (a) review the initial medical assessment form to ensure that it provides adequate data for the management of prisoners;**
- (b) provide health staff and other interested staff with specialised training in the management of substance abuse problems; and**
- (c) ensure that medical and nursing staff gain access to newly-admitted prisoners early enough to complete all assessments without pressure from operational considerations.**

Initial assessment – data to increase knowledge for forward planning

- 12.76 The Select Committee commented on the value of a “system of routine data collection” as an “an invaluable ‘early warning’ system and [to] provide prevalence trends” and recommended a variety of data collection and monitoring systems including:-
- the mandatory and anonymous monitoring of drug use by offenders at the time they first enter the criminal justice system (R60);
 - the collation and publication of urinalysis testing to establish indicators of drug abuse to be utilised by health service providers and other relevant groups such as the Substance Use Resource Unit (R66);
 - analyses of prevalence and trends in indices of drug abuse in prisons (R67);
 - an integrated information system to routinely collate information with respect to offenders under community based orders in terms of their compliance with orders and outcomes from interventions (R68).

- 12.77 The Ministry, on its own admission, has no current data on the extent of the problem of drug abuse in prisons or by persons serving community based orders and has conducted no evaluation of the treatment programs provided to prisoners in terms of their effectiveness in reducing offending behaviour or drug dependency. As far as I am aware, there is also no statistical analysis of the information obtained from a prisoner on admission to prison. In response to my draft report, however, the Ministry has advised me that it has engaged a consultant to produce a report based on current Health Services statistics and to advise the Ministry on means of improving the ongoing collection of data from prisoners for the purpose of continual statistical monitoring.
- 12.78 The Government's tabled response accepted the merits of the Select Committee's suggestion for useful objective data but did not support Recommendation 66 on the ground that current national methodologies are inconsistent and can produce misleading results, such as a conclusion that Western Australia has a significantly higher incidence of substance abuse by prisoners than other states. The Ministry similarly rejected Recommendation 68 because of the prohibitive cost and stated that its new database – Total Offender Management System – would not be able to provide the detail envisaged by the Committee.
- 12.79 Nevertheless, the *DMSP* report recommended (R16) the establishment of “*a central record for the collection of all detection strategies data to assist in the evaluation of the effectiveness of the initiatives*” and the development of “*a standardised, validated substance use assessment instrument for implementation statewide*” (R39). It appears from the 1999 review that no action has been taken in relation to R16 - which is “*dependent on funding success*”. However, there has been a more positive response to the recommendation for a standardised assessment instrument in the form of progress with the receipt and assessment centre at Hakea and the development of “*a single assessment instrument for treatment program suitability, as part of the comprehensive Individual Management Plan.*”
- 12.80 It seems to me that the Ministry's rejection of the Select Committee's recommendations for the development of a comprehensive database on the prevalence of drug use by prisoners before, during and after their imprisonment ignored the undeniable benefit of such statistics in the planning, staffing and nature of future prison requirements. Although I am aware that funding for prisons is not limitless, it seems to me that the long term benefit for forward planning from the compilation of reliable and comprehensive data should be a powerful incentive, particularly if the extent of the problem of drug abuse is as great as that suggested in the Smith Report – about which I have no doubts.
- 12.81 As was noted in Chapter 6²⁵ the JJ/HIDC was critical of the Ministry's lack of an effective information system in 1996. The Smith Report concluded that the disturbance at Casuarina in 1998 “*reflects the delay in tackling the growing drugs crisis in prisons*” and that the “*growing use of prescription drugs was not monitored and it was well known but no concerted action was taken.*”²⁶ Elsewhere the report refers to the Ministry's lack of “*systematic planning*”, and “*management ability and vision.*”²⁷ - criticisms which had already been raised in the report of the Wanneroo Royal Commission in 1996 and in a Cabinet research paper commissioned from Australian Correctional Services, also in 1996.
- 12.82 Although the Smith Report²⁸ refers to the growing use of drugs as being a factor outside the Ministry's control, it also expressed the view that “*understanding, anticipating and addressing these problems are a responsibility of the Ministry of Justice and particularly the Offender Management Division.*” I agree.

- 12.83 As discussed in Chapter 7 on medication, the Ministry has advised me that it recently commenced regular three-monthly reviews of prescription charts in order to ascertain the level of usage of psychoactive medications and that the results of the reviews indicate a significant decrease – up to 50% - in the prescription of Benzodiazepines and psychotropic medications. Although the true extent of drug usage within the prison community will be difficult to ascertain other than through urine and other forms of testing, greater use could be made of information which may be more willingly provided by prisoners on admission to prison to establish the likely extent of the problem and the implications for health services.

RECOMMENDATION 12.3

That the Ministry take steps to produce reliable statistical data on the prevalence of drug use in the interests of the welfare of prisoners, the safety of staff and the efficient planning of its future prison requirements and management strategies.

Pharmacotherapies – Methadone and Naltrexone

- 12.84 Health Services Policy 5.19 - *Drug and Alcohol Withdrawal* – provides:-

*“The treatment of drug and alcohol withdrawal is largely symptomatic and involves medication use and therapeutic medical/nursing interventions. Careful observation and assessment are vital to the provision of adequate medical/nursing care. All medical/nursing actions **must** be documented.”*

- 12.85 The *Principles of Management* in Policy 5.19 include:-

- obtaining a complete history of drug and alcohol use;
- treatment according to the dominant drug use;
- the option of placement in the nearest public hospital if there is not 24 hour nursing coverage and the prisoner is experiencing severe symptoms or is unstable;
- documentation of all assessments, interventions and treatments.

Methadone

- 12.86 Policy 5.19 refers to methadone, but as one of the drugs from which a prisoner may be withdrawing and advises “*Treat as per opiate withdrawal.*” There is no methadone management program generally available within the prison system. Methadone ‘maintenance’ programs are restricted to prisoners who are already participating in a community methadone program prior to admission and who are pregnant, HIV positive or short term remand with a good prospect of bail. On 12 November 1998 there were 20 male prisoners and four females receiving methadone. Eleven of those prisoners were on remand and one was pregnant; four were serving short sentences. As at 18 October 1999 there were 34 male prisoners and 13 female prisoners on a methadone program. In April 2000 51 prisoners were receiving methadone. The sentence or health status of these prisoners is not known but it is presumed that they were primarily prisoners who fell within the criteria listed above.
- 12.87 The absence of a “*credible chemical substitute programme*” (that is a methadone maintenance program) was criticised by the Coroner and the then Manager of the SNT, (now the FCMT) following the deaths of Darren **Boyle**, Ronald **Hill** and Ryan **Kennedy** within 11 days at the Remand Centre in 1994. The Coroner said:-

“It is the policy of the prison authorities that gaols will be free of illicit drugs. Accordingly persons who had previously been taking part in a methadone maintenance program before entering the prison system are given a chemical substitution treatment. There are very limited exceptions to this policy. However, it seems that this policy is in conflict with a credible program sponsored by a Government authority and is excessive in its effect on a person, as yet unconvicted and on remand.

If a person has entered the methadone maintenance program and has made a commitment to comply with that regime, the opportunity to continue with this program, if released from remand custody, will be effectively destroyed by the present policy.

While it is true that some persons may be held on remand for inordinate periods of time, this may often not be the fault of the individual who is detained.

The provision of methadone in the prison setting may well cause difficulties, particularly if the person is held on remand for a long time, but expediency should not be allowed to override the rights of the individual.”

- 12.88 In a report reviewing the circumstances of the deaths of the above prisoners the Manager of the SNT expressed her agreement with the Coroner’s views and suggested:-

“If the remand prisoner was on the ADA [Alcohol and Drug Authority] programme and this could be verified, then they should be allowed to continue the proscribed [sic] regime throughout the remand period. Those remand prisoners who do end up with a custodial sentence could then be withdrawn off methadone in reducing doses.”

- 12.89 There was no change to the Ministry’s policy following the three deaths at the Remand Centre in spite of the comments by the Coroner and the Manager of the SNT.

- 12.90 At page 162 of its 1997 Interim Report, the Select Committee was critical of the Ministry’s management of “opioid dependent individuals” stating:-

*“There is not a standard approach to the management of opioid dependent persons. **Indeed it is believed that few dependent prisoners receive adequate care**, aggravated bya low value placed on pharmacotherapies and the connotations of punishment if prisoners are placed in medical observation cells.” (my emphasis)*

- 12.91 At page 163, the Committee noted the Ministry’s limited methadone policy for remand prisoners and stated:-

“Given the chronic nature of the abuse of heroin by a significant minority of prisoners, it is logical that there is a need to provide appropriate pharmacotherapies to those prisoners who wish to achieve an abstinence from drugs, by the use of drugs such as Naltrexone.”

- 12.92 In light of its conclusions, the Select Committee recommended:-

“That the Ministry of Justice establish appropriate pharmacotherapies to address the rehabilitative and treatment needs of prisoners with established histories of serious opioid abuse, with appropriate legal coercion, with the ultimate aim of prisoners being drug free at the time of their release from prison.” (Recommendation 64)

- 12.93 In its tabled response to the Select Committee²⁹, the Government supported Recommendation 64 “in principle” and stated that it would:-

“.....work in conjunction with the WA Drug Abuse Strategy Office and the Health Department to investigate and consider the introduction of new pharmacotherapies as they become registered for general use in Australia with a view to providing the most appropriate short term and long term management within the prison context and upon release.”

12.94 The DMSP report includes some discussion of the Prison Methadone Program in NSW prisons where approximately 15% of the prison population are engaged in the program.³⁰ The program was described in the DMSP report (at page 45) as showing “...mixed evidence of success. There is good evidence that prisoners comply with methadone dosing and do not divert methadone, and there are low rates of illicit injecting drug use among prisoners on the methadone program. There is no evidence that the program has reduced recidivism after release from prison.”³¹

12.95 The DMSP report goes on to state:-

“Considerable discussion at sub-committee level has occurred on the issue of extending methadone availability within WA prisons. At no time was consideration given to adopting the NSW model where methadone dispensing is now an extensive program within prisons.....The major focus of that program has been to reduce the potential for blood-borne virus infections, by illicit drug use within prisons.

On this public health basis alone there are strong arguments for an expansion of methadone availability within prison environments.”

12.96 On the other hand, the DMSP report notes some support for the view of a 1996 Queensland Commission of Inquiry that if the clear objectives of a community-based methadone program are the reduction of opiate drug usage and criminal activity, imprisonment of an offender should achieve both those objectives and obviate the necessity for a custodial methadone program.

12.97 Consideration was given to expanding the provision of methadone to prisoners who were already involved in a methadone program on admission to prison based on:-

“.....public health factors and the need to promote a safe environment for methadone recipients moving to an unstable status, because of the need to detoxify upon admission. In addition there is an expectation of a significant increase in the number of methadone recipients entering prisons, because of this State’s move to community assessing and dispensing program for methadone.”

12.98 An expanded program would provide methadone recipients with access to a short maintenance program before implementing a reduction regime not exceeding eight weeks duration. This was seen as “reflecting acceptable community based practices” and as a means of reducing “attempts by methadone recipients to traffic in alternative (self) medications, as a consequence of enforced detoxification.”

12.99 However, the proposal was defeated by the majority view of the project team subcommittee which favoured no expansion of the current policy, fearing an increase in “trading between prisoners”. Although it was agreed that detoxification from methadone is “a particularly unpleasant experience”, the majority were of the view that “there is no medical reason for reduction in the first instance to be preferred”. As a result the sub-committee agreed there should no change in the Ministry’s methadone policy although developments in other jurisdictions would be closely monitored.

- 12.100 The Ministry advised me in December 1998 that its reluctance to expand its methadone program was based on a number of medical issues and resource implications. For example, it was considered that there would be an increased risk associated with overdose and that methadone could create insensitivity to pain possibly masking symptoms of other health problems.³² The Ministry also cited difficulties in “*monitoring compliance with taking the medication, identifying and preventing diversion of doses; secure modes of distribution and administration and secure storage of the stock.*”
- 12.101 Although I note that the DMSP report indicates an intention to “*closely monitor.....more liberalised policies on pharmacotherapies*” in other jurisdictions, I find the reluctance to conduct a controlled trial in Western Australia and its conclusions somewhat surprising given the data on which they are based – which appears to be primarily a 1993/94 study in New South Wales. Again the Ministry appears to have no data of its own to support its continued restrictive methadone policy.
- 12.102 I would have thought that the positive results from the New South Wales study – namely clear evidence of compliance by prisoners and a reduction in illicit drug injecting - were persuasive at least in terms of improvement to prison management and safety. The Ministry’s apparent objections on the basis of the lack of evidence to support a consequential reduction in recidivism are rather unexpected given its own lack of data to support the success or otherwise of any of its own current programs.
- 12.103 Although there is some debate about the long term effectiveness of methadone in the treatment of heroin addiction - not only in relation to prisoners but in the broader community - proponents of community methadone programs emphasise that the official supply of methadone at very least tends to reduce the criminal behaviour which for many addicts is primarily motivated by the need to finance a continuous source of the drug of addiction. I also note that participants in community programs are provided with counselling and other means of support which can only be of long term benefit in reducing illicit drug dependence.
- 12.104 Fear of bullying and violence is considered to be one of the prime causes of suicide and self harm.³³ Furthermore, prison health staff attributed a decrease in self harm and suicide during the ‘lockdown’ at Casuarina following the disturbance in December 1998, to the limited opportunities for bullying and standover tactics under such a restrictive regime. In the custodial setting I would have thought that the possibility of being able to reduce the violence, bullying and standover tactics associated with drug demand by means of pharmacotherapies would have been an outcome which the Ministry would have considered persuasive.
- 12.105 I also find the practical reasons cited by the Ministry for not expanding the methadone program - namely difficulties in “*monitoring compliance with taking the medication, identifying and preventing diversion of doses; secure modes of distribution and administration and secure storage of the stock*” - somewhat surprising as I would have thought that those concerns applied to all psychotropic medications, Schedule 4 and Schedule 8 drugs and potent analgesics.
- 12.106 Leaving aside the merits or otherwise of the provision of methadone to *all* prisoners willing to participate, it seems to me that the Coroner’s comments about the desirability of an expanded program for *remand* prisoners have merit. In the circumstances, I would have thought that the seriousness and extent of drug abuse among prisoners and the associated problems were at very least grounds for a controlled methadone trial on the lines of the trial Naltrexone program conducted at Bandyup. Although I am aware that Health Services held a methadone maintenance forum in May 1998 to discuss the issue, there appear to have been no operational developments in this area apart from the formulation of draft guidelines for a methadone program.

RECOMMENDATION 12.4

That the Ministry reconsider its decision not to expand its methadone program and conduct a pilot study for the purposes of assessing its effectiveness in Western Australian prisons.

Naltrexone

- 12.107 In December 1998 five prisoners (all males) were receiving Naltrexone. The Ministry advised me that six prisoners at the Remand Centre and two-six at Canning Vale had received it in the previous six months and that:-

“Prisoner access to naltrexone within the Ministry of Justice is currently managed on an individual case basis. Prisoners who were participating in a naltrexone program prior to imprisonment are eligible to continue access within the prison environment. These prisoners are required to authorise release of information from their practitioner to allow the Ministry of Justice to verify that they are currently involved in a program in the community.

Prisoners who meet this requirement have their medication dispensed daily in tablet form, which must be crushed and swallowed under the supervision of staff. The cost of the medication is borne by the offender (or their family).”

- 12.108 Early in 1999, following three heroin overdoses in the prison in seven months, it was decided to conduct a trial program at Bandyup. Eight prisoners were selected to participate on the basis that they were chronic heroin users both outside and inside prison and that they wanted to overcome their addiction. Medication guidelines for the program were provided in a draft Health Services Policy and ongoing counselling and support by a dedicated member of the FCMT who is currently preparing counselling protocols.
- 12.109 Although there were found to be problems with the program (for example, Naltrexone is not psychologically suitable for all those with heroin addiction; there was found to be incompatibility with partners on a methadone program; and the fear of detection of cannabis usage with compulsory urine testing) and three of the eight dropped out, the Ministry was encouraged by the positive response to the trial by both participants and staff and has recommended a further pilot program using different selection criteria.
- 12.110 In the latest proposal, participants from Wooroloo have been chosen on the basis that they are in the last three months of their sentence; are motivated and have expressed the intention to enter the *Next Step* community rehabilitation program after release. Funding has been allocated to the trial and the medication will be provided at no cost to the prisoner. There are to be three components in the program – administration of Naltrexone; groupwork and individual counselling provided by the Ministry’s Project Officer.
- 12.111 The Ministry’s recommendation and commitment to a further pilot Naltrexone program is encouraging. In view of the success of this program, however, it is perhaps surprising that the Ministry remains concerned about introducing a trial methadone program.

(iii) Reducing the problems - non-medical management

Rehabilitation and treatment programs

- 12.112 Available research indicates a high probability of repeat offending of all kinds, not only drug-related, among offenders with a history of substance abuse. As far as I am aware, the consensus of opinion among experts experienced in treatment of persons with a substance abuse problem is that therapeutically appropriate counselling and support programs are *essential* to any effective drug rehabilitation strategy. It is also widely accepted that it is virtually impossible for a dependent drug user to become 'drug free' without assistance and without the occasional relapse.
- 12.113 However, because of high musters and the increasing number of prisoners with substance abuse problems in the system, the requirement and demand for treatment programs are so high that the Ministry has made a conscious decision to focus its resources on rehabilitation/treatment programs towards the *end* of a prisoner's sentence, prior to his or her release into the community, and generally for the primary purpose of satisfying a condition of parole eligibility.
- 12.114 Even so, I have been told that the Ministry's current level of program provision cannot cater for the number of prisoners who are assessed as needing substance abuse programs - with the result that some will find that they remain in prison beyond their eligibility date for no reason other than that they have been unable to complete the required program. Although I am aware that an 'eligibility date' should be seen only as an indication of when a prisoner can expect to be released, the psychological effect on a prisoner of passing that date through no fault of his or her own can generate feelings of hopelessness and increase vulnerability to suicide and self harm; cause serious management problems for prison administrations; and unnecessarily exacerbate the muster levels.
- 12.115 More importantly, it seems to me that this approach represents a lost opportunity to tackle the problem from the start of a prisoner's sentence, with the potential to minimise the management problems associated with drugs in the prison system and to increase the chances of a prisoner with a history of substance abuse being released from prison 'drug free' and having overcome the problems associated with his or her offending behaviour.
- 12.116 The Ministry currently offers the following substance abuse treatment programs:-

Intensive Substance Abuse Program

A combination of individual counselling, groupwork and written assignments, conducted one day a week over a period of 5-6 weeks. The groupwork component occupies 20-25 hours in a two week period. The program takes 12 participants and is run 16 times a year at all metropolitan prisons plus Bunbury and Greenough, and Albany and Roebourne to a lesser extent. Intensive programs for women at Bandyup and Nyandi are run one day a week for five consecutive weeks. Ongoing individual sessions to support progress made in groups are offered to women who wish to continue their rehabilitation (see below).

Pre-release Substance Use Counselling

For prisoners whose substance abuse is problematic but less serious than those on the Intensive program. It comprises 4-5 individual counselling sessions tailored to suit an individual prisoner's needs and is available at all prisons.

Substance Abuse Women's Program

Individual counselling to address the skills and relapse issues covered in mainstream programs as well as issues specific to the antecedents and consequences of substance abuse by women.

Prison to Parole – Substance Use

This program offers counselling by community treatment agencies before release to increase prisoner involvement after release. It includes relaxation and stress management, cognitive skills, costs and benefits of substance use and alternatives to the use of alcohol and drugs for handling issues.

Mawarankarra Substance Use Education Program

An alcohol education program provided by the Mawarankarra Aboriginal Corporation for Aboriginal prisoners at Roebourne Prison.

Kimberley Offender Program

Addresses issues of violence and substance use for Aboriginal prisoners in an integrated format using Aboriginal presenters where possible. The program is run at Broome Prison but is currently under review.

Remand Class Prisoners with Substance Use issues

An orientation and interventions program for remand prisoners at the Remand Centre.

“Ending Offending”

An internationally accredited alcohol education program, developed in conjunction with South Australia. It was hoped that the program would be developed to run continuously in all prisons to reduce the waiting list for current substance use programs. However, I understand that it has been used primarily as a module in one of SURU's other programs.

- 12.117 The importance of treatment programs in the management of prisoners with substance abuse problems was highlighted by the Select Committee at page 163 of its Interim Report:-

“Experience from other jurisdictions indicates that a significant number will successfully complete abstinence oriented programs which are well-resourced and address their specific needs. These programs appear to be particularly successful if they are able to create a drug free environment, which involves motivated prisoners and if conducted by committed staff....”³⁴

- 12.118 The potential value of providing prisoners with rehabilitation programs during their sentence is not new. A study completed in 1993³⁵ noted that:-

“Gaols provide an opportune time to intervene with offenders who have often experienced little contact with substance abuse services. Distrust of social services agencies, lack of funds, or unfamiliarity with community treatment agencies often deter inmates from seeking substance abuse treatment. The severity of substance abuse problems is often not acknowledged among these individuals, their family members and peers. The initial period of incarceration often serves to focus an inmate's attention on the negative consequences of substance use and can mobilise internal motivation to address longstanding lifestyle problems through treatment.”

This study also found a positive connection between participation in custodial treatment programs and a prisoner's greater willingness to continue with the program after release and the corresponding beneficial effects on recidivism.

- 12.119 The *DMSP* report refers to identification of a prisoner's "*criminogenic need*" (the relationship between that prisoner's drug use and his or her offending behaviour) and the targeting of programs to such needs as essential components in successful interventions. It acknowledges that it is unrealistic to expect prisoners with drug problems to stop when they are imprisoned without help in the form of treatment programs, but concedes that the Ministry has a current lack of treatment options. The *DMSP* report also refers to the absence of a "*universal, validated recidivism risk-needs assessment*" tool which has made it "*difficult to quantify program needs and prioritise prisoners for engagement in appropriate programs. In this light it is difficult to determine the effectiveness of present drug and alcohol interventions in custody.*"³⁶
- 12.120 To address these deficiencies the Ministry proposes a restructuring of its non-medical treatment options, shifting the focus from pre-release programs in order to "*utilise the 'window of opportunity' at the beginning of a period of incarceration, to generate motivation to change.*" This 'new' approach to treatment options will, however, remain predicated on the Western Australian Government's *Drug Abuse Control Strategy* which is based on the primary principle of "*opposition to drug use*". The principle of "*harm reduction*" based on strategies which reduce harm to the user and the community is seen as secondary and must not "*encourage or normalise drug abuse*".
- 12.121 For example, in a reversal of previous policy, the Ministry now proposes to offer remand prisoners the opportunity to participate in substance abuse treatment programs, but only those prisoners identified as medium to high risk and motivated to change will be informed of the availability of such programs. Participation will be on a voluntary basis in recognition of the "*unique status of remand class prisoners*".
- 12.122 The programs offered will be 'brief intervention' based on the current pre-release program for short term remand prisoners and an intensive program based on the current SURU program for long term remand prisoners expecting a sentence of imprisonment. Specific programs to address alcohol abuse, possibly including a program specifically for recidivist drink drivers, will also be developed.³⁷ The *DMSP* report estimates that an additional FTE would be required to provide programs to remand prisoners at the Remand Centre.
- 12.123 In addition, substance abuse treatment programs for newly sentenced prisoners will be provided as part of the standard orientation program. Such programs will include coping strategies, harm minimisation techniques and relapse prevention strategies and will be designed to "*influence a behavioural change that may culminate in a reduction in substance use or even abstinence.*" Programs would be available throughout a prisoner's sentence culminating in a pre-release unit which prepares the prisoner for successful reintegration into the community.
- 12.124 The current lack of treatment options and the focus on pre-release programs are a continuing source of complaint to my Office and one which creates anger and frustration in prisoners who, because they are unable to gain a place on the program, spend longer in prison and exacerbate the current crowding situation.
- 12.125 As discussed elsewhere in this report, in my opinion the current focus, scope and quantity of pre-release drug treatment programs are inadequate to properly prepare prisoners – and the community – for their release. Of equal - or perhaps greater - significance the lack of any rehabilitation programs before pre-release presents a wasted opportunity to assist in the management of prisoners *during* their sentence and deprives the prison system as a whole of a number of benefits. For example, although recidivism rates are high, it seems to me that prisoners who are provided with some form of education and counselling programs early in their sentence when they may feel some remorse for their actions and when pressure from their families to address the substance abuse problems which resulted in their imprisonment may well be more influential, may have a better chance of returning to the community,

if not drug free, at least with fewer problems. The public health interests of this outcome alone should be a significant motivating factor. As far as I am aware, the Ministry has undertaken no research in this area to evaluate the success of the programs it does provide.

- 12.126 In relation to the provision of compulsory programs to prisoners (remand or sentenced), I was advised by the Western Australian Drug Abuse Strategy Office (WADASO) that there was no indication from research that prisoners who were coerced into participating in programs were less likely to succeed than those who volunteered and that there was great advantage in ‘tapping’ into the remorse and motivation for change of newly-admitted prisoners. In fact it was considered that the high level of motivation exhibited by prisoners at the end of their sentence (suspected to be generated by a desire to satisfy parole pre-conditions) may well be not as genuine as at the beginning of the sentence. I have no doubt that the apparent lack of confidence in the effectiveness of compulsory programs is merely a reflection of the lack of funding to provide sufficient programs for the large number of prisoners in need of them.
- 12.127 Although the Ministry acknowledges in the report of the *DMSP* that it has insufficient treatment options, from information provided to me in the course of my inquiry, it seems to me that it has also been reluctant to utilise the services of specialist community-based organisations such as Holyoake, Palmerston and Cyrenian House which are willing and able to provide programs to prisoners. These organisations seem to receive little encouragement from the Ministry and have told me that they often encounter hostility from some prison staff.
- 12.128 For example, I was informed that Holyoake conducted a very successful 10-week program at Bandyup focussing on the effect of drugs in pregnancy and on families and children, including domestic violence issues. The program cost the Ministry around \$2000 but Holyoake was advised that there was no more funding to repeat the program. I understand that lack of space at Bandyup because of the current high muster level was cited as an additional limiting factor.
- 12.129 Similarly, I was also told of another very successful initiative organised by Outcare and conducted by Holyoake at Canning Vale - an 8-week program involving both prisoners and their families. The program produced tangible results, with prisoners and their families continuing with counselling after their release, significant and sustained reduction particularly in relation to alcohol consumption and a reported improvement in the mental health of prisoners’ partners. The program was conducted as a pilot at no cost to the Ministry but no further programs have been requested. This is not the only example brought to my attention where the Ministry has used the services of individuals and organisations to provide a program on a trial basis at no cost but then decides not to repeat the program if it is required to pay for it-even if the program has been a success.
- 12.130 Holyoake, Palmerston and Cyrenian House are also contracted to conduct the Prison to Parole Program. Although aimed at prisoners who are to be released within the next three months, prisoners who have longer to serve are frequently allowed by the community organisations to participate because of the lack of availability of other programs and their concern that failure to complete a required program will adversely affect eligibility for work release, home leave and parole.³⁸
- 12.131 Funding for provision of treatment programs in adult prisons by community organisations comes from WADASO. The Ministry provides funding to community groups such as Holyoake only in relation to programs for juveniles. WADASO has advised me that there is insufficient funding to properly cater for the demand for programs and that this shortfall was the prime reason for the decision to focus funding on pre-release programs.

- 12.132 SURU programs which are resourced and funded by the Ministry³⁹ are aimed primarily at those with the worst problems and whose offences are related very closely to substance use. These criteria leave large numbers of prisoners with identifiable problems who are unable to access any kind of rehabilitation program. Furthermore, these programs do not generally contain basic life skills or guidance in alternative ways of dealing with the underlying problems which frequently lead to substance abuse.
- 12.133 Although the proposals in the report of the *DMSP* for the restructuring of its substance abuse program delivery are encouraging, particularly for new prisoners, implementation will need to be afforded a high priority if the substance abuse problem within the prison system is as serious as suggested in the Smith Report and if the alleged inadequacy of the Ministry's previous approach contributed to the "tinderbox" which became the Casuarina riot.
- 12.134 In my view, to properly address the problem, treatment programs will need to be made available to prisoners from the beginning of, and throughout, their sentence in addition to 'refresher' programs prior to their release. Of equal concern is that program availability is insufficient to meet the needs of prisoners eligible under the current criteria. For example, I was advised in August 1998 by the Ministry that at that time there were 529 prisoners waiting to participate in its substance abuse programs and that nine of those had remained in prison after the date of their earliest eligibility for release. Although numbers waitlisted for substance abuse programs have fallen significantly since 1998 – there were 125 awaiting placement and/or assessment as at 16 August 2000 - it seems to me that simply to keep pace with the demand for current program participation, without introducing new programs, there will need to be a considerable increase in resources and funding for program delivery.

RECOMMENDATION 12.5

That in recognition of the extent and seriousness of the problem of drugs in prisons the Ministry provide adequately funded and resourced substance use treatment programs for all affected prisoners from the beginning of their sentence.

Facilities for prisoners suffering the effects of substance abuse.

- 12.135 On admission to prison a prisoner will usually be placed in a mainstream unit unless there are strong indications from the initial assessment that the level of risk of self harm is acute or immediate or he or she is suffering from extreme withdrawal symptoms. As discussed in Chapter 11, placement options are inevitably limited by increasing muster levels (particularly at Casuarina and Bandyup). In prisons where most cells are already shared because of pressure of numbers the possibility of placing a prisoner with a friend or relative also becomes more difficult. If placement in a mainstream unit is not considered appropriate because the prisoner is considered to be a high risk of self harm, in most prisons the only other option is the universally hated medical observation cell; currently only Casuarina is able to offer alternative placement in either the Crisis Care Unit or the Infirmary.
- 12.136 On the basis of my discussions with prison Health Services staff, it is not considered to be ideal or even reasonable that prisoners experiencing the physical trauma of withdrawal (typically vomiting and diarrhoea) should be placed in a cell by themselves or with another person. This kind of placement makes it difficult for health staff to monitor the prisoner, particularly if the unit is unstaffed at night, requiring special arrangements for access to be made. The degrading experience of going through the physical symptoms of withdrawal in a cell with another person – for whom the experience is equally unpleasant and a health risk – may well increase the likelihood of self harm.

12.137 This point is well illustrated by the death of Carl **Jackson** in Casuarina in 1996. Mr Jackson, a first time remand prisoner withdrawing from heroin, was placed in a shared cell in an unstaffed mainstream unit and committed suicide on the night of his admission. Although given medication by nursing staff once during the night, it was not possible for them to observe him because of difficulty of access to the unit after lockup.

12.138 Similarly, Huy Van **Le** was admitted to the Remand Centre on the evening of 13 February 1998 suffering withdrawal from heroin. He was placed in a single cell in a mainstream unit and was found hanging in his cell on the evening of 14 February. He died after his admission to Fremantle Hospital.

12.139 The *DMSP* report at page 41 states:-

“Drug and/or alcohol withdrawal is common with newly incarcerated prisoners. Current practice within the Ministry of Justice consists of a plethora of detoxification regimes or practices with significant differences. Furthermore, there is inconsistency in the threshold for withdrawal treatment to occur. These practices need to be standardised and should reflect best practice benchmarks in withdrawal treatment.

It is accepted that a prison setting is not an ideal environment for withdrawal, and duty of care requirements do not appear to have been consistently implemented.”

12.140 The *DMSP* report goes on to describe effective withdrawal treatment as comprising:-

- *Supportive Care* - regular monitoring with recording of “observations to determine progress”;
- an environment which reflects a “minimisation of stress” and considers the “physical comfort of the individual”; and
- *Medical Care* - the process of “illness screening to identify health problems directly related to the withdrawal”.

12.141 It recommended that the Ministry:-

“Provide discrete detoxification areas in all major reception prisons to enable prisoners with moderate to severe withdrawal symptoms to be accommodated in a supportive care setting.” (Recommendation 26)

12.142 On the evidence before me, I consider that current prison facilities are inadequate and do not allow prison health staff to properly manage the physical symptoms of substance abuse. Although I am aware that it has been proposed to convert the wing of the Infirmary at Casuarina currently occupied by the Intensive Sex Offender Treatment Program into a detoxification unit, there appears to have been no further progress on this initiative.

12.143 It goes without saying that, even if a detoxification unit were to be established at Casuarina, it would only be of benefit to male prisoners. Given the high involvement of female prisoners with drugs, it is disturbing that there are currently *no* facilities for female prisoners at Bandyup other than medical observation cells which are located with the punishment cells. There is no indication in the *DMSP* report whether funding has been sought to implement Recommendation 26. However, I am pleased to note that the planned refurbishment of Bandyup includes an enhanced health centre and a Crisis Care Unit.

RECOMMENDATION 12.6

That the Ministry provide funding for the provision of discrete detoxification areas in all major reception prisons, particularly within the proposed refurbishment at Bandyup.

Ongoing support and counselling by trained staff

12.144 The Select Committee commented on the employment of “*skilled personnel*” in other jurisdictions, notably Victoria and New South Wales -

“.....to treat drug problems in the prison context. The approach adopted by the NSW Department of Corrective Services, where medical and related health services in prisons are provided under the administrative control of the NSW Health Department, has much to commend it. The involvement of community based health providers wherever possible has a number of advantages, including that:

- this maximises the perception that health care providers working in correctional settings are independent of prison administrators.....;*
- community based health care workers are less likely to become isolated compared to those who work only within a correctional context;*
- it encourages the provision of methadone and other pharmacotherapies in prison settings; and*
- the ongoing medical management of prisoners can be maintained after release from prison.”⁴⁰*

12.145 In Western Australia, the FCMT provides counselling for prisoners in withdrawal who have been assessed as a high risk of self harm but is precluded by lack of resources from becoming involved in routine or regular monitoring of lower risk prisoners in withdrawal. It is left to those prisoners to approach the FCMT themselves.

12.146 Following the death in January 1996 of Carl **Jackson**, the IIU recommended that “*prisoners withdrawing from drugs on admission to prison be routinely assessed by a member of the FCMT to identify ‘at risk’ prisoners who may self harm*”. Although in-principle approval to this recommendation was given, the Ministry confirmed that, following the routine medical and at risk assessment conducted when a prisoner is first admitted, a referral to the FCMT would only be made when “*offenders experience problems or crises during withdrawal from drug abuse.*” I interpret this to mean that there is only crisis management and *no routine monitoring* by the FCMT of prisoners in withdrawal. Although they believe that it is an important part of their role, FCMT staff have told me that this is the case.

12.147 The proposal to use Unit Managers and other custodial staff in program delivery (*DMSP* report at page 52) is seen as having the dual benefit of providing cost-effective delivery of the information component of the programme and fostering better prisoner/officer relations in the spirit of the *At Risk Management System*. There has been no progress with this initiative.

12.148 On the basis of information provided to me about the lack of facilities and staff at most institutions, I suggest that it would rarely be possible for health staff to provide ‘supportive care’ as envisaged in the *DMSP* report. Even with the increased resources now available, it seems to me that prison health services in general and the FCMT in particular are only able to provide ‘crisis care’ with no ability to become involved in crisis *prevention*, whether it be related to prisoners withdrawing from substance abuse or those with severe behavioural disorders. Although I realise the cost implications of providing sufficient resources to perform this function, having looked at systems in other jurisdictions within Australia, it seems to me that this type of ‘front end’ management has the potential to be of benefit to both the prisoner and the prison in reducing the need for *crisis* care. In addition, it is of concern that there are few health services staff with specific qualifications in the treatment of substance abuse and that there are limited opportunities for training of prison health staff in this field.

12.149 Given the accepted link between the effects of substance abuse and the increased potential for self harm, and the increasing numbers of dependent drug users entering the prison system, it is perhaps surprising that *ARMS* does not appear to specifically encompass this issue.

RECOMMENDATION 12.7

- (a) That the FCMT be provided with sufficient resources to enable it to routinely monitor prisoners suffering the effects of drug abuse and provide the counselling considered essential to the success of any intervention; and
- (b) that the opportunity for training in this specialist field be made available to health staff and other interested prison staff.

12.150 In summary, I am encouraged by the initiatives proposed in the Report of the *DMSP* and the action taken following the 1999 review. Essentially, however, the success of any of the proposed strategies will depend on the Ministry's willingness to provide adequate funding and resources for their implementation.

SUMMARY OF RECOMMENDATIONS

- 12.1 That the Ministry allocate funds and resources to facilitate implementation of Recommendations 5 and 6 in the Report of the *Drug Management Strategy Project* as a matter of priority.
- 12.2 That in the interests of the welfare and better management of offenders entering prison in withdrawal or suffering from the effects of substance abuse the Ministry should:-
 - (a) review the initial medical assessment form to ensure that it provides adequate data for the management of prisoners;
 - (b) provide health staff and other interested staff with the opportunity for specialised training in substance abuse problems; and
 - (c) ensure that medical and nursing staff gain access to newly-admitted prisoners early enough to complete all assessments without pressure from operational considerations.
- 12.3 That the Ministry take steps to produce reliable statistical data on the prevalence of drug use in the interests of the welfare of prisoners, the safety of staff and the efficient planning of its future prison requirements and management strategies.
- 12.4 That the Ministry reconsider its decision not to expand its methadone program and conduct a trial program for the purposes of assessing its effectiveness in Western Australian prisons.
- 12.5 That in recognition of the extent and seriousness of the problem of drugs in prisons the Ministry provide adequately funded and resourced substance use treatment programs for all affected prisoners from the beginning of their sentence.
- 12.6 That the Ministry provide funding for the provision of discrete detoxification areas in all major reception prisons, particularly within the proposed refurbishment of Bandyup Women's Prison.
- 12.7
 - (a) That the FCMT be provided with sufficient resources to enable it to routinely monitor prisoners suffering the effects of drug abuse and provide the counselling considered essential to the success of any intervention; and
 - (b) that the opportunity for training in this specialist field be made available to health staff and other interested prison staff.

- ¹ The Ministry's Director, Health Services has advised that the estimated figure of Hepatitis C carriers in Western Australian prisons is approximately 20%
- ² Indermaur and Upton *Alcohol and drug use patterns of prisoners in Perth* (21 Australian and New Zealand Journal of Criminology 144-167)
- ³ See also paragraphs 12.64-75
- ⁴ Allen (1996) *Drug and Alcohol Programmes in NSW Prisons: Culture, Context and Change* (paper presented to the 7th International Conference on the reduction of Drug Related Harm)
- ⁵ Kevin, *Women in prison with drug related problems. Part 1: background characteristics*
- ⁶ Kevin, *The alcohol & other drug screen with inmate receptions in New South Wales. A pilot initiative*. NSW Department of Corrective Services, 1997
- ⁷ *Education/prevention strategies for people who use drugs illicitly in prison: What can be done realistically?* By Ken Quayle of the NSW Users and AIDS Association
- ⁸ at page 13
- ⁹ Paragraphs 5.2.7.6 and 5.2.7.7
- ¹⁰ *Violent property crime*, Annandale, NSW, Federation Press, 1995 at page 55
- ¹¹ Lipton: *The effectiveness of treatment for drug abusers under criminal justice supervision*, National Institute of Justice, US Department of Justice, 1995 at page 4
- ¹² *ibid* at page 131
- ¹³ *ibid* at page 132
- ¹⁴ Extract from a submission to the Committee by Dr S Rajaratnam and Professor Redman, Department of Psychology, Monash University
- ¹⁵ Panel members included the Medical Director, Sexual Health Services HDWA, the Chairman, Hepatitis C Council of WA and the Ministry's Project Officer for BBCD
- ¹⁶ See paragraph 12.86
- ¹⁷ See also paragraphs 12.135-12.143
- ¹⁸ Paragraph 5.2.7.6
- ¹⁹ Paragraph 5.2.7.1
- ²⁰ Paragraph 5.2.7.12
- ²¹ *Australian Medicine*, 13 October 1998
- ²² Report of the *Drug Management Strategy Project* April 1998; 6.1 at page 28
- ²³ See Chapter 5, paragraphs 5.73-5.87 for a detailed consideration of the initial assessment
- ²⁴ See Chapter 6, paragraphs 6.96-6.100
- ²⁵ Paragraph 6.150
- ²⁶ Paragraph 5.2.7.12
- ²⁷ Paragraph 5.2.8.1
- ²⁸ Paragraph 5.2.10.1
- ²⁹ at page 24
- ³⁰ This would equate to around 450 prisoners in Western Australian prisons
- ³¹ Hall, Ward and Mattick (1993) *Methadone Maintenance Treatment in Prisons: The New South Wales Experience*. Drug and Alcohol Review, 12, pp193-203
- ³² In the inquest into the death of Winifred Michael who was admitted to Bandyup withdrawing from drugs but subsequently died from a perforated appendix, the Coroner stated "This case has highlighted the fact that withdrawal symptoms may mask or be similar to symptoms caused by serious illness and so in cases where symptoms such as "cramps" are described abdominal examination may be important."
- ³³ Page 14 of the *Report on Suicide Prevention Strategies for Prisons in Western Australia* and paragraph 5.2.2.8 of the Smith Report
- ³⁴ Taken from *Correctional treatment helps offenders stay drug and arrest free*; R Mathias; *NIDA Notes* July/August 1995
- ³⁵ Peters; *Examining the Effectiveness of In-Jail Substance Abuse Treatment*; *Journal of Offender Rehabilitation* Vol 19
- ³⁶ At page 47
- ³⁷ Report of the *Drug Management Strategy Project* at pages 47-54
- ³⁸ I note from the response to a Parliamentary Question by the Minister for Family and Children's Services on 9/3/99 that 231 prisoners participated in the pre-release Prison to Parole Programme in 1997/98
- ³⁹ The Substance Use Resource Unit was allocated \$530,000 in 1998/99
- ⁴⁰ Interim Report, page 162

CHAPTER 13 PROGRAMS

THE IMPORTANCE OF PROGRAMS IN PRISONER MANAGEMENT

THE ADEQUACY OF PROGRAMS AVAILABLE TO WESTERN AUSTRALIAN PRISONERS

EDUCATION, TRAINING AND EMPLOYMENT

RECREATION

TREATMENT/REHABILITATION PROGRAMS

SUMMARY OF CONCLUSIONS ON THE ADEQUACY OF EDUCATION, EMPLOYMENT, RECREATION AND TREATMENT PROGRAMS

SUMMARY OF RECOMMENDATIONS

THE IMPORTANCE OF PROGRAMS IN PRISONER MANAGEMENT

- 13.1 For the purposes of this section I have interpreted ‘programs’ to include any activity which might be considered ‘constructive’ such as education, vocational training, industry, recreation and rehabilitation.
- 13.2 In her 1992 study of prison suicide¹, Dr Alison Liebbling referred to a review of suicide prevention procedures by Judge Tumim, the UK Chief Inspector of Prisons, in 1990 which concluded that “*Confinement in prison under conditions of inactivity and the lack of any purpose, can only serve to emphasise extremes of human feeling, such as boredom and despair.*”
- 13.3 Liebbling found that her own research into the causes of suicide and self harm by young (under 21) prisoners supported that view, having identified the lack of constructive activity as a factor likely to impact on a prisoner’s ability to cope with and adjust to imprisonment. As previously discussed in Chapter 3, Liebbling links poor coping ability to the level of a prisoner’s vulnerability to self harm and suicide:-
- “In hopeless young people, with the least available skills and resources for coping with adversity and stress, confinement, isolation and boredom.....can be the last straw. This is one unintended consequence of imprisonment no society should knowingly or willingly inflict on its law-breakers. ‘Looking after with humanity’ should exclude boring people to death.”² (my emphasis)*
- 13.4 By comparing a ‘subject group’ of prisoners who had attempted suicide with a ‘comparison group’ of similar prisoners who had not she found a marked difference in the subject group’s level of activity both prior to the suicide attempt and in prison generally -
- “The most significant point to emerge from the responses to these questions [could you find something rewarding to do in the institution in which you are imprisoned?] is the **consistency** with which the subject group are (and feel) worse off than their fellow inmates in terms of the availability and desirability of work, education, PE and other methods of occupation. They do not see as many opportunities for themselves in prison, nor do they seem to be able to make constructive use of their time. The combination of constraints and their own lethargy leaves them helpless and resourceless in the face of hours of unfilled time. It is their inability to occupy themselves constructively, combined with ‘enforced idleness’.....that increases their vulnerability to both impulsive acts of self-harm and suicidal thoughts.”³*
- 13.5 Liebbling referred to the colloquial term for serving a term of imprisonment – ‘doing time’ – as being more closely associated with ‘surviving’ the sentence than describing an opportunity for improvement and a means of avoiding future offending. She cited the UK Chief Inspector of Prisons, who argued in 1990 that “*inmates should be encouraged to **use** time, not just **do** it, and that constructive occupation may relieve some of the frustration common to young anxious prisoners.*”
- 13.6 She found, however, that although less than half of both the subject and comparison groups thought they were using the sentence to achieve something constructive for themselves, the majority expressed a desire to -
- “get fitter, become more intelligent and ‘wise’ and better qualified; they wanted to give up drugs, reorganise their lives, change their personalities and ‘sort their heads out’. Significantly more of the subject group wanted to change personal things about themselves.”⁴*
- 13.7 Liebbling concluded that a basic understanding of the problems identified by prisoners themselves was a useful tool for prison officers as a strategy for reducing the prison stresses which were seen to be significant contributory factors in self-harming and suicidal behaviour. For example, the discovery that a prisoner was unable to occupy himself in his cell after lockup or rarely took advantage of opportunities for activity during ‘unlock’ might be a useful indicator of that prisoner’s poor coping ability. Similarly,

officers should consider whether a prisoner's reluctance to participate in team sporting activities could be based on his difficulties with other prisoners rather than laziness. She notes:-

“It is interesting to note how an attitude towards an everyday prison feature may indicate other important feelings. Prison officers could be encouraged to make these sorts of enquiries as part of their general ‘welfare’ role, taking an interest in all inmates without ‘boring in’ on the suicidal.....Lack of socialisation within the prison may be another indicator of risk, particularly if the inmate has few friends inside, spends a lot of time on his own, has difficulties with other inmates.....Importantly, inmates who present disciplinary problems to the staff cannot be assumed to be (just) manipulative, or obvious trouble-makers. Their disciplinary problems may be another feature of the difficulties they are experiencing in coping with prison.”

13.8 She concluded that *“Vulnerability can be recognised and alleviated in simple ways. Education, activity, contact and concern might avert many crises”* and also advocated the provision of *“‘coping skills’ courses, which address both sentence and post-sentence survival.”*

13.9 The UK Prison Reform Trust said in 1996:-

*“In its widest sense it [suicide prevention policy] must be about creating a climate in which suicidal thoughts and feelings are less likely to take root. **Inmates will normally be less prone to suicidal behaviour in the establishment where regimes are full, varied and relevant;** where staff morale is high and relationships with inmates positive; where good basic living conditions are provided; where every effort is made to encourage contacts with family and the community.”* (my emphasis)

13.10 In a more recent report on suicide and self harm in UK prisons⁵, HM Chief Inspector of Prisons referred to the concept of a ‘healthy’ prison and identified the ‘key constituents’ of a ‘healthy’ institution as:-

- a safe environment
- treating people with respect
- a full, constructive and purposeful regime
- resettlement training to prevent reoffending

13.11 One of the ‘tests’ of a healthy prison formulated by HM Chief Inspector (‘Test 3’) is that *“Prisoners are fully and purposefully occupied and are expected to improve themselves”*. He went on to state at paragraph 7.27:-

*“There is nothing worse for the mental well-being of those who find it difficult to cope with life in prison than being idle. **A healthy prison provides a range, variety and choice of activity in which prisoners can be involved.** The aim must be to motivate prisoners towards improving themselves. It is not sufficient to provide opportunities for education, employment, exercise and physical education, access to library and other activities. It is just as important to ensure that staff have the skills to encourage prisoners to take up these opportunities.....Healthy establishments provide prisoners with opportunities to gain qualifications and also the help and support they need to take advantage of them. Prisons are full of people who have achieved little in their lives and who have had little experience of praise and encouragement. The opportunity to do something of which they can be proud can have an important influence on their mental well being, their views of other people and on their attitude to future offending.”* (my emphasis)

- 13.12 The positive effect of suitable programs was highlighted in a recent review of the high rate of suicide by Maori prisoners in New Zealand prisons⁶ which found:-

“The Maori suicide review group believes that the risk of self-harm and suicide can be reduced through the provision of programmes to inmates that assist in the development of coping skills, communication and problem solving skills, and self esteem. The current focus of programmes in prisons is on the particular causes of offending, or skills needed to live in the community, rather than development of skills which mitigate against the risk of self-harm or suicide. The review group recommends that criteria be developed for the provision of programmes to at-risk inmates. Participation in programmes also allows inmates to constructively use their time. The review group supports the recommendation of the 1995 suicide review group for a system that identifies and addresses the need of remand inmates including the delivery of programmes for the constructive use of time.”

- 13.13 Apart from the psychological and behavioural benefits of constructive activity and “full, varied and relevant” regimes, its importance is endorsed by United Nations *Standard Minimum Rules for the Treatment of Prisoners* in the following rules:-

- *“Every prisoner who is not employed in out-door work shall have at least one hour of suitable exercise in the open air each day.”* (Rule 21(1))
- *“Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.”* (Rule 71(3))
- *“Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.”* (Rule 71(5))
- *“The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.”* (Rule 72(2))
- *“Provision shall be made for the further education of all prisoners capable of profiting thereby.....The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.”* (Rule 77(1))
- *“Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.”* (Rule 78)

- 13.14 *Standard Guidelines for Corrections in Australia* includes the following “guiding principles.....intended to show the spirit in which correctional programs should be administered and the goals towards which administrators should aim” in relation to work, recreation, education and activities:-

“All prisoners should have access to productive work, education, recreation and leisure programs and facilities which provide them with the opportunity to utilise their time in prison in a constructive and beneficial manner.” (5.57)

“The Manager of the institution has a responsibility to encourage prisoners to participate in such programs.” (5.58)

“Weather permitting, prisoners should be allowed access to open air for at least one hour each day.” (5.62)

13.15 In addition the RCIADIC made a number of recommendations in relation to constructive activity:-

Recommendation 184 - All Aboriginal prisoners should have the opportunity to perform meaningful work and to undertake educational courses in self-development, skills acquisition, vocational education and training including education in Aboriginal history and culture.

Recommendation 185 - The Department of Education, Employment and Training should be responsible for the development of a comprehensive national strategy designed to improve the opportunities for the education and training of those in custody.

Recommendation 186 - Prisoners, including Aboriginal prisoners, should receive remuneration for work performed. Those who pursue education or training courses during the hours when other prisoners are involved in remunerated work should receive the same level of remuneration.

Recommendation 187 - Experiences in and the results of community corrections rather than prisons should be closely studied by Corrective Services and communities and Aboriginal organisations should be more involved in correctional processes.

THE ADEQUACY OF PROGRAMS AVAILABLE TO WESTERN AUSTRALIAN PRISONERS

Education, Training and Employment

13.16 Each prison has an Education Centre at which attendance by prisoners is voluntary. Courses range from basic literacy to Year 10 level competency. Prisoners are able to study to tertiary level at their own expense. The Ministry now employs 30 full-time Education Officers, comprising a full-time permanent Senior Education Officer at each Education Centre assisted by full-time permanent Education Officers at most prisons – depending on prisoner numbers – as follows:-

Albany/Pardelup	2
Bunbury	1
Casuarina	4
Hakea Prison	3
Hakea Remand	1
Greenough	1
Roebourne	1
Wooroloo	1

13.17 In 1997 the Ministry, in conjunction with the Western Australian Department of Training, established a Taskforce “to review the provision of institutional-based education and training” at the 13 prisons then in operation. The Taskforce found that the Educational and Vocational Training Unit was isolated from the “main business” of each facility “with the result that educational effectiveness relies heavily on the personal conviction of local custodial management.”

13.18 The Taskforce recommended that “*the education and training of offenders must be regarded as a core business of the organisation*” by the following means:-

- The special educational training needs of the offender be afforded high priority and accommodated in Case Management planning decisions regarding program placement and access. All educational activity should be prioritised against an agreed set of criteria consistent with the strategic direction of the OMD. (Rec 3)
- That each prison site become registered as a training provider of accredited programs so that the OMD can maximise existing skills and abilities of staff. (Rec 6)
- That the OMD, offender population permitting and within the principle of *through care*, establish the structure of an integrated articulated pathway between prisons and from prisons to the community with a view to developing “best practice” models. (Rec 7)
- That an assured funding arrangement commensurate with rising prisoner populations be committed by the State Government to support the increased demand in education and training. (Rec 8)
- That discussions should occur within the Parole Board regarding the possibility of it taking a pro-active stance in acknowledging offenders’ participation in literacy programs as a genuine attempt at self-improvement. (Rec 9)
- That, in accordance with the OMD focus on offender development, education and training of offenders be included in the accountability and performance requirements of prison superintendents so that in each prison, the education and training of offenders is a key element of the strategic planning process. (Rec 11)
- The accountability and performance requirements of Education Officers in each prison will include:
 - (a) the development of an annual operation plan with the Education and Vocational Training Unit’s policy framework;
 - (b) an assessment/orientation process of all offenders on admission;
 - (c) a demonstrated commitment to information exchange to support the OMD Integrated Case Management model. (Rec 12)
- That an effective Management Information System be developed in relation to education and training of offenders between all prisons and from prisons to the community. (Rec 13)
- That all Education/Vocational Training staff in the Ministry be paid a salary level commensurate with their qualifications, experience and standing in mainstream education systems. (Rec 14)
- That the Ministry adopt a limit of 12 months on all staff secondments. (Rec 15)
- That existing services be adapted to better meet the needs of offenders with disabilities. (Rec 16)
- That the gratuity system be redeveloped to reward behaviour and accord all education and training programs equal status and remuneration with other prison occupation areas. (Rec 17)
- That relevant legislation under Section 94 of the *Prisons Act 1981* - “Approved Absences” - be reviewed and amended to include education and training opportunities. (Rec 18)

13.19 A new model for education and vocational employment was proposed by the Taskforce on the basis that:-

“.....prison operations cannot operate in isolation if the goal of reducing recidivism is to be achieved. They must provide value for offenders post release and so must translate to the community. It is imperative then, that prison activity should only be determined after full consultation with relevant players from both within the system and outside community agencies?”.

13.20 ‘Relevant players’ were identified as:-

- *prison administration* - because the Superintendent controls the work/training industry at the prison;
- *individual prisoners* - in order to identify meaningful and relevant activities;
- *therapeutic program staff* - to establish the available time for more education for each prisoner;
- *education and vocational staff* - responsible for the assessment and identification of individual needs;
- *peer support and community corrections officers.*

13.21 The Taskforce report refers to the need to *“take into account the offender’s experience of a lifetime of educational deficit An offender choosing industry employment may need education support At all times, education/training and industry should adopt the case management approach to mutual clients.”*

13.22 It was envisaged that the new model would remove day to day operational issues and duplication of services by ‘Head Office’, and that, in the interest of efficiency, the skills, aptitudes and abilities of staff should be identified and applied *“to gain optimum effect and value for the educationally disadvantaged offender in the short time available.”*

13.23 The Taskforce also proposed the establishment of an OMD Alliance Board *“to provide advice to the Director General of the MOJ [the Ministry] and the CEO of the Department of Training on policy, training needs, priorities, resource allocation and service delivery of correctional education and training”*. The Board was to be responsible for, inter alia:-

- preparation of an annual Ministry education and training plan;
- endorsing policy for the implementation of education and training programs including delivery of accredited programs and gaining recognition for industry training programs;
- development of strategies to ensure equal opportunity in training for Aboriginal and female prisoners; and
- monitoring outcomes to ensure compliance with the Code of Practice.

13.24 The ‘Code of Practice’ would provide, *inter alia*:-

- the maintenance of high professional standards for the delivery of occasional education and training services which safeguard the interests and welfare of students; and
- a learning environment conducive to the success of course participants and ensure capacity to deliver nominated courses, provide adequate facilities and use appropriate methods and materials.

13.25 The Ministry has advised me that almost all of the recommendations of the Taskforce have been either implemented or are under consideration. In particular:-

- in October and December 1997, July 1998, October 1999 and September 2000 additional full-time permanent Level 2/4 and 5 positions were created to cater for rising prisoner numbers – the number has risen from 19.5 in 1997 to the current establishment of 30 plus 95-100 contract tutors (*Rec 8*);

- in July 1998 former Level 2/4 positions were reclassified into Level 5 positions as a strategy to make correctional education salaries commensurate with mainstream education. Salaries for the Level 2/4 positions are, however, still under ongoing negotiation due to “*an across public sector equity issue*” (Rec 14);
- imposed a 12 month limit on all staff secondments in October 1997(Rec 15).

13.26 On the basis of the Ministry’s response to my draft Report it would appear that there has been no progress in relation to *Recommendation 9*, namely that it should initiate discussions with the Parole Board about the possibility of it taking a more proactive stance in acknowledging participation in literacy programs as an a genuine attempt at self improvement.

13.27 Although the majority of the recommendations have been accepted, I have decided to include in this Report a summary of the Taskforce’s findings which were drawn from the results of their observations and of interviews and surveys conducted during visits to each prison in the system at that time (Nyandi and Riverbank were not in operation) because the comments made to me in the course of this inquiry and my own observations are very similar to those made by the Taskforce a year earlier. To the extent that I continue to receive complaints about the availability of programs (in the broad sense) I believe some of the problems identified by the Taskforce still remain. The dates in brackets are the dates the audits were completed. The findings are set out below.

Albany Regional Prison (May 1997)

13.28 Nominated hours for training needs and shorter semesters following the introduction of new operational guidelines for TAFE Colleges meant that four to five weeks additional tutor time had to be provided to enable students to complete the modules. The number of prisoners accessing some form of education – 177 out of a prison population of 193 – was described as “*remarkable*” by the Taskforce which found that at that level of participation, available space was fully utilised. The Taskforce commented:-

“once again, it is evident that where enthusiastic and hard-working education staff “team” with a supportive and encouraging prison administration, the MOJ education \$ is utilised more effectively”.

13.29 Albany was inspected by the Custodial Inspection Team in September 1999. The Report which was tabled in Parliament early this year stated:-

- the team was “*impressed to see that a Needs and Risks Assessment system was used by each prisoner’s Case Manager to evaluate comprehensively each prisoner’s programme needs*”;
- at the time of the inspection, of the 227 prisoners, 136 prisoners were involved in education programs - 24 full time, 82 part time, 22 enrolled in external studies and eight prisoners were involved in apprenticeships. Aboriginal prisoners (24% of the prison population) represented 32% of part time but only 16% of full time students. The small number of full time students out of a capacity in the Education Centre of 40 was described as “*disappointing given the number of prisoners idle in the units*”;
- the Gratuities Policy restricted the ability to attract and reward students because of the relatively low pay scales for students compared to payments for industry.

- 13.30 In relation to numbers of prisoners engaged in education, the Ministry has advised me that it - in common with other jurisdictions - has a deliberate policy to restrict full-time student numbers to between five and ten per cent so that a greater proportion of the prison population are afforded the opportunity to access education. In the Ministry's view "*Education Centres should not be filled with a few full-time students. New educational trends look to "on the job" training as a "shift" from the old classroom based system. Education/vocational training students are now at various sites all over the prison (gardens, cleaning parties, industry workshops, kitchens, abattoirs etc).*"
- 13.31 Although I accept that education does not have to be classroom based and that the provision of 'on the job' training is a valuable educational tool, I am not convinced that the Ministry's response entirely addresses the concerns of the Albany Custodial Inspection Team whose main criticism seems to me to be that there was spare capacity in the Education Centre *and* there were prisoners idle in the units. Clearly, even if there were prisoners engaged in 'on the job training', the Inspection Team observed an Education Centre not operating at its full capacity and prisoners who were not engaged in any activity.

Bandyup Women's Prison (February 1997)

- 13.32 The Taskforce found that:-

*"...the opportunity to develop new skills while at Bandyup Prison is **restricted to occupations that generally reflect the traditional and cultural roles of women.** The women are restricted to kitchen laundry, gardening and textile shop duties, essentially those occupations that are required to support the functioning of the prison. They have limited relevance to the labour market outside the prison". (my emphasis)*

- 13.33 The main impediment in 1997 was seen to be "*the lack of appropriate facilities to run courses*" and the Taskforce recommended the establishment of a skills development centre which could facilitate both vocational and developmental courses. In particular the audit team recommended that the OMD should:-

- *"support women to develop and fulfil their aspirations for employment and training, and have a maximum choice of options available to them on release;*
- *recognise the impact of society's gender values and expectations and promote an affirmative and positive view of each woman's potential;*
- *ensure that women have equal opportunity for access to relevant services and programs within the prison system; and*
- ***ensure that women offenders are not a "forgotten minority"**. (my emphasis)*

- 13.34 Out of a prison population of 90 at Bandyup Prison at the time of the audit in 1997 there were:-

- 7 full time and 40 part-time students
- 54 employed as follows:- textiles (10); gardens (14); laundry (6); cleaning (12); and the kitchen (12)
- an average of 8 per day attended treatment programs.

- 13.35 The Ministry has advised me that the opening of a new Industrial Skills Workshop at Bandyup has meant that prisoners now have the opportunity to participate in training in a number of non-traditional trades areas such as building and construction, plastering, carpentry and joinery, forklift driving and welding. The women were involved in the construction of the Workshop and will assist in its re-establishment following its re-location due to the extensive rebuilding of the prison. There is now a full-time Vocational Skills Officer who plans the training schedule and is also actively involved in the delivery of some of the courses. During the refurbishment of Bandyup and the temporary closure of the Skills Workshop, he is performing the same function at Nyandi. The courses are designed to allow flexible

‘entry and exit’ in recognition of movement of prisoners within the system and to cater for a small number of participants so that each person has the opportunity to, for example, drive the forklift. Training in plastering was provided to enable prisoners to become involved in the building of the Workshop and will be repeated so that prisoners can assist in the rebuilding program.

- 13.36 In addition, hospitality, computing, horticulture and art are amongst other accredited training options available at Bandyup and a Landcare program for prisoners at Nyandi who will be working in one of the workcamps which have been so successful for male prisoners. The women’s training program is recognised as being one of the most progressive in Australia and Education staff were fully funded by the Australian National Training Authority to present a paper on two “best practice” Women in Non-Traditional Trades models at a national conference in Melbourne in early 1999.

Broome Regional Prison (December 1996)

- 13.37 The Taskforce noted the following impediments to access to education:-

- Facilities for delivering educational programs to prisoners confined in the “security” area were unsuitable and inadequate;
- the physical design limitations of Broome Prison made the involvement of more prisoners in education/vocational training impossible;
- court appearances entailing 2-3 weeks off-site caused disruption to program delivery;
- although 53% of the predominately Aboriginal prisoner population expressed interest in some form of educational program, only 26% actually accessed education. This was considered significant given the view that inadequate education was seen as a major contributory factor in recidivism by Aboriginal offenders;
- there was a need for constructive employment for 80 prisoners. However, at the time of the review, only 10% of prisoners were employed – 5 in the kitchen and 3 in the agriculture area.

- 13.38 In response to my draft Report, the Ministry informed me that an extra classroom was built in Broome Prison in October 1998 and that there are now available a “*number of innovative programs in partnership with Commonwealth and State agencies (including Indigenous community groups) where an ever increasing number of prisoner students are involved in traineeships and “on the job training” at venues off-site*”. I have also been advised that a special program for women - *New Opportunities for Women* – to prepare prisoners for re-entry into the workforce is run at an Aboriginal Community Hall off-site.

Bunbury Regional Prison (October 1996)

- 13.39 The Taskforce noted that the Superintendent was both “*supportive and pro-active in increasing prisoner access to programs*” and that he was a “*strong advocate for the notion that improving education and vocational training attainment levels greatly reduces the risk of recidivism. This positive attitude “at the top” has a “filtering down” effect and is evident in established practice*”, namely the stable roster of prison officers in the Education Centre which enhances their understanding of the education program.
- 13.40 Polling of prisoners to establish their educational needs found that the notion of “*self-improvement*” was a common theme for the majority of prisoners and the desire to improve literacy and computer skills “*so employment prospects could be improved and/or enhanced once released.....Approximately 70% of polled prisoners expressed the desire to do more study and training at this point in time with a view to entering the workforce.*”

- 13.41 The Taskforce was critical of the limited work opportunities for minimum security prisoners, who were restricted to the 'market garden' and the lack of accredited training available in this and other industrial areas of work in the prison. It also recommended the urgent provision of a vocational training classroom and the need for expansion of facilities in the Education Centre.
- 13.42 Bunbury was the first prison to be inspected by the Custodial Inspection Team in July 1999. The inspection report which was tabled in Parliament in November 1999 found that:-
- “education at Bunbury was an example of good practice” on the basis that “high priority was afforded to literacy and numeracy students”;
 - there was high participation by prisoners;
 - the range of educational programs on offer was “varied and appropriate ranging from basic literacy and numeracy to creative writing, Aboriginal studies, human development, life skills, computing, nutrition, yoga... and art therapy”;
 - education staff had good links with the community; and
 - students enrolled in tertiary studies were utilised as “peer-tutors”.
- 13.43 However, the inspection team also noted that the Education Centre was “clearly overcrowded and there was a shortage of classrooms and study areas” and expressed disappointment that there were no Aboriginal education staff in spite of the “numerically significant number” of Aboriginal students who were actively involved in education programs. The Ministry has since informed me that a permanent Aboriginal Education Officer commenced in August 2000 and that an Aboriginal contract tutor is also now employed.

Canning Vale Prison (February 1997)

- 13.44 The Taskforce stated:-

“Increasing prisoner participation rates in education and vocational training in Canning Vale Prison is largely dependent on changing the focus of prison industry and re-examining the programme direction of education to ensure it meets the needs of the majority of prisoners”.

- 13.45 The following impediments to access to education were identified:-
- shortage of prison officers beginning a shift frequently led to the closure of the Education Centre and the turning away of externally funded agencies/presenters;
 - staff shortages meant that prison officers were not released to participate in ‘train the trainer’ courses to enable them to deliver accredited vocational training;
 - late ‘unlocks’ reduced education contact time.
- 13.46 As at 31 August 1996 the prison muster was 315 of which 58% were aged 20-29 and 36% were Aboriginal. Seventy nine per cent of the prison population at that time was recorded as having “nil education” - realistically, this was found to be Year 9 or less. Nevertheless, in spite of the clear education needs of prisoners, the Taskforce found that:-
- **53%** were not involved in any type of program;
 - **40%** expressed no interest in any study;
 - **35%** were interested in full-time work upon release.

13.47 The lack of participation in educational programs was seen as a reflection of:-

- unhappy experiences at school;
- lack of support at home;
- fear of ridicule from other prisoners;
- frequency of prisoner movements.

13.48 In terms of employment a maximum of 175 prisoners (out of 315) were occupied as follows:-

- 30-35 - kitchen⁷)
- 20 - automotive paint shop) No vocational
- 20 -automotive repairs) training offered
- 20-25 – upholstery)

- 20 - metals – “jobbing” shop) Limited vocational
- 11-20 - woodwork/cabinetmaking) training available

- 15 – horticulture) The level of training was not
- 20 - concrete products) specified by the Taskforce

Involvement of Aboriginal prisoners in the “trade” shops was negligible. However, almost all workers in the laundry were Aboriginal.

13.49 In its response to my draft Report the Ministry advised me that there has been a significant improvement in educational opportunities and access by prisoners at Hakea Prison as illustrated by an increase in Student Contact Hours from 89,680 in 1998/99 to 108,160 in 1999/2000 while prisoner numbers remained relatively stable. In addition, following the delivery of the first prison-based traineeship in Australia in 1998 by Ministry education staff, prison industrial officers and the Department of Training and Employment, prison officers are now more actively involved in the delivery of training courses to prisoners.

Casuarina (May 1997)

13.50 Casuarina was seen as having “*enormous potential*” for education and employment because of its facilities and the Taskforce referred to the stated Casuarina philosophy that “*by making life more “normal” within prison prisoners have a better chance of making a successful return to life back in the community*”. The education officers were applauded for their “*re-vamping*” of the system. However, the Taskforce found that the ‘philosophy’ did not translate in practical terms and there was insufficient employment for the large prison muster at that time. Impediments to access to education access were seen as:-

- the acoustics of rooms in the Education Centre which prohibited the running of programs involving “noise” such as music;⁸
- the lack of air-conditioning/ventilation which made education rooms unbearable in summer;
- inadequate capacity – the Centre could accommodate 75-80 prisoners but demands required at least 100 places and there was only one toilet and one lunchroom. The Art Room could accommodate only 13 full-time students;
- Education staff were required to provide education services to the Infirmary, the Sex Offender Treatment Unit, Unit 6 (protection unit), the Induction and Orientation Unit, and the Special Handling Unit;
- lower gratuities for participation in education and training were a disincentive;
- lack of co-operation from industries staff in releasing prisoners for education programs;

- “Core production functions” in industrial workshops were considered more important than education and training. Industrial staff were reluctant to take on more prisoners to allow for release to educational training without disruption to production;
- prison officers were not found to be proactive in offering education as an integral component of prisoner development and had a negative attitude to the concept of training;
- methods for recruitment to education/training were ineffective;
- lack of consistency in rostering of officers in the Education Centre;
- there was no prisoner feedback on course content or delivery;
- Art was identified as a therapeutic activity because of its known value in enhancing self-esteem and confidence and as a vehicle to channel aggression. However, the ‘Art’ budget was considered insufficient, the facilities were inadequate, and transfer of prisoners to other prisons where there was no tuition or space disrupted courses; and
- competing program demands on the Education Centre which also houses a number of treatment programs means that education needs had a lower priority - a finding which was strongly disputed by prison management.

13.51 Prison industry occupied 138 prisoners at the time of the audit (the daily average muster for 1996/97 was 483) as follows:-

• Metals shop	15
• Cabinet Shop	20
• Projects	7 (maximum 10)
• Bakery	16 (maximum 20)
• Bookshop	20
• Garments	20
• Textiles	20-21
• Print Shop	20
• Auto Shop/Industrial Skills Centre	20 ⁹

Each industry offered limited to nil vocational training

13.52 Significantly, the Taskforce made the following findings:-

- “Perhaps the most significant need of Casuarina Prison is a clear and definitive policy regarding the roles of education, vocational training and industry. Applicable to all prisons, is the request for a clear policy statement from the Ministry’s executive enunciating program priority over production”;
- the gratuity system which acted as a disincentive to participation in education or training needed an urgent review;
- the fact that 140-160 prisoners were unemployed each day “reinforces the necessity for effective prisoner management”;
- the unacceptable number of prisoners not engaged in any type of activity reinforced the problem of inadequate staffing numbers and the priority that must be given to supervision and security;
- a more strategic, holistic approach to program participation which avoided “ad hoc” prisoner transfers was needed;
- a public relations campaign, promoting the activities of the Education Centre was “imperative” to overcome the negative attitudes of some prison officers.

13.53 I was advised in a submission that when Casuarina was first opened in 1991 the Education Centre was intended to offer a new custom-designed Introductory Studies Course comprising basic adult education, life skills and personal development units to be completed by all prisoners who aspired to prison employment higher than gratuity Level 4 and who had not completed Year 10 schooling. The course was based on the premise that prisoners would stay at Casuarina for at least three years.

- 13.54 Shortly after opening, however, the workshops began to employ prisoners at a higher gratuity level than Level 4 regardless of the educational level of the prisoners. In addition, rising prison musters meant that Casuarina became a short term receiptal prison. Prisoners were transferred long before the anticipated three year stay with the result that few prisoners were able to complete a lengthy period of study or even successive semesters. Originally designed and staffed to cater for 370 prisoners, the Education Centre was unable to accommodate prisoner surplus to industry requirements and no additional educational staff were employed. In an attempt to make educational programs available to as many prisoners as possible, courses were delivered outside the Centre in special placement units such as Unit 6 (for protected prisoners), the Special Handling Unit and the Industries area and attendance at the Centre became part time.

C W Campbell Remand Centre (February 1997)

- 13.55 The Taskforce noted:-

“The fact that remand incarceration periods can be measured in years appears to escape the “powers that be” in WA correctional building decisions and so the administrators of these centres are faced with the unenviable task of managing anxious, and often bored prisoners without the physical resources to provide meaningful occupation. Over half the remand population will remain at this site for at least six months with little or no “real” work to do.”

- 13.56 The Taskforce found that 50% of remand prisoners remained at the Centre for eight months or longer and identified the following impediments to access to education:-

- limited facilities;
- low staffing levels;
- the multi-purpose function of the Education Centre and the attitude towards education meant that education programs tended to be afforded a lower priority for accommodation than other programs or functions such as ‘hair-cutting’;
- staffing shortages at the prison led to withdrawal of staff in the workshops, library and Education Centre and the consequential closure of the Centre.

- 13.57 There was no vocational training at the Remand Centre in 1997 although it had been proposed to hold cooking classes. There were no industries and the Industrial Skills Officer was occupied full-time with maintenance of the complex.

- 13.58 A survey of prisoners conducted by the Taskforce revealed that the “*major deterrent to program participation was the type of course on offer*”. Sixty six percent of the prison population did not access education programs although 46% of those who were not engaged in educational programs expressed the desire to work on release. The Taskforce recommended that education programs should have priority in the Education Centre timetable; that training through a video-link with TAFE Colleges should be seriously considered and that future planning for the Remand Centre acknowledge the difficulties posed by the lack of facilities and examine “*innovative options*” including utilising Canning Vale Prison facilities.

Eastern Goldfields Regional Prison (May 1997)

- 13.59 The Taskforce noted positive developments in the Education Centre, which provided an area conducive to learning for 12 students in spite of the “*design difficulties*” at the prison. However, only minimum rated prisoners were allowed to access the Education Centre and education staff were required to deliver programs in the maximum security wing which, in their absence, effectively limited access to the Education Centre for minimum security prisoners. There was no study area other than a prisoner’s cell. Negative staff attitudes and a lack of collaboration in getting prisoners to the Education Centre on time were again identified as impediments to effective delivery of educational programs. Again the Taskforce found that education was not generally well-promoted by staff.
- 13.60 It noted that the prison population is a “*unique group and requires specialist programs to cater for its specific needs/situation*”. There was insufficient constructive employment for prisoners within the prison and a noticeable lack of communication with the community to assist prisoners after release. The prison was only able to employ 20 prisoners in the workshop, kitchen and wholesale nursery respectively. No women were employed in industry. The nursery (gardening), which was a “*first*” for prisons in Western Australia was noted to be “*no longer thriving*” and “*in urgent need of attention*” although it was an area which could easily absorb “*bored and unoccupied*” prisoners.
- 13.61 The Taskforce concluded that the priority requirement was for educational and vocational programs to develop prisoner self-management in parenting, hygiene, literacy and numeracy while at the same time increasing self-esteem through the development of employment related skills.

Greenough Regional Prison (June 1997)

- 13.62 The Taskforce found that the Education Centre was too small and that the number of prisoners participating in education (18 full time and 30 part time) was “*disappointing*”. It stated that “*it is crucial that education services are presented in a favourable light.*” It was critical of access to education for maximum security prisoners and for women whose access was described as “*severely impeded*”. Vocational training opportunities were found to be restricted due to “*inappropriate resources*”.
- 13.63 An operational audit conducted in May 1998 endorsed the criticisms of the Taskforce in relation to access to education by maximum security and female prisoners and recommended that:-
- recreational activities be managed by prison officers to improve the quality and level of interaction between prisoners and officers;
 - the expansion of employment opportunities for prisoners through increased community involvement; and
 - the payment of a bonus gratuity to prisoners who successfully complete an education or training course.
- 13.64 The Ministry has advised me that there has been some improvement in the opportunities for male Aboriginal prisoners who are now able to undertake a TAFE building skills course and to use their skills in any building projects at the prison. Opportunities remain limited for female prisoners, largely because the prison is a medium security facility and they are segregated from the men.

Karnet Prison Farm (May 1997)

- 13.65 The team found that education and vocational training was “*high on the agenda*” at Karnet and that the prison was making optimum use of its facilities.

Pardelup Prison Farm (May 1997)

- 13.66 Pardelup was able to offer *100% employment* for prisoners. However the Taskforce noted the “*disinterest of the Farming Officers towards training*”; frequent transfer or movement of staff and the short stay of prisoners as impediments to the full education vocational potential of the prison. It was hoped that the “*commitment and enthusiasm of the administration/education team and the granting of “accredited training provider”*” would overcome these problems.

Roebourne Regional Prison (December 1996)

- 13.67 The Taskforce noted that the Education Centre could cater for 40-45 students and its recent expansion made it an environment conducive to learning. However, the only vocational training was for five prisoners in seed propagation. The lack of encouragement given by officers to prisoners to participate in educational programs and the exclusion of the Education Officer from prison “debrief” were considered problems.
- 13.68 A survey of the prison population, which comprised primarily Aboriginal men (90%), showed considerable interest in improving literacy skills to increase employment opportunities - 50% said they wanted to work on release and 33% wanted assistance with literacy and numeracy. The review noted “*part of rehabilitation is to give the offender a means of being able to support himself and his family upon release and literacy classes can play an important role in achieving this.*” Participants in the survey also indicated a desire to overcome boredom and to become independent as motivating factors. The team was concerned, however, that the high percentage of those expressing interest in education (72%) was not reflected in the **actual** numbers accessing full-time education, which was 10. In addition, the prison’s three trade workshops were well-equipped but “*empty of prisoners*” at the time of the audit.
- 13.69 Continuing the theme of opportunities for women, the team found that female prisoners were “*seriously disadvantaged*” in terms of access to education and training although the prison had attempted to contact community women’s groups to establish a program of visits, craft, parenting and self-esteem development programs. The lack of opportunities for women remains a problem although there are now special courses in carpentry and small tools.

Woorloo Prison Farm (May 1997)

- 13.70 It was found that a pro-active orientation program designed by staff at the prison and their positive attitude to education had significantly improved the numbers accessing the Education Centre. The prison also endorsed the premise that working prisoners must be allowed to attend education without pressure from work instructors. Nevertheless the principle that production overrides education was still evident. The need for a multi-purpose skills development centre as recommended for other prisons was repeated.
- 13.71 The prison was inspected by the Custodial Inspection Team in August 1999. Because of the critical comments of the prison as a whole, it was agreed that a second inspection would take place in November 1999 to enable some of the problems to be addressed. The report of both inspections was tabled in Parliament on 16 August 2000. The team’s findings included the following:-

- There was a “*significant lack of constructive work activities. Workshops were being under-utilised and not enough use was being made of prisoners to clean, paint and re-furbish the prison*”. “*Serious*” employment (including education) was available to only 100 prisoners out of a total prison population of around 200. “*Having healthy prisoners lying in bed at mid-day is not a sign of a good prison.*”
- The farm employed only five prisoners and offered no accredited training. The only commercial workshop¹⁰ was the laundry but the laundry workers were not working to capacity and there was no accredited training. The industrial workshops (carpentry, steel fabrication/mechanical, paint and vocational skills) employed only 18 prisoners but had a capacity of 44. At least 38 prisoners were without allocated work and the 59 employed in the gardens, cleaning, recreation, recycling and stores were under-employed.
- The Education Centre was full and education staff actively pursued prisoners to attend. However, because the Centre was too small it could not realise its full potential. The low gratuity rate for students was a disincentive to participate in education programs. Literacy and numeracy screening was undertaken on all prisoners who had not been previously screened and there was a focus on these core skills together with computing, small business management and Aboriginal studies. There were separate courses for Aboriginal prisoners and a third of all Aboriginal prisoners were involved in part time education. There were no Aboriginal staff and attempts at recruitment had been unsuccessful.
- Programs included Skills Training for Aggression Control, Substance Abuse, Driver Education and Training and Transition to Parole Release programs were run on a regular basis and prisoners were encouraged to participate to enhance their prospects of release on parole.

13.72 By the time of the second inspection in November, the team noted a significant improvement in the level of activity for prisoners, a large proportion of whom were involved in maintaining and refurbishing the prison. However, the team believed that although this helped defray the cost of imprisonment, the work undertaken was not productive in terms of enhancing prisoners’ skills or in facilitating re-integration after release. The prison management were taking steps, however, to organise training in tiling to facilitate refurbishment of the ablution blocks.

13.73 The team found that there had been no progress in increasing accommodation in the education centre nor had funding been allocated to do so in the future. There was concern that “*education funding constraints were inhibiting the engagement of tutors and therefore the provision of programmes*”. Outcare had, however, commenced a new program of drug and alcohol counselling. The team was concerned to find that a large number of prisoners were arriving at Wooroloo from other prisons without completing any programs.

Conclusions of the Taskforce

- 13.74 There were a number of consistencies in the findings of the review team in relation to the majority of prisons inspected:-
- (i) the low priority of education was reinforced by the negative and unsupportive attitude of some officers; by prison regimes; and by the inadequacy of education facilities and resources;
 - (ii) the existence of significant disincentives to participation in education and vocational programs including:-

- (a) lower gratuities for education than for work;
 - (b) difficulties in obtaining release from work parties or industries workshops to attend education and training;
 - (c) fear of ridicule from officers and fellow prisoners because of inadequate orientation programs which could promote education;
 - (d) the likelihood of unscheduled transfers to other prisons which may not have the same educational opportunities;
- (iii) the absence of sufficient constructive employment for all prisoners at most prisons;
- (iv) the lack of multi-purpose skills development centres at most prisons to encourage work-related training;
- (v) a lack of communication with the community to identify and promote employment opportunities and related training needs;
- (vi) difficulties in accessing educational opportunities caused by security ratings; and
- (vii) the lack of opportunities for all women prisoners across the system leading to their serious disadvantage.

13.75 Similar concerns about the adequacy and suitability of education and training were expressed during the course of my inquiry. Particular reference was made to the low level of education of many prisoners; the insensitivity of some prison officers to illiterate prisoners and their lack of support for educational programs. It was suggested that prison officers should be more involved in the delivery of educational programs. A number of submissions questioned the low priority of education and suggested that it should be part of the sentence planning process. Concerns were also expressed about the lack of culturally appropriate educational programs; that music and art were not generally encouraged as accredited programs and that most prisons have inadequate educational facilities.

13.76 I regret to say that, despite the passage of time since the Taskforce reported, it was apparent from my observations when visiting prisons that many of the deficiencies identified by the Taskforce - which were echoed in submissions to my inquiry and in the recent reports of the Custodial Inspection Team following inspections of Bunbury, Albany and Wooroloo Prisons - remain. A number of those issues are considered further in this chapter.

PRISON INDUSTRIES

13.77 The issue of prison industries was debated further at a *Prison Industries Workshop* held at Casuarina in November/December 1998 and attended by operational industry supervisors and managers and executive staff responsible for the development of policy relating to prison operations. During the course of this workshop, the Ministry's focus in relation to industry and employment was defined as:-

- providing job satisfaction to officers organising prison industries;
- giving prisoners hope for their future, sound work habits and the necessary skills; and
- making the prison system more effective and less costly to run.

13.78 Workshop participants agreed with the following propositions relating to employment in the prison environment:-

- all prisoners should work;
- some prisoners cannot or will not work;
- security issues will always override industry needs;
- industries can operate with an identified level of risk;
- prison industry makes a significant non-monetary contribution to the community;
- Superintendents manage and control the industries in their prisons;
- ‘troublemakers’ must be kept in the system and given work opportunities;
- Industrial Officers and offenders can get a normalised working relationship;
- offenders want to work;
- offenders respond to incentives; and
- Industrial Officers are not capable of managing a budget.

13.79 However, they did not agree with the following propositions:-

- Each workshop has a stable workforce;
- prison systems support prisoners using their time productively;
- production and education/training are complementary;
- all prisoners work a full day in a shop without disruption;
- all offender development programs should be delivered at the end of the sentence;
- key decision makers in industries have business training;
- the system provides incentives for production;
- prisoners are unable to cope with skilled work;
- workshop managers cannot make workshop policy decisions;
- staffing levels will keep pace and be appropriate;
- all offenders can be offered work in prisons;
- prisoners cannot be used as peer trainers;
- the prison schedule complements industries and recreation;
- the prison system allows prisoners to stay in one place;
- the gratuity system is fair and equitable; and
- Aboriginal workers do not want skilled work.

13.80 The key issues which emerged from the workshop were that:-

- procedures and programs within prisons are designed primarily with security in mind;
- gratuities were counterproductive to industry productivity;
- Industrial Officers feel undervalued compared to “*disciplinary*” prison officers. They are unable to reward themselves or prisoners and face significant problems getting investment in necessary machinery and equipment; and
- prison industries appear to be undervalued by the system, Government and the community.

13.81 A suggestion put forward at the workshop to “*make industries work*” was to ensure that reception staff emphasise the importance of education, industry and training and that these components are included in on Individual Management Plan (IMP) for each prisoner. Changes to the way in which industries are managed and funded and the structure of gratuities were proposed. Daily prison routine should be modified to include:-

- full-time education until the required level for industry was achieved;
- a 10 hour working day which includes 8 hours' work and 2 hours' training;
- greater communication between industries and education;
- identified productivity incentives; and
- visits and medical parades after work.

13.82 The Ministry's "*Industries Policy*" (presumably incorporating some or all of the views expressed at the workshop) dated 14 April 1999 and implemented in October 1999 states:-

"Prisoners will be given the best possible opportunity to model and practise behaviour and attitudes that reflect normal community standards. This will be done in a realistic, business-like work environment that replicates as closely as possible, the outside world.

To achieve the stated outcomes of the Offender Management Division the following industries policy objectives will be pursued concurrently and with equal weighting.

Development of opportunities for prisoners to acquire vocational and work skills to enhance their opportunity to gain and retain employment upon their release.

Continuous and meaningful activity for prisoners as a basis of securing more effective management of prisons.

Opportunities for prisoners to undertake productive work that contributes to reduce the cost of prisons to the taxpayer."

- 13.83 Strategies for attaining the goals of the policy are to include established hours of work; a gratuities system which rewards attendance and work performance; normalised employer/employee relations between officers and prisoners; minimisation of interruptions to working hours; no unnecessary prisoner turnover; a complementary approach between work programs and vocational education; training programs and conscious monitoring of programs addressing offending behaviour in the work setting.
- 13.84 The Ministry advised me that prison superintendents are encouraged to identify opportunities for industries provided they are cost-neutral or considered suitable for allocation of additional funding. Prison industries reviews were undertaken in 1989, 1993 and 1996 and have resulted in a number of unspecified "*incremental improvements*". A further review completed in June 1997 resulted in the appointment of an Industries Manager who is responsible for implementing and coordinating the Ministry's industry policy.
- 13.85 With the rise in muster levels, the Ministry is well aware that it is unable to provide constructive work for all prisoners in the system. It estimates that work for approximately 1000 more prisoners is needed. To this end the Ministry has established a Prison Industries Advisory Committee chaired by the Hon Ray Halligan MLC with representatives from the Chamber of Commerce and Industry, the Small Business Development Corporation, CCA, Prison Services Division, the OMD and the Ministry's Policy and Legislation Section to assist it to seek commercial contracts and partnerships to fund new industry opportunities. An important breakthrough has been agreement that any profits made in the course of prison industries can be retained by the industry to create more employment for prisoners. However, the Ministry still considers itself constrained by the requirement of the *State Trading Concerns Act 1916* that prisoners can only be provided with work opportunities which assist in rehabilitation.
- 13.86 I have made no attempt to examine what legal restrictions may exist by virtue of that or any other Act. However, it seems quite clear to me that the acquisition of any form of work skills or work ethic as a result of engagement in gainful employment while in prison must be rehabilitative. There should, in my opinion, be no doubt about what industries the Ministry can and cannot engage in. If there is, the Ministry should seek clarification and take steps to address any problems that are identified.

- 13.87 In spite of the development of an industries policy and the apparent acceptance by the Ministry of most of the recommendations made by the Taskforce examining education and training, the views expressed in submissions and interviews and my own observations during visits to all prisons in the State indicated a residual lack of commitment to providing adequate education, training and/or employment opportunities for prisoners at most prisons.
- 13.88 I was told that the Ministry offers no 'central' advice on the availability of funding or grants from other sources such as TAFE (Technical and Further Education), ATAS (Aboriginal Tutoring Assistance Scheme) or VEGAS (Vocational Education Guidance Assistance Scheme) to supplement education budgets at individual prisons. The Education Officers at some prisons independently access such funding and grants and told me that they would be unable to operate without those contributions. The Ministry has advised me that this is no longer the case and that "... 'one-off' grant funding, funding arrangements with ATAS, IESP, Department of Training, DETYA, TAFE Colleges are now negotiated centrally with great benefit to the Unit. Currently, the "value" (time and/or \$) coming in from external State and Commonwealth sources is in excess of \$1.3 million annually..."
- 13.89 It was also suggested to me that not only was there a lack of 'central' support but attempts were made to control and standardise all education programs with the result that local needs were often overridden. The criticism that the central administration of programs consumes a disproportionate amount of resources (with the creation of new highly paid positions) and that staff numbers in the prisons remain static¹¹ despite rising musters levels was a familiar theme which was raised consistently throughout my inquiry.
- 13.90 A further obstacle drawn to my attention during the course of my inquiry was a policy directive that prisons should only run courses which lead to employment, making the running of life-skills courses such as financial management, self-esteem, positive parenting, form filling etc at very least 'unofficial'. The Ministry has advised me that these courses have been part of the Ministry's accredited certificate courses and traineeships delivered in Education Centres for the past ten years. However, following a review of education in 1996 it was decided that a number of the 'life-skills' units were out of date and needed to be made more relevant to employment in the 90s. The policy directive was therefore "...aimed at reducing delivery in "old" courses for which there are no longer employment opportunities in WA".
- 13.91 Concerns about the adequacy of strategies to educate, train or merely 'occupy' prisoners were also raised in the Smith Report, which, in its analysis of the causes of the Casuarina Christmas Day riot, made the following observations:-

"A significant number of prisoners did not seem to have access to constructive activities and many passed their time not actively engaged – unhealthy for any establishment and in direct contrast to the stated aims of the prison regime. On Christmas Day the prison was 164 activity places short. The programmes being run for prisoners were unable to deal with all referrals – a source of tension for prisoners whose parole is often dependent on attending such programmes. The social/psychological effects of having no job/occupation can reinforce negative self esteem perceptions and increase hostility and negative feelings towards authority." (paragraph 5.2.4.9)

National comparison of prisoner participation in education, training and employment

13.92 Information about the level of 'engagement' of Western Australian prisoners in education, training and employment in 1997/98 and 1998/99 compared with those in other States is published in the Commonwealth Government *Report on Government Services 1999* and 2000, respectively. The figures for Western Australia compared with the highest and the lowest figures for the States and the national figure are set out in the following tables.

TABLE 13.1 National comparison of prisoner engagement in employment, education & training 1997/98

1997/98	WA	Highest	Lowest	Australia
Employment	78%	VIC – 81.6%	NT – 54.1%	73.0%
Education – overall	31.1%	VIC – 62.2%	WA – 31.1%	51.5%
• Basic skills*	12.3%	QLD – 25.5%	WA – 12.3%	18.7%
• Secondary	11.1%	VIC – 42.3%	WA – 11.1%	21.0%
• Tertiary	4.7%	QLD – 8.0%	TAS – 2.5%	5.7%
• Vocational	3.0%	SA – 4.8%	VIC – 2.3%	3.0%

* remedial/preparatory courses in literacy, numeracy and personal development courses

TABLE 13.2 National comparison of prisoner engagement in employment, education & training 1998/99

1998/99	WA	Highest	Lowest	Australia
Employment	78.3%	NSW – 79.5%	NT – 55.8%	73.4%
Education – overall	39.0%	NT – 61.7%	TAS – 25.4%	45.5%
• Basic skills*	5.3%	NT – 30.7%	WA – 5.3%	17.7%
• Secondary	4.6%	NSW – 17.1%	NT – 3.6%	9.1%
• Tertiary	3.3%	SA – 8.5%	NT – 1.0%	3.3%
• Vocational	25.8%	NT – 45.3%	SA – 12.1%	24.2%

* remedial/preparatory courses in literacy, numeracy and personal development courses

13.93 The employment figures for Western Australia show that in 1997/98, 26% of prisoners were employed in commercial industries and 40% in service industries, with 12% engaged in work release. The 1998/99 figures show an increase in both commercial and service industries to 33.6% and 44% respectively. There were no figures for work release in that reporting period.

- 13.94 In relation to education the Ministry advised me that it considered the figure of 31% for 1997/98 to be an unfair representation of the educational involvement of prisoners as it was based on numbers in the Education Centre on a given day and did not account for all prisoners enrolled in educational programs, both full and part time, which it estimated to be around 38% of the prisoner population in that period. I was told that the 1997/98 percentage figure also excluded those who were on a waiting list for enrolment in educational programs.
- 13.95 In response to my draft Report the Ministry also raised concerns about discrepancies in the way in which different States compile their figures – for example, it claims that New South Wales records non-intensive treatment programs as education delivery whereas Western Australia does not and notes that “the Ministry of Justice will continue to figure poorly in comparison”. This would clearly make a difference in a comparison with New South Wales. However, I note that although the overall level of engagement in education in Western Australia for 1998/99 had increased to 39%, it was still lower than that in Victoria (56.6%), Queensland (45.6%) and South Australia (42.5%) and the national level (45.5%).
- 13.96 In early 1999, at my request, the Ministry collected figures for the level of engagement in education on a prison by prison basis for the period 31 January to 31 March 1999. Education figures were also provided for 1-31 October 2000. Both sets of figures are set out in **Table 13.3**.

**TABLE 13.3 Percentage education engagement by WA prisoners
31 Jan-31 Mar 1999 and Oct 2000**

	Average Daily Muster		% Full Time		% Part Time	
	Jan-Mar	October	Jan-Mar	October	Jan-Mar	October
	1999	2000	1999	2000	1999	2000
Albany	220	218	13	18	38	32
Bandyup	165	137	7	8.7	43	56
Broome	105	111	23	0	60	47.7
Bunbury	225	207	11	12	33	39
Hakea	330	329	9	10	32	32.8
Casuarina	660	657	4	4	11	38.8
Remand Centre	175	349	0	0.2	57	46
Eastern Goldfields	110	109	3	0	98	62
Greenough	205	236	39	12.7	9	38
Karnet	145	187	12	4	32	39.6
Nyandi	Included in Bandyup	42	0	0	Included in Bandyup	35.7
Pardelup	75	79	9	10	39	41.7
Riverbank	90	55	9	22	23	31
Roebourne	211	175	13	14	17	20.6
Wooroloo	200	222	11	9	60	29

- 13.97 These figures translate to an overall education engagement level of approximately 47% for the period January to March 1999 and 48% for October 2000. The Ministry has also provided me with monthly overall engagement figures for April 2000 through to August 2000 which indicate only minor variations – 46% in April and May; 47% and 48% in June and July respectively and 50% in August. The figures for September are not available.

- 13.98 These figures show a significant improvement in the level of education across the system – except at Broome, Eastern Goldfields and Wooroloo where there has been a marked decrease. The Ministry provided the following reasons for the decrease:-

Broome

“[The] Indonesian population is choosing not to access education at the moment. They have participated in functional english classes but now this group consider they have enough english and choose not to attend, (We are currently surveying their needs, interests etc to see if we can offer anything else that may interest them).”

Eastern Goldfields

[the earlier figures may overstate the position because] “... it is likely.....that [the Education Officer] ran some short first aid, music, art and health courses. Sometimes these can attract the whole population for a limited time.....If a couple of these were run end to end, then a large accessing percentage is possible. These are valuable when you are a new EO [Education Officer] and need to break the ice and/or coax reluctant students into the Ed Centre for more formal education.”

Wooroloo

“ - (the Senior Education Officer who is on extended sick leave) was in the midst of a dormitory building program (with training), had chainsaw programs operating [and] forklift courses (very popular). High turnover in this prison will always mean that the numbers will fluctuate dramatically. Recently the figures were 58% serving six months or less – this means the ed[ucation] numbers will reduce.”

- 13.99 The Ministry also advised me:-

“.....numbers in education fluctuate all the time for a number of reasons:-

1. Population doesn't choose to attend (all education is voluntary)
2. Prison building programs – Bandyup upgrade has closed the vocational training workshops for at least 6 months – our % out there is sure to reduce dramatically in the next 6 months.
3. Hakea's good figures are already being affected badly by the change to that prison's population profile in readiness for its new assessment function.
4. When the medium security prisoners move to Acacia, our figures will fall at all prison sites because that is the most productive education/training period (prisoners are more settled during this time).
5. At release prisons (eg Wooroloo), there can often be the need for prisoners to participate in the mandated treatment programs to meet parole conditions. If limited time is available then there is no time for education access.
6. If a prison's numbers rise, the % accessing education can fall because of available education places. ”

- 13.100 Encouragingly, the level of engagement appears to have remained relatively consistent in spite of an increase in the muster from 2990 in April 2000 to 3113 in October 2000. I have also been advised that the number of Student Contact Hours has increased from 250,000 in 1996/97 to 890,000 for the year ended 30 June 2000. Presumably the figures for Western Australia in the *Report on Government Services 2001* will reflect these improvements.

- 13.101 The Ministry also collected figures of levels of engagement in employment during its survey of prisons in early 1999 and provided me with the following information:-

TABLE 13.4 Levels of engagement in employment 1 January-31 March 1999

	Average Daily Muster	%Employed	% Full-time	% Part-time (4 hrs per day)	% Casual (1-2hrs per day)
Albany	220	87	65	14	8
Bandyup/Nyandi	165	82	48	6	28
Broome	105	100	10	50	40
Bunbury	225	85	85	0	0
Canning Vale	330	90	73	0	17
Casuarina	660	40	40	0	0
Remand Centre	175	60	0	60	0
Eastern Goldfields	110	100	15	45	40
Greenough	205	100	10	50	40
Karnet	145	90	90	0	0
Pardelup	75	94	94	0	0
Riverbank	90	90	0	0	0
Roebourne	211	94	45	49	0
Wooroloo	200	70	70	0	0

13.102 These figures equate to an employment level of approximately 73% across the system. Although the Ministry collects employment figures for each prison on a quarterly basis, the type of employment (full-time, part-time or casual) is not routinely differentiated. However it has provided me with the number of prisoners employed and the 'prisoner count' as at 14 November 2000 taken from TOMS. These are set out in **Table 13.5**.

TABLE 13.5 Levels of engagement in employment as at 16 November 2000

	Average Daily Muster	%Employed
Albany	209	78
Bandyup	142	86
Broome	99	88
Bunbury	204	80
Casuarina	651	53
Eastern Goldfields	121	81
Greenough	227	57
Hakea (inc Remand)	666	85
Karnet	199	95
Nyandi	48	83
Pardelup	71	95
Riverbank	53	70
Roebourne	182	70
Wooroloo	229	91

13.103 On the basis of these figures the overall employment level appears to have remained relatively stable at 74.6%.

Summary of conclusions on education, training and employment

- 13.104 On the basis of the available literature and research, and as a matter of common sense, it is quite clear that employment in constructive activity has benefits for the mental and physical health of prisoners; “for the good government and good order” of prisons; and ultimately for the community because the acquisition of any educational, vocational or work skills is likely to lower the risk of reoffending after release. Conversely, a lack of constructive activity has been found to increase boredom, anxiety and tension by increasing feelings of helplessness and hopelessness and exacerbating the “pains of imprisonment”. Such feelings frequently result in self harm and suicide or aggression towards other prisoners and staff.
- 13.105 The evidence gathered during the course of my inquiry has led me to the conclusion that, there were generally insufficient educational, training and employment opportunities for prisoners at most prisons in Western Australia. It is obvious that the Ministry has made significant improvements in this area in the past 12-18 months and that opportunities for education and employment work at most prisons are increasing. However, there are exceptions. In particular, the low level of engagement in both education (43%) and employment (53%) at Casuarina is of concern. A lack of constructive activity at Casuarina was highlighted by both the 1997 Taskforce and by the Smith Inquiry into the disturbance on Christmas Day 1998. Similarly, there have been few improvements in the conditions and services available to women held in regional prisons and, in my view, in relation to education and employment they are particularly disadvantaged.
- 13.106 Although this was partly due to a lack of facilities and staff for these functions, in my view – as with the provision of health services - the underlying reason for the shortfall arose from the perception that education and training were not *core activities*, with the consequence that funding requests suffered in competition with more security-focussed and prison operational requirements.
- 13.107 In response to my draft Report the Ministry has advised me that “*the 2000 Draft Business Plan for Prison Services recognises education/training as “core” business in that SCH [Student Contact Hours] numbers and prisoner participation rates are two of its performance measures*”. I note that the Plan is a “draft” and although I do not doubt that the Ministry is serious in its desire to enhance the value of education and training, I suspect that a number of the obstacles identified in this Chapter will need to be overcome before it is able to achieve its goal. At this stage, therefore, I am not entirely satisfied that the range and availability of education and employment programs currently offered at *some* prisons is yet adequate for the purposes of the ‘healthy prison’ test suggested by HM Chief Inspector of Prisons, namely that “*prisoners are fully and purposefully occupied and are expected to improve themselves.*”
- 13.108 The active promotion of education is of particular importance given that prisoner statistics for the year ended 30 June 1999 show that around 74% of prisoners had less than three years’ secondary education (68% of non-Aboriginal prisoners and 85.4% of Aboriginal prisoners) on admission to prison. A similar bleak picture emerges from the statistics on employment status produced by the Ministry - only 27% of prisoners were employed at the time of arrest (15.7% of Aboriginal males and 7.5% of Aboriginal females and 34% of non-Aboriginal males and 20% of non-Aboriginal females).¹²
- 13.109 The Ministry has advised me that it is aware of this situation but that:-
- “Prisoners with an unhappy educational history often have to be “persuaded” to engage in education/training. Experience has shown that very few can cope with full-time education and so the part-time option is very popular. When the vast majority of prisoners have significant literacy deficits it is not realistic to expect them to be engaged in “secondary schooling”. The most successful way to entice them to the education environment has proven to be through “on the job” training. Prison education follows the principles of Adult Learning – voluntary, relevant to their needs, interests, career aspirations and individual student input to the education program.”*

- 13.110 I am quite sure that this is true and that many prisoners may also be reluctant to admit to poor or non-existent literacy and numeracy skills because they feel it increases their vulnerability in an environment where any form of weakness could be used against them. In my view this is all the more reason for promulgation by all parts of the prison system of the notion that education and training are important and valid activities which are of real benefit to prisoners, the prison system and the community, and the complete discrediting of any suggestion that education or training is a “*soft option*” for prisoners who do not want to work.
- 13.111 In my view, given the generally poor level of education and the lack of work skills among the majority of prisoners, the low priority accorded to education and training reflected in the Ministry’s apparently reactive approach for some years to the provision of adequate education, training and employment has impacted on the overall effectiveness of its suicide prevention strategies and the rehabilitation of prisoners prior to release.
- 13.112 I have no doubt that recognition of education and training as important *management tools*, rather than ‘soft options’, would result in a significant improvement in both the efficiency and effectiveness of the prison system and allocation of the “*education \$*”. It is encouraging to note, therefore, that the new assessment process, which commenced in the form of a ‘pilot’ on 20 November 2000 at Hakea, is designed to provide a comprehensive assessment of a prisoner’s total needs in relation to programs (including education, training and employment).¹³
- 13.113 Under the new process the program and education needs of each prisoner will be assessed by Reception and Education Officers, using consistent assessment ‘tools’. Because all prisoners will be asked the same questions, it is believed that some needs – such as lack of basic literacy and numeracy skills – will be easier to identify and less embarrassing for prisoners to reveal. To ensure the best outcome from its new assessment process, the Ministry will, of course, need to ensure that it has sufficient resources to cater for the program needs identified.

RECOMMENDATION 13.1

That the Ministry should:-

- (a) acknowledge the importance of constructive activity in the prevention of suicide and self harm and in the rehabilitation of prisoners and ensure that all prisoners are provided with adequate opportunities for education, training, employment and treatment programs throughout their sentences at all prisons;**
- (b) take steps to remove the disincentives to participation in education identified by the Taskforce and in the course of my inquiry;**
- (c) provide funding, resources, trained staff and facilities to increase the opportunities for education (in its broadest sense), training, employment and rehabilitation throughout the sentence at all prisons; and**
- (d) obtain legal advice as to whether the *State Trading Concerns Act 1916* or any other legislation prevents the Ministry from offering particular forms of gainful employment to prisoners, and consider seeking amendment if it is found that there are legislative restrictions.**

RECREATION

- 13.114 Only Casuarina and Hakea have dedicated Recreation Officers. All other prisons have an Activities Officer who is responsible for recreational activities as *part* of other duties.¹⁴ Recreation/Activities Officers are generally not required to possess specific qualifications and do not receive any internal or external training for the position. Essentially the responsibilities of the Recreation Officer positions are to:-

“...develop recreation programmes which will provide a maximum opportunity for prisoners’ participation and utilisation of recreation facilities, and as far as possible, cater for the whole spectrum of prisoners’ interests.

Consistent with the management philosophy of the prison, recreation activities will be after working hours Monday to Friday, weekends and public holidays as per daily routine.

Therefore, programmes should be developed, with an opportunity for prisoners’ input in order to promote a sense of responsibility, motivation of recreation interests and a degree of self-management which is consistent with the Departmental recreation policy.”

I understand that the classification and duties of the Recreation Officer positions are currently under review.

- 13.115 Recreational activities include ‘active pursuits’ such as team sports, (primarily football, soccer, basketball, badminton and volleyball) and ‘passive pursuits’ (which include television, videos, art work, music (guitar), board games, pool, table tennis, darts and reading). Bandyup had access to a swimming pool – this will be removed in the planned refurbishment of the prison - and was the only prison to receive additional funding for recreation purposes in the past five years for a tennis court and community centre. The recreation budget at Eastern Goldfields was cut in 1999.
- 13.116 In its report on Bunbury Regional Prison (July 1999), the Custodial Inspection Team found that there were no organised sporting activities, nor formal passive and active recreation programs. The team was critical of the fact that the Sports Coordinator was a prisoner and found the recreational facilities to be inadequate. The Sports Oval is closed at weekends except between 9.30am and 11.30am. Minimum security prisoners were able to use the small adjacent oval only when staff were available to supervise and although they had been provided with cricket nets they were “*not allowed bats and balls*”!
- 13.117 The team recommended the immediate cessation of the practice whereby, prior to issue of recreational equipment, prisoners were required to sign a blank “Request to Transfer Cash” form to facilitate deduction of money from the prisoner’s account to cover loss or damage to equipment.
- 13.118 In the Albany Inspection Report (September 1999), the team found that “*organised sport evolved from the needs of prisoners and they had ample input into recreation activities*”. Overall facilities were good and it observed “*many prisoners using the oval both at the weekend and during the week day evening*”. The oval was accessible each day between 4pm and 5pm (5.30pm in the summer). The team found a wide range of activities in the accommodation units but was critical of the use of home-made weights. There were inter-unit sports ‘carnivals’ during holiday periods. Football was popular and well-organised with three teams and a drafting system. One of the few complaints from prisoners was that they had to buy football boots through the prison shop which was “*beyond the means of many prisoners*”. The team recommended that boots be made available on request.

- 13.119 The team noted that videos were shown every night and during the day at weekends, that Vietnamese language videos were available and that the library was well-stocked. The team was critical of the fact that the Recreation Officer did not hold a dedicated rostered position and that responsibility for recreation was part of the role of the Activities Officer, who was also required to perform other duties such as washing vehicles, daily town runs, mail and the delivery of blood samples to the hospital. He was only rostered every second weekend. The team recommended that “*Staff responsible for recreation should be rostered on duty for the majority of prisoners’ recreational times.*”
- 13.120 The first Custodial Inspection of Wooroloo Prison in August 1999 noted “*extensive*” recreational facilities both outdoor and indoor but described the recreation hall as “*seriously neglected*”. There appeared to be no organised sporting activities and the Recreation Officer “*appeared to dedicate most of his time to a few prisoners participating in community sporting activities to the detriment of the vast majority of the prisoner population.*” Prisoners were left to organise their own internal sports arrangements despite concerns that prisoners could monopolise facilities and a prisoner was responsible for sports equipment although it exposed him to intimidation from other prisoners. By the time of the second inspection in November 1999, a comprehensive recreational plan had been developed but was not in operation. The prisoner was still responsible for sports equipment and there had been no improvement in the greater involvement of the Recreation Officer in activities for the majority of prisoners.

Conclusions on recreation

- 13.121 On the basis of my observations during my visits to prisons, those prisons with a younger population such as Casuarina and Canning Vale who were able to participate in team sports, particularly football, soccer and basket ball, could be said to meet some of the physical needs of the majority of prisoners, *provided* prisoners have access to those sporting activities. Prisoners at Casuarina were, of course, unable to take advantage of any exercise or active pursuit for almost the whole of 1999.
- 13.122 Other smaller prisons and those with an older population offer relatively little in recreational activities. I found that Bandyup and Eastern Goldfields had a particularly poor range of both active and passive pursuits. Recreation rooms at Bandyup had been converted into cells to address the serious overcrowding problem. Special category prisoners such as ‘protected’ prisoners and women in predominantly male prisons were particularly disadvantaged.
- 13.123 There are very few organised exercise activities for prisoners who are unable or unwilling to participate in team sports at any prison and I found the lack of involvement of prison officers in many sporting and recreational activities disappointing, given that this appears to me to offer an ideal means of improving relations between prisoners and prison officers.
- 13.124 Space for art, craft and music is at a premium at most prisons in spite of the acknowledged therapeutic effect of such activities in reducing stress and offering alternative strategies to violence and aggression.
- 13.125 In line with community practices, I would not expect the participation of prisoners in recreation and exercise to be given priority over education, training and employment or treatment programs. Nevertheless, the benefits of exercise and recreation for both the physical and the mental health of prisoners are, from my observations, neither properly appreciated nor fully utilised in the management of prisoners at most prisons. For the most part, this was due to a lack of resources; a shortage of trained and qualified staff and a general lack of commitment by the Ministry.

RECOMMENDATION 13.2

That, in line with United Nations *Standard Minimum Rule 77(1)*, in the interests of the mental and physical wellbeing of prisoners and as a means of creating better prisoner/officer relations, the Ministry:

- (a) employ a full time Recreation Officer/Sports Coordinator at each prison;
- (b) ensure that each prison provides adequately resourced and appropriately staffed recreational and exercise opportunities for all prisoners; and
- (c) encourage prison officers (by internal recognition and additional remuneration) to take responsibility for particular recreational activities for which they have appropriate qualifications and/or aptitude.

RECOMMENDATION 13.3

That in recognition of the acknowledged therapeutic benefits of music and art for all prisoners, and particularly Aboriginal prisoners, the Ministry:-

- (a) ensure that adequate resources and facilities are available at all prisons for these activities; and
- (b) accord art, music and cultural activities program status.

TREATMENT/REHABILITATION PROGRAMS

13.126 The Offender Management Division Outcome Statement specifies “*Protection of the community and to direct offenders towards the adoption of law-abiding lifestyles*” as one of the desired outcomes of the Division. An integral part of its obligations in this regard is the provision of treatment/rehabilitation programs including the following:-

1. Anger and Violent Offender Programs

Skills Training for Aggression Control (STAC)

An introductory 20-hour cognitive behavioural anger management program which is available at all prisons, except the Remand Centre, and Broome, on an “as needs” basis. During 1997/98 the program was run on more than 80 occasions with over 700 participants. The optimum number per group is 10 offenders.

Violent Offenders Treatment Program (VOTP)

An intensive cognitive behavioural anger management intervention which runs for six months. The program was developed by the Ministry in conjunction with Edith Cowan University to address the offending behaviour of up to 12 seriously violent offenders per program. It is co-facilitated by a human services professional (who may be a clinical psychologist) and a prison officer. Four programs were completed in 1998, two at Casuarina and two at Canning Vale.

Kimberley Offender Program

This program is available at Broome Prison and addresses issues of violence and substance use in an integrated format using, where possible, Aboriginal presenters from local agencies and groups. Approximately five programs per year of seven weeks duration are held with 10 to 12 participants each. The program is currently under review.

2. Sex Offender Treatment Programs

Sex offender treatment programs are managed and presented by the Sex and Violent Offender Treatment Unit (SVOTU) which is also responsible for assessing a prisoner's need and eligibility to participate in a program. The programs available are:-

Intensive Sex Offender Treatment Program

An intensive treatment program of approximately 38 weeks' duration for up to 12 prisoners assessed as posing the greatest risk of re-offending and the most damage to victims. Participants selected for this program will have committed a diverse range of offences including rape, wilful murder, paedophilia and intrafamilial sexual abuse. It is run at both Casuarina and Bunbury Prisons two or three times per year, depending on need.

Pre-Release Program for Sex Offenders

A program for sex offenders considered to present a significant risk of re-offending, but with less severe offending characteristics than those listed for the intensive program. These prisoners will usually have committed offences involving a significant level of aggression. The program consists of 36 x 3-hour sessions with additional out of hours homework completed between sessions. Five or six programs per year are usually run at Karnet Prison Farm with a maximum group size of 10 individuals.

Pre-Release Program for Sex Offenders at Greenough

A pre-release program designed for Aboriginal sex offenders run at Greenough Regional Prison approximately twice per year with 10 participants. The program content is similar to the program run at Karnet but is adapted to ensure that it is culturally relevant.

Intellectually Disabled Sex Offenders Program

A program for sex offenders with low levels of intellectual ability run on an "as needs" basis in both the community and prison. The content is adjusted to ensure comprehension and duration of the program is open-ended in acknowledgement of the fact that those with an intellectual impairment will take longer to acquire new skills to effectively manage their inappropriate behaviour.

For sex offenders in denial

A program for sex offenders in denial or who have shown reluctance to participate in a treatment program for some reason. The program is based on motivational interviews both one-to-one and in a group to encourage prisoners to talk about the issues underlying their denial (eg, fear of assault in the prison; the effect on self-esteem) and to point out the possible consequences of denial (eg, refusal of parole; loss of family and friends; difficulty in adjusting after release). The first program was run in the protection unit at Hakea early in 2000 and a second is currently in progress at Casuarina.

Sex Offender Maintenance Group

An ongoing program in the community for those who have completed prison-based programs.

3. Substance Use Programs

Substance use programs are co-ordinated by the Substance Use Resource Unit (SURU) which is also responsible for individual assessments of prisoners and the presentation of programs at metropolitan prisons. The following programs are offered:-

Intensive Substance Use Program

A intensive program which runs once a week for five to six weeks. It is designed for prisoners who have experienced the most significant negative consequences of their past use in terms of offending and are motivated to make changes in their substance use. It consists of a combination of individual counselling, written assignments and group-work which occupies 20-25 hours in a two week period. The program is held about 16 times a year at all metropolitan prisons plus Bunbury and Greenough with 12 participants and now at Albany and Roebourne. Programs for women are also run once a week for five consecutive weeks together with ongoing individual sessions to support progress made in groups for women who wish to continue with their rehabilitation.

Pre-Release Substance Use Counselling

This service consists of 4-5 individual counselling sessions with a flexible content so that a prisoner's individual needs may be covered. The target group for this form of intervention is prisoners for whom substance use is problematic, but less so than those included in the Intensive Program. Individual counselling sessions are continuous at all prisons.

Substance Use Women's Programs

Individual counselling is provided to address the skills and relapse issues covered in the mainstream programs as well as issues specific to the antecedents and consequences of women's substance use. Counselling is continuous as required.

Prison to Parole Program - Substance Use

A program designed to increase prisoner engagement with treatment agencies upon release by utilising those agencies to provide individual counselling with the prisoner before release.

Mawarankarra Substance Use Education Program

Essentially an alcohol education program for Aboriginal prisoners at Roebourne Regional Prison provided by Mawarankarra Aboriginal Corporation. The six week program is run on a continuous basis.

Remand Class Prisoners with Substance Use issues

Development and implementation of an orientation program and appropriate interventions for remand prisoners commenced in late 1997 followed by a needs analysis and piloting of a range of services at the Remand Centre in April 1998.

4. Other programs

- 13.127 An internationally accredited alcohol education program - "*Ending Offending*" – has been developed in conjunction with the South Australian prison authorities. It was hoped to run the program continuously in all prisons to reduce the length of the waiting list for substance use programs which are required by a large proportion of prisoners. I understand, however, that the Ministry has incorporated the program into existing SURU programs.

- 13.128 The Ministry has made considerable progress in introducing a *Cognitive Skills Program* (CSP) developed by Canadian company T3¹⁵ for application in Western Australia and which is to be piloted in late 2000. Essentially, CSP aims to teach prisoners to overcome and modify certain behavioural deficits such as lack of self-control, the inability to recognise problems and to think and reason rationally through:-
- problem awareness and problem solving;
 - creative and positive thinking;
 - social skills;
 - values enhancement;
 - emotion management; and
 - self control and coping strategies.
- 13.129 The focus is based on changing the ‘thinking’ process, not the content, through encouragement to practice, maintain and sustain the skills they have learnt and by allowing offenders to become responsible for their own changed behaviour. Poor interactions between two people generally reflect an imbalance in the level of cognitive skills which frequently leads to conflict. Interactions between prison officers and prisoners are thought to be no different. Evaluation of programs run in other jurisdictions over the past ten years indicates that CSP can decrease the likelihood of reoffending by up to 30%.
- 13.130 T3 has found that delivery to offenders by prison staff is the most effective means of presentation *provided* suitable staff with appropriate skills are selected and properly trained. In particular, it has been found that:-
- “...with the introduction of the prisoner program (Reasoning and Rehabilitation), the prisoners were developing skills that were enhancing their cognitive skills and conflict was arising with officers who had not shared similar training. The ideal is to enhance the cognitive skills of both prisoners and prison officers. To do only the prisoner program without the other will ultimately result in conflict.”*
- 13.131 The training provided to the program deliverers (ie prison officers) will enable those staff to do their job better and to interact more positively with colleagues and prisoners. The Ministry believes that by emphasising the delivery of the program by prison officers, it will become a vehicle for change within the system and will lead to better communication and interaction between officers and prisoners and *vice versa*.
- 13.132 CSP has been found to be particularly successful with indigenous offenders in Canada, New Zealand and South Australia, although it has not yet been trialled with traditional Aboriginals from remote communities. T3 has found from their experience in Canada that the style and cultural context – rather than the program content - may need to be modified to facilitate delivery to traditional populations and has been contracted by the Ministry to work with both Ministry staff and representatives from indigenous communities in Western Australia to examine how the program can be made more culturally appropriate.
- 13.133 The Ministry expects prison officers involved with the program to find CSP useful as a motivational tool for positive intervention with prisoners and to provide them with a better understanding of prisoners’ behaviour. The program will provide prisoners with an opportunity early in the sentence to become constructively involved in challenging their offending behaviour. The simple, practical presentation of the program is also expected to motivate prisoners to challenge their offending behaviour and to participate in other programs early in the sentence - rather than at the end when ‘motivation’ is primarily generated by the prospect of parole.
- 13.134 For the most part prisoners participate in treatment programs towards the end of their sentence. Programs are generally designed to equip prisoners with the skills to function in the community after release and to enable them to put their skills into practice in a community setting within a reasonable period of time.

THE ADEQUACY OF TREATMENT PROGRAMS

13.135 In the course of my inquiry many comments and concerns about treatment programs were expressed in submissions and interviews by prisoners, prison staff and community groups. The main themes are summarised below. I should add that these concerns are also a source of regular complaint to my Office by prisoners and their families.

Availability, funding and resources

- Programs are under-resourced and under-funded;
- programs are not available at all prisons, which means that prisoners may be transferred in order to participate, making family contact difficult or impossible.

Timing

- Programs are provided too late in a prisoner's sentence;
- long waiting lists;
- de-institutionalisation and resocialisation programs are more important at the end of a sentence than treatment programs;
- uncertainty of being able to participate prior to a prisoner's earliest eligibility for release date;
- inconsistency in eligibility criteria resulting in prisoners who have been advised that they should complete the treatment program towards the end of their sentence being overlooked in favour of others with a longer period left to serve.

Course content

- There is a need for more appropriate rehabilitation programs;
- programs do little to assist in gaining employment after release which leads to reoffending;
- programs are dull and pointless and eligibility for parole or work release is the prime motivating factor for most prisoners;
- first offenders are more likely to attend courses than repeat offenders;
- some programs may not be suitable or are pitched at too high an intellectual level which deters those prisoners most in need of personal development from participating;
- the Violent Offender Treatment Program is poorly constructed;
- there is no quality control of course content or presentation; and
- involvement in programs increases a prisoner's 'safety'.

Miscellaneous comments

- Art and music programs are important aids to rehabilitation;
- visits are so important to a prisoner's rehabilitation that they should be accorded program status; and
- the Ministry is reluctant to accept a holistic program approach.

13.136 I must emphasise that the statements summarised in paragraph 13.135 are a sample of submissions received in the course of my inquiry and represent the views of prisoners, prison staff, prisoner support groups and community groups. To that extent, they are neither right nor wrong but are opinions - some first-hand from prisoners who have participated in programs, and others from interested parties who have subsequently had contact with those prisoners - which reflect personal experience or perceptions of the Ministry's range of programs.

13.137 On the basis of my own observations and discussions during the course of my inquiry it was quite clear that the availability, timing and content of treatment programs were, in some instances, unable to satisfy the needs of prisoners; the requirements of the Parole Board; and the expectations of the community that most prisoners will be released having addressed their offending behaviour.

13.138 I am aware that the Ministry has made some considerable effort in the past 12 months to improve the range and number of programs available; in particular, programs for remand prisoners, the introduction of a program for sex offenders in denial and the development of the Cognitive Skills Therapy program. The Ministry has advised me that the Parole Board has indicated its satisfaction with the programs now being offered, particularly the intensive ones. I am also aware that the new assessment process combined with the enhanced case management system should improve the timeliness of programs and ensure that programs are suitable and complementary.

13.139 The recent improvements to program accessibility and delivery are encouraging. However, my concerns in relation to a number of issues remain and I consider in more detail some of the main issues below.

(a) Availability of programs

13.140 A constant source of anxiety to prisoners and of complaint to my Office is that there are insufficient programs to enable all prisoners to participate in those which are prerequisite to their release on parole before the earliest eligibility date. This concern was also noted by the Custodial Inspection Team following its inspection of Albany Regional Prison. The team was critical of the range of programs available - particularly the absence of both sex offender and violent offender treatment programs despite a demand for such programs and commented "*Having implemented a holistic needs and risk assessment process without then providing the programmes to meet the range of needs that has been identified was not good policy.*"

13.141 The Ministry told me that in August 1998, there were 149 prisoners on the waiting list for participation in, and/or assessment for, sex offender treatment programs and 529 for substance use programs. It has been explained to me by the Director of Operational Services, however, that the number on the waiting lists included those still awaiting assessment - not all of whom would be assessed as eligible to undertake a program - and those for whom the Parole Board has decided to defer its decision on parole eligibility until a later date. Prisoners in this category remain on the waiting list although they would not generally participate in the program until closer to the time of review by the Board.

13.142 I understand that since 1998 the waiting lists for sex offender and substance abuse programs have decreased significantly - for example, the waiting list for SURU programs has more than halved. However, of the 1200 violent offenders in the system in August 2000, only 24 have completed or are undergoing the Violent Offender Treatment Program - in August 1998 there were 105 on the waiting list. This program, which is expensive to run, is held twice per year with 12 participants per program. In spite of the large number of violent offenders in the system who have been assessed as needing to participate in the program, no funding has been provided to run more programs or to offer the program earlier in the sentence. In my view, in spite of the improvement in the availability of sex offender and substance use programs the shortfall in the number of places for violent offenders is an important deficiency in the Ministry's suite of programs given the community's concerns about violent offences. It also illustrates the problems which can occur when there has clearly been no forward planning to ensure program availability keeps pace with demand.

13.143 In response to the concern that programs are not available at all prisons (see paragraph 13.135), the Ministry advised me:-

"The Ministry is of the view that it is necessary to ensure that programs are available across the system, but not necessarily that every program is available in every prison. This is consistent with practice in other Australian correctional facilities. The more intensive treatment programs are generally located in specific prisons but programs such as STAC, substance use programs and education are provided across the system. Prisoners will, from time to time, need to be transferred to facilitate program inclusion; however this should be flagged at the assessment stage so that the prisoner has a knowledge and understanding of the need for such a transfer."

13.144 I appreciate that the provision of a full range of programs at each prison would have cost implications. However, the basis of this concern is that the need to participate in a program which is not available at the prison where they are housed means that prisoners may be transferred to a location where it is difficult for them to receive visits and maintain contact with their community. This would invariably be the case for prisoners who need to complete the Intensive Sex Offender Treatment program which is run at Casuarina and Bunbury. Relocation to Perth or Bunbury would cause significant difficulties for prisoners from the north west of the State. In my view there is a real need for the Ministry to consider the feasibility of running such a program at Greenough or Roebourne.

(b) Timing

13.145 My views on the timing of substance use treatment programs at the end of a prisoner's sentence have been documented in Chapter 12 (*Drugs in Prisons*). Those views apply equally to other types of rehabilitation programs available to prisoners. Essentially, I consider that substance use programs and those designed to assist prisoners deal with violent and impulsive behaviour are scheduled too late in a prisoner's sentence given the management problems caused by the presence and demand for illegal drugs in the prison system, and by prisoners who may be ill-equipped to control their behaviour while in prison.

13.146 In this regard, I note that the Custodial Inspection Team was critical of the timing of substance use programs at Albany and stated:-

“the selection and assessment of prisoners for SURU programmes during the latter part of their sentence is wasteful of an opportunity to develop prisoners’ skills and understanding about matters critical to their offending lifestyles.”

13.147 None of the evidence provided to me convinces me that the timing of substance use programs at the end of the sentence is motivated by anything other than the Ministry's budgetary limitations. Given the continued presence of drugs and the inherent costs in spite of the emphasis on detection and deterrence, I would suggest that a greater focus on reducing *demand* is long overdue. Although I accept that it is virtually impossible to eliminate both supply and demand from the system entirely, it seems to me that commitment to reducing demand through the provision of programs and counselling throughout a prisoner's sentence merits at least equal priority. In my view the provision of additional funding for *ongoing* programs to address drug dependency is required in the interests of the wellbeing of the prisoners, the good management of prisons and the safety of the community.

13.148 In relation to anger management, it seems to me that there are tangible benefits for the prison population and prison staff in providing prisoners who have committed violent offences with programs and counselling which offer alternatives to violence and other coping strategies at a very early stage in their sentence. Without early treatment, the management of persons who have in the past dealt with problems using violent means (leading to their imprisonment) will inevitably present prison administrators with problems during incarceration and provide the community no assurance that prisoners will be able to better cope with life 'on the outside'.

13.149 Although disciplinary measures for dealing with assaults, violence and 'difficult' prisoners will continue to be necessary in some cases, it seems to me that they also create additional work for staff; frequently do not address the underlying problems of the prisoner involved in the aggression; and lead to poor prisoner/officer relations. I should add that it has also been suggested to me in more than one submission that the provision of anger management courses and training in conflict resolution for prison officers would be of considerable benefit to them and would improve the general harmony of the prison.

- 13.150 In response to the claim that eligibility criteria are inconsistent and result in prisoners not completing programs at the appropriate time, the Ministry advised me:-

“The timing of programs relates mainly to the content and purpose of the program. For instance, if the program is focused on assisting in release then it is best placed towards the end of the sentence. The SOTP is a particular program that is designed for delivery towards the end of the prisoner’s sentence. The Violence [sic] Offender Treatment Program is intended for delivery earlier in the prisoners’ sentence.

The Ministry does not support the view that there is an “Inconsistency in eligibility criteria”. Eligibility criteria remain constant, however, the capacity to meet all program demands will change depending upon the prisoner profile at any one time.”

- 13.151 In this regard, because the Skills Training for Aggression Control program (STAC) is seen as a management tool, Hakea has made a particular effort to schedule extra programs and target prisoners early in their sentence in order to reduce the waiting list for this course. The Ministry has also expressed the view that demand for programs must be balanced against available resources.
- 13.152 In my view, providing prisoners with alternative strategies to deal with anger or substance abuse problems which they will be able to put into practice while incarcerated can only help to alleviate management problems and enhance the skills which they will eventually take into the community on release.

(c) Content of programs

- 13.153 In response to the criticisms of the content of programs set out in paragraph 13.135, the Ministry provided the following comments:-

- **Need for more appropriate rehabilitation programs**
“The programs provided by the Ministry are those that are provided almost universally in prison settings with an emphasis on alcohol/drugs, violent and sexual offending. The program content has been developed to ensure that they are appropriate for the participants and the key customers. The Ministry is always seeking to improve the range of programs presented to improve their relevance to offenders. The cognitive skills program, among others, is an example which will be further enhanced through consulting with relevant Aboriginal people to ensure the program is culturally relevant for aboriginal people.”
- **Programs do little to assist in gaining employment after release**
“Successful program participation will inevitably result in increased knowledge, skills and self awareness, all pre-requisites for gaining and maintaining employment. The increased focus on the development of industry and associated vocational and educational training is expected to enhance both specific and generic employment skills of prisoners.”
- **Programs are dull and pointless and eligibility for parole or work release is the prime motivating factor for most prisoners**
“The Ministry seeks to develop programs that are interesting but also there is a requirement for prisoners to genuinely wish to deal with their issues rather than just undertaking the process to facilitate work release or parole”
- **First offenders are more likely to attend programs than repeat offenders**
“Not Accurate. Program participation is based primarily upon risk and need assessments. The Ministry questions the source of this information.”

- **Programs are not suitable or pitched at too high an intellectual level which deters prisoners most in need of personal development from participating**
“Not Accurate. Programs are designed to meet the needs of the target group and ...programs are developed to address the specific needs of those prisoners with intellectual disability.”
- **The Violent Offender Treatment Program is poorly constructed**
“Not Accurate. The program was designed and constructed by one of the most respected international practitioners and academics in the field of violent offending.”
- **There is no quality control of course content or presentation**
“There is extensive quality control of programs, particularly for the intensive programs.”

13.154 As I have stated above, the comments in paragraph 13.135 were made to me in the course of my inquiry by prisoners, prison staff, and community groups. I have not considered or investigated their ‘accuracy’. However, in my opinion, they are the sorts of views which the Ministry might well encourage and receive in the course of evaluating the effectiveness of its courses – an activity which I believe is under-emphasised – and which it should consider as constructive criticism. If a prisoner or a member of the prison staff believes that a program is boring and pointless; unsuitable; unlikely to be of assistance in gaining employment; or that eligibility criteria are inconsistent, in my view that is useful feedback. It is precisely the sort of feedback which most training courses in both the public and private sectors seek at the end of every course. Proper evaluation of programs is an essential measurement of both efficiency and effectiveness and should be an integral part of the Ministry’s performance indicators.

RECOMMENDATION 13.4

That the Ministry ensure that sufficient resources and funding are provided to enable prisoners to participate and complete the treatment programs identified in the assessment process on admission to prison or prescribed by the Parole Board prior to their release date.

RECOMMENDATION 13.5

That the Ministry provide rehabilitation programs at an early stage in and throughout the sentence with refresher courses at the end.

(d) Dissatisfaction with Sex Offender Treatment Programs

13.155 I received a large number of comments and complaints about the Ministry’s sex offender treatment programs in submissions and interviews during the course of my inquiry, including the following:-

- To be eligible for participation in the Sex Offender Treatment Program (SOTP), a prisoner must acknowledge his guilt and be genuinely willing to address his offending behaviour. Prisoners who claim that they are not guilty or who are intending to lodge an appeal against conviction are therefore ineligible for the program and are unlikely to be granted parole because of a perceived failure to address their offending behaviour.¹⁶
- Some sex offenders who are willing to participate are reluctant to join programs attended by paedophiles.
- Several submissions about the SOTP at Bunbury raised concerns about the content and administration of the program and that the program needed to be independently reviewed.

- Apparent confusion and inconsistency among course administrators. For example, one prisoner told me that he agreed to transfer from Albany Prison to Bunbury to participate in a SOTP that he believed to be starting shortly. On arrival at Bunbury he was interviewed by a part-time prison psychologist who did not appear to know about the imminent program and referred him to the full-time psychologist who advised that the course was going to be run by an outside contractor. The prisoner claimed that it then took two months for him to get an interview with the contractor, who advised him to do a pre-release course which might not be available until after his earliest eligible date for parole. This apparent uncertainty, delay and misinformation caused a great deal of confusion and distress for this prisoner.

13.156 The report by the Custodial Inspection Team following its inspection of Bunbury Regional Prison in July 1999 supported a number of those concerns. It noted:-

*“We were impressed with [the staff’s] commitment and enthusiasm.....But several aspects of the programme gave us cause for concern and did not fit into what we know about best practice. There was for example...no manual for tutors to follow and a **lack of effective supervision on the content** of individual sessions....These factors made the likelihood of programme drift high (i.e. tutors drift away from the original treatment objectives) and must affect consistency of delivery. Both tutors felt their **training was poor**. The high drop out rate of sex offenders participating in the programme (some 50% of the current course) was a particular concern as evidence suggests that these offenders are more likely to re-offend in the future. **Risk assessments appeared at times subjective and naïve**. Neither was there an obvious differentiation between offenders entering the programme. Nor had the programme been independently evaluated for its effectiveness...We were also disappointed to find that there was **no apparent effective strategy for dealing with prisoners either minimising or denying their offence**.”* (my emphasis) (paragraphs 4.28-4.31)

13.157 The Ministry has taken issue with a number of the concerns about its sex offender treatment programs which were put to me in submissions. Specifically it has advised:-

- **Reluctance to participate**

“Sex offenders as a broad category of prisoner are always reluctant to participate in treatment programs and will use all available means to change the focus from them as sexual offenders. They have real and valid issues for this approach; firstly; being identified as a sex offender because of the fear this creates in the prison system and secondly; to acknowledge sexual offending particularly against young children brings the shame and disgrace accompanying such crimes. This needs to be acknowledged in any review of programs and, measures taken to ensure that an accurate holistic perspective is taken rather than just acknowledge the views of a vocal minority.”

- **Reluctance to participate in mixed groups**

“...most programs in Australia, UK, USA, Canada etc have mixed groups [of sex offenders] and use this issue as a critical treatment issue. To ignore this issue would be professional negligence and in fact the majority of programs proceed successfully with this mixture of rapists and child molesters and have done so for the past 15 years. It is not considered to be a valid therapeutic approach to construct groups around an individual’s bias.”

- **Concerns about the program at Bunbury**

“Concerns identified within the Bunbury SOTP were addressed during the course of 1999 responding to previous reviews and the Custodial Inspection Services report.”

- **Apparent confusion and inconsistency among program administrators**

“This appears to be an unverified complaint. The general administration of these programs is considered to be sound and in reviews of the Unit (Thomas-Peter, 1995; Stanton Partners, 1997; Boer, 1998; Greenberg, ongoing) program administration is identified as a strength of the Unit.”

13.158 I am aware that the Ministry's range of sex offender programs is nationally regarded as 'cutting edge' and has been used as a model by other jurisdictions. I have noted its comments and have not explored the concerns raised about the SOTP in detail as they largely relate to offenders' eligibility for, and the content of, the programs, issues which I consider to be outside my expertise and beyond the scope of this Report. It appears that the concerns about the administration of the program – particularly at Bunbury – were considered to be valid, however, as the Ministry has taken steps to address the similar concerns raised by the Custodial Inspection Team. I also understand that the Ministry has commissioned an external review of the effectiveness of its current range of sex offender treatment programs and an analysis of recidivism rates. In the circumstances, I do not believe that I need to make recommendations about this point.

(e) A lack of programs designed to cater for the specific needs of certain groups of prisoners

13.159 As identified in the preceding chapters relating to health, there are in my view several groups of prisoners within the prison population which pose distinct management problems because of their special needs. In relation to their health needs, I identified the elderly; Aborigines; women; long term prisoners; and prisoners suffering from the effects of substance abuse as having special needs. For the purposes of their 'program' needs, Aborigines; women; long term prisoners; and prisoners suffering from the effects of substance abuse also have special requirements together with remandees and those with behavioural disorders. Significantly, these groups of prisoners are also known to present a high risk of suicide and self harm.

Aborigines

13.160 I received a submission from an Aboriginal prisoner who expressed his concerns about the number of Aboriginal prisoners who were illiterate; that their illiteracy was the main reason for the over-representation of Aborigines in prison; and that little was done to address this problem while they were imprisoned. He said:-

“Help us Aborigines to “read and write” to better our culture.....Then when these Aboriginal men come before the parole board or the judge, they can understand what these men are talking [about].....

The reason I am writing is that...parole sends them forms and they don't know what to do about it. The department has got the schools while in jail but they don't know how to go about it.....Remember please ask these Aboriginal men (by themselves) not when they are in a mob because they will say nothing. Respect them and they will respect you.....These men will reoffend if you don't help them.”

13.161 According to the Ministry's census of prisoners on the night of 30 June 1999, 85.4% of Aboriginal prisoners had less than three years' secondary education. Although a low level of education is not confined to Aboriginal prisoners – 68.4% of non-Aboriginal prisoners and 74% of all prisoners had less than three years' secondary education - I acknowledge the cultural obstacles for Aboriginal men in this position.

13.162 In the community, lack of literacy and numeracy skills amongst adults is generally handled in confidence by specialised staff who are trained to address not only learning difficulties but also to show sensitivity to the embarrassment often felt by adults who are unable to read and write. From my observations there is a marked lack of confidentiality in the reception process at most prisons where newly admitted prisoners are not interviewed in private and are unlikely to reveal any information which might increase their vulnerability.

13.163 I was told that the content and presentation of some treatment programs, particularly drug and alcohol and sex offender programs, which are primarily presented by young, white females, is considered to be culturally inappropriate for many male Aboriginal prisoners, who are unlikely to reveal their problems or reap the full benefit from treatment programs. It was also alleged that programs designed in 'Perth' do not cater for the special needs of prisoners from rural or remote areas.

13.164 The Ministry had advised me that it does not support these views on the ground that:-

“[F]eedback from prisoners on the program indicates that Indigenous sex offenders are more likely to talk about their key personal issues with a non-Indigenous person than they will with an Indigenous person. Although the facilitation of some programs is dictated by the fact that there are program facilitators who are based on one site, careful consideration is given to the fact that all staff within program areas need to have the professionalism, knowledge, sensitivity and interpersonal skills required to meet the challenges of program assessment and delivery. In the case of intensive programs, particular care is taken to ensure that wherever possible the mix of the groups and the program facilitators are matched.

The use of Indigenous staff in sex offender programs is acknowledged by those who have knowledge of the area as being extremely problematic for a number of reasons. For most Indigenous people there is almost a certainty that if they are facilitating a program (particularly in regional areas) that they will have family, kin, or other relationships with program participants. For these people to then challenge participants on matters of personal significance presents major difficulties and in some instance may pose significant moral and ethical dilemmas.”

13.165 In spite of these comments – which I consider to be valid – the Ministry has told me that it has taken steps to use Aboriginal presenters wherever possible on programs for Aboriginal prisoners such as the Kimberley Offender Program¹⁷ at Broome; the pre-release program for sex offenders at Greenough; and the Mawarankarra Substance Use Education Program at Roebourne. The Ministry also advised me that the STAC program is delivered in the metropolitan area by an Aboriginal facilitator in an effort to ensure that it is culturally appropriate.

13.166 As discussed in paragraph 13.144, prisoners are frequently transferred between prisons for the purposes of participating in a program required by the Parole Board. This is an issue of particular relevance to Aboriginal prisoners and appears to me to conflict with the spirit of RCIADIC **Recommendation 168** that the placement and transfer of Aboriginal prisoners should be “*according to the principle that, where possible, an Aboriginal prisoner should be placed in an institution as close as possible to the place of residence of his or her family.*”

13.167 The Ministry has advised me that although it supports the principle of:-

“...placing Indigenous people close to their homes....to have a total program coverage available for all prisons would require a significant increase in funding and the cost effectiveness of such a move would be doubtful. Additionally, as there are no maximum security prisons north of Perth and many of these programs are run at maximum security prisons it is appropriate to expect that Indigenous people are given the opportunity to participate when they are completing this part of their sentence.”

13.168 I accept that Western Australia presents different problems because of the 'tyranny' of distance. However, given that 80% of the population of some prisons is Aboriginal, there is clearly an opportunity at those prisons to provide a wider range of programs for Aboriginal prisoners and I believe that progress has been and is being made in this area.

- 13.169 However, I also believe that there is room for a wider range of programs for Aboriginal prisoners that combine strategies to address offending behaviour with literacy and numeracy, occupational health and safety training, cultural issues, history, art, craft and music. These can be very effective in reducing future offending by providing a sense of identity and ‘place’ and a more positive view of the future. Successful models of such programs in operation in other States include:-
- **New South Wales** - the Girrawaa Creative Work Centre at Bathurst; the *Second Chance* substance use programs;
 - **Northern Territory** - *Ending Offending – Our Message* and *Gurma Bilni – Change your Life* (sex offending treatment);
 - **Queensland** - *Inside-Dreaming* which uses prisoners’ families as a support mechanism during and after imprisonment in conjunction with anger management, substance use and cognitive skills programs;
 - **South Australia** - *Reclaiming our Future* which also includes training in strategies to reduce depression, suicide and self harm; and
 - **Victoria** - the Aboriginal Cultural Immersion Program.
- 13.170 Comprehensive programs for Maori prisoners in New Zealand were developed following the findings of the Maori Suicide Review Group that participation in programs which offered the development of coping skills, constructive use of their time, communication, problem-solving skills and self-esteem and involved Maori elders and local communities was particularly effective in reducing the high risk of self harm and suicide among Maori prisoners.
- 13.171 A submission to my inquiry referred to a similar initiative which operated in Boggo Road Prison in Queensland in 1986-89 (known as “*Life Force*”). During the operation of this program there was a marked reduction in self harm and suicide by Aboriginal prisoners. The submission attributed the program’s success to the development of “*a sense of community*”, the individual’s “*sense of identity*” and to the emergence of a “*collective responsibility*”, achieved by getting in touch with the “*life force*” - the spirit of the land and heritage.
- 13.172 I note that the Ministry has recently appointed a Manager, Aboriginal Services with specific responsibility for assessment of the program needs of Aboriginal prisoners and the development of a suite of programs to meet those needs. The Ministry has advised me that it is confident that the new comprehensive assessment procedure which will commence once the Reception Centre at Hakea is operational will be more successful in identifying prisoners with a low level of literacy and numeracy skills because all prisoners will be asked the same questions and prisoners who acknowledge that they are unable to read and write will feel less isolated. It has advised me that a Senior Education Officer and three Education Officers will be an integral part of the Hakea Assessment Team.
- 13.173 These new initiatives are very encouraging. However, the Reception and Education Officers will still require the appropriate communication skills to encourage prisoners to admit to a deficiency in their education. It will also be essential that the Ministry is both willing and able to provide adequate funding for the delivery of programs to meet the needs identified.

RECOMMENDATION 13.6

That the Ministry ensure that participation in culturally appropriate basic literacy and numeracy courses is encouraged in a sensitive way at all prisons.

RECOMMENDATION 13.7

That the Ministry provide appropriate cultural programs for Aboriginal prisoners at all prisons, involving local community and tribal elders, on the lines of those available elsewhere in Australia and New Zealand.

Female prisoners

- 13.174 The Taskforce looking at education and training was critical of the range of educational and training opportunities for female prisoners at Bandyup and observed that:-

“...the opportunity to develop new skills while at Bandyup Prison is restricted to occupations that generally reflect the traditional and cultural roles of women....., essentially those occupations that are required to support the functioning of the prison. They have limited relevance to the labour market outside the prison.”

- 13.175 Similar criticisms were levelled at the facilities and opportunities at regional prisons housing female prisoners and the Taskforce recommended a number of measures which should be taken to “ensure that women offenders are not a “forgotten minority””.¹⁸ In my visits to all prisons in the course of my inquiry, however, I found that little had been done to improve the situation for women since the Taskforce reported.
- 13.176 Although female prisoners are in a minority, the number of women receiving custodial sentences is increasing; and their offences are becoming more serious, resulting in an increase in the length of the sentences being handed down. If this trend continues the Ministry will need to accept that the prison population is likely to include an increasing number of female prisoners for longer periods of time.
- 13.177 Facilities and program opportunities for women in all prisons housing female prisoners are, in my view, significantly deficient and require urgent attention to meet both international and Australian standards. I believe that the Ministry has been aware of the problem for some time. However, it has only very recently sought funding to refurbish Bandyup and it is unlikely that facilities for women in regional prisons will improve in the short or medium term. In addition, it will also be necessary for the Ministry to significantly enhance its commitment to the program needs of women prisoners throughout the State if there is to be any meaningful improvement in the circumstances of its female prisoner population.

RECOMMENDATION 13.8

That the Ministry address the current inequality of education, training and employment opportunities for female prisoners throughout the State by providing a wider range of programs designed specifically to cater for their needs and ensuring that they are adequately staffed and funded.

Long term prisoners

- 13.178 I have commented on this issue in some detail in Chapters 5 and 6 of this Report in relation to the health needs of long term prisoners. This group of prisoners is increasing in size due to sentencing changes and the handing down of longer sentences. Because long term prisoners have committed the most serious offences, are most in need of rehabilitation, and remain in the system for significant periods of time, their program needs and requirements; their general management; their health; and risk of self harm and suicide; present the system with a range of problems. Given these special needs and problems, it is in my view essential that management of their sentences be comprehensive (including education, training, employment, rehabilitation and progression through the system), coordinated and possess an element of certainty that components of any sentence ‘plan’ *will* occur unless there are compelling reasons to the contrary.

- 13.179 The Ministry has conducted a review of its case management system with a view to providing all prisoners, both new and serving, with individual management plans based on a comprehensive assessment of individual needs and consistent standard principles. The new system is to be piloted at Albany, Bunbury and Casuarina following commencement of the assessment procedure pilot at Hakea and prison officers at each of those prisons are being invited to volunteer to receive training in case management. The aim is for long term prisoners to be reviewed every 12 months until three years prior to their statutory review date when reviews will be conducted six-monthly.

Prisoners suffering the effects of substance abuse

- 13.180 As stated in a number of sections of this report, and also in the Smith Report, the program needs of this large and growing group of prisoners present the Ministry with a range of resource-intensive and costly problems. In addition to their health needs and the security risks which they pose to the system, other prisoners and staff, the ultimate danger which they present to the community if released with the same substance dependency (and sometimes more acute) as when they were admitted to prison is a significant concern. In my view, the program needs of this group are a priority which should be addressed upon their admission and on an ongoing basis throughout their sentence.
- 13.181 The Substance Use Resource Unit (SURU) is responsible for the assessment and treatment of prisoners with substance use problems. Because of its limited resources, however, it is restricted to providing programs to prisons in the metropolitan area. Services to other prisons have generally been outsourced and are provided under contract by private bodies. Comments received during my inquiry suggest that fewer programs are provided to some prisons under the outsourced service. I was also told that utilisation of community groups such as Holyoake and Palmerston is not considered viable because of the cost.
- 13.182 However, in response to my draft Report, the Ministry advised me that the employment of a prison-based SURU Programs Officer at Albany during 1999 enabled the delivery of sufficient substance use programs to meet prisoner demand and at an earlier stage of the sentence – at least a year prior to the earliest eligibility date (EED) compared to an average of six months elsewhere. In some cases the Programs Officer works with a prisoner two to three years prior to the EED in order to assist them to progress to a minimum security rating and transfer to a minimum facility such as Pardelup, Karnet or Wooroloo.
- 13.183 The Ministry also advised me that earlier this year it experienced some difficulty in recruiting new SURU staff. The restructure of staffing requirements, delays in the advertisement, selection and appointment process all exacerbated the situation and it was forced to advertise twice before it was able to fill eight of the eleven vacancies. It is hoped that the new staff will enable the delivery of a broader range of programs.
- 13.184 In my view, the large number of prisoners entering the system with problems associated with use of drugs and alcohol, the consequential problems for their management and the community interest in the rehabilitation of prisoners upon release make it imperative for the Ministry to provide a comprehensive range of programs throughout the sentence.

Remand prisoners

- 13.185 In line with the principle that a person is innocent until proven guilty, it is universally accepted that untried and unsentenced prisoners are a special group which should be treated differently from those who have been convicted and sentenced. Significantly, remand prisoners are also widely known to present one the highest risks of suicide and self harm.

13.186 The Taskforce examining the provision of education and training commented on the lack of treatment programs for remand prisoners and the poor range of opportunities for remand prisoners for work, education and recreation attracted criticism from the Auditor General in his 1997 performance examination report “*Waiting for Justice*” in which he stated (at page 32):-

“Despite the Remand Centre providing some activities such as table tennis, basketball, art and the use of a library, prisoners often chose to remain unoccupied. Remand prisoners cannot be made to work and in any event, work opportunities are limited and mostly menial. While the Remand Centre has a small workshop it only employs six prisoners. Casuarina and Bandyup have substantial prison industries but work is mostly assigned to sentenced prisoners.

The provision of meaningful work opportunities is thought to have some clear benefits:

- *fewer injuries to prisoners from assault by other prisoners;*
- *reduced tension within the prison leading to lower prison staff costs through reduced stress related or prisoner assault related sickness absence and worker’s compensation payments; and*
- *assisting prisoners to obtain employment upon release by improving their work skills. A 1995 prison census found that 74 per cent of remand prisoners were unemployed prior to arrest.”*

13.187 The Auditor General also confirmed that “*Prison management and medical staff advise that reducing the risk of assault, injury and stress amongst remand prisoners can be achieved by reducing boredom and inactivity...*”.

13.188 In support of this view, I have been told that the initiative “*Making the Remand Centre a Safer Place*”, commenced at the Remand Centre in 1992 by the then Acting Superintendent,¹⁹ involved extending recreational time for prisoners; increasing the number of activities and educational opportunities available; instituting management strategies for prisoners; and inviting active participation by prisoners in the renovation and maintenance of buildings, gardens and facilities. A 1994 study of incidents of self harm at the Remand Centre between January 1990 and December 1994 reported a noticeable drop in the number of self-harming incidents between July and December 1993 when the initiative was in place.

13.189 I understand that there was an attempt to resurrect the strategy at the Remand Centre in 1996. However, it was never fully reinstated and, as noted, the lack of activity for remand prisoners attracted further criticism from the Auditor General in 1997 who recommended that the Ministry “*investigate ways to provide remand prisoners with work skills that will aid them to return to or find work on release.*”

13.190 Although I have been told that the provision of television sets and access to video games in 1998 resulted in a significant fall in the number of self harm incidents and prisoner assaults, the Ministry advised me in June 1999 that there were no educational opportunities at the Remand Centre and only limited work related to the maintenance of the prison. There have, however, been significant improvements at the Remand Centre since August 1999 including the provision of increased funding; the appointment of a second full time Education Officer; and the introduction of a comprehensive suite of education programs including:-

- ‘Information’ programs – providing advice on debt management while in prison; communication with the Ministry of Housing regarding rent; court procedures and what to expect during a trial;
- Literacy and numeracy;
- Speaking in public – in preparation for appearing in court and including self-confidence and organised thinking;
- Career counselling – including the establishment of realistic goals with short achievable steps;

- Recognition of prior learning – assessment of skills and abilities; advice on addressing any deficiencies; providing certificates for levels already attained;
- Driver education program developed in conjunction with Murdoch University; and
- Courses/programs available in other prisons and short ‘orientation’ videos.

- 13.191 The modular courses have been designed to be flexible and fluid to allow for entry and exit at any time and to provide nationally accredited qualifications which are transportable. If offenders have been involved in TAFE courses or other study programs prior to remand, the Education Officers negotiate with the community providers to enable prisoners to continue with their studies.
- 13.192 There are some difficulties on the present site in offering vocational training but with the opening of the Hakea Receiving and Assessment Centre, remandees will be offered the opportunity to take courses in occupational health and safety and small tool handling so that if they return as sentenced prisoners they will be prepared to commence work programs.
- 13.193 The progress made in increasing work and study opportunities for remand prisoners at Hakea is commendable. However, it is unlikely that similar opportunities will be made available to remand prisoners held in other prisons. In particular, there do not appear to be any specific plans for separate accommodation for female remand prisoners within the refurbishment of Bandyup. Although I have been advised that many female prisoners have been in prison before and may not need to be placed in separate facilities, this group of female prisoners should not become another ‘forgotten minority’. Given that five of the seven apparent suicides this year have been by remand prisoners (including a remand prisoner at Roebourne), it is clear that this group of prisoners continue to present special problems.
- 13.194 The Ministry has expressed the view that *“the availability of treatment programs in a remand prison is contentious and complex. Participation in such programs would be voluntary and would in most instances be an indication that the offender was guilty, which if an offender intended to plead not guilty is a disincentive to participation. Also the majority of therapeutic programs are at least 4 months in duration and many would not be able to complete these in time.”*
- 13.195 Although I accept that there is some validity in these comments particularly in relation to sex offender programs, it seems to me that they do not apply to SURU programs which are designed to assist with problems associated with substance abuse and are unlikely to impact upon a person’s innocence or guilt and I understand that a 1-day Alcohol and Drug Awareness workshop is now provided every Friday. I also find it difficult to believe that there are no therapeutic programs which are less than four months’ in duration based on the fact that most of the Ministry’s own treatment programs are much shorter than four months. I am not sure how the Ministry has attempted to gauge demand if no therapeutic programs are offered and I also note that the Taskforce found that a survey of prisoners found that the *“major deterrent to program participation was the type of course on offer”*.

RECOMMENDATION 13.9

That the Ministry take steps to review program provision for remand prisoners at Bandyup and at regional prisons and ensure that they have access to a range of education, meaningful employment and rehabilitation opportunities.

‘Difficult’ prisoners

- 13.196 As discussed elsewhere in this report, the behaviour of disruptive young prisoners who continue to flout authority is considered by psychological researchers to be as indicative of a lack of coping abilities as those who attempt serious self harm and suicide. However, the problems they cause to prison authorities frequently mask the risks which they present to themselves and others and their need of counselling and alternative management strategies. As Liebling has said²⁰ :-

“Importantly, inmates who present disciplinary problems to the staff cannot be assumed to be (just) manipulative, or obvious trouble-makers. Their disciplinary problems may be another feature of the difficulties they are experiencing in coping with prison.”

13.197 In my view there is a need for therapeutic behaviour modification programs for prisoners who present as major “*management problems*”. As far as I am aware, the current range of programs offers nothing of this nature other than anger management programs. This means that prison officers and other prisoners generally bear the brunt of the disruptive behaviour of ‘difficult’ prisoners for the majority of their incarceration. With no alternative strategies available, prison officers tend to respond with disciplinary measures which frequently exacerbate rather than address the situation and increase stress levels for both officers and prisoners. I understand that the Cognitive Skills Program is believed to be of benefit in assisting such prisoners to develop alternative problem-solving skills and I would encourage the Ministry to consider a pilot program for prisoners with type of ‘coping’ difficulty.

RECOMMENDATION 13.10

That the Ministry develop appropriate programs to assist ‘difficult’ prisoners address their behavioural problems as alternatives to progressively more severe disciplinary measures.

Compliance with International and National Standards and RCIADIC Recommendations

13.198 At paragraphs 13.12-13.14 I set out the international and national standards relating to prisoner activity and the relevant recommendations made by the RCIADIC. In light of my observations and findings, I consider that the Ministry does not fully meet the following standards:-

United Nations *Standard Minimum Rules for the Treatment of Prisoners*²¹

Rule 71(3)

“Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.”

- Although some prisons are better able to provide work opportunities than others, there is not “*sufficient work*” for all prisoners at all institutions. Female, Aboriginal and remand prisoners are particularly disadvantaged.

Rule 72(2)

“The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.”

- Although the preference for the establishment of employment activities which make the prison less costly to run could be justified provided prisoners were usefully occupied, the acknowledged reluctance of officers to release prisoners from work for education and training and the lack of promotion of education casts doubt on the Ministry’s commitment to the spirit of this rule.

Rule 77(1)

“Provision shall be made for the further education of all prisoners capable of profiting thereby.....The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.”

- The level of engagement of Western Australian prisoners in education and training in 1998/99 reported in the *Report on Government Services 2000* was the second lowest in the nation and lower than the national average.²² As discussed at paragraph 13.95, the Ministry considers these figures to be an unfair representation of the educational involvement of prisoners and that comparisons with other States are unhelpful because of discrepancies in methods of recording. I agree that comparisons are only useful to a degree. Of greater relevance is whether opportunities for education in Western Australian prisons meet the needs of prisoners. Although there have clearly been improvements in the past two years, in my view more needs to be done. In particular, positive steps need to be taken to raise the profile and priority of education and to address the low standard of education and the high incidence of illiteracy among a large proportion of prisoners.

Rule 78

“Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.”

- I noted a shortfall in the provision of both recreational and cultural activities at most prisons in the course of my inquiry.

Standard Guidelines for Corrections in Australia

Guideline 5.57

“All prisoners should have access to productive work, education, recreation and leisure programs and facilities which provide them with the opportunity to utilise their time in prison in a constructive and beneficial manner.”

Guideline 5.58

“The Manager of the institution has a responsibility to encourage prisoners to participate in such programs.”

- In my view, for the reasons set out in this chapter, I am not convinced that this “responsibility” is taken sufficiently seriously in a number of prisons.

RCIADIC Recommendations

- 13.199 In my view the Ministry has not fully implemented the spirit of the following recommendations made by the RCIADIC²³:-

Recommendation 184

“...all Aboriginal prisoners in all institutions have the opportunity to perform meaningful work and to undertake educational courses in self-development, skills acquisition, vocational education and training including education in Aboriginal history and culture...”

- The Ministry does not provide sufficient resources to ensure that the spirit and intent of this recommendation is properly implemented at all prisons where there are Aboriginal prisoners. Aboriginal women are, in my view, particularly disadvantaged.

Recommendation 185

“That the Department of Education, Employment and Training be responsible for the development of a comprehensive national strategy designed to improve the opportunities for the education and training of those in custody. This should be done in co-operation with State Corrective Services authorities, adult education providers (including in particular independent Aboriginal-controlled providers) and State departments of employment and education...”

- The Ministry has advised me that there is cohesive involvement of the State Education or Education and Training Departments in the provision of education and training to prisoners “...*although not to the level desired by the Ministry of Justice*”. It is, however, “...*actively engaged in the work of trying to increase the Department of Training & Employment’s responsibility for prisoners*”. The Ministry has also advised me that the DETYA document – *National Strategy to Improve Education and Training for Adult Indigenous Australians in the Custody of Correctional Authorities* has recently arrived in Western Australia.

Recommendation 186

“That prisoners, including Aboriginal prisoners, should receive remuneration for work performed. In order to encourage Aboriginal prisoners to overcome the educational disadvantage, which most Aboriginal people presently suffer, Aboriginal prisoners who pursue education or training courses during the hours when other prisoners are involved in remunerated work should receive the same level of remuneration...”

- Although a prisoner undertaking educational programs does receive a gratuity, if he has the opportunity to *work* at a higher gratuity there would be little incentive to choose education rather than employment. Given that the majority of prisoners rely on their gratuities to enable them to maintain telephone contact with their families there would be little incentive to take up educational opportunities if it resulted in a lower ‘income’. The Ministry has advised me that a recommendation that prisoners who undertake training or education while working will receive an additional gratuity is currently being considered by a Steering Committee.

Recommendation 187

“That experiences in and the results of community corrections rather than institutional custodial corrections should be closely studied by Corrective Services and that the greater involvement of communities and Aboriginal organisations in correctional processes be supported.”

- From my observations, the involvement of community organisations in most aspects of prison life is met with a degree of resistance and sometimes hostility by prison staff who often cite potential breaches of security as a justification. The Ministry has advised me, however, that the Indigenous Education and Training Programs Coordinator is “...*as a matter of priority, pursuing a policy of increasing the numbers of Indigenous tutors, increasing Indigenous participation rates and expanding community involvement. To date the Coordinator has been highly successful in all three aspects.*”

SUMMARY OF CONCLUSIONS ON THE ADEQUACY OF EDUCATION, TRAINING, EMPLOYMENT, RECREATION AND TREATMENT PROGRAMS

13.200 Although in general I found that most prison administrators were supportive of programs (in which I have included education, training, employment and recreation as well as treatment programs), and accepted their value as a management tool and in creating a safe and ‘healthy’ environment for prisoners and prison staff, it was also quite clear that programs were not considered a *core* prison activity. The Ministry has advised me that its draft *2000 Business Plan for Prison Services* recognises education/training as a “core” business in that Student Contact Hours and prisoner participation rates are two of its performance measures. Nevertheless, I note that the Plan is a draft and that there will need to be a shift in prison culture to ensure that the principle is embraced in practice.

- 13.201 The focus in Western Australian prisons has been – and still is in my opinion - on ‘security’ with the result that – similar to the situation of health services – programs have, to a large extent, been starved of funding. Programs have been unable to satisfy prisoner needs and the potential benefits for the system of active and constructively occupied prisoners have not been, in my opinion, fully realised. This approach has also ignored the beneficial effect of constructive activity on a prisoner’s general wellbeing and the fact that the inter-dependence of parole eligibility and the completion of treatment programs is without doubt a source of great stress and anxiety to prisoners.
- 13.202 The Taskforce looking at education and training found that most prisoners indicated a need and a willingness to improve themselves in order to avoid a return to prison. My own observations also support the findings of the Taskforce. A prisoner at Bunbury Regional Prison wrote in the 18 February 2000 edition of *Odyssey* – a statewide fortnightly newsletter produced “by prisoners for prisoners”:-

“Using Time Wisely

Time in prison can be one of two things, used to benefit yourself or wasted. Once in prison it is inevitable that the time will be used, how it is up to the individual.

While in prison your beliefs and way of thinking that culminated in being here can be maintained without any form of internal reassessment or recognition of life choices. This may very well lead to another stint as a guest of the Queen.

The alternative is to study a subject that we are all find interesting, ourselves. Our lives can basically be broken up into three categories. Most stories have a beginning, middle and end. We are not a whole lot different. We have a past, a present and a future. We can all learn from our past, use the present and influence our future. Out of these three areas the present is the active, or important stage. We live the present everyday of our lives. How we live these days determines the quality of our future, that is, what we do, say achieve today affects tomorrow, next week, next year and so on.....”

- 13.203 A prison psychologist told me that the Education Centre and workshops where apprenticeships were available are considered by prisoners as “*areas of hope*” in the prison environment. Successful completion of a course is a major ego boost for prisoners and involvement in these areas encourages prisoners to take positive steps to improve their lives, for example, by reducing drug dependency and the desire to self harm.
- 13.204 The timing of this involvement is, however, paramount, as is the need to encourage prisoners to participate in courses as part of a genuine attempt to improve themselves rather than as merely a means of gaining parole eligibility. Concentration of rehabilitation initiatives at the end of the sentence prior to review of parole eligibility almost certainly also deprives the prison system of the benefits of possible modification of a prisoner’s behaviour while incarcerated, particularly those prisoners charged with offences involving violence or substance abuse. It seems to me that it would be far more productive for prisoners themselves and for the prison system if they were provided with the opportunity to use the skills they acquire from treatment and counselling programs in a situation where they are able to seek further assistance and guidance rather than in the community where, realistically, they are very much ‘on their own’.
- 13.205 An additional disadvantage of scheduling programs at the end of the sentence is that it frequently leaves the Ministry little leeway to cater for unforeseen delays resulting from cancellation or re-scheduling of programs or simple over-subscription. The prospect of serving additional time due to an inability to participate in appropriate programs through no fault of their own is a cause of significant frustration for prisoners who may have limited coping skills. Academic opinion - and basic common sense – indicate that frustrated prisoners are more difficult to manage and are likely to vent their frustration on other prisoners or staff or themselves.

- 13.206 In making these comments I do not under-estimate the value of pre-release programs. However, in my view, such programs should be designed to not only reinforce the skills learned in earlier programs but also to provide resocialisation and life skills to maximise a prisoner's chances of succeeding in the community. There are a number of more holistic programs run by community-based organisations such as the Prisoners' Advisory and Support Service and Outcare which merit further consideration by the Ministry.
- 13.207 Prisoners have a number of ideas on the type of assistance which they need to equip them for life in the community. For example, a letter from a prisoner at Bunbury Regional Prison published in the 7 January 2000 edition of *Odyssey* suggests modification of the “*day to day monotony of the prisoner's day in aid of better preparing prisoners for release into the community*” and refers to the prison regime - which involves notification by loud speaker when it is time to go to work; eating only when told to; checking in at ‘home’ at lunch time (muster check) and before recreation and must be ‘home’ before 4.45pm.
- 13.208 Although I agree that routine may be necessary for the smooth-running of a prison, by the time a prisoner has progressed through the system and he or she is considered ready for release into the community, the focus of that prisoner's daily life should be preparation for a life where there are no “*such regimented restrictions*”. In his letter to *Odyssey*, the prisoner referred to in paragraph 13.207 states:-
- “...it makes no sense to turn people into robots and then release them into the community. This is particularly true for those who have been incarcerated for some years. There have been many accounts given over the years by those who have been released from prison of the unawareness regarding the regimental day. For some time after they still expected to be woken up, or jump up at the sound of rattling keys, inexplicably go to their room at 7.00pm.....*
- How about unlocking prisoners in the morning and leaving it up to individuals to get to work on time, make individuals responsible for logging in at work or they don't get paid.”*
- 13.209 In my view, given that most prisoners are in minimum security prisons prior to their release on parole, the prisoner's suggestions for ‘normalising’ life prior to release have merit. There is an urgent need for a more practical approach to pre-release programs in order to increase a prisoner's chance of success in the community; to reduce the likelihood of re-offending, thereby improving the cost-effectiveness of the prison system. A smooth transition to release may also reduce the risk of self harm for those long term prisoners who are apprehensive about fitting in to ‘life on the outside’.
- 13.210 To show true commitment to suicide and self harm prevention, it is essential that the Ministry takes steps to address the causes of a prisoner's ‘immediate stress’, to which boredom and inactivity are major contributors,²⁴ by taking a holistic and cohesive approach to the education and treatment of prisoners in its care. The Ministry's current commitment to programs in general is, in my opinion, questionable given that programs of all types remain largely under-staffed and under-funded and are almost universally unable to cater for the needs and demands of prisoners.
- 13.211 There are, of course, significant cost implications in a number of the recommendations which I have made regarding program provision. I make no apology for that based on the view – previously stated – that there are greater benefits for the prison system and for the community if prisoners are released better educated and trained and having been given the opportunity to address the offending behaviour which led to their imprisonment.
- 13.212 In the long term, there could also be significant cost-savings for the prison system (and the tax-payer) if the rate of reoffending is reduced. Given that a large number of prisoners reoffend²⁵ and return to prison I cannot say with any confidence that programs currently provided are cost-effective. In this regard, I agree with the view expressed in the AIC Trends and Issues paper “*The Economics of Implementing Intensive In-prison Sex-offender Treatment Programs*” published in November 1999, which stated:-

“Society must choose how to allocate limited resources most efficiently and in a manner that maximises social welfare. Resources can be said to be used efficiently if it is impossible to reallocate in any other way that would increase the overall benefits derived. The analysis of economic efficiency involves comparing the costs of using scarce resources against the resulting benefits.” (my emphasis)

13.213 As a final comment on programs, I am aware that the Ministry has recently completed its *Integrated Prison Regime Project* which it describes as -

“.....a major vehicle for improvement across Prison Services in Western Australia. The project seeks to integrate and maximise the impact of all relevant services and interventions for prisoners in a manner which increases efficiency and effectiveness.

The major elements of the project remit are:

- *The revitalisation of Unit Management within public prisons²⁶*
- *The development and introduction of a model of Case Management for prisoners*
- *The introduction of Cognitive Skills training for prisoners complemented by Interpersonal Skills training for prison officers*
- *The development of a Constructive Day for all prisoners*
- *The development of an integrated ‘Incentives and Earned Privileges’ system to encourage prisoners to engage with the prison regime in a positive manner.*

Given the scope of this project it is expected that the time frame for completion will be three years.”

13.214 As part of this project, the concept of ‘case management’ has been reviewed and improved. The Ministry has described case management as:-

“.....the process by which prisoners within Western Australian prisons will be assisted to achieve the goals identified in their Individual Management Plans. The aim of Case Management is the provision of integrated and coordinated services that assist offenders to address their offending behaviour. Case Management facilitates access to planned interventions within a supportive environment.

The steps involved in Case Management include comprehensive assessment, service planning and delivery, regular monitoring and review. Central to effective Case Management is the cooperative relationship established between the prisoner and designated Case Officer.”

13.215 In my opinion, this initiative should have a significant impact on the effectiveness of the Ministry’s program delivery, and the rehabilitation of offenders – *provided* that prison officers are adequately trained; that there are sufficient resources to meet the program needs identified; and the Ministry is prepared to evaluate its programs and address any deficiencies to ensure the best value for its ‘welfare \$’.

RECOMMENDATION 13.11

That the Ministry subject all of its programs to ongoing monitoring and evaluation as part of an assessment of efficiency and effectiveness to ensure that they meet prisoner and community needs.

SUMMARY OF RECOMMENDATIONS

- 13.1 That the Ministry should:-
- (a) acknowledge the importance of constructive activity in the prevention of suicide and self harm and in the rehabilitation of prisoners and ensure that all prisoners are provided with adequate opportunities for education, training, employment and treatment programs throughout their sentences at all prisons.
 - (b) take steps to remove the disincentives to participation in education identified by the Taskforce and in the course of my inquiry;
 - (c) provide funding, resources, trained staff and facilities to increase the opportunities for education (in its broadest sense), training, employment and rehabilitation throughout the sentence at all prisons; and
 - (d) obtain legal advice as to whether the *State Trading Concerns Act 1916* or any other legislation prevents the Ministry from offering particular forms of gainful employment to prisoners, and consider seeking amendment if it is found that there are legislative restrictions.
- 13.2 That, in line with United Nations *Standard Minimum Rule 77(1)*, in the interests of the mental and physical wellbeing of prisoners and as a means of creating better prisoner/officer relations, the Ministry:
- (a) employ a full time Recreation Officer/Sports Coordinator at each prison;
 - (b) ensure that each prison provides adequately resourced and appropriately staffed recreational and exercise opportunities for all prisoners; and
 - (c) encourage prison officers (by internal recognition and additional remuneration) to take responsibility for particular recreational activities for which they have appropriate qualifications and/or aptitude.
- 13.3 That in recognition of the acknowledged therapeutic benefits of music and art for all prisoners, and particularly Aboriginal prisoners, the Ministry:-
- (a) ensure that adequate resources and facilities are available at all prisons for these activities; and
 - (b) accord art, music and cultural activities program status.
- 13.4 That the Ministry ensure that sufficient resources and funding are provided to enable prisoners to participate and complete treatment programs prescribed identified in the assessment process on admission to prison or by the Parole Board prior to their release date.
- 13.5 That the Ministry provide rehabilitation programs at an early stage in and throughout the sentence with refresher courses at the end.
- 13.6 That the Ministry ensure that participation in culturally appropriate basic literacy and numeracy courses is encouraged in a sensitive way at all prisons.
- 13.7 That the Ministry provide appropriate cultural programs for Aboriginal prisoners at all prisons, involving local community and tribal elders, on the lines of those available elsewhere in Australia and New Zealand.

- 13.8 That the Ministry address the current inequality of education, training and employment opportunities for female prisoners throughout the State by providing a wider range of programs designed specifically to cater for their needs and ensuring that they are adequately staffed and funded.
- 13.9 That the Ministry take steps to review program provision for remand prisoners at Bandyup and at regional prisons and ensure that they have access to a range of education, meaningful employment and rehabilitation opportunities.
- 13.10 That the Ministry develop appropriate programs to assist ‘difficult’ prisoners address their behavioural problems as alternatives to progressively more severe disciplinary measures.
- 13.11 That the Ministry subject all of its programs to ongoing monitoring and evaluation as part of an assessment of efficiency and effectiveness to ensure that they meet prisoner and community needs.

¹ *Suicides in Prison* Routledge 1992

² *ibid* at page 165

³ *ibid* at page 145

⁴ *ibid* page 159

⁵ *Suicide is Everyone's Concern* 1998

⁶ *Review of Maori Suicides, Executive Summary* at page 2

⁷ The kitchen provides meals for other prisons

⁸ I understand that accredited music programs are now run at different times in the Education Centre

⁹ In response to a parliamentary question the Attorney General advised that as at 5 May 2000, 397 of a total muster of 609 prisoners at Casuarina were involved in full time work or programs.

¹⁰ The laundry handles the prison laundry and a contract for the cleaning of uniforms from an abattoir

¹¹ The number of Education Officers has increased from 19.5 in 1997 to the current figure of 30

¹² Census on the night of 30 June 1999

¹³ It will also assess the level of each prisoner's risk of self harm and health needs (both physical and mental)

¹⁴ Such as those identified in the Albany Custodial Inspection Report. See paragraph 13.118

¹⁵ A Criminal Justice Consulting Organisation which specialises in providing training and technical assistance in correctional settings worldwide. The CSP has been successfully introduced in Canada, the UK, Scotland, the USA, Sweden, Germany, New Zealand and South Australia

¹⁶ In January 2000 the Ministry developed an appropriate program for prisoners who are in denial.

¹⁷ This program is currently under review

¹⁸ See paragraph 13.33

¹⁹ See Chapter 8 paragraphs 8.42-8.43

²⁰ “*Suicides in Prison*”, at page 159

²¹ **UN Rule 21(1)** - “*Every prisoner who is not employed in out-door work shall have at least one hour of suitable exercise in the open air each day.*” and **Standard Guideline 5.62** - “*Weather permitting, prisoners should be allowed access to open air for at least one hour each day.*” – was not applied during the lockdown at Casuarina prison for many months after the riot in December 1998.

²² See paragraph 13.95

²³ See Appendix 1 for full text of the RCIADIC recommendations

²⁴ See also Chapter 8

²⁵ See Chapter 6, paragraphs 6.12-6.13 and Table 6.1

²⁶ See also Chapter 15, paragraphs 15.31-15.43

CHAPTER 14 JUSTICE ISSUES

PAROLE ISSUES

BAIL ISSUES AND COURT APPEARANCES

REVIEW OF SENTENCE LAWFULNESS AND CALCULATION

REPRESENTATION OF FAMILIES AT INQUESTS

SUMMARY OF RECOMMENDATIONS

- 14.1 This chapter contains comments about a number of aspects of the overall administration of justice in Western Australia that have arisen, in one way or another, in the deaths of prisoners. Some issues have directly impacted on prisoners in custody while others are more relevant to how offenders (or alleged offenders) get into prison. The latter point is not the focus of this Report, but is discussed to reinforce the idea that imprisonment must always be the last resort for any person - and any unnecessary imprisonment can only increase the chances of deaths in prisons occurring, as well as exacerbating the consequential impact of imprisonment on the families of prisoners.

PAROLE ISSUES

- 14.2 Eligibility for parole and gaining release on parole at the earliest opportunity are matters of great importance for almost all prisoners. I receive numerous complaints from prisoners when a decision is made by the Parole Board to defer or deny an application for parole. Some do not appear to understand the relationship between the courts, the Ministry and the Parole Board. For example, the court might hand down a sentence including eligibility for parole, but with no explicit requirement for particular rehabilitation programs to be completed. However, Ministry staff will assess whether the prisoner needs to undertake certain rehabilitation courses before it will advise the Parole Board of the degree of risk of re-offending by the prisoner. Many prisoners have difficulty in understanding and accepting this.
- 14.3 Many prisoners also complain that although they do everything required of them in regard to programs and their parole plan, and are considered suitable for parole by prison and FCMT staff, their applications are not supported by the Ministry or approved by the Parole Board. They argue that the prison staff know them best, whereas to the rest of the Ministry and the Board, they are just “*a photo and a file*”. Many prisoners have difficulty in coping with this situation. The problem is particularly acute when Ministry staff decide that a prisoner need not do a particular program but the Parole Board subsequently requires that he/she should.
- 14.4 In most cases my involvement, if any, has been limited to ensuring that the Board has been given accurate and adequate information by the Ministry on which to base its decisions. In general, I would not attempt to investigate a complaint about the merits of the Board’s decision in a particular case. However, there have been several aspects of the Board’s role which were of concern to me and which I have discussed with successive Chairmen of the Board.

Reasons for Board decisions

- 14.5 First, the complaint is often made by prisoners that the Board does not provide the prisoner with adequate written reasons for its decision. This contention was the subject of a 1996 decision of the Supreme Court of Western Australia in which the Court stated¹ that

“...the Board is required to provide not only its conclusion, eg that there is not an appropriate parole plan, or that the prisoner is at a high risk of reoffending, but also the material which led the Board to that conclusion and, if relevant, the criteria against which the Board judged the information available to it. The reasons should be sufficiently specific to enable a prisoner to understand what aspects of his previous offending, his conduct within prison, or plans which may have been made for his release, caused the Board to have the concerns which gave rise to its determination.”

- 14.6 Some time before my inquiry commenced, having considered the Board's policy, the decision in the case referred to above, and the standard letter of decision sent to prisoners by the Board, I expressed the view to the then Chairman that the issue of adequacy of reasons given might still result in complaints to my Office. Following discussions, I was advised that a more explanatory form of letter had been introduced. While I commend the Board on doing so, I continue to receive complaints about this issue from prisoners. I can appreciate the resource implications for the Board if detailed reasons were always provided, but recent examples of letters I have seen from the Board to prisoners conveying the decision about parole or work release continue to provide little or no information about why a particular conclusion was reached. For example, phrases such as "*unaddressed offending behaviour*" or "*poor prison conduct record*" provide the prisoner with little specific information to help him/her understand what aspect of their offending behaviour or prison record caused the Board to form those opinions. Given that the Board presumably discusses in some detail the reasons for reaching the conclusion that a prisoner has failed to address offending behaviour or has a poor prison conduct record, I would have thought that it would not be too difficult to extract that detail from the Board's Minutes.
- 14.7 The Chairman of the Parole Board has acknowledged that the Board's inability to provide detailed reasons in the first instance is a problem. He has advised me, generally, as follows:-
- "In respect to parole issues I fully share with you the concerns that you have raised and assure you that the Parole Board has every intention of continuing to address these matters.*
- I am acutely aware of the restrictions under which the Board operates due to lack of resources and have made strong representations to the Ministry of Justice to provide the additional staff which are urgently required. The need for additional staff was identified in a recent review and we now await implementation of the recommendation by the Ministry of Justice. Most of the matters in your draft report have already been considered by the Board which has resolved that they be dealt with expeditiously upon the restructuring of the Secretariat."*
- 14.8 In relation to the provision of more detailed reasons for decisions the Chairman has advised as follows:-
- "I acknowledge that this is a problem and also that the Board has every intention of addressing it as soon as we have the resources to do so. The number of cases being considered by the Board at each meeting is increasing and there is an expectation that the decisions reached will be communicated as quickly as possible. With additional staff it should be possible for more detailed letters to be drafted without undue delay.*
- I agree that phrases such as "unaddressed offending behaviour" or "poor prison conduct" ideally require more detailed explanation. However, should a more detailed letter be sent it is vital that the information contained in it is accurate. This requires a great deal more staff time than is currently available to the Board."*
- 14.9 Second, at the time of my initial discussions the then Chairman advised me that there were no sessions of the Board at which a prisoner was able to appear and to be heard, and to hear first-hand from the Board the reasons for its decision. The Board had applied for funding from the Attorney General to provide the resources to hold hearings at Casuarina, and sought my support for its application, which I was happy to provide in the form of a letter to the Attorney General. Some funding was provided subsequently and the Board does now hold sessions at Casuarina at which prisoners who have been refused parole can "appeal" in person - but only if the Board agrees to grant such a "hearing". This initiative will assist some prisoners considerably to understand the basis for a decision made by the Board.
- 14.10 The Chairman has clarified when the Board will grant a "hearing". The Board has adopted a policy of allowing any prisoner who has been denied parole or deferred for more than six months to seek a personal hearing. All prisoners who meet this criterion are granted a personal hearing if it is sought.

The Parole Board's Expectations

- 14.11 On a number of occasions I have received complaints from prisoners who have been assessed by Ministry staff as not eligible for, or not needing to do, a particular program - only to have the Parole Board decide subsequently that parole or work release cannot be granted at that time because the prisoner has not adequately addressed offending behaviour, as evidenced by the failure to do the program. When these issues arise they are usually followed by a 'scramble' to fit the prisoner onto a program at short notice - often with consequential adverse affects on another prisoner who is removed from the program to make room.
- 14.12 In such cases I have no reason to question the merits of the Board's assessment of the need for the prisoner to undertake the program. My concern is that the need was not identified at an earlier stage - which would assist Ministry staff and the prisoner to know what expectations the Board may have.
- 14.13 I appreciate that, because circumstances and people change over time, it will not be possible in every case to specify with certainty in advance the Board's future requirements. Inevitably, therefore, cases may arise where reasonably based expectations must be altered. The challenge to all concerned must be to keep such cases to a minimum. I have been informed that the Victorian Parole Board operates a system whereby every prisoner is assessed by that Board early in the sentence and pre-requisites for parole identified - which are then used to guide the prisoner's management and rehabilitation efforts during the sentence. At the time a parole decision is made it is apparently relatively rare for any unaddressed issues to delay parole.
- 14.14 I have no doubt that the Victorian model is resource intensive and that the Western Australian Parole Board could not hope to emulate such a system with its present limited resources.
- 14.15 On the issue of determining what should be required of prisoners before a parole or other decision can be made, the Chairman of the Board has advised me as follows:-

"When considering whether or not a prisoner should be released on parole, the Board has before it information from a number of sources, including in some cases psychological and psychiatric reports. This material, taken in conjunction with the Judge's sentencing remarks, prison assessments, reports from the Victim Mediation Unit, Community Corrections Officer's assessment, the criminal record of the prisoner and their community supervision record, may lead the Board to decide that a particular programme should be undertaken prior to release on parole.

I understand that at the beginning of a sentence the prison authorities develop a plan for each prisoner which identifies the need for programmes to address their offending behaviour. The providers of the relevant programmes then carry out an assessment but in some cases the prisoner refuses to admit that they have a need for such a programme. In other cases the prisoner may incur, late in the sentence, a prison charge which indicates their need for a programme. Either case may lead the Parole Board to require programme participation prior to release.

It should also be stressed that currently in cases where a prisoner has been unable, through no fault of their own, to access the relevant programmes, the Board considers releasing that prisoner with the condition that they undertake a suitable programme in the community.

You have noted that the WA Parole Board could not hope to emulate the Victorian model and I do not think that, even with a massive increase in resources we would be able to consider the programme needs of each prisoner in the manner suggested. Nor does the Board possess the expertise necessary for the professional assessment of treatment needs. The Board's preferred option is effective assessment of prisoners by the Ministry of Justice at an early stage in their sentence and effective programme provision. In the Board's view it is the lack of programme availability which most frequently creates the problems. In addition, I emphasise some prisoners are unwilling to undertake programmes."

- 14.16 Finally, the view was expressed to me that the Board's practice of meeting on Fridays caused operational problems within the prisons in terms of providing appropriate support and counselling for prisoners who received adverse decisions late on a Friday afternoon. During the course of my inquiry the Board changed its meeting day to Thursday, which has been of assistance in this regard.
- 14.17 I had intended to recommend that the Board be better resourced so that it could conduct an assessment of every prisoner eligible for parole early in the sentence with a view to specifying (non-binding) expectations of what the prisoners should do to maximise the likelihood of gaining parole at the earliest date. However, in light of the Chairman's advice of the Board's preferred position as set out in paragraph 14.15 above, I make the following recommendations:-

RECOMMENDATION 14.1

- (a) **That the Ministry of Justice respond to the Parole Board's request for additional resources as soon as possible. In particular, the Parole Board should be resourced so that it can provide detailed reasons for its decisions to prisoners; and**
- (b) **that, with a view to maximising the effectiveness of the Ministry's assessment process for prisoners, the Board and the Ministry review:-**
- **how the Board's expectations about what prisoners should be required to do during a sentence can be better understood by the Ministry; and**
 - **the nature and extent of programs to be offered by the Ministry and the timing of their delivery.**

Communicating Parole Board decisions to prisoners

- 14.18 The way in which Parole Board decisions are communicated to prisoners was considered to be a factor in the deaths of two prisoners - Shane **Hitchcock** (Canning Vale; June 1993) and Alessandro **Leone** (Casuarina; April 1998).
- 14.19 Mr Hitchcock, who committed suicide on 15 June 1993, was eligible for parole on 24 June 1993. When his application for parole was considered by the Parole Board on 11 June, parole was deferred pending further psychological and psychiatric reports. As the Coroner subsequently reported, the usual practice following a Board decision to defer parole was for a Board staff member to telephone a designated officer at the prison the same day to advise of the decision. The information should then be passed on to the prisoner's accommodation unit where the Unit Manager or the Wing Officer would advise the prisoner of the Board's decision. The officer is supposed to remain available to provide counselling and assistance to the prisoner, if necessary, because it is recognised that the prisoner might be under stress and that the news would inevitably be disappointing, at the least.
- 14.20 On Friday 11 June there was, apparently, a disturbance in Mr Hitchcock's Unit which distracted the officers from conveying the Board's decision personally to Mr Hitchcock and he did not find out about the Board's decision until the following Tuesday (15 June) when he received a formal letter from the Board. The Coroner suggested that the formal style of the letter might not have been easily understood by Mr Hitchcock as he took it to a prison officer who then spent some ten minutes explaining the situation to him. Mr Hitchcock reportedly appeared subdued and disappointed and was found hanging in his cell at approximately 9.45pm that night.

- 14.21 Both the Coroner and the IIU investigator concluded that the unexpected news of his parole deferral and the manner in which it was communicated to him were factors - although not the only factors - in his decision to take his own life.
- 14.22 The system for notifying prisoners required the Coordinator, Sentence Planning to leave a written message containing the relevant Board decisions in a designated place for collection by an officer from each Unit. According to the Coroner, the prison administration acknowledged that the system failed on this occasion. The IIU report stated that the procedure had now been rectified to prevent any recurrence –

“The Coordinator Sentence Planning will now advise each Unit Manager personally of Parole Board decisions and it will be the responsibility of each Unit Manager to personally advise the prisoner in his Unit and record that the prisoner has been advised in the Unit occurrence book.”

I am reasonably satisfied that this response by the Ministry was appropriate.

- 14.23 However, it appears that similar circumstances may have arisen in the death of Alessandro **Leone** who committed suicide in Casuarina in April 1998. His statutory review date for consideration of parole was 26 March 1998. On 20 March 1998 the Board reviewed Mr Leone’s suitability for inclusion in a pre-release program and for parole. The Board resolved to defer the matter and to review it again in July 1998. From the information that I was able to review, there is no record in the Unit occurrence book for 20 March 1998, or the subsequent days, that the Unit Manager notified Mr Leone - or any other prisoner in that unit who had been considered by the Board on that day - of the Board’s decisions.
- 14.24 The Parole Board’s procedure in 1998 was to fax ‘decision slips’ relating to each prisoner considered at its meeting to each prison - and then to telephone the designated officer at the prison to check that the correct numbers of slips had been received. The Board keeps no records of this confirmation and the Coroner subsequently found that “... *it would appear that on this occasion the prison did not receive a copy of the decision*”. In any event, it seems clear that Mr Leone was not advised by prison staff of the outcome of the Board’s consideration of his case on the day it made its decision - even though, presumably, prison personnel were aware that the Board would be considering Mr Leone that day.
- 14.25 It is clear that Mr Leone received the letter of advice from the Board the following week, (in the same manner as Mr Hitchcock received his letter) because it is known that he expressed his disappointment with the decision to the Superintendent and was advised to write directly to the Board. It appears that Mr Leone was aware that the Casuarina Unit Conference meeting of 12 March 1998 had decided to recommend against parole because of his “*ongoing psychiatric problems*” because he wrote to the Board on 29 March 1998 disputing that he had psychiatric problems and appealing against the Board’s decision not to grant him parole.
- 14.26 The Secretary of the Board replied to Mr Leone on 1 April 1998, explaining that “...*the professional psychiatric advice to the Board is that you do suffer from a psychiatric disorder and one which requires further investigation*” and reiterated the Board’s decision to review the case in July 1998. It appears that the Secretary considered Mr Leone’s letter was seeking clarification of the Board’s decision, which he provided. Because he did not regard it as a formal appeal against the Board’s decision, he did not consider it necessary to instigate a similar notification procedure to that followed when the Board’s decisions are conveyed to prisoners. That view was reasonably open to the Secretary to take. However, in hindsight, it might have been better if the usual notification procedure had been followed because it is likely that, in Mr Leone’s mind at least, he expected a reply granting him release on parole.

- 14.27 From enquiries which I have made with the administration at Casuarina Prison, I understand that incoming mail for prisoners is scrutinised but not recorded. I have also been advised that scrutiny of the letter from the Board would not have resulted in an FCMT staff being alerted that they may need to monitor Mr Leone's reaction to the Board's response. Mr Leone was found hanging in his cell at approximately 8am on 8 April and the Coroner found that the cause of his death was suicide. In my view, the decision not to grant him parole was a factor in his decision, but not the only factor.
- 14.28 Although it appears unlikely that Mr Leone was orally advised of the Board's decision on 20 March 1998 in accordance with the established procedure, it seems unlikely that any lack of counselling or monitoring on that particular day would have affected his decision three weeks later. In this regard, I note that it was Mr Leone's psychiatrist who recommended that his parole be deferred. The psychiatrist does not appear to have considered Mr Leone at risk of self harm and consequently did not alert the 'appropriate authorities'. It is not clear whether prison officers who saw Mr Leone on a daily basis might have expected him to react adversely to a deferral of parole. Nevertheless, it is, in my opinion, significant that there was no reaction by the prison administration to the possibility that Mr Leone may have reacted badly to the Board's letter of 1 April 1998.

RECOMMENDATION 14.2

That the Ministry and the Parole Board review the procedures by which Board decisions and other correspondence from the Board are conveyed to prison staff and to prisoners to ensure that:

- (a) prison personnel are aware that the prisoner is to receive advice from the Board;**
 - (b) a prison officer personally delivers the correspondence or oral advice to the prisoner, thereby having the opportunity to observe the impact of the advice on the prisoner; and**
 - (c) the records of both the Board and the prison document whether information about decisions or other correspondence has been conveyed to and received by, the prison and the prisoner in every case.**
- 14.29 In response to my draft report, the Board has advised me that it has already sought to improve its procedures for communicating its decisions to prisoners and has resolved to undertake a further comprehensive review when the new administrative arrangements are in place. For example, the Chairman has pointed out that:-
- as already noted, the Board now meets on a Thursday to ensure that staff are available at the prison to discuss the Board's decision with prisoners and monitor their reaction to adverse decision;
 - prior to each meeting of the Board, an agenda is circulated to each prison so that prison staff are fully aware of who is to be considered by the Board at that meeting. A check is made to ensure that the agenda has been received; and
 - the Board maintains a record of decisions and correspondence sent to each prison and checks to ensure that the decisions and correspondence have been received.
- 14.30 Circulation of Board agendas will, of course, inform prison staff of which prisoners will be considered at formal Board hearings, but will not cover prisoners who correspond with the Board.

Aboriginal prisoners

- 14.31 The Aboriginal Legal Service (ALS) submitted to my inquiry that Aboriginal prisoners experience particular difficulty in accessing parole and work release, stating that less than 30% of parolees and only 8.5% of prisoners given work release orders in 1996 were Aboriginal. The ALS told me that many Aboriginal prisoners believe they are unfairly denied work release and that *“Clearly systematic denial of parole and work release to Aboriginal prisoners contributes to their continued over-representation in Western Australian prisons.”*
- 14.32 Ministry statistics about parole and work release orders (which do not match exactly Parole Board statistics but are sufficiently similar to be reasonably comparable) are shown in **Table 14.1**.

TABLE 14.1		Parole and Work Release Orders for the years ending 30 June 1996-1999		
		Aboriginal	Total	Aboriginal as % total
Parole	1996	409	1401	29.2%
	1997	402	1379	31.4%
	1998	459	1431	32.1%
	1999	430	1266	34.0%
Work Release	1996	18	179	10.0%
	1997	19	180	10.6%
	1998	10	123	8.1%
	1999	9	97	9.3%

Source: Ministry of Justice Statistical Reports, 1996-1999

- 14.33 Table 14.1 shows that, in relation to parole orders, those made for Aboriginal prisoners represent about one-third of all orders - which is consistent with the proportion of the total prison population represented by Aborigines. That seems to be appropriate. Parole Board statistics for 1998 (the latest available) show that 82.9% of Aboriginal males are granted parole on the first consideration - virtually identical to the 82.8% of other male prisoners. However, female Aboriginal prisoners gained parole on the first consideration in only 73.8% of cases compared to 92.3% for other female prisoners. Comparable figures for 1997 are not available. The much smaller number of cases for women prisoners means that percentage differences may be exaggerated in a given year and may not reflect the longer term position.
- 14.34 In relation to work release orders, Table 14.1 clearly suggests that Aboriginal prisoners have consistently benefited from such orders to a disproportionately smaller extent than non-Aboriginal prisoners. Why this might be so is beyond the scope of this Report, but the anecdotal information given to me by prisoners and Ministry staff is that the work release system and criteria for eligibility is weighted heavily against Aboriginal prisoners - particularly because they often have long records of previous convictions.

14.35 In response to those comments, the Chairman of the Parole Board has advised me:-

“The two main areas of concern appear to be work release orders and female Aboriginal prisoners. With respect to work release orders, the Board can only operate within the Statutory criteria. These require the person to be no more than a minimum risk to the safety of people in the community. This means that work release orders are of very limited application generally and cannot be made where a person has a significant record of violence. The Board is aware however of pending legislation changes that will re-word minimum risk to low risk and may therefore provide the opportunity for more prisoners to meet the Statutory criteria for release.

Another mitigating factor that may influence the apparent discrepancy in figures between work release orders for aboriginal and non-aboriginal offenders is the imprisonment sentence length. In order to be eligible for work release a prisoner must have served 12 months in custody prior to release. This means that the initial head sentence must have been greater than 3 years, with parole eligibility, or 18 months if there was no parole eligibility. Terms above these limits tend to be imposed for the more serious violent or sexual crimes, or drug trafficking.

As a general observation it would appear that aboriginal offenders tend to be imprisoned for lesser charges, usually relating to minor assaults, alcohol and vehicle related offences and therefore do not receive a lengthy term of imprisonment qualifying them for a work release order. This however would obviously need to be investigated by the Ministry of Justice to statistically compare the percentage of prisoners eligible for work release against the number of orders being granted.

The position of Aboriginal women is clearly a matter which requires further investigation. However, without expressing a final view, two points may be made. First, as you say, the number of such cases is relatively small and therefore more open to statistical variation. Secondly, the Board considers every case on an individual basis. Experience suggests that Aboriginal women who are serving lengthy and (therefore parole-eligible) sentences tend to face particularly difficult issues with respect to substance abuse and psychological and/or psychiatric problems.”

14.36 In light of the Board’s response to my comments, the important point is that there is a need for the Ministry to commence a study of parole and work release statistics to be undertaken to establish reliable data and identify any apparent anomalies in current procedures.

RECOMMENDATION 14.3

That the Ministry and the Parole Board institute a review of available data, current assessment procedures and eligibility criteria to determine whether female Aboriginal prisoners and Aboriginal prisoners generally are, or are likely to be, disadvantaged in relation to parole and work release orders respectively. Action to rectify any imbalance found should be taken, including the reconsideration of any legislated eligibility criteria.

BAIL ISSUES AND COURT APPEARANCES

Changes to the *Justices Act* and the *Bail Act*

- 14.37 The death of Paul **Vincent** (June 1992; Remand Centre) caused the Coroner to make a recommendation that consideration be given to amending section 79 of the *Justices Act* and/or the *Bail Act* in order to avoid unnecessary court appearances by prisoners on remand. At the time of Mr Vincent's death the *Justices Act* required that a person in custody in respect of either a simple or indictable offence should be brought before a court each thirty days.
- 14.38 Mr Vincent had been charged with a number of offences in different locations and was required to appear in both the Perth and Fremantle Courts of Petty Sessions. He had previously been on probation and had also been released on bail, but he was eventually remanded in custody. In April 1992 he appeared in the Perth Court of Petty Sessions at which time an application was made under section 656A of the *Criminal Code* so that all charges against him could be heard simultaneously. This was to take place in July 1992. The following day in April he appeared in court in Fremantle, was committed to appear in the Perth District Court in July 1992 and was remanded in custody because of the other pending charges. Mr Vincent appeared in the Fremantle Court of Petty Sessions again on 4 May 1992, due to the provisions of section 79 of the *Justices Act*, and was remanded for a further thirty days (until 2 June). He also appeared in the Perth Court of Petty Sessions on 26 May 1992 in connection with the transfer to Perth of the charges previously heard at Fremantle. He appeared again in the Fremantle Court of Petty Sessions on 2 June 1992.
- 14.39 The Coroner commented that the appearance on 2 June:-
- “...was necessary in a strict legal sense...The provisions of s79 of the Justices Act required him to be brought before a Court at least every 30 days on every indictable charge, or group of charges. In practical terms there was no sense in having the deceased brought up in Court again. Such appearances simply overload already hard pressed Court and Prison resources and on the evidence before me, causes distress to prisoners.”*
- The evidence before the Coroner was that Mr Vincent had been very angry and upset over the Fremantle Court appearance on 2 June.
- 14.40 The Coroner's finding was that Mr Vincent died as a result of attempted suicide by hanging. He also found that the “*key factor*” which prompted the suicide was the notification over the prison's public address system on 7 June 1992 that Mr Vincent was required to attend court the following day. It appears that Mr Vincent had been angry and upset over the impending court appearance, had expressed his anger and frustration to fellow prisoners and a prison officer, and was found hanging in his cell later that evening. The tragedy of the case is that this notification was incorrect - as he was not in fact required to attend court. It appears that his prison records were mistakenly endorsed with the details of another prisoner named Vincent who was required to appear in Court on 8 June. The Coroner stated that this “...*simple error led, indirectly, to quite tragic consequences.*”
- 14.41 The Coroner expressed the view that there was a need to reconsider whether a person in custody should be required to be brought before a court every thirty days and recommended accordingly in regard to the *Justices Act* and/or the *Bail Act*. In a letter to Mr Vincent's mother in August 1993, the then Attorney General advised that the Coroner's recommendations had been noted and would be “...*considered in due course.*” As part of this inquiry I wrote to the Ministry to request its advice as to whether or not that consideration did take place. The Ministry advised me that the *Justices Act* has not been amended in the way suggested and that defendants on charges of indictable offences are still required to attend court on either an eight or a thirty day cycle.²

- 14.42 The Coroner referred specifically to the *Acts Amendment (Jurisdiction and Criminal Procedures) Bill 1992*. I understand that the proposed amendments to the *Justices Act* to allow for “fast-tracking” – the process of expediting the committal of cases in the District Court where the defendant intends to plead guilty – came into force on 1 March 1993 and has drastically reduced the length of time defendants who wish to plead guilty spend on remand.
- 14.43 The Coroner also recommended changes to the *Bail Act* following his inquest into the death of Russell **Gibson** (also known as Green) (October 1992; Remand Centre), having expressed concern at the procedures involved in obtaining and approving a surety.
- 14.44 Mr Gibson was charged with a number of offences for which the maximum penalty was eight years imprisonment. Under the provisions of the *Criminal Code*, these charges could not be heard by a magistrate and were dealt with as indictable matters under the *Justices Act*. On 21 October 1992 Mr Gibson appeared in court to make a bail application. Bail was granted on terms of a personal undertaking of \$10,000 and a surety of \$7,500, the latter to be approved by a JP, but he was remanded in custody until such time as those undertakings could be met. If they were not met by 29 October, then Mr Gibson was required to reappear in Court on that date.
- 14.45 On Friday, 23 October, while in custody at the Remand Centre, Mr Gibson arranged for a friend, Mr R, to act as surety. However, Mr R was deemed to be unacceptable as a surety because a check of police records carried out by prison staff showed that there were outstanding warrants against him, totalling fines of \$186 which, it was discovered, were parking fines plus costs incurred by Mr R’s son while he was driving Mr R’s car, and were unknown to Mr R. The Justice of the Peace who contacted Mr R to determine his suitability, advised him to pay the warrants on the following Monday at which time he could then be approved. Unfortunately, as the Coroner reported, Mr R was unable to attend to this on the Monday and on Tuesday, 27 October, he heard that Mr Gibson had hung himself the previous evening.

Bail Act procedures

- 14.46 The Coroner expressed concern at two levels. First, he concluded that the correct administrative procedures required by the *Bail Act* were not followed on 23 October when Mr R attended the Remand Centre. The Coroner referred specifically to sections 37(2) and 40, which provide, respectively, that an applicant to be a surety must complete a declaration in the prescribed form **before** a decision is made by an authorised person about the applicant’s suitability, and that the authorised person may only make enquiries about the applicant **after** receiving the declaration.
- 14.47 The essence of his concern was that a decision had been made that Mr R was unsuitable as a surety before he had completed a declaration. According to the Coroner, that declaration would have shown that Mr R would have been an acceptable surety. The Coroner concluded that the declaration (Form 8) was not given to, or completed by, Mr R because a decision had already been made that the outstanding warrants rendered him unsuitable. The Coroner stated that the procedure described in the Act was:-

“...the clear intent of Parliament. It is not lawful for anyone to ‘invent’ a new procedure to suit the convenience of Justices, members of the public or prison officers. Unfortunately there is no statutory duty on any person to ensure a Form 8 is handed to a proposed surety.”

- 14.48 The Coroner recommended that the Act be amended to overcome the situation. He also recommended that the Ministry “...review the practice of...checking with the Police Department’s computer records on proposed sureties as a matter of some priority.” The then Executive Director advised the Attorney General on 31 March 1993 that a review would be carried out “without delay.”

- 14.49 When asked whether the Act had been amended and what were the outcomes of the above review, the Ministry advised me that there was no evidence that a formal review had been carried out. Changes had, however, been made to bail procedures. The Ministry's advice then described the bail procedures at metropolitan and country prisons, namely that the superintendent or officer-in-charge should contact the police, advising the name of the proposed surety and the name of the defendant seeking bail. The police response is then conveyed to the Justice of the Peace who has been asked to assess the application. It was clear from the Ministry's response that these steps are taken **before** the surety completes the Form 8 declaration. In other words, the procedure as described is the **same** procedure which the Coroner found to be incorrect, and which was supposed to be reviewed in 1993 by a directive from the Executive Director - but apparently was not.
- 14.50 Although the Ministry advised me that there are two Bail Coordinators employed at the Remand Centre, my understanding is that there is, in fact, only one. However, the described bail procedure at the Remand Centre appears to be the correct procedure in that the proposed surety completes the required declaration *before* any enquiries are made with the police.
- 14.51 I was concerned to receive advice from the Ministry to the effect that the incorrect procedures are still in place. Moreover, information given to me during the course of my inquiry suggests that the administration of bail and surety conditions remains haphazard and dependent to some extent on the wishes and habits of individual Justices of the Peace. For example, it appears that some Justices insist that prison staff make enquiries with police about prospective sureties before they will come to a prison to assess an application. In view of the voluntary role of Justices it is understandable that they would not want to use their time and resources making wasted journeys. However, as the Coroner stated, the procedure required by the Act is "...*the clear intent of Parliament.*" The Ministry has advised me that it has instigated a review of the *Bail Act* which is being carried out by the Crime Research Centre of the University of Western Australia. The review will consider the arrangements for bail in light of the procedure in New South Wales where, for most offences, a range of conditions can be imposed on the offender rather than seeking surety.
- 14.52 I also understand that prison staff are generally inexperienced in the bail process and tend to avoid processing enquiries from prospective sureties if possible. It appears that sureties are still, on occasion, informed by telephone, either by officers or the bail coordinator, that they are unlikely to be approved by a Justice of the Peace. Often, no Form 8 is filled in; no record of the enquiry or advice is recorded; and in many cases, a Justice has never been consulted. If my understanding is correct, this is a quite unacceptable situation.

RECOMMENDATION 14.4

That the Ministry:

- (a) review the procedures followed in all Western Australian prisons to determine the level of knowledge officers have of the requirements of the *Bail Act* and the working arrangements between prison officers, police and Justices of the Peace;**
- (b) ensure that the requirements of the *Bail Act* are being complied with, in practice, in all prisons; and**
- (c) complete the review of the *Bail Act* as quickly as possible.**

Approvals outside normal hours

- 14.53 The Coroner's second expression of concern was about the arrangements for obtaining approval of a surety after normal office hours or at weekends. He stated that this revolved around "...*the availability and idiosyncrasies of various JPs...*" The Coroner viewed Mr R as an acceptable surety and believed that he should have been judged as such on 23 October. In his view, the existence of the warrants was only one relevant factor to be considered and should have been outweighed by Mr R's overall financial position.
- 14.54 Following his detailed observations on the operation of the *Bail Act*, the Coroner considered that "...*specific persons, appropriately trained, should be appointed as a Bail Justice for each Petty Sessions Court throughout the State...who should be paid an appropriate on call allowance for after hours attendances.*" In his view, this would end the system of "*justice on the cheap.*"
- 14.55 I also received a submission from an advocacy group to the effect that there has been a general erosion of the right to bail for accused persons, and that community pressure and Government ideology have resulted in more people being sent to prison. This had led to an increase in the number of prisoners remanded in custody and the added risk of suicides. It was submitted that there should be greater use of alternatives to bail, such as home detention, that the Bail Hostel should be re-opened (this was a "*half-way house*" facility for people who were unable to raise a surety or provide suitable accommodation for themselves while on bail), and that there should be less emphasis on the requirement for a surety.
- 14.56 I wrote to the Ministry as part of this inquiry to obtain up to date information about these matters. Its advice was that the *Bail Act 1982* had not been amended but that the *Bail Amendment Bill 2000* seeks to broaden the range of persons with the authority to approve surety. The categories of authorised persons will be amended to include "*any person for the time being in charge of a prison*" and that this will ensure that even after normal working hours, an officer will be available to approve surety applications.
- 14.57 The Ministry also advised that:-
- "As a condition of their appointment, prospective Justices of the Peace have been required to successfully complete a tertiary level training course preparing them for their new duties and responsibilities. This training course includes specific emphasis on the Bail Act 1982, in particular the procedures involved in obtaining and approving a surety.*
- Issues associated with the practices of Justices of the Peace have been recently identified as part of a review initiated by the Attorney General. Officers from the Court Services Division of the Ministry of Justice are currently preparing a proposal for the Attorney General suggesting changes to improve the current situation. The review will seek to improve consistency of practices and the availability of JPs, relating to bail and surety matters."*
- 14.58 Because the *Bail Amendment Bill 2000* is still under consideration by Parliament and it is not certain what changes will result from the review mentioned above, I am not inclined to make specific recommendations regarding this issue. Nevertheless, I believe that it is appropriate to record disappointment that it is only now, some seven years after the Coroner's comments about the death of Mr Gibson that concrete action is proposed that may improve the situation.

Court appearances by prisoners

- 14.59 Since the death of Mr Vincent and the recognition by the Coroner that court appearances can be stressful and distressing times for remand prisoners, the Ministry has introduced a video communications link between the Remand Centre and the courts in Perth. I was able to observe the system in operation during one of my visits to the Remand Centre as part of this inquiry. In my view, its operation clearly provides a less stressful experience for prisoners and a more efficient and effective use of the Court's time.
- 14.60 A trial video link was established in March 1996 between the Remand Centre and the Central Law Courts. It has since been further developed and, in January 1999, the facility was relocated to a purpose built area at Hakea Prison. The link has since been extended to the Kalgoorlie Courthouse and I understand that it is planned to extend it to courthouses at Bunbury, Geraldton, South Hedland and Fremantle. The *Acts Amendment (Audio and Video Links) Act 1998* broadened the powers of Western Australian courts to deal with various matters by video and the link was expected to process about one hundred remand prisoners per week in 1999.
- 14.61 Although the video-conferencing facility is a welcome innovation, it is again disappointing that it took some three years after the Coroner's inquest on Mr Vincent's death for the facility to be implemented.

Notification of Court appearances

- 14.62 Following the Coroner's inquest into Mr Vincent's death, in February 1993 the Ministry issued a directive to superintendents – to take effect immediately - that staff were to notify prisoners individually of forthcoming court appearances the day before the appearance; that the public address system was not to be used; that records were to show a prisoner's first names, not just initials; and that all requests for transfers to court were to be in writing. The Ministry has confirmed that the directive was implemented and that it remains in force. I am, therefore, satisfied that appropriate steps have been taken to amend the relevant administrative procedures.

REVIEW OF SENTENCE LAWFULNESS AND CALCULATION

- 14.63 The death of David **Metcalf** (1991; Casuarina) resulted in a lengthy report from the Coroner which contained a bizarre account of incorrect charges laid, unlawful sentencing by country Courts of Petty Sessions and incorrect sentence calculation. The Coroner described Mr Metcalf as “*simple*” and “*socially inadequate*” and expressed the view that he was “*not a vicious criminal*” and that “*society was not prepared to tolerate [his] annoying behaviour...*”.
- 14.64 Mr Metcalf had been admitted to Graylands Hospital for assessment of his mental state on several occasions but there had been insufficient evidence to support a diagnosis of mental illness. The Coroner referred to his sense of “*outrage that the deceased, with no real ability to exercise those rights which the well educated and wealthy take for granted, became enmeshed in the system of Government and suffered the consequences.*” He was unsure whether Mr Metcalf had intended to take his own life by hanging and returned a verdict of accidental death which “*...arose from want of care.*” However, this last phrase appears to be a general comment on societal issues, rather than a direct reference to the day to day care in Casuarina Prison, which he described as “*adequate...within the resources which were available...*”. Mr Metcalf was seen regularly by prison medical staff, psychologists and a consultant psychiatrist and was eventually diagnosed as schizophrenic, a diagnosis which the Coroner attributed to Mr Metcalf's becoming better able to communicate with those assessing him in prison.

- 14.65 The IJU report into the death referred to the fact that Mr Metcalf had applied on 20 November 1991 for ten days' early discharge. The application was approved by the Superintendent and Mr Metcalf was advised that he would be released on 25 December 1991. However, on 24 December 1991 he was advised by the manager of his accommodation unit that he would not be eligible for such a discharge because his prison sentence was in place of outstanding fines and that his date of release would now be 1 January 1992. On Christmas Day Mr Metcalf was visited by the Superintendent and Assistant Superintendent. An internal department report stated that the latter did so because of his particular personal interest in Mr Metcalf's situation and that he commiserated with him over the ineligibility of his application. The IJU report also stated that Mr Metcalf "...made no complaints and appeared to have accepted that he was to be released on January 1, 1992." It would be conjecture to try and assess the impact, if any, of this reversed decision on Mr Metcalf's state of mind at the time of his death. The Coroner did not do so but concluded that there was insufficient evidence to make a finding of suicide.
- 14.66 The Coroner made the following recommendations:
- *"That the Department of Corrective Services review each sentence of imprisonment being served for an aggravated prison offence to ensure that the proceedings were duly authorised.*
 - *That the Department of Corrective Services carries out a similar review in respect of any such future sentence.*
 - *That there be a comprehensive review of sentences of imprisonment by the Courts of Petty Sessions in this State to determine what is the range of sentences for particular offences, the composition of the Court imposing the sentences of imprisonment, the pleas entered by the persons accused, and whether or not the persons accused are legally represented. This suggested review should not be seen as an abstract exercise but should represent a real examination of the administration of justice in Courts of Petty Sessions."*
- 14.67 The (then) Department responded to the recommendations by expressing the view that it was not its role to question the actions of magistrates, judges or the courts generally, that it did not have the legal mandate or the resources to provide legal assistance to prisoners, and that its prison staff did not have the knowledge or experience to conclude that a charge had been incorrectly laid or that a penalty was excessive. In my opinion, that was a reasonable view of the Department's function; any remedial action for the problems which arose in this case would have to be addressed as part of a wider strategy.
- 14.68 Following the Coroner's inquest in December 1992, the then Attorney General wrote to Mr Metcalf's mother in April 1993 and stated that she would be "...instituting a review of administration of justice in such circumstances by country courts in the near future. It is my concern as Attorney General to attempt to ensure that there is no repetition in the future of the sort of tragic events which led to your son's death."
- 14.69 As part of my inquiry, I sought the Ministry's advice about whether such a review took place and, if so, what was its outcome. The Ministry advised me as follows:
- "Since Mr David Metcalf's death, the Western Australian Government has undertaken a number of significant measures to facilitate sentencing, provide information on sentencing to the judiciary, review existing legislation, review the criminal and civil justice systems, and improve the management of offenders. Some measures include:*
- *The Government introduced a sentencing package consisting of the **Sentencing Act 1995**, the **Sentence Administration Act 1995** and the **Sentencing (Consequential Provisions) Act 1995** which came into effect in November 1996. The sentencing package consolidated existing sentencing provisions, provided a wider range of sentencing options, clarified the effect of sentences and simplified the sentencing process. It also facilitated the administration of sentences.*

- The **Sentencing Act** abolished sentences of three months or less, provided that sentences of imprisonment by Justices of the Peace must be reviewed by a Magistrate within three months, requires the court to set a commencement date so that time spent on remand may count towards service of the sentence, and requires written reasons for sentences of less than three months.
- A review of remission and parole was commissioned by the Attorney General in 1996 under the chairmanship of the Chief Judge of the District Court, Judge Hammond.
- The **Sentence Administration Bill** and the **Sentencing Legislation Amendment and Repeal Bill** were recently introduced into Parliament. These two pieces of legislation provide a clear, consistent sentencing regime that the public will be able to understand, make the courts more accountable and consistent in sentencing, and give Parliament more control over sentencing. This legislation also provides for a review of the **Sentencing Act**.
- The Ministry of Justice is also currently arranging for an interim review of the **Sentencing Act**. Expressions of interest will shortly be sought from the private sector. This review will examine the operation of the Act, and in particular how key stakeholders view important aspects of the Act such as the introduction of suspended sentences, the general abolition of prison sentences of three months or less, etc.
- The Attorney General gave the Law Reform Commission of Western Australia a reference to review the criminal and civil justice system and make recommendations for a more accessible, less complex, more efficient and more cost effective system of justice. The Commission is due to report by 30 April 1999.
- The Government has made a commitment to provide sentencing statistics. The Ministry will commence publishing quarterly statistics early in 1999. These statistics will include data on offences, sentence types and sentence length. Initially, these statistics will relate to the Higher Courts but will be expanded to include the Court of Petty Sessions and the Children's Court. This will provide sentencing information to judges and magistrates."

14.70 In my view, the above outcomes represent a reasonable response by Government to the Coroner's recommendations on the administration of justice issues which arose in Mr Metcalf's case, particularly the abolition of sentences of three months or less and the review by magistrates of decisions made by Justices of the Peace. I make only the following observations:

- The time taken to effect a number of the above outcomes is again disappointing. The provision of sentencing information, for example, was discussed internally by the then Department in December 1992, in response to the Coroner's findings. It took over six years to get to the point where the relevant statistics will be available to judges and magistrates.
- In light of Mr Metcalf's personality difficulties, eccentricities, and itinerant and isolated lifestyle, it is questionable whether prison was the most appropriate place for him to be kept while in custody. The only alternative which was tried at various times was Graylands Hospital, where it was concluded that there was insufficient evidence to substantiate a diagnosis of mental illness. The only other reference to post-release care for Mr Metcalf was a reference by the Coroner to an expression of hope by the consultant psychiatrist that Mr Metcalf might be contacted after his release and receive ongoing treatment for his condition from a community based clinic. Obviously, that did not take place but it raises a general concern about how society deals with people in Mr Metcalf's situation and what resources are made available by Government for that purpose.

- 14.71 It is worth mentioning that staff of the department obviously felt somewhat aggrieved at the Coroner's reference to Mr Metcalf's death arising from "*want of care*." An internal report to the Director of Prison Operations suggested that "*the prison was perhaps the most caring influence in this man's life and although there is no evidence to this effect, there is some thought amongst prison circles that he committed suicide at the thought of the prospect of leaving the prison – a syndrome commonly referred to as 'Gate fever'*." I am not prepared to dismiss this suggestion. However, it is a sad comment on society, in my opinion, if prison is the best it can offer people such as Mr Metcalf.
- 14.72 The Coroner also expressed some concern over the fact that Mr Metcalf had been arrested on one occasion under section 65(1) of the *Police Act*, for the offence of having "*no visible or lawful means of support*." Mr Metcalf subsequently failed to satisfy the single Justice of the Peace who heard his case that he had a means of support and was sentenced to six weeks imprisonment. The Coroner questioned the appropriateness of such an offence and whether the imposition of a fine or a term of imprisonment would alleviate the situation complained of. He noted that the Western Australian Law Reform Commission had recommended repeal of the sub-section of the *Police Act*. I understand that new legislation to replace the *Police Act 1892* has been in the course of preparation for several years and that it is possible that section 65(1) will be repealed and not replaced in the new legislation. However, as the new legislation has not yet been introduced into Parliament, the repeal of this provision is by no means certain. I can only voice my support for any consideration of that repeal.

Sentence calculation

- 14.73 Although the Coroner acknowledged that "*Where a person has been sentenced in respect of a number of offences, the calculation of the release date may be complex and difficult*" he concluded that Mr Metcalf "*...was detained for one day short of 12 months when he should have been free, and that the Department should have been aware of that fact*." The Coroner's view was that the country Court of Petty Sessions had no jurisdiction to deal with the charges against Mr Metcalf of escaping legal custody and that those proceedings should have been nullified. To further complicate the matter, the administration at Casuarina Prison misinterpreted certain aspects of Mr Metcalf's sentence and wrongly calculated his release date as 3 January 1992. Prior to the Coroner's inquest, a Legal Officer within the department recalculated the release date as being 28 December 1991. Mr Metcalf died on 27 December 1991. As the Coroner commented, "*No one will know what the deceased would have thought had he been informed that he was to be released on the following day, 28th December 1991*."
- 14.74 In its response to the Coroner's findings, the then Executive Director reported to the Attorney General in March 1993 that there was a "*...dire need for a Sentence Calculation Unit located in Perth where there is access to legal advice*". He added that the department was in the planning stages of setting up such a Unit and I am aware that it has been operational for some time now. As part of this inquiry, I wrote to the Ministry seeking information about the procedures which were in place to ensure that sentences are correctly calculated. Its response confirmed that the Unit was established in 1993 and described its method of operation. It also advised that "*In a recent audit by the Office of the Auditor General the Sentence Information Unit was found to have a 100% accuracy rate in regard to it's [sic] data entry and sentence calculation details*" the audit being a random sample of current prisoners.
- 14.75 However, I am aware that periodic reviews of long term prisoners by the Unit have discovered two miscalculations in sentences, which have been to the detriment of the prisoners concerned, both of whom transferred to Western Australia under the provisions of the *Prisoners (Interstate Transfer) Act 1983*. One of the errors was actually made before the Unit was established and was discovered by the Unit; the other was made in 1994 and discovered in 1997. Since the latter incident, a verification function has been introduced by the Unit, and I am now reasonably satisfied that procedures are in place to prevent a recurrence of that situation. Despite the above two errors, I am satisfied that the Ministry has responded appropriately to the issue of sentence calculation.

REPRESENTATION OF FAMILIES AT INQUESTS

- 14.76 In recognition of the importance of families of deceased prisoners being legally represented at coronial inquiries - to become better informed about the circumstances of death and to raise issues of possible concern - the RCIADIC recommended in **Recommendation 23**:-

“That the family of the deceased be entitled to legal representation at the inquest and that government pay the reasonable costs of such representation through legal aid schemes or otherwise.”

- 14.77 The Ministry responded in the 1995 Government of Western Australia Implementation Report that:-

“This recommendation is supported in principle as the Coroner’s Act provides that any person who in the opinion of the Coroner has sufficient interest in the subject or result of an inquest may appear at and be represented by a legal representative at the inquest.

Such persons may apply for legal aid in the usual manner through the Legal Aid Commission or ALS and it is a matter for those agencies to decide if such aid will be given.”

- 14.78 The “*status of implementation*” in 1995 was reported as:-

“Implemented – the Coroner’s Bill will enable the family of the deceased to be represented. Such persons may apply for Legal Aid in the usual manner through the Legal Aid Commission or ALS.”

- 14.79 In spite of the Ministry’s response, of the 32 inquests held into the deaths of prisoners between June 1991 and May 1998 considered by my Office in the course of this inquiry, the family of the deceased was not legally represented in 21 cases; representation was provided by the ALS in only five cases and by other members of the legal profession - usually *pro bono* - in the remaining six cases. The Ministry and its employees were represented in all cases.

- 14.80 I sought clarification of the current situation from both Legal Aid Western Australia and the Aboriginal Legal Service (the ALS) and was disturbed to find that it is the view of Legal Aid WA that assistance for representation at inquests is presently, and has **always** been, outside its guidelines for approval except where it is likely that the applicant may be the subject of criminal charges or a civil action or could derive a significant benefit from the outcome of the inquest. These circumstances clearly do not apply to the families of deceased prisoners.

- 14.81 The ALS advised me that although it has opened a large number of files regarding deaths in custody since February 1991, its 1994 request for additional funding to be able to represent the families of deceased Aboriginal prisoners to date remains unanswered by government.

- 14.82 Although I am aware that it is possible - and encouraged - for the family of a deceased prisoner to raise issues and put questions through Counsel Assisting the Coroner at an inquest, this does not, in my view, offer the family the same ability to question the actual treatment of a prisoner prior to his or her death as would representation by their own counsel.

- 14.83 From my examination of the Ministry's files relating to deceased prisoners it become clear that in a number of cases concerns about a prisoner's management were identified by the Ministry with the expectation that it would be criticised by the Coroner. However, these issues were not explored during the subsequent coronial inquiry. For example, the then Director, Health Services stated in relation to the death of Paul **Vincent** in 1992 that he expected the Coroner to be critical of the standard of care provided to him. This did not occur. Similarly, the Ministry's concern that it would be criticised for failing to conduct a psychiatric review of Shane Hitchcock, who died in 1993, does not appear to have been considered at the inquest. I cannot, of course, express any view about how the particular inquests were conducted or whether evidence was given which would have justified comment about or criticism of the Ministry.
- 14.84 Nevertheless, I cannot agree that **Recommendation 23** has been implemented. It is apparent that reliance on the ALS or Legal Aid Western Australia to represent or fund representation for all families is illusory - those bodies simply are not funded for the purpose and the approval guidelines will almost never be satisfied. Representation of most families of deceased simply will not occur unless some alternative arrangement is made.

RECOMMENDATION 14.5

That the Ministry reconsider its response to RCIADIC Recommendation 23 and accept an obligation to make funds available - to the families of deceased prisoners directly or to legal aid organisations - to enable legal representation at inquests in all cases.

SUMMARY OF RECOMMENDATIONS

- 14.1 (a) That the Ministry of Justice respond to the Parole Board's request for additional resources as soon as possible. In particular, the Parole Board should be resourced so that it can provide detailed reasons for its decisions to prisoners; and
- (b) that, with a view to maximising the effectiveness of the Ministry's assessment process for prisoners, the Board and the Ministry review:-
- how the Board's expectations about what prisoners should be required to do during a sentence can be better understood by the Ministry; and
 - the nature and extent of programs to be offered by the Ministry and the timing of their delivery.
- 14.2 That the Ministry and the Parole Board review the procedures by which Board decisions and other correspondence from the Board are conveyed to prison staff and to prisoners to ensure that:
- (a) prison personnel are aware that the prisoner is to receive a decision or correspondence from the Board;
- (b) a prison officer personally delivers the correspondence or oral advice to the prisoner, thereby having the opportunity to observe the impact of the advice on the prisoner; and
- (c) the records of both the Board and the prison document whether information about decisions or other correspondence has been conveyed to and received by, the prison and the prisoner in every case.

- 14.3** That the Ministry and the Parole Board institute a review of available data, current assessment procedures and eligibility criteria to determine whether female Aboriginal prisoners and Aboriginal prisoners generally are, or are likely to be, disadvantaged in relation to parole and work release orders respectively. Action to rectify any imbalance found should be taken, including the reconsideration of any legislated eligibility criteria.
- 14.4** That the Ministry:
- (a) review the procedures followed in all Western Australian prisons to determine the level of knowledge officers have of the requirements of the *Bail Act* and the working arrangements between prison officers, police and Justices of the Peace;
 - (b) ensure that the requirements of the *Bail Act* are being complied with, in practice, in all prisons; and
 - (c) complete the review of the *Bail Act* as quickly as possible.
- 14.5** That the Ministry reconsider its response to RCIADIC Recommendation 23 and accept an obligation to make funds available - to the families of deceased prisoners directly or to legal aid organisations - to enable legal representation at inquests in all cases.

¹ *The Queen against the Parole Board ex parte Michael Wayne Forbes* (960732 19 December 1996 at page 9)

² See also paragraph 14.60 for comments on the *Acts Amendment (Video and Audio Links) Act 1998*.

CHAPTER 15 PRISON LIFE - ADMINISTRATIVE ARRANGEMENTS

ATTITUDES TO IMPRISONMENT AND TREATMENT OF PRISONERS

PRISONER AND PRISON OFFICER RELATIONS

UNIT MANAGEMENT

PRISON DISCIPLINE AND PUNISHMENT

PRISONER COMPLAINTS AND GRIEVANCES

TRANSFER OF PRISONERS

VISITS TO PRISONERS

SUMMARY OF RECOMMENDATIONS

- 15.1 Throughout this Report references have been made to many aspects of prison life that in some way or another can impact on the care and welfare of prisoners. In this chapter a number of other aspects of prison life and the administrative practices and procedures that are employed in prisons are considered. Integral to all this is an understanding of how prisoners and prison life are perceived from various points of view - and the starting point for that exercise is how “*the community*” appears to view prisoners.

ATTITUDES TO IMPRISONMENT AND TREATMENT OF PRISONERS

- 15.2 Most people who made submissions to me perceived that governments generally were not committed to addressing the social causes of crime and that the community is increasingly calling for tougher punishment for criminals. With regard to the former, a chaplain submitted that the long term solution is early intervention in families at risk, but governments are reluctant to do so because it does not generate immediate results and no-one ever looks at why a person breaks the law in the first place or tries to prevent young people from going to prison. With regard to punishment, most comments I received acknowledged that prison may well be the only place for people who commit violent crimes. However, in many other cases, tougher punishment was “...akin to burning of the witches to solve the problem of poor crop performance,” as one prisoner put it. That prisoner commented that prison is not a solution to crime and that the present system actually increases the criminal potential of the inmate. A prison psychologist agreed, saying that some prisoners have preferred to use prison as a training ground in criminal life skills and future “*business*” contacts.
- 15.3 Numerous prisoners and others expressed a strongly held view that prisoners must be treated as human beings deserving of rehabilitation, arguing that greater attention should be paid to first time prisoners in terms of induction and orientation, access to peer support prisoners, and segregation from long term, violent prisoners. It was also said that the prison system should be productive in terms of giving prisoners opportunities for resocialisation, education and rehabilitation, with long term prisoners being assisted on an ongoing basis, rather than being neglected and ignored for long periods. The prisoner quoted in the preceding paragraph also commented that “*It is rare to find a prisoner who leaves the institution with the social, educational skills or vocational training and emotional well being suited to finding accommodation, employment and the social skills to fit back into society.*” He also quoted from an article entitled *A Vision for Criminal Justice*:-

“In Sweden, there is recognition that those who must be sent to prison are there for a limited period, that they still continue to be members of society, and must be prepared for effective re-entry into that society. For this reason, all prisoners have the availability of professional treatment, the right to a weekly conjugal visit with their wife or husband, and, for all except the highest security inmates, frequent access to temporary leave from prison after the first half of their sentence is completed.”¹

- 15.4 The following selection of comments by prison chaplains are, in my view, worth quoting:

- *A humane, compassionate and just system is the only way to rehabilitation and change;*
- *If imprisonment is to be used, and for some few it is necessary, each prisoner should have a rigorous daily programme of work, education, sport, craft, counselling, to be offered on many levels according to the needs of the individual;*
- *I am concerned that imprisonment is not being used as a last option, but as the ultimate answer, knowing that more creative, cheaper and beneficial alternatives could be used. The present system is based on retribution and punishment and is an abject failure because it guarantees a high re-offending rate, it perpetuates an anti-social culture, it fails victims as no one is satisfied, and it is expensive to the taxpayer;*
- *I quote the Catholic New Zealand Bishops who described imprisonment as an affront to human dignity, responsible for destroying partially or totally, temporarily or permanently, those confined. They found it hard to imagine a more destructive or wasteful method of spending public funds.*

- 15.5 As noted elsewhere in this Report, there was a widely held perception (shared by many prison staff) that there are increasing numbers of older and mentally unstable prisoners, yet resources to deal with them seem to be diminishing and alternatives to prison are not being explored. Prisoners who are management problems are frequently treated in a repressive manner rather than by efforts to assist them to address their underlying problems.
- 15.6 According to some longer term prisoners, ill-founded and “*foolish*” policies - such as the twelve-hour shifts for prison officers - have been introduced over the years and have not been reviewed. Some prisoners expressed the view that prison officer numbers have increased disproportionately to prisoner numbers, but that this had not led to overall improvement to the system. They suggested that the Ministry has suffered from complacency and a lack of leadership and accountability from the very top, and has become an unbalanced and top-heavy bureaucracy.
- 15.7 It was also argued that change to the whole system is needed because staff and prisoners are being systematically ‘ground down.’ Conditions were said to have deteriorated over the years as evidenced by increased incidences of assaults, rapes, deaths, the numbers of paedophiles in prison, and the use of drugs. Doubts were expressed as to whether the Government was meeting internationally recognised standards and covenants and whether it had implemented many of the recommendations of the RCIADIC. Submissions stated that there is an urgent perceived need for a complete review of all prisons from the perspectives of administration, health and welfare. The prisoners’ support group, PASS, submitted that prisons clearly do not reduce crime. Its view is that the culture is one of “*systemic brutalisation*” in which there are “*...horrific accounts of blatant abuse...emotional traumatising and unforgivable neglect.*”
- 15.8 Whatever one may think about the merits of the individual points of view summarised above, it cannot be denied that the persons who have expressed them have, in virtually all cases, experienced prison life personally in one way or another - whether as a prisoner, prison staff member, chaplain or the member of a prisoner’s family. I was impressed by the sincerity of all those who shared their experiences with me and my investigating team and have no doubt that, for them, the perceptions are indeed their realities.
- 15.9 I have to say that I agree with many of the comments and views expressed to me along the lines of those above. However, in my opinion the total picture is not as bleak as those views would suggest. There are many fine people working within prisons and with prisoners, who have been able to achieve much in terms of prisoner welfare and rehabilitation - sometimes against considerable odds. It must also be acknowledged that many prisoners are ready to give credit to those people. Prisoners are, on the whole, very demanding “customers” - but quite a few were prepared to acknowledge the efforts and achievements of those who work within the prison system and who are prepared to deal with prisoners “as human beings.”
- 15.10 The issue of whether prisoners should have the benefit of a statement of “rights” – which would better define their minimum entitlements has been debated both nationally and internationally.
- 15.11 The standards which correctional authorities in Australia should meet are contained in *Australian Standard Guidelines for Corrections*. In its **Recommendation 329**² the RCIADIC recommended that these guidelines, containing a statement of rights for prisoners, should be given legislative effect.
- 15.12 The Royal Commission suggested that in legislating a statement of prisoner rights consideration should be given to the Victorian *Corrections Act*, which sets out in section 47 a list of fifteen rights to which every Victorian prisoner is entitled – ranging from the right to be in the open air for at least one hour per day (s47(1)(a)) to the right to take part in educational programs (s47(1)(o)).

- 15.13 The Western Australian Government's 1995 Implementation Report in relation to Recommendation 329 records that the recommendation was "*Not implemented. Conference of Correctional Ministers determined not to implement by way of legislation.*"
- 15.14 It is clear that many aspects of prison life in Western Australia - such as the ability to receive visits; to make telephone calls; to have certain items in one's cell; to participate in educational or other programs; or to purchase items through the prison canteen – are regarded only as privileges by prison managers and staff. As such they can be, and frequently are, taken away from prisoners by prison staff without any, or sufficient, process to determine whether the removal is justified or necessary.
- 15.15 It seems to me that the major advantage of having a statement of prison "standards" and prisoner "rights" incorporated in legislation is that they would be taken more seriously. Prisoners would be better informed about the nature of their "rights" and those who may wish (perhaps for very good reason) to take away the rights in a particular case would be required to adhere to procedures prescribed in the legislation (or subordinate legislation) for doing so.
- 15.16 The Ministry has advised me that a recent review of the Western Australian *Prisons Act* did not support the concept of legislated rights and standards. In my opinion that is unfortunate.

RECOMMENDATION 15.1

That the Ministry reconsider its position regarding RCIADIC Recommendation 329 and consider incorporating a statement of prisoner rights into the *Prisons Act*.

PRISONER AND PRISON OFFICER RELATIONS

- 15.17 I have touched on the important and difficult role that prison officers can and should play in the identification and management of prisoners who are at risk of self harm in Chapters 10 and 11 of this Report. This chapter considers more generally the issue of the relationship between prisoners and officers and some of the factors that can get in the way of a healthy relationship.
- 15.18 This subject inevitably generates somewhat emotional responses from those who feel strongly about it. To my mind, this strength of feeling serves only to underline how central the issue is to the 'health' of the prison environment. A prison in which there is a good working relationship between prisoners and prison officers will be a far more normal and healthy place for all concerned. Conversely, where that relationship does not exist the prison environment will be characterised by management, disciplinary and health problems - for both prisoners and staff alike.
- 15.19 In my opinion the RCIADIC "put its finger on" the issue well in its **Recommendation 182**, which states:-
- "That instructions should require that, at all times, correctional officers should interact with prisoners in a manner which is both humane and courteous. Corrective Services authorities should regard it as a serious breach of discipline for an officer to speak to a prisoner in a deliberately hurtful or provocative manner."*
- 15.20 I agree with that recommendation in that it identifies the need for interaction that is humane and courteous - and that it should be regarded as a serious disciplinary offence if that requirement is not met. However, it seems to me that, although the objective of courteous and humane interaction is obviously desirable, it is highly unlikely that it will be achieved only – or primarily - by a threat of a disciplinary sanction. Such a threat would only achieve the behavioural outcome sought if the chances of every

breach being detected and the offending officer being dealt with accordingly were overwhelming. In a prison environment, where the balance of power relationships and credibility of individuals are by no means equal, this will simply, in my opinion, never be the case.

- 15.21 The Ministry responded to RCIADIC Recommendation 182 in the 1995 *Government Implementation Report* by stating that it had been implemented through section 13(2)(d) of the *Prisons Act*, which contains an officer's oath of engagement and includes the phrase "*I will deal with prisoners fairly and impartially.*" I am unwilling to accept that this section of the Act alone is an adequate response to Recommendation 182. Obviously, such an oath can be important in emphasising to new prison officers that courtesy, humanity, fairness and impartiality are essential attributes that must underpin the prisoner/prison officer relationship. What is needed, in my opinion, is that prisoners and prison officers must actually *want* to deal with each other with humanity and courtesy. That can only occur when prisoners and prison officers are able to have a necessary degree of mutual respect (even if not affection), confidence and trust in an environment and culture that expects and supports those qualities.
- 15.22 I believe that it is possible to achieve that state of affairs in a prison - indeed some prisoners told me that it is achieved in some parts of the system. One prisoner submitted to me that, in general;
- "...officers treat you as you treat them. If you don't give them any trouble, they are more likely to be more friendly to you. Don't be confrontational and they won't either (though some will be more distant and firm than others). Don't try to rot the system and you will get more free space. Don't put tension into the system and the system will be more relaxed about you."*
- 15.23 Another prisoner commented that, provided an individual prisoner behaves well and adheres to the rules, the relationship with officers is one of mutual respect and objectivity, in which the majority of officers behave in a compassionate, considerate, helpful and understanding manner.
- 15.24 I was pleased to receive those comments because they provide a degree of balance to the very many other submissions and comments made to me in which a much more negative picture of prisoner/prison officer relationships was painted. A sample of comments is set out below. I should say that I have not attempted to establish whether the particular allegations are true because it would be impossible to do so with any degree of certainty. I do not, therefore, make any assertion that they are true and I am not suggesting in any way that the following comments are typical of the majority of prisoner/prison officer relations. I am, however, of the opinion that the type of interactions which they describe represents the attitude of a *small* number of prison officers at *some* prisons. I also have no reason to doubt that the situations described were believed to be true by the persons drawing them to my attention.
- A number of prisoners asserted that some officers 'harass' prisoners. They are alleged to make inappropriate and inflammatory remarks to 'stir up' prisoners, often at times when prisoners are most vulnerable, such as when they have received bad news or when they have relationship or family problems. These prisoners claim that such officers impart no feeling that they genuinely care about the welfare of prisoners. On the contrary, they appear to take a perverse pleasure in playing "*mind games*" with prisoners in order to make life more difficult. Several prison officers (including one Assistant Superintendent at a metropolitan prison) told me that they agreed that complaints of this kind about a relatively small minority of prison officers were justified. The Assistant Superintendent told me that by looking at the daily roster of prison officers on duty he could reasonably predict whether there would be "*problems*" in the prison that day.

- Submissions alleged that one of the ways that prison officers could ‘stir up’ prisoners was by divulging confidential information, or deliberately giving misleading information about a prisoner, to other officers or prisoners. Several prisoners (and officers) gave examples of officers who, while censoring incoming mail, would read parts aloud to other officers in order to embarrass a prisoner. A person who has had a long involvement with prisoners and their families through a church included the following anecdote in a submission:

“A mother was writing to her son. He was a first offender. She ended her letter ‘No matter what, you will always remain my little boy.’ The officer handed the letter with the words ‘So you’re Mummy’s little boy, are you?’ and an accompanying sneer. That man told his mother never to write to him again. It’s remarks like that and ‘you’ll be back’ as a repeat offender leaves prison which add to the cruelty of life ‘inside.’”

- Several prisoners and programs staff told me that there had been occasions when some officers ridiculed prisoners who attend programs and personal development courses - which is obviously extremely unhelpful. Some staff members told me that they had the impression that some officers were apathetic about, and non-supportive of, the value of education for prisoners and that some officers would not release prisoners from their workplace to attend programs. A programs staff member also relayed feedback from some prisoners that they continually got no response from officers when they made requests to see individuals or agencies who could assist with particular concerns. It was the staff member’s view that lack of supportive interaction with prison officers was one of the main causes of prisoner frustration.
- Two alleged incidents were cited to my staff by prisoners:-
 - A prisoner asked how long he would be kept in a particular cell. The answer given by a Superintendent was *“I f—g own you now. You’re mine until I say different and you’ll do as you’re told.”*
 - Remand prisoner to officer - *“Excuse me, can I ask you a question?”*. First officer - *“No, f— off?”*. Prisoner - *“You can’t speak to me like that?”*. Second officer, who was adjacent - *“Yes he can, because he’s a gentleman and you’re just a c—. Now f— off.”*
- A prisoner complained to me that he had needed, but could not get, help to deal with certain psychological problems that were preventing him sleeping. In desperation he had attempted to speak to a prison officer on the night shift about his problems but was allegedly told by the prison officer - *“I think you are mistaking me for someone who gives a shit.”*

That prisoner subsequently escaped from the prison to gain the help he believed he needed, leaving behind a letter (which I confirmed did exist) explaining the above reason for his escape.

- A prisoner alleged that a prison officer had abused and threatened him, saying *“I’ll drive you crazy until you slash up or neck yourself and I will put you in observation.”*

I received a report about the incident from the Ministry which, in my opinion, failed totally to address the substance of the allegation. I informed the Ministry (in November 1999) that its response:-

- made no reference to the existence of potential witnesses known to the Ministry;
- made no reference to the fact that one of those witnesses had (to the knowledge of the Ministry officer investigating the complaint) corroborated the prisoner’s allegation; and
- failed to address the merits of the allegation.

The Ministry informed me that it would investigate the incident further, but no further advice has been forthcoming. The matter continues.

15.25 Other similar allegations could be cited, but it is not necessary to labour the point. What is important is that senior prison officers, prison managers and senior Ministry executives have told me that they accept that a proportion - unquantified, but thought to be a minority - of prison officers are unable and/or unwilling to interact with prisoners in a constructive and beneficial way.

15.26 In response to the dot points in paragraph 5.24 and on the general issue of prisoner/prison officer relations, the Ministry provided the following comments:-

“The allegations clearly indicate purported inappropriate behaviour on the part of officers. There is also reference to the ‘insensitivity’ of officers, and to case studies of prisoners placed in medical observation cells.....”

These statements together with other statements in the report, collectively depict prison officers as generally behaving inappropriately and in non-supportive ways with prisoners as well as not having appropriate skills.

The Ministry is of the view that it is neither accurate nor beneficial to the future of the prison system to depict officers in this manner. It is accepted that some prison officers may not consistently have appropriate and supportive interactions with prisoners. However, it is not considered reasonable for the inference that prison officers, in general, do not have appropriate and supportive interactions with prisoners, to remain in the report.”

15.27 To avoid any doubt, I emphasise that it is not my wish to portray all prison officers in a negative light. As this and other chapters of this Report make clear, many prison officers and other prison personnel do their utmost to deal with prisoners positively, many are good at it – and their efforts are, on the whole, appreciated by most prisoners. I believe that this Report represents a balanced view of the good and not-so-good aspects of prisoner/prison staff relationships. What cannot be overlooked, however, is that incidents do occur that, rightly or wrongly, are perceived to be caused - or at least aggravated by – inappropriate staff conduct. The Ministry acknowledges as much.

15.28 Although the making of a complaint about a prison officer does not, of course, mean necessarily that it is justified, it is worth noting that in the four years to June 2000 the number of allegations raised in formal complaints received by my Office that are categorised as alleging “harassment by prison officers” rose from 52 in 1996/97 to 113 in 1999/2000.

15.29 I am well aware that the dynamics of the prison officer ‘culture’ have been subjected to significant and pivotal changes in the past two years. However, it is clear to me that it will be some time before those changes erode the fixed ideas on how prisoners should be managed apparently held by some prison officers – and, I might add, by certain sections of the community.

15.30 Whatever the deficiencies in the system might be, however, it would not be fair to place all the responsibility on the shoulders of prison officers. It is equally clear, in my opinion, that the Ministry has been remiss for many years in not establishing an infrastructure, appropriately and adequately staffed, based on ‘best practice’ operational practices and systems and an ethic of continuous improvement.

UNIT MANAGEMENT

- 15.31 The failings of the Ministry in this context are best illustrated by what I consider to be the abject failure of the concept of unit management in the State's prisons. This concept was embraced in Western Australia during the 1980s. A typical description of what is meant by the concept is:

“A prisoner management system which involves constructive interaction between prison officers and prisoners. It provides a more normal living and working environment for both groups. Under Unit Management the muster of a prison is divided into groups which are managed by a Unit Manager and a team of officers for an assigned period. Constructive interaction between officers and prisoners involves the use of interpersonal, custodial and case management skills within a framework of delegated decision making power and authority.”

- 15.32 The Ministry cite the principles of Unit Management as the means by which the welfare needs of prisoners would be met in its response to a number of welfare-orientated recommendations of the RCIADIC, namely:-

- **Recommendation 122** - duty of care generally;
- **Recommendation 174** - employment of Aboriginal welfare officers;
- **Recommendation 179** - simplification of procedures for dealing with prisoners' requests.

In addition, it would seem apparent that the “*constructive interaction*” component of Unit Management would be integral to the implementation of the RCIADIC **Recommendation 182** - interactions with prisoners to be courteous and humane.

- 15.33 The Ministry did not support Recommendation 174 because “*in prisons, welfare services are provided by prison officers.*” In response to Recommendation 179, the Ministry stated that:-

“Unit management principles are important in the content of the implementation of this Recommendation. These principles emphasise the need for higher levels of interaction between prisoners and officers (and provide the opportunities for those higher levels to develop familiarity and trust by having prisoners and officers in various stable groups). Additionally, each prisoner has ready access to the Unit Manager.”

- 15.34 It is clear that, under the principles of Unit Management - as it was expected to operate - prison officers were required to interact with prisoners in order to assess their welfare needs and to assist them in addressing concerns about such things as family matters, safety conditions, difficulties with visits or telephone calls, and so on. That is not to say that prison officers were expected to be able to resolve personally every matter of concern to prisoners, but they would be expected to know what external resources (whether in other parts of the prison system, or external to it) were available to assist a prisoner to resolve problems.

- 15.35 There was almost complete unanimity amongst prisoners, prison officers and prison administrators that the concept of unit management is a good one in theory but that it was doomed to fail and, in reality, was never really given a serious chance of succeeding. However, depending on whom one asks, the reasons why this might be so vary considerably. Some of the factors put forward as contributing to the ‘inevitability’ of failure were as follows:

- prison officers were not assessed for their suitability to perform a welfare role;
- more importantly, prison officers never received any significant training to enable them to take on the welfare role successfully. Consequently, many prison officers found it very hard to make the transition from a role where the main function was to “*turn keys*” to one where a vital function was to build relationships with prisoners;
- the increasing prisoner numbers during the 1990s, with no corresponding increase in the number of prison officers and other staff, meant that there were never enough prison officers to perform the expected role;
- the changing nature of the prisoner population - and changes to the type of persons recruited to be prison officers - meant that there were many prison officers who lacked confidence in their ability to interact with prisoners. It was argued that many officers were afraid of prisoners and, hence, were far more likely to resort to authoritarian methods of management and were too ready to charge prisoners with disciplinary offences or use restraint measures to deal with insignificant situations;
- some prison officers and prisoners argued that in the existing culture of division between officers and prisoners (“*the khaki and the green*” as it is referred to) which exists in Western Australian prisons, it is unreasonable to expect a prison officer to combine the welfare and the disciplinary roles;
- with the introduction of 12-hour shifts and the rostering arrangements which accompanied that change, officers rarely spend more than three consecutive days in one place. This means that prison officers are frequently unable to spend sufficient time in a Unit to enable good relationships to develop and it was a constant source of complaint from prisoners that it was impossible to find an officer who would be around long enough to resolve a problem;
- as a corollary of the rostering changes referred to above, it was argued that an increasing number of prison officers have chosen to regard their job as a part-time one - with many having a second occupation and, consequently, considerably less interest in, and commitment to, the prison officer’s role; and
- the Ministry has made no meaningful attempt (except in very recent times) to in any way monitor or enforce the underlying expectations of Unit Management.

15.36 I have no doubt that there is validity in all or the vast majority of the above comments to a considerable extent and that such factors - and probably others - will have contributed to the failure of Unit Management. The Ministry has advised me that it disagrees with the view that unit management has been “*an abject failure*”. In my opinion, however, it is fair to say that the concept simply did not work – except in one prison referred to below. I believe that was partly because nobody within the Ministry - at all levels – appeared to take much interest in whether it worked or not. There was certainly no attempt to evaluate the system and therefore no steps were taken to address shortcomings in the way it was operating in practice. The fact that ‘Head Office’ was out of touch with the ‘coal face’ was a common theme in submissions to my inquiry. Ultimately, it is difficult to conclude that the introduction of unit management improved conditions for either prisoners or prison officers or interactions between them. Moreover, in my opinion, to the extent that other prisoner support mechanisms (such as welfare officers) were withdrawn in favour of Unit Management, the situation may have actually contributed to the deterioration in prisoner/prison officer relationships.

- 15.37 Throughout this Report reference has been made to situations where “the system” failed to identify prisoners at risk or failed to manage identified risks. In my opinion, there is little doubt that a lack of “*constructive interaction*” between prisoners and some prison officers has been a contributing factor to prisoner deaths and self harm. As I have stated elsewhere in this Report, it is also my view that some prisoners who have been identified as at risk of suicide or self harm have been placed in medical observation cells because it is an easier option than sitting down and talking to a prisoner to establish what was the cause of his/her distress.
- 15.38 The Ministry has also told me that it acknowledges “*that unit management works at different levels at different prisons.*” I agree and in making the observations in the preceding paragraphs it is not my intention to devalue the good work done by the majority of prison officers and other staff members who are both willing and able to relate to prisoners well and who assist prisoners in many ways. In particular, I believe that it is appropriate to mention specifically Albany Prison - which has been acknowledged as the ‘shining light’ in an otherwise very dull landscape, despite being a maximum security prison with some of the most serious offenders.
- 15.39 I received a number of submissions specifically about Albany. A prisoner wrote that, in his opinion, the Unit Management system had failed at Casuarina but worked well at Albany. He stated that:-
- “...staff at this prison can and do perform extremely well in the ‘Unit management’ role and go out of their way to help prisoners with personal problems...On a whole, both prison staff and prisoners live and work in a positive environment. The prison staff are thoroughly professional in their approach to dealing with prisoners and the problems that they may be having. Unlike Casuarina, if a prisoner has a genuine personal crisis here, the staff act on it promptly and are not indecisive...In this manner, possible major crises for prisoners are alleviated as soon as is humanly possible, thus avoiding undue stress on the person involved. It is simply a case of staff doing the job they are employed to do and they are good at it. This prison is administered and run exceptionally well and I feel should be used as a role model for prison administration throughout the State. If this man management style was adopted in prisons throughout WA I am sure the suicide rate in the prisons will drop dramatically.”*
- 15.40 Other prisoners told me:-
- “*Albany jail is one of the best in WA...more laid back officers don’t give you so much of a hard time?*”;
 - the officers at Albany are “*human*”;
 - the Superintendent cared for the wellbeing of prisoners and had implemented a duty of care and a higher standard of compassion among the staff which meant that officers were willing to listen and to try to help prisoners in need;
 - Albany had a culture of “*togetherness*”, in contrast to other prisons where the general attitude was one of ‘them and us’;
 - officers exhibit understanding, flexibility and responsiveness, and new officers have to adapt to that way of operating;
 - there do not seem to be any officers who actively promote trouble among the prisoners or subject individual prisoners to pressure;
 - unlike other prisons, there are two hourly checks at Albany throughout the day and the night;
 - “*Many officers working in residential areas come out of the security of their office to share in recreation and play sport with the prisoners and to engage them in ‘small talk’ which establishes a friendly atmosphere where there is less paranoia and more trust, while enabling officers to be more likely to identify anyone at risk?*”;
 - Albany Prison is “*very well run...the officers were happy to talk to prisoners and vice versa. Older prisoners look after other prisoners and sort out problems, and peer support works really well.*”

- 15.41 An Albany Prison Visitor commented on the good management of the prison and the belief that the small number of deaths there is a reflection of the quality of the staff. A recent death there was, in the Visitor's view, a case of someone who couldn't live with the shame or consequences of his crime. He believed that "...most tellingly, prisoners feel able to talk to the staff without breaching the tacit rules of 'prison culture'." In other words, "...talking to the screws' does not automatically bring suspicions among fellow prisoners of being an informer." He also expressed the opinion that the wider sense of a stable community in Albany itself was reflected in the attitude of prison administrators and officers. He observed that the prison holds the highest percentage of prisoners serving life terms and sentences of over fifteen years, and that those prisoners tend to develop stable routines and to be the least troublesome.
- 15.42 During our visit to Albany Prison my staff and I observed a considerable difference in the prison environment compared to that of the major metropolitan prisons, and we agree with the comments expressed above. The situation raises the obvious question – can the factors which make Albany different from other prisons be identified and isolated? I have little doubt that a number of the following factors have contributed to the generally favourable opinion of Albany Prison:
- The prison is small enough for prisoners and officers to get to know each other. I was told by the former Superintendent that when it was first established as a prison many staff were recruited locally and (at least initially) the prison had many local prisoners. Consequently, there were many existing relationships and these were able to be maintained and a "culture" of inter-action between officers and prisoners established.
 - Unlike other prisons, there have been relatively stable prisoner and officer populations, with few changes at prison management level.
 - Prison management has insisted on a form of case management - whereby each prison officer is allocated several prisoners to manage, in the sense of preparing sentence plans and being accessible if the prisoner has problems.
 - Most importantly, in my opinion, prison management has insisted on the principles of Unit Management being observed. "Constructive interaction" has been the "Albany way" of running a prison and prison officers and prisoners have been expected to play their parts. Significantly, the prisoners appear to have been prepared to meet the prison management and officers half way - to the credit and, in my opinion, to the benefit of all concerned.
- 15.43 In my view the very complex and difficult issue of deaths in prisons requires an evaluation of not only what has gone wrong but also what seems to have been done right. In this respect, I believe that the situation at Albany Prison provides a model of a management style which seems to have worked to the benefit of all concerned - and the reasons why this may be so should not be lost.

RECOMMENDATION 15.2

That as part of its current internal review of prison deaths the Ministry commission an independent comparative study of the management of Albany Regional Prison and other prisons in order to identify any practices or other factors which should be more widely applied in the prison system.

- 15.44 The Ministry has recognised that it faces a formidable task in attempting to develop prisoner/officer relations to an adequate and 'healthy' level. As a first step it has developed the "*Integrated Prison Regime*" to "...*revitalising the concept and operation of unit management*" and is working on the introduction of a system of Case Management for prisoners as part of that regime. The "*Integrated Prison Regime*" will be introduced initially into five prisons and then across the system. The Ministry is well aware, however, that without constructive relationships between prisoners and officers, neither unit management nor case management will achieve the necessary improvements.
- 15.45 As part of the process the Ministry has contracted with a Canadian firm to provide both a Cognitive Skills Program for prisoners and a program of Interpersonal Skills Training for prison officers.³ Both of these are important, but overdue, steps in the right direction - and I am pleased that they will occur. In the light of these initiatives - reflecting as they do the Ministry's acceptance of the importance of "*constructive interaction*" and the need to address the shortcomings of the existing situation - I do not believe that it is necessary for me to make any other specific recommendations.
- 15.46 I will, however, observe that programs alone will not automatically guarantee achievement of the desired outcomes. Without the complete commitment of the Ministry at all levels - reflected in very clear statements of what is expected of prison personnel and systems and strategies to evaluate initiatives and highlight any deficiencies - the system will limp along as it has done in the past. With this proviso, I am optimistic that the initiatives already underway within the Ministry will change the system for the better.

PRISON DISCIPLINE AND PUNISHMENT

- 15.47 The ways in which prisoners can be disciplined or punished for prison offences is a very important feature of prison life in Western Australia. It is an issue which is acknowledged to be a significant cause of stress and distress for many prisoners. In the light of the comments made in this Chapter about the shortcomings of the relationships between prisoners and officers it is not surprising that many observers believe that officers are far too ready to resort to discipline and punishment of prisoners for matters that could and should be managed in a more positive and productive way. A phrase often heard in interviews during my inquiry was that prisoners are in prison "*as punishment*", not "*for punishment*", but many feel that this is not what happens in practice.
- 15.48 The *Prisons Act 1981* provides that a prisoner can be charged with the "*minor*" or "*major*" prison offences specified in the Act - which range from disobeying an order of an officer, being "*idle, negligent or careless*" in work or pretending injury, to assault, using drugs or possessing weapons. Prisoners charged with such offences are invariably dealt with by a "visiting justice" (of the Peace) - a "VJ".
- 15.49 Penalties which can be imposed by prison superintendents and VJs include separate confinement, confinement in sleeping quarters, restitution and, importantly, forfeiture of days of remission of sentence. In addition, a prison superintendent or officer can remove various "*privileges*" - such as contact visits, telephone calls, having electrical items in the cell, canteen spends etc. - by an administrative or management action. Such a penalty can be imposed without any form of "trial" or finding of guilt.

- 15.50 Prisoners are generally ready to accept punishment handed out by the superintendent or VJ if they believe that they deserved it. However, I received numerous comments - and receive many written complaints from prisoners - about the “*double jeopardy*” of the loss of privileges as well as the forfeiture of remission or other penalty arising from a prison charge. Prisoners seem unwilling to accept that the giving of privileges is a management option which can be taken away by the prison administration on suspicion of an offence, without a charge being laid or before it is heard. This is perceived to be another form of punishment, and one which can be imposed arbitrarily. The loss of privileges can also lead to “standover” tactics, where a prisoner who has lost canteen spends, for example, might bully another prisoner into giving up some of the latter’s purchases or property.
- 15.51 The withdrawal of contact visits (where prisoners and their visitors sit with each other at the same table) or the imposition of non-contact visits (where prisoner and visitor communicate by means of a ‘telephone’ through a window in a booth) causes much distress, particularly to prisoners who value receiving visits from their children. A further cause of stress is when a prisoner believes that a visitor is being harassed, perhaps by being targeted for strip searches. Prisoners have also told me of instances where a visitor has arrived at the prison only to be told that a visit has been cancelled for some unspecified reason, with resulting distress to all concerned.
- 15.52 There have been two deaths where the Coroner has commented on the significance of the loss of privileges for the deceased prisoner. James **Reynolds** (Remand Centre; June 1991), was classified as a high security prisoner and had been denied use of the prison oval. His visitors were strip searched prior to each visit and Mr Reynolds was strip searched after each visit. Mr Reynolds appealed to the Superintendent and to one of my predecessors for restoration of privileges but was unsuccessful. Other prisoners testified that Mr Reynolds became frustrated over these issues. The Coroner accepted that the loss of privileges caused distress to Mr Reynolds but he was unable to conclude positively that this factor was a determining cause in his decision to commit suicide.
- 15.53 In the case of Victorino **Vivas** (Wooroloo; July 1996), the Coroner expressed concern about the perceived double punishment imposed on Mr Vivas after he had been involved in an incident in which he refused to carry out an order of a prison officer. Mr Vivas was to be charged with a prison offence over the incident and was also removed from his shared room to dormitory accommodation - the loss of a significant privilege. The Coroner stated:-
- “While the deceased was clearly upset following a relatively minor dispute with a prison officer and a decision which had been made that he should be removed from his 2 Up Cell to the dormitory, those events at most could only amount to precipitating factors for his actions.”*
- 15.54 Nevertheless, the Coroner added the following rider to his findings:-
- “That while it is accepted that the housing of prisoners in different accommodation within a particular prison is a matter to do with the good management of the prison, where a decision is made to remove a prisoner from accommodation which is regarded as being of significantly higher standard than the accommodation to which the prisoner is to be placed as a result of disciplinary issues, a senior officer, before acting on the recommendation of a prison officer, should where practicable form an independent assessment of those issues in order to provide a check in the system and to ensure that the recommendation was reasonable in all of the circumstances.”*
- 15.55 The Ministry advised me in 1998 that the Coroner’s rider “*has been given effect from November 1996 with the adoption of the formal hierarchy system at Wooroloo. This requires review and discussion by the ASPM before any such loss of privileges can be implemented.*”

- 15.56 Some chaplains referred to the distress experienced by prisoners at times because of heavy-handed “punishment” for petty incidents, which frequently arose as a result of prisoners’ frustration over the difficulty in having simple requests met. The chaplains referred to a perception by prisoners that punishment was imposed on the basis of suspicion and innuendo and because officers were not prepared to listen to them. They commented on inconsistency in the reactions of officers, some of whom, they believed, “*made up the rules as they went along*”. I was told that some officers made little attempt to use conflict resolution, mediation or understanding to deal with a problem.
- 15.57 The regime for prisoners in punishment varies according to the nature of the offences and the superintendent’s discretion, but can include no smoking, no electrical items and no mattress or other furniture during the day. Some books and writing materials may be allowed but they are of little or no value to prisoners who are illiterate. I have been told by prisoners’ family members that prisoners in punishment are occasionally treated in a degrading manner, such as being left in restraints for far longer than necessary and having to eat meals off the floor while in restraints. I have not received complaints from prisoners or seen first hand evidence about the latter issue.
- 15.58 A number of submissions and interviews made reference to the punishment cells themselves, describing both the environment and the punishment regime as “*inhumane*” - some described the conditions as sufficiently inhumane to prompt some prisoners to contemplate suicide. These submissions questioned whether there was not a better way of dealing with prisoners who infringe prison discipline.
- 15.59 The effect of the use of separate confinement as punishment was considered by the Coroner in the case of Gregory **McIntosh** (15 July 1998; Albany) who had apparently expressed concern to other prisoners about being placed in separate confinement as punishment for a prison disciplinary charge. The Coroner said in his findings:-
- “While there is no reference to the deceased’s concerns about solitary confinement contained in the suicide note discovered in his cell after his death.....in the light of the significant number of occasions on which the deceased raised concerns in respect of this matter immediately prior to his death, it was clearly a factor which was causing him concern at the time. It cannot, therefore, be excluded as a possible precipitating factor in the deceased taking his own life.*
-For some prisoners solitary confinement does not appear to constitute a very severe punishment....For others, however, solitary confinement can cause great distress.*
- In the case of the deceased, while it would appear that he did not suffer from claustrophobia as such, it is clear that he was concerned that he would have difficulty in coming to terms with being locked in a cell with very little to occupy his time.*
- The deceased was a young man, only 18 years of age, and this was to be his first experience of solitary confinement.”*
- 15.60 The Coroner also referred to the Attorney General’s decision to replace Justices of the Peace at three of the metropolitan prisons as VJs with a magistrate (for a short term) who had also been asked to prepare an independent report on “*issues surrounding prison disciplinary procedures*” and noted that the documentation which had been provided by the Ministry relating to this decision included the comment that “*....disciplinary procedures could affect the health and well being of prisoners and in some circumstances unfair treatment could have critical consequences.*”
- 15.61 The Coroner recommended that “*the review of Prison Disciplinary Procedures currently being conducted include a review of punishment options available in relation to such charges.*”

- 15.62 Prisoners also raised concerns about the perceived unfairness of the visiting justice system, which they describe as a “kangaroo court”. They clearly perceive that the system is ‘stacked’ against them in terms of the procedures involved, such as the difficulty in calling witnesses; the fact that they are not entitled to legal representation and have no right of appeal. One VJ told me, however, that he did not believe legal representation was necessary because most prisoners are “streetwise” when it comes to ‘court’ proceedings.
- 15.63 Some VJs themselves complain that there is a lack of flexibility and innovation in sentencing options which means that punishments often do not ‘fit the crime’. They are not given (and, apparently, do not generally ask for) background reports of behavioural, medical or social issues relevant to a prisoner and some told me of their concerns that a penalty handed down may ‘tip the scales’ for a vulnerable prisoner and lead to self harm. Some VJs would welcome the power to suspend sentences and told me that they had been seeking – unsuccessfully – for some years appropriate amendments to the *Prisons Act* to include this and other sentencing options. In contrast, one VJ expressed the view that life in prison is too easy, that there is no real deterrent to offending, and that some prisoners have lists of prison offences which are pages long, partly because some VJs are “*too lazy*” to do their job properly.
- 15.64 The Coroner commented on the “*fairness*” of the prison disciplinary system in the inquest into the death of Dean **Lauder** (May 1998; Canning Vale) as follows:-

“While in the present case the deceased had experienced the punishment of separate confinement on a number of previous occasions and does not appear to have been very distressed as a result of that punishment being imposed, it is clear that shortly before his death on the night of 31 May, 1998 he expressed concerns to fellow prisoners... about the punishments which had been imposed and he was of the view that the punishments were unfair.

In this case for each of 2 charges of using cannabis the deceased received the maximum penalty available to the Visiting Justice pursuant to Section 78 of the Prisons Act 1981.

While it would not be appropriate for me to make comments in respect of the penalties which were imposed in this case, evidence at the inquest hearing indicated that it was the view of a number of prison officers that the maximum penalties are regularly imposed by Visiting Justices in relation to such charges because of a view that such an approach would lead to greater consistency in sentencing.

If this is the case, I would have concerns about the way in which current practices and procedures are used to implement the disciplinary provisions of the Prisons Act 1981.”

- 15.65 The Coroner recommended that the independent review referred to above examine whether “*the maximum penalties provided for by the Prisons Act 1981 are in fact being routinely imposed*”.
- 15.66 In my 1999 Annual Report⁴ I voiced my concerns about the prison justice system as follows:-

“For some time now I have made my views and concerns known about the Visiting Justice function and its part in the prison discipline and punishment process (see page 50 of my 1997 Report and page 50 of my 1998 Report). As in previous years a number of complaints about this aspect of prisoner management were received. These continue to strengthen my belief that the current prison discipline regime is unsatisfactory. The complaints received raise much the same issues as in the past and include the way prison charges are laid; the basis for the charge; the relevance of the charge to the alleged offence; the manner in which the proceedings are conducted; the decision itself; and the nature and extent of the punishment imposed. These complaints cause concern about natural justice and other procedural aspects of the hearings, the consistency and relevance of the decisions and the effect of these on the management of the prisoner. In deciding to approach the Ministry with my concerns about this issue in the broader sense there was also a need to review the question of my jurisdiction in relation to Visiting Justices and their actions and decisions. As there has long

been an element of uncertainty in respect of this, an opinion from the Crown Solicitor was sought. Two questions needed to be answered: - (1) whether the office of 'Visiting Justice' was an 'authority' to which the Parliamentary Commissioner Act 1971 applied; and (2) would a complaint about the conduct of a hearing by or the decision of a Visiting Justice relate to a 'matter of administration' as is referred to in the Act - or should such a hearing be considered a judicial matter over which I have no investigatory powers. In short, despite an opinion and a subsequent qualifying comment from the Crown Solicitor's Office the position remains unclear - with the general understanding being that the position could be reasonably argued either way.

I subsequently met with Ministry officials to discuss the general topic of Visiting Justices in the hope of identifying the relevant issues and reaching some broad agreement about how we might proceed to improve the current disciplinary process, regardless of the legal position. An independent review of the process and the principles upon which the prison disciplinary system is based has since been commissioned by the Ministry. I welcome that development."

15.67 The independent review mentioned in paragraphs 15.60 and 15.65 above commenced in early 2000 when a magistrate, Mr Paul Heaney SM, was appointed. He replaced the VJs at three metropolitan prisons and heard all charges at those prisons as well as reporting to the Ministry on the operation of the prison disciplinary system generally. Mr Heaney's report is presently being considered by the Ministry. As this Report was being finalised for printing I was provided with a copy of Mr Heaney's report. It recommends wide-ranging changes with respect to legislation, regulations, and the Director General's Rules *"in order to meet criteria of normalisation, certainty, transparency, accountability, efficiency and professionalism."*

15.68 It must be noted in this context that RCIADIC **Recommendation 180** recommended:-

"That where a prisoner is charged with an offence which will be dealt with by a Visiting Justice, that Justice should be a Magistrate. A charge involving the possibility of affecting the period of imprisonment should always be dealt with in this way. All charges of offences against the general law should be heard in public courts."

15.69 In the 1995 *Government Implementation Report* the Ministry's 1994 *Summary Response* was that the recommendation was *"partially implemented in Corrective Services; fully implemented in Juvenile Justice Division"*. In relation to the *"status of implementation"* in 1995, the Ministry stated:-

"Recommendation not supported in Corrective Services – sections 54, and 56 of the Prisons Act apply. Justices of the Peace currently bear prison charges; there are no plans to change the current procedures in the immediate future."

The 1997 *Implementation Report* repeated the 1994 *Summary Response*.

15.70 The Ministry has advised me that the change in the status of the implementation of Recommendation 180 was overlooked when it provided information for the 1997 *Implementation Report*. However, regardless of the Ministry's apparently contradictory statements in the 1995 *Implementation Report*, it is quite clear that Recommendation 180 has not been implemented in Western Australia. In my opinion – and on the basis of investigations into the numerous complaints received by my Office about the prison disciplinary system - prisoners can and have been seriously disadvantaged by deficiencies in the disciplinary system (as illustrated by comments in my last three Annual Reports).

- 15.71 I support the Coroner's comments in the inquests into the deaths of Messrs McIntosh and Lauder, and Dr Liebling's conclusions in her examination of prison 'stressors',⁵ that fear of solitary confinement, and a perception that the system for dealing with prison offences is unfair and biased against them, are significant stressors for prisoners and can become precipitating factors in a decision to self harm or suicide. In this regard, it is of concern that the Ministry stated that it had implemented RCIADIC **Recommendation 181** which recommends, *inter alia*, that "*Corrective Services should recognise that it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention*"⁶ when separate confinement is a frequently used punishment for *all* prisoners. In my view it is disappointing that the prison disciplinary system was not reviewed some time ago.

RECOMMENDATION 15.3

That the Ministry complete its review of the independent report on prison disciplinary procedures as a matter of urgency and implement its recommendations. If implementation is delayed by a need to amend the *Prisons Act* or other legislation then RCIADIC Recommendation 180 should be implemented in the meantime by continuing the role of magistrates or experienced legal practitioners as visiting justices at all prisons.

PRISONER COMPLAINTS AND GRIEVANCES

- 15.72 An important part of the broader general issue of Unit Management and the relationship between prisoners and prison officers is the procedure for handling prisoner grievances about an aspect of prison life or about decisions affecting them - and how well the Ministry is able to resolve such problems.
- 15.73 The RCIADIC recognised the importance of this issue in its **Recommendation 176** which recommended the establishment of a "*Complaints Officer*" who would regularly attend the prison to hear, and attempt to settle, any complaints and would be responsible to the Ombudsman, Attorney-General or Minister for Justice. **Recommendation 179**⁷ recommended that officers should deal with prisoner requests as simply and as quickly as possible.
- 15.74 In the 1995 *Government Implementation Report* the Ministry said that Recommendation 176 was implemented because "*adequate provisions exist*" in the *Prisons Act*, DGR 2G and through Aboriginal Visitors. It claimed that Recommendation 179 was also implemented, stating:-

"Unit Management Principles are important in the content of the implementation of this recommendation.

These principles emphasise the need for higher levels of interaction between prisoners and officers (and provide the opportunities for those higher levels to develop familiarity and trust by having prisoners and officers in various stable groups). Additionally each prisoner has ready access to the Unit Manager."

- 15.75 DGR 2G prescribes the procedure to be followed when a prisoner makes a "*request or complaint*" - including a hierarchy of consideration by Unit officers, other authorised persons, the Superintendent, the Director, Prison Management and ultimately to the Executive Director, OMD. The Rule also provides an avenue of consideration by an unspecified higher authority if a prisoner remains dissatisfied after exhausting the hierarchy of approaches.

- 15.76 In my opinion it is not an overstatement to say that, despite the theory and principles set out above, the Ministry did not have any form of efficient or effective grievance handling system throughout the 1990s. Obviously, many prisoner problems and grievances will have been resolved in an *ad hoc* way by individual prison officers and other staff members - but there was no system or consistent process that would give prisoners confidence in the integrity of the grievance-handling process.
- 15.77 One consequence of that deficiency is that the number of complaints made to my Office in recent years has increased substantially, increasing from around 200 in 1996/97 to 500 in 1998/99. The number of complaints increased again in 1999/2000 to 515 with approximately the same number of telephone inquiries that were able to be dealt with informally. I have for several years recommended to the Ministry that it should establish a comprehensive internal complaint-resolution process - to enable a majority of prisoner problems to be resolved at the lowest possible level (within the Unit or prison) so that those who make – or fail to make - decisions about prisoners have the primary responsibility for attempting to resolve their problems.
- 15.78 The Ministry finally took action to set up such a system in early 2000 and I have had input into how it should operate. The objective of the new system, as described in the *Prisoner Grievance Resolution Manual*, is to provide “...a transparent and credible prisoner grievance process that will facilitate the resolution of prisoner grievances at the lowest possible level and within the shortest possible time.”
- 15.79 The system provides a hierarchy of review of a prisoner grievance in a consistent, fair and timely manner commencing with the Unit Manager (or Nurse Manager if a health issue is involved) and progressing to review by the superintendent (or delegate) followed by consideration by the Grievance Manager and ultimately by the Grievance Review Panel. The new system does not in any way detract from a prisoner’s right to complain to the Ombudsman or any other external complaint-handling body at any point. A pilot of the system was commenced at Bunbury at the end of October 2000 and is shortly to be introduced at Woorlooloo.
- 15.80 Obviously, how well the system will work in practice will depend upon a number of factors, including:
- the adequacy of, and the extent to which, information about the system and the procedures for using it are disseminated to prisoners and prison staff;
 - how “user-friendly” it is for prisoners and those trying to resolve the grievance;
 - how well grievance “resolvers” are trained and encouraged to objectively review the decisions and actions complained about;
 - how quickly decisions can be made at the various review levels; and
 - how well the decisions that are made, and the reasons for them, are explained to those affected by the decision.
- 15.81 The indications are that the Ministry is committed to making the grievance resolution process work in a way that has never existed before. Turning that commitment into reality will not be easy - but I am optimistic that the system can be made to work. There really is no alternative.

RECOMMENDATION 15.4

That the Ministry:

- (a) finalise and implement the proposed grievance resolution process as quickly as possible; and**
- (b) ensure that prison officers and all those persons expected to be involved in resolving grievances are adequately trained in the aims and principles of the system and the skills needed to objectively evaluate and resolve grievances.**

TRANSFER OF PRISONERS

- 15.82 Inter-prison transfer is an issue which regularly generates complaints from prisoners and their families. Prison transfers occur frequently - often with very little warning – with the result that a prisoner can be placed in a prison hundreds of kilometres away from family and other forms of external support. The issue was identified by the RCAIDIC in **Recommendation 168**⁸ as being of particular importance for Aboriginal prisoners - for whom a particular location may have cultural importance as well as being where family support is located. As a result, the RCIADIC recommended that *“Where an Aboriginal prisoner is subject to a transfer to an institution further away from his or her family the prisoner should be given the right to appeal that decision.”*
- 15.83 DGR 2B deals with the issue of security ratings, placements and transfers of prisoners. In line with the principle of an appeal recommended by the RCIADIC, DGR 2B 1.1.4 requires that prisoners be given the opportunity to make personal representations up to the level of the Ministry’s Assistant Director, Prison Placement, about placement and the reasons for the decision and be afforded a right to appeal against a placement decision – although an appeal does not necessarily operate as a stay on a transfer. Not surprisingly, issues about placement and transfer have arisen in prison deaths.
- 15.84 Reference has previously been made to the death of Michael **McMahon** (Casuarina; April 1996) in the context of the Ministry’s failure to follow up on issues which arise from particular deaths in custody. The issue of an inter-prison transfer was also considered relevant.
- 15.85 On 4 April 1996 the prison administration decided under the provisions of DGR 2B that Mr McMahon would be transferred to Albany on Tuesday 9 April, primarily because of the high muster at Casuarina at that time, but also because of allegations of disruptive behaviour and bullying on his part. Mr McMahon first found out about the pending transfer on 5 April (Good Friday), when he asked a prison officer about the funds in his gratuities account and was told that no funds were available because his account had already been transferred to Albany. (I am told by prisoners that this is a frequent occurrence.) It is apparent that the requirement that he be given reasons for the transfer and an opportunity to appeal the decision were not complied with. To compound the situation, any representations made by Mr McMahon would not have been considered until the following Tuesday (because of the Easter holidays) and he would not have been able to contact his family by telephone over that weekend (because there were no funds in his Casuarina telephone account).
- 15.86 The Coroner commented that, in making its decision, the administration had assessed the impact of the transfer on Mr McMahon’s visits as *“minimal”*. The Coroner considered that this assessment was inaccurate as Mr McMahon received regular visits from his mother and other family members, and observed:-
- “None of the senior officers concerned in the decision making process appears to have taken responsibility for ensuring that Director General’s Rule 2B was applied...the whole issue of prison visits was misunderstood...Mr McMahon was not given any opportunity to make representations relating to his placement. Had any representations been allowed, the error relating to prison visits would have been discovered.”*
- 15.87 It is clear that Mr McMahon was extremely upset about the proposed transfer and threatened to react violently and unpredictably. At his request, he was relocated to a cell in the IOU on 5 April for his own protection and that of other prisoners. Later that day he saw a member of the FCMT who advised him of his appeal rights and ensured that he was provided with writing materials so that he could write a letter of appeal against the decision. Mr McMahon apparently told the FCMT member that he was not contemplating suicide or self harm. However, he was found hanging from a grille in the exercise yard adjacent to his cell in IOU at approximately 5pm on 7 April.

15.88 The Coroner concluded that Mr McMahon was upset as a result of the proposed transfer but suggested that:-

“One possible scenario is that the deceased wished to delay his transfer to Albany Prison in the hope that a decision would be made that he should remain in the Perth area. Mr McMahon could have feigned a suicide attempt in the hope that his transfer would be delayed.

.....On the other hand Mr McMahon’s history indicates that over a long period of time he had been subject to strong emotional outbursts.....At the time of his death Mr McMahon was an impulsive 22 year old who was taking both anti-psychotic and ant-depressant medication.

It is possible that, very distressed at the thought of his proposed transfer, Mr McMahon decided to take his own life.

While there is some evidence that the deceased may have had an intention to take his own life, the possibility that the death arose by way of accident cannot be excluded.”

15.89 As a result, the Coroner made an open finding about the manner of death. He did, however, add two riders to his findings, as follows:

“I recommend that the Ministry develop procedures which would ensure that in cases where a decision is made to transfer a prisoner from one prison to another, where practicable the prisoner be advised of the transfer by an officer with some knowledge about the reasons for the transfer who would be in a position to monitor the prisoner’s response to the decision.

I recommend that the Ministry develop procedures which would provide that, in the case of non-urgent transfers and subject to necessary security considerations, a sufficient time period be allowed between the time of notification and the time of movement to allow the prisoner to contact his visitors to advise them of the transfer and to make any necessary arrangements and to forward to the relevant officer any documents appealing against the decision in sufficient time to allow proper consideration of those documents prior to any movement being effected.”

15.90 The Ministry convened a review group to consider the findings and riders. In its report, dated 29 August 1997, the group acknowledged that there had been “breakdowns in the system”, including references to “confusion”, “failures”, and “inaccuracies”. It also identified a systemic problem at Casuarina in relation to inter-prison transfers of prisoners, characterised by:

“...very heavy workload carried by the Assistant Superintendent which reduces or eliminates discussion about a possible transfer with the prisoner;

low levels of knowledge by Unit Managers in the assessment and placement process, which reduces their capacity to give the best advice to prisoners;

Unit officers have a similarly low level of knowledge and assessment and placement which reduces their capacity to manage these prisoners whose cases are under review.”

15.91 The report also stated that “The 12 hour shift system and high prisoner musters at Casuarina Prison contribute to a lack of staff continuity and failure at times to resolve matters which are causing prisoner dissatisfaction.”

15.92 The review went on to identify principles which should be integral to all placement decisions - including the need for accurate and complete information; the interview of prisoners prior to decisions being taken; advice on rights of appeal being made known to prisoners; consideration of appeal by a competent authority – and the steps needed to ensure a better process. It made the following recommendations to bring about “early improvements” to the system:-

“At any time that a management-initiated prisoner transfer is contemplated, the Unit Manager shall be advised, and where appropriate, assume responsibility for investigating and processing the decision.

Any decision to transfer a prisoner shall be preceded by discussion with him, unless it has been demonstrated, in writing, that consultation will clearly jeopardise security.

Unless it has been demonstrated in writing that such action will jeopardise security, the decision slip shall be handed in person to the prisoner who will sign for its receipt. The officer will be identified. The officer shall advise the prisoner of any right of appeal.

In the event that the prisoner is not in agreement with a transfer the officer shall note his reaction and ensure that such information is logged to advise officers on succeeding shifts.

Any appeal documentation shall be considered by the designated superintendent or a delegate properly trained in assessment procedures, who shall decide whether the transfer shall proceed pending final determination of the appeal. This interim decision shall be communicated to the prisoner by an officer conversant with appeal procedures, prior to effecting the transfer.

In the longer term the following arrangements should be investigated:

Appoint a dedicated Unit Manager to each Living Unit.

Establish an assessment and classification system which is specialised for the initial assessment and sentence planning process for each prisoner. Subsequent assessments should be undertaken by unit officers.”

- 15.93 In my view, it would be reasonable to conclude that Mr McMahon’s death was avoidable and that it occurred after a serious flaw in administrative procedures, namely as identified by the Coroner, the failure of senior officers to take responsibility for ensuring that the provisions of DGR 2B were applied. There is no indication that any disciplinary action was considered against the staff involved, either by the Ministry or by the Coroner. For my part, I see little value in recommending that such be considered more than four years after the event. I am reasonably satisfied that the administrative shortcomings have been acknowledged by the Ministry and that the above recommendations represent a reasonable response by the Ministry to them, albeit not entirely in the manner suggested by the Coroner. However, I have a significant reservation.
- 15.94 Put simply, there is little point in making recommendations and endorsing them for implementation if the administrative structures are not in place to follow the matters through. For example, in Mr McMahon’s case, the provisions of DGR 2B should have been adequate to deal with the transfer - *if* they had been followed. A new DGR containing the above recommendations may well be ineffective unless staff are suitably trained about its requirements and their responsibilities and committed to ensuring compliance. I understand that the incorporation of the recommendations in existing DGRs has been superseded by the preparation of new DGRs by the Operational Standards Directorate of the Ministry and that the recommendations are included in a proposed new Rule. The Ministry confirmed that this was the case and advised me that the recommendations would also be included in an Operations Manual which was being developed.
- 15.95 In relation to the training to be provided to staff, the Ministry advised me that *“There is no specific training... planned at this stage. It is envisaged that the Operations Manual being developed will be self-explanatory. If further training is required following the introduction of this manual, it will be addressed at that time”*. The Ministry also referred to the training of new prison officers in *“Special Needs Awareness”* and to the *“At Risk Management System”*, to which about half of prison officers have been exposed. The Ministry believes that these initiatives will ensure adherence to the required procedures relating to the transfer of offenders.

- 15.96 It seems clear to me that the principles reflected in DGRs and the techniques for risk assessment and management can become lost all too easily without constant reinforcement by ongoing training. I presume that, in the absence of specific training, the new Operations Manual will be distributed to staff in the manner currently used for the distribution of new or amended DGRs. This involves circulation of the material to all relevant and interested parties, including prison superintendents. It is then the responsibility of the Superintendent to ensure that copies of the new or amended rule are placed in each 'work place' (unit, workshop, education centre, library, medical centre, gatehouse etc). Officers are expected to familiarise themselves with DGRs, although there is no uniform method for doing so.

RECOMMENDATION 15.5

That the Ministry:

- (a) ensure that the new DGR relating to prisoner transfers is strictly complied with by prison staff; and
- (b) implement a uniform procedure whereby all prison officers and prison management are made aware of the contents and requirements of all amendments to DGRs, Standing Orders and other instructions.

VISITS TO PRISONERS

- 15.97 It is universally acknowledged that the maintenance of a prisoner's links with family and friends is crucial to the prisoner's well-being and ability to cope while in prison as well as to his/her chances of re-establishing normal relationships with those other people on release from prison. Prisoners and prison personnel all agree that visits are one of the most fundamental and sensitive issues affecting the state-of-mind of prisoners - a missed or unhappy visit can generate erratic behaviour and precipitate self harm risks, whereas a prisoner who is able to maintain a regular and harmonious relationship with significant persons on the outside via visits and other forms of contact is far more likely to be able to cope with the pressures of prison life. This is one of the reasons why the issue of transfer of prisoners discussed above is so important.
- 15.98 The RCIADIC made two recommendations of direct relevance to this subject. **Recommendation 169** proposed that financial assistance should be given to the family of a prisoner placed in a prison some distance from his family and **Recommendation 170** recommended that all correctional institutions should have adequate visits facilities which enable relatively normal family interaction to occur and that the intervention of prison officers in the conduct of such visits should be minimal.⁹
- 15.99 In relation to Recommendation 169 the Ministry responded by adopting the practice of temporarily transferring prisoners to the prison nearest to the location of family members, rather than the recommended approach of providing financial assistance to the family. Although temporary visits can sometimes be disruptive for prisoners who have commitments at their usual prison (such as for education or employment), it seems to me that the Ministry's alternative approach is entirely reasonable. Delays can occur in arranging the temporary transfer at times because of muster levels but I understand that when a prisoner is transferred to facilitate visits it is usually for an extended period and arrangements are made for special extra visits during the time.

- 15.100 In relation to Recommendation 170, it is apparent that the standard of visiting facilities varies considerably between prisons - ranging from very good to poor. Visiting areas are often partly in the open air - which is acceptable when the weather is fine but quite unusable when that is not the case. On the basis that I now receive relatively few complaints about visiting facilities, I think it would be fair to say that improvements made at a number of prisons have been effective. However, I would also add that increasing prison musters must also at times place those facilities under stress.
- 15.101 The Ministry has contracted with several welfare agencies to operate "visitor centres" at a number of prisons. These agencies provide an invaluable service by acting as an interface between visitors and prison staff (thereby, at times, reducing tension); providing storage for visitors' belongings that could not be taken into the prison; by providing care for children of visitors; and, generally, helping to maintain connections between prisoners and their families.

RECOMMENDATION 15.6

That the Ministry contract appropriate welfare organisations to operate visitor centres at all prisons.

- 15.102 The issue of visits arose in the deaths of Darren **Boyle** (CWCRC; 5 September 1994) and Stephen **Maslin** (Casuarina; February 1997).
- 15.103 As discussed in Chapter 10, there was confusion over a visit to Mr Boyle by his mother on 3 September (Saturday). It appeared that, because he had not expected her to visit, he had arranged for other friends to visit him on that day. When his mother's request that he be allowed two shorter sessions rather than receiving one visitor was refused by a prison officer, Mr Boyle's mother cancelled her visit so that his other friends could visit him, with the intention that she would arrange another visit for either 4 or 5 September. She was, unfortunately, unable to visit him as planned and arranged a visit for 6 September (Tuesday). However, Mr Boyle was not advised of the change and, it is alleged, was also refused permission to telephone his mother on the Monday afternoon - although this is denied by the officers on duty - and hanged himself later that day.
- 15.104 In my view, this incident raises two concerns. First that the apparent denial of the request to have two visits of shorter duration seems somewhat inflexible and unhelpful and second, that there appears to be some uncertainty as to whether prisoners are notified when visits are booked or cancelled, and whether telephone messages are taken for prisoners if a visitor is unable to visit at a prearranged time. I was particularly interested in whether the denial of the request for two shorter visits was in accordance with established procedure.
- 15.105 The Ministry advised me that remand prisoners are allowed one visit period per day during the times promulgated by each prison. The length and frequency of visiting periods are determined by overall prison operations and availability of staff. Sentenced prisoners are permitted one visit on each scheduled visiting day at the times promulgated by each prison. Officers may use discretion for additional visits in cases where visitors have travelled long distances, or a genuine emergency occurs, or an 'at risk' prisoner would benefit from an additional visit. The exercise of this discretion depends on the number of visitors and space available during a scheduled visits time. It also advised that "...*the provision of services to prisoners and their visitors is limited only by the resources available to carry them out.*"

- 15.106 On the matter of booking and cancellation of visits, the Ministry advised that, in prisons where a visits booking system operates, prisoners are notified of booked or cancelled visits. In other prisons, prisoners can only be notified if staff are contacted and advised. Where visits are cancelled, prisoners are informed as soon as possible by prison staff. I mention in passing that the above response is typical of the Ministry's tendency to answer questions by describing general procedures rather than answering the specific question asked.
- 15.107 Nevertheless, as the Coroner noted, the introduction of the "Arunta" telephone system, which was intended to overcome difficulties experienced by prisoners in making telephone calls, should enable prisoners to make calls to nominated telephone numbers without officer intervention. It also facilitates contact between prisoners and family members, and to that extent, should assist in the resolution of misunderstandings about visits.
- 15.108 The death of Stephen **Maslin** was found by the Coroner to be an accident, having occurred after Mr Maslin obtained access to heroin and inhaled a quantity of it. The Coroner concluded that Mr Maslin obtained the heroin while he was in Casuarina and that it was most likely obtained as a result of visits. It was not possible to establish conclusively from the prison records who exactly had visited Mr Maslin on the day of his death or the day before, and the Coroner was not prepared to make a finding as to who supplied the heroin or the circumstances in which it was supplied. Two of the persons who could be identified as having visited denied any involvement. The Coroner commented that "*...the failure to have a reliable means of recording prison visits appears unsatisfactory*". He therefore added a rider to his finding, that :
- "The Ministry of Justice should implement a system which would record with some reliability the identity of visitors having contact visits with prisoners. Such a system could, for example, require each adult visitor to sign a Daily Visits Report form against an entry of the name and address of the visitor."*
- 15.109 The Ministry reviewed the Coroner's findings and supported the rider. It noted that visitor recording systems are in place in all prisons but that none appeared to record reliably the identity of visitors. It was therefore recommended that the viability of implementing a formal system of visitor identification utilising motor vehicle licences or other similar accepted forms of identification should be investigated. During this inquiry I asked the Ministry about the status of this recommendation.
- 15.110 The Ministry responded by describing some of the practical difficulties involved, such as when visitors to prisons are "*...traditional or semi-traditional indigenous people...[very few of whom]...would be able to present any kind of formal identification. Many are also illiterate and would therefore be unable to complete or understand the legal responsibility associated with forms such as Statutory Declarations.*" It also commented that the envisaged level of visitor identification might not be necessary at minimum security prisons. To my knowledge, no further action has been taken in relation to this recommendation.

SUMMARY OF RECOMMENDATIONS

- 15.1 That the Ministry reconsider its position regarding RCIADIC Recommendation 329 and consider incorporating a statement of prisoner rights into the *Prisons Act*.
- 15.2 That as part of its current internal review of prison deaths the Ministry commission an independent comparative study of the management of Albany Regional Prison and other prisons in order to identify any practices or other factors which should be more widely applied in the prison system.
- 15.3 That the Ministry complete its review of the independent report on prison disciplinary procedures as a matter of urgency and implement its recommendations. If implementation is delayed by a need to amend the *Prisons Act* or other legislation then RCIADIC Recommendation 180 should be implemented in the meantime by continuing the role of magistrates or experienced legal practitioners as visiting justices at all prisons.
- 15.4 That the Ministry:
- (a) finalise and implement the proposed grievance resolution process as quickly as possible; and
 - (b) ensure that prison officers and all those persons expected to be involved in resolving grievances are adequately trained in the aims and principles of the system and the skills needed to objectively evaluate and resolve grievances.
- 15.5 That the Ministry:
- (a) ensure that the new DGR relating to prisoner transfers is strictly complied with by prison staff; and
 - (b) implement a uniform procedure whereby all prison officers and prison management are made aware of the contents and requirements of all amendments to DGRs, Standing Orders and other instructions.
- 15.6 That the Ministry contract appropriate welfare organisations to operate visitor centres at all prisons.

¹ (Norden, P. - Australian Social Justice Council, Sydney 1996)

² See Appendix 1

³ See Chapter 13, paragraphs 13.130-13.133

⁴ at page 45

⁵ See Chapter 8

⁶ See Chapter 10, paragraphs 10.183-205

⁷ See Appendix 1

⁸ *ibid*

⁹ *ibid*