SECTION ONE - CHRONOLOGY

1970 –

*New prison facility opened at Bunbury*

*Work Release initiated*

The scheme permitted prisoners to undertake work, and be remunerated for work while still accommodated within prison facilities.

1971 –

*Byford opened*

A further rehabilitation and training centre (Byford) for ‘convicted inebriates’ (alcoholics) was opened. This marked a shift away from imprisonment as a means of dealing with alcoholism (Thomas & Stewart 1979: 158).

1972 –

*Wooroloo Prison farm education centre*

Wooroloo Prison farm education centre was established in 1972 on the site of a disused hospital and sanatorium.

1973 –

*Royal Commission into allegations relating to Fremantle (the Jones Report)*

Following allegations concerning alleged mistreatment of inmates by prison staff and alleged racial discrimination directed towards Aboriginal prisoners, Jones oversaw a Royal Commission to examine the same. Some allegations were substantiated, although the racial integration policy of the Department was praised, and a number of recommendations were made, including that more welfare officers were required.

1974 –

*Prisons Rules and Regulations first issued*
These Rules and Regulations replaced outdated provisions, and, to an extent, focused upon rehabilitation. There had been no major review of these provisions since the 1950s.

1975 –

*Wyndham opened*

1979 –

*Law Reform Commission’s Report No. 64 – Bail – released*

At the time of the reference to the LRC, the law governing the grant of bail was contained in 117 provisions in 14 different statutes and regulations. This LRC report led to the introduction of consolidated and revised bail provisions in the *Bail Act (WA) 1982* (see below), and included a range of recommendations relating to issues such as bail justices in remote areas and sureties.

*Parker Report on parole, prison accommodation and leave from prison*

The Parker Report, which recommended paring back parole eligibility, was quite influential, in that it led to legislative restrictions on parole in 1985 (see below). It had been seen at the time that prisoners were getting off too lightly as a result of parole.

1980 –

*Wilsmore v WA [1981] WAR 159*

A Fremantle prisoner challenged on State constitutional grounds an amendment to electoral legislation prohibiting from voting in State elections any prisoner who had previously become eligible to vote in Federal elections because no longer of unsound mind. His challenge, which went to the High Court and was eventually unsuccessful, raised serious questions about procedure around previous amendments to the electoral legislation.

*Eastern Goldfields prison opened*

*Aboriginal Justice of the Peace scheme introduced*

Under the provisions of the *Aboriginal Communities Act 1979*, Aboriginal communities in the north-west of the State began participating in managing justice issues through Aboriginal JPs, Bench Clerks and Probation Officers.

1981 –
Completion and opening of Canning Vale Prison-

The first prisoners were transferred there in June 1982. This was later re-named Hakea Prison

Prisons Act (WA) 1981 introduced

The Prisons Act (WA) 1981 was introduced, and subsequently amended and subject to six reprints consolidating amendments. Some of the provisions were criticised. In particular, the lack of welfare provisions and the closed nature of disciplinary proceedings for officers were singled out by commentators at the time. There was an internal Ministry of Justice review of the Prisons Act in 1998, with a view to replacing it with new legislation.

Dixon Committee Report into WA’s rate of imprisonment

The report recommended that there ought to be a greater use, particularly by lower courts, of community-based sanctioning in place of imprisonment; and that the frequency with which people were being imprisoned in the state was the primary contributor to high rates of imprisonment, rather than length of sentences.

1982 –

Work Release/ Section 94 Activities/Home Release

Introduced as part of the new Prisons Act 1981, these schemes all permitted release for open security prisoners to home/work/community based work activities.

Bail Act passed

Implementing the primary recommendations of the Law Reform Commission’s 1979 report into bail in Western Australia, Government passed the Bail Act, consolidating existing bail legislative bail provisions into one piece of legislation.

1982/82 –

Roeburne Regional Prison opened, and plans to close Fremantle Prison were announced

1984 –

Abolition of capital punishment

The last execution in the State was in 1964, but it was not until 1984 that the Acts Amendment (Abolition of Capital Punishment) was passed.

Aboriginal Welfare Group established within DCS
The Group, made up of Aboriginal welfare workers, provided an opportunity for liaison and support; and was focussed on improving the situation of Indigenous prisoners and offering policy advice to the Department, *inter alia*.

**1985 –**

*Greenough Regional Prison opened 1985*

This year marked the opening of Greenough Regional Prison and a push generally to regionalise prisons as a means of alleviating problems associated with prisoner welfare, unnecessary prison transfers and accommodation pressures at Fremantle Prison.

*Legislation restricting parole eligibility*

Responding to the *Parker Report* of 1979, this legislation restricted parole eligibility by, *inter alia*, removing the presumption that a minimum term would be set for sentences of 12 months or more. These amendments preceded a major overhaul of parole in 1988 (see below).

**1986/87**

*Aboriginal community-based supervision commenced -*

The introduction of Aboriginal Field Officers as a pilot in three regions had positive benefits for Indigenous people within the criminal justice system.

*Aboriginal Programs –*

DCS developed appropriate programs for Aboriginal offenders, both pre-release and post-release in nature.

**1987 –**

*Department of Corrective Services established*

The Department of Corrective Services (DCS) was created legislatively, as an amalgamation of Probation and Parole and the Prisons Department.

*Vincent Committee Report - Interim State Inquiry into Aboriginal Deaths in Custody*

The Interim inquiry was completed, with recommendations including the need for DCS to upgrade custodial facilities for Indigenous prisoners.

**1988 –**
Major legislative overhaul of parole

Following the 1985 restrictions on parole eligibility, further amendments led to greater changes within parole, including the setting down of a statutory formula for parole to reduce disparities (minimum of six months, maximum of two years).

Criminal Law Amendment Act No. 70

This legislation introduced provision for allowing sentencing authorities to order that (for persons who commit offences after this date), a person is not eligible for parole and that a parole order shall not be made at any time. Thus, persons may be sentenced for ‘the term of their natural life’.

Community Corrections Centre legislation introduced

This legislation provided for the development of Community Corrections Centres; for the issuing by the Parole Board of work release orders; and for diversion of fine defaulters to ‘work and development orders’.

Riot at Fremantle & McGivern Report

A riot by prisoners at Fremantle Prison on 4th January, involving hostage taking and fire, led to considerable damage to the facility. Order was finally restored on the 5th January. This led to an enquiry into the circumstances of the riot (McGivern 1988), wherein several recommendations were made in relation to procedure and administrative practice at Fremantle. The high rates of incarceration, and poor conditions at the Prison, were blamed for the riot (Utting 1988).

Aboriginal Visitor Scheme introduced as a pilot at Eastern Goldfields

The Scheme was introduced as a result of the Interim Inquiry into Aboriginal Deaths in Custody, and celebrated 20 years of operation in 2008.

Court Drug Diversion scheme piloted in Perth

The program allowed for offenders, upon pleading guilty, to be given bail of 4-8 weeks generally prior to sentencing, during which time participation in drug rehabilitation programmes is assessed, with a view to considering their prospects of success in participating in longer-term programmes.

1989 –

Decriminalisation of public drunkenness
The *Acts Amendment (Detention of Drunken Persons) Act 1988* had the effect of decriminalising public drunkenness in WA, and sobering up shelters were established in a number of locations, with some focus upon Aboriginal communities.

**1989/90 –**

*Juveniles in adult prisons*

As a result of the *Acts Amendment (Children’s Court) Act 1988*, the Department was required to notify the Department for Community Services of all juvenile offenders within its (adult) prisons.

*Unit Management introduced*

Prison officers were responsible for ‘welfare’ of prisoners under ‘unit management’. Officers they were supposed to engage in constructive interaction with prisoners within their particular unit and thereby deal with those prisoners ‘welfare’ needs.

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**1990 –**

*Fremantle Prison conservation project*

As the largest such project ever undertaken in Western Australia at the time, the Fremantle Prison Conservation & Future Use project commenced in 1990, making extensive investigations & researches into the prison site, its history & heritage potential. It reported to State Government during 1990, recommending that the prison be conserved as a significant heritage site, and this recommendation was accepted by Government.

**1990/91 –**

*Case Management introduced.*

Prisoners serving more than four-month sentences were given a sentence plan, and were allocated a Case Manager (Prison Officer) to work on relevant options (such as education).

*State Cabinet approved involvement of private enterprise in prison industry*

This subsequently led to contracts with private providers in the area of court security and transportation.

**1991 –**
Home Detention introduced

Home Detention was introduced as a condition of bail or as a sentencing option, with the intention of reducing incarceration rates in Western Australia through the *Community Corrections Legislation Amendment Act 1990*. Home Detention currently exists for bail, but not for sentencing.

Fremantle Prison closed and Casuarina opened

Inmates and staff of Fremantle Prison were transferred to the new metropolitan maximum security prison at Casuarina, about 20 kilometres south of Perth, with the closing of the old Prison. Fremantle has been preserved as an historic site.

Halden Committee Review of parole

This Committee released its findings in 1991, finding that the ‘principle of parole, as an essential and integral part of the correctional system, ha(d) been confirmed’ during their research into the issue. The Committee recommended the ‘continuation of a system of supervised conditional release which provides support for the prisoner and protection for the community’. The Committee made 29 recommendations which have had some influence on policy and legislation.

Royal Commission into Aboriginal Deaths in Custody released report

DCS in WA introduced Aboriginal Community Corrections Officers, an Aboriginal Visitors Scheme and an Aboriginal Unit, *inter alia*, as a result.

1992 –

Aboriginal Unit established by DCS

This Unit was set up in response to the RCIADIC, and sought to build relationships with Aboriginal people, *inter alia*.

Ministry of Justice Aboriginal Plan - N/A

This was the first such plan for the Ministry, and was based, in part, on input from Aboriginal staff, Aboriginal community members, and recommendations from the RCIADIC.

Victim-Offender Mediation Unit approved by Minister to operate within DCS

This DCS Unit, a restorative justice initiative, is still operational today, and mediation is undertaken voluntarily and through both reparative and protective (where victim/offender do not meet) mechanisms.
Crime (Serious and Repeat Offenders) Sentencing Act 1992 passed

This legislation was passed in response to community outrage in relation to a series of fatalities arising from police car chases of juvenile offenders. It was, however, applicable to juveniles and adults alike, and targeted, in particular, ‘repeat violent offenders’ with mandatory indeterminate detention, with some alleged impacts upon human rights.

1993 -

Aboriginal Community Supervision Agreements formalised

Contractual agreements with Councils on relevant Aboriginal communities were set up to enable offenders to supervised by the community. It was hoped that such an initiative may reduce Aboriginal incarceration.

Department of Corrective Services incorporated into Ministry of Justice

In 1993, the state’s prisons and community corrections functions (ie. Department of Corrective Services) were brought together with its juvenile detention facilities under the Department of Justice umbrella (O’Toole).

1994 –

Prisoner Support Scheme initiated

Now known as the Prisoner Peer Support Scheme, the scheme recruited prisoners to mentor and offer support to other prisoners. It now has an Aboriginal-prisoner specific component.

Victims of Crime Act introduced

The legislation contained a list of guiding principles in relation to victims of crime.

Fines, Penalties and Infringement Notices Enforcement Act 1994

Addressing the large numbers of persons being incarcerated for fine default in Western Australia, this legislation removed community work and prison as an option for fine defaulters. Licences were to be suspended instead to enforce payment of fines.

1995 –

Sentencing legislation package

Series of Acts, including Sentencing Act 1995, came into effect in 1996, consolidating existing provisions and enacting changes (such as abolition of sentences of three months or less). There was a clear focus on non-custodial options in the legislation.
1996 –

**Future Directions Report, Towards Integration**

The Report set out recommendations for an integration model for the Offender Management Division, focusing upon recidivism risk assessment; recidivism risk reduction interventions; case management; throughcare; customer focus; and information exchange.

**Mandatory Sentencing legislation introduced (three strikes legislation)**

The legislation provides that when convicted for a third time or more for a home burglary, adult and juvenile offenders must be sentenced to a minimum of twelve months imprisonment or detention. Mandatory sentencing remains in place, despite its abolition in the Northern Territory in 2001.

**Criminal Law (Mentally Impaired Accused) Act 1996**

Established the Mentally Impaired Defendants Review Board and relevant procedures for those found to be unfit to stand trial or acquitted on account of unsoundness of mind and subsequently detained under custody orders.

**Fremantle Police Diversion Project – Offenders with Disability - introduced**

The project commenced in 1996, but was discontinued in 1998 as police withdrew from the scheme.

1997 –

**Auditor General review of bail and remand**

The Auditor General criticised delay in the development of bail legislation in Western Australia over recent years, and noted increasing rates of remand, factors which were leading to increasing imprisonment rates.

**Internal Review of the Prisons Act – Ministry of Justice**

DCS working group and steering committee were established to examine the *Prisons Act 1981* with the intention of developing a new Act. A Draft Report and a number of Discussion Papers were produced some of which were sent to members of the judiciary for comment. In the event, the Draft Report was shelved and new Act did not go ahead although a new (more broader) Corrections Bill is again now under development.

**Restraining Orders Act passed**
This legislation resulted from a 1995 Government review of restraining order provisions and procedures, and made provision for different types of restraining orders and prescribed penalties for breaches of such orders.

1998 –

Christmas day riot at Casuarina prison

The riot at Casuarina caused over $250,000 damage to property; and 221 staff and 2 prisoners required medical treatment as a result of the riot. McGivern led an inquiry into the riot, and it was found overcrowding, as well as a range of other factors, led to the incident.

Hammond Committee report on parole

The Committee made a number of recommendations, with the effect that offenders would ultimately serve their whole sentence in prison or in the community. The report led to the ‘truth in sentencing’ legislation of 1999.

First work camp commenced at Walpole

Now ten years old, the work camp initiative began by carrying out community work at Walpole. The stated goals of the work camp program are rehabilitation and reparation, and there are now seven camps in the State. They carry out work projects relating to community and heritage; environmental; disaster relief; and recreation and tourism work tasks.

Riverbank Prison Educational Centre opened

1999 -

Specialised Family Violence Courts commence

This court model was initially implemented at Joondalup Family Violence Court in 1999, but has subsequently been expanded to other areas. It utilises an inter-agency and alternative sentencing approach for dealing with the civil matters of Violence and Misconduct Restraining Orders, and all criminal matters related to family violence.

Prisons Amendment Act passed

This legislation enabled the development of private prison facilities and also created the Office of the Inspector of Custodial Services.

Truth in Sentencing Legislation
To address perceptions of leniency in sentencing, a series of laws were passed which had a number of effects, including abolishing remissions and increased a non-parole period to one half of a sentence from one third. This legislation was replaced by new provisions in 2003.

2000 –

Privatisation of court security and custodial services

The push for privatisation of corrective services in Western Australia led to the development of the first private prison (Acacia) in the State; and to contracts with the private sector in relation to court security, prisoner transportation, and (some) police lockups.

WA State Ombudsman – Report into Deaths in Custody

This Report by the State Ombudsman examined the large numbers of deaths and suicides in Western Australian prisons over a recent period of time, and made recommendations relating to parole, health services, and prison programs, inter alia, directed towards addressing this issue.

Inspector of Custodial Services commences duty

A groundbreaking initiative, the Office of the Inspector of Custodial Services is an independent body directed towards ensuring effective accountability in all custodial facilities in the State (including juvenile and private facilities). The Inspector has completed a number of thematic and prison-specific reviews.

Nevill Report into financial management of prisons

This Governmental review of the financial management of prisons was fairly wide-ranging. The high rate of imprisonment in the State is discussed, and recommendations to tackle the issue include focusing upon community-based sanctions and ensuring that remand of offenders was absolutely necessary.


The Report provides information from relevant agencies with respect to implementation of the 339 recommendations from the RCIADIC (imprisonment as a last resort, courts, custodial health, inter alia).

Aboriginal Justice Plan (2000) (AJP)
The *AJP*, developed by the Justice Coordinating Committee and the Aboriginal Justice Council in response to the outcomes of the Ministerial Summit into Aboriginal Deaths in Custody (1997), sets out a vision, principles and framework to guide actions to reduce the number of Aboriginal people caught up in the criminal justice system.

**Office of the Inspector of Custodial Services introduced**

As an independent body, the role of the Office is to examine the operations of the Western Australian prison system and report its findings independently to Parliament. This statutory independence is unique in the Australian correctional system, and has elevated WA correctional system to world’s best standards. Inspections can be announced or unannounced and would encompass every prison over a three-year period (O’Toole: 189).

**First Aboriginal work camp established**

The State's first prisoner work camp specifically for Aboriginal prisoners was established in February 2000 on the traditional lands of the Millstream-Chichester National Park. Camps at Millstream, Mt Morgans, Derby and Wyndham provide an option for Aboriginal prisoners to serve prison terms near their traditional lands and communities.

**Drug Court commences**

An alternative scheme for dealing with high-level offenders with illicit drug problems, the Court has now expanded to the Perth Children’s Court, *inter alia*, and has been found to reduce recidivism.

**2001 –**

**DCS - Integrated Prison Regime**

The integrated prison regime was developed as the ‘glue’ to bind together and reinforce activities and initiatives within prison which seeks to provide certain outcomes, such as rehabilitation, for prisoners. There is some focus upon unit management and case management.

**Acacia Prison opened**

This was the first (and is still the only) private facility in Western Australia and the largest prison in the State, accommodating 750 adult male prisoners, of whom 200 are Indigenous (O’Toole).

**Victim Notification Register**
DCS established the Register to ensure that victims of crime are kept informed about the status of the offender who has committed the relevant crime whilst that offender is under their supervision.

2002 –

*Intellectual Disability Diversion Pilot project commences*

Seeking to address the specific needs of persons with intellectual disabilities, the scheme diverts offenders whilst they complete a relevant management plan. It has been positively evaluated.

*Gordon Inquiry and Action Plan (2002)*

The highly influential report of the *Gordon Inquiry*, with 197 Recommendations, and the Government response to these recommendations (*Gordon Action Plan*) sought to urgently address the issue of safety of Indigenous women and children, including through a focus on improving criminal justice responses.

*Prisons Division Strategic Plan for Aboriginal Services (2002-2005)*

The Plan seeks to address the issue of Indigenous over-representation in the State’s prisons, and includes a number of key principles, objectives and actions directed towards this goal.

*Suicide in Prison – Report by Department of Justice*

This Report is compiled by the Government-appointed Suicide Prevention Taskforce, and makes a number of broad-ranging recommendations directed towards reducing the comparatively high number of suicides in prison in the State in the late 1990s and 2000.

*Frizell report – parole*

This Governmental review of the Mentally Impaired Defendants Review Board, the Supervised Release Review Board and the Parole Board recommended greater community engagement.

2003 –

*Skinner Review*

The Review focused on the Department of Justice case management practice for ‘high risk’ offenders in the community and made a number of recommendations on this issue.

*Report on the Review of Activities under Section 94 of the Prisons Act (WA)*
DCS conducted an internal review in relation to allegations that prisoners had been participating in appropriate activities as part of their community release under s 94 of the *Prisons Act*. It was recommended that the scheme be maintained, but that there be tighter controls imposed.

**Legislative change – truth in sentencing package**

Legislation introduced ‘truth-in-sentencing’ repealed earlier similar provisions (1999/2000), the main aspects of which included abolition of one-third remission and of sentences of less than six months, and courts adjusting sentences by one-third to prevent an increase in imprisonment as a result of the new legislation. The latter provision was abolished, however, in 2008.

**Yandeyarra Aboriginal Circle Court**

This Circle Court has been successful in addressing the offending of local Aboriginal people through an alternative sentencing process.

**2004 –**

**Boronia opened**

*Western Australian Family and Domestic Violence State Strategic Plan (2004-2008)*

The Plan constitutes the major Government policy framework relating to family and domestic violence in Western Australia, and works in conjunction with annual Action Plans developed to address this issue in Western Australia.

*Western Australian Aboriginal Justice Agreement (2004)*

The AJA (WA) is, broadly, a framework or partnership of five years duration between Government and Aboriginal communities to work together at a state, regional and local level to improve justice outcomes for Aboriginal people. It aims to achieve a number of objectives, including to reduce Indigenous contact with the justice system and to lower the incarceration rate of Aboriginal people.


The Plan sets out a number of objectives and strategies for Community and Juvenile Justice, which seek to reduce offending and re-offending, and to protect the community.

*Repay WA commences – community work*

Repay WA is program that allows eligible offenders to repay their debt to society through supervised community work projects. Offenders participating with repay WA may be
completing development orders, community-based orders, intensive supervision orders or early release orders.

*Disability Services Policy – DCS and DoAG*

The Policy seeks to address the way that DCS can meet the specific needs of those with disabilities within the criminal justice system, including, for instance, through the Intellectual Disability Diversion Program.

**2005-**

*Drug and Alcohol Action Plan 2005-2009 - DCS*


*Geraldton Family and Domestic Violence Project*

Working with the Aboriginal community at Geraldton, Government designed justice strategies such as a Family Violence Court and community-based Indigenous family violence offender program. The Barndimalgu Court (family violence) arose as a result of the project in 2005, with relevant programs attached to it.

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

This inquiry has significantly influenced justice policy and legislation in Western Australia since the release of its report in 2005, which contained 148 recommendations. It has led to the separation of the Department of Justice into two new agencies: the Department of the Attorney General and the DCS; the beginnings of a new Corrective Services Act for WA; and replacement of the Parole Board with the Prisoners Review Board, *inter alia*.

*Inspector of Custodial Services Directed Review under the Inspector of Custodial Services Act 2003*

In addition to the *Mahoney Inquiry* report, the Inspector of Custodial Services conducted a directed review under the *Inspector of Custodial Services Act 2003*, setting out 162 recommendations relating to risk management; development of a super-max facility to address rising concerns with terrorism; and a focus upon the DCS as a ‘knowledge-oriented organisation’.

*Overcoming Indigenous Disadvantage in Western Australia Report (2005)*

The OIDWA set out baseline indicators against which progress in terms of Indigenous socio-economic circumstances could be measured, as well as sharing examples of
evidence-based best practice directed towards achieving such progress. Relevant strategic action related to, *inter alia*, diversion to sobering-up shelters and pre-release training for Indigenous people.

*DCS - Prisons Division Indigenous Education and Training Policy (2005)*

This policy framework aims to increase participation and success rates of Indigenous prisoners in Western Australia.

*Kimberley Aboriginal Reference Group’s (KARG) initial recommendations toward the Kimberley Custodial Plan (October 2005) – Stage One and Stage Two Reports -*

The KARG was commissioned by Government to make recommendations in relation to correctional facilities and programs in the Kimberley region of WA for input into a final Kimberley Custodial Plan. This initiative provides an example of best practice in terms of Aboriginal community engagement in the justice system. A *Stage Two Report* followed in 2006 - *The Kimberley Custodial Plan – An Aboriginal Perspective – Stage Two Report – Prisoner Programs (February 2006).*

*A Community Justice Services Programs Branch – Approach to Servicing Offenders (2005) (Corrections) – N/A*

*Court Services Aboriginal Strategic Plan (2005-2009) – N/A*

*2006 –*

*Aboriginal court commenced at Norseman*

Following introduction of similar courts in other jurisdictions, the Norseman Aboriginal Court commenced in the south-east of the State, with a similar court commencing in Kalgoorlie-Boulder in the same year.

*Profile of Women in Prison study*

From 2001, DCS has gathered and presented information on three occasions (including in this latest report (2005)) relating to the profile of women in prison so as to ensure that these prisoners’ needs are met and that the community has an understanding of the backgrounds and circumstances of women in prison.

*Statement of Reconciliation (DCS) (2006)*

This document serves as the Department’s statement of commitment to work with Indigenous people towards reconciliation.

*WA Law Reform Commission’s report into Aboriginal Customary Laws*
The Commission, after consultation, published a wide-ranging report with 131 recommendations - advocating, for instance, a greater role for community justice groups; establishing an Aboriginal Justice Advisory body; and Office of the Commissioner for Indigenous Affairs (to report on RCIADIC implementation).

Parole & Sentencing Legislation Amendment Act 2006

This legislative amendment, arising from recommendations of the Mahoney Inquiry, led to establishment of the Prisoners Review Board; the establishment of legislative authority around re-socialisation programs for serious offenders; and the abolition of re-entry release orders for prisoners serving parole terms.

Prisons & Sentencing Legislation Amendment Act 2006

This Act constituted the first stage in the introduction of a Corrective Services Act in Western Australia, and focused upon enhanced rehabilitation of prisoners and making necessary legislative amendments resulting from the division of the Department of Justice to the DCS and the Department of the Attorney-General.

Department of Justice split into DCS and DoAG

In line with Mahoney Inquiry recommendations, the Department of Corrective Services was separated from the Department of Attorney General.

2007 –

Inspector of Custodial Services – Code of Inspection Standards released

The Code sets appropriate benchmarks for prison standards, and has a strong focus upon human rights.

Safer Communities Safer Children (2007)

This policy framework was developed by the Department of Indigenous Affairs and responded to a crisis in the East Kimberley in relation to cases of child sexual abuse. Relevant agencies were called upon to participate in its implementation.

Prisoners Review Board

Following examination of criticisms of the Parole Board in the Mahoney Inquiry (2005), the Parole Board was replaced with the Prisoners Review Board. The latter deals with release and breaches of conditions of prisoners.

DCS - Disability Access and Inclusion Plan 2007-2010 (DAIP)
The DAIP details, at the corporate level, the Department’s disability services priorities for the period 2007-2010, as well as listing achievements to date. It is to be reviewed every three years.

*Specialist Bail Coordinator appointed for female offenders*

The Coordinator is to assist women, particularly Aboriginal women, with bail in the justice system.

**2008**

*Death in Custody case Elder in Kalgoorlie –*

The death in custody of an Aboriginal Elder, arrested for drink driving, whilst being transported by a private contractor to Kalgoorlie from remote Western Australia led to changes to prisoner transportation laws.

*Repeal of truth-in-sentencing one – third reduction of sentences*

Following the case of *Yates v The State of Western Australia* [2008] WASCA 144, the Government repealed truth-in-sentencing provisions which directed courts to reduce sentences by one-third to prevent increasing rates of imprisonment in the State.

*Inspector of Custodial Services – Aboriginal Prisoner Standards released*

Representing a codification of findings and recommendations for improving outcomes for Aboriginal prisoners collected over eight years of custodial inspections.
SECTION TWO –
MAJOR THEMES DECADE BY DECADE

1970s

INCARCERATION RATES

A comparison between WA and other jurisdictions in 1969-70 indicates that WA had more prisoners in open conditions, proportionally, than the other jurisdictions. More than 50% were in open conditions in WA, compared to a national average of 20% (O’Toole). (Or: 592 daily average minimum security prisoners (51.11% of total daily average - cf. 21.52% in NSW; 28.82% in Victoria; 7.98% in Queensland; 20.57% in Tasmania; and 14.92 in South Australia in 1969-70 (Thomas & Stewart: 160-61)).

The daily average prison numbers had risen throughout the 1960s and into the 1970s. In 1963-64, the daily average was 856.42 (818.49 were male; 136.89 Aboriginal males; 37.93 female; 21.31 Aboriginal females). By 1968-69, the daily average was 1175.57 (314.39 Aborigines) and 64.47 females (49.41 Aborigines). In 1972-73, the daily average was 1416.94.

See also Dixon Committee Report (1981) below.

LEGISLATIVE CHANGES

1974 –

Prisons Rules and Regulations first issued

One of the recommendations of the 1973 Royal Commission into Fremantle (see below) was that out of date prison regulations ought to be replaced. There had been no major review of rules and regulations since the 1950s, and these earlier provisions included rules relating to preventing officers from ‘unnecessarily’ conversing or in any way being ‘familiar’ with a prisoner, for instance. It had been an offence, in fact, for an officer to be found ‘holding a private conversation with a prisoner’ or ‘conversing on private or public topics in the hearing of prisoners’ (Dengate 1974: 79ff).

The 1974 Regulations reduced the number of regulations from 288 to 103. The new Regulations clarified earlier provisions, including those relating to the calculation of remission, for example. According to Dengate, they largely conformed with the Standard Minimum Rules for the Treatment of Prisoners, including by way of statements espousing racial equality between prisoners. There was also some emphasis upon rehabilitation and re-integration. However, Dengate notes that the problem of short-term sentences, high incarceration rates, and the perceived need for vast expenditure on
increasing prison capacity prevented the Western Australian penal system from properly complying with the Minimum Rules (despite such initiatives as work release; Karnet; and the introduction of classification and assessment systems) (Dengate: 84).

1977 –

*Increasing penalties*

The WA Labour Government, when elected in 1977, sought to increase the maximum prison term for a large number of offences and to make it more ‘difficult for prisoners to be awarded a minimum term’ (Utting 1988) – no further detail.

1979 –

*Electoral Act 1907 amendments* (see below *Wilsmore v WA*)

**MAJOR INQUIRIES**

1973 –

*Royal Commission into allegations relating to Fremantle (the Jones Report)*

The *Royal Commission appointed to investigate: Various allegations of assaults on or brutality to prisoners in Fremantle Prison: and of discrimination against aboriginal or part-aboriginal prisoners therein: and upon certain other matters touching that prison, its inmates and staff 1972*) was announced in 1972, and reported in 1973 (the *Jones Report*).

The Commission came about as a result of Prison Officers’ Union threatening industrial action if no response was forthcoming in relation to allegations raised by prisoners of mistreatment by prison staff. Those allegations related to incidents following a strike by prisoners at Fremantle in 1972 as a result of an increase in strip searching at the prison (partially substantiated by the Commission); and allegations in relation to an officer allegedly shooting at an inmate who refused to stop fleeing during an escape (substantiated). It was also alleged that Aboriginal prisoners were being discriminated against (including by officers allowing non-Aboriginal prisoners to assault Aboriginal prisoners).

Commissioner Justice Jones presided over the Commission. He found little evidence of systemic racial discrimination, as alleged, and indicated that the ‘prison population of Fremantle prison is far more racially integrated than is the general population outside’. Indeed, one of the recommendations in the final report was that the effective policy of racial integration should be ‘continued’. It was also recommended that inmates required more supervised recreational activities; that more staff were required; and that there ought to be sufficient welfare officers (who are not ex prison officers and who should be located in the Department of Community Welfare). The Department of Corrections
accepted some recommendations - for instance, the policy of racial integration was maintained in preference to one of segregation.

1979 –

*Law Reform Commission's Report No. 64 on bail released*

At the time of the reference to the LRC, the law governing the grant of bail was contained in 117 provisions in 14 different statutes and regulations. The diversity of legislation led to doubts about irregularities, omissions and ambiguities in the law. In addition, some practices, such as the imposition of a condition requiring a cash surety, were not legislatively authorised. As a consequence, decisions regarding bail were often taken on an ad hoc basis without adequate or comprehensive guidelines, and sometimes without sufficient relevant information about the defendant. In many cases, excessive use was made of the requirement that a defendant find a surety as a condition of their release on bail. Failure to meet this condition had added significantly to the number of remand prisoners in Western Australian jails. There was also no clear procedure for either the defendant, or the prosecution, to appeal against decisions made relating to bail.

The Commission made detailed recommendations to consolidate, clarify and reform the law and procedure relating to bail. The primary recommendation was to enact a separate *Bail Act* to deal comprehensively with bail for defendants in all levels of court in Western Australia and at all stages of criminal proceedings. The Commission also recommended further reforms designed to improve bail procedures that could not appropriately be included in the proposed legislation.

- The proposed *Bail Act* should provide that bail be considered for all criminal offences in Western Australia.
- All unconvicted defendants should have a qualified right to bail. Certain provisions should limit this right. These provisions ranged from the likelihood of certain behaviour whilst on bail to the requirement of further information about the defendant.
- Bail conditions should be reasonable, specified and relevant.
- The law relating to sureties should be specified and streamlined.
- Greater use should be made of summons procedures.
- Bail centres should be established in Western Australia.
- Steps should be taken to improve conditions for defendants who are remanded in custody, and to reduce pre-trial delay.
- Better interview facilities should be provided for prisoners on remand.
- There should be sufficient Justices of the Peace available to perform bail decision-making duties in rural and remote areas.
- Consideration should be given to the establishment of a body to provide a continuing review of bail procedures.
The *Bail Act* was eventually passed in 1982 (see below), with subsequent amendments to that Act in 1988 implementing any outstanding recommendations of the LRC made in this report.¹

**Parole Inquiry – Parker Report**

This report into parole, prison accommodation and leave from prison in Western Australia, conducted by K.H. Parker, was influential in that it led to legislative amendments restricting parole eligibility (see below). There was an ‘increasing view that the minimum sentence was becoming the real sentence and that parole was a means whereby convicted offenders were avoiding their ‘just deserts’’ (Halden 1991: 22), and it was this view, in part, which Parker considered in the final report.

The Parker Report identified difficulties in the minimum term regime established under the *Offenders Probation and Parole Act 1963*. There had previously been no statutory provision for adult probation in Western Australia until the passing of this 1963 legislation. The Act had set up a separate Department of Probation and Parole (which is unusual, in that generally this might fall within a Department of Corrections) (for discussion of the same, see Thomas & Stewart 1979: 152). The Parker Report noted that under the Act the offender had no automatic right to parole, but became eligible upon completion of a minimum term, in instances where a court had set such a term. For offences with a sentence of less than 12 months, there had been a general discretion in terms of setting a minimum term. For those greater than 12 months, a minimum term would be set only if both the nature of the offence and the antecedents of the offender indicated that this was an appropriate course to take.

It was also found that the application of antecedents and offence seriousness in determining the imposition of a minimum sentence led to a ‘conundrum’ of ‘multiple reckoning’, as these factors had already been utilised in determining the head sentence (Parker 1979: 19). Further, there appeared to be inconsistencies in decision-making in terms of the relationship between the head sentence and the minim term. Whilst it may have been intended, Parker suggested, that minimum terms were to be half of the head sentence, at times they equalled a third or less of the latter sentence. Parker found that the setting of short minimum terms disrupted a prisoner from settling into prison life, and did not allow sufficient time for reports and a parole plan to be compiled.

Parker called for a change in approach – suggesting that parole ought to be used as ‘*an* effective method for some prisoners’ rather than ‘*the best* method for most prisoners’ (Parker 1979: 92). It was also suggested that the Parole Board, which had been able to grant parole ‘in its discretion’, should not order release on parole unless satisfied that such release would not involve undue risk, unduly depreciate the seriousness of the offence, promote disrespect for the law or adversely affect public confidence in the administration of justice.

¹ See [http://www.lrc.justice.wa.gov.au/2publications/summaries/P64.PDF](http://www.lrc.justice.wa.gov.au/2publications/summaries/P64.PDF)
Other recommendations included the following:
• it should no longer be mandatory for a Court sentencing an accused person to 12 months imprisonment or more to declare the prisoner eligible for parole. The court should be given the discretion to order a minimum term unless the judge was of the opinion that any one or more of the following would make release on parole inappropriate or undesirable - the nature of the circumstances of the offence, the antecedents of the offender, the likely residence and circumstances of the offender after release, or any other matter);
• a person declared eligible for parole must serve half of the sentence imposed by the Court before being released;
• alternatively, the court could, in exceptional circumstances, fix a minimum term of not less than six months during which a prisoner would not be considered for parole;
• a parolee who has had parole cancelled should be given credit for ‘good behaviour’ of up to one quarter of the unserved portion of his sentence; and
• remission of 10% of the minimum term should be discontinued to alleviate public concerns that prisoners were not serving an appropriate portion of their sentence.

MAJOR POLICY CHANGES

1970 –

Work Release scheme initiated (some discrepancy about dates of commencement)

A work release scheme had been mooted in 1969, and it was introduced in 1970. By 1973, five hundred prisoners had been through the scheme under which prisoners live on prison department property and are remunerated for work completed. Initially only certain inmates were eligible for work release, but in 1971 the scheme was extended to all persons serving a prison sentence. Although there had been some controversy initially due to prisoners being released for study, the scheme was seen as working well (in its early stages) (Dengate 1974: 75ff).

1971 –

Prison staff

By 1971, an important shift had taken place in terms of staffing prisons. The State had had previously (inter-war) had a large number of police gaols when compared to the number of ‘common gaols’. By 1971, a policy of staffing more prisons with professional prison staff resulted in there being thirteen common gaols and six police gaols.

1972 –

Attempt to close Fremantle with the building of a new prison & consultation
In an attempt to replace Fremantle with a new facility, land was selected and, unusually for the time in question, a process of consultation was utilised in developing the prison, including with members of the prison service — a ‘remarkable action’, as consultation was ‘generally alien to the prison tradition’ (Thomas & Stewart 159-60). The prison was ultimately not built, however, for economic reasons.

1973

*Training and Treatment Branch established within Prisons Department*

The development of this branch within the Prisons Department demonstrated the growing move towards introduction of ‘professional’ or ‘expert’ non-uniformed staff within the Department of Corrections from the 1950s (when Fremantle had appointed a welfare officer, but in the 1960s, specifically). The Branch dealt with staff training, social work and psychology, and was constituted by a number of relevant, specialist staff.

**MAJOR CASES**

1979-82 -

*Wilsmore v WA – prisoner’s right to vote*

This case involved a challenge by Wilsmore, a Fremantle prisoner, to 1979 amendments to the *Electoral Act 1907* (WA?) which excluded persons detained in custody (under s 653 of the *Criminal Code 1913*) who had previously been entitled to vote if they could prove they were sane from voting in State elections. Wilsmore commenced action which threatened ‘to shake the constitutional foundation of the State’ (Phillips 2008: 109).

Wilsmore had established a right to vote in Federal elections by satisfying the court that he was no longer of unsound mind, but when he sought to enrol for State elections, was ‘beaten to the punch by the amendment’. Wilsmore initially sought an interlocutory injunction to prevent the 1980 election (denied), but came to argue more substantively that the relevant amendment required an absolute majority of elected Members in each House as it affected the constitution of both houses (see s 73(1) of the *Constitution Act 1889*). Wilsmore was successful in his action, but this led to questions concerning earlier amendments, which, for instance, had rendered 18-21 year olds eligible to vote without a majority, as required. After a number of appeals, including to the Privy Council, the High Court in 1982 upheld a Government appeal, indicating that only amendments to the actual *Constitution Act 1889* required an absolute majority (*Western Australia v Wilsmore* (1982) 149 CLR 79).

**DIVERSIONARY**

*Work Release (see above)*
VULNERABLE POPULATIONS

1969 –

*Women’s Rehabilitation Centre opened 1969 –*

*Opening of first women’s prison - Bandyup*

- No further information -

1980s

INCARCERATION RATES

1980 –

see *Dixon Committee Report* (1981) below (although this largely refers to 1970s).

1981/1982 –

There had been a decline in the number of incarcerations by 5% over last year, perhaps due to *Dixon Committee Report*. There was some hope that the introduction of the *Prisons Act* (forthcoming) with its expected effect of increasing remission rates would further reduce numbers (*DCS Annual Report 1981/1982*).

1983/84 –

It was noted that Western Australian imprisonment rates remained the highest in Australia, although the daily average muster (in prisons) had declined c.f. last year’s figures (1464 in 1983/84 c.f. 1485 in 1982/83). Figures are provided as follows:-

*Daily Average Numbers – Prisoners*

<table>
<thead>
<tr>
<th>Year</th>
<th>Average Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1979/80</td>
<td>1524</td>
</tr>
<tr>
<td>1980/81</td>
<td>1533</td>
</tr>
<tr>
<td>1981/82</td>
<td>1441</td>
</tr>
<tr>
<td>1982/83</td>
<td>1576</td>
</tr>
<tr>
<td>1983/84</td>
<td>1552</td>
</tr>
</tbody>
</table>

(*DCS Annual Report 1983/84*)

1984/85 –
There was concern expressed about prison numbers at this point in time. Although they had increased only slightly over the previous year’s figures, there had been a substantial increase in those with a sentence of five years or more or an indeterminate sentence. They had doubled over the last five years (*DCS Annual Report 1984/85*).

**1985/86** –

During this year, there was an average of 1568 prisoners in prison each day, compared with an average of 1481 in 1984/85 – an increase of 5.9%. There were 5582 prisoners received this year, compared with 5597 in 1984/5 (*DCS Annual Report 1985/86*).

**1986/87** –

The average number of prisoners incarcerated increased by 3.7%; the average number of community-based offenders supervised increased by 11.7%. During this year, there had been an average of 1626 prisoners in prison each day, c.f. 1568 in 1985/6. This represented an increase of 4%. There were 5932 prisoners received into prison during the year, c.f. 5582 for the last 12-month period (*DCS Annual Report 1986/87*).

**1987/88** –

The average number of prisoners increased by 1.6%; and community-based supervised offenders increased by 5.5%. There was an average of 1652 prisoners in prison each day compared with an average of 1626 in 1986/87. It had been expected that a 3% increase in average muster would be experienced, but it was suggested that the lower rate was attributable to ‘extreme pressure on prison accommodation, and resultant reactions by the criminal justice system as a whole, due to the riot and fire at Fremantle Prison’ (*DCS Annual Report 1987/88*: 11). There were 5802 prisoners held in prison during the year, c.f. 5932 in 1986/87 (*DCS Annual Report 1987/88*).

**1988/89** –

The daily average number of prisoners decreased from 1652 in 1987/88 to 1564 in 1988/89 (a fall of 5%). This was said to be due to the impact on sentencing and other authorities of the implementation of initiatives outlined in the Ministerial Statement on Reducing the Rate of Imprisonment, presented to the Legislative Assembly in 1987 and to the RCIADIC. Community supervision orders increased by 8% in this time. It is noted that although there had been a decline in prisoners who were classified as minimum security (resulting in the closure of Barton Mills Prison in 1989, and expected to continue with the diversion of fine defaulters), there had been an increase in long serving, serious and ‘difficult to manage’ prisoners requiring high security accommodation. There was also an increase in the numbers held under the *Migration Act 1958 (Cth)* (81 persons detained during 1988/89 c.f. 11 persons in 1987/88 (due to a boat of asylum seekers landing in north-west WA) (*DCS Annual Report 1988/89*). **
The daily average muster of prisoners was 1624 during the period, representing a gradual increase from 1555 during the first quarter of 1989/90 to 1677 during the last quarter. This reflected a change in the composition of prisoners, with an increase in the number of closed security as opposed to open security prisoners. The total number of prisoners received during 1989/90 was 6161, c.f. 1677 during 1988/89 (DCS Annual Report 1989/90)

** Utting remarks on the decision by the Labour Government, when elected in 1977, to increase the maximum prison term for a large number of offences and to make it more ‘difficult for prisoners to be awarded a minimum term’. This was, according to Utting, a cynical vote-buying stunt and had resulted in more people being in prison for longer periods - to ‘lock up a large number of healthy young men for relatively minor crimes is asking for trouble’ (Utting 1988 (see further comment below - Fremantle riot (1988))).

**MAJOR LEGISLATIVE CHANGES**

1981 –

*Prisons Act (WA) 1981 introduced*

The Act was introduced following a three-year review of the old *Prisons Act 1903*. As well as seeking to ‘ensure the operation of a humane environment for prisoners’ and to protect prisoners from abuse of prison officer powers, the legislation sought to move prisoners who did not pose a danger to the community more rapidly from prison to community. Remission was increased from one quarter to one third; and leave of absence from prison was strengthened (in terms of uniformity and regularisation). Although there was some stress upon ‘accountability’ - this did not mean accountability to the public, but to the Minister. There was also some stricter control over information which might be imparted to the public in terms of prison operations and events. For instance, letters sent outside prisons were to be censored (unless they were intended for the Minister or Commonwealth Ombudsman). The penalty for communicating with a prisoner in an unauthorised manner attracted a penalty of 18 months imprisonment or a fine of $1500.

There was also more centralised control of prisoners being introduced. Pt V of the Act provides for prisoners to be searched, restrained, separately confined, forcibly medically examined and that firearms may be used against prisoners in certain situations, but also against a person who is rescuing or attempting to rescue a prisoner, or breaking into or attempting to break into prison. The provisions relating to the use of firearms was criticised, and it was noted that the use of ‘potentially lethal force’ against prisoners went further than provisions which authorised police to use such force against potentially dangerous prisoners at large (within specified limits) (Rowland 1982). It was noted that police officers had more training and were more disciplined in the way that they might
use such force than prison officers, but that police face more restrictions than prison officers.

An internal system of disciplining prison officers was also established. The appellate tribunal (before which no legal representation was allowed) was to make up of a magistrate appointed by the Director of the Department; another nominee of the Director; and a representative of the Prison Officers Union. As part of criticism of the Act at the time, it was also noted that the relevant provisions relating to welfare programs in Part IX were not broad enough. The single section in that Part simply authorises the Director to provide welfare programmes and services, with the onus on prisoners to elect to take part in any such programmes and services (Rowland 1982).

Other provisions within the Act included establishing a prison visitor scheme consisting of official visitors appointed by the Governor who submitted reports to the Minister for Corrective Services in terms of state of prison facilities or in response to complaints (by officers or prisoners); and the Minister appointing visiting justices to inquire into and dispose of charges relating to minor prison offences.

The Act was reviewed internally in 1998 by the DCS, with a view to developing new corrections legislation (see below).

1982

**Bail Act (WA) 1982 introduced**

In 1976, the Government referred the issue of bail to the WA Law Reform Commission. Bail provisions, at that time, were contained in a number of different statutes and required clarification and consolidation. The Commission consulted widely, and presented a final report in 1979 to government (see above). Further consultation by Government led to the passing in 1982 of the *Bail Bill*. Proclamation did not occur until 1989, but soon after proclamation a Ministerial review was conducted due to inherent difficulties with the legislation. The review panel made a number of recommendations, including that police officers should be expected to initiate prosecutions for offences relating to breach of bail and should have greater scope and flexibility in dispensing with bail for minor offences.

Bail was again examined, along with remand issues, in 1997 by the Office of the Auditor General (Office of the Auditor General 1997). Breaching of bail conditions was looked at, and it was noted that although there were significant penalties for breaches, 53% of defendants were not charged for breach of bail and 87% of fines for breach of bail remained unpaid after eight months. These difficulties were put down to delays in the development of bail legislation over the last three decades, with the latest recommendations of 1990 still to be implemented (at that time). Further, since 1990-91, remand prisoners had increased by 200%, leading to initiatives such as double-bunking in some prisons. Yet 18% of remand prisoners were being released on bail within two days of entering prison and could have been given bail earlier if the bail system was better understood; and many remand prisoners were unable to find a person to act as surety.
was recommended, *inter alia*, that the then-current bail scheme be examined, and that the speed with which arrangements to obtain bail was increased so that the numbers in remand could be reduced.

**1984 –**

*Abolition of capital punishment*

The last execution in the State was in 1964, but it was not until 1984 that the *Acts Amendment (Abolition of Capital Punishment)* was passed (a year before NSW also abolished capital punishment – the last jurisdiction to do so). The retention of the power to inflict capital punishment had some at least symbolic significance. Western Australia was, in effect, a de facto abolitionist state with death penalties being commuted to prison sentences. However, as Hartz-Karp notes, at any time Cabinet *could* have decided not to commute a death sentence and the Governor could have then signed a death warrant which would have led to death by hanging (Hartz-Karp 1979).

**1985 –**

*Legislation restricting parole eligibility –*

Partly in response to the recommendations of the *Parker Report* on parole (1979) (see above), the legislation introduced in 1985 provided that there was no longer any presumption that a minimum term would be set for sentences of 12 months or more. A discretion to set such a term was provided for, taking into account the ‘nature of the offence… or the circumstances of its … commission or the antecedents of the convicted person or any of those things considered together’. For sentences under 12 months, there was no general discretion, and a minimum term was to be set only if ‘special circumstances’ (undefined) were in place.

**1988 –**

*Major overhaul of parole - Acts Amendment (Imprisonment and Parole) Act 1987*

Following the restrictions imposed in terms of parole eligibility in 1985, the *Offenders Probation and Parole Act 1963* (now entitled the *Offenders Community Corrections Act 1963*) was further amended in 1988 by the *Acts Amendment (Imprisonment and Parole) Act 1987* (based on the recommendations of the *Parker Report* and of the Dixon Committee Report (see above)).

Under these 1988 amendments, a court could make an order if it considered such an order appropriate. The legislation prohibited the making of a parole eligibility order for sentences of under 12 months, in keeping with the *Parker Report*’s criticisms of short minimum terms and with the thrust of the 1985 amendments (Morgan 1992: 104). The court now had to comply with a formula in setting minimum terms to reduce disparities (the non-parole period being a third of the sentence for sentences of one to six years; and
for sentences of more than six years, two years less than two thirds of the sentence). The maximum parole period was now two years, and the minimum no shorter than six months.

The recommendations made by Parker (see above) in terms of the discretion of the Board were not implemented. Thus, ‘special term’ prisoners (serving a term of imprisonment of not less than five years for a violent or sexual offence) would not be released without prior consideration of the Board. However, all others were to be released automatically upon expiration of their non-parole period (if they had one). The Secretary to the Board exercised this power, and cases were only referred to the Board in exceptional cases. As Morgan points out, contrary to Parker’s recommendations, the scheme reflected a view that parole was in fact the ‘best method for most prisoners’ (Morgan: 106).

Vodanovich summarises the major changes as follows:
• Courts will impose a single sentence appropriate to the offence
• The need to impose minimum terms is abolished
• Parole will only be available where the court makes a positive order to that effect
• In such circumstances, the date of eligibility for parole will be fixed by application of a statutory formula
• Parole periods, in general, will be subject to a minimum of six months and a maximum of two years
• In most cases, release on parole on the due date will be virtually automatic
• The Parole Board, however, will have an unfettered discretion to defer, refuse or cancel parole and to determine its own procedures
• As an added incentive to continued good behaviour on parole, credit will be given against head sentences of one-half of clean street time. This will happen in the event of cancellation of parole, and will apply to persons dealt with under the ‘old’ system as well as the new
• Offenders subject to the old minimum term and who on release complete an uninterrupted period of two years on parole will have the remainder of their sentence remitted
• Offenders currently on parole when the amending legislation is proclaimed will have their sentences remitted on completion of the existing order or two years uninterrupted parole, whichever occurs first

He suggests that the new legislation represents an ‘equitable approach… aimed at providing for the protection of the public interest, while at the same time, where possible, it also provides a means of dealing with the urgent problem of attempting to reduce the present crises of prison overcrowding’ (Vodanovich 1988: 59)

**Community Corrections Centre Act introduced**

This legislation provided for the establishment and operation of Community Correction Centres and for the Parole Board to issue Work Release Orders (WRO) to enable the participation of selected prisoners in a closely supervised programme of community work and personal development activities aimed at enhancing re-integration outcomes.
Offenders released on WROs live in the community (c.f. work release introduced in 1970), but are subject to a more stringent regime than parole and must complete unpaid community work, as well as complying with other reporting requirements and treatment programmes. Work Release has only been available in the case of prisoners who have actually served at least 12 months in prison and the maximum duration of the order has been six months. According to Morgan, WROs have not been frequently made by the Parole Board as it cannot make an order unless satisfied that the person ‘would pose a minimum risk to the personal safety of people in the community or to any individual in the community’. These Orders have been used primarily for serious property offenders (with a focus upon those with strong community ties and records of employment) (Morgan 2000: 256).

The legislation also provided for the diversion of fine defaulters to participation in community work and personal development (where appropriate, constituted by Work and Development Orders (WDOs)). The latter requires an offender to undertake 14 hours ‘work’ per week for up to each week default imprisonment in a community corrections programme (constituting up to six hours of personal development work and at least eight hours of community work). It supplemented provisions already contained in the Offenders Probation and Parole Act 1963.

As a result of the Community Corrections Centre legislation being introduced, the West Perth Work Release Centre was de-commissioned and converted into a Community Corrections Centre. Further Community Corrections Centres were opened at Balcatta and Maddington.

Harding discusses the fact that, initially, the work and development order scheme actually increased incarceration rates overall, and, specifically, for those defaulting on fine payments. He speculates that this may be as a result of a failure by Western Australian law to take account of offenders’ ability to pay when setting the level of fines or ability to pay within a specified time, and because it was not necessary that default (as failure to comply with a WDO) be wilful before a person is imprisoned as a result (Harding 1992: 87-88). (See effect that work and development orders had on incarceration rates in 1990/92 below).

Subsequently, the Community Corrections Legislation Amendment Act 1990 repealed the Community Corrections Centre Act 1988 and re-enacted its provisions in the Offenders Probation and Parole Act 1963 (now the Offenders Community Corrections Act 1963).

As required by the 1990 legislation, a review was undertaken by the Department of Corrective Services in 1991 into whether the objectives of the orders had been achieved; as an evaluation of the administration of the legislation; and in order to discover if there had been any unintended consequences of the orders (Department of Corrective Services 1991). The review indicates that originally the WDOs were not reducing numbers of fine defaulters in prison as defaulters were only transferred to such orders from prison custody. Amendments have subsequently provided for release onto a WDO from police custody, and there has therefore been a decline in incarceration of fine defaulters since
1990. It is noted that the Aboriginal participation rate is low in terms of WDOs and that some ‘net widening’ may have occurred. The WRO scheme appeared to be working effectively but again Aboriginal participation was disappointing, and was largely due to the fact that a disproportionate number of Aboriginal people were given short sentences which fell below the programme’s criteria. A number of recommendations were made in the review, including that legislation be amended to allow for immediate conversion of a fine to a WDO.

*Criminal Law Amendment Act No. 70 (1988)* -

This legislation introduced provision for allowing sentencing authorities to order that (for persons who commit offences after this date), a person is not eligible for parole and that a parole order shall not be made at any time. Thus, persons may be sentenced for ‘the term of their natural life’. A working party established in 1989 (by Corrections?) was due to review this and other policies and procedures for the management of the increasing numbers of prisoners serving sentences of seven years or more (DCS Annual Report 1988/89: 18).

1989 –

*Decriminalisation of public drunkenness*

Following similar legislative initiatives in other States and relevant recommendations of interim reports of the RCIADIC, Western Australia enacted the *Acts Amendment (Detention of Drunken Persons) Act 1989*. This Act amended the *Police Act 1892* and the *Child Welfare Act 1947* so that it was no longer an offence in Western Australia to be drunk in public. The *Convicted Inebriates Rehabilitation Act 1963* was repealed. That Act had established an advisory board given the task of overseeing, advising on and assisting in the clinical treatment and rehabilitation of ‘convicted inebriates’. The Act permitted a court to place such persons in a separate institution upon conviction; that is, Karnet Prison farm (opened in 1963). After the passing of the 1989 legislation, a decision was made to introduce sobering up shelters in four locations, focusing on Aboriginal communities in the north of the State (as most arrests for public drunkenness occurred in these communities). Halls Creek and Fitzroy Crossing had 20% and 15% of arrests for drunkenness in 1988/89, respectively. Two further centres were opened at South Hedland and in Perth. Whilst there were early indications that the sobering up centres were managing to capture all those who might otherwise have been detained for drunkenness (including by providing equitable access for Aboriginal persons) there was some concern raised at the time of their introduction that such persons were being arrested for public order offences instead of drunkenness (Milford 1991).

**MAJOR INQUIRIES**

1981 –
Report of the Committee of Inquiry into the Rate of Imprisonment (Dixon Committee Report) -

The Dixon Committee’s Terms of Reference were to obtain all relevant statistical information relating to use of imprisonment in WA; to consider whether it is possible to reduce imprisonment and whether other forms of punishment may be suitable; and to make proposals in relation to the keeping of statistics. Relevant statistics are gathered together in the report, and it is noted that WA’s average imprisonment rate and penal receival rate are twice those of Victoria or NSW, and have been so since 1971/72. Western Australia’s Aboriginal imprisonment rate in 1979/80 was approximately three times that of NSW at a census in 1981 (67). The report indicates that Western Australia has greater victimization and reported crime rates; that more people in the state are charged, convicted and sentenced to imprisonment than in other jurisdictions; and that, especially in the lower courts, courts are sentencing a greater percentage of convicted persons to imprisonment (with Aboriginal people being imprisoned at two to three times the rate of Aboriginal people in NSW or Victoria).

Recommendations of the Dixon Committee included that:
• the power to imprison for the offence of being found drunk in a public place be abolished;
• consideration be given to the introduction of a Fine Option Programme;
• pre-sentence reports for those who have not previously served a prison term or who are under 21 years must be obtained before that person is imprisoned;
• remission on finite sentences should be increased from one-quarter to one-third;
• in terms of parole, courts should no longer have the power to impose both a maximum and minimum sentence – a finite sentence should be imposed reflecting the courts assessment of the offence and person convicted. Further, when a finite sentence of less than one year is imposed, then release should be unconditional and with no parole; and where the sentence is between one to two years, the prisoner on release shall be subject to a period of parole supervision for two years.

1988 –

Vincent Committee – Interim Report into Aboriginal Deaths in Custody (see below)

McGivern Report into riot at Fremantle (see below).

MAJOR POLICY CHANGES

1980 –

Prison Health Service established

The establishment of this service marked a more formal approach to provision of health care to inmates. The Service was established under the direction of the Senior Medical
Officer, and a full-time medical officer was appointed. By the end of 1981, 24-hour nursing coverage, seven days a week, was available at three metropolitan prisons. By 1985, all prisons except Wyndham were able to provide on-site nursing coverage.

1981/82 –

*Professionalisation of corrections staff*–

DCS aimed to promote staff with degree qualifications to senior administrative positions, and, consequently, prison officers were increasingly enrolling in degrees *(DCS Annual Report 1981/82)*

1983/84 –

The DCS Social Work Branch and Welfare Sections separated *(DCS Annual Report 1983/84)*

*Ombudsman’s Inquiry into Bandyup Women’s Prison*

An extensive inquiry into the management of Bandyup Women’s Prison by the State Ombudsman resulted in new policies and a different management structure at that facility.

1984/85 –

There is mention of a drug problem in prisons, with a hard line drug policy introduced during this reporting period *(?) (DCS Annual Report 1984/85)*

*Dufty Report on rank structure of prison officers within DCS*

The *Dufty Report* on rank structure of prison officers in DCS made recommendations in relation to the role, career structure, and motivation of prison officers. Implementation of the recommendations was intended to enhance the position of prison officer as a ‘career’ and to improve job satisfaction for current employees. A task force was established to make recommendations.

1986/87 –

*Programs*

Resocialisation, sexual offending and substance abuse programs were all introduced by DCS. Further, pre- and post-release programs for Aboriginal offenders were introduced (see below).

*Specialised Metropolitan Security Unit*
The Metropolitan Security Unit was established. This Unit was responsible for perimeter security at the C.W. Campbell Remand Centre; high security escorts; special prison searches and riot control at all metropolitan prisons; as well as training other officers. It consisted of specially trained and equipped officers.

Volunteers in community

Groundwork was established to recruit community-based volunteers to assist individual offenders as part of community-based corrective programs (DCS Annual Report 1986/87).

1987 –

Department of Corrective Services established

Probation and Parole (established under Offenders Probation and Parole Act 1963) and the Prisons Department (established under Prisons Act 1981) amalgamated to become the Department of Corrective Services (under s. 21 of the Public Service Act), representing ‘a contemporary approach to management in the correctional sphere - embracing the complete range of operations associated with the various sentencing options available to sentencing authorities’ (DCS Annual Report 1986/87: Introduction).

1987/88 –

The DCS introduced a position of First Class Prison Officer for officers of three or more years experience and a good work record. During the year, 150 officers were promoted.

DCS Offender programmes restructured

Offender programmes were re-structured, comprising now of six primary programs staffed by multi-disciplinary teams providing services to both prisoners and offenders subject to community based supervision. The teams were to address the following areas: social skills, sex offenders, substance abuse, disturbed and vulnerable offenders, education services, and volunteer services.

1989/90 –

Heirarchical cell block system at Canning Vale Prison

An hierarchical cell block system was introduced at Canning Vale Prison which was based on the establishment of separate regimes within the prison, offering different levels of privilege commensurate with a prisoner’s conduct and industry. It was found to be operating effectively during an interim review in 1988/90, and had considerable officer and prisoner support (DCS Annual Report 1989/90).

1989/90 –
Unit Management introduced in prisons

Prior to 1989/90, non-uniformed welfare officers and prison officers shared responsibility for the ‘welfare’ of prisoners. In 1988/89, ‘unit management’ was introduced. Welfare officer positions were abolished (and the Welfare Section of the Department), and prison officers assumed a ‘welfare’ function in return for additional remuneration. Although professionals other than officers were able to assist with welfare needs, Unit Management meant that the muster of a prison was divided into groups which were then managed by a Unit Manager and team of officers for an assigned period, and it was thus expected that through the use of ‘interpersonal, custodial and case management skills within a framework of delegated decision making power and authority’, prisoners would constructively interact and thereby build up a relationship within which ‘welfare’ needs might be addressed. All prison-based training was altered to ensure it included Welfare and Unit Management.

The scheme was introduced, specifically, at Canning Vale in April 1988. This involved staff/prisoner interaction being maximised and the encouragement of self-responsibility of prisoners as the primary means of prisoner management. Prisoners were to be managed in small, semi-autonomous groups by teams of staff members working extended roster periods, of up to three months, with the same group of prisoners. Cell Block 5 accommodated 58 prisoners, 30 of these living in a self – management unit where they undertook their own day-to-day domestic duties. By 1989/90, Unit Management was fully operational at this facility. The new 56-cell unit at Albany Regional Prison (opened in April) also operated under this system during 1989/90. It was hoped that Unit Management would be introduced to Greenough, Bandyup, Eastern Goldfields and Bunbury Prisons by the end of 1988, and to all prisons by 1989.

Unit Management as a theory and a practice was criticised by the State Ombudsman in a report into deaths in custody in Western Australia (State Ombudsman 2000: 382ff) (except in its application to Albany Prison – ‘a ‘shining light’ in an otherwise very dull landscape’. The Ombudsman suggests that there had been ‘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’. This might be due to factors such as prison officers not being assessed for their suitability for, or trained to undertake a welfare role; and increasing prison numbers in the 1990s meant that there was an insufficient number of officers to undertake the role. Further, given the long-standing ‘culture of division’ between officers and prisoners, it was unreasonable to expect a prison officer to combine a disciplinary and welfare role. It is also noted that the Ministry of Justice had rejected the Ombudsman’s definition of Unit Management as an ‘abject failure’, but it is suggested that a large part of its failure can be attributed to the Ministry not taking ‘much interest in whether it worked or not’. There had been no evaluation undertaken for instance. In the context of an examination of deaths in custody, the Ombudsman suggests that the scheme may have actually made things worse...
in that other prisoner support mechanisms were withdrawn (such as welfare officers) in favour of Unit Management.

**DIVERSIONARY**

**1982 –**

*Work Release/Home Release/Section 94*

The *Prisons Act 1981* provided for open security prisoners, who have served more than 12 months continuous imprisonment and are within three months of their estimated release date, to be granted a leave of absence from prison on work release. The scheme commenced operation in 1982. During 1987/88, 153 prisoners participated in work release. Further, those who had served not less than twelve months of their sentence of imprisonment, and were rated open security, and who were within 12 months of their estimated earliest release date, were eligible for Home Release under s 87(3) of the *Prisons Act*. Section 94 of the Act also permits minimum security prisoners to partake in community work and work outside prison; as well as sporting activities in the community.

**1988 –**

*Western Australian Court Diversion Service (CDS) initiated as pilot*

The DCS, WA Alcohol and Drug Authority and non-government treatment agencies worked together to initiate this scheme, following the consideration of such a program by the Working Party to Examine a Court Diversion Programme, established in 1995. The intention was to divert drug users from prison, and there was some borrowing from the Drug and Alcohol Court Assessment Programme in NSW. Courts are able to delay sentencing (and thus, a plea of guilt is required to participate in the program) to allow assessment of suitability of offenders for longer-term drug rehabilitation programmes by supervising offenders’ participation in such programmes during the period of bail (4-8 weeks). It was apparently part of a Government legislative package being introduced at the time to reduce imprisonment in Western Australia. (For discussion of a limited assessment of the scheme by members of the Crime Research Centre, University of Western Australia, see Indermaur & Rigg 1996; and Rigg 1994).

Currently, court drug diversion schemes consist of the following:

- Cannabis Infringement Scheme introduced in 2004 (see below)
- All Drug Diversion which directs offenders with small quantities of illicit drugs into three treatment sessions. An offender can only be issued an All Drug Diversion if they are over 18, have no history of previous violent or drug dealing convictions, if they admit to the offence, and if the issuing officer has no doubt that the drugs are for personal use. Only one All Drug Diversion is
allowed per individual. If the treatment sessions are not completed within 30 days, a summons is issued for the original drug offence.

- Young Persons Opportunity Program (YPOP) targets those aged 10 – 18 years of age who have been identified by their Juvenile Justice Team as having either an emerging or significant drug issue. In Perth, young people in the Court Conferencing process can participate in YPOP. The offences do not have to involve drugs.

- Pre-Sentence Opportunity Program (POP) - POP aims to direct offenders with no or minimal criminal record but with a drug use problem into treatment. Participants in the program would normally expect to receive a fine or community based order on a plea of guilty.

- Indigenous Diversion Program (IDP) directs indigenous persons who have committed relatively minor offences and that have an alcohol and/or other drug problem. While similar to POP, IDP varies in that it provides a culturally secure regional service.

- Supervised Treatment Intervention Regime (STIR) directs moderate level offenders with a greater drug use problem into treatment. Unlike POP, the STIR program provides ongoing case management of offenders and requires a strong partnership between drug treatment services, Criminal Justice Services (CJS) and the judiciary. 2

The POP, IDP and STIR programmes were evaluated by the Crime Research Centre in 2007 (Crime Research Centre 2007). The report suggested that over 60% of incarcerated offenders were regular drug users. Offenders referred to the three diversion programs typically have a long history of involvement with the criminal justice system with multiple previous arrests and offence charges. The evaluation recorded significant improvements in all reported physical and mental health measures for offenders participating in the programmes. For each program, those who completed the program were less likely to have been re-arrested (all offences and drug offences); had a longer median time to first arrest; were less likely to have been imprisoned post-program than those who did not complete the program; and had lower re-arrest rates than were predicted by risk estimates. The programmes were generally well regarded by most stakeholders and clients.

*Community Corrections Centres* (see above)

**VULNERABLE POPULATIONS**

1980 –

Aboriginal Justice of the Peace scheme introduced

A Senior Magistrate working in the Kimberley region introduced Aboriginal advisors to the bench in Broome 1971, attempting to redress the inequity which Aboriginal people experienced in the criminal justice system. Following lengthy community consultation in 1977 (at the request of the Attorney-General), the Magistrate recommended that Aboriginal Justices of the Peace (JPs) be appointed to preside over courts in their own communities. Under the provisions of the *Aboriginal Communities Act 1979*, Aboriginal communities in the north-west of the State began participating in managing justice issues through Aboriginal JPs, Bench Clerks and Probation Officers.

The Scheme was reviewed during 1984, and it was suggested that there ought to have been further incorporation of traditional Aboriginal law and sanctions into the Act (with an emphasis on traditional dispute resolution, using the JP scheme as an ‘optional avenue of arbitration’; that Aboriginal community courts ought to be wholly staffed by Aboriginal people; that JPs and communities needed ongoing education; and that further reviews of implementation of the Act were required (Hoddinott 1984).

1984 –

Aboriginal Welfare Group established within DCS

This group was created to enable Aboriginal welfare workers to be able to explore their role within DCS. The group was comprised of three metropolitan staff who liaised with workers at Roebourne and Eastern Goldfields prisons and members of the Welfare Branch supervisors’ group within DCS. It had four main objectives:

- to assist in the development of Aboriginal Welfare workers
- to contribute to the development of policy on Aboriginal issues
- to advocate on behalf of Aboriginal prisoners
- to act as ‘Aboriginal Interest Group’ for the EEO Coordinator within the Department

Issues addressed during meetings included recruitment of Aboriginal prison officers and input in policy relating to funeral attendance of Aboriginal prisoners (*DCS Annual Report 1984/85*).

Prisoners with mental health issues – report commissioned

DCS noted the inadequate facilities for prisoners with mental illness. Cabinet commissioned Professors Harding and Cramond to report on the appropriate treatment of mentally ill and intellectually disabled offenders. At this time, mentally ill prisoners were incarcerated at Fremantle Prison, where the facilities were poor (*DCS Annual Report 1984/85*). In 1986/87, an Interdepartmental Committee was established to report to the Minister for Corrective Services and Health on this issue (*DCS Annual Report 1986/87*).
1986/87 –

Community-based Supervision – Field Officers

Three Aboriginal Field Officers were appointed at Broome, Kalgoorlie and Albany under a Commonwealth-funded training program for 12 months. This resulted in improved communication with Aboriginal groups, better knowledge of Aboriginal offenders’ needs and community values, and enhanced understanding on their part of the purposes and relevance of community-based supervision orders. The Department then sought to establish similar positions on a permanent basis and to extend the pilot to other areas in the State.

Aboriginal Programs

The Department was funded to develop and operate programs for Aboriginal offenders to reduce re-offending rates during this period. This involved pre-release skill development programs (driver training programs) and post-release assistance and support programs (in Albany and Eastern Goldfields, to assist during critical post-release period) (DCS Annual Report 1985/86).

1987/88 –

In order to work towards reducing imprisonment, Community Corrections Officers of Aboriginal background were engaged at Broome and Kununarra (does this differ from Field Officers above?). This pilot was assessed as successful, and there was a decision made to expand it.

In terms of education, an Aboriginal Offender Alcohol Education Kit was produced, and includes participation of community groups in a series of workshops funded by WA Alcohol and Drug Authority. A revised version of the WA College of Advanced Education, General Education Certificate for Aboriginal Students was completed and reissued. Further courses (under a Commonwealth Grant) include basket making, welding, and fitting etc. (DCS Annual Report 1987/88)

1988 –

Aboriginal Visitor Scheme introduced

The AVS was introduced as a pilot program in Kalgoorlie in July 1988, following concerns about the increasing number of Aboriginal deaths in custody, and was originally administered by the Aboriginal Affairs Planning Authority. The scheme was reviewed in 1998 (Downie 1998).

For media release from DCS celebrating 20 years of the Scheme (2008) see:
The celebration marks …. 20 years of being instrumental in providing much-needed and accessible support and raising awareness of issues surrounding the incarceration of indigenous people and in reducing self-harm and suicide rates for this largely disadvantaged sector of our community: Minister for Corrective Services, Margaret Quirk, May 2008

Vincent Committee – Interim Enquiry into Aboriginal Deaths in Custody in Western Australia

The Interim State Inquiry into Aboriginal Deaths in Custody was finalised in January 1988. The recommendations of the Vincent Committee Report included the following:

• Prisoners are to be closely observed within first hours in custody, especially if alcohol is connected with prisoner
• DCS should develop a program to encourage recruitment of Aborigines as prison officers.
• Specific cardiac complaint testing should be undertaken on all aboriginal prisoners received into custody & prison diets should be reviewed in connection with preventative measures against heart disease
• Suicide prevention principles should be to treat prisoners as humanely as possible
• Facilities should be reviewed and up-graded to enable frequent observation and interaction with prisoners
• Aboriginal prisoners should share accommodation with other Aboriginal prisoners
• Duty of care should be thoroughly explained to officers
• Officers are to immediately seek medical care for prisoners if they have any doubts as to the prisoner’s condition
• Establishment of formal communication guidelines between prison medical service and Aboriginal Health Service should be established
• There should be a transfer of medical information from police to prisons
• There should be input from Aboriginal groups with regards to the design of new facilities
• An Aboriginal visitor scheme should be implemented

PRISONER/OTHER RESISTANCE

1982 –

Escaping prisoner shot at Remand Centre – difficulty with security in minimum security prisons

A prisoner escaping from C.W. Campbell Remand Centre was shot during 1982. It is noted in the DCS Annual Report 1983/84 that prison escapes were up (by nine) in numbers when compared with the previous year, and that improved security at minimum security facilities would rectify this.
1988 –

Riot at Fremantle

At the time of the 4 pm lockup of prisoners at Fremantle Prison, a group of 135 prisoners in Division 3 rioted whilst being returned to their cells from the yard. Fires were lit and five officers were taken hostage by prisoners and held in the yard. Nine other officers were also injured during the incident. The Main Division was seriously damaged, resulting in substantial loss of capacity.

The riot was started by the prisoners as a result of an alleged bashing by officers of an inmate. The prisoners requested media coverage of the event, and to talk directly to the media in relation to this alleged bashing and other alleged assaults upon inmates by officers at the prison (Utting 1988). Order was restored within nineteen hours and the hostages freed without loss of life. This was ‘one of the most serious emergencies ever to be confronted by the Department’, according to DCS (DCS Annual Report 1987/88: 14). Of the thirty five prisoners who faced criminal charges as a result of the incident, twenty were sentenced to further terms of imprisonment (in fact, a total of 223 aggregate years were added to their current terms (DCS Annual Report 1988/89: 15).

John McGivern was appointed by the Minister to inquire into the causes and circumstances of the riot. Recommendations arising related to procedure and administrative practice at Fremantle. A number of these recommendations were approved by Cabinet and were implemented. For instance, a Special Handling Unit, for prisoners who pose a major threat to security and safety, was established in January 1988 (McGivern 1988).

Utting suggests that conditions of the old prison contributed to the riot (with prisoner lock down at 4pm – 7am, two to a cell, with two buckets (one for bodily wastes, one for water)). He also comments on the ‘appallingly high rate of imprisonment’ in WA as a factor. It is noted that historically, the rate of imprisonment in Western Australia has been second only to that of the Northern Territory (in WA, 110 prisoners per 100,000 of population). It was, at the time of Utting’s comment, twice that of Victoria. Aboriginal people made up 33% of the prison population in Western Australia. The closed nature of the McGivern inquiry is also noted by Utting (1988).

1988/89 –

There were a number of incidents during this period.

• In March 1989, two prisoners at Fremantle Prison escaped by threatening a prison officer and using a rubbish truck to smash their way out of the prison

• At Bandyup Women’s Prison, prisoners refused to enter their cells as a result of an alleged incident of mistreatment of an Aboriginal prisoner and structural damage was also caused as a result of a fire lit by prisoners in the remand section
• In Eastern Goldfields Prison, an officer was taken hostage by prisoners during an escape (DCS Annual Report 1988/89)

**1990s**


**INCARCERATION RATES**

See discussion below in Ombudsman’s report into deaths in custody (State Ombudsman 2000)

Harding noted the long-term, comparatively high rate of imprisonment in Western Australia – calculated since 1977, the state’s average rate of adult imprisonment was no less than 3.5% and sometimes as much as 80% above the national average. As at 30 November 1991, he estimates that the Western Australian rate was 120 plus per one hundred thousand (1977 prisoners); whilst the average national rate at that time was 81.4 per one hundred thousand. Notably, the total index crime rate in Western Australia, according to Harding, for the period 1977-1991 was somewhat above the national average whilst the state’s imprisonment rate has been considerably higher, suggesting that penal policy and practice in Western Australia had not done anything to make the state either safer or more dangerous (Harding 1991: 72-75). Western Australia was also utilising community-based sanctions less frequently than other jurisdictions, with Indigenous prisoners particularly disadvantaged in terms of access to such sanctions (78ff). Harding attributes the high incarceration rates, in part, to the inadequacy of the appeal system (in terms of decisions of the lower courts) in Western Australia, particularly as it applies in non-metropolitan areas (80ff).

**1990/1991 –**

The daily average muster of prisoners during this reporting period was 1763, representing an increase in 8.6%. This muster peaked at 1961 during February 1991 and is attributed to Indonesian fisherman being incarcerated in WA prisons for illegal fishing offences. Aboriginal prisoners constituted 45.39% of prison receivals. Further, despite the introduction of provisions to divert fine defaulters, they still made up the most significant portion (53.52%) of prison receivals. However, it was hoped that recent (at that time) recommendations in relation to work and development orders (enabling fine defaulters to convert to such an order from police lockups) might assist in reducing fine defaulters’ incarceration rates (DCS Annual Report 1990/91).

Halden also discusses the ‘unacceptably high’ incarceration rate in Western Australia,
indicating that in April 1991, the imprisonment rate per 100,000 head of total population for each jurisdiction was as follows:

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northern Territory</td>
<td>299</td>
</tr>
<tr>
<td>Western Australia</td>
<td>117</td>
</tr>
<tr>
<td>New South Wales</td>
<td>98</td>
</tr>
<tr>
<td>Queensland</td>
<td>76</td>
</tr>
<tr>
<td>South Australia</td>
<td>67</td>
</tr>
<tr>
<td>Tasmania</td>
<td>52</td>
</tr>
<tr>
<td>Victoria</td>
<td>51.2</td>
</tr>
</tbody>
</table>

For Indigenous prisoners, the rates were especially atrocious – 46% of prison receivals; 98% of prisoners held in police lock-ups; 93% of those serving sentences of 12 months or less; and 55% of those imprisoned for fine defaults were Aboriginal (whilst Aboriginal people constituted only 1.8% of the WA population). Most were imprisoned because there were no local alternatives to imprisonment, and served short sentences for public order and traffic offences (Halden 1991: 97-98, 100ff).

1991/92

During the year, 5791 prisoners were received into WA prisons, c.f. with 6785 in 1990/91. The decrease was due to diversion of fine defaulters. The number of Work and Development Orders increased by 66% from June 1991 to June 1992. The daily average muster of prisoners, however, during 1991/92 was 1861, representing a 3% over the previous years figures. In the second half of the financial year, high male prison numbers resulted in a need to ‘double bunk’ at metropolitan prisons. The increase in daily averages is due to the cumulative effect of a larger number of prisoners serving longer sentences entering the system.

1997-1999:-

According to Harding (2000)....

....Western Australia has had a chronic need for new prison accommodation for the last few years. This is partly because of poor quality stock, partly because of lack of 'fit' between security levels and prisoner classifications, partly because of over-provision in some geographic areas and under-provision in others; and above all because of a significant increase in prisoner numbers. As of 31 December 1997 the population had been 2234, whilst on 31 December 1999 it reached 2876 - an increase of almost 29 per cent.

The Standing Committee on Estimates and Financial Operations in the Western Australian Legislative Council considered imprisonment rates in its 2000 report (see below – Nevill 2000), and made note of the considerable overcrowding in WA prisons. The prison population peaked at 3000 in June 1999 (a 29% increase in the prison population of 12 months earlier) (18). Overcrowding had led to mattresses being placed
on floor spaces near toilet facilities at Bandyup Women’s Prison, and to the use of the
gymnasium at Bandyup as dormitory style prisoner accommodation. Further, whilst
maximum prison utilization might be at 85-95% capacity, Western Australia was at 113% in 1998-99. Western Australia had the fastest growing prison population of any
Australian jurisdiction, according to the Committee, with a 29% during the financial year 1998-99. It also had the fastest growing rate of imprisonment – three times the national average, imprisoning women in particular at twice the national average. In 1998, the juvenile imprisonment rate in Western Australia was 62.7 per 100,000 juvenile persons – 1.7 times higher than the national rate. (See further discussion in Nevill report (2000) below).

Population Trends in WA prisons

Prison population trends (Receivals) in Western Australia, 1990-1998

<table>
<thead>
<tr>
<th>Year</th>
<th>All Persons</th>
<th>Aborigines</th>
<th>Non-Aborigines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>6,717</td>
<td>3,139</td>
<td>3,578</td>
</tr>
<tr>
<td>1991</td>
<td>6,212</td>
<td>2,685</td>
<td>3,527</td>
</tr>
<tr>
<td>1992</td>
<td>5,622</td>
<td>2,358</td>
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<tr>
<td>1993</td>
<td>6,042</td>
<td>2,505</td>
<td>3,537</td>
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<tr>
<td>1994</td>
<td>6,059</td>
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</tr>
<tr>
<td>1995</td>
<td>4,646</td>
<td>1,739</td>
<td>2,907</td>
</tr>
<tr>
<td>1996</td>
<td>4,628</td>
<td>1,877</td>
<td>2,751</td>
</tr>
<tr>
<td>1997</td>
<td>4,547</td>
<td>1,924</td>
<td>2,623</td>
</tr>
<tr>
<td>1998*</td>
<td>4,652</td>
<td>1,931</td>
<td>2,721</td>
</tr>
</tbody>
</table>

Ministry of Justice, Policy and Legislation, Research and Statistical Unit.

Prison population trends (census December 31) in Western Australia, 1990-1998

<table>
<thead>
<tr>
<th>Year</th>
<th>All Persons</th>
<th>Aborigines</th>
<th>Non-aborigines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>1,620</td>
<td>548</td>
<td>1,072</td>
</tr>
<tr>
<td>1991</td>
<td>1,809</td>
<td>581</td>
<td>1,228</td>
</tr>
<tr>
<td>1992</td>
<td>1,852</td>
<td>613</td>
<td>1,239</td>
</tr>
<tr>
<td>1993</td>
<td>2,078</td>
<td>654</td>
<td>1,424</td>
</tr>
<tr>
<td>1994</td>
<td>2,053</td>
<td>683</td>
<td>1,370</td>
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<tr>
<td>1995</td>
<td>2,206</td>
<td>722</td>
<td>1,484</td>
</tr>
<tr>
<td>1996</td>
<td>2,071</td>
<td>678</td>
<td>1,393</td>
</tr>
<tr>
<td>1997</td>
<td>2,205</td>
<td>729</td>
<td>1,476</td>
</tr>
<tr>
<td>1998*</td>
<td>2,617</td>
<td>870</td>
<td>1,747</td>
</tr>
</tbody>
</table>

*Corrective Services Australia, Australian Bureau of Statistics, December Quarter 1998, pp. 6 and 20

MAJOR LEGISLATIVE CHANGES
1990 –

Community Corrections Legislation Amendment Act (see Home Detention below)

This legislation renamed the Offenders Probation and Parole Act 1963 as the Offenders Community Corrections Act 1991. It also provided for Home Detention orders (as part of sentencing, and as a condition of bail (through amendments to the Bail Act 1982). It also brought the provisions of the Community Corrections Centre Act 1988 within the Offenders Community Corrections Act 1991.

1992 -

Crime (Serious and Repeat Offenders) Sentencing Act 1992

Due to increasing community pressure to really toughen penalties against juvenile offenders (see below – Major Cases), Government passed the Crime (Serious and Repeat Offenders) Sentencing Act 1992, which ultimately dealt with both juveniles and adults in the same manner (although there had been some specific emphasis upon juveniles to start with).

There are three types of offenders defined in the Act:
• serious repeat offenders – those appearing for sentence on their seventh ‘conviction appearance’ for a ‘serious offence’ (scheduled to the Act as including burglary, arson and stealing a motor vehicle aggravated by reckless or dangerous driving);
• motor vehicle offenders – those who commit a range of violent offences in the course of stealing a motor vehicle; and
• repeat violent offenders – those appearing for sentence on a fourth conviction appearance in 18 months for a listed violent offence, or the seventh for a listed serious offence, with the last being for one of the listed violent offences (including resisting or preventing arrest; various assault offences; wounding; robbery; sex offences; or homicide).

Sentencing guidelines within the Act, which must be applied, focus on retribution and incapacitation rather than rehabilitation, and whilst the individual circumstances of an offender may still be relevant in sentencing, for ‘repeat violent offenders’ (adult or juvenile), a sentence of detention or imprisonment is mandatory. The effect of the Act is to ensure that any such sentence will be at least 18 months, and at the end of the 18 month period, continued indeterminate custody is imposed upon all such offenders. The Supreme Court alone may terminate a juvenile’s continuing detention; and for adults, detention is at the Governor’s Pleasure.

Broadhurst and Loh have pointed out that the legislation breached established sentencing principles (including the principle that juveniles must be given special consideration in sentencing and that there ought to be no double punishment for a single offence). Other criticism, including by the Federal Human Rights Commissioner, concerned human rights and their breach. To avoid opposition to the Act prior to its passing on the basis that the
Convention on the Rights of the Child was contravened by its provisions, the Government ensured that the Act was to apply equally to adults and juveniles (see discussion in Broadhurst & Loh 1993; Wilkie 1992; White 1992; & Harding 1995).

1994 –

**Victims of Crime Act –**

The Victims of Crime Act (1994) simply sets out Guidelines about treatment of victims, but serves, more symbolically, as the first statutory recognition of victims’ rights. In 2001, the Coalition introduced its Victims First policy. A statutory review of the legislation and its operation was conducted in 2004 (Cand & Downie 2004).

A media release in 2001 indicated that the Government was replacing committal proceedings for criminal charges to go before the District and Supreme Courts with a pre-trial discovery process. Victim Mediation Units were to be expanded to all Children’s Courts. Other provisions promised included increasing victims’ compensation; legislating to require courts to apply provisions that ensure that persons bailed or convicted of an offence, are subject to a condition or restraining order preventing them from returning to the scene of the crime or approaching the victims; giving victims a voice in terms of trial venues; and amendments in relation to domestic violence (such as ensuring that prior convictions or prior similar behaviour is admissible evidence in family violence and stalking proceedings).

See media release:

**Fines, Penalties and Infringement Notices Enforcement Act 1994**

This legislation was introduced to streamline the fine default process in Western Australia. There were difficulties in the previous system of dealing with fine default. It was all too easy to avoid paying a fine. Then, fine defaulters who accumulated a large number of fines were able to extinguish them by serving default or performing community work on one fine alone. Thus, fines could be discharged through work and development orders and prison at a rate ‘far in excess of average daily wages’. Further, offenders were ‘encouraged… to avoid paying their fines because one work and development order or prison term could be used to discharge one or any number of fines with no additional time penalty’. Moreover, 34% of all prison receivals were fine defaulters and there also many defaulters in police lock ups. Approximately 1800 persons imprisoned each year were there for fine default.

Offenders now, if they breach a time – to – pay arrangement or fail to pay a fine in full, are sent a notice advising them of the suspension of their licence. If the fine is then not paid within 28 days, the licence is suspended. There is no option to perform community work or serve time. For Aboriginal people, who were being locked up disproportionately
for minor offences (such as breaches of orders or fine default), five courts in WA will have Aboriginal fines officers to explain to Aboriginal people obligations in terms of their fines and assist in making suitable arrangements for payment (Commonwealth Law Bulletin 1996).

**1995 –**

*Sentencing Act 1995*

The *Sentencing Act 1995, Sentence Administration Act 1995 and Sentencing (Consequential Provisions) Act 1995* came into effect in 1996. This ‘package’ of legislation 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* effectively abolished sentences of three months or less; provided that sentences of imprisonment by a Justice of the Peace must be reviewed by a Magistrate (due to the high rate with which JPs imprisoned offenders); and required a court to set a commencement date so that time spent on remand may count towards service of a sentence. Further, written reasons for sentences of imprisonment of less than twelve months were now required in most instances; and the Supreme Court was now legislatively authorised to provide ‘guideline judgements’ to lower courts (for discussion of the latter, see Morgan & Murray 1999).

Section 39 of the *Sentencing Act 1995* sets out, for the first time in WA, a statutory ranking of sentencing options, through which a court is expected to work prior to imposing imprisonment. Those options include release without sentence, conditional release order, fine, community based order, intensive supervision order, suspended imprisonment, and imprisonment (fixed term, prescribed term, or life term). Indeed, a ‘central plank’ of this legislation is the ‘provision of a wider range of genuine alternatives to imprisonment’ (Morgan 1996: 373).

Morgan notes that non-custodial options are required to tackle the enormous problems of rates of imprisonment in Western Australia. The State is ‘placed second behind the Northern Territory, a long way ahead of third placed New South Wales and 45 per cent above the national average’ in terms of an overall rate of imprisonment. For Aboriginal rates of imprisonment, WA ‘sits well clear of the field, with a rate which is approximately twice that of the Northern Territory and again around 45 per cent above the national average’ (Morgan 1996: 364). This legislation, ‘generally welcomed…(and) long overdue’, provides non-custodial sentences which are ‘more accessible and more workable and which will have the confidence of both the courts and the public’, but will depend upon adequate resourcing and effective implementation to be successful in real terms (365), and some caution is required in relation to the issue of net-widening (380). Morgan also notes that Government, in pre-election mode, ‘made unnecessary and unjust inroads into the basic objectives of the *Sentencing Act*’ just ten days after it came into force by introducing the three strikes legislation (see below).
Mandatory sentencing introduced

Western Australia passed a mandatory sentencing law (Criminal Code Amendment Act (No. 2) 1996 (no. 60 of 1996)), which inserted new sections 400 and 401 into the Criminal Code. The Western Australian laws provided that when convicted for a third time or more for a home burglary, adult and juvenile offenders must be sentenced to a minimum of twelve months imprisonment or detention. This was so, regardless of the gravity of the offence. Hinds notes that these provisions, and similar provisions in the Northern Territory in 1997 targeted repeat property offenders, not violent offenders.

Three strikes legislation has been criticised on a number of bases, including:
(i) increased court costs and delays in case processing, and increased prison numbers;
(ii) ineffectiveness given the lack of effect on crime rates;
(iii) injustice: the inability to take into account individual and situational factors in sentencing and the shift from judicial discretion to increased discretion by prosecutors' decision-making pre-trial that is both more private and less accountable;
(iv) the discriminatory impact on minorities: while Aboriginal children represent one-third of offenders charged in the Children's Court, they represent three-quarters of children (74%) charged with three strike offences; and

In terms of impacting disproportionate upon Aboriginal youth and increasing incarceration rates, the legislation led to an increase in the imprisonment rate in Western Australia, particularly for Aboriginal youth. In 1997, the WA detention rate for young (10-17 years old) Aborigines was 649.2 per 100,000, rising to 758.8 in 1998, while the national rate fell slightly. Aboriginal children constituted 80% of those caught by the three strikes laws in Western Australia in the Children’s Court from February 1997 to May 1998 (Morgan 1999: 272). A Department of Justice review of the laws in 2001 indicated that 80% of all children dealt with under the laws were Aboriginal. Where there are no juvenile detention centres (in regional areas, and resulting in juveniles being relocated to Perth), this figure becomes 90% (Department of Justice 2001). The DCS indicated that between 2000 and September 2005, 87% of all children sentenced under these laws were Aboriginal. In contrast, advocates for the laws have suggested that they are contributing to a drop in home burglary rates in WA (for discussion, see WA LRC 2005: 86-97).

Despite much criticism of mandatory sentencing provisions in Western Australia, the laws remain in place (whilst similar provisions have been repealed in the Northern Territory in 2001). (For discussion (criticism) see Bayes 1999; Stokes 1998; Morgan 1999; WA LRC 2005; Morgan 2001; Blagg 2001; Human Rights and Equal Opportunity Commission n.d.). Hinds notes that the three strikes law has been criticised as being
solely about ‘winning votes’ (Hinds 2005: 242 – see article for discussion of relationship between media, politics and three strikes law).

*Criminal Law (Mentally Impaired Accused) Act 1996 (the ‘MID Act’).*

The MID Act set up the Mentally Impaired Accused (or Defendants) Review Board, which deals with defendants who are (a) either unfit to stand trial or (b) acquitted on account of unsoundness of mind and detained under ‘custody orders’ issued under the Act.

Morgan and Morgan (2002) set out the role of the Board, at the time of writing, as being to review ‘custody orders’ imposed upon mentally impaired defendants by the courts and to report to the Attorney General on such orders. The key issues which the Board must look at are as follows:

- where the person should be detained;
- whether and upon what conditions the person should be given leave of absence / home leaves during a custody order;
- whether the person should be released from a custody order to a conditional release order; and, if so, the conditions (if any) that should be imposed;
- whether the person has reached the stage where he or she can be unconditionally released (‘discharged’) from the *Criminal Law (Mentally Impaired Defendants) Act 1996*

They have also raised a number of criticisms of the current operation of the MID Act and of the Board. For instance, they suggest that the distinction between those unfit to stand trial and of unsound mind is inadequately made in the Act. If unfit to stand trial, the options available are to release the person unconditionally or to make a custody order. If the person is found to be of unsound mind, however, intermediate options include Conditional Release Orders, Community Based Orders or Intensive Supervision Orders under the *Sentencing Act 1995*. An intermediate option permitting supervised release ought to be available to those unfit to stand trial without that person having to go through the process of having a review conducted by the Board. The argument that such an option is not available because the person has not been sentenced under the Sentencing Act is ‘unconvincing’, according to these commentators. Why oppose community supervision orders when the current system is ‘prepared to lock the person up indefinitely (despite the lack of any conviction) and then to allow release under supervision’ (7).

Further, it is appropriate that only higher courts are able to impose custody orders, not the magistrates courts, as currently occurs. In terms of the Board, after a custody order is made, its role is to regularly review the order and report to the Attorney General and Governor. It is ultimately the Governor’s decision, on advice from the A-G, to release a person. Specific difficulties include that release to a ‘place of custody’ for a mentally impaired defendant who is not suitable for treatment will be to a prison facility. There are also problems in ensuring the necessary ‘inter-agency collaboration’ in managing mentally impaired defendants.

Giezen and Sacha have discussed the Board in the context of Aboriginal people effectively detained indefinitely by a court on the basis of being unfit to stand trial.
Human rights implications are noted, as prisoners under this system are unable to participate in programmes which might qualify them for release or parole on the basis that they have not been sentenced under the *Sentencing Act 1995*. Such persons need to satisfy the Board that their release is appropriate. Discussion of the process of working out a release plan with the Board is largely positive, but questions are raised concerning whether law reform is required in terms of how persons come to be indefinitely detained (and thus require review by the Board) (Giezen & Sacha 2002).

In 2003, the Attorney General and Minister for Health commissioned a review of the MID Act. Holman’s report – *The Way Forward: Recommendations of the Review of the Criminal Law (Mentally Impaired Defendants) Act 1996* (Holman 2003) – recommended a repeal of the legislation and replacement with new legislation clarifying the previous Act and advancing the human rights of persons with mental illness. Recommended legislative amendments included altering interpretations of mental impairment to be more consistent with cognate legislation; ensuring that the maximum duration of custody orders for those unfit to stand trial not exceed a period longer than the maximum term of imprisonment provided by the statutory penalty for the alleged offence; and broader options for judicial officers dealing with a defendant (such as interim custody orders, structured supervision or support orders).

**1997 –**

*Restraining Orders Act introduced*

In February 1995, the Attorney General announced a review ‘to examine all aspects of legislation and procedures relating to restraining orders and to make appropriate recommendations’. An inter-agency committee chaired by the Ministry of Justice conducted the review.

The *Restraining Orders Act 1997* gives effect to the recommendations of that review. It provides for two types of order, the Violence Restraining Order and the Misconduct Restraining Order; provides for a restraining order to be made to prevent a person loitering near schools or other places frequented by children; requires that firearms be surrendered or seized when a Violence Restraining Order is made, and provides an option to the court to order that firearms be surrendered or seized when a Misconduct Restraining Order is made; provides for an application for a Violence Restraining Order to be made by telephone under certain circumstances; includes a non-exclusive list of conditions to assist the courts and to promote consistency; allows for other forms of service of a restraining order if personal service proves ineffective; makes new arrangements for hearings and for variation or cancellation of orders; requires the involvement of a responsible adult in restraining order proceedings involving juveniles;
• provides for the court to be informed of any family order or application for such an
order under the Commonwealth Family Law Act 1975 or the Western Australian
Family Court Act 1975; and
• prescribes penalties for breaches of orders.

The Act was reviewed by the Ministry of Justice in 1998 (Ministry of Justice 1998) and
the Department of Justice in 2002 and 2004 (Department of Justice 2002 & 2004) (see
also Ministry of Justice 1995; Auditor General 2002; Ombudsman 2003). The Attorney
General more recently commissioned a review into the Act, with a final report published
in 2008 (Department of the Attorney–General 2008).

1999 –

Truth in Sentencing legislation –

As other jurisdictions had enacted ‘truth in sentencing’ legislation to counteract the
perceived ‘leniency’ of provisions relating to remissions and parole, so too Western
Australia passed the Sentence Administration Act and the Sentencing Legislation
Amendment and Repeal Act in 1999.

These provisions were, in part, motivated by the findings of the Hammond Inquiry into
parole and remissions (1998) (see below). Morgan suggests that by the early 1990s,
through remissions, parole, work release and home detention, prisoners were generally
eligible for release after serving no more than one-third of their sentence. Those offenders
who were released at an early stage remained under supervision in the community for
some time but, in most cases, the final one-third of the sentence was simply remitted.
(Morgan 2000: 252 – see also for discussion and criticism of this legislation more
generally).

The legislative package abolishes remissions, but retains work release, home detention
and parole options (Early Release Orders). Whilst parole previously applied only to
sentences of 12 months or more, it now applies to sentences of any duration. The courts
must now consider parole eligibility on all sentences of imprisonment, not just those of a
year or more. The courts have also been given greater scope to determine that a person is
not eligible for release on parole. Hitherto, those prisoners made eligible for parole by
the courts have been required to serve at least one-third of their sentence before possible
release on parole (the 'non-parole period'). Under the new laws, the non-parole period is
one-half of the sentence. If a person is released on parole, the remaining 50 % is served
on parole, which is either 'supervised' or 'unsupervised'. Further, courts are required to
‘adjust’ sentences to take account of the new laws with respect to Early Release Orders.
Those who are not eligible for parole may be subject to post - sentence supervision
through the Release Programme Order – under which they are required to undergo
treatment programmes in the community after the sentence of imprisonment has expired.

This legislation was repealed and replaced with the latest truth-in-sentencing legislation
in 2003 (see below).
1999 – *Prisons Amendment Act* passed (see below)

**MAJOR CASES**

**Early 1990s** –

*Juvenile offending leads to Crimes (Serious and Repeat Offenders) Act 1992 (see above)*

During an 18-month period from April 1990, a series of police car chases led to the death of sixteen people, five of whom were offenders fleeing police and their passengers. There were others injured during the course of the chase or of the stealing of relevant vehicles. Broadhurst and Loh suggest that the ‘media had a field day’ as a result, and public sympathy for victims and their families culminated in a rally of 20,000 people protesting outside Parliament House in August 1991 against the ‘juvenile justice system’ and Labour’s soft stance on crime (Broadhurst & Loh 1993: 251-2). Although a 1990 high level Government advisory committee on young offenders had recommended an emphasis on prevention, cautioning, and victim reconciliation and mediation schemes, after the death of a pregnant mother and her baby son on Christmas night 1991 when an Aboriginal youth in a stolen vehicle collided with her car during a police chase, Cabinet responded by legislating to increase penalties and target ‘dangerous’ offenders. The Acting Premier announced on 6 January 1992 that ‘Western Australia’s hard core juvenile criminals will be subject to the toughest laws in Australia’ with the passing of the *Crime (Serious and Repeat Offenders) Sentencing Act*. He also indicated that for such offenders, the ‘government has decided there is now no choice but to excise them from society… (as these offenders) will not change their attitude and the protection of the community is paramount’ (Broadhurst & Loh 252). Under the new laws, repeat offenders were to be jailed at the Governor’s pleasure in addition to any other penalty, and where an offence involved violence, there would be no release possible prior to 18 months imprisonment. The legislation may be seen, ultimately, as ineffective and flawed, according to commentators, and as an attempt to appease community outrage, whipped up by media, about juvenile offending (Broadhurst & Loh: 268)

**MAJOR POLICY CHANGES**

**1990/91** –

*Case Management*

Following a review of prisoner assessment and placement procedures, a (new?) system of case management was introduced. Under case management, each prisoner serving more than four months, or subject to a Parole provision, is allocated a Prison Officer case manager who prepares a sentence plan including work, education and placement options. The objective of the system is ‘better management of prisoners through planning,
coordination of key elements of the plan, and by the provision of more detailed information to the prisoner of his potential progress through the prison system (DCS Annual Report 1990/91).

1991 –

_Fremantle Prison closed and Casuarina Prison opened._

The State’s oldest prison was decommissioned in 1991, with the last prisoners being moved out in November 1991. Responsibility of the site was transferred to the Minister for Heritage, and it is currently a tourist and historic site. Fremantle had been a prison for 136 years, and for the first 72 years, was the State’s only prison. Prisoners were transferred to Casuarina Prison in 1991/2. The latter was developed with Unit Management in mind, permitting the development of semi-autonomous units for prisoners, headed by a Unit Manager (see above).

1992 –

_Victim Offender Mediation Unit approved by Minister_

The DCS Victim Offender Mediation Unit was approved following Cabinet’s endorsement of the _Western Australian Charter of Victims’ Rights_. The objectives of the Unit were to provide a constructive option to the Courts which may satisfy victim needs and be acceptable to the offender; address victims’ rights in accordance with the Charter; encourage offenders to take responsibility for their orders; provide the opportunity for meaningful reparation for victims; respond to the demands of the wider community; and assist in reducing costs of criminal justice sanctions (DCS Annual Report 1991/92: 12).

The Department continues to offer mediation between victims and offenders through the Victim-offender Mediation Unit (a community corrections program), which must be entered into voluntarily by both parties. Reparative and protective (where offender and victim do not meet) mediation services are provided.

1994 –

_Prisoner Support Scheme initiated_

The _Prisoner Support Scheme_, which commenced operation in 1994, was expanded in later years to include _Aboriginal Prisoner Support Officers_ who work with selected prisoner groups to teach them to help each other and to attend to Aboriginal issues. This position is now filled in the ten major prisons in Western Australia. Suitable prisoners

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are recruited to work with the Prisoner Support Officers and to assist vulnerable prisoners. This is now known as the Prisoner Peer Support Scheme.

1996 –

*Future Directions Report, Towards Integration –*

The Offender Management Division within the Department of Justice sought ‘future direction’ in terms of integrating the various parts of the Division (consisting of juvenile and adult offender services, both custody and community-based, and support areas of Programs and Health). The service areas of the Division had a history and culture that was ‘isolationist’ (Department of Justice 1996: 3). A Future Directions committee was set up in 1996 to develop an integration model for the division. It was hoped that such a model might improve standards for management practice and lead to differential management of offenders, ‘tailored to individual needs’, as well as improving community protection as recidivism was reduced (4).

Recommendations relating to the integration model focused upon recidivism risk assessment; recidivism risk reduction interventions; case management; throughcare; customer focus; and information gathering, storage, and exchange. The report noted that the justice model approach to corrections had been popular in the 1970s, with few opportunities for rehabilitation of offenders (after publication of relevant research indicating that nothing could be done to address re-offending). It suggested that, internationally, there had then been a shift towards ‘what works’ as a philosophy in terms of addressing re-offending, and that relevant strategies could, in fact, reduce recidivism. Risk-need intervention programs for offender management were required. Objective risk-needs assessment instruments and systematic, data-driven intervention strategies were required. It also identified gaps in the current programs provided by the Department in terms of treatment, and suggested that external evaluation of programs was necessary. Further, there ought to be a significant commitment to support the maintenance of family and personal relationships in order to reduce recidivism; and also a dual prisoner management scheme, with different case management for prisoners assessed as being ‘high-risk’. The model incorporated a specific focus upon female and Indigenous offenders and offenders with disabilities.

The Department adopted the report’s recommendations, on the whole.


In 1997, the Department of Justice set up an internal Steering Committee to review the *Prisons Act 1981* (with a consultative Project Group, which included representatives from the Department’s Offender Management Division). The Review is the culmination of their work.

In that Review, the ‘landmark’ nature of the *Prisons Act* is noted – it is the oldest mainland Australian penal legislation and one of the largest. It is also noted that although
that Act had undergone a number of *ad hoc* amendments over fifteen years, it was time then to consider enacting new legislation which might better reflect and embody current penological thinking and practice, including the thinking embodied within the Department’s *Future Directions* strategy.

The Review initially considers the high rates of imprisonment in Western Australia. It also sets out the ‘changing criminal justice environment’ within the state, which has included:

- restorative and reparative justice principles (for instance, the *Victims of Crime Act 1994*);
- the *Sentencing Act 1995* (including some emphasis upon community orders and prison as a last resort);
- mandatory sentencing;
- reflecting community expectations around community safety, release on parole has increasingly been dependent upon offenders completing relevant programmes (which has led to an increasing emphasis upon rehabilitation programmes, including as an effective means of targeting recidivism);
- privatisation of prisons;
- prison work now has a reparative element (community work), a focus upon assisting prisoners with skill-building useful in post-release transition, and is also used to offset prison costs;
- and there is also some greater emphasis upon prisoners’ rights and safe and humane prison conditions (see, for instance, the *International Covenant of Civil and Political Rights 1976*).

A number of core principles are set out which might be part of the new Bill, including that prisoners are imprisoned ‘as punishment’, not ‘for punishment’, for instance. The new Bill, it is proposed, ought to focus on the key penal outcomes of custody; duty of care; reparation to the community; and reduction of re-offending.

(i) Custody

Moving away from a coercive to a more interactive and cooperative model of prisoner management, the Steering Committee proposes that a fair and speedy prisoner disciplinary scheme is required (with greater regulation of the use of privilege/punishment powers of officers). Further, prisoners ought to be informed of their rights and obligations; and minimum standards ought to be set out in the new Bill.

(ii) Care and well-being of prisoners

The common law duty of care ought to be encapsulated in the legislation as a second outcome of imprisonment. Duty of care issues as they specifically relate to Indigenous and female prisoners, juveniles who are sentenced to incarceration in an adult prison under the *Young Offenders Act*, and prisoners from different religious and cultural backgrounds are discussed.

(iii) Reducing recidivism and re-offending

Whilst the *Prisons Act* embodied a ‘just deserts’ or ‘justice’ model of corrections in response to what were seen as the failings of rehabilitative approaches to offending, rehabilitation has been slowly coming back into fashion in penal culture (through, for
instance, drug abuse treatment). The new Bill should have some focus upon relevant rehabilitative programmes; educational and training initiatives; contact with family; and approved leave programmes for persons with intellectual disability.

(iv) Reparation
The nature of prison work has changed over years, and has been the subject of substantial review in the 1980s (Office of the Auditor General 1988; Leith 1984). The latter reviews recommended a Prison Industries Board be established, with statutory authority to oversee the corporatisation of prison industries, *inter alia* – but these recommendations have not been implemented (Ministries of Justice 1997). The current focus of prison industry ought to be upon reparation, with rehabilitative elements.

(v) Privatisation
It is noted that privatisation has been delayed in Western Australia because of an agreement between Government and the Prison Officers Union (‘the prisons package’). Under the agreement, Government promised not to privatisе in return for prison staff accepting employment terms which would cut back prison costs (such as overtime or holiday entitlements). The Review makes a number of recommendations in relation to privatisation, including ensuring that private facilities are subjected to a high level of public scrutiny.

The Review did not lead to any changes in legislation. There is currently a new Corrections Act under consideration, however (see below).

1999 –

*Specialised Family Violence Courts commence*

The Joondalup Family Violence Court was established as a pilot problem-solving court in 1999 following recommendations in the Family and Domestic Violence Taskforce Action Plan (1995). It aimed to improve the criminal justice response to family violence; to make offenders accountable for their behaviour; to support victims and to ensure their safety; and to reduce the incidence of family violence in the Joondalup district. It deals with all criminal matters pertaining to family violence, as well as Violence and Misconduct Restraining Orders. As well as trying to bring the offender into the justice system as early as possible, and monitor them through conviction, sentencing and community supervision, the victim is also attended to by way of services such as support through the justice system and safety audits/risk assessment, and each court has a Family Violence Service attached to it to assist victims. The Court used an interagency approach (such as the Ministry of Justice, Police, Family and Children’s Services, Relationships Australia, and a local refuge). The Family Violence Court also provides programs and support to meet the needs of Aboriginal people and other cultural groups.

There are now six such courts in the State. The courts are based upon the Family Violence Court Case Management model, which involves the following:

- a dedicated magistrate to preside over cases being managed through the Court
- an integrated case management team
• early review by the integrated case management team in assessing an individual’s suitability for inclusion in the court case management process. This occurs after the offender has pleaded guilty and is referred for assessment for inclusion in the Court case management process.

• deferral of sentencing to enable the offender to participate in an identified family and domestic perpetrators program and the case management process.

Once accepted into the Family and Domestic Violence Court case management process, an offender is subject to ongoing case management and review by the integrated case management team. This involves a progress review by the integrated case management team approximately 3 months after the offender’s release on bail. This allows offender to continue to be involved with relevant services and programs. Following this progress review, the offender appears in Court before the family and domestic violence magistrate. A community justice services officer (CJS) (Senior Community Corrections Officer) also attends the court. The CJS represents the integrated case management team and reports on the offender’s progress in case management and the perpetrator program. The CJS officer will also provide information to the court in terms of feedback from the victim and information relating to further police involvement that has not resulted in charges. In a case where more charges have been laid, the prosecuting sergeant will represent these in court (for further detail of procedure, see Kraszlan & West 2001).

The Court was evaluated in 2002 (Department of Justice 2002a), and found to be a ‘qualified success’.

(See also Geraldton Family Violence court initiatives below).

MAJOR INQUIRIES

1991 –

Joint Select Committee on Parole – Halden Committee

Halden chaired a Parliamentary Joint Select Committee to review parole in Western Australia. The Committee was established to review the changes to parole legislation of 1988 (see above), but also in response to publicity and discussion surrounding a number of high profile cases.

Examining parole in each Australian jurisdiction and overseas, the Committee noted, at the outset, that parole did work in Western Australia. A Crime Research Centre study was referred to, indicating that there was a 48.6% recidivism rate for prisoners released unconditionally, compared with a 32.3% rate for those released on parole (25). Further, the estimated parole success rate quoted by the Committee was 70% (measured by both the number of successfully completed parole orders and by the incidence of re-offending) (79). The Committee stated that ‘parole is an important and essential part of an offender’s resocialisation’.
In terms of parole, the Committee made wide-ranging recommendations, including that:

• parole be re-named ‘supervised community sentence’
• the Parole Board be re-titled ‘Community Sentence Board’ (and also include a community representative in its membership)
• a statement that the paramount consideration in granting a supervised community sentence be the protection of the community should be embodied in the Offenders Community Corrections Act
• all prisoners ought to be eligible for supervised community sentence, except those who have been adjudged unsuitable by a sentencing judge, or in other limited circumstances
• eligibility for supervised community release should remain at the one-third mark on sentences of six years or less and at two-thirds less two years on sentences of more than six years. The minimum period on supervised community release should be six months and the maximum two years
• a sentence of imprisonment should only be applied if the judicial officer is convinced, having regard to the nature of the offence, antecedents of the offender, and any guideline judgements that the paramount principle of the protection of the community would be placed in jeopardy, and that other options have already failed or have an extreme likelihood of failure
• short sentences be abolished (three months or less), except in relation to offences of violence against the person
• the Court of Criminal Appeal ought to be able to more effectively control lower courts’ sentencing patterns. The Supreme Court should be able to issue ‘guideline judgements’ about sentences of the lower courts, including in instances where an individual has not lodged an appeal against that sentence. Further, the Chief Justice should also be able to report to Parliament on any sentencing matter that he thinks appropriate to comment upon
• the community and judiciary ought to have greater confidence in the parole system, and that there ought to be widespread education and awareness encouraged through a public campaign
• one-third remission of head sentence should remain but as a ‘privilege’ which can be lost for breaches of the law, and the existing 10% remission under the Prison Regulation should be abolished
• review of the Criminal Code with a view to decriminalising certain minor offences and to comparing penalties for crimes against the person with those for crimes against property
• review of the current system of fine payment be undertaken— the courts should be given greater discretion in terms of options (such as ordering wage garnishment); and the ability of a person to pay a fine should be established before the level of a fine is set
• a review be undertaken in terms of open security prisons and their effectiveness.

The particular circumstances of Aboriginal offenders was considered in detail in the report (see below – VULNERABLE POPULATIONS).

1997 -

Corrections review of Prisons Act 1981
Auditor General review of bail and remand (see above)

1998 –


The Attorney General (WA) commissioned a review of the system of parole and remissions as a result of concerns raised by the judiciary and community. Hammond was thus required to balance the increasing concern to ensure that sentences were actually served by prisoners rather than being token only as a result of remissions, parole and other early release programmes with the need to tackle the rising prison population.

Hammond recommended the following:

• that the policy of one-third remission be abolished, but that parole be retained for sentences of 12 months or more
• courts ought to be able to refuse parole (whereas their discretion was then constrained – only in exceptional circumstances could parole eligibility be refused); and the non-parole period ought to be one-half of a sentence
• for those serving less than 12 months, there should be provision for automatic release, with or without conditions, after serving one half of the term and for them to then ‘remain at risk’ (that is, be unsupervised, but if they committed an offence during this period, they could be imprisoned to serve the balance of the sentence) for the remainder of the term.
• those released on parole were to be supervised for a period equivalent to one-third of the sentence (up to two years), and were then to be ‘at risk’ for any remaining time.
• Work Release Orders should be abolished for prisoners on parole (as they may be subject to conditions relating to work anyway whilst on parole), but for prisoners not eligible for parole, there should be provision for release during a ‘reintegration period’ (during the last 10% of the sentence)
• Home Detention for offenders serving less than 12 months was also to be abolished
• the Parole Board was to be given clear statutory guidelines, setting out factors to be considered when determining release of an offender on parole
• moreover, in order to prevent these recommended changes increasing the prison population, it was also suggested that sentences should be adjusted (reduced by one-third) by courts.

According to Morgan, the scheme

…. returned more authority and control to the courts with respect to parole eligibility. It was far simpler and more comprehensible in that early release mechanisms were to be reduced in number and complexity; and, although sentences would generally be reduced, the scheme was more truthful in that offenders would serve the whole sentence, either in prison or in the community. (Morgan 2000: 260)

Due to concerns in relation to potential rising imprisonment rates, it was recommended that further consultation and research be undertaken. However, by October 1998, the Liberal Government sought to pass legislation which effectively encapsulated the
Hammond recommendations (Truth in sentencing legislation package – see above (??))

1999 – Casuarina Prison – Inquiry (see below)

VULNERABLE POPULATIONS

1991 –

RCIADIC completed -

The DCS in WA proposed a number of principles in response to the recommendations, including the importance of a whole-of-government response; need to develop on community based, as opposed to prison based, programs; importance of recognising cultural differences within the Aboriginal community; need to increase Aboriginal representation within Department; and to involve Aboriginal people in development, implementation, and monitoring of programmes (Annual Report 1990/91: 30). Work undertaken by the Department included Aboriginal recruitment strategies; development of staff training with Curtin University; establishment of Aboriginal Community Corrections Officers; Aboriginal Unit; engagement with Aboriginal groups and community in development of programmes; and the Aboriginal Visitors Scheme (DCS Annual Report 1991/2: 37).

Halden Committee report on parole – Indigenous focus

The Committee made a number of recommendations in relation to Indigenous over-representation in Western Australia (for other recommendations, see above). Those recommendations included that:

- there be further consideration of the application of customary law and its relationship with non-Aboriginal sentencing practices;
- Aboriginal people and communities ought to be better informed by the DCS about the nature of community sentence (parole) and breach of the same;
- Aboriginal-specific or appropriate non-custodial options ought to be further considered, taking account of the different needs of metropolitan, rural and remote communities. Aboriginal offenders, for instance, ought to be able to perform community service work on their communities and Aboriginal communities ought to be encouraged and enabled to supervise Aboriginal offenders; and
- alcohol and substance abuse within Aboriginal communities needs attention. For instance, detoxification centres should be established by Aboriginal communities; and there should be alternatives to incarceration for drunk and disorderly offences.

1992 –

An Aboriginal Unit was established by DCS
The Unit, consisting of seven Aboriginal staff, was set up in response to the RCIADIC, and was designed to facilitate the use of community-based orders; to build communication links between Aboriginal groups; and to provide pre-sentence advice to courts on Aboriginal offenders. Specifically, its aims were to increase the use of and compliance with community-based sentencing options; foster better working relationships; encourage greater understanding of community-based orders; and deliver more informed advice to courts (DCS Annual Report 1991/92: Executive Summary & 11).

When DCS later separated from the Department of Justice (after the Mahoney Inquiry recommendations – see below), the Aboriginal Policy and Services Unit remained within Justice.

1993 –

**Aboriginal Community Supervision Agreements finalised**

In January 1993, a form of contractual agreement with Aboriginal offenders was introduced under which participating Aboriginal communities manage the supervision of offenders resident in those communities. Previous attempts to manage offenders on remote communities had proven to be largely unsuccessful (such as Honorary Probation and Parole Officers). Without an option to supervise in remote areas, offenders were invariably given prison sentences. Parriman refers to this initiative as a ‘break through’ and points to its benefits as follows (Parriman 1999):

- It offers communities a key role in the decision making process about offender management. The community itself decides whether it will accept an offender under supervision, determines who is the most appropriate person to administer the supervision order, and it exercises considerable discretion in determining the supervision regime.
- It encourages the Courts to make greater use of community based sentencing options by providing a credible system of management for offenders who do not pose a major risk to the community.
- It aims to increase public confidence in the administration of justice by enhancing the rate at which community supervision orders are successfully completed.

The local Community Council undertakes, *inter alia*, to ensure that community work obligations are met, and that offenders report to supervising officers (which the Council nominate). It also advises about non-compliance. The Ministry of Justice consults with a community before placing an offender; transports the offender from the place of sentence to the community; and remunerates the Council for services rendered.

1996 –

**HIV/AIDS segregation – disability discrimination**
The DCS reported that it was conducting compulsory HIV/AIDS testing of prisoners at least as early as 1988 (DCS Annual Report 1988/89). In 1996, the Human Rights and Equal Opportunity Commission found that the WA Government had breached the Disability Discrimination Act 1992 (Cth) with respect to specific prisoners who had brought a complaint to the Commission through its policies which segregated HIV-positive prisoners and also imprisoned them in maximum security prisoners. The policies effectively established 'corridor prisons' designated to accept medically suspected or HIV positive prisoners (see Alexander 1995, Andrews 1994).

**Fremantle Police Diversion Project – Offenders with Disabilities**

This scheme, introduced in 1996, involved diversion of those offenders who had ‘decision-making disabilities’, and targeted offenders who had committed ‘nuisance’ offences or ‘other commonly occurring offences’ (such as cannabis possession or shoplifting). Offenders were placed on a management plan, and, upon completion of the plan, were referred to court again. The Police Prosecutor then had the power to withdraw the charge. According to Cockram, if the plan had been successfully completed by the offender, it was expected that ‘s/he would receive a more appropriate and meaningful disposition. The court would also be better informed regarding the risk of re-offending and the general circumstances of the client’ (Cockram 2005: 17). Police withdrew from the project, however, and it ceased operation in 1998. Police indicated that there was a difficulty or reluctance of police to identify people with an intellectual disability, low numbers of referrals, poor completion numbers, issues surrounding cautioning powers and high resource commitment for limited outcome.

**DIVERSIONARY PROGRAMS**

**1991 –**

*Home Detention introduced*

The scheme was launched in 1991 with the aim of reducing incarceration rates, and included Home Detention as a condition of bail or as a condition of release for offenders serving sentences of less than twelve months or who had served at least one month or one third of their sentence, whichever is longer, in custody. Further, attempts were made to ensure that Home Detention as a scheme could be appropriate and available to Indigenous community members (through appointment of a project officer seconded to Corrections from the Aboriginal Affairs Planning Authority). Those on Home Detention as part of their sentence were obliged to complete unpaid community work, as well as to comply with curfew conditions. (DCS Annual Report 1990/91: 17).

Morgan suggests that Home Detention was not popular with prisoners due to its intrusive level of supervision. Prisoners have preferred to remain in prison rather than be released under the scheme (Morgan 2000: 257).
The first Work Camp was opened at Walpole in 1998 when, after extensive community consultation, one officer and eight prisoners from Pardelup Prison Farm set up camp at the old Mains Roads Department depot and assisted to realign the Bibbulmun Track between Walpole and Albury. As at 2002, when DCS published a Commemorative Booklet celebrating 10 years of work camps, there were seven such camps in operation. Over this period of time, prisoners and staff have contributed 488,000 work hours to regional communities. The other camps are as follows, carrying out disaster relief as well as general community work:-

- Millstream – for prisoners at Roeburn Regional Prison – the first camp established specifically for Aboriginal prisoners. The Department worked closely with traditional owners, the Injibandi people, in operating the camp.
- Wheatbelt – 200km east of Perth – established in 2000
- Bungaran – 27 km outside Derby, a 20-man work camp commencing in 2001 and operating on the site of a former leprosarium (1927-1984)
- Pardelup – previously a minimum security farm, it became a work camp in 2002, and has a capacity of 20. Prisoners work on the farm, which provides food to prisons in the State, but also on community work.
- Wyndham was established in 2002, supported by the community (which had also supported the old Wyndham prison, closed in 1997). It was also, according to DCS, welcomed by local elders as local Indigenous people could serve their prison term closer to home, rather than at Broome (1000 km away).
- Mt Morgan – opened in 2005, and operating outside Laverton.

According to DCS, work camps, based in small rural and remote communities, provide prisoners with the opportunity to live in the bush away from prison in a less institutionalised environment. The program’s primary goals are rehabilitation and reparation. Prisoners are provided with training (and accredited for training received), as well as having the benefit of working in the community. Training modules include workplace communication, forklift operation, numeracy and literacy modules, and preparation for employment. Future directions include development of base camps, with outstation and out-camps attached to them – providing more prisoners with opportunities to participate. Further, Millstream, Mt Morgans, Derby and Wyndham camps enable Aboriginal people to serve their terms near to traditional lands and communities. DCS has indicated that the work camp program has won national and state awards for excellence, including the State and National Public Relations Institute of Australia Awards for Community Communication in 2000.  

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RIOTS/UNREST

1998 – Christmas day riot at Casuarina prison

On Christmas Day 1998, prisoners at Casuarina Prison rioted and caused over $250,000 in damage to property, besieging prison officers, with staff not in control of the prison grounds for two hours and one hundred prisoners roaming free in prison grounds. Between 20 and 30 prisoners also suffered major drug overdoses during this time, and 221 staff and two prisoners needed hospital treatment as a result of the riot.

When the Attorney-General attended at the prison the day after the riot, he directed that an inquiry be established immediately. The report subsequently presented into the riot compared it to the 1988 Fremantle riot, and it was noted that recommendations of the McGivern Report into the latter riot, including, for instance, that a formal prisoner grievance system be set up, had not been implemented (Smith 1999: 42). Overcrowding at Casuarina was partly to blame for the riot, and formed the basis of many of the prisoners’ grievances which caused them to take action – although the prison’s capacity was 446 prisoners, at the time of the riot it held 529 prisoners and at the time of writing the report in question, it held 648. Further, the mix of sentenced and ‘volatile’ prisoners on remand, and defiant Aboriginal prisoners in particular, was also a factor (54). Prisoner grievances’ also included strip searching of visitors; prison officer attitudes to prisoners; welfare issues not being addressed; and lack of access to programmes in order to obtain parole.

Recommendations included that the Offender Management Division ensure that policies and strategic plans provide for adequate training of police officers; sufficient levels of activities and engagement for all prisoners; and a plan to monitor and improve the quality of prisoner-officer relationships, inter alia. Serious incidents should be video-taped, and regimes ought to be examined to see how they could better deal with increasing musters.

Media:

The Western Australia Deaths in Custody Watch Committee has called for an independent judicial inquiry into the causes of the riot at Casuarina Prison on Christmas Day 1998. The Committee feels the terms of reference should include an examination of the impact that overcrowding has had on the prison system, the continued overrepresentation of Aboriginal people in prisons, and prisoners’ claims of brutality since the riot. The situation at Casuarina remains extremely tense and prisoners continue to be locked down for a 23 hour period each day. (Koori Mail, ed.193 Jan 27 1999; 9)
**INCARCERATION RATES**

Throughout the last two decades, WA has had some of the highest incarceration rates as a proportion of population of any Australian state (including Indigenous rates). The State has made attempts to address this through innovative partnerships with Indigenous communities such as juvenile bail facilities and circle sentencing (O’Toole).

The Department provides monthly graphical statistics online –

As at January 2009, prisoner numbers had risen to approximately 3950 from 3000 in January 2004. For the same period, Aboriginal prisoners had risen from 1104 to over 1600 (http://www.correctiveservices.wa.gov.au/_files/AG_Report_0901.pdf).

See discussion in *Nevill Report - Financial Management of Prisons* - below

**MAJOR LEGISLATIVE CHANGES**

2003 –

*Sentencing Legislation Amendment and Repeal Act 2003 and Sentence Administration Act 2003 – truth in sentencing*

This legislation repealed the *Sentencing Legislation Amendment and Repeal Act 1999 and Sentence Administration Act 1999* and the *Sentencing Amendment Act 2000*. These Acts were ‘purportedly designed to enhance ‘truth in sentencing’ but were complex and, in some respects proved unworkable and arguably flawed in principle’ (Morgan 2003: 11).

The main aspects of the legislative changes are as follows:
• the Pre Sentence Order displaces the suspended sentence;
• prison sentences of six months or less are abolished, but, Morgan notes, most offences that have, in practice, attracted prison sentences now carry an ‘enhanced maximum’ of 9 or 12 months;
• greater scope for a court to order that a person is not eligible for parole;
• provision for early release orders to be cancelled when a person is charged (not convicted) for an offence; and
• requirements for a court to adjust sentences by reducing terms by one-third. To avoid
an increase in imprisonment rates, cl.2(1) of Schedule 1 of the Act – ‘the transitional
provisions’ – states as follows:

If a court sentencing an offender to imprisonment proposes to impose a fixed term (with
or without a parole eligibility order), it must impose a fixed term that is two thirds of the
fixed term that it would have imposed had the old provisions been in operation at the time
of sentencing (cl. 2(1) of Schedule 1).

• amendments with respect to parole and other early release orders (including a new
parole scheme for sentences of less than 12 months which gives the CEO of the
Department of Justice power to make a parole order on sentences of less than 12 months;
and abolition of WROs (to be replaced by Re-Entry Release Orders (RROs)))
• abolition of one-third remissions.

Morgan comments in relation to a number of aspects of the changes. In terms of the
abolition of sentences of six months or less, he notes that whilst the aim of this provision
is ‘laudable’ – to reduce incarceration and to address the ‘revolving door’ created by
short sentences, the effective starting point for a term of imprisonment is now seven
months. There has been anecdotal evidence that the abolition of sentences of three
months may have led to more sentences of three months and a day. The legislation
actually stipulates that there will be enhanced maxima for some offences of 9 or 12
months (restraining order and some prostitution offences, inter alia). Thus, Morgan
suggests that most of the ‘key offences’ that will have attracted short prison sentences
will continue to carry imprisonment (but now, that must be constituted perhaps by 7
months instead of 4). The rising remand rate is also commented upon, as is a concern
that courts may impose a short sentence by way of remand in place of a prison sentence
(Morgan 2003a).

Morgan criticises the laws as they stood before the amendments as rendering sentences as
‘something of a charade, distorting their ‘real’ meaning, creating anomalies and raising
issues of transparency and accountability’ (Morgan 2003b: 19). He refers to the
entitlement to one-third remission and to parole eligibility for offences aggregating 12
months or more, with courts determining eligibility and the Parole Board deciding
whether to release someone and on what conditions, and non-parole periods set down in a
statutory formula. Work release orders (WROs) have in effect only been available to
those with less complex reintegration needs, and Home Detention Orders, only for those
with sentences of less than 12 months, have been determined by the CEO of the
Department of Justice (delegated to managers of community correction centres). The
discriminatory impact of WROs; the fact that the most intrusive interventions have been
used for the least serious offenders (Home Detention); the fact that courts have had some
say in parole eligibility but none with respect to remissions, WROs and Home
Detention; and that a 12 month sentence with parole has been a better outcome than a 9
month sentence, inter alia. He suggests that the requirement that courts reduce sentences
by one-third may prove to be a workable, and necessary option. The power given to the
CEO of the Department of Justice with respect to parole is also criticised, in principle –
for the department which is responsible for the administration of corrections ought not to
have such discretion. He also raises concerns about the potentially racially discriminatory impact of the legislation upon Indigenous people.

The Labour Government announced in August 2008 that it would repeal truth-in-sentencing legislation (of 2003) in so far as it led to an automatic one-third reduction of sentences in criminal cases (see above). Appealing to the general populace, with reference to victims and their families, the Attorney General stated that as a result, judges ‘will be able to use their discretion to impose extremely tough sentences on criminals who commit horrific crimes’. Other than simply repealing the relevant provisions of the legislation, the Government proposed to replace them ‘with a direction to the Court on how sentencing is to be conducted in the future. This will achieve consistency, avoid confusion and ensure that sentence discounting is not revived’. Where judges, therefore, are not willing to impose a maximum penalty (without discount), they will be now ‘directed to have regard to the established ‘tariff’ or ‘precedent’ imposed for similar cases in fixing an appropriate sentence within the statutory maximum for that offence’.

Previously, the Government had approached this issue by suggesting that as the reduction did not apply to ‘new offences’, they could simply enact new laws creating offences to avoid the reduction. However, the case of Yates v The State of Western Australia [2008] WASCA 144, in which the Supreme Court of WA found that the one-third discount to sentences applied even to a sentence of imprisonment for a new offence (that is; an offence created after the Sentencing Legislation Amendment and Repeal Act 2003 (WA)), led to the Government’s announcement that it would repeal the provisions altogether.

- See media release from Attorney-General McGinty - 3/8/2008 -

- For media commentary on the likely impact upon prison numbers and current overcrowding (with specific focus on Indigenous people), see
  http://www.abc.net.au/stateline/wa/content/2006/s2434529.htm

2006 –

*Parole & Sentencing Legislation Amendment Act 2006*  

One of the main reforms in this Act, brought about by the *Mahoney Inquiry* recommendations (and those of Frizell (2002)), included the establishment of the Prisoners Review Board (PRB) (see further below) to replace the existing Parole Board (with the appointment of a victims’ representative to the PRB and a legal requirement for the PRB to consider victim issues when making a decision, including submissions received from victims). The PRB was established in 2007 (see below). The focus on contribution by victims to decision-making also encompassed the appointment of a

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5 This information is taken from Department of the Attorney General (WA), (2006)*Parole and Sentencing Reforms: Overview of Changes*,
victims’ representative and mandatory consideration of victims’ submissions for the Supervised Release Review Board (juveniles) and the Mentally Impaired Defendants Review Board.

The Act also led to the establishment of legislative authority around re-socialisation programs (RSP) (previously known as pre-release programs) for serious offenders. All life and indefinite sentence prisoners will be assessed for suitability for a RSP two years prior to their statutory review date (the date that they become eligible for release on parole). Prisoners subject to fixed term sentences will be assessed only if the PRB requests an assessment.

Further, as it was recommended by Mahoney that the parole system be simplified where possible, short-term parole (previously known as CEO parole) now became the responsibility of the Review Board (applying to prisoners who are serving a term of less than 12 months). The PRB may make a short-term parole order in the case of a prescribed prisoner. A prescribed prisoner means a prisoner who –

- is serving a term for a serious offence (usually a sexual or violent offence)
- was released from serving a term for a serious offence in the past 5 years, or
- was subject to an early release order that was cancelled in the past 2 years.

For all other prisoners subject to short-term parole, the PRB must make a parole order when half the sentence has been served, unless:

- the prisoner is remanded in custody on other matters, or
- transport arrangements warrant a deferral of release on parole for up to 7 days.

Parole term prisoners are no longer eligible for Re-entry Release Orders (RROs). Prisoners may apply to the PRB to be released under a RRO if:

- they were sentenced on or after the proclamation date
- they are not eligible for parole
- they are not serving a life or indefinite term of imprisonment
- they will have been in continuous custody under sentence for at least 12 months when the RRO starts, and
- they will have completed their sentence and be eligible for release to freedom within 6 months of the start of the RRO.

Under previous legislation, prisoners lost their automatic parole eligibility when they received combined short-term sentences of 12 months or more. To overcome this issue, a court can consider parole eligibility when it imposes a sentence that, in addition to a previous sentence, delivers a total sentence of 12 months or over. Given that this provision only relates to short-term sentences, the offences are likely to be at the lesser end of the severity scale and it is considered appropriate for the sentencing court to consider the question of parole eligibility. This change is designed to give less serious offenders a rehabilitation opportunity and to help reduce the rate of imprisonment.

Pre-sentence orders (PSO) were introduced in 2003 to enable a court to defer imprisonment and give offenders an opportunity to undertake programs that address their
offending behaviour. If a prisoner successfully completes a PSO, it may reduce the penalty when sentencing eventually occurs. Under the new legislation, a court can no longer impose a PSO for an offender who was on parole or subject to a suspended imprisonment order at the time of committing the current offence. A prisoner under either of those orders has already been provided with an opportunity to address their offending behaviour, and as a term of imprisonment will breach the previous order, it is considered inappropriate to impose a PSO in these cases and further delay the sentencing process.

Prisons & Sentencing Legislation Amendment Act 2006

This legislation amended a number of Acts, including the Bail Act 1982, the MID Act 1996, the Prisons Act, and the Sentencing Act 1995. It is seen as the first stage in the introduction of a new Corrective Services Act in Western Australia (the introduction of which was recommended in the Mahoney Inquiry).

The main reforms of the Act include:

• broadening the capacity to grant temporary absences from prison
• comprehensive provisions for the exchange of information to facilitate offender management, research and victim support
• enhanced rehabilitation and wellbeing provisions for prisoners
• establishing work camps as external facilities to prisons (formalizing their operation)
• the authority to withhold prisoners mail
• define powers and functions of key positions within DCS
• consequential amendments to other Acts required as a result of the separation of the Department of Justice into the Department of Corrective Services and the Department of the Attorney General.

The media release of the Corrective Services Minister highlighted the provisions in the Act which prevented offenders from writing to victims; and that the information exchange referred to above was directed towards managing high-risk or complex needs prisoners (where secrecy provisions in relevant legislation had previously hindered such management).

MAJOR CASES

2003 –

Offending on parole

The Skinner Review (2003) into the case management supervision of ‘high profile’

offenders in the community (see below) was prompted by specific incidents which occurred between 18-19 August 2003 involving the commission of serious crimes by an offender who was being managed in the community by the Western Australian Department of Justice's Community Justice Services (CJS) directorate. The offender was subject to parole supervision at the time and was being case managed as a 'high risk' offender. See Skinner Review (2003) below.

2008 –

_Yates v The State of Western Australia [2008] WASCA 144_

This case led to repeal of the statutory provision in truth-in-sentencing legislation which directed courts to reduced sentences by one third (see above).

_Dead in Custody case Elder in Kalgoorlie –_

On Australia Day 2008, an Aboriginal Elder who had allegedly been arrested for drink driving died in custody in a van which was transporting him from a remote location (Laverton) to prison in Kalgoorlie. The van in question was operated by Global Solutions Ltd (a private company), although owned by the Western Australian Government. GSL also had responsibility for court custody and security services in the State. It was suggested that inadequate checks had been made on and care taken with the prisoner during the long journey, and there were questions raised about the roadworthiness of the van in question (for instance, faulty air-conditioning may have contributed to the man’s death). This death in custody led to a public and media outcry, and, subsequently, to changes to prisoner transportation laws.


**MAJOR POLICY CHANGES**

2000 –

_Privatisation of court security and custodial services_

The WA Government approved a transfer of ownership of Corrections’ Court Security and Custodial Services to a private firm to deliver most of the State’s custodial and security services in courts, some police lockups and to transport prisoners throughout the

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State. Around 300 police officers, prison officers and juveniles justice officers had been carrying out these tasks, with ‘poor coordination and no sense of organizational ownership’, resulting in substandard service (Harding 2000: 236). The *Court Security and Custodial Services Act 1999* was passed to enable a transfer of these tasks to the private sector.

For a recent scandal involving private contractors in corrections, see Aboriginal death in custody (Kalgoorlie) above.

*Inspector of Custodial Services commences duty*<sup>8</sup>

The Inspector of Custodial Services, an independent statutory body that provides external scrutiny to the standards and operational practices of custodial services in Western Australia, was created as part of legislatively-mandated checks and balances created to ensure accountability and transparency of the private sector management of prisons in WA (see *Acacia* below). The Inspector commenced duty in 2000, and the Inspector’s Office commenced work in 2001. In 2003, the *Inspector of Custodial Services Act (2003)* became operative.

The Office has jurisdiction over all public and private sector prisons and juvenile detention centres, court custody centres, prescribed lock ups, and contracted prisoner transport and support services in Western Australia. Its core responsibilities include:

- comprehensive inspections of all non-police custodial facilities in Western Australia;
- thematic reviews and discussion papers on systemic issues;
- advice to Parliament and the Minister for Corrective Services on criminal justice policy issues;
- co-ordination with other relevant statutory bodies, such as the Ombudsman; and
- administration of the Independent Visitor Scheme.

Harding has noted that the Inspector’s position is an effective one as it provides for thematic, as well as prison-specific, reports. Further, the idea of independent scrutiny of prisons is a novel one in Australia. He criticises previous internal audits (such as the McGivern Inquiry into the Fremantle riot (1988)) as ad hoc and ineffective (Harding 2000).

The Inspector has completed a wide range and number of inspection reports, including in relation to specific institutions but also to issues such as vulnerable and predatory prisoners (2003); a directed review into the management of offenders in custody (2005) (see below); and the assessment and classification of prisoners (2008).  

<sup>8</sup> Some of the following information is taken directly from the Office of the Inspector of Custodial Services (WA) website: [http://www.custodialinspector.wa.gov.au/go/home](http://www.custodialinspector.wa.gov.au/go/home)

DCS - Integrated Prison Regime

The Department of Justice implemented a strategy known as the Integrated Prison Regime (IPR). According to the DCS, ‘IPR seeks to establish the regime as the “glue” which binds together and provides reinforcement of the many different activities and initiatives within the prison that seek to provide particular outcomes for prisoners.’

It was designed, in part, to revitalise the concept and operation of unit management, and a new Case Management scheme was to be part of this new regime. It was to be introduced initially into pilot sites at five prisons, then on a more widespread basis within WA prisons (see below). This entails training and other initiatives aimed at improving the overall functioning of prisons with regard to such matters as prisoner safety, prisoner support, and the development of mutual respect between officers and prisoners. Other aspects include enhancing the ‘constructive day’ for prisoners, so that they are using their time in prison undertaking rehabilitative, educational and training activities; interpersonal skills training for prison officers; and an upgraded incentive scheme for prisoners.

Acacia Prison opened – first private facility in Western Australia

Responding to a chronic need to improve prison infrastructure to cope with an increasing numbers of prisoners, in 1999 the Government selected a private sector organisation to develop a medium security facility for adult males in the near – metropolitan area. Acacia Prison was subsequently developed. This corresponded with a push to privatise activities such as court security (see above). Enabling legislation was passed in 1999 – the *Prisons Act Amendment Act 1999*. Due to the Democrats insistence on accountability and transparency, the Act also legislated for the Office of the Inspector of Custodial Services (see above). Harding has praised the processes around development of Acacia and the *Prisons Amendment Act* as ‘exemplary’ (including initiatives such as the display of the DCS contract with the relevant private sector provider on the Attorney-General’s website), and as assisting to improve the systems and accountability of public sector prisons through the establishment of the Inspector of Custodial Services (Harding 2000).

For media commentary on the release criticizing the private management of Acacia in 2003 by the Inspector of Custodial Services see: http://www.abc.net.au/stateline/wa/content/2003/s997515.htm

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For media release by Inspector of Custodial Services in 2008, indicating that privatisation was working at Acacia, see:

**Victim Notification Register**

The Department maintains a Victim Notification Register, established for victims of crime in 2001. The register allows victims to receive information about the perpetrator of the crime against them for as long as that person is under the supervision of the DCS. Information available from the register may include details about the offender's sentence, any escapes from custody and recapture, impending release dates, and the results of any appeals against the sentence, for instance. Victims are notified in writing of any changes to the circumstances of the offender usually within about five days of that change occurring. (See also *Victim Offender Mediation* above).

**Justice Drug Plan**

The Department of Justice formulated the Justice Drug Plan as a response to the Western Australian Drug and Alcohol Strategy (2003). The Plan sets out the high rate of drug use amongst offenders in Western Australia (and the associated health risks and problems associated with this, such as hepatitis C infection), and discusses the link between drug addiction and re-offending. The Plan aims to reduce drug use amongst offenders by way of the following initiatives, *inter alia*:

- deploy drug detection dogs to prisons where drug testing shows higher levels of drug use;
- double the random drug testing of offenders in the metropolitan maximum-security prisons from twice a year to four times a year;
- introduce a comprehensive pharmacotherapy program including methadone, Buprenorphine and Naltrexone, enabling up to 150 offenders to be engaged in this treatment at any time;
- expand Treatment Programs for high-risk offenders with an additional 15 programs per year, catering for an extra 150 offenders;
- introduce two new drug-free units in WA prisons, with one additional unit in a metropolitan prison and one in a regional prison;
- investigate the efficacy of a prison-based therapeutic community.

- in partnership with Government and non-government agencies, introduce a comprehensive transition program for offenders re-entering the community to address health, housing, drug programs and counselling, training, employment and education needs; and
- introduce harm reduction measures to reduce the prevalence of blood-borne communicable diseases.  

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13 (See also Department of Justice (n.d.))
This plan underpins the DCS *Drug and Alcohol Action Plan 2005-2009*.

**2004 –**

*Western Australian Family and Domestic Violence State Strategic Plan (2004-2008)*

The Plan was developed by the Family and Domestic Violence Unit (FDVU) (Department of Community Development), in consultation with members of the Family and Domestic Violence Coordinating Committee (FDVCC) (Family and Domestic Violence Unit 2003). The ten specific focus areas of the Strategic Plan have been used to develop annual WA *Family and Domestic Violence Action Plans* over time. There was some Indigenous-focus within the Plan and Action Plans (see below).

*Aboriginal Justice Agreement* (see below)

**2005 –**

*Drug and Alcohol Action Plan 2005-2009 - DCS*


*DCS Community Re-entry Coordination Service implemented*

This Service is aimed at assisting prisoners to re-enter the community without offending. Community groups were funded to provide support to offenders for up to three months before leaving prison and six months after release. It appears to be a case-coordination service, according to Mahoney, which links offenders to services, rather than providing services itself. Mahoney noted in 2005 that Indigenous prisoners are participating in the program at an increasing rate. In June 2005, 54.3% of clients were Indigenous.

**2006 –**

*Department of Justice split into DCS and DoAG*

In line with *Mahoney Inquiry* recommendations, the Department of Corrective Services was separated from the Department of Attorney General

**2007 –**

*Prisoners Review Board*
The Mahoney inquiry (2005) looked at frequent criticisms of Parole Board decisions, many of which Mahoney found to be unwarranted in nature. The Report recommended amendments to the *Sentence Administration Act 2003*, which resulted in the creation of the Prisoners Review Board (PRB) to replace the Parole Board. On 28 January 2007, the PRB began operation.

The PRB makes recommendations and decisions relating to the release of prisoners. Breaches of conditions are also reported to the Board. In some cases, for instance, where a prisoner is sentenced to a life term, the board must report to the Attorney General and may make recommendations about pre-release programs and release on parole, but ultimately, the decision to release rests with the Governor of Western Australia. The Board consists of a full-time serving Judge as chairperson; at least two Deputy Chairpersons with special knowledge of the Board’s functions; representatives of WA Police and of DCS; and community members with specific skills (including a victims’ representative and an Aboriginal person). Further, the PRB may now refer to external experts or professionals to give additional advice in relation to individual prisoners, or to assist in the operation of the PRB generally.

The new Board is now required, by legislation, to have regard to community safety as the paramount consideration when making any decision. This applies to officers undertaking assessments and providing advice to the PRB and supervising parolees in the community, for example. Similarly, the consideration of victims’ submissions will now be a legislative requirement. This does not necessarily mean that a prisoner will not be released, but it is likely to have an impact on the conditions of release. Parole considerations will now be known as release considerations. The change of name reflects the nature of PRB decisions, which are not simply parole decisions.

The *Mahoney Inquiry* had suggested that the Parole Board had not been sufficiently understood and that decisions were not ‘made simple’ enough (see also Frizell (2002)). Therefore, the new PRB aims to be as open and accessible as possible in terms of processes and decision-making (see ‘Communication Policy’ on PRB website: available at [http://www.prisonersreviewboard.wa.gov.au/P/policies.aspx?uid=5979-2936-8147-3394](http://www.prisonersreviewboard.wa.gov.au/P/policies.aspx?uid=5979-2936-8147-3394)).

**Inspector of Custodial Services – Code of Inspection Standards released**

Drawing from the *Standard Guidelines for Corrections in Australia*, international treaties and covenants, the Code serves to ‘forewarn custodial management of the operational standards expected’, with the hope that this might encourage ‘rigorous self-assessment’. The basis of the code lies in the principles of purposeful and rehabilitative imprisonment, and the protection of human rights, the latter being ‘integral to good prison management and the most effective and safest way of managing prisons’ (Office of Inspector of Custodial Services 2007: Preface). Issues covered include orienting new prisoners; appropriate building layout and design; and anti-bullying policy.
RISK RELATED DEVELOPMENTS

See below:

- Department of Justice: Suicide Prevention Taskforce Report (2002)
- Department of Justice: Suicide Prevention Taskforce Report (2002)
- Mahoney Inquiry (2005)

MAJOR INQUIRIES

2000 –

Nevill Report – Financial Management of Prisons

The Standing Committee on Estimates and Financial Operations (WA) was asked to examine the financial management of prisons. The (Nevill) Committee noted that the incarceration rate of Western Australia was over twice that of NSW, the Netherlands and Germany, and that incarceration was not an effective means of addressing crime, in terms of costs associated with imprisonment or in reducing re-offending. These figures could be associated with a number of factors, including a disproportionate use of incarceration at sentencing (including mandatory sentencing); an increase in those being incarcerated for fine defaults (despite an initial decrease after the introduction of the Fines, Penalties and Infringement Notices Enforcement Act 1994 (see above)); the growing rate of imprisonment for the offence of driving without a licence under the Roads Traffic Act 1974; and an increase in the number of prisoners on remand. Since 1990-91, the total annual number of remand prisoners had increased by 200%, and there had been a failure in addressing issues and recommendations raised in the Auditor General’s 1997 review relating to bail and remand (see above – Bail Act 1982)).

The Committee ultimately made a number of recommendations, as follows. There ought to be greater focus upon community-based sanctioning, and the Sentencing Act 1995 ought to be amended accordingly. Relevant options might include combinations of sentences (such as pre-trial detention followed by community service or electronic monitoring with community service); compulsory treatment for drug addicts (with one in seven females and one in eight of males being incarcerated for drug-related offences); and ‘day fines’. Focus ought also to be given to offender programmes, which should be offered to prisoners at the commencement of their sentences, not at the end; to their re-socialisation and reduction in their drug use in prison; and the use of short-term sentences ought to be reduced. The savings generated by reducing the rate of imprisonment should be able to fund the less expensive and more effective community programs and improve the level and effectiveness of prison programs for violent offenders, according to the
Committee. Further, an Official Visitor Scheme ought to be introduced. More specifically, incarceration could be reduced by the following initiatives:

- imprisonment as a sentencing option for the offence of driving without a licence under the *Road Traffic Act 1974* should only be imposed in extraordinary circumstances;
- the number of Aboriginal Australians held in Western Australian prisons could be reduced by amending the *Bail Act 1982* so as to require an automatic re-appearance before the court within five days where an offender has been remanded because of an inability to raise a bail surety;
- measures should be put in place to ensure that persons are not held on remand unless they are deemed by a judicial officer to be a danger to the community, are likely to abscond, or are likely to pervert the course of justice;
- offenders who escape or abscond from minimum-security prison should be dealt with internally by loss of privileges and removal to a higher security prison;
- judicial officers responsible for sentencing decisions should receive feedback on the rehabilitative effectiveness of their sentencing decisions, as well as evaluations of the rehabilitative effectiveness of different sentencing options generally
- community supervision as a sentencing option ought to be better developed by the Ministry of Justice

Further, those prisoners with mental illness ought to be kept in a secure, separate facility; and there needs to be greater research, including through improved collection of data and information, to enable incarceration issues to be effectively addressed.

*WA State Ombudsman – Report into Deaths in Custody*

This Report by the State Ombudsman examined the large numbers of deaths and suicides in Western Australian prisons over a recent period of time, and made recommendations relating to parole, health services, and prison programs, *inter alia*, directed towards addressing this issue.

The Report, initiated by the Ombudsman as an ‘own motion’ investigation in 1998 and completed in 2000, considered sharp increases in deaths and suicides in the State’s prison system and, more generally, the poor conditions that growing numbers of prisoners were subjected to. There had been growing numbers of deaths in custody over recent years in Western Australia. The Report indicated that 47 prisoners, including Aborigines, had committed suicide, and 23 had died of ‘natural causes’ in the State’s prisons since the RCIADIC’s Final Report (1991). More specifically, in the five and a half years between 1 January 1995 and 30 June 2000, there were 56 deaths from all causes, which represented 56% of the total deaths in Western Australian prisons in the eighteen years between 1982 and 30 June 2000 and exceeded the number of deaths in the previous thirteen and a half years combined. The Ombudsman noted in his report the community concern surrounding these numbers and suggested that the growing rate of incarceration in the 1990s (with the community agitating for more and longer prison sentences as a response to a perception of increasing crime rates) and subsequent overcrowding in prisons contributed to these deaths.
(a) The key conclusions in the Report were that:

• offenders frequently enter prison in a vulnerable state, experiencing remorse for their crime with psychological and psychiatric problems that may be the result of traumatic histories and drug dependencies;
• this vulnerability is often exacerbated by the pressures of prison life, resulting in a greater risk of suicide than the rest of the community;
• prisoner health and welfare is the responsibility of all prison staff and requires the full involvement and commitment of all concerned working together;
• the nature and quality of interactions and relationships between prison officers can be a significant determinant of the ‘health’ of the prison system and whether prisoners at risk of self harm will be identified and managed in a way that reduces that risk;
• prison services such as health and education were under-resourced;
• prison health services often failed to provide sufficient and appropriate care to prisoners and were frequently over-ridden by prison operational considerations;
• there was a need for improved prison officer/prisoner relations;
• accommodation, access to education, meaningful employment and rehabilitation programs were inadequate;
• the Department’s response to recommendations made by the various bodies which are required to investigate prison deaths appeared to lack coordination and commitment;
• there was no specific person in the Department with responsibility for responding to and pursuing recommendations made following the death of a prisoner; and
• the Department appeared to have accepted some of these requirements and deficiencies and had begun to take steps to formulate strategies and to provide an environment in which improvements could be made.

(b) The main recommendations in the Report included:

• increased funding and resources for prison health services, which should be provided by a body external to the Department;
• greater effort to encourage the involvement of Aboriginal medical services;
• provision of appropriate accommodation and services for special needs groups of prisoners such as those suffering the effects of substance abuse, those with a psychiatric disorder, and female prisoners;
• additional resources for the Forensic Case Management Team (FCMT) to enable ongoing monitoring of at-risk prisoners and provision of self-help strategies, not just crisis care;
• improved facilities and services for female prisoners in regional prisons and increased education, employment and training opportunities for women at all prisons;
• expansion of the methadone program; provision of drug rehabilitation programs from the beginning of the sentence; and discrete detoxification areas in each prison;
• acknowledgment of the importance of constructive activity in the prevention of suicide and self harm and in the rehabilitation of prisoners, and increased opportunities for education, employment and training at all prisons; and
• incorporation of a statement of prisoner rights in the Prisons Act.

The recommendations have been the subject of discussion and negotiation with the Department. A number have been introduced although others are dependent on the
availability of funding. See *Department of Justice: Suicide Prevention Taskforce Report* below.

For media on deaths in custody at this time, see: [http://www.abc.net.au/4corners/stories/s12075.htm](http://www.abc.net.au/4corners/stories/s12075.htm)

*Government of Western Australia 2000 Implementation Report – RCIADIC* (see below)

2002 –

*Frizell review of parole* – N/A

The Frizell Report on parole (and the Parole Board), the Mentally Impaired Defendants Review Board and the Supervised Release Review Board (August 2002) recommended that the Parole Board engage more effectively with relevant stakeholders and key interest groups in terms of informing them of operational and process issues as it is essential that the community and justice system understand that nature of the Boards.

*Department of Justice: Suicide Prevention Taskforce Report*

A Suicide Prevention Taskforce was established by Government in 2000 in response to the number of suicides in custody in Western Australia over a period of time up until 2000 (see also Ombudsman’s report into deaths in custody above (2000)). Three working parties were established to separately report on the impact of mental health, the prison environment, and the identification and management of at-risk prisoners. An analysis of suicide in custody data and a literature review were also carried out.

The Taskforce set out to investigate how prison custody places prisoners at-risk of self-harm and suicide and how to identify, manage and treat prisoners who are at-risk, particularly those prisoners who present as an acute risk. It was noted that, whilst it was important to develop systems that effectively screen for risk, (and current tools such as the Prisoner Risk Assessment Group (PRAG) and At-Risk Management System (ARMS) are examined), there will never be a totally reliable screening tool. Thus, it was considered important to focus on the extent to which the whole prison environment contributes towards good mental health of inmates. It was also noted that in Western Australia between 1986-1997, the standardised suicide rate for Aboriginal males in the general population was almost double the rate for males overall, and implementation of relevant recommendations of the RCIADIC was examined.

Recommendations included the following:

- the enhancement of constructive and supportive relationships between staff and prisoners should continue to be a major priority for the prison system.
- opportunities should be expanded for prisoner interaction with the outside world, particularly with regard to family and friends.
- each prisoner should be provided with the opportunity to participate in constructive activities such as, employment, education and programs that build competency and
address offending behaviour.
• the Department of Justice should consider the reinstatement of a generic social
work/social welfare service.
• priority should be given to the provision of comprehensive mental health services to
prisoners, including a multi-disciplinary model for screening and assessment of mental
illness; adequate mental health treatment and management resources and systems within
prisons; and sufficient provision of external hospital accommodation for the treatment
and management of acute mental illness.
• prison reception and induction processes should be reviewed to reduce uncertainty and
stresses associated with suicide and self-harm, and should incorporate a detailed
assessment of risk of self-harm or suicide.
• a thorough evaluation of the current suicide prevention strategy (ARMS/PRAG) should
be undertaken.
• a longitudinal information system designed to identify behaviours indicative of suicide
should be developed.
• a position of Suicide Prevention Coordinator should be established. This position will
have the task of overseeing implementation of the recommendations of this report and the
ongoing development and refinement of suicide prevention strategies. It will also serve
as a focus for the system-wide ownership of suicide prevention.

Gordon Inquiry and Action Plan (2002) (see below)

2003 –

DCS internal review of s 94 activities – leave from prison

As a result of concerns raised about an incident involving prisoners undertaking activities
under the section 94 release scheme seen as inappropriate (such as inmates attending a
community football match), a decision was made to undertake a review of all section 94
programs.

Under section 94 of the Prisons Act 1981 (WA), prisoners may be permitted leave to take
part in an activity program approved by the Minister. The activities defined in section 94
are community work; charitable or voluntary work; work associated with the operation of
the prison; sport; religious observance; or any other activity approved by the Minister.
Only persons whose absence from prison would pose a minimum of risk to the security of
the public and who are rated minimum-security may be considered for participation in a
section 94 activity program. On average, each week approximately 346 prisoners
participate in section 94 activity programs throughout the State.

Current s 94 activities are examined in this review, and the enormous benefit which these
activities provide to both the community and to inmates is discussed. A number of
recommendations are made in the final report, including that approved activities currently
being undertaken be re-assessed against certain criteria to assess suitability, and that the
criteria for selection of activities include a requirement that the expertise of supervising
personnel be a factor to be considered. It was recommended that the scheme be maintained, but that there be tighter controls imposed.

**Skinner Review – High Risk Offenders and case management**

The Department of Justice conducted a review into case management practices for the supervision of ‘high risk’ offenders within the community as a result of a high-profile case of murder committed by an offender whilst on parole.

The Skinner Review considered the case management practices for the supervision of 'high risk' offenders within the community by the Department of Justice. The final report notes that there has been a significant commitment to improvement in this area of the Department's operations, particularly following the Auditor General's performance examination in May 2001 (Office of the Auditor General 2001). It found, overall, that case management practices for ‘high risk’ and ‘special risk’ offenders within the community appeared to be generally sound, with examples of good and best practice standards. Rehabilitative effort directed towards offenders was based on current research-led practice, which again followed best practice. However there were two areas which still required addressing:-(i) case handover procedures when staff change and (ii) inconsistencies between CJS centres with respect to professional practices, standards and office procedures. Ultimately, 24 recommendations are made in the review, including relating to these two issues. Recommendations included that risk definitions of offenders be more meaningful for staff and easier for the community to understand and that an assessment and case management model outlining the risk of recidivism and potential for harm be developed. It was further recommended that a professional practice standards unit be established to develop, monitor and advise on practice standards.

**2005 –**

*Inquiry into the Management of Offenders in Custody and in the Community (Mahoney Report) (November 2005)*

In 2005, it was announced that an inquiry was to be held into the management of offenders and associated matters by Hon. D. Mahoney under the *Public Sector Management Act 1994*. The inquiry came about as a result of public outcry following a number of prison escapes, an assault upon a female prison officer, and a murder committed by a parolee. The Terms of Reference required, *inter alia*, the examination of the corrections system; the assessment of the organisational structure, role, and performance of the Department of Justice (as relevant); and the development of a plan of ‘implementable strategies’. It was to be read in conjunction with the Inspector of Custodial Services’ *Directed Review (2005)* (see below).

The final Mahoney Report has been highly influential in shaping legislation and policy in Western Australia. Recommendations were made in the final report with respect to a range of relevant issues. It was recommended, for instance, that:
• corrections (to be responsible for the administration of the management of offenders and for the development of relevant policies for the same) and the Attorney General’s departments be separated into two distinct departments (as has subsequently occurred);
• Government should consider enacting a Corrections Act to incorporate administrative components in the Prisons Act and the Sentence Administration Act 2003;
• open prisons’ capacity be expanded;
• consideration should be given to expanding prison industry opportunities;
• the present classification process ought to be reviewed (particularly as it applies to those entering minimum security);
• case management should be reintroduced into prisons;
• the Department ought to establish a function to determine and review programs available to inmates to assess their effectiveness;
• the Department should establish a peak representative body for non-government not-for-profit agencies that operate for the benefit of people involved in the justice system;
• the Department should continue to use absences from prison for re-socialisation of prisoners, including those serving life and indeterminate sentences (for work leave etc.);
• the Parole Board needs improvement - for instance, in terms of handling of victims’ issues;
• the Department should investigate the potential specialisation of the role of the community corrections officer;
• the proposed Department of the Attorney General should investigate mechanisms available to support victims of crime and ensure coordination of victims’ issues across the criminal justice system;
• Government should consider the equalisation of community justice service provision in regional areas compared to metropolitan areas;
• increased priority should be placed on training and professional development throughout the Department, and a special training and professional development facility ought to be developed;
• Bail Coordinators be appointed to courts to assist offenders with bail issues (and thereby reduce the remand population);
• a committee should be established to review, on an ongoing basis, procedures that will achieve a reduction in the number of prisoners held on remand;
• Government should consider building a High Risk Security Unit for special risk prisoners; and
• the Department should develop strategies to assist prisoners, particularly from regional and remote areas, to return home following their release from custody.

More specifically, the management of Indigenous, juvenile and female offenders and offenders with mental health issues was also extensively considered (see below – Vulnerable Populations)

A Government response to the Mahoney recommendations was endorsed in November 2005 announcing that the Department of Justice would be split into the Department of the Attorney General and of Corrective Services (see below); that a Prisoners Review Board would be established to replace the Parole Board (see below); and that a Corrective Services Act would amalgamate the Prisons Act 1981 and the Sentence Administration Act.
Act 2003 (see above). Once developed, it was envisaged that the Corrective Services Act would also establish purposes and guiding principles for the legislation; reform the process of prisoner discipline; and transfer the employment of prison officers from the Minister to the Department of Corrective Services.

The DCS received $100 million over four years from the State Government to implement a comprehensive reform program to improve offender services in Western Australia which will be specifically utilised to address issues raised by the Mahoney Inquiry in areas such as staffing levels; offender assessment and case management; staff training and development; and organisational structure and processes.  

See media release and commentary:


http://www.abc.net.au/stateline/wa/content/2005/s1518171.htm

Inspector of Custodial Services Directed Review

As a parallel inquiry to the Mahoney Inquiry, the Inspector of Custodial Services was directed to review a number of matters relating to custodial services, including classification; future prison capacity; and management of dangerous prisoners in a ‘super-max’ facility, inter alia. In terms of rates of imprisonment, it is acknowledged by the Inspector that some steps have been taken to address the situation in Western Australia, but without unqualified success. Those initiatives are:
• expanding the sentencing options for fine default and driving offences;
• providing for adjournment of sentencing;
• introducing CEO parole, re-entry release orders, and pre-sentence orders;
• facilitating early discharge under the Prisons Amendment Act 2003; and
• abolishing sentences of six months or less.

The report reviewed the current classification system in Western Australian prisons, and found that risk assessment was not effectively calculated in prisons. The Inspector advocates that, in terms of assessing correctional risk, the following three assessment objectives ought to be met:

(i) assessing the potential danger an individual poses to society – that is, how likely are they to re-offend and, if they do, how serious or dangerous is such offending likely to be;
(ii) ascertaining the level of custody or supervision required – that is, given the risk

of reoffending and likely seriousness of such offending, what is the least level of custody and supervision consistent with ensuring the safety of the community, staff and others; and
(iii) determining the criminogenic needs of an offender – that is, assessing such things as drug or alcohol dependence and antisocial attitudes and behaviours that are directly associated with criminal activity and may be able to be addressed through programs and services.

Prisons in Western Australia, however, have developed and introduced a system that focuses upon risk of escape and only poorly meets the second and third objectives. It does not assess the risk of re-offending or of physical harm to the community and through a blanket approach it takes insufficient account of gender or cultural factors.

It is also noted that current prison infrastructure affects classification. Due to a lack of minimum security facilities in metropolitan areas, minimum security prisoners in those areas are being held in maximum security facilities, for example. Infrastructure ought to be developed with community consultation as part of the process. The report emphasises culturally appropriate accommodation (such as work camps with a cultural focus for Aboriginal people). It is also noted that there are inadequate resources being placed into prisoner programmes.

The Inspector recommended development of a ‘super-max’ facility to provide long-term, specialised, segregated accommodation for a small number of ‘dangerous’ prisoners. The facility should, however, be ‘disciplined and orderly’ rather than repressive. It is noted that an increasing focus upon terrorism may give rise to the need for such a facility. The facility would assist in the management or containment of the growing risk of, for instance, the planning and perpetration of a terrorist act, or the planning and perpetration of a prison break-out or riot. In terms of staffing issues, prison legislation and policies need updating to ensure that there is clarity and precision in terms of what is required of whom within the Department; and there needs to be a greater mix of civilian and uniformed staff and an emphasis upon a ‘knowledge-oriented organisation’, with introduction of a training academy or similar facility for staff.

2006 –

*Profile of Women in Prison 2006 (DCS)* (see below)

*Aboriginal Customary Laws: The Interaction of WA Law with Aboriginal law and culture (Law Reform Commission of Western Australia (2006))* (see below)

**VULNERABLE POPULATIONS**

2000 –

*Government of Western Australia 2000 Implementation Report – RCIADIC –*
The Government of Western Australia 2000 Implementation Report – RCIADIC provides information from relevant agencies with respect to how they have implemented each of the 339 recommendations of the RCIADIC. Those recommendations cover a broad range of issues, including sentencing and corrections. Some examples follow.

- **Recommendation - ‘Imprisonment as a last resort’** - Up to 40 Aboriginal communities are participating in the supervision of adult community based orders and the Ministry of Justice is assisting by ensuring that Community Corrections Officers liaise with hostel providers to allow for bail within hostels where bailees cannot return to their communities. These Officers will also provide a relevant court assessment with a view to home detention bail.

- **Recommendation – ‘Courts’** - Aboriginal Fines Liaison Officers commenced work in 1995. They may be involved in providing information to Aboriginal people appearing at court or to the court and the magistracy on Aboriginal issues, or in supervising Aboriginal people placed on community based orders (or similar) by the court. Further, Community Based Services employs Aboriginal staff at all of its field offices (as Community Corrections Officers or Juvenile Justice Officers), and those staff also provide advice to courts, including in relation to what a relevant community considers to be appropriate in terms of sentencing.

- **Recommendation - ‘Custodial health and safety and the prison experience’** - The Ministry of Justice provides an Aboriginal Visitors Scheme to provide support and counselling to Aboriginal detainees in prisons and juvenile detention centres and also provides for temporary transfer of prisoners to relevant facilities (including police lockups) which are closer to family for family visits (once or twice per year). Further, DCS will give recognition, where appropriate, to special kinship and family obligations of Aboriginal prisoners which extend beyond immediate family in relation to a request for release for ceremonies, for instance. Aboriginal Welfare Officers are employed in juvenile detention facilities, and one of their roles is to provide management with family and background information in relation to attendance at significant occasions.

**Aboriginal Justice Plan (2000)** –

The Aboriginal Justice Plan (AJP) was jointly developed by the Justice Coordinating Committee (JCC) (Ministers and CEOs of Government agencies with responsibility for justice-related issues), and the Aboriginal Justice Council (AJC), and in response to the outcomes of the 1997 Ministerial Summit into Aboriginal Deaths in Custody.

The aim of the AJP is to reduce the over-representation of Aboriginal people at all levels of the criminal justice system through initiatives such as focusing on primary prevention, with a critical focus on the areas of family, education and policing; continuing social and criminal justice reforms for Aboriginal people and a renewed commitment to continued implementation of the RCIADIC recommendations; developing local service agreements between Government agencies, other relevant bodies and Aboriginal people at the local level; and establishing processes for the ongoing involvement of Aboriginal people in the planning, monitoring and delivery of programs and services. The Appendix to the AJP sets out agency outputs and activities addressing key focus areas of the AJP. These
include, for instance, ensuring fair treatment in policing practice through increasing numbers of Aboriginal warden schemes.

2002 –

*Intellectual Disability Diversion Program –*

This Program helps divert people with intellectual disabilities away from the justice system and into more appropriate arrangements in the community, and is jointly funded by the DCS and DoAG. Adults with intellectual disabilities who have been charged with a minor, non-violent offence and whose charges are being heard in the Perth Magistrates Court are eligible to participate. Potential participants can be referred by a range of people, including lawyers, family members, mental health nurses, police officers, court staff, and community corrections officers. If the person is eligible for the program, a plan will be developed by the Co-ordinator of the Program, working with the offender and staff from the Disability Services Commission. The plan is presented to the court, which may accept the person onto the program and place them on bail. The program co-ordinator provides a report to the court on the progress of the participant, which is considered during sentencing.

The Program also provides training for professionals who may come into contact with people with an intellectual disability within the justice system (such as Police, Legal Aid Lawyers, and court staff).

There was an evaluation of the project in 2004 which was largely positive in its findings (TNS Social Research 2004). Participants indicated that they found the project helpful; and participants and their families and carers consistently stated that the project had improved their life circumstances, including improvements to their behaviours, life skills and social capacity. Further, stakeholders reported better utilisation of existing services and resources through cross-agency liaison – multiple government agencies and service providers. However, stakeholders also questioned the limited definition of who might participate in the scheme (see Cockram 2005).

*Gordon Inquiry and Action Plan (2002)*

The *Gordon Inquiry* (Gordon 2002) came about in the aftermath of a coronial inquest into the death of an Aboriginal teenage girl at the Swan Valley Nyungah Community. The Inquiry was headed by Magistrate Sue Gordon and ultimately presented Government with 197 Recommendations and Findings.

The *Gordon Action Plan* was formulated by the Department of the Premier and Cabinet in November 2002 as a detailed, formal Government response to the *Gordon Inquiry*

15 See also http://www.correctiveservices.wa.gov.au/I/intellectual_disability_diversion_program.asp?uid=3627-2354-6373-5281)
(Department of Premier and Cabinet (WA) 2002). It details more than 120 initiatives to be implemented by 15 agencies and a whole-of-government approach to organising and delivering services. The *Action Plan* has been a very influential policy document in Western Australia. It focuses on the safety of women and children, and its key outcomes reflect this focus (for instance, timely responses to Aboriginal children identified as abused or significantly at risk of abuse and/or neglect, and a reduction in Aboriginal family violence and child abuse). The *Action Plan* suggests, *inter alia*, that responses to child abuse and family violence may be strengthened by implementing the best aspects of the Joolalup Family Violence Court Project and by ensuring that Aboriginal prisoners access relevant (and culturally appropriate) programs. It also suggests that Aboriginal (victims and) offenders should be given better information about the justice (and specifically court) processes and systems; and that the number of Aboriginal Community Supervision Agreements should be increased (whilst strengthening support provided to Aboriginal communities participating in this program). Further, the safety of communities may be strengthened through the use of work camps as an alternative to traditional incarceration of Aboriginal adult offenders.

**DCS Prisons Division Strategic Plan for Aboriginal Services (2002-2005)**

This document was formulated by the Department of Justice when Corrective Services (Prisons Division) was incorporated within that Department. The purpose of the Plan is to provide a framework for action to achieve a key set of objectives, and the primary outcome sought is a reduction in the over-representation of adult Aboriginal people in the prison system. It acknowledges that the ‘dominant issue’ facing the Western Australian Prison System in 2002 is that of massive over-representation of Aboriginal people amongst inmates.

The Plan sets out a number of principles that ought to be adopted in addressing Indigenous over-representation, which include ensuring ongoing consultation with Aboriginal people. Key Objectives include reducing the over-representation of Aboriginal adults in prison; ensuring that Prisons Division is responsive to the specific needs of Aboriginal women prisoners; ensuring that the services provided by the Prisons Division are appropriate to the culture and needs of indigenous people and their local communities; providing alternative approaches to managing adult Aboriginal prisoners in regional WA; and reducing the negative impact of incarceration on Aboriginal people.

Relevant actions include the following:

- more effective reintegration of prisoners by (i) developing alternatives to breaches of conditional release (so that problems can be dealt with in the community rather than through a return to custody), and (ii) increasing the use of cooperative partnerships to assist in the safe reintegration of high risk and high need prisoners approaching release;
- developing a comprehensive spiritual, physical and mental health care strategy addressing the specific needs of Aboriginal prisoners;
- assisting in the capacity building of local communities (through engaging Aboriginal individuals and organisations in the delivery or facilitation of prison programs, and making available prison offender programs to local communities for their
information/implementation within the community);
• and, where the security rating permits, accommodating Aboriginal prisoners within their
homelands and maximising contact with families and community.

**Yandeyarra Aboriginal Circle Court**

This Court was established in the Pilbara Region of the State in the Yandeyarra
Aboriginal Community (150 kms south of Port Hedland) after members of that
community approached Magistrate Sharratt in 2002 with a request that such a court be
established. The Court sentences offenders (juvenile and adult) after a plea of guilt has
been entered, and works with the community-based juvenile bail hostel at Yandeyarra.
The benefits of both initiatives have been obvious and widespread, according to the
Magistrate presiding (Temby: n.d.).

2004 –

**Western Australian Aboriginal Justice Agreement (2004)**

*The Western Australian Aboriginal Justice Agreement: A partnership between Justice-
related State Government Agencies and the Aboriginal and Torres Strait Islander
Commission* was formulated by Western Australian justice-related agencies, ATSIC, the
Aboriginal and Torres Strait Islander Services (ATSIS) and the Aboriginal Legal Service
of Western Australia (ALSWA) - and within the context of a number of State and
Commonwealth Government commitments, policies and initiatives. The *AJA* is five
years in duration from the date of signing (March 2004).

It is, broadly, a framework or partnership between Government and Aboriginal
communities to work together at a state, regional and local level to improve justice
outcomes for Aboriginal people. It aims to achieve a number of objectives, including to
reduce Indigenous contact with the justice system and to lower the incarceration rate of
Aboriginal people.

There are three nominated justice outcomes in the *AJA* – (i) safe and sustainable
communities; (ii) a reduction in the number of victims of crime; and (iii) a reduction in
Aboriginal over-representation in the criminal justice system. With respect to the latter,
relevant elements include targeting resources for the development of diversionary
programs; imprisonment recognised as a sanction of last resort as a matter of practice;
improved opportunities for input from Aboriginal people into sentencing options; and
developing an evidence base specific to Aboriginal people to ensure the effectiveness of
penalties used.

There are also five strategic focus areas to enable the development of strategic actions for
implementation in the State, local and regional Aboriginal justice plans. ‘Focus area C’
is concerned with the criminal justice system, and sets out a number of elements which
are relevant to improving criminal justice responses to Indigenous people, including
targeting intervention strategies for first offenders; Aboriginal customary law; a broader
range of sentencing options; safety and security of individuals in custody; education, training and rehabilitation programs; and aboriginal input into the review and reform of justice-related legislation and policies.


The Plan, developed by the Department of Justice (incorporating Corrections), provides a basis for Community and Juvenile Justice to contribute to the agreed outcomes of the AJA. Its stated mission is to reduce offending, protect the community, and encourage those who offend towards law-abiding lifestyles. A number of objectives and strategies have been set out relating to diversion and intervention, services and programs, over-representation, and managing offenders in the community, *inter alia*. Strategies include promoting the use of diversion options, particularly through the development of Aboriginal courts and alternative sentencing initiatives and skilling staff to work effectively with Aboriginal people through accredited skills-based, cross-cultural training and engagement of community-based Aboriginal people for mentoring, *inter alia*.

**Disability Services Policy (2004) - Department of AGs, Department of Corrective Services**

The Policy acknowledges the particular difficulties faced by those with disabilities (physical, intellectual, sensory, or cognitive) within the criminal justice system, and commits to addressing their specific needs. The ongoing work of the Disability Services Unit within the DCS is noted – a Unit which serves as a contact area for Prison Services staff who come into contact with offenders with intellectual disabilities and cognitive impairment and advises Prison Services more generally at a policy level in relation to the same. The Department of Corrective Services and the Disability Services Commission have established a ‘paired resource’ through the appointment of a Manager, Disability Services Unit and Justice Coordinator with their agencies. Their role is to establish processes between Disability and justice services to facilitate joint planning and programming to better meet the needs of people in custody and following their release.

The Policy should be read in conjunction with the DCS *Disability Access and Inclusion Plan 2007-2010* (DAIP). The DAIP details, at the corporate level, the Department’s disability services priorities for the period 2007-2010, as well as listing achievements to date. For instance, in 2005/06, thirty two people participated in the Department’s Intellectual Disability Diversion Program and the Disability Services Unit completed the ‘Repeat Offenders with Intellectual Impairment’ study - which identified services and programs that are required to appropriately meet the needs of offenders with intellectual disabilities. Trainee prison officers (160) received disability awareness training to assist in identifying and managing prisoners with intellectual impairment. The DAIP’s six outcomes include ensuring that people with disabilities have the same opportunities to access the services of DCS and to make complaints to the Department (through, for instance, providing information about complaint mechanisms to providers of disability services; seeking funding for a specialist unit within a prison for prisoners with intellectual impairment or acquired brain injury; and increased court diversion programs
for cognitively impaired offenders).

2005 –

Overcoming Indigenous Disadvantage in Western Australia Report (2005)

The Department of Indigenous Affairs’ policy document - Overcoming Indigenous Disadvantage in Western Australia Report 2005 (OIDWA) - seeks to improve performance by establishing baseline indicators for measuring progress, facilitating cohesive and coordinated action, and sharing examples of evidence-based best practice. Basically, it seeks to guide the delivery of better services to Indigenous people in Western Australia, serving as a tool for governments in developing policy and planning for services delivery, and to measure the impact of these services over time.

The Report’s three priority outcomes include ‘Safe, health, and supportive family environments with strong communities and cultural identity’ and ‘Positive child development and prevention of violence, crime and self-harm’. The Report’s headline indicators are to be used to indicate the extent of Indigenous disadvantage and to measure progress in the priority outcomes over the longer term.

DCS Prisons Division Indigenous Education and Training Policy (2005)

This policy framework aims to increase participation and success rates of Indigenous prisoners in basic and vocational education; to involve Indigenous people in decision-making in relation to educational programs; to achieve equity in education and to strengthen Indigenous identity, decision-making and self-determination; and to increase Indigenous employment. The document also provides an overview of educational levels amongst Indigenous prisoners, and sets out a number of strategies to be utilised in reaching the aforementioned goals (such as ensuring that Indigenous offenders, where appropriate, have access to Indigenous-specific programs and teachers/trainers).

Mahoney Inquiry (see above) – Indigenous focus

The Mahoney Inquiry made specific recommendations in relation to Indigenous prisoners. The report goes into some detail in relation to the over-representation of Indigenous people within the justice system in Western Australia (as both victims and offenders). It is noted that there are four ‘Aboriginal prisons’ in Western Australia, holding 75% or more of Indigenous prisoners, and that nearly half of the adult prison population, and almost all of the juvenile detention centre population, is Indigenous.

Recommendations include that employment of Indigenous staff and/or more culturally appropriate programs may assist Indigenous offenders to access diversionary initiatives such as the Drug Court; and that Regional Indigenous Justice Advisory Groups (RIJAG) should be established, reporting to the Attorney General to provide policy and project advice in relation to Indigenous overrepresentation, amongst other tasks. From these RIJAGs, a State Indigenous Justice Advisory Group could be developed. It was also
noted that the current classification system is not always appropriate for Indigenous offenders, and a review was recommended to determine its appropriateness for the management of Indigenous offenders. The Department should also consider increasing the use of low security facilities for Indigenous offenders such as work camps (including women’s work camps), in all areas.

In terms of management and treatment of Indigenous inmates, the final report indicates that conditions endured by inmates is ‘appalling’ in ‘Aboriginal prisons’, both in physical terms and in terms of rehabilitation opportunities provided. It was recommended that future regional custodial facilities with predominantly Indigenous prisoners should be specifically constructed to meet the needs of Indigenous offenders and to provide for the delivery of services to prisoners at all classification levels so that the need to transfer prisoners to other facilities out of their ‘country’ due to overcrowding is minimised. Mainstream programs are available to Indigenous offenders, but referrals and completions of such programs by these offenders are low. It is recommended that the Department should significantly increase its expertise and capacity in the Programs Branch to develop, deliver and evaluate programs for Indigenous offenders, particularly to meet the needs of women and young offenders. In terms of remote communities, it is noted that the Department should enter into commercial and non-commercial agreements with Indigenous community groups for the provision of correctional services to Indigenous offenders such as work camps, Women’s Pre-Release centres, juvenile correction camps, community supervision agreements, offender programs and other services.

The specific needs of female Indigenous prisoners are noted in the report. For instance, the Department should undertake research to determine the causes of the high failure rate of Indigenous women in relation to community-based orders. Further, and more generally, more will be achieved with a greater application of performance indicators and benchmarks in policies, strategies and plans.


The Inspector’s Directed Review (see above) had some focus upon Indigenous prisoners, constituting 40% of the adult prison population in Western Australia. This focus gave rise to the following recommendations, inter alia.

There is great potential for bias within the classification and assessment system as factors such as program performance, stability factors, work/education report are utilised in making an assessment, and these factors have been found to be poor predictors of Aboriginal behaviour. The classification system does not allow the Department to deliver on its Strategic Plan for Aboriginal Services. Prisoners are not accommodated in their homelands, contact with family is not maximised, Aboriginal prisoners are not being housed in institutions which provide programs that respond to their specific needs, and they are not developing culturally appropriate assessments in prisons and the community to support and sustain reintegration. Aboriginal prison regimes are a matter of deep
concern to the Inspectorate. Aboriginal prisons have been neglected, and their conditions are inferior to those within non-Aboriginal prisons. This is structural racism, and regional stakeholder reference groups ought to be established in each region to be able to speak for the Aboriginal prison population in particular. These groups would maintain effective links between communities, Aboriginal leaders and the prisons, and would engage in consultation in terms of policy and planning.

*Mahoney Inquiry – Focus on Women*

The Inquiry made a number of recommendations relating to women, as follows:

- the Department should take steps to improve access to, and facilities for, visits between women and their children;
- prison staff working with women should receive additional training in the management of gender specific issues such as any history of physical and sexual abuse; and separation from, and anxiety about, children;
- Government should consider the establishment of separate remand accommodation for women;
- the education and employment skills made available to women should reflect the nature and likelihood of employment in the communities to which they will return and women offenders and communities should be consulted on their needs;
- the Department should undertake research to determine the causes of the high failure rate of Indigenous women in relation to community based orders; and
- any Departmental Indigenous policy or strategy should include separate reference to the needs of Indigenous women, and not simply as a subset of those for women in general or those for Indigenous men.

*Kimberley Aboriginal Reference Group’s (KARG) initial recommendations toward the Kimberley Custodial Plan (October 2005) – Stage One Report*

In 2005, the Minister for Justice established the Kimberley Aboriginal Reference Group (KARG), thereby providing an example of effective Indigenous community engagement in relation to justice issues. KARG consulted widely with Aboriginal people throughout the Kimberley to provide to Government initial recommendations in its *Stage One Report* (2005). A further *Stage Two Report* (see below) was produced for input into a final Kimberley Custodial Plan.

KARG made a number of recommendations in its *Stage One Report*, including that a ‘full prison’ be built in both the East and West Kimberley; that new work camps ought to be developed; and that communities should be contracted to provide community-based custodial alternatives. Consideration ought to be given to establishing community-based facilities for women, given their low numbers, and a work camp for women (which offers cultural programs, education and rehabilitation programs and the opportunity for practical community reparation). Services and programs ought to be designed specifically for Kimberley Aboriginal prisoners, and be planned in partnership with the Kimberley
Aboriginal community and Aboriginal service providers. A prison is being built in the Kimberley as a result of the KARG report (see below – FUTURE FACILITIES).

**Geraldton Family and Domestic Violence Project**

This project was launched in 2005 and seeks to address the issue of Indigenous over-representation, particularly for offences of family and domestic violence. Government worked with local Aboriginal people, including an Aboriginal Reference Group from Geraldton, to determine an effective court-based model and appropriate offender case management and through-care strategies to address the issue of overrepresentation. This model was completed in 2006, and was piloted in that same year at Geraldton, with the Aboriginal Reference Group assisting to manage its implementation. The model includes the following:

- an alternative court process – a Family Violence Court – which includes a round table court, Aboriginal court advisors and JPs, participation by all parties, and support from a case manager team;
- programs and services, including adaptation of the Northern Territory Prison-referred and Community-based Indigenous Family Violence Offender program and continuous review and programs to ensure their cultural appropriateness and effectiveness.

The first services to be offered through this project began on 8 August 2007 with the launch of Barndimalgu Court. This alternative court service hears family and domestic violence charges involving Aboriginal people. The service provides offenders with the opportunity to complete programs to address their violent behaviour before the final sentence is delivered. The court is operated by the DoAG, with offender programs provided by the DCS.  

**Media Release DCS:**

**2006**

*Aboriginal Court set up at Norseman and Kalgoorlie Boulder*

The first Aboriginal Court was established at Norseman, south-east Western Australia. Kalgoorlie-Boulder then had an Aboriginal Court developed. The use of such a court has been advocated by the WA Law Reform Commission, with some specific recommendations (including that such courts be introduced through formal government policy, rather than by magistrates and communities in different regions on an ad hoc

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16 See also:
basis) (LRC 2005: 124ff). For positive comment on this initiative, see King 2003, 2004, 2005. 17

For opposition to the Aboriginal Court model see media:

Profile of Women in Prison 2006 (DCS)

Due to a rise in numbers of women in custody in Western Australia, a profile of women in prison was first developed by the DCS in 2001. Between 1991 and 1996, the female prison population had been at around 5%. In 1999/2000, the proportion of women in prison represented 7.6% and by 2004/2005, it was 8%. A bi-annual profile update is now completed by DCS so that this issue can be monitored over time, with the hope that the needs of women in prison will be met effectively by the Department and that there will be greater community understanding of women in prison. This latest report is based on information collected for the first two profiles completed, and through a third survey conducted in late 2005 which gathered information on the attitudes and perceptions of women in Western Australian prisons.

The report indicated the following:-
• More women believed they were unlikely to re-offend when released back into the community. Around 90% of women in the 2005 report believed they would not re-offend, compared to 78% in 2003. This trend was particularly strong among Aboriginal women - 89% of whom did not believe they would re-offend, compared to 64% in 2003.
• Women were also more satisfied with the programs they were undertaking in prison. The number of women satisfied or very satisfied with the range of programs had more than doubled since 2001. In 2005, 76% of women were satisfied or very satisfied with programs, increasing from 34% in 2001 and 45% in 2003.
• Higher satisfaction levels were also reported regarding the recreational activities made available to women in prison. The number of women who reported they were satisfied or very satisfied with recreation activities increased from 28% in 2001, to 46% in 2003, and increased again to 54% in 2005. The level of dissatisfaction decreased during this same period (50% in 2001, 33% in 2003 and 22% in 2005). 18

Aboriginal Customary Laws: The Interaction of WA Law with Aboriginal law and culture
(Law Reform Commission of Western Australia (2006))

In 2000, the Western Australian Law Reform Commission (WA LRC) was asked to inquire into and report upon Aboriginal customary laws in Western Australia and to consider whether, and if so how Aboriginal customary laws should be recognised within the Western Australian legal system. In 2005, after consultation, the Commission

published a Discussion Paper detailing opportunities for recognition of Aboriginal customary laws in Western Australia and called for submissions. The Commission finally reported in 2006, setting out 131 recommendations.

Broadly, the WA LRC recommended establishing an Office of the Commissioner for Indigenous Affairs to report on progress of implementation of this report and the RCIADIC, as well as on outcomes directed towards reducing Aboriginal disadvantage generally and overrepresentation in the justice system; a review of programs and services for Aboriginal people by the Departments of Attorney General and Corrective Services; that an Aboriginal Justice Advisory Council should be established to support community justice groups (CJGs), which would operate at a local level to assist with sentencing and bail matters. CJGs may also assist with diversionary programs, participate in the supervision of offenders subject to court orders, and play a role in the establishment of Aboriginal courts. It was also recommended that an Aboriginal Court be established in both regional and metropolitan locations, and for both adults and children. The LRC recommended that the Courts be established under formal government policy in order to ensure long-term sustainability, and sets out procedures and a structure for the relevant Courts. Further, Aboriginal liaison officers ought to be employed in all courts to provide assistance to Aboriginal people giving evidence in court, and to ensure that due regard is given to customary law in court. Judicial officers ought to be provided with cultural awareness training.

The Kimberley Custodial Plan – An Aboriginal Perspective – Stage Two Report – Prisoner Programs (February 2006).

This Stage Two Report focuses on prisoner programs. Effective programs are absolutely essential to reduce incarceration and recidivism, according to KARG. At the time of writing, Aboriginal prisoners made up almost 100% of the prison population in the Kimberley, but had no access to rehabilitative programs and did not appear to be involved in any structured preparation for release or return to their communities. It was noted that prisoner programs must be designed and delivered in partnership between non-Indigenous and Indigenous leaders and professionals. Design of the programs should lead the design of the physical custodial facilities; a prison-based therapeutic community must be set up; and any prisoner program/prison-based therapeutic community model must also be administered under the through-care concept, as most Aboriginal prisoners average only 5 months in prison.

Statement of Reconciliation (DCS) (2006)

The Department of Corrective Services Statement of Reconciliation acknowledges Aboriginal disadvantage, and notes, with concern, the over-representation of Aboriginal people within the justice system. The Department expresses a commitment to ensuring access to a fair and cost effective justice system and states that it is proactive in establishing partnerships with ATSI people to ensure equity of access to justice services.
Safer Communities Safer Children

This policy was developed by the Department of Indigenous Affairs in September 2007 in response to a dramatic increase in the number of disclosures and investigations of child abuse in the East Kimberley (WA). The document sets out a ‘phased approach’ to disclosure.

- Phase 1 consists of an initial, immediate and short-term response, where evidence is obtained, perpetrators charged and case managed within the court system, and victims provided with safety, support and intervention strategies.
- Phase 2 consists of recovery and the delivery of support for the broader community to manage issues arising as a result of the allegations and arrests.
- Phase 3 is concerned with ongoing community building where agencies will work with communities to accomplish any cultural shift required to ensure the safety and security of children. Each relevant agency has specific roles to fulfill in relation to each phase.

The DCS, for instance, is to provide appropriate custodial care and transport of Indigenous prisoners, suicide prevention programs, and will manage the integration of Indigenous prisoners into the justice system (considering age, cultural and family issues) during Phase 1. During Phase 2, they will supervise persons on bail or on supervision orders and parolees in the community with other relevant support staff, and will train and supervise Aboriginal Community Corrections Officers. They will support the uptake of police and court diversion services. During Phase 3, they will contribute to streamlining core police and justice activities through an extension of custodial services, and will provide or purchase culturally appropriate sex offender treatment programs for adults and juveniles and cognitive behaviours, violent offenders and alcohol and drug programs, available both in and out of prison. The Department of the Attorney General, in relation to Phase 2, will evaluate the possibility of developing specialist Aboriginal courts and family and domestic violence courts within the region. Further, it will support the uptake of court diversion services. For Phase 3, it will ensure that regional Aboriginal Justice Agreements are available to all relevant agencies for action, and will evaluate the possibility of developing specialist courts.

DCS announces appointment of specialist bail coordinator (women)

The role of the coordinator is to explore bail options for female offenders to try to ensure incarceration is a last resort, with specific emphasis on Aboriginal women.

Media release:

DCS Disability Access and Inclusion Plan 2007-2010 (DAIP) (DCS) - see above
The Inspector of Custodial Services introduced these Standards as setting benchmarks for the treatment and management of Aboriginal prisoners in Western Australia. They are to be read in conjunction with the *Code of Inspection Standards for Adult Custodial Services (2007)*. They deal with issues such as transportation of Aboriginal prisoners; health care; and addressing the criminogenic needs of Aboriginal prisoners. (See also Office of Inspector of Custodial Services 2006).

**DIVERSIONARY PROGRAMS**

**2000 –**

*Drug Court*

Available to high-level offenders with illicit drug problems, the Perth Drug Court commenced operation in 2000 as a two year pilot project within the Perth Court of Petty Sessions. It aims to reduce recidivism and drug dependence levels of offenders and to provide a more cost effective approach to dealing with such offenders. There are now drug courts at Perth Children’s Court, the Magistrates Court and District Court in Perth. Programs currently available within the Perth Drug Court are as follows:

- Supervised Treatment Intervention Regime (STIR) – a pre-sentence program for offenders facing sentencing for relatively less serious offences for which they would be unlikely to be imprisoned.
- Drug Court Regime (DCR) – a pre-sentence program for participants with significant histories of offending criminal records and substance misuse, who are facing current serious charges.
- Pre-Sentence Order (PSO) – a pre-sentence program for participants who otherwise would be facing an immediate and substantial prison sentence.
- Conditional Suspended Imprisonment Order (CSI) – a post-sentence program for offenders who committed the referral offences while on parole or a suspended sentence of imprisonment.

All programs require regular appearances in Court, regular monitoring (including drug screen urine testing) and participation in treatment and support services and programs. Participation in a Drug Court program is overseen by the Drug Court magistrate with the support of the DCS through the Court Assessment and Treatment Service (CATS), defence counsel and prosecution services. A Drug Court program typically runs for between 3 to 12 months, depending on the program and individual circumstances. On successful completion of a program, the magistrate will sentence the participant, taking into consideration the participant’s performance in the program. Participants subject to sentencing in the District or Supreme Courts return to the superior Court to undergo final
sentencing with comprehensive advice provided by the Drug Court to assist the sentencing process. 19

Difficulties identified in the early stages of the Drug Court included a lack of appropriate detoxification facilities for Aboriginal people and of rehabilitation services; and the large waiting list for residential treatment facilities in WA (Airey & Weise 2001). In May 2003, a Drug Court Pilot Evaluation Report was completed by the Crime Research Centre. The evaluation found that those who had completed a Drug Court program had lower rates of re-offending; that there was no significant difference between rates of recidivism based on the type of program completed; and that probabilities of re-arrest were slightly lower for program completers in comparison to other offenders with an acknowledged drug problem (Crime Research Centre 2003).

The Drug Court was again evaluated by the Department of Attorney-General in 2006. The review focuses upon recidivism, and finds strong evidence that involvement in a Drug Court program had a positive effect in reducing the level of re-offending among individuals charged with a drug-related offence. Thus, 46.4% of those who had been through the Drug Court did not return to corrections due to new offending, compared with 29.4% of those who had been incarcerated and 36% of those in community-based corrections. It is also noted that more needs to be done to attract Aboriginal offenders to the Court. The report acknowledges an earlier review completed by the Crime Research Centre in 2003 (Department of Attorney-General 2006).

2003 –

*Cannabis Infringement Notice (CIN) Scheme commences operation*

The CIN scheme for adults, introduced under the *Cannabis Control Act 2003*, enables police to issue infringement notices for minor cannabis-related offences (such as cultivation of up to two non-hydroponic plants). A report on the scheme’s first 12 months of operation (Drug & Alcohol Office and WA Police Service 2005) indicated that 2643 persons had been issued with CINs, but that less than half (43.4%) were expiated. Of these, almost two-thirds (62.1%) were expiated through payment of the penalty and more than one third (37.9%) through attendance at a cannabis education session. Un-expiated notices are referred to the Fines Enforcement Registry for follow-up and will further increase the completion rate (Crime Research Centre 2007: 23).

The CIN scheme was subjected to a statutory review, as required by the 2003 Act, by the Drug and Alcohol Office in 2007. The review indicated that the introduction of infringement notices in place of prosecutions had not led to an increase in the prevalence of cannabis use in the community, and that there was widespread community support for the CIN scheme. It was recommended that the scheme continue, with some alterations, as follows:

- simplification of the offences to which the CIN scheme applies;

• modification of the legislation so that police can implement streamlined processes to assist with implementing the scheme with certainty and cost effectiveness;
• ensuring an effective and appropriate intervention for juvenile offenders that maximises the opportunity to educate and modify the behaviour of young people regarding their cannabis use;
• improving access to and the content of the education and therapeutic intervention for offenders; and
• improving education of the general community about the harms associated with cannabis use, the treatment services available and the cannabis laws that are in place (Drug and Alcohol Office 2007).

2004 —

*Repay WA*

Repay WA is program that allows eligible offenders to undertake supervised community work projects. Prisoners nearing the end of long-term prison sentences or on an early release scheme may be eligible to participate in Repay WA to support their transition back into the community. Adult offenders participating with repay WA may be completing development orders, community-based orders, intensive supervision orders or early release orders. Juvenile offenders participating with Repay WA may be completing youth community-based orders, intensive youth supervision orders, juvenile conditional release orders or community work orders.  

Although the option of providing projects for adults and juveniles completing community sentences has been running successfully in Western Australia since 1977, the launch of Repay WA in 2004 meant that the number of supervised community work programs managed by the Department was increased. The establishment of Repay WA also supported the additional community sentencing created by the abolition of prison sentences of six months or less, which came into effect on 15 May 2004 (see above).

SECTION THREE –
PRISON FACILITIES

The following detail has been sourced (and then modified) through the Department of Corrective Services website at http://www.correctiveservices.wa.gov.au.

CURRENT FACILITIES

Prisons - Metropolitan

Acacia Prison

Acacia Prison is about 50 km east of Perth in the Wooroloo area and is the only privately-managed prison in Western Australia. It was opened in 2001, and accommodates 750 males (prison design capacity) as a medium security facility. The prison, owned by the Department of Corrective Services, contracts its management to an external service provider. The current contractor, Serco Australia, began a five-year contract at Acacia in May 2006. Australian Integration Management Services Corporation (AIMS Corp) was the contractor for the first five years, from May 2001, but had its contract withdrawn due to failings in its administration of the prison.

Before prisoners transfer to Acacia they undergo a case management assessment at Hakea Prison to develop individual management plans. At Acacia, case managers work with prisoners to design individual management plans, including programs and work needs. Offenders are expected to work or study, and can access the prison’s education and employment facilities. The prison houses up to 800 prisoners within three levels of accommodation. Varying degrees of privileges are attached to each level. The prison provides a range of services to manage the prisoners’ needs. There are also interconnecting 'buddy' cells and four-bed cells for those who want to share, although most are accommodated in single-cells only. Acacia delivers a range of accredited programs in line with prisoners' individual management plans. As a Registered Training Organisation, Acacia delivers educational courses and vocational training to prisoners. Prisoners are employed in a wide variety of industries including food processing, metal work, woodworking, commercial laundry, kitchen, horticulture and grounds maintenance, education support services and general services. Prisoners also have access to recreational activities. Up to 168 prisoners can be housed in self-care units where they cook their own meals and do their own laundry. The prison is also required to support prisoners re-entering the community by providing links with local community organisations.

Bandyup Women's Prison

Bandyup was opened in 1969 in Perth. Previously, women had been housed in mixed gender facilities, although kept separate from male prisoners. With the opening of Bandyup, they were transferred from Fremantle. Bandyup Women’s Prison is the only female prison in Western Australia that caters for all security classifications.
Bandyup holds women on remand awaiting a court appearance, assesses newly-sentenced prisoners, and manages women who are completing sentences. It has managed female prisoners since 1970 when Corrective Services took over the site at West Swan and transferred all the women prisoners from Fremantle Prison. Fremantle Prison could not cope with the overcrowding in its female section, and the women suffered from limited opportunities in the confined facility. It has a design capacity of 147 females.

The prison works with the Boronia Pre-release Centre for Women, which manages suitable women ready for a minimum-security environment. Bandyup is also developing a self-care accommodation unit on the existing prison site to provide for another 40 women prisoners. * As well as standard-living units, women can reside in a drug-free unit, earn privilege self-care accommodation or transitional accommodation, which focuses on developing life skills to assist with the transition to the community or a pre-release centre. A mother and baby unit allows babies up to 12-months old to live with their mothers. Prisoners are employed to help maintain the prison, or on contracts for private industry and Government agencies. As part of this, traineeships and vocational skills training are available to prisoners. Bandyup provides prisoners with self-development and therapeutic programs, focusing on such issues as substance use, anger management and self-development. A wide range of educational programs are offered, ranging from basic literacy and numeracy to tertiary level.

* Self care unit now opened - see media release:

Bandyup Women’s Prison was awarded a Certificate of Merit in 2006 Australian Crime and Violence Prevention Awards for the Prisoners and Their Families program.

  Media release:

**Boronia Pre-release Centre for Women**

Boronia Pre-release Centre was opened in 2004. It manages up to 70 women and their children in a community-style setting. The centre is built on the site of the former Longmore Detention Centre for juveniles, which was closed in 1997. The adjacent Nyandi facility, a former juvenile detention centre for girls, was a low-security women’s prison before it moved to the neighbouring site to become Boronia Pre-release Centre for Women. Up to five women live in each Homeswest-style house where they are responsible for cooking; cleaning; budgeting; and buying groceries at the centre supermarket. Women are required to work or study. They can enrol in traineeships in areas such as hospitality, horticulture, retail operations, asset management and retail supervision. Women undertake work in the local community for businesses and not-for-profit organisations.
Boronia is guided by four values and principles: personal responsibility and empowerment; family responsibilities; community responsibility; and respect and integrity. According to the Department, the Boronia model is based on the principle that, ‘while imprisonment serves as a punishment for crime, it also provides an opportunity to maximise each woman's potential to positively, confidently and safely reintegrate with their families and communities following release.’ It is the State's first prison to have a community advisory group. The group is made up of local residents and business operators who meet monthly with Department of Corrective Services staff to provide community input, feedback and involvement into the centre's operations. Community advisory group members can be contacted by members of the community to discuss issues, ideas and to present community views at the advisory group meetings. The Community Advisory Group played a role in the design and construction of the facility.

Boronia Pre-release Centre for Women's community engagement and volunteer program is the first program of its kind Western Australia. It involves both local community groups entering the prison to run programs and activities for the women, as well as the women working in the community to support local organisations, such as Swan Village of Care and the RSPCA. In addition, Boronia has a volunteering program, which involves community members entering the prison to work with the prisoners as mentors, visitors, tutors or to help the women enhance their employment skills.

The Community Re-entry for Prisoners Program has been developed to assist offenders in the critical transition period back into the community. Beginning three months prior to release, the program relies on partnerships with a range of non-government organisations that provide coordinated services to prisoners. The program services are accessible up to six months following release.

The Program includes:
- re-entry coordination services: partnerships with non-government organisations to link ex-prisoners to existing community services that provide welfare, housing, drug treatment and counselling support, in addition to training and employment assistance;
- accommodation: about 33 houses/units have been made available for prisoners being released from custody;
- education and employment: programs will be expanded. Currently WA has the highest percentage of prisoners (57%) accessing programs;
- mental health taskforce: increased services at courts, prisons and within the community for people with mental health issues;
- family and community support: improved family visits to prisons, including the creation of family-friendly environments;
- justice drug strategy: includes evaluation of WA's Drug Court, pharmacotherapies, rehabilitation in custody and the community, and blood-borne communicable diseases management; and
- mediation: increases the participation of victims, offenders and others in the criminal justice system. Funding has been allocated to the Victim-offender Mediation Unit for a full-time mediator based in a Perth court.
The Centre won the John Curtin Medal in 2006 for its contribution to the community and to corrective services in Western Australia

DCS media release:

For positive evaluation by Independent Inspector of Custodial Services,

See media release in response by DCS:

Casuarina Prison

Casuarina Prison is the main maximum-security prison for male prisoners — particularly long-term prisoners — in Western Australia. It replaced the 130-year-old Fremantle Prison as the State's main maximum-security prison in 1991 and has a capacity of 397. It is located 30 km south of Perth. It has a special unit for intensive high-security supervision of offenders and is surrounded by a range of state-of-the-art security devices. Most prisoners are housed in six living units.

The prison has 11 workshops where prisoners develop skills in metal fabrication, cabinet making, boot and shoe manufacturing, printing, baking and making concrete products. The education centre offers courses from basic literacy and numeracy classes to further studies including full-time TAFE and external university studies. Prisoner programs address sex offending, violence, substance abuse and cognitive skills. The prison infirmary is the biggest prison medical facility in the State and has a similar capacity to a small country hospital.

Casuarina opened a living unit specifically designed to meet the needs of Aboriginal prisoners from remote areas in November 2007.

See media release:

Hakea Prison (formerly Canning Vale Prison and CW Campbell Remand Centre)

Hakea Prison was opened in 1982, with a capacity of 617. The Canning Vale Prison and the CW Campbell Remand Centre were merged to become Hakea Prison in 2000. Canning Vale Prison opened officially in June 1982, managing 248 prisoners. From September 1991, Canning Vale operated as a maximum-security prison until it merged with the remand centre in 2000. It is located 27 km south of Perth. It manages prisoners remanded in custody to appear in court or those who have just been sentenced. Newly-
sentenced prisoners are assessed at Hakea Prison before being placed at other WA prisons. Prisoners are employed in a large laundry, or work in areas such as carpentry, spray painting, concrete products, upholstery, food preparation, domestic duties as well as maintenance and gardening around the prison. Trade training is also available. The prison's education centre provides up to 30 prisoners with full-time education. Studies range from basic literacy training through to tertiary courses. The centre also provides education for up to 40 part-time students and offers TAFE bridging certificates for Aboriginal students. A 15-bed crisis-care facility at Hakea serves the needs of a small group of acute and, at times, chronic risk offenders who require specialised treatment and support interventions. Hakea also hosts a self-care block designed mainly for long-term prisoners. It allows selected prisoners to cook and clean for themselves.

Karnet Prison Farm

Karnet Prison Farm was initially opened in 1963 to treat convicted alcoholics. Alcoholics Anonymous and a psychiatric service were employed to educate prisoners. The prison was also opened to accommodate the excess number of prisoners who had been held at Fremantle. Karnet’s initial intake was about 60 prisoners. In 1971, it held 90 prisoners who worked the 375ha property to provide meat, eggs, and vegetables for the other prisons in the State. In 1999, a 48-bed self-care unit was built to allow prisoners to cook and clean for themselves. A visitors’ centre was also built during this period. Twelve beds were added to the facility in 2005 and in 2006 a perimeter fence and entry buildings were being constructed as part of a redevelopment project. It is 73 km south of Perth.

Prison activity revolves around agricultural production, to supply other custodial facilities. The prison breeds cattle and sheep and is responsible for buying and breeding beef cattle for the Department’s three prison farms, at Karnet, Wooroloo and Pardelup. The prison also has an abattoir, a dairy, a poultry farm, market gardens and an orchard that supplies citrus and stone fruit. Prisoners who work in these operations can complete rural traineeships that are recognised in the wider community. The prison runs treatment programs to enable prisoners to address their offending behaviour before leaving prison. Many prisoners also take part in the Section 94 community work party, working in the local area on projects for not-for-profit groups or organisations.

Wooroloo Prison Farm

Wooroloo Prison Farm was built in 1915 as a sanatorium for people with tuberculosis and leprosy and, as a result, the prison buildings are listed on the State Register of Heritage Places. By the 1960s, the sanatorium was no longer required and the institution became a general hospital for the surrounding district. The hospital closed in 1970 and Corrective Services took over the site in 1972. Wooroloo Prison was established as a minimum-security prison with an arrangement it would continue to offer the use of its amenities to the local community – locals continue to use the prison swimming pool today. A perimeter fence was completed at Wooroloo in 2007 and in April 2008 a redevelopment program was completed to replace buildings lost in a major fire in 1997 and to improve
other prison facilities. The 2008 project increased prison capacity by 35 beds to 250, and included the construction of three six-bed self care units and refurbishment of other prisoner accommodation. A new prisoner induction area, a new health building and the refurbishment and extension of existing buildings to create an education area were also part of the 2008 project. Prisoners work in the local community and are involved in reforestation programs, Department of Environment and Conservation programs, training at local businesses and general community projects. The prison farm breeds and fattens sheep and cattle to provide food for the prison system. The prison's large industries complex produces goods for the prison system and for external contracts. Prisoners are taught workshop skills and many undertake traineeships to help them gain employment upon release from prison. Up to 12 prisoners from Wooroloo are based at the Kellerberrin work camp.

Prisons - Regional

Albany Regional Prison

Albany is 8km west of Albany, 408 km south of Perth. It is the only maximum-security prison outside Perth, and also manages medium and minimum-security prisoners and holds a significant number of long-term prisoners originally from other countries. It was opened in 1966 with a capacity of 72 minimum security cells. It was upgraded to maximum security in 1979 and expanded to a capacity of 126 in 1988. In 1993, it expanded to 186 standard-bed cells.

Albany Prison has administered Pardelup and Walpole work camps since 1996. Pardelup farm, at Mt Barker, provides livestock to other State prisons. Work camps provides labour for local community projects for the Plantagenet and Walpole communities. Education opportunities for prisoners at Albany include full-time study in English and maths (general education to tertiary level), art, music and computer tuition. Prisoners can work in the metal, carpentry, textiles, or furniture upholstery workshops, or work as cooks, gardeners or cleaners.

Broome Regional Prison

Broome Regional Prison manages male and female prisoners of all security ratings from across the Kimberley region. It was opened in 1945, and is the only prison in the Kimberley. Broome is the oldest prison in the State still functioning as a prison. It manages a high percentage of Aboriginal prisoners, and has a design capacity of 66, and a work camp capacity of 46. The Department's Alternatives to Violence Unit runs the Kimberley offender program, which is a combined anger management and substance abuse treatment course. The program is geared toward Aboriginal offenders and looks closely at the link between alcohol and violent offending as well as sex-offending issues. The prison also manages the Bungarun work camp.

Bunbury Regional Prison
Bunbury Regional Prison has a capacity of 188, and is located 180 km south of Perth. The prison opened in 1971. The minimum-security block was commissioned in 1982. As part of a major upgrade in 1992, self-care accommodation was added. It includes a short-term maximum-security section for managing people remanded in custody to appear in court. The minimum-security section is a self-contained unit separate from the main prison. The self-care unit allows prisoners to do their own cooking and cleaning. The prison is developing a minimum-security facility on the existing prison site to accommodate 72 prisoners, and to assist prisoners in their transition back into the community. The redevelopment is part of a strategy to provide additional beds for the State's increasing prisoner population.

Offenders are expected to work or study, and can access the prison’s education and employment facilities. In the education centre, prisoners can study subjects from basic adult literacy and numeracy to a wide range of TAFE subjects and courses. There are also opportunities for employment within the prison. The prison’s market garden supplies a large proportion of fresh vegetables consumed in the State’s prisons. It is the major employer of minimum-security prisoners and off-sets the cost of managing prisons in the State. Bunbury Prison also has a team of prisoners working on community projects throughout the South-West region. Recent projects undertaken by Bunbury Regional Prison prisoners include sand dune rehabilitation at Injidup Beach and track construction at Sugarloaf, on the Cape to Cape trail.

Eastern Goldfields Regional Prison

Eastern Goldfields Regional Prison was opened in 1980, and replaced the Kalgoorlie Regional Prison. The old prison was retained as an annexe to the new prison for three years to hold maximum and medium-security prisoners on a short-term basis. It was closed down permanently with the opening of a maximum-security remand block at the new prison in 1983. It has a capacity of 100, with a work camp capacity of 24. It is 614 km east of Perth, and is an integrated minimum-security facility, which has a capacity to manage higher security male and female prisoners for a short term to allow visits or court appearances. The prison manages a high percentage of Aboriginal prisoners. In April 2005, the prison opened the Mt Morgans work camp, which allows approved low-risk prisoners to live, care for themselves and work under supervision in the area.

Greenough Regional Prison

Greenough Regional Prison was opened in 1984. It was designed and built as a minimum-security prison, replacing the Geraldton Prison. It was upgraded in 1990 to a medium-security prison. A medium-security perimeter was built and close-circuit television surveillance was installed. A further upgrade was completed in 1996, and in 1999 a 36-bed minimum security facility was opened. It manages male and female prisoners from throughout the Midwest region, extending from Exmouth in the north to Moora in the south, and east as far as Wiluna. It has a capacity of 219, and manages a high percentage of Aboriginal prisoners and up to 29 female prisoners. Two cells are designed for mothers and babies. The prison offers educational, vocational and offending
behaviour education programs and opportunities. Programs include sex-offender
treatment, drug and alcohol programs, domestic violence programs and cognitive skills.

Roebourne Regional Prison

Roebourne Regional Prison opened in 1984 after the old Roebourne Gaol was closed. A
larger facility was needed to service the growing community following the expansion of
mining and pastoral industries in the 1970s and 1980s. The prison originally managed 70
minimum-security prisoners, but was upgraded to medium-security in 1995. It has a
capacity of 116, and a work camp capacity of 8. manages prisoners in single, two, four
and six-bed cells. The prison’s catchment area covers much of the Pilbara and the
Kimberley regions. It manages a high percentage of Aboriginal prisoners. Prisoners are
required to work or study. The prison has a full-time education officer who is assisted by
tutors to provide full-time education from basic literacy to higher education. Running
parallel to vocational training are courses on first aid, alcohol and drug education,
alternatives to violence, and hygiene. The prison also manages the Millstream work
camp.

Work Camps

See above and below. ²¹

FUTURE FACILITIES

Kimberley Prison

As a result of the KARG (see above), a Kimberley Custodial Plan was released in 2006,
and underpins development of a new prison at Derby – the West Kimberley Regional
Prison Project. It is intended that the prison will house up to 150 male and female
prisoners with all security classifications, with the majority being Aboriginal people from
the Kimberley region. It is seen as a landmark facility, the first prison in Australia to be
designed, constructed and operated specifically to meet Indigenous needs. A Derby
Community Reference Group and a Kimberley Cultural Advisory Group will ensure that
community is involved in the project and facility. The Department indicates that
Aboriginal community will be involved in prison programs and will support efforts to
successfully re-introduce prisoners into society. Consultation during planning,
construction and operation will ensure:
• a respect for culture in all aspects of the project
• the creation of culturally appropriate prison design, programs and services
• Kimberley prisoners can remain closer to family and country

²¹ Information about Work Camps (7) is available at
• local Aboriginal people have opportunities to work in the prison (the aim is to fill up to 50% of all prison positions with Aboriginal staff).

Along with an upgrade of Broome prison, the new facility will improve services for Indigenous people in the region.  

Media Release:


Kimberley Work Camp

The Government has also allocated approximately $10 million to create Western Australia’s first purpose-built work camp in the East Kimberley. The new facility, due for completion in mid-2009, will replace the existing Wyndham Work Camp and will accommodate up to 40 minimum security prisoners, double the capacity of the existing work camp. The increased capacity of the work camp will mean more Aboriginal prisoners from the East Kimberley can be housed closer to their country and family support. This new facility will complement services provided by Broome Regional Prison and the 20 bed Bungarun work camp near Derby. Its design will tie in with the West Kimberley Regional Prison, which is due for completion in 2011, to ensure continuity of custodial services in the Kimberley. Department of Corrective Services has identified a preferred site for the work camp approximately 12km from Wyndham.  

Goldfields Custodial Plan

The Department intended to develop a plan for custodial services in the Goldfields Ngaanyatjarra Lands region, but the status of the plan is not clear.
For media release on community engagement with Ngaanyatjarra Lands communities:

CLOSED FACILITIES

1991 –

_Fremantle Prison_

As the largest such project ever undertaken in Western Australia at time, Fremantle Prison Conservation & Future Use project commenced in 1991, making extensive investigations & researches into Prison site, its history & heritage potential. It reported to State Government during 1990, recommending that the Prison be conserved as a significant heritage site, and this recommendation was accepted by Government.
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