

Women

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10 WOMEN

In its *Equal Treatment Bench Book*, the UK's Judicial Studies Board stated:

Whilst much has been achieved in recent decades to secure greater equality for women, gender inequality remains a significant feature of both public and private life for women and men.

Such inequality is reflected in traditional ideas about the role of women and men and, though they have shifted over time, the assumptions and stereotypes that underpin those ideas are often very deeply rooted. Indeed, they so permeate our view of the world that they often appear to reflect no more than "common sense" ...

It is perhaps not surprising that gender inequality persists. Women were legally subordinate to men in a number of ways until well into the twentieth century. There is a long and recent history of inequality between men and women, sanctioned by law and apparently supported by the judiciary whose intransigence on occasions did much to impede the promotion of equality.

Whilst many of the formal barriers to equality have of course been removed, assumptions about the proper role of men and women continue to obstruct true equality and often do not reflect reality. For example, assumptions about the primary role of women as bearers and carers of children and of men as breadwinners do not necessarily reflect the true life experience of many people.¹

Despite recent gains in the representation of women in law-related employment in this State, the imbalance in gender representation continues to be very significant² and can impact on both the practice and perception of the law.

This chapter of the *Bench Book* is intended to provide information and background knowledge about the impact of gender on people's lives and to suggest ways in which the judicial officers can contribute to promoting confidence in the administration of justice.

The material used in this chapter was drawn from the New South Wales Judicial Commission's *Equality before the Law Bench Book*,³ with modifications as a result of the incorporation of local legislation, data and reference material. The Steering Committee overseeing the production of this *Bench Book* also gratefully acknowledges the submissions and contributions received from the following individuals and organisations which have assisted in the development of this chapter:

- Ms Hannah McGlade (28 March 2007);
- Multicultural Women's Advocacy Service (4 May 2007);
- Women Lawyers of Western Australia (Inc) (15 June 2007, 19 January 2009);
- Office for Women's Policy (17 July 2007);
- Legal Aid Western Australia (27 October 2008, 26 February 2009); and
- Women's Council for Domestic & Family Violence Services (WA) (21 January 2009).

¹ Judicial Studies Board, *Equal Treatment Bench Book* (2004) chapter 6.1.2, available at: www.jsboard.co.uk/downloads/etbb/etbb_6_gender_08.pdf (accessed 28 July 2009).

² For example, the representation of women judicial officers in WA increased from 24.4% in 2003 to 29.8% in 2008; as senior counsel from 4.8% in 2004 to 10.0% in 2008; as sworn police officers from 13.2% in 2001 to 19.1% in 2008; and as senior police officers from none in 2001 to 10.0% in 2008: Department for Communities, *Women's Report Card: Measuring Women's Progress 2009 Update* (2009), available at: www.community.wa.gov.au/DFC/Communities/Women/Publications.htm (accessed 19 October 2009).

³ Judicial Commission of NSW, *Equality before the Law Bench Book* (2006), available at: www.judcom.nsw.gov.au/publications/benchbks/equality (accessed 28 July 2009).

10.1 Some statistics

10.1.1 General

- As at December 2008, there were slightly more men resident in WA than women; of the 2.20 million residents of WA, 1,117,090 (50.7%) were male and 1,086,950 (49.3%) were female.⁴
- Estimates based on the 2006 census indicate that, unlike the Indigenous populations of most other states and territories, there were slightly more Aboriginal males than females in WA; of the 70,996 Aboriginal persons, 35,775 (50.4%) were male and 35,191 (49.6%) female.⁵
- Females aged 15 years and over represented 39.9% of the WA population as at 30 June 2008.⁶
- The proportion of women to men generally increases with age. For example, as at 30 June 2008, 51.7% of the WA population aged 24 or under was male, whereas 58.9% of the population aged 75 and over was female.⁷

10.1.2 Gender pay gap

- A number of social, historical and labour market factors affect the gender pay gap. One example is that family caring responsibilities limit training, career development and employment opportunities, which results in over-representation in part-time and/or casual work for women. Another example is that women of child-bearing years may be overlooked for training and promotion opportunities.
- As at February 2009, Western Australia had the largest gender pay gap of all states and territories:⁸
 - Women earned 72.7% of men's average weekly earnings, significantly less than the national rate of 82.8%.
- In 2006, 213,732 women earned \$600 or more per week compared with 392,564 men who earned this amount:⁹
 - Women had less participation in the labour force as at June 2009.¹⁰
 - Women's labour force participation rate (61.2%) was lower than men's (76.8%).
 - 511,200 women were employed, compared with 653,200 men.

⁴ ABS, *Australian Demographic Statistics* Cat No 3101.0 (2008) Table 4, available at: www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3101.0Dec%202008 (accessed 28 July 2009).

⁵ ABS, *Experimental Estimates of Aboriginal and Torres Strait Islander Australians, June 2006* Cat No 3238.0.55.001 (2008), available at: www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3238.0.55.001Jun%202006 (accessed 27 July 2009).

⁶ ABS, *Australian Demographic Statistics, Dec 2008* Cat No 3101.0 (2008), available at: www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3101.0Dec%202008 (accessed 28 July 2009).

⁷ ABS, *Australian Demographic Statistics, Dec 2008* Cat No 3101.0 (2008), available at: www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3101.0Dec%202008 (accessed 28 July 2009).

⁸ ABS, *Average Weekly Earnings* Cat No 6302.0 (2009), Tables 1, 11A–11E, available at: www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6302.0Feb%202009 (accessed 28 July 2009).

⁹ ABS, *2006 Census Tables — Western Australia* Cat No 2068.0 (2007) "Gross individual income (weekly) by age by sex", available at: www.censusdata.abs.gov.au/ABSNavigation/prenav/PopularAreas?&collection=Census&period=2006 (accessed 28 July 2009).

¹⁰ ABS, *Labour Force Australia, June 2009* Cat No 6202.0 (2009) Table 8, available at: www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6202.0Jun%202009 (accessed 28 July 2009).

- 271,500 women were working full-time, compared with 551,800 men.
- As at June 2009 women constituted 33.0% of full-time employees and 82.0% of part-time employees:¹¹
 - Women were more than twice as likely to work part-time¹² (279,700) than men (101,500).
- The official unemployment rate in June 2009 for Western Australian women was 5.2%, the same as the unemployment rate for men.¹³ These figures were lower than the national figures, which were 5.6% and 6.1% respectively.¹⁴

10.1.3 Females and education¹⁵

A number of differences have been noted in the educational attainment of women when compared to those of men as reflected in the following national data:

- In 2005, a higher proportion of females than males in the 15–24 age group had vocational or higher education qualifications (29% and 24% respectively). However, in the 25–64 age group, a higher proportion of men had a vocational or higher education qualification, the difference increasing with age.
- Between 1995 and 2005 the proportion of women aged 25–64 with a vocational or higher education qualification increased from 40% to 54%. For men, the proportion increased from 53% to 62%. These changes are more pronounced among younger age groups.
- In 2005, the proportion of women aged 25–34 with a higher education qualification exceeded that of men (32% and 27% respectively), whereas a decade earlier the proportions for men and women aged 25–34 were both about 14%.
- Between 1995 and 2005, the proportion of females aged 15–64 participating in education increased slightly from 17% to 19%. In comparison, participation for males aged 15–64 remained about the same at 17%.
- Since the mid-1970s, females have been more likely than males to continue through secondary school to the uppermost level of schooling, as indicated by Year 7/8 to Year 12 retention rates; and this in turn has led to greater increases in participation in other programs of education and training.
- As indicated by the preceding section, 10.1.2 on the gender pay gap, the improving educational attainment of females relative to males since the mid-1970s has not translated into a corresponding increase in the rates of pay for females relative to males.

¹¹ ABS, *Labour Force Australia, June 2009* Cat No 6202.0 (2009) Table 8, available at: www.abs.gov.au/ausstats/abs@.nsf/DetailsPage/6202.0Jun%202009 (accessed 28 July 2009).

¹² Part-time work is defined by ABS in this report as “less than 35 hours a week”.

¹³ The submission from Women Lawyers of Western Australia (Inc) (19 January 2009) highlights that official unemployment rates, based on eligibility for unemployment benefits, may mask real unemployment rates because these do not capture actual numbers of women looking for work.

¹⁴ ABS, *Labour Force Australia, June 2009* Cat No 6202.0 (2008) Tables 1, 8, available at: www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6202.0Jun%202009 (accessed 28 July 2009).

¹⁵ ABS, *Measures of Australia's Progress 2006 (Reissue)* Cat No 1370.0 (2006) “Education and training”, available at: www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/8CCED7939CA66EC6CA25717F0019014A (accessed 28 July 2009).

10.1.4 Poverty

Particular groups identified as being at high risk of poverty include those who earn low wages, those who are dependant upon government benefits, aged people and sole parent families.¹⁶

Women are disproportionately represented in these groups. As a result of the disadvantage experienced by women in the labour market, such as interrupted working patterns due to family caring responsibilities, women are more likely to earn low incomes and to be reliant on government pensions and benefits — particularly in retirement, as their life-time earnings and ability to accumulate sufficient savings are more limited. Note also that of the 22.8% families in Western Australia in 2007 which were lone parent households, 87% were headed by a female compared to 13% of lone parent families headed by a male.¹⁷

10.1.5 Care

In 2006 women continued to do significantly more of the household work, childcare and primary care than men:¹⁸

- National figures indicate that women spend almost double the amount of time on household work per day (2 hours and 52 minutes) than men (1 hour and 37 minutes).
- Even when employed full-time, women spend 2 hours and 2 minutes per day on household work compared to the 1 hour and 16 minutes per day spent by men who are employed full-time.
- When parents work full-time in paid employment, mothers spend twice as much time as fathers on childcare activities.
- For children of all age groups, mothers spend more than twice as much time as fathers on childcare activities.
- In 2003, 73% of primary care for elderly or frail people or the chronically ill in WA was performed by women.¹⁹

¹⁶ Senate Community Affairs References Committee, *A Hand Up Not a Hand Out: Renewing the Fight Against Poverty* (2004), available at: www.aph.gov.au/senate/committee/clac_ctte/completed_inquiries/2002-04/poverty/report/ (accessed 19 October 2009).

¹⁷ ABS, *Australian Social Trends, 2007* Cat No 4102.0 (2008) "Family and community — National and state summary tables", available at: www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4102.02007 (accessed 28 July 2008).

¹⁸ ABS, *How Australians Use Their Time, 2006* Cat No 4153.0 (2008), available at: www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4153.02006 (accessed 28 July 2009).

¹⁹ ABS, *Disability, Ageing and Carers: Summary of Findings 2003* Cat No 4430.0 (2004) "State Tables for WA", available at: www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4430.02003 (accessed 28 July 2009).

10.1.6 Women as victims of violence

Research is expanding contemporary understandings of women's sense of safety and experiences of violence. The 2005 Personal Safety Survey was one of the first Australian research projects to look at women's and men's experiences of violence and identify the differences. It found that:²⁰

- There were distinct differences in the feelings of safety for men and women. In 2005, more than 19% (1,477) of women did not use public transport alone after dark because they felt unsafe, compared to only 5% (333) of men. Similarly, only 29% (2,257) of women felt safe walking in their local area after dark, compared to 61% (4,581) of men. Of women who were at home alone in the evening or night, 13% (1,029) reported feeling unsafe, compared to 4% of men in the same situation.
- Both men and women were more likely to have been victims of physical than sexual violence in the 12 months prior to the survey. Approximately 5% (363,000) of women had experienced physical violence, compared to 2% (126,100) who had been victims of sexual violence. In contrast, 10% (779,800) of men had been victims of physical violence, while less than 1% (46,700) had experienced sexual violence.
- Overall, men and women had different experiences of physical assault in the 12 months prior to the survey. Of those women who were physically assaulted, 15% (35,500) were assaulted by a male stranger, whereas 65% (316,700) of men were assaulted by a male stranger. Assaults by a current and/or previous partner accounted for 31% (73,800) of females' physical assaults, and 4% (21,200) of males' physical assaults.
- Of women who were physically assaulted, 27% (65,800) were aged 18–24 years, while the comparison for men was 43% (207,100). Conversely, across all other age groups a higher proportion of women were physically assaulted than men.

In 2006, 84% of sexual assault victims in Australia were female:²¹

- The highest rate of sexual assault was recorded for females aged 10–14 years — at 544 per 100,000 females in that age group.
- Where the relationship between victim and offender was stated, most sexual assault victims had some form of relationship with the offender (78%).
- Two in five sexual assaults were perpetrated by a family member.
- In 38% of sexual assaults the offender was a non-family member known to the victim.
- Females (23%) were more likely than males (15%) to be sexually assaulted by strangers.
- Sexual assault was most likely to occur in the home environment. Of sexual assaults recorded in 2006, 66% occurred in dwellings.
- Although more recent data is not available, according to the National Crime and Safety Survey in 2002, while more than three-quarters (77%) of female victims of sexual assault considered the most recent incident to be a crime, only one in five indicated that they had told police about the most recent incident.²²

²⁰ ABS, *Crime and Justice News, 2007* (2007), available at: www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4500.02007 (accessed 28 July 2009).

²¹ Australian Institute of Criminology, *Australian Crime: Facts and Figures 2007* (2008), available at: www.aic.gov.au/publications/current%20series/facts.aspx (accessed 28 July 2009).

²² ABS, *Sexual Assault in Australia: A Statistical Overview 2004* Cat No 4523.0 (2004) 43, available at: www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4523.02004 (accessed 29 July 2009).

- In the Women’s Safety Survey of 1996, 88.6% of women who had experienced sexual assault by a man since the age of 15 had not reported the incident to police.²³

The *Women in Australia Report 2007*²⁴ reported that:

- At least two in five women have experienced violence at some stage in their lives and at least one in 17 women are victims of violence each year.
- More Indigenous women report experiencing violence than non-Indigenous women. About 7% of non-Indigenous women reported experiencing physical violence in the previous 12 months, compared to 20% of Indigenous women. Indigenous women were three times more likely than non-Indigenous women to be sexually assaulted.
- Many people still wrongly believe that men are biologically driven to rape and female victims “ask for it”.
- The comparison of results from the 2005 Personal Safety Survey with the 1996 Australian Bureau of Statistics Women’s Safety Survey shows there were 46,600 fewer women reporting that they were victims of violence in the year prior to 2006 than in the year prior to 1996. The decrease in the reporting of physical violence was larger than the decrease in the reporting of sexual violence.
- The decrease in the rate of violence reported was largely due to a fall in the number of women aged between 18 and 34 years who reported having been the victim of physical violence. These results are encouraging, given that these age groups represented the highest risk in 1996. However, there was an increase in the number of women aged 45 years and over who reported experiencing physical or sexual violence.

Traditionally women were disproportionately the victims of family and domestic violence. This has not changed.
For more information on women as the victims of family and domestic violence please refer to chapter 13.

10.1.7 Females as perpetrators of crime

- Some of the factors influencing the involvement of females in crime include:²⁵
 - Women generally are twice as likely as men to report extreme levels of psychiatric distress and report experiencing depression, anxiety and somatisation disorders at higher rates than men. This has been identified as a risk factor relating to women’s drug use and criminal activity.
 - It is believed that the extent of women’s drug use has a higher correlation to their criminality than it does for men.

²³ ABS, *Sexual Assault in Australia: A Statistical Overview 2004* Cat No 4523.0 (2004) 59, available at: www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4523.02004 (accessed 29 July 2009).

²⁴ Office for Women, *Women in Australia 2007* (2007), available at: www.fahcsia.gov.au/sa/women/pubs/general/womeninaustralia/Pages/default.aspx (accessed 28 July 2009).

²⁵ Unless otherwise indicated, data is drawn from Willis K and Rushforth C, “The female criminal: an overview of women’s drug use and offending behaviour” *Trends & Issues in Crime and Criminal Justice* no 264 (2003), available at: www.aic.gov.au/publications/current%20series/tandi.aspx (accessed 17 August 2009).

- Females who commit crime continue to be drawn from those who experience economic and social deprivation.
- Many females who offend have been victims of childhood sexual and/or physical abuse. In 2005, 88% of women in adult prisons in WA reported having experienced some form of abuse in their childhood or as an adult. Half of the women surveyed had experienced abuse both in childhood and as an adult.²⁶
- In relation to offences committed by females:
 - The fact that female offenders are more likely to receive non-custodial sentences than men has been attributed to the differences in the types of crimes committed by males as opposed to females.²⁷
 - In 2003, the most common offences for which Aboriginal women were arrested were offences against justice procedures (19.7% of all offences) and burglary/theft (19.2%).²⁸
 - Offences for which non-Aboriginal women were arrested were burglary/theft (34.2% of all offences) and driving offences (19%).²⁹
- Far fewer females are charged with criminal offences than males — in 2007/08 only 22.5% of the defendants whose matters were finalised across all of the criminal courts in Western Australia were female, and 10.8% of defendants finalised in the higher courts were female.³⁰
- In comparison with non-Aboriginal females, Aboriginal females are significantly over-represented in the justice system. In 2004, Aboriginal women, who made up 2.7% of the adult female population in WA, represented 47% of all women charged for an offence and 59.4% of women received into prison.³¹
- The handling and outcome for charges against females is significantly different to the processing and outcome of charges against males. In 2006:³²
 - The arrest rate for all women aged 18 years and over was 920.8 per 100,000. The age-specific arrest rates were higher for the younger age groups (18–39). The overall arrest rate for men was 3,366.6 per 100,000.
 - The arrest rate for juvenile females (aged 10–17) was 583.5 per 100,000. The arrest rate for juvenile males was 2,090.8 per 100,000.

²⁶ Department of Corrective Services, *Profile of Women in Prison 2005* (2006) 9, available at: www.correctiveservices.wa.gov.au/_files/Profile_of_Women_in_Prison_2005.pdf (accessed 28 July 2009).

²⁷ Unless otherwise indicated, data is drawn from Department of Corrective Services, *Profile of Women in Prison 2005* (2006) 4, available at: www.correctiveservices.wa.gov.au/_files/Profile_of_Women_in_Prison_2005.pdf (accessed 28 July 2009).

²⁸ Department for Community Development, *Women in Western Australia: A Statistical Profile* (2005) chapter 4, available at: www.community.wa.gov.au/DFC/Communities/Women/Womens_Statistics.htm (accessed 28 July 2009).

²⁹ Department for Community Development, *Women in Western Australia: A Statistical Profile* (2005) chapter 4, available at: www.community.wa.gov.au/DFC/Communities/Women/Womens_Statistics.htm (accessed 28 July 2009).

³⁰ ABS, *Criminal Courts 2007–08* Cat No 4513.0 (2009), available at: www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4513.0Main+Features12007-08 (accessed 28 July 2009).

³¹ Department of Corrective Services, *Profile of Women in Prison 2005* (2006) 4, available at: www.correctiveservices.wa.gov.au/_files/Profile_of_Women_in_Prison_2005.pdf (accessed 28 July 2009).

³² Unless otherwise stated, statistics are drawn from Crime Research Centre, *Police Arrests and Juvenile Cautions Western Australia 2006* (2009), available at: www.law.uwa.edu.au/research/crc/reports (accessed 29 July 2009).

- 20.5% of persons arrested were female but, according to those arrest processes which were recorded, 22.8% of offences involving females resulted in a summons or caution being issued.
- 29.8% of juvenile cautions were issued to females.
- Women are less commonly imprisoned than men. In 2004, a total of 5.8% of women in the lower courts and just under one-third (30.1%) of women in the higher courts were imprisoned, compared with 7.7% of men in the lower courts and almost half (49.2%) of men in the higher courts.³³ (See Table 10-1.)
- Women are more likely to receive a non-custodial sentence than men. In 2004, just over one-quarter (27.7%) of women in the lower courts and almost two-thirds (64.4%) of women in the higher courts received a non-custodial penalty (other than being fined), in comparison to 16.2% of men in the lower courts and 43.0% of men in the higher courts.³⁴ (See Table 10-1.)

Table 10-1 Most serious penalty by gender for all finalised lower court charges and higher court final appearances: 1 January 2004 to 31 December 2004

Penalty type	Lower courts		Higher courts	
	Males	Females	Males	Females
Dismissal of charges	5.0%	4.5%	0.0%	0.0%
Fine	71.0%	62.0%	7.8%	5.5%
Non-custodial	16.2%	27.7%	43.0%	64.4%
Imprisonment	7.7%	5.8%	49.2%	30.1%
Total	100%	100%	100%	100%

Source: Adapted from *Department of Corrective Services Profile of Women in Prison 2005*

Note: Original source notes rounding error; lower courts figures for males do not add to 100%.

³³ Department of Corrective Services, *Profile of Women in Prison 2005* (2006), available at: www.correctiveservices.wa.gov.au/_files/Profile_of_Women_in_Prison_2005.pdf (accessed 29 July 2008).

³⁴ Department of Corrective Services, *Profile of Women in Prison 2005* (2006), available at: www.correctiveservices.wa.gov.au/_files/Profile_of_Women_in_Prison_2005.pdf (accessed 29 July 2008).

10.1.8 Imprisonment of females

10.1.8.1 Females as prisoners

- A total of 1,002 women were received into Western Australian prisons in 2004, either as sentenced prisoners or on remand.³⁵
- The most common offences for which women were imprisoned in 2004 were driving and traffic-related offences, followed by offences against justice.³⁶
- Note, however, because relatively few women are imprisoned in Australia — 1,957 compared to 25,658 men on 30 June 2008 — a substantially larger proportion of female prisoners are incarcerated for homicide and related offences or charges (10.9%) than men (0.1%).³⁷
- As at 30 June 2008, the 274 women prisoners in Western Australian prisons constituted 7.3% of the total Western Australian prison population. This exceeded the national rate of 7.1%.³⁸
- Between 1997 and 2007 the Western Australian female imprisonment rate increased from 22 prisoners per 100,000 adult female population³⁹ to 33.7 prisoners per 100,000. This exceeded the national rate of 23.6 per 100,000 adult female population, and was the second highest in the country, after the Northern Territory (61.6 per 100,000 adult female population).⁴⁰
- 47% of women in a 2005 survey of women prisoners reported being carers for dependent children, other family members or non-family dependents.⁴¹
- Over the five years to July 2009, the percentage of Aboriginal women in prison varied between 46% and 57% of the total female prison population.⁴²
- Over the five years to July 2009, the number of Aboriginal females in juvenile detention had consistently been significantly higher than the number of non-Aboriginal female detainees, ranging between 53% and 100% of female juvenile detainees.⁴³

See Appendix 1, at section 10.4, for more information on the prison facilities available in WA to detain females.

³⁵ Department of Corrective Services, *Profile of Women in Prison 2005* (2006), available at: www.correctiveservices.wa.gov.au/_files/Profile_of_Women_in_Prison_2005.pdf (accessed 29 July 2009).

³⁶ Department of Corrective Services, *Profile of Women in Prison 2005* (2006), available at: www.correctiveservices.wa.gov.au/_files/Profile_of_Women_in_Prison_2005.pdf (accessed 29 July 2009).

³⁷ ABS, *Prisoners Australia 2008* Cat No 4517.0 (2008), available at: www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4517.0Main+Features12008 (accessed 29 July 2009).

³⁸ ABS, *Prisoners Australia 2008* Cat No 4517.0 (2008), available at www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4517.0Main+Features12008 (accessed 29 July 2009).

³⁹ ABS, *Prisoners Australia 2007* Cat No 4517.0 (2007) 7, available at: www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02007 (accessed 29 July 2009).

⁴⁰ ABS, *Prisoners Australia 2008*, Cat No 4517.0 (2008), available at: www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4517.0Main+Features12008 (accessed 29 July 2009).

⁴¹ Department of Corrective Services, *Profile of Women in Prison 2005* (2006), available at: www.correctiveservices.wa.gov.au/_files/Profile_of_Women_in_Prison_2005.pdf (accessed 29 July 2009).

⁴² Department of Corrective Services, *Monthly Graphic Report July 2009* (2009), available at: www.correctiveservices.wa.gov.au/O/offendermanagement_stats.aspx?uid=5318-6510-1057-2784 (accessed 29 July 2009).

⁴³ Department of Corrective Services, *Monthly Graphic Report July 2009* (2009), available at: www.correctiveservices.wa.gov.au/O/offendermanagement_stats.aspx?uid=5318-6510-1057-2784 (accessed 29 July 2009).

10.2 Some information

10.2.1 Gender, gender inequality and gender bias

The statistics in section 10.1, while relatively general, demonstrate considerable gender inequality within WA. Women tend to fare worse than men in relation to their employment status, income level, the amount of unpaid household work, childcare and other care activities they engage in, and in the nature of violence committed against them.

While it is true that, statistically at least, women defendants do appear to fare better than men in relation to criminal prosecutions (see section 10.1.7), it is argued that women generally fare badly or unfairly in comparison to men in relation to matters requiring a female (as opposed to male) perspective:

- Insufficient account is taken of the realities of the female experience of sexual assault and family and domestic violence, and women are assessed from the male standpoint of what a “reasonable man” would have done rather than what a “reasonable woman” would have done in the circumstances.
- Women receive a lesser share of financial assets in many forms of property division.
- Women’s unpaid contribution to household work and childcare activities is often undervalued in relation to such matters as personal injury compensation and succession law, and in commercial contexts (for example, in disputes about signing guarantees).

Not all women fare badly in comparison to men, or feel discriminated against. However, the general existence of gender inequality or bias in our society means that, unless appropriate account is taken of potential gender bias listed at 10.2.2 below, a woman may feel:

- uncomfortable, resentful or offended by what occurs in court;
- that an injustice has occurred.

In some cases she may be treated unfairly or unjustly.

Section 10.3, below, provides additional information and practical guidance about ways of treating women to reduce the likelihood of these problems occurring.

10.2.2 Examples of possible gender bias, or a perception of gender bias, in relation to court proceedings

No judicial officer would consciously discriminate against women (or men). However, it is relatively easy to act unconsciously in a way that causes offence to women generally or to a particular woman, or that is perceived as discriminatory or gender-biased.

Some examples of situations where gender bias could occur, or be perceived to occur, are:

- using language and terminology carelessly and/or inappropriately — that is, using language, statements or comments that create, or could create, a perception of gender bias;
- assessing a woman against how a man would have acted or felt in a situation;
- assessing a woman against how a “normal” woman ought to behave;

- showing a lack of understanding of the nature of family and domestic violence or sexual assault, or of the impact of such violence on women (see chapter 13 for more information);
- showing a lack of understanding of the value of household work and child care activities;
- not taking appropriate account of the statistical differences between men and women in relation to such matters as income level, household work and childcare activities; or
- implying that a woman makes a less credible witness than a man.

These problems are likely to be compounded if the woman also happens to be Aboriginal, from another culturally or linguistically diverse background, older, lesbian, bisexual, or transgender(ed); if she has a disability, if she practises a minority religion, or if she is a young person or representing herself — Please see the appropriate chapter(s) of this *Bench Book* for further information.

10.3 Practical considerations

10.3.1 Modes of address

Points to consider

Note that many of these points apply to female lawyers, jurors and expert witnesses, not just to female witnesses, litigants or defendants:

- Check what title a woman prefers and then use the title she chooses — without making any negative comment or asking questions about her marital status — unless such questions are relevant to the matter(s) before the court.
- Address women using the same level of name as you address men in the court — for example, do not address women by their first names if you are addressing men as Mr X.
- Do not make any negative comment about a married woman's choice to use — or not use — her husband's name, or to use a hyphenated family name consisting of both her original family name and her husband's family name, or to use a form of name reflecting her status as her father's daughter, as a wife or as a mother, in accordance with different cultural practices (see chapter 7).

10.3.2 Language and terminology

Points to consider

Note that many of these points apply to female lawyers, jurors and expert witnesses, not just to female witnesses, litigants or defendants:

- Use the corresponding terminology when describing both women and men — that is, “women” when you are using “men”, “ladies” when you are using “gentlemen” (although be aware that some disapprove of the use of the term “ladies” in any context), “girls” when you are using “boys”.
- Use words that sound as though they include women as well as men (when you are intending to include both) rather than words that by the sound of them exclude women — for example, “chair” or “chairperson”, not “chairman”; “foreperson” not “foreman” (in relation to jurors).
- Use words for occupations that include both women and men, not words that refer only to women — for example, “barperson” not “barmaid”, “steward” not “stewardess”.
- Avoid expressions which assume traditional patriarchal arrangements, e.g. “The form must be signed by both the staff member and his wife”. “The form must be signed by both partners/spouses” would be more appropriate.
- Do not use a gender descriptor unless relevant to the matter(s) before the court — for example, “pilot”, not “female pilot”.

- Include women in statements when women are present and should be included — for example, say “Please sit down ladies and gentlemen” not “Please sit down gentlemen”.
- Do not assume or imply that a woman is of a lesser status than a man — for example, do not state, imply or assume that a woman should not be at the bar table, or that a woman at the bar table is not as senior a lawyer as the men there; do not state, imply or assume that a woman cannot be as qualified as (or more highly qualified than) a man to give expert evidence on anything — even in an area that has traditionally been regarded as a male area; do not imply that a woman makes a less credible witness than a man.
- Do not comment on a woman’s dress or appearance, particularly when you are making no such comments about any of the men in court — unless relevant to the matter(s) before the court.
- Do not refer to a woman by her physical appearance unless relevant to the matter(s) before the court — for example, do not say “pretty young woman”, say “young woman”. Inappropriate references to a woman’s physical appearance have led to a successful appeal on the basis of denial of a fair trial in the USA.⁴⁴
- Do not use (or allow to be used) any form of discriminatory or discriminatory-sounding language, even when it is meant as a joke — for example, do not state or imply that women tend to exaggerate (implying that their evidence is less credible), all women are nurturing, women like to shop more than men, women are gossips, men cannot control their sexual urges, it is a woman’s job to look after the children or home, a woman’s career is not as important as a man’s, the women jurors in particular might like to finish early so they can shop/prepare food for their family, the men jurors in particular might like to finish early so that they can watch a particular game, race or program.
- Treat every woman as an individual, and do not make statements that imply that all women are the same or that all women are likely to act in the same way. Never assume or imply that what you consider to be the majority way of behaving and thinking for women is the standard by which any individual woman should be judged.
- Carefully explain any legal concept that sounds like it only includes men — and/or change it so that it does include women — for example, the concept of the “reasonable man” — for more on this see 10.3.3.1 below.

⁴⁴ *State v Pace* (1994) 447 S.E. 2d 186.

10.3.3 The impact of gender on any behaviour relevant to the matter(s) before the court

10.3.3.1 General considerations

Points to consider

- The court process must be free from stereotypical assumptions pertaining to women. Stereotypes can undermine the credibility of a woman through assumptions relating to personal characteristics, moral character or reputation, perceived “risk-taking behaviour” and assumptions about sexual assault scenarios, sexual assault reporting and post-assault behaviour.
- Do not judge, or appear to judge, a particular woman by the way you or society thinks women are supposed to, or ought to, behave — there is no right or wrong behaviour for women as opposed to men, only behaviour that is lawful/legal or unlawful/illegal for everyone.
- Women do not have a defined role in society. Be careful not to make any statements that imply that women (or men) “should” act in a particular way. The effect of this bias may be compounded by a woman’s age, culture, education and socioeconomic background.
- Do not compare a woman’s behaviour with the way a man “would have” behaved. Women’s and men’s experiences and feelings and therefore actions or inactions in relation to similar situations might be (and often are) different for very valid reasons — for example, unequal income levels, unequal strength or unequal power. It is important to try to understand the reality, and then to demonstrate an understanding of the reality from a woman’s (and the particular woman’s) perspective.
- For similar reasons, be careful about applying and/or using the concept of the “reasonable man” — it is potentially inaccurate or unfair when applied to a woman, and using such a concept could seem to exclude women. A more appropriate term would be “reasonable person”.
- Has the fact of being a woman as opposed to a man been an influencing factor in the matter(s) before the court? If so, where possible, you may need to take appropriate account of these influences. For example:
 - you may need to decide whether the law allows you to take account of any such influences and, then, as necessary and at the appropriate time in the proceedings, to ensure that justice is done and seen to be done, explain why any such influences can/should be taken into account, or cannot/should not be taken into account; or
 - you may need to explain this in any direction you make to the jury during the proceedings or before they retire, and in your decision-making or sentencing — see 10.3.5 and 10.3.6 below.
- As prescribed by law,⁴⁵ you may need to intervene if it appears that any cross-examination is stereotyping and/or alluding to a woman’s gender in an unduly annoying, harassing, intimidating, offensive, or oppressive way.

⁴⁵ *Evidence Act 1906* (WA) s 26.

10.3.3.2 *Sexual assault and other violence against women*

It is important to understand the fear, shame and trauma that a woman may feel as a result of a sexual assault. Often it is distressing to be in the presence of the offender, who is usually a person known to the victim. There is also the strong fear of retribution after proceedings have ended.

Similar issues relating to shame, trauma, the distress of being in the presence of the offender and fear of retribution also arise in relation to family and domestic violence. Family and domestic violence is dealt with in detail in chapter 13.

Points to consider

- An important message for women is that family and domestic violence is not their fault and that violence and the abuse of women is not acceptable in our society. Hearing these messages from a person in authority, such as a judicial officer, can be one of the most powerful interventions that can be provided.
- Develop and demonstrate an understanding of the nature of family and domestic violence and its impact on women.
- Develop and demonstrate an understanding of the nature of sexual assault and its impact on women.
- Do not repeat in court any of the unfounded assumptions and myths about family and domestic violence or sexual assault. Instead, cite the facts based on accurate statistics and research — for example:
 - It is not easy for a woman to leave a violent man — it takes considerable emotional and practical strength for an abused and frightened woman to do this, particularly if there are children involved. Many who do leave or threaten to leave are coerced into returning or staying by threats or further violence from their partner. There are often insufficient support and protection structures to enable a woman to either leave or leave safely. This can be even more difficult for Aboriginal women, women from other culturally and linguistically diverse backgrounds, women with disabilities and women in rural and remote locations. Statistically, the most dangerous time for a woman in a violent relationship is at separation or after leaving the relationship.
 - When a woman says “no” she does not mean “yes” — she means “no”, in much the same way as a man means “no” when he says “no” to unwanted sexual advances from a woman or a man.
 - It is no more acceptable for a man to resort to sexual assault or violence than it is for a woman to do so.
 - Women can be sexually assaulted by a friend. Of all women who are sexually assaulted, most are assaulted by someone they know, not a stranger.
 - Women do not ask to be assaulted or raped. It is no more acceptable for a man to assault a woman because he felt she was acting, behaving or dressing in a manner that was “asking for it”, than it is for a man or woman to rob a man for “asking for it” by walking through a park at night wearing an expensive suit and carrying an expensive briefcase.

- Women who are sexually assaulted react in many different ways — there is no standard way to react or behave.
- Lesbian, bisexual and trans-women can be violently and sexually abused by their partners too — see chapter 12 of this *Bench Book* for more information.
- Do not dismiss or undervalue the impact of family and domestic violence or sexual assault on a woman. In this context, note that prostitutes (male or female) are entitled to the same protection of the law as any other citizen.⁴⁶
- Be aware of the widespread criticism in relation to the use of the defence of provocation — it is no more acceptable for a man to hit or kill his wife, partner or lover (or partner’s lover) than to hit or kill a work colleague.

10.3.3.3 Evidentiary issues

Consider the difficulties for a woman in presenting evidence about family or domestic violence or sexual assault in our adversarial system — she may have to come face to face with her alleged attacker, and generally has to be prepared to have her reputation attacked.

There are legislative provisions available which may address these difficulties and which should be considered — these are outlined below. Also see section 13.3.5 for more information regarding evidentiary issues you should consider if women are victims of family and domestic violence and sexual assault, and see section 5.4.2 for the special measures available if the witness is a child or young person.

Points to consider

- There are restrictions on unrepresented persons directly cross-examining witnesses who are children, complainants in serious sexual assault proceedings or certain witnesses in restraining order matters.⁴⁷
- You have a discretion to allow the cross-examination by an unrepresented accused of any witness to be by video-link, while screened, or without questions being put directly — having regard to the nature of the charge, the wishes of the witness, and the availability of any necessary facilities or equipment.⁴⁸
- If you declare a woman to be a “special witness” you can allow her to be accompanied by a support person and/or communicator in any court proceedings.⁴⁹ You can declare a woman to be a special witness if she is likely to suffer severe emotional trauma or to be so intimidated or distressed as to be unable to give evidence satisfactorily because of her relationship to any party to the proceeding, the nature of the subject-matter of the evidence or for any other relevant reason.⁵⁰

⁴⁶ *Michael v The State of Western Australia* [2008] WASCA 66 at [98], [240], [244].

⁴⁷ *Evidence Act 1906* (WA) s 106G; *Restraining Orders Act 1997* (WA) ss 44C, 53D.

⁴⁸ *Evidence Act 1906* (WA) s 25A.

⁴⁹ *Evidence Act 1906* (WA) s 106R(4).

⁵⁰ *Evidence Act 1906* (WA) s 106R(3).

- In the prosecution of serious sexual assaults, a complainant must be declared to be a special witness unless you are satisfied the witness would otherwise be able to give evidence satisfactorily and that person does not wish to be a special witness.⁵¹ For more information on evidentiary issues associated with sexual assault see section 13.3.5.
- If you have declared a woman to be a special witness in criminal proceedings you can allow her to give evidence in proceedings for an offence by video-link or while screened.⁵²
- You can also, on application by a party or on your own motion, allow a woman, whom you have declared to be a special witness, to have the whole of her evidence in any criminal matter taken at a special hearing and visually recorded.⁵³
- Under s 121 the *Evidence Act 1906* (WA) you, on your own initiative or on the application of any party to the proceedings, may allow evidence to be taken by video-link from outside the place where the court is sitting — although you should not do so if satisfied that this is not in the interests of justice.
- You should consider discussing with the parties and/or their legal representatives the use of any special measures referred to above — irrespective of whether a woman has been declared a special witness — if to do so would be in the interests of justice.
- Instruct the jury that declaring a witness to be a special witness, or using alternative means for a witness to present evidence, are routine practices of the court and these measures should not affect how they consider the evidence.

10.3.3.4 Points to consider for special groups of women

Women from different backgrounds may be affected by issues or factors specific to that background. It is important for judicial officers to be aware of those factors when dealing with such women.

10.3.3.4.1 Aboriginal women

Aboriginal women are over-represented in relation to almost all of the social, economic and health disadvantages faced by women in Western Australia, in particular in relation to being victims of family and domestic violence: see section 10.1 and chapter 13 of this *Bench Book*.

One of the submissions received in response to this *Bench Book* highlighted the particular issue of discrimination within the criminal justice system against Aboriginal women and girls in cases of sexual assault:

*A fundamental principle of our legal system is that all who come before it are equal and entitled to its equal protection, but the discriminatory legal recourse offered to Aboriginal rape victims undermines and belittles this important human rights principle.*⁵⁴

⁵¹ *Evidence Act 1906* (WA) s 106R(3a).

⁵² *Evidence Act 1906* (WA) s 106R(3).

⁵³ *Evidence Act 1906* (WA) s 106RA.

⁵⁴ Ms Hannah McGlade submitted a copy of her article, "Aboriginal women, girls and sexual assault" (2006) 12 *ACSSA Newsletter* 6, available at: <http://apo.org.au/research/aboriginal-women-girls-and-sexual-assault> (accessed 29 July 2009).

Reference was made to the Northern Territory cases of *Lane* (1980), *Jackie Pascoe Jamilmira* (2002) and its appeal in *Hales v Jamilmira* [2003] NTCA 9; 13 NTLR 14, and *The Queen v GJ* (2005) as examples where such discrimination has occurred. In these cases, it was argued that the courts had given more weight to evidence that physical and sexual abuse are tolerated in situations of arranged marriage under traditional Aboriginal law than to evidence from the victims regarding the physical abuse they suffered. Sentencing was also said to have reflected this attitude.⁵⁵ Moreover, in the case of *Jackie Pascoe Jamilmira* where charges of rape had been reduced by police to a charge of “unlawful intercourse with a minor”, it was argued that the same reasoning, giving less weight to the victim’s evidence, was followed.

The submission argues that this trend is indicative of the tensions between the *Racial Discrimination Act 1975* (Cth) and the need to provide equality before the law, legislated for federally in sexual discrimination legislation. The point is made that these cases should be contrasted to the decision of the NSW Court of Criminal Appeal in *R v MAK; R v MSK* [2005] NSWCCA 98, where the argument that sexual assault was perceived differently in Australia and Pakistan was refused as a defence.⁵⁶

As highlighted by the submission, one of the difficulties in these cases has been that the focus of Aboriginal and Torres Strait Islander legal services’ resources is upon the representation of defendants, who are predominantly men, with the corollary that Aboriginal women’s interests may not be sufficiently represented or acknowledged in the legal system. Recent initiatives to establish Family Violence Prevention Legal Service Units throughout Australia, to provide legal assistance, casework, counselling and court support to Aboriginal and Torres Strait Islander adults and children who are “victims–survivors of family violence and sexual assault”,⁵⁷ are expected to go some way to address this imbalance. Local Aboriginal and Torres Strait Islander communities are to take a leading role in the development of the units through representation on management committees, steering committees and auspice bodies. More recently, however, concerns have been expressed by some Aboriginal women about the auspice arrangements for some of the units being contracted to Aboriginal and Torres Strait Islander Legal Services. For more information on the Family Violence Prevention Legal Service Units and contact details, refer to sections 13.2.2.5 and 13.4.2 of this *Bench Book*.

It is important for judges and magistrates to be aware of this issue as it develops in the law, and always to consider women’s rights equally before the court, no matter what their cultural background. This is consistent with Australia’s international obligations under the United Nations *Convention on the Elimination of All Forms of Discrimination against Women* (1979).

Further discussion of the issues concerning recognition of customary law and sentencing can be found in the *Aboriginal Benchbook for Western Australian Courts*.⁵⁸

⁵⁵ Although it was also noted that sentences were progressively increasing to reflect the seriousness of the crime: see *Hales v Jamilmira* [2003] NTCA 9 and *R v GJ* [2005] 16 NTLR 30.

⁵⁶ Ms Hannah McGlade submitted a copy of her article, “Aboriginal women, girls and sexual assault” ACSSA (2006) 12 *Newsletter* 6, available at: <http://apo.org.au/research/aboriginal-women-girls-and-sexual-assault> (accessed 29 July 2009).

⁵⁷ Attorney-General’s Department (Cth), “Family Violence Prevention Legal Services — Operational Framework” (2009), available at: www.ag.gov.au/www/agd/agd.nsf/page/Publications (accessed 19 October 2009).

⁵⁸ Fryer-Smith S, *Aboriginal Benchbook for Western Australian Courts* (2nd ed) (2008) chapter 8, available at: www.aija.org.au/index.php?option=com_content&task=view&id=436&Itemid=165 (accessed 29 July 2009).

Points to consider

- There are several issues that particularly affect Aboriginal women:
 - Be sensitive towards issues of sexuality. It may be a taboo subject and may connote “shame”.
 - Some women may hide physical injuries due to feelings of shame.
 - There may be community repercussions from the legal process for the woman, her family and children.
 - Be aware that leaving a violent relationship is especially problematic for Aboriginal women as they also may fear reprisal from extended family members.
 - Do not make the assumption that all Aboriginal people will necessarily want access to Aboriginal services.
- Please refer to *The Aboriginal Benchbook for Western Australian Courts* for further information.⁵⁹

10.3.3.4.2 Women from culturally and linguistically diverse backgrounds

The needs of women from culturally and linguistically diverse backgrounds, including refugees, may be influenced by cultural and religious beliefs, level of education, length of residence in Australia, level of English fluency, family and social networks and economic dependence.

Points to consider

- Some issues particular to women from culturally and linguistically diverse backgrounds may include:
 - more limitations on access to independent income;
 - unfamiliarity with English and limited access to interpreters, which may reduce access to information and support services; and
 - increased levels of social isolation.
- The additional challenges that may confront women from culturally and linguistically diverse backgrounds in the context of family and domestic violence are discussed at section 13.2.6.4 of this *Bench Book*.
- Please also refer to chapter 7 of this *Bench Book* for further information on culturally and linguistically diverse people.

10.3.3.4.3 Women with a disability

In addition to the other barriers affecting people with disabilities, women with disabilities are particularly affected by violence and sexual assault.

⁵⁹ Fryer-Smith S, *Aboriginal Benchbook for Western Australian Courts* (2nd ed) (2008) chapter 8, available at: www.aija.org.au/index.php?option=com_content&task=view&id=436&Itemid=165 (accessed 29 July 2009).

Points to consider

- While there is a lack of research on the extent and nature of family and domestic violence affecting women with disabilities, what has been determined from some of the overseas research conducted in recent years is that women with physical disabilities are at similar or greater risk of abuse than other women.⁶⁰
- In most cases the perpetrator would be known to the woman or be a family member. The woman may even be reliant on the perpetrator for care and support. For example, women with a disability can be living in residential facilities or at home, isolated and dependent on others, making it difficult for them to respond to unwanted kissing or touching.
- Threats of being sent to an institution, control of finances and a lack of legal capacity to act on their own behalf can make disabled women particularly vulnerable; these are also considered forms of family and domestic abuse.
- Please refer to chapter 4 of this *Bench Book* on people with disabilities and chapter 13 on family and domestic violence, for further information.

10.3.3.4.4 Women from rural or remote areas

Women in rural and remote areas may face particular issues in relation to family and domestic violence and sexual assault.

Points to consider

- Social and physical isolation reduces access to information and support services. For example, access to police services may be hampered by social relations between police officers and the alleged victim or perpetrator of criminal offences.
- Guns are more accessible in rural areas.
- Isolation may increase self-harming behaviours.
- Local communities may have conservative attitudes towards women.
- Be aware of the extended family violence issues and the particular difficulties for some Aboriginal women to leave their community (see section 10.3.3.4.1).
- Please refer to chapter 9 of this *Bench Book* on rural and remote WA and chapter 13 on family and domestic violence, for further information.

10.3.3.4.5 Women in same-sex relationships

In addition to the disadvantages faced by people in same-sex relationships, women in same-sex relationships can face the same issues of power and control with regard to family and domestic violence as affect heterosexual relationships.

⁶⁰ Cockram J, *Silent Voices: Women with Disabilities and Family and Domestic Violence* (2003), available at: www.wvda.org.au/silent1.htm (accessed 29 July 2009).

Points to consider

- Threats of “outing” or publicising a person’s sexuality can be a form of abuse in same-sex relationships. Lesbians can face severe discrimination and may suffer the loss of important close relationships if their sexuality is made public.
- Community isolation may be faced by people in same-sex relationships.
- Please refer to chapter 12 of this *Bench Book* on diverse sexuality, sex and gender for further information.

10.3.4 Timing of proceedings, breaks and adjournments

Points to consider

- As indicated in 10.1 above, women tend to be responsible for a predominant amount of childcare.
- They also tend to be the main carers for other relatives — such as those with disabilities and those who are elderly.
- Given the lack of childcare facilities in courts and respite care generally, you may need to take these factors into account when considering the start and finish times on any particular day, the dates of hearings, adjournment dates, and the need for adjournments or breaks — for example, to allow a witness or juror to check that any necessary care arrangements are in place.
- Note that a woman may need adjournments to breastfeed her child or to express milk.

10.3.5 Directions to the jury

Points to consider

As indicated at various points in 10.3, it is important that you ensure that the jury does not allow any stereotyped or false assumptions about women, family and domestic violence, sexual assault or the manner by which a particular woman’s evidence was presented to unfairly influence their judgement. You should raise any such points with the parties’ legal representatives first.

For example, you may need to provide specific guidance as follows:

- Caution jurors against making any false assumptions about the credibility of female witnesses as opposed to male witnesses.
- Explain that they must try to avoid making stereotyped or false assumptions — about women’s behaviour generally, a particular woman’s behaviour, or, if relevant, about the nature and impact of either family or domestic violence or sexual assault. Instead they must carefully consider the particular evidence presented.

- If appropriate, explain what needs to be taken into account in relation to long-term abuse of a woman by her partner and the defences of duress, provocation and/or self defence.
- In particular see section 13.2.2.2 and 13.3.6 on long-term or repeated abuse as a contributory factor to violence.
- If appropriate, explain that they must not make misplaced comparisons with how a man would have behaved — and that, instead, they should make any such comparisons to how a “reasonable *woman*” would have behaved in the light of what they have been told about the particular circumstances.
- Remind them of any directions you made earlier in the proceedings in relation to how they must treat evidence that was presented in any alternative manner — see 10.3.3.3 above.

10.3.6 Sentencing, other decisions and judgment writing

Your sentencing, decision and/or judgment must be fair and non-discriminatory to (and preferably be considered to be fair and non-discriminatory by), any woman affected by or referred to in it.

Points to consider

- In order to ensure that any woman referred to or specifically affected by your sentencing, decision and/or written judgment also considers it to be fair and non-discriminatory, you may need to give consideration to (and indeed specifically allude to) any of the points raised in the rest of 10.3 (including the points made in the box in 10.3.5 immediately above) that are relevant to the particular case.
- If a witness is not personally capable of giving a victim impact statement for any reason, consider whether it is appropriate for someone else to do so on the victim’s behalf.⁶¹
- Consider whether to quote from a victim impact statement in court.⁶²
- Bear in mind that:
 - Women tend to have lower income levels and higher caring commitments than men — so a specific level of fine for them will often mean considerably more than the same level of fine for a man. For options on sentencing see section 2.6.3.
 - As suggested by the Office for Women’s Policy:

*Wherever possible, court sittings should ... be held at the scheduled time to avoid additional loss of earnings or the need to make child care or other arrangements through adjournments or delays.*⁶³

⁶¹ *Sentencing Act 1995* (WA) s 24(2).

⁶² See Part 3, Division 4 of the *Sentencing Act 1995* (WA). Note that a court may make a written victim impact statement available to the prosecutor and to the offender, on such conditions as it thinks fit.

⁶³ Submission from the Office for Women’s Policy (17 July 2007).

- Women may find community service orders harder to comply with than men, given their generally greater proportion of household work and childcare activities — consideration may need to be given to the hours to be served and the location in which the order is to be served.
- It is important not to undervalue women's unpaid household duties and childcare activities in relation to such matters as personal injury compensation and property division.
- It is important to ensure that the financial as well as the non-financial assets of male and female partners are dealt with fairly in relation to all forms of property division.
- While the children of male prisoners are usually cared for by their female partner, research shows that the children of female prisoners are frequently cared for by temporary carers — this impacts much more negatively on their children.
- Note that female offenders are less likely than male offenders to be guilty of violent crimes (see 10.1 above), so it may be appropriate (depending on the nature of the offence) to consider imposing a non-custodial sentence or possibly home or periodic detention for a woman who is the primary child carer.
- On the other hand, it is also important not to be paternalistic and, for example, give a woman a more favourable sentence than you would give a man in materially similar circumstances.

10.4 Appendix 1 — Prison facilities for females

Western Australia has two custodial centres for women, Bandyup Women's Prison, for all security classifications, situated in Guildford; and Boronia Pre-Release Centre for Women, a low-security custody centre for women reintegrating into the community, situated in Bentley.

Women may also be incarcerated at Broome Regional Prison, Eastern Goldfields Regional Prison and Greenough Regional Prison.

All juvenile females in the state are detained at Rangeview Remand Centre (including sentenced offenders).

Although there has been an increased focus on the conditions for female prisoners and detainees in recent years, in particular leading to the establishment of Boronia Pre-Release Centre, their relatively small number continues to impede their access to appropriate facilities and services:

- Bandyup Prison holds women on remand who are awaiting court appearances, newly-sentenced women prisoners and women who are completing their sentences. The Prison provides women prisoners with:⁶⁴
 - accommodation consisting of standard living units, drug-free units and transitional units to assist women to develop life skills for their transition from prison to the community. A mother and baby unit is also available to allow babies up to 12 months old to live with their mothers;
 - employment programs, such as maintenance of the prison, contracts for private industry and government agencies, traineeships and vocational skills training;
 - educational programs ranging from basic literacy to tertiary level;
 - therapeutic programs to help prisoners address their offending behaviour, i.e. substance use, anger management, etc; and
 - nursing, psychological and counselling services.
- Women prisoners preparing for reintegration into the community are held at Boronia Pre-Release Centre. The Centre manages up to 70 low-security women, in some instances with their children, in a community-style setting. The Centre provides women with Homeswest-style housing and the women perform their own cooking, cleaning, budgeting and grocery shopping from a 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 also undertake work in the local community for businesses and non-profit organisations.⁶⁵
- Broome Regional Prison has capacity to manage a small number of female prisoners of all security ratings, from across the Kimberley region.⁶⁶

⁶⁴ Department of Corrective Services, *Bandyup Women's Prison* (2009), available at: www.correctiveservices.wa.gov.au/B/bandyupprison.aspx?uid=1923-2530-4717-2043 (accessed 29 July 2009).

⁶⁵ Department of Corrective Services, *Boronia Pre-release Centre for Women* (2009), available at: www.correctiveservices.wa.gov.au/B/boronia_women_prison.aspx?uid=1994-1430-7024-1557 (accessed 29 July 2009).

⁶⁶ Department of Corrective Services, *Broome Regional Prison* (2009), available at: www.correctiveservices.wa.gov.au/B/broomeprison.aspx?uid=4854-1244-4830-3763 (accessed 29 July 2009).

- Eastern Goldfields Regional Prison is an integrated minimum-security facility for men and women. It has a capacity to manage higher-security female prisoners for a short term to allow visits or court appearances.⁶⁷
- Greenough Regional Prison manages prisoners from throughout the Midwest region, extending from Exmouth in the north to Moora in the south, and east as far as Wiluna. It manages up to 29 female prisoners, and two cells are designed for mothers and babies.⁶⁸
- Rangeview Remand Centre, located in Willetton, is the only facility in Western Australia that holds female juvenile detainees. Despite the name it holds remanded and sentenced female juveniles. It is a secure centre, which means detainees are confined to the grounds and supervised by staff at all times. Detainees live in small, modern units. Each unit has either single or double cells with an intercom, and detainees are locked in their cells from 8:00 pm to 8:00 am. Young people aged 17 and under must go to school; education programs are provided within the Centre.⁶⁹

⁶⁷ Department of Corrective Services, *Eastern Goldfields Regional Prison* (2009), available at: www.correctiveservices.wa.gov.au/E/easterngoldfieldsprison.aspx?uid=4128-6605-1380-4660 (accessed 29 July 2009).

⁶⁸ Department of Corrective Services, *Greenough Regional Prison* (2009), available at: www.correctiveservices.wa.gov.au/G/greenoughprison.aspx?uid=9237-0527-8470-1167 (accessed 29 July 2009).

⁶⁹ Department of Corrective Services, *Rangeview Remand Centre* (2009), available at: www.correctiveservices.wa.gov.au/R/rangeview.aspx?uid=4911-4092-5492-3203 (accessed 29 July 2009).

10.5 Further information or help

Further information about women's services and rights can be found at:

Women's Information Services

Department for Communities

Level 7, Dumas House

2 Havelock Street

West Perth WA 6005

Phone: (08) 6217 8230

Freecall: 1800 199 174

Interpreting

Services: 131450

National Relay

Services: 133677

Fax: (08) 9481 0441

Email: wis@communities.wa.gov.au

Web: www.communities.wa.gov.au/serviceareas/women/Pages/WomensInformationService.aspx

Office of Women's Interests

Department for Communities

Level 7, Dumas House

2 Havelock Street

West Perth WA 6005

Phone: (08) 6217 8200

Freecall: 1800 199 174

Fax: (08) 9481 0441

Web: www.communities.wa.gov.au/serviceareas/women

Women's Law Centre (WA) Inc

920 Beaufort Street

Inglewood WA 6932

Phone: (08) 9272 8800

Fax: (08) 9272 8866

TTY: (08) 9272 9500

Freecall: 1800 625 122

Email: Womens_WA@fcl.fl.asn.au

Legal Aid of WA

55 St Georges Terrace

Perth WA 6000

Phone: (08) 9261 6222

Fax: (08) 93255430

TTY: 1800 241 216

Infoline: 1300 650 579

Web: www.legalaid.wa.gov.au

Women's violence and assault services:

Refer to section 13.4 of this *Bench Book*.

10.6 Further reading

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www.parliament.wa.gov.au/web/newwebparl.nsf/iframewebpages/Committees+-+Reports (accessed 29 July 2009).

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www.community.wa.gov.au/DFC/Communities/Women/Womens_Statistics.htm (accessed 28 July 2009)

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Heeth M, “The law and sexual offences against adults in Australia” *Australian Centre for the Study of Sexual Assault Issue no 4* (2005), available at: www.aifs.gov.au/acssa/pubs/issue/i4.html (accessed 29 July 2009)

Judicial Studies Board, *Equal Treatment Bench Book* (2004) part 6, available at: www.jsboard.co.uk/etac/etbb/index.htm (accessed 28 July 2009)

Law Reform Commission of Western Australia, *Review of the Law of Homicide: Final Report* (2007), available at: www.lrc.justice.wa.gov.au/097g.html (accessed 30 July 2009)

McGlade H, “Aboriginal women, girls and sexual assault” (2006) 12 *ACSSA Newsletter* 6, available at: <http://apo.org.au/research/aboriginal-women-girls-and-sexual-assault> (accessed 29 July 2009)

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10.7 Your comments

Feedback on how this *Equality before the Law Bench Book* can be improved is welcomed.

We would be especially interested in receiving relevant practice examples, including any relevant model directions that you would like to share with other judicial officers.

Additionally, you may discover an error, or wish to advise further references to legislation, case law, specific sections of other bench books, discussion or research material.

Please refer to chapter 14, which contains information about how to send us your feedback.

