

# **PROFILE OF FEDERAL PRISONERS**

**Satyanshu K. Mukherjee**



**Australian Institute of Criminology**

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## FOREWORD

Late in 1973 the Board of Management of the Institute approved as a research project a survey of federal prisoners. This was in fact the first such project approved by the Board because the Australian Institute of Criminology had just been established and still did not have its first Director. At that time research staff were just being recruited and responsibilities had not been allocated. There was, therefore, no systematic attempt to conceptualise the project although the data had begun to arrive from the Commonwealth Attorney-General's Department and it seemed to be thought that a simple collation of the information would be sufficient. In fact the information was incomplete and even a statement as to the number of persons held in prison for federal offences could not be provided without more detailed information on releases from the prisons in the states where federal prisoners were held. The difficulty of obtaining precise data was complicated by staff changes on the one hand and by the pressure of other priority projects on the other hand. The project also lacked commitment in that the responsibility for carrying out the work changed hands rapidly and no one had the opportunity to fully examine the data. Later financial constraints prevented intensive research. Nevertheless the collection of data continued and was shelved for later consideration. Dr Mukherjee has now provided a useful analysis of the data collected over the years with indications of the greater precision needed for more meaningful studies.

If this study is taken as a policy guide it highlights the need for a more coordinated collection of data -- not just on federal prisoners but on all federal offenders. It also suggests a need for regular publications of the data and what they mean.

William Clifford

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The data for the survey were provided by the Commonwealth Attorney-General's Department. The author is thankful for the cooperation.

## Background

This research is based on a few known facts and many unknowns.

Among the known facts are

- (i) the existence of a number of Commonwealth laws (including the Crimes Act 1914) which, when violated by an individual, labels him/her as 'a federal offender';
- (ii) there are federal law enforcement agencies such as the Australian Federal Police, Customs and Treasury Department officers, etc., as well as the exercise of federal power by all state police forces. It should be noted that in the period under consideration there has been an amalgamation of the former Commonwealth and Australian Capital Territory Police Forces to create the Australian Federal Police;
- (iii) there are federal prosecutors working from the Department of the Attorney-General and there are Federal Courts and state courts which as required exercise Federal jurisdiction;
- (iv) there is no federal prison in Australia and those violating Commonwealth laws, if found guilty and consequently convicted and sentenced to terms of imprisonment, are sent to state or territory (Northern Territory) prisons to undergo their sentences.

Among the unknowns are some of the fundamental items:

- (i) what is the number of federal prisoners at a given point in time and where are they detained? (The Department of the Attorney-General in Canberra produces an internal quarterly census of federal prisoners in each of the jurisdictions; these are only estimates but are believed to be reasonably accurate);
- (ii) why do we need to study federal prisoners - do they present any special problems?
- (iii) does the parole system for federal prisoners raise problems or delay release; and
- (iv) should there be a federal prison or prison system in Australia?

The present study cannot answer any of the above questions but it is possible to answer the first question by saying that this study indicates a need for federal/state cooperation - perhaps via the Australian Institute of Criminology - for all sides to have precise information on a group of prisoners designated by law as distinct from other prisoners. The answer to the second question is contained in the reference given by the Commonwealth Attorney-General to the Australian Law Reform Commission. This indicates at least some concern about disparities in the sentencing of federal offenders. On the question of release, the state ministers responsible for corrections have previously sought the permission of the Commonwealth Attorney-General to treat federal prisoners like state prisoners for purposes of parole: but the system remains that federal prisoners are dealt with separately. The question of a special prison for federal prisoners has been raised for discussion by the Australian Law Reform Commission and poses the problems of national or state uniformity in the treatment of offenders on which there is much disagreement. The findings of the present study can at least serve to encourage researchers and policy makers to look more closely into an area which has been virtually neglected probably since the establishment of the Commonwealth in 1901. The information while not being exhaustive does permit two objectives. First an identification of the profile of federal prisoners with the help of such variables as age, sex, race, nationality, marital status, occupation and offence. Secondly, an examination of the existence or otherwise of disparities in setting prison terms by courts across jurisdictions.

Caution, however, must be exercised in interpreting the results mainly because all of the information relevant to the severity of



offence was in most cases not available. For example, if forgery and uttering was the offence there was no clue as to the amount involved. Similarly, if unlawful importation of drugs was the offence no information on the quantity of drugs illegally imported was available in most cases. Obviously among other factors these will have some consequences on the length of imprisonment as a sentence imposed by the court.

#### Who is a Federal Prisoner?

This question is easy to answer. An individual violating a federal legislation, convicted by a court of law and sentenced to a term of imprisonment is a federal prisoner. There are numerous Commonwealth statutes which define acts as offences for which offenders may be given prison terms.<sup>1</sup> However, as will be seen later the following Commonwealth statutes are violated more frequently than others:

Crimes Act 1914  
Customs Act 1901  
Social Services Act 1947  
Bankruptcy Act 1956  
Migration Act 1958  
Marriage Act 1961

The reporting of an offence against the Commonwealth law, the apprehension and prosecution of an offender, and the punishment procedures are not substantially different from those under the state or territorial laws. These have been discussed in great detail in the Interim Report of the Australian Law Reform Commission.<sup>2</sup> However, a brief description would help set the stage for a proper examination and analysis of the data on which the present study is based.

Reporting, detection and apprehension: Besides cases which originate at various departments of the Federal Government and at the Australian Federal Police, a large number of offences under the Commonwealth laws are detected by the law enforcement agencies of the states and the Northern Territory. Often a federal offence is detected in the process of investigation concerning an offence under the laws of the state or territory. In such circumstances the law enforcement officer of the state is deemed to function as a Commonwealth law enforcement officer.<sup>3</sup> In such events the federal authorities should be notified of the laying of information but in practice it seems that this may not always be the case.

Prosecution: Unlike the police forces of the states and Northern Territory, the Australian Federal Police are not involved in the prosecution of offences against Commonwealth laws. In this respect, although the responsibility for prosecution rests with the Crown Solicitor it is the Commonwealth Attorney-General who has the final say in matters relating to prosecution of a federal offence. Barring offences triable in the Federal Courts most of the offences against Commonwealth laws are heard and determined in the state courts and sentences imposed on convicted offenders are administered by appropriate agencies in the state or territory.

Treatment: When a federal offender is sentenced to a term of imprisonment he/she undergoes the sentence in a prison in the jurisdiction where he/she is tried.

Parole: There is no single standard according to which the parole system for federal prisoners operates. Section 4 of the Commonwealth Prisoners Act 1967 lays down the procedure for fixing minimum terms of imprisonment:

- 4.--(1.) Where a federal court or a court of a State or Territory sentences a federal offender to a term of imprisonment--
- (a) if, under the law of the State or Territory where the offender is convicted, a court of the State or Territory is required (or is required except in specified circumstances), when sentencing a State offender or a Territory offender to a like term of imprisonment, to fix a lesser term of imprisonment during which the State offender or Territory offender is not to be eligible to be released on parole--the court shall fix (or shall, unless the like circumstances exist, fix) a lesser term of imprisonment during which the federal offender is not to be eligible to be released on parole; or
  - (b) if, under the law of the State or Territory where the offender is convicted, a court of the State or Territory is permitted, when sentencing a State offender or a Territory offender to a like term of imprisonment, to fix a lesser term of imprisonment during which the State offender or Territory offender is not to be eligible to be released on parole--the court may fix a lesser term of imprisonment during which the federal offender is not to be eligible to be released on parole.

The methods of fixing minimum terms of imprisonment in the Australian jurisdictions vary. Thus, while in Queensland and Tasmania the 'non-parole periods are prescribed by statute to be a fixed proportion of the length of prison sentences imposed', in the remaining six jurisdictions the 'court imposes a full sentence of imprisonment and may specify a lesser period during which the prisoner is not to be eligible for parole.'<sup>5</sup> These are broad categorisations and it is probable that any two jurisdictions differ substantially when the specifics are examined. Therefore, when the question of uniformity of

treatment of federal offenders arises it is a dual question of national uniformity for a group of perhaps 200 prisoners in a total prison population of about 10,000 - or the uniformity of treatment of all offenders at the state level. With rare exceptions Australia's answer so far has been a preference for state uniformity. Anything else would make the management of prisons very difficult and there is little justification for discriminating in a prison between a few federal prisoners and the rest. This inevitably leads to disparities in the treatment of federal prisoners but the Australian Law Reform Commission's mooted of a federal prison system seems an expensive way to provide for a few - and it could introduce further disparities due to two systems of imprisonment.

#### The Register of Prisoners

The Commonwealth Attorney-General's Department, on the basis of information supplied by each state and territory, maintains a register which purports to contain details of all federal offenders sentenced to terms of imprisonment. The register also contains details of offenders sentenced to terms of imprisonment under territorial ordinances. Therefore, until recently, when self government was proclaimed in the Northern Territory, prisoners under the ordinances of both the territories were included in the register. It is relevant to point out that the prisoners under the territorial ordinances are not federal prisoners; in fact they are like prisoners under any state legislation. This distinction is important because, as we shall see later, about half the prisoners in this study came from the two territories.

The Register of Prisoners contains the following details on each federal prisoner:

Personal particulars

- sex
- race
- date of birth
- marital status
- occupation
- place of birth
- nationality or citizenship
- if not born in Australia, date of arrival in Australia
- date of naturalization
- educational standards attained

Details of sentence

- state/territory
- date of conviction
- court
- offence
- sentence
- non-parole period
- date sentence imposed
- commencement of sentence
- nature of plea

Since early 1974, the Attorney-General's Department has forwarded to the Australian Institute of Criminology copies of all entries made in the Register of Prisoners. As at 31 December 1980 the Institute had received such details on 3750 cases. If the Register of Prisoners maintained by the Department of the Attorney-General does contain details of all federal prisoners then the number of cases in this study represents the universe of federal prisoners, not a sample. However, it is possible that offenders sentenced to extremely short periods of imprisonment may not have been entered in the Register of Prisoners. It should be noted however that some offenders convicted and sentenced in 1980 may not be included in the study, mainly because their cases had not been finalised by the courts when this report was compiled.

Early attempts to list and classify the data contained in the register involved laborious manual tallying procedures and these were found to be wasteful in terms of the information distilled from the growing files. This was the period during which the Institute did not have a computer terminal or access to more sophisticated techniques of data analysis. When the equipment became available it was possible for the files to be coded for computer processing and for anonymity to be preserved.

The entries in the Register of Prisoners were by no means complete and it proved virtually impossible to collect the missing information without expensive follow-ups of individual cases at the state level. Therefore, the missing information was simply coded as 'unknown'. Other minor problems were resolved in the following ways:

- i. When date of birth was shown only in years, e.g. 1953 or 1942, the mid-point, i.e. 1 July, was selected as the date of birth. The same system was followed in the case of 'date of arrival in Australia' or 'date of naturalization'.
- ii. It was almost impossible to code every occupation. Occupations were coded according to the 7-point 'Congalton Scale'. In this scale '1' represents the occupation with the highest status and prestige and '7' represents the lowest.
- iii. Often a prisoner was convicted and sentenced for more than one offence. The number of offences committed by a prisoner was recorded. But to facilitate analysis only the principal offence was coded and the rule for this was -

The principal offence was taken to be the one for which imprisonment was imposed. If there were two or more offences for which imprisonment was used, the principal offence was the one which carried the longest prison term. If the prisoner received sentences of similar length for two offences, the principal offence was the first-mentioned of those two offences.

Since 1974, when the collection of data began, and up to the end of 1980 the Institute had received copies of 3750 entries in the Register of Prisoners. These included prisoners sentenced under Commonwealth laws as well as those sentenced under the laws of the Australian Capital Territory and the Northern Territory (up to 1978 only). It should be noted that persons sentenced to terms of imprisonment in the ACT are detained in the NSW prisons at the expense of the federal government. This does not make them federal prisoners however if they have contravened ACT or Northern Territory but not federal laws. The detailed analysis presented here relates only to federal prisoners, defined as federal law offenders. This reduces the number surveyed here from 3750 to 1892.

Table 1 presents the distribution of prisoners by the jurisdiction in which they were tried and convicted. Of the total 1892 entries were clear - they were convicted under Commonwealth laws in the six states. Of these 1892 prisoners not one had been convicted of any violent offence; the majority were convicted of forging and uttering, fraud, and the unlawful importation of narcotic drugs.

The non-federal prisoners convicted in the ACT and NT, on the other hand, were convicted mainly of offences such as homicide, assault, rape, robbery, breaking and entering, drunkenness, driving offences, larceny of motor vehicles, etc. This difference is not surprising. The federal prisoners had contravened the federal laws which deal only as shown above with specified crimes. ACT and NT laws on the other hand are equivalent to the ordinary state laws - they prohibit the usual full range of criminal offences. The very few cases of forging and uttering,

Table 1

NUMBER OF FEDERAL PRISONERS BY STATE/TERRITORY  
WHERE TRIED AND CONVICTED

State/ Territory	Number
New South Wales	680
Victoria	355
Queensland	279
South Australia	262
Western Australia	242
Tasmania	74
Northern Territory	1432
Australian Capital Territory	420
Unknown	6
Australia	3750

and of fraud for which offenders were sentenced to terms of imprisonment by courts in the ACT and NT, could well have been cases brought under Commonwealth laws, but this could not be determined. Therefore, the analysis that follows excludes all cases from the ACT and NT.

The very high rate of imprisonment in the Northern Territory is significant because in the data on daily average prison populations collected monthly by the Australian Institute of Criminology the Northern Territory rate of imprisonment per 100,000 people exceeds all other jurisdictions in the country - and this has been going on for some



years. Whether therefore one is considering federal or any other prisoners it is obviously going to indicate that the Northern Territory for reasons not yet fully explained has a higher proclivity to imprison.

#### Characteristics of Federal Prisoners

Of the total of 1892 prisoners who were tried and convicted for federal offences in various state courts, only 92 had been sentenced to imprisonment more than once between 1974 and 1980. They are distinct individuals in that their second or subsequent prison term began as a result of an offence committed after their release from prison for an earlier offence.

The report on the Sentencing of Federal Offenders<sup>6</sup> states that a large majority of federal offenders are convicted of fraud, forgery and allied offences. The distribution of the offences committed by federal prisoners, presented in Table 2, lends support to the observation. Forgery and uttering, fraud and misappropriation were the offences for which 1106 or 58 per cent of the individuals were in prison. A further 494 or 26 per cent of the prisoners violated the provisions of the Commonwealth Customs Act and were convicted of the offence of unlawfully importing narcotic drugs. Of the rest 56 were in prison for criminal bankruptcy, 41 for perjury and bribery, 41 for stealing Commonwealth property and there were 154 'others'.

That fraud, forgery and allied offences were common among federal prisoners is also apparent when we examine the data by state. Prisoners

Table 2

## FEDERAL PRISONERS BY STATE AND OFFENCE FOR WHICH IMPRISONED

State	Forgery and Uttering	Fraud	Misappro- priation	Stealing	Perjury and Bribery	Unlawful Importation of Drugs	Bankruptcy	Other	Total
NSW	165	145	11	11	32	255	5	56	680
VIC	81	104	4	14	4	87	21	40	355
QLD	52	149	1	6	-	46	1	24	279
SA	111	95	4	4	1	17	16	14	262
WA	47	73	4	4	3	86	8	17	242
TAS	28	30	2	2	1	3	5	3	74
TOTAL	484	596	26	41	41	494	56	154	1892

who were convicted of such offences formed the largest group amongst the federal prisoners in every state. However, the federal prisoners in New South Wales and Western Australia presented patterns which were different from the other states. Among the federal prisoners in New South Wales, less than half, i.e. 47 per cent, were in prison for committing fraud, forgery and allied offences. In Western Australia the corresponding figure was 51 per cent. In other words, in these states the preponderance of fraud, forgery, etc., was reduced because of the high proportion of federal prisoners in both the states convicted of the unlawful importation of narcotic drugs; i.e. over 37 and 35 per cent respectively. In fact since 1974 the number of federal prisoners convicted of unlawful importation of narcotic drugs has been steadily increasing. Their number being proportionately large in New South Wales and Western Australia simply reflects the fact Sydney and Perth are busy international ports.

Data in Table 3 show that the number of federal prisoners has been rising gradually since 1974. It should be noted that figures for 1980 are not complete. Prisoners convicted of fraud and unlawful importation of narcotic drugs have shown consistent and the greatest increases over the years.

As might be expected, an overwhelming majority of federal prisoners are males. However, as compared to the male/female ratio of state prisoners, women in prison for federal offences are more prominent. Data in Table 4 show that 11.6 per cent of the federal prisoners were women as against about 3 per cent of state prisoners. Indeed among the drug offenders over 14 per cent were women. But there

Table 3

## FEDERAL PRISONERS BY YEAR OF CONVICTION AND OFFENCE

Year	Forgery and Uttering	Fraud	Misappro- priation	Stealing	Perjury and Bribery	Unlawful Importation of Drugs	Bankruptcy	Total
1972	2	1	-	-	-	15	-	18
1973	5	6	-	2	4	19	1	37
1974	54	30	-	14	2	28	12	140
1975	66	49	2	11	8	48	5	189
1976	67	71	1	3	5	61	4	212
1977	91	84	7	2	5	82	4	275
1978	69	100	4	1	7	101	8	290
1979	68	123	5	3	3	87	11	300
1980	61	132	7	5	7	53	10	275
TOTAL	483	596	26	41	41	494	55	1736

Table 4

## FEDERAL PRISONERS BY SEX AND OFFENCE

Sex	Forgery and Uttering	Fraud	Misappro- priation	Stealing	Per jury and Bribery	Unlawful Importation of Drugs	Bankruptcy	Total
Male	414	535	23	38	34	413	53	1510
Female	66	53	3	-	6	68	2	198
TOTAL	480	588	26	38	40	481	55	1708

were no women imprisoned for stealing Commonwealth property. This could indicate that if there is any leniency shown to women offenders by the courts legislation on narcotics makes it much less possible to exercise.

Table 5 presents data on the age distribution of federal prisoners by offence. In general, the majority of federal prisoners (over 56 per cent) were young adults under the age of thirty years. This proportion is not uniform across offence. Within the three fraud and allied offences\* group there were some differences. For example, of all the prisoners convicted of forgery and uttering about 59 per cent were under 30 years of age, the corresponding figure for those convicted of fraud was 47 per cent. On the other hand a substantial majority of those convicted of unlawful importation of narcotic drugs (about 71 per cent) were under thirty. Finally, over 80 per cent of the prisoners convicted of bankruptcy were over 30 years of age. This is not unusual considering the fact that very few young adults can have their own business. This pattern may not seem surprising. It accords with profiles for prisoners generally, but it must be remembered that with federal offenders it is the white collar more than the violent offences which are being considered. Therefore, apart from drug offences, there might be less reason to expect so many under 30 years of age.

Only 36 per cent of the federal prisoners were married compared with 65 per cent in marriageable age in the general population; about 13 per cent of the prisoners were either separated, divorced or widowed

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\* These include forgery and uttering, fraud and misappropriation.

Table 5

## FEDERAL PRISONERS BY AGE AND OFFENCE

Age in Years	Forgery and Uttering	Fraud	Misappropriation	Stealing	Perjury and Bribery	Unlawful Importation of Drugs	Bankruptcy	Total
< 20	32	19	3	6	1	12	-	73
20-24	157	122	3	13	4	141	3	443
25-29	94	135	7	6	10	187	7	446
30-34	52	92	1	1	9	73	11	239
35-39	37	64	3	5	7	20	8	144
40-49	56	84	3	1	5	24	13	186
50 +	52	72	6	6	4	24	13	177
TOTAL	480	588	26	38	40	481	55	1708

compared with 11.5 per cent of those in the Australian total marriageable age. Data in Table 6 supplements the information presented in Table 5 and suggest that a majority of federal prisoners were young individuals without strong familial responsibilities and prone to risk-taking. Prisoners convicted of bankruptcy are different from the rest, a majority of them are married or have de facto relationships.

Information on the educational levels of federal prisoners were available only for about one-third of the cases. Of these about half had completed a primary school education with only a few years of secondary school. The second largest group of prisoners, 232 out of 659, had completed school certificate. The data in Table 7 provide us grounds for suggesting that prisoners with certain levels of education indulged in specific crimes. However, it was interesting to see that as compared to fraud and allied offenders, the prisoners convicted of the unlawful importation of drugs seemed to have attained a higher level of education. Of the 232 prisoners who had completed school certificate, more than half were amongst those convicted of the unlawful importation of narcotic drugs. Also, among the prisoners who had had a tertiary education, more than a half were convicted of the unlawful importation of narcotic drugs.

Occupational data were available for about half the federal prisoners. Occupations were ranked according to the 7-point Congalton<sup>7</sup> scale. In this scale occupations with highest status and prestige were given the score of 1 and those with lowest status and prestige were given the score of 7. The following are examples of occupations included in each of the seven categories:



Table 6

## FEDERAL PRISONERS BY MARITAL STATUS AND OFFENCE

Marital Status	Forgery and Uttering	Fraud	Misappropriation	Stealing	Perjury and Bribery	Unlawful Importation of Drugs	Bankruptcy	Total
Single	202	207	9	17	10	301	7	753
Married & de facto	124	217	8	8	16	111	34	518
Separated, divorced, widowed	59	70	3	3	8	33	8	184
TOTAL	385	494	20	28	34	445	49	1455

Table 7

## FEDERAL PRISONERS BY EDUCATION AND OFFENCE

Education Level	Forgery and Uttering	Fraud	Misappropriation	Stealing	Perjury and Bribery	Unlawful Importation of Drugs	Bankruptcy	Total
None & some primary	7	17	-	-	8	4	-	28
Primary & some secondary	65	109	6	7	8	115	13	323
School certificate & HSC	44	42	5	8	10	119	4	232
Some tertiary to Uni. degree	9	18	1	1	5	41	1	76
TOTAL	125	186	12	16	23	279	18	659

1. architects, barristers, directors (large business), diplomats, judges, physicians and surgeons, professors, etc.
2. accountants and auditors, administrators, bank managers, economists, graziers, managers, newspaper editors, school principals, etc.
3. airline pilots, artists, financial brokers, consultants (business, education, taxation), pharmacists, opticians, clergymen, departmental managers, etc.
4. agents, art dealers, bank clerks, booksellers, contractors, designers, teachers, journalists/writers, electricians, etc.
5. skilled workers
6. semi-skilled workers
7. unskilled workers

It is clear from the data presented in Table 8 that over 85 per cent of the federal prisoners held occupations in the three lowest categories. This is true for all prisoners convicted of any offence except unlawful importation of narcotic drugs. About 24 per cent of the latter as against only 8.7 per cent of those convicted of fraud and allied offences were in the top four occupational groupings before their criminal careers began. Furthermore, among prisoners who had held occupations in the top four categories, over 58 per cent were convicted of unlawful importation of narcotic drugs.

The last variable considered in identifying a general profile of federal prisoners was place or country of birth. The data in Table 9 offers some remarkable findings. They show that whilst native born Australians predominate in all offences this is not true of the drug offender. The majority of these are foreign born - and most of these

Table 8

## FEDERAL PRISONERS BY OCCUPATION AND OFFENCE

Occupation Scale	Forgery and Uttering	Fraud	Misappro- priation	Stealing	Perjury and Bribery	Unlawful Importation of Drugs	Bankruptcy	Total
1	-	3	-	-	1	4	-	8
2	2	1	-	-	-	6	2	11
3	4	8	-	-	1	20	1	34
4	9	16	3	1	2	54	5	90
5	29	46	7	3	8	72	7	172
6	57	88	5	4	5	110	17	286
7	114	137	1	12	10	86	8	368
TOTAL	215	299	16	20	27	352	40	969

Table 9

## FEDERAL PRISONERS BY PLACE OF BIRTH AND OFFENCE

Place of Birth	Forgery and Uttering	Fraud	Misappropriation	Stealing	Perjury and Bribery	Unlawful Importation of Drugs	Bankruptcy	Total
Australia	333 (30.6)	410 (37.6)	18 (1.7)	29 (2.7)	24 (2.2)	236 (21.7)	39 (3.6)	1089 (100.0)
New Zealand	12 (19.7)	15 (24.6)	-	-	3 (4.9)	31 (50.8)	-	61 (100.0)
U.K. & Eire	34 (25.6)	39 (29.3)	2 (1.5)	4 (3.0)	1 (0.8)	47 (35.3)	6 (4.5)	133 (100.0)
West Europe	29 (23.4)	40 (32.3)	-	1 (0.8)	2 (1.6)	48 (38.7)	4 (3.2)	124 (100.0)
East Europe	10 (31.3)	13 (40.6)	-	1 (3.1)	1 (3.1)	5 (15.6)	2 (6.3)	32 (100.0)
North America	1 (4.3)	2 (8.7)	-	1 (4.3)	2 (8.7)	17 (73.9)	-	23 (100.0)
Asia & Pacific	2 (7.1)	4 (14.3)	-	-	1 (3.6)	21 (75.0)	-	28 (100.0)
Africa & Middle East	1 (2.9)	6 (17.6)	-	-	1 (2.9)	25 (73.5)	1 (2.9)	34 (100.0)
Other Foreign	62 (29.1)	67 (31.5)	6 (2.8)	5 (2.3)	6 (2.8)	64 (30.0)	3 (1.4)	213 (100.0)
TOTAL	484	596	26	41	41	494	56	1737

Note: Figures in brackets denote percentages.

were from Western Europe and New Zealand.

Of all the federal prisoners 1089 or 62.7 per cent were born in Australia: but only about 48 per cent of the prisoners convicted of unlawful importation were Australian born; the corresponding figure for fraud and allied offences is much higher, almost 70 per cent. Among the prisoners convicted of unlawful importation of narcotic drugs and born overseas, the largest single group came from Western Europe, including the United Kingdom and Ireland; New Zealanders formed the second largest group.

A much more interesting picture emerged when we examined the offences of prisoners born overseas. As a background it is important to remember that only 21.7 per cent of the Australian born prisoners were convicted of the unlawful importation of narcotic drugs, so that a large majority of their offences fell in the fraud and allied offence category. Roughly speaking, the pattern presented by prisoners born not only in the United Kingdom and Ireland, but also in the rest of Western Europe and Eastern Europe, is the same. In other words, well over half the prisoners born in the European countries were convicted of fraud and allied offences and only about a third were convicted of unlawful importation of narcotic drugs. The pattern changes dramatically when we examine prisoners born in New Zealand, North America, Asia and Pacific, and Africa and the Middle East. Among those born in New Zealand over half were convicted of unlawful importation of narcotic drugs, but almost three-quarters of those born in the three regions stated above were convicted of this offence. However a word of caution is necessary: before conclusions are drawn the relatively small numbers in each

immigrant category need to be remembered. Only by a comparison of these in the total of those in the population from that category or region would be indicative of a higher rate of criminality or a higher propensity for drug offences. It could not be verified whether these foreign-born prisoners came to Australia with the intention to settle permanently. But one thing is sure and that is a large majority of foreign born prisoners came to Australia during the 1970s and many were detected and apprehended at the various points of entry into Australia.

The above description concludes this section. Before moving to the next, it may be worth repeating that: over 84 per cent of the federal prisoners were convicted of either fraud and allied offences or unlawful importation of drugs; in terms of a profile, prisoners convicted of fraud and allied offences do not demonstrate similarities in background characteristics strong enough to distinguish them from those convicted of other offences; prisoners convicted of unlawful importation of narcotic drugs are different, a federal prisoner, convicted of this offence is a male, under the age of 30 years, unmarried, with an educational level of school certificate or higher, generally born overseas and are recent entrants to Australia.

#### The Sentencing Process

We may recall that full information on the gravity of the offence was not available. Hence the analysis in the following few pages is based on the label of the offence only. By and large a majority of federal prisoners were tried and convicted in the magistrates' courts. The proportion, however, varied by state and offence. New South Wales

is the only state where well over half, 62 per cent, of the federal prisoners were tried and convicted in the higher courts. Tasmania, represents the other extreme where only 14 per cent of the prisoners were tried and convicted in the higher courts. The proportion tried and convicted in the higher courts seemed influenced by the number of those charged with unlawful importation of narcotic drugs. As we shall see later this offence attracted the heaviest penalty, i.e. the longest term of imprisonment.

As can be seen in Table 10, in Tasmania, of 71 prisoners, only three were charged with this offence; in New South Wales, on the other hand, 250 of a total of 615 prisoners (over 40 per cent) were in prison because of unlawful importation of drugs. These two states consistently present this pattern across offences. Without exception, a higher proportion of federal prisoners charged with any of the seven offences were tried and convicted in the higher courts in New South Wales as compared to any other state, and in general the opposite is the case in Tasmania. Nationally, about 24 per cent of those charged with fraud and allied offences were tried and convicted in the higher courts; in New South Wales this proportion was over 35 per cent. Entries made in the Register of Prisoners were unable to shed any light on whether the offences committed by federal prisoners in New South Wales were more serious than those in other states or whether the trial jurisdiction of higher courts in New South Wales extended to offences which in other states are tried exclusively in the magistrates' courts. In any case this situation points to the lack of uniformity in trial of those charged with federal offences.



Table 10

## FEDERAL PRISONERS IMPRISONED BY STATE, TYPE OF COURT AND OFFENCE

State	Forgery and Uttering		Fraud		Misappropriation		Stealing		Perjury and Bribery		Unlawful Importation of Drugs		Bankruptcy		Total	
	MC	HC	MC	HC	MC	HC	MC	HC	MC	HC	MC	HC	MC	HC	MC	HC
NSW	109	54	92	52	4	7	3	8	3	28	22	228	1	1	234	381
															<i>38.0</i>	<i>62.0</i>
VIC	66	14	79	25	2	2	7	5	2	2	17	68	18	3	191	119
															<i>61.6</i>	<i>38.4</i>
QLD	39	13	99	50	1	-	4	1	-	-	6	37	-	1	149	102
															<i>59.4</i>	<i>40.6</i>
SA	87	23	87	8	3	1	3	1	1	-	4	13	13	3	198	49
															<i>80.2</i>	<i>19.8</i>
WA	41	6	64	2	2	2	4	-	-	3	6	77	7	-	124	90
															<i>57.9</i>	<i>42.1</i>
TAS	25	3	28	2	2	-	1	1	1	-	-	3	4	1	61	10
															<i>85.9</i>	<i>14.1</i>
TOTAL	367	113	449	139	14	12	22	16	7	33	55	426	43	12	957	751
	<i>76.5</i>	<i>23.5</i>	<i>76.4</i>	<i>23.6</i>	<i>53.8</i>	<i>46.2</i>	<i>57.9</i>	<i>42.3</i>	<i>17.5</i>	<i>82.5</i>	<i>11.4</i>	<i>88.6</i>	<i>78.2</i>	<i>21.8</i>	<i>56.0</i>	<i>44.0</i>

Note: Percentages are shown in italics. MC = Magistrates' Court HC = Higher Court

This can be examined much more meaningfully with the help of information on length of imprisonment by type of court, type of offence and state. Considering the small number of prisoners convicted of stealing, perjury and bribery, and bankruptcy, this examination will concentrate on fraud and allied offences, and unlawful importation of drugs only. In Tables 11 and 12 such information has been provided for the above two offence groups respectively. Each table is divided into two parts - one dealing with magistrates' courts and the other with higher courts.

Looking at the upper half of Table 11 it is quite apparent that federal prisoners convicted of fraud and allied offences were given longer terms of imprisonment by magistrates in New South Wales than in any other state. Only under 40 per cent of the prisoners in New South Wales received a prison sentence of less than six months; in the remaining five states the corresponding figure was well over 70 per cent. Prison sentences awarded by the judges of higher courts did not follow such a clear pattern. However, prisoners in New South Wales in general fared worse than those in other states. The differences between decisions of higher courts of New South Wales and other states are less than those between the magistrates' courts.

It would seem that the offence of unlawful importation of drugs is considered to be a relatively serious crime in every state and as such almost 90 per cent of the prisoners convicted of this offence were tried in the higher courts. Data in Table 12 indicate that no matter where the trial takes place, the length of prison sentences imposed is fairly uniform. There appears one exception from this rule and that is

Table 11

FEDERAL PRISONERS BY STATE, TYPE OF COURT AND LENGTH OF SENTENCE  
FOR FRAUD AND ALLIED OFFENCES

State	Length of sentence					Total
	< 6mths	6 < 12mths	1 < 3yrs	3 < 6yrs	6yrs & over	
<u>Magistrates' Courts</u>						
NSW	81 (39.5)	88 (42.9)	36 (17.6)	-	-	205 (100.0)
VIC	129 (87.8)	13 (8.8)	4 (2.7)	-	1 (0.7)	147 (100.0)
QLD	102 (73.4)	34 (24.5)	3 (2.1)	-	-	139 (100.0)
SA	129 (72.9)	41 (23.2)	7 (3.9)	-	-	177 (100.0)
WA	90 (84.1)	11 (10.3)	6 (5.6)	-	-	107 (100.0)
TAS	44 (80.0)	6 (10.9)	5 (9.1)	-	-	55 (100.0)
	575 (69.3)	193 (23.3)	61 (17.3)	-	1 (0.1)	830 (100.0)
<u>Higher Courts</u>						
NSW	15 (13.3)	23 (20.4)	51 (45.1)	18 (15.9)	6 (5.3)	113 (100.0)
VIC	26 (63.4)	6 (14.6)	7 (17.1)	2 (4.9)	-	41 (100.0)
QLD	11 (17.5)	20 (31.7)	29 (46.0)	3 (4.8)	-	63 (100.0)
SA	12 (37.5)	10 (31.3)	9 (28.1)	1 (3.1)	-	32 (100.0)
WA	1 (10.0)	-	6 (60.0)	2 (20.0)	1 (10.0)	10 (100.0)
TAS	2 (40.0)	2 (40.0)	1 (20.0)	-	-	5 (100.0)
	67 (25.4)	61 (23.1)	103 (39.0)	26 (9.8)	7 (2.7)	264 (100.0)

Note: Figures in brackets denote percentages.

Table 12

FEDERAL PRISONERS BY STATE, TYPE OF COURT AND LENGTH OF SENTENCE  
FOR THE OFFENCE OF UNLAWFUL IMPORTATION OF NARCOTIC DRUGS

State	Length of sentence					Total
	< 6mths	6 < 12mths	1 < 3yrs	3 < 6yrs	6yrs & over	
<u>Magistrates' Courts</u>						
NSW	1 (4.5)	8 (36.4)	10 (45.5)	1 (4.5)	2 (9.1)	22 (100.0)
VIC	7 (41.2)	3 (17.6)	6 (35.3)	-	1 (5.9)	17 (100.0)
QLD	1 (16.7)	1 (16.7)	3 (50.0)	1 (16.7)	-	6 (100.0)
SA	1 (25.0)	3 (75.0)	-	-	-	4 (100.0)
WA	1 (16.7)	2 (33.3)	2 (33.3)	1 (16.7)	-	6 (100.0)
TAS	-	-	-	-	-	-
	11 (20.0)	17 (30.9)	21 (38.2)	3 (5.5)	3 (5.5)	55 (100.0)
<u>Higher Courts</u>						
NSW	3 (1.3)	9 (4.0)	58 (25.4)	87 (38.2)	71 (31.1)	228 (100.0)
VIC	4 (5.9)	2 (2.9)	19 (27.9)	26 (38.2)	17 (25.0)	68 (100.0)
QLD	2 (5.4)	1 (2.7)	8 (21.6)	18 (48.7)	8 (21.6)	37 (100.0)
SA	1 (7.7)	1 (7.7)	2 (15.4)	7 (53.8)	2 (15.4)	13 (100.0)
WA	-	1 (1.3)	14 (18.2)	39 (50.6)	23 (29.9)	77 (100.0)
TAS	-	-	2 (66.7)	1 (33.3)	-	3 (100.0)
	10 (2.3)	14 (3.3)	103 (24.2)	178 (41.8)	121 (28.4)	426 (100.0)

Note: Figures in brackets denote percentages.

the sentences by judges in Western Australia. Over 80 per cent of the prisoners in Western Australia convicted of this offence received a prison term of three years or more; this proportion is much higher than in other states. Therefore, while the data do not convincingly show great disparities in prison sentences imposed in various states, they do allow us to draw a couple of tentative conclusions: (i) federal offenders charged with fraud and allied offences and convicted in the magistrates' courts are likely to receive longer prison terms in New South Wales than in other states, and (ii) federal offenders, charged with unlawful importation of narcotic drugs are likely to be tried in the higher courts; if convicted they are likely to receive prison sentences of three years or more, this probability is higher in Western Australia than in any other state. Obviously, more data are needed to substantiate these findings, but the fact remains that the offence of unlawful importation of drugs is occupying more time and resources of the federal criminal justice system than any other offence.

We now propose to examine the sentencing data in a more general fashion. Table 13 provides data on length of prison term by offence. The nature of the seven offences selected in this study could be such as to warrant the lightest as well as the heaviest penalties that can be imposed. Thus, an offence of forgery and uttering may be so trivial as to invite a warning by the court but it could involve a conspiracy to forge the currency which may elicit harsher responses from the courts and a longer prison term for the offender. This is quite apparent from the data in Table 13. The minimum and maximum punishments imposed on federal prisoners convicted of the seven offences are quite illustrative. For forgery and uttering the minimum penalty imposed was

Table 13

FEDERAL PRISONERS: MEDIAN AND MEAN LENGTH OF SENTENCE  
BY OFFENCE

Offence	Number of Prisoners	Length of Sentence in Months			
		Median	Mean	Range	
				Minimum*	Maximum
Forgery and uttering	484	3.01	8.24	0.01	108.00
Fraud	596	3.02	6.09	0.01	60.00
Misappropriation	26	8.27	13.40	1.47	36.00
Stealing	41	5.98	10.92	0.23	39.00
Perjury & Bribery	41	35.96	44.29	0.47	120.00
Unlawful importation of drugs	494	47.92	49.64	0.01	240.00
Bankruptcy	55	2.99	3.77	0.01	12.00

\* 0.01 under the column 'minimum' indicates that the offender was sentenced till the rising of the court. There were very few such cases.

anything between one day and nine years; the maximum for unlawful importation of drugs was 20 years. It is possible therefore that such extreme values may present a skewed distribution and may affect the 'mean' length of sentence significantly. Therefore, we have provided the median values as well.

Federal prisoners convicted of the offence of forgery and uttering received, on an average, a prison term of 8 months and a week. The median prison term for this offence is significantly different from the mean. The median value of three months and a day indicates that half of the 484 federal prisoners received a prison term of less than this length and the other half received prison terms of more than three months and a day. A similar result is obtained when the offence of fraud is examined. In this case as well, half of the 596 prisoners received a prison term of less than three months and two days. Together prisoners convicted of these two offences constituted about two-thirds of the total number of prisoners, i.e. 1080 out of 1737. Half of these 1080 prisoners received sentences of three months or less.

The differences between mean and median values are noticeable in almost every offence except unlawful importation of narcotic drugs. Also, the offences which put the offenders in prison for the longest term were unlawful importation and perjury and bribery. For the former, of the 494 prisoners 247 received prison terms of less than four years; in the case of the latter, 20 prisoners were imprisoned for less than three years.

Length of sentences for federal prisoners are presented in Table

14. Besides identifying prison terms of various length by offence, the data also make it possible to examine sex differences in sentencing, if any. For statistical analysis the number of women prisoners is small, but as mentioned earlier, their proportion as federal prisoners is much higher than their proportion as state prisoners. Nevertheless, women were imprisoned generally for three types of offences, i.e. forgery and uttering, fraud, and unlawful importation of narcotic drugs.

Differences in the length of imprisonment between sexes is not significant. But by and large, proportionately more women received longer prison terms than men. Or, to put it in another way, proportionately fewer women received sentences of under six months as compared to men. Of the 66 women prisoners convicted of forgery and uttering 30 or 45.5 per cent received prison terms of less than six months; of the 414 men almost 59 per cent received similar prison terms. For those convicted of fraud the differences are in the same direction but of a lesser magnitude. Overall, that is irrespective of offence type, fewer women than men received sentences of under six months.

Do the prison terms vary according to the age of the offender? We shall examine this in relation to two offence groups: (i) forgery and uttering, fraud and misappropriation, and (ii) unlawful importation of narcotic drugs, mainly because there are sufficient numbers of cases to enable proper analysis. Table 15 presents data on ages of prisoners by length of imprisonment for the first group of offences. Noting that almost 82 per cent of the prisoners received sentences of less than 12 months, it will be sufficient if we examine the age differences for this group. Such an examination does not produce any dramatic results. The data in Table 15 allow us to make a guarded statement to the effect



Table 14

## FEDERAL PRISONERS BY OFFENCE, LENGTH OF SENTENCE AND SEX

Offence	Length of sentence										Total	
	< 6mths		6 < 12mths		1 < 3 yrs		3 < 6 yrs		6yrs & over		M	F
	M	F	M	F	M	F	M	F	M	F	M	F
Forgery and uttering	243 (58.7)	30 (45.5)	93 (22.5)	25 (37.9)	56 (13.5)	8 (12.1)	15 (3.6)	2 (3.0)	7 (1.7)	1 (1.5)	414 (100.0)	66 (100.0)
Fraud	333 (62.2)	31 (58.5)	113 (21.1)	13 (24.5)	82 (15.3)	9 (17.0)	7 (1.3)	-	-	-	535 (100.0)	53 (100.0)
Misappropriation	5	-	9	1	7	2	2	-	-	-	23	3
Stealing	20	-	6	-	8	-	4	-	-	-	38	1
Perjury and bribery	3	1	3	-	6	3	12	1	10	1	34	6
Unlawful importation of drugs	18 (4.4)	3 (4.4)	30 (7.3)	1 (1.5)	105 (25.4)	19 (27.9)	150 (36.3)	31 (45.6)	110 (26.6)	14 (20.6)	413 (100.0)	68 (100.0)
Bankruptcy	35	1	13	1	5	-	-	-	-	-	53	2
	657 (43.5)	66 (33.3)	267 (17.7)	41 (20.7)	269 (17.8)	41 (20.7)	190 (12.6)	34 (17.2)	127 (8.4)	16 (8.1)	1510 (100.0)	198 (100.0)

Note: Figures in brackets denote percentages.

Table 15

## FEDERAL PRISONERS BY OFFENCE, AGE AND LENGTH OF SENTENCE

Forgery, Uttering, Fraud and Misappropriation

Age in Years	Length of sentence					Total
	< 6mths	6 < 12mths	1 < 3yrs	3 < 6yrs	6yrs & over	
< 20	36 (66.7)	15 (27.8)	3 (5.5)	-	-	54 (100.0)
20-24	186 (65.9)	58 (20.6)	33 (11.7)	2 (0.7)	3 (1.1)	282 (100.0)
25-29	141 (59.7)	55 (23.3)	31 (13.1)	7 (3.0)	2 (0.9)	236 (100.0)
30-34	80 (55.2)	38 (26.2)	23 (15.9)	2 (1.4)	2 (1.4)	145 (100.0)
35-39	63 (60.6)	22 (21.1)	13 (12.5)	5 (4.8)	1 (1.0)	104 (100.0)
40-49	71 (49.6)	42 (29.4)	25 (17.5)	5 (3.5)	-	143 (100.0)
50 & over	65 (50.0)	24 (18.5)	36 (27.7)	5 (3.8)	-	130 (100.0)
	642 (58.7)	254 (23.2)	164 (15.0)	26 (2.4)	8 (0.7)	1094 (100.0)

Note: Figures in brackets denote percentages.

that younger offenders, under 30 years of age have a slightly higher probability of getting sentences of less than six months as compared to those in older age groups.

As regards prisoners convicted of unlawful importation of narcotic drugs, age of the prisoners did not seem to have any effect on the length of imprisonment. Data in Table 16 demonstrate a fairly uniform distribution across various age groups.

### Conclusion

The key word in drawing any conclusion from the above analysis is caution. The reasons for this are obvious.

1. The federal prisoners included in this study do not represent a systematic sample and may not be the universe of all federal prisoners.
2. The Register of Prisoners maintained by the Department of the Attorney-General often lacks valuable information on prisoners.
3. Imprisonment is only one of several options open to a judge or magistrate after an offender has been convicted. Therefore, it would be desirable to ascertain other options that are used in sentencing federal offenders.
4. A post facto study of this sort has very limited value. It is well known that offenders who end up in prisons constitute only a fraction of all offenders.

The implications of the above are more and better information. At present, statistics on offences against Commonwealth laws and their perpetrators are almost completely lacking. In order to design effective law enforcement and justice systems it is vitally important that the authorities pay greater attention to collection of data.

Table 16

## FEDERAL PRISONERS BY OFFENCE, AGE AND LENGTH OF SENTENCE

Unlawful Importation of Narcotic Drugs

Age in Years	Length of sentence					Total
	< 6mths	6 < 12mths	1 < 3yrs	3 < 6yrs	6yrs & over	
< 20	-	-	4 (33.3)	7 (58.3)	1 (8.3)	12 (100.0)
20-24	11 (7.8)	10 (7.1)	42 (29.8)	56 (39.7)	22 (15.6)	141 (100.0)
25-29	6 (3.2)	14 (7.5)	55 (29.4)	73 (39.0)	39 (20.8)	187 (100.0)
30-34	3 (4.1)	5 (6.8)	12 (16.4)	25 (34.2)	28 (38.3)	73 (100.0)
35-39	-	1 (5.0)	3 (15.0)	4 (20.0)	12 (60.0)	20 (100.0)
40-49	1 (4.2)	1 (4.2)	4 (16.7)	5 (20.8)	13 (54.2)	24 (100.0)
50 & over	-	-	4 (16.7)	11 (45.8)	9 (37.5)	24 (100.0)
	21 (4.4)	31 (6.4)	124 (25.8)	181 (37.6)	124 (25.8)	481 (100.0)

Note: Figures in brackets denote percentages.

During the last two years there have been debates on the needs for a federal prison. It is an issue which would necessarily involve investment in millions of dollars and hence the cost-benefit aspect must be examined thoroughly before a decision is made. Certainly, statistics on federal offences and offenders will be of help.

From this study it is very difficult to make any statement on the need for a federal prison. On the other hand, those who favour the establishment of a federal prison may find the data presented here useful. For example, one offence for which more and more offenders are being sent to prison for longer terms is unlawful importation of narcotic drugs. Certainly, by far the best option would be to make enforcement in this area more effective and thereby avoid the need for a federal prison. If, on the other hand, this offence grows out of proportion, the scenario which one reads in the news media and on which there is general agreement within the law enforcement agencies, the federal government will be hard-pressed not to consider the issue of the establishment of a federal prison system. We do not know precisely how many prisoners convicted of this offence are in prison at any point in time. The number of federal prisoners at the end of each quarter of 1979 and 1980 are given in Table 17. On these eight points in time the number throughout Australia has varied between 242 and 310. In most of the jurisdictions, and especially in New South Wales and Western Australia, the number has fluctuated little. Judging from their numbers in this study and also the length of imprisonment imposed, our most conservative estimate would be that of those federal prisoners in prison on any given day at least half will be convicted of unlawful importation of narcotic drugs.

Table 17

## NUMBER OF FEDERAL PRISONERS AT THE END OF EACH QUARTER 1979 AND 1980

State	1979				1980			
	31 Mar.	30 June	30 Sep.	31 Dec.	31 Mar.	30 June	30 Sep.	31 Dec.
NSW	111	107	139	127	130	120	117	129
VIC	25	31	35	29	27	26	37	43
QLD	31	28	43	29	29	28	37	34
SA	13	11	17	24	15	14	8	12
WA	42	48	49	47	46	42	52	48
TAS	7	8	9	7	4	5	5	5
NT	12	16	17	19	17	15	14	15
ACT	1	1	1	1	1	-	3	-
TOTAL	242	250	310	283	269	250	273	283

Source: Figures for 1980 are from the Commonwealth Attorney-General's Department, Canberra.  
 Figures for 1979 are from Sentencing of Federal Offenders, Report No. 15 Interim, The Law Reform Commission, AGPS, Canberra, 1980, Table 19, page 114.

Footnotes

1. For an exhaustive list of such statutes see Appendix E, Sentencing of Federal Offenders, Report No. 15 Interim, The Law Reform Commission, AGPS, Canberra, 1980.
2. Ibid., see Chapters 3, 4 and 5.
3. See Section 3 Crimes Act 1914.
4. Commonwealth Prisoners Act 1967.
5. Sentencing of Federal Offenders, op. cit., p 184. For details see Chapter 9.
6. Ibid.
7. See A.A. Congalton, Status and Prestige in Australia, F.W. Chesire Publishing Pty Ltd, Melbourne, 1969.