REPORT

OF THE

INQUIRY INTO THE

CENTRAL INDUSTRIAL

PRISON

AUGUST, 1988

His Honour A. G. MUIR Q.C.

Volume 2
P R E F A C E

Throughout this Report a number of blank pages and blank spaces are shown. This results from necessary abbreviation by reason of possible prejudice.
Intervention to Prevent the Furtherance of the Assaults

Introduction

Term (4)(b) requires me to inquire into whether adequate action was taken by the authorities at the prison to intervene in order to prevent the furtherance of the assaults on Mr Partlic, F1 and F2. The only officers who were in a position to intervene were those on duty in 6 Wing. This Term requires an examination of their actions. The evidence indicated that only Officers Wetzler and Varvaressos were on duty in the wing at the time. Neither of them were physically in the fines yard when the assaults commenced. They were, however, both in the wing office, Mr Varvaressos on the fines side and Mr Wetzler on the 6 Wing side.

There were possibly two other officers in the Wing shortly before the assault, Officer Reynolds who was relieving 31 Post for a short time and Assistant Superintendent Crowley who visited there on his way back from 4 Wing. Mr Crowley himself said that he was there shortly before the assault. This aspect was considered with respect to Terms of Reference (1) and (2). Other
officers arrived in the wing after the incident was notified to the Deputy Superintendent but, by then, the assaults were over.

In order to determine what intervention occurred it is necessary to start with the evidence of the two officers on duty in the wing. As will be seen, their evidence was most unsatisfactory and ultimately it will be necessary to examine the evidence of other witnesses who were in the wing.
One further matter arising from the evidence of Mr Varvaressos requires comment. It is clear that Mr Varvaressos was fearful and felt ill equipped to cope with the emergency confronting him on the day. To some extent, this may simply have been a consequence of his particular personality. It is likely, however, that part of the problem lay in his lack of experience and training in dealing with this type of emergency.

It may be that training of this sort is not the responsibility of the authorities at the prison. Whoever bears this responsibility, however, it is necessary to bear in mind Mr Varvaressos' lack of training in this respect in assessing his decision not to intervene directly and immediately. Any criticism of him must be seen in this context. In examining this problem, it is not sought to make any criticism of any persons individually or collectively who had responsibility for training. Such matters are outside the Terms of Reference. The examination is rather to investigate what positive procedures in training could, in future, be available to assist officers faced with the type of crisis which enveloped Mr Varvaressos.
Senior counsel for the P.S.A. took up this matter in evidence with both Mr Cook and Mr Horton. It does seem that training for these sorts of crises was lacking. The policy seems to have been that the only way to learn was by experience in the field. This approach seems unsatisfactory and fraught with danger to prisoners and prison officers alike, as the assault on Mr Partlic amply demonstrates.

Added to the training problems was the understaffing of the C.I.P. The prison was 13 officers below the approved staff level as at 30 October 1987, one week before the assault. Further, the C.I.P. is used as a training prison for staff. Mr Cook indicated that during 1987, the C.I.P. received 108 new staff and lost 109 old staff, many of these moved to other prisons. Of the 108 that were received 100 were probationary officers, ie in their first year of service.

Mr Adams Q.C. explored fully with Mr Horton the problems of an officer confronted with an emergency in the form of a continuing serious assault. Mr Horton agreed that the officer had to balance out in an extremely short time risk of injury to himself and the risk of injury to the victim if the assault continues. He noted, however,
that prisoners generally "have less propensity to
continue physical violence against officers than they do
against other prisoners."

Mr Horton agreed that an opportunity to discuss with
other officers the problems of controlling violent
outbursts in prison would assist an officer in reaching
the most appropriate response. He further agreed that
"nowhere in the training of officers is there any part
given to the thorough ongoing analysis of the problem of
violence with which an officer might be faced, and the
range of possible problems" but he added that "it would
be impractical to try to cover the whole range of
possibilities". Nevertheless, he said that it would be
possible and reasonable to take as training exercises
certain individual examples of violence in prison. He
agreed that this incident pointed to the necessity of
such training. Exercises of this type were included in
the training in the 1970s. He was not aware if such
training was included in courses as at 1987, but
accepted the propositions of Mr Adams Q.C. that they
were not.

Unfortunately, no other evidence was led by counsel
concerning the lack of training in this area, no doubt
because it was considered outside the Terms of
Reference. Nevertheless, without directing any criticism, it is regrettable that it appears that junior officers are placed in positions such as that of Mr Varvaressos without some training in this area. No doubt much knowledge is gained from experience. In the present context, however, it is gained in circumstances of grave danger to officers and prisoners alike.
Chapter 15

The Actions of Mr Wetzler

Pages 212 to 234 are not printed.
Chapter 16

Actions of the Officers in the 6 Wing Office

Pages 235 to 240 are not printed.
Prison officer Reynolds was the relieving 31 Post officer on 7 November, 1987. He was directed to the fines yard to assist with the telephone calls. He said that between approximately 1.30pm and 1.55pm he sat in the fines yard office. He did not speak much to Mr Wetzler, if at all, although he may have said a few words to him. During the whole of that time whenever he looked, Mr Wetzler was sitting in the 6 Wing side of the office. He left some minutes prior to the assault.
A number of prisoners were in the office area (fines or wing) at about the time of the assault. A prisoner, F6, was in the process of having a telephone call when he heard a noise from the fines yard and terminated the call.

F6 said that while he was in the office, there was an officer with him "the dark-skinned one with the moustache fairly well built" (clearly Mr Varvaressos) and in the other office there was a thin officer with blonde hair and he was pretty sure he had a moustache. He said he did not think he was the wing officer because the wing officer did not have a moustache. It seems certain that the officer whom F6 saw in the wing office must have been Mr Wetzler, although he has misdescribed him. There were no other officers actually in the area at the time and both Mr Varvaressos and Mr Wetzler gave evidence that Mr Wetzler was in that office for a period.

F6 said that Mr Varvaressos was minding the telephone when the yelling started and then Mr Varvaressos went out to the other office and looked at the other officer. F6 finished his call and wedged himself into a place in
the office where he was out of the way. After Mr Varvaressos walked into the other office.

F6 then walked into the fines yard himself and had a look at Mr Partlic and he was going to try and assist, but by that time one of the officers told F6 to leave him alone, and after a time the nurse came.

F6 said that he did not notice the officer with him look out into the fines yard while he, F6, was in the office. He said that he could not have missed seeing the officer look out. He indicated that there were other inmates in the offices while he was making his call. These were F7 and F9.

Subsequent evidence confirmed in significant respects this part of his evidence and indeed other details, although clearly there are some points where he has made
mistakes, in particular misidentification of the officer in the far office and failure to observe Mr Varvaressos go into the yard on his own the first time.

F7 said in his statement, that a little before 2pm he went into the wing office to ask about his release date. F9 also came into the wing office with him and spoke to the same officer. He saw the officer pick up the telephone and he appeared to talk to someone on the telephone and told both of them their release dates. After this telephone call, the officer then spoke to another prisoner who had entered the office.

F7 stated that he looked at the clock and saw that the time was around about 2pm. When F7 left the wing office he went to the 6 Wing gate where he saw Mr Varvaressos. Mr Varvaressos opened the 6 Wing gate and called out to another officer to escort F7 to 11 post.

Before he left the office, F7 said he saw a prisoner on the fines office telephone. He said that F6 was not the man on the telephone but this seems to be an error. He did not hear any part of the conversation of the man on the telephone. He saw a sentenced prisoner in the 6 Wing office. He did not know the name of this prisoner.
but he knew him by sight. Although F7 was not able to identify this prisoner, it would be consistent with other evidence that the prisoner was F24.

F9 did not make a statement but gave evidence. He said that he was in the 6 Wing office with another prisoner of a particular complexion at about 2pm on 7 November. This was F7. He said he went to the office to ask for a telephone call with F7 and to ascertain his release date. There was conversation between the officer and F7 about F7 going for a visit and F7 left the office. F9 remained in the office after F7 departed. He identified Mr Varvaressos as being the officer on the fines side and Mr Wetzler as being the officer on the 6 Wing side with whom he talked. Not long after he spoke to Mr Wetzler, Mr Wetzler gave him the release date.

F9 was waiting for a telephone call. Mr Wetzler told F9 to go into the other room and wait there. He knew that his call would be ready when the other prisoner got off the telephone. He told Mr Varvaressos the telephone number he wanted, but he never made the call because that was when everything happened outside and, in the meantime, there was someone else on the telephone. He described physically the person already on the telephone as F6. When F6 finished his call, F9 remained in the
office for about 5 minutes. Mr Wetzler was there when F9 went from the 6 Wing side to the fines side, and F9 thought that Mr Wetzler was still there when F9 first heard the noise.

Mr Varvaressos left F9 to go into the fines yard, but F9 said this was later on. It was not clear just how much later. Mr Varvaressos went into the fines yard on his own. Mr Wetzler was not with him. F9 did not see where Mr Wetzler was at that time.

Later in evidence F9 reassessed his times and said that it was about 5 or 10 minutes between the time he last saw Mr Wetzler on the 6 Wing side and the time he heard the noise in the fines yard. I consider he is mistaken as to the length of time. The period was significantly shorter. When he heard the yelling, he went out into the fines yard. The assault had just finished and he saw Mr Partlic lying on the ground. Mr Varvaressos ran back in and that was the last he saw of it. He did not hear Mr Varvaressos say anything.

When F9 left the office, F6 was still there, but he could not remember if F6 was still on the telephone. He did say however, a little earlier that F6 hung up the telephone once all the noise started. When Mr
Varvaressos came back from going into the fines yard on his own, he went through to the other side. F9 did not see if he met the other prison officer. He did not look out of his cell until about 5 or 10 minutes later, when all the officers had arrived.

F9 thought the yelling went on for about a minute. He was "pretty sure" that Mr Varvaressos was in the office all of the time because Mr Varvaressos had to be there if someone was on the telephone. He continued to assert this but there was a possibility that Mr Varvaressos was not there and he was really not sure.

F9, as best he could recall, did not see any prisoner who did not live in the fines yard pass through the offices into the fines yard.

F24 went to 6 Wing Office at about 2pm. His description of his movements in his record of interview was:

"I turned left, straight into the Wing Officer's Office. To return some weight lifting clamps. The clamps are kept in the top right hand drawer of the Wing Officer desk. As I am not allowed to have them in my cell. Radar was seated at the desk I
just probably left the clamps on the desk in front of him. I also remember at the time that the glass door leading into the fines office was closed."

"Radar" was Mr Wetzler's nickname.

F24 indicated that he had a strict routine which he always applied on his regular work-out days. He remained at the activities area until 1.55pm, and then he returned to 6 Wing to put the clamps back in the wing office. As is noted above, it is likely that F24 was the sentenced prisoner referred to by F9, although there is no positive identification. I have set out the passage of the evidence of F24 because of the time at which he is able to state he saw Mr Wetzler in the office. Although he was uncertain in evidence whether Mr Wetzler was present in the office, he thought he was on the ground floor of the wing.

F10 gave evidence of a prison officer entering the fines yard immediately after the assault.
Mr Crowley

Mr Crowley relieved Mr Crossingham as wing officer in 4 Wing for the lunch break. He had some conversation with Mr Crossingham after Mr Crossingham returned from lunch. He then walked directly from 4 Wing to 6 Wing and he thought he arrived at 6 Wing gate shortly before 2pm. He thought Mr Varvaressos was the officer who let him through. He went directly to the wing office. Mr Wetzler was in the office standing up just inside the door on the right hand side. Mr Crowley did not go into the fines yard. The furthest he went was to the end of the desk in the 6 Wing office. He did not see anyone in the office on the fines side. It is possible for the view to be obscured "if there was somebody sitting behind the table at the back of it". He remained in the office for about 2 minutes. He believed he signed the
search book, although he says he may have signed it later. He said he did not hear any noise from the fines yard when he was there prior to the assault. He did not notice if the grille door was locked.

Mr. Ross

Prison officer Ross, made a record of interview in February 1988. He said that after he had finished his lunch break in the meal room above the C.I.P. gate, he went through 11 post and was walking towards 4 Wing in order to go round to the activities area.
Conclusion

It would seem, therefore, that there is a great deal of evidence indicating that Mr Varvaressos was in the fines side of the office and Mr Wetzler in the 6 Wing side of the office just prior to and probably during the early part of the assault. This includes the period during the phone call by F6 and the presence of F7 and F9 in the office. At some point, Mr Wetzler claims that he went to make a bed state check upstairs. For reasons I will set out later, I do not accept that as the reason why Mr Wetzler went upstairs. I have concluded that he
went upstairs to observe what was happening in the fines yard after becoming aware that some incident was occurring.

As a result of Mr Wetzler's absence, Mr Varvaressos clearly was carrying out more duties than should have been required of him at the time. It was in this context that he heard the shouting toward the end of the assault. This led him to enter the fines yard. It is not known whether he knew about the assault prior to that. He claims he did not.

If, as I believe, Mr Wetzler has lied about the reason why he went upstairs, it seems likely that he would have told Mr Varvaressos that he was going upstairs to see what was going on in the fines yard. It is possible, of course, that he may have lied to Mr Varvaressos about his true reason for going there.
The upper landing of 6 Wing overlooking the fines yard. Sentenced prisoners reside in the cells on the landing.

A view of 4 Wing across the Square.
Chapter 17

The Actions of the Officer on the Landing

The evidence establishes that a prison officer appeared on the landing above the fines yard during or at the end of the assault.

Mr Wetzler was the Officer

There is considerable confusion in evidence from eye witnesses as to the identity of the officer. This confusion was aggravated by what I accept was a mistake in the statement made by Mr Varvaressos to the police on 8 November 1987. That mistake implied that Mr Varvaressos had been upstairs during part of the assault. There is, however, no doubt in fact that the officer on the landing was Mr Wetzler and he agrees he was there. Positive evidence was given by some witnesses in the fines yard that it was Mr Varvaressos. One of those witnesses was FI, who knew Mr Varvaressos prior to becoming a prisoner at the C.I.P.

A number of prisoners from the landing were called. These indicated that it was Mr Wetzler who was the officer on the landing. In view of the number of
witnesses who independently stated that, it seems clear that it was Mr Wetzler who was, in fact, on the landing, and not Mr Varvaressos. Further, it seems unlikely that Mr Varvaressos would have had time to do all he did downstairs if he had gone up to the landing. His actions in the office and at the 6 Wing gate during this period are independently corroborated by a number of witnesses.

The Reason for Going Upstairs

The questions of when and for how long Mr Wetzler was on the landing with the possible opportunity to observe the assault on Mr Partlic, have been the subject of very detailed evidence and submissions. In particular, counsel assisting the Inquiry set out in submissions the evidence of many eye witnesses. The evidence on this aspect comes from the fines prisoners as well as sentenced prisoners. Suffice to say, there is a great variation in the estimates of duration given, so much so that no real reliance can be placed on any one witness. This comment also applies to evidence as to the time when Mr Wetzler first appeared on the landing.
Necessarily the length of time of the assault is important. Having examined this aspect, counsel for the P.S.A. says:

"... 10 minutes is plainly too long for the assault, 5 minutes must be regarded as the outside limit and is too long if the acts which had caused the demonstrated injuries occurred within seconds of each other".

Counsel assisting says:

"Nevertheless at the end of the day, the assessment of 5-10 minutes which was attested to by a number of the witnesses probably places the matter fairly accurately. Allowing for the colouring of observation, somewhere in the vicinity of 4-5 minutes may be a proper period."

I am satisfied that Mr Wetzler went to the balcony to see what was happening in the fines yard. This was expressly asked of him and he denied that this was so. My reasons for this conclusion are set out below. It is submitted on his behalf that the action of going upstairs to observe would have been perfectly proper before determining what to do about it. I cannot accept that submission.

I agree there is no basis for accepting a precise time during which Mr Wetzler was on the balcony, but he was seen there by a substantial number of witnesses.
I believe, therefore, he must have been there for a significant period which in the circumstances may only have been seconds. It may have been a number of seconds but it is certainly unlikely to have been as long as a minute. Whatever the period I am of the view that Mr Wetzler spent unnecessary time observing when he should have taken some action.

F14, who did not appear to colour his evidence, said that he saw the prison officer on the landing apparently at the end of the assault.
F14 has otherwise been accepted as reliable. He said in evidence that he first saw the prison officer on the landing when that officer walked around the corner (he indicated the end of the landing nearest the Square). He was asked specifically: "At the time you first noticed the guard was there any further blow struck to Jamie Partlic after that?" His answer was "No, not that I can recall."

Conclusions

My view, after very careful consideration, is that it is not possible to form any conclusion on the evidence whether Mr Wetzler witnessed any of the assault on Mr Partlic from the landing. However, there is no question he was there to witness the end of the assault even if he saw no blows.
I have further come to the firm conclusion that although he specifically denied it, Mr Wetzler went upstairs to the landing for the purpose of observing what was happening in the fines yard after he became aware there was some incident occurring. I have come to this conclusion for the following reasons:—

1. He was not seen by any person looking into a cell. There were some prisoners who observed him on the landing and none of these saw him going partly into any cell.

2. He claims he spent some 10 minutes on the right upper landing overlooking 22 yard. Given the times of the observations of him downstairs this could not be true and in my opinion is a lie. He was seen by F24, and others, probably in the wing office and certainly downstairs in 6 Wing, very close to 2pm.

3. He claims to have inspected all of the cells on the right side before inspecting the left and he was half way along when he heard the noise. The times of the incidents, no matter how far they can be stretched, would not allow for this.
4. Conclusion 3 is fortified by the period of time he was seen in the office immediately prior to and probably during the start of the assault.

5. No reason, let alone any acceptable reason, was put forward by him as to why he chose to carry out the alleged inspection at that very time.

6. The appropriate time to carry it out was when there were three officers in the wing. He had an opportunity to do this when the wing was so manned between approximately 1.30-1.55pm.

7. He chose to leave at a time when Mr Varvaressos was trying to supervise telephone calls and man the 4 Post gate. This of course does not take into account other matters which might arise such as the telephone call to summon F7 for his visit.

8. There was an order on 30 July, 1986, by the Deputy Chairman of the Commission for a report of the wing state on each Sunday. Mr Pfeiffer put out a circular for the C.I.P. on 4 August, 1986, requiring each wing officer to advise the Deputy's office each Sunday by mid-day of the total number of beds available for use in the wing. Mr Thompson
on the same day, endorsed on the circular a note that he required this information by 10am each Sunday. There seems little point in doing a similar type of check on the Saturday. It may be significant that a note said to have been left for the wing officer of 8 November 1987 was not found.

9. The evidence indicated that no other wing officer carried out this procedure although some did carry out some type of inspections which may have been similar.

I have formed the firm view that Mr Wetzler was quite wrong in failing to respond to the noise from the fines yard by entering the yard immediately. I believe it is obvious he may thus have prevented by verbal intervention leaving aside physical intervention, which perhaps was impossible. He failed to act responsibly by going upstairs to observe the incident and he failed in his duty to intervene immediately by ordering when he was upstairs.
Thus my view is that he was derelict in his duty when he left the office to go to the landing during, I believe, a vital part of the assault. Mr Varvaressos at least responded correctly although he should have attempted to intervene verbally.

Again the evidence of Mr Cook, as Superintendent, is most relevant. These two officers were working in an atmosphere of low morale, which is so well described by the Superintendent. It was, I believe, an atmosphere approaching hopelessness as to discipline. The inevitable consequence was a failure to respond to protect a prisoner who undoubtedly required whatever assistance could be given.
Introduction

Term of Reference (4)(c) requires me to report upon whether adequate action was taken by the authorities at the prison to protect witnesses to the assault on Mr Partlic, F1 and F2. I have elsewhere in this Report examined the failure of the authorities to isolate prisoners affected by alcohol before lock-in on 7 November 1987. I need not repeat that examination here.

The witnesses to the assault were in three main categories, fines prisoners, sentenced prisoners and prison officers.
I do not need to express any conclusion about this however in this Chapter. I do not consider that prison officer witnesses were intended to fall within Term (4)(c).

Some prisoners gave evidence about comments made by other prisoners to them. The comments were to the effect that they should not say anything about the assault to anyone. The evidence was vague and unsatisfactory and some of it was very much hearsay.

In the circumstances, I make no finding that there was any special requirement for protection of these prisoners from those who addressed the particular comments to them.

The real criticism which may arise under this Term was the failure to ensure that sentenced prisoners who might threaten the fines prisoners, all of whom to some extent witnessed the assault, were permitted to enter the fines yard after the incident. Some steps however, were taken to isolate them. For example, when S11 attempted to return to his cell in the fines yard at about 3pm, he
found that the grille door was locked and he could not enter. He then went upstairs to the landing to see what was happening in the yard.

There may have been a responsibility on Mr Thompson, either himself, or through one of the other executive officers, to give specific directions to Mr Wetzler to keep all prisoners out of the yard who were not physically in it when the executives and medical staff left the yard with the stretcher. At the very least, such a direction should have been given even if the identity of the assailant was not then known or suspected.
I do not, however, accept that the identity was unknown. I am not saying that every officer in authority knew every detail, but the combination of their knowledge meant they either did know or failed in their duty to enquire and find out. I come to these conclusions for the following reasons:
Pages 266 to 276 are not printed.
The Failure to Secure the Fines Prisoners

The next problem which the authorities at the prison face is that they were faced with a fines prisoner victim. It must have occurred to them that there could be other potential fines prisoner victims. In those circumstances, they could have secured them in their cells so no one from outside could get to them or they could have immediately moved them into protection.

There is no evidence that any of the fines prisoners asked for protection at the time. Indeed, later on after lock-in, it was offered to some fines prisoners who accepted it. Why was this offer not made earlier? It is true that none of the fines prisoners was prepared to disclose his observations of the assaults until after lock-in. It was in that context that the offer of protection was then made. It has not been suggested by
the prison authorities that protection was not offered because the possible assailant was a fines prisoner who might, in turn, pose a threat to protection prisoners.

The M.E.U.

M.E.U. officers entered the C.I.P. shortly before 3pm for the purpose of investigating the assault upon Mr Partlic. A short discussion ensued between Mr Thompson and the M.E.U. officers. It was not suggested in evidence that Mr Thompson gave these officers any direction to secure the fines yard or the prisoners in it or that the topic was even discussed at that time. The M.E.U. officers attended the Clinic to see Mr Partlic. Shortly after 3pm, they were withdrawn from the C.I.P. to remain on stand by at M.E.U. headquarters in case of possible riot at the C.I.P. The disturbance near 3 Wing brought this about.

But for this withdrawal, the evidence suggests that the M.E.U. officers would have attended the fines yard, sealed it off and secured the fines prisoners in their cells. In the result, it was not until 4.30pm that the M.E.U. again entered the C.I.P. and 4.50pm when they
first entered the fines yard. The activities of the M.E.U. on 7 November, 1987, are examined in greater detail in the next Chapter.

Conclusion

In truth, it appears that protection of fines prisoners, who were likely witnesses, from threat or intimidation was not a matter given high priority by the prison authorities on the day. It may have been expected that the M.E.U. officers would attend to this. If this be the case, the withdrawal of these officers shortly after 3pm required the task to be performed by others. This did not occur.

I do not lose sight of the fact that a serious disturbance on the Square distracted the attention of executive and other officers between 3 and 3.30pm.
The C.I.P. Clinic viewed from the Square.

A view of the fines yard from the far end facing the Square. The open door onto the Square was closed and locked on 7 November, 1987.
PART VI — TERM OF REFERENCE (4)(d)

Chapter 19

Investigation of Assaults in the Fines Defaulters Yard by the Prison Authorities

Term of Reference (4)(d) called for the Inquiry to consider "whether adequate action was taken by the authorities at the prison...otherwise to investigate the circumstances of any assault" upon Mr Partlic or any other fines prisoner in the fines yard at the time.

Three categories of investigation appear to fall within this Term of Reference. First is the investigation carried out by Deputy Superintendent Thompson and other executive officers immediately after the discovery of the assault on Mr Partlic. Second is the investigation carried out by the Malabar Emergency Unit (M.E.U.) at the request of Mr Thompson. Third is the investigation carried out and report made for the purpose of the Commission Assault Policy.
Mr Thompson and Senior Assistant Superintendent Plunkett attended the fines yard at about 2.07pm in response to a telephone call from Officer Wetzler. Mr Thompson spoke to Mr Wetzler who informed him that he had seen S1 leaning over Mr Partlic. Officer Varvaressos was not questioned by Mr Thompson or Mr Plunkett and volunteered no information himself. From his own observations, Mr Thompson formed the view "that I thought an assault had taken place". Mr Thompson stated that in the fines yard "no prisoner or officer reported an assault had taken place or had seen anything".

Prison Officer Reynolds entered the fines yard while Mr Thompson was there shortly after the assault. He could not say whether Mr Thompson had actually heard them but presumed so. Mr Thompson asserted from the outset that he received no information direct or indirect in the yard as to the manner in which Mr Partlic sustained his injuries. On the evidence, it appears that Mr Thompson did not hear these words.
Mr Thompson states that he instructed Mr Wetzler that the grille gate was to be kept locked and that only prisoners who lived in the yard should be allowed in. He instructed Mr Wetzler that nothing in the yard should be altered. He told him that from the injuries sustained it was obvious that an assault had taken place and, because of the seriousness, the M.E.U. and the police would be informed and the M.E.U. would be entering the gaol. Mr Thompson also directed Mr Wetzler to prepare a report and a list of the prisoners who were housed in the yard at the time. Mr Thompson himself directed the fines prisoners to line up in front of their cells and enquired of each of them whether they had seen anything. A number of fine default witnesses confirmed that this had occurred.

According to Mr Thompson, each of the prisoners denied having seen anything. The only fine default witness who asserted to the contrary was F3. According to F3, when asked if he had seen anything he replied "Yes, my fur coat, I did". F3 alleges that Mr Thompson replied "No you didn't". There is doubt as to the reliability of F3's evidence about this. From the totality of the evidence it appears that Mr Thompson was doing his best to try and ascertain what had happened. He himself would have no motive for wanting to suppress any
available eye witness account of what occurred.
Therefore I am unable to accept the evidence of F3 in this regard.

Whilst in the fines yard Mr Plunkett observed facial injuries to F1 and F2. He later informed Mr Thompson of this. Mr Plunkett asked F1 and F2 if they had any knowledge of the incident. Both denied any knowledge.

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F1 did not indicate to Mr Plunkett the person to whom he referred in these comments. It may be that Mr Plunkett was in a position to draw the inference as to whom F1 meant but his evidence is that he did not do so.

Mr Thompson and Mr Plunkett then returned to the Deputy's Office. At 2.20pm Mr Plunkett contacted Mr John Horton who was the Duty Officer of the day at the Malabar Complex. Mr Horton's assault form bearing information given to him by Mr Plunkett at that time included the statement "No prisoner will identify the assailant(s)."
In evidence, he later asserted that he had no recollection of having told Mr Horton this but that he could not assert categorically that he had not said it.

Mr Horton stated that Mr Plunkett had provided the "min. number" and other particulars. These had to be obtained from records to which Mr Horton did not have ready access at that time. There had been a discussion between Mr Horton and Mr Plunkett as to the description.

I accept the evidence of Mr Horton. Mr Horton directed Mr Plunkett that the M.E.U. was to be notified, that the police were to be advised, and that all prisoners present were to be interviewed.

Mr Plunkett stated that he contacted Mr Menzies at the M.E.U. at 2.28pm that day. Mr Plunkett's original handwritten statement made on 7 November, 1987 had erroneously stated that this call occurred at 3.28pm. Mr Menzies and the M.E.U. running sheet however indicate that the call from Mr Plunkett was received at 2.40pm and not at 2.28pm. There was no evidence to explain this discrepancy. It appears that Mr Plunkett did not
tell Mr Menzies that it was a serious assault. In his statement, Mr Menzies states that at no time was he told that it was a serious assault or that the prisoner's life was in danger.

**The Investigation by the M.E.U.**

Mr Thompson expected that the M.E.U. would carry out an investigation of the assault. The formal role of the M.E.U. in performing such investigations was unclear in the evidence although there is no question that some such matters were assigned to them. Mr Thompson so informed Mr Wetzler and explained to the Inquiry that this was his expectation. This was also Mr Plunkett's view of the matter. Mr Plunkett stated that he perceived his function and that of other officers as being to identify the victim of the assault and ensure everything was under control. Thereafter it was for the M.E.U. or the Internal Investigation Unit (I.I.U.) to investigate. In other evidence, Mr Plunkett stated:

"It was going to be investigated by the M.E.U., the professional people, and the I.I.U. They were going to do the investigation into that assault."

M.E.U. Officers Markham and Sinclair were directed to attend the C.I.P. to investigate the assault. There was a delay from 2.40pm to 2.52pm while Mr Sinclair returned
from certain search duties at the C.I.P. Mr Markham stated in evidence that he understood the purpose of the visit to be the initial investigation of the assault. That there was a highly visible level of drunkenness in the C.I.P. that day is borne out by a comment made to Mr Markham as he entered the gate of that prison shortly prior to 2.55pm. A number of officers in the gate inquired as to whether the M.E.U. officers were there to investigate drunken prisoners in the Square.

Officers Markham and Sinclair went to the Deputy's Office and saw Mr Thompson at 2.55pm. Mr Thompson gave the following evidence:

"When I spoke to the M.E.U. later on, this was after I had held the muster and from information I received, although no prisoner stated he saw anything I informed them to interview 5 prisoners and that would be F1, F2, F3, F4, and just from the actions of the prisoners."

Further, it is unclear just when the executive officers realised there was a second person involved in the assault.
The M.E.U. and the police became aware of this on the evening of 7 November, 1987, when four of the fines prisoners made statements. Mr Markham stated that during his conversation with Mr Thompson he was told by Mr Thompson that

Mr Thompson did not indicate the source of this suspicion nor the alleged facts upon which it was based. Mr Markham said that Mr Thompson explained to him that Mr Partlic was in the Clinic.

Officers Markham and Sinclair then left the Deputy's Office and went to the Clinic. They wished to speak to Mr Partlic if he was fit to discuss the matter but found him in no condition to communicate with them at all. They remained at the Clinic for about 2 minutes. At this time Mr Markham heard noise in the Square and looked out to see a disturbance in the vicinity of 3 Wing. It was shortly after 3.00pm. Mr Markham contacted Assistant Superintendent Jones, the Officer-in-charge of the M.E.U.

Mr Jones directed Officers Markham and Sinclair to return to the M.E.U. headquarters at Katingal to stand by in case of a riot in the C.I.P. Officers Markham and Sinclair returned directly to Katingal arriving there at
3.15pm. All M.E.U. officers on duty remained on stand by at Katingal from 3.15 to 4.15pm. During this time the M.E.U. carried out no investigation in relation to the assault on Mr Partlic.

The disturbance in the vicinity of 3 Wing settled down by 3.30pm. The details of this disturbance are set out in the various reports tendered before the Inquiry. There is no doubt that it was a serious situation. A further distraction was caused by a prisoner having a fit in the C.I.P. Square near the Clinic shortly before the end of the 3 Wing disturbance.

**Preservation of the Scene of the Assaults**

At about 3.30 or 3.45pm Mr Crowley visited 6 Wing. He there spoke to Mr Wetzler who was preparing a list of the prisoners housed in the fines yard and possibly a report also as to the incident to give to Mr Thompson. Mr Crowley talked to Mr Wetzler about the incident. Both Mr Crowley and Mr Wetzler became aware that a prisoner was washing down the fines yard. Both were aware that this was improper given that the scene of the incident should be preserved. Neither took any action to stop this occurrence.
This was an unsatisfactory response on the part of both of them. Mr Thompson states that he gave a specific direction to Mr Wetzler to protect the area of the incident. Mr Wetzler disputes that such a direction was given. I accept Mr Thompson's evidence in this respect. Even if Mr Wetzler was accepted as to this, such a direction should not have been necessary.

Mr Wetzler complained further that Mr Thompson should have placed another officer in 6 Wing to supervise the fines yard whilst he, Mr Wetzler, made out his report. The evidence does not suggest that any such request was made by Mr Wetzler on the day.

It appears that Mr Wetzler did not regard it as any part of his duty to stop the prisoner washing away the blood in the fines yard. At this time, of course, he was still the wing officer. He had with him an executive officer. That both of them could remain in the office effectively engaged in a discussion whilst this went on is difficult to understand as apparently neither knew whether the evidence had, at that time, been totally destroyed. Common sense and their own experience called for some action on their part. There was no evidence that any officer directed the washing down of the yard.
It is unfortunate indeed that the disturbance near 3 Wing caused Officers Markham and Sinclair to leave the C.I.P. shortly after 3.00pm. Mr Markham was asked what steps he would have taken if he had continued the investigation in the C.I.P. He replied:

"If I was unable to speak to Partlic, I would have gone straight to the fines yard where the alleged incident happened, and we would have sealed the area off, locked all the prisoners that were milling round back in their cells or wherever we could put them, and seal off the area."

The Response of the Non-commissioned Officers to the Investigation

While Mr Partlic was still at the Clinic that day a number of officers learnt important information concerning the nature of the attack upon him and the identity of his assailant. None of this information was given to M.E.U. officers that day or at all. None of this information was given to the police nor to Mr Thompson or Mr Cook. Indeed none was forthcoming until the Inquiry itself was well underway. This appears to be an illustration of an attitude raised in evidence by Mr Adams Q.C. in cross examination of Officer Ross:
"Q. Would it be fair to say that the general attitude of Prison Officers towards Inquiries is that they do not volunteer, but if they are asked they will say what they know? A. Yes. Their morale is down at the moment.
Q. And it would have been fairly low at the time of this incident as well? A. Very low."

It is regrettable that this attitude towards investigations exists. In the event, the Inquiry benefitted from the evidence of these officers, albeit belatedly.

Having made this observation it is appropriate to return to the evidence of officers in the Clinic. Mr Crowley stated that before the ambulance left with Mr Partlic, an unidentified prison officer near 11 Post mentioned

___________________________ Officer
Rayner said that an unidentified person in the Clinic said words to her ______________________

The evidence of Mr Reynolds has already been referred to. He heard a couple of prisoners say ______________________
Mr Reynolds informed Officer Howard of the information he had received from the prisoners.

Mr Howard stated that Mr Reynolds had informed him that there had been a fight in the fines yard. Mr Reynolds had said and indicated that people in the fines yard were hosing it away. It may well be that Mr Howard is mistaken in relation the hosing away of the blood. It would appear that this did not occur until a later point in the afternoon. There may, however, have been two incidents when fines prisoners on the yard attempted to clean up. It is clear however, that Mr Reynolds gave quite specific information to Mr Howard concerning the nature of the assault on Mr Partlic.

The evidence of Ambulance Officer Matheson is that the ambulance left the C.I.P. at 3.20pm. The various conversations referred to above took place while Mr Partlic was still at the Clinic.
Mr Reynolds had some specific detail as to the nature of the assault and passed this on to Mr Howard. It appears that none of this information was passed on further at that time.

In these circumstances, such information would have been of great assistance to Mr Thompson and the M.E.U. officers.

Additional Problems in the C.I.P. after the Assault

It will be recalled that Assistant Superintendent Jones determined shortly after 3.00pm that the M.E.U. should be on stand by for a possible riot in the C.I.P. At 3.30pm Mr Thompson informed the M.E.U. that there was no need for it to remain on stand by. Apparently, the incident near 3 Wing had subsided by then. Mr Jones said in evidence that he considered it better to stay on stand by and that, on his advice, Mr Ken Horton so
directed at 3.50 pm. Mr Jones took this view because the prisoner population of the C.I.P. was still unsecured and because the lock-in time was close.

Mr Jones stated that he was not aware that the assault was a serious one until 6.00 pm when he was told that Mr Partlic has suffered a brain haemorrhage. However, Officers Markham and Sinclair had attended the C.I.P. at about 3.00 pm and had received certain information directly from Mr Thompson.

It should have been known to the M.E.U. at that time that the assault was sufficiently serious for Mr Partlic to be taken to hospital and for Mr Thompson to have indicated an intention to call in the police. In these circumstances, the decision not to lift the stand by at 3.30 pm, in hindsight, was not the best course of action. Mr John Horton's direction given at 2.20 pm was that witnesses were to be interviewed, police were to be advised

These directions were not complied with.
The Return of the M.E.U.

At 4.20pm M.E.U. Officers attended the C.I.P. for the purpose of breath testing a number of specified prisoners. Mr Jones stated that it was after 4.20pm that one of the executive officers, probably Mr Plunkett, indicated ———— A number of prisoners were breath tested by the M.E.U.

During the late afternoon, M.E.U. officers entered the fines yard to enquire of fine defaulters whether any of them had witnessed the assault. A number of the fines prisoners confirmed this in evidence. At 5.15pm F1 was taken to the Deputy's Office and a handwritten statement was given to Mr Carmady. It would seem that this part of the investigation was carried out properly, F6 observing that "they seemed concerned to ask and to find out if anybody saw anything".
Shortly before 6.00pm, Superintendent Cook was informed that Mr Partlic had suffered a brain haemorrhage. Although not on duty, Mr Cook decided to attend the C.I.P. and he arrived a short time later. He then passed this information on to Mr Carmady who at that time was in the Deputy's Office taking the statement from F1. On the direction of Mr Cook and Mr Jones, Mr Carmady was to interview all possible witnesses.

At about 6.05pm Mr Jones informed Mr Ken Horton of this development. At 6.11pm Mr Jones telephoned the Maroubra Detectives and informed Detective Chris Reilly of the serious assault and requested attendance by police. It seems that Mr John Horton's direction at 2.20pm was completely ignored, this being the first call made to the police on 7 November 1987. At 7.20pm F2 was interviewed by M.E.U. Officers and a statement was taken. It seems the matter was then handed over to the police and the M.E.U. took no further part in the investigation itself.
Arrival of the Police

At 8.15pm two detectives entered the C.I.P. At 9.00pm F3 and F4 were taken to the Deputy's Office to be interviewed by police and statements were taken from them.

The C.S.C. Assault Policy

The procedures of the Corrective Services Commission for investigation of assaults occurring within institutions is set out in an instruction given in January, 1987, by Mr John Horton, the then Acting Director of the
Custodial Services Division. The instruction is entitled "Need for investigation in the event of an Officer or inmate exhibiting signs of an injury" and states, inter alia:

"A Superintendent who becomes aware that an officer or prisoner is exhibiting signs of an injury that could have been inflicted as a result of an assault, irrespective of whether or not a complaint has been made, must ensure that the circumstances of the injury are investigated by a senior officer and a report forwarded to the Assistant Director for the region."

It does not appear that the "circumstances of the injury" to Mr Partlic, F1 and F2 were the subject of an investigation and report in compliance with this instruction. Mr Thompson made an entry in his journal and in the C.I.P. Assault Book. In addition, Mr Jones filed a written report directed to the Superintendent of the C.I.P. together with an Assault Cover Sheet. A volume of information was given to Mr Flynn, the Acting Assistant Director of Custodial Services for the Central Region. This material is set out in his statement and in correspondence between Mr Flynn and Mr John Horton. These documents appear to fall short of full compliance with the instruction.
The enquiries as carried out by Mr Flynn and at his direction appear adequate and reasonable. A matter of concern however, is the record of interview between Mr Flynn and Mr Varvaressos dated 18 November, 1987. Mr Varvaressos admitted in the Inquiry that he had lied to Mr Flynn in this interview. He was aware that the contents of the interview would be made available to the Minister. Quite apart from any breach of discipline that is involved in such action by Mr Varvaressos, it is clear that his false statements misled the investigators and indeed all involved in the Inquiry itself until he purported to set the record straight in late January, 1988.

Conclusion

In conclusion, a number of observations may be made concerning the investigation by prison authorities of the assaults on Mr Partlic, F1 and F2.

The following criticisms may be made of that part of the investigation presided over by Mr Thompson prior to the intervention of the M.E.U.:

1. The failure to seek any account from Mr Varvaressos as to the incident.
2.

3. The failure to inform the M.E.U. at an early stage that the assault prima facie was a serious assault.

4. The failure to question any sentenced prisoner as to any observation that he made of the assault.

5. It may be that there was lack of wisdom in the failure to give clear and unequivocal directions to Mr Wetzler in relation to the securing of the fines yard, the preservation of the crime scene.
6. The failure to notify police as directed by Mr John Horton until 4 hours after the assault.

A number of these criticisms may be unduly harsh in the difficult circumstances that prevailed on the day. Mr Thompson did give directions to Mr Wetzler in relation to the security of the fines yard. He should have been entitled to assume that an officer of Mr Wetzler's long experience would use his own common sense and judgement in determining what should happen in relation to the yard.

The disturbance near 3 Wing at 3.00pm clearly interfered with the course of the investigation which, at that stage, should have been taken up by the M.E.U. Any statement obtained from Mr Varvaressos at that time would likely have been false given his apparent willingness to lie in relation to the incident in his statement of 8 November, 1987 and his records of interview of 18 November, 1987 and 4 December, 1987.
It is not appropriate to criticise Mr Thompson for the failure of his own officers to bring to his attention significant information concerning the manner of the assault and the identity of the assailant. It is also unclear whether Mr Plunkett relayed to Mr Thompson the direction of Mr John Horton to advise the police.

As to that part of the investigation carried out by the M.E.U. the following critical observations can be made:

1. The failure to terminate the stand by at 3.30pm, Mr Thompson having said that it was no longer necessary.

2. The consequential failure to carry out the breath testing of a number of prisoners at an earlier time.

3. The failure to take steps to secure the fines yard and to secure the fines prisoners at an earlier time.
4. The failure to take some steps to try and identify the second prisoner referred to by F1 and F2 in their handwritten statements given that night.

5. The failure to question any sentenced prisoner as to any observation that he made of the assault.

Again it may be that some of these criticisms are too harsh given the course of events in the C.I.P. on 7 November, 1987, and the number of duties the M.E.U. was required to carry out.

Mr Plunkett had failed to notify the M.E.U. of the serious nature of the assault in his initial call at 2.40 pm. It should have been apparent, however, to Officers Markham and Sinclair during their visit at 3.00 pm to the C.I.P. that the assault was serious. The arrival of the police at 8.15 pm meant that, in practice, responsibility for investigation of the assaults passed from the M.E.U. to them from that time.

In fairness, when finally involved, the M.E.U. Officers carried out the breath tests, their questioning of the fines prisoners,
with efficiency. The principal criticism is that these steps should have taken place at an earlier time that day. Clearly, however, the lack of co-ordination and communication between the C.I.P. executive officers and the M.E.U. contributed to the delay in compliance with Mr John Horton's directions.

The multiple roles of the M.E.U. and the location of its headquarters in Katingal are matters requiring comment. Officers Markham and Sinclair attended the C.I.P. before 3pm that day in their role as investigators. They were recalled to Katingal to stand by in their role as members of a riot control squad. The M.E.U. investigation was suspended whilst the unit stood by in case of riot. It may be that the M.E.U., in ordinary circumstances, can discharge both its investigatory and riot control functions. From time to time, simultaneous demands may be placed upon the M.E.U.'s investigatory and riot control functions at the Malabar Complex of Prisons.

It, of course, has other functions as well including cell searching and searching of prisoners and visitors in the visits area. In circumstances such as the present, however, concentration on the riot control
function meant that no investigatory steps were taken in a crucial period and the fines yard and fines prisoners were not secured.

The appropriateness of one unit bearing responsibility for both functions is open to question. Each function is essential for the security, good order, control and management of the C.I.P. and, indeed, the entire Malabar Complex. Specialized skills are required for effective investigation of assaults and other incidents within a prison. The separation of the functions of investigation and riot control would allow greater expertise in investigatory techniques to develop in those officers specializing in that area. As to whether an expanded I.I.U. could take over this function or a new unit would be necessary is a matter for consideration by the appropriate authorities. The minimum requirement is that the M.E.U. be sufficiently staffed to meet simultaneous demands upon its emergency response and investigatory functions in the event it retains responsibility for both.
Although the investigatory role of the M.E.U. was acknowledged in evidence, it should be noted that the Corporate Plan of the Department of Corrective Services, 1986-1991 (pp.34-35) ascribes no such function to the Special Response Units, of which the M.E.U. is one.

The second matter is the location of the M.E.U. headquarters at Katingal in the Malabar Complex. That facility, of course, is separate from each of the prisons in use within the Malabar Complex. It is some distance from the C.I.P. M.E.U. officers remained on standby at Katingal during the relevant period on 7 November, 1987, although the emergency was in the C.I.P. It was not the practice to have M.E.U. officers enter the prison experiencing the emergency and stand by there. Should prisoners sight M.E.U. officers entering the prison during a disturbance, this apparently compounds an already volatile situation. The difficulty with this practice, however, is that the M.E.U. is distant from the scene of the emergency. Some delay in response is inevitable if assistance is required.

In addition, no investigation in a prison can be carried out if the entire unit is required to stand by at Katingal. If the M.E.U. is relieved of its investigatory function, the difficulty in this regard
may be resolved. The practical difficulties flowing from the location of the M.E.U. at Katingal require consideration.

As to the third stage of the investigation that is that carried out by the prison authorities after 7 November, 1987, the principal criticism would seem to be the absence of a specific report of the type required under the Commission Policy. In fairness, however, it cannot be said that the absence of such a report in any way compromised the investigation into the incident.

It may be that the appointment of this Inquiry on 19 November, 1987 led the relevant prison authorities to determine that there was little purpose in official departmental reports. The whole incident was to be the subject of a full judicial Inquiry. The concern arising from this stage of the investigation in no way reflects upon the quality of the investigators. It arises from the false statements made by Mr Varvaressos on 18 November, 1987. Clearly the investigators had no control over conduct of that sort.
PART VII

Chapter 20

Recommendations

Publication of the Report

1. The complete Report should not be published or made public until the completion of all criminal proceedings arising out of the assaults upon Jamie Christopher Partlic, F1 and F2. This Recommendation does not apply to the edited Report.

Criminal Proceedings

2. Criminal prosecutions have been initiated with respect to the assault upon Jamie Christopher Partlic. In these circumstances, no recommendation is required.

3. The complete Report of the Inquiry should be referred to the Commissioner of Police for consideration to be given to the question of criminal prosecutions with respect to the assaults upon F1 and F2.
Disciplinary Proceedings

4. Disciplinary proceedings under the Public Service Act, 1979, as amended should be instituted against Raymond Edward Wetzler with respect to the findings concerning his actions contained in the Report.

5. Disciplinary proceedings under the Public Service Act, 1979, as amended should be instituted against Emile Varvaressos with respect to the findings concerning his actions contained in the Report.

Conditions of Imprisonment of Fine Defaulters

6. The Prison Regulations, 1968, should be amended to include a class of prisoners entitled "fine default prisoners" in Regulation 10. The Regulations should make specific provision with respect to the conditions of imprisonment of fine default prisoners.

7. Fine default prisoners should be housed in low security prisons where work is available. They should be required to work whilst in prison. If
fine default prisoners are detained at the Malabar Complex of Prisons they should not be housed in the C.I.P.

8. Subject to the following exceptions, fine default prisoners should be housed in a separate part of each prison in which they are detained. A fine default prisoner who has received a sentence of imprisonment for an offence of violence within 5 years of the commencement of the period of default imprisonment shall not be detained in the separate area of prison set aside for fine default prisoners. A sentenced prisoner or a prisoner remanded in custody who is concurrently serving a term of imprisonment in default of payment of fines shall not be detained in the fine default area.

9. In the event that fine default prisoners continue temporarily to be imprisoned in the Fine Defaulters Yard at the C.I.P., the following steps should be taken immediately:

(a) 6 Wing should cease to be the Reception Wing;

(b) no sentenced prisoner should reside in the fines yard;
(c) no sentenced prisoner should be permitted to enter the fines yard for work purposes, unless under constant escort;

(d) no visits by sentenced prisoners should be permitted to the fines yard and a sign should be erected above the fines yard grille gate to this effect;

(e) the laundry store room for the C.I.P. should be removed from the fines yard and no other C.I.P. facility should be located in the yard;

(f) a written Local Order should be made concerning use of the fines yard grille door;

(g) the grille door should be locked at all times except when opened for the purpose of entry to and exit from the yard;

(h) the fines yard office is to be re-located or altered to give vision of the yard to an officer on duty in the office;
(i) a permanent officer should be posted with responsibility for supervision of the fines yard, the fines yard Office and fine default prisoners;

(j) an experienced officer should be assigned to perform the duties referred to in (i) above; it is not to be a training position;

(k) the Local Order in (f) and the statement of duties for the post in (i) above should be affixed to the wall of the fines yard office;

(l) there should be a notice placed on the grille door to the effect of (g) above.

10. Should a different area of the C.I.P. be used to house fine default prisoners, the steps required in Recommendation 9 apply to that area.

_Structural Change to the C.I.P._

11. Alterations should be made to the C.I.P. Square area so that officers and prisoners are separated by fence or other appropriate partition. The alterations should provide for a design whereby the
wings do not open directly onto the Square or the open area or areas incorporated in the redesigned Square.

12. Consideration should be given to use of part of the C.I.P. Square for a building or buildings in which prisoners can carry out work. In this context, regard should be had to:

   (a) any security problems which may be created by erection of buildings in the Square (bearing in mind that buildings were there until the 1970's);

   (b) the need for adequate exercise areas for prisoners.

   (c) a re-examination of the use, structure and management of the Square.

Information Concerning Prison Procedures

13. All officers should be issued with a copy of the current Prison Rules or the Regulations which will take their place pursuant to the Prisons (Further Amendment) Act, 1986.
14. The Commission or Departmental assault policy should be formalised and incorporated in the Prison Regulations.

15. Written detailed Statements of Duties should continue to be prepared for each commissioned officer in the C.I.P. and for each post manned by a non-commissioned officer. The Statements of Duties should be easily accessible to each officer, should be kept up to date and any change in duties or movement of posts should be incorporated in the written Statements. Informal oral re-arrangements of post duties should be prohibited by Local Order.

16. (a) All officers taking up duties at the C.I.P. must be made aware of all Local Orders applicable to the C.I.P. by provision of copies of Local Orders then current.

(b) All officers performing duties at the C.I.P. must be made aware of new and amended Local Orders applicable to the C.I.P. by provision of copies of the new or amended Local Orders.
Conduct outside Prison

17. (a) Where a person is to be detained in prison after charge, through refusal of bail or inability to meet the terms of bail granted, a copy of the short statement of facts prepared by police for the purpose of the court appearance should accompany the warrant of commitment to the prison where the person is to be detained. The short statement of facts is to be placed on the prison file and taken into account by prison authorities in placement and employment decisions keeping firmly in mind that the statement represents bare allegations only and not proven facts.

(b) Where a person pleads guilty and is sentenced to a term of imprisonment by a Court, a copy of the statement of facts presented on the plea should accompany the warrant of commitment to the prison where the person is to be detained. The statement of facts is to be placed on the prison, classification and parole files and is to be taken into account.
by prison authorities in placement and employment decisions. Where the person is sentenced by the Supreme or District Court, a copy of the sentencing Judge's remarks on sentence should be placed on the abovementioned files as soon as available and be taken into account in the same manner as the statement of facts.

(c) Where a person pleads not guilty and is sentenced to a term of imprisonment following conviction at trial in the Supreme or District Court, a copy of the sentencing Judge's remarks on sentence should be placed on the files referred to in Recommendation 17(b) as soon as available and be taken into account by the prison authorities in placement and employment decisions.

(d) A copy of the person's criminal record should accompany the warrant of commitment in the circumstances referred to in Recommendations 17(a) to (c) and be placed and used in the same manner.
(e) A copy of any pre-sentence report prepared by the Probation and Parole Service and any police antecedents report should accompany the warrant of commitment in the circumstances referred to in Recommendations 17(b) and (c) and be placed and used in the same way.

(f) Action to bring on line the police computer within the Department of Corrective Services should proceed. Information stored on that computer concerning prisoners should be taken into account by the prison authorities in placement and employment decisions. Should the information include police intelligence not involving findings by courts, it should be borne in mind that such information constitutes allegations only and not proven facts.

Conduct inside Prison

18. Where a prisoner is held on remand in a prison prior to sentence ("the remand prison") and is sentenced to a term of imprisonment and received in the C.I.P. or some other prison ("the receiving prison"), a short report should be provided by the
authorities at the remand prison for use by the receiving prison as to the prisoner's conduct and employment at the remand prison. Such reports should be used in placement and employment decisions by the prison authorities.

19. Consideration should be given to introduction of the procedure referred to in Recommendation 18 with respect to all transfers of prisoners, including transfers of sentenced prisoners, from one prison to another.

20. A system of recording incidents of prisoner misconduct in and in the vicinity of prison Clinics should be devised. A book or diary should be located in each Clinic for this purpose and entries should be made by officers on duty there or Clinic staff. If necessary to implement such a system, the Prisons Act and the Prison Regulations should be amended to require the recording of incidents of misconduct. The system should require a commissioned officer to examine the book or diary on a daily basis for the purpose of ensuring that commissioned officers are properly aware of the special characteristics of prisoners who may be a security risk.
21. An officer making an entry in a wing diary, search register, central register or other record noting prisoner misconduct must indicate the time of observation of a prisoner or search of a cell or other place and the time when the entry is made and signed.

22. (a) A wing diary should be located in each wing of the C.I.P. Officers should be required to make a written record of incidents of prisoner misconduct in the diary. Observations, inter alia, of prisoners apparently affected by alcohol or drugs should be noted in the diary, in addition to breath testing, urine testing and other disciplinary action taken.

(b) The wing diary referred to in Recommendation 22(a) should be inspected daily by a commissioned officer. It should be his duty to enter particulars of the wing diary entries in a central register for the C.I.P. If practicable, there should be a central index under the name and number of the prisoner referring to the central register entry. This
may be done automatically upon introduction of a computerised records system when the central register entry is made.

General

23. Urgent steps must be taken to determine the feasibility of a computerized central filing and records system within the Department in accordance with Recommendation 231 of the Royal Commission into N.S.W. Prisons.

24. Recommendations 17(a) to (e), and 18 should be implemented forthwith and immediate consideration given to the steps raised in Recommendation 19. The continued implementation of these Recommendations may be further considered following action under Recommendation 23. All information referred to in Recommendations 17(a) to (e), 18 and 19 should continue to be available following introduction of a computerized central filing and records system.
25. Further implementation of Recommendation 131 of the Royal Commission into N.S.W. Prisons with respect to cell decorations and contents should give full consideration to the problems of security and cell searching which have since been demonstrated.

26. Full steps should be taken in all cases by the officer or officers who find contraband to investigate and produce evidence to prove the possession of contraband in cells.

27. (a) Daily cell searching in the C.I.P. should be performed by officers other than the wing officer and wing assistant. This task should be carried out by the M.E.U. or such other unit as may bear responsibility for searching following consideration of Recommendations 45 and 46.

(b) The practice of searching at least 6 cells in each wing daily selected on a random basis should continue.
(c) Consideration should be given to a weekly search of all cells in a randomly selected wing in the prison.

(d) These searches should be carried out under the supervision of a commissioned officer, who should satisfy himself and record that the search has taken place.

28. Steps taken to rigidly control diet to eliminate possible substances for fermentation should be continued. (Since evidence was completed, recent publicity indicates that further appropriate action has been taken).

29. The use of telephone disinfectant, window cleaner and any other alcohol-based cleaning fluids in the prison should cease forthwith.

30. Containers capable of use for the manufacture and storage of fermented substances should be removed from the C.I.P.

31. All officers should be made aware of the following matters concerning consumption of alcohol or drugs by prisoners:
(a) a breath testing certificate (Regulations 100J and 100M) or urine sampling certificate (Regulations 100L and 100N) is not the only method of proof that a prisoner has consumed alcohol (Regulation 100I) or used a drug (Regulation 100K) contrary to the Prison Regulations;

(b) officers may give evidence of observation of a prisoner's speech, reactions, demeanour, motor coordination, appearance and smell which indicate consumption of alcohol or use of a drug;

(c) it is not an element of the offences under Regulations 100I and 100K that a prisoner be actually under the influence of alcohol or a drug - mere consumption of alcohol or use of a drug constitutes the offence;

(d) in the absence of evidence of breath testing or urine sampling, however, observations indicating that a prisoner is under the influence of alcohol or a drug are admissible as evidence in proceedings for offences under Regulation 100I and 100K;
(e) the analogy may be drawn with prosecution of a person for driving under the influence of alcohol or a drug contrary to S.5(2), Motor Traffic Act, 1909, as amended, where evidence of observation is clearly admissible.

32. The matters referred to in Recommendation 31 herein should be incorporated in the training programme for all officers.

33. Prisoners undergoing punishment by way of confinement to the cell for a disciplinary offence should not share that cell with any other prisoner.

**Mobility of Prisoners and Wing Visits**

34. No prisoner should be allowed to enter a wing in which he does not reside unless he enters to perform maintenance work and is under prison officer supervision while such work is carried out.

35. The Superintendent's Local Order of 12 January 1988, permitting wing visits by non-resident prisoners at the discretion of the wing officer should be withdrawn. A Regulation, Rule or Local Order should issue in terms of Recommendation 34.
36. Subject to employment and visiting arrangements, all prisoners in the C.I.P. should be locked in their cells for a period commencing at 11.30am while lunch is served and eaten. This period should be used for breath testing and urine testing purposes, for searching those parts of the prison to which prisoners have had access during the morning and for other security purposes. The introduction of this lock-in should not exclude these activities being carried out at other times.

37. Prisoner identification cards should be carried by prisoners at all times and should be designed to be attached to clothing. Prisoners out of their wing must wear the card on their external clothing at all times. The card should carry the prisoner’s photograph and indicate the prisoner’s name, wing number and any work position he may hold.

38. Consideration should be given to the appropriateness of prisoners being allowed to return to their own wing during let-go hours. Difficulty in observation and effective supervision of prisoners by officers in the wing should be taken into account in this respect. If return to
the wing is permitted, prisoners may be required to leave the wing at any time to permit searching or for any other purpose.

39. It is necessary that all avenues to enable the securing of a prisoner in the Square be examined and, if practicable, implemented. See also Recommendations 11 and 12.

The Emergency Alarm System

40. The C.I.P. emergency alarm system must be emphasised as an integral and important part of the prison security system. To this end:

(a) urgent consideration should be given to replacing or supplementing the current emergency alarm system with a portable radio telephone system;

(b) should the current system remain in use, full and complete consultation should take place as a matter of urgency with O.P.S.M. to resolve difficulties in operation of the system;
(c) should the current system remain in use, all action recommended by O.P.S.M. with respect to the present system should be implemented forthwith;

(d) instructions concerning use of the present system and any new system should be reduced to writing and made available to officers within the C.I.P.;

(e) all officers should receive thorough training as to use of the present system and any new system including specific reference to emergency situations where use may be considered or required;

(f) an effective system for recording the daily issue and return of portable radios and emergency alarm activators should be devised and it should be a breach of discipline by officers to fail to record correctly this information;
(g) the radio telephone system and alarm system when activated should sound at a point in the prison where appropriate officers will be available to respond to the emergency.

Appointment of Prisoners to Work Positions

41. (a) An additional commissioned officer and additional non-commissioned officers, as necessary, should be appointed in the C.I.P. with responsibility for examination of prison records for the purpose of placement and employment decisions. Consideration should be given to this commissioned officer being directly responsible to the Superintendent for his duties.

(b) No appointment of a prisoner to a work position, including sweeper, should be made without approval of the additional commissioned officer given after consideration of records with respect to the prisoner.
(c) A wing officer must make a recommendation with respect to sweeper appointments but the decision to appoint is to be made by the additional commissioned officer.

(d) A principal purpose for Recommendation 22 is to provide reliable and up to date information on computer for use in placement and employment decisions.

42. Should prisoner workers, including sweepers, be eligible for any additional privileges by reason of that employment, the privileges should be reduced to writing and all officers made aware of the practice.

43. The additional commissioned officer appointed pursuant to Recommendation 41(a) should be required to examine computer or documentary records of prisoner misconduct on a weekly basis to determine whether the employment of any prisoner should be reviewed.

44. The procedure for obtaining a workhold for a prisoner must be set out in writing and adhered to in each case.
45. Consideration should be given to separating the emergency response and investigatory functions presently vested in the M.E.U. Officers fulfilling these functions will be required to perform the following tasks:

(a) response to emergency calls and alarms from prisons within the Malabar Complex;

(b) daily searching of a specified number of randomly selected cells in each wing of the C.I.P.;

(c) possible weekly searching of an entire wing and adjoining yard in the C.I.P. randomly selected;

(d) isolation of prisoners for breath testing and urine testing during the 11.30am lock-in, at the 4.30pm lock-in and at other times when necessary;
(e) investigation of assaults by prisoners upon prison officers and prisoners in particular identifying, isolating and containing the alleged assailant, securing the scene of the assault, protecting material evidence from destruction, securing prisoner witnesses and providing protection where sought;

(f) assisting police as required when police are called in to investigate;

(g) where police are not called in for that purpose, the taking of statements from both prison officer and prisoner witnesses.

46. In the event that the M.E.U. retains responsibility for all tasks set out in Recommendation 45, the staff level of the M.E.U. must be increased to ensure that sufficient officers are on duty at any one time to meet simultaneous demands upon the emergency response and investigatory functions.
47. (a) The emergency response group should not be located at Katingal. The headquarters of the group should be more centrally located in the Malabar Complex with ready access to each of the prisons.

(b) Consideration should be given to the installation of an internal television monitoring system in the Square and the yards in the C.I.P. This system should be available to the M.E.U.

48. The requirement that the scene of an assault or crime must be kept intact should be incorporated in Prison Regulations or Rules, a breach of which should be subject to disciplinary proceedings.

49. So far as practicable, prisoners in the vicinity of a serious assault should be placed in a separate area of the prison and separated from each other pending the arrival of investigating officers.

Staff and Training Issues

50. In recognition of the special difficulties of the C.I.P. as a maximum security prison:
(a) the authorized staff level of the prison should be maintained at all times;

(b) the prison should be staffed by a high proportion of experienced officers.

(c) the prison may play some part in training, but should not be staffed by a high ratio of probationary officers under one year's service.

51. These Recommendations suggest that a number of additional duties be carried out by commissioned and non-commissioned officers within the C.I.P. These tasks are essential to the security, good order, control and management of the C.I.P. Implementation of Recommendation 50 will see more experienced officers staffing the prison. If the duties here recommended cannot reasonably be carried out by experienced officers at the existing staff level, consideration should be given to increasing the authorized staff level of the C.I.P.

52. The training course for all prison officers is to include instruction in meeting emergency situations including assaults by prisoners upon prison
officers and prisoners. Emphasis should be given to different types of emergency which may confront an officer in the prison setting. Training in this respect should be given by officers with extensive practical experience in prisons.

53. All officers taking up duties at the C.I.P. should receive additional training as to the special problems that may give rise to emergencies in that prison. The training should include reference to locations of special concern, the identity of controversial or dangerous prisoners, practical examples of emergencies that have or may arise and the best methods for dealing with them.

54. The selection of non-commissioned officers to relieve in more senior security posts within the prison should be based upon ability, reliability and initiative of officers and not mere length of service. Applying these criteria, a list of officers with the appropriate qualities should be prepared and maintained for use when a relieving officer is required to fill a security post, including wing officer, within the prison.
Chapter 21

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The only thing that remains to be said is that this Inquiry could not have been conducted or completed without the dedicated and efficient efforts of the secretarial, clerical and security staff, Misses...
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