INQUIRY INTO PRISONER SECURITY CLASSIFICATION IN THE
DEPARTMENT OF CORRECTIVE SERVICES

FINAL REPORT

His Honour T. J. Martin, Q.C.
a retired judge of the
District Court.

July 1987
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CHAPTER 1 - INTRODUCTION

A. Terms of Reference and Interim Report

In February 1986 following the sexual assault and murder of a young woman in Sydney's western region in which Michael Patrick Murphy, an escapee, was allegedly involved, the then Premier announced the Government's intention that there should be an enquiry into the Prisoner Classification System in the Department of Corrective Services. In his letter of 4th March, 1986, the then Premier, the Hon. N. K. Wran, Q.C., M.P., communicated to me the following terms of reference:

1. To enquire into and report on the circumstances surrounding the classification of Michael Patrick Murphy as a C2 prisoner resulting in his incarceration in a minimum security prison.

2. To enquire into and report on the operation of the present system for the classification of prisoners.

3. To make such recommendations as you think fit in relation to the procedures used, criteria adopted, or any other matters concerning the classification of prisoners.

As I was made aware that an urgent report was required in respect of the first term of reference I made it the subject of an interim report in April, 1986. In making that investigation and report on the desired urgent basis I considered that what was required of me and what it was proper to do was to enquire and report on that matter on the basis of accepting the Classification System as it was at the time of the classification of Murphy and as it was ordinarily working at that time. Having now concluded my enquiry into the second term of reference and my recommendations in response to the third, I do not wish as a result of them to alter or add to that report.

B. The Issues Raised by the 2nd and 3rd Terms of Reference

I took the view that the second and third terms of reference required me in reporting on the Classification System generally, to take account of what happened in the case of Murphy and consider whether it, in the light of whatever other matters I found in my subsequent investigations, indicated any necessary changes in the Classification System. However, I did not regard myself as limited to an enquiry into aspects of that system which were directly relevant to the Murphy escape. Classification is a vital part of prison management, of the greatest importance both to the community and to the prisoner, and I thought that the separate existence of Clauses 2 and 3 of the terms of reference required me to look, so far as practicable, into all aspects of the Classification System.
If that view were taken at its widest, it could be held to require me to enquire not only into the objects and hence the bases of classification but also into the techniques of classification and the question who should carry them out. As to the objects and bases I came to the view that I should enquire into them, since the Department's practices in classifying went beyond the limited aspects covered by regulations on the subject. As will appear, I am of the opinion that the Department is right in going beyond such limited aspects and in propounding and trying to put into practice the view that there are two branches of classification, the security branch and the developmental programming one.

Basic to my conclusions and recommendations is my view that a penal system which merely locks prisoners up and makes no attempt to assist whatever potential they have for improvement is not in the best interests of any society, and certainly not one which seeks a humane system of justice. That view is based on my own acceptance of the various doctrines of the Nagle Report, springing from my own experience and study. Those doctrines in turn were based on Mr. Justice Nagle's own beliefs and his view of what he regarded as the consensus of the best modern criminologists.

The question of techniques is more complex. On taking up my task I found that the Department had, before the escape of Murphy, itself instituted an enquiry into this matter by four (4) of its experienced officers constituting a Policy Unit. This unit has recommended a complete change in the technique of classification in its security aspects, but the Commission has made no final determination in respect of this. I came to the conclusion that in view of the nature of my enquiry and in view of that fact that the Department has at present a well established technique of classifying which works reasonably well, that I should leave it to the Department itself, with its expertise, to debate and in due course decide whether this change should be made. I shall discuss this matter later. I have however considered other aspects of the techniques of classification where I thought it necessary.

Again on the question of who should do the classifying, a submission was made to me by two (2) Departmental officers for certain important changes in this area. I shall deal with these also later, but here again it appears to me that where the system is working reasonably satisfactorily, it is preferable that I should leave this submission also to be debated in due course in the Commission. However I have considered other aspects of the question who should classify where I thought appropriate.

Thus the task that I have principally essayed, is, accepting the present system as one which is working and has been working for some time, and which has objectives with which I am in general agreement, to seek any defects in its working and to make recommendations for improvement.

This does not mean that I am approving the aspects of the present system for perpetual use into the indefinite future, and I am not to be taken as opposing or recommending against any basic or other change in future should the Department so decide. The same view should be taken of my own recommendations for change. Criminology and penology are fairly new and rapidly developing studies. There have been immense changes in the practices of imprisonment in New South Wales in living memory. Annexure H to the Nagle Report contains an interesting history. Parole, periodic detention, work release and community service orders all commenced in the last quarter of a century. It would be foolish for me to attempt to lay down unchangeable rules for the future.
I did not in general extend my inquiry into the results of the Classification System. To do so in any depth would have required for greater resources and time than were available to me. Indeed with the greater resources and time available to a number of institutions and persons, not much research appears to have been done into the results of the working of classification systems in Australia. The valuable study by Aitken and Gartrell of the management of life sentence prisoners in New South Wales was necessarily limited to a fairly small number of prisoners over a rather short period. It was made possible by reports from a large number of Probation and Parole Officers. A constant difficulty in the sociological field is the impossibility in many areas of arranging control studies. Biles in 1978 made a thorough report on the Victorian security classification system which did not venture into this further area.

On the security side of classification, an obvious field of inquiry into the results of a classification operation is the statistics of escapes and, if available, the consequences of them. In this area I have noted details of escapes in the Commission's annual reports. I have read the useful paper on escapes produced by the Research Branch of the Commission. I have seen the weekly reports furnished by the Commission to the Minister of escapes, recaptures and punishments for the escapes. I have inquired into certain particular cases in them which appeared to require further study. Finally, I have thoroughly studied the case of Michael Patrick Murphy which was the immediate cause for my inquiry.

Those sources of enquiry, however, are only pointers to whether security classifications were or were not too low. There is also the possibility that security classifications may be too high and that this may have bad results in causing prisoners to leave prison worse than they were when they came in, with bad consequences for society. An investigation into such results would not have been practicable for me.

On the developmental programming side of classification, it was not practicable for me to study the results of the various programmes, educational, work, vocational, psychological, social and welfare. Quite apart from the results, I did not consider it necessary to attempt to watch any of the various programmes being put into operation. I noted the educational results published in the Commission's annual reports attained by the comparatively limited number of prisoners pursuing studies in external courses. I attended meetings at the Special Care Unit Malabar and the Drug and Alcohol Unit Parklea. They are in the nature of therapeutic communities. They appeared to me as a lay-person, wholly admirable, and it would be surprising if they did not have some good results for the limited number of prisoners who participate in them. One hopes that there can eventually be more of them.

C. The Method of my Enquiry

My enquiry was intended to be in its nature a private enquiry conducted by me personally, and without assisting investigators or researchers. There were no public sittings or hearings. No counsel was appointed to present evidence and assist the enquiry. There was no formal taking of evidence or examination or cross-examination of witnesses by lawyers. The Minister for Corrective Services arranged for me to have the services, when required, of a liaison officer and a secretary. The former arranged for my entry to gaols, access to files and the like; the latter typed correspondence, a problems paper and reports. The Attorney-General provided the services of an experienced member of his staff as secretary to the enquiry when required. I
called on him mainly for secretarial assistance in the initial stages and certain advice at other times. In a sense, every officer of the Commission whom I approached, including the Chairman and the previous Deputy Chairman and his successor, the Minister himself and every member of his staff whom I approached, were assisting workers. I questioned many of them and a number of them on many occasions. All gave me freely and fully the information I sought. I was given full and free access to such files of the Minister and the Commission as I sought. I never observed the slightest suggestion of obstruction or resentment. I learned much from them.

In view of the nature of the inquiry it would have been both unfair and unwise for me to suggest changes in present procedures based on criticisms of those procedures without first submitting what I had in mind tentatively to the Minister and the Chairman of the Commission. Accordingly, with the assent of the present Premier, the Hon. B. J. Unsworth, M.P., I submitted to the Minister and the Chairman a paper setting out my tentative views as to problems arising out of my enquiry with tentative suggestions as to how they should be dealt with. To this paper, in due course, I received a frank and helpful reply from the Commission through the Minister with an indication from the Minister of his endorsement of the reply.

As noted in my interim report I caused newspaper advertisements to be inserted inviting submissions. I received a number, mainly from Officers of the Department and from prisoners and a few from members of the public. I interviewed all of the officers who made submissions and all of the prisoners whom I was able to locate by the time I was available to interview them.

I visited a number of gaols and inspected the important programmes mentioned above and also the Case Management Review Team Programme at Emu Plains Training Centre. I met with the Implementation Committee of the Women in Prison Task Force concerning the classification of female prisoners. I inspected the orientation or Access Programme at the Central Industrial Prison, Malabar.

I interviewed a large number of Officers of the Classification Division and other divisions and branches, some of them on many occasions. I attended two meetings of the Classification Committee and three of the Malabar Reception Committee and, by gracious permission of the Boards concerned, a meeting of the Release on Licence Board, several meetings of its sub-committees, and two meetings of the Parole Board when matters relevant to Classification were dealt with. I participated in three seminars of departmental officers on subjects relevant to classification.

I studied a number of the Commission's files, its circulars, a manual commenced by the Classification Division before my appointment and produced first in draft and later in published form, the reports of various committees of the Department and papers published and unpublished of its Research Division. I read a large part of the Nagle Report and also the report of Judge Muir concerning the various forms of leave from prison which involved a study of classification methods. I read a number of works, both local and overseas, in particular a number from the United States, concerning prisons and especially the classification of prisoners. These included the Standard Minimum Rules for the treatment of prisoners published by the United Nations, the two Australian drafts based thereon and the United States Standards for Adult Correctional Institutions published by the American Correctional Association.
I have drawn on my experience as a Barrister actively engaged for a number of years in both the prosecution and defence of persons charged with crime, as a Judge of the District Court necessarily dealing with a large number of criminal cases, and as one, who over the years, had endeavoured to acquire knowledge through reading and attending seminars on criminology and penology.

Before the escape of Murphy the Department had commenced preparations for an enquiry by its Research Division involving the evaluation of the work of the Programme Review Committees. These are committees in the various gaols entrusted with the task of making recommendations as to the review of classifications both as to security and to programmes of prisoners in their gaols. The work of those committees necessarily was the subject of quite a large part of my own enquiry and it therefore became obvious that the enquiry of the Division would cover the same field as an important part of my enquiry. The three persons employed for the task by the Division were engaged in it for the greater part of 1986 and they were able to conduct it in a much more thorough way than I would have been able to do. They prepared questionnaires and obtained answers to them by both members of the Programme Review Committees and by the prisoners who had been reviewed by them. On the basis of these they made certain tentative conclusions of fact and tentative recommendations which were placed before a seminar involving about 30 other members of the Commission, which I attended by invitation. The Head of the Research Division, Mr. Don Porritt, has graciously permitted me to see, in draft, the final recommendations which are at the time of writing being prepared under his supervision for the Commission.

It appeared to me that in view of that enquiry, it might be possible for me to limit that part of my own enquiry dealing with Programme Review Committees. However, I did attend six different meetings of such committees at six different gaols. As a result of those meetings and perusals of files I formed certain views as to the need for improving some aspects of the work of the committees. Various Committee members seemed to lack an adequate knowledge of the principles of classification, of what was required of them. My views were based on observations of a limited number of committees and of files. The Research Division's enquiry covered almost all committees and had the assistance of answers to questionnaires. It was a great help to me in confirming my tentative views. I found myself in general agreement with the various final findings and recommendations of the Research Division as I saw them in draft.

However, I take full responsibility for my conclusions and recommendations as set out in this report. The recommendations in it are all that I wish to make. In making my recommendation in the area mentioned above I have, however, referred to the recommendation of the Division which I saw in draft.

D. Some Cautions about Recommendations

I noted above a caution as to the permanency of recommendations. In this section I caution about the effect of recommendations on a complex system and about the effect of lack of resources on recommended changes.

The Nagle Report marked great changes. It covered most, if not all, aspects of the Prison System. It dealt not only with technique and practices but also with the basic principles and purposes of imprisonment for a modern society claiming to be both rational and humane. Classification was the subject of Chapter 18 covering 10 pages. The whole report consisted of 38
chapters and 393 pages. It laid down a new system of classification which has since basically been adopted. Details have been filled out and it has necessarily been expanded.

This report is quite different. It is largely a detailed analysis of what was a small area of that great report. It does try to expand what that Report said of classification, by showing more fully the two sides of classification, not only security but also needs programming. But apart from that it is concerned principally with the techniques and the practices. Its recommendations are mainly about details of those techniques. A prison system in a modern society must have great complexities. Its administration must be very difficult. A change of techniques in one area often comes up against impossibilities and dire consequences in another area. Persons of great experience and understanding have shown me how this has happened in the past. In the course of my enquiry I have learnt a lot about the existing system. But my knowledge is small when compared to that of persons who have spent a life time in it. I have tried to test the possible effect of any recommendation not only by the Problems Paper which I submitted to the Commission and the Minister, but also from many and persistent enquiries of various officers of the Commission.

Some of my recommendations I regard as essential for improvement. They are an improved supply of facts about the crime and the prisoner for committees; prompt follow up of recommendations in gaols of placement; a thorough expounding of principles for committee members; and a real attempt at needs programming for short-term prisoners. Those of my recommendations which concern techniques and practices I would see as recommendations for the consideration of those who have much longer and more thorough knowledge of the complexities of the prison system than I.

On discussing many of my tentative suggestions with officers of the Commission, I have often been told that although they might well be desirable, it was most unlikely that resources would permit them to be carried out. Similarly in its reply to my Problems Paper the Commission, on various occasions, pointed to shortage of resources as a difficulty in the face of some suggested improvements. The Commission is obviously short of some resources. It is short of additional gaols and additional people to run them. I know that various members of its staff have added to their own work loads for the purpose of improving parts of the Commission's work in which they are involved. I have taken the view that it would be foolish for me to suggest improvements which could only be achieved by additional resources which it would be quite unreasonable to expect would ever come to the Commission. I am well aware that if the prevailing views as to the state of our economy persist, it is more likely that the Commission will have reduced rather than increased resources in future. Nevertheless I have considered that I should not refrain from making recommendations which could be achieved with such additional resources as it is reasonable to expect having regard to their importance.

E. Outdated Regulations

In a number of instances in this report I draw attention to the fact that the Commission's current practices in classification are in some respects not in accordance with the Regulations under the Prisons Act. This is not a matter for surprise. Nor is it a matter for criticism of the Commission. The administration of prisons is, I repeat, a difficult and complex task. It is also a changing and developing one. If the difference between the practice and the regulations were retrograde, it would be a matter for criticism. But
they are not. They are either progressive changes or sensible and often necessary practical variations. It is not surprising that administrators without lawyers at their elbow should make changes and variations in practice without thinking of the need to revise the regulations. Nevertheless it is in the interests of the Commission to revise them.

F. Gender Distinctions

Since only 5% of prisoners are females, papers such as this tend to be written mainly from a consideration of factors which apply to males but not to females. The Women in Prison Report made in 1985 by a Task Force appointed by the Minister drew attention (page 240) to what it regarded as defects in an earlier report in this respect. In my Report Chapter 12 deals specifically with classification of women. It will be found that the rest of the Report is largely written with classification as applied to males in mind, without specifically considering how the materials would be affected if females were the subject. I hope that any such defect is remedied in Chapter 12.
CHAPTER 2 - THE RELEVANCE OF PENOLOGY

A. Crime and Criminals

Anyone who has anything to do with criminal justice must be struck by the obvious fact that crime is very largely an activity of males between the ages of about 16 to 30. The statistics bear this out. There were 3907 males and 208 females in prison in New South Wales at the 1985 census. 2479 males were under 30 years.

An important connected fact is the observation of those who deal with criminals that their outlook and habits often change with increasing maturity. It is also observed that marriage and development of a family also tend to turn younger people away from criminal activity. Only 28% of prisoners in the 1985 census were married legally or de facto.

Another striking fact is that the majority of those who come before the criminal courts belong to the lower economic classes. In 1974 the New South Wales Bureau of Crime Statistics and Research took a random sample of 1000 prisoners and found that 66.8% of them were unskilled workers as compared with 20.4% of unskilled in society.

A majority of crimes are not of a violent kind and a majority of criminals in gaol are not of a violent nature, although some who were not originally convicted of violent crimes may become violent as a result of imprisonment and experiences in prison. Indeed the crime thought of as the most violent, namely murder, is commonly committed within families, often under various stresses and many murderers have not been previously convicted of violent crimes.

Statistics show that the majority of crimes are those against property, disturbing indeed to the victims, but not ordinarily accompanied by violence or committed by violent persons, such as burglary, car stealing and fraud.

A high percentage of criminals coming before the courts are illiterates, unemployed, weak and indeed disturbed people. Not a few, and they cause the greatest difficulty for the courts, are actually retarded.

It is also true that a number of persons in gaol have committed crimes of violence, and a number are of a violent disposition. Some, a comparatively limited number, are psychopaths. Increasingly also, in recent years large numbers are in gaol because of drug related crimes. Many of them have engaged in the various forms of violent or armed robbery in order to pay for drugs to support their habit.

However it is an error, sometimes fostered by media headlines to think of all persons who are imprisoned as a group who present not only the constant danger of escape, but also as likely if they do escape, to commit acts of physical violence. As the Nagle Report says (p.214):- "Dangerous prisoners are a very small proportion of the prison community".

B. Imprisonment as a Punishment

Imprisonment is a cruel and destructive form of punishment. That is why the 7th Nagle Recommendation says that imprisonment should be a last resort and that the loss of liberty should be the extent of the punishment so that a
prisoner should be treated humanely. The 1974 Report of the McClemons Working Party said the same thing and it is a common view of those who study criminology in the western world.

So cruel and destructive is imprisonment that it can only be justified in the case of those who have been shown to be unable to restrain themselves from repeated or serious violence towards other persons, those shown to be unable to restrain themselves from repeated or serious damage to other persons' property and those whose crimes are so serious that our present society demands removal from normal society as a consequence.

It can certainly not be justified for ordinary minor offences, or in the form of short sentences which are still all too frequently imposed by sentencers in an attempt to deter other persons from various minor crimes. The McClemons Report put as an aim:— "As far as possible short term imprisonment should be abolished." (p.13).

Imprisonment can certainly not be justified as an automatic sanction for those who have failed to pay fines. Such a punishment is very close to the old English law barbarism, of imprisonment for debt.

Imprisonment is cruel because it cages human beings, deprives them of freedom of movement and of control and decision making in respect of their own lives. These considerations are ignored by those who publish falsehoods about motel-like conditions in prisons.

Imprisonment is destructive because of the very deprivation of responsibility and of decision making. The longer imprisonment of an individual continues, the more destructive it is in this respect. It can result in what some criminologists regard as a condition of institutionalisation. It deprives prisoners of their ordinary family life and of association with relatives and with friends of the opposite sex. Prison officials say that the principal thing in the mind of all prisoners is visits. Great difficulty is caused to classifying authorities because of the almost universal desire of prisoners to remain in the limited number of prisons in the metropolitan area so as to receive visits readily.

If prisoners have been employed, they are deprived of their normal work and work associations and their families are deprived of their earnings. It is not practicable in present circumstances to find real work for all prisoners and a very common complaint is of the boredom of prison life.

Prison deprives male prisoners (and males are 95% of the prison population) of the restraining and socialising influence of the non-criminal female sex. Prison deprives those persons of either sex who have been accustomed to an active heterosexual life of such sexual experience for prolonged periods. It places prisoners in a society of persons many of whom have been brought there by giving way to the evil forces in human nature, as distinct from such punishments as Community Service Orders which tend to place prisoners in the society of persons exercising the good forces in human nature. It places prisoners in a peculiarly primitive form of society, a society in which there are established "pecking orders", in which there are " heavies" and on the other hand special classes of prisoners who are the subject of contempt to their fellows. It is a society with special moralities of its own. It can no longer be said, as has commonly been said in the past, that prisons necessarily are schools for crime. It can be said that they are places
inhabited by those, who though they have special moralities of their own, tend to share an anti-social morality, in the sense of one opposed to that of an orderly society, whose members respect one another's rights.

From the point of view, therefore, of a society which claims to be based on ethical standards of love and humanity, it is inhuman to subject other human beings to such conditions, unless they are completely unavoidable. It is also very unwise for any society to place its law-breakers, the lesser ones along with the greater, all carefully collected together, into such a world and morality. Almost all prisoners under modern conditions in the western world will ultimately return to outside society and there is a great danger that they will return worse than when they went in. Some studies have shown that the longer prisoners stay in prison the more likely they are to commit further crimes outside. It is a commonplace to see prisoners' records commencing with short sentences unwisely imposed for motor traffic offences and going on later to burglary and later still to armed robbery. So it is that imprisonment harms not only the imprisoned but also the society which uses it more than is absolutely necessary.

C. Rehabilitation

In modern times penologists have often come to abandon hope of prisoners being rehabilitated in prison. They would certainly not expect, as people did in earlier centuries, that they would be rehabilitated either by suffering or by fear or both. In 1974 Martinson has commonly been thought to have shown that there is no proven method of rehabilitating prisoners. On the other hand, constructive thinkers argue that he did not show that all possible efforts should not be made by a rational and humane society to assist prisoners moving towards law abiding habits. Nor did he prove that prisoners in the process of maturing, of growing older, may not be assisted in developing towards law abiding habits by psychological, educational, and vocational work. Certainly he did not disprove the possibility of rehabilitation, aided or unaided. (S. Adams. Evaluating Correctional Treatments 1977).

One way in which it can be contended that classification can help rehabilitation is by classifying and then trying to separate those less committed to lawlessness from those more committed, the weak from the strong, the vulnerable from the predators, those who wish to work or study or learn from those who do not wish to work and who do not wish others to work.

A way in which it is possible that rehabilitation may be assisted is by review of security classifications regularly, by the recognition of work and reasonable behaviour and by interpreting such conduct as justifying placing the prisoner in a lower security prison. (See Section G.)

D. The Importance of Programmes

Under the heading "Classification of Prisoners", the draft or discussion paper "Minimum Standard Guidelines for Corrections in Australia and New Zealand" prepared by the Conference of Ministers and Administrators of Corrections contains Guideline No.7: - "As soon as possible, a programme shall be prepared for each prisoner in the light of the knowledge obtained about individual needs, capacities and interests".

The majority of prisoners coming to gaol are unskilled, the majority in these times are unemployed, a large number are illiterate, and most poorly educated. A number have psychological problems, difficulties with facing the
problems of life outside prison which are increased by imprisonment. It is, therefore, both humane and also in the practical interests of society itself, having regard to the time when almost all will be released, to try to provide as many of them as possible with educational, vocational training, work experience and psychological programmes. In practice the co-ordination of the planning and following up of these programmes have been in the hands of the classification authorities. It is natural that they should be so because some programmes are available at some gaols and not at others, because the need for such programmes in individual cases may have some effect on decisions as to security classification, and because the behaviour of prisoners in working at such programmes may well effect decisions in reviewing their classification. Similar facts are involved in developmental programming decisions as in security classification and placement decisions and it is sensible administration to link them.

E. The Difference between Maximum and Minimum Security Prisons

The difference between maximum and minimum security prisons is not mainly in the difference of the rules and regulations but in the difference of attitudes between staff and prisoners. There is a great need for security in the maximum security prisons, from which escape is difficult and rare, whereas it is part of the nature of minimum security camps and prisons that a determined prisoner can escape from them. As a result there is a considerably relaxed atmosphere between staff and prisoners and a great reduction in tension for both sides. There is a greater possibility for communication between them. I have been told of this relief from tension by both prisoners and prison officers. There is a greater possibility of better attitudes to work in minimum security establishments. It is only from them that day leave, education leave, work release and other special leaves can be granted. Nagle Recommendation 7 recommends that prisoners should be kept in the lowest appropriate security. The Report (p.214) said that there were far too many prisoners in maximum security who could be held in gaols of lesser security.

Since escape is practicable from minimum security, imprisonment at that level means that prisoners gain the benefit of one area of acceptance of responsibility for their own lives, namely the responsibility of resisting the temptation to escape and of persisting in completing their sentences in lawful fashion. It is therefore a possible aid to rehabilitation. It is at least some indication to the Commission and the Parole Board of its possibility in the individual case.

Another aspect from the public point of view is that it costs less to build minimum security gaols. A number of them are forestry and farm huts. Further it costs much less in respect of labour costs and other charges to run them.

F. The Transition from Prison to Life Outside

It is recognised that the transition from life in prison to that outside where the person must take full charge of his/her own life and full responsibility for it, can be difficult and the longer the stay in prison the more difficult it is likely to be. There is the need to take up normal family life, association with friends, and if possible, earning one's own way and working. It has been found that even prisoners with the best of intentions may quickly go back to crime and return to gaol.
A way of making the transition more satisfactorily has been devised by use of the classification system. If the prisoner's behaviour has made it possible to reduce his/her security classification then he/she may have progressed from either maximum or medium security prison to minimum security prison. There the tensions are reduced and there is more possibility for prisoners taking responsibility for the conduct of their own lives. With the lowest security ratings, as the prisoner approaches the time for release, day leave out of prison may be granted. Further it is possible for prisoners to be placed on work release which permits them to leave the prison and work outside in an ordinary job earning money and returning at night. If a prisoner is fit for admission to work release, this system as a half way stage to full release is a splendid means of aiding the transition to normal society. It provides a practical test of the prisoner's fitness to make that transition by release on parole. It allows the prisoner the benefit of a bank of money for use on release. It presents many temptations and some prisoners break down under the severe test. The surprising fact is that the great majority succeed.

The Nagle Report Recommendation 225 was that work release programmes should be extended so as to be available to most prisoners before discharge. The Report agreed (page 334) with an argument put about the system which work release is designed to replace—

"It is nothing short of senseless to keep a man in gaol for a number of years, then push him perfunctorily out the gate with no job, no home, no friends or relatives and $30 in his pocket. Yet this is what happens."

It might have added that it was equally senseless in such circumstances for society to rely on the threat of further imprisonment to prevent a fresh lapse into crime. Unfortunately work release is not yet available to most prisoners. Obviously not all are suitable. It calls for special accommodation and staff to manage it. The Commission has to face what the McClemens report (page 13) called the "ambivalence of public opinion" about prison management. Nevertheless it is to be commended for persisting in carrying on an active work release scheme comprising about 100 prisoners at a time, who work outside prison for periods of about three or six months or sometimes longer. It is greatly to be hoped that it can find the resources to extend it, and is not discouraged from doing so.

G. The Regular Review of Security Ratings

The Nagle Report in Recommendation 7 said: "... those imprisoned should be kept in the lowest appropriate security". In Recommendation 50 made in Chapter 18 on classification it said: "A Programme Review Committee in all gaols should review long-term prisoners on a six monthly basis".

The Commission's policy of regular review of security ratings permits prisoners to obtain lower ratings as a result of attitudes and behaviour which give the classifying authorities reason to trust the prisoner in a lower security situation. I have called this elsewhere the staging down principle. It is not merely a system of reducing the security rating for good behaviour. The nature of the original crime and the prisoner's prior history must be borne carefully in mind and balanced against the factors that tell in favour of a reduction in rating. [See also Chapter 5, Section A(II)(b)].
Escapes

This problem is closely connected with that of security classification. Mr. Justice Nagle's 71st Recommendation reads:-

"The present escape rate is acceptable. The Prisons Commission should not introduce repressive regimes in an attempt to reduce that rate. It should discuss escapes and the problems they present frankly and fully in public."

In my interim report I quoted passages from the body of the Nagle Report dealing with this matter and I repeat here the most important. At pages 219-221 these passages appear:-

"If the Department's policy were to guarantee that no one would escape from gaol then, as well as these astronomical costs, a restrictive and repressive regime would be essential. This would mean an end to the benefits of relaxed security programmes which result in more humane treatment of offenders, improved staff conditions and possible opportunities for rehabilitation...."

"Consideration also has to be given that an escape of itself brings the whole prison system into disrepute. An over-emphasis on security in an attempt to prevent escapes leads, however, to repressive regimes which inevitably create tensions which, in themselves, lead to disturbances and riots...."

"But from the material presented to the Commission, it concludes that the number of escapes, notwithstanding the very few that have resulted in violence and ensuing tragedy, it not unreasonable and that it is a risk that the community should accept. At much greater risk to itself, society is prepared to accept the motor vehicle with all its attendant advantages and tragedies...."

"Indeed there would appear to be no alternative unless the public is prepared to assume the enormous financial burden implicit in adopting a regime which, of necessity, must both be repressive and tyrannical, a regime which would most certainly result in the discharge into society of prisoners more anti-social and more dangerous. Too often it is forgotten that practically every prisoner at some time or other, returns to the community."

The Department in its annual report publishes statistics of the number of escapes, the places from which they occurred and an escape rate for every year from 1975 together with details showing the number of recaptures for the current year. The tables from the report for the year 1985/1986 are Appendix 1 to this report. It also published a research bulletin prepared by its Research and Statistics Division in March 1982.

The figures for the 1986 year show that two-thirds of the escapes, 78 in number, were from minimum security institutions, whilst only three escapes were from maximum and four from medium security institutions, the latter being a considerable reduction from all previous years except the last. All the other escapes, thirty-five in number, were from places outside the gaol walls. Seventeen of those might more accurately be called absences without leave or abscondings rather than escapes, in the sense that they were a failure to return from leave, including educational or work release.
programmes. These are distinguishable from actually physically breaking out of a prison. The planning and determination involved are less, the temptations greater.

The tables show that the escape rate varied very little in the first eleven years of the period. It can be seen that the annual number of escapes varied only from 180 to 190 except in three years when it was 168, 211 and 148. An escape rate has been obtained by dividing the number of escapes by the average daily prison population and multiplying by one hundred. This method is used in certain other countries. The resulting rate in all but the same three years was very close to five escapes for every hundred man years of imprisonment served. Perhaps it could be more meaningfully expressed as twenty man years of imprisonment served for every escape.

There has been an extraordinary fall in the number of escapes in the last 24 months commencing May 1985. None of the authorities in the Commission has been able to explain it. There has been no apparent causative factor that can be pointed to. The average prison population has steadily increased in the period. The number of escapes in 1985/86 as shown in Appendix 1 was 120. This works out at 3.0 escapes per 100 man years imprisonment served. The number in 1986/87 has been less again, namely 107.

The 1982 research bulletin found that half of those who escaped were recaptured within three weeks and 80% within six months. It found that nearly two-thirds of recaptured escapees were not proven to have committed any other offences whilst at large. Overall 2 - 3% of them were proven to have committed violent offences, but those who were in prison for violent offences were 3 - 4 times as likely to commit a violent offence as other prisoners. The offences commonly committed by those who did offend were, as might be expected, car stealing and burglary. An estimate was made that probably a little less than 2% of all convictions for violent crimes by all persons in the periods studied were convictions against escaped prisoners. 1% of such convictions were against escapees who had gone to gaol for violent offences.

The latest year's statistics covered in that research was 1980/81. In that year there were five escapes from maximum and thirty one from medium security. Last year the figures were three and four respectively. As at 30th June 1981 the number of escapes from medium security had only fallen once below 19. For both 1984/85 and 1985/86 the figure was four. It seems to me, from perusal of this year's weekly escape reports and of incomplete studies by the Research Division of escapes in 1983/4 and 1984/5, that there is reason to believe that since the research period the recapture rate has risen and the crimes committed by escapees fallen.

If it were sought to establish a policy, as is sometimes suggested, whereby no escapes or a very limited number were to occur, success could only be guaranteed by instituting a maximum security regime for all prisoners. That would be physically impossible without scrapping all the excellent minimum security camps and prisons, and abolishing the various forms of leave. It would ensure greater tensions for all staff and prisoners and remove many of the present encouragements to reform permitted by and in minimum security prisons and destroy various excellent practices such as day leave, education leave and work release designed to try to secure a smooth transition for prisoners from a highly artificial life to that of normal outside living. Studies suggest that recidivism (offending again) is reduced by such practices as compared to keeping prisoners in maximum security continually until release, and that violence amongst prisoners is reduced. As noted the
financial cost of maximum security imprisonment is very much greater. To attempt such a policy would involve huge capital expense for new prisons. If such a demand for complete freedom from escape were applied to all prisoners, then, in the extreme, it would mean locking them all in cells with electronic or other supervision such as prevailed in the Katingal establishment (which was abandoned as a result of a Nagle recommendation) and a return to the barbarities (not to mention expense) of the 18th and 19th Centuries.

It could be argued that those prisoners who were brought to prison by committing crimes involving violence should never be allowed into minimum security or external leave programmes. Such a policy would involve society shutting its eyes to the fact that almost all prisoners in our system will be released at some time. This is because our legal system is still based on punishment for proved committed crimes and not on future possibilities. It is also because it has given up hanging for all felonies and does not ordinarily contemplate its replacement as imprisonment for a whole lifetime. Prisoners who have committed crimes involving serious violence have to spend a considerable part of their expected imprisonment period in maximum and/or medium security before they can attain to minimum security and external leave programmes. They can only do so then after careful appraisement of their crimes and their development since. It would be unwise to give up the opportunity of trying to influence the prisoner against further crime by such methods in order to avoid the risk of violence following escape, when the same risk would have to be taken not very long afterward when the time arrived to "push him perfunctorily out the gate" of a maximum security prison without any attempt at preparation. To do so would also be to retreat from practices that are merciful and humane.
CHAPTER 3 - THE NATURE AND PURPOSE OF CLASSIFICATION

A. The Classification Legislation and Security Categories

The Prisons Act, 1952, provides by Section 15: "To the fullest extent reasonably practicable, convicted prisoners shall be separated from other prisoners, and different classes of convicted prisoners and different classes of other prisoners shall be separated as prescribed".

Section 50 (1)(c) authorises the making of regulations by the Governor for "the classification and separation of prisoners". Thus the details of classification are left to the regulations.

Regulation 10 provides:

(1) Each prisoner shall be included in one of the following classes:
   (a) unconvicted prisoner;
   (b) appellant;
   (c) debtor; or
   (d) convicted prisoner.

(2) Subject to Section 15 of the Act, as far as practicable prisoners of any class shall be separated from prisoners of any other class.

(3) The Commission may direct the separation, within a class, of prisoners who have previously been imprisoned from those who have not, and of those whose age is less than 21 years from those of or above that age.

As will appear in Section C of this chapter Regulation 10 is a survival of the old pre-Nagle Regulation which included a number of other classes. Sub-regulation 3 is in the same words as in the old Regulation. Sub-regulations (1) and (2) are not now of any practical consequence in the classification operations. Unconvicted male prisoners are automatically placed in the Metropolitan Remand Centre but because of greatly increased numbers have overflowed into three other gaols. They are not classified. Appellants are classified with certain exceptions. Debtors are only the very few persons imprisoned for disobedience of a Court's order. Sub-regulation 3 could still possibly have an effect in modern classification, but is out of date because of the unnecessary and impractical restrictions in the terms of the sub-classes.

Regulation 11 provides:

(1) Each prisoner shall, for the purposes of security, be classified in one of the following categories:

   Category A - those prisoners whose escape would be highly dangerous to members of the public or to the security of the State;

   Category B - those prisoners who cannot be trusted in conditions where there is no barrier to their escape;

   Category C - those prisoners who can be trusted in open conditions.

(2) The Commission may, from time to time, review and vary the security category of prisoners as in its opinion the circumstances require.
The Regulations also provide for the constitution of committees which are to make recommendations for classification and the review of classification and certain other matters which will be dealt with later.

The categories A, B and C follow exactly the terms of Recommendation 59 of Mr. Justice Nagle. They correspond with the three types of gaol, maximum, medium and minimum security. Maximum security gaols have walls with armed towers. Medium gaols have walls or other secure barriers without armed towers. Minimum gaols have barriers of various kinds. They include afforestation prison huts and walled gaols.

Some years ago the Commission commenced and still continues the use of extended categories – A1, A2, B, C1, C2 and C3 instead of A, B, and C. It did this apparently on advice that this could be done as a matter of administrative flexibility without formally changing the regulations. Judge Muir in his 1983 report into temporary leave programmes, which involved an enquiry into classification of prisoners, indicated his knowledge of the change and in his fourth recommendation said that the present security ratings were satisfactory.

The substitute categories are:

A1 - This prisoner requires the highest available security as he/she has put the general community at risk and/or has shown himself/herself to be dangerous/violent/unpredictable in the prison community. His/her escape would bring severe criticism on the officers of this Department and on the Government.

A2 - This prisoner has shown that he/she cannot be trusted in the general community and is judged to be a security risk needing to be contained in a walled institution with armed towers.

B - This prisoner does not need to be contained within a wall with armed towers but should be kept separate from the general community by a physical barrier.

C1 - This prisoner does not need to be separated from the general community by a physical barrier and does not need to be handcuffed on escort. However, he/she cannot be trusted in completely open conditions and needs to be under supervision at all times.

C2 - This prisoner can be trusted in open conditions, is eligible for an outside work and/or sports warrant and will be eligible for consideration for Day Leave after an appropriate interval and in accordance with criteria laid down from time to time.

C3 - This prisoner can be trusted to go out into the general community unescorted and unsupervised to work and/or study.

Judge Muir was told, as I was, that Category A1 was rarely, if ever, used. There are no A1 prisoners at present.

B. The Commission's View of the Purpose of Classification and its Practice

The Commission set out its views as to the object of and practice in classification in a circular No. 82/63 dated 13th December, 1982 and signed by the then Director of Classification. It is Appendix 1 to my interim report.
It sees the objects of classification as follows:-

"The role of the Classification System is to assist in the preparation of each prisoner for his/her earliest proper release, by providing a programme facility which ensures:

(a) that each prisoner is contained at the lowest appropriate level of security;
(b) that each prisoner is afforded a proper level of protection throughout his/her sentence;
(c) that the welfare needs of each prisoner and those of his/her family are satisfied;
(d) that each prisoner is given the opportunity to develop his/her educational and employment potential;
(e) that each prisoner programme is regularly reviewed and updated."

This is further elaborated in the following part of the statement of the role of the Classification Committee:-

"(d) to begin preparing each prisoner for his earliest proper release by outlining and implementing an initial programme, with social/educational/psychological/industrial components as necessary."

As I noted in my interim report, the question arises whether there is a conflict between the Commission's view of the role of the Classification System and its practice on the one hand, and the terms of Regulation 11 providing for classification categories A, B and C and the Nagle recommendations 58 and 59 which gave rise to them on the other.

As to the Commission's practice, my investigation has satisfied me that it and its committees have tried to work along the lines set out in the above circular within the limits of the available resources. Some of those limits are shortage of gaol accommodation, the structure and location of gaols, difficulty in providing educational and vocational facilities, staff shortages and other difficulties in regard to staff, and difficulties in ascertaining the facts about the prisoners and their crimes before coming to gaol, and making them readily available. This is not to say that there is not room for improvement nor that various efforts are not being made to affect improvement at various points.

I have not observed any suggestion that prisoners be compelled to undertake any programme, that they be "compulsorily rehabilitated". On the contrary a number of officers have stressed that all that should be done is to give prisoners an option. That is not to say that there are not inducements, such as the possibility of more favourable consideration in regard to security classification reduction and ultimately the granting of parole.

I would group the classification practices of the Commission and its committees under four heads and I would set them out a little differently and a little more fully than is done in the above circular. They are:-
(1) Each prisoner is classified under one of the six security categories. The lowest appropriate level is assigned. Facts taken into account include particularly the length of sentence, the nature of the crime committed and the prisoner's history.

(2) The security classification is regularly reviewed. Facts taken into account include the prisoner's behaviour and activities in gaol and the length of the period to elapse before the prisoner's likely release. There is a practice of staging down a prisoner's security classification, if the facts justify it. (See Chapter 2 Section G and Chapter 5 Section A(II)(b).)

(3) Efforts are made to devise educational, vocational, psychological, welfare and other programmes suitable for individual prisoners and likely to assist in their development towards becoming law abiding members of society. No prisoner is compelled to undertake any programme, but to the extent that resources permit and the prisoner qualifies for one, each prisoner is given the opportunity to do so.

(4) Prisoners likely to be in physical danger in prison are classified so as to enable them to be placed in special protection areas. Efforts are made, so far as resources permit, to keep susceptible prisoners away from corrupting and other harmful influences.

C. Mr. Justice Nagle's View

Mr. Justice Nagle's Recommendation No. 58 reads: "The primary concern of any classification should be security. A detailed personal assessment of each prisoner should also be made." Recommendation No. 55 reads: "The existing Regulations regarding classification should be replaced by regulations embodying the security classifications recommended in this Report." The Report (Chapter 18, page 202) indicates that the then existing Regulation 10 provided for the following categories: (a) unconvicted; (b) appellants; (c) debtors; (d) maintenance confinees; (e) remediable; (f) recidivist; (g) intractable; (h) homosexual. The Regulation also provided for separation of classes as far as practicable. It further provided as the present Regulation 10 still does: "The Commissioner may direct a separation, within a class, of prisoners who have previously been imprisoned from those who have not, and of those whose age does not exceed 21 years from those of or above that age". The regulation was apparently intended to provide for the separation of prisoners on some sort of basis of potential for harm by one to another. But on the other hand the classifying authority then operating must have in fact decided in what type of security institution each prisoner was to be placed, since maximum, medium and minimum security gaols were available.

Despite the terms of Recommendations 58 and 59 there are many indications in his Report that Mr. Justice Nagle did not intend to prevent the system of classification of prisoners going beyond mere security classification. He does not appear to exclude the appropriate separation of prisoners, as contemplated by the Prisons Act, being dealt with; or the devising of programmes to assist prisoners in respect of educational, vocational, psychological and other problems, and generally in equipping themselves for return to normal society.

Recommendation No. 58 was concerned with security and its categories were similar to those of the English Mountbatten Report which was concerned only with security. It is expanded at page 210 of the Report which states: "The
primary, but not the only concern of any classification should be security. In the light of the security classification those responsible should give effect to all other relevant circumstances with a view to seeing that the programme and placement suits the prisoner's needs."

In the first paragraph of Chapter 18 appears:--

"Simply stated, classification is the attempt to divide prisoners into different classes to determine their placement in particular goals, and to consider what programmes (if any) they should follow: a somewhat ambitious aim considering the myriad differences in individuals and the difficulty in assessing human character and future behaviour."

There follows a reference to a "definition" in the 1974 Report of the McClemens Working Party which inquired into the Prisons Act and Regulations. It said:-- "Classification is a diagnostic process for the purpose of assessing the corrective needs of prisoners and covering such areas as physical and mental health, vocational and educational training and other material matters". The Nagle report commented:-- "Later in the same report, it was referred to as 'categorisation for security sake', changing the emphasis in the objectives of classification". The McClemens report recommended in its 17th Recommendation that prisoners be "classified" along the lines of its above definition. Its 18th Recommendation was that "categorisation" of prisoners be made on the basis of three security categories very similar to those recommended in the Nagle Report.

Although the Nagle Report made no recommendation as to programmes, it clearly contemplated that they would be devised. At p.210 it says that the Chairman of the Classification Committee "should also report to the Prisons Commission any continuing inability to provide practical programmes for prisoners which his Committee recommends".

D. The Minimum Standard Guidelines for Corrections in Australia and New Zealand

In 1978 the Australian Institute of Criminology published the Minimum Standard Guidelines for Australian Prisons as a draft or a discussion paper. It was based on the United Nations "Standard Minimum Rules for the Treatment of Prisoners". It included the following:--

"65. The purpose of classification of prisoners shall be:

(a) To place the prisoners so as to facilitate their treatment, taking into account security requirements and their social rehabilitation;

(b) To separate from others those prisoners who, by reason of their criminal records or their personality, are likely to exercise a bad influence.

66. As soon as possible a programme shall be prepared for each prisoner in the light of the knowledge obtained about his or her individual needs, capacities and interests."
These guidelines have been reviewed this year by the Conference of Ministers and Administrators of Corrections. The Conference has decided to publish a redrawn version as a discussion document. It is called Minimum Standard Guidelines for Corrections in Australia and New Zealand. Under the heading "Classification of Prisoners" it contains the following:

6. The purpose of classification of prisoners shall be to place them at the lowest level of security for which they qualify, taking into account the needs of the individual prisoner, and the need to separate certain categories of prisoners.

7. As soon as possible a programme shall be prepared for each prisoner in the light of the knowledge obtained about individual needs, capacities and interests.

E. An American View

In the United States the federal courts have made orders requiring classification plans. In a paper in "Classification as a Management Tool" (American Correctional Association 1982) the following passage is cited from Palmigiano v Garrahy (443F.Supp.956,965):

"Classification is essential to the operation of an orderly and safe prison. It is a prerequisite for the rational allocation of whatever program opportunities exist within the institution. It enables the institution to gauge the proper custody level of an inmate, to identify the inmate's educational, vocational, and psychological needs, and to separate non-violent inmates from the more predatory...Classification is also indispensable for any coherent future planning."

F. Conclusion

I return to the four heads of the Commission's classification practices as interpreted by me and listed above. I cannot imagine that anyone would argue that practices numbers 3 and 4 should be discontinued on the ground that they are in conflict with Regulation 11 or with Nagle recommendations 58 and 59. Actually practice number 4 is along similar lines to Regulation 10(3), although that Regulation is out of date in that it appears to assume that the mere fact that a prisoner has not been in gaol before or is under 21 years of age establishes that he/she is of the kind in need of separation from evil influences. Such prisoners may be in need of separation or other protection, but also may be the very ones from whom others need to be separated or protected. Practices Numbers 3 and 4 are, in my opinion, most desirable. I propose to make recommendations at an appropriate place for their recognition and continuance.

It appears then that it is only practice number 2 that could be arguably in conflict with Regulation 11 and the Nagle Recommendations. It could conceivably be argued that a person imprisoned for a violent offence who was classified A2 should remain at that classification during the whole of his/her stay in prison. It could perhaps be more strongly so argued if such a prisoner had been guilty of an escape.

I do not believe that Mr. Justice Nagle had any such intention. In his Recommendation 7 dealing with an appropriate policy statement for the Commission, he said:- "Imprisonment should be a last resort and those imprisoned should be kept in the lowest appropriate security."
Recommendation 60 said:— "A Programme Review Committee in all gaols should review long term prisoners on a six monthly basis." Recommendation 225 said:— "Work Release Programmes should be extended so that they are available for most prisoners before their discharge from prison."

Recommendation 226 said:— "Pre-release leave covering day, weekend and home leave should be more widely used." Finally at page 214 of the Report the Commissioner said "It (the Department) also has far too many prisoners in maximum security gaols who could be held in gaols of lesser security."

The lowering of the security rating of prisoners on the basis of gaol behaviour has been going on in prisons over a large part of the world for a long time. When Mr. Justice Nagle recommended the six monthly review of prisoners, it seems to me quite clear, that he intended that at least one object of the review would be to see if the prisoner's existing classification was the lowest appropriate.

I believe it is clear that Judge Muir also saw no reason to reject the possibility of the lowering of a prisoner's classification by review. Although he did not explicitly in his recommendations set out an approval of the contents of circular No. 82/63, he set it out fully at pages 4 to 7 of his report and in his fifth recommendation he noted that the permanent classification committee as presently constituted was "properly able to deal with initial classification of long term prisoners and the review classification of all prisoners", and he offered no criticism of the contents of the circular. It is reasonable to take the view that he approved of its contents.

Whether or not I am right in my interpretation of the views of Mr. Justice Nagle and Judge Muir, for my part I consider that the Department is unquestionably right; firstly in regularly reviewing prisoners' ratings, as it does, with a view to lowering them if appropriate, or for that matter increasing them if it should be necessary; secondly in associating with the classification procedures, particularly in the case of "long term" prisoners, the devising and following up of the various programmes appropriate to the needs of individual prisoners; and thirdly in attempting to separate harmful influences from those prone to harm.

I further consider that the second and third points are admirably provided for in the classification rules contained in the Minimum Standard Guidelines for Australian Prisons, and also in the Minimum Standard Guidelines for Corrections in Australia and New Zealand.
A. Introduction

The Corrective Services Commission is the authority legally responsible for making classification decisions. Under Section 7 of the Act it has the management of the prisons. The Minister for Corrective Services does not directly administer the Act, but Section 7 provides that the Commission's management shall be "subject to the direction of the Minister".

Under Section 48D of the Act, the Commission has power to delegate the exercise of its functions to officers of the Public Service. Such a power is obviously necessary for efficient administration. The Commission has executed a formal delegation of its functions in regard to Classification to the Director of Prisoner Classification or his Deputy.

In the case of all prisoners with the exceptions mentioned below certain committees have the function of making recommendations in some cases directly, in others indirectly, to the Director or his Deputy as delegate of the Commission. He normally only acts after receipt of such a recommendation. Ordinarily, he follows such a recommendation, but is not obliged to do so.

Those committees are the Prisoner Classification Committee, the Reception Committees at various gaols, the Programme Review Committees at the various gaols, and the Sub-Committee of the Prisoner Classification Committee which in the first instance receives the recommendations of the Programme Review Committees.

Recommendations in respect of all classifications of prisoners under life sentence, after their initial classification, are made by the Release on Licence Board constituted under Section 59 of the Prisons Act. The Board makes its recommendations direct to the Commission and not to the Director. The Board took over this function in January 1984 by Ministerial direction, but recently new regulations (No. 75 of 1987) have been gazetted conferring the function on it.

Recommendations in respect of Governor's Pleasure prisoners also have, until recently, been made after the initial classification, by the Release on Licence Board. (Governor's Pleasure prisoners are those of the persons found not guilty by reason of mental illness at their trial, who are held in a prison. The term came from Section 23 of the former Mental Health Act, 1958. The Judge was required to order that they were to be held in strict custody "until the Governor's Pleasure is known". The Governor was empowered to order their safe custody "during the Governor's pleasure".) However, the Board has recently ceased to exercise this function because of the view taken that the Mental Health Tribunal constituted under the Mental Health Act 1983, has the exclusive function of making all recommendations in respect of them by virtue of Sections 118 and 119 of that Act and of the fact that they fall within the definition of "forensic patients" contained in it. (See later).

B. The Prisoner Classification Committee

This Committee (which I shall call the Classification Committee) is constituted by Regulation 11A(1). That regulation specifies the following as members or such substitutes or additions as the Commission determines:

The Director of Prisoner Classification or his Deputy (who acts as Chairman);
The Assistant Superintendent (Classification);
An Industrial Officer;
A Programmes Officer;
A Psychologist; and
A Probation and Parole Officer.

The Office of Assistant Superintendent (Classification) has been regraded, and is now Deputy Superintendent Classification. A Programmes Officer is a name for an officer of the Programmes Division which is the curious name for what is really an Education Division. A Welfare Officer is now also a member of the Committee and a Chaplain is a member, the latter without a vote. The Official Visitor appointed for the Central Industrial Prison frequently attends Malabar meetings as an observer. In practice at Malabar meetings ordinarily the Programmes Officer is a Regional Education Officer seconded to the work of Classification; the Psychologist is one of the Psychologists attached to the Malabar Complex; and the Probation and Parole Officer is one of those Officers stationed at the Malabar Parole Unit.

The great majority of the Committee's meetings are weekly ones at Malabar where it deals with the majority of long term male prisoners. It also sits on a limited number of occasions at Parramatta and occasionally at Goulburn, Parklea and Maitland. When the Committee is not proposing to sit at those places in the near future, the long term male prisoners are brought to Malabar for classification. In a limited number of clear cases, where the prisoner is located at a country gaol and can appropriately be kept in the area, the Committee dispenses with bringing the prisoner to Sydney and "ratifies" a recommendation from the gaol. What it does is to make a classification recommendation without the prisoner appearing before it. It is based on the recommendation of the local Programme Review Committee before which the prisoner did appear, and which is supported by statements of facts and reports. The Committee sits at Mulawa at intervals to deal with long term female prisoners. At the places other than Malabar the Director or his Deputy always acts as Chairman but the other members are made up of local officers of the appropriate professions.

In respect of all long-term prisoners Regulation 11C provides that "on reception" the Committee shall "having regard to the categories prescribed in Regulation 11(1) make a detailed personal assessment and recommendation to the Commission on the prisoner's security classification and placement." In practice the recommendation is made to the Director of Classification or his Deputy as delegate of the Commission. Regulation 7A defines "long-term prisoner". Its prime meaning is a prisoner who is likely to serve 12 months or more in prison having regard to his/her likelihood of being released on probation or parole or obtaining remissions. But the definition also includes a life sentence and a Governor's Pleasure prisoner. Accordingly this Committee makes the initial classification recommendation in respect of prisoners of those kinds also. The Committee's principal function is thus initial classification of long-term prisoners. It does, however, also exercise a review function in regard to prisoners removed from gaols as unsuitable and in other appropriate cases from time to time.

When I first attended meetings of the Committee the only written material ordinarily available to its members was a Psychologist's report with test results and the warrant file for the prisoner stating the offence for which he was committed to prison and the length of sentence and the gaol record card giving his prior criminal record as known to the Commission. The Psychologist's report contained the prisoner's account of the facts which constituted the crime. It also made a recommendation for classification and
if appropriate for psychological treatment. I saw no cases in which there was available a police statement of the facts of the offences for which the prisoner was convicted or a pre-sentence report by the Probation and Parole Authority for the use of the sentencing Court. Sometimes there was available the Police Department's list of prior convictions as furnished by the Police Officer concerned to the Court. Since then certain improvements have occurred. (See later).

The Committee has a permanent Secretary whose task it is to arrange agenda and files. The Director of Classification or the Deputy Director has available the Classification Division's files. The case of each prisoner is discussed before the prisoner concerned is called in. When the prisoner does appear the matter is discussed with the prisoner and the discussion takes different forms. When a final decision is reached the Classification Committee form is filled in and signed by all, including the prisoner. It has spaces for recommendations as to security rating and gaol of placement and also in respect of each area of programme or need of the prisoner. The original goes to the warrant file, a copy to the Classification Division file and a copy to the prisoner. Matters discussed with the prisoner include facts bearing on the security classification, the gaol in which he/she is to be placed, any questions raised as to his/her programme and protective segregation if that is raised. The decision is under Regulation 11C a recommendation to the Commission. However its approval is forthwith given by its delegate being either the Director of Classification or his Deputy who has been present at and chaired the meeting.

C. Reception Committees

All gaols have Reception Committees whose function is the formal reception of prisoners. The Reception Committees at those gaols which are designated as Reception gaols also themselves make initial classification recommendations regarding short-term prisoners, that is prisoners who are likely to spend less than 12 months in prison, taking into account their likelihood of release on probation or parole or their likely remissions. They make them to the Director of Classification or his Deputy as delegate of the Commission. In respect of long-term prisoners, their function is to refer them to the Classification Committee.

(I) Malabar Reception Committee

The Malabar Reception Committee has those functions in respect of prisoners at Malabar. It meets daily. Its constitution is to be as determined by the Commission. It is composed at present of a Senior Assistant Superintendent and two (2) Assistant Superintendents attached to the Classification Division together with a Welfare Officer and a Probation and Parole Officer. The Malabar Parole Unit undertook this additional duty last year on the basis that their role was to follow prisoners through their stay in gaol and, where their sentence called for it, to supervise them after it. This was a commendable change and it is most desirable that it continue. The Reception Committee has the same material as to the description of the conviction and the nature of the sentence as the Classification Committee has. Ordinarily, it has no other material, unless the Probation and Parole Officer is able to obtain other material from an existing Probation and Parole file on the prisoner. In the year ending 30th June, 1986 the Committee recommended the classification of 3237 prisoners. The great majority were recommended for minimum security, mainly as C2 rating. This Committee has not the resources
to do anything in regard to planning an educational or other programme for short-term prisoners but it does try to recommend placement of them in suitable gaols having regard to the limited choices available.

(II) Reception Committees at Reception Gaols other than Malabar

Regulation 11D(2) contemplates initial classification of short-term prisoners at Reception Gaols other than Malabar being the subject of recommendation to the Commission by the Governor or his Deputy. In practice, these gaols now have Reception Committees with constitutions similar to but not identical with those at Malabar. The constitution of each such committee is decided by the Governor. They are made up generally of a senior custodial officer representing the Governor and an industrial officer. At most gaols some or all of the non-custodial officers attend depending on availability.

Regulation 11D(3) and (4) contemplate the review of the Malabar and other Reception Committee recommendations by the Classification Committee. In practice this is not done and resources would not permit it in view of the large number of recommendations involved, namely over 3000 per year. The practice is for the recommendations to be submitted direct to the Director of Classification or his Deputy as the delegate of the Commission for his approval or otherwise. It is first vetted for the Director by one of his staff.

D. Programme Review Committees

Regulation 11F provides for Programme Review Committees at each prison, which are to "review the security classification, programme progress and placement" of each long-term prisoner at the prison at least once each six months, and to "forward a report and recommendation on those matters to the Prisoner Classification Committee for review". They are to be constituted by such persons as the Commission determines. Departmental circular 82/63 requires them to review short-term prisoners also if their sentence is three months or more. The circular provides that each committee is to consist of the Superintendent or his nominee as chairman, a principal Industries Officer, a Probation and Parole Officer, an Education Officer, a Psychologist and a Welfare Officer. Ordinarily at present the chairman is a nominee of the Superintendent and not the Superintendent himself. The Committee at each gaol with two exceptions has an Administrative Officer who acts as its Secretary. The Committees also have other functions in regard to the recommendation of day leave, of admission to work release and other similar matters.

A Committee has available to it the prisoner's warrant file and the Probation and Parole Officer has the file of his Service. The warrant file contains amongst other things the prisoner's criminal record card which also contains a record of his gaol offences. There is available from it the description of the offence for which the prisoner was sentenced and details of his sentence. In his report Judge Muir said that the members of the Committee should produce reports in writing and that copies of each report should be available to all other members. He realised that this might be difficult at some large gaols, as indeed it is. In practice it has not been done at some gaols. Thus at Cessnock gaol with 400 prisoners and a limited number of psychologists and Education Officers, who amongst their other duties have to attend two such Committee meetings a week, it has hardly proved possible in the past. At smaller gaols, however, it is possible. Reports by a Wing Custodial Officer and an Industries Officer on standard forms are ordinarily available.
The Committees use a similar form to that used by the Classification Committee. It contains similar spaces for their recommendations, and also spaces for reports on progress in each area of programme or need. During the course of last year instructions were given to Programme Review Committees by the Classification Division that in future recommendations by the Committees would have to be accompanied by written reports of each officer as envisaged by Judge Muir. However, they were told that if a particular officer had no contact with a prisoner, a report to that effect would be accepted. This qualification was doubtless made because of the shortage of some staff at some gaols. The Committees follow a similar procedure to that of the Classification Committee in that they discuss each case before calling the prisoner in, and then discuss the matter with the prisoner. The above mentioned form is then completed with recommendations and signed by all concerned and by the prisoner, who is given a copy. The Superintendent is also required to sign the form and indicate his/her agreement or otherwise.

In practice the review of the report and recommendation is not made by the full Classification Committee, as contemplated by Regulation 11F but by a Sub-committee of it consisting of its Deputy Superintendent (Classification), and its Education Officer. They consider the recommendations and either approve or reject them. Quite a considerable number (estimated at 20%) are rejected. The Sub-committee passes its recommendation to the Director of Classification or his Deputy for his final decision. He ordinarily, but not invariably, accepts the recommendation of the Sub-committee. In 1986 there were 3464 recommendations considered by the sub-committee. It would be quite impossible for the full Committee to deal with them.

E. The Release on Licence Board

This Board was constituted in 1983 by Section 59 of the Prisons Act. It consists of two District Court Judges, or retired Judges, the Director of Classifications, the Director of the Probation and Parole Service, the Chief Psychologist, a Police representative and four community representatives. The primary function of the Board set out in the Statute is that of making recommendations on applications for the granting of licences for the release of prisoners whether or not sentenced to life imprisonment.

Section 60 provides for the Board to have such other functions as are determined by the Minister or prescribed by regulation. A former Minister conferred on the Board the functions previously exercised by a departmental committee known as the Indeterminate Sentence Committee in respect of the "review, placement and security rating" of indeterminate sentence prisoners. Consequently the Board had, in the past, carried out the functions of programme review and of considering placement and security rating in respect of both life sentence prisoners and those Governor's Pleasure prisoners who were held in prison. It has recently ceased to do so in respect of the latter (see Section F). It carried out those functions notwithstanding that there was no indication in the Regulations that it was to do so. Indeed there was a contra-indication in the definition of "long-term prisoner" in Regulation 7A. However the position has recently been regularised by a new Regulation 11GA and by amendments to related regulations. (Prisons Act Regulation No. 75 of 1987). The amendments are not quite accurate in that they give an intervening role to Programme Review Committees in regard to the programme progress of these prisoners which they do not have in practice and I would think is not intended by the Department.
The Board makes classification recommendations direct to the Commission which in the past has commonly, though not invariably, approved of them. New Sub-Regulation 11(3) appears to make a partial change in the relationship between the Board and the Commission. It provides that the Commission in future shall not vary the security classification of a life sentence prisoner except on the Board's recommendation.

In order to effectively carry out the classification functions the Board has followed the admirable practice, developed by the Indeterminate Sentence Committee, of having three of its members constituting Sub-Committees personally interview all the prisoners of both types in the various gaols where they are located, having first interviewed the Officers concerned with them. As a result the Board has built up an excellent personal knowledge of the characteristics and needs of the various prisoners concerned. An important aspect is the continuity of supervision by the Board in whatever gaol the prisoner is placed. The Board meets monthly and it reviews each of the prisoners under its care at least every six months. The full Board meets in Sydney and the prisoners under review do not appear before it. It acts on the various reports it receives and in particular the reports of its own sub-committees. Its first Chairman, Judge Collins, set out in a letter to the present Minister the principles on which it acts. The body of this letter by kind permission appears as Appendix 2 to this report.

At the 1984 census there were 194 life sentence prisoners, and 16 Governor's Pleasure prisoners housed in gaols. At the 1985 census the numbers were 191 and 10 respectively. Both kinds are housed in various gaols throughout the State.

F. The Mental Health Tribunal

This Tribunal is constituted under the Mental Health Act 1983 and the view has been taken that it is the sole authority charged with the function of making recommendations in regard not only to detention or release, but also to classification type matters in respect of Governor's Pleasure prisoners, including those housed in gaols. The Release on Licence Board has accordingly ceased to exercise such functions in respect of them. The curious position is that the Tribunal's recommendations are made to the Minister for Health, and it is by no means clear by what means a recommendation as to classification type matters comes to be a recommendation to the Corrective Services Commission, or to whom that Commission should look for advice from the point of view of the prison system as to the suitability of particular recommendations to operate within that system. The suggestion is made that the Health Minister, on receipt of a recommendation, will pass it on to the Minister for Corrective Services, and that the Commission will then look to its own officers also for advice.

I have been told that the Mental Health Tribunal has on two occasions within recent months seen a number of Governor's Pleasure prisoners held in prisons and has made certain recommendations in regard to them. I am informed as at the time of writing that quite recently two orders of His Excellency the Governor made upon recommendation of the Tribunal, and several recommendations by the Tribunal have been received by the Minister for Corrective Services and the Commission. I am told that the Tribunal's practice is to hear the prisoners who are brought to its meeting place in Sydney for that purpose and also any necessary officers of the Commission who are also brought there. The prisoners are to be represented by lawyers unless they decide not to be.
G. Case Management Review Team

This is an infant institution not formally recognised by any regulation or otherwise. It was devised by certain officers in 1985 at Emu Plains Training Centre, a minimum security prison farm holding about 100 prisoners, most of whom are serving short-terms. It involves a team consisting of the Probation and Parole Officer, the Psychologist, the Education Officer and the Welfare Officer meeting each prisoner within about two weeks of entry into the prison, assessing him and developing suitable programmes; reviewing progress every 6 to 8 weeks; and trying to make arrangements for referrals and other care after his leaving gaol. They have no function in regard to security classification. This system is still in existence and according to my observation operating well. It is an excellent one and speaks well for the enthusiasm and initiative of the Officers concerned. Unfortunately, the Commission considers that it may not be practicable at larger gaols which are not as fully staffed as Emu Plains. I would hope that eventually sufficient staff would be available in larger gaols to permit its operation. For a fuller treatment see Chapter 8.
CHAPTER 5 – HOW IS THE CLASSIFICATION SYSTEM FUNCTIONING?

It is convenient to consider this question from the security side and the needs side separately. The first is the public interest in seeing that prisoners are held securely but no more securely than is appropriate. The second is the public interest in trying to prevent prisoners being made worse by imprisonment, remembering that there is no proven method of making them better. The conflict between these interests is one important factor giving rise to the difficulties faced by modern prison authorities.

A. The Security Side

(I) The Nature of the Task

The task is to prevent so far as possible the escape of dangerous prisoners and to limit or restrict the escape of others. It is commonly wrongly thought and indeed suggested by some opinion makers that all prisoners are dangerous. This is quite untrue. In fact the majority of prisoners are sentenced for crimes which do not ordinarily involve physical violence, the various forms of stealing and dishonesty, damage to property, driving offences and minor drug cases. Indeed the great majority of burglaries, disturbing as they are, do not involve physical violence. Although the three security categories A, B and C devised by the Nagle Report do not distinguish between the risk of escape by violent prisoners and non-violent ones, the prevention of the escape of the non-violent is not so important as preventing the escape of the violent. As Mr. Justice Nagle said (page 219) an escape by either kind tends to bring the prison system into disrepute. One assumes that he meant in the eyes of those whom he described as "abysmally ignorant of the whole subject" (page 17). Apart from that consideration, the cost of the extra work in recapturing non-violent escapees is outweighed by the benefit of the cheaper and less destructive, not to say more humane, form of imprisonment in minimum security prisons as opposed to medium or maximum security. New South Wales has long favoured the use of minimum security prisons to the greatest extent possible and is a leader in Australia.

When those imprisoned for crimes of violence are to be considered, several matters must be remembered. Violence is more commonly a feature of young males, who often grow milder with age and maturity. All, except those with life sentences, are certain to be released sometime, and the various advantages in giving them an opportunity of attempting to have their security ratings reduced and, if possible, being admitted to work release ultimately, have to be borne in mind. Even murder itself is often committed by persons who are not ordinarily violent. It is commonly a family crime committed in a time of stress and passion and the majority of murderers are ultimately released though only after careful assessment and consideration.

(II) Assessment of the functioning of the System

In making an assessment nine (9) factors need to be taken into account. They are:

(a) availability of facts on which to base classifications;
(b) the principles on which classification is based;
(c) knowledge of those principles by committee members;
(d) the honesty and competence of judgments made;
(e) the question of justice and fairplay to both the prisoner and the community;
(f) the speed of classification;
(g) general efficiency of the system - Is there a better one?;
(h) the economics of the system;

(a) Availability of facts on which to base classifications.

As for the Classification Committee - the basic facts of the crime and of the prisoner available to it are not as full as they should be. However, the position has been improved since I commenced my enquiry. Further improvements are necessary and will be noted later. Whilst the making of those improvements would make for a better informed committee, it cannot be said that the absence of them has meant that it does not function reasonably efficiently.

As for the Reception Committees - the same considerations apply, with the qualification that the improvements are less necessary for them as they are dealing with short term prisoners.

As for the Programme Review Committees similar considerations apply. In their case there is also the additional problem that they do not receive all the material available to the Classification Committee. They do, however, have greater experience with the prisoners than the others. However, in their case too inadequacy of the data base has not prevented their work being carried out with reasonable efficiency.

As for the Release on Licence Board - it has full and thorough files containing all relevant facts. Further, by virtue of the personal interviews conducted regularly by its sub-committees it builds up a thorough knowledge of the prisoners with whom it deals. An important factor is that its supervision of them continues in whatever gaol they are and it continues for a long period. I can suggest no improvements in this area for the purposes of its work.

As for the Mental Health Tribunal - I do not propose to comment on the way in which the Tribunal has carried out the functions which it is thought to have in regard to classification type matters of Governor's Pleasure prisoners held in prison. The Tribunal has to date only held two sets of hearings in regard to such matters and only a limited number of its recommendations have so far been received by the Minister for Corrective Services and the Commission. I have made no attempt to study its work. It would be inappropriate for me to comment in those circumstances. The Tribunal has as President and Deputy President, very experienced members of the legal profession. The prisoners are to have legal representation unless they decide not to. I would, however, suggest that if the Tribunal is to continue with this function, it might be desirable to have a senior officer of the Classification Division in attendance to put the viewpoint of the Commission to the Tribunal. This suggestion would not necessarily apply if the Tribunal is only to exercise the function of deciding on release or continued detention or to cases in which it is exercising such a function.

(b) The Principles on which Classification is based

A basic principle of classification applied by the Commission on the security side is the duty to keep secure and prevent the escape of prisoners judged to be dangerous and to limit and restrict the possibility of escape by the remainder. The mere fact of the existence and use of minimum security prisons indicates acceptance of the lower nature of the task in regard to non-dangerous prisoners. A prominent principle applied is that of "staging-down" security ratings. A prisoner's rating can be reduced having
regard in particular to judgments as to the trust that can be placed in him/her based on his/her attitude and behaviour in gaol and to the closer approach of the time when he/she is likely to be released. A further principle is that a prisoner is to be kept in the "lowest appropriate security". These words come from Nagle Recommendation No.7. I consider the Commission is correct in applying these principles. I shall discuss the second in more detail below.

These principles are not fully enunciated in the main Classification Circular No.82/63. There the role of Classification is stated in terms of the third principle above, "that each prisoner is contained at the lowest appropriate level of security". The roles of the various committees as stated are centred round that concept. However the principles are to be inferred from the Regulations which contain the security ratings and the concept of review; from a variety of staff instructions on specific matters; and from the practices of the Commission, its officers and its committees.

Subsidiary principles concern the factors to be taken into account in assessing classification ratings and the nature of the balancing operations involved particularly in review assessments.

Until last year, as far as I can discover, there was no departmental instruction on the subject of the various facts to be taken into account in arriving at a security rating. Some are set out on page 8 of the Huir report. They relate to security rating and appear to have been supplied to the Judge by the then Director of Classification. Officers learnt such matters by the handing down of tradition in the workplace, by the use of commonsense, by observing the practice, and by reading circulars on specific matters relating to security. Commonsense dictates that relevant facts must include the nature of the crime, in particular the extent to which dangerous violence was involved, the length of the sentence, other facts known about the prisoner, including family position, work habits, relationship to drugs, previous behaviour in gaol, and criminal record. Although there is no instruction containing a general list of facts to be taken into account, there are several instructions as to the need for special care in particular cases. Examples are instructions about escapees, and about the special rules applicable in regard to the security ratings of prisoners convicted of violent or drug offences in the higher courts. It would be an advantage in several respects to have all the principles expressed in writing available to all. At the same time I do not consider that the system has worked unsatisfactorily because of the absence of such express formulation of principles.

Last year a start was made on the task of expressly formulating the facts to be considered in recommending security ratings in the newly published Classification Manual. It contains lists of factors to be taken into account in reviewing prisoners' programmes and of points for consideration in reviewing security ratings and programmes.

The "staging down principle" involves the practice of reviewing security ratings at the six monthly or other review of prisoners, and where justified reducing them to the "lowest appropriate" level. It is applied not only to prisoners who have been convicted of non-violent crimes but also to those who have been convicted of violent ones, though in the case of the latter with a higher degree of caution. As noted above, the matters considered include the prisoners' behaviour in gaol as reported on by those in touch with them and the amount of time before their likely release. There are various objectives. Not the least is to bring prisoners, particularly long-sentence
ones, gradually to conditions where they accept increased personal responsibility for their own lives and indeed their own confinement. This is in the opinion of senior experienced officers both a valuable test of the responsibility of prisoners to society, and a training in responsibility with a view to their fitting into normal law abiding society upon release.

This principle is applied even to those convicted of murder and sentenced to life imprisonment, most of whom may ultimately expect release, although there are undoubtedly some who may never be released. In the case of these prisoners, recommendations for their classification and ultimate release are functions of a strong body, the Release on Licence Board. In my opinion it takes great care in its work of supervision and in its recommendations.

The principle has been applied to escapees. The great majority of escapes are from minimum security prisons and many are in the nature of abscondings or absences without leave, being failures to return to prison from external leave. Escapees are punished by sentences to additional imprisonment, by losing remissions as well, and they are placed in higher security gaols. However, they have been permitted in the past by good work with the passage of time to regain trust and eventually have their security classification reduced even to minimum. After the escape of Michael Patrick Murphy this policy was changed. The nature of the change was dealt with in my interim report and is discussed in Chapter 8 Section F.

The word "trust" is used above in regard to the lowering of security ratings. I have discussed its ambiguity previously. It can refer to trusting a prisoner not to escape and to trusting a prisoner not to commit a violent crime if he/she should escape. In the majority of cases there is no reason to expect an escapee to commit a violent crime, so that only the former kind of trust is applicable. As for dangerousness, it is notoriously difficult to predict.

It follows that the decisions that have to be made as to whether prisoners should have their security rating reduced must be pragmatic ones based on all the available facts. They are indeed difficult ones, like so many decisions that have to be made in this difficult area of administration. In the case of prisoners who have committed violent crimes, when perhaps considerably younger, assessments have to be made from time to time. Those making the decisions have to be conscious of the changes that may occur in prisoners with the passage of time. The decisions can only be made on the basis of experience of their behaviour and attitudes in gaol and of summing up their character by psychologists and prison officers and others who are in daily or other regular touch with them. The facts favouring a reduction have to be judged in the light of and weighed in the balance against the evidence of the facts of the crime that brought the prisoner to gaol and of his/her prior history. It has to be borne in mind, and I have no reason to doubt that the officers concerned do bear it in mind, that persons who behaved monstrously when at large, may very often behave excellently in prison.

I am firmly of the view that the staging-down principle is justified and should continue. The efforts of the Release on Licence Board and the Indeterminate Sentence Committee which preceeded it, show the good results in aiding rehabilitation that can be achieved by a group of persons who have detailed information about a particular group of prisoners and who acquire personal knowledge of that group by personal interviews and who make careful decisions about their classification based on that information and knowledge. A valuable study of the results of the work of the Indeterminate Sentence Committee has been made, covering a fairly short period only (Aitkin and
Gartrell). As may be seen from the statement of Judge Collins, the Board's first Chairman, (Appendix 2), a programme which bears in mind the possibility of staging down a prisoner's security classification is an important part of its efforts to aid rehabilitation. The practice gives prisoners something to strive for, namely ultimate minimum security rating, which provides not only a more tension free lifestyle but also opportunity for the special leaves including work release and ultimately a better chance of obtaining parole. The Department's policy is that only prisoners who have succeeded in having their security classification staged down to C3 should be admitted to work release. The reason is that they have to leave prison by day to go unescorted to work places outside and return at night. If prisoners are interested in such achievements, then the officers of the Department are likely to find less difficulty in their difficult task of managing locked-up adult human beings. Prisoners who have nothing to hope for by means of such achievements are less likely to make an effort to behave in gaol in a constructive and law abiding manner and are likely to make more difficulties for themselves, for other prisoners and for prison staff. Giving prisoners the benefit of achieving lower security ratings is not only a more humane method of treating prisoners. It is also of value in preparing the prisoner for return to normal society.

(c) The Knowledge of the Principles of Security Classification by the Committee Members

As to the Classification Committee, the Malabar Reception Committee and the Release on Licence Board I have no doubt of their knowledge of the written and unwritten principles. They are composed for the most part of officers of considerable seniority and experience, although there may be, from time to time, newcomers amongst them. As for the other reception committees and the Programme Review Committees, though they would always have some members with experience and seniority, from time to time they do have a greater number of new members and I have also seen, on one occasion, a relieving Chairman of some seniority who had little experience in classification. He was wise enough to ask frankly for help from the experienced members. But all members lack a consolidated updated and clear statement of their functions. Generally, nevertheless, I consider that these bodies are carrying out their functions reasonably satisfactorily. They carry on a tradition based on knowledge of the various writings available and on experience in the workings of the system. The ratings themselves are indicative of the need for security. There are various circulars warning of the need for care in the case of certain kinds of prisoners. The formulation and publication of consolidated and updated principles would be of great assistance to all members but particularly the inexperienced. A start has been made with this task by the issue of the Classification Manual to the administrative assistants of the Programme Review Committees.

(d) Honesty and Competence of Judgments made

From my observations and many discussions, I found no reason to doubt that the persons entrusted with making these judgments, in general make them conscientiously and honestly. The judgments that have to be made are in most cases pragmatic ones and often difficult. I formed the view that they were in general made with reasonable competence, even though subsequent events might sometimes show that assessments made were incorrect. One aspect of the results of classification, namely escapes, is considered later in the Chapter.
(e) The Question of Justice and Fairplay to both the Prisoner and the Community

As to the Classification Committee, the Reception Committees and the Programme Review Committees – prisoners appear before each of these on each occasion when they are considered. As mentioned in Chapter 4, there is one exception in the case of so-called "ratifications" by the Classification Committee of recommendations by country gaols. However, in that case the prisoner has appeared before a Local Programme Review Committee. One matter requiring consideration is that prisoners are unassisted. Another is that although a right of appeal is usually regarded as an essential principle of justice, there are no formally recognised methods of appeal. There is no regulation setting out a right of appeal. However, in practice there are obvious methods akin to appeal that can be resorted to. My observations and enquiries do not at all suggest that these committees, with their wide memberships, do not endeavour to deal fairly and justly with prisoners. However, there are possibilities for some forms of improvement which will be discussed later. As for the community interest in seeing that security classifications are not inappropriately low, I find nothing to suggest that this aspect does not receive due consideration.

As to the Release on Licence Board – as noted above, the prisoners do not appear before it in person, though they are interviewed in the gaols in which they are housed by its sub-committees. I do not consider that prisoners are not justly and fairly dealt with.

(f) The Speed of Classification

Nagle Recommendation No. 56 says that classification of long term prisoners should be completed within two months. In the body of the Report (page 209) it is said that if this does not happen an explanation should be provided in each case to the Commission. This recommendation has been embodied in Regulation 11E. It covers short-term prisoners also.

The majority of long term male prisoners awaiting classification are housed in the Central Industrial Prison. This is a seriously overcrowded gaol and is not now intended to be used for and is not equipped suitably for the housing of prisoners during the service of their sentence. It is, therefore, desirable that classification be as prompt as possible and I am satisfied that proper efforts are made by the Classification Committee to achieve this. However, my observations show that it is not always possible to do this within two months. I have not seen cases of delay that have gone much beyond that. In my opinion Regulation 11E is too stringent in requiring a report to the Commission on each case that goes beyond two months. In fact this part of the Regulation has not been put into practice. To do so would merely add to the paper work necessary by the already heavily burdened committee and to the amount of paper work received by the heavily burdened Commission. The Director of Classification and his staff and the Committee can be trusted to work as expeditiously as possible and they should be so trusted. The Director or his Deputy who are entrusted as the delegates of the Commission with power to make the final classification, should be trusted to see that the system is so working. I therefore recommend that Regulation 11E be amended to delete the need for a report in each case where a period of two months is exceeded. A suitable replacement provision would be a requirement that the relevant Committees act as expeditiously as possible and use their best endeavours to complete each recommendation within two months.
(g) General Efficiency of the System - Is there a better one?

Prior to the escape of Michael Patrick Murphy the Commission had set on foot an enquiry into whether a better classification system could be devised. It entrusted this to a Policy Unit of four experienced officers led by Mr. G. Hay. This Unit considered published accounts of a variety of systems used in England and the United States, circulated draft papers and held discussion meetings with other officers of the Department, which I attended by invitation. Ultimately it produced a detailed plan for a new system. This has been submitted for comment to various branches of the Commission. The plan is similar to what are apparently widely used systems in the United States. It rejects what it calls the clinical method of classifying a prisoner by a process of summing up in the collective mind of a Committee the various features about the prisoner that are relevant to a classification decision. It replaces this with allotting scores to a prisoner in respect of various relevant facts and then making a security classification decision ordinarily, but not automatically based on where the prisoner's score falls within predetermined ranges. The principal supporting arguments in favour of the system are greater accuracy and objectivity, and the fact that the method of arriving at the classification can be seen openly in writing and checked by any person concerned.

I consider that I should not pass judgment on this scheme. The administration of corrective services, as I have pointed out, is a most complex and difficult task. There are within the Commission many persons of great experience and expertise. I believe that the plan, particularly in view of its use in America, is worthy of full and continued consideration within the Department or indeed outside it. Part of that consideration may well involve testing the suggested scores or any other scores against actual past cases or perhaps a series of cases, that occur in the future. It appears from the Review of the Victorian Classification System by David Biles, dated May 1978, that a scoring system was then in use in Victoria (pages 8-10). This system has since been abandoned after some years of operation. I have made brief enquiries only as to the reason for its abandonment. It might be wise for the Department in considering the recommendations of the Policy Unit to seek the reasons for the Victorian system ending. It is my firm opinion, however, that I, as an outsider to the prison system, should not attempt to lay down such a plan for such a Department or indeed reject it, but rather that I should leave it for further consideration by those having the appropriate expertise, namely the Commission and its officers.

(h) The Economics of the System

The Classification System involves a lot of work for a lot of staff. Time is spent assessing prisoners, making written reports and holding meetings. In a large gaol, Cessnock, when I inspected it early in 1986, the psychological and educational departments were under staffed. The officers had to spend part of two days on Committees alone and could only make their ordinary services available to such prisoners as consulted them. The Nagle Report (page 205) raises the question of the efficacy of classification. It cites Professor Norval Morris as writing in 1974 that the classification operations of Reception and Diagnostic Centres in the USA were largely a waste of resources. The same thing could be done, he said, by an experienced prison administrator alone in much less time. Further the reports obtained often rested "undisturbed in files". Mr. Justice Nagle visited such centres overseas and found many to be costly and elaborate but with results that did not match expectations.
This is a serious charge. It could be levelled in part at the New South Wales system and supported by showing the weaknesses in the follow up of classification recommendations on the needs side in regard to prisoners in the gaols where they are sent after classification. I believe that this can and will be improved and shall discuss the matter later.

Classification in its various aspects is of the greatest importance to prisoners and through them to the community. It affects vitally prisoners' lives in gaol, their prospects of release, and ultimately whether on release they return to society more anti-social and more dangerous than when they went into gaol, whether they are no worse, or whether they are likely to be more law abiding than before. It affects the community on the security side also. I do not believe that the present efforts should be given up in favour of a cheaper and quicker system of classification. I believe that it is worth the expense of having different minds belonging to different disciplines brought to bear on the security classification aspect of each individual prisoner at the start of the sentence and that every effort should be made to see that the best possible decisions are come to. The problem mainly concerns the needs side. It is closely tied to the question whether a recommendation on the needs side should be made at the initial classification of long-term prisoners. I am leaving this aspect open, though I am far from suggesting a change. It is discussed in Section B(II)(h).

(III) The Problem of Unconvicted Prisoners

Both the Nagle Report and the Mc Clemens Working Party recommended that unconvicted prisoners should be classified. Regulation 11 requires the security classification of unconvicted prisoners. Although efforts have been made to do so in the past, remand prisoners are not classified at present and have not been for some years. The reason is lack of the resource of a modern remand centre convenient to the courts in which to house them. In fact so far from being able to classify them, the Commission is now from time to time in view of the growth in numbers unable even to receive and house them. The classification aspect is dealt with as a special problem in Chapter 8 Section C, and the housing crisis in Chapter 10 Section D.

(IV) A Summing up from the Security Aspect

I consider that the system is working reasonably satisfactorily. That is not to say that, as in all human institutions, improvement is not possible and I shall deal with this in Part II. There are two main areas where improvement is necessary. The first is the data base or facts available to the Classification Committee on original classification and the Programme Review Committees on reviews, and to a lesser extent to Reception Committees. The need for improvement is greater for reviews than for the original classification. The Programme Review Committees do not automatically get all the material which the Classification Committee had and, as time passes, the warrant file, which they do have, tends to become larger and some information contained in it more remote. The second is the need for a consolidated updated and clear volume of instructions for all officers taking part in the classification process as to the nature of their difficult functions and the practical approach to carrying them out properly.

It is possible to consider one aspect of the results of classification on the security side, namely escapes. As noted above (Chapter 2 Section H), there was little variation in the escape numbers and rate from 1975/76 until 1984/85. That period covers a period of the pre-Nagle classification system and runs well into the time of the present system. The 71st Nagle
Recommendation said that the then escape rate was acceptable, and was in effect a lesser evil than the regressive regimes which would be needed to cause any large reduction in it. But in fact an extraordinary drop in escape numbers has occurred in the last two years and the new low rate is still continuing. As noted above there is no known explanation for this occurrence. No change in procedures can be pointed to as a possible cause. The escape of Michael Patrick Murphy, which gave rise to this enquiry, occurred on the 27 December 1985. On the 4th March 1986 the Commission gave instructions limiting the staging down of security ratings of escapees below B without exceptional and extenuating circumstances and the approval of the Commission as distinct from that of the Director of Classification or his Deputy. But the great drop in escape numbers commenced in May 1985. Furthermore there are other penalties designed to deter escapes, namely loss of remissions and additional prison sentences imposed by the Courts on all escapees. The Court of Criminal Appeal had pronounced as long ago as 1982 and earlier on the necessity for severity in sentencing prisoners for escapes from minimum security. Yet there was no evidence in the escape figures of any deterrent effect resulting from these measures.

There is no justification for regarding the drop in escape numbers as evidencing the efficiency of the classification system. On the other hand, accepting as I do, the 71st Nagle recommendation, there is certainly no inference adverse to that system to be drawn from the escape statistics of the last two years.

As for the escape of Murphy himself, my views have been given in my interim report. He, like most prisoners, would have ultimately been released, and, at the time of his classification as C2 those officers making the recommendation and the decision knew that it was possible for him to be released to parole in seven months time. In view of the length of time he had spent in prison and his recent record they would have been justified in believing that he was likely to obtain parole then. The Nagle Report said (page 217):- "Most leading criminologists agree that there is no adequate method of classifying and predicting dangerousness." I do not consider it proper to draw an inference adverse to the classification system from the Murphy escape and its tragic sequel.

B. The Needs Side

(I) The Nature of the Problem

In view of the great potential of imprisonment for the personal destruction of prisoners, a responsible correctional system tries to counter-balance this by attention to the needs of a prisoner. It does so not only on the ground of humanity but also in the interest of protection of the society to which the prisoner will eventually return. These are not the only reasons. A further one is with a view to the reasonable management of prisons and the relief of tension for both prisoners and staff. There are a variety of needs, quite apart from the ordinary one of day to day living. The word is used in its widest sense. They comprise education (even the most basic form such as teaching literacy), vocational training, work, psychological assistance, social needs such as plans for resumption of life in society on release, and welfare needs particularly those connected with the families of prisoners. The greatest of all perhaps in prisons in 1987 is how to meet the problem of drugs. In addition, there is the question of protective custody from physical injury by ill-disposed prisoners and, if it is at all practicable, the separation of those recently come to crime from others more heavily involved in the criminal morality. The problems are great. It is
widely accepted amongst modern criminologists that there is no treatment that can be proved to rehabilitate prisoners and divert them from further criminal behaviour. In a scientific age they are no longer so naive as to believe that the suffering of imprisonment of itself is sufficient to deter them from further crime, much less reform them. The reverse is rather the truth, that the longer the imprisonment or the more frequent, the more likely the prisoner is to revert to further crime on release. This does not mean that prisoners do not mature and often, as they grow older, grow out of criminal behaviour. Nor does it mean that some forms of treatment for prisoners may not assist them in the process of rehabilitation or even perhaps bring it about.

Added to all these difficulties in New South Wales is the difficulty of resources. The State's gaols are mostly old, scattered throughout the State, the products of 19th Century beliefs, the subject of overcrowding, and having inadequate facilities. In addition, there is a shortage of appropriate trained staff. Some special problems are the difficulty of devising programmes for short-term prisoners and the consequent lack thereof, the difficulties caused by lack of proper humane facilities for protective custody and of accommodation for the separation of the lesser criminal types from the greater, and finally difficulties in following up programmes for prisoners when they are moved from their original gaol to their first gaol of placement and on subsequent moves.

(II) Assessment of the Functioning of the System

This is considered under the following headings:

(a) Availability of facts on which to base classification;
(b) The principles on which classification is based and knowledge of them by Committee members;
(c) Knowledge by Committee members of available facilities;
(d) The honesty and competence of judgments made;
(e) The question of justice and fairplay;
(f) The following up of planned programmes in practice;
(g) Protection and Separation;
(h) The efficiency and economics of the system.

(a) Availability of facts on which to base Classification

As to the Classification Committee - in regard to information from outside the prison system the position is similar to that noted above under the aspect of security. The detailed police statement of the facts of the crime as presented to the Court are not available to the Committee before classification. These facts could indicate aspects of a prisoner's needs in regard to programming. When I originally inspected this Committee at an early stage of my enquiry the only matter available in writing to the Committee in respect of all prisoners, apart from the sentence and legal description of the crime, was the psychological report. Since that date a distinct improvement has occurred at Malabar. The Psychologist, the Education Officer, the Probation and Parole Officer and the Welfare Officer conduct a team operation. Each separately interviews the prisoner some days before the Committee meeting. They then meet together to discuss him and each makes a report to the Committee. The Probation and Parole Officer endeavours to have the pre-sentence report, if one was made, available for inspection by all. This team operation should result in the discovery of the
main aspects of the prisoner's needs. This Committee is working reasonably satisfactorily. There is still room for improvement in respect of obtaining facts. This will be discussed later.

As to the Reception Committees – The Malabar Reception Committee (which handles many more prisoners than the others) deals with the classifying of short-term prisoners from the security viewpoint but not from that of programming. It is left to the gaol in which these prisoners are placed to do something in regard to developmental programmes. It would clearly not be practical to attempt to carry out a programming function as part of the classification system in respect of short-term prisoners in this Committee.

As to the Programme Review Committees – part of the data that should be available to these in respect of long-term prisoners, would be original studies of and reports on the prisoners made for the Classification Committee, reports on the progress of and recommendations for the future of the prisoners in any gaols in which they were housed prior to coming to the present gaol, and reports of the same kind for the present gaol by the various officers concerned. In the past, some of these materials have not been available at all and others not available to an adequate extent. For that and other reasons, although the programming of prisoners has been good in some gaols, mainly the smaller ones, there has been little concentration on formal programming in the larger gaols. The Committee at such a gaol concentrates mainly on reviewing security classifications and dealing with applications for day leave or other leaves. Indeed at the very large gaols, there might not be much time available to do more. This is not to say that if individual prisoners in such gaols seek out assistance in such matters as education, psychological needs or welfare, they would not be given it in so far as resources were available. It must be recognised that the filling of needs such as these and even more the devising of programmes for filling them by way of classification must necessarily be limited by existing shortage of resources including accommodation and staff. Basic improvements necessary for all gaols could be made by fairly inexpensive administrative changes in regard to files and earlier follow-up of new prisoners by the committees. If resources allow, using the Case Management Review Team System on either the Emu Plains or Malabar model in support of the Programme Review Committees should also result in improvements. These matters will be discussed later.

As to the Release on Licence Board – its comprehensive files, personal knowledge of the prisoners gained by regular interviews and the fact that it has continuous supervision of the same group of prisoners over a lengthy period, mean that it can operate efficiently in the needs side of Classification as well as in the security side.

(b) The Principles on which Classification is based and knowledge of them by Committee Members

The basic principle underlying classification on the needs side is that in addition to satisfying the needs of prisoners for food, shelter, health and protection, an attempt should be made to satisfy wider needs such as psychological, educational, vocational, social and welfare ones. The reason is not only that it is humane to do so, but also because humanity, like honesty, is the best policy. This policy is enunciated in circular No.82/63. The role of the classification system is said to be "to assist in the preparation of each prisoner for his/her earliest proper release by providing a programme facility". It is to include protection, the satisfaction of welfare needs, an opportunity to develop educational and employment
potential. The role of the classification committee is said to include ensuring protection, ensuring satisfaction of immediate welfare needs, and outlining an initial programme "with social/educational/psychological/industrial components as necessary." The role of Programme Review Committees includes, in respect of long-term prisoners, reviewing the programme as previously defined, updating and implementing it where necessary. In respect of short-term prisoners it includes outlining and implementing an initial programme with social/educational/psychological/industrial/pre-release programme components as necessary.

The instruction, perhaps stemming from its general nature, is in wide and vague terms and abstract in form. I am not aware of any more specific and detailed instruction by the Commission to its staff for the performance of the roles set out. For a number of years now, indeed dating from before the Nagle era, the Department has commendably committed itself to these principles by appointing staff, psychologists, education officers, probation and parole officers and welfare officers to endeavour to carry them out. I have no reason to doubt that these various staff members have endeavoured to satisfy the various needs that have come to their notice within the limit of available facilities. It is a deficiency, however, that the instructions have been left merely as a circular dating from 1982 and that an attempt has not, in the past, been made to fill the principles out in more specific terms and with more detailed guidance. By that means the minds of the officers could have been concentrated more on the need for planning programmes for the satisfaction of various needs, rather than merely providing facilities for those prisoners who choose to take advantage of them and satisfying such of the needs as come to light.

Considerable improvement occurred shortly before and during the course of my enquiry. The Emu Plains Case Management Review Team devised a form for the purpose of their system which itself gives some indication of the method of planning a programme. A report on their work and other matters was published in 1986 by a Departmental Committee, the Institutional Case Management Review Committee. (Convenors Ms. Johnston and Mr. Aitkin). In addition, Ms. Caruana and Mr. Allanson of that team wrote a programme specifically for short-term prisoners called a 'Time Out' programme which has been published and publicised to various gaols. Further an Orientation Programme later called an Access Programme was devised and instituted for new long-term prisoners coming to the Malabar reception and staging prison, the Central Industrial Prison by Mr. Medaris and Ms. Luck, education officers at that gaol. I have read their report on their work dated 15th April, 1987. A young offender's programme has been devised and instituted at Berrima Gaol. An account of it is published in the booklet "Prisons and Programmes". (Cole, J. Probation and Parole Service, 1986). Another instance of what I have in mind as capable of giving guidance in programming is a paper of Mr. T. S. Power of 4th February, 1986 on the subject "Orientation Programme - CIP Position Paper". The subject of the paper is more than mere orientation. It deals with preparation for programming.

The lack of detailed specification about programming has been reflected in the lack of knowledge of the programming principles by a number of members of the Programme Review Committees. It has been a contributing cause to the tendency of those committees to regard their duties primarily as the review of security ratings and the consideration of applications for the various forms of review. This tendency was observed by me and my observation was confirmed by the findings of the Research Division team. Other causes are probably the procedure of reviewing the prisoners ordinarily only on the
expiry of six months after their arrival at their gaol of placement, and the unsuitability of formal Programme Review Committee meetings for programme planning.

(c) Knowledge by Committee Members of Available Facilities

The facilities available for the satisfaction of the various needs vary in accordance with the different gaols. Some are much better equipped for this purpose than others. The more experienced members of the various committees would be aware of the situation in some of the gaols and if uncertain could seek to ascertain it by telephone. But it is desirable for the information to be readily at hand for all committee members. At the start of my inquiry it was not so at hand. Last year two improvements occurred. Much of the material was contained in the Classification Manual prepared for and supplied to the Administrative Assistants of the Programme Review Committees by the Classification Division. In addition the Commission published for staff a booklet referred to above, "Prisons and Programmes". It gives details of facilities at all gaols and of certain special programmes.

(d) Honesty and Competence of Judgments made

As to honesty of judgment there is nothing to be added to what was said under this heading in respect of the security side.

As to the competence of judgments made on the needs side, in some gaols, especially the large ones, very little has been done in the way of monitoring past programmes for the development of long-term prisoners or for the satisfaction of their needs or of planning future ones. Even less has been done in respect of short-term prisoners. In smaller gaols there has been some reasonable monitoring of the prisoners' progress. The deficiencies have sprung partly from shortages of staff and other facilities, partly from what seems to have become established practice at Programme Review Committee meetings of dealing mainly with security ratings and leave applications, and perhaps partly from the unwieldiness of formal Programme Review Committee meetings to establish needs and plan programmes. It is also possible that as much as is practicable within resources available is being done to satisfy the needs that become known to the non-custodial staff, so that little need for programming of prisoners is seen. As against that, there is the question of the non-communicative prisoners, those who do not push their needs forward. A further possible cause is lack of sufficiently detailed and specific instructions to make clear to committee members the nature of what was required of them. Perhaps models would help. One attempt to improve the position was made by the Department last year. It sent the authors of the "Time Out" programme to the various gaols to introduce the programme and its concepts to the appropriate officers.

By these remarks I do not intend to reflect on the ability or competence of the officers concerned. Further I have no reason to doubt that they have tried to satisfy such needs of prisoners as have come to their attention.

(e) The Question of Justice and Fair Play

Similar considerations apply in respect of the needs side as were suggested on the security side with two qualifications. The first is that there is not so much scope for apparent conflict between the community's interest and that of the prisoner as there is on the security side. The second is that it may be easier for the needs of a prisoner who is not able to speak up readily being missed at a formal meeting of a large committee.
Malabar whereby all the non-custodial officers interview the prisoner and then meet to discuss him and to present reports before the Classification Committee meets or the similar Case Management Review Team System devised at Emu Plains Training Centre, if it is possible to spread them to other gaols, should do much to overcome this difficulty.

(f) The Following Up of Planned Programmes in Practice

There has been a gap in the follow-up of programmes planned in respect of long-term prisoners in the past. The main reason has been the fact that Programme Review Committees at the gaols to which the prisoners are transferred after classification have not ordinarily met in respect of them until the expiry of six months. That is the maximum period allowed by Regulation 11F and it has ordinarily become the minimum or norm. It is true that the prisoners coming to a new gaol have been met by Reception Committees at those gaols. It is also true that at most gaols some or all of the non-custodial officers attend at Reception Committee meetings. However, Reception Committees have other functions to perform and must see prisoners as soon as possible after arrival. The position could be improved by simple administrative changes as will be discussed. The extent of improvement may be limited by availability of resources.

As for short-term prisoners, many of them have not been seen at all by the Committees because they have not ordinarily reviewed prisoners until the expiration of the six months set as the maximum time for mandatory review and by this time quite a number of them are released. One has heard the view expressed that there is not much that can be done for short-term prisoners as they are in gaol for such a short period. I do not share this view. I think that, as far as resources permit, something should be done. If they do not permit, efforts should be made to obtain more resources. Again the Case Management Review Team System could provide an admirable start towards solving this problem. It was in an effort to solve this problem that it was devised.

(g) Protection and Separation

Protection refers to the segregation of a prisoner in protective custody. Protection has ordinarily always been necessary for three classes of prisoners, former policemen and warders, child molesters and informers who provide information to or give evidence for the authorities. It is part of the special morality of prison society which is found in other countries also that these classes are in danger of violence or death from some of their fellows. The number requiring protection has grown very much in recent years. There are new classes seeking protection, consisting of prisoners claiming to be indebted to others inside or outside prison in connection with such matters as drugs or gambling. The increase in numbers has become a heavy burden to the system. It has to provide such custody for the most part in antiquated gaols surviving from a time when such needs were much less, and in any case does not have sufficient accommodation for all the ordinary prisoners committed to it. It also has the problem of protection within protection, or protecting some of the protected from others on protection.

As protection accommodation is ordinarily inferior and often considerably inferior to ordinary gaol accommodation, it is reasonable to assume that those claiming protection, are probably in need of it. On the other hand, those in need of it soon become aware of their need, and ordinarily it has been requested and granted before the prisoner is classified. Prisoners may request protection in writing as contemplated by Section 22(1A) of the...
Prisons Act. If they do so the Commission has little option but to grant it. I found no evidence that the classification system is not operating efficiently in respect of supplying protection.

Separation is contemplated by Section 15 of the Prisons Act. One of the great potential evils of imprisonment is that there are lumped together all the different kinds of persons who have broken different kinds of laws. There are some who are in prison for the first time for using illegal drugs or for some kind of driving offence, some young people, perhaps easily led, perhaps of the rebellious type, engaged at an early stage in the common offences of motor car stealing or minor burglary, others who have perhaps graduated to armed holdups to provide money for drugs and yet others who can be regarded as professional criminals committed to a thoroughgoing criminal morality. One would hope that it would be practicable to separate those less committed to crime from the influence of the worse. However the question is not so simple. Sometimes quite young people are guilty of the most horrendous crimes. A further difficulty is in providing different accommodation for the different types in view of the shortage of accommodation and the geographical distribution of gaols in New South Wales.

However, the Commission does make quite considerable efforts to achieve some forms of separation. The Classification Division takes steps to keep certain gaols, particularly certain small medium or minimum security ones free of "heavies". It has tried to set aside part of one goal for young offenders. It has instituted a young offenders programme at one of the gaols which it keeps free of the "heavy" types. It sees a certain gaol as particularly favourable to education. It tries to accommodate in it some of those interested in training or education and to keep out those who are opposed to work and study. It tries to place prisoners in suitable or appropriate gaols within the limits of resources available. Some of these kinds of separation become in effect forms of protection. Some young vulnerable prisoners who might be in danger of sexual harassment or assault can by this means, when available, be kept away from "predators". Some of the prisoners traditionally needing protection from violence can be accommodated in gaols where "heavies" are not sent.

A further problem is that some penologists are of the view that such separation is not necessarily to be pursued. It was partly because of this view that the Nagle Commission recommended the dispersal of the most difficult prisoners amongst several gaols instead of the concentration of them in one gaol as had been the policy prior thereto. Some prison administrators doubt the wisdom of this recommendation although it has been followed.

(h) The Efficiency and Economics of the System

The kind of criticism levelled by Professor Norval Morris and others against the American Reception and Diagnostic Centres can be made against the present system on the needs side also. Indeed in view of the weakness in the follow-up system in the past, it may apply more strongly to it than to the security side. I believe that the present efforts should continue from the needs view point. Undoubtedly improvement is necessary in follow up. But I think that the spirit is there to achieve it and efforts have been and are being made by individuals and the administration to do so. The organisation is a large one, and both sides need the help of the other. I think that some administrative changes that are not too difficult can assist improvement.
The Chief Psychologist of the Commission made a submission to me on this aspect of a different kind. He suggested that the initial classification by the Classification Committee in respect of needs should be abandoned and that needs planning should be left to the gaols in which the prisoners were ultimately placed. The argument was that planning for prisoners' needs was difficult in the early stages of their stay in gaol and could be more readily handled a little later in the gaol where they were placed; that the non-custodial officers there would have a fuller opportunity to acquaint themselves with their needs and plan accordingly; that by this means those who had to carry out the programmes would be the persons who planned them; and that the delay in holding prisoners in overcrowded conditions at Malabar for up to two months would be avoided. I must confess that I found and still find this argument and submission tempting. However, I have discussed it with a number of senior officers of the Commission concerned with the matter, and they are generally in disagreement with it. They argue that it would inevitably mean changes of gaol for a number of prisoners after the initial classification. Changes are expensive for the Commission and disturbing for the prisoners. The security classification function involves not only fixing a security rating but also deciding on the gaol in which prisoners are to be placed. This may well be affected by some study of prisoners' circumstances and needs. If this is necessary, then it is better to do it more fully in the first instance before initial classification is made and gaol placement ordered. The improvement in the classification system at Malabar which I have mentioned consisting of the preliminary interview of the prisoner by all non-custodial officers before the Classification Committee meets bears on the problem, since it should result in a more adequate assessment of prisoners' needs. I consider that I should not make a recommendation for or against this proposal but leave it to the continued consideration of the Commission.

(III) A Summing Up from the Needs Aspect

Difficult a task as classification is from the security aspect, it is much more so from the needs side. On the security side at least there is the important guideline of the dangerousness of the prisoner based on past performance. And there is the goal of preventing the escape of the dangerous, and at least limiting escapes by the rest. The needs of the sort of people who come into gaol are much more complex. Classifying from the needs side has not functioned as efficiently as classifying from the security side. It has been hampered by the shortage of staff resources in gathering facts for initial classification, and in following up those facts at the gaols to which prisoners are placed. There have been serious defects, particularly in the larger gaols, in regard to following up developmental programmes for long term prisoners. These have been contributed to by administrative deficiencies in the supply of material concerning programmes to the Programme Review Committees and the failure of those Committees to interview prisoners until the expiry of the six months set as the maximum period which can elapse before review becomes mandatory. Very little had been done in respect of developmental programmes for the needs of short-term prisoners, until the devising at Emu Plains Training Centre of the Case Management Review Team System. All of this is not to say that the Commission has not made very heavy commitments in resources by way of providing large numbers of staff with the special training to equip them to answer the various needs. I find the Commission's continued commitment to this policy entirely admirable. The result is that at least prisoners who themselves seek answers to their needs can find such officers to turn to. But the providing of programmes for individuals' needs by way of classification, which is required for those who need them most, the prisoners who do not push themselves forward, is certainly not as efficient as it could be. I am
hopeful that the position can be improved in respect of long-term prisoners by two simple administrative changes, the furnishing of adequate data to the Programme Review Committees, and requiring them to interview the prisoner soon after his/her reception at the new gaol instead of six months later. Along with this, the Committees would be required to see themselves, as their name indicates, as reviewers of programmes, rather than mainly or solely as reviewers of security classifications and leave applications. This development could, I believe, be aided by more detailed instructions and the provision of models. In respect of short-term prisoners other solutions are possible, but dependent on staff facilities. (See Chapter 8 Section A.)
PART II — ROOM FOR IMPROVEMENT

CHAPTER 6 — DEFINING AND GIVING EFFECT TO THE PURPOSES OF CLASSIFICATION

A. Bringing the Regulations into line with the Practice

There are indications of the purposes of classification in the Regulations, and in staff instructions, principally circular 82/63, which is an appendix to my Interim Report. There are indications also in the discussion paper "Minimum Standard Guidelines for Corrections in Australia and New Zealand".

At present the Regulations do not fully express the modern view of the Commission as to classification appearing from staff instructions, and confirmed by its practice.

The security categories in Regulation 11 are out of date. The six categories which replace them in practice are also out of date in that category A1 is never used, and there would be little point in applying it as distinct from category A2. They also need redrawing so as to eliminate from them the ambiguous concept conveyed by the word "trust". This word does not appear, at present, in category B but does in all the others except A1. Thus, whether or not a prisoner is to be classified as one of the C classes is made to depend on whether he can be trusted in open conditions. The ambiguity is that the word "trusted" seems primarily to mean "trusted not to escape". However, in category A2 it is accompanied by the concept of the prisoner involving some kind of risk to, or, as it is put in the original category A, danger to the public. Different considerations should apply to the escape of a confirmed shoplifter from those applying to the escape of a person who has held up a bank with a loaded firearm. I think the problem is best solved by eliminating the words "risk" and "trust", leaving the matter to the judgment of the officers concerned in the individual case, and drawing attention to the different considerations in staff instructions.

I submitted this problem to the Minister and the Commission and they have suggested five new categories, which I consider are satisfactory and should be substituted for the three Nagle categories at present contained in Regulation 11. It is true that such objective features as were represented by the words "danger", "risk" and "trust" have been removed in the new categories. But those words involved serious ambiguities and I do not think it is possible to define the categories by the use of single concepts even if unambiguous. In individual cases, depending on a number of factors, the risk of a prisoner escaping, even though he/she is not physically dangerous, is highly relevant for classification. In others it is relatively unimportant. Similar considerations apply to the word "trust".

Furthermore, Regulation 11 deals only with security classification. Regulation 11C also requires the Classification Committee to make a recommendation only as to security classification and placement of a prisoner, although it does require it to make "a detailed personal assessment". However, Regulation 11F(2) requires Programme Review Committees to review not only security classification and placement but also "programme progress" and to report and make recommendations on those matters to the Classification Committee (in practice its "sub-committee") "for review". But the only function required of the latter upon review by Regulation 11F(3) is to make a recommendation to the Commission for a change in the prisoner's security classification or placement if it considers that a change is indicated.
Thus whilst Regulation 11F in part reflects the modern viewpoint and practice of the Commission in treating the prisoner's programme as part of the classification functions, the other two Regulations do not.

In the redrawn version of Regulation 11 suggested by the Minister and the Commission the prisoner is required to be classified into a category not only for the purposes of security but also for the purposes of "developmental programmes". The addition of the words mentioned tend to indicate that the security requirements in respect of prisoners may affect their developmental programmes, and also that their developmental programmes may affect their security rating, although in the latter case the need for caution is necessary.

I consider that the time has come for the obligation to devise programmes to be expressed in the Regulations. This could readily be done by including in Regulation 11 rule 7 from the Minimum Standard Guidelines for Corrections in Australia and New Zealand.

I therefore recommend that Regulation 11 be replaced with the following:-

11 (1). Each prisoner shall, for the purposes of security and developmental programmes, be classified in one of the following categories:

Category A - those, in the opinion of the Commission, require to be contained within a secure physical barrier including towers.

Category B - those who, in the opinion of the Commission, require to be contained within a secure physical barrier.

Category C1 - those who, in the opinion of the Commission, require to be contained within a physical barrier unless in the company of an officer.

Category C2 - those who, in the opinion of the Commission, do not require to be contained within a physical barrier at all times but who require some level of supervision.

Category C3 - those who, in the opinion of the Commission, do not require to be contained within a physical barrier at all times and who do not require to be supervised.

(2) The Commission shall, from time to time, review and vary the category of prisoners as in its opinion the circumstances require.

(3) As soon as possible a programme shall be prepared for each prisoner in the light of the knowledge obtained about individual needs, capacities and interests.

In this recommendation I have replaced the word "may" at present appearing in Regulation 11(2) with the word "shall". The present Regulation 11F imposes a duty on Programme Review Committees to review classifications in accordance with Nagle recommendation No. 60. Their decisions were intended to be subject to the approval of the Classification Committee. (Recommendation No. 62). The Nagle report envisaged the Classification Committee deciding classifications subject only to being overruled by the Commission. (Report pg.209). Since the Regulations place the decision with the Commission, it should also have a duty to review.
In addition to amending the Regulation setting out the Commission's powers, it is also necessary to amend the Regulation concerning the duties of the Classification Committee to the like effect. I therefore recommend that Regulation 11C be amended so as to require that Committee to make a recommendation to the Commission for a developmental programme for each prisoner. To cover the possibility of prisoners not desiring to co-operate and other difficulties it would be reasonable to add the qualification "so far as practicable".

Classification is not limited to security and developmental programmes. It also involves protection from physical harm from other prisoners, and also to the extent that it is possible in available accommodation, separation of those less committed to criminal morality from those more committed.

Physical protection is granted under Section 22 (1A) of the Act upon written request by the prisoner. As noted in Chapter 5 Section B(II)(g) protection is known to be ordinarily necessary for former policemen, warders, child molesters and informers or those intending to give evidence for the authorities. Prisoners in these categories ordinarily learn of the need and will have made the request for protection before coming up for classification. Such requests naturally are normally granted as a matter of course. Circular No. 82/63 instructs the various committees that the ensuring of proper protection to prisoners is part of their role. I do not know whether the Classification Committee and the Reception Committees raise the question in cases of the type where it is traditionally known to be needed or in other cases thought to be appropriate, if it has not been already requested and received by the prisoner concerned. I do know that protection causes difficulties for the prisoners involved and the increasing numbers on protection have become a heavy burden on the system. The matter is a delicate one. On balance I think that consideration should be given to adding to the instructions that committees should raise the question with the prisoner in cases where it was thought appropriate. I do not propose to make any recommendation.

The classification process should also attempt to separate out, as far as practicable and as far as accommodation allows, those prisoners who are less committed to the criminal morality, those of retarded mentality and other vulnerable prisoners generally. This has been difficult in the past because of the limited facilities available. However I note with pleasure the request for funds by the Minister reported in the media to set up a special prison to house retarded and vulnerable prisoners. An important report ("The Missing Services") by an Interdepartmental Committee has recently been published concerning the difficulties faced by intellectually handicapped prisoners.

Regulation 10 (3) gives the Commission power to direct "the separation, within a class, of prisoners who have previously been in prison from those who have not, and of those whose age is less than 21 years from those of or above that age".

This provision is not in accordance with modern thinking. Some appalling crimes have been committed by persons coming to gaol for the first time and also by persons under the age of 21 years. The power to order separation should depend on the Commission's judgment as to the kind of prisoner involved. I therefore recommend that Regulation 10 (3) be replaced by a provision giving the Commission power to separate young or other prisoners not committed to criminal morality, prisoners who are physical vulnerable,
intellectually handicapped, or have some other characteristic which, in the opinion of the Commission, requires them to be separated from the general body of prisoners.

That recommendation deals with the Commission's powers. In addition provisions are needed to require the Committees concerned with classification to make recommendations for the exercise of those powers. I do not suggest that the Committees do not at present make an effort to discover needs for separation and where resources permit to recommend placements that pay regard to them. Indeed I know that they do try to do so, but resources in kinds of gaols available are sadly limited. It is nevertheless useful to give expression to the obligation.

I therefore recommend that Regulations 11C and 11D be amended so as to require the Classification Committee and the Reception Committees if separation should appear to them to be necessary and practicable in the case of any prisoner to make a recommendation to the Commission to that effect.

The Malabar Reception Committee has to deal with a very large number of short-term prisoners and is not equipped to make a thorough study of them. Further a change of circumstances may occur in respect of prisoners who have been the subject of recommendations by the Classification Committee as long term prisoners. It is therefore desirable that the same requirement should be made of Programme Review Committees and I recommend that Regulation 11F should be amended so as to require those Committees to make such a recommendation in appropriate cases.


It is not sufficient that classification policies be set out only in the Regulations. It is also necessary for them to be set out, and more fully set out in such documents as staff instructions and to the extent appropriate in the corporate plan. In the past the main source in which to find this kind of policy has been staff instructions. In the case of classification it was the circular No. 82/63 mentioned above. I have been provided with and have also seen a large number of classification instructions. I have not found it easy to ascertain precisely which were still in force and which were superseded.

In 1986 during the course of my enquiry the Classification Division completed a loose-leaf manual which is to be kept up to date. It was primarily designed to give instruction to the administrative assistants who have been attached to the various Programme Review Committees throughout the State pursuant to a recommendation of the Muir report. The production of this Manual is an admirable concept, but when it reaches final form, it should be distributed more widely.

I have seen in draft the report of the Research Division following its lengthy enquiry into Programme Review Committees. It contained at the draft stage a recommendation for provision of a Manual to all members of those committees to instruct them in the responsibilities of those committees, their role as members and as to the Department's policy on classification and also to acquaint them with the facilities available at the various gaols. I completely agree with their recommendation. However their enquiry was limited to Programme Review Committees. I consider further that the Manual should be provided not only to those Committees nor only to their administrative assistants, but to all officers serving on the various committees which have classification functions.
The Manual should do much to improve the understanding by the various officers of the Department's classification policy on the security side. I deal with certain problems on that side in Sections C to F below. On the needs side the problem has difficulties of a different kind. The deficiency on this side noticed by me and strongly confirmed by the Research Division enquiry is that there is at present little organised developmental programme planning for needs in the Programme Review Committees. One of several possible causes is the fact that Departmental instructions in this area, though admirable, are wide and general. Instruction No. 82/63 speaks the language of "opportunity to develop his/her educational and employment potential" and "an initial programme, with social/educational/psychological/industrial components as necessary". No doubt such general instructions could be said to be adequate for professional staff. The position may be that needs are being attended to as much as practicable within available resources and little more in the way of programming is needed at committee meetings. However with some hesitation I think that consideration could be given to providing more detailed instructions in the actual things to be done in particular types of prison with particular types of prisoner to provide such programmes. Consideration could be given to providing checklists and further model programmes such as the ones that have recently been developed by individual officers. I refer to the "Time Out" programme and the Orientation or Access Programme. Another excellent model might be the Berrima Young Offenders programme. I recommend that consideration be given to such developments.

When finalised the Manual should be placed in prison libraries for the instruction of prisoners. I have suggested this as an objective to the Minister and Commission and they agree with me. Further I see no reason why it should not ultimately be made available to interested members of the public. The Nagle report strongly recommended that the Commission communicate to the public knowledge of its principles and practices. The Commission has, in the past, made public its classification practices for use in a course in prisoner classification forming part of the Administration of Justice course in the Mitchell College of Advanced Education. Similarly I think that ultimately the Manual should be made available to the libraries of Universities and Colleges which have courses in penology and related subjects. It should be available in law libraries and also should be made available to prison authorities in other States. Although conferences of Corrective Services Ministers and Administrators throughout the Commonwealth are held from time to time, there is a great need for communication between the ranks in those services below the top ranks. Many developments and ideas spring from the ranks at all levels in the service and I think it most desirable that there should be a sharing of knowledge between the States and Territories.

I recommend that the Classification Manual be expanded to cover all aspects of Classification as far as is practicable, that provision be made for keeping it up to date, that it be made available to all persons in the Commission responsible for making classification recommendations, that it be placed in gaol libraries, offered to appropriate university, college and law libraries, made available to other libraries, members of the public, and prison authorities in other States.

C. Should the Factors Relevant to Classification be Formulated?

The question arises whether it is desirable to formulate expressly what facts should be taken into account in assessing the ratings to be assigned to prisoners, and if so what are the facts that should be taken into account.
Under the existing categories an indication is given partly by the ambiguous words "trust" and "risk" and partly by the less ambiguous word "dangerous". Even if those words or the word "dangerous" were retained, there would still be a question of what facts were to be taken into account in arriving at the conclusion that a prisoner was "dangerous" or to be "trusted". Ordinarily a prime fact must be the prisoner's past behaviour in committing the crime for which he/she was convicted. If, as I have recommended, those words are to be removed from the categories, it is even more necessary, to formulate expressly the facts to be taken into account in fixing a category for a prisoner. It has been put to me by the Commission that it is undesirable to do so because it might limit flexibility in treatment. That is an important consideration, but I consider that that problem can be overcome by adding to a list of factors to be taken into account, as is commonly done in drafting, a provision that any other factor which the Committee considers relevant is also to be taken into account.

I think it is better that officers of the Commission, prisoners and interested persons in the public should know the various matters that are to be considered. The officers having classifying duties change from time to time, and there should be a record of what are now thought to be the appropriate facts to be taken into account. That is not to say that they should not be changed in the course of progress. The listing of factors, if only used as a check list must surely assist the officers concerned.

In the Muir report (page 8) there are set out certain lists of matters to be taken into account. The report did not recommend specifically that these were to be taken into account, or that they were to be expressly formulated. They do not appear to have been obtained from any express departmental formulation but they do seem to have come from a departmental source. They are as follows:

Factors influencing towards a Higher Rating are:

(a) at initial classification - unstable family background, easily led/influenced by companions, unstable work pattern, addiction to drugs/alcohol, further charges pending, misconducts and/or attempted or actual escapes if a recidivist, violence in offence/s and in previous offences/s if a recidivist, pending deportation or extradition, length of minimum effective sentence to be served.

(b) at review classification - IN ADDITION TO THE ABOVE ... misconducts (especially violence, breaches of security, unlawful consumption of "home brews" or drugs), instability in family relationships since last review.

Factors influencing towards a Lower Rating are:

(a) at initial classification - stable family background and support, stable work pattern, no addiction to drugs and/or alcohol, demonstrated application in trade training or further education, satisfactory performance while on bail, satisfactory performance in open conditions when previously imprisoned if a recidivist, non-violent offence/s or peripheral involvement if violent, length of minimum effective sentence yet to be served.

(b) at review classification - IN ADDITION TO THE ABOVE ... good conduct and application to work, education and/or self-improvement since the last programme review."
During 1986 the Classification Division itself in the Classification Manual provided lists of factors to be taken into account in reviewing prisoners' programmes and of points for consideration in reviewing security ratings and programmes. So far the Manual has only been provided to the Administrative Assistants of Programme Review Committees. I consider that it is an improvement to furnish such guidelines. I do not see them yet as in a final form. I recommend that the Manual include for the guidance of committee members factors to be taken into account and/or points for consideration in making classification recommendations. I set out below for assistance a list which I would consider appropriate to be specified. In doing so I am not recommending that this list be used word for word or otherwise.

"The age of prisoners, their social, family and work history, personal traits including relationship to drugs, ethnic origin, the nature of their crime, the length of their head sentence and non-parole or non-probation periods, their criminal record, the likelihood of their attempting to escape from gaol, the potential personal danger to members of the public if they should escape as indicated by the nature of the crime or otherwise, their behaviour and work in gaol, their various needs including their aptitude and suitability for training and education, the length of time likely to elapse before their release from gaol, the possibility of and need for preparing them for the time when they will be released from gaol, and all other matters, which in the opinion of the officers or Commissioners concerned, are relevant."

I do not think it is practicable or profitable to attempt to list for the Commission and its officers the order of importance to be attached to the particular considerations set out. It is best to retain flexibility and to leave the matter to the good judgment of the officers concerned. At the same time, I think it would be appropriate to set out that what is required of officers dealing with classification is a weighing or balancing operation. They must not concentrate only on the prisoner's behaviour in gaol. He/she may be on his/her best behaviour. They must give it what weight they think correct. But they must never lose sight of the indications of dangerousness shown by the facts of the prisoner's crime and his/her prior history. Again they must give what weight they think correct to that. They must pay regard to the time to likely release and all the other factors. They must weigh them all against one another to the best of their ability in every decision.

D. The "Staging Down" Practice

I have set out in Chapter 2 Section G and Chapter 5 Section A(II)(b) my reasons for supporting this practice. I consider that the Commission should by statement make clear the propriety of the current practice of "staging down", where appropriate, with the passage of time, the original rating given to a prisoner. Naturally such a practice depends on the prisoner's behaviour and performance in gaol and changes observed in his/her attitude and character, on his/her development in maturity and otherwise and on the continuing approach of the time when he/she is likely to be released into society in any event. These matters subsequent to imprisonment must be judged in the light of and balanced against the prisoner's conduct and particularly dangerousness as evidenced by the facts of the crime which brought about the imprisonment as well as his/her earlier history. It can be argued that this too should not be put into express form but should be left as a matter of flexibility to the good judgment of the officers and Commission. It could also be said that officers are made aware of the practice by the instruction in circular No. 82/63 and the Classification
Manual that one of the roles of Programme Review Committees is "to actively review the prisoner's security rating to ensure that this is at the lowest appropriate level". The last three words echo Nagle Recommendation No. 7.

The "staging down" principle is an important and a correct one. I consider it would be wise to give it formal and express recognition. In doing so there should be made clear, what is also not formally expressed in Circular 82/63, that in staging a prisoner down it is his/her security rating that is being reduced. In doing so full weight must be given not only to the likelihood of the prisoner escaping but particularly to his/her potential dangerousness as shown by the facts of the crime and prior history. The importance of such an instruction is to prevent a possible view that the role of Programme Review Committees is simply to reward good conduct in the prison environment without full consideration of the facts that brought the prisoner there.

In the statement by Judge Collins, the first Chairman of the Release on Licence Board, (Appendix 2) there appears a statement of the way in which staging down may take effect in appropriate cases in the case of life sentence prisoners. It contains very rough indications of the number of years that a life sentence prisoner might expect to spend in each stage of security if his/her progress was satisfactory and staging down was appropriate and in the interests of the public in the particular case. It was not intended to lay down any hard and fast rule, but merely to give some outline of what might be worked for by prisoners under the penalty of an indeterminate sentence in order to assist them in planning performance of their sentences.

Prisoners under determinate sentences are in quite a different position. In their case I think the possibility of staging down their security ratings and the times for any particular stages should remain quite flexible. There is no need for any indication, even a rough one, of the proportionate part of a sentence to be served in each or any rating. To do so would not benefit prisoners. If the proportions tended to become rigid, it might seriously harm some.

I recommend that there be incorporated in staff instructions, preferably in the Classification Manual, a recognition of the staging down principle. It could be to the effect that as part of the principle of keeping each prisoner at the lowest appropriate rating, officers or Commissioners reviewing ratings from time to time, notwithstanding that a prisoner had an initial high rating, are justified in recommending a lower rating in appropriate cases, having regard to the development of the prisoner in all relevant respects with the passage of time, to the approach of the time when the prisoner is likely to be released, and to the desirability of preparation of the prisoner for his/her earliest proper release. All of these factors must be viewed in the light of and balanced against the prisoner's conduct particularly dangerousness as evidenced by his/her crime and prior history. The likelihood of escape must also be taken into account.

E. The Relevance of a Long Sentence in Classification

Observation suggests and the Commission confirms that under present practice the length of the head sentence is a strongly relevant factor in assigning a classification rating. Thus a prisoner with a long head sentence may be classified at present as A2, even if the facts of the crime and of the prisoner's history give no reason to suggest that he/she would be likely to escape or would be physically dangerous to the public if he/she did. The
problem arises most clearly in the case of "white collar" crimes such as embezzlement of money, where very large sums are involved. I am not suggesting that the classifying officers are rigid in this matter. I believe that it represents in their minds too a difficult problem.

During my enquiry I have been given a variety of reasons for imposing a high classification in the case of a long sentence, irrespective of the particular facts of the crime, and for doing so with a certain amount of rigidity. These have come from very experienced persons who spoke sincerely and from a detailed knowledge of what life in prison and prison management mean.

Some of the reasons I have been given are:-

"A long sentence prisoner needs goals, such as the achievement of reduction in classification rating by his behaviour and development. It is important both for himself/herself and for gaol management. Without goals a prisoner is liable to become institutionalised."

"A prisoner who is in minimum security for too long a time is likely to become over confident in his attitude to gaol discipline and get into serious difficulty if he comes up against a more disciplinarian type of officer".

"A prisoner in gaol for a long time needs the discipline of maximum security whilst he/she become adjusted to prison life, to the shock of the sentence, to settling his/her affairs and getting any appeal over". (That reason is used with particular reference to life sentence prisoners in Appendix 2).

"The public would not accept a situation in which a prisoner guilty of a serious crime, for example murder, or indeed one subject to a long sentence for a white collar crime, did not have to spend a substantial period in maximum security".

"If a prisoner with a long sentence does not spend a substantial period in maximum security, it is likely that those who do have to do so, will accuse the Department of discrimination, be dissatisfied, and accuse the prisoner of having obtained favoured treatment, by giving information to or by other forms of co-operation with the Department."

"Each time a prisoner has his/her security rating reduced, he/she has to accept more responsibility. The way in which he/she responds is a useful method of testing what his/her response is likely to be outside. This applies particularly to prisoners whose crime involved violence."

One argument that was not advanced which appears to me to be substantial would be:- "A long sentence prisoner would have greater temptation to escape". A like argument is used in the area of bail. Probably it does influence those who have to make recommendations in regard to classification even if they have not expressed it to me. With regard to the fourth argument above I can appreciate that there could be severe criticism of the Commission if a non-dangerous prisoner who received a long sentence for a white collar crime escaped at an early stage of it so as to leave Australia. I realise there would be even severer criticism if a prisoner escaped who had been guilty of secret crimes such as multiple burglaries and had been difficult to catch, even though burglars are not ordinarily dangerous, in the sense of resorting to personal violence. The sixth argument seems only to apply to prisoners with long sentences for crimes of violence or secret crimes against
order such as multiple burglaries. Whilst it would be hard to argue against maximum security for such cases, it hardly seems to apply to more open crimes such as fraud or "white collar" crimes.

Perhaps the fourth argument if recast a little is the true one. It could run thus:— "Despite the virtues of low security imprisonment, prisoners who have been guilty of very serious crimes should not be placed in a position where they can escape and so avoid punishment at too early a stage of their imprisonment." I feel that there would still have to be a qualification — "provided there was a real possibility of escape".

I do not find it easy to rebut these arguments. Certainly they are not in line with the present definitions of the security ratings which suggest that the test is the likelihood of escape or of danger to members of the public if the prisoner should escape. Nor are they wholly in line with two propositions of modern humane penology accepted by Mr. Justice Nagle, namely that the only punishment in imprisonment is to be the loss of liberty, and that security ratings should be the lowest appropriate. For my part, though I respect those who offer these arguments, I remain not wholly convinced. I note that in Port Arthur in about 1840 a new "Probation System" was introduced under which convicts passed through "a species of crucible of discomfort" (Ives 1914, page 143). It is true that sometimes old procedures find legitimate new justifications in later times. (cf. the jury system). Thus the crucibles of discomfort may have become crucibles of tests. But it is hard to resist the feeling that high security ratings not fully justified on a security basis are really being used as punishment, and that, if they are, it is contrary to the two Nagle propositions.

I recommend that the principle be adopted that security classification is not to be used as a method of punishment. I think in view of the difficulties that is as far as I should go.

There is the allied question of excessive rigidity in classification. This is not intended as a criticism of the officers concerned. As in all kinds of administration where there are recurrent situations of the same or similar kind, administrators do tend to apply what become formulae from case to case. This has the merit of tending to provide an even handed administration of justice, to avoid charges of discrimination, favouritism or corruption, and to lessen dissatisfaction. All one can say is that there should not be excessive rigidity, that flexibility of decision should be available, whilst realising the difficulty for administrators. If a decision is made to assess a low rating in the case of a prisoner convicted of a particular crime, it is sure to be cited as setting a precedent for all such. However, a proper flexibility in appropriate cases is the lesser evil.

An illustration of lack of flexibility is the tendency to grant an initial C3 rating only in very few cases. Only four(4) prisoners were classified C3 in 1980, seven(7) in 1981, none in the next three years, twenty-two(22) in 1985 and eleven(11) in 1986. I have heard a prisoner who was sent to gaol for driving with more than the prescribed concentration of alcohol, complain that his job was available for him outside and he could not obtain work release so that he could go to his job in the day time, whilst returning to gaol at night. The reason was that he had been given a C2 rating and could not obtain a C3 rating soon enough. A C3 rating is essential for being placed on work release.
If persons are sent to full time gaol rather than weekend detention for such offences, then I think that serious consideration should be given to giving them an initial C3 rating so as to enable them to retain their jobs if not in their own interest, at least in the interest of their families.

F. Increasing Ratings for Misbehaviour

If ratings can be reduced based on observation of good behaviour, than it may be quite logical that they can be increased because of misbehaviour in prison. Obviously much must depend on the nature of the misbehaviour. Prisoners on work release who are found to have consumed alcohol or other drugs are removed from work release and their C3 rating is removed. I have observed a case in the Classification Committee where a prisoner transferred from a minimum security camp as unsuitable because of his having a positive urine test for drugs was reclassified C1 and returned to an appropriate gaol. The prisoner claimed that it was unfair and a punishment. Such decisions are difficult. If the misbehaviour is such as to suggest the likelihood of escape and of dangerousness to the public in the event of an escape, or perhaps that the prisoner was unlikely to be released on parole, then a decision to increase the rating can readily be justified. I think that all that can be said is that the increase of ratings should not be used as a form of punishment. I so recommend.
A. Facts needed for initial classification. Deficiencies and Recommendations

Committees making recommendations for classification on the security side have to decide on the dangerousness or otherwise of each prisoner. The most important materials for such judgments are what the prisoner has done in the past, that is the facts of the crime for which he/she is in prison and his/her past record. Yet ordinarily the only facts about the crime which are available to the Classification Committee, apart from such account of them as is obtained by the interviewing officers from the prisoner, are the legal description of the crime and the length of sentence and non-parole period. The Malabar Reception Committee does not have the advantage of such interviews prior to its meeting.

The legal description of the crime and the length of the sentence naturally provide some information, but more is desirable. Thus robbery under arms can cover crimes ranging from robbery with the use of a toy pistol to an armed hold-up with a loaded shot gun which is discharged as a warning. Assault and robbery can cover a very wide range of assaults from a drunken push to a beating of another into unconsciousness. Again participation in a crime may vary considerably from that of pulling the trigger to that of transporting the principal criminal to the scene or keeping watch.

For committees dealing with classification to be as fully informed as possible as to the facts of the crime for which the prisoner is in gaol, they should have the police officer's statement of the facts of the crime given to the sentencing court, the pre-sentence report prepared by the Probation and Parole Service for the assistance of the Court in cases where one was prepared, and the sentencing court's assessment of the facts of the case and the reasons for its sentence. For the fullest information as to the prisoner's history they should also have the police antecedents of the prisoner, that is facts about the prisoner prepared by the Police Officer concerned and his/her prior criminal record as kept by the Police Department.

The police almost invariably prepare a typed short statement of the facts in every case in which an accused pleads guilty in the higher courts which deal with the more serious crimes. They usually produce spare copies of this and of the antecedents for the Judge and shorthand writer for their assistance. They also formerly produced a spare copy of the antecedents for the representative of the Commission, the Gaol Recorder, in the courts where those officers were stationed. It was then possible for that officer to send the copy to the prison with the prisoner's commitment warrant. The office of Gaol Recorder has been abolished in recent times. The police do not prepare the short statement of facts for the court in cases where the plea is not guilty. However I have been told that one is prepared in such cases for the Solicitor for Public Prosecutions.

Ordinarily the only criminal record available at present to the Classification Committee or Malabar Reception Committee is that written in by hand on a card in the prisoner's warrant or gaol file which is always located at the gaol where he/she is housed. Unless, as sometimes happens, the gaol record card has had added to it material from the Police Department records, it may lack entries other than sentences to imprisonment in New South Wales. Thus it may not have, as the Police Department records do, Childrens Court convictions or convictions in which the prisoner was placed on a bond, or
interstate or foreign convictions. Before the abolition of the office of Gaol Recorder, the Police antecedent form did reach the Reception Gaol from courts where Gaol Recorders were stationed.

The Corrective Services Department being a large one with various branches, has several different files in respect of a prisoner. As well as the gaol or warrant file, there is a prisoner file at the Head Office, a Probation and Parole file and a Classification file kept by the respective divisions, and other minor files such as a psychology file and a work release file. A copy of the Police record usually comes in due course onto the Probation and Parole file and commonly onto the Classification file. But they are the files of divisions which are separate from where the gaol or warrant files are kept (namely in the gaols). There appears to be no system at present by which information on those files can be transcribed onto the card contained in the gaol or warrant file. I have seen a gaol or warrant file card in a particular case which did not have certain important interstate convictions of the prisoner concerned, although they did appear in a Police antecedents record on the Probation and Parole file.

In 1983 the then Director of Classification told Judge Muir that the Classification Committee at times lacked information as to the prisoner's record and the facts of the crime and also the comments of the sentencing court. Accordingly the Judge recommended (No.6) that negotiations with the Police be pursued to ensure receiving the full information. Negotiations were conducted and a Police Department liaison officer was appointed to make material available. As a result the Classification Division does obtain the original criminal incident reports for its own files but they do not flow automatically and have to be sought. The result is that they are ordinarily not available in time for the initial classification. Further the original criminal incident report is made at the stage of the complaint and is not as authentic as the Police Officer's report made after investigation, and prepared for the court at the time of conviction and sentence.

As for the Police Officer's statement of facts prepared for the court and the prisoner's antecedents containing his/her criminal record as kept by the Police Department, I can see no reason why administrative arrangements should not be made in District and Supreme Court cases for a copy of each of these to be made by the Police Officer concerned for the Commission just as a copy of the antecedents was formerly made for the Gaol Recorder. The copies should be forwarded automatically with the warrant for the prisoner's commitment to the gaol to which he/she is committed. The Department employing the Officer whose function it is to forward the warrant with the prisoner, should instruct him/her to attach to it the statement of facts and the antecedents. I so recommend.

The remedy may not be so simple in the Local Courts. There the matters are not so serious as in the higher courts and imprisonment is much less likely to be the result. Not all the cases there are handled by detectives as is nearly always the case in the higher courts. Uniformed officers are not generally as experienced in court requirements as detectives. Typed statements of facts and criminal record sheets may not always be available. To solve the problem it was agreed in 1981 between the Commission and the Police Department to have each commitment warrant from a Local Court accompanied by a Police Information Sheet. It was to be prepared by the Police Officer handling the case. A form was agreed and a specimen attached to Police Circular 81/29. I am told that this was done for a time but was dropped, except for a limited number of police stations, presumably because of pressure of work on staff. The sheet was designed to give the prison
authorities at least information whether other changes were pending or likely against the prisoner in New South Wales or elsewhere and any basic known facts relevant to classification. I am told that absence of such information has sometimes been a source of great embarrassment. I have seen a file concerning a prisoner who was committed to prison with a short sentence for a minor crime. He was properly received from the Police by a minimum security gaol. No information was given to the gaol officers that other very serious charges were pending against him including a charge of escape from another prison. Such information would have been on a Police Information Sheet. The officers at the gaol which received him had no means of knowing his previous history. The prisoner escaped again.

I recommend that an appropriate Police Information Sheet be prepared by the Police Officer concerned in every case where a person is sentenced to prison by a Local Court. It should be the function of the officer responsible for sending the commitment warrant with the prisoner to attach the document to it. However, I do not consider the existing Police Information Sheet adequate. It does not contain the prisoner's record. If this is obtained for the Local Court, surely a copy could be attached for the information of the prison authorities. Exactly the same can be said about a short statement of the facts of the crime. If the record and statement of facts are not obtained in writing for the Court then I consider a brief note of each should appear on the Information Sheet. I so recommend.

I realise that the above recommendations will cause extra work for the already burdened police officers and court staff. The Corrective Services Department, the Police Force and the Courts are three branches of the criminal justice system. None is less important than any other. Each branch should give whatever assistance it can to the others, consistently with the proper carrying out of its own duties. It is absolutely essential to the proper discharge of the functions of the Corrective Services Department that it should have the fullest possible information about the prisoners entrusted to its care. The matters dealt with above are very important parts of this information which are possessed by the Police and by the Courts. It is quite consistent with the proper performance of the duties of each body and important to the administration of justice that it should give that information to the Corrective Services Department which needs it. I do not think it too much to expect that at least a brief summary of the information should be so given.

The importance of the judgment giving reasons for sentence by the sentencing court is that it will often contain a statement of the court's view of the facts of the crime, particularly if its view differs from that of the police after hearing the accused's version. If the court takes a different view of the accused's character and conduct from that taken by the police or the Probation and Parole Officer that should also appear. I have seen a case at a classification meeting where a wise prisoner had got his solicitor to obtain a copy of the reasons for sentence because it contained a classification recommendation based on the judge's view of the prisoner. This was then properly taken into account by the committee. Plainly the reasons for sentence may well be of value to other Corrective Service authorities. The Probation and Parole Division always orders and obtains a copy in due course where a prisoner has a non-parole period. The Parole Board does likewise in cases where the head sentence is five(5) years or more and in cases where it is less but the crime is violent, sexual or drug related. It should not be necessary for branches of the Department to order copies. There should be a system whereby they flow automatically to it and are distributed to the branches concerned.
Unfortunately that may be difficult to arrange. Not all reasons for sentence are transcribed and there is considerable delay in transcribing those that are ordered. The reason is staff shortage. Because of the delays the Court Reporting Branch has to give priority to urgent orders. To date it has not appeared that Corrective Services Commission orders are urgent on the view that the sentence reasons are not needed until the non-parole period expires. In my opinion they are urgent because of the need for them at initial classification.

I recommend that an appropriate administrative section or the Classification Division order the reasons and request them urgently as soon as a gaol receives a prisoner with a sentence with a non-parole period or with a long term sentence without a non-parole period. All of the reasons should then go to the Classification Division and copies of those where a non-parole period is involved should go to the Probation and Parole Service and the Parole Board. If it does not prove possible to get the reasons in time for initial classification, they will still be useful for reviews.

In 1985 the Efficiency Audit Section of the Public Service Board recommended that pre-sentence reports were also necessary for the Classification Committee (Report paragraph 3.17.), in those cases (about 40% of the total) in which they had been prepared for the court. When my enquiry commenced these were not being made available, but during the course of my enquiry, a new procedure was instituted at Malabar under which the prisoner was interviewed prior to the Classification Committee meeting with him by each of the non-custodial members of the committee. As a result of and as part of this improved system, the Malabar Parole Unit undertook to obtain in future pre-sentence reports in all cases in which they had been prepared for the sentencing court. At a recent inspection of the classification files for one week chosen at random, I found that this was indeed being done. I recommend that the Malabar Parole Unit continue to obtain all pre-sentence reports available.

This arrangement covers only prisoners dealt with at the Classification Committee meetings at Malabar. I recommend that it be the responsibility of the Parole Officer who presents a pre-sentence report in every case where a prisoner is sent to gaol, to supply a copy to the Director of Classification. It should be placed on classification files of long-term prisoners dealt with at meetings away from Malabar. In the case of a short-term prisoner a copy should be made available for the Reception Committee dealing with his/her classification and a further copy for the appropriate file or files of the Programme Review Committee and/or Case Management Review Team handling any review of the prisoner. This recommendation could bring about an overlap with the work of procurement at present done by the Malabar Parole Unit. An appropriate solution should be found.

On the needs or developmental side of classification, a committee needs to know as much as possible of the prisoner's needs, potentialities, and wishes. When my enquiry commenced the Classification Committee at Malabar obtained this information from a psychological report made by a psychologist who had interviewed and given tests to the prisoner, from an oral report by the Regional Education Officer in respect only of those prisoners who chose to see him, and from discussion by the committee itself with the prisoner at its formal meetings.

Discussions with the prisoner at a formal committee meeting are not the best method to get such necessary information from those who are not good at communicating in such circumstances. However, as noted above, in 1986 a new
procedure was instituted under which the prisoner is interviewed by each of
the non-custodial members of the committee some days prior to the formal
meetings. After their interviews and before that meeting the officers
concerned then meet and decide on their recommendations for an appropriate
developmental programme for the prisoner. This is in effect a case management
review team approach and represents a considerable change for the better. I
strongly recommend that the new system continue in future.

The psychology branch has considered abandoning the psychological testing of
every prisoner which in the past has gone along with each psychology
interview. Psychological tests would be given only in cases where the
psychologist judges them to be necessary. A result would be more time
available for important work required of the hard pressed psychology staff.
I read a number of the test results and they did not appear to a lay reader
to disclose much of significance for the classification system. I would not
regard the change as a retrograde step, but make no recommendation.

The case management review team system at Malabar differs from the Emu Plains
one in that at Malabar each non-custodial officer separately interviews the
prisoner whereas at Emu Plains they do it jointly. The Emu Plains contention
is that their method saves time for each officer, avoids duplication for
themselves and for the prisoner and should produce more thoroughly sought
facts and better conclusions. The Malabar argument is that it may be seen as
too much like an interrogation. The reply to this is that it can be
conducted informally. I think that groups should make their own decision,
though I prefer the Emu Plains contention.

B. Facts needed for Classification Reviews. Deficiencies and Recommendations

Programme Review Committees need the same documents as do the Committees
recommending initial classification, namely the Police Officer's statement of
facts for the sentencing court, the Police criminal record of the prisoner,
the sentencing court's comments, and the pre-sentence report (if any) by a
Probation and Parole Officer. (Judge Muir had a similar view. See his
Report page 15 and Recommendation No.6). Actually all of the various
documents mentioned are ordinarily in the long run available on the Probation
and Parole Service's files for long-term prisoners. That Service is
accustomed to obtain such records for its files, but they are not always
available at a gaol as distinct from a local Probation and Parole Office.
Nor are they ordinarily available to all members of reviewing committees.
These committees suffer from the same deficiencies in respect of such
documents as do the committees dealing with initial classification. They
have as one of their functions that of reviewing the security classification
of prisoners. For this purpose it is essential that they are made familiar
not only with the behaviour of prisoners in gaol but also with the nature of
the crimes that brought them to gaol and their previous history. The
deficiencies mentioned should be partly removed by my recommendations for the
obtaining of factual material. To remove them completely it is necessary to
provide for the communication of the facts to the reviewing committees.

At present the only information source available to all members of review
committees is the warrant or gaol file which alone accompanies a prisoner to
each gaol to which he/she goes and contains his/her commitment warrant. The
only information for classification purposes contained in it are the personal
particulars of the prisoner, his/her hand written criminal record card, which
also has prison misconduct charges with results listed on it, and standard
form sheets of all classification decisions previously made. Such a form, if
made at an initial classification contains brief notes of recommendations for
the prisoner's future programme. If made at a review classification it also contains brief notes of his/her previously existing programme. The forms themselves encourage brief notes only. Both kinds have a single line for each officer to write in his/her programme recommendation. The review form has a single line for each to write a note about the previous programme.

The criminal incident report obtained by the Classification Division from the Police Department, which is not usually available before the initial classification, is not placed on the warrant or gaol file, but it is kept on the classification file in the classification division. Similarly the psychologist's report also was kept on the classification file. The new report or reports now supplied to the Classification Committee on initial classification by the Case Management Team are kept on the classification file. Classification files remain permanently in the classification division. They are needed there and cannot follow the prisoner. Nor is there any duplicate made of them at present which could follow the prisoner. As a result the documents placed in those files are not available to Programme Review Committees. If the Police Officer's criminal antecedents form and statement of facts, reasons for sentence, and pre-sentence report are obtained in future, as recommended, and if they are kept attached to the commitment warrant and so placed in the warrant file, Programme Review Committees will have access to them. It may be, indeed it is likely, that not all of these documents will be placed in the warrant file because of concerns in the Department about privacy. If they are not, then they will be kept in the classification file. As the classification file does not follow the prisoner, such of these documents as are placed in it will also not be available to Programme Review Committees.

The remedy for these deficiencies is quite clear. I regret the extra paper work, but it seems to me essential. I recommend that all classification files be made in duplicate, that the duplicate follow the prisoner to each gaol to which he/she goes and be kept there in the custody of the administrative assistant of the Programme Review Committee. Any addition subsequently made to the classification files should be made in duplicate and the duplicate forwarded to the appropriate gaol so that it can be placed on the duplicate classification file.

However it is not sufficient that the non-custodial members of the Programme Review Committees should have to rely on the general classification file for information from the point of view of their own specialty. The Probation and Parole Officer has available to him/her a probation and parole file on each prisoner. This does not apply to the other non-custodial officers. Thus there is no education file which follows the prisoner from gaol to gaol. The Education Officer at present serving on the Classification Committee has made it a practice to send a copy of his notes regarding the educational needs of each prisoner whom he interviews to the gaols into which they are placed. But there is not an education file for each prisoner. I realize that the making of one means extra clerical work and that clerical resources are limited. I would hope that the problem of extra work is not insoluble. I recommend that there should be an education file for each prisoner and that it should follow him/her to each gaol of placement and be kept up to date.

There is a psychology file kept for each prisoner but this as a matter of routine only follows him/her to the first gaol of placement and not to subsequent gaols unless it is asked for. I consider that this position should be remedied. I recommend that the psychology file should follow each prisoner to each gaol in which he/she is housed.
Reviewing committees need further information when dealing with classification. They need to know details of misconduct by the prisoner in gaol resulting in charges; actions of the prisoner in gaol which did not result in charges but which may affect classification; prior reports on and suggested programmes for the prisoner made in gaol whether on initial or review classification; and current reports by both custodial and non-custodial officers made for the purpose of the current review. Such material is needed both for the security side and for the developmental programme side of classification.

As for the misconduct resulting in charges, there is available at committee meetings a list of such charges and their outcome on the criminal record card in the warrant file. As for the actions of the prisoner other than those resulting in charges, not only matters telling against him but also matters telling in his favour, it is unlikely that these would come to the notice of a Programme Review Committee unless they occurred in the gaol where the prisoner is at present and were mentioned in one of the reports before it. An example of this is the contraband letter in the case of Michael Patrick Murphy, which a vigilant officer discovered and referred to the classification division, where it was placed on the classification file with appropriate comments. Although I have not suggested that knowledge of it would or should have made any difference to the Programme Review Committee concerned with Murphy's case, the fact is that it had no knowledge of it. This deficiency would not be applicable in the case of the Sub-Committee of the Classification Committee which reviews recommendations of the Programme Review Committees, since it works within the Classification Division and has access to its files. If such material reached the classification file, the above recommendation for a duplicate classification file would remedy the deficiency in that respect. I deal with remedies in other respects at the end of this chapter (Section F).

The third sort of material needed is the original developmental programme designed for the prisoner at initial classification with supporting reports, together with the later reports made for any prior Programme Review Committee meetings being reports on the progress of the programme and recommendations for the future. I have already indicated that because Programme Review Committees lack copies of classification files they do not get the reports on which the initial classification was based but only the standard classification decision form with a brief note of recommendations endorsed on it. The position is the same in regard to any prior reviews by a Programme Review Committee. Again all that a subsequent committee has before it is the standard classification form which only differs from the initial form in having spaces for notes about the previous programme. Any full written reports made would have been attached to the original of the form and sent to the sub-committee of the Classification Committee and would remain with the classification file in the classification division. No copy is retained by the Programme Review Committee itself. Doubtless the officers concerned would keep a copy for their own records. The Probation and Parole Officer would presumably put his/her copy on that Service's file. The psychologist would presumably do the same if he/she held the psychology file. Thus officers of those two disciplines could have the prior material relating to their own discipline available to them. The remedy for this deficiency is again the recommendation for a duplicate classification file.

As for the fourth need, namely current reports, Programme Review Committees have available to them written reports usually on standard forms by the prisoners' Wing Officer and Industrial Officer and reports by the members of the Programme Review Committees themselves. Judge Muir expressed the view
(Report page 16) that these members should put their reports in writing and that the reports of each should be available prior to the meeting to be read by all the others. He instanced Berrima Training Centre as a gaol where this was done but acknowledged that it was a small gaol and each prisoner would be known to each officer concerned. He recognised that this might prove difficult in larger gaols and this indeed is the position. Thus at a large gaol such as Cessnock with 400 prisoners, when I met the Committee early in 1986 there were only two Psychologists, two Education Officers and one Welfare Officer. There was quite a turnover of prisoners and the Officers were only able to acquire knowledge of those prisoners who had actually sought their help or been referred to them. In addition to giving attention to such prisoners, the officers spent a number of hours on two days each week at meetings of the Programme Review Committee, which required their attendance. (Since then the position there has improved in that the staff has been increased to three Psychologists, three Education Officers and two Welfare Officers.) During the course of my enquiry the Classification Division instructed the Programme Review Committees that recommendations involving changes in a prisoner's security rating or programme would not be accepted by the sub-committee of the Classification Committee unless they did contain written reports by each member. However the instruction was qualified, to allow for pressure of work, by saying that if the member had no knowledge of the particular prisoner a report to that effect would be accepted.

It is difficult to criticise or to make recommendations in a context where owing to staff shortage it is not possible to carry them out. It is desirable, though difficult, that efforts be made to have funds available for more staff to be appointed where they are needed to carry out these functions efficiently. I believe that the non-custodial staff could carry out their duties more efficiently and with greater economy of time by applying the system of interviewing each prisoner as a Case Management Review Team in the way devised at the Emu Plains Training Centre, or the basically similar system of separate interviews and team consultation now used by the non-custodial members of the Classification Committee at Malabar. Whilst such a system economises individual effort, I realise that it still may not be possible even with the improved staff numbers at such a gaol as Cessnock.

In whatever way the problem is solved, solved it should be, if Programme Review Committees are to live up to their name rather than continuing to be, as many, especially at the larger gaols, tend to be now, committees for reviewing security ratings and making recommendations for leave. I recommend that the non-custodial officers at all gaols endeavour to interview each prisoner, whose classification is to be reviewed, preferably by a Case Management Review Team system, and make an appropriate report jointly or separately to the gaol's Programme Review Committee. I recommend that if such a system is used, a joint report be acceptable.

C. Follow up of Developmental Recommendations

This section is concerned with long-term prisoners. The problem of short-term prisoners is considered separately in Chapter 8.

Regulation 11F(2) requires Programme Review Committees to review the security "classification, programme progress and placement" of each long term prisoner at least once each six months. In practice the maximum has ordinarily been treated as the minimum or norm. Even in the case of initial prisoner placements reviews have been left until six months after reception of the
prisoner at the gaol of placement. That period is ordinarily sufficient for review of classification on the security side of placement. However it is quite insufficient for review of the developmental programme.

Indeed, in the case of initial placements what is needed is not a review of the programme but a consideration of what has been recommended by the Classification Committee, so as to see to its application, any reconsideration of it that may be necessary, and also a consideration of any matters that have not been covered by the Classification Committee.

Obviously someone at the gaol of placement should be responsible at least for promptly considering and seeing what is to be done about the recommendations of the Classification Committee, and desirably considering the other matters mentioned.

One possibility is that the Reception Committee at the gaol of placement should attend to this review. In some respects Reception Committees are attending to this at present. In most gaols some or all of the non-custodial officers attend reception committee meetings. Some, though not all, prisoners are well able to communicate their needs and the recommendation forms of the Classification Committee are available, even if the reports on which they are based are not. An unofficial check was made by the Regional Education Officer attached to the Classification Division and he found that in a majority of cases prisoners were receiving educational programmes which had been recommended. However Reception Committees are not the appropriate bodies to attend to this follow up. They are primarily for reception and orientation purposes and not for assessment and programming. Further it is not always practicable for the non-custodial officers to attend and rare for them all to do so. Receptions must proceed promptly and regularly and cannot be deferred.

Another possibility is that if the case management review team system devised at Emu Plains Training Centre is extended to other gaols, this team could take over the follow up of Developmental Programme recommendations shortly after the prisoner is received at a gaol of placement. I have considered recommending that such teams take over the follow up. However I have to accept that it may not be practicable to extend such a system to other gaols. Further such teams do not have the advantage of an administrative assistant and it is not envisaged that they would supersede the Programme Review Committees. I recommend that the Program Review Committee should follow up the recommended developmental programme for each prisoner within 14 days of his/her reception at a gaol of placement, and Regulation 11F, Officer Instructions and the Manual should be amended accordingly. For the purpose of greater efficiency this should be preceded, if practicable, by a case management review by the non-custodial officers team on either the Emu Plains or Malabar model.

The programme consideration or review that is necessary for prisoners following their initial classification and placement is equally necessary for all prisoners transferred from one gaol to another. In their case also consideration of them by the Programme Review Committee at the new gaol six months later is not adequate. I recommend that prisoners transferred from one gaol to another should have their programmes considered and reviewed by the Programme Review Committee at their new gaol within 14 days of reception.

Attention should be paid to the reasons for their transfer. Regulation 11F, instructions and the Manual should be amended accordingly.
D. Criminal Record Cards

The present system of recording the criminal records of prisoners is that there is a card for each prisoner on which is written in handwriting his/her criminal record. The original card is kept with the prisoner's warrant or gaol file. A copy is kept at Head Office. The card contains the prisoner's photograph and other basic identification material. The card is primarily a record of convictions which have caused the offender to enter the New South Wales Prison System. Cards do not necessarily contain offences dealt with by Childrens Courts or by other courts which did not result in gaol sentences, or by courts outside New South Wales, although they sometimes have this information if the cards have been originally made up from or brought up to date from Police records. I have seen a card of a prisoner used at a Programme Review Committee meeting which did not show certain important interstate convictions for offences committed by him after escaping from a New South Wales gaol. I have also seen a case at an open sitting of the Parole Board in which the Board had two different versions of a card before it, one containing a particular conviction whilst the other did not. Apparently one was a Head Office card and the other a gaol card. A further difficulty for users of the cards is that they are handwritten.

The Commission has been for some time engaged in the task of computerising various details about gaols and prisoners. I am told that the task is difficult, complex and lengthy. The Information Services Branch is carrying out the computerisation. It tells me that it does not contemplate in the immediate future and for some time thereafter being able to place on the computer the past criminal records of prisoners. It will be placing on it particulars of the offences for which the prisoners are currently committed to prison and also of all future warrants of commitment of prisoners to prison in New South Wales. It may be possible some time in the future to add to the computer the old offences and also offences from the police records. This means that until that can be done the past records of prisoners now in prison or coming into prison in future will not be available on the computer. It also means that details of interstate or foreign offences will not appear on it. The Department will still be forced to rely on its handwritten card records for old offences and on police records, if received, for such old offences as are not written on the cards including interstate and foreign offences.

This makes it even more important that steps be taken as recommended above, for proper arrangements to be made to receive with the commitment warrant for each prisoner full details of his/her criminal record from police records. That objective might be more simply and efficiently achieved by the Commission having access to the Police Department computer. I recommend that if and when resources permit the computer should contain the full criminal record of each prisoner to the same extent that Police Department records do, that is a record of all offences whether resulting in imprisonment or not and whether committed in New South Wales or elsewhere. When that situation is achieved, the criminal record cards should be abandoned.

I recommend that until the cards are abandoned or if it is decided to retain them as a record of the New South Wales gaol history of prisoners, they should be replaced by Police Department record sheets when classifying authorities or the Parole Board seek information as to a prisoner's criminal history. Alternatively, if it is not desired to take that course, some section should be assigned the definite task of completing from the police records both the cards of long term prisoners at present in gaol and those of prisoners received in future. An indication sufficient to attract attention
should be placed on each card to indicate whether it has been so completed or not. It is a regrettable fact of modern life that handwritten papers are a temptation to busy people to skimp reading. I recommend that pending full computerisation the Department endeavour to replace handwritten criminal record cards at least for the future by typed ones.

A further problem is that of bringing the prisoner's full criminal history to the notice of committee members. I was told in the case of one Programme Review Committee that the warrant record card was always available for members to see. It is sometimes lengthy and always handwritten. I have seen at another committee that photocopies of that part of the warrant record card covering a certain number of years in the recent past had been prepared by the Administrative Assistant for all committee members. I do not regard either method as sufficient. In making recommendations as to security classification a knowledge of a prisoner's full criminal history is of great importance. To prepare and provide full copies of all records is time and paper consuming. Nevertheless it is necessary. I recommend that administrative assistants prepare full copies of full criminal records of each prisoner for each member of Programme Review Committees. The Secretary of the Classification Committee should do the same for its members.

E. Identifying Crimes by Numbers

On the recommendation forms of the Classification Committee and the Programme Review Committees a prisoner's prior criminal record is shown briefly by listing corresponding numbers at one time used to identify crimes by the Australian Bureau of Statistics. This system is not adequate to convey information to members of Programme Review Committees. Although they may recall some of the numbers, it is difficult to remember them all accurately and a code is sometimes not readily available. Mistakes occur in transcription, as for example when "521" signifying "escape from lawful custody" was wrongly transcribed by a busy clerk as "520" signifying "contempt of court". Further the categories of crimes represented by the numbers, though formerly possibly adequate for statistical purposes, are not always informative for classifying purposes. Thus there is no number in the code for armed robbery, although it is important that Committee members should know if that crime has been committed by the particular prisoner. The number used is "300" which merely covers "robbery with major assault". A code number commonly used is "510" which merely means "breach of parole" and gives no indication of the actual type of crime committed by the prisoner.

I am assured that the computerised system will contain, and that printouts will show, not only a number, but also a description of the crime in words.

I recommend that words and not code numbers be used to describe crimes in sheets for the information of committee members. That would no doubt be onerous for clerical staff. However provided my recommendation for providing full criminal records to members is adopted, it should be possible to omit altogether the references to the record from the recommendation forms.

F. Reference to Important Facts concerning a Prisoner

My enquiry has shown the possibility of certain important facts concerning a prisoner being located in the depths of a thick file about him and therefore not readily available to the members of a Programme Review Committee. Each member could not be expected to read large files about each prisoner at each meeting particularly in the case of the large gaols with busy meetings. The administrative assistants conceivably could read them and note them for the
other members, but again the pressure of business might easily prevent this, and administrative assistants might miss the significance of one particular note in a file. The sort of fact that I had in mind was the letter discovered in the cell of Michael Patrick Murphy and sent by a Prison Officer to the Classification Committee.

I am told that it may be possible to provide fields for the recording of references to the places where such significant facts may be found on a particular file in the computer records for individual prisoners. I consider that this should be done if at all possible. I therefore recommend that the Department should endeavour to provide fields for references to the location of significant information for classifying authorities in respect of individual prisoners. It is true that a computer can only print out what officers put into it. I therefore recommend that officers be instructed to notify the Classification Division of significant matters for inclusion in classification records and that the Classification Division on receipt of such material place a reference to where it may be found on the computer record of the prisoner concerned. Pending computerisation a suitable method should be devised such as a precis form which can be carried forward, for alerting administrative assistants and others to such significant facts.
CHAPTER 8 - SPECIAL CLASSES OF PRISONERS

A. The Problem of Short Term Prisoners

(I) Can Anything be done for Short Term Prisoners

Short term prisoners are defined by the Regulations as those likely to spend less than twelve months in gaol when the likelihood of their release on probation or parole and remissions are taken into account. There are two problems concerning them: whether there can be any developmental programming for them, and secondly, how it is to be set in motion.

The view has been expressed that there is nothing much that the Department can do for short term prisoners because of the comparatively short period that they are in gaol. I sympathise with the Department's difficulty in regard to resources, but I do not share this view. I am not alone in this. In 1985 there was devised at Emu Plains Training Centre by the Psychologist, Education Officer and Probation and Parole Officer a scheme which they called the Case Management Review Team System. Sometimes the word 'Institutional' is added. The team consists of three officers of the kind mentioned together with a Welfare Officer. The scheme is an imaginative and progressive one.

Emu Plains is a minimum security prison containing about one hundred C2 and C3 category prisoners. They do not ordinarily stay there long. It has an average turnover of 20 to 30 receptions/discharges per month. The team interviews each inmate two weeks after his arrival. The scheme's objects are to ensure that all are assessed on arrival and a data base developed to ensure that appropriate programmes are developed for them, that their progress is regularly reviewed every 6 to 8 weeks, that after-care arrangements and referrals are made on release. Furthermore the Psychologist and the Education Officer of the original team also devised a programme for assisting short-term prisoners with basic life skills called the "Time Out Programme". I consider that provided resources are available, and it is important for society that resources become available, there are a number of such forms of assistance that could be given to short-term prisoners.

The Case Management Review Team scheme goes a good way towards showing that something can be done in the way of a programme even for short term prisoners. Even for the shortest there could be matters such as seeing to the prisoner's adjustment to gaol and leaving it, attending to transition to life outside gaol, possibly some basic education, drug counselling, vocational help and general life skills help. Those who devised the scheme stress the importance of assessing the short-term prisoners' needs and trying to initiate introductions for them to the appropriate bodies outside gaol able to give assistance. Thus if they found that a prisoner had an alcohol or other drug problem, they would try to establish contact with suitable assisting bodies outside, and if time allowed, initiate some assistance inside gaol.

The scheme also indicates that there is a solution to the problem next to be discussed. It also suggests a way for improving the work of Programme Review Committees in respect of all prisoners, short or long term.
(II) How are Programmes for Short-Term Prisoners to be set in motion

It is not practicable for the Malabar Reception Committee to develop any programmes on the developmental side of classification. Regulation 11F requires Programme Review Committees to review each long-term prisoner at least once each six months. It makes no reference to short-term prisoners. Staff instruction circular No. 82/63 requires Programme Review Committees to review short-term prisoners with sentences of three months or more. There is a statement in that section of the circular dealing with the role of Reception Committees that short-term prisoners with a sentence of more than three months are to appear before a Programme Review Committee in their gaol of classification within two weeks of reception. That has not been applied in practice and short-term prisoners like long-term prisoners have ordinarily only been seen by Programme Review Committees six months after reception.

However like long term prisoners they have been seen by Reception Committees within a few days. In most gaols some or all of the non-custodial officers attend and the prisoners with ability to make their needs known under such circumstances, will have an opportunity to do so. Unlike long term prisoners their files contain no recommendations in regard to programmes. It is not likely that the bad communicators, whose needs are often the greatest, will receive attention to their various needs in these Committees, which are not strictly intended for or suitable for programming purposes.

I believe that it is clearly necessary that short term prisoners should be seen as soon as practicable after arrival at their gaol of classification, say in two weeks by a body more appropriate for assessing them and doing something about their needs. The most suitable body is a Case Management Review team working along similar lines to that of the Emu Plains team. Such a system is better suited for such objectives than the more formal and larger Programme Review Committee. Experience has shown that Programme Review Committees like the Classification Committee are not particularly suitable for these purposes without case assessment in advance by a smaller non-custodial team. However I have to accept that it may not be practicable to extend the Case Management Review team system to all gaols, particularly those with lower staff/prisoner ratios. I recommend that the Programme Review Committees should see every short term prisoner within two weeks of reception at his/her gaol of classification and make an assessment and devise a developmental programme for him/her. For short term prisoners it should not be necessary for the Committees to formulate their decisions as recommendations to the Sub-Committee of the Classification Committee, unless the prisoner remains in the gaol for more than six months. If practicable, the meeting should be preceded by an assessment by a Case Management Review team on the Emu Plains or Malabar model, and this should be followed up from time to time by the team as appropriate having regard to the length of the prisoner's sentence. A Classification file to contain all necessary assessments and reports should be kept for each short term prisoner by the Administrative Assistant. It should follow the prisoner to any other gaol to which he/she goes. It should ultimately be kept by the Classification Division. Regulation 11F should be amended accordingly.

A further problem is that whilst the short-term prisoners at Emu Plains Training Centre were mostly in gaol for less than six months, other prisoners within the short-term definition could be in gaol for as much as a year or even more. (For example a prisoner with a sentence of four years with a fifteen months non-parole period, who failed to get parole or receive remissions). In the case of such short-term prisoners, it is even more important that they be seen early by Programme Review Committees.
B. The Problem of very Long-Term Prisoners

Some years ago the Department set up a committee called the Indeterminate Sentence Committee because it felt that there was a need for a group to give special attention to and exercise a continued form of supervision over prisoners with an indeterminate sentence, that is a life sentence, who might pass that sentence in a number of different gaols. In 1985 this unofficial body was superseded by an official statutory body set up under Section 59 of the Prisons Act, the Release on Licence Board headed by a District Court Judge. I have dealt with the work of this Board elsewhere. By its sub-committees of three, it personally interviews every such prisoner every six months, after first interviewing the officers concerned with him/her at his/her present gaol. Quite an amount of time is put into these interviews and the prisoner's progress is discussed with him/her in the sub-committee and later separately by the full Board. I think this is a very humane and valuable operation and according to accounts given to me it has produced some very favourable results. (See also J Aitkin and G Gartrell. "Sentenced to Life: Management of Life Sentence Prisoners in New South Wales Gaols).

It appears to me that the time has now come to set up within the Department a new committee for similar supervision for prisoners who are under much longer sentences than normal. Recently a prisoner in this State has been sentenced to 25 years in prison with no non-parole period. Such a prisoner will probably serve a longer time in prison than a number of life sentence prisoners. It has been a common view of penologists that a period of imprisonment of five years has been sufficient to "institutionalise" a prisoner. The term is conceived as meaning something like the destruction of initiative. I think that care, such as that given by the Release on Licence Board to indeterminate sentence prisoners, is valuable in that the prisoners are encouraged by a single special group which regularly supervises them, to make an endeavour to attain objectives in gaol, and thus to retain initiative as far as possible so that there is some hope of the prisoner concerned fitting into normal society on release. I am told that it assists the prisoners to have a special group to look to. I see as one of its objectives, to avoid, what has happened in the past, a long term prisoner being a forgotten person. It appears to me that this need is just as great, if not greater, in respect of very long sentence prisoners as it is for life sentence prisoners. Supervision by a single, special group should also result in fuller knowledge and understanding of the prisoner, including any dangerous tendencies indicated by his/her crime and thus in more thorough attention to the security side also. In the case of prisoners eligible for parole the continuity of knowledge built up in respect of each prisoner should greatly assist the Parole Board.

I submitted this suggestion to the Commission which does not agree with me. It considers that such prisoners are sufficiently looked after by the Classification system. I remain unconvinced by this argument mainly because such prisoners would be in various gaols whilst in prison. Care and supervision by various Programme Review Committees could not be as thorough as that of a single, special group. I recommend that a new committee be set up to give similar care to very long sentence prisoners to that given to life sentence prisoners. Perhaps the borderline for a very long sentence prisoner might be one who is likely to spend five or perhaps six years or over in gaol after the probability of obtaining parole and all likely remissions are taken into account. It would not be necessary to include members of the public in the committee, as unlike the Release on Licence Board, it would have no power to recommend release.
G. Unconvicted Prisoners

Unconvicted or remand prisoners are those who have been charged and remanded in custody but not convicted. Bail has been refused them or they have been granted bail on conditions (usually financial) which they have been unable to comply with.

The McClemens Working Party report said (page 27):- "We are of opinion that specific provision should be made for the classification of remand prisoners." It said that it was essential for consideration to be given in each case to the nationality, nature of offence, education, dangerousness, personal traits and all other circumstances relevant to each such prisoner so as to separate those with serious criminal records or who were dangerous or violent or potential escapees from those others who might be likely to be harmed. "The need for classification for the unconvicted prisoner among other things will ensure that the limitations put on unconvicted men are as few as possible and that they be given the opportunity to work, to earn gratuities, to have the use of the prison library and other amenities". (The latter part no doubt refers to the fact that in the past prisoners on remand could not work even if they wished to and had no library).

Nagle recommendation No. 64 said:- "Remand and unconvicted prisoners should be classified by the Superintendent of the gaol of reception". The Report at page 211 said that such prisoners could not be classified in the same way as ordinary prisoners. They were frequently contained in the prison closest to where they were to be tried. A special remand centre should be built but in any case a security classification of remand prisoners was necessary.

Regulations 11D (1) and (2) require the Malabar Reception Committee and Governors in gaols other than Malabar to recommend classification for unconvicted prisoners. Regulation 11 requires the Commission to classify them. (In practice Reception Committees have taken over the classification function of Governors). Nevertheless unconvicted prisoners are not being classified, and have not been for some time in the past.

Even before the present state of crisis in regard to remandees (see Chapter 10) the Commission argued that all remand prisoners were held in secure accommodation, and that whilst it supported the concept of differentiating between prisoners on remand according to security requirements, the shortage of appropriate accommodation close to the courts was a limiting factor in any attempt to classify them.

The Minister also supports the classification of remand prisoners "particularly if courts continue to remand in custody the large number of offenders who are eventually found not guilty or who upon conviction are given a non-custodial sentence". He adds that a new remand gaol is required and the present remand facilities must be improved before an attempt is made to classify remand prisoners.

The normal "secure accommodation" is the Metropolitan Remand Centre at Malabar. It is a maximum security prison, and, like most of them, of an old and inadequate type for modern conditions. In recent times it has become overcrowded and the Commission has been placing remandees in the re-opened Parramatta Gaol. (For further details see Chapter 10 Section D.)

A further difficulty in classifying unconvicted prisoners is that the authorities do not know what sentence the prisoner will receive ultimately if convicted, nor what precisely are the facts which will be proved against
him/her. I am told that some years ago efforts were made to separate different classes of remandees in the Centre, but that it proved too difficult because of the varying rates of inflow of prisoners.

I accept the account of their difficulties given by the Commission and the Minister and am unable to show that more could be done by them at present than is being done. Not only do they have the problem of obtaining capital funds to build a new gaol and the large continuing expenditure to run it, but they also have the difficulty of finding a location in the Sydney area handy to the Courts.

One must sympathise with the Commission in its shortage of establishments, particularly modern ones and ones in the Sydney area. One also sympathises with its view that, particularly in present conditions, the courts should make a better effort to limit the number of prisoners awaiting trial without bail. (See Chapter 10, Section D). Further one can imagine that there could be heavy criticism by a court of the Commission if remand prisoners escaped and were not available for trial.

As for the uncertainty as to the prisoner's future sentence, if any, I believe that this difficulty can be overcome. The Police Department should co-operate by providing a statement of the allegations in support of the charges. Further the Commission would have access to the records of any prisoners who had been imprisoned previously and the Probation and Parole records of any who had come to the notice of that Service. Any difficulty caused by uncertainty as to the prisoner's final sentence or the nature of the offence is the lesser of two evils. The greater is that persons who might not finally be required to be imprisoned at all, may, because of court delays, be required to spend a year or more in maximum security conditions awaiting trial. Persons so affected are not only those who are refused bail, but also those who are granted bail but are unable to meet the financial conditions attached because of their own poverty or the poverty of their friends and associates.

As to the other difficulties I believe that the community should supply the resources, and that I should make the same recommendation as was made by my predecessors. It is even more necessary today, when the appalling delays in bringing on committal proceedings and criminal trials is continually adding to the number of unconvicted prisoners in gaol and keeping them there longer. I make the same recommendation as was contained in the 20th recommendation of the McClemens Working Party, namely that remand prisoners should, as far as possible, be classified and their conditions ameliorated as far as is reasonable.

D. Convicted Prisoner Awaiting Trial on other Charges

These prisoners also create a problem, in that the Commission has to be able to produce them readily when required by the Courts. It does classify them if bail has been granted on the outstanding charge or probably would have been granted had the offender not been in custody. On the other hand if bail was refused on the outstanding charge, and it is of a serious nature, the prisoner is likely to be classified as maximum security. The Commission's difficulties are in having to keep the prisoners secure, particularly in case of serious charges, so as to be available for trial, and also in having no certain knowledge of the outcome of the pending trial. I do not regard them as insuperable. I recommend that the Commission classify convicted prisoners who have further charges awaiting trial, and that they be not automatically classified as maximum security.
E. Appellants

Regulation 11D (1) and (2) require the Malabar Reception Committee or the Governors of prisons other than Malabar to recommend classifications for appellants as well as unconvicted prisoners. In practice they are treated in the same way as convicted prisoners, long term prisoners being dealt with by the Classification Committee and short term prisoners by the Reception Committee. An exception is made in the case of prisoners where a Crown appeal has been lodged against the alleged leniency of the sentence, and there is thus a likelihood of the prisoner's sentence being increased. The case of the latter limited class of prisoners is affected by the problem of the weight to be given in classification to the length of sentence. The Commission's practice is based on the view that since the ultimate length of the prisoner's sentence is unknown, it should keep the prisoner in maximum security until the result of the appeal is known. Whilst there are difficulties, again I do not consider them insuperable. The Commission should make the best attempt it can at considering the range of likely lengths of sentence having regard to its knowledge of the facts of the case, and make an appropriate classification. I recommend that all appellant prisoners be classified, and in the case of those whose sentences are subject to a Crown appeal, that they be not automatically classified as maximum security.

F. Escapees

A prime objective of classification on the security side is the prevention of escapes, particularly by dangerous prisoners. It was an escape that gave rise to this enquiry. I have noted in my interim report instances of reactions by the Commission in the past after particular escapes thought worthy of attention by the media. In those circumstances, sections of the media, which claim to have certain knowledge of and in fact to represent public opinion, fortified sometimes with methodologically satisfactory polls, sometimes with completely unsatisfactory ones, assure their readers, as one journal did recently, that the public is only interested in how securely prisoners are locked up and not in their rehabilitation. Not unnaturally the Commission, when faced with this sort of criticism from the media and from those who accept the claim of the media to be voicing public opinion, has reacted in the past by rulings as to the future classification of escapees which have ultimately proved to be too stringent. On one occasion for a period there was a ruling that no escapee should be classified less than A.

That ruling was cancelled in 1984 and the position prior to the escape of Michael Patrick Murphy was established by circular No. 84/33. Under it an escapee upon return to custody was to be initially placed in a maximum A security classification. However the Classification Committee, after considering all the circumstances, could allot a lower classification. Further the Director or Deputy Director of Classification could, in due course, approve recommendations from Programme Review Committees for reductions of the classification provided the prisoner's gaol Superintendent agreed in writing.

This was a reasonable policy. Although it is natural that an escapee on recapture should ordinarily be placed in maximum security or at least medium security I do not consider that he/she should necessarily remain there for the rest of his/her prison sentence. There are many different types of escape. The great majority in New South Wales occur from minimum security prisons. Interviews by the Research Division with escapees and also experience of accounts given to Police and to the Courts show that many cases
involve such mitigating factors as the prisoner's knowledge of and worry about family difficulties and dangers. They are commonly recaptured after a few days at large often in their family environment. An extraordinary feature is that they often occur at a time when the prisoner's release or likely release is only a few weeks or months away. Even in minimum security prisons there is a great difference between an escape involving breaking out of the prison itself and one, such as the first Murphy escape, which consisted of not returning from permitted external leave. Prisoners on such leave are often under severe temptation and it is quite remarkable that the great majority are able to resist these temptations. It is a pity to deprive such escapees and indeed escapees generally as well as the community of the benefits of the application of the staging down system, provided proper care is taken to assess as thoroughly as possible the likelihood of a further escape by the prisoner, and more importantly of his/her proving a danger to the public in the event of an escape.

Following Murphy's escape the 1984 circular was revoked and a new policy set out in circular No. 86/14. It provided that no inmate who had previously escaped and was either returned to custody or sentenced on a fresh offence was to be classified below B category or transferred to a minimum security establishment except with the approval of the Commission which would only be given when there were extenuating circumstances which were also described as exceptional.

The difficulty with the directive was that Commissioners are very busy people, and in a large organisation requiring matters such as the reclassification of individual prisoners to be placed before them acts as an automatic brake on the making of such applications, particularly when the directive is accompanied by such a warning as the word "exceptional" suggests.

I received submissions from prisoners that this was unduly hard on prisoners who had escaped a long time previously. The ruling was interpreted as applying to prisoners who had escaped during a previous episode of imprisonment. I learnt that it was impeding the proper reduction of security ratings of a number of prisoners. Some of them had been guilty of what I have called abscondings or absences without leave rather than gaol break-outs. Some had escaped years before and lived down their prior offence by good behaviour. A number of them indeed were thought to be suitable for prison camps. When I was proposing to place my tentative views on various matters before the Commission and the Minister for their comments, I took the liberty of expressing in a written form my views as to this policy and of suggesting that some action might well be taken to make it less stringent without awaiting my final report. Subsequently a new policy directive was issued by the Commission with the Minister's approval.

It provided that escapees upon return to custody would be initially assigned to A or B security rating according to the status of the reception prison. However prisoners could receive a lower security rating later in certain circumstances on the decision of the Director of Classification and in others on the decision of the Commission. Although the directive is not completely clear, I read it as meaning that the Commission is required to make the decision in the case of prisoners who have escaped from a secure institution or from an escort or from an open institution, provided in the latter case that the escape occurred less than two years previously. The Director is authorised to make the decision in the case of escapes from an open institution more than two years previously and in the case of failing to
return from unescorted leave and the like. The directive wisely instructs reviewing committees as to the heads of relevant facts which should be included in support of a recommendation for reduced classification.

This directive suffers to a limited extent from the problem in the previous one, that requiring the approval of busy Commissioners puts brakes on the making of applications to them. I would have preferred a return to the previous policy under which the reclassification of escapees like that of all other prisoners was primarily entrusted to the Director or his Deputy after consideration by committees. However the directive is a large improvement on the one replaced. Firstly there is no requirement of exceptional circumstances. Instead there is the helpful list of facts to be set out in support of an application. Secondly escapes from a secure institution or an escort are very few, the great majority being from minimum security institutions. Further drawing the line for escapes from open institutions to go before the Commission at those under two years previously should not require a large number to be placed before it. Having regard to the fact that failures to return can be dealt with by the Director, I consider it reasonable.

I accept the considered decision of the Minister and the Commission and I recommend that the policy of the directive be continued. However for the assistance of those who have to apply the directive I suggest that it be clarified in the following respects. First it could be stated that the directive does not apply to prisoners who had escaped whilst serving some prior sentence which had subsequently been completed. This would not prevent such an escape being a relevant consideration in classification. Secondly the term "open institution" should be clarified. In some contexts I have seen it applied to afforestation camps only. In other contexts I have seen Silverwater named as an open institution but not the Metropolitan Training Centre. I had, myself, thought that it applied to all minimum security gaols, and therefore covered the Metropolitan Training Centre and for Class C prisoners Cessnock Gaol. Thirdly some Officers of the Commission doubt whether the Director has power to make decisions in respect of prisoners who have absconded from an open institution more than two years ago. I do not consider that this is a proper reading of the directive but it should be clarified. Finally, in every other context the Deputy Director of Classification has been trusted with the same authority as the Director. In fact they alternate in such duties as chairing the Classification Committee. I should have thought that it was an oversight that the Deputy Director was not mentioned in the directive and if I am right this should be rectified.

G. Suggested New Rating for Prisoners on Work Release

A submission was made to me by officers working in the important work release section that prisoners on work release and prisoners permitted to attend external educational courses should, not merely be classified as C3 but should have special classification, such as C4, so as to indicate that they have reached a special position of trust after the special consideration which is given in regard to applications for work release or release for external education. I submitted the proposal to the Commission but it did not support it.

Although I realise the special importance of work release and that special care is taken before permitting prisoners to enter upon it, I am not satisfied that the extra complication added by a new rating would achieve any particular benefits. All prisoners who have been given the C3 classification are eligible for consideration for external education courses or for work
release. The classification does not amount to an entitlement. This is the view taken by the Commission also. However, I do not think I should reject the submission but leave it open by simply making no recommendation in respect of it.
CHAPTER 9 - JUSTICE IN CLASSIFICATION

A. Introduction

Classification is a most important operation, almost as important as the sentence of the Court. It determines to a large extent the way in which prisoners spend their time in gaol, what opportunities for improvement are available for them, what other prisoners they will be associated with and it also has effects on the time when they will be released. All of these things are also important from the community's point of view. From that point of view also in the case of dangerous prisoners classification has effects on their potential for escape. In the United States of America, the Courts have compelled some prison systems, by virtue of constitutional rights, to set up court approved classification plans. In Victoria, the Corrections Act 1986 in a list of rights of prisoners includes a right to classification. In New South Wales the Court of Appeal has held that prisoners have no enforceable right to classification (Smith v Commissioner of Corrective Services [1978] 1 NSWLR 317 at 329). However, a complex classification system is operating and it is necessary to consider possible means of improving its operations in respect of justice.

B. Appearance of Prisoners before Committees

According to my observations prisoners at committee meetings are ordinarily treated with reasonable courtesy. Wardlaw and Biles (page 49) noted that in South Australia and Western Australia prisoners sat at committee meetings, whilst in Tasmania they stood. The authors also noticed a difference in the matter of using the term "Mr" or plain surnames when addressing them. In New South Wales prisoners sit and given names are used. It has been suggested to me that in some committees, the members all sit at tables, whereas the prisoner sits on a chair without a table, surrounded by the Committee. The suggestion is that whilst this would not trouble prisoners expert in the art of communication, other prisoners might well feel ill at ease and unable to put their case effectively. Something similar happens in the case of witnesses in the ordinary courtroom situation. Although communication problems are really deeper than this, I think that there could be better arrangements which could put some prisoners more at their ease. On the other hand, I have observed attempts in the conversation of members with the prisoners to achieve such an objective. I do not propose to make a formal recommendation on this aspect.

Another matter is the way in which the views of a committee are put to a prisoner when he/she is brought before it. The committees ordinarily do discuss the matter before the prisoner is brought in. That is necessary, at least from a point of view of information, and I see no objection to it. When a prisoner was brought in I noticed that sometimes it was put to him/her that the committee had a tentative view and the prisoner's view was sought. At other times the prisoner was given no indication, but was asked what he/she wished to say. On other occasions prisoners were told "we have decided", although they were not prevented from speaking in opposition. Some prisoners have expressed the view in answer to a questionnaire that the whole matter was decided in advance. This feeling is natural if the third course above is taken. There can be no objection to either of the first two courses. Again I do not propose to make a formal recommendation.

A more basic matter is that many prisoners, like persons in court, are not well able to communicate their own thoughts, particularly in situations of stress. Many prisoners, on the other hand, from long experience are very
good at doing so. In these circumstances the poor communicators are disadvantaged. In the problems paper which I submitted to the Minister and the Commission, I suggested that in appropriate cases of this kind a prisoner should be able to have another prisoner to assist him/her. I added that I would not wish to see a team of amateur prisoner advocates created. I also suggested that another possibility would be to tell prisoners in advance that submissions in writing would be accepted, as they often are by courts. I also said that the best solution might be for the matter to be discussed with the prisoner by an officer interviewing him/her before the actual committee meeting and seeking his/her views in advance. The Commission agreed with my suggestions, although it referred only to Programme Review Committees, whereas I had in mind also the Classification Committee itself. The Commission went further and suggested that use of interpreters should be borne in mind for prisoners with inadequate English, and where appropriate, the services of the Department's Aboriginal liaison officer or an Aboriginal welfare officer should also be availed of.

At the time of my original inspections prisoners appearing before the Classification Committee were only interviewed prior to their appearance by a psychologist, and in the case of those who wished to be interviewed by an education officer, by such an officer. Since then, in the course of 1986, an important improvement was made. Each prisoner some days before appearing before the Classification Committee is now interviewed by each of the four non-custodial officers, a Probation and Parole Officer, a psychologist, an education officer and a welfare officer. These officers then meet and discuss each case before submitting a report to the full committee.

With this considerable reform operating, it is likely that the prisoner's views will be elicited and come before the full committee. I should think it unlikely in those circumstances that a prisoner should require the assistance of a friend at the committee meeting. I consider that one of the officers should have the duty of obtaining the prisoner's views and I would think that the Probation and Parole Officer would be most suitable for that purpose. He/she should also advise the prisoner that written submissions would be accepted by the Committee.

A suggestion appears in the Muir report (page 12) that at committee meetings the psychologist had the function of acting as "advocate" for the prisoner. I have also heard this function suggested in conversation within the Department. The Judge made no recommendation to this effect. The place in his report where it appears, seems to be a transcription of a statement of duties prepared in the Commission. I do not think that Judge Muir would have intended it to be a suggestion on his part that the psychologist should act as advocate for the prisoner in the strict sense of that word. I do not think that the psychologist or any other officer of the Commission has a function of being advocate in the strict sense for the prisoner. The psychologist and all other officers have a duty at committee meetings to consider the interests of the prisoner and the interests of the community and to balance them to the best of their ability. It would be very difficult to join that role with the role of advocate for the prisoner. I do not think that it would be proper for a psychologist or any other officer to try to do so or that it is required of him/her. On the other hand if all that was meant was that the psychologist, who was formerly the only one who interviewed all prisoners before the Classification Committee met, should get the prisoner's views and put them to the meeting with supporting arguments, there could be no possible objection to that.
In the case of Programme Review Committees, in the smaller gaols it is possible for the non-custodial officers to interview prisoners before committee meetings so as to be able to report to the Committee, although this desirable objective may not yet be possible in some of the larger gaols. Thus at Emu Plains Training Centre the case management review team system achieves this objective, even though most of the prisoners seen, being short term prisoners, have not in the past appeared before the Programme Review Committee. The objective of all Committee members interviewing each prisoner and supplying written reports, as recommended by the Muir report, should be aimed at. If the case management team system is used, there should be no objection to a joint report. Again it should be the duty of at least one officer, preferably the Probation and Parole Officer, to ascertain the prisoner's views and to advise him/her that written submissions would be accepted.

I recommend that a Probation and Parole Officer or some other non-custodial officer obtain from each prisoner before meetings of the Classification Committee or any Programme Review Committee his/her views as to classification matters for submission to the Committee and that he/she advise him/her that submissions in writing would be accepted by a committee; that where appropriate, committees bear in mind the possible need for a friend as advocate for a prisoner or for an interpreter, or for an Aboriginal welfare assistant, and that these matters be included in the Classification Manual.

C. The Question of Appeals

Since Roman times appeals have been regarded as a necessary part of justice where courts are involved. They are necessary not only in the hope of preventing error but also as a check on the powers and attitudes of courts. Where administrative decisions are concerned, although appeals have long been known in continental Europe, they have only recently come in with any strength in the English common law system. I have seen in the classification plan of one State of the United States, required to be drawn up by court order, the institution of an Appeal Board for Classifications quite distinct from the original classifying committee. That State however had a much larger prison system than has the State of New South Wales. I submitted to the Commission the question of possible appeals from decisions of the Director of Classification, acting as a delegate of the Commission, on recommendations from the Classification Committee or from Programme Review Committees through the Sub-Committee of the Classification Committee. The Commission opposed a formal appeal mechanism and pointed out that there existed several avenues for review, including requests for reconsideration to the Director of Classification himself, a Commissioner, the Minister, the Ombudsman or Official Visitors. I agree. An appeals system is only workable, if the greater number of litigants are prepared to accept the primary decision, or if there is something to lose. For example, if every person who was dissatisfied with a Local Court conviction appealed to the District Court, the whole summary trial jurisdiction would pass to that Court, the Local Court would be unnecessary and the District Court list unworkable. Regrettably, to those in prison time tends not to matter and nothing would be lost by an appeal. It is true that possibly a large majority of persons classified are not dissatisfied with the result. However if there were large numbers of appeals, the officers appointed to hear them would have little time for their other duties, and I do not think that the constitution of a special appeals board without other duties is justified. I do recommend, however, that there be noted in the Classification Manual the various avenues for reconsideration of classification decisions.
In one type of case something akin to an appeal is possible. If a prisoner is dissatisfied with the recommendation of a Programme Review Committee, since that recommendation has to be reviewed by the sub-committee of the Classification Committee before a final decision is reached by the Director of Classification, there could be an opportunity for him/her to submit a written argument to the sub-committee asking it not to accept the Programme Review Committee's recommendation. The Commission agrees with me that opportunity should exist for prisoners to submit such a written case, and suggests that the prisoner could be notified of this by that Committee and that there could be a notification on the standard form of recommendation, a copy of which is furnished to the prisoner.

I recommend that prisoners be notified on the standard form of recommendation by Programme Review Committees that if they are dissatisfied with the recommendation they may submit an argument in writing to the sub-committee of the Classification Committee, and that prisoners be invited to initial this notification on the form.

D. The Two Hats of the Director of Classification

The Commission has delegated decisions as to classification of prisoners to the Director of Classification or to his Deputy. In practice almost all such decisions are made by one or other of them. One or other of them also chairs all meetings of the Classification Committee and ordinarily signs the recommendation form as Chairperson of that committee and also approves it as delegate of the Commission. It follows that in theory the Director or his Deputy could be in a minority of one in the Committee, and yet override all the others by using his power to make the decision as Delegate of the Commission. (Strangely after classification has taken place he has the delegated power to order the moving of the prisoner to another gaol only when it is recommended by the appropriate Committee. I do not think that this conflict in the delegations is intentional, and it should be rectified). Theoretically the power to override could be a source of frustration to the other members of the Committee, and indeed it may be that it sometimes is so in practice.

The Commission's view is that the final decision must rest with its delegate, the Director or his Deputy and that that person and not the Committee must accept responsibility to the Commission. In practice most decisions, I believe, would be arrived at by consensus. Committee members, I think, should see themselves as advising the Director and in doing so as playing an important part. I do not think that the Director or his Deputy would lightly reject the unanimous opinion of the other members of a committee, or even perhaps a very substantial majority view. In extreme cases dissatisfied committee members could refer a matter to a Commissioner. A dissatisfied prisoner has the avenues mentioned in the last section.

E. Relationship between Programme Review Committees and the Sub-Committee of the Classification Committee

Regulation 11F requires the recommendations of Programme Review Committees to be made to the Classification Committee which in turn is to make a recommendation to the Commission. In practice this is not done. The recommendations of Programme Review Committees go to a sub-committee of the Classification Committee, and it is this body that makes recommendations to the Commission. (The Commission is represented by its delegate, the Director of Classification or his Deputy). The sub-committee consists of two members of the Committee, its Deputy Superintendent Classification and its
Regional Education Officer. The sub-committee estimates that it rejects about 20% of recommendations. These are mainly for security or placement changes. The Director or his Deputy ordinarily though not invariably, accepts the recommendations of the sub-committee. There is evidence that some frustration is felt at rejections by Programme Review Committees which deal with the prisoners on the spot in the gaols where they are housed. The question arises whether it is sufficient that their recommendations go only before a sub-committee. I believe it is sufficient. These officers deal with over 3000 recommendations a year (amongst their other duties) and it would be quite impossible for the full committee to handle them. The two officers are careful and experienced and form a balanced team, and there would be little point in each recommendation being considered by the various other officers on the full committee. However Regulation 11F should be changed so as to regularise this position. It has been suggested to me that this is perhaps unnecessary. The sub-committee could be regarded as the Classification Committee with the two members substituted for the six provided for in Regulation 11A(1). The words "or such other persons, if any, in substitution for" in the Regulation could permit this. I do not agree.  

I have considered a submission that an additional officer being a Probation and Parole Officer should be added to the sub-committee, and also a suggestion by the Commission itself that possibly the constitution of the sub-committee could be changed at intervals so as to allow other divisions to contribute to the decision making.  

In support of the first submission it was argued that the appointment of the additional officer would result in the considerable workload of the sub-committee being more effectively met. I am not satisfied that this is so. I certainly do not think that the workload would be more speedily disposed of. The need for a third member of the sub-committee to read the paper work and consider it would, I think, tend to slow it up. Nor is it clear to me that the quality of the work would be improved.  

Regulation 11F(2) requires Programme Review Committees to review the security classification, programme progress and placement of each long term prisoner and forward a report and recommendation on those matters to the Classification Committee. Regulation 11F(3) requires the Classification Committee, if it considers that a change in a prisoner's security classification or placement is indicated, to make a recommendation to the Commission. In practice in the past Programme Review Committees, as such, have been mainly concerned with the security side of classification and placement. Attention to programme progress has mainly been in the hands of the individual officers as distinct from the Committee. The Classification Sub-Committee (which operates in place of the full committee for the purposes of Regulation 11F) has even more clearly been principally concerned with security classification and gaol placement. Indeed it is those matters only on which it is required by the Regulation to make a recommendation. Those matters within themselves are a serious responsibility. As noted above, the officers have a heavy workload, and have little time for monitoring the programme progress of each prisoner. If they did have the time it would hardly be practicable for them to do it in any meaningful way on the paper available to them.  

It has been submitted to me that it is desirable that there be such a central check up on the programme progress of prisoners. I certainly think it is desirable that their progress be watched but I am far from convinced that it can be effectively done at Head Office on paper without even the presence of the prisoner. I think that it is more likely that progress will be
effectively watched on the spot in the gaols by some sort of Case Management Review team system. I have considered whether the appointment of an additional officer to the sub-committee or the changing of the constitution of it at intervals would contribute to some kind of successful monitoring of programme progress at Head Office. If I thought it would, I would certainly recommend it. Being unconvinced, I make no recommendation. However I do not recommend against either submission. The matters should be left open for further consideration if necessary in future.

There is evidence that another source of frustration on the part of both prisoners and Programme Review Committees has been inadequate communication in the past between the sub-committee and those Committees. An example, which actually went beyond the sub-committee, is set out at page 149 of the Report of the Ombudsman for 1985-1986. Probably most rejections of Programme Review Committees' recommendations occur because they do not meet with what the sub-committee regards as established criteria for changes in classifications or in placements. In the past it seems that these reasons have not always been communicated to the Programme Review Committees but steps have been taken during the last year to rectify this situation by giving at least a brief indication of the reasons for rejections of a recommendation.

I think that three things could be done to improve the position:

(1) publish the various criteria in the Classification Manual;

(2) the sub-committee should always give reasons for rejection of a recommendation, and, if practicable and necessary, expand them or relate them to the facts of the case;

(3) if rejection is proposed, the sub-committee should notify the Programme Review Committee of the fact and give it an opportunity to supply fuller reasons or arguments.

As to the third proposal, I may say that the Commission has indicated its agreement with this. It suggests that some procedure would have to be devised to carry it out. I think that the procedure would be simple enough. A standard form could be drawn up to cover such cases and all that would be necessary to be written into it would be the reasons in the particular case. It should be the responsibility of the Programme Review Committee to notify the prisoner and ask whether there is anything else that he/she wishes to urge. However, I think it proper to add that with the heavy burden of work already on the sub-committee I doubt whether it would be possible to put this into practice without an addition to staff.

I recommend that Regulation 11F be amended so as to provide for Programme Review Committee recommendations to go to a sub-committee of the Classification Committee; that if the sub-committee proposes to reject a recommendation of a Programme Review Committee it notify it by a standard form with its reasons, giving the Programme Review Committee an opportunity to supply further reasons or arguments; that the Programme Review Committee discuss the matter with the prisoner; that the sub-committee notify Programme Review Committees in each case of rejection of recommendations of the reasons for it, giving them as fully as is practicable and necessary and relating them to the facts of the particular case; that the criteria used for judging and either accepting or rejecting recommendations for changes in security classification or placement be published in the Classification Manual.
CHAPTER 10 - HINDRANCES TO CLASSIFICATION

A. Introduction

In the course of the inquiry I have noted several matters which cause difficulty for the classifying authorities. The first three, short prison sentences, the bail system and fine defaulters arise outside the prison system. If there are more people received into prisons than is absolutely necessary, the principal harm is to the community (See Chapter 2 Section B). There is also harm to the prison system because of overcrowding, and because the more persons are unnecessarily in gaol, the less reasonable accommodation is available for and the less attention can be paid to those who are necessarily there. Unnecessary numbers in the prison system also create undue burdens for officers carrying out the classification operations and so are hindrances to classification. They add greatly to the numbers appearing before the Malabar Reception Committee. Although it is not at present practicable to classify remandees, the fine defaulters and short sentence prisoners add to the numbers to be classified. The three groups add to the numbers whom the classifiers have to try to separate from the more hardened and greater offenders in the limited accommodation available, particularly in the Sydney area. All groups are likely to have various needs. The fourth matter, transferring prisoners other than through classification is internal to the prison system.

B. Fine Defaulters

The fine is the commonest modern form of criminal penalty. It is also the most economical for the community, and is sometimes said to be the most effective in preventing recidivism.

It presents difficult problems, because the only present sanction for the vast majority of fines (those imposed for summary offences tried in local courts) is imprisonment. Further, although it may be deferred, if default persists it is automatic.

It is hard to believe, but it is a fact that in 1986 of all sentenced prisoners received in New South Wales gaols to the number of 8069, 3479 or 43% were fine defaulters (Australian Prison Trends Nos. 116 to 127). In 1985 they represented 47%. In 1983 the number received was 4939 being 51.9% of all sentenced receptions. In addition in country areas not close to gaols, a large number, estimated at another 50% are received and imprisoned in police lockups. The figures given are for persons received into gaols. Since fine defaulters only spend a short time in prison, the average time being ten days, the proportionate number in prison at any one time is much less. Thus on the 30 June 1983 of over three thousand persons in prison under sentence only 59 were fine defaulters.

A survey of prisoners received into New South Wales gaols in the first half of 1982 (Fine Default. J.M. Houghton 1985) disclosed that two thirds of persons imprisoned for fine default were single males under the age of 30. The main reason for default given by over two thirds of the defaulters interviewed was lack of money. Over half were unemployed when fined and stayed unemployed. Over half had never been in prison before and over two thirds had not been in prison or had been there for fine default only. Of the 1631 fine defaulters imprisoned in the half year, 1092 had been fined for traffic offences, the majority as a result of traffic infringement penalty notices which cover comparatively minor offences. 740 or 45.4% of the defaulters imprisoned had been guilty only of offences in respect of which
the law did not allow the penalty of imprisonment. Of that 740, 632 had committed driving or traffic offences only. 70% of those imprisoned had one fine only.

Thus the grave injustice is occurring of persons being imprisoned for non-payment of fines which many of them are unable to pay, for offences for which a court, and in many cases the law itself, did not regard imprisonment as a proper penalty. It is in effect imprisonment for debt since it is difficult to see fines as other than debts to the State. At the other extreme there are cases of persons who are probably able to pay and yet who are enabled by serving only a few days imprisonment to avoid payment of very large sums being fines for a large number of offences, because all of the prison terms served instead of the various fines may be served concurrently.

An obvious remedy for these injustices would be to provide that only civil remedies for default be allowed, such as garnisheeing the pay of defaulters, selling their assets and in extreme cases putting them bankrupt. These problems have been investigated by inter-departmental committees recently, and the objections to this solution are that it would involve a great amount of detailed work by court staff in a large number of cases and that the staff is already overloaded and would not be able to cope with it; further that a fine, being a punishment, is not exactly the same as a civil debt and that if the sanction of a gaol penalty were removed there might well be a considerable increase in the number of defaulters as a result, and the State might lose a large part of the present revenue received from fines paid by the great majority who do pay their fines at present.

Imprisonment for fine default causes problems in the classification area. Defaulters add large numbers to those who have to be processed into the prison system. Although they ordinarily receive C2 classification, in view of the shortness of their stay in gaol it is commonly not practicable to find accommodation for them in a gaol of that classification in the Sydney area, and to transport them there. Thus society faces the grave danger that it is placing young men, many of whom have only committed minor traffic offences, many of them unemployed, into the gaol environment and the various anti-social moralities all shut up together there. Since in these times a large number of crimes are drug related, they are liable to be in close contact with the drug taking morality, and in some areas may be in danger from sexual predators. Homosexual rape is by no means unknown in prisons. As it seems unlikely that rapists would use condoms, there is now the possibility of a victim acquiring a fatal disease. (An account of the dangers suffered by one prisoner with a six weeks sentence whilst temporarily in a maximum-security gaol may be read in the law report R v Ridgeway, 1983 2 NSWLR 19). At Malabar care is taken to keep the fine defaulters in a special wing in the Central Industrial Prison from which they are not allowed out. At Silverwater they are kept on their own at night but in the day mix with the gaol population. At other gaols it may not be possible to keep fine defaulters separate and apart. Imprisonment for fine defaulters may in the long run prove worse for society than relieving the overloading of court staff or receiving less revenue from fines.

In Victoria in 1985 Parliament passed legislation for the solution of the problem by providing that gaol should not be the automatic consequence of default, but that every defaulter should first be brought back to court and that the court could then order imprisonment but only in case the defaulter was unable to satisfy the court that he/she was unable to pay. In other cases it could make an order for unpaid community work by the defaulter or grant extended time. (Penalties and Sentences Act 1985, Section 70). In
England in 1967 legislation (now Magistrates Court Act 1980, Section 82) provided that, with certain limited exceptions, Magistrates should not when fining an offender fix an automatic prison term for default. There has to be an inquiry into the offender's means and the Court has to be satisfied that he/she has means to pay or the default has been wilful or culpable.

Enquiries by the inter-departmental committees are said to have shown that these systems have run into difficulties, and in any case it is said that such a system would not be workable in the already overloaded Local Courts in this State without considerable increases in staff. It is also suggested that if such a procedure were adopted, many of the great majority, who now pay their fines more or less on time, might be tempted to defer payment until they were brought back to court for the means investigation. There should however be set off against the costs of extra court work the costs of police arresting fine defaulters and of the prison system in receiving, classifying and housing them.

A further solution considered by the inter-departmental committees was the substitution of community work instead of imprisonment for fine defaulters who were unable to pay. A scheme was drafted but its costs were considered to be too heavy for it to be adopted.

What then is the solution? The McClemens working party said in 1974:— "A substantial contribution to penal reform would be the exclusion from prisons if possible of persons confined for default of payment of fines or sentenced to twelve months imprisonment or less". The Nagle report recommendation No.39 reads:— "Fines should be enforceable by the Crown through garnishee or other execution order. There should not be automatic imprisonment in default of payment of fines". The Australian Law Reform Commission's 58th recommendation was that imprisonment for fine default should be confined to those who wilfully disobey. A defaulter should be brought before a court to explain his failure and it should conduct a fresh assessment of his situation where the default has arisen as a result of changes in his/her ability to pay after the fine was imposed. Automatic imprisonment for non payment of fines should cease.

The inter-departmental committees recommended a number of legislative changes in the hope of improving the position. These have been made. A Magistrate in fixing a fine is required to consider the means of the defendant; the amount of the fine resulting in one day's imprisonment was doubled from $25 to $50; Magistrates were required to allow at least 21 days to pay except in special circumstances; police were given power to refrain from taking arrested defaulters to prison so as to give them a chance to seek further time to pay; Local Court officers were given express power even when a warrant was in existence, to give further time to pay and cancel the warrant. The Statistics for the ten months ending April 1987 do not appear to show any appreciable difference in the number of defaulters received in prison.

I understand that the government is considering another solution applicable to traffic fines, of cancelling the driver's licences of defaulters. That would certainly be preferable to imprisonment, but involves other problems such as the dependence of family men of low income on driving to get them to their work, and the great temptation imposed on the car infatuated young to drive without a licence which could result in their spending a longer time in gaol eventually.
I do not doubt the sincerity of the committees who found that the more desirable solutions led to administrative, staff and ultimately financial difficulties, nor the general accuracy of their investigations. I should add that one observer says that his inquiries do not suggest that the Victorian system has run into serious difficulties. My view is that society is being penny wise and pound foolish if it decides that the saving of money is more important than keeping its young people out of the grave dangers of imprisonment. I believe that I should make the same recommendation as those before me have made. I recommend that fine defaulters should not be sent to prison because they are too poor to pay their fines, and that if the problem can not practically be solved by greatly extended time to pay, then a sanction involving community work be devised for such persons. Courts should have power as in England and as recommended by the Australian Law Reform Commission (Recommendation 59) to remit a fine wholly or in part where the offender's circumstances have changed.

There remains the classification problem in respect of fine defaulters pending a full solution. Suggestions have been made that rather than house defaulters in the ordinary prisons with contact in some cases with the various kinds of gaol society, they could be housed in the accommodation used for periodic detention prisoners who undergo weekend detention. This would certainly be better than the present position, but there is the obvious difficulty of where the defaulters are to be placed when the accommodation is required by the other prisoners at weekends. I am told that there are possible ways of solving this problem. I recommend that so long as persons are imprisoned for non payment of fines, consideration be given to housing them during week days in the periodic detention centres, or at places other than prisons.

C. The problem of short sentences.

I refer to but do not repeat the statement of the McClemens working party cited in Section B. Our gaols are seriously overcrowded and becoming increasingly so. An aggravation of the problem is that accommodation and management required for the increasing numbers of persons who must be imprisoned are both being used for short sentence prisoners who are often sent to gaol for comparatively minor offences in cases where it is doubtful whether imprisonment is strictly necessary.

Experience and observation including observation of some newspaper reports show that there are still too many offenders being sent to prison for minor terms unnecessarily, particularly by the Local Courts. Sentences such as one week, one month, two months, three months and six months are being imposed, sometimes for offences of an administrative type, sometimes for driving offences or public order offences. The last year in which the Australian Bureau of Statistics published the number of gaol receptions in New South Wales prisons showing length of sentences was 1978-9. In that year 8010 sentenced male prisoners were received excluding periodic detainees. Of that total 3590 were fine defaulters. 3776 were received with a sentence of less than one month (almost all presumably fine defaulters); 549 with less than three, 741 less than six, and 896 less than 12 months. Excluding fine defaulters 2372 had sentences of less than 12 months.

Another source of this kind of information is "Court Statistics" published by the N.S.W. Bureau of Crime Statistics and Research, the latest being for the year 1985. It supplies accounts of the outcome of offences in the Local Courts. If a person was sentenced for more than one offence on one occasion it counts the longest sentence and ignores any cumulation of sentences; if on
different occasions it counts both or all occasions. It does not count reversals or changes on appeals to the District Court. In 1985 4507 sentences of imprisonment were imposed by Local Courts. 66 were one month or under, 3087 were six months or under, 842 were 12 months or under, and 378 were 2 years or under. The figures include 62 persons sentenced to 1 month or under and 288 persons to 6 months or under for possession, use of or administering drugs. In view of the factors mentioned those figures do not truly represent prisoners received in 1985. The numbers in each category would be considerably less. But they do suggest that a substantial number were received with sentences of six months or less.

Census figures being static are in this context much less than receptions. At the 1985 census 22 prisoners were serving less than three months, 93 less than six, and 281 less than twelve. The latter were probably mainly sentences of six months together with some of nine. Altogether 396 were serving less than twelve months or 12.3% of the total prison population.

The McClemons Working Party after demonstrating that at that time a large proportion of prison sentences were for short periods said: "We are strongly of the opinion that prison should be a last and not a first resort, and should only be resorted to where no alternative is feasible" (pg 13). The report included the following in what it said was a better statement of the aim of corrective services:

"1. To ensure that the minimum number of convicted people commit further offences, and of those who are convicted of offences, an irreducible minimum be sent to prison;

2. that other methods of punishment be used for those who or whose offences present no threat to the community - they can and should be dealt with by way of fine or probation or in some other way;

3. as far as possible, short term imprisonment should be abolished."

At page 12 it said: "A problem that has to be faced is the extent to which prisons ...... are mere repositories of social nuisances, alcoholics and vagrants who present no serious social threat". Since then New South Wales has removed the two latter classes from the gaol system, but the first remains.

Mr Justice Nagle said (Report page 41) "As few as possible should be incarcerated in prisons, and then only when all appropriate alternatives have been exhausted."

Since those reports an additional alternative to imprisonment has become available, namely Community Service Orders, and is working well.

The reasons behind these statements are not just the lesser one that imprisonment is a form of punishment very expensive financially to the State, but the much more important ones that studies show that it tends to increase crime rather than reduce it; that it is a destructive form of punishment, long considered a school for crime; and that it involves bringing minor offenders into contact with the various forms of criminal morality, despite the best efforts of classifying authorities. Since almost all offenders
leave gaol eventually, if society insists on imprisonment for minor offenders, it does itself the grave disservice of making it likely that they will leave gaol worse than they were when they went in.

But these views and statements do not form part of the tradition of English and Australian criminal law. Its tradition was for long one of brutal punishments. Death was the penalty for felonies. The law and those it teaches tend to be conservative. Ideas in the law live on long past their time. Judges feel bound by the decisions and words of judges of past ages. In the 19th Century when the death penalty was largely replaced by imprisonment, the reformers invented the "penitentiary". They thought that silent and partially isolated confinement aided by the fear of further doses and the admonitious of religion would lead to penitence and rehabilitation. Psychology and penology are both new and developing studies. It is only recently that their practitioners have been getting into the goals and been able to tell us of the destructive and self-defeating nature of imprisonment as a punishment. These lessons were accepted by McClemens, by Nagle and by the Australian Law Reform Commission. They have been acted on by the English, Australian and Victorian Parliaments. But they have not yet found their way into judgments in decided cases which constitute legal precedents. Many old legal precedents tell judges of the need for stern punishment and to avoid being "weakly merciful".

Many statutes prescribe as well as fines short terms of imprisonment as maximum penalties for administrative, breach of order and other minor offences, often victimless ones. Legal precedents tell judges that although the maximums are reserved for the very worst offences of the kind, still they must pay regard to them when fixing a penalty for each individual offence. It is therefore natural that many judges and magistrates should think of short terms of imprisonment as suitable penalties to act as deterrents for minor crimes. The phrases "a short sharp shock" and "a taste of prison" are expressions of this view. I believe that the time has come for it to be said with the authority of Parliament in our State also that imprisonment should be a punishment of last resort.

In 1985 the Victorian Parliament provided that in the case of offences, other than offences punishable only by imprisonment without the option of a fine, a court must not pass a sentence of imprisonment unless, after considering all other available sentences, it was satisfied that no other sentence was appropriate. In addition Magistrates' Courts passing sentences of imprisonment were required to state in writing the reasons for the decision. (Penalties and Sentences Act 1985 Ss. 11 and 12).

In 1973 the English Parliament provided that a sentence of imprisonment should not be passed on a person who had not been to gaol before, unless no other punishment was appropriate; also that no such sentence should be passed on any such person who was not legally represented, unless he/she had refused legal aid or it had been refused on the grounds of means. Magistrates' Courts were required to state in writing why no other punishment than prison was appropriate (Powers of Criminal Courts Act 1973 Ss. 20,21.) (The reason for the provision about offenders without lawyers is presumably because it is not sufficient to rely on the Police bringing out, or the court fossicking out mitigating factors from an offender who is poor at communication).

In 1982 the Australian Parliament provided that imprisonment was not to be imposed for Federal offences unless the court after considering all other available sentences was satisfied that nothing else was appropriate. Courts were required to state why no other sentence was appropriate and have it
I consider it unwise to provide exceptions, as in the Victorian and Australian statutes, based on the type of maximum penalty or the lack of provision for a fine in the statute creating the offence, in view of the growth in the number of alternatives to full time prison other than fines available in New South Wales. The English provision limiting the requirement to consider other punishments than imprisonment to cases of persons who have not been in gaol before is also unwise. It is a well known sentencing principle that if an old offender has been going straight for a considerable period, it is wise, if he should have a lapse, not to start him back in gaol again if at all possible. Since the superior courts deal with the much more serious offences, the requirement to state reasons in writing could be limited to Local Courts.

I recommend that a legislative pronouncement be made requiring courts not to impose gaol sentences unless after considering all other possible alternative forms of punishment they conclude that nothing else is appropriate. Local Courts should be required to state in writing the reasons why all such alternatives have been rejected.

D. Unconvicted Prisoners. Is the bail system working properly?

There is a general view in the Corrective Services Commission both amongst Officers at the work face and administrators that there are too many unconvicted prisoners (remandees) in the gaol system. They are there either because they have been refused bail or because they have been granted conditional bail but are unable to comply with the conditions, usually conditions requiring the deposit of money or the obtaining of a surety who deposits money. These conditions are often difficult for the typical gaol prisoners, the unemployed and the poor, and commonly fall more heavily on females than on males.

At the 1985 Prison Census there were 3907 male prisoners of whom 416 were unconvicted or 10.6%. Of 208 females 43 were unconvicted or 20.7%. On 3rd May, 1987 there were 3897 male prisoners of whom 860 were unsentenced. ("Unsentenced" includes some who have been convicted but not yet sentenced.) There were 182 female prisoners of whom 56 were unsentenced. The position has reached crisis stage. The Metropolitan Remand Centre, at the 3rd May, had 364 prisoners and 220 single cells. Parramatta Gaol had 117 unsentenced prisoners, a total 379 prisoners and 320 single cells. The Metropolitan Reception Prison had 105 unsentenced prisoners, a total 250 prisoners in all and accommodation for 220. The Metropolitan Remand Centre has recently, from time to time, been compelled to reject further prisoners and as a result it has been necessary for a number of prisoners without bail to remain in police cells which are unsuitable for such a purpose.

The static census figures do not truly portray the number of persons affected nor the effect of their numbers on prison management. Although the total number of sentenced prisoners received and the number of fine defaulters received annually have, for some years, been published in Australian Prison Trends, there has been no such publication of unconvicted prisoners received for any year since 1978-9. The Research and Statistics Division of the Department made a count for the year 1982 for the purposes of a study. In
that year it was found that 4486 unconvicted prisoners were received. 7263 sentenced prisoners were received in the year including 3564 fine defaulters (Australian Prison Trends).

New South Wales has a modern bail code, the Bail Act 1978. It was passed as a reform after the holding of an inquiry. It provides (Section 8) with certain limited exceptions that a person charged with an offence not punishable by imprisonment or with such other summary offences as may be prescribed by regulation, is entitled to bail which is to be either unconditional or to have such conditions as can reasonably and readily be entered into. For other offences with limited exceptions it provides (Sections 9, 32) for a presumption in favour of the granting of bail; a further presumption in favour of unconditional bail; and a limited series of factors which a court is required to take into account in deciding whether or not to grant bail, combined with a provision that they are the only matters to be taken into account.

It is understandable when bail is refused, or heavy financial bail imposed, in very serious charges such as large drug dealings particularly importing, because of the fear, arising from the seriousness of the charge and the sort of money involved, that the accused may fail to appear; or such as repeated armed hold-ups by alleged addicts, because of the fear of repetition. However there are a number of indications that persons charged with lesser crimes are unnecessarily being refused bail, and that persons charged with still lesser crimes are having financial conditions imposed on bail which they cannot meet because of poverty of themselves or their connections or, if they do meet them, do so only after having been kept in gaol for days or even weeks.

Some indications are given of this by the research which has been repeated more than once into the number of persons received into gaol without bail who are later released from gaol without receiving custodial sentences.

In 1984 the Conference of State Correctional Ministers requested the Australian Institute of Criminology to investigate the subject. In 1985 it produced a report. (The Outcomes of Remand in Custody Orders - J. Walker). The report showed (Table 7) that of a sample of 195 New South Wales unconvicted prisoners received into gaol without bail, 41.4% concluded the remand with a prison sentence and 38.3% were released to bail. 3.170 were acquitted and 6% received non-custodial sentences. Setting aside the number in respect of whom the outcome was unknown, 52.1% of the sample terminated the remand in prison by release. As is the case with other studies it was apparently not possible to follow up the ultimate outcome of the charges against the 38.3% who were released to bail.

Earlier studies were done by the Research Division of the New South Wales Commission in 1982 and 1983. The first was of a sample of 1287 prisoners received in gaol without conviction in the first seven months of 1982. It showed 35.6% terminated the remand with a prison sentence by the end of the follow up period. 3.6% were still on remand and 60.8% terminated the remand by release from gaol without a prison sentence. Their final result is not known. The second study was of all women prisoners remanded in custody in the first half of 1983. Of the 183 women 33.3% received a prison sentence while in custody. Two-thirds were released from remand without custodial sentence. In this case it was possible to follow the cases through to their ultimate outcome and it was found that 47% ultimately received a gaol sentence. 18.6% of cases had not been terminated so that 34.4% had a definite non-custodial final outcome. Although the fact that they had been
in gaol without bail may have been taken into account by the sentencer in
respect of some of those convicted, some at least spent time in prison
unnecessarily. A more recent study by the Research Division for the period
October 1985 - April 1986 showed 63.9% of remandees being released from gaol
without custodial outcome. In this case again their final result is not
known.

The unconvicted prisoners received into gaol without bail who are released to
bail are of two types; those refused bail, commonly by a Local Court, and
subsequently granted it, commonly by the Supreme Court, and those granted
bail on financial conditions who are unable to comply with them at first, but
can after further efforts are made. Table 9 of the Walker report shows that
of those so released in New South Wales nearly a quarter are released in
days or less, a further quarter in less than a week, a further 19.4% in
less than two weeks and another 19.4% are released after more than one
month. It must be remembered that even the stay of less than three days in
gaol may cause severe problems and perhaps injustices to the prisoners
concerned. It also presents grave housing, handling and management problems
for an already overcrowded prison system. Prisoners on remand are supposed
to be classified under the regulations and the McClemens and Nagle reports
have recommended that they be classified, yet there is no real bail hostel in
which they may be classified, and the only practicable means of dealing with
them has been to keep them in poor conditions, with all kinds of prisoners
together, in maximum security. The figures show that women are greater
sufferers than men. The position has become gradually worse for the
Corrective Services system, with the appalling delays in cases coming on for
trial, the increase in length of trials, which often involve persons charged
with large scale drug importing in whose case bail is often refused.

The causes of the crisis are not easy to assign without elaborate research.
One is the delays mentioned. It has been suggested that Police Prosecutors
ask for bail to be refused or for stringent conditions of bail in too many
cases, and that Local Courts which have very long lists and in many cases
have to deal with unrepresented persons not well able to speak for
themselves, are not unnaturally inclined to follow the submissions of the
Prosecutors. Prosecutors have a delicate and responsible task and are liable
to be criticised from either viewpoint. The Women's Task Force listed some
cases studied of the 183 women remandees in the first half of 1983 whose
history was referred to above. These are listed at pages 58-59 of the Report
and include such cases as; Case 4 - "Possess Indian Hemp - Bail Refused and
Medical Treatment Recommended - Outcome: accused discharged by court after
two days in gaol"; Case 8 - "Charge - fail to pay for meals, assault - bail
granted if accused agrees to forfeit $100 and an acceptable person deposits
$100 and forfeits if accused fails to comply - Outcome: accused discharged by
court after four days in gaol". It is difficult to rely on newspaper
reports, but one recalls recently reading cases in which Local Courts were
reported as saying that the charges were too serious for bail to be granted.
Under S.32 of the Bail Act that is not one of the three matters that alone
can be taken into consideration in deciding whether to grant bail or not. It
is one of five matters to which regard may be paid in considering the first
of the three matters for consideration, namely whether or not the accused
will appear in court to answer the charge. In the cases in question failure
to appear did not seem to be a strong possibility.

A study which tends to suggest that the Bail Act could be more liberally
applied was made by the Institute of Criminology of Sydney University into
the effect of the five week Prison Officers' strike in 1984. Proceedings at
a busy local court were studied for the period and compared with a suitable
control period for the same court. It was found that there was no decrease in the number of new charges as between the two periods. However, there was a significant increase in the numbers of accused on new charges who had been granted police bail (66.23% in the strike compared with 39.43% in the control period). There was a similar decrease in the number of accused retained in police custody. On the other hand there was no substantial increase in the number of accused persons who did not appear in court to answer their charges. It was found that in both periods the Magistrates tended to grant bail to persons whom the Police had released on bail and to refuse bail to those to whom the Police had refused bail. (Effect of the Five Week Prison Officers' Strike in New South Wales in 1984. David & Ward 1986).

The Commission itself has made certain attempts, both on a trial basis and on a permanent basis, to gather information for the Courts about accused persons in order to facilitate the granting of bail. This is information which it has presumably not been practicable for either the Police or Duty Solicitors to gather in the time available to them between the arrest of a person and his/her appearance in court.

In January - June 1983 the Commission conducted a Bail Assessment Service and Supervision (pilot) Programme (BASS). The personnel were Probation and Parole Officers. Interviews were conducted with arrested persons in police cells, information obtained for presentation to the court, checks were made of the information so as to assist the court, and offers were made of social welfare assistance to the prisoners which would increase the chances of their getting bail. The Officer-in-Charge of the Programme in her report concluded that it had been a valuable tool in assessing areas of need within the Criminal Justice System. She recommended that such a programme should be introduced into suitable courts in conjunction with a Probation and Parole Service Duty System as staffing requirements permitted. Regrettably it has not been possible to carry this recommendation out because of staffing difficulties. However, Probation and Parole Duty Officers do assist as time available to them permits. Furthermore, a Bail Co-ordinator has been appointed who visits the women's prison weekly to assist in gathering and checking information to assist the courts in considering female applicants for bail. The Metropolitan Remand Centre also endeavours to assist prisoners in gathering information to present cases for bail.

If the necessary information has not been gathered prior to the actual time of the court appearance and if the magistrate is not satisfied to grant bail and bail which the prisoner can meet, then the prisoner remains in custody and the various evils for the prisoner and the prison system discussed apply even if he/she is able to satisfy the bail conditions later on, whether within days or weeks. To get over this problem the BASS programme often interviewed prisoners in police cells at 6.00 or 7.00 a.m. to allow sufficient time before the prisoner's court appearance. It seems clear that the BASS Programme indicates one means of attacking the bail problem namely the obtaining of facts about the prisoner, who is often not well able to communicate them to the court, and if necessary the checking of them. It seems wise that this attack should be linked with an attempt to fill in the Manhattan bail form so as to present both relevant facts and a points score under it to the Court. There is no suggestion that this score should be binding on the Court but the American experience suggests that it may greatly assist. Although the form has been provided for by Regulations under Section 33 of the Bail Act, it appears that it is not used in practice presumably because of the time that would be required to fill it in. One would have
thought that actually the form might save time first as a check list of the matters to be enquired into and secondly as a convenient listing of the results.

I recommend that efforts be made to provide resources and staff to carry out a Bail Assessment System for prisoners in need of it and that, if possible, assessments be available for the first appearance of the accused person before the Court. I further recommend that official persons preparing facts for bail assessment for prisoners to appear before courts, attempt the use of the Manhattan bail form prescribed by Regulation under Section 33 of the Bail Act.

The provision in the Bail Act that there is to be a presumption against financial conditions on bail draws attention to the fact that the whole notion of a surety who is to make a forfeit if the accused fails to appear is really a relic of village law. In village days it was common sense that some person had to undertake under penalty to make sure that the accused appeared for trial. The surety in effect acted as gaoler of the prisoner. Such a scheme of things appears to have only limited relevance to the circumstances of a metropolis in the late twentieth century. The change in the environment is partially recognised in the Bail Act by two provisions. One puts an onus on the accused by making failure to appear in Court under a bail undertaking a punishable offence. The other abolishes the surety's ancient power of taking actual custody of the accused. Yet it has not taken the final step of abolishing as a bail condition the finding of a surety who is prepared to risk personal financial loss if the accused absconds. One result of old traditions in the law dying hard is the above case 8 cited by the Women's Task Force. A female defendant was held in gaol for four (4) days by inability to arrange a deposit by a surety of one hundred dollars.

In a foreword to the Law of Bail by B.H.K. Donovan, published after the 1978 Act, Mr. Justice Roden said:

"It has long been a matter of grave concern to many that the system now replaced, with its strong emphasis on means, frequently offered to serious offenders the opportunity of purchasing a chance to abscond, whilst many persons charged with trivial offences were deprived of their liberty before trial because of their inability to find a surety in some paltry sum. The greatest achievement of the legislation, in my view, lies in the considerable down-grading of means as a relevant factor and of money or surety as a bail condition."

The Bureau of Crime Statistics and Research found that the new legislation had in practice improved the position in that a large percentage of accused persons were being granted unconditional bail and a further large percentage of the remainder did not have money conditions imposed (Bail Reform in N.S.W. 1984, page 90).

However, the present crisis shows that the time has come to down-grade still further the importance of money conditions attached to bail. A good place to start would be with minor offences. Section 8 of the Bail Act provides that, with certain exceptions, a person charged with an offence not punishable by imprisonment or with such other summary offences as may be prescribed, is entitled either to unconditioned bail or bail with conditions that are reasonably and readily able to be entered into. Summary offences are those tried without a jury, that is mainly in Local Courts. It should be remembered that failure to appear after giving a bail undertaking is now
itself a punishable offence. I recommend that a Regulation be made prescribing that all summary offences for which the maximum penalty is less than two years imprisonment be brought within Section 8. I further recommend that Section 8 be amended to provide that the bail conditions which may be imposed under it should not include money conditions, unless there are special circumstances to be stated in writing by the Court.

The Prisons Act, S.11 authorises judges of the Supreme and District Courts to visit and examine any prison at any time. The Nagle Commission thought that this by no means constituted an inspectorate (page 189). However the more that prisons are visited by sentencers and the conditions there seen by them the better. Certain magistrates visit prisons as Visiting Justicess but as such have a prime function of trying charges. The Magistrates have recently become independent judicial officers of Local Courts which have replaced Courts of Petty Sessions. A number of them are stationed in or visit country cities near to important prisons. It might well achieve some good, and could do no harm, if they were given the same authority as Supreme and District Court Judges. I recommend that Section 11 of the Prisons Act be amended to include magistrates.

E. Removal of Prisoners from a Gaol for Unsuitability or for Security

The Nagle Commission received complaints from prisoners of being "shanghaied" - moved without forewarning - and at times being moved as a punishment. The report states (p.221) that the Department claimed and the Judge accepted that movement of prisoners was necessary as a "management tool" and that sometimes security demanded that prisoners be not forewarned. It was said that the movement of a high risk prisoner might frequently be necessary to forestall trouble in a gaol. The report added that where for good reason a prisoner should not be forewarned, close relatives of the prisoner should be informed of the change of location as soon as possible.

It accepted that the Superintendents of "dispersal prisons" should have power to move a dangerous prisoner to another dispersal prison with the consent of the Superintendent of that prison, and that he should not have to seek the permission of Head Office for the transfer, but that Head Office should be advised as soon it occurred. The reference to a "dispersal prison" was a reference to the recommendation of Mr Justice Nagle that difficult prisoners should not be concentrated in one place but dispersed to various gaols. The formal recommendations he made were numbers 72 and 73 to the effect that the Commission should keep prisoner movements to a minimum and that when prisoners were not forewarned relatives should be informed as soon as possible.

The Commission has delegated under Section 48D of the Prisons Act it's power to remove prisoners from one gaol to another to various officers of the Custodial Services Division and the Classification Division. It has recognised, I believe correctly, that there are basically two reasons for removal, security and unsuitability and it has attempted to keep the two types of removal in separate channels.

The discussion in the Nagle Report was about removal for security reasons. These include such matters as an assault upon an officer or another prisoner liable to cause a disturbance in a gaol, or other serious matters calculated to interfere with its security. Unsuitability means that, whilst the prisoner might be quite suitable for and suited by conditions in another gaol, there are reasons, which do not amount to interference with security, but which render him/her unsuitable for or unsuited by conditions in the gaol concerned. An example might be the prisoner who is not willing to work under
the working conditions in the particular gaol. It has been put to me that a transfer for unsuitability does not tend to place a slur upon the prisoner in the same way that a transfer for security reasons tends to.

The Commission has delegated its power to order a transfer of a prisoner from one goal to another to the Director of Custodial Services and his Assistant Directors without any conditions. It has delegated the same power to the Executive Officer of the Custodial Services Division and the Administrative Assistant to the Assistant Director Central Region with three conditions. They are: on the recommendation of the medical officer, in the interest of security, or to facilitate court appearance. It has delegated the same power to the Director of Classification, his Deputy and the Deputy Superintendent Classification on the condition that it is recommended by the Classification Committee or by a Programme Review or Reception Committee. It is true that in this delegation the three Classification Officers have been included in the one delegation with the two last mentioned Custodial Services Officers and the whole six conditions have been placed against the delegation to them all, ie the three that are really applicable to the Classification Officers and the three that are really applicable to the Custodial Services Officers. I believe that it was not intended that the whole six conditions should be applicable to all five officers and the delegation should be amended so as to separate one group from the other and apply the appropriate conditions to each group.

Regulation 11G provides that where a Governor considers that one of the prisoners or a prisoner newly received as a result of classification was unsuitable for placement or for continued placement in that prison, the Governor should forward to the Classification Committee a report setting out his reasons why the prisoner should be placed elsewhere.

The above delegations and Regulation 11G appear to me to indicate the Commission's view that removals for security reasons should be channeled to the Custodial Services Division and removals for unsuitability to the Classification Division. I think that that channeling is correct. At the same time it has to be recognised that there is a grey area between the two concepts of security and unsuitability where they tend to merge. The decision as to which side of the dividing line a particular case falls can only be left to the commonsense and sense of propriety of the senior officers concerned.

In practice there are two main difficulties in the working of the transfer system. Even allowing for the grey area mentioned, the channeling of security transfers to the Custodial Services Division and unsuitability transfers to the Classification Division is not being fully maintained. Whilst some gaols do look to the Classification Division for transfer of unsuitable prisoners, some do not but instead look to the Custodial Services Division. Possibly I have misinterpreted the original intention of the Commission in regard to such channeling. Whether I have or not, I consider that such a form of channeling of the transfer functions is desirable. If a prisoner is fairly judged to be a security problem, then undoubtedly he should be moved urgently, and it is appropriate that the Custodial Services Division should authorise the move. If however he/she is merely an unsuitability problem, then it is just that the facts should be brought before the appropriate committee and the decision to move and new placement, if any, should be made by the Director of Classification or his Deputy after considering the facts and the recommendation of the Committee. I would think it most unlikely that the Director would force on a gaol a prisoner deemed by it to be unsuitable. However, investigation by a committee may clear the
matter up. A possible slur on the prisoner of having being moved for security reasons is avoided. The prisoner is kept within the Classification System and it is enabled to keep a proper track of him/her.

The second difficulty is that when prisoners are moved from one gaol to another by authority of the Custodial Services Division, there appears to be no regular system of reporting the transfer promptly to the Classification Division. Such reporting is necessary to that the prisoner can be brought back within the Classification System and so that that system has the ultimate control and supervision over his/her movements and over gaol placements and prisoner programmes.

There are three subsidiary difficulties that need attention. The first two concern the delegation of authority to transfer to the Senior Officers of the Classification Division and the third the delegation of authority to transfer to certain officers of the Custodial Services Division.

In practice when a gaol requests the Director of Classification to remove a prisoner for unsuitability he authorises his removal to Sydney so that he can appear before and be the subject of a recommendation by the Classification Committee. Strictly, however, the Director of Classification has only a conditional delegation of authority to transfer a prisoner. The condition is "only where the removal is recommended by" a Classification, Programme Review or Reception Committee. The Director lacks delegated authority to order the transfer of a prisoner for the purposes of appearing before the Classification Committee. Clearly a change is necessary. The form of the desirable change is closely connected with the second difficulty. That arises after the Classification Committee's recommendation has been made. It is conceivable, though most unlikely, that such a committee could make a recommendation of which the Director did not approve. In those circumstances the Director or his Deputy has unconditional delegated authority from the Commission to make the final decision on the Commission's behalf whether or not it is in agreement with the Committee's recommendation. (See Chapter 9 Section D). If he did so, because of the form of wording of the delegation to him to order the transfer of a prisoner, he would strictly be unable to order the transfer. This inconsistency between the delegation of authority to transfer a prisoner under Section 27 of the Act and the delegation of authority to classify under Regulation 11 should be removed. If this were done the Director of Classification and his Deputy would have delegated authority to transfer prisoners unconditionally and this would solve both difficulties.

The third difficulty relates to the delegated authority of officers of the Custodial Services Division to order transfers. The Director and the Assistant Directors have unconditional authority to do so. The two other officers mentioned above, the Executive Officer of the Division and the Administrative Assistant to the Assistant Director Central Region, have conditional authority to order transfers. The conditions are in the interest of security, a recommendation by the Medical Officer for treatment and/or consultation, and to facilitate appearance at court.

In practice the decisions to transfer for security reasons are always made by the Director of one of the Assistant Directors. However, they are busy and senior officers and it is their ordinary practice to instruct one or other of the other two officers, the Executive Officer of the Division or the Administrative Assistant to the Assistant Director Central Region, to prepare the necessary paperwork ordering the transfers in the name of one or other of those officers and signed by one or other of them. It is necessary that busy
Senior officers should be relieved so far as possible of unnecessary paperwork. Clearly it would be quite unnecessary for transfers for medical or court reasons to have to go before the Director or an Assistant Director. However different considerations apply in regard to transfers for security reasons. These are matters of considerable importance not only to the Commission but also to the prisoners concerned. I consider that in the case of such important orders, since the decisions are in fact made by the Director or an Assistant Director only, the actual order should be made in the name of the officer who makes the decision and signed by him/her, and not by a subordinate. My view is based on the desirability of it being quite clearly seen which officer takes responsibility for the ordering of the transfer. In fact under the present practice there is, I am told, a view in some parts of the Department that the security transfer orders are decided upon by the signing officer. I am assured by the Director of Custodial Services and I accept that this is not so and that the position is as set out above. I wish to make it quite clear that I make no reflection on the competency, efficiency or honour of any of the officers concerned. My opinion and recommendation are based solely on my view as to what would be a better practice. In a case the facts of which bear no similarity whatever to the present situation, Mr. Justice Nagle recommended that all prisoner transfer movement orders should bear the personal signature of the actual officer who approved the movement. (Report pages 494-495).

I recommend that the Commission make clear by instructions that transfers of prisoners from one gaol to another should be ordered by the Director or Assistant Directors of Custodial Services for purposes of security or what they reasonably believe to be purposes of security; that orders for transfers for unsuitability be made by the Director of Classification of his Deputy or the Deputy Superintendent Classification. Further that the officer of the Custodial Services Division who orders a transfer should report it promptly to the Director of Classification with sufficient reasons to enable the Classification Division to exercise its functions. Further that it should be made clear in the delegation of powers by the Commission under Section 48D that the Director of Custodial Services or an Assistant Director have power to order transfers where the above grounds exist and that the Director of Classification or his Deputy or the Deputy Superintendent Classification have power to order transfers for the purposes of or in pursuance of classification of the prisoner concerned. Further that Regulation 11G be amended so as to require the Gaol Governor to inform the Director of Classification or his Deputy instead of the Classification Committee as at present. Further that the delegation to the Executive Officer, Custodial Services Division and the Administrative Assistant to the Assistant Director Central Region be to order transfer upon medical recommendation and for court appearances only.

A problem occurs with transfers of prisoners made at the instance of the Internal Investigation Unit without the matter coming to the knowledge of or being reported to the Classification Division. I am advised by the Commission that the Superintendent of the Unit reports directly to the Commission Chairman. Because of the sensitive nature of the Unit's work it is not desired to have full written details of transfers made as part of its work placed on classification files. The Commission's view is that the Unit Superintendent should report any transfer to the Commission as soon as possible. The Commission will then discuss the matter with the Director of Classification who would have a note placed on the classification file referring enquiries to himself. I appreciate the importance of the Unit's work and its sensitive nature and I accept that statement.
CHAPTER 11 - SOME INSTITUTIONS CONNECTED WITH CLASSIFICATION

A. The Muir Committee

Judge Muir's enquiry was primarily into temporary leave programmes for prisoners. It became necessary for him to consider classification because of its close connection with leave programmes. Dealing with educational and vocational training of prisoners which involved their attendance at institutions outside the prison, he noted that such prisoners had to have a C3 security classification and also that since long-term prisoners were often involved, careful consideration had to be given to any risk to the public that might arise. At the suggestion of Dr. Hancock (then Director of Programmes (Education) Division and now Commissioner) he recommended the forming of a new committee to give final consideration to applications for external study leave.

The Commission established such a committee, which became known as the Muir Committee. It comprised, as recommended, the Assistant Director (Education and Training) Programmes Division, the Programmes Advisor on Classification, and representatives of the Director of Classification and the Director of Custodial Services. The Committee has met whenever there have been applications to be considered, usually once a week. The Programmes Division Advisor on Classification and the representative of the Director of Classification will have already considered the application in their capacity as the members of the sub-committee of the Classification Committee which reviews recommendations of Programme Review Committees. The recommendation of the Programme Review Committee at the prisoner's gaol will have come before that sub-committee as a matter of course.

It has been submitted to me by experienced officers closely connected with the procedures that the time has come to disband the Muir Committee and return its functions to the sub-committee of the Classification Committee. They say that it has served a most useful purpose. It has insisted that educational training courses be relevant to the prisoner and offer him/her useful instruction in employment or recreation skills.

It has established valuable criteria for deciding whether approval should be granted or not. Those criteria are well known now by the Education Officers in the gaols and the sub-committee of the Classification Committee. They say that in recent times decisions have almost always been by consensus, and the recommendations of the sub-committee have been followed. They consider that the assembling of the two additional members of the Muir Committee, namely the representatives of the Assistant Director (Education and Training) of the Programmes Divisions and of the Custodial Services Division has sometimes been difficult, due to pressure of work in those Divisions, and has sometimes resulted in delays to the applications for education or training leave, causing difficulties in respect of the actual applications to join external classes. The submission suggests that there be two conditions on disbanding the Muir Committee:

(1) that the criteria for granting leave which it has established should be codified and formally adopted and published;

(2) that the sub-committee of the Classification Committee should always include the Programmes Advisor on Classification when external study applications are being considered.
I agree with the submission and, when I sought the Commission's views, it also agreed. With the two provisos mentioned, I therefore recommend that the Muir Committee be disbanded and its functions returned to the Sub-Committee of the Classification committee, whose recommendation is to be referred to and subject to the approval of the Director of Classification or his Deputy. Publication of the criteria should include publication in the Classification Manual.

B. The Parole Board

The Board consists of eight members, being three District Court Judges, one member of the Police Force and four members of the community at large. Only one Judge sits at a time. The Board has the responsible and onerous task of deciding whether to grant parole to individual prisoners. Its work is arduous, as it meets on three days each week. One meeting is a public hearing on Fridays. Its members read files on a fourth day. It is estimated that the work takes from 25 to 30 hours per week. It was submitted to me that in view of the close connection between the work of the Classification Division and that of the Board, the Commission should have one or two representatives as Board members. It is part of the classification function to try to prepare prisoners for their ultimate release. It is the Board's function to decide if and when they should be released to parole. This often involves consideration of a prisoner's progress through the classification ratings and in certain activities such as work release and external education, entry into which has to be approved by the Director of Classification.

This problem is mentioned in "The Management of Long-Term Prisoners in Australia" by Wardlaw and Biles at page 81:-

"One of the fundamental problems that creates significant difficulties in management and programme planning for long-term prisoners is the fact that programme decision making is separate from release date decision making. Classification or assessment committees are responsible for the assignment of prisoners to particular institutions and their transfer from maximum to medium security and from medium to minimum security in a planned manner as sentences are served, and yet these committees have no direct influence on the date of release. It is parole boards, .... that decide the time and conditions of release on parole. This discontinuity of decision making can lead to obvious management problems, as would occur if a classification committee misjudged the probable release date of a long-term prisoner and consequently held him or her for too long or too short a time in a secure environment. This problem is particularly acute with the granting of work release a few months before the end of the custodial part of the sentence."

There seemed to me to be a strong case for the inclusion of a representative of the Director of Classification on the Board. There are precedents in three other States where the Corrective Services Departments have representatives on the Boards. The Commission approved of this submission. I submitted my tentative view to the Parole Board. Each member was good enough to go to considerable trouble to submit to me lengthy detailed arguments to the contrary. Their principal and most potent argument was the importance of the Board being recognised by the public as representing it, and of its being and appearing to be completely independent of the Department. One member went to the trouble of supplying me with quotations
from speeches of various members of Parliament at the time the Probation and Parole Bill 1983 was before it. I was interested to see that one senior member of the Opposition shared my view that it would be useful to have a representative of the Commission on the Board. I am still of that opinion. However I believe that the argument as to the independence of the Board prevails. Members of the public are not unnaturally suspicious of persons being released from prison without serving their full sentences and I am compelled to agree that the community based nature of the Board should be an important reassurance. There is an analogy in the jury system.

The principal reason for the submission that the Classification Division or the Commission should be represented on the Board was to improve communication and understanding of one another's problems and ways of working between the two groups. Suggestions for doing this in other ways have occurred to me as a result of information supplied by some of the Board members. They state that in the past they have had consultations on a regular basis with the Director of Probation and Parole. It seems to me that it might be even more valuable if they had such regular consultations with the Director of Classification or his Deputy. I have consulted both the Board members and the Director and they are agreeable and I accordingly make that recommendation. Moreover one member suggested that it would be a good idea to have workshops, say on a six monthly basis between Board members and Departmental Executive Officers to discuss matters connected with the operations of the Parole Board. That too seems to me to be a splendid way of furthering the knowledge of each side of the problems of the other. I accordingly recommend that such workshops be held.

C. The Release on Licence Board

The constitution and functions of this Board have been discussed above. A submission was made to me that just as the Director of Classification, the Chief Psychologist and the Director of Probation and Parole are members of the Board, so the Director of Programmes should also be a member. Information stemming from that Division and knowledge of its viewpoint was just as important to the Board as similar matters emanating from the other Divisions.

Further it occurred to me that as the Heads of each of the Divisions are very busy persons, with many other responsibilities, it might be wise to suggest an amendment to the Prisons Act s.59 to allow them to be replaced on the Board by permanent nominees from their Divisions. At present the Heads of each Division must serve on the Board and can only be replaced when they are absent or ill. The Indeterminate Sentence Committee, which was the body established within the Commission to carry out similar functions to those carried out by the Release on Licence Board, and which was its predecessor, had a more flexible membership arrangement. In its case nominees of each of the Heads of the Divisions served as members.

I have put both the submission made to me and my own suggestion to the Commission and also to the Release on Licence Board. Neither body was in favour of change in either respect. My observation is that the Board carries out its functions thoroughly and well. It would not be possible for me to suggest that there would be any particular improvement as a result of either change. In regard to the proposal that the Director of Programmes should be added to the Board, it has been pointed out that this could upset the carefully chosen balance between official members and community members laid down by Parliament, and that the Board did not have any difficulty in obtaining any necessary information from the Programmes Division which it
required to carry out its duties. In regard to the second proposal it has been pointed out that Parliament probably chose the heads of the Divisions as members of the Board because of the importance which it attached to the Board's work. As a result of having the heads as members of the Board, there was a continuity of membership and also the Directors concerned were able to get an overview of how the work of their own Divisions was proceeding.

I consider that I should not make any recommendation along either of these lines. However, I do believe that when next amendments are made to the Prisons Act, it would be advisable to permit each of the three heads of Divisions to alternate with their Deputies whenever convenient because of the pressure of other duties. That seems to me to be preferable to the existing position under which the Deputies can only act as Board members when they are acting in the office of their Director. I do not think that such a change would impair the work of the Board or lower it in the estimation of the public. It would probably be a great convenience for the officers concerned.

I therefore recommend that Section 59(4) of the Prisons Act be amended so as to provide that the ex officio members be in each case the Director or the Deputy Director of the Division concerned.

D. The Mental Health Tribunal

I have mentioned above the view at present held that the functions of the Release on Licence Board in respect of the classification of Governor's Pleasure Prisoners held in prison have been in effect transferred to the Mental Health Tribunal by the Mental Health Act, 1983. After careful consideration I do not share this view.

I say this with due respect, because the matter is by no means free from doubt and the true construction of Sections 118 and 119 of the Mental Health Act is difficult. My view is that the function of the Tribunal is limited to recommending initially under Section 118 whether or not prisoners of this kind should be detained, cared for and/or treated in a general sense in a hospital prison or other place. Under Section 119 the Tribunal has the function of reviewing whether or not the detention, care and/or treatment is to be continued and if so where. However, I consider that the methods by which detention in prison, if that has been decided on, are to be carried out, are for decision by the Corrective Services Commission upon the recommendation of the Release on Licence Board. These matters cover classification, gaol placement and programming. I set out in "Appendix 3" the reasons for my view.

If I am wrong in this and it is held that the Mental Health Act has indeed conferred upon the Tribunal the function of making recommendations in regard to classification, placement and programming of Governor's Pleasure prisoners held in prison, then I consider that the Mental Health Act should be changed so as to remove that part of its jurisdiction with a view to it remaining with the Release on Licence Board. The administration of prisons is a most complex and difficult matter. It requires, as a minimum, detailed knowledge of the nature of the various prisons, of their inmates and of their staff. It involves difficult decisions as to the proper location for prisoners having regard to all the above matters and the proper mixing of prisoners. It requires a thorough knowledge of the very special and often strange ways in which the places where people are locked up, work in practice.

The Release on Licence Board has built up such a knowledge. It has three chief departmental officers as members. It has ready access to gaols and prisoners and it has regularly taken advantage of that. Through
sub-committees of three members, including the Chairman, it interviews every six months all prisoners within its care in the gaols where they are located, after first interviewing the officers having knowledge of them. The Governor's Pleasure prisoners held in prisons, about 15 in number, though not identical in nature with life sentence prisoners, fit suitably into the Board's work. By way of contrast and without any disrespect to the Mental Health Tribunal (which has as it President and Deputy President very senior and experienced members of the legal profession), this small number of persons in gaol would have to be a very special part of its work.

It could be argued that the Tribunal will merely be making a recommendation to the Corrective Services Commission, which will make the ultimate decision as a result of reports from its own officers. That does seem however an unnecessary duplication, and one that could lead to embarrassment in the event of conflicting views. It might be particularly so, if the recommendation had been the subject of an appeal to the Supreme Court under S.136, though it is not clear whether such an appeal lies from a recommendation.

It could be argued that there is an advantage for these prisoners in having their classification whilst in prison looked at by both bodies. On balance, however, I consider that care of them by the Release on Licence Board is sufficient. The question of the removal of such prisoners from gaol is quite a different one and there can be no objection to that function being vested in the Mental Health Tribunal. Indeed the required regular periodical review of that question by the Tribunal is a valuable reform.

The above remarks apply only to the Governor's Pleasure prisoners held in prison. They do not apply to those held in hospitals or elsewhere. Nor should they be taken to constitute approval of the policy of such persons being held in prison at all. They are persons who have been adjudged not guilty on the ground of mental illness. The policy by which they are housed in prison is presumably based on the view that they are dangerous persons needing secure confinement, and that such security is not available elsewhere. It seems to take little account of whether prison, even a prison hospital, is a suitable environment for them.

I recommend that if it is held that the functions of the Release on Licence Board in respect of classification placement and programming of Governor's Pleasure prisoners held in prison has been transferred to the Mental Health Tribunal by the Mental Health Act, 1983, the position be reversed and those functions restored to the Release on Licence Board. The question of the release or continued detention of such prisoners, and if they are to be detained, in what type of institution whether hospital, prison or other place, should remain with the Tribunal.

E. Permanent Chairs for certain Committees

The functions of the Programme Review Committee and those Reception Committees which classify prisoners are very important from the viewpoint of classification. I noticed that in certain larger gaols the Superintendent had delegated a permanent Chairperson for the Programme Review Committee which had frequent meetings. The Chairperson in each case had a thorough grasp of the functions of the Committee. In another gaol where meetings were much less frequent the Chairperson quite frankly told the Committee members that he had not occupied the role before and wisely asked for guidance and assistance.
I realize that some gaols have more limited resources than others and that sometimes new officers must learn on the job. However, Judge Muir expressed the view (Report page 16) that where the duties were too heavy a burden for the Superintendent, he/she should appoint a senior officer as permanent chairperson. I respectfully agree and I recommend that so far as possible Superintendents appoint permanent Chairpersons for the Programme Review Committees and for Reception Committees; that if officers are new to the task, proper attempts should be made to train them for it; that if meetings are infrequent or it is otherwise not practicable to appoint a permanent Chairperson or one who has been trained, then Superintendents should carry out the duties in person.
CHAPTER 12 - THE CLASSIFICATION OF WOMEN

One of the great problems of criminology, for which I have read no satisfactory explanation, is exemplified by the fact that the 30th June 1985 prison census showed 3907 men in prison in New South Wales and 208 women. At the 3rd May, 1987 there were 3897 men and 182 women. The proportion is similar in other states and is said to be similar in other countries. Whether one adopts the views of Doctor Ramsey of Trenton State College, New Jersey (Women in Prison Appendix 3) that the small participation of women in crime is because of their social conditioning to be submissive, conforming and dependent, or whether one, perhaps under the influence of the ideology of the patriarchal system, takes the view that it is because of innate differences in the sexes, it is obvious that there must be important differences in the nature of women's criminality from that of men's. This is borne out by experience in the courts and also by studies. The report of the Task Force on Women in Prison cited the 1983 prison census tables showing the percentages of the most serious offences of male and female prisoners respectively. The 1984 and 1985 censuses show similar figures.

The percentage of female prisoners sentenced for homicide is very close to that of the males. (The great majority of female convictions were found in another study to be for domestic cases). The percentage of females sentenced for assault and other aggressive offences including robbery is considerably less than that of males. (Interviews with women convicted of armed robbery often showed that their involvement was as driver or as an accessory in some other way.) In respect of break and enter, the female percentage is little less, but female percentages are considerably higher for fraud, misappropriation and other thefts. The percentage of female prisoners whose most serious offence was possession or use of drugs is double that of the males. The same applies to trafficking in drugs, perhaps because of the common use of female couriers. The percentage of females sentenced whose most serious crime was a driving offence was also considerably below that of the males. There is thus a strong indication that the escape of a female prisoner would not be likely to be seen as constituting a physical danger to the public.

It is noteworthy that the 1984 census showed the percentage of female prisoners who had not been convicted and were without bail as 26 percent as against a male percentage of 13. In 1985 the figures were twenty and ten percent respectively. The explanation is possibly that few of the women in prison had a connection with traditional or family structures and were unable to comply with the common financial conditions of bail. A demographic study of the women in prison for the Task Force showed that the position was much the same as that in respect of men, in that most women were young (two-thirds were between 21 and 29 years), poorly educated, unemployed, and single. Nearly half had a least one child. Nearly half of the mothers were supporting the child or children as a single parent.

Of the 90 prisoners interviewed in the study 78 percent reported drug and/or alcohol usage and 91 percent of those at least daily usage, with heroin the most used drug. The majority reported a long term habit and 87 percent of those who admitted using drugs prior to coming to gaol said that their being in gaol was a direct result of their drug use. The proportion of women in gaol for drug related crimes is considerably higher than that of men.

The Nagle Report said (page 211) that there had never been any real classification of women prisoners previously. It pointed out that there had only been one prison. It said that there was no excuse for not attempting to
classify women prisoners, that arrangements should be made for classification, which it regarded as vital. It said: "Accommodation should be made available to coincide with the classification". It made this its 63rd recommendation. It gave no reason why it considered security classification vital. Since the Report classification has been carried out. The Nagle Report did not suggest any security categories for women different from those for men and it is those that have been applied. An officer experienced with female prisoners has suggested to me that classifying them in this way has not been beneficial but the reverse.

There are two women's prisons, Mulawa and Norma Parker. The latter is a minimum security gaol and only contains minimum security prisoners. The former is medium security, but accommodates prisoners classified as A, B and C. It has different types of accommodation but none of the buildings is limited to prisoners of one security classification only. The accommodation at Mulawa is agreed to be very poor. Part of it, the dormitory area is generally said to be disgraceful. The facilities for work are also poor. There are a limited number of machinist jobs. The rest are sweeping, domestic and gardening. In recent years a limited number of prisoners have been sent from Mulawa to Parramatta Gaol for disciplinary reasons. There has also been developed a wing at Bathurst for female C Category prisoners. With certain exceptions women who have been at Mulawa are required to go there before going on to Norma Parker. It is expected that this procedure will not be followed when Mulawa is, as is now proposed, rebuilt. According to the 1984 and 1985 censuses the break up of women into the A, B, and C categories is about the same as that for men.

The Classification Committee sits to make recommendations in respect of long-term women prisoners at Mulawa. There it is headed by either the Director of Classification or his Deputy and the other members are provided from the officers at Mulawa. Short-term women prisoners are classified by a Reception Committee Meeting with non-custodial officers attending. For review of classification there is a Programme Review Committee at each gaol and their recommendations go to the Sub-Committee of the Classification Committee at Head Office in the same way as those of the men's gaols.

The report of the Task Force on Women in Prison criticised the application of the classification system to women. It said that its concepts were based on requirements for and the needs of male prisoners. It cited lists of factors said to be considered by the Department in determining a security rating which were reproduced in the Muir Report. I have set them out in Chapter 6, Section C. The Task Force's report argued that the lists were male orientated and that other matters needed consideration when classifying women. It suggested that one such matter was whether the woman was the primary carer of a child or children. It claimed that whilst job stability was a factor in the list in the Muir Report, it was hardly applicable to women in that a high proportion of female prisoners were single heads of households, were unemployed and were drug or alcohol affected. It argued that one of the factors influencing Classification Review was application to work, education and/or self improvement in prison, yet women had limited access to limited programmes and little opportunity for such improvement.

The report further argued that the initial security rating is primarily determined by the length of sentence and the nature of the offence; that remand and often appeal prisoners are more or less automatically treated as A security category and that both these procedures are of doubtful relevance to women prisoners. It argued that the vast majority of women prisoners merely require medium or minimum security. The fact that all classes are present in
the one gaol, (though conditions may be different after it is rebuilt,) throws further doubt on the applicability of this form of security rating for women. The report recommends (Number 217) that the classification system as it relates to women should be reviewed and that this should include an examination of the efficacy of the present security ratings for women.

A submission was made to me by the Implementation Committee of the Task Force. It argued that the best way to achieve that recommendation was to have a separate Classification Committee for female prisoners. It made the further point that other reasons for considering that the male security ratings should not necessarily be applied to women were the small number of escapes by women and the less aggressive behaviour of women prisoners. It expressed the wish that when Hulawa was redeveloped, female prisoners might be classified with as much emphasis being placed on the developmental programme side of classification as on security rating.

The present Classification Committee for women is made up of officers from Hulawa Prison but the chairperson must be the Director of Classification or his Deputy. This position is one of considerable influence, particularly as those persons are also the delegates of the Commission to make the final decisions not only as to classification of long-term prisoners after recommendation by the Classification Committee, but also of short-term prisoners after recommendation by the Reception Committee, and as to review classification after recommendation of the Classification Sub-committee which in turn has considered that of the Programme Review Committee. Both of the Officers mentioned have at their fingertips the various Regulations and the rules and criteria for dealing with classification, based on dealing with the 95 percent of prisoners who are male. They are constantly applying the accepted criteria to the classification of male prisoners. They are responsible to the Commission for applying the same regulations and criteria to female prisoners as to males. But it is necessary to rethink whether these regulations and criteria developed for males are really suitable for female prisoners, and if not, what should replace them. This is particularly necessary at present in view of the redevelopment of Hulawa. The best way to achieve such a rethinking would be to appoint to the Classification Division a new officer, not necessarily female, to take over the chairing of the women's Classification Committee. This person would take responsibility in conjunction with the Committee for the necessary research. No disrespect is intended to the Director or his Deputy who are very experienced, competent and busy officers.

The submission is supported by the argument that the new chairperson, and the Committee generally, would have the opportunity of building up intimate knowledge of the women prisoners, and would be able to programme their development better having regard to the hoped for new emphasis in classification, and to follow them up more effectively. The result would be the same sort of personal care and supervision that is now given by the Release on Licence Board to life sentence prisoners. There is about the same number of female prisoners as life sentence prisoners. It is argued that just as the Board does in respect of the latter, the women's Classification Committee, chaired by the new officer, could also take over the functions of the Programme Review Committee for Hulawa. That would mean that there would be no need for review classifications to go through the Sub-Committee of the Classification Committee at Head Office as at present. Thus the one committee, and the one committee only, could take over the care of the female prisoners. Whether they would take over the care of those at Norma Parker can be left for future discussion. It is anticipated that when Hulawa is redeveloped, there will be no female prisoners at Bathurst.
Removal of the need for Programme Review Committee recommendations to pass through the sub-committee may have another advantage. The sub-committee officers are very efficient and busy, but by the very nature of the sub-committee its attention is directed almost completely to the security side of classification. As a result it might be an obstacle to the desired objective of changing the emphasis in the case of women between the two sides of classification.

It is also argued that although the Classification Committee is intended to sit monthly at Mulawa, in fact it has not been possible to do so because of the heavy work loads of the appropriate chairpersons. Again there have sometimes been delays in regard to the approval of the Programme Review Committee recommendations by the Classification Sub-Committee. These have been due to the heavy work load of the sub-committee. It has been put to me that these delays have proved to be a source of difficulty in the past and are likely to become a serious problem when Mulawa is reconstructed. Prompt classification will then be essential for the proper functioning of the prison. The suggested system should remove the problem and bring about quicker classification and review.

I submitted a proposal for a separate female classification system to the Commission. It replied that it did not support a change; that the Director of Classification was the Commission’s delegate who is required to oversee the total classification system and that fragmentation or duplication of it would not be justified.

I am of the view that the case made by the Implementation Committee of the Task Force is overwhelming. I too would oppose fragmentation or duplication of the classification system in the absence of a special reason. However I consider that gender differences are a special reason for duplication. I think the classification of women does need rethinking. The women prisoners are a minute (5 percent) proportion of the whole. There is evidence of the different nature of the criminality in which women are involved, of the difference between the sexes from the security view point and in their reaction to imprisonment, and the different prison conditions applicable to the sexes. The smallness of the female community means that special care can be given to it by a specialised group. Classification delay can be eliminated.

Until recently all of the women prisoners have been, and at present the majority are, and probably in the future all again will be contained in the one gaol. It is a gaol without towers and is therefore not a true maximum security prison, even though it includes women who are at present classified as maximum security, largely because of the length of their sentence. Prior to the suggestion in the Nagle Report that the classification of women prisoners was essential, which has been interpreted as classifying them like the males primarily on a security basis, the women prisoners of all kinds were in fact treated differently, and therefore in fact classified differently on the basis of their response to imprisonment. This is still what goes on in fact to a large extent at Mulawa since prisoners classified A, B and C are in fact housed in each of the different types of housing there, the dormitory type, (Catchpole House), the trusty unit living type (Blaxland House) and the single cell secure type (Conlon House).

I recommend that careful thought should be given as to whether women should be classified in the same way as men prisoners; if they are to be classified on some sort of security basis, what sort of criteria should be applied in so classifying them; and whether that kind of classification is necessary and
appropriate for women prisoners at all. There is reason to hope that research into the criteria for classifying women might throw light on the traditional criteria for men.

I recommend that an officer should be appointed to the Classification Division, not necessary female, to chair the various committees which make recommendations in respect of women's classification. This officer would chair the Classification Committee dealing with long term female prisoners, the Reception Committee dealing with short-term ones and the Programme Review Committee dealing with the review of prisoners. Although the officer need not necessarily be female, I think it might be preferable, if a suitable person were available, to appoint a female to such a position.

Some further likely advantages of such a system follow. An inquiry could be held into how far maximum security for a considerable period is necessary for female prisoners with long sentences such as murderers in a domestic situation. Unconvicted prisoners without bail could be classified, which has not yet been possible in male gaols (Task Force Recommendation No.219). Because of the smallness of the system it should be possible to get away more readily from the sometimes excessively rigid rules and criteria that arguably have to be applied in the much larger male system. An example of the lack of flexibility suggested to me is that when as a result of the misconduct of some male prisoners on day leave, changes and restrictions have been applied to such leave, these have been applied to females as well as males, even though the behaviour of female prisoners in such circumstances did not justify the application of the change to them.

I also recommend that the case management review team system devised at Emu Plains Training Centre be instituted at Mulawa particularly for the benefit of giving some assistance to short term and remand prisoners. For long term prisoners the Malabar case management system of interviews by the non-custodial officers followed by consultation by them prior to Classification Committee meetings should be adopted. The officers concerned in either case could use either joint interviews as at Emu Plains or separate as at Malabar, as they thought best.

There remain two problems. First at present female prisoners under a life sentence, after initial classification, are reviewed every six months and their classification on both the programme development and security sides is the subject of recommendations exclusively by the Release on Licence Board. It is a body of considerable experience whose work is of great value. Without any disrespect for it I would prefer the classification reviews of female life sentence prisoners to be handled by the new committee which I am recommending. A difficulty is that the Release on Licence Board has the other vital function of ultimately recommending release, if appropriate, for life sentence prisoners. That function is statutory and one which it is not desirable to transfer. If the Release on Licence Board is properly to exercise that function then it must also continue with its classification functions in respect of female life sentence prisoners. I consider that the proper solution is that both groups should oversee the classification of the comparatively few prisoners involved and I would hope that they could come to harmonious joint views in respect of them. If there were any disagreement it could be resolved by the Commission. I do not suggest any change in the Release on Licence Board's function in respect of release.

Secondly there is the question whether the Commission should delegate its function of final decision in respect of classification of women to the new chairperson or whether it should remain with the Director of Classification
or his Deputy. I do not see this as a vital problem. After all the security concept in respect of female prisoners cannot be nearly so important as it is in respect of males in the public estimation. If it is ultimately decided that the delegation should remain with the Director or his Deputy, I would think that differences of view would only arise on limited occasions and could be harmoniously settled. Again any disagreement could be settled by the Commission. However my preference is for the delegation to be to the new officer and I so recommend.
No. | Recommendation | Page No.
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1. | That Regulation 11E be amended to delete the need for a report in each case where a period of two months is exceeded. A suitable replacement provision would be a requirement that the relevant Committees act as expeditiously as possible and use their best endeavours to complete each recommendation within two months. | 39 |
2. | That Regulation 11 be replaced with the following:— | 52 |
   | 1. Each prisoner shall, for the purposes of security and developmental programmes, be classified in one of the following categories: | |
   | Category A – those who, in the opinion of the Commission, require to be contained within a secure physical barrier including towers. | |
   | Category B – those who, in the opinion of the Commission, require to be contained within a secure physical barrier. | |
   | Category C1 – those who, in the opinion of the Commission, require to be contained within a physical barrier unless in the company of an officer. | |
   | Category C2 – those who, in the opinion of the Commission, do not require to be contained within a physical barrier at all times but who require some level of supervision. | |
   | Category C3 – those who, in the opinion of the Commission, do not require to be contained within a physical barrier at all times and who do not require to be supervised. | |
   | (2) The Commission shall, from time to time, review and vary the category of prisoners as in its opinion the circumstances require. | |
   | (3) As soon as possible a programme shall be prepared for each prisoner in the light of the knowledge obtained about individual needs, capacities and interests. | |
3. | That Regulation 11C be amended so as to require the Classification Committee to make a recommendation to the Commission for a developmental programme for each prisoner so far as practicable. | 53 |
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<td>4.</td>
<td>That Regulation 10 (3) be replaced by a provision giving the Commission power to separate young or other prisoners not committed to criminal morality, prisoners who are physical vulnerable, intellectually handicapped, or have some other characteristic which, in the opinion of the Commission, requires them to be separated from the general body of prisoners.</td>
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<td>5.</td>
<td>That Regulations 11C and 11D be amended so as to require the Classification Committee and the Reception Committees if separation should appear to them to be necessary and practicable in the case of any prisoner to make a recommendation to the Commission to that effect.</td>
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<td>6.</td>
<td>That Regulation 11F should be amended so as to require Programme Review Committees to make a separation recommendation in appropriate cases.</td>
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<td>7.</td>
<td>That consideration be given to providing more detailed instructions to staff in methods of formulating needs or developmental programmes for prisoners and in relating them to actual facilities. Consideration should be given to providing staff with check lists and some programmes recently developed by individual officers as models.</td>
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<td>8.</td>
<td>That the Classification Manual be expanded to cover all aspects of Classification as far as is practicable, that provision be made for keeping it up to date, that it be made available to all persons in the Commission responsible for making classification recommendations, that it be placed in gaol libraries, offered to appropriate university, college and law libraries, made available to other libraries, members of the public, and prison authorities in other States.</td>
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<td>9.</td>
<td>That the Classification Manual include for the guidance of committee members factors to be taken into account and/or points for consideration in making classification recommendations.</td>
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<td>10.</td>
<td>That there be incorporated in staff instructions, preferably in the Classification Manual, a recognition of the staging down principle. It could be to the effect that as part of the principle of keeping each prisoner at the lowest appropriate rating, officers or Commissioners reviewing ratings from time to time, notwithstanding that a prisoner had an initial high rating, are justified in recommending a lower rating in appropriate cases, having regard to the development of the prisoner in</td>
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all relevant respects with the passage of time, to the approach of the time when the prisoner is likely to be released, and to the desirability of preparation of the prisoner for his/her earliest proper release. All of these factors must be viewed in the light of and balanced against the prisoner's conduct particularly dangerousness as evidenced by his/her crime and prior history. The likelihood of escape must also be taken into account.

11. That the principle be adopted that security classification is not to be used as a method of punishment.

12. That the increase of security ratings should not be used as a form of punishment.

13. That a police officer preparing a statement of facts and antecedents for the Supreme or District Court prepare an additional copy of each document for the Corrective Services Commission; that the officer whose function it is to forward a commitment warrant to accompany a prisoner to prison attach to the warrant the Commission's copy of each document. In the case of prisoners convicted after trial the officer instructing the Crown Prosecutor should supply the short statement of facts for attachment to the warrant.

14. That an appropriate Police Information Sheet be prepared by the Police Officer concerned in every case where a person is sentenced to prison by a Local Court. It should be the function of the officer responsible for sending the commitment warrant with the prisoner to attach the document to it. If the officer supplies a statement of facts in writing and/or an antecedents sheets to the Court, he/she should provide a copy for the Corrective Services Commission for attachment to the commitment warrant. If the officer is not providing one or the other of those documents for the Court but is supplying the information orally, a brief note of the information should be written on to the Police Information Sheet.

15. That an appropriate administrative section or the Classification Division order a copy of the Court's reasons for sentence and request them urgently as soon as a gaol receives a prisoner with a sentence with a non-parole period or with a long term sentence without a non-parole period.
Recommendation

16 That the Malabar Parole Unit continue to obtain all pre-sentence reports available in respect of long-term prisoners to be classified at Malabar.

17 That it be the responsibility of the Parole Officer who presents a pre-sentence report in every case where a prisoner is sent to gaol, to supply a copy to the Director of Classification. It should be placed on classification files of long-term prisoners dealt with at meetings away from Malabar. In the case of a short-term prisoner a copy should be made available for the Reception Committee dealing with his/her classification and a further copy for the appropriate file or files of the Programme Review Committee and/or Case Management Review Team handling any review of the prisoner. An appropriate solution should be found to any overlap with the work of the Malabar Parole Unit.

18 That the new system instituted in 1986 at Malabar, by which a Psychologist, Probation and Parole Officer, Education Officer and Welfare Officer interview each long-term prisoner before classification and furnish reports, continue in future.

19 That all classification files be made in duplicate, that the duplicate follow the prisoner to each gaol to which he/she goes and be kept there in the custody of the administrative assistant of the Programme Review Committee. Any addition subsequently made to the classification files should be made in duplicate and the duplicate forwarded to the appropriate gaol.

20 That there should be an education file for each prisoner and that it should follow him/her to each gaol of placement and be kept up to date.

21 That the psychology file should follow each prisoner to each gaol in which he/she is housed.

22 That the non-custodial officers at all gaols endeavour to interview each prisoner, whose classification is to be reviewed, preferably by a Case Management Review Team system, and make an appropriate report jointly or separately to the gaol's Programme Review Committee.
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<td>23</td>
<td>That the Programme Review Committee should follow up the recommended developmental programme for each prisoner within 14 days of his/her reception at a gaol of placement, and Regulation 11F, Officer Instructions and the Manual should be amended accordingly. For the purpose of greater efficiency this should be preceded, if practicable, by a case management review by the non-custodial officers team on either the Emu Plains or Malabar model.</td>
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<td>That prisoners transferred from one gaol to another should have their programmes considered and reviewed by the Programme Review Committee at their new gaol within 14 days of reception. Attention should be paid to the reasons for their transfer. Regulation 11F, instructions and the Manual should be amended accordingly.</td>
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<td>That if and when resources permit the computer should contain the full criminal record of each prisoner to the same extent that Police Department records do, that is a record of all offences whether resulting in imprisonment or not and whether committed in New South Wales or elsewhere. When that situation is achieved, the criminal record cards should be abandoned.</td>
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<td>That until the cards are abandoned or if it is decided to retain them as a record of the New South Wales gaol history of prisoners, they should be replaced by Police Department record sheets when classifying authorities or the Parole Board seek information as to a prisoner's criminal history. Alternatively, if it is not desired to take that course, some section should be assigned the definite task of completing from the police records both the cards of long term prisoners at present in gaol and those of prisoners received in future</td>
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<td>That pending full computerisation the Department endeavour to replace handwritten criminal record cards at least for the future by typed ones.</td>
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<td>That administrative assistants prepare full copies of full criminal records of each prisoner for each member of Programme Review Committees. The Secretary of the Classification Committee should do the same for its members.</td>
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<td>That words and not code numbers be used to describe crimes in sheets for the information of committee members.</td>
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30 That the Department should endeavour to provide fields for references to the location of significant information for classifying authorities in respect of individual prisoners.

31 That officers be instructed to notify the Classification Division of significant matters for inclusion in classification records and that the Classification Division on receipt of such material place a reference to where it may be found on the computer record of the prisoner concerned. Pending computerisation a suitable method should be devised such as a precis form which can be carried forward, for alerting administrative assistants and others to such significant facts.

32 That the Programme Review Committees should see every short term prisoner within two weeks of reception at his/her gaol of classification and make an assessment and devise a developmental programme for him/her. It should not be necessary for the Committees to formulate their decisions as recommendations to the Sub-Committee of the Classification Committee, unless the prisoner remains in the gaol for more than six months. If practicable, the meeting should be preceded by an assessment by a Case Management Review team on the Emu Plains or Malabar model, and this should be followed up from time to time by the team as appropriate having regard to the length of the prisoner's sentence. A Classification file to contain all necessary assessments and reports should be kept for each short term prisoner by the Administrative Assistant. It should follow the prisoner to any other gaol to which he/she goes. It should ultimately be kept by the Classification Division. Regulation 11F should be amended accordingly.

33 That a new committee be set up to give similar care to very long sentence prisoners to that given to life sentence prisoners by the Release on Licence Board.

34 That remand prisoners should, as far as possible, be classified and their conditions ameliorated as far as is reasonable.

35 That the Commission classify convicted prisoners who have further charges awaiting trial, and that they be not automatically classified as maximum security.
36 That all appellant prisoners be classified, and in the case of those whose sentences are subject to a Crown appeal, that they be not automatically classified as maximum security.

37 That the policy contained in policy directive as to escapees PLY.87.31/1(Bulletin 15 June 1987) be continued, but be clarified.

38 That a Probation and Parole Officer or some other non-custodial officer obtain from each prisoner before meetings of the Classification Committee or any Programme Review Committee his/her views as to classification matters for submission to the Committee and that he/she advise him/her that submissions in writing would be accepted by a committee; that where appropriate, committees bear in mind the possible need for a friend as advocate for a prisoner or for an interpreter, or for an Aboriginal welfare assistant, and that these matters be included in the Classification Manual.

39 That there be noted in the Classification Manual the various avenues for reconsideration of classification decisions open to a person dissatisfied with any such decision.

40 That prisoners be notified on the standard form of recommendation by Programme Review Committees that if they are dissatisfied with the recommendation they may submit an argument in writing to the sub-committee of the Classification Committee.

41 That Regulation 11F be amended so as to provide for Programme Review Committee recommendations to go to a sub-committee of the Classification Committee; that if the sub-committee proposes to reject a recommendation of a Programme Review Committee it notify it by a standard form with its reasons, giving the Programme Review Committee an opportunity to supply further reasons or arguments; that the Programme Review Committee discuss the matter with the prisoner; that the sub-committee notify Programme Review Committees in each case of rejection of recommendations of the reasons for it, giving them as fully as is practicable and necessary and relating them to the facts of the particular case; that the criteria used for judging and either accepting or rejecting recommendations for changes in security classification or placement be published in the Classification Manual.
42 That fine defaulters should not be sent to prison because they are too poor to pay their fines, and that if the problem cannot practicably be solved by greatly extended time to pay, then a sanction involving community work be devised for such persons. Courts should have power to remit a fine wholly or in part where the offender's circumstances have changed.

43 That so long as persons are imprisoned for non payment of fines, consideration be given to housing them during week days in the periodic detention centres, or at places other than prisons.

44 That a legislative pronouncement be made requiring courts not to impose gaol sentences unless after considering all other possible alternative forms of punishment they conclude that nothing else is appropriate. Local Courts should be required to state in writing the reasons why all such alternatives have been rejected.

45 That efforts be made to provide resources and staff to carry out a Bail Assessment System for prisoners in need of it and that, if possible, assessments be available for the first appearance of the accused person before the Court; that official persons preparing facts for bail assessment for prisoners to appear before courts, attempt the use of the Manhattan bail form prescribed by Regulation under Section 33 of the Bail Act.

46 That a Regulation be made prescribing that all summary offences for which the maximum penalty is less than two years imprisonment be brought within Section 8 of the Bail Act, which would entitle the person to unconditional bail or bail with conditions that can readily be entered into; that Section 8 be amended to provide that the bail conditions which may be imposed under it should not include money conditions, unless there are special circumstances to be stated in writing by the Court.

47 That Section 11 of the Prisons Act be amended to give all magistrates authority to visit and examine any prison at any time.
48. That the Commission make clear by instructions that transfers of prisoners from one gaol to another should be ordered by the Director or Assistant Directors of Custodial Services for purposes of security or what they reasonably believe to be purposes of security; that orders for transfers for unsuitability be made by the Director of Classification of his Deputy or the Deputy Superintendent Classification; that the officer of the Custodial Services Division who orders a transfer should report it promptly to the Director of Classification with sufficient reasons to enable the Classification Division to exercise its functions; that it should be made clear in the delegation of powers by the Commission under Section 48D that the Director of Custodial Services or an Assistant Director have power to order transfers where the above grounds exist and that the Director of Classification or his Deputy or the Deputy Superintendent Classification have power to order transfers for the purposes of or in pursuance of classification of the prisoner concerned; that Regulation 11G be amended so as to require the Gaol Governor to inform the Director of Classification or his Deputy instead of the Classification Committee as at present; that the delegation to the Executive Officer, Custodial Services Division and the Administrative Assistant to the Assistant Director Central Region be to order transfer upon medical recommendation and for court appearances only.

49. That the Muir Committee be disbanded and its functions returned to the Sub-Committee of the Classification committee, whose recommendation is to be referred to and subject to the approval of the Director of Classification or his Deputy. Two machinery provisos are set out in the text.

50. That the members of the Parole Board have regular consultations with the Director of Classification and his Deputy.

51. That workshops be conducted on a six monthly basis between members of the Parole Board and Departmental Executive Officers to discuss matters connected with the operations of the Board.

52. That Section 59(4) of the Prisons Act be amended so as to provide that the ex officio members of the Release on Licence Board be in each case the Director or the Deputy Director of the Division concerned instead of the Director only as at present.
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<tr>
<th>No.</th>
<th>Recommendation</th>
<th>Page No.</th>
</tr>
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<tbody>
<tr>
<td>53</td>
<td>That if it is held that the functions of the Release on Licence Board in respect of classification placement and programming of Governor's Pleasure prisoners held in prison has been transferred to the Mental Health Tribunal by the Mental Health Act, 1983, the position be reversed and those functions restored to the Release on Licence Board. The question of the release or continued detention of such prisoners, and if they are to be detained, in what type of institution whether hospital, prison or other place, should remain with the Tribunal.</td>
<td>108</td>
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<tr>
<td>54</td>
<td>That so far as possible Superintendents appoint permanent Chairpersons for the Programme Review Committees and for Reception Committees; that if officers are new to the task, proper attempts should be made to train them for it; that if meetings are infrequent or it is otherwise not practicable to appoint a permanent Chairperson or one who has been trained, then Superintendents should carry out the duties in person.</td>
<td>109</td>
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<tr>
<td>55</td>
<td>That thought should be given as to whether women should be classified in the same way as men prisoners; if they are to be classified on some sort of security basis, what sort of criteria should be applied in so classifying them; and whether that kind of classification is necessary and appropriate for women prisoners.</td>
<td>113/114</td>
</tr>
<tr>
<td>56</td>
<td>That an officer should be appointed to the Classification Division, not necessary female, to chair the various committees which make recommendations in respect of women's classification. This officer would chair the Classification Committee dealing with long term female prisoners, the Reception Committee dealing with short-term ones and the Programme Review Committee dealing with the review of prisoners.</td>
<td>114</td>
</tr>
<tr>
<td>57</td>
<td>That the case management review team system devised at Emu Plains Training Centre be instituted at Mulawa particularly for the benefit of giving some assistance to short term and remand prisoners. For long term prisoners the Malabar case management system of interviews by the non-custodial officers followed by consultation by them prior to Classification Committee meetings should be adopted.</td>
<td>114</td>
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<tr>
<td>No.</td>
<td>Recommendation</td>
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</tr>
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<td>58</td>
<td>That the Commission should delegate its function of decision in respect of classification of women to the new chairperson.</td>
<td>114</td>
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BROWN, D. "You're Poor – Go to Gaol". Australian Society, June 1, 1984.


Note: Page references and recommendation references are as contained in the one volume edition.


NSW Bureau of Crime Statistics and Research. "Fine Default". See under HOUGHTON, J.M.


Public Service Board of N.S.W. Report on Efficiency Audit. Managing Prisons. 1985


Publications of NSW Corrective Services Department


Intra-Departmental Papers of the NSW Corrective Services Department


APPENDIX 1

Tables 5, 6 and 7 of the Department's Annual Report, 1985/86.

**TABLE 5**: Detailed Information Relating to Escapes from Custody 1985/86

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APPENDIX 2

Extract from a letter from His Honour Judge A. D. Collins, Chairman of the Release on Licence Board to the Minister dated 8th November, 1984.

"The Board has been charged with the responsibility of dealing with the following classes of matters.

1. The supervision of those prisoners serving indeterminate sentences.

......

6. Supervising the conduct of prisoners released on licence ...... and where necessary making appropriate recommendations as to revocation or amendment of terms of the licence.

The work of the Board is divided into three sections:

1. The day to day administrative work of the Board is performed by those Departmental Officers attached to the Board in relation to routine correspondence, correspondence implementing decisions of the Board less than recommendations and processing and forwarding to the appropriate authorities recommendations and other matters calling for further action.

2. The Board through a Sub-Committee is at some pains to make the personal acquaintance of each and every indeterminate sentence prisoner, and Governor's Pleasure Detainee and this is done by regular pre-arranged visits to each of the institutions where prisoners of that category are presently confined. These visits ensure that the Sub-Committee meet and confer with each and every such prisoner at least twice annually.

The personal discussions with the prisoner take place in the absence of any custodial or other staff and encourage the prisoner to discuss all relevant matters in as uninhibited a manner as the situation permits.

The meeting and discussion with the prisoner takes place after the Sub-Committee has interviewed and conferred with all responsible custodial and professional staff as to all aspects of the prisoner's present situation, his activities, his behaviour, his outside connections and other matters relevant for the consideration of the Board. Thus the members of the Sub-Committee are at all times fully acquainted with the situation so far as relevant matters including education, forward planning, custodial behaviour, health and social contacts are concerned.

The Board attaches a very great deal of importance to the relationship which is thus built up between the prisoner and the Board and its close personal knowledge of all that can practicably be known about the prisoner before matters relevant to his progress and ultimately his licence come for consideration before the full Board.

3. The full Board as required by statute meets at least once monthly and deals with a variety of matters dealing with the prisoner's progress from the day he is first sentenced until the day, if it happens, when he
is released to licence and even thereafter if any relevant matters occurring during licence are reported to the Board by Probation or other authorities.

Consonant to what the Board considers to be the public expectation as indicated by speeches in the House, the Board takes the point of view as a general rule that consideration for a licence does not occur until a sentence of approximately ten years has been served. There are of course a great number of factors which could influence this general rule of thumb, not the least of which being the prisoner's prior record, the nature of the offence and all the other considerations set down in Section 61 of the Prisons Act. However, it has been found by frank discussions with prisoners that one of the greatest burdens that they have to bear and one of the more difficult impediments to their adjustment is uncertainty as to what is expected of them and uncertainty as to what they can expect both in terms of duration, placement and consideration by authorities in relation to their release.

These matters became quite apparent to the Board early after its formation and it also found that many of the people dealing with life prisoners on a day to day basis such as Education Officers, Welfare Officers, Probation and Parole Officers, Psychologists and Custodial Officers were in an equal state of uncertainty and this influenced the planning of the performance of the sentence by the prisoner. The Board considered rightly or wrongly uncertainty as to where he stood is probably a material factor in many cases of prison misbehaviour and discontent or disaffection by prisoners.

Accordingly, what the Board has set out to do for the benefit of those counselling and supervising prisoners and for the prisoners themselves is to present a consistent blue print of a typical life sentence and what is expected by the Board of a prisoner during it and what he can expect by compliance with the programmes set out for him. This also involves keeping before the prisoner at all times the things that a Board or any releasing authority will be looking for before any question of ultimate release is contemplated.

The way the Board perceives it is that a sentence should be broken up into sections each of which involves a program aimed at progressing the prisoner through his sentence to achieving that situation where a recommendation for release on licence can be confidently made. The first section of a sentence is that which occurs after custody and sentence, whilst the prisoner remains in maximum security. As a general rule it is necessary for this portion of the sentence to be in the range of five to six years. The reasons for that are of course that the prisoner comes to gaol as a person who has offended gravely against society and is probably in some state of emotional shock or rejection of the concept that he is to be imprisoned for a long time. Experience shows that it takes in the general case a number of years for a prisoner to come to terms with the situation and to make his own mind up as to how he will adapt to it and also to dispose of all outstanding legal matters such as appeals. It is deemed appropriate that this portion of the sentence should be served in maximum security. The Board, however, believes that any problems of inadequacies socially, physically or mentally should be attacked from the outset of the sentence. Typical of these is that of encouraging the prisoner to involve himself in educational improvement bearing in mind that many prisoners commence their sentence semi-literate or even less and many of them with drug or alcohol related problems.

It is the Board's policy to give such prisoners the maximum encouragement to set about remedying these by having recourse to the appropriate counselling, teaching or other facilities which are available within the system, not only
from the point of view of improving problems which may have tended towards
criminal behaviour but as alerting to the prisoner the fact that such
facilities for self improvement are there readily available and do produce a
self serving benefit to the prisoner and ultimately hopefully to society.

The second stage of the prisoner who demonstrates at the appropriate time
that he is able to cope with the reduction of security is the period between
say five and eight years. It is at this time that a well motivated prisoner
has the opportunity to make the greatest advance with the ultimate view to
presenting a case for licence recommendation. It is during this period that
according to his, by now, demonstrated capacities, for learning and for
accepting custody, can be utilized by advancing him to a lesser secure
institution as to say a B or C1 category prisoner for the purpose of
enrolling in courses of a more practical nature aimed at higher education or
at acquiring trade skills which can ultimately be utilized in society if and
when he is released. This is frequently the make or break section of a
sentence because from the prisoner's point of view he has already served a
fairly long time and it is recognised that he still has a fairly long time to
serve as a minimum and it is a period when prisoners see themselves advancing
but become impatient at the apparent slowness of the advance.

The Board recognising this, emphasises the importance to the prisoner and to
the Officers counselling him to use his time to its maximum constructive
benefit by acquiring as much knowledge and/or skills as the courses available
offer to him. Already the result in many cases considered to be rather
hopeless at first interview have been very encouraging.

The third and perhaps final stage before the expiration of, round about ten
years and becoming eligible for consideration for recommendation for a
licence takes some two to three years. If a prisoner has done all that could
be expected of him according to his abilities and if he has demonstrated a
motivation to improve himself and if he has psychologically adjusted to
prison and adjusted recognising the anti-social conduct which brought him
there the prisoner is generally advanced to a lower security establishment to
demonstrate both to himself and also to the Board and custodial authorities
that he has the personal resources to respond to the trust that a lower
security institution involves. This is a very testing time for a prisoner
who may have gone a long way to becoming institutionalised and who is
suddenly exposed to a relative relaxation of security and also to the
temptations within the system which are afforded by associating with
short-term prisoners. It also is testing because it demonstrates to him and
the Board and the Custodial authorities whether the efforts during the middle
years have been worthwhile and have advanced him towards the ultimate goal to
which all prisoners aspire which is favourable consideration of a release
application. The prisoner is encouraged to occupy himself in potential
income earning activities in such places as Tech Help and S.L.E.F.
preparatory to being tried out, if appropriate, on work release. By the time
work release is considered he should be equipped with trades and skills to
the limit of his capacity and should be in a position whereby he has earned
the trust of custodial authorities and the recommendation to be admitted to
Work Release by the professional officers having his day to day supervision.
By now he should also have had limited experience of day leave to try himself
out from behind walls and when he enters work release he is put to the test
whether or not he can be entrusted in the company of civilians in the work
context and can maintain the discipline to remember at all times that he is a
prisoner and is still subjected to very strict rules as to conduct when
outside the walls of the institution. A very close watch is kept by
custodial authorities who report to the Board as to how the prisoner stands
APPENDIX 3

Legal considerations as to the Jurisdiction of the Mental Health Tribunal in respect of Governor's Pleasure Prisoners.

The sequence for Governor's Pleasure prisoners is

1. Section 428(ZB) of the Crimes Act;
2. Section 118 of the Mental Health Act;
3. Section 119 of the Mental Health Act.

The first is an order by the Judge "that the person be detained in strict custody in such place and in such manner as the Court thinks fit until released by due process of law".

I consider that "place" means primarily gaol or hospital. I do not know what "manner" means. It is probably just legal verbiage. The words are possibly a traditional form, as they appeared in the old Mental Health Act 1958, Section 23(3). It said: "The Judge ..... shall order such person to be kept in strict custody, in such place and in such manner as to such judge seems fit until the Governor's pleasure is known...."

I do not consider that the words require the Judge to specify the particular prison that is to house the prisoner, or what his/her classification should be, or what programme is to be made available to him/her.

The second event is the Mental Health Tribunal's initial review under Section 118. It is to be within 14 days of the Judge's order. As soon as practicable the Tribunal is to make a recommendation to the Minister (for Health) "unconditionally or subject to conditions" (i) "as to the person's detention, care or treatment" or (ii) if safe "as to the person's release".

The only consequence of the first type of order specified in Section 118 is that the prescribed authority (in this case the Governor) may "make an order for the person's detention in such place being a hospital, prison or other place, and in such manner as are specified in the order".

It is to be noted that this provision for an order only provides for "detention" and for the "manner". It is also to be noted that the word "manner" is also supposed to be specified in the original order made by the Judge.

The third event is the Tribunal's review at least once every six months under Section 119. Under this section if the Governor's Pleasure prisoner is not to be released, the Tribunal is to make a recommendation to the Minister (for Health) as the "the patient's continued detention, care or treatment in a hospital, prison or other place". Again the only consequence set out in the Section following such a recommendation is precisely the same as that contained in Section 118. In this case, it is contained in sub-section (6)(a).

The contention that the Release on Licence Board's functions in regard to Governor's Pleasure prisoners held in prison are now taken over by the Mental Health Tribunal is, I understand, based on the definition of "forensic patient" and on the words "care or treatment" contained in both Sections 118 and 119. It is not easy to say what meaning should be given to the words
"care or treatment". The first thing to be noted is that Section 118 deals only with Governor's Pleasure prisoners. Section 119 deals with them and all other forensic patients, including those who are unfit to plead and sentenced prisoners who have been transferred to a hospital. The second thing to notice is that unlike the position in Section 119(1), in Section 118(1) the Tribunal is only to recommend detention, care or treatment as far as the wording of the sub-section goes, without specifying whether it is to be in hospital, prison or other place. Yet sub-section (2)(a) of Section 118 requires the prescribed authority to specify which it is to be of these places just as Section 119(6)(a) does. I cannot understand this distinction in drafting and it appears to me to be an error. However, presumably the Tribunal is impliedly required to specify whether hospital, prison or other place is recommended under Section 118(1)(b). The difference does not seem to have any bearing on the question at issue here. The third thing to notice is that in the case of some types of forensic patients, namely those the subject of an order under Section 428L(b) or 428Q of the Crimes Act that they be detained either in a hospital or in a place other than a hospital, it is one possible precondition of such an order that the Tribunal has found that the person concerned is suffering from a mental condition for which "treatment" is available in a hospital. These patients do not come within Section 118 although they do come within Section 119. The fourth thing to notice is that in Section 119(1) the words "detention, care or treatment" are preceded by the word "continued".

I think that the word "continued" gives a clue as to the meaning of the words defining the functions of the Tribunal in Sections 118 and 119. I think that the Tribunal with its special expertise is to make the initial recommendation under Section 118 as to whether Governor's Pleasure prisoners are to be detained and, if appropriate, cared for and, if appropriate, treated in a gaol or in a hospital or in some other place. Under Section 119 the Tribunal is to make a recommendation in respect of all types of forensic patients as to whether they are to continue to be detained and, if appropriate, cared for and, if appropriate, treated in a hospital or a prison or some other place. I consider that the words "care or treatment" do not require or authorise the Tribunal to specify in respect of prisoners to be held in gaol what particular gaol they are to be housed in, or under what circumstances, or with what security rating, or whether they are to be housed, in a maximum, medium or minimum security gaol, or what type of care or treatment they are to have there, or what programme they should have, or whether they should be placed on work release or have any other forms of leave.

When one bears in mind the great difficulty and complexity of prison administration, including the detailed knowledge required of the nature of the various prisons, of their inmates and their staff, the difficult decisions involved as to the proper location for prisoners, the problem of mixing of prisoners, the protection of prisoners, and generally the management of prisoners, I am inclined to think that it is unlikely that Parliament would have intended to transfer the recommending of matters such as these to an authority operating quite outside the Prisons Act, and necessarily not having the same expertise in the administration of prisons as exists within the Commission. I see nothing to suggest otherwise in the Minister's second reading speech in the Legislative Assembly. Furthermore, an appeal is given by Part VIII of the Act from determinations of the Tribunal to the Supreme Court. The appeal is not limited to matters of law, but is a "new hearing", or as lawyers say, a hearing de novo. It is not clear whether a recommendation under Section 118 or Section 119 is a "determination". That word includes a "decision" (Section 134).
The above is written without any disrespect for the members constituting the Tribunal. The President and Deputy President are both senior and experienced lawyers with great experience in criminal matters.

I consider that a limited construction is supported by the very vagueness of the words "care" and "treatment". Like "Detention" they are quite general words. As noted above, the word "treatment" is used in quite a general way in Sections 428L and 428Q of the Crimes Act and in each case the power given to the Court is to order detention without any reference to treatment. (Those sections were inserted in the Crimes Act by the Crimes (Mental Disorder) Amendment Act, 1983 which is cognate to the Mental Health Act 1983.)

My view of the words "care" and "treatment" are that they are words used to express legal generalities. The word "treatment" is clearly used in a general or non-specific sense in association with the word "continued" in the phrase "continued treatment patient" defined in Section 4(1) and in the sections referred to in that definition. The phrase "continued detention, care or treatment" also appears in Section 129 with reference to a hospital.

The word "treatment" with the addition of the word "care" can be found in more than one place in the Mental Health Act, 1958. For example in the definition of "mentally ill person" in Section 4 and also in Section 7(2) in reference to the Director's powers to make inspections. Under Section 14 a Mental Health Tribunal was to determine whether a temporary patient was to become a "continued treatment patient and detained ...... for further observation and treatment". Under Section 35 Official Visitors were required to enquire "as to the care, treatment and control of the persons detained therein". Under Section 102 a court visitor could be required to report to the Court "the state of mind and bodily health and general condition, and also of the care and treatment of the person visited".

Finally, if the words "care or treatment" are to be construed so as to give the present Tribunal the function of making recommendations to the Minister for Health as to which particular gaol a prisoner is to be housed in and which particular type of care or treatment including classification, protection and general needs, then a similar construction would have to be given to the Tribunal's function in regard to forensic patients who are not in gaol but in hospital. Presumably then under that function the Tribunal may recommend what particular hospital and what type of medical care or treatment is to be given to such patients in that hospital.

In conclusion I would like to make it quite clear that there is no doubt that the Tribunal has the important function of recommending initially whether Governor's Pleasure prisoners should be released unconditionally or on conditions or are to be detained and if so whether in a hospital, prison or other place. (Section 118). It also clearly has the function on six monthly reviews or on certain requests of making recommendations in respect of all forensic patients as to whether they should be released unconditionally or on conditions and if not whether they should be detained, and if so whether in a hospital, prison or other place. (Section 119 with an exception in sub-section (4)).