REPORT
OF THE
WORKING PARTY ON THE PRISONS ACT, 1952,
AND THE
REGULATIONS AND PRISON RULES

Ordered to be printed, 27 November, 1974
REPORT OF WORKING PARTY TO THE MINISTER OF JUSTICE

The Minister of Justice, the Honourable J. C. Maddison, B.A., LL.B., M.L.A., in 1973 established a working party under the Chairmanship of the Honourable Mr Justice J. H. McClemens, Chief Judge in Common Law of the New South Wales Supreme Court, and the members of which were, Professor Gordon Hawkins, Associate Professor of Criminology at the University of Sydney, and Mr Barrie Barrier, an Assistant Commissioner of Corrective Services.

Mr Dennis Cullen, was initially appointed to act as Executive Officer of the Working Party. Subsequently Mr Cullen was transferred and Mr Peter Webb, also of the Justice Department, took his place.

The Working Party was requested to examine and report on deficiencies and inadequacies in the Prisons Act Regulations and Prison Rules and to make recommendations for amendments in the light of current penal philosophy.

The report is hereunder.

10th October, 1974.
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SUMMARY OF REPORT RECOMMENDATIONS

1. Establishment of Corrective Services Commission charged, subject to the direction of the Minister, with laying down the overall policy and supervising and the conducting of the whole of the Prisons and of the Corrective Services of the State.

2. The Commission as a whole and each Member of it have special responsibilities in the whole area of the Commission's duties and activities.

3. Probation and Parole should move into the top policymaking and management.

4. The Commission should be given the widest powers, including research, to prevent recidivism.

5. There is a need for appropriate advisory bodies so that leading citizens have an obligation to look at the working of the Corrective System, so that it is not given over entirely to the control of the professional.

6. There is recommended in addition to the Corrective Services Advisory Council, an Industrial Advisory Council, a Chaplain's Advisory Council and other Councils and Committees.

7. Officers of the Corrective Services should be treated as part of the machinery of law enforcement and should be bound by oath or affirmation, the same as Judges and Police Officers.

8. As far as possible interchange between officers of the Service should be worked out and designed long range to strengthen the rehabilitative services of the State and to elevate the standard of officers.

9. General guidelines should be laid down for the duties of Probation and Parole Officers.

10. The status of Superintendents of prisons should be elevated and their duties and powers should be spelled out by the legislation.

11. The Rules under s. 49 of the Prisons Act should be repealed.

12. Offences by Prison Officers should be spelled out from the Public Service Act and Regulations made thereunder.

13. Women should be used as Prison Officers in male prisons and men as Prison Officers in women's prisons.

14. The functions of Chaplains and others undertaking the spiritual ministrations of prisoners should be clarified and developed. Encouragement should be given to the bringing in of persons to assist the Chaplains in their spiritual ministrations and the situation of Religious Sisters and Deaconesses should be recognized.

15. Provision should be made for the admissibility of presentence reports and their use by Courts. In special circumstances the Courts should have power to withhold the contents of presentence reports.

16. The Courts should have power to be able to order physical and mental examinations of persons being sentenced and to ensure that those examinations are conducted.

17. Classification should be kept continuously under review and prisoners should be properly classified, taking into account physical and mental health, background, nationality, nature of offence, education, capacity for training, likelihood of rehabilitation, dangerousness, personal traits, desire to reform or not to reform and all other relevant circumstances.

18. Categorization of prisoners be undertaken so that those whose escape would be highly dangerous to the public or to the police or to the security of the State be separated from those who cannot be trusted but who do not have the ability or resources to make a determined escape attempt and from those who can reasonably be trusted to serve their sentences in open conditions.
19. Segregation units are necessary in maximum security institutions for the protection of staff and inmates and to facilitate classification.

20. Remand prisoners should, as far as possible, be classified and their conditions ameliorated as far as is reasonable.

21. The right of complaint and request should not be fettered and there should be four internal bases on which these may be made, namely, to the Minister, a Member of the Commission, a Visiting Magistrate, or the Superintendent.

22. The Commission and Superintendent of any institution shall be bound to facilitate the making of a complaint to the Ombudsman and, in addition, that the Minister, the Commission, the Visiting Magistrate and the Superintendent be empowered of their own motion to send on a complaint.

23. The Commission should have a Health Service in each prison consisting of such number and type of medical practitioners as may be necessary, and such a Health Service may consist wholly or in part of practitioners employed by the Health Commission or the Corrective Services Commission or persons in private practice employed on a contract or sessional basis.

24. The Act should provide for what has been carried out in practice, namely, that children of women prisoners be born outside the gaol.

25. That provision be written into the Act for home leave.

26. That any amendment of the Prisons Act should contain specific provisions dealing with prison labour, requiring prisoners to be set to work suitable to their physical and mental capacity and that no work of an afflictive nature be required of a prisoner.

27. The Commission should make standing orders governing the conditions of labour and rates of a prisoner's pay including the making of deductions from a prisoner's wages to defray part or all of his maintenance.

28. The Commission ought to be empowered to enter into contracts and arrangements for the purchase and supply of goods.

29. The Commission should attempt to obtain and provide sufficient work to keep all prisoners employed for a full working day, and provide for suitable vocational training.

30. The Regulations as to food services should be modernized and the existing scales repealed.

31. The rights to correspondence should be liberalized and with proper classification there is no reason why the majority of prisoners should not have a free right of correspondence.

32. The right to control correspondence must be preserved but this should be reduced to a minimum.

33. Because of the great number of non-English speaking persons in Australia, the limitations contained in the Regulations on the use of languages other than English in correspondence should be modified.

34. There should be free communication with legal advisers.

35. Within the limits of security and manpower the rights of prisoners to visits should be liberalized. Times and extent of visits should be as laid down by the Superintendents, subject to Commission approval, and the rights to visits should be liberalized, particularly with wives and children.

36. Provision should be made by regulation for reasonable facilities to be afforded for visits by legal advisers out of the hearing but in the sight of an officer.

37. In the event of denial of reasonable facilities for a legal adviser to interview a prisoner the latter should have the right of complaint to the Ombudsman and the right to apply to the Court for a declaration.

38. Travel vouchers should in appropriate cases be issued to relatives or close friends to enable them to visit prisoners.
39. The institutional timetable as published in the Regulations should be repealed and the timetable of the prison should be settled by the Superintendent.

40. Remissions have to be considered under four headings:
   (a) cases where no non-parole period is specified,
   (b) cases where a non-parole period is specified,
   (c) whether prisoners should be entitled to mandatory remissions provided they do not forfeit their remissions by disciplinary breaches or criminal offences, and
   (d) whether remissions should be discretionary by being earned.

41. Where no non-parole period is specified the right to remission should remain.

42. There is an inconsistency in the co-existence of a parole system and a remission system.

43. Until the Parole of Prisoners Act is revised the remission system under Regulation 110 should continue.

44. Regulation 111 should also continue with its discretionary provisions placed upon the behaviour of the prisoner, but the criteria should be altered.

45. For certain limited reasons the Commission, by consent, would have the right to withhold the release of a prisoner.

46. The records of young offenders should, in certain circumstances, be expunged, provided that the offences are committed before the offender is 21 years of age and an adequate time has elapsed.

47. Offences by prisoners should be divided into three categories:
   (a) minor offences against discipline;
   (b) major offences against discipline;
   (c) offences cognisable by the Public Courts.

48. There is a distinction to be drawn between deprivation of remissions within the limits of an imposed sentence and imprisonment after the imposed sentence has elapsed. There is no objection in principle to remissions being withdrawn by an intramural tribunal, but all additions to sentences should be made by Public Courts.

49. The system of the Visiting Justice should be maintained but his title changed and status improved.

50. A panel of Visiting Magistrates should be drawn up by the Chairman of the Stipendiary Magistrates, instead of the Minister, and provision ought to be made for an adequate number of Visiting Magistrates, including the use of retired Magistrates.

51. Minor offences against discipline ought to be dealt with by the Superintendents if there is an admission of the truth of the facts alleged or a consent in writing, and the Superintendent should have the power to impose certain sanctions.

52. Major offences against discipline should be dealt with by the Visiting Magistrate and he should have power to impose adequate sanctions.

53. Matters of sufficient seriousness to be dealt with by the Public Courts should be referred by the Visiting Magistrate to those Courts, to give the prisoner concerned the right to representation and to appeal.

54. That statutory provision be made embodying procedures to be adopted where disciplinary offences are heard before either the Superintendent or a Visiting Magistrate.

55. That s. 34 of the Prisons Act and s. 447A of the Crimes Act be incorporated into a single statutory provision. This will cast clearly upon the Courts the responsibility of determining the length of a prisoner's sentence when he is being dealt with by the Courts for having escaped from lawful custody.
56. The penalties presently contained in s. 36B and ss. 37 and 38 of the Prisons Act should be amended.

57. A new statutory provision giving prison officers all the powers of a Member of the Police Force to arrest, search and impound in cases where reasonable suspicion exists that firearms, ammunition, explosives or any other thing intended to assist the escape of a prisoner where firearms are being introduced into a Corrective Services institution.

58. That statutory provision be made with reference to the rights and duties of armed Prison Officers and that the rights of Prison Officers to use force be codified.

59. That the Mental Defectives (Convicted Persons) Act of 1939 be repealed.

60. That the Habitual Criminals' Act, 1957, be repealed.

**SUMMARY OF APPENDIX RECOMMENDATIONS**

1. That the powers and duties of the Sheriff be clarified by statute and that to this end the existing s. 8 of the Prisons Act, 1952, be amended.

2. That clear statutory authority already given to Judges of both the New South Wales Supreme Court and the New South Wales District Court to visit and examine any prison at any time thought fit be preserved. In addition greater emphasis be given to the importance of gaol deliveries.

3. That s. 18 of the present Criminal Appeal Act, 1912, be recast to clarify the status of time spent in custody, by an appellant to the Court of Criminal Appeal, between the time that the appeal is lodged and the date of its disposal.

4. That provisions along the lines of s. 617 of the Criminal Code of Queensland be introduced into the law of this State in order to extend certain protections to all Courts sitting in criminal jurisdictions.

5. That there be a power of search of persons, whether in custody or on appeal appearing before the criminal Courts.
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CHAPTER 1—INTRODUCTION

At the outset we say that it is difficult to consider the Prisons Act, Regulations and Prison Rules in a vacuum or make recommendations for their amendment in the light of current penal philosophy without considering them in relation to the whole system of corrective services.

Though prison is seen by the public as being the centre of the corrective services, and though it will for the foreseeable future, and perhaps always, remain as the ultimate sanction, it cannot be honestly asserted it has been successful in turning prisoners away from crime in any country. A great advance that can be made in the treatment of crime is, as has happened in New South Wales, by the use of alternative measures.

To illustrate this, as at 30th June, 1974, the following table sets out the number of persons on some form of conditional liberty in New South Wales:

<table>
<thead>
<tr>
<th>Periodic Detention</th>
<th>Work Release</th>
<th>Total on License</th>
<th>Total on Parole</th>
<th>Total on Probation</th>
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<tr>
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In addition there are approximately 180 000 fines imposed each year.

The total hereunder sets out the numbers of persons under sentence at 30th June, of each year between 1970 and 1973, analysed by length of sentence, and also the number of unsentenced prisoners.

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<tbody>
<tr>
<td>Less than 3 m</td>
<td>214</td>
<td>194</td>
<td>201</td>
<td>190</td>
</tr>
<tr>
<td>3 m and less than 6 m</td>
<td>253</td>
<td>246</td>
<td>233</td>
<td>228</td>
</tr>
<tr>
<td>6 m and less than 12 m</td>
<td>348</td>
<td>346</td>
<td>393</td>
<td>359</td>
</tr>
<tr>
<td>12 m and less than 2 y</td>
<td>470</td>
<td>484</td>
<td>446</td>
<td>365</td>
</tr>
<tr>
<td>2 y and less than 5 y</td>
<td>1 159</td>
<td>1 152</td>
<td>1 181</td>
<td>1 019</td>
</tr>
<tr>
<td>5 y and less than 10 y</td>
<td>549</td>
<td>554</td>
<td>615</td>
<td>618</td>
</tr>
<tr>
<td>10 y and over</td>
<td>204</td>
<td>225</td>
<td>253</td>
<td>271</td>
</tr>
<tr>
<td>Life</td>
<td>143</td>
<td>133</td>
<td>140</td>
<td>150</td>
</tr>
<tr>
<td>G.P.</td>
<td>22</td>
<td>21</td>
<td>18</td>
<td>16</td>
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<tr>
<td>Other (balance of sentence, periodic detention, etc.)</td>
<td>67</td>
<td>138</td>
<td>161</td>
<td>183</td>
</tr>
<tr>
<td>Total</td>
<td>3 429</td>
<td>3 493</td>
<td>3 641</td>
<td>3 399</td>
</tr>
<tr>
<td>Unsentenced prisoners</td>
<td>409</td>
<td>502</td>
<td>585</td>
<td>471</td>
</tr>
<tr>
<td>Total Prison Population (sentenced and unsentenced)</td>
<td>3 838</td>
<td>3 995</td>
<td>4 226</td>
<td>3 870</td>
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</table>

At the time of writing this report it was not possible for us to obtain the details for 30th June, 1974, except that the total prison population, sentenced and unsentenced at that date, had fallen to 3 121.

In reality the proportion of persons serving short sentences is greater than these figures would indicate. Figures taken from p. 33 of a statistical report on the New South Wales Prison Population, 1973, prepared by the N.S.W. Department of Corrective Services indicate that approximately 91 per cent have served less than 12 months; this indicates an annual turnover rate of 91 per cent.

A problem that has to be faced is the extent to which prisons, as we know them, are mere repositories of social nuisances, alcoholics and vagrants who present no serious social threat.

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 12 months imprisonment or less.

The 1960 United Nations Congress on the Prevention of Crime and Treatment of Offenders recognized that in some cases short sentences of imprisonment may be necessary and that the total abolition of short-term imprisonment was not feasible in practice but that a reduction in its use should be brought about gradually and permanently by the use of substitutes, such as suspended sentences, probation, fines, extramural labour, and other measures that do not involve the deprivation of liberty. Most of these latter sanctions are employed in New South Wales but there still remain as the figures above will show, a majority of short-term prisoners.
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.

There is no facile or immediate solution to the problem of prisons. Nevertheless it has been a good thing to have the prison system as a part of a wider system in this State with prisons, training centres and parole and probation officers and other services under the control of the Commissioner of Corrective Services.

It is widely held that the purpose of the prison system should be as stated in Rule 1 of the English Prisons Rules of 1964, Statutory Instruments 1964, No. 388, which said that the purpose of the training and treatment of convicted persons was to encourage and assist them to lead a good and useful life. Unfortunately we have been unable to discover any evidence as to how that purpose can be achieved or to what extent it ever has been achieved.

In our opinion it might be better if the aim of all corrective services was stated in the following way:

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;
4. As far as those who are confined in prison are concerned, the authorities should ensure that the experience of imprisonment is not pointlessly punitive and that the regimen is designed to facilitate the prisoners' return to the community in circumstances most likely to diminish the chances of recidivism.

In our opinion, the ultimate function both of the sentencing and correctional processes must be not only to protect the individuals who make up a particular community as a group, but also should be directed to seeking to reduce the rate of recidivism to the irreducible minimum and, of course, it is because of the last proposition that the person who once has been convicted, and particularly if he has been sentenced to imprisonment, for the benefit of the community, be as far as possible retrained in such a way as will minimize the chances of him committing offences which would send him to prison again.

In recent years many and great changes have been brought about in the prison system of this State. It is only some 8 years ago that the bread and water regimen for breach of prison discipline was abolished. Corporal punishment is forbidden. Denial of food as punishment is also forbidden. It was only in 1966 that a detailed parole system was introduced, and since then Parliament has enacted measures contained in the Periodic Detention of Prisoners Act. Work Release was introduced in 1969.

There is a problem in relation to prison reform arising from ambivalence of public opinion. At the same time as the prison system is being publicly attacked for being too repressive and for the unsatisfactory nature of prison conditions, there co-exists an equally strong view that there is a tendency in modern prisons to treat prisoners with kid gloves, that they are not treated harshly enough and that permitting them to indulge in sport, go to work release, take a degree of freedom and have other indulgences is cossetting them. In the long discussion that he had with us a leading New Zealand criminologist, Dr J. L. Robson, formerly Secretary of Justice in that country, emphasized the danger of hysteria both of the right and of the left.

The overall objectives it is desirable to achieve have been stated with clarity in the summary of the report of the Task Force on Correctional Services and Facilities presented to the Attorney-General of British Columbia on 28th February, 1973, at page 39 where this is said:

**OBJECTIVES**

It is considered important that the overall objective of the Criminal Justice System be clearly defined in order to provide the basis for the integration of effort within the operation of the system. As was defined by the O'Quinnet Report, the Task Force considers the overall objective of the system to be the protection of all members of society from seriously harmful and dangerous conduct. The emphasis as noted is on all members of society which would also include the offender. Each sub-system within the overall is seen as having more specific objectives which in turn must support the overall objective of the system, i.e., the protection of society.

The objectives for the police are seen as:

1. The prevention of crime.
2. The control of crime through the methods of deterrents available to law enforcement, e.g., patrol.
3. The apprehension of criminals.
The objectives for the corrections are seen as:

1. The adjudication of the charge in a manner designed to protect the rights of the victim, the accused and others.

2. To impose a sentence which will deter the offender from any further commission of offences, as well as others.

3. To sentence the offender for control and correction and/or segregation of those determined to be dangerous to society.

The objectives for corrections are seen as:

1. The prevention of crime essentially through probation, which has as part of its responsibility the stimulation of social environmental change.

2. To control offenders by imposing the sanction of the sentence imposed upon the offender by the court.

3. The modification of criminal behaviour to achieve voluntary compliance with the law, utilizing the diagnostic, supervision and community development services available within Corrections.

It is obvious from this specification of objectives that all groups play a key role in terms of the whole operation of Corrections. The police as the entry point to the system are the initial decision-makers in terms of what offenders shall be processed through the system, while the courts make the vital decision as to what offenders are passed on to Corrections and the limits within which Corrections must operate with those offenders.

Therefore, any consideration of the development of Corrections as a sub-system must consider the inter-relationship with both the police and courts.

It is the considered opinion of the Task Force that realistic relationships among the various components of the Criminal Justice System must be established. Within this lies the need for uniformity of definition, standards, and practices, which requires an integrated system that is responsive to the public's needs and scrutiny. Such requirements suggest that planning activities be co-ordinated to the highest possible degree to reduce fragmentation, jurisdictional ambiguity, and close gaps in support services such as a computerized information system.

The fulfilment of the suggestion made in the last paragraph of the Opinion of the Task Force would be one beyond our scope, capacity and our terms of reference and, in any event, would require years of planning, but it is a necessity that will certainly have to be looked at in the future. Our commission is in relation to the third set of objectives.
CHAPTER 2—CORRECTIONAL SERVICES COMMISSION

We recommend that the Prisons Act of 1952 be replaced by a Correctional Services Act, which would be an Act to make provision for the establishment, regulation and control of Corrective Services and for the correction and custody of persons who have been convicted and sentenced to periods of incarceration, for periodic detention of certain persons, for work release, for recognizances to be of good behaviour, for parole and probation, for the Parole Board and for the education and training of persons who have been convicted by the Court and for their resettlement into the community.

At the present time, the Corrections of this State are conducted under Ministerial control by a Commissioner of Corrective Services, one Deputy Commissioner and four Assistant Commissioners. We suggest that for the purposes of emphasizing the importance of the role of Corrections in the community, to enable all the disciplines involved in Corrections to have a representative available so that there would be complete and balanced opinions always available to the Correctional authority, that in lieu of the present structure there be substituted a Corrective Services Commission which would consist of a Chairman, a Deputy Chairman and three or four members who would be charged, subject to the direction of the Minister, with laying down the overall policy and supervising and conducting the whole of the Corrective Services of this State.

The Commission should have the authorities, duties and functions given to it by Act of Parliament, be deemed to be a statutory body representing the Crown, and in the exercise and performance of its powers, authorities, duties and functions, except in relation to the contents of a recommendation or report made by it to the Minister, be subject to the control and direction of the Minister. We would envisage that each member should devote the whole of his time to the duties of his office and hold office for a period not exceeding 7 years, no appointment to be able to be made after any member of the Commission attains the age of 65 years but permitting a Member of the Commission to hold office until the day on which he attains his 68th birthday.

The functions of all the Commissioners and their duties and areas of responsibility should be as determined by the Commission under the direction of the Minister to the intent that the Commission as a whole and each member of it has special responsibility in the whole area of the Commission’s duties and activities. It is essential that probation and parole move into top policymaking or management.

One of the most important members of this Commission would be the man charged as a full member of the Commission with staff administration. The Probation and Parole Services are far more attractive than the Prisons Service and one of the things that is necessary is to elevate the standards, training and morale of members of the Prisons Service and to ensure that Prisons’ Officers can be made interchangeable with Probation and Parole Officers and have the same opportunities for promotion and for work in the rehabilitative sphere as Probation and Parole Officers. In this particular period the whole system of the relation between employing agencies and those employed is a very difficult one, and the industrial relations between the proposed Commission and those officers would be a very sensitive area.

Though each Commissioner would be full-time engaged in being responsible for the overall administration of the system and particularly in reference to his own area, his knowledge of and appreciation of other areas and his sense of the necessity of Corrections being seen as a whole and not as a section would be emphasized by the fact that he would be bound to meet frequently, both formally and informally, with his fellow-Commissioners charged with the other disciplines of the Corrective Services. He would be bound formally and informally to make, as far as possible, contact with officers. The need is to build up a carefully selected and properly trained group of officers of the highest available quality, particularly in the custodial field where there have been, during periods of affluence, grave difficulties in the training education and retention of men suitable for the tasks they have to perform. The philosophy underlying this report is that the Commission be the policymaker and the efficient administration as far as possible be delegated. We do not propose in this report to deal with machinery matters and, in any event, the machinery matters in respect of such an organization as we adumbrate can be seen plainly set out in the Health Commission Act, No. 67 of 1972.
There is, however, always present in the prison situation a potential state of emergency which would require some special provisions to enable an unusual and sudden emergency to be dealt with, and we would suggest a provision that the Commission should at its first meeting and thereafter once in every year, or as often as may be necessary, make special provision to enable immediate action to be taken by one member of the Commission on its behalf in the event of an emergency riot, strike, break-out, or escape of a dangerous group of prisoners from any prison to the intent that there is always available someone to take immediate charge without delay in such event.

For the purpose of empowering the Commission to Act in the best interests of the State we propose that it be given power along the following lines:

For the purpose of promoting, protecting, developing, maintaining and improving the peace, well-being and good Government of the State of New South Wales to the maximum extent possible having regards to the needs of and resources available to the State, the Commission shall have and would be empowered to exercise and perform the following powers, authorities, duties and functions, subject to the Correctional Services Commission Act and subject to the directions of the Minister:

(a) to initiate, promote, commission and undertake research surveys and investigations into crime prevention and prevention of recidivism and into the resettlement of offenders and into the resources of the State available for those purposes and the methods by which those tasks should be undertaken, and to provide for education in crime prevention and to promote the same;

(b) to have the care, direction, management and control of all the prisons and all persons detained therein;

(c) to appoint maximum, medium and minimum security prisons and to conduct hospital and medical services for prisoners, parolees and probationers, and to conduct remand centres and also such other residential facilities in the community as may be deemed necessary;

(d) to develop and maintain programmes for the control and rehabilitation of committed persons within its prisons;

(e) to have the care, direction, management and control of the Parole and Probation Services of the State;

(f) to have, subject to the provisions of the Parole of Prisoners Act, 1966–1970, the supervision and guidance of persons released on parole, their training and resettlement;

(g) to set up work release centres, periodic detention centres and other semicustodial or community centred correctional services as from time to time may be desirable or necessary;

(h) either alone or in conjunction with other persons or organizations or Government Departments (whether of this or any other State or of Australia) to make provision for the training, welfare and aftercare and re-employment of prisoners, former prisoners, probationers, parolees and their families;

(i) to promote and facilitate the provision by any Government Department, Statutory authority or other body or person in the Social Welfare services necessary or desirable to complement the Correctional Services of the State;

(j) to make standing orders and to approve of standing orders made by Superintendents for the administration, control and discipline of any prison. Such standing orders may be general in their application or applicable only to one institution or part thereof. Standing orders which cast upon any prisoner any duties the breach of which may subject him to punishment shall be brought to his notice and he shall have a copy available to him;

(k) to promote and facilitate the provision of professional, technical and other education or training of any persons employed or to be employed in the Correctional Services;

(l) to promote and facilitate the raising of funds by means of public appeal or otherwise by any body, institution, association or person for the purpose of the assistance of prisoners or of their families and for the aftercare and welfare of former prisoners, parolees, probationers and their families;
(m) to make payments or loans to such bodies or organizations undertaking
the provision of aid and assistance to former prisoners, parolees, probationers and their families. Any such payments and loans shall be
subject to such terms and conditions as the Commission may approve;
(n) to facilitate the spiritual ministrations of the Chaplains and their assistance
to prisoners and former prisoners, parolees and probationers and their families;
(o) to decide the conditions and circumstances under which home leave
may be granted to any prisoner and the persons to whom such leave
should be granted;
(p) to provide as far as is reasonably possible for the independence and
responsibility of the Superintendents of institutions and the directors
of any section of the services of the Commission, subject to the direc-
tions of the Minister and to Commission policy;
(q) in conjunction with the Health Commission and with any other hospi-
tals, persons or organizations to develop programmes for drug addicts
and alcoholics duly convicted by the courts of criminal offences involv-
ing the strict probation or parole, supervision, detoxification, hospitaliza-
tion, out-patient treatment, suitable counselling and other medical and
psychological procedures for the prevention and diagnosis of drug-
addiction and alcoholism and to conduct and co-operate in the conduct
of forensic clinics;
(r) to engage in public relations work on behalf of the Correctional Ser-
vices and the prevention of crime;
(s) to cause the regular re-assessment of persons detained under s. 23 of
the Mental Health Act (1958) and to report thereon to the Minister;
(t) to co-operate in the conduct of and to conduct half-way houses to
enable prisoners towards the end of their sentences to work and earn
their living by day and to fit them for full release or conditional liberty.

It would be necessary to insert in the Act an express statement that nothing
in the above would affect or take away the responsibilities, powers, authorities, duties
or functions of the Judiciary, Police or other Services, but emphasizing at the same
time the need for co-ordination and co-operation.

We also suggest that the Commission, its Members, Officers and Employees,
be given the benefit of the requirement of the notice of action and limitation of action,
similar to that set out in s. 29 of the Health Commission Act.

We have defined as widely as possible the powers we think the Commission
ought to have so that there will be no doubt as to what its function is, namely, the
prevention of crime and its reduction to the irreducible minimum. For this purpose it
should have wide and yet clearly defined powers. Some of these are now being exer-
cised by the Department of Corrective Services or in one or other of the Ministries
without express statutory power. We consider it is necessary to ensure that by co-
operation and planning there is no wasting or duplication of man power or resources
in areas common to Corrective Services, Health Commission, Youth and Community
Services and other Government instrumentalities.

As far as we have been able to discover, the latest full code of corrections
in the United States is that contained in the Illinois Unified Code of Corrections,
July, 1972. That code sets up a Department of Corrections and gives certain powers
and duties to the Department but these have been much amplified in what we say
above.

It will be observed that in the powers given above there is a power to make
payments or loans to voluntary organizations and to assist them in the raising of
funds. It is unfortunately true at the present time that there is a tendency to minimize
not only in this but in all other fields the functions and roles of voluntary organizations
and in a period of difficulty and complexity, such as the periods through which we are
now passing, financial stringency and costs escalation is having a fatal effect on the
existence of many of the volunteer bodies which, out of their funds, could formerly
have assisted in the field.

Were the Civil Rehabilitation Committees and the volunteer bodies such as
Prisoners' Aid Association, the St Vincent de Paul Society and the Salvation Army to
cease to exist and to work in co-operation with the Government Officers, then it may
well be that our whole system would be the poorer.

It is in the blend of the two that the best work is done. On present trends the
volunteer organizations may in the foreseeable future play little more than a minor
part. It is to be hoped this forecast is wrong. It is desirable to ensure as far as pos-
ible that there will always exist a balance between the paid Government official and
the volunteer groups in this area.
CHAPTER 3—ADVISORY BODIES

In our opinion the Commission should have power, subject to the approval of the Minister, to appoint appropriate advisory bodies so that the Correctional System is always under the scrutiny of some outside organization.

There is in existence at the present time a Corrective Services Advisory Council appointed by the Minister, which has no legislative authority. We think it should be specifically provided for in the Act so that leading citizens all the time have an obligation to look at the working of the system so that the system is not given over entirely to the control of the professional.

We also strongly recommend an Industrial Advisory Council.

It is of prime importance that any man released from prison find employment. Many of those released from prison are released with limited skills, with no history of regular employment, and in many instances with severe intellectual and emotional handicaps. Hence a body, partly voluntary and partly official, which would be an Industrial Advisory Committee would be of great importance. On such Committee there could be at least two representatives of employers' organizations, at least two of the trade union movement, at least one of the Commonwealth Employment Service and at least one of the Vocational Training and Guidance Service. The function of such a Committee would be to keep the employment prospects of prisoners, parolees and probationers, continually under review and also giving emphasis on the whole problem of training and employment.

Another area which has to be considered is the question of trade union acquiescence in schemes which could involve prisoners being engaged in jobs of an industrial nature, either inside or outside prison walls. Industrial employees, in any industry, with their obligations to their homes, wives and families, are fearful of any changes which will lessen the security of their employment. This in turn renders it difficult within prisons to retrain prisoners because they can only be retrained and resettled if they are given the opportunity of forming work habits and acquiring skills which will enable them to obtain and keep employment outside the prison.

One area of development of crime prevention lies in the liaison between the Corrective Services, employers and unions, the Commonwealth Employment Service and the Training and Guidance Service so that the problem of the unemployed ex-prisoner can be mitigated as far as possible.

Though this is a long-range matter involving considerable and lengthy planning we recommend ultimately the payment of award wages for prisoners, out of which the cost of their maintenance is deducted, then provision made for their families, and then provision made for compensation for their victims and then the establishment of a bank account for them on which they can draw when they come out of prison. The implementation of this proposal will necessarily have to be dependent on the working out of some scheme between organizations of employers, trade unions and both the Commonwealth and State Public Services.

We have set out in the above paragraphs the areas in which the Industrial Advisory Committee would be invaluable. We also suggest that consideration might be given to a Chaplains' Advisory Council.

Spiritual ministrations in a prison are of great importance but it is essential that they never become cold, unreal and formalized. There is a tendency to exclude the Chaplain for various reasons, or to limit the contribution he can make in dealing with personal problems of the prisoner or his family. We deal with this matter hereafter in the report. The Report of the New Zealand Department of Justice, for the year ended 31st March, 1974, contains this passage:

It is perhaps of significance that those actively engaged in the life of a Church are very rarely inmates of penal institutions... It has become rather too commonplace to write down the contribution of the Churches in the field of prevention against delinquency... They have strongly supported the establishment of probation prerelease and postrelease hostels and have contributed much to voluntary organizations.

Provision could be made, as is necessary, for other committees and, of course, provision has already been made in the Periodic Detention of Prisoners Act, No. 90 of 1970, for the establishment of Community Committees.
The Councils and Committees we propose could carry out investigations or inquiries into matters on behalf of the Minister or the Commission, make suggestions for the improvement of the Services generally and for bringing to the notice of the Minister and the Commission things that require to be disclosed or in respect of which improvements may be suggested.

One grave danger of Advisory Councils is that after an initial period of activity they tend to slip back into an area of fossilized inactivity. This can be prevented by having provision for regular retirement or replacement of members, so that new blood is always becoming available. We suggest each member be appointed for a limited period and not indefinitely, with an age limit of, say, 68 on membership. An adequate section would be necessary in respect of the improper disclosure of information similar to s. 15 of the Health Commission Act.
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CHAPTER 4—OFFICERS OF COMMISSION

On the matter of officers of the Commission we make the following observations: As Members of the Correctional Service are as much a part of the machinery of law enforcement as any Judge, Magistrate or Police Officer, then anything that tends to improve their status, and particularly their own self-image is desirable. It would be desirable that established officers be invited to take an oath or make an affirmation. We think it would be a good thing if any officers appointed on or after the date of the Proclamation of any new Correctional Services Act be required to take an oath or make an affirmation in a form prescribed with a proviso that officers appointed before that date may take such oath or make such affirmation at their election. It is only a small thing but it would tend to make clear to these officers that they are in a category apart—an important category—and that like Police Officers, Magistrates and Judges, they are sworn to uphold the law.

Probation and Parole Officers

The use of recognizance to be of good behaviour under Common Law bonds and under ss. 556A and 558 of the Crimes Act is too well known to require restatement, as are the parole provisions of the Parole of Prisoners Act, 1966–1970.

We are of opinion that it should be made patently clear that officers of the Parole and Probation Services are officers of the Corrective Services Commission. It is our opinion that it is desirable that probation and parole should be administered together, that officers doing that work should be officers of the Commission, that adult and juvenile probation and parole should be kept separate and that custodial officers, industrial officers, educational officers and all the others should be equally officers of the service with probation and parole officers, with interchangeability, all designed long-range to strengthen the rehabilitative Services of the State and to elevate the standards, particularly of those associated with custody.

We suggest the removal of s. 560A from the Crimes Act and the re-enactment of a section in lieu of it in the Corrective Services Act that the Commission shall appoint such of its officers as it may consider necessary for the purposes of the supervision of offenders who are on recognizance or on parole, and for the purposes of ensuring that such offenders comply with the provisions of their recognizances or parole orders.

It should be observed that though section 560A has been in existence for 50 years, it having been introduced by Act No. 10 of 1924, no regulations have ever been made under it.

One function of officers assigned to those duties would be the preparation of presentence reports. These we deal with later.

We suggest that provision should be made not on the basis of detailed prescriptions but on the basis of general guidelines for the oversight of probationers and parolees and it should be made clear by the regulations that among other things the duties of Parole and Probation Officers extend to:

(a) supervising persons on recognizance to be of good behaviour who are subject to their directions;
(b) assisting parolees in their rehabilitation through counselling, information, training and otherwise;
(c) keeping such persons informed of their obligations under their recognizances;
(d) carrying out the directions of the Court and of the Parole Board;
(e) reporting to the Commission any breach or apprehended breach of probation or parole;
(f) involvement of families in programmes designed for persons coming under the jurisdiction of the Corrective Services Commission.

By s. 6 of the Parole of Prisoners Act, 1966–1970, it is provided that “The Governor may from time to time under and subject to the Public Service Act, 1902, appoint a Secretary and such other officers as may be necessary for the purposes of the Act”.

The Parole Board to carry out its quasi judicial functions must, as is recognized in the section, have people to do its administrative and clerical work who are independent of Corrective Services. Without these it could not function as a going concern. But the Parole Officers working in the field, obtaining reports, supervising parolees and ensuring that the conditions of parole are complied with are doing strictly correctional work.
A clear distinction should be made between the two classes of function and to enable this to be done s. 6 ought to be amended.

Any officer, engaged in the oversight of parolees has a clear duty under the Parole of Prisoners Act, 1966-1970, to inform the Parole Board of the occurrence of any matter that might affect the continuance of parole. These obligations ought to be spelled out by regulation.

In any draft of a new Act dealing with corrective services, we think that provision should be made for the elevation of the status of the Superintendent of any penal institution. In this regard, we take the view that the Superintendent or other administrative head of each correctional institution shall be the chief executive officer and subject to the directions of the Minister and the policy of the Commission, and shall be responsible for its efficient and humane maintenance. We think it ought to be stated, as it now is, that every prisoner should, whilst in prison, be deemed to be in the legal custody of the Superintendent and when removed from the prison be deemed to remain in custody, unless delivered over to another authority entitled to receive him; e.g., the Sheriff, the Police, or the Superintendent of another institution. We feel that the duties and powers of his office should include the following:

(a) to receive, retain and release, according to law persons duly committed to prison;
(b) to enforce the provisions of law and regulations applicable and standing orders for the administration of the institution, the control and training and education of its officers and the treatment, training, employment, care, discipline and custody of the prisoners;
(c) to take proper measures to protect the safety of all persons in the prison;
(d) to take proper measures to prevent the escape of prisoners believed to present escape risks;
(e) to maintain and improve the building, grounds and appurtenances of the institution within the means and finances available to him;
(f) to make recommendations as often as he thinks necessary for the improvement of the prison, its services, its personnel and their conditions and its staffing, and in respect of all matters and things affecting the prison, its staff, its services and its inmates;
(g) where not dealt with by standing orders made by the Commission, to make standing orders for the operation of the institution and for proper classification and separation of prisoners therein subject to the approval of the Commission;
(h) to co-operate with the Probation and Parole Services and the Commission and with all other agencies working in the field towards the rehabilitation, resettlement and prevention of recidivism among prisoners and former prisoners;
(i) to exercise the powers of discipline given by the Act or Regulations or Standing Orders.

Sections 12 and 13 of the Prisons Act as they now exist do not seem to require amendment.

We have later suggested the repeal of the existing rules under s. 49 of the Prisons Act. So far as officers are concerned we think they reflect an outmoded approach and a lack of confidence in the integrity of the Prison Officers. This is inconsistent with an enlightened prison service which, while realistically appreciating that there are a few dangerous men in gaol who must be kept in tight security in any case, also appreciates in respect of a far greater number that after a longer or shorter period they will be released, and it is to be hoped in a proper proportion of cases, to take up life again as free citizens. Rather than rules directed solely at Prison Officers it would be better to treat them as other public servants and have their code of behaviour dealt with by the general law, by the Public Service Act and Regulations.

Section 56 (1) of the Public Service Act provides for certain offences by Public Servants generally and special provisions for fines for twenty minor offences by prison officers are set out in Regulation 279 of the Public Service Regulations. There are, of course, things that are offences under various Acts which apply equally to all citizens, whether prison officers, public servants or not. These are in a class apart. In the approach we take to the problem detailed rules under s. 49 are unnecessary because the responsibilities of officers should be found elsewhere and are spelled out for them in the Public Service Act and Regulations made under it which ought to be sufficient, coupled with adequate standing orders conditioned to meet the needs of each separate institution and annually kept up to date.

The two most serious offences that in our general view officers could commit would be assaults on prisoners and trafficking. Both of these are offences against the law and ought, if discovered, to be punished as such. Rather than have rules like the existing rules which breathe mistrust of officers in every word the better approach is elevation of standards and integrity and the removal of doubts.
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(g) where not dealt with by standing orders made by the Commission, to make standing orders for the operation of the institution and for proper classification and separation of prisoners therein subject to the approval of the Commission;
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CHAPTER 5—WOMEN IN CORRECTIVE SERVICES

Men and women officers have been used for counselling services, both for males and females, as probation and parole officers and both for adults and juveniles with great success.

One matter that we believe should be clearly spelt out in any legislation is the position of women in male prisons and the position of men in female prisons. Though it is of course essential that men and women serving sentences should be separated, there is no reason why, apart from an irrational and deeply built-in resistance, women officers should not serve in male prisons and vice versa. In the English Prisons Act of 1952, s. 7 (2) it is provided:

Every prison in which women are received shall have a sufficient number of women officers and if women only are received in the prison the Governor shall be a woman.

In our opinion there should be a clear declaration that women officers may be employed in every prison in which men are received, provided that such prison shall have a sufficient number of male officers; and male officers may be employed at any prison in which women only are received, provided that such prisons shall have a sufficient number of women officers.

This problem was discussed in the First Report of the Criminal Law and Penal Methods Reform Committee of South Australia at p. 177 et seq and we agree with that Committee when it said at p. 178:

61. Female Prison Staff: In our opinion it would be a significant improvement in prison administration for female prison officers to be employed in male prisons. We do not recommend that in a male prison female staff should form a majority. We do recommend that if they are recruited in sufficient numbers to implement such a policy they should form a substantial component of the staff of the prison and should work, and be seen to work, on equal terms with male prison officers. One of the characteristics of the prison life which is most to be regretted is the isolation from the opposite sex. The mere presence of women would significantly reduce some of the typical tensions of imprisonment. It might also be reasonably expected to assist towards the improvement of levels of public conduct on the part of both prisoners and male staff. We are aware of the usual objections to the employment of women in male prisons. They have been summarized under four heads: loss of discipline, obscene behaviour and utterance by prisoners, sexual assault, and serious courtship by prisoners.

The South Australian Committee then went on to examine each one of the four heads, taking the view that there was not a vestige of evidence that women are less able to discipline either themselves or others than men. They also considered obscenity and the problems of sexual assault and rejected these objections for reasons which appear in the report; the Committee taking the view that it would be most unlikely that women staff should be singled out for attack and that prisoners did not become potential rapists by virtue of being prisoners and sexual assault is not an admired category of offence amongst them. Serious courtship was also considered and the South Australian Committee could see no inherent harm in such a development. At p. 179, the Committee had this to say:

62. Phasing in of Female Staff. We draw attention to the danger of overdramatization of such an issue as this. There are many occupations connected with prisons which could well be utilized to introduce a female staff to male prisons without an abrupt and wholesale change of practice. They include social, educational and general professional work, clerical work and the operation of telephones, and the performance of such domestic functions as cooking and organizing supplies of food and clothing. Directly custodial duties might well follow a period of introduction of female officers or non-departmental specialists in such roles as these.

63. Male Staff in Female Prisons. Equally, we see no objection of principle to the employment of a proportion of male staff in female prisons, but as South Australia has only one, small prison specifically reserved for female prisoners, and female sections in other prisons in which numbers are also small, this possibility does not present itself as an immediate practical question.

To overcome objections, we think that the concept of the employment of women in men's prisons and vice versa should be written into the Act.
CHAPTER 6—CHAPLAINS

In our opinion, the functions of those who undertake the spiritual ministrations to prisoners should be clarified. The existing Prisons Act gives the Governor power to make regulations for and in respect of:

(h) religious ministration to prisoners and divine service within prisons, and by the existing Regulations, pt 7, religious ministrations are provided for.

In England, the exercise of the office of Chaplain and the appointment of prison ministers is provided for by Act of Parliament, the Prisons Act, 1952, 15 and 16 George VI and I Elizabeth II, Chapter 52, ss. 9 and 10. In our opinion, rather than setting out the terms of religious ministration in an oblique and somewhat negative way in the regulations, the recognition of religious ministrations should be stated in any amendment of the Act.

Religious ministrations in prisons should not be merely official and sterile and Ministers of Religion should be able to bring to the assistance of those prisoners with whom they have dealings the benefit of counselling and other similar services.

Ministers of Religion who are introduced into prisons should also, in proper cases, be free to make valuable and effective contacts with the families of prisoners. We think therefore that in any amending legislation provision should be made for spiritual ministrations and widening the somewhat narrow scope of these as they appear in the existing regulations.

We would suggest that where in a prison the number of prisoners who belong to a religious denomination is such in the opinion of the Commission as to require the appointment of an ordained Minister of that denomination, the Commission might appoint such Ministers, either as full-time or part-time chaplains and either as paid or honorary chaplains. It would be necessary to ensure that those appointments be made on the recommendation of the diocesan or other denominational authority to ensure that suitable persons be appointed and that they should be made for a specified period subject to re-appointment. Not all men are suitable for prison chaplaincy work. On the other hand, there are some who are able to do a great deal of good over many years and to deal with this situation, elasticity is essential. The statute should actually provide authority for the appointed Minister freely to visit members of his own denomination in prison, subject to safeguards in proper cases. Furthermore no prisoners should be required to see a Chaplain or attend any religious service and so far as prisoners are concerned they should be completely free in this regard.

On the other hand it should be completely spelt out that it be the duty of the Superintendent of each prison to arrange as far as possible the schedule of the prison so that prisoners who wish to do so may attend religious services regularly without loss of sport, earnings or privileges. It should in our view be written into any proposed legislation that any chaplain should, as far as is reasonably possible, have free access to any prisoner wishing to see him for the purpose of spiritual ministrations, advice or counselling, or welfare of the prisoner or his relatives.

The Act should also provide that religious sisters and deaconesses might be introduced into male prisons for the purpose of spiritual ministration, advice, counselling or welfare of the prisoner or his relatives. In this area the legislation should be framed as far as possible to widen the access to prisoners of people who might be able to help them and their families and we would suggest that each Superintendent be authorized to permit each chaplain to introduce into the prison, where reasonably practicable such number of persons approved by the Superintendent, whether ordained or not, to assist the Chaplain in the performance of spiritual ministration, advice, counselling or welfare of the prisoner or his relatives. The functions of any such person should be clearly spelled out. His presence is required to deal with the specific problems of individual people and he can best deal with those if he knows why he is there. Hence it would only be right to put into the legislation a requirement that any person introduced by a Chaplain, with the permission of the Superintendent, should give a written undertaking that he shall confine his activities to the purposes set out above and shall not take in or out of the prison any letter or give to a prisoner any money or anything else without the authority of the officer-in-charge, and also that he should be prepared to accept guidance, by way of instruction, as to his duties and obligations.
In the existing rule 76 there is a provision that the Governor shall see, when a prisoner is suffering from an injury or severe illness likely to terminate fatally, that proper steps are taken to secure for the prisoner visits from the minister of the religious persuasion to which such prisoner may belong and communicate his condition to his relatives if their addresses are known or can be ascertained. This should be written into the Act as a positive humane obligation that applies even when the prisoner is removed to hospital for his terminal condition.

It will be observed that in the existing Act and Regulations there is no provision for that organization which has traditionally done so much for prisoners. We refer to the Salvation Army. In our opinion, the legislation should expressly authorize such officers of the Salvation Army, whether male or female, as either the Commission or Superintendent approves, to be introduced into the prison for the purposes of spiritual ministration, advice, counselling, and the welfare of the prisoner and his relatives, though it would only be proper that they be required to give an undertaking of the sort mentioned above. To this could be added the Society of St Vincent de Paul and such other charitable welfare and religious organizations as may be approved by the Commission.

The more prisoners cease to be isolated from the community to which one day they will have to return, the better. Hence, we suggest that the Act make provision for the introduction of an organist or choir or similar group or other aids to worship into the prison, subject, of course, to the authority of the Superintendent.
CHAPTER 7—PRESENTENCE REPORTS

As the provision of these is part of the duties of the Corrective Services Commission we envisage, we recommend that—

(1) Any Court before whom an offender is convicted or pleads guilty may require a written presentence report to be presented to and considered by the Court.

(2) Such presentence report shall be admissible if produced by an officer of the Corrective Services Commission.

(3) In the event of the death, illness, retirement or absence from any other cause of the person making the report, the Court may receive the report in his absence provided that the Court may, in the case of illness, retirement, or absence from any other cause, postpone the hearing until the officer is available.

(4) In the preparation and presentation of presentence reports regard needs to be had to the rights of the offender to know the nature of the matters affecting him which will be reported upon. However the Court shall have power to withhold the contents of any part of any presentence report from the Prosecution and the Defence, and the offender, if it thinks it desirable in the public interest or in the interests of the offender or his victim of family to do so.

(5) Any presentence report shall be produced to the Court and shall be open for inspection as follows:
   (a) to the Court;
   (b) to the Prosecution and the Defence;
   (c) to the Appellate Court;
   (d) to the Commission, the Parole Board or to any other Department agency or institution to which the defendant may be committed;
   (e) to any other person as ordered by the Court.

(6) The reporting officer shall have the responsibility of indicating to the Court matters that should not be disclosed.

(7) Unless authorized by the Court, none of the contents of a presentence report should be published.

There would have to be a provision that no sentence shall be increased by virtue of any matter appearing in such a report which is withheld from the defence or the offender. There is no point in the unnecessary public display of things, such as illegitimacy or family insanity. The above is borrowed, with substantial modification, from the Illinois Code of 1972 1005-3-4, 3.2 and 34 at pp. 96 et seq.

The functions of the presentence report should be clearly understood as being directed to the rehabilitation of the prisoner wherever that is possible. It may be that in a proportion of cases any rehabilitative objective has little reality, but as the aim must be to keep that proportion at its minimum and to get to the maximum those cases where there is a probability of rehabilitating a prisoner. It may be that in individual cases the only effect of a complete and dispassionate evaluation of all the facts in a presentence report would be to demonstrate that the only possible step would be a long sentence, but there would be more cases where the reverse would be true and where such a report would justify a non-custodial sentence.

(8) The statute ought to provide for the obtaining of reports and their admissibility without proof and for the circumstances under which the Court would not require the maker of it to attend and be cross-examined, but the regulations could set out the type of content it should bear.
The presentence report should not be stereotyped in a prescribed form and should be left for proper adaptation in the appropriate case, but the officer making the report ought to consider the following:

(a) Family history, situation, background and economic situation.

(b) Prisoner's history, education, occupation, economic situation, personal habits and prior record. It should be a provision of the Statute that the Department of Youth and Community Services should make available its records to enable a proper evaluation of the offender to be made. There is, of course, here the objection that such a Department should be able to presume its confidentiality but there are so many circumstances in which the giving of proper information can be helpful in crime prevention that on balance the argument for confidentiality ceases to be valid. It is not to be overlooked that the Correctional Officer compiling the report should be a sworn officer, bound to secrecy and who would be guilty of a criminal offence if he made unauthorized disclosures of confidential material coming to him in the course of his duties but, furthermore in par. 4 above, we give the Judge power to withhold prejudicial information.

(c) The circumstances surrounding commission of offence.

(d) Information about recourses which might aid the offender by way of education, training, treatment, employment and housing.

It should be specifically provided for by Statute that the Court have power to order or to require the officer preparing the presentence report to obtain a physical and mental examination of the prisoner and to designate the persons by whom and the hospitals, clinics or the other places at which such examination might be held.

It would be pointless to give Courts power to order physical and mental examinations in institutions able to give them if such an order could be rendered ineffective by refusal to make the examination; e.g., by the refusal of the admission centre of a psychiatric hospital to receive such a person. Hence some provision must be made that requires compliance with the Court's direction as to the conduct of examinations and the rendering of a report.
CHAPTER 8—CLASSIFICATION

We turn now to the important problem of the classification of prisoners, a matter that presents in our view very great and insoluble difficulties.

The existing Regulations, Part II, set up eight classes of prisoners and provide as far as practicable separation of each class from any others. Classification is, of course, essential. But we take leave to doubt whether the classification along the rigid lines set out in Regulations 10 and 11 really is the most desirable way. 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.

As part of the diagnostic process it is desirable that parole officers submit social reports on prisoners being classified.

We therefore suggest that in the Act itself it should be spelled out:

It shall be the duty of the Commission continually to keep under review the proper classification of prisoners and to appoint officers and committees for that purpose.

We would therefore go on to suggest that it should be the duty of the Commission to cause to be considered in each case physical and mental health, the background, nationality, nature of the offence, educational capacity for training, likelihood of rehabilitation, dangerousness, personal traits, desire to reform or not to reform and all other circumstances relevant to each convicted prisoner so as to ensure that proper categories are established and those likely to be rehabilitated are separated from those likely to prevent rehabilitation, and that dangerous or violent prisoners, or potential escapees are separated from those in other categories to whom they would be likely to do harm.

Within correctional institutions themselves serious tensions exist. The man deprived of his liberty, separated per force from his family and friends, perhaps suffering from personality disorder of some kind faces a difficult situation. When one adds to these usual tensions, the loss of freedom, the staff-prisoner tension that exists in some areas, staff-administration tensions that exist in others and the inevitable tensions between inmates that must exist in a society of captives, one has difficult problems indeed. All these considerations emphasize the need for effective classification.

Categorization for security sake is necessary and though this problem would not be a matter for the Act but would be a matter for the regulations we suggest that the early classification of prisoners be made along these lines:

Category A. Prisoners whose escape would be highly dangerous to the public or the police or to the security of the State.

Category B. Prisoners who cannot be trusted in open conditions but who do not have the ability or resources to make a determined escape attempt.

Category C. Those who can reasonably be trusted to serve their sentences in open conditions.

The higher the number of those who can be put into Category C becomes the better.

Segregation units are necessary in maximum security institutions for the protection of staff and inmates to facilitate diagnosis and we would suggest that the Act make provision for these along the lines suggested by the Corrective Services Advisory Council.

We are of opinion that specific provision should be made for the classification of remand prisoners. The figures to which we have referred above indicate that as at 30th June, 1973, there were 471 unsentenced persons in New South Wales gaols. We have no analysis of the details of this. Some of these may be persons who had been convicted or pleaded guilty and were awaiting sentence, and others would be persons who would be awaiting trial, but it is essential in our opinion that the regulations should provide specifically for consideration in each case of the background, nationality, nature of the offence, education, dangerousness, personal traits and all other circumstances relevant to each unsentenced prisoner, so as to ensure that proper categories are established and that persons with serious criminal records, dangerous or violent prisoners, or potential escapees are separated from those in other categories, to whom they would be likely to do harm.

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.

There should be an obligation on the part of the Commission to undertake regular reviews of the correctional and post-release needs of each prisoner, particularly long-term and life sentence ward of
CHAPTER 9—COMPLAINTS AND REQUESTS

We now turn to a consideration of the question of complaints and requests. Allied to the topic of complaints is the problem of communication between the Correctional Services Staff and prisoners, parolees and probationers. This is particularly so in the case of prisoners because so far as parolees and probationers are concerned they have a free communication with people in the free world, but the prisoner only has communication (apart from his limited visiting privileges) with the officers of the prison, with those who come to give him spiritual ministration and counselling, and with welfare and parole officers.

We assert that communication should be as free and easy as possible between Chaplains, Parole Officers, officials and prisoners, subject only to considerations of personal safety and security. Therefore we take the view that the right of complaint and request should not be fettered. We are of the opinion that these matters, under modern conditions, are so important as to justify formalization by incorporation in the Act itself, and we suggest in addition to the rights of complaint to the Ombudsman as follows:

1. Each prisoner shall be entitled privately to make a complaint or a request to the Superintendent.
2. Each prisoner shall likewise be entitled to make a private complaint or request to the Visiting Magistrate.
3. Each prisoner is likewise entitled to make a complaint or request to the Minister or a Member of the Commission who may be visiting the gaol.
4. If the Superintendent or the Visiting Magistrate or the member of the Commission or the Minister is able to satisfy the complaint or comply with the request and he considers it proper to do so, he shall satisfy such complaints or comply with such request.
5. If the Superintendent, Visiting Magistrate, Member of the Commission or the Minister considers that a complaint or request is baseless or is being made for the purpose of harassment of the staff, the Commission or any other prisoner, he shall take no action.
6. If the Superintendent, Visiting Magistrate, Member of the Commission or the Minister considers there is prima facie a basis for the complaint or request and is unable or unwilling to satisfy the complaint or comply with the request he shall forthwith refer the same to the Commission which shall inquire into the same and may take such action thereon as seems proper.
7. Any prisoner may, in an uncensored sealed letter, send to the Commission any complaint or request he desires to make. The Commission, if it is of the opinion the complaint is frivolous, vexatious, not in good faith, or too remote in time to justify investigation, or if the prisoner has no or not sufficient interest in the matter complained of or the request made, shall take no action but shall notify the prisoner that no action is to be taken, and the reason.
8. If the Commission is of the opinion that there is prima facie a basis for the complaint or request it shall forthwith investigate the complaint or request and take such action thereon as to the Commission seems just.
9. Nothing in these provisions shall affect the right of any prisoner to make any complaint to the Ombudsman. This ought to be made very clear because of the terms of the Ombudsman Bill, 1974, which will no doubt become law in the near future. It passed its third reading stage in the Legislative Council on 3rd October.

10. The Commission and the Superintendent of any institution when the Bill becomes law shall be bound to take all steps necessary to facilitate the making of a complaint to the Ombudsman and to send it unopened to him who would have the powers set out in the proposed Part III of the Bill.
It must always be borne in mind that when dealing with prisoners, one is not dealing with persons in a free world, but, as has been pointed out before, with members of a society of captives whose tensions and pressures are very different from people in the free world. We have, as will be observed, recommended the right to make complaints to four internal authorities—Superintendent, Visiting Magistrate, Member of the Commission or the Minister together with an external authority—the Ombudsman.

We would go beyond the view that prisoners have a right of complaint to an Ombudsman and would suggest that in addition the Minister, the Commission, the Visiting Magistrate or the Superintendent be also empowered of their own motion to send on any complaint by any prisoner. These matters would seem adequately to enable the interests of prisoners who have complaints or requests to be protected on terms that would be in the best public interest.

Though the rule of law must exist in prisons there are other and better ways for its enforcement than through the importation into prisons of the adversary system before a judicial officer conducted by professional lawyers. Though there should be full and free opportunity for the investigation of such complaints, the adversary system is not the way to do it.

Looking at the matter realistically, if one has a public Ombudsman of adequate status and authority as is envisaged in the draft Bill then such a body is more likely to have public confidence if not associated in any way with the Corrective Services Commission.

There is furthermore an additional reason why no further provisions are necessary, other than those to which we refer above. Under the Supreme Court Act, 1970–1972 ample provision is made for any prisoner who is of opinion that he is not being dealt with consistently under the Prisons Act and Regulations and Rules thereunder to apply for declaratory relief as was done in Cheetham v. McGeechan, 1971 2 N.S.W.L.R., 223 and Kennedy v. McGeechan, decided on 7th June, 1974 and as yet unreported but under appeal to the Court of Appeal.
CHAPTER 10—HEALTH

So far as s. 17 of the Act is concerned, we are of opinion that this should be repealed. With modern antibiotics and other treatments, the necessity for lock hospitals no longer exists, though a person suffering from venereal disease or other disease capable of being transmitted from person to person should be placed in a position, if it is necessary, where he is not likely to infect anyone else.

Sections 9 and 16 of the Act in our opinion require modernization, and so far as health is concerned we would suggest a catena of sections along these lines suggested below. There are some institutions in New South Wales at present which could on no showing adequately be serviced by one medical officer and others which equally could not justify a man full-time. Of course, the development and complexity of modern medical services requires that more than one person in a particular case may be required to see, investigate, diagnose and treat a prisoner. We would suggest something along these lines:

1. Prisoners in the interests of good health generally should be required to keep themselves clean and to maintain a good appearance, and facilities should be provided for these purposes.

2. Every prisoner should be medically examined as soon as possible after admission and thereafter as necessary with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of suffering from infectious or contagious conditions, the amelioration and cure, if possible, of physical and mental defects which might hamper rehabilitation and the determination of the physical capacity of every prisoner for work.

3. Adequate health and dental care should be provided for every prisoner and may be provided for any parolee or probationer.

4. The Commission shall establish a health service in each prison, such service to consist of such number and types of medical practitioner as may be necessary having regard to the size, situation and nature of the prison, and may consist wholly or in part of practitioners employed by the Health Commission or the Commission, or practitioners in private practice who may be engaged on a contract or sessional basis, and the Commission, of course, should be given power to arrange for persons to act during the illness or absence of any member of the Health Service.

We likewise think there should be written into the Act the provision (which has been in fact carried out over many years) that, except in emergency, children of women prisoners shall be born in a hospital outside the institution and that except where they are adopted in conformity with the appropriate legislation infants may be allowed to remain with their mothers for such period not less than 12 months as the Commission may in any case determine.

In our view, the existing section 28 of the Prisons Act should be amended to authorize the Superintendent without reference to the Commission to make the appropriate order for removal to hospital.

Section 29 of the Act ought to be amended by widening it to allow a prisoner by permission of the Superintendent to be temporarily absent from the prison for the purpose of diagnosis or treatment. If a responsible trusted prisoner requires an X-ray or outpatient treatment of a sort that cannot be given in a prison, why should he not be given leave to go over to the Prince of Wales Hospital, or the Parramatta Hospital, or to the Goulburn District Hospital to get it?
CHAPTER 11—HOME LEAVE

Another thing that arises under s. 29 is the question of home leave. The problem of the maintenance of the marital life of a prisoner is a very difficult one and from what one is led to believe a lot of disturbances and unhappiness in prisons is due to sexual deprivation by either the husband or the wife. Particularly if there are children, this ought to be avoided if possible and hence we would suggest the writing into s. 29 of an express provision giving the prisoners the right to home leave from time to time. This would be far better than any alternative such as the conjugal visit of the wife to the prison. Home leave, given in the appropriate cases and under proper safeguards, may well be the most effective form of keeping the family together which is, of course, one of the most effective ways of preventing recidivism not only in the prisoner's generation but in the next.
CHAPTER 12—WORK

The problem of work in prisons has always been one of the gravest problems that has had to be faced.

It is desirable to introduce into the Act specific provisions authorizing the obtaining of contracts from Government agencies and from outside organizations.

The proposition can be set out in various ways. At p. 72 of the Illinois Unified Code of Corrections of July, 1972, there are a number of sections dealing with useful employment, types of employment, vocational training and compensation for work and in the Model Penal Code of the American Law Institute there are a number of clauses dealing with the employment of labour and of prisoners.

We take the view that any amendment of the Prisons Act should contain specific provisions dealing with prison labour along these lines:

1. Subject to the directions of the Commission the Superintendent of a prison shall for the purpose of preserving the work capacity of prisoners require each prisoner to be set to work considered suitable to his physical and mental capacity.

2. No work of an afflictive nature shall be required of any prisoner.

3. The Commission shall make standing orders governing the conditions of labour and prisoners and the rates of prisoners' payments for such labour.

4. In determining the rates of payment the Commission may take into consideration the quantity and quality of the work performed by a prisoner, whether or not such work was performed during regular working hours, the skill required for its performance, as well as the economic value of similar work outside prisons.

5. Prisoners' wage payments shall be paid into a bank to enable them to earn interest on short-term deposit.

6. The Regulations may provide for the making of deductions from a prisoner's wages to defray part or all of his maintenance but a sufficient amount shall remain after such deduction to enable the prisoner to support his dependants, if any, to make necessary purchases from the store, and to set aside sums to be paid to him with interest at the time of his release from the institution.

7. The Commission may enter into contracts and arrangements for the production and supply of goods at reasonable rates to any person or organization.

8. The Commission shall attempt to obtain and provide sufficient work to keep all prisoners employed for a full working day.

9. Wherever possible, the Commission shall provide suitable vocational training.

10. We also think that the Commission should be given power in addition to making payment for work done, that it may, subject to the standing orders, make payments to prisoners or their dependants for any reason.

11. The right of remand prisoners to work for gratuities should be recognized.
CHAPTER 13—FOOD SERVICES

The proper feeding of prisoners in a modern prison is essential but this involves careful consideration of the amount of food delivered to the prison, to ensure that neither is prisoners' food taken or food delivered in excess of the needs of the prisoners.

Provision should be made for the prisoners (such as diabetics) whose state of health requires special food, being provided with that food as authorized and directed by the medical services of the prison.

It is suggested that s. 14 requires to be revised and that it would read along these lines:

(1) It ought to be the duty of the Superintendent of each institution to obtain once in every year a proper dietetic scale of food necessary for the adequate nutrition and maintenance of health of prisoners from the dietary services of the Health Commission and a programme of menus of adequate standard should be worked out on a proper rational basis, based on ordinary feeding standards in the State.

(2) Every prisoner for whom provision is not otherwise made for his main­tenance shall be supplied at the public expense with sufficient food to main­tain health according to ordinary accepted standards.

(3) It shall be the duty of the Commission to have the food services of each prison inspected at least once a quarter to ensure the adequate feeding of each prisoner and to prevent theft, or waste. Such inspections may be made by the Commission's own officers or by officers from the Health Commission.

The existing scale of the food services set out in Regulation 28 should be abolished as soon as possible. By way of comparison the Queensland Dietary Scale has obviously been worked out by a skilled dietitian and the protein, fat, carbohydrate, caloric, vitamin and other contents of the food set out. The Prince of Wales and the Prince Henry Hospitals both have Dietetic Departments as do other hospitals close to prisons. There are skilled dietitians attached to the Health Commission. Food services are services where waste and theft are endemic, and hence a system of providing adequate food of a more desirable kind than those set out in the Regulations is essential.

The Act should be amended along the lines we have suggested and the Regulations concerned should be examined with care to enable the implementation of proper food services. What proper food services ought to be, requires the attention of a person skilled in the field.
CHAPTER 14—CORRESPONDENCE

Here a departure is required from the rigidity of the Regulations that proceed on the basis that every prisoner is a maximum security risk. There is no valid reason why, with proper classification, the majority of prisoners should not be free to have the right of correspondence, both inward and outward, particularly with their families, which is, subject to no limitation and free also from the limitations of having to be on official prison notepaper (Regulation 85). If a prisoner is not a security risk and has standing to his credit in the gaol a sum of money, he should be permitted to buy private stationery and use that and should also be permitted to have his own supply of stamps.

It is easy to assert that correspondence should always be on plain unmarked envelopes which the prisoner himself has bought, and on his own stationery, but cases have been known in which drugs have been introduced into the prison on the gum of envelopes, under stamps, and letters being written from one prisoner to another have been used as a means of trafficking in drugs. Hence the right to control correspondence must be preserved but this should be reduced to the minimum. When the Superintendent limits the rights of a prisoner to correspondence he shall forthwith report it in writing to the Commission giving his reasons.

The existing regulations limit letters written by prisoners except in the case of debtors, to two letters immediately after or within 3 days of reception and thereafter to four letters in every period of 4 weeks. By Regulation 79 prisoners may be permitted to receive such letters as are delivered to the prison for them, provided that the Governor may withhold any letter of unreasonable length. These seem to be unreasonable limitations and their only justification would be on the basis of manpower requirements for censorship purposes. There is a proportion of prisoners in respect of whom it is desirable to have their mail censored, but we think it can be fairly asserted that no such requirement exists in the case of the majority of prisoners. There are prisoners who, if there were no right of censorship, could arrange for drugs to be smuggled or some other illegality arranged, but postulating a good system of classification there is no reason why prisoners who do not present a security risk should not be permitted to send out uncensored mail on plain paper, subject to the right always of the Superintendent, if he has cause to believe that there is any abuse going on, to withhold any letter or letters to or from any prisoner or group of prisoners and to have the same opened and read.

We are of opinion that Regulations 77 to 90 should be liberalized. We can see no justification for limiting prisoners to, in effect, four letters in every 3 to 4 weeks. We can see no justification for the provision of Regulation 79 except that letters of unreasonable length are hard to censor but, on the other hand, a desperate wife with her children causing trouble because their father is in prison may be the very person who might like to sit down and pour out her troubles at inordinate length to her husband and we ask, why should she be prevented from so doing?

The right to examine correspondence must, in the interests of safety and security be preserved and unfortunately the experience of those associated with prisons is that often the benefit of the great number is harmed by the irresponsibility and criminality of the very few, and hence any method that sieves out the very few from the great majority is essential and that can only be done as we have tried to emphasize, by proper classification.

Regulation 88 in its present form may have been a desirable regulation in the day when this was practically an entirely English-speaking country. Now when over one million people have come to Australia from abroad over the last 20 years, many of whom are from countries in Western and Eastern Europe and Asia, whose command of English is very halting and unsatisfactory, it seems to be placing an unnecessary limitation on such people if they have to write to their wives in English. Here again the problem of classification becomes so essential because the migrant who presents no security risk at all should be permitted to correspond with his wife and family or legal advisers in the language in which both of them think. We observe in Regulation 88 that where a prisoner is unable to read or write in the English language, approval may be given by the Governor of the prison for letters in other languages to be written or received, but we think that the emphasis should be the other way around; allowing them to write in whatever language they see fit, provided that the Superintendent has the right to require English or has the means available to obtain an interpreter from the Government panel.
One takes liberty to question Regulation 88, prohibiting letters containing improper, abusive or threatening expressions being written by or delivered to prisoners. Of course, if there were no censorship such letters could pass freely, but postulating that there must be some degree of censorship such letters might have some degree of benefit because they might indicate to a wife the need to take steps to protect herself and so on.

During the course of our visits we saw in one prison a red phone on which prisoners could telephone to their families and friends. This is of course not provided for in the existing Act or Regulations but it has been a successful introduction in a limited area and there should be the appropriate discretionary authority for it.

Freedom of communication with a legal adviser in the case of an unconvicted prisoner or a prisoner who is an appellant is in our view an essential part of the system under which we operate and it should be clearly spelled out in the Act that there is such a right to uncensored letters being sent by prisoners to their solicitors and that the solicitors have a right, also without censorship, to communicate with their clients by means of a letter in an envelope which bears on the outside of it their names.

Of course, it is not necessary to legislate in respect of correspondence between barristers and prisoners because ethically the prisoner would have to communicate with them through the instructing solicitor, and the instructing solicitor with the prisoner. There might be cases, of course, where the prisoner may have to communicate with his legal advisers by letter as, for instance, where a person has an action for negligence current or was a beneficiary under a will. In these circumstances also we think there should be free and uncensored correspondence.

In the case of unconvicted prisoners, of course, these should have free rights of access to their legal advisers in respect of any litigation with which they are concerned.
CHAPTER 15—VISITS

We would recommend the amendment of the Regulations to liberalize, as far as it is possible within the limits of security and manpower, the rights of prisoners to visits, preserving in the regulation rather than in a rule or standing order, the provisions of rule 230 that the prisoner shall have the option of refusing to see a visitor. The right to an immediate visit after conviction ought to be preserved.

In general, we would support the recommendation in the South Australian report at p. 131:

As to visiting, we recognize that organizational and security restrictions must necessarily be placed on visitors but we do not accept that restrictions should assume the aspect of being punitive. In many parts of this report, we emphasize the need to minimize the degree to which imprisoned offenders are cut off from the community and their family and friends. In principle, there should be no restrictions on the number of visits or visitors a prisoner in any category may receive, or intrusions on the privacy of visits. We accept that in maximum security institutions this principle must yield to security requirements and that in any institution certain hours and locations must be set aside for visiting if chaos is not to ensue. Hard and fast rules cannot be laid down in a general report.

We would suggest regulations as follows:

(a) Times and extent of visits should be as laid down by the Superintendent subject to Commission approval, such times and extent to be conditioned to the situation of each individual establishment;

(b) circumstances of visits should be also determined by him subject to the Commission approval;

(c) the rights to visits ought in any event to be widened, especially for spouses, children, fathers and mothers;

(d) all of these, however, should be clearly understood to be subject to the safety of all other persons concerned;

(e) the provisions as to visits within the hearing and sight of a prison officer and as to physical contact should be able to be modified by the Superintendent;

(f) the Superintendent be empowered to grant to any particular prisoner or visitor more liberal visiting rights than are provided for generally;

(g) the Superintendent is to be required by regulation once in every year to submit to the Commission for its approval a schedule of the times and extent of visits he proposes to allow to the intent that visiting rights shall be under regular revision;

(h) the Superintendent may with the view to securing discipline and good order or the prevention of crime or in the interests of any persons, impose restraints either generally or in a particular case upon the visits to be permitted between a prisoner and other persons.

These would appear to give wide powers to the Superintendent but if his position is to be elevated and if the administration of institutions is to be decentralized, as he is the person closest to officers and prisoners we think it right he should have such powers.

The matter of visits of legal advisers to prisoners has presented some problems and an application was made recently to the Supreme Court for a Declaration of Right that the existing conditions at the Remand Centre at Malabar created an illegal barrier to free contact between lawyer and client. It was held that a glass pane with a microphone which allowed free sight and hearing but prevented bodily contact and the joint reading of documents and the handing of documents from one to the other did not breach the regulations. We would suggest in lieu of the existing visiting regulations so far as they affect legal advisers a simple regulation along the lines:

(1) The legal adviser of a prisoner in any legal proceedings, civil or criminal, to which the prisoner is a party shall be afforded reasonable facilities for interviewing him in connection with those proceedings, and may do so out of hearing but in the sight of an officer.

(2) A prisoner's legal adviser may with the approval of the Commission interview the prisoner in connection with any other legal business out of the hearing but in the sight of an officer.

(3) The Superintendent may in any particular case waive the provision as to the interview being in the sight of an officer.

(4) If there were a denial of reasonable facilities the prisoner would have his right of complaint to the Ombudsman and also a right to apply to the Court for a declaration. Regulation 96 should be retained.
CHAPTER 16—TRAVEL VOUCHERS

One matter that we would suggest is an express power in the Act authorizing the Commission to issue travel vouchers to any wife, husband, child, father or mother or in a particular case to another relative or close friend to enable visits to take place to those who are in prisons a long distance from their relatives. For instance, it should be possible, if there are no means otherwise for enabling the wife/husband and children to see the husband and father or wife and mother for rail vouchers to be issued, for example, to Goulburn or to one of the camps, or if the wife and family are in the country and the husband is incarcerated in Long Bay or Parramatta then vouchers should be issued to enable the visits to be had there. Such vouchers would be for second-class rail with appropriate transport, in distant places, to and from the railhead. The cost to the State as a whole would be minimal.
CHAPTER 17—INSTITUTIONAL TIMETABLE

The daily timetable of prisoners as published in the Regulations should forthwith be abrogated. The timetable of each prison should be as settled by the Superintendent. The Regulations should provide for this and, having been settled by the Superintendent, it should be forwarded to the Commission. We realize that the problems of staffing, the rigidity of Australian industrial awards and the problem of overtime, will all operate to prevent in the immediate future any alteration to the timetable which results in prisoners being locked in their cells before 5.10 p.m. and kept in their cells until 6.45 a.m. the following morning, though steps are taken where possible to mitigate this rigidity. The Regulations should clearly provide that it is the duty of each Superintendent continually to keep under review the increasing of the period in which prisoners are out of their cells, the increasing of their periods of productive labour each day to ordinary working hours, and the giving to them of opportunities for vocational training and religious services, pictures and other amenities out of their cells. We realize in practice that the daily timetable as set out in the Regulations is not complied with in certain institutions, but it is undesirable to have a rigid timetable of the sort that appears in Schedules 1 and 2 of the Regulations as part of the law of this State.
CHAPTER 18—REMISSIONS

There are a number of situations to be considered in relation to remissions, namely, (a) cases where no non-parole period is specified; (b) cases where a non-parole period is specified; (c) whether prisoners should be entitled to mandatory remissions provided they do not forfeit their remissions by disciplinary breaches or criminal offences; and (d) whether the granting of remissions should be disciplinary in the sense that prisoners ought to earn their remissions by the quality of their own behaviour and industry in gaol.

These are all very difficult questions and ones in which a variety of differing opinions can justifiably be held.

Dealing with heading (a) first, we have no doubt that if a man has no non-parole period specified, the sentence imposed—provided it is of sufficient length—should carry with it the right or privilege of remissions depending on what view one takes under the heading (c), so that a man who is serving a sentence and who either commits no disciplinary breach or, in the alternative view, earns by conduct appropriate remissions, should have the benefit of having his imposed sentence reduced either by the remissions prescribed or by those which he has earned.

A system of remissions is now so deeply ingrained as a form of reduction of the imposed sentence either by negative prescription, that is, the lack of disciplinary breach or by positive prescription, that is, the active earning of remissions that it would not, we think, be possible—even if it were desirable—to abolish the system of remissions.

(b) Where a non-parole period is specified; in some ways a system of remissions within a parole system is anomalous. If the non-parole period is the minimum period the prisoner ought to serve by way of punishment before he ought to be given consideration in the way of parole release and after that date the Parole Board can grant his release to conditional liberty before the expiry of his imposed sentence as shortened by remissions granted to him under the regulations, we would find an inconsistency between the existence of a Board which can release him and the existence of a system of remissions which can result in his release before the Parole Board considers he ought to be released.

It is noted that s. 41 (3) of the Prisons Act as amended by Act No. 8 of 1968 now provides that prisoners shall be granted remission of sentences as prescribed by Regulations under this Act. This was a new section introduced into the Act by Act No. 43 of 1966, assented to 2 days after the Parole of Prisoners Act No. 41 of 1966 became law. Section 41 (4), giving the Minister power to place conditions on remissions, was introduced by the same Act No. 43 of 1966, hence there has been introduced at almost the same time two provisions of the law which, in our view, might seem to be inconsistent with each other.

Our terms of reference do not extend to the Parole of Prisoners Act, but to the Prisons Act, and Regulations which involve remissions which in turn in the case of a prisoner for whom a non-parole period has been specified cannot be looked at without involving the Parole of Prisoners Act and Regulations, particularly in the case where a man has been released on parole and has had his parole revoked or a man who has not been granted parole. In the case of a man for whom a non-parole period has been specified and who is not granted parole, there can be no question but that he is entitled to his remission under s. 41 (3) in Reg. 110. In the case of a man who gets parole and whose parole is revoked, the legislation denies to him the benefit of any remissions which might have accrued in his favour pending his release on parole but shall leave to him a prospect of enjoying remissions calculated by reference to the unexpired portion of his term, Cheetham v. McGeechan 1971 2 N.S.W.L.R. 222 at 224. We think that the legislation and that authority make it sufficiently specific that there is no remission except as appears in s. 6 (2) (A) (1) of the Parole of Prisoners Act on the non-parole period, the remission being calculated on the head sentence if no parole is granted, or on the unexpired portion of the sentence to be served if parole is revoked, Cheetham v. McGeechan (supra).

There is a great deal to be said for the view that remissions under Reg. 110 should not apply where a non-parole period is specified because the Board shall consider before the expiration of the non-parole period whether or not such prisoner should be released on parole, Parole of Prisoners Act s. 6 (1). In other words, the consideration by the Board is in substitution for the remissions.
According to the authorities R. v. Combo 1971 1 N.S.W.L.R. 703 and R. v. Humphreys & O'Brien 1971, 1 N.S.W.L.R. 781, the judge must consider remissions in fixing the non-parole period so that the non-parole period expires before the sentence would expire by remission so that release to Parole Board supervision would not be ineffective and of course there are the cases in which a prisoner asks that a non-parole period be not fixed because he feels he is better off out on remissions without parole supervision and without being subject to the provisions of s. 6 of the Parole of Prisoners Act. It is an anomaly that a man to whom parole release is refused can be free of all sanctions earlier than a man to whom parole has been granted, stays out of gaol for, say, a year, then has his parole revoked and goes back to serve the unexpired portion of his sentence at a time well after he would have been released on remission if parole had been refused. We think this anomaly should be removed by a provision ensuring that persons to whom parole is refused are not better off than the persons to whom parole is granted.

(c) Whether prisoners should be entitled to mandatory remissions, provided they do not forfeit their remissions by disciplinary breaches. This is the manner in which Reg. 110 is now framed. A prisoner shall be entitled to remission. Regulation 111, of course, imports a discretion but the Reg. 110 remission amounts to either ½ or ⅓ which is the equivalent of 10 or 7½ days a month, whereas the discretionary remissions now given only for excellence amount to two days a month or, in the aggregate, at most four. In practice remissions can be higher than that. The effect, therefore, of the combined operation of Regs. 110 and 111 could be, in certain circumstances, to cut the imposed sentences by half. Whatever may be thought of the generosity of these remissions, courts are not entitled to take them into account in fixing the head sentence. R. v. Enos 1956 40 CAR 92; R. Combo (supra) at p. 705.

We think it is now too deeply ingrained in our system to justify its change and in any event the right to remissions is a valuable way of preserving, in ordinary circumstances, discipline in gaols though of course recent events have shown that this is not entirely true and prisoners are prepared in certain instances to lose the valuable privilege they have in remissions but this brings us to the last matter, whether the granting of remissions should be discretionary in the sense that prisoners ought to earn their remissions by the quality of their behaviour and industry while in prison. In this regard we have had the benefit of two lengthy discussions with representatives of the staff at Malabar who have strongly supported the view that remissions should actively depend on the way the man behaves in prison and that each prisoner should be able to earn up to fifteen points for behaviour and fifteen points for industry, each point to be the equivalent of half a day, so that a prisoner who earned fifteen points for each would, in that month, get 15 days remission and the man who, for example, only earned eight points, would only get 4 days' remission. The theory behind this which—as was pointed out to us—was in effect the method introduced by Alexander Maconachie at Norfolk Island is, of course, that if a man has a motive to earn his early release by his own positive acts, he will be more likely to do so than the man who has no such motive. The arguments in favour are too plain to require restating. The argument against is that it contains the dangers of favouritism, and the possibility of inconsistency in individual approaches.

We can see a grave objection in that the suave, professional criminal, whose only intention is to commit further crimes on release, would be better off because he was prepared to co-operate than the grumpy unpopular prisoner who had not expectation of offending again.

We consider that, in the present state of knowledge and research, as the remission system works reasonably well—as it now exists—it should be preserved. Regulation 110 remissions are understood by prisoners and they know they can only lose them by operation of law, that is, the finding of guilty either of a disciplinary offence or a crime. If one were to put into the hands of individuals in the present state of knowledge, no matter how well motivated and experienced those individuals were, the right to allot marks and to release early on the strength of marks, it would create too much dissention.

Our recommendation is that the opening portion of s. 41 (3) should remain in its present form to make it quite clear that prisoners who comply with the appropriate standards of discipline in prisons are entitled to a mandatory remission provided their remissions have not been taken from them as a result of a disciplinary or other offence, by another sentence or by operation of law. We would support the preservation of the existing one-quarter and one-third rule, hence we think the existing Reg. 110 (a) should remain; Reg. 110 (b) should be repealed if our recommendation as to the repeal of the Habitual Criminals Act, 1958, is accepted.
There is a small consequential amendment required in Reg. 110 (a) to overcome
the anomaly that a man sentenced to 1 month gets released, if a first offender, in 20 days
whereas a man sentenced to 21 days would serve a day more. The regulation should
be amended to provide that the remissions shall commence at 1 month but shall not
operate to reduce a sentence of 1 month or more to less than 1 month.

Regulation 111 as now framed provides for three further sets of remissions,
(a) 2 days a month while carrying out a training programme, (b) 2 days a month
for an open institution, and (c) 2 days a month for employment in industry. Under
the existing regulations, to get the extra remissions, the prisoner must now exhibit, in
the opinion of the Governor, (a) excellence in conduct, training and education; (b)
excellence in conduct and industry; (c) excellence in conduct, training and industry.
There is a provision that a prisoner cannot get remission (c) in respect of a period
when he is entitled to remission (b).

In place of these unrealistic criteria we would suggest that subject to the
proviso abovementioned prisoners be entitled to the further 2 days a month remission
provided they were actively co-operative and of good behaviour in their training,
education and industry. It would be clearly understood that under Reg. 111 remissions
were subject to good behaviour and would be automatically forfeited by any proven
offences. This would mean that a man could actively earn up to 4 days a month,
subject to his good behaviour.

Regulation 110 Remissions, should only be forfeited by express order either
of the Superintendent, the Visiting Magistrate, or a Court. For the reasons which are
set out hereunder, we only make this as an interim recommendation. The Parole of
Prisoners Act, has now been in force for 8 years. It has been a beneficial piece of
legislation but at this stage it requires further investigation and examination which
does not appear to be within our terms of reference. Rather than have the conditional
aspect of s. 41 (4) of the Prisons Act left in the statute book without any effective
operation it might be desirable to have a provision in the Parole of Prisoners Act
providing that if parole is refused to a prisoner the Commission ought to be notified
so that consideration might be given to his situation in relation to conditional release
if he earns his remissions.

The whole problem of the relations of remissions and parole is a difficult one.
If and when the Parole of Prisoners Act is re-examined careful thought would have to
be given to s. 4 (3), emphasizing the freedom of the discretion of the sentencing Judge
as to whether he should or should not nominate a non-parole period. The figures of
that the proportion of prisoners being granted a non-parole period by the courts to the
total number of prisoners received with sentences of 12 months or more is very
consistent over the five quarters between July, 1972, and September, 1973 at 86 per
cent.

Whether parole in some form should be a mandatory incident of every lengthy
sentence will require future consideration.
CHAPTER 19—WITHHOLDING RELEASE

There may be circumstances in which it might be desirable to hold a prisoner beyond the expiry date of his sentence by remissions or even the imposed expiry day, or the day on which he could be released on parole. One can conceive of a prisoner who has undertaken a course of study and who has an examination coming up in a fortnight’s time which may fit him to go into a trade, and has nowhere to study if he left the prison. Perhaps it is not even beyond the realms of possibility that the examination may give him a university matriculation. It might be that no outside accommodation is immediately available for him but if some latitude could be allowed accommodation would be found for him with a job. We would suggest the insertion of a section giving the Commission power to allow the prisoner to remain in custody, at his request in writing, for a reasonable time after the expiry date of his sentence either as imposed or by remission or by order of the Parole Board if, in the opinion of the Commission, it is desirable to do so in the prisoner’s own interests for the purpose of completing an examination, a course of study or training, for the purpose of obtaining employment or accommodation for him or for such other reason as to the Commission seems sufficient even if it be merely a course of medical treatment.
CHAPTER 20—EXPUNGING RECORDS

Section 19 of the existing Prisons Act provides that:

Every prisoner shall be liable to be photographed, to have an impression of his fingers and palms taken and to have such details of his personal description as may be prescribed recorded.  

We think that the prison record of any prisoner should at some stage be expunged. Obviously a remand prisoner of good character who is acquitted should at some stage be so treated. As it is not possible to deal with a prison record except in relation to the wider record of a prisoner we feel that there should be some general provision for the expunging not only of the prison record but of the criminal record of a prisoner in certain instances.

We suggest an amendment along these lines: where a person has been convicted before his 21st birthday and—

(a) has not been convicted of any offence after attaining that age;
(b) has paid any fines and complied with any recognizance or any parole imposed on him;
(c) at least 3 years have elapsed since the terminating date of any sentence as imposed on him;
(d) the longest individual sentence or the aggregate of all the sentences imposed has been less than 3 years imprisonment,

then on fulfilment of the above conditions when or after he has reached his 25th birthday such conviction shall be disregarded for all purposes whatsoever and be inadmissible in any criminal, civil or other legal proceedings as being no longer of any legal force or effect.

We appreciate now that the age of adulthood is 18 but, if one is going to have an expunging provision this would seem to be too young, so we have come to the conclusion that the 21st birthday, 3 years after attaining the full legal age, is adequate, and a period of 4 years without any further offence plus 3 further years after expiry of the imposed sentences provide a reasonable basis for expunging the record.
CHAPTER 21—DISCIPLINE

We now turn to deal with the question of discipline in prisons. This is a very difficult and complicated matter but vital to the security of the public, other prisoners and officers.

The United Nations Minimum Rules, to which we have referred earlier, provide as follows:

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life;

28. (1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.

(2) This rule shall not, however, impede the proper functioning of systems based on self-government under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment;

29. The following shall always be determined by the law or by the regulation of the competent administrative authority:

(a) conduct constituting a disciplinary offence;

(b) the types and duration of punishment which may be inflicted;

(c) the authority competent to impose such punishment.

30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence;

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

In the portion of the report that follows we have sought to suggest a disciplinary code that will effectively carry into effect these rules and at the same time introduce a realistic and just method of protecting persons and controlling unjustified misconduct.

It is a basic requirement of a reasonable system of discipline that the person concerned knew what he can or cannot do and if possible why he cannot do what he is not permitted to do.

Every prisoner should have available to him in some form depending on convenience, either as a mimeographed form or a small booklet or as a notice in his cell, a statement written in simple English and not in legal terms setting out the minor and major offences against discipline and also the serious crimes which can be punished by additional or cumulative sentences. Copies of this statement in his own language should be obtainable for a person unable to read English.

On the matter of offences against discipline, we divide these into three categories:

(a) minor;

(b) major;

(c) cognizable by the public courts.

It is only in respect of matters that have been dealt with in open court that a prisoner should have his imposed sentence increased. The legal sentence is imposed by the court and within that legal sentence he is liable to the sanctions of the criminal law. If his remissions can amount to one year and he is deprived of 6 months of that he is still due to be released before his imposed sentence is concluded. We can see no objection in principle to a man being deprived of remissions WITHIN the limits of his imposed sentence by an intramural tribunal. However, different considerations would apply if a man sentenced to imprisonment has a sanction imposed on him which means that he is released AFTER his imposed sentence has elapsed. If any sanction in the case we postulate keeps him in gaol one day over his imposed sentence, the extra sanction should be imposed by a public court.
CHAPTER 22—THE VISITING MAGISTRATE

The Visiting Justice has for many years now been an integral part of the disciplinary framework of the prison. We think a semantic change in the title to “Magistrate” is desirable. We use the word “disciplinary” in its true sense because, if he does his duty properly, he has obligations not only to the officers and to the authorities but also to the prisoners.

In our opinion, on any consideration of an amendment of the Act, s. 10 should be recast and we would suggest recasting along these lines, portion of which involves the Minimum Rules, the existing s. 10, Pt 12 of the existing Regulations and Rules 185 to 189.

We would suggest a legislative declaration:

(1) For each prison there shall be a Visiting Magistrate who shall be a Stipendiary Magistrate subject to para. 5.

(2) There shall be a panel of Visiting Magistrates for each of the Prisons of the State. Such panel is to be prepared by the Chairman of the Bench of Stipendiary Magistrates by the end of November in each year for application in the following year.

(3) On preparation, the Chairman will forward a copy thereof to the Minister and to the Commission.

(4) It shall be the duty of the Chairman to maintain the panel up to date and to remove from the panel the name of any Magistrate who dies, or, subject to para. 5, retires, or whose name he thinks for any reason ought to be removed and add to the panel from time to time the names of such Stipendiary Magistrates as he thinks fit.

This casts on the Chairman of the Bench of Stipendiary Magistrates a duty that has hitherto fallen on the Minister but we are of opinion that, with the existing population of this State, the nature and extent of the problems that exist in prisons at the present time and the increasing elevation of the prestige of Stipendiary Magistrates, it is a function that could be properly dealt with by their Chairman.

(5) With the approval of the Minister the Chairman may place on this panel the names of any retired Magistrate who has not attained his 68th birthday, who may then be issued with a Commission authorizing him so to act.

This would mean that there would be available for the State the services of experienced, independent men for this service who could be paid some retainer in addition to their pensions which would enable, if necessary, the visiting services of the prisons to be maintained without delay and without impinging unduly on the ordinary work of the Magistrates Courts which at the present time are under heavy pressures of work.

We would suggest that the legislation contain further provisions along these lines, most of which come from the present Act.

(6) A Visiting Magistrate may visit and examine the prison in respect of which he is the Visiting Magistrate at any time he may think fit. He shall visit and examine such prison at such intervals as may be directed by the Minister.

(7) A Visiting Magistrate may and shall, when requested by the Minister or the Commission, inquire into and report to the Minister or the Commission as the case may be, upon any matter relating to the security, good order, control or management of the prison in respect of which he is the Visiting Magistrate.

(8) In the event of a Visiting Magistrate being unable, through illness or other sufficient cause, to visit any prison, the Chairman shall forthwith assign another person whose name is on the panel to visit and examine such prison.
(9) The Visiting Magistrate shall forthwith visit the prison whenever applied to by the Superintendent and shall hear and determine all cases awaiting adjudication and, where the character of any alleged offence may be beyond his power to deal with in the prison, he shall adjourn the same to Open Court to be dealt with by him (unless he is a retired Magistrate) or by another Stipendiary Magistrate.

(10) The Visiting Magistrate shall permit no publicity to be given to cases adjudicated upon within the prison.

(11) The Visiting Magistrate shall privately interview such prisoners as have expressed their desire to see him.

(12) The Visiting Magistrate shall cause to be kept depositions of all cases adjudicated upon by him.

(13) And he shall cause to be kept a written record of all complaints and requests by prisoners, including any action taken.

Section 24 would require another amendment, to delete the "one justice" and "two justices" of the provisions because the Visiting Magistrate would render these unnecessary and it is envisaged he would have the jurisdiction of the two justices.
CHAPTER 23—MINOR OFFENCES AGAINST DISCIPLINE

We take the view that there are minor offences the control of which is necessary for the proper running of the institution and for the safety of its officers and inmates, and which ought to be dealt with by the Superintendent or the Visiting Magistrate without the necessity for the man being represented. The Visiting Magistrate would of course have all the jurisdiction the Superintendent possesses as well as those specifically given to him. We think that there are more serious ones which ought to be dealt with by the Visiting Magistrate within the prison, without the necessity for the man being represented, provided that he has in each case the full opportunity given to him by United Nations Rule 30 (2).

Then there are the offences of a different sort which would be offences, whether committed by a prisoner or someone outside the prison, which have to be put in a different category. These ought to be dealt with by the ordinary court and a Visiting Magistrate should have the right, as the Visiting Justice has now, to refer any of such offences to the ordinary courts.

We would therefore suggest a redrafting of the existing sections in Pt 4 of the Prisons Act to provide as follows:

For the purposes of this part the following shall be deemed to be minor offences against prison discipline, whether such offences are committed within a prison or outside a prison whilst in custody or deemed to be in custody—

1. Using any obscene, abusive or threatening language to any person;
2. Being idle and careless at work or, being required to work, refusing to do so.
3. Delivering to or receiving from any person any unauthorized article, not being a firearm, ammunition, explosive or drug as later referred to.
4. Having with the above exceptions an unauthorized article in his possession.
5. Committing a nuisance.
6. Failing to keep himself clean.
7. Preferring a complaint against any person knowing the same to be false.
8. Late return after work release or leave granted to be absent from the prison for any purpose.
9. Intoxication when on work release or leave for any purpose.
10. Disobeying any order, regulation or standing order or any lawful order of the Commission or of an officer.
11. For the purposes of para. 10 “lawful order of the Commission or of an officer” includes any order given by the Commission or an officer for the purpose of securing the enforcement or observance of the provisions of the Act, which orders the Commission and officers are hereby authorized to give.

It will be observed that we have widened the scope of the section as compared to the existing section. Then we would suggest that existing s. 23 (a) should, in a somewhat recast form, be preserved so that in the case of where a prisoner has committed or is suspected of having committed a minor offence against prison discipline and such prisoner admits the facts alleged against him in respect of such offence to be true or consents in writing to the Superintendent of the prison herein determining the matter, such Superintendent may hear and determine the matter. If the Superintendent of the prison finds that such prisoner has committed an offence against prison discipline as aforesaid, we would suggest that in addition to ordering confinement to a cell for a period not exceeding three days or deprivation of privileges as now provided by s. 23 (a) the Superintendent be given power to fine the prisoner a sum not exceeding $20 out of any money standing to the credit of him or to forfeit his entitlement to remissions to which he is entitled under Regulation 110 for a period not exceeding fourteen days, alternatively, or in addition to the remissions lost by reason of confinement to cell.
CHAPTER 24—MAJOR OFFENCES AGAINST DISCIPLINE

Then we would suggest that a section along these lines should be introduced:

For the purposes of this Part the following shall be deemed to be major offences against prison discipline, whether such offences are committed within a prison or outside whilst in custody or deemed to be in custody:

(a) Mutiny if, in the opinion of the Visiting Magistrate, the circumstances are not sufficiently serious to justify the prisoner being charged before a court;

(b) Incitement to mutiny if, in the opinion of the Visiting Magistrate, the circumstances are not sufficiently serious to justify the prisoner being charged before a court;

(c) An assault on any person if, in the opinion of the Visiting Magistrate, the circumstances are not sufficiently serious to justify the prisoner being charged before a court;

(d) Threatening personal violence to any person;

(e) Making any concerted noise designed to harass or interfere with the proper discipline and control of the prison;

(f) Deliberately interfering with the water supply, electricity supply, sewerage system, or any other of the amenities or facilities of the prison;

(g) Wilfully breaking, damaging, destroying or disfiguring any part of the prison or any property not his own, or defacing, or writing on the wall or other property of any person;

(h) Escape if, in the opinion of the Visiting Magistrate, the circumstances are not sufficiently serious to justify the prisoner being charged before a court;

(i) Attempt to escape if, in the opinion of the Visiting Magistrate, the circumstances are not sufficiently serious to justify the prisoner being charged before a court.

The catena of sections that follow s. 23 would need to be amended by substituting the word “Magistrates” for “Justices” which would carry with it minor consequential amendment to s. 24 (2) (a). Section 24 (3) would require certain amendments in our view too, so it would read:

A prisoner against whom a conviction of a major offence against prison discipline is found proved pursuant to this section shall be liable to—

(a) confinement to a cell for a term not exceeding 14 days, and/or

(b) such forfeiture of remission of sentence to which he is entitled under Regulation 110 which would otherwise be granted to him in accordance with this Act as to the Visiting Magistrate may seem fit, and/or

(c) deprivation of rights, and/or

(d) a fine of a sum not exceeding $100 out of any moneys standing to the credit of the prisoner.

The existing s. 25 in our opinion is a necessary and salutary section which should be kept, leaving it to the Visiting Magistrate to decide whether or not he ought to refer the matter to open court, either in the Court of Petty Sessions or to enable it to be dealt with by way of indictment.

There may be circumstances in which it might be desirable for the public hearing to take place in a prison, which would of necessity involve the finding of a suitable room and the giving of adequate access to the press and to the public. It might be desirable to have such a provision in the Act in the interests of flexibility so that in the case of a serious gaol break-out or a riot, instead of risking the security of a magistrate in an ordinary court, the courtroom be assembled within the confines of the gaol. We merely mention this matter without making a firm recommendation because it has elements of security both ways. On the other hand, the security problems and the problems of allowing some members of the public access to a courtroom within a prison might be a thought to be insoluble.
We would suggest that s. 25 as it now stands be amended by putting in a sub-clause (c) so that, if the Visiting Magistrate were of the opinion that the complaint which he was hearing was of such seriousness that a sentence or sentences cumulative to the sentence or sentences being served might reasonably be awarded, he could have power to abstain from any further adjudication thereon as Visiting Magistrate and to cause the matter to be dealt with by reference to open court before him or another magistrate, or on indictment. This would automatically give rights of representation and appeal to the prisoner.

We would suggest that s. 34 in any redrafting of the Act be moved to a different position in the Act to emphasize that it is an offence capable of being committed only by a prisoner.

It should be observed in the existing Act by s. 23 (a) escape or attempt to escape are offences that can be dealt with by the Visiting Magistrate, but by s. 34 escape or attempt to escape are felonies punishable by penal servitude for a term not exceeding 7 years to be served cumulatively. We have attempted to make it plain that the Visiting Magistrate's jurisdiction to deal with escape or attempted escape is one that is to be used in those circumstances which do not possess seriousness or where no attempt is made to attack officers, use firearms or create public danger. Escapees and attempted escapees can fall into all areas of seriousness and the less serious which justify only forfeiture of remissions of sentence or other summary penalties are proper to be dealt with by the Visiting Magistrate and, of course, there is the provision in the existing s. 25 that if he thinks that it should be dealt within an ordinary court he can order it to be so dealt with.
CHAPTER 25—PROCEDURE BEFORE SUPERINTENDENT OR VISITING MAGISTRATE

We would suggest a new section to the Act in cases of disciplinary offences heard before a Superintendent or Visiting Magistrate along these lines:

(1) Where a prisoner is to be dealt with for offences against discipline the charge should be laid as soon as possible;

(2) Where a prisoner is so charged he shall be informed of the charge as soon as possible and before the charge is enquired into;

(3) A prisoner who is to be charged with an offence against discipline may, by direction of the senior officer, be kept apart from other prisoners or classes of prisoners pending adjudication;

(4) Every charge shall be enquired into, save in exceptional circumstances, not later than the next working day after it is laid;

(5) Outside the metropolitan area of Sydney, to avoid delay the prisoner may, by direction of a Visiting Magistrate if a Stipendiary Magistrate, be conveyed to a convenient court house and the magistrate may adjudicate there;

(6) At any inquiry into a charge against a prisoner he shall be given a full opportunity of hearing what is alleged against him and of presenting his own case;

(7) Where necessary and practicable, the prisoner shall be allowed to make his defence through an interpreter.
CHAPTER 26—SERIOUS OFFENCES

As we have attempted to make clear earlier, these should all be dealt with in the public courts of the State, with the same rights of open hearing and counsel as any other accused persons have, and the same rights of appeal. We are of the opinion that courts which deal with prisoners who commit offences against the general law while prisoners should have power not only in all cases to order forfeiture of remissions but to impose sentences cumulative on those being served. We do not think that the present Act makes it plain that courts as well as a Visiting Justice may order the forfeiture of remissions. We think that courts should certainly have this right as part of the ordinary machinery of public justice in appropriate cases.

There are a great number of offences which can be committed by prisoners within the prison such as assault, malicious wounding, wilful damage to property and many others, which are offences against the general law. So far as these are concerned they should be preserved and dealt with for what they are by trial and conviction in the ordinary courts and if, in the opinion of the judicial officers concerned, they justify forfeiture of remissions they should have power to order such forfeitures and if as now they think they require consecutive sentences then this power should be preserved.

Section 32 of the Act does not appear to require amendment, neither does s. 33. We think, however, that the escape sections of the Prisons Act and the Crimes Act need to be reconsidered. Section 34 of the Prisons Act and a redrafted s. 447 (a) of the Crimes Act should, in the interests of clarity be made into a section containing two subsections. This would involve the repeal of s. 447 (a) of the Crimes Act and its re-enactment within the Prisons Act in a somewhat different form. It is not clear whether the word "liable" in s. 447 (a) creates an automatic liability to serve the period between escape and recapture or whether the word "liable" in this context authorizes the judge before whom a person is brought when charged with escape to order that the period of absence from prison after the escape and before recapture should be added to the sentence. Apparently at Common Law, where a prisoner escaped and was recaptured after his imposed sentence, he could not be called upon to complete the sentence and, to overcome this problem, s. 447 (a) was enacted. We would therefore suggest that s. 34 be extended along these lines, that:

(1) Any person who, being a prisoner in lawful custody, escapes or attempts to escape from such custody, shall be guilty of a felony and should be liable to penal servitude for an appropriate term which, in the case of a convicted prisoner undergoing a sentence involving deprivation of liberty, is to be served, unless the Court otherwise orders, after the expiration of any term of imprisonment, penal servitude or detention to which he was subjected at the time of his escape, or attempt to escape;

(2) provided that when any person escapes from lawful custody whilst undergoing a sentence involving deprivation of liberty, the court shall have a discretion to determine that he undergo the punishment, which he was undergoing at the time of his escape, for a term equal to that time during which he was absent from prison after the escape and before the expiration of the term of his original sentence or any part thereof whether or not at the time of his recapture, the term of that sentence had or had not expired. It is intended by this provision to cast clearly upon the Courts the responsibility of the appropriate determination.

Section 35, in our opinion, does not require amendment.

In s. 36 (b) the penalty for summary conviction should be increased to $5,000 to deal with the decrease in the value of money, and ss. 37 and 38 should be amended by increasing the penalty from $200 to $1,000.

On any redrafting of the Act we suggest that mutiny be specifically dealt with by a new section which would provide that any person who, being a prisoner in lawful custody, mutinies or whether such a prisoner or not incites any prisoner to mutiny, should be guilty of a felony and should be liable to a period not exceeding 7 years which, like escape, should be consecutive on the sentence being served.

Furthermore, we think that it should be provided that any person, whether a prisoner or not, who has unlawfully in his possession in a prison or introduces or attempts to introduce into any prison, any firearm, ammunition, explosive or other thing intended to assist a mutiny or the escape of a prisoner should also be guilty of a felony, and be liable to penal servitude for a term not exceeding 7 years and, if a prisoner, such sentence should be consecutive with his then current sentence.
We suggest a new statutory proviso that:

(a) Any officer who has reason to suspect that a person within or near any prison, not being a prisoner, intends or has attempted to introduce into any prison any drug referred to in the previous proposed clause or any firearm, ammunition, explosive or any other thing intended to assist the escape of a prisoner, such officer may arrest and search such person and may exercise in relation to such person, if any such drug, firearm, explosive, ammunition or other thing is found in his possession, all the powers of a member of the Police Force;

(b) Any officer who has reason to suspect that any vehicle, container, suitcase or other thing within or near any prison contains any drug referred to in the preceding clause or any firearm, ammunition, or other thing intended to assist the escape of a prisoner, such officer may impound such vehicle, container, suitcase or other thing and may arrest any person who appears to such officer to be in apparent possession thereof or any of the things mentioned are found and may exercise in relation to such person all the powers of a member of the Police Force.

The existing Act makes no provision for the searching of prisoners but by Regs 12, 13 and 14, searching is provided for. It might be desirable in the interests of clarity and to establish the right to search that some reference be made to it in the Act itself rather than in the Regulations.

There is also a need for an amendment of s. 38. A person who under s. 38 (1) (c) smuggles in a letter from a wife is in a very different category to a person who attempts to smuggle in a drug of addiction or even more so the person who attempts to smuggle in the firearm. Section 38 (1) (c) therefore should be amended by adding the words after "thing"—"other than a drug, within the meaning of Pt 4 of the Poisons Act, 1966, a firearm, ammunition or explosive". Section 38 (1) (f) would also require amendment; leaving a few dollars under a brick in a prison might be regarded as much more venial than leaving a revolver or some bullets or some gelignite, and hence the secreting should also have the same limitation "other than drugs, firearms, ammunition or explosive".

A special provision is necessary to deal with the smuggling of drugs into prisons.
CHAPTER 27—THE EXISTING RULES

The whole of the rules made in pursuance of the Prisons Act, s. 49, in our opinion is outmoded and should be repealed in toto and replaced not by one set of blanket rules covering all institutions but by a set of standing orders applicable to each institution separately.

The problems of each institution are different and attempts to run them all under one set of rules which is directly conditioned to maximum security will lead either to a disregard for the rules or a rigidity in administration which is inconsistent both with that effective training programme necessary to return the maximum possible number of persons to the free world and effective security where it is needed.

If the rules are to be replaced by standing orders for each institution, then in some places it might be possible to have what is intensely desirable, namely, a minimum of directives capable of being varied and adapted instantly if need arose, but in other places—particularly in maximum security institutions where necessarily there are detained the prisoners whose escape would be highly dangerous to the public or to the police or to the security of the State—more and stricter directives are necessary.

We suggest that it be provided in the Act as part of the duty of each superintendent to revise the standing orders in December of each year so that, instead of having a system in which rules are left unamended as the rules of 1956 have been substantially for 18 years, or having the situation in which it is impossible to find out—as has happened in the cases of other regulations in different fields—exactly what the applicable regulations are, the whole of the standing orders are looked at and brought up to date at yearly intervals so that they can be revised in a concise and short form without amendments being pasted here, there and everywhere and so that staff and prisoners know what they have to do and what they may not do. We suggest a regulation that in November of each year the Superintendent should consult with appropriate representatives of his staff before settling the standing orders for the next year so that the points of view and opinions of his officers can be considered. Rule 2 of the existing Rules provides for an order book but there is no provision for it being kept up to date. The essence of an effective system of rules or orders is that they be short, concise, clear and up to date, and that they be re-examined and revised regularly, and if anybody looks at them he knows that they are all there. This is particularly important in the case of prisoners who are likely to lose remissions for breach of them and for officers who have to enforce discipline.

It is a criticism of the rules as a whole as they now exist that they are entirely oriented to the "lock-up" situation and take no account of anything that might be regarded as training for release and certainly do not bring into effect Minimum Rule 27 of the United Nations Rules. We cannot overemphasize the need for (a) flexibility; (b) the orders for each institution having regard to the position of that institution; (c) continuous revision; and (d) ease of reference.

The 281 rules made under s. 49 of the Prisons Act do not comply with these criteria because the existing rules are heavily weighted in favour of the punitive and custodial.

We have already indicated our view that the rules as to firearms and self-defence should be incorporated in the Act itself. Rules 7 to 54 set out a series of negative prescriptions which seem to be directed to mistrust of prison officers. The misconduct of prison officers should be a matter for the Public Service Act and Regulations, not a series of rules directed at them alone. We have referred to this earlier. The matters that are dealt with in the rules we have mentioned are things that any competent superintendent should see were done anyhow. Rules 55 to 61 inclusive have to some extent already been dealt with. We have, it will be recollected, recommended part of these be incorporated in the statute. Rules 62 to 184 inclusive deal with matters of pure administration which could and should vary from institution to institution and which scarcely require the meticulous detailed directions if the administrator applies sound canons of administration and if the standing orders that we envisaged are drafted having regard to the needs of the institution.

Rules 185 to 189 dealing with the Visiting Justice are in our opinion so important that they should not be in the Rules but should be in the Act or Regulations, and it will be observed that we have dealt with much of what appears there as being matters we recommend should be put in one or other of those categories.
Turning now to Rules 190 to 224, if a proper medical and dental service is available as it ought to be, then it is not necessary to hedge in the responsibility of those concerned by Rules which, if the service were efficient, would be applied automatically. Some of the matters referred to in the Rules should be incorporated in the Statute or Regulations. We refer, for instance, to Rule 193. If such a state of affairs arose it should be a statutory duty on the Superintendent to ensure that it was brought to the notice of the Minister. Rule 235, for instance, giving the police the right to visit prisoners should be incorporated in the Regulations. The Rules as to the earnings by prisoners in our opinion should be repealed and it should be by Statute part of the ordinary function of the Commission from year to year depending on the budgetary provisions made by Parliament for the service of the work of the Commission to make provision for the credit of earnings by the prisoners so that, depending on the circumstances, depending on the changes in the value of money and depending on the work done by prisoners, the Commission would all the time be reviewing and revising the scale of earnings to prisoners which would be always kept up to date and in convenient form. This is the sort of area where the policy of the Commission should be periodically enunciated as a matter of routine by the Commission itself.

Perhaps the best argument as to the redundancy of Rules under s. 49 lies in the fact that, though these may be made by the Commissioner himself, only Rules 242, 243, 252, 255, 259 and 271 have been altered since 1956.

One portion of the Rules which requires immediate repeal is that dealing with the purchase of newspapers by prisoners. If the purpose of prison be to fit a man after he has served his sentence, working through work release, home leave and parole to restoration to the community as a citizen with full rights, it seems pointless to deny him the right to more than one paper weekly. Rule 264 as to censorship of the newspaper seems pointless in the light of modern conditions, as does Rule 265. To have a Rule preventing men accumulating rubbish or a fire hazard by keeping newspapers in their cells is one thing, but Rule 265 in its present form seems unduly restrictive, as is the prohibition against prisoners being permitted to take a newspaper outside their cells. Rule 266 and the following Rules as to indulgences ought to be abolished and for them substituted a standing order in respect of each prison indicating what men are allowed to buy from the prison store and authorizing extra issues of food and other things in appropriate cases.
CHAPTER 28—PROTECTION OF OFFICERS, PRISONERS AND OTHER PERSONS

We are of opinion that the Act itself should contain some reference to the rights and liabilities of armed officers. The existing Prison Rules made under s. 49 of the Act (Rules 55 to 61 inclusive) contain provisions dealing with officers at armed posts. These Rules should be repealed, recast and incorporated into a public statement of the duties and obligations of armed officers, and in so far as any portion of them is not incorporated into the Act it should be incorporated into the Regulations, the public document which is to be laid before Parliament.

We would suggest that rather than leaving the present vague and uncertain state of affairs to exist that the Act itself contain a code:

1. In any security prison there shall be such armed posts as the Superintendent may direct;

2. Officers on such posts shall carry such arms as the Superintendent may direct;

3. Except at the discretion, in emergencies, of the Superintendent, at no time will any officer carry arms within the prison or in the immediate presence of prisoners;

4. Officers on armed duty may where in their opinion it is reasonably necessary to do so use their arms to prevent escape and to protect themselves, prisoners and other persons and to prevent or quell a general riot where there is a reasonable probability of death or injury to himself, any other officer, prisoner or other person;

5. Officers escorting any violent or dangerous prisoner or any prisoner likely to escape may be issued with such arms as the Superintendent may determine;

6. Officers escorting prisoners may where it is in their opinion reasonably necessary use their arms to prevent escape, to protect courts, officers, prisoners and other persons, and to protect themselves;

7. Wherever a firearm is discharged by any officer, except in the course of proper training, the Commission shall hold an enquiry into such discharge and shall report thereon to the Minister.

By the existing Rule 4 it is provided that an officer shall not strike a prisoner unless compelled to do so in self-defence. In any case, if the application of force to a prisoner is needful, no more force than is necessary shall be used. It is to be observed that the existing rule makes no provision for the defence of another prisoner. The English Rule 44 provides that an officer, in dealing with a prisoner, shall not use force unnecessarily and when the application of force to a prisoner is necessary, no more force than is necessary shall be used; (2) no officer shall act deliberately in a manner calculated to provoke a prisoner.

In our view it would be desirable to codify also the rights of officers to use force and we would suggest codification in the statute along these lines: that officers where in their opinion it is reasonably necessary to do so to prevent escape, to protect themselves, officers, prisoners and other persons, to prevent the prisoner injuring himself, and to prevent or quell a general riot or where it is necessary to place a resisting prisoner in a cell, may use such degree of force as is reasonably necessary to fulfil such object. Wherever any force is used on a prisoner the officer using that force shall forthwith report the same to the Superintendent.
CHAPTER 29—MENTAL DEFECTIVES (CONVICTED PERSONS)
ACT, 1939

We would strongly suggest the repeal of this Act. It has been on the statute book now for 35 years, has been used very rarely and at the present time there are no persons retained under its provisions.

CHAPTER 30—HABITUAL CRIMINALS ACT

In our opinion the Habitual Criminals Act, 1957–58 is now obsolete and should be repealed. On 27th June, 1974, there were seventeen persons serving sentences imposed on them as habitual criminals under s. 6 of the Act.

The experience not only in this State but also in other parts of the world is that the existence of habitual criminals legislation does not prevent either crime or recidivism. In the days of the indeterminate sentence when a declaration as an habitual criminal was one of the most feared of all the sanctions that the courts possessed, there was no evidence that the existence of such a statute in the slightest degree reduced the amount of crime or increased the chance of the person who had been declared an habitual criminal not offending again.

It should be noted that s. 443 of the Crimes Act provides for a case in which the presiding judge is of the opinion that the maximum punishment provided for an offence is insufficient in the circumstances and enables the judge to sentence him to a term of punishment in addition to that prescribed for the offence. We think it would be preferable to use s. 443 rather than the Habitual Criminals Act in proper cases.
APPENDIX

We have added by way of Appendix to this report four chapters dealing with the Court's relations to the Corrective Services Commission and with Prisons.

It is impossible to have a Correctional Services Act or Prisons Act without the problems of the Courts and Prisons and prisoners meeting at some point.

This is recognized in ss. 11, 39 and 40a of the Prisons Act, 1952. Though the subject of the relations of Courts to Prisons stands a little apart from the task we have undertaken, it is in our view sufficiently germane to it to justify us adding these chapters.

Recent events in this State point to the possibility of prisoners in prisons embarking on courses which may render the orderly conduct of the Courts impossible, and events abroad indicate the need for Protection of the Courts. Hence we regard it as being an essential part of our task to examine the matters which appear below.
APPENDIX I—THE SHERIFF AND PRISONERS

The powers and duties of the Sheriff in relation to the prisoner have not hitherto had much examination in any of the appropriate legislation nor in the cases. So far as the Sheriff's power over prisoners is concerned, this is enshrined in the Common Law and was given recognition by earlier statutes now repealed by s. 8 of the Prisons Act No. 9 of 1952. This power is enforced by arrangements which have just grown up like Topsy between the Police Department, the Corrective Services Department and the Sheriff. We think that this requires some examination and that it should be clearly spelt out in terms which go far beyond the words of the existing s. 8 of the Prisons Act, No. 9 of 1952.

We think, in any event, that that section should be re-enacted but we add certain suggestions in connection with its re-enactment.

(a) every prisoner while detained in a prison shall be deemed to be in the custody of the Superintendent of the Prison to which he has been committed or removed and the liability of the Sheriff or other person delivering such prisoner shall cease on delivering of such prisoner to the Superintendent of the Prison or his authorized representative;

(b) every prisoner shall be deemed to be in the custody of the Sheriff whilst within the precincts of any Supreme or District Court.

This would involve, in the case of remand or trial prisoners or appellants, them being the responsibility of the Corrective Services Department until they got to the Court House and from then on the Sheriff should be responsible until redelivered to Corrective Services. The "footpath" situation should be clarified.

It is the legal duty of the Sheriff to effect appropriate arrangements for the protection of Courts, juries and witnesses and the security of prisoners at Court and, to discharge that duty, he must either be given the means himself, or he should have the right to call upon the services of the Commissioner of Police and the Commissioner of Corrective Services.

In the event of any inability or unwillingness to provide that assistance, the Sheriff should be required and empowered to refer the matter directly to the Chief Justice whose decision as to such arrangements should be made in writing and should be legally binding on the Sheriff, Commissioner of Police and the Commissioner of Corrective Services.

We also suggest that it should be the duty of the Sheriff, the Commissioner of Police and the Commissioner of Corrective Services from time to time to effect suitable arrangements for the escort of prisoners to and from prison to Courts, such arrangements to be legally recorded. We would suggest that the same arrangements as to referral to the Chief Justice, and his arbitrament should take place in this area likewise.

Though it may not be possible in the immediate future for a change to be implemented, we would point out that we regard it as undesirable that the Police should guard prisoners undergoing trial and call witnesses in the Supreme Courts and District Courts. In England this work is undertaken by warders, and we are of the opinion it would be better if uniformed officers of the Department of Corrective Services undertook this work instead of Police Officers. It is essential that in trials on indictment juries have it made perfectly plain to them that the Courts and the Police are independent of each other. While Police Officers are used to look after prisoners in the presence of juries this independence is not made manifest though it exists in fact.

In the Supreme and District Courts, it is absolutely essential, in the interests of judicial independence, that the Sheriff, the officer charged by law with the security of the Courts, should retain that responsibility and be given the means to enforce it but for practical purposes he will have to use another agency.

Owing to the magnitude of the work undertaken by the Courts of Petty Sessions, and the diversity of locality of their sittings, we do not think it would be within the bounds of reasonableness to suggest that security for these courts should be in any hands other than the Police, but we think it should be clearly spelled out in legislation just where the responsibility of the Corrective Services ends in relation to prisoners delivered over to the Courts of Petty Sessions, where the obligations of the Police begin and end, and where the legal custody of prisoners who are at Courts of Petty Sessions lies.
APPENDIX II—JUDICIAL EXAMINATION OF PRISONS AND GAOL DELIVERIES

It is in our opinion essential that in any redrafting of the Prisons Act, along the lines we have indicated as a Corrective Services Commission Act, the power of a Judge of the Supreme Court or a Judge of the District Court to visit and examine any prison at any time he may think fit be preserved and extended.

The Courts should have a great interest in the Prisons and the state of affairs in them. We hence recommend that the Chief Justice at least once in each year appoint a Supreme Court Judge or Judges to inspect and report to him on the Malabar Complex, Parramatta, Goulburn, Maitland and Cessnock and Bathurst (if rebuilt). By this means, it would be ensured that the Supreme Court of the State made itself cognizant of prisons and trends and conditions. No great difficulty would be found in practice because Supreme Court Judges sit at Newcastle, Goulburn and Bathurst and will next year be sitting at Parramatta.

Gaol Deliveries. It has not been appreciated in the past how important an audit the gaol delivery is. What makes it important is not that prisoners who are in gaol without legal warrant be discovered but the fact that with a system of gaol deliveries people are just not held without proper warrant because each one of them has to be accounted for when the Judge comes to deliver the gaols at quarterly intervals. After Sir John Kerr became Chief Justice a system was introduced under which the Judge delivering the gaols makes a detailed report to the Chief Justice, but this has merely been done by administrative arrangements between the Chief Justice and the individual Judges concerned.

We would suggest that s. 40a the Gaol Delivery section of the Prisons Act, be amended by increasing the fine for failing to make returns under s. 40a (2) to at least $2,000 and by also providing in the statute that it shall be the duty of the Prothonotary to give public notice of sittings of the Supreme Court to deliver the gaols, and we would suggest the adding to the section a provision that as well as the ordinary return to the Prothonotary, which his associate makes after each gaol delivery, that the Judge who delivers the prisons be required as soon as reasonably possible to make a report to the Chief Justice upon such delivery, so that if it should ever transpire that any person is being held without legal warrant or is being held without trial for an abnormally long period the fact becomes known.

We would also suggest the adding to s. 40a another subsection. There have been cases where, to meet the convenience of counsel or for other reasons, trials of persons held without bail have been unduly delayed, and we would therefore suggest a subsection that the Judge who delivers the prisons, may, if he thinks the incarceration of any person awaiting trial in custody is unduly long, require the production of such person before him in order that he may enquire into the circumstances of such person's incarceration and make such order for a speedy trial as he thinks fit.

Bail procedures were recently examined by a working party of which Mr Barrier was a member and a report made to the Chief Justice on 26th February, 1974.
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APPENDIX III—COURT OF CRIMINAL APPEAL

It would be impossible to suggest improvements to the Prisons Act and Regulations without reference to the provisions of s. 18 of the Criminal Appeal Act, 1912. By s. 18 (1), it is provided:

An appellant who is not admitted to bail shall, pending the determination of his appeal, be treated in such manner as may be directed by regulations made under the Acts relating to prisons.

Sixty-two years have elapsed and no detailed regulations have yet been made except for an odd reference in Regulations 10, 11 and 64.

Section 18 (2) deals with bail and is not material for our purposes.

Section 18 (3) provides shortly that the time during which an appellant in custody is specially treated as an appellant under the section shall not count as part of any term of imprisonment or penal servitude.

At the time the Criminal Appeal Act, 1912, was enacted the first period of any prisoner’s sentence was spent under rigid conditions of confinement and dietary restriction, fortunately now long since abolished. An appellant is incarcerated now after conviction and sentence in the remand section of the gaol and by and large does not work, though he may work if he elects to do so.

The reasons why an appellant should be “specially treated” have long since gone.

An appellant who appeals, having been first duly convicted by a properly constituted tribunal, has the onus placed on him to show miscarriage at his trial or, if he appeals on sentence only, that it was too severe. If he appeals on sentence only he appeals on the assumption that he was validly convicted and hence even if his sentence is reduced, his incarceration is the direct result of his valid conviction. If he appeals against conviction and is granted a new trial then he is usually granted bail between appeal and new trial. Legally, it would be unreal to treat an appellant as a person who has not been convicted and in any event there must be a presumption, until the Court of Criminal Appeal intervenes, that the conviction was right.

Our suggestion is that s. 18 in its present form be reframed as follows:

Subsec. (1) ought to be omitted. Subsec. (2) would become subsec. (1). Subsec. (3) would be omitted and would become as follows:

The time during which an appellant is liberated on bail or recognizance pending the determination of his appeal shall subject to any directions which the Court may give to the contrary in any appeal, not count as part of his sentence. The time during which an appellant is in custody shall count as part of his term of imprisonment or penal servitude under his sentence unless the Court orders that the time spent between the date of lodgment of the notice of appeal or application for leave to appeal and the date of disposal of that appeal or application, or any part thereof shall not count as part of the sentence.

It will be observed that the proposal recognizes the right of a convicted person to exhaust his legal remedies without the imposition of further penalty except in the presence of impropriety and seeks to give legislative sanction to what the practice of the Court of Criminal Appeal was for nearly the last quarter of a century, namely that unless an appeal is frivolous or vexatious the Court makes an order for time to count.

It is idle to speak of special treatment in relation to confinement in a remand yard and it would be better for all concerned, and especially in cases of appeal against sentences only, that once a person is convicted he be required to work and be otherwise treated in the same way as any other convicted prisoner.

The present practice is that officers of the Department of Corrective Services bring prisoners in from prisons and into the Courts though the legal responsibility so to do lies with the Sheriff. If special arrangements have to be made the Court Constable and other Police are available. It is with knowledge of the above that we have made...
the suggestion earlier in this report that the three services involved, namely, the Sheriff, the Police and the Corrective Services, work out an arrangement for the custody of prisoners in the Courts who are serving sentences and who either come as appellants or witnesses.

We have suggested earlier in this report that it be clearly spelled out by legislation what the legal duty of the Sheriff is in relation to the security of prisoners at Courts and in the event of suitable arrangements not being made that the matter should come to the arbitrament of the Chief Justice.

If this suggestion is adopted then a suitable amendment of s. 18 (4) of the Criminal Appeal Act will have to be made to effect the changes we propose. Specific legislation should also provide for convicted persons who have to be brought from prison for the purpose of District Court Criminal Appeals. It should be made clear that it is the duty of the Corrective Services Department to convey prisoners to the Courts there to be delivered into the hands of the Sheriff. The Sheriff is then responsible for ensuring adequate security for prisoners in Courts and adequate protection for the Courts themselves. Other arrangements may of course still be made with the Police if necessary.
APPENDIX IV—PROTECTION OF COURTS FROM PRISONERS

A grave defect in the law of this State exists in the lack of control over prisoners exercisable by Courts in this State. If the problem of a mass disturbance, i.e. by a group of prisoners, (or even by one or two), should occur in a New South Wales Court it is likely to be the result of an arrangement made between prisoners.

By s. 617 of the Criminal Code of Queensland (Queensland Statutes 1962 vol. 3, p. 193 and p. 532 it is provided:

PRESENCE OF ACCUSED. The trial must take place in the presence of the accused person, unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable, in which case the Court may order him to be removed, and may direct the trial to proceed in his absence.

Provided that the Court may, in any case, if it thinks fit, permit a person charged with a misdemeanour to be absent during the whole or any part of the trial on such conditions as it thinks fit.

If the accused person absents himself during the trial without leave, the Court may direct a warrant to be issued to arrest him and bring him before the Court forthwith".

This was the section which Lucas, J. invoked in the recent "Whisky Au Go Go" trial in Brisbane to enable the trial to be proceeded with in the absence of the accused who was deliberately disrupting it.

In R. v Cornwell, 1972, 2 N.S.W.L.R. 1 a prisoner being refused to be allowed to change his plea commenced to interrupt the proceedings, using coarse and unseemly language, so that after some number of such interruptions the Judge directed the prisoner to be removed from the Court. He was then removed and sentenced in respect of certain charges to which he had pleaded guilty.

At p. 3 of the report in 1972, 2 N.S.W.L.R. this was said by Jacobs, J.A. who presided:

The fourth ground of appeal before this Court is that the learned Chairman was in error in sentencing the appellant in his absence. It would appear that, in the case of a felony, it is a requirement of the law that the prisoner be present at the time of sentence if he is in custody and does not voluntarily waive that right. This is made clear in the decision of the Privy Council in Lawrence v. The King (1933) A.C. 699. An absconding whilst on bail may be a voluntary waiving of the right. R. v. Jones (1972) All E.R. 731.

It is a question whether in the case of the trial generally there is a further exception or a proviso to the absoluteness of this rule namely, that the conduct of the accused is intended to and does make the trial impossible. That case was reversed in Lawrence v. The King, but there is other authority for such a proviso. However, in the present case it cannot be said that the trial was impossible because the proceedings had reached the stage of sentence, and as Smith, J. points out in R. v. Vernell (1953) V.L.R. 590 at p. 600, in the case of sentence the requirement that the trial becomes in fact impossible can never be satisfied. His Honour said: "It must always be possible for sentence to be passed in the presence of the prisoner, whatever efforts he may make to prevent it". I respectfully agree, and, when one is faced with the strong decision of the Privy Council in Lawrence v. The King and with no possibility of applying any proviso, the result must follow that the prisoner must be present at the time of sentence. He was not, and therefore the trial aborted.

The language that the prisoner used to the trial Judge in Cornwell’s case was of a type which no Judge would be required to tolerate, and to allow a prisoner, even while being sentenced, to stand in the dock and scream abuse at the Judge knowing that his sentence will be such that no extra sentence for contempt would be material to his case is unthinkable.

The Court of Criminal Appeal of this State granted a new trial though the prisoner had pleaded guilty because the sentence in absentia rendered the whole trial a nullity. (R. v Cornwell 1972, 2 N.S.W.L.R. 1).

A Crown appeal to the High Court on Cornwell’s case was aborted by Cornwell pleading guilty.

We are of opinion that a section adapted from s. 617 be introduced into the Law of this State to:

(a) to enable a trial to go on in the absence of the accused if he renders it impracticable;
(b) enable a prisoner to be sentenced in absentia if his behaviour renders it undesirable to have him present;

(c) enable a trial to be concluded and the prisoner sentenced if he escapes;

(d) deal with the case of the person who jumps bail while being tried (cf. R. v. Jones No. 2, 1972, 2 All England L.R. at 731);

(e) ensure that he is wherever practicable and as soon as is reasonably possible served with a copy of the transcript of the evidence heard in his absence;

(f) ensure that he be given every reasonable opportunity of consulting his legal adviser;

(g) ensure that he be returned to Court if he either personally or through his Counsel gives an assurance of proper behaviour and that provided he comply with it he be permitted to remain in Court.

These provisions would apply to Trial on Indictment, summary trials, committal proceedings or appeals to the Court of Criminal Appeal or the District Court.

Some recent experiences abroad have indicated that adequate provision be made for the protection of courts from violence. As far as we can see there is now no provision in the law to enable a prisoner surrendering from bail to be searched before he is placed on trial. We think that there should be some such provision so that the Sheriff would have power to cause a prisoner brought to the Court for trial from a prison or surrendering at a court to his bail to be searched to ascertain whether he has in his possession any firearms, ammunition, explosive or similar thing. We also recommend that it be made a felony punishable by penal servitude for an appropriate term for any prisoner or other person unlawfully to introduce or attempt to introduce into any courtroom any firearm, ammunition, explosive or similar thing. The Police should have this power at Petty Sessions.

It is to be hoped that the necessity for the introduction of such provisions should never arise in this State but it is being only realistic to assume that within the foreseeable future such an incident may happen.
ACKNOWLEDGMENTS

This being a working party we did not seek to obtain information through formal hearings. The literature on the topic is not unfamiliar to the members of the working party.

Two of the party have visited corrective institutions in every State of Australia, as well as abroad, and the third, Mr Barrier, Assistant Commissioner, is familiar with every prison in this State.

The working party or members of it have seen a great number of people and had informal discussions with them and are grateful to each of these for the assistance they have given us.

Among those we have seen and with whom we have had discussions we would mention Sir Leon Radzinowicz, formerly of the Institute of Criminology, University of Cambridge and formerly Wolfson Professor; Doctor J. L. Robson, former Secretary of Justice in New Zealand who has represented his country at a number of United Nations Congresses on The Prevention of Crime and Treatment of Offenders; His Honour Judge Staunton, Chief Judge of the District Court; Judges Goran and Muir of that Court; Mr Justice Allen and Mr J. Morony, Chairman and Member of the Parole Board; Mr Murray Farquhar, Chairman of Bench of Stipendiary Magistrates, and Mr W. J. Lewer, Deputy Chairman; Superintendent Taylor, representing the Commissioner of Police; Mr W. R. McGeechan, Commissioner of Corrective Services; Mr G. W. Slough, Deputy Chairman of the Health Commission; Mr K. Lukes, Acting Director of Probation and Parole; Mr R. B. St John and Mr Anthony Green, both representing the Council for Civil Liberties. We met Adrian Cook and Mr Roger Court, representing the New South Wales Bar Association; Mr David Biles, Assistant Director of Research of Australian Criminology; Dr E. P. Houston, Superintendent, Prison Medical Services; Mr J. Stewart, Chief Superintendent, Long Bay Malabar Complex. We had several lengthy discussions with the representatives of the Prison Officers Association; Mr M. J. Horton, Mr M. Love, Mr A. Cook also Mr R. Carter and Mr N. Schumack of the Prison Officers' Training Centre. At one of these discussions Mr Barry Finch, Probation and Parole Officer at Malabar, was present. The Superintendents at the Long Bay Complex, the Central Industrial Prison, the Metropolitan Remand Centre, the Malabar Training Centre and the Metropolitan Reception Prison and some officers of each of those prisons had discussions with us. We visited the Malabar Complex on three occasions and saw a number of people there. We also received a deputation led by Bishop Huime Moir of the Prison Chaplains, and we likewise attended a meeting of the Corrective Services Advisory Council. From all these people we received very great co-operation and we are indebted to them for their courtesy and assistance.

The thanks of the working party are due to Mr Peter Webb who, on the transfer of Mr Dennis Cullen, took over the work of Secretary, and his co-operation and assistance have been outstanding.