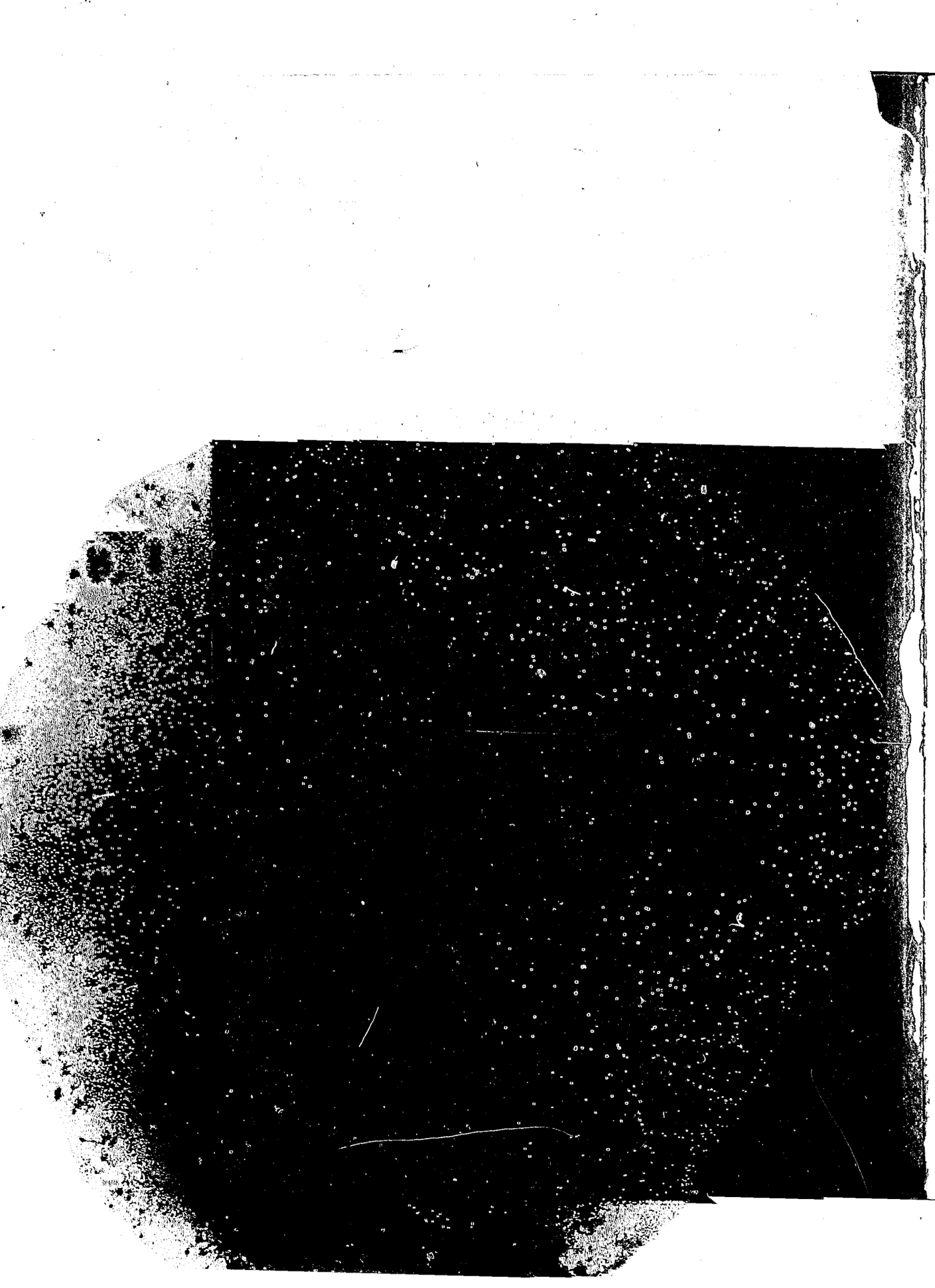
Criminal Law and Penal Methods Reform Committee of South Australia

FIRST REPORT

Sentencing and Corrections



CRIMINAL LAW AND PENAL METHODS REFORM COMMITTEE OF SOUTH AUSTRALIA

V

FIRST REPORT

Sentencing and Corrections

JULY, 1973

Price $2.75

CRIMINAL LAW AND PENAL METHODS REFORM COMMITTEE OF SOUTH AUSTRALIA

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CRIMINAL LAW AND PENAL METHODS REFORM COMMITTEE
OF SOUTH AUSTRALIA

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July, 1973

The Hon. L. J. King, Q.C., M.P.,
Attorney-General,
Parliament House,
ADELAIDE, S.A. 5000

Dear Mr. Attorney,

On the 14th December, 1971, you appointed us as the Criminal Law and Penal Methods Reform Committee with the following terms of reference:—

> "To examine and to report and to make recommendations to the Attorney-General in relation to the Criminal Law in force in the State and in particular as to whether any, and if so what, changes should be effected—
>
> (*a*) in the substantive law;
>
> (*b*) in criminal investigation and procedures;
>
> (*c*) in Court procedures and rules of evidence; and
>
> (*d*) in penal methods."

At your request we have first considered questions relating to penal methods. We now have the honour to submit to you the Report of the Committee on this aspect of the Inquiry.

Yours sincerely,

ROMA MITCHELL, Chairman
COLIN HOWARD, Member
DAVID BILES, Member

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CHAPTER 1

PRELIMINARIES

1 Terms of Reference. The Criminal Law and Penal Methods Reform Committee was appointed on 14 December, 1971, by the Honourable L. J. King, Q.C., M.P., Attorney-General, with the following terms of reference:—

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>
> (*d*) in penal methods.

2 Order of Proceeding. The Attorney-General desired us to construe these terms of reference as relating only to adults, that is to persons who have attained 18 years of age. The Attorney-General requested that the committee should first consider the question of penal methods and report upon that matter, and that each of the other terms of reference should be considered separately and be the subject of an individual report.

3 Exclusion. A decision to move from Glenside to a hospital to be attached to Yatala Labour Prison persons who have been found not guilty of an offence on the ground of insanity and defendants who are unfit to plead to a charge, as well as persons convicted of an offence who are later found to be insane, had been taken by the government before this committee began its inquiry. Accordingly we do not discuss the propriety of holding persons who have not been convicted of an offence in an institution which is staffed partly by prison officers.

4 Aims of Sentencing. We do not include in this report any general discussion of the aims of sentencing. This is not because we underestimate the value of rational inquiry into the philosophical bases of social action. It is partly because we do not have any new generalizations to contribute to this much-discussed subject and partly because we are impressed by the restrictive influence of too close an adherence in practical matters to a speculative theory. For in our opinion there is as yet too little reliable evidence of the effects of various sentences for any general theory of sentencing to amount to more than speculation. Speculative inquiry with a view to developing a theory which explains such facts as are known is a valuable undertaking, but it is not a safe

basis upon which to recommend measures which affect the liberty of the individual or the safety of the public. In our general approach our aim has been to strike a balance between assumptions which there is no immediate reason to doubt and apparent facts. For example, we see no reason to doubt that the total process of criminal law enforcement as we know it is a necessary part of the organization of society at this time and in this place; but equally we observe that the different stages of the process are not well integrated with each other. We do not doubt that the machinery of laws and law enforcement taken as a whole exercises a necessary restraining influence on the community, but we see no evidence to support the sweeping generalizations about the deterrent value of particular measures which are so often made. We have no difficulty in taking as a working guide that the general aim of sentencing and consequential correctional measures is to reduce recidivism, but we avoid any extreme applications of this principle by measuring it against generally accepted ideas of justice. In the terms which are currently fashionable our approach has been pragmatic, by which we mean that we do not attempt to remain consistent to any one sentencing aim throughout but rather to identify areas in which progress can be made without trying to do too much at once. There is a place for multiplicity of choice in the sentencing process, so that if one measure does not work another can be tried; but there is value also in not departing too far or too quickly from community opinion, even if we sometimes believe that opinion to be mistaken. With these few introductory remarks, we leave our report to speak for itself.

5 Further Inquiry. On a number of matters we have recommended further inquiry. In these areas we hope that this report will be used as the basis for continuing investigation.

6 Procedure. The first meeting of the committee was held on 20th December, 1971. On that occasion the committee decided to invite submissions from persons and organizations with a special interest in penal methods, the submissions to be sought by means of advertisements in the press and written invitations. Invitations were sent to 98 organizations which, as it seemed to the committee, had a particular and direct interest in penal methods. In response to the advertisements and to the invitations by letter, 61 written submissions were received. A list of the authors of submissions is contained in schedule 1 to this report. The committee met on 28 occasions, and while it did not hear evidence in public or interview all those who made submissions, it did meet and have discussions with many persons who had made or were party to the making of submissions, or from whom the committee sought particular information. These people are listed in schedule 2 to this report.

7 Visits. The committee visited Yatala Labour Prison twice, each of the other major prisons once, four police prisons, and police cells in eight country towns, Adelaide, Port Adelaide and Elizabeth. A list of the prisons, police prisons and police cells visited is contained in schedule 3 to this report. In addition the committee visited Glenside Hospital "Z" Ward. In the far north of the State the committee visited Indulkana Aboriginal Reserve and in other towns inspected aboriginal reserves and places in which aborigines live. The consultant to the committee was able to inspect the Saturday work scheme in Tasmania. The committee spent eight days in New Zealand inspecting institutions and holding discussions with persons concerned with the treatment and management of offenders. A list of the institutions visited and of the principal persons with whom the committee held discussions is contained in schedule 4 to this report. No member of the committee had previously visited institutions in New Zealand. The committee, through one or more of its members, was aware of the conditions under which correctional institutions are conducted in the Australian States. In New Zealand many correctional innovations have been initiated. The committee knew the general nature of these innovations and had read a variety of documents on correctional methods in New Zealand. It was of opinion that a better evaluation of the New Zealand system could be made only after a visit. It found that its expectations in this respect were fulfilled. During the course of a short visit to England in August 1972 the chairman had the opportunity also of meeting the present head of the Prisons Department of that country and his predecessor in office. Through them she was able to visit three prisons chosen for their diversity of methods and to hold discussions with the governors and prison officers as well as with the prisoners. A list of these prisons is contained in schedule 5 to this report.

8 Contact with Prisoners. At all the prisons and other institutions visited by the committee we were afforded the opportunity of meeting and talking informally with prisoners. At Yatala Labour Prison, Cadell Training Centre and Gladstone Prison we met and talked with the prisoners' representative committees. On all occasions we were afforded the opportunity of meeting prisoners without prison officers or officials being present. In New Zealand we talked with offenders attending periodic detention centres as well as prisoners in institutions. At Yatala Labour Prison we attended a meeting of the classification committee. We met and talked with persons with personal experience of parole.

9 Other Sources of Information. The committee has had access to many overseas publications as well as Australian publications on questions of penal reform, and has drawn both on these and on the collective experience and learning of its members and its consultant and research officers in the consideration of the matters submitted to it.

10 Acknowledgments. The committee has received from the Honourable the Attorney-General all the support which it has sought from him. We record our appreciation of the co-operation which he has given, particularly with respect to visits of inspection. We are grateful to Mr. L. B. Gard, Comptroller of Prisons and Chief Probation Officer, for the assistance which we have received from him and from all those in his department, who include his deputies, Mr. K. Skegg and Mr. F. Cassidy, and the Principal Probation and Parole Officer, Mr. W. L. Henderson. We have received every consideration from Brigadier J. G. McKinna, C.B.E., D.S.O., who was Commissioner of Police when this inquiry began, from his successor, Mr. Harold Salisbury, and through them from the various police officers from whom we sought information and whom we met on visits of inspection. The Chairman, The Honourable Sir Roderic Chamberlain, and members of the Parole Board, and the Chairman, Mr. W. L. Bridgland, and members of the Alcohol and Drug Addicts Treatment Board and its Medical Director, Dr. J. W. Gabrynowicz were generous in giving time to us. Dr. W. A. Dibden, the Director of Mental Health Services, Dr. L. C. Hoff, Medical Superintendent Glenside Hospital and Dr. C. Radeski, Senior Psychiatrist Mental Health Services, afforded us all the help which we sought. We are grateful too to Sir Roy Jack, then Minister for Justice in New Zealand, and Mr. E. A. Missen, Secretary for Justice, for permitting us to visit and obtain information from the persons named in schedule 4, and to those named persons and their subordinates in New Zealand. All assisted us greatly in our inquiries in that country. The chairman thanks Mr. R. D. Fairn, former head of the Prisons Department, England, Mr. W. R. Cox, C.B.E., present head of the Prisons Department, England, and the governors and officers of the prisons which she visited, for the courtesy and consideration shown to her. The committee expresses its graditude to its consultant, Miss Mary Daunton-Fear, its research officer, Mr. J. Douglas Claessen, and its secretary and research officer, Mr. Geoffrey L. Muecke, from each of whom it has received the utmost co-operation. We wish to thank the many people who made written submissions, held discussions with the committee and showed us various institutions. It was encouraging to find among them so lively an interest in the difficult problems with which this report is concerned. Finally we record how much we owe to the industry and efficiency of Professor Howard's secretary, Miss J. Turner of Melbourne.

CHAPTER 2

THE SENTENCING PROCESS

1 Distribution of Sentencing Authority. In South Australia the greater part of the sentencing process is distributed among four authorities: the legislature, the courts, the Prisons Department and the Parole Board. In general terms their respective functions are as follows. The legislature in Acts of Parliament prescribes maximum or fixed penalties for specific offences and specifies also the different types of sentences, such as bond, fine, supervised probation, suspended sentence or imprisonment, which are available. The courts impose sentences, exercising such discretion as to the length and type of sentence as is left to them by the legislature. Officers of the Prisons Department, including probation officers, carry out the detailed administration of some of the sentences imposed. Apart from supervised probation the role of the Prisons Department is greatest, as the name of the Department implies, where a sentence of imprisonment is imposed. In such cases the Prisons Department decides where and in what type of confinement the sentence is to be served and in what activities the prisoner is to be engaged. The Prisons Department has power to reduce the length of terms of imprisonment of three months or more by crediting the prisoner with remission for good conduct, and also to reduce non-parole periods. The Parole Board has power to release a prisoner on parole before the expiration of his sentence. In general the power to release from imprisonment is distributed at present among too many uncoordinated authorities.

1.1 Exceptions. There are of course many exceptions of detail to the foregoing general structure of sentencing authorities. It is for example within the prerogative of the Crown, exercisable by the Governor on the advice of the government of the day, to remit or reduce any sentence as an act of clemency or to pardon the commission of an offence altogether. This is a reserve power, rarely invoked, which is exercised in cases where the ordinary processes of criminal law have produced a result sufficiently questionable or unjust to require governmental intervention. At the present time it is used as a matter of course in South Australia to commute the death penalty, which under the law as it stands is mandatory on conviction of murder. Another exception to the general rule is that the superior courts have a power to punish certain offences which derives from common law and not from statute, and which is therefore neither specified nor limited by the legislature in any Act of Parliament. Such offences are few in number, although of considerable sociological significance. At present they include contempt of court, common law conspiracy

and misprision of felony, which is the concealment of one's knowledge of felony. A parallel exception is the offence of contempt of Parliament, for which both trial and imposition of sentence are carried out by the legislature itself as an executive act not involving the courts at all. The general rule that penalties are specified in Acts of Parliament has to be understood as including the common practice of empowering appropriate executive Departments of Government to create minor offences for breaches of such subordinate legislation as regulations made under the authority of an Act of Parliament. And sometimes, as with parking offences, a sentence of a small fine can be imposed by a minor executive official without the intervention of the courts unless the offender fails or refuses to pay the fine. The police also should be mentioned. They enter into the sentencing process at the same stage as the Prisons Department by virtue of their control of police prisons and police lockups or cells. The difference between police prisons and police lockups or cells is that offenders may serve sentences of up to twenty-eight days imprisonment in the former but not more than fourteen days in the latter. There is not necessarily any physical difference between the two. Police cells become a police prison by being gazetted as such, which from time to time they are. They function as prisons for short-term offenders in country areas remote from the main institutions of the Prisons Department. These exceptions to the main structure of sentencing authority outlined in the previous paragraph are all important in their various ways, but they do not disturb the accuracy of the general model as an initial basis upon which to consider the questions of policy which arise in connection with the concept of authority to sentence.

2 Complexity of Sentencing. Before proceeding to consider the proper respective sentencing functions of the legislature, the courts, the Prisons Department and the Parole Board, there is a further preliminary matter which needs emphasis because it is of fundamental importance. This is the inevitable complexity of sentencing. It is too little realized that in a modern developed community it is impossible to have a simple sentencing system. Failure to appreciate this fact explains the sterility and oversimplification of much public discussion of sentencing. The importance of this point will become apparent at large in this report. Almost every matter to which we shall have occasion to refer is more complicated than at first appears. But it may be as well to give some straightforward examples at the outset.

2.1 Death Penalty. At first sight nothing could be simpler than s. 11 of the Criminal Law Consolidation Act, 1935-1972: "Any person who is convicted of murder shall suffer death as a felon". Nevertheless it illustrates in stark form a complicating factor in

sentencing which may arise at any time and in any context. This is that two or more of the various governmental and judicial authorities concerned with sentencing may differ in their respective policies and thereby bring about a result quite different from the one contemplated by the written laws. In the present instance, as mentioned already, it is government policy to commute all death sentences to life imprisonment. This brings about a result which is the opposite of legislative policy as expressed in the Criminal Law Consolidation Act. This result, although striking in the present context because human life is involved, is not unique or basically remarkable. It is merely a consequence of including in the correctional system a mechanism for varying the sentence in cases where, in the opinion of the government of the day, the ordinary processes of the law have produced an unjust or undesirable result. It is a grave defect in any correctional system not to have such a mechanism. Nevertheless its presence complicates the actual working of the sentencing process.

2.2 Multiple Offences. A second, and much more frequent, way in which the practical realities of sentencing become far removed from the simple processes generally suggested by a mere inspection of the penalty prescribed by the statute is where one set of facts, if proved, reveals the commission by the defendant of several related offences. If, in accordance with the usual practice, these offences are tried simultaneously, and the defendant is convicted of more than one of them, the questions arise whether he should be sentenced separately for each offence and, if so, whether the sentences should operate concurrently or consecutively. The position may be further complicated by the defendant's voluntarily confessing, after conviction but before sentence for the offences proved against him, his commission of other offences in order that they may be taken into consideration on sentence. Several conventions operate here, although none of them is binding in law and they are departed from if there is reason to do so. The first convention is that all reasonably closely related offences which arise on the same facts are prosecuted simultaneously. Secondly, sentences imposed on the same occasion are usually made concurrent. Thirdly, if an offender asks for offences for which he has not been tried to be taken into consideration, and his request is acceded to, he will not thereafter be prosecuted for them. Fourthly, an untried offence will not be taken into consideration unless it is of the same general character as, and not more serious than, the offence or offences for which the offender has been convicted, and is not in itself unduly serious. It is not our purpose in this report to comment on these practices but to use them merely as illustrations of the complexities which arise in sentencing

even before one arrives at such considerations as the character and personal history of the offender and the protection of the public.

2.3 Type of Sentence. A third way in which sentencing becomes more complicated than a simple reading of the penalty for the offence reveals lies in the practice of not imposing the maximum sentence unless there appears to be no reasonable alternative, combined with the variety of types of sentence at present available to the court. For example, a court empowered to impose a maximum of a given number of years imprisonment is not confined in its task to deciding the appropriate number of years. It may have to consider also the alternatives of release on bond, fine, supervised probation or suspended sentence. If imprisonment is decided on, the question of a non-parole period may arise also. If one adds these considerations to those described in the previous paragraph it becomes apparent that many quite routine cases of criminal law enforcement call for a high degree of technical competence at the sentencing stage. Only for the most minor offences does sentencing itself become a routine matter.

2.4 Significance of Complexity. We make this seemingly obvious point with emphasis because it has become apparent to us that, obvious though it may be once stated, and obvious though it may be to many who are professionally concerned with sentencing, it is not at all obvious to the general public, to the press and to most politicians until pointed out to them. Indeed, in the course of the evidence which has been presented to us it has become clear that by no means everyone connected professionally with sentencing fully realizes the intricacy of the subject. In saying this we make no criticism of the general lack of awareness on the point. One cannot be informed about everything. Nevertheless, superficiality of approach in this area is apt to be peculiarly damaging to the public interest because sentencing is a matter which gives rise to strong emotions. Strong emotions produce a yearning for simple solutions, but there are no simple solutions. The sooner that a general appreciation of this fundamentally important fact is reached the better, for failure to accept it only delays understanding and hampers progress. None of the complications of the daily working of the sentencing system taken as illustrations in the preceding paragraphs of this report is capable of being disposed of without loss to the effectiveness of the system. Whatever South Australia decides to do about the death penalty, the need for an ameliorating device to correct otherwise unavoidable injustices will remain, but the very presence of such a device means that from time to time the functions of the different sentencing authorities will come into conflict with each other. Whatever

changes of detail may be made in the procedures for dealing with multiple or repeated offences, the phenomenon of multiple or repeated offences will remain and will put pressures on the system which are different from the simple prototype of one offender and one offence. And if any criminological progress is to be made at all, the various sentencing authorities must have a reasonable variety of alternatives and discretions in sentencing available to them in order to reflect as far as possible the widely varying circumstances of personality and situation under which people commit criminal offences.

3 The Legislature. In South Australia the role of the legislature in criminal law and its enforcement is paramount. As in all Australian contexts, the situation is to some extent affected by the federal Constitution. The federal Parliament has power to enact and enforce criminal law incidentally to its other constitutional powers, and under s. 120 of the Constitution the States are obliged to receive offenders against Commonwealth law into their own correctional systems. But the body of Commonwealth criminal law is small and there is no question that within the States the general area of criminal law and its enforcement is predominantly a State matter. We therefore make the following observations on the role of the legislature with the legislature of South Australia primarily in mind and without further reference to minor considerations which may arise from the federal system.

3.1 Role of the Legislature. The role of the legislature is paramount because in South Australia the legislature is the supreme lawmaking body. The Prisons Department and the Parole Board derive their existence and their powers entirely from Act of Parliament. These propositions are not wholly true of the courts, but to the extent that they are not it is because the legislature has not seen fit to curtail their inherent powers deriving from common law. It follows that the legislative role in sentencing includes basic policy determinations not only of the penalty appropriate to each offence forming part of the criminal law but also of the range of types of sentence which is to be available to the other sentencing authorities and the degree of discretion which is to be left to them in deciding on the sentence appropriate to a particular offender. The spectrum of alternatives open to the legislature in constructing the general scheme of sentencing authority in the State is wide. It may create as many different subordinate sentencing authorities as it wishes, and define their relationship with each other, and it may limit or extend their respective discretions as it sees fit. With specific reference to types of sentences, as opposed to sentencing authorities, the legislative role includes formulation of the policy factors determining whether sentences should be expressed as maxima or minima

or should be fixed or indeterminate; whether sentences should be ordered in some kind of progression of seriousness, proceeding perhaps from unconditional discharge through supervised probation and fine to suspended sentence and imprisonment; whether a basic maximum or minimum sentence for an offence should be increased for habitual offenders; and what part parole and remissions for good conduct should play in the sentencing structure. In practice the manner in which the legislature uses its powers is much affected by tradition and by the apparent degree of effectiveness of the existing machinery at any given time.

3.2 Legislative Pattern in South Australia. In South Australia the customary pattern hitherto has been for a sentence, usually in terms of a fine or imprisonment but not invariably so, to be prescribed in the legislation creating an offence and for this sentence to be intended both as a maximum and as an indication to the courts of how seriously the offence is regarded by the legislature. The policy underlying this statutory practice is to leave to the other sentencing authorities, particularly the courts, a large measure of discretion in the prescription of sentences for individual offenders but to provide an ultimate protection for the offender against the unrestrained use of discretion by imposing a maximum limit. Sentences of this kind are called indefinite sentences because of their variability of application to the particular offender. Such a policy is neither inevitable, in the sense that there are no alternatives, nor carried through without exception in this State. Three other possibilities in principle are fixed (or definite) sentences, indeterminate sentences and minimum sentences.

3.3 Fixed (or Definite) Sentences. As a general principle it is in our opinion unwise for the legislature to specify a mandatory, fixed sentence for any serious crime, by which we mean crime triable on indictment (called information in South Australia). It is impossible at the legislative level to foresee and provide in adequate detail for the multitudinous variety of circumstances under which serious crimes are committed and the sometimes considerable differences of personality, background and intelligence between the people who commit them. For serious offences the fixed sentence implies a certain primitiveness of thought which confuses the offender with the offence, and by so doing diminishes the effectiveness of the correctional system in promoting the ultimate interests of society. It is simply not the case that society is damaged or threatened to exactly the same extent every time a given offence is committed, or that every offender who commits that offence will respond in the same way to the same penalty, or that the effect on public opinion will in all cases be the same. What is virtually

certain is that legislatively imposed fixed penalties for serious crimes will require the frequent intervention of executive clemency. Such a result means that discretion is being exercised by the government of the day instead of by the courts, who are in the great majority of cases much better equipped to do so. The only instance of a fixed penalty for serious crime in South Australian law is the death penalty for murder, which illustrates the point as to the increased intervention of executive clemency but is perhaps not a good example of discretion which would be better left to the courts because it entails the taking of life. The difficulties which arise from a mandatory death penalty however do not diminish the force of the foregoing criticisms of fixed penalties for serious offences in general.

3.3.1 Minor Offences. The same considerations do not apply to the same extent to minor offences, by which we mean offences triable summarily without the option of trial on indictment. Since the consequences of conviction are far less serious than they may be for indictable offences, the need for the exercise of discretion by the sentencing authority to allow for the particular facts is correspondingly less serious, and there may be a significant gain in efficiency of enforcement from the legislative imposition of a fixed scale of penalties. A familiar example is the imposition of a fixed scale of fines for parking infringements, but similar reasoning applies to such devices as the points demerit system in relation to an accumulation of driving offences. With minor summary offences, for which the maximum sentence is small, there is in any event a noticeable tendency for the courts to establish their own rules of thumb in the absence of a fixed legislative scale. We are not suggesting that all summary offences are necessarily suitable for the application of legislatively fixed scales of sentence, but only that there is often a good case for doing so.

3.3.2 Habitual Offenders. A general question which at first sight transcends the distinction drawn in the preceding two paragraphs between indictable and summary offences is whether the legislature should restrict the discretion of the other sentencing authorities, particularly the courts, in respect of habitual offenders. We deal below (chapter 3, paragraph 3.13) with specific provisions of South Australian law on the subject of habitual offenders. The present question is whether as a matter of general policy the legislature should impose a fixed sentence for habitual offenders, that expression being defined in terms of a certain number of repetitions of offences of a specified degree of seriousness. In our opinion it is

not good legislative policy to restrict the discretion of the courts either in this way or by way of prescribed minimum penalties where it would not be good policy to restrict the discretion of the courts with respect to non-habitual offenders. By that we mean that the arguments already advanced against legislatively fixed sentences for serious crime are in our opinion applicable with as much force to recidivists as to any other offenders, and that the distinction we have drawn between indictable and non-indictable offences is equally relevant in this context. We therefore see no objection to a legislatively fixed increasing scale of penalties for repeated commission of certain types of summary offences, conspicuously those associated with road traffic.

3.4 Indeterminate Sentences. An indeterminate sentence is to be distinguished from an indefinite sentence. An indefinite sentence is one which has a maximum limit but is variable up to that maximum. At the legislative level it is a statement of the maximum sentence which can be imposed for the relevant offence and has the effect of limiting the discretion of the subordinate sentencing authorities. An indeterminate sentence is one without a maximum limit. At the legislative level it leaves the subordinate sentencing authorities with complete discretion as to the size or character or length of sentence for the particular offender. In our opinion the indeterminate sentence should not be adopted at the legislative or any other level except in the case of life imprisonment, which is discussed as a special case below (paragraph 3.7). It is no doubt necessary to detain certain categories of people indefinitely on medical grounds for the protection of both themselves and others, and to afford the possibility of cure, but this is a medical and not a correctional consideration. We are aware that there are some people, generally if vaguely referred to as psychopaths, in whose behaviour it is difficult to draw a distinction between criminal and medical considerations. We consider the difficulties posed by such offenders more specifically below (chapter 3, paragraphs 3.15.3 and 3.15.4). The proper disposal of psychopaths is undoubtedly a serious and baffling problem but in our opinion considerations relevant to it should not be allowed to obscure the general principle that the indeterminate sentence has no correctional value for other classes of offender.

3.4.1 Medical Analogy. The theory behind the indeterminate sentence in its most serious application, which is in respect of imprisonment, is an analogy with medicine which we find unacceptable. The analogy is with requiring a person to submit to treatment until cured. Whatever propriety of appli-

cation such an approach to a medical problem may have (and we recognize that this in turn depends on such matters as the social threat posed by the illness and ethical questions of freedom of choice by the patient), we are of opinion that the analogy has no useful application to correctional methods, and is indeed dangerous. It is dangerous because it seeks to justify imprisoning an offender on the basis of two assumptions neither of which is in our opinion justified in the present state of criminological knowledge. The first is that in some sense criminal behaviour manifests a disease from which the offender is suffering and the second that he can be recognizably cured of this disease. We cannot accept these simplistic ideas, still less recommend that indeterminate sentences be justified by reliance on them. We acknowledge that many offenders suffer from personality disorders but in the present state of the evidence we are not prepared to conclude either that a criminal offender is in some sense a sick person who can be cured of recidivism or that an offender with a personality disorder has necessarily become an offender because he has that disorder. We do not think that any better justification is supplied by describing the offender's supposedly curable condition in moral terms and postulating the continuation of his sentence until he is reformed. Even if such an approach were acceptable *prima facie*, there is no known way of measuring a person's potential for recidivism with precision except releasing him back into the community.

3.4.2 Defects of Indeterminate Sentences. In the absence of a positive correctional justification the indeterminate sentence has three serious defects. The first is that if an offender is to be detained until he is believed to have attained some imprecise state of cure from his propensity to criminal behaviour, he is likely to serve a much longer sentence than would otherwise be thought just or reasonable because those charged with his supervision will tend to err on the side of caution. Secondly, a situation in which a person may be detained indefinitely by others has obvious potential for abuse. Thirdly, the effects on prisoners of an indeterminate sentence are known to be deleterious. The absence of any definite date for release induces a hopelessness and resentment which is counterproductive in correctional terms because it diminishes the offender's capacity to become fit for release.

3.5 Minimum Sentences. It is possible for the legislature to express sentences as minimum penalties, either in association with a higher maximum or without a maximum. A minimum sentence

without a maximum is either a fixed sentence, in which case it is misleading to call it a minimum, or an indeterminate sentence beyond the minimum base. In our opinion none of the reasons given above for rejecting the use of fixed sentences for serious crime, or of indeterminate sentences in any context, is affected by identifying or associating, as the case may be, these correctional devices with minimum penalties. Indeed, in our opinion, to combine an indeterminate sentence with a minimum sentence would only make the situation worse, for if there were any virtue in the unlimited discretion conferred by an indeterminate sentence, a minimum term would run counter to it.

3.5.1 Utility of Minimum Sentences. There may be, however, utility in the concept of a minimum period of sentence in combination with a maximum. This occurs, for example, where a court sentences an offender to a term of imprisonment and specifies a fixed period before the offender becomes eligible for parole. The South Australian courts have power to do this under s. 42i of the Prisons Act, 1936-1972. But this is a decision which is taken, under the present structure of sentencing in South Australia, at the judicial and not at the legislative stage. The legislative policy decision embodied in s. 42i of the Prisons Act is to make the device of minimum sentence, in combination with a maximum, available to the judiciary but not to prescribe in advance of the occasion the particular circumstances under which it is to be used. As a general principle we think that this type of scheme illustrates the most useful distribution of functions as between the legislature and the subordinate sentencing authorities in relation to minimum terms. We return to this matter below (paragraph 4.8.2).

3.6 Maximum Sentences. As will have become apparent from the foregoing outline of the basic alternatives available to the legislature, we are of opinion that the traditional legislative practice in South Australia of prescribing penalties as maxima is in general the best method of distributing sentencing power between the legislature and the subordinate sentencing auhorities. The prescription of a maximum sentence at the legislative level has three conspicuous advantages: it indicates to the subordinate sentencing authorities the degree of seriousness with which the legislature, on behalf of the public at large, regards the offence; by its indefinite character up to that maximum it leaves flexibility and discretion to the subordinate sentencing authorities in their disposition of particular cases; and it protects the interests of the offender himself by setting a limit to restrictions on his liberty or freedom of action

beyond which the subordinate sentencing authorities cannot go. It is true that none of these advantages is absolute. If the legislative sentence is to reflect with even approximate accuracy the attitude of society towards a given offence, the legislation must be kept up to date. Also, the reason why it is regarded as serious may change with changes of emphasis in the general philosophy of society, which in turn may reflect on the way in which the subordinate sentencing authorities deal with particular offenders. From the correctional point of view the legislative maximum, however accurately it reveals the attitude of the legislature and the public at large, may leave too little or too much discretion to the post-legislative stages of sentencing. And the interests of the offender as an individual member of society have to be balanced with other interests of society in general so far as the two conflict in any particular case. But these necessary qualifications do not in our opinion impair the generality of the advantages of expressing legislative sentences as maxima. Neither do the recommended exceptions to maximum sentences where other forms of legislative sentence have, in our opinion, a useful although limited role to play.

3.7 Life Imprisonment. Special problems are presented by the sentence of life imprisonment which may be imposed for a number of serious offences under current legislation; and which is in practice the sentence for murder after commutation of the death penalty. There is now a well-established policy at the post-judicial stage of sentencing that a life sentence is not to be taken literally. If an offender under life sentence behaves himself in prison and gives reason to believe that he is capable of successful readjustment in the community, he can expect to be released on parole after a certain number of years, the exact period of time depending partly on the individual circumstances and partly on current correctional policy. Neither this attitude to life sentences nor the tendency in recent years steadily to reduce the number of years actually spent in prison under a life sentence is confined to South Australia. Both phenomena are general throughout the common law world, and are well understood and accepted by the judiciary. It is not unknown for a long sentence of a fixed term of years to be changed on appeal to a life sentence on the ground that the offender is likely under the life sentence to be released earlier. Life sentences administered in this way, however, raise questions of policy which should be decided at the legislative level.

3.7.1 Policy Questions Arising. In the terms which we have defined in the preceding paragraphs of this report a life sentence under current legislation is in theory an indefinite

sentence at the legislative level, because it represents only a maximum, which becomes definite at the judicial level, because as applied to a particular offender, it represents a definite period of time, his own life span. It can be argued that a life sentence never becomes definite because no-one knows when the offender will die, but this is not in our opinion a useful line of thought. The categorization of sentences into definite, indefinite, indeterminate, and in other ways, is undertaken in order to facilitate discussion of their effect on the offender. The categories should therefore always be defined from the point of view of the offender. To him a life sentence is a definite sentence, if it means what it says, because it affects him for the rest of his life. In practice, however, it works to some extent as an indeterminate sentence because he does not know when he will be released or if he will ever be released. In practice also this is not entirely true because he will be aware of current policy, but it is sufficiently true to raise the question whether the disapproval we have expressed already of indeterminate sentences (paragraph 3.4. above) should apply also to life sentences. The problem is that the legislative prescription of a maximum of imprisonment for life indicates a high degree of community disapproval of the commission of that offence. The only other way of indicating such disapproval, whilst at the same time leaving a wide measure of discretion to the subordinate sentencing authorities, is by prescribing very high maximum terms of years. In practice these might quite possibly prove to be twenty, thirty or even forty years. Such a statement of legislative policy would place the courts in a dilemma. If they virtually ignored these maxima by customarily imposing the much shorter sentences which are normally the result of life imprisonment, they might be seen as deliberately disregarding a conscious change of policy by the legislature. But if they acted by reference to such maxima, the result would be an increase in length of sentences which would run counter to all current correctional practice and would in our opinion be a retrograde step.

3.7.2 Conclusion on Life Imprisonment. We have concluded that notwithstanding the element of indeterminateness in a life sentence as at present administered, the degree of flexibility which this form of sentence permits, given the judicial convention that it will in practice normally amount to a reasonable term of years, serves a useful purpose. The dangers of substituting, on theoretical grounds, long maximum terms of years are in our opinion far greater than the dangers in this instance

of leaving the discretion when to release the offender to the subordinate sentencing authorities. Our conclusion might be different if the judiciary, aware of the current parole practice, showed any signs of resorting to very long prison sentences, upwards of twenty years for example, as a substitute for life sentences where the latter have hitherto been thought appropriate. There is no such indication and in this jurisdiction there is no reason to anticipate such a development. If it were to take place, and were sanctioned by the Full Court, we should recommend legislative reconsideration.

3.8 Hierarchy of Sentences. The question has arisen whether as a matter of legislative policy the various types of sentences available should be legislatively graded in an ascending order of seriousness, ranging perhaps from unconditional discharge at one end of the scale to imprisonment at the other. In our opinion such a step is both impracticable and undesirable. No doubt many persistent offenders will undergo an experience of this kind, but this is not necessarily so. It depends, among other things, on what sorts of offences he commits. In the supposed middle range of such a hierarchy of sentences, comprising perhaps fine, supervised probation, suspended sentence and other possible non-custodial sentences, there is no necessary or even desirable order of seriousness because such measures are not conceived of as a correctional progression. They are alternatives made available to the sentencing authority to enable it to adapt its sentence with as much flexibility as possible to the particular offender and the circumstances of his offence. Any attempt to arrange them in a predetermined order of seriousness runs counter to this flexibility of operation. It has been known for a non-custodial sentence which the layman would no doubt regard as unduly lenient to produce a good result, in the sense that it was not followed by recidivism, on some offenders with previous experience of imprisonment. To prevent such a result by the legislative ordering of correctional measures in a sequence of seriousness produces no useful result. Indeed we can see no utility of any kind in such an ordering.

3.9 Recommendations with respect to Legislative Sentencing.

(*a*) *We recommend no change in the present policy whereby in general the legislature confines its role to the prescription of maximum sentences for offences and leaves to subordinate sentencing authorities wide discretion in sentencing particular offenders up to the prescribed maximum.*

(*b*) *We recommend that the use of legislatively fixed or definite sentences be confined to such summary offences as those*

connected with road traffic which lend themselves to effectiveness of enforcement in this manner.

(c) *Except in the case of life imprisonment we do not recommend the use of indeterminate sentences at all.*

(d) *We do not recommend any change in the legislative prescription of life imprisonment as a maximum sentence for offences to which it is thought to be appropriate.*

(e) *We do not recommend the legislative imposition of minimum sentences but we do recommend the continued use of the minimum sentence concept at the post-legislative level subject always to legislatively prescribed maximum sentences.*

(f) *We do not recommend the legislative ordering of available sentences in a sequence of seriousness for any purpose.*

4 The Courts. In South Australia the principal subordinate sentencing authority is the courts. As things stand at present the courts both enter and leave the total sentencing process at precisely defined points. They enter it immediately after an offender has been convicted of a criminal offence and they leave it immediately after imposing on him a maximum sentence less than or equal to the maximum sentence authorized by the legislature for that offence. Exceptions to this general scheme have already been mentioned (paragraph 1.1 above). They are common law offences the power to sentence for which has not been restricted by the legislature. The superior courts dispose also of appeals against sentence. Matters relating to sentencing policies which should be pursued by the courts with respect to particular types of sentences are discussed later in this report in connection with the utility and purposes of the various types of sentences which are now available or could be made available. Otherwise the main question arising with respect to the role of the courts in the total sentencing process is whether that role should remain undisturbed, should be diminished or should be increased. We shall have occasion later in this report to recommend that in one major respect it should be increased (paragraph 7.4 below). At this stage it is necessary to deal first with the contrary suggestion which has been made in some quarters that the courts should be virtually eliminated from the sentencing process, at all events for serious crime, and replaced by a separate administrative sentencing tribunal. In South Australia a limited step in this direction has been taken by the creation in 1969, under the Prisons Act Amendment Act (No. 2), of the Parole Board. The immediately following discussion is not intended to have any specific reference to the Parole Board, because that too is the subject of separate consideration later in the report (paragraphs 4.8.2 and 7 below).

4.1 Separate Sentencing Tribunal. The suggestion that sentencing should be taken away from the courts and entrusted to a separate non-judicial sentencing tribunal rests on the twin beliefs that judicial sentencing is unsatisfactory in its operation and that a differently constituted tribunal would produce better results. We agree that judicial sentencing is not beyond criticism but in our opinion the remedy lies in the improvement of existing institutions and not in the creation of new ones. The two most general criticisms of the judiciary are that their sentences are less uniform or consistent than they ought to be and that they make too little allowance for individual variations between offenders. It is to be observed that these two propositions are inconsistent with each other, for a policy of fitting the sentence to the offender rather than to the offence necessarily produces sentencing decisions which appear to be unpredictable when put in tabular or statistical form. At this level therefore, dissatisfaction with judicial sentencing does no more than reflect uncertainty or disagreement among its critics as to the function which the sentencing tribunal should be serving. It is necessary to carry the inquiry into a little more detail.

4.2 Criticism of Judicial Sentencing. There is in our opinion no question at the present day that the primary emphasis in judicial sentencing in cases where the legislature leaves substantial discretion to the courts should be on the offender rather than the offence. From this standpoint criticism of the judiciary has been summarized as falling under four heads: that individual variations of personality between different judges or magistrates result in variations of sentence which are unjustifiable because they are attributable to no other cause; that sentences are imposed with too little knowledge of or regard to the offender's personality and background; that sentences are imposed with too little knowledge of correctional methods or of the actual working of the correctional system to which the offender is consigned by his sentence; and that judges and magistrates lack the criminological expertise to make the best use of the information available to them, even if that information is in itself adequate, or to make due allowance for their own personality variations. We consider these criticisms in turn in the paragraphs which follow, but we should say at once that we are not persuaded by any of them that judicial sentencing should be replaced by some other system. To the extent that they are well-founded they do no more than direct attention to ways in which judicial sentencing may be capable of improvement.

4.2.1 Sentencing Inconsistencies. We have drawn attention in paragraph 4.1 above to the ambiguity of the concept of consistency in the present context. Consistency can mean

that the same sentence is imposed for the same offence whenever committed. At the judicial level this amounts to the reintroduction of fixed or definite sentences after the legislature has already declared itself in favour of indefinite sentences by leaving to the courts a discretion in sentencing up to a stated maximum. On that ground alone consistency in this sense is objectionable, but at the present day it suffers from the further disadvantage that it runs counter to one of the main avenues of advance in correctional methods, which is the recognition of variations between offenders as well as between offences. But consistency can mean also that like offenders who commit like offences are treated alike. Used in this sense the charge of inconsistency against the judiciary usually is that offenders who should be treated alike for correctional purposes are to a significant degree treated differently by different judges or magistrates. Sometimes it is asserted also that the same judge or magistrate treats like cases differently on different occasions. It is true that the working of any human institution varies to some extent with the personalities of the individuals which it comprises. It is pointless to speculate whether this is a good thing or a bad thing because it is unavoidable. In the present context there is some evidence that judges and magistrates vary among each other but maintain a high degree of individual consistency. Just how much variation in attitude exists, or is reflected in sentencing decisions, is not clear, but our impression is that it is less than appears in some quarters to be supposed. Nevertheless, accepting that there is or may be a problem of this kind, and taking into account that, however much a judge or magistrate differs in approach from his brethren, he is usually consistent with himself, we regard the situation as one calling for an effective machinery of appeal rather than replacement of the sentencing tribunal. We discuss the subject of appeals against sentence in paragraph 4.9 below. Principles of sentencing policy should be established by the higher judiciary and significant variations from them should be corrected on appeal. With normal appellate guidance the general principles of sentencing at any given time would be well understood by the judiciary at all levels and applied with little fortuitous variation. Moreover there is no ground at all for supposing that a new non-judicial tribunal would achieve greater consistency in the desired sense than the existing judicial institutions. The human variables which are inescapably present in the courts would be present in at least equal degree in a panel of differently qualified experts. Indeed they would probably be more prominent because of the very variety of professional

training likely to be present and the corresponding lack of common traditions and procedures.

4.2.2 Knowledge of the Offender. The criticism that judicial sentences are necessarily imposed with too little knowledge of the offender's personality and background has in our opinion no foundation. The more serious a case is, the more likely is it that the evidence which proves the charge will reveal a great deal of relevant information about the offender. In addition the court when considering sentence will be in possession of any further information which the offender or his representatives think relevant, and in appropriate cases pre-sentence and psychiatric reports also are available. Lack of information, or of the means to acquire it, cannot be accepted as a ground for radically changing the present system of sentencing because it is simply not the case. This is not, of course, to say that the quality and availability of information presently available to sentencing tribunals cannot be improved. We shall have occasion to suggest improvements in a number of contexts. The present discussion is concerned only with the question whether sufficient reason appears for removing the sentencing function from the judiciary.

4.2.3 Knowledge of Correctional Methods. The third criticism of judicial sentencing is that sentences are imposed with too little knowledge of correctional methods or of the actual working of the correctional system. This may be the case, but if it is, it is not in our opinion a sound criticism of the present sentencing role of the judiciary. Sentencing tribunals are well aware of the range of alternatives open to them. The range is not great and both the higher and the lower judiciary know the results which it is hoped that the various correctional methods will produce. To this extent they are at least as well-informed as anyone else. They do not of course know what results actually will be produced, but they are not alone in this. We have already mentioned that we are deeply impressed with the general uncertainty of knowledge about the effects of correctional methods. Persons with professional experience in the field are no doubt more free of the grosser errors or suppositions about human behaviour than many laymen, but persons with relevant professional experience include judges and magistrates. It is true that a judge or magistrate will not have the same detailed knowledge of criminological matters as a professional criminologist but this qualification does not seem to us to be necessary for the proper performance of the sentencing function. To the

extent that judicial sentencing could be improved by greater participation in the subsequent disposition of the offender, we make recommendations elsewhere in this report (paragraphs 4.10 and 7.6 below). As an addendum to the present discussion we recommend that a concise handbook of sentencing alternatives and policies be produced for the information and assistance of the judiciary. We recommend also that the judiciary at all levels attend periodical sentencing seminars, make regular visits to the institutions to which they are sentencing offenders, and, to the extent to which they are able to do so, keep in regular contact with persons engaged in the daily routines of later stages of the sentencing process. These would be improvements in the structure of judicial sentencing as it at present stands in South Australia. They do not imply any fundamental weakness in that structure from ignorance of correctional methods.

4.2.4 Correctional Expertise. The views we have just expressed to some extent anticipate the last of the four criticisms distinguished above, that judges and magistrates lack appropriate expertise in evaluating criminologically relevant information, at all events to the extent to which it is relevant to the imposition of the original sentence. As we have indicated we doubt that anyone concerned in the total process of enforcement of the criminal law is better placed than the judiciary to make an assessment of the appropriate sentence for an offender. We do not believe that the evaluation of criminologically relevant information is different in kind from the evaluation of other types of information, and a fundamental part of the training and experience of a judge or magistrate consists in the bringing of evidence under detached scrutiny. We do not doubt the wisdom of causing the judiciary to be as well-informed on criminological and correctional matters as is reasonably possible. We do not believe that if this is done the judiciary will manifest a serious lack of relevant expertise in sentencing.

4.3 Criticism of Non-Judicial Tribunal. For the foregoing reasons we find the argument that judicial sentencing is inherently unsatisfactory to be unpersuasive. We turn to the more positive suggestion that, whether judicial sentencing is unsatisfactory or not, it would be an improvement to entrust sentencing to a separate non-judicial tribunal. This tribunal would consist of such experts in fields other than law as psychologists, psychiatrists, sociologists, probation officers and persons with experience in the prison service.

4.3.1 Effect on Offender. As an initial objection we observe that it is in our view a mistake to treat the imposition of sentence as a function of the total criminal process which is sharply distinguishable from the stage of trial and conviction. The offender himself sees the sentence imposed on him as a directly related consequence of his being tried and convicted, as indeed it is, and is in our opinion unlikely to accept that people, however expert, who have played no part in deciding on his guilt are better qualified to determine the consequences to him of that decision than persons who participated in it. Since the success of any acceptable correctional method depends ultimately on co-operation by the offender, we regard it as unsound to adopt a method of proceeding which is likely to arouse scepticism and resistance unless there is a very good reason for doing so. In the present instance we see no such reason.

4.3.2 Personal Liberty. The most fundamental reason for rejecting the idea of a separate administrative tribunal for sentencing is that its activities are concerned with personal liberty. The restriction of personal liberty is in our society pre-eminently a matter for the judiciary and not for administrative discretion, however expert or enlightened. We do not need to rehearse the reasons for this. They include the complete independence of the judiciary from the other arms of government and the fundamental value attached to the rule of law. If a separate administrative sentencing tribunal were to be established, it would in our view represent an unacceptable encroachment on our present safeguards for personal liberty unless its operations were so closely curtailed by the possibility of appeal to the courts that there would be no point in removing sentencing from the courts in the first place. It would be distinctly paradoxical to remove sentencing from the courts to a tribunal whose operations became subject to review by the very courts which are supposed to lack the expertise to carry out sentencing themselves. The only alternative is to free such a tribunal from judicial supervision or review altogether, but for the reasons just given we regard this as entirely unacceptable.

4.3.3 Connection of Sentence with Trial. It appears to us that the idea that some body of persons which is separate from the judiciary and qualified in other areas than the law can satisfactorily perform the function of sentencing gravely underestimates the complexity of sentencing. In this context as elsewhere it is in our view a mistake to treat sentencing as a sharply

distinguishable stage of the total process of criminal law enforcement. It is particularly closely connected with the trial stage. No one suggests that the judiciary should be removed from the trial of offences. But if the offender is convicted, trial merges into sentence. Two of the most obvious ways in which this happens have been mentioned already: the problems which arise on conviction of multiple offences (paragraph 2.2 above) and the relevance of evidence given at the trial to sentence (paragraph 4.2.2 above). There is a further link between the two which in our opinion is the most important of all, and that is the judge himself. He is in a unique position to form a detached personal assessment of the offender in relation not only to the offender's personal problems but also to the law and what society expects of the law. We see nothing to be gained and much to be lost by breaking this link between trial and sentence. We do not regard the suggestion that the judge make his views known to some other tribunal in writing as being an adequate substitute for the direct role he plays in sentencing under the present system.

4.3.4 Analogy with Cure. It has been said that the separate sentencing tribunal idea reflects in a somewhat confused way the theory that an offender is a sick person for whom there is likely to be some appropriate treatment. This links the non-judicial tribunal approach to sentencing with the misplaced theoretical humanitarianism of the indeterminate sentence. The objections we have already advanced to the analogy with medicine in that context (paragraph 3.4.1 above) seem to us to be no less cogent in any other. We therefore do not countenance the suggestion that a separate sentencing tribunal is more likely than the judiciary to serve the offender's interests, and therefore ultimately those of society, in any curative sense.

4.4 Conclusion on Separate Sentencing Tribunal. For the foregoing reasons we do not recommend the removal of responsibility for sentencing from the courts. Given the basic assumptions of society as we know it with respect to the liberty of the individual, and the role of the judiciary in relation thereto, and taking into account the present defective state of knowledge about the causes of criminality and the effects of correctional measures, judicial sentencing in South Australia in our opinion works in general reasonably well. There is certainly no ground for replacing the entire system. There is ground for improvement in some directions, and we make appropriate recommendations in the course of this report, but the improvements which can be made require greater, not less, judicial involvement in sentencing. Perhaps the most funda-

mental point to be made about judicial sentencing is one which transcends that particular function, and indeed applies to all human institutions. It is that ultimately it is not the form of the institution which determines its effectiveness but the quality of the people whom it comprises. Able judges and magistrates produce good results. In the end, high standards of judicial sentencing are to be attained and maintained only by good appointments to the bench. To the extent that this involves the desirability of justices of the peace having power to sentence we regard it as raising questions which go beyond the scope of the present report, because they are not confined to sentencing, but we observe that justices of the peace have in any event only limited sentencing powers. In view of our conclusion on the general question it is unnecessary for us to enter into such logistical matters as how one sentencing tribunal is to cover the entire State; whether there should be more than one such tribunal, and, if so, whether the requisite numbers of adequately trained personnel are available; whether such a tribunal or tribunals should be full-time or part-time; how their efforts are to be co-ordinated if there is more than one; whether their membership should be constant; and whether they should form part of the Prisons Department.

4.5 Non-Judicial Assessors. A variation of the separate tribunal suggestion which has been advanced is that a suitable compromise between judicial and non-judicial sentencing would be the appointment of non-legal assessors to sit with and advise the judge when he is determining sentence. We can see nothing to be attained by this device which is not at least equally attainable under the present system by the evidence of psychiatrists and others in appropriate cases and by the availability of pre-sentence reports by probation officers. Indeed, the practice of hearing expert evidence is superior to the appointment of assessors because it leaves open the possibility of a variety of opinions being expressed where there is room for legitimate disagreement among experts. It includes also the safeguard of cross-examination where appropriate. We see therefore no advantage in embarking upon the administrative, personnel and cost problems of appointing sentencing assessors to participate in the judicial function.

4.6 Jury Participation. It has been suggested also that the jury, where there is a jury, impose sentence. In our opinion this suggestion has no merit. It is unfair to all concerned and cannot reasonably be expected to work well, still less to work better than the familiar and tried procedures of judicial sentencing. It is unfair to the jury because it places upon them responsibility for the decision of a complex question in an area in which, apart from the

occasional individual exception perhaps, they have neither experience nor expertise. The weight of this responsibility is not lessened by the fact that the liberty of an individual is at stake. The difficulty of the decision is not lessened by the pressure of community attitudes, especially if the crime committed is one with strongly emotive overtones. The decision immediately follows the other difficult and responsible decision with which the jury is charged of finding innocence or guilt. The means by which a jury is brought to the point of returning a verdict have evolved over a long period of time. The question whether these means operate satisfactorily at the present day is not the subject of this report and we express no views upon it. We are of opinion however that there is no analogy between them and the process of deciding on sentence because the role of the jury in the former case is to find a fact, innocence or guilt but in the latter to express and put into effect an expert opinion. Moreover, either a jury sentence has to follow immediately after the verdict without benefit of pre-sentence reports or evidence, or else the jury has to be reconvened at a later date. The disadvantages of either course of action are obvious. We do not dwell on them because there are in our opinion so many other objections to jury sentencing in any event. It is unfair to the offender both because no jury can be expected to make as sound and informed a decision on sentence as a judge and because any difficulties which may arise in other methods of sentencing from lack of consistency or continuity in the sentencing authority can be expected to be greatly more prominent with juries, who meet together as a body on only one occasion or limited series of occasions. Moreover juries are subject to far greater community pressures than judges. There is the further consideration that jury sentencing can occur only if there is a jury. There are no juries in summary jurisdiction. Jury sentencing would mean therefore that in the very area where experience and expertise is at a premium, which is sentencing for the more serious offences, the sentencing function is removed to a discontinuous and non-expert body. For these reasons we reject the idea of jury sentencing.

4.7 Reasons for Sentence. It has been suggested that courts should always give reasons for sentence, at all events if the sentence is of imprisonment or of imprisonment exceeding a given number of years. We agree that reasons for sentence should be given, especially if the sentence is a severe one or if it departs in the direction either of severity or of leniency from the usual or expected. Not only is this practice just to the offender, it also supplies a guide to other courts on future occasions, to other interested enforcement agencies and correctional personnel, and to the public at large

through the usual media of news dissemination. We therefore recommend that to the extent that they do not do so already, courts at all levels should give detailed reasons for the sentences they impose.

4.8 Form of Judicial Sentences. The question was discussed above (paragraphs 3.2 to 3.6) whether at the legislative level sentences should be expressed as maxima or in some such other way as fixed sentences or minima. We observed that to a large extent the answer depended on how much discretion ought to be left to the subordinate sentencing tribunals and recommended that as a general principle a considerable discretion ought to be available. Since the courts are the principal repositories of the sentencing powers conferred on subordinate sentencing tribunals by the legislature, and since the courts come next in chronological sequence in the total sentencing process, it follows that in principle similar questions could arise in relation to judicial sentencing. In practice they do not arise in South Australia to any great extent. This is because the established legislative framework of sentencing leaves post-judicial authorities with comparatively little discretion in the disposal of offenders.

4.8.1 The Prisons Department. The authority which becomes immediately concerned after sentence is imposed by a court is the Prisons Department, either through its probation branch or through the prisons themselves if a sentence of imprisonment is imposed. The Prisons Department has a large measure of control over the placement and activities of offenders who are sentenced to a prison term, but the role of the Department in relation to them is administrative. It derives its authority over prisoners ultimately from the legislature but more immediately from the imposition of sentence by the courts. It cannot exercise the powers conferred upon it by the legislature in relation to any particular offender until authorized to do so by the courts in this way. In principle it is possible for the legislature to make available to the courts a form of sentence which enables the courts in turn to leave to the Prisons Department considerable discretion in its ultimate duration and incidents. An example would be an indeterminate sentence, which leaves it to the Prisons Department or some equivalent body to decide when an offender should be released back into the community. That particular device we have already discussed and rejected (paragraph 3.4 above). Both in that context and in our discussion of the non-judicial sentencing tribunal suggestion (paragraphs 4.1 to 4.4 above) we have indicated our general acceptance of the principle that the exercise of discretion

in sentencing is a judicial function and should not normally be entrusted to any other body than the courts. This implies, in accordance with present practice, that at the judicial stage the sentence imposed will normally be of fixed duration or amount and that any conditions attached, such as the conditions of a supervised probation order, will also be judicially specified. It is to be noted that under the present law this principle is even more thoroughly accepted than is generally realized, for by s. 17 of the Prisons Act, 1936-1972, the Supreme Court and District Criminal Courts have power to specify the prison in which a sentence of imprisonment is to be served. This is a matter normally left to the Prisons Department. Such minor departures from this general principle as the degree of discretion properly to be left to probation officers in deciding the detailed content of supervised probation conditions (how often to report, whether to abstain from alcohol, whether to seek psychiatric treatment and like matters), and what changes in confinement within the same prison to leave to the discretion of the prison authorities, are taken up in their particular contexts (supervised probation, classification of prisoners, the legal status of prisoners) later in this report. For the present discussion it is enough to say that in our view the exercise of post-judicial discretion in relation to offenders should always be within maximum limits set by the judiciary.

4.8.2 The Parole Board. The Parole Board does not form an exception to the foregoing principle, in that it cannot extend a period of supervised probationary release beyond the maximum period of imprisonment to which the offender has been sentenced, but the Board exercises more discretion than is entrusted to the Prisons Department in that it has the power at any time to order the release on parole, subject to such conditions as the Board sees fit, of an offender sentenced to imprisonment. The Parole Board does not need the authorization of a court to make such an order but its discretion can be judicially limited in that the sentencing court may, under s. 42i of the Prisons Act, 1936-1972, set a non-parole period. If such a period is set, parole can be granted during its currency only with the approval of the Governor on the recommendation of the Parole Board under s. 42k (7) of the Act. As observed earlier in this report (paragraph 3.5.1 above), the setting of a non-parole period illustrates the possible utility of combining a minimum sentence with the customary statement of a maximum. Where parole is entrusted neither to the courts nor to the Prisons Department but to an independent tribunal, it is in our opinion desirable for the courts to retain a means of indicating

an opinion that an offender should not be paroled for a given period. The power to set a non-parole period gives some scope for the court's own, uniquely valuable, opportunity for assessment of an offender to affect the parole decision. The exceptional case where good reasons later appear for modifying the court's assessment is adequately covered by the provision for a recommendation to the Governor. The general question whether parole should continue to be in the hands of an independent non-judicial tribunal is taken up later in this chapter (paragraph 7.4 below). At this point all that need be said is that if there is to be a Parole Board, it should continue to work within maximum and minimum limits of sentence set by the judiciary.

4.8.3 Conclusions on Form of Judicial Sentencing. In relation both to the Prisons Department and to the Parole Board and to any other non-judicial sentencing institutions which may be suggested or devised, we are of opinion that judicial statements of sentence should always include a maximum limit, the discretion of non-judicial sentencing bodies being exerciseable only within that maximum. In some contexts it may be desirable to specify a minimum also. In many contexts the maximum will also be the minimum because the sentence is of a fixed character. An example is disqualification from driving for a stated period. In short, we recommend that the present, and traditional, emphasis on sentencing discretion being a matter for the judiciary be retained.

4.9 Appeal from Sentence. The general rule in Australian jurisdictions has been that in summary jurisdiction either party may appeal against the sentence imposed by the court but that only the offender may appeal against a sentence imposed after conviction on indictment. Up to now four States, New South Wales, Victoria, Queensland and Tasmania, have departed from this rule by providing for appeals by the Attorney-General against sentence on indictment. In South Australia s. 352 (*d*) of the Criminal Law Consolidation Act, 1935-1972, provides for appeal against sentence by the offender after conviction on information (indictment) with leave of the Full Court. We do not recommend any change in this section. In particular we think the requirement of leave of the Full Court is a desirable precaution against pointless appeals. But the question arises whether South Australia should follow the majority of States in allowing an appeal by the Attorney-General, in the case of Tasmania with leave of the appellate court also, against sentence imposed on information. We think that appeals by the prosecution should be allowed.

4.9.1 Double Jeopardy. The argument of principle against allowing an appeal by the prosecution from sentence imposed on information relies on an application of the general rule of criminal law against double jeopardy: that a defendant should not be put in danger of being twice punished for the same offence. We note in passing that in practice there are many exceptions to this rule. Both the rule itself and the exceptions to it are for the most part beyond the scope of this report because they appertain to the trial stage of the criminal law enforcement process and not to the post-conviction stage. Nevertheless there is a question whether the intent of the rule has relevance to the sentencing stage. We are not prepared to assert that it has no application at all. No doubt the influence of the double jeopardy principle is to be seen in our expressed preference for the present practice, at both the legislative and the judicial levels, for sentences to be expressed in maximum terms, and in our rejection of the indeterminate sentence. At first sight, a right in the prosecution to bring an offender who has been sentenced once by the trial court before a court of appeal to be, in effect, sentenced again, wears an appearance of infringing this principle. This argument is perhaps strengthened by the analogy that the prosecution has no right of appeal from an acquittal on information.

4.9.2 Balancing of Interests. In its own terms the double jeopardy argument may be correct, but we do not accept it altogether in its own terms. We agree that any right of appeal in the prosecution from sentence on information should be restricted but we think that to deny the prosecution any right of appeal at all takes too narrow a view of the public interest. The analogy with appeal from acquittal is defective in that the verdict of acquittal is a decision of the jury and not of the judge. Such questions as whether there should be a right of appeal in the prosecution from acquittal on information on the ground that the verdict is wrong in law are beyond the scope of this report. The point of present relevance is that the decision of the judge on sentence has a large element of discretion in it which may be wrongly exercised from the point of view either of the defendant or of the public. So far as it may be wrongly exercised against the defendant he has his own right of appeal. We see no sufficient double jeopardy reason why the opposite error, departure from the established principles of judicial sentencing in a manner which may prejudice the interest of the public at large, should not also be subject to further judicial review.

4.9.3 Role of the Prosecution. The argument has been advanced also that the prosecution is concerned only with guilt, not with sentence. The present practice in South Australia is in substantial accordance with this point of view. The prosecution does not regard an address on sentence as part of its normal function, and does not usually present one, although we are informed that argument might be presented if in the opinion of the Crown the general level of penalties for a particular offence was too low. On appeal from summary jurisdiction argument on sentence is not presented unless in the opinion of the prosecution the magistrate has made a clear departure from principle or has overlooked important facts. This stance does not meet with complete judicial approval. We understand that at least one judge of the Supreme Court in recent times has objected strongly to the Crown's reluctance to argue on sentence, and judicial requests for prosecution assistance on sentence are not infrequent. On the particular point of utilization of existing machinery for appeals against sentence in summary jurisdiction, we observe that if the legislature has made appeal against sentence available to the prosecution, there is at least implied a legislative policy that such appeals should be taken in a proper case. To assume at the administrative level that there never will be a proper case amounts to ignoring the legislature. But the more important question is whether the prosecution should play any part in the sentencing process at all. In our opinion it should. The main virtue of the adversary system to which we adhere in our criminal trial process is that the court receives the benefit not only of hearing a skilled presentation of the case for each party involved but also of hearing that case tested by adverse argument. There is also an excellent tradition in our courts that the prosecution does not see its task as being to secure a conviction but to present to the court the case for convicting. In both respects the prosecution in jurisdictions which follow English common law traditions is regarded as a representative of the public interest and not of any particular party. We see no reason why this conception of the role of the prosecution should stop once the verdict is given. The public interest in effective sentencing is just as great as its interest in the conviction of offenders, and the advantage to the court of skilled argument and the presentation of opposed points of view is no less after verdict than before. We therefore recommend that informed, and not merely rhetorical, addresses on sentence, and the calling of any necessary evidence in support, become at least as much a part of prosecuting practice as of defence

practice. We say "at least" because it seems to us likely that the development of sentencing expertise by prosecutors will benefit the offender as much as anyone else. Crown prosecutors normally spend a considerable part of their professional time in that capacity. They are therefore in a unique position to help the development of orderly and consistent judicial sentencing policies through continuity of experience. For them to refrain from involvement in the sentencing process deprives the courts, offenders and the public of a valuable source of skilled assistance in a highly critical area of law enforcement. No doubt the effective implementation of such a policy would require prosecutors to have rather more knowledge of the purposes and aims of the various types of sentence than they normally do at present, and also of the actual working of the correctional institutions of this State, and of the views of the Prisons Department where relevant, but in our opinion that would be a good thing. It would be another means of combating the frequent assumption that the sentencing stage of criminal law enforcement is to be sharply differentiated from the trial stage. At present an address on sentence is simply a plea for leniency. In our opinion this is an exercise of limited utility. What ought to be done for the assistance of the court on sentence is the presentation to it of all available information relevant to a rational decision in conformity with current sentencing policies. Since this information can be presented in different ways, and with different degrees of emphasis, both defence and prosecution counsel should play a full part in addresses on sentence.

4.9.4 Advantages of Prosecution Appeals. If it be accepted that the participation of the prosecution assists towards the attainment and maintenance of rational and consistent sentencing policies at the trial level, it follows that the proper balancing of the interests of the public and of the offender in relation to each other is even more important at the appellate level; for it is the appellate courts which set the general standards for the trial courts. The one-sided presentation of appeals against sentence on information which occurs at present, because only cases in which the offender is aggrieved come before the appellate court, hampers this process. We have already adverted to the phenomenon of judicial inconsistency in sentencing in our discussion of the non-judicial sentencing tribunal suggestion (paragraph 4.2.1 above). Whatever degree of inconsistency there may be, it can hardly be disputed that it would be lessened by the utilization of appeals against sentence by the prosecution as well as by the defence

in cases where there appeared to have been a significant departure from accepted principles, or where a marked difference of practice appeared between different courts or judges. There is also the case where the sentence is of a kind, or for an offence, for which there is no precedent, or no recent precedent or no precedent on comparable facts. Under the present system the first sentence tends to become the norm, especially if the offender regards it as favourable to him. A prosecution appeal can bring such a sentence under review. A further advantage of prosecution appeals on sentence would be the elimination of the troublesome question whether the appeal court should have power to increase sentence. There is a natural feeling, to which we subscribe, that it is unfair to an offender convicted on information to put him at risk of an increased sentence if he makes a successful application for leave to appeal against it and then appeals. This problem arises only because the offender is the only person who can appeal, and therefore affords the appellate court its only opportunities to establish general principles of sentencing. If the prosecution also can appeal, there is no reason why there should not be a consequential rule that the appellate court can increase sentence only on a prosecution appeal. No doubt some refinement of this rule would be necessary to enable the appellate court to substitute a different sentence in appropriate cases without encountering questions as to whether a substitution was under some circumstances an increase, but this is a matter which could well be left to the Full Court to work out in case law.

4.9.5 Representation on Defence Appeals. It follows from what we have said in the two preceding paragraphs that the prosecution should normally regard it as part of its function to be represented before the appellate court even if it is the defence alone which is appealing against sentence. Even if the prosecution view is that the appeal should not be opposed it does not follow that representation is unnecessary. There may well be room for discussion of the proper sentence to be substituted. In our opinion part of the role of the prosecution is to assist the court in such argument.

4.9.6 Disadvantages of Prosecution Appeals. Having set out what appear to us to be the considerable advantages of introducing prosecution appeals against sentence on information, we should deal with such arguments to the contrary as have come to our attention. Those which turn on the proper role of the prosecution in the common law system of trial, and on double jeopardy, have already been met. There are

two others. It has been said to be an unedifying and dehumanizing spectacle to see a public prosecutor demanding a particular sentence on behalf of the people, particularly if there are moral or political overtones to a case or if it has aroused public indignation. Such occurrences are by no means unknown in other jurisdictions which South Australia would not wish to emulate. We entirely agree with this objection taken in its own context, but we do not think it is a realistic objection in this country. The traditions of advocacy here, and the very high degree of control traditionally exercised by the judiciary over the advocates who appear before it, make such a development, in our opinion, unthinkable. We have hitherto successfully maintained a system of criminal trial distinguished for its standard of impartiality and for the neutral stance of the prosecution. We see no reason to believe that these standards of conduct will decline if the prosecution enters, to the limited extent which we envisage, into the sentencing question. The decision will still remain with the court. General restraint of the traditional kind can be taken for granted. The other objection is that appeals against conviction by the prosecution will add to the costs of criminal justice. Up to a point this cannot be denied, but it is not in our view an adequate reason for failing to institute such appeals. It is ultimately money well spent because it contributes to the better ordering of society in a disturbing and damaging area. It might well be discovered also, were there some way of making an accurate calculation, that in the long term the economic saving to society would exceed the additional immediate cost of prosecution appeals against sentence.

4.9.7 Restrictions on Appeals. We do not suggest that the prosecution should have any wider right of appeal against sentence than the defence. Since defence appeals from sentence on information can be taken only with leave of the Full Court, it follows that this restriction should apply to the prosecution as well. The question arises whether there should be any further restriction. In New South Wales and Tasmania such appeals can be taken only by the Attorney-General, a provision which discourages prosecution appeals against sentence and clearly suggests that they should be only an exceptional occurrence. In our view such a restriction tends against the working involvement of the prosecution in the sentencing process which we advocate in this report. Although we do not envisage a constant stream of prosecution appeals, equally we do not see the purpose of such appeals being

effectively served if they are highly exceptional. As we indicate below (paragraph 4.9.9), we should like to see the emergence of a reasonably substantial body of reported case law on sentencing. Such a development cannot take place in the absence of a basic structure of appellate opinion. It follows that sentencing questions ought, for the health of the whole system, to come with reasonable frequency before the Full Court, at all events in the initial stages of shaping judicial sentencing policy after the introduction of prosecution appeals. In our view the only desirable restriction on prosecution appeals from sentence on information should be leave of the Full Court. We anticipate that prosecutors would be quickly receptive to any indication by the Full Court that applications for leave were becoming too frequent or in some other way were not being used to the best advantage. This being so, we can see no reason why such a comparatively straightforward question should warrant the personal attention of the Attorney-General as a matter of course. In this connection we draw attention to ss. 275 and 276 of the Criminal Law Consolidation Act, 1935-1972, whereby every prosecution on information requires the assent of the Attorney-General. Since every such case comes to his attention in any event, we see nothing to be gained and possibly something to be lost by requiring the specific issue of an appeal against sentence to be referred back to him at a later stage. Within the limits just indicated we think that prosecution appeals against sentence should be encouraged.

4.9.8 Criteria for Granting Leave. If the improvements in judicial sentencing which we envisage as following from a proper use of prosecution appeals against sentence are to take place, it is desirable that the changed situation be reflected in the principles applied by the Full Court to sentencing appeals. At present, on appeal by the defendant, the Full Court modifies the sentence imposed if one or more of the following three errors is present: that the trial judge acted on a wrong principle in that he either failed to take into account matters which he should have taken into account or took into account matters which he should not have taken into account; that the trial judge acted on a misinterpretation of fact; that the sentence imposed is manifestly excessive. The first two of these grounds for appellate intervention clearly are as applicable to prosecution as to defence appeals. The third reflects in two ways the present situation in which only the defence can appeal from sentence on information and only the defence normally does

appeal from sentence in summary jurisdiction. The first way is that it works in only one direction: the reduction of a sentence. The second is that the word "manifestly" implies a certain judicial reluctance to alter a sentence on appeal when all that can be urged against it is that it is too long. Even if the appellate court is of opinion that it would not itself have imposed so long a sentence, it will not, under present practice, intervene unless the disproportion between what the offence appeared to call for and what was actually imposed is so obvious that it can properly be called manifest. Since, as we have had occasion to stress already (paragraph 4.2.2 above), the trial judge is in a better position than most to form an accurate opinion of the offender, this caution is soundly based. Nevertheless if the higher judiciary are to make the fuller contribution to formation of judicial sentencing policy which we recommend, some modification of the manifest excess ground for reducing sentence will be necessary. We recommend that it be abandoned altogether and that the concept that the trial judge has acted on a wrong principle be enlarged to include errors both of excess and of insufficiency. The current tendency to enlarge the range of sentencing options open to the trial judge increases the possibility that he may impose a sentence which is wrong in kind, rather than either too long or too short. Errors of this description too, as well as errors in length of sentence, are in our opinion best regarded as wrong applications of principle. Any general statement by the Full Court inevitably lends itself to much individual interpretation by trial judges. This in turn gives substance to the complaint of judicial inconsistency. It is only by fairly detailed correction of departures from the norm that individual inconsistencies can be reduced. The advantage that the trial judge has in the particular case of having heard the evidence and personally observed the witnesses and the offender has to be balanced against his unavoidable preoccupation with the circumstances of that case as against sentencing policy as a whole. This is where the role of the appellate court becomes invaluable, but that role is much diminished if the grounds on which it will intervene are unduly restrictive. Accordingly we recommend that the conception of wrong principle be enlarged to include the case where the trial judge has applied the correct principle, enunciated it accurately, and taken all proper matters into account, but nevertheless arrived at a wrong result in the opinion of the appellate court. Under s. 353 (4) of the Criminal Law Consolidation Act, 1935-1972, the Full Court on an appeal against sentence may substitute a new sentence "if it thinks that a different sentence should

have been passed" at the trial. This form of words has been interpreted to limit the appeal court in general to consideration of the evidence which was before the trial court, although an exception is made if there is a reasonable explanation for the failure of the defendant's advisers to produce any further evidence relevant to sentence at that time. In England s. 97 (7) of the Criminal Justice Act, 1967, adopts the wording "if it considers that the appellant should be sentenced differently for any offence for which he was dealt with by" the trial court. This wording has been held in England to empower the appeal court to receive further evidence on sentence without regard to the reason why it was not produced to the trial court. This increase in flexibility in the disposal of appeals against sentence is in accord with our other recommendations. We therefore recommend an appropriate amendment to s. 353 (4) of the Criminal Law Consolidation Act.

4.9.9 Law Reporting. For case law to be influential it must be known. Nowadays that is virtually the same as saying that it must be published in the usual channels of law reporting. Unreported cases no doubt become known to specialists in the field but this is hardly an adequate substitute for proper reporting. We have had occasion already (paragraph 4.7 above) to indicate our approval of the practice of giving reasons for sentence, and the preceding paragraphs have developed the argument that there should be much greater appellate participation in sentencing, which would include reference to previous decisions, learned discussions of the purposes and efficacy of different types of sentences and the apparent intentions of the legislature. Neither of these measures will have the effect which we envisage on the development of orderly and sound principles of judicial sentencing unless they are adequately reported for the information of the legal profession and other concerned persons. We therefore recommend that sentencing cases be reported in the South Australian State Reports and not merely as part of the Law Society Judgement Scheme. We add that, apart from their function as a source of precedent, the existence of reliable law reports on any subject promotes learned discussion and analysis, which in turn assists its practical application.

4.10 Recommendations with respect to Judicial Sentencing.

(*a*) *We recommend that primary responsibility for post-legislative sentencing remain with the courts.*

(*b*) *We do not recommend that the sentencing functions of trial courts be transferred to any form of non-judicial tribunal,*

or to any other judicial tribunal than the trial court except in the case of appeal.

(*c*) *We do not recommend the appointment of assessors to sit with and assist the courts on sentence.*

(*d*) *We do not recommend jury participation in sentencing.*

(*e*) *In conjunction with recommendation (a) above, we recommend that the present practice of leaving the greater part of post-legislative discretion in sentencing to the courts, as opposed to other post-legislative sentencing authorities, be retained.*

(*f*) *We recommend that the present judicial practice of expressing sentences as maxima, within or up to the maxima set by the legislature, be retained.*

(*g*) *We recommend that both trial and appellate courts give, or continue to give as the case may be, detailed reasons for sentence, including in appellate courts reference to appellate decisions, learned discussion and the apparent intentions of the legislature.*

(*h*) *We recommend that the prosecution take a full part in argument and the presentation of evidence on sentence.*

(*i*) *We recommend that the present availability of appeal against sentence on summary conviction by both defence and prosecution be retained.*

(*j*) *We recommend that the present availability of appeal against sentence on conviction on information by the defence, with leave of the Full Court, be retained.*

(*k*) *We recommend that the prosecution have a similar right of appeal, with leave of the Full Court, against sentence after conviction on information.*

(*l*) *We recommend that in cases where the defence appeals against sentence but the prosecution does not, it be normal prosecution practice to be represented at, and participate in, the appeal.*

(*m*) *We recommend that in deciding whether to grant leave to appeal, or to allow an appeal, appellate courts enlarge the scope of the ground that the trial judge has acted on a wrong principle to include the case where the trial judge has applied the correct principle, enunciated it accurately, and taken all proper matters into account but nevertheless arrived at a result, whether as to length or as to type of sentence, which the appellate court thinks is wrong; and that as a corollary manifest excess be discontinued as a separate ground of appeal.*

(*n*) *We recommend that appellate courts have power to increase sentence only on an appeal by the prosecution.*

(*o*) *We recommend that s.* 353 (4) *of the Criminal Law Consolidation Act,* 1935-1972, *be amended to empower the Full Court to receive additional evidence on appeals against sentence without regard to the reason why such evidence was not before the trial court.*

(*p*) *We recommend the regular reporting of judgments and appeals on sentence in the South Australian State Reports.*

(*q*) *We recommend that a concise handbook of sentencing be prepared for the assistance of the judiciary and magistracy, and be kept regularly up to date.*

(*r*) *We recommend that the judiciary and magistracy attend periodical sentencing seminars, make regular visits to the correctional institutions of this State, and of other jurisdictions as the opportunity arises, and maintain personal contact with persons regularly engaged in post-judicial sentencing.*

5 The Prisons Department. In South Australia the next sentencing authority in chronological sequence after the courts is the Prisons Department. The relationship of this stage of the sentencing process to judicial sentencing has been discussed already (paragraph 4.8.1 above) and the principle stressed that the powers which the Prisons Department or its equivalent exercises over offenders should be exercisable only within maximum limits set not only by the legislature but also, in relation to individual offenders, by the courts. This restriction, which is in accordance with the practice hitherto in this State, might seem to reduce the Prisons Department to a position of secondary importance in sentencing. In our opinion this is far from the case. In so far as questions affecting the Prisons Department relate to particular types of sentence or the treatment of offenders in detail, they are taken up in other parts of this report in the contexts to which they relate. As a matter of general principle in the overall structure of sentencing authority, the functions of the Prisons Department, or of its equivalent by whatever name called, fall under the following two main heads. We intend our observations to apply equally, so far as they may be relevant, to any co-equal authorities which may be envisaged, such as a separate Probation Department.

5.1 Administration of Sentences. It is to be appreciated that the extent to which, if at all, the Prisons Department is concerned with post-judicial sentencing depends on what form of sentence is imposed by the court. The Prisons Department is not concerned, for example, with the collection of fines or the policing

of disqualifications from driving. It enters the sentencing picture if imprisonment is imposed or, through its probation branch, by reason of supervised probation. Through its probation officers it remains to some extent involved if a prisoner is released on parole because they have the responsibility of supervising parolees, where required, as well as supervised probationers. Probation officers also prepare pre-sentence reports for the courts. Within these areas the role of the Prisons Department is primarily administrative, but within the scope of its necessary administrative discretions the Department can exercise a great degree of influence over the effectiveness of a sentence. The first and most obvious way in which this is so is in respect of the personnel of the Department. The effect of imprisonment on an offender depends more than anything else on the quality and motivation of the prison officers in whose charge he is placed. The amount of good, in terms of reducing recidivism, which can be done by an able prison officer is debatable. There is no basis for undue optimism. But the amount of harm which can be done by a bad prison officer is beyond doubt. Even if empirical evidence, when and if it becomes available, shows that the most any officer can hope to accomplish is to minimize character-distorting effects of imprisonment, this alone justifies aiming at the highest attainable standards of personal ability, motivation and training. The importance to society at large of the role of the Prisons Department in this area alone can hardly be over-estimated. Similar considerations apply to the probation side of the Department's responsibilities. Whatever the effects may be of the various sentencing functions which probation officers serve, there can be no question that the better the quality of the officer, the better in social terms are those effects likely to be. The second major way in which the Prisons Department influences the effect of sentence on an offender is by way of the type of confinement and work programme to which he is assigned. This proposition needs no elaboration at this point. In general terms it may be postulated that confinement should not be greater, or worse in kind, than the circumstances of the offender and of the institution to which he is sent demand, and that work programmes should be as well-adapted to the individual prisoner as circumstances permit. The third important administrative aspect of the Prisons Department's responsibilities relates to pre- and post-release measures: the extent to which, and manner in which, a prisoner is prepared for his return to normal society and his re-integration into the daily life of the community assisted. These matters, as well as those previously mentioned in this paragraph, are all the subject of more detailed comment and recommendation later in this report. We do no

more than draw attention at this stage to the great influence the Prisons Department can, and should, have on them. Just as it is not, in our view, in the best interests either of the offender or of society that an unrealistic line should be drawn between the trial and the sentencing stages of criminal law enforcement, so is it not in their interests that a similar line should be drawn between imprisonment and release. It is within the proper role of the Prisons Department, for example, to promote and maintain continuous contact with employer and trade union sources with a view to reducing the pressure on an offender to offend again by making employment opportunities available to him. Fourthly, the Prisons Department exercises direct influence over the actual length of a term of imprisonment by its control of remissions for good behaviour.

5.2 Research and Policy. The function of the Prisons Department in the total process of criminal law enforcement is not, or ought not to be, confined to the administrative responsibilities adverted to in the previous paragraph, important though they are to the practical effectiveness of the criminal justice system. The other main aspect of its role lies in the formulation of correctional policy and the acquisition of research knowledge on which to base policy recommendations. Research in this perspective includes not only the accumulation and evaluation of data gathered from the Department's own internal operations, and internal experimentation, but also keeping abreast of developments in other Australian jurisdictions and overseas, both actual and theoretical. Policy formulation includes not only the detailed modification or extension of the Department's own correctional services and methods, but also the preparation of general recommendations to government and the promotion of co-ordinated activities with other bodies and jurisdictions. An instance of the latter would be efforts towards the establishment of uniform, high quality criminal statistics throughout the country.

5.3 Recommendations with respect to the Prisons Department. *For the purposes of this part of our report we have no specific recommendations with respect to the Prisons Department. The recommendations which we shall be making are best presented in the more immediate context of the particular matters to which they relate.*

6 The Police. As mentioned above (paragraph 1.1), the police enter to some extent into the sentencing process by virtue of their responsibility for police prisons and police lockups or cells. These are used for the post-conviction imprisonment of short-term offenders (not more than twenty-eight days in a police prison and not more than fourteen days in

a police lockup) in country areas remote from the main prisons administered by the Prisons Department. The police are also engaged in the conveyance of prisoners from remote areas to Prisons Department prisons. A question of principle arises as to the propriety or wisdom of using police as part-time prison officers in relation to post-conviction imprisonment (as opposed to temporary arrest until the offender can be brought before a court), even where only very short sentences are to be served. We take up this question later in this report (chapter 5, paragraph 12 below).

6.1. Recommendations with respect to the Police. *For the purposes of this part of our report we have no specific recommendations with respect to the police. The recommendations which we shall be making are best presented in the more immediate context of the particular matters to which they relate.*

7 The Parole Board. In chronological sequence of functions the last of the four main sentencing authorities is the Parole Board. In South Australia it is a recent innovation, having been established by the Prisons Act Amendment Act (No. 2), 1969, and having begun to operate in 1970. The existence of the Parole Board is to be distinguished from the availability and desirability of parole as a correctional measure. Parole is the release of an offender sentenced to imprisonment, before the completion of his term, under the supervision of a parole officer and subject to such conditions as the paroling authority imposes. The period of parole is normally the balance of the unserved sentence without allowance for remissions. We accept the utility of parole as a correctional measure. The purpose of the present discussion is to examine the question whether it is either necessary or desirable that parole be administered by a sentencing authority separate from both the courts and the Prisons Department. We observe that the Prisons Department is indirectly involved in the administration of parole because parole officers are in fact probation officers.

7.1 Constitution of the Parole Board. Under s. 42a of the Act the Board consists of five persons appointed by the Governor, which means by the government of the day. There is first a chairman, who is required by the Act to have "extensive knowledge of, and experience in, the science of criminology, penology, or any other related science". This post is at present filled by a retired judge of the Supreme Court who had considerable experience of criminal prosecutions as a Crown law officer before his elevation to the bench. Secondly there is "a legally qualified medical practitioner who has . . . extensive knowledge of, and experience in, the practice of psychology or psychiatry". This post is at present filled by a psychiatrist who is a woman. Thirdly there is a person who has "extensive knowledge of, and experience in, the science of

sociology or any other related science". This post was formerly filled by the Comptroller of Prisons. Lastly there are two persons appointed from nominations made by the South Australian Chamber of Manufactures, Incorporated, and the United Trades and Labor Council of South Australia. There is a requirement that at least one member of the Board be a woman. The term of office of the chairman is five years, which is not renewable if he is by then more than seventy years of age, and of other members three years.

7.2 Criteria and Mode of Operation. The criterion for granting parole specified in s. 42k (1) of the Act is that the Board shall have regard to "the interests of the public and the interests of a (*sic*) prisoner". The Board meets once a month, relevant documents being distributed five days before each meeting. Therefore in its present form it is a part-time operation. Prisoners may apply for parole at any time. They do not appear before the Board and no reasons are given for the granting or refusal of parole. The documentary information on which the Board acts is the following:—

(*a*) Details of the offence and any report or evidence before the sentencing court affecting the question of sentence.

(*b*) Remarks of the court in passing sentence.

(*c*) Full details of the applicant's prison behaviour, including reports of the classification committee [the committee which makes an initial assessment of the prisoner and decides where he is to be confined and what work he is to do].

(*d*) Any medical, psychiatric or psychological reports.

(*e*) A report by a parole officer which includes full details of the applicant's history, his prospects of employment and proposals for residence if released, and a general evaluation.

7.3 Critique of the Constitution of the Parole Board. Logically the question whether a separate parole authority is necessary or desirable may be regarded as anterior to an evaluation of the present structure of the Parole Board, for if the conclusion is reached that no separate authority is required, discussion of the present Board becomes superfluous. It is however convenient to consider the constitution of the present Board first because a number of points arising out of it are relevant to the more basic question.

7.3.1 Expertise. We start from the position that if it has been thought necessary to send an offender to prison, the time at which, and circumstances under which, he is to be released

back into the community are matters which may be critical to the likelihood of his re-offending. No informed person doubts, and we certainly do not, that the decision whether he should be sent to prison is one for experts, who for this purpose in South Australia are the judiciary. Even the proponents of the separate sentencing tribunal suggestion, which we have discussed and rejected already (paragraphs 4.1 to 4.4 above), base their arguments on the assertion that there are better experts than judges, not that sentencing is a function which does not call for expert administration. It follows that the release of a prisoner on parole is as much a matter for experts as his being sent to prison in the first place. Exactly what experts is a matter we return to shortly. The present purpose is to examine the South Australian legislation on the basis of this principle.

7.3.2 Membership of the Parole Board. The most obvious respect in which the Act departs from the requirement of expertise is in the provision for appointment to the Parole Board of two persons, one nominated by the Chamber of Manufactures and the other by the Trades and Labor Council. We make not the slightest reflection on either of these bodies, or on any members of the Board, when we say that clearly there is no requirement of sentencing expertise in either of these two appointments. Secondly, the place assigned to a psychologist or psychiatrist overlooks the distinction between expertise and relevant expertise. There is nothing to require that the practitioner appointed have any experience or knowledge of sentencing other than his connection with the Parole Board itself. Thirdly, it is to be noted that by s. 42c (4) of the Act, a quorum of the Board is three members. It therefore becomes possible under the present legislation for parole decisions to be taken by three persons having no knowledge of sentencing. This possibility is not lessened by s. 42c (5) (*a*), which provides that decisions of the Board are to be those of a majority of members present. Even at a full attendance it is possible for non-expert members to form a majority. No doubt in practice this is unlikely to happen, but it is a defect in the legislation that the possibility is left open. Fourthly, the criticism which we have made of the qualifications required of the psychologist or psychiatrist, that no knowledge or experience of sentencing is specified, applies equally to the sociologist. Indeed, the qualifications required of this member are remarkably vague in their application to sentencing expertise. We are not at all clear what criminologically relevant skills are covered by the expression "any other . . . science"

which is related to the science of sociology. The only member of the Board whose qualifications are described in terms which make direct reference to sentencing expertise is the chairman, who is required to be skilled in criminology or penology, although even here the uncertain expression "or any other related science" introduces an element of vagueness. The conclusion which we reach on an inspection of the South Australian statute is that it contemplates a parole authority which can very easily be too lacking in sentencing expertise to be a desirable component of the sentencing system. We do not regard this criticism as satisfactorily answered by the contention that good appointments will always in fact be made.

7.3.3 Chairman of the Parole Board. There is one further point. In marked contrast to the usual form, there is in South Australia no requirement that the chairman of the Parole Board be a judge, or former judge, of the Supreme Court. Indeed there is no requirement that any member of the judiciary serve on the Board in any capacity, although the desirability of judicial leadership of its deliberations has been recognized in practice in the appointment of the present chairman. We draw particular attention to this because the opinion has been expressed, and we agree with it, that parole is a field of such significance, and involves so many different problems of a judicial and quasi-judicial nature, that it calls for a member of the higher judiciary to preside. A judge of the Supreme Court has a particular status and tradition of independence.

7.3.4 Conclusion on Membership of the Parole Board. For the foregoing reasons we are of opinion that the least which should be done in relation to the Parole Board, although we stress once again that we make no criticism of its present members as individuals, is to change the statutory criteria for membership to ensure the possession by every member of sentencing expertise. We return to this matter below in the context of other changes we should like to see in the Parole Board if it is to be retained as a separate institution. Before that we proceed to the question whether it is either necessary or desirable to retain the Parole Board at all.

7.4 Judicial Parole. A number of considerations lead us to the conclusion that it is neither necessary nor desirable that the Parole Board should be retained because the function which it performs would be better assigned to the judiciary. We start from the opinion, which we stress throughout this report, that no single aspect of sentencing should be artificially separated off from the rest unless there is positive reason for doing so. In the present

case we see no reason of principle why parole as an available correctional measure should be administered separately from the rest of the sentencing process. In our view the obvious place for parole decisions is in the courts. It is the courts which decide to send an offender to prison; it is the courts which decide the maximum length of time he should remain there; and it is the courts, through their power to specify non-parole periods, which have the primary decision whether he should serve a minimum time also. In our opinion it is almost self-evident that it should be the courts which make the equally important decision whether to release him at a particular time on parole.

7.4.1 Parole a Judicial Function. There are a number of other considerations which reinforce the inherent logic of assigning parole to the courts. It is a major exercise of sentencing discretion. Every other major sentencing discretion, including the closely similar supervised probationary sentence, already is entrusted to the courts, basically for the reasons which we have developed in our argument against entrusting such discretions to any other tribunal (paragraphs 4.1 to 4.4 above). We see no better case for an independent sentencing tribunal in respect of parole than in any other context. There is no need to recapitulate the various arguments here, but we do draw attention to some aspects of the Parole Board which have particular relevance and which illustrate points which we made in general terms in the earlier discussion. The most obvious is the judicial character of the parole decision which makes it the almost universal requirement, or at least practice, that a judge of the Supreme Court be chairman of the parole authority. Secondly there is the nature of the evidence on which the Parole Board acts, which was detailed in paragraph 7.2 above and includes reference to any matters affecting sentence in the trial court. We see no ground for supposing that the Parole Board, whether composed of laymen or non-judicial experts, is in a better position than a court to evaluate this evidence. We have adverted already to the fact that part of a judge's professional competence is the detached evaluation of evidence of all kinds, including expert evidence on any matter brought before the court. We have adverted already also to the particular advantage enjoyed in this respect by the trial judge when sentencing by reason of his observations of the offender and witnesses and his detailed knowledge of the case. These considerations seem to us to lead to the conclusion that a court, and particularly the trial judge, is distinctly better placed

than the Parole Board to make the parole decision. It is implicit in this conclusion, and will form part of our recommendation, that wherever practicable an offender's application for parole should come before the judge who presided at his trial, but we do not regard our arguments in favour of assigning parole to the courts as depending on this procedure always being available.

7.4.2 Further Advantages of Judicial Parole. There are other advantages too. In arguments which we have presented already, in connection with prosecution argument on sentence and appeals (paragraph 4.9 above), we have expressed the opinion that the whole sentencing system would benefit from greater judicial involvement with it. Consideration of parole applications, requiring as it does an acquaintance with the progress of the offender in prison, promotes this process. All correctional measures benefit from, and indeed depend for their efficacy upon, co-operation by the offender. A disadvantage of the present parole procedure, in that it militates against this co-operation, is that applicants for parole do not appear before it. To some extent this is linked also with the practice of not giving reasons for either the granting or the refusal of parole. Each of these defects is conveniently remedied by bringing parole applications to a court, which is accustomed as part of its normal procedure to acting in the presence of the offender himself and to giving reasons for its decisions. We have expressed our opinion already also that full reasons should be given for sentence (paragraph 4.7 above). It can be argued that these two points at least could be met by a change in the present practice of the Parole Board. This may be true, but clearly does not afford in itself a sufficient reason for retaining a separate parole authority. Finally we are impressed by the argument that an offender is likely, however little fondness he may have for the judiciary, to accept more readily a decision not to release him on parole which comes from the judge who sent him to prison in the first place than from a committee whose entire knowledge of him is hearsay, and which sees him, if at all, only after he has spent some time in prison.

7.4.3 Procedure. We have referred already to the desirability of parole applications coming before the judge who presided at the trial, where this is practicable. We appreciate that there are a number of reasons why this will not always be practicable and we return to these in the next paragraph below. The standard situation we envisage is that an offender has been sentenced in the Supreme Court in Adelaide to a term of

imprisonment and applies to the trial judge for parole release after having served part of his term. What proportion of a sentence should be served before eligibility for parole arises is a matter we take up later in the report (chapter 3, paragraph 3.11.2 below). We recommend that parole applications should have the status of chamber applications, whereby they would come on within seven days. This we think is essential for their speedy disposal. Where the applicant is unrepresented, or where the Prisons Department supports the application, the matter should be disposed of in chambers. This would be the case with the great majority of applications. Where there is a substantial issue raised, or where both the Crown and the prisoner are represented, the hearing should be in open court. The Prisons Department should have the right of representation by the Crown on all parole applications. The prisoner should have the right to be present. The evidence before the court would normally be documentary but there should be a right to call witnesses on any disputed matter. Reasons for decision should always be given. Appeals should be to the Full Court with leave of the Full Court.

7.4.4 Procedural Problems. It will not always be practicable to follow the standard procedure. Where the trial judge has retired, or died, or is ill or on leave, the application in the nature of things would have to come before a different judge, although in the last two cases it would be open to the prisoner to defer his application if he attached particular importance to coming before the trial judge. Where sentence was imposed by the District Criminal Court in Adelaide, we envisage the same procedure as for the Supreme Court. Greater problems are presented where sentence was imposed on circuit and the prisoner is not in the Adelaide area. In our opinion it would entail disproportionate cost and organization to recommend that all such prisoners should be conveyed to wherever the trial judge happened to be. In some instances no doubt the difficulty would not arise because the judge happened to be on circuit again in the same area as the prisoner, but this would be a mere coincidence. Where this does not occur we recommend that the prisoner be given the option of either dispensing with his right to be present or deferring his application until the next circuit in his area. In the latter case his situation would be treated as one in which it was impracticable for the application to come before the trial judge. In the former case the court should have the power to order the attendance of the prisoner if it thought fit.

7.4.5 Magistrates and Justices of the Peace. Magistrates and justices of the peace have powers of sentencing to terms of imprisonment which, although relatively short, might bring an offender within the scope of the parole legislation. We recommend that all applications from prisoners in this category should come before a special magistrate, with as much adherence as is practicable to the principle that the person who imposed the sentence should hear the parole application. Appeals should be available in accordance with the usual rules for appeals in summary jurisdiction.

7.4.6 Incidental Matters. It may be argued that it is administratively impracticable for parole to come before the courts. The vision may be conjured up of the court calendar being filled with parole applications and of the Prisons Department being constantly engaged in the conveyance of prisoners to whom a visit to court is worthwhile as a change of routine. Questions arise also over legal representation and the cost thereof. We do not think there is anything in the administrative objection. There will no doubt be some increase in applications for parole if our recommendations are accepted but this is because the present system of parole discourages applications. Discouragement is caused partly by such aspects of current parole procedure as omission to give reasons or allow appearance and partly by the rule in s. 421 of the Prisons Act that the parole period includes the whole unexpired period of prison sentence without deduction of remission for good behaviour. This rule has the effect that many prisoners prefer to serve their full prison term, less remissions, and leave as free men, than accept the constraints of parole for a longer period. This problem is more relevant to parole as a correctional measure than to the present discussion. The point being made now is that if parole applications are to be encouraged, as we shall be recommending that they should be, instead of discouraged, as at present they effectively are, even if that is not the intention, the administrative problems of coping with an increase will have to be faced in one context or another in any event. As an item of judicial business such an increase does not seem to us to present any special feature to distinguish it from other normal developments in the work of the courts. Legal representation should be allowed in accordance with the normal practice of the courts. To the extent that this raises questions of legal aid, it forms part of the general problem of indigent litigants and goes beyond the scope of this report. If a parole applicant is unable to afford legal representation, he is not unique in that respect, but we should

mention that we make recommendations with respect to legal advice for prisoners later in this report (chapter 3, paragraph 3.22.1 below). As to cost, here, as elsewhere, improvements in the administration of justice cost money, but we see no reason to anticipate that the removal of parole decisions from the Parole Board to the courts would entail any great increase in parole expenditure, because it would not require the setting up of any new machinery. As to the conveyance of prisoners, we hardly think that the conveyance of parole applicants on one occasion a week, or whatever the arrangement might be, would add significantly to a task in which both the Prisons Department and the police are already, and inevitably, constantly engaged. We do not recommend removal of responsibility for conveyance of prisoners from either of these bodies, or of responsibility for placement of prisoners, from the Prisons Department. As to the possibility of frivolous applications to escape prison routine, this is a matter easily dealt with by the courts themselves.

7.4.7 Advisory Functions. The Parole Board has certain advisory functions in that it is empowered to make recommendations to the Governor under ss. 42o and 42p of the Prisons Act for the parole release of prisoners declared to be habitual criminals or detained pursuant to s. 77a of the Criminal Law Consolidation Act, 1935-1972. If this legislation is retained, a matter which we consider later in this report (chapter 3, paragraph 3.13 below), we recommend that these powers be exerciseable by a judge of the Supreme Court nominated from time to time by the Chief Justice.

7.5 Alternative Parole Board. We have indicated already that if, notwithstanding our recommendation that responsibility for parole decisions be removed to the courts, an independent Parole Board is retained, we should like to see considerable changes in its constitution (paragraph 7.3 above). It should be mandatory, in our opinion, for the chairman to hold, or have held, judicial office, either as a judge of the Supreme Court or as a judge of the District Criminal Court. The other members should be statutorily required to have criminological or sentencing qualifications or experience. It should be a body with discretionary power to order release on parole and revoke parole. It should be conceived of as a paid professional body the existence and procedures of which encourage the use of parole as a correctional measure. It should meet in Adelaide at least once a week and travel throughout the State in the course of its work. Prisoners making application to the Parole Board should have the right to

appear before it and the Board should give full reasons for its decisions. Parole applications should be evaluated in accordance with statutorily stated criteria of considerably more precision than the present vague requirement that the interests of the public and of the prisoner be regarded. There should be an appeal, by either the prisoner or the Prisons Department acting through the Crown law officers, to the Full Court, with leave of the Full Court, to contest any apparent departure from the statutory criteria. The total membership of the Board would no doubt depend on the volume of work which developed. There might be difficulty in constituting a suitably well-qualified Board but in our view such a body is essential, once the courts are ruled out, if parole as a correctional measure is to have its proper effect. Since the Prisons Department would have the right of appearance before the Parole Board, no member of the Prisons Department should serve on it at the same time as he is a member of that Department.

7.6 Recommendations with respect to the Parole Board.

(*a*) *We recommend that the Parole Board be discontinued and that responsibility for parole release of prisoners be transferred to the courts.*

(*b*) *Should recommendation* (*a*) *not be accepted, we recommend substantial changes in the constitution and mode of operation of the Parole Board.*

CHAPTER 3

PRE-SENTENCE REPORTS; IMPRISONMENT

1 Introduction. When sentencing an offender the courts should act on the best information available to them. One means of acquiring information is by way of a pre-sentence report, but pre-sentence reports raise more problems than is generally realized. We discuss them as a preliminary to a survey in this chapter and the next of the various types of custodial, semi-custodial and non-custodial sentences which are or may be available to the courts. The balance of this chapter comprises a discussion of the most complex sentence, which is imprisonment. Our main recommendation is that the form of a sentence of imprisonment be changed to make greater use of parole and remove the unsatisfactory present reliance on remissions. The particular topics covered include the following: the character and potential of imprisonment as a correctional measure; the criteria which should indicate a prison sentence; remissions, parole and the structure of a prison sentence; consecutive and concurrent sentences; persistent recidivists, sexual offenders, mentally ill offenders and psychopaths; prison discipline; reciprocal interstate arrangements; prison work and education; payment of prisoners; classification of prisoners; the legal status of prisoners; legal advice; and restraints on publication of criminal records. We have considered whether a survey should be included in this report of the length of maximum sentences of imprisonment which can be imposed under the law of South Australia. We have decided that to attempt such a survey would anticipate to a greater extent than is desirable our later report on the substantive criminal law, but we make the observation that in general they appear to be too high by modern standards, especially in relation to offences against property.

2 Pre-sentence Reports. A pre-sentence report is an extra-judicial report supplied to the court, usually by a probation officer, giving personal information about a convicted offender which may assist in deciding on the appropriate sentence and at later stages of the correctional process. In principle it is an obviously sensible measure which, properly used, can be of significant help. In practical application however, the preparation and use of pre-sentence reports give rise to a number of questions.

2.1 When Pre-sentence Reports should be Required. A pre-sentence report is an administrative intrusion into the life of its subject. In our community it therefore requires justification, especially since such a report forms no part of the evidence at the offender's trial and is not one of the necessary incidents of

his arrest and detention. Its basic justification is that under appropriate circumstances it materially assists effective sentencing, which is in the interests both of society and of the offender. But such a justification necessarily implies that pre-sentence reports are not to be used indiscriminately or automatically, or only for the collection of research information, or for any other ulterior reason or in disregard of countervailing considerations. A typical ulterior reason might be the ordering of remand for report as a means of giving the offender an experience of prison without actually imposing a sentence of imprisonment. From this in turn it follows that if an offence is trivial, or for some other reason does not call for an onerous sentence, or if the offender seems unlikely to offend again in any event, there is no case for a pre-sentence report because the sentencing process itself presents no problem. Similarly a pre-sentence report is likely to be a constructive contribution only if it is reliable. If it includes errors or omits relevant facts it may do much harm. It follows that if properly trained staff are not available, a pre-sentence report should not be called for, however desirable a sound report might be. Delay also must be taken into account. If the pressures on available staff are such as to impose a significant delay in the production of reports, any benefit to be obtained must be weighed against the effect on the offender of a long period of remand for sentence and the doubtful justice of such a delay. For such reasons as these we are of opinion that there should be no compulsion on the courts to call for a pre-sentence report. A report should be called for only when there is reasonable ground to expect that it will help. For example, a pre-sentence medical report is desirable if the court is considering a sentence of periodic detention involving manual labour and there is some such reason as age, frailty or disability for doubting the defendant's capacity to do the work. But a pre-sentence report is more usually a social report which seeks to amplify the evidence already before the court of the offender's character, circumstances and history. Reports of this kind are especially appropriate where the offender is young, which may be taken in general to mean under 21, particularly if he has been convicted of a serious offence, and in cases where the offender is unrepresented and is likely to be sentenced to imprisonment for more than 28 days. We recommend that courts give special consideration to the possibility of calling for a pre-sentence social report for young offenders and that they call for such a report as a matter of routine where an unrepresented offender is at risk of imprisonment, unless in either case they are satisfied that all material information concerning the offender's background and circumstances is already before them. We see no reason to make special mention of psychiatric reports beyond

recommending that particular care should be exercised before calling for a pre-sentence medical report of this kind. We shall be recommending against special measures for persistent sexual offenders or suspected psychopaths at the sentencing stage (paragraphs 3.14.4, 3.15.4 below). In the present context also we prefer to adhere to the principle that an offender should become subject to psychiatric inquiry only if he appears to be mentally ill. This may appear from the circumstances of his offence, from his demeanour or from his history. If it does, a psychiatric pre-sentence report would be desirable, but such a report ought not to be ordered merely on the basis of the category of offence committed. To do so is to commit the error, which in our opinion is a serious one, of tending to equate criminality with mental illness. Our reason for recommending caution in calling for psychiatric reports is that an unneccessary psychiatric examination may cause avoidable anxiety in the defendant or his relatives.

2.2 Power to Order Pre-sentence Reports. The only question which arises under this head is whether the courts should have power to order a pre-sentence report of any kind without the consent of the offender. In our opinion they should have this power. It is obviously desirable that the offender co-operate in the compilation of the report. Persistent refusal to do so may be a practical reason under some circumstances for not ordering a report or for countermanding the order, but as a matter of law this decision should be with the court and not with the offender. It is equally possible that refusal to co-operate may indicate a particular reason why a report would be useful. In the case of a social report information is likely to be available from third parties even if the offender is uncommunicative. The question whether any authority other than a court should have power to order a pre-sentence report does not arise because we do not envisage any other authority occupying a position equivalent to the courts in the sentencing process. We consider rights of challenge to a report and of appeal against an order for one separately below (paragraph 2.4). If a situation arises in which a probation officer knows facts which make a report desirable but they are not known to the court, and the court does not otherwise think a report to be necessary, he should have the power to draw the court's attention to them in order that a fully-informed decision may be made.

2.3 Contents of a Pre-sentence Report. What should go into a pre-sentence report hardly arises as an issue with medical or psychiatric reports, unless it is necessary to observe that a statement of the appropriate treatment, if any, should be included, together with an indication of its availability. With social reports an initial

consideration must be the degree of skill, experience and training of the probation or other officer who is going to compile it. We have mentioned already (paragraph 2.1 above) that a report emanating from an unskilled source may do more harm than good, and therefore should not be ordered at all, but there are degrees of reliability even among trained staff which are usually related to length of experience but are influenced also by the general calibre of the probation or other service. As a general principle, the less confidence the courts have in the subjective judgment of the service supplying the report, the more objective and factual should be the information required. Evaluative opinions should be called for only where there is reasonable ground for confidence in them. We appreciate that in practice the courts will probably, and properly, demonstrate confidence by expecting evaluative opinions from those whose professional competence lies, by definition, in social work and correct any apparent imbalance themselves. As to the specific matters which should be included in a pre-sentence social report, the first question is whether such reports should follow a fixed form or not. On the whole we think not. A trained officer will know the general range of matters to which he should have regard, supplemented by anything the court itself particularly wants to know, and can be relied on to present them in an orderly fashion. No doubt it is administratively convenient for reports to be rendered on a standard form but we recommend that it be designed with as little informational categorization as possible, and preferably with none. There is a difference between writing a report on a standard form and writing a report in a standard form. The latter can exercise a distorting effect which is not adequately corrected by providing a space for additional comment. As to particular facts, there is no need to duplicate material which has emerged in evidence because pre-sentence reports should supplement the evidence and not replace it. Beyond this, individual cases vary so much that it is impracticable to suggest a statutory list of subjects to be covered. In general terms they would include relevant details of the offender's home surroundings and family background, his attitude to his family and their response to him, his school and work record and leisure activities, his attitude to his employment, and his attitude and response to previous sentences, if any. An assessment of personality and character might well be included on the basis that the court is not obliged to agree with it. The question has arisen whether a pre-sentence report should include a recommendation as to sentence. In our opinion it should not. It is the responsibility of the court to impose sentence and that responsibility should not be weakened or influenced by a direct recommendation from any other quarter. Moreover it would not improve the posi-

tion of the officer compiling the report for it to be believed by the offender or others, as might be the case if he were authorized to make such a recommendation, that he will in effect be determining the sentence. The furthest he ought to go should be to express an opinion, which can be regarded in the same light as expert evidence of any other kind, as to the likelihood that supervised probation or other non-custodial order would produce a favourable correctional result. Also, we do not recommend that the reporting officer should have power to order further reports to supplement his own. For example, he may uncover information which suggests that a psychiatric examination would be desirable. He should not have discretion to order such an examination but should include the information in his own report and draw attention to it for the court to act upon if it sees fit.

2.4 Rights of Appeal and Challenge. Two distinct questions arise in respect of the offender's rights in relation to pre-sentence reports: whether he should have a right of appeal against an order that such a report be supplied and whether he should have a right of challenge to the contents of the report. In view of the recommendation which we have made already that a pre-sentence report should not depend on the consent of the offender (paragraph 2.2 above), it appears to us that the only legitimate ground for appealing against an order for such a report is that its preparation would involve an unjust delay in sentencing the offender. If the offender has already made representations to the court on this point and had them rejected we think it is reasonable that he should have a right of appeal either to the Full Court or to a single judge, as appropriate. We do not envisage that the right would be often exercised because it adds to any delay. We do not recommend that courts making pre-sentence report orders routinely specify a date by which the report should be furnished, unless the offender is released on bail to report for sentence on a given date, because such a limitation might lead to reports being superficial from pressure of work, but provision should be made for the courts themselves to call up an offender for sentence if undue delay is encountered. On the matter of challenge to the contents of a report, the preliminary question arises whether its contents should be disclosed to the offender, for if they are not he has nothing to challenge. Both in Australia and in other common law jurisdictions law and practice vary. Most Australian States leave disclosure to the individual discretion of the courts. In South Australia the normal practice is to disclose the contents of pre-sentence reports to the offender. The two main arguments against disclosure are that it may inhibit the frankness of third parties in supplying information about the offender and that some of the information in the

report may have an adverse effect on him. We do not accept the first argument because research into the experience of probation officers in all States suggests that it has no factual basis. No reluctance to give information on this ground has been found. The second argument is a little more weighty. Two categories of information are relevant: psychological or physical illnesses or defects revealed for the first time by examination and social facts, such as that he is illegitimate, of which the offender was previously unaware. The suggestion is that information of these kinds may have an adverse effect on him, or at least on his attitude to the correctional authorities. We do not believe that medical or psychological information should be withheld. Taking the view, as we do, that a pre-sentence report should be compulsory if the court so wishes, we think that as a general principle it is unreasonable to withhold the contents of a psychological or medical report from the offender. Keeping him in ignorance of facts concerning his own health is in our opinion not only objectionable in itself but is likely to have an adverse effect on his attitude to his sentence, for since he is being examined and knows he is being reported upon, the fact of concealment cannot be concealed. Since the sentencing process entails the exercise of very extensive powers over an offender, and since the hope is that the wise use of those powers will prevent recidivism, it is in our opinion of the greatest importance that the offender know on what information the court is acting, and therefore on what basis and with what object he is receiving the sentence decided upon. Moreover there is much to be said for confronting offenders with facts of life which are relevant to their own future. Some social facts, however, form an exception. There may be circumstances, such as the illegitimacy example mentioned above, which it can do no good to reveal and possibly harm. It appears to us that the question is whether the fact in issue might help to explain things to the offender, particularly the attitudes of others towards him. We recommend that if the officer making the report discovers information of this character and is uncertain whether it would be wise to pass it on to the offender, he should make it the subject of a separate confidential report to the court and leave it to the court to decide what to reveal. Subject to this one exception we recommend that a copy of a pre-sentence report of any kind should be routinely supplied to the offender. The question then arises whether the report should be regarded as a matter of information only or should be subject to some right of challenge as to its contents. The value to be protected by a right of challenge is accuracy of information. In some jurisdictions serious sentencing errors have been made on the basis of incorrect information which would have been either rejected or made the subject of

further inquiry if it had been subjected to challenge. In principle therefore the factual information in a report, as opposed to matters of opinion, should be subject to examination for accuracy by the offender. We recommend the following procedure. Sources of information should be revealed in the report unless they are persons who insist on anonymity as a condition of supplying it. Named third parties should be subject to cross-examination for factual accuracy if the offender so wishes. Anonymous third parties should not be subject to cross-examination but the court should disregard otherwise unconfirmed information the accuracy of which is disputed by the offender. Facts which are stated by the officer compiling the report as within his own knowledge should be disregarded if challeneged unless substantiated on oath. We recommend also that the prosecution should be routinely supplied with any pre-sentence report made available to the offender, should have a similar right of challenge for accuracy, and should have a duty to draw to the attention of the court any suspected inaccuracies which the offender may not have mentioned.

2.5 Recommendations with respect to Pre-sentence Reports.

(*a*) *We recommend that the courts avail themselves of pre-sentence reports in all cases where there is reasonable ground to expect that such a report will assist the sentencing process on conviction or at any later stage, but we do not recommend that they should be obliged in any case to order such a report.*

(*b*) *We recommend that the courts should particularly consider ordering a pre-sentence psychiatric, medical or social report, as may be appropriate, where the offender may be mentally ill, or physically unfit to do work which may be assigned to him, or is under* 21 *and has been convicted of a serious offence, or is unrepresented and is at risk of a sentence of imprisonment of* 28 *days or more.*

(*c*) *We recommend that pre-sentence reports not be ordered where the offence is trivial, or does not call for a sentence of imprisonment, or for some other reason does not call for an onerous sentence, or where the offender is unlikely to re-offend, or for the collection of research information alone, or for any other reason ulterior to immediate assistance in sentencing that particular offender.*

(*d*) *We recommend that particular care be exercised in ordering pre-sentence psychiatric reports.*

(*e*) *We recommend that a pre-sentence report be not ordered unless there are available suitably trained staff who are able to render the report within a reasonable time.*

(*f*) *We recommend that in its order for a pre-sentence report the court specify any information which it particularly wishes to have but do not, except where the offender is released on bail to report for sentence on a given date, specify a date on which the report must be available. If undue delay is encountered the court should recall the offender for sentence of its own motion.*

(*g*) *We recommend that there be no statutory or administrative specification of the contents of a pre-sentence report or a prescribed form for it to take.*

(*h*) *We recommend that third parties be entitled to insist on anonymity as a condition of supplying information.*

(*i*) *We recommend that the compiler of a pre-sentence report be entitled to express expert opinion on the probable effect of a non-custodial sentence but that he be not entitled to recommend the sentence to be imposed.*

(*j*) *We recommend that the compiler of a pre-sentence report be not empowered to order further examinations or reports but that he be under a duty to draw to the attention of the court any apparent need for them.*

(*k*) *We recommend that a pre-sentence report be not dependent on the consent of the offender but that he have a right of appeal against such an order, to a single judge or to the Full Court, as may be appropriate to the jurisdiction, on the ground that it will entail unjust delay in sentencing him.*

(*l*) *We recommend that copies of pre-sentence reports should be supplied routinely to both the prosecution and the offender except, in the case of a pre-sentence social report only, where the report contains material not previously known to the offender which in the opinion of the court it would be better not to reveal to him; and that consequentially, where the compiler of a report acquires information which in his opinion may fall into this category, he make it the subject of a separate confidential report to the court.*

(*m*) *We recommend that both prosecution and offender have a right of cross-examination to challenge the accuracy of any factual statement in a pre-sentence report, except that where cross-examination is impossible because the source of the statement insists on anonymity, the statement be disregarded by the court if its accuracy is disputed by the offender.*

(*n*) *We recommend that facts stated by the officer preparing the report as within his own knowledge be disregarded if challenged unless substantiated on oath.*

(*o*) *We recommend that the prosecution be under a duty to draw to the attention of the court suspected inaccuracies not mentioned by the offender.*

3 Imprisonment. In a survey of different types of sentence imprisonment ought logically to come at the end, for it is the last resort of a correctional system. The number of offenders who are sentenced to a prison term on conviction for the first time is very small in relation to the size of the prison population as a whole and smaller still in relation to the total number of convicted offenders. Imprisonment is typically a sentence to be imposed either where the offender appears to be a serious danger to the public if left at large, or for persistent recidivism, or where the circumstances of the offence arouse particular disapprobation. The vast majority of offenders never go to prison, except in some cases on remand whilst awaiting trial. The reason for taking imprisonment first in a survey of different types of sentences is that at the present day virtually every other correctional measure which either is available or might be contemplated is a reaction from, or a modification of, imprisonment and is therefore best understood in that light.

3.1 Categorization of Imprisonment. In terms of its incidents imprisonment is normally categorized as either maximum, medium or minimum security, depending on the degree of closeness of confinement and custodial supervision. The popular idea of imprisonment, and the sense in which for the most part it will be discussed in the following paragraphs, approximates to maximum security, but at the present time, in accordance with the general trend in correctional thought away from unnecessary confinement, increasing use is being made of minimum security prisons. These are virtually open prisons, frequently prison farms, which rely largely on self-regulation by the prisoner. The main uses of minimum security prisons are to ease the transition from maximum or medium security back to the community before release and to accommodate prisoners who need not be confined more securely because they are unlikely to attempt escape. Maximum security explains itself. It is properly applicable to prisoners who are poor escape risks and dangerous to the public. Maximum security also has a disciplinary function. Medium security is necessarily an imprecise term. It envisages a degree of confinement less rigorous than maxximum security, in that it depends on less supervision and more co-operation from the prisoner, but not as open as minimum security. In practice the dividing line between

medium security and minimum security is often a matter of degree or definition. Each is necessarily considerably more flexible than maximum security in terms of work and training programmes and puts less strain on custodial staff as well as prisoners. Medium and minimum security accommodation is also cheaper to construct and maintain than maximum security. One important use of maximum security accommodation is in respect of detainees on remand awaiting trial. Prisoners in this category normally must be confined under maximum security conditions, for otherwise they would be released pending trial. Typical reasons for not releasing them are that they may be a danger to the public, or are likely to abscond before trial, or may intimidate witnesses or may be in personal danger from popular feeling about the offence with which they have been charged. Such reasons for imprisonment indicate maximum security. There are exceptions. Some defendants are remanded in custody only because they are strangers in the community and cannot raise bail. These defendants do not necessarily need maximum security but it would be over-elaborate to provide a separate institution for them. Reactions from maximum security imprisonment in the form of alternative correctional measures which avoid sending the prisoner to prison in the first place are known as non-custodial sentences and are discussed under the appropriate heads in the next chapter.

3.2 Modifications of Imprisonment. Modifications of imprisonment take two main forms. Some are semi-custodial sentences, where the offender is confined or kept under restraint only intermittently. An example of such a sentence where confinement nevertheless remains prominent is pre-release work, where the offender resides in medium or minimum security prison accommodation but is allowed out to work in the community. An example of such a sentence where confinement plays only a small part in terms of time is week-end detention, where the offender typically spends his week-ends in minimum security prison accommodation but lives in the community in a normal way during the week. The second main type of modification of imprisonment consists of measures which improve the quality of full-time imprisonment with a view to countering deleterious effects on the prisoner. The reduction of custodial rigour by way of medium and minimum security degrees of confinement has been mentioned already. Another example is a prison work programme. Each of these two main types of modification of maximum security is conveniently considered under the present general heading of imprisonment. First it is necessary to give some indication of the problems inherent in the use of imprisonment as a correctional measure.

3.3 Imprisonment as a Correctional Measure. The history of imprisonment has often been surveyed and there is no need to retrace it here. The essential point to grasp is that it did not emerge as a correctional measure in itself but as a by-product of the need to retain custody of offenders until they were punished or disposed of in some other way. Hence an offender would be kept in prison until executed, or mutilated, or flogged, or until he paid a fine or debt or was transported. Politically inconvenient states of mind or action could be, and in many parts of the world still are, dealt with by using imprisonment simply as a means of removing the offender from the community rather than as a punishment, still less a correctional measure, in itself. The transition from the conception of imprisonment as necessary but incidental custody to imprisonment as a correctional measure in itself probably owes its occurrence to two developments. One is the decline or disappearance of most of the other punishments to which it was incidental. If an offender is in prison awaiting transportation, for example, and there ceases to be anywhere to which to transport him, he remains in prison, and sooner or later his presence there has to be rationalized. In this way imprisonment becomes a correctional measure almost by default. The second development has been the increasing use of imprisonment as a means of retaining custody of an offender while he is subjected to coercion or persuasion. Detention of religious and political offenders has often been of this character, their removal from the community being combined with the aim of changing their views. The use of imprisonment as a means to an end of this kind is in effect a correctional measure, the difference between religious or political persecution and criminological rehabilitation being one of ends rather than means so far as the fact of imprisonment is concerned. The need to find some other justification for imprisonment than as custody incidental to a specific punishment leads naturally to the idea that it may be used as an instrument of coercion or persuasion instead. Where the persuasive aspect is dominant, the aim is rehabilitation. Where the sense predominates that imprisonment merely replaces some more draconic punishment, the aim is retribution. But these so-called aims of imprisonment lack cogency at the present day because they are *ex post facto* rationalizations of an inherited state of affairs: the existence of prisons as a means of disposing of offenders. The questions which should be asked are, what are the effects of imprisonment, and, having regard to its effects, for what socially beneficial purposes imprisonment can be realistically used.

3.4 The Paradox of Imprisonment. There is a self-contradictory element about imprisonment as a correctional measure which has far-reaching effects on the correctional system. The commission of

offences of a character or to an extent which causes an offender to be sentenced to imprisonment may be taken as cogent evidence that that offender is poorly adjusted to the community in which he lives. The view is widely held, and we accept it, that in principle the best way of countering such maladjustment is to promote the maximum integration of the offender into a community. In other words, to reduce the emotional barriers between the offender and the rules of communal behaviour which enable society to cohere. Yet offenders who are by definition the worst-adjusted (leaving cases of serious mental illness aside), and who are therefore in the greatest need of remedial social contact, are the very ones whose isolation from the community is increased by imprisonment. The same contradictoriness is to be found in the utilization of semi-custodial or non-custodial measures for easing the transition from prison back to the community. Examples are pre-release work and parole. There is a natural tendency to select prisoners for pre-release work or parole by reference to the likelihood that they will not re-offend whilst out of prison: that they are good risks. But the effect of releasing only good risk prisoners is to ease the transition for the very prisoners who least need assistance. The ones who need it most, the bad risks, are likely to be kept in prison for the full period authorized by the sentence, less remissions if applicable, and then released with minimum preparations for their return to society. We do not suggest that there is any easy answer to the paradoxical nature of imprisonment as a correctional measure, but we draw attention to it as an important influencing factor and one which does much to explain why imprisonment so often appears to be self-defeating.

3.5 Response to the Paradox. The apparent contradiction between the socially beneficial aim of reducing recidivism and the socially harmful results of imprisonment as a correctional measure has been observed and commented upon for a long time. It has produced two major developments in sentencing and correctional policy. First, there have appeared a steadily increasing number of non-custodial and semi-custodial alternatives to imprisonment. The aim of these alternative sentences has been twofold: to reduce recidivism wherever possible without sending the offender to prison and to provide the sentencing authorities with as wide a variety of choice as is practicable in the interests of fitting the sentence to the particular offender. Secondly, there has been increasing pressure to improve the quality of life in prison, to introduce some sense of purpose for both prisoners and staff, and to ease the transition from prison back into the community. The aim here has been to minimise the deleterious effects of imprisonment where imprisonment seems to be unavoidable. The proliferation of non-custodial

sentences has been seen in some quarters as part of a larger progress towards the time when imprisonment as a correctional measure will be abandoned altogether. As to this, we can say only that it may well be so but we do not anticipate the total disuse of imprisonment as a correctional measure in South Australia in the foreseeable future This opinion is reflected in our recommended criteria for imprisonment (paragraph 3.8 below). The problems of imprisonment are therefore likely to be with us for a long time yet. In our view these problems can best be dealt with by continuing to make available and experiment with non-custodial and semi-custodial sentences, by much improving the administration of the prison system for both staff and prisoners, and by establishing clear criteria for the imposition of a prison sentence on an offender with a view to not taking that step unless there appears to be no reasonable alternative. We now take up these matters in more detail.

3.6 Effects of Imprisonment. There is a considerable body of evidence, backed by a wide spectrum of opinion from persons with practical experience of prison administration, that imprisonment is harmful to the character. What is less certain is the extent to which this is inherent in imprisonment as opposed to being a consequence of inadequate personnel and facilities and lack of a sense of purpose about imprisonment as a correctional measure. There is certainly a formidable case for arguing that, however badly adjusted to a society an offender may be, imprisonment will not make him better and is likely to make him worse, so that if a man does not re-offend after imprisonment it is in spite of, rather than because of, the prison system. Proponents of this point of view point to the following customary aspects of prison life in Australia and elsewhere at the present time. The emotional pressures generated are strong and have little outlet. The routine is monotonous. There is total deprivation of heterosexual contact, which is enough in itself to produce serious emotional complications. Homosexual attentions are not encouraged and are in any event unwelcome to the majority. Constant discipline is necessarily enforced but prisoners are by definition people who find discipline hard to practise or accept. Personal responsibility and initiative are at a minimum. Opportunities for abuse of power by both staff and fellow prisoners are frequent and are sometimes taken. A prison is necessarily an extremely artificial social unit and is therefore productive of constant, and sometimes serious, emotional distortion. This is a difficulty which is hard to overcome in practice because the artificiality of prison life to some extent affects the attitude of staff as well as prisoners, particularly where the staff feel a conflict, as they often do, between their

custodial and disciplinary functions and the desire which many of them have to do something constructive with the prisoners under their control. The pressures are increased for the prisoner who has family responsibilities or matrimonial troubles, for in both cases there is little he can do but worry about them. Finally, imprisonment constantly emphasises to the prisoner that he belongs to a society apart, a society which is rejected by the rest of the community and which in response develops its own distinctive anti-social values. These various aspects of imprisonment lead some to conclude that the surest way of confirming a recidivist in his way of life is to send him to prison. The only exception admitted is that if an offender is kept in prison long enough, he will grow too old to be a menace.

3.7 Evaluation of Imprisonment. The foregoing argument is a disturbing one. There is no sound basis for rejecting it altogether. It may ultimately prove to be an inescapable conclusion that, however much conditions are improved, imprisonment remains a basically harmful experience. If this is so, but no aceptable alternative sentence can be found for certain classes of offenders it follows that all that can be hoped for from better personnel and facilities is the minimization of distorting effects on the prisoner, and not his positive improvement. If it is not so, however, it follows that it may be possible to make of imprisonment, for certain kinds of offenders, a positively rehabilitative measure. For our purposes it is unnecessary to reach a fundamental decision either way. For the foreseeable future there is no alternative to imprisonment as the last resort of the correctional system. In order to minimize the deleterious effects of imprisonment it is clearly desirable, and in the interests of the public, to improve the quality of prison life. In order to introduce one of the most valuable elements in any improvement, a sense of constructive purpose in the prison service, it is equally clearly desirable to encourage the use of any measure which may improve the prisoner's attitude to society. In this report, therefore, we act upon the opinion that a number of improvements should be introduced into the prison system as it at present exists in South Australia, in order to reduce its harmful effects, and upon the assumption that with a positive attitude to rehabilitation it may be possible positively to help some prisoners to a better adjustment of life.

3.8 Sentencing to Imprisonment: Criteria. It has been observed that there is a change of emphasis in relation to a prison sentence as between the courts and the subsequent sentencing authorities. In the courts the major consideration tends to be retributive or deterrent whereas at the later stages of sentencing

rehabilitation is uppermost. If this is true it follows that there is a danger in relation to prison sentences that different parts of the sentencing system will work inconsistently with each other. As a counterweight to this possibility we have recommended already greater involvement of the judiciary in sentencing, and in particular the assumption by the judiciary of responsibility for parole release (chapter 2, paragraphs 7.4, 7.6 above). A further measure which we recommend is the adoption of definite criteria for the imposition of a prison sentence so that all concerned may know as precisely as possible why an offender is in prison. This may have an important bearing on what happens to him when he gets there and whether he is released on parole. We observe also that the desirability of definite criteria is increased by the statutory practice, where imprisonment may be imposed, of expressing the maximum sentence for an offence in terms of imprisonment, which tends to place the emphasis on whether there is any reason why he should not go to prison rather than on whether there is any reason why he should.

3.8.1 Dangerousness. The first and most obvious criterion for the imposition of a prison sentence is that the offender is too dangerous to leave at large. We doubt if a useful general definition of dangerousness can be formulated for this purpose. It is an oversimplification to argue only from the offence to the offender. The fact that a man has committed a crime of violence is not necessarily conclusive evidence that he is too dangerous to leave at large. In all cases the effect of public arrest, trial and conviction has to be taken into account, and the influence of any time spent in prison on remand. Age, present and probable future personal circumstances, and presence or absence of a previous criminal record are relevant. And perhaps most important of all, the circumstances under which the offence was committed. There is reasonable ground in a number of cases for concluding that the offence was an act of immature bravado which is unlikely to be repeated after a major brush with the law. Moreover the circumstances may be unique, as where a son seeks to defend one parent against the other and in the heat of the moment goes too far; or where distress at the sufferings of a close and loved relative brings resort to euthanasia; or where an unlawful homicide is committed because of an overstrained personal relationship between the offender and the deceased. It is not necessarily the case that offenders in these categories are dangerous in a recidivistic sense. Moreover danger to the public can be a concept which goes beyond physical violence. It can reasonably be argued that large-scale fraud or theft, drunken and dangerous driving and the sale of dangerous drugs are activities

sufficiently dangerous to the public to justify imprisoning an offender if there appears to be no other way of protecting the community from him. But we stress that where imprisonment is in question on the basis that the offender is dangerous, the assessment on which his sentence should proceed is the likelihood of his re-offending and not, except as an indication of that likelihood, an evaluation of his dangerousness at the time he committed the offence for which he has been convicted. We point out that we are here speaking only of his being imprisoned on the basis that he is dangerous. There may be other reasons why he should be imprisoned, dangerous or not. We take these up in the following paragraphs.

3.8.2 Non-cooperation and Recidivism. The sentencing process anticipates co-operation but depends on coercion. If co-operation is not forthcoming, sentencing must ultimately resort to coercion in order to retain credibility. What this means in practice is that if an offender persistently refuses to abide by the terms of a non-custodial sentence, he leaves the law-enforcement authorities with no alternative but to imprison him. Normally failure to abide by the terms of such a non-custodial sentence as supervised probation or weekend work is accompanied by the commission of further offences, so that no distinction is to be drawn for practical purposes between non-cooperation and recidivism, but this need not necessarily be the case. An offender might decide not to re-offend but also not to accept the non-custodial sentence placed on him. In such a case it is arguable that there is no point in compelling him to abide by the sentence because its object, non-recidivism, has been accomplished. No doubt this happens to some extent when probation officers and others fail to report breaches on the ground that to do so would do more harm than good. But ultimately, in our opinion, imprisonment must remain the final coercive sanction for the persistent non-cooperator or petty recidivist because there is no other way in which the coercive power of the law, and therefore its practical authority, can be demonstrated. We regret having to arrive at this conclusion, since it may justify imprisoning some people who, in terms of the offences they have committed or are likely to commit, ought not otherwise to be in prison, but we see no alternative.

3.8.3 Public Opinion. The two foregoing criteria for the imposition of a prison sentence proceed on the basis of its utility as a correctional measure. A third ground on which an offender is sometimes sentenced to a prison term, or to a longer

term than might otherwise be the case, is that community disapproval of his offence must be expressed in the sentence. This basis for imprisonment is perhaps justified by the need to retain community support for the correctional system, but it is clearly a ground which ought to be relied on to the minimum extent compatible with preserving public confidence. By definition it justifies sending to prison an offender who, unless it is necessary to send him there for his own protection, is not by any correctional criterion an appropriate subject for imprisonment. Its philosophical basis is no doubt retributive: a sense that the offender deserves to be punished, however debatable on rational grounds the results of imprisoning him may be. In suitable cases the actual results can be modified by the use of parole after the retributive sense has been satisfied by a period of confinement. We accept this criterion for imprisonment as a social necessity still at present but express the hope that the time will come when the public at large will have sufficient confidence in and understanding of the purposes of the correctional system to render it unnecessary.

3.8.4 Minor Sexual Offenders. A particular problem with the recidivism criterion is presented by certain sexual offenders, typically those who have no record of causing physical harm but persistently interfere with children or expose themselves to children. Opinions vary as to the degree of seriousness with which this type of offender should be regarded. One view is that in himself he causes no harm at all, any harmful consequences to the child being the result of protective adult reactions of fear and hostility and the general publicity and questioning which accompany prosecution of the offender. Other opinions are not prepared to assume that because the offender has done no physical harm in the past he will do none in the future, especially if frightened or seeking to avoid discovery. It is also pointed out that the degree of shock or psychological trauma to the child may depend more on the individual character of the child and the circumstances of the offence than on the intentions of the offender. It is also true that, unfortunate though the alarmed and over-protective reactions of parents and others may be, they are the common reactions of mankind and cannot realistically be overlooked in deciding the best way to dispose of the offender. There is in our opinion no ground for recommending the construction of a special treatment institution for this type of offender. The size of the problem does not justify such an expensive measure. Moreover we are not persuaded that these offenders are

necessarily responsive to treatment or that their behaviour is always attributable to the same psychological or physical difficulties. There is therefore in our view no alternative to sending them to prison once it becomes clear that there is no other way of protecting the public from them. They are no doubt very unfortunately circumstanced, especially if, as is usually the case, the psychiatric resources of the prison system are inadequate to give them proper attention. But in our opinion this is a situation in which personal misfortune must yield to public interest where the offender appears to be either incapable of restraining himself or unwilling to do so. We therefore accept the repeated commission of minor sexual offences against children as a criterion for imprisonment, whilst once again expressing the hope that in time public attitudes may change with a better understanding of the causes of this type of offence and its best remedies.

3.9 Cost and Utilization of Imprisonment. The following table shows the average cost for the year 1968-69 of keeping a prisoner in the six States. The expenditure shown in the first column is taken from the Commonwealth Year Book. No later information from the same source has been available to us.

State	Net Expenditure ($'000)	Daily Average Prisoners Held	Expenditure per Prisoner $
New South Wales* .	6,479	3,685	1,758.2
Victoria	3,342	2,315	1,443.6
Queensland	2,095	1,072	1,954.3
South Australia . . .	1,688	1,009	1,672.9
Western Australia . .	2,219	1,351	1,642.5
Tasmania	801	333	2,405.4
TOTAL . . .	16,624	9,765	1,702.4

* Including Australian Capital Territory.

To arrive at the total cost there has to be added also capital expenditure, but the foregoing figures for recurrent expenditure are a sufficient basis on which to make two points of importance to South Australia. The first is that the simple cost of keeping offenders in prison affords in itself a good reason for exploring every acceptable correctional alternative which will keep them in the community instead. Such alternatives are discussed later in this chapter. Maintaining a prison system is expensive. Every offender who is sent to prison when he might reasonably have been disposed of in

some other way becomes an unjustifiable charge on public funds. The second point is that South Australia spends significantly less per prisoner on its prison system than three of the other States. It follows that South Australia can well afford in comparative terms to increase recurrent expenditure on its prison system. If a policy of increased expenditure on personnel, facilities and research is combined with a policy of using imprisonment only as a last resort, where there appears to be no reasonable alternative, a marked improvement in the quality of imprisonment as a correctional measure may be expected, with consequent benefit to the public if reconviction rates decrease as a result. It has come to the attention of the committee that the various Australian States hold widely differing proportions of their populations in prison. This is illustrated by the following table, which shows the imprisonment rates (daily average number of persons in prison per 100,000 of the general population) for the six States for the year 1970-1971.

State	Daily Average Persons in Prison	General Population* (in thousands)	Imprisonment Rates
New South Wales (including A.C.T.)	3,953	4,764	83.0
Victoria	2,389	3,481	68.6
Queensland	1,243	1,820	68.3
South Australia	921	1,178	78.2
Western Australia	1,440	1,001	143.9
Tasmania	386	396	97.5

* Based on Commonwealth estimates.

It has been suggested to us that these differences may be attributable either to the numbers, legal status and stage of development of aborigines in each State, or to the relative availability of accommodation in mental hospitals in each State, or to different levels of social tolerance in the various communities. We express no opinion on the validity of any of these suggested explanations but we make the point that as long as South Australia has an imprisonment rate which is significantly higher than the rates for at least two other States there cannot be argued to be social danger in reducing the South Australian rate by developing non-custodial alternatives to imprisonment. Such alternatives are discussed in the next chapter of this report. We regard the recent tendency towards a reduction in the South Australian imprisonment rate as a welcome event. This tendency is revealed in the following table, which shows the imprisonment rates of all States since 1959-60.

Year	N.S.W. (including A.C.T.)	Vic.	Qld.	S.A.	W.A.	Tas.
1959-60	82.1	60.7	62.9	72.3	88.7	65.8
1960-61	79.3	64.9	59.6	73.0	89.7	61.2
1961-62	81.6	67.5	60.4	78.8	95.8	68.7
1962-63	78.9	66.0	59.9	77.9	106.7	68.4
1963-64	80.7	68.0	56.9	80.1	109.2	65.4
1964-65	74.6	64.3	55.9	77.2	107.2	64.3
1965-66	78.3	61.0	61.5	81.9	103.0	64.6
1966-67	80.5	65.0	64.6	81.0	117.8	78.1
1967-68	81.8	67.6	62.4	88.2	133.0	85.0
1968-69	81.1	69.0	61.2	88.8	145.3	86.3
1969-70	82.1	66.8	63.1	84.5	134.7	91.8
1970-71	83.0	68.6	68.3	78.2	143.9	97.5

3.10 Remissions. A widespread characteristic of imprisonment is some form of remission of sentence for good behaviour. In South Australia this is a matter for the Prisons Department, in the person of the Comptroller of Prisoners, acting under regulations made under the Prisons Act, 1936-1972. Remission applies to every sentence of imprisonment of more than three months and is applied at the rate of not more than ten days for each month of sentence served. If the offender is serving consecutive sentences they are counted as one sentence for this purpose. The regulations contemplate that remission is not automatic but is to be earned by the accumulation of marks for satisfactory behaviour. There is a parallel power for the Comptroller to reduce by three days a month a non-parole period set by the court under s. 421 of the Prisons Act. For exceptional merit a non-parole period may be reduced by a further three days a month. The rationale of these powers is that they assist discipline by giving the prisoner something to lose if his behaviour is unsatisfactory and promote rehabilitation by giving him some positive benefit to aim at. In practice the scheme works somewhat differently.

3.10.1 Practical Operation. Since it is clerically burdensome to allocate merit marks for each prisoner at the end of each month of sentence served, the maximum remission to which he may become entitled is calculated at the beginning of of his sentence and credited to him subject to reduction for subsequent disciplinary offences. However convenient, or even necessary where prisons are understaffed, this mode of proceeding makes a fundamental change in the prisoner's attitude to remission. Instead of its being a benefit to be earned it becomes an automatic reduction of his sentence. If he subsequently loses remission for unsatisfactory behaviour, which means in effect for the commission of a disciplinary offence, the

result is seen by him as an increase of his sentence which has to be justified. This may be of little consequence to the disciplinary aspect of the remission system but it reacts poorly on the rehabilitative aim. The positive aspiration of working for a benefit becomes the negative precaution of not incurring an extension of sentence. This in turn leads more to a preoccupation with observing prison rules than with reformative attitudes.

3.10.2 Remissions and Non-parole Periods. The association of remissions properly so-called with reductions of non-parole periods displays a confusion of aims. Parole as a correctional measure is intended to concentrate attention on the question whether, in the ultimate interest of society itself, a prisoner is sufficiently readjusted in his attitudes to be allowed back, under supervision, into the community. It is mistaken in both principle and practice to link a correctional measure of this kind with the diciplinary necessities of imprisonment. If there is ground for believing that a non-parole period is too long, in the sense that the prisoner appears to be suitable for parole release before that period has expired, the matter should be taken back to the paroling authority for reconsideration. If there is no such ground, it is inconsistent with the original exercise of discretion by the court to reduce the non-parole period below what the court thought appropriate. To argue that the court can take into account the possibility that the non-parole period may be reduced by allowance for satisfactory behaviour invites the answer that this introduces an imponderable and unnecessary complication into the working of the parole system.

3.10.3 Defects of the Remission System. The discrepancy between the remission system envisaged in the prison regulations and the actual practice of remission described in paragraph 3.10.1 above can no doubt be overcome by bringing the practice into conformity with the regulations, but this would be at the expense of imposing on prison staff an onerous book-keeping duty in respect of merit marks. We do not believe that such a change would be worth the time and effort. Even if the remission system envisaged by the regulations is put into effect, its rehabilitative value is likely to be minimal compared with other such measures as adequate occupational and educational programmes. Moreover remissions are not necessary for the disciplinary purposes to which they are widely assumed to be essential. There is no reason why a disciplinary offence in prison should not be punished in other ways than by loss of

remission. Closer confinement, loss of amenities or imposition of additional imprisonment are all possible. The only advantage, if it be an advantage, of calling an extension of imprisonment a loss of remission is that the extension remains part of the sentence originally imposed by the court and therefore cannot amount to more than the part of that sentence available for remission. If discipline is the object, there is a loss of power to discipline in this way once a prisoner has lost all his remissions. In our opinion it is preferable to keep the original sentence and punishment for misbehaviour in prison separate from each other because they serve different purposes. The former relates to an offence committed whilst in the community and the latter to a breach of discipline under the entirely different circumstances of imprisonment. Inevitably they must come into conflict if indiscipline is punished by a further term of imprisonment, because the actual length of time spent in prison is extended by the latter, but this is inherent in the use of imprisonment as both a correctional measure for offences against the criminal law and a disciplinary punishment. The issue which it raises is whether, in view of that conflict, and in view also of the possibility that a prisoner may through the repeated commission of disciplinary offences be kept in prison indefinitely, additional imprisonment should be used as a disciplinary punishment at all. This is a matter we take up in our discussion of prison discipline (paragraph 3.18.10 below). It is not relevant to the view we take of remissions. The association of remission with non-parole periods can be dealt with easily by removing from the Prisons Department the power to reduce non-parole periods except by way of application to the paroling authority. There is another interaction between remissions and parole which under the present arrangements works against parole. This is that if a prisoner is released on parole he ceases to have remissions credited to him in calculating his parole period. He remains on parole for the whole unexpired portion of his original sentence. A successful application for parole therefore operates as a forfeiture of remissions, which induces many prisoners to prefer to serve their time less remissions and emerge as entirely free men at a time when they would still be subject to the restrictions of parole supervision if they had elected to accept parole release earlier. But in our opinion there is a more fundamental ground for questioning the remission system than any of the foregoing matters. It is that it operates to confuse the proper distribution of responsibilities between the courts and the Prisons Department, and generally

to render the assessment of a prison sentence by the former more complex than necessary. There is no good reason why a sentence of one year's imprisonment should mean one year's imprisonment if the offender does not conduct himself satisfactorily in prison but approximately eight months if he does. In this situation the court, if it determined that an offender as he appeared to be at the time of his conviction, and in light of the circumstances of his offence, should spend a given period in prison, would be obliged to allow for possible remissions and impose a longer sentence accordingly. This not only unduly complicates and distorts the sentencing process but on the present law is not open to the courts. It becomes a proceeding subject in significant degree to reinterpretation, and therefore to misunderstanding by the public, because it does not mean what it says. In our opinion this is unsatisfactory from all points of view and should not be engaged in if there is a reasonable alternative.

3.11 Alternative Sentencing System. In our opinion supervision after release from prison is a useful and helpful measure from the point of view of both the community at large and the offender in particular. We recommend its adoption as an automatic consequence of any prison sentence of more than three months. But we recommend also the retention of parole in its present form as a supervised release voluntarily sought by the prisoner. And finally we recommend the abolition of remissions in favour of prison sentences which, with certain necessary qualifications, mean what they say. To combine these recommendations we propose the following scheme where a sentence of imprisonment of more than three months is imposed. The total effect of the sentence should be thought of as falling into three distinct parts: imprisonment, parole and conditional release. Basically each of these parts should be thought of as equal to each other in time. Thus a sentence of one year's imprisonment would normally be specified as including a non-parole period of four months, followed by a four month period of eligibility for parole and a further four month period of conditional release which might or might not be supervised. The expected sequence of events would be a minimum of four months spent in prison, followed by up to four months on parole after voluntary application by the prisoner, followed by four months of what amounts to compulsory parole but which for the sake of clarity we call conditional release. If an offender sentenced to one year's imprisonment made a successful application for parole at the earliest available time he would spend four months in prison and possibly as much as eight

months under parole supervision, depending on whether he continued to be supervised whilst on conditional release. If he ceased to abide by the conditions of his parole or conditional release he could be returned by the court, preferably the court which originally sentenced him (cf. our parole authority recommendations in chapter 2, paragraph 7 above) to prison to serve all or part of his unexpired sentence. We envisage that re-imprisonment for breach of parole alone could not exceed the unexpired portion of the offender's parole eligibility period, and similarly for breach of condition in relation to the conditional release period. The main differences between parole and conditional release would lie in the differing conditions. Parole would always carry a condition of supervision, and such other conditions as abstention from alcohol and prescribed place of residence as seemed appropriate. Conditional release would carry only one automatic condition: not to re-offend. Whether conditional release continued to be supervised would depend on the circumstances. The original order of the court would include a condition of supervision but either the offender or the Prisons Department could apply to the paroling authority for the removal of this restriction during the conditional release period if it appeared to be unnecessary. A ground for removal would no doubt be satisfactory completion of the parole period. Ground for retention would be no antecedent parole, or too short a parole period. It is perhaps desirable to stress that the sentencing scheme we propose does not represent a relaxation of present practice but only its remodelling into a more rational and flexible form. Far from being a relaxation, the increased provision for post-release supervision may be regarded as more stringent than present practice.

3.11.1 Form of the Sentence. In order to make clear the precise effect of a sentence of imprisonment if this scheme is adopted we recommend that the court in each case specify that a maximum sentence of a given period of imprisonment is imposed and that it is made up of a stated non-parole period, a stated period of eligibility for parole and a stated period of conditional release.

3.11.2 The Non-parole Period. We do not envisage any of the three parts of such a tripartite sentence as being rigid, although the existence of a reasonably firm framework of equality of proportion between the parts is a useful guide to the courts and other sentencing authorities in the normal case. The idea underlying the first part, imprisonment, is that if the court decides that the offender should go to prison, this decision must be put into effect, and in our opinion

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should be put into effect without modification by other sentencing authorities unless any proposed change is referred back to the court. Hence, for example, our earlier recommendation (chapter 2, paragraph 7.6 above) that responsibility for deciding parole applications be transferred to the courts, although we point out that that recommendation and this one are not mutually dependent. Either can be put into effect without the other, although in our opinion each would work better in conjunction with the other. Similarly we would not advocate any restriction on the overriding power of the executive government to intervene at any stage after sentence in exceptional circumstances. Two other relaxations of the normal rule that the first one-third of a prison sentence be spent in prison which we recommend are that the court have power to reduce this period if it sees fit by specifying a non-parole period shorter than one-third of the sentence, and that the Prisons Department have power to apply to the court at any time, through the law officers of the Crown, for the release of a prisoner on parole before his own period of eligibility for parole starts. It is possible that in some cases the Prisons Department will consider that an offender is suitable for parole before the expiration of one-third of his sentence, particularly if the sentence is a relatively long one. With these various safeguards we do not think that it is unduly rigid to recommend that the first one-third of a prison sentence be normally specified as a non-parole period.

3.11.3 Eligibility for Parole. The value of the second one-third is that it allows both the offender and the paroling authority a measure of flexibility in gauging when the best time to start supervised release has arrived. This is the precise function of parole. At its best it should operate to release the prisoner back into the community, by mutual consent, at a time when it seems reasonable to believe that he is as ready as he ever will be to re-assume, with the assistance of supervision, the responsibilities of life in society. This time does not necessarily arrive on a fixed date, although we recommend that the paroling authority be enterprising rather than unduly cautious in this respect. As a matter of calculating the period of eligibility for parole release under the sentencing system which we are recommending, we mention that it is envisaged that where a non-parole period is specified which is less than one-third of the total sentence, this will have no effect on the time at which parole, if granted, or parole eligibility if parole is not granted, becomes conditional release.

3.11.4 Conditional Release. The period of parole eligibility should not be extended beyond the stated maximum of the expiration of two-thirds of the sentence because all prison sentences should end at some time and not be indeterminate (see our discussion of indeterminate sentences in chapter 2, paragraph 3.4 above). Since it is desirable that an offender should not, wherever it is avoidable, be released into the community without any transitional supervision, there comes a point at which the balance of advantage from the point of view both of society and of the offender moves in favour of release on condition of supervision and against keeping him in prison any longer. Sooner or later he has to leave prison, because his sentence has expired. It is better to anticipate that time by easing the transition than to make no preparation at all. This is the main function, in the sentencing scheme which we are recommending, of the third stage. It is not intended that the transition from prison to parole to conditional release should be exclusive of other such measures as pre-release employment (chapter 4, paragraph 9.1 below). Pre-release employment can very well be an appropriate preliminary to parole.

3.11.5 Short Sentences. The example taken above of a sentence of one year's imprisonment to illustrate the basic working of the recommended system is a convenient one because none of the periods of time involved is disproportionate to the end in view. Problems may occur with short or long sentences, and life sentences have to be accommodated to it. We have already indicated (paragraph 3.11 above) that we would limit its application to sentences of more than three months. This is because three months or less is too short a period for the three stages to have adequate effect in relation to each other. Unless an offender has been in prison for at least three months, the need for parole and conditional release is too small to warrant the extra burden on the probation service. From this it follows that if the offender receives a total sentence of which one-third is less than three months, it is inappropriate to apply the tripartite structure of sentence with arithmetical literalness. For example, an offender sentenced to six months imprisonment might serve less time in prison (two months) than an offender sentenced to three months. It is possible to argue that some offenders need two months in prison and four months supervised release, while others need three straight months in prison, but we regard this argument as depending too much on precise evaluation of offenders. It is an unrealistic over-refinement to carry sentencing into such a degree of detail. The best solution to

the problem of the short sentence is to adopt a rule that no offender sentenced to more than three months imprisonment shall spend less than three months in prison, supplemented by a further rule that no prisoner shall be eligible for parole, or subject to conditional release, until he has served at least three months in prison. In the case of sentences between three months and nine months this will mean a reduction or elimination either of the period of eligibility for parole or of the period of conditional release. We recommend that the former be reduced before the latter. The time scale involved in the sentences now under discussion is so relatively small that little change in the offender is likely to take place of a character which would make the difference between paroling him and not paroling him. The desirability of some period of supervision after release remains nevertheless. It follows that after a short term of imprisonment has been served, which for the present purpose means between three and nine months, more weight should be attached to the conditional release period than to the parole eligibility period.

3.11.6 Long Sentences. The question which arises with long sentences is whether the parole eligibility and conditional release periods will become too long to serve a useful purpose. Suppose the court has sentenced the offender to a maximum of nine years imprisonment, specifying a period of three years for each of the purposes distinguished above, and the offender is released on parole at the end of the first three years. It is unlikely that if he satisfactorily completes a year's parole he will need further supervision. Indeed it may become counterproductive as far as rehabilitation is concerned by preserving for an undue time the sense in the offender that society does not trust him. Pointless supervision also places a superfluous burden on the probation service. To meet these difficulties we recommend that at any time after the expiration of one year's parole supervision an offender may apply to the court, or other paroling authority if it is not the court, for discharge from the unexpired term of his sentence. In addition to any other consideration, this should act as a rehabilitative incentive. To provide for the possibility that the supervising probation officer is of opinion after one year or more that further supervision will serve no useful purpose, but the offender will not act, there should be a similar power for the Prisons Department to apply for discharge of the sentence.

3.11.7 Life Sentences. We have already commented on the anomalous character of the life sentence and given our reasons

for recommending that it be retained nevertheless because it preserves a useful flexibility in prison sentencing (chapter 2, paragraph 3.7 above). Clearly special provision has to be made in our recommended tripartite scheme for a sentence which cannot in advance of the occasion be divided into calculable parts by reference to its total duration. One possibility would be to treat a life sentence as equivalent to a term of years, fifteen for example, for the present purpose. We do not recommend such a step because one of our reasons for retaining the life sentence was that the length of time actually spent in prison under such a sentence varies in practice with the climate of sentencing opinion in relation to imprisonment as a correctional measure. To convert a life sentence at the legislative level into a fixed term of imprisonment conflicts with this flexibility and is likely to retard progress. We therefore think it better to recommend instead that where a sentence of life imprisonment is imposed, the court specify a non-parole period, subject to the right in the Prisons Department to apply for its reduction which we envisage as common to all non-parole periods in future, but no conditional release period. We see no other need for special provision for life sentences. The rule recommended in the previous paragraph, that application may be made by either the offender or the Prisons Department after one year's parole for discharge of the remainder of the sentence, should apply as much to life sentences as to any other long sentence. We note that an anomaly of the present parole system is that an offender under a life sentence who is paroled remains on parole for the rest of his life. In our opinion this serves no useful purpose.

3.11.8 Exceptions. Apart from the foregoing modifications of the recommended scheme of sentencing in order to facilitate the achievement of its substantial objects in the cases of short sentences, long sentences and life sentences, a few outright exceptions must be made. These would include imprisonment for non-payment of money, of which examples would be fines, maintenance and reparation, and imprisonment for other contempts of court. The reason for making these exceptions, and there may be others which fall into the same or similar categories, is that imprisonment can be brought to an end at any time by the offender if the money owing is paid or the contempt purged, as the case may be. Imprisonment of this kind is different in principle from imprisonment imposed as a correctional measure because it is coercive in character rather than rehabilitative or protective. The offender is not sent to prison

because he is dangerous, or because public opinion expects it as a properly punitive responsive to his crime, but because he will not co-operate. Since his failure to co-operate is relatively minor by comparison with serious crime, his period of imprisonment is normally short. The occasional offender in this category who acts obstinately from conscience or moral principle is better left to the individual discretion of the courts than made the subject of general sentencing policies.

3.11.9 Staffing. It may be suggested that the alternative sentencing scheme which we propose will require an excessive increase in the numbers of probation officers. We deal with staffing matters elsewhere (chapter 5 below). At this point it is necessary only to say that in our opinion the reasonable increase in the size of the probation service which will be necessary in any event should suffice also to accommodate the changes presently under discussion.

3.11.10 Recommendations with respect to an Alternative Sentencing System.

(*a*) *We recommend the restructuring of sentences of imprisonment on a tripartite basis to consist in principle of equal terms of imprisonment, parole and conditional release.*

(*b*) *We recommend that although in general the principle of equality between the three parts of the sentence be maintained, the courts have discretion to vary this proportion as they see fit.*

(*c*) *We recommend that the constituent parts of the sentence be specified by the court at the time when sentence is imposed.*

(*d*) *We recommend that the Prisons Department have power to apply for the parole release of a prisoner at any time before the expiration of his specified period of imprisonment on the ground that he is suitable for parole release, and that the court have power to vary its original sentence accordingly.*

(*e*) *We recommend that notwithstanding the foregoing, no offender sentenced to imprisonment be eligible for parole or conditional release until he has served a minimum of three months in prison.*

(*f*) *To the intent that periods of parole supervision and conditional release should not become unduly long, we recommend that at any time after the expiration*

of one year's parole supervision an offender may apply to the court, or other paroling authority, for discharge from the balance of his original sentence.

(*g*) *We recommend that where a sentence of life imprisonment is imposed, the court specify a non-parole period but no conditional release period, the Prisons Department retaining, as in all other cases, power to apply for its reduction.*

(*h*) *We recommend that the foregoing scheme not apply to imprisonment for contempt of court, including contempt by way of non-payment of money ordered to be paid.*

(*i*) *Consequent upon the foregoing recommendations we recommend that the use of remissions of sentence be discontinued.*

3.12 Consecutive Sentences. Just as the maximum possible sentence for an offence is necessarily prescribed legislatively on the assumption that that offence alone is in question, so the principles of sentencing policy at the judicial level are necessarily formulated on the initial assumption that one sentence alone is to be imposed. This basic pattern is disturbed where more than one offence is in question because the possibility arises that the court may impose more than one sentence. Where this occurs the court has to decide whether to make the sentences imposed concurrent with each other or consecutive. Since problems of concurrent and consecutive sentencing arise in practice only in relation to imprisonment, this is an appropriate point at which to discuss them. The opinion at which we have arrived is that although a formidable case can be made against the correctional complications caused by consecutive sentences, the courts ought nevertheless to retain a limited power to sentence in this form.

3.12.1 Present Law. The present law in South Australia is that sentences of imprisonment imposed for offences of which the defendant is convicted on the same occasion may be made either concurrent or consecutive. If the defendant is convicted at a time when he is already serving a prison term for a previous offence, a sentence of imprisonment imposed for the second offence may be made consecutive to the term which he is already serving. To this point there is no difference between felonies, misdemeanours and summary offences. There is a distinction between felonies and the other classes of offences if an offender is sentenced to imprisonment for a

third offence at a time when he is already serving prison terms imposed on two previous occasions. In this situation the courts have held that under s. 310 of the Criminal Law Consolidation Act, 1935-1972, the offender cannot be sentenced to a third consecutive term of imprisonment for a felony. Any prison term imposed must be concurrent with either the first or second previous terms. There is no such restriction for a subsequent misdemeanor or summary offence. The effect of the restriction where the third offence is a felony might in theory be overcome by imposing a much longer prison term than would otherwise have been given in order to leave a substantial portion of it unexpired when the previous sentence with which it is concurrent expires, but circumventions of the law in this fashion are not to be countenanced in principle and are in any event bad sentencing practice.

3.12.2 Questions Arising. The foregoing being the law with respect to the power of the courts to impose consecutive sentences of imprisonment, the question arises whether they should have such a power at all, and, if so, according to what principles the power should be exercised. The reason for the power to impose consecutive sentences is to enable the courts to sentence separately for separate offences prosecuted on the same occasion. From a practical point of view concurrent sentences amount to one sentence. If the courts had no power to impose consecutive sentences for offences prosecuted on the same occasion, the only machinery whereby consecutive sentences could be imposed would be for each offence to be prosecuted separately. This would often be a needlessly expensive and wasteful procedure. Nevertheless the question remains whether consecutive sentences should ever be imposed. It is convenient to distinguish the usual situation, where the defendant is convicted of several related offences arising on the same facts, or of the same offence committed several times, from the less common case where the defendant is convicted of an offence, or offences, after he has begun serving a prison term for a previous offence, or where the offences which he has committed are unrelated to each other.

3.12.3 Related or Repeated Offences. The rare utility of the consecutive sentence in the first of these situations is reflected in the judicial practice of normally imposing concurrent sentences, the effective sentence being the longest of them. The philosophy underlying this practice is that the offender has manifested a certain degree of criminality which

calls for an appropriate sentence. It is usually of little relevance that he has technically committed several offences instead of one, because this is likely to reflect a chance circumstance either of law-enforcement, in that he might have been caught either earlier or later, or of offence definition, in that one set of facts may amount to several offences, or both. If consecutive sentences are imposed in any of these situations, the legislative sentencing policy expressed in the prescription of maxima is being departed from. Statutory maximum sentences are intended partly as a safeguard for the offender against the excessive use of discretion to his disadvantage. This is not so if the court takes the course of imposing consecutive sentences each of which is too short for the particular offence taken in isolation, but there seems to be no point in this sort of ingenuity when the concurrent sentence achieves the same result without the possibility of remission and parole complications. In the situations now under discussion a strong case can be made against consecutive sentences. In addition to their operating in effective disregard of statutory maxima, they can also result in excessively long sentences from the correctional point of view. In this report we acknowledge, and support, the present trend towards shorter sentences for correctional purposes. It can be regarded as inconsistent with this point of view, and with the arguments in its support which we have deployed in our discussion of imprisonment hitherto, to recommend the retention of judicial power to sentence consecutively in the present context. Moreover consecutive sentences distort also any parole system. The difficulty that parole is effectively not available for any consecutive sentence except the last one can be overcome by requiring the whole period of imprisonment to be regarded as one sentence for parole purposes, but this still distorts the length and effect of a non-parole period, which should be arrived at primarily by reference to the offender's suitability for release back into the community and not by reference to an arithmetical calculation of his prison-indebtedness to society.

3.12.4 Conviction After Imprisonment; Unrelated Offences. The second situation distinguished above, where the offender is convicted for a second or subsequent offence when he is already serving a prison term (other than offences committed in prison), brings one to a further distinction: the difference between the situations discussed above, which had in common the close relatedness of the offences in question, and the situation where the offences are unrelated in kind, or seriousness, or are committed a significant length of time after earlier

offences. A complicating factor can be the exercise of discretion by the prosecuting authorities. They may choose for some reason to prosecute separately offences which could have been tried together. No sentencing problem need arise from this. The situation becomes equivalent to prosecution on the same occasion, which, according to the arguments advanced above, indicates concurrent sentences (concurrent with the sentence which the offender is presumably already serving). In considering the sentencing potential of cases where unrelated offences are involved, considerations relevant to sentencing must be distinguished from considerations relevant to trial. It is clearly desirable, in the interests of fair trial, not to try unrelated offences together, and under the present practice this would not be permitted. This does not mean that the sentencing potential of the successive convictions must also be evaluated as if they were unrelated to each other. There is a case for arguing that here too the consecutive sentence serves no useful purpose. Its object can often be achieved in other ways. Suppose for example that offence 1 is less serious than offence 2. If the court concludes that the commission of offence 2 shows that the sentence for offence 1 was too short for that offender in light of his proved greater criminal propensity, a longer concurrent sentence can be imposed for offence 2. The longer sentence will be available because by definition it is a more serious offence. The offence 2 sentence in effect replaces the offence 1 sentence. If the facts are the other way about, offence 2 being less serious than offence 1, there is no need for any increase of sentence. If the reason for separate prosecution of offence 2 is that it was committed a significant period of time after the offence or offences for which the defendant is now in prison, there seems to be no reason for applying any different principle than in the case of offences tried together. By definition the later offence is of the same character and degree of seriousness as the earlier. Hence here again there seems to be no reason of substance for the use of a consecutive sentence. The mere repetition of offences is not in itself a sufficient reason. The argument that if the courts lose power to sentence consecutively under these circumstances the offender will take advantage of the occasion to commit more offences is not altogether cogent. If he seems to be the type of offender who will re-offend before trial he is likely not to be out on bail anyway. Even if he is, it is unlikely that with the prospect of acquittal for his original offence before him he will calculate in a way which assumes conviction. And further, we doubt that

offenders calculate in this way at all. The likelihood of detection is a much more probable influence. But we return to this argument in the next paragraph.

3.12.5 Advantages of Consecutive Sentences. Notwithstanding the foregoing arguments, which all proceed from the fundamental objection to consecutive sentences that they tend to concentrate attention on the offence rather than the offender, there are some situations to which a consecutive sentence may be appropriate. One is the effect on the prosecuting authorities, although this can no doubt be overstated. If the courts had no power to sentence consecutively there would under some circumstances be a temptation for the prosecution to delay the bringing of a second charge until the sentence for an earlier conviction had been served. No doubt the courts would be capable of dealing with such a manoeuvre if they disapproved of it, but there is perhaps something to be said for not creating the difficulty in the first place. Similarly we may have been over-sanguine in the previous paragraph of this report in suggesting that the possibility of an increased sentence has no deterrent value for an offender on bail awaiting trial. If we were, a consecutive sentence would be more in accord with principle than either an increased sentence for the original offence or an unduly long sentence for the second offence. But there appears to be a more significant argument than either of these for according to the courts a limited power of consecutive sentencing. This is the need, in the interests of maintaining respect for the correctional system, to sentence offenders in a manner which so far as possible does not seem to them unjust. The example has been put of three offenders, each with similar past records, who are convicted of robbery with violence on the same occasion but one of whom is convicted also on one count of breaking, entering and larceny and another of whom is convicted also on two counts of breaking, entering and larceny. All else being equal, they should each receive the same sentence for the robbery with violence because in relation to that offence there is no reason of principle for distinguishing between them. But if the offenders who are convicted also of breaking, entering and larceny receive sentences for these offences which are only concurrent with the robbery with violence sentence, the third offender would have reasonable ground for complaint that he was being treated unjustly, for the result would be that their effective sentences were no greater than his own. In such situations it is in our view

wise to accord to the courts a power to distinguish between offenders in a manner effectively reflected in the sentence, and we see no other way of doing this than by a consecutive sentence, even if only a relatively short one.

3.12.6 Conclusions on Consecutive Sentences. For the foregoing reasons we conclude that although in general consecutive sentences serve no useful purpose and should not be imposed, there are some exceptional situations in which this is not the case. The courts should therefore retain the power to impose consecutive sentences of imprisonment. But in recognition of the marginal utility of this form of sentence, and of its capacity for distorting the correctional system, we recommend limiting it to one consecutive sentence. By this we mean that if the offender is being sentenced for more than one offence on the same occasion, or is being sentenced at a time when he is already serving a term of imprisonment, the court should have power to impose one consecutive sentence but no more. We recommend also that the power be used sparingly and that it apply to all classes of offences without distinction. In order to produce the greatest degree of integration with the rest of the correctional system we recommend that where a consecutive sentence is imposed, for the purpose of calculating parole eligibility and other periods the total maximum period of imprisonment judicially imposed be treated as one sentence. In terms of the alternative sentencing system which we recommend above (paragraph 3.11), the court when imposing a consecutive sentence should specify non-parole and conditional release periods on this basis.

3.12.7 Recommendations with respect to Consecutive Sentences.

(*a*) *We recommend that on any one occasion the courts have power to impose one consecutive sentence but no more.*

(*b*) *We recommend that the foregoing power be used sparingly but that it apply to all classes of offences without distinction.*

(*c*) *We recommend that the court when imposing a consecutive sentence should specify non-parole and conditional release periods on the basis that the total maximum period of imprisonment judicially specified be treated as one sentence.*

3.13 Persistent Recidivists. It is necessary to make separate mention of persistent recidivists because the Criminal Law Consolidation Act, 1935-1972, makes special provision for this class of offender, but our recommendations on the matter have been foreshadowed by our rejection of the indeterminate sentence as a correctional measure (chapter 2, paragraph 3.4 above) and our acceptance of recidivism as a criterion for imprisonment (paragraph 3.8.2 above).

3.13.1 The Present Legislation. Section 319 of the Act gives the judge before whom an offender is convicted on information discretionary power under certain circumstances to declare him an habitual criminal. This power arises if the offender has been twice previously convicted, either within or without South Australia, of an offence falling within the categories of wounding, poisoning, sexual offences or abortion, and his current conviction is for an offence of the same class. Three previous convictions of the same class of offence are required for robbery, extortion, burglary and related offences, larceny, embezzlement and related offences, false pretences, receiving, arson, forgery and Commonwealth coinage offences. The effect of being declared an habitual criminal is, under s. 321 (1), that the offender may be detained indefinitely. Under s. 323 he may be released on licence, by the Governor on the recommendation of the Parole Board, but may be recalled again at any time. After three years on licence without recall he ceases to be an habitual criminal unless the Governor, which means in effect the Parole Board, orders to the contrary. In addition to these provisions there is s. 313a, inserted into the Act as recently as 1969. This section gives to a court before which an offender is convicted of an offence carrying a maximum penalty of two years or more imprisonment power to sentence him to a maximum of ten years imprisonment if, since he attained the age of eighteen, he has been convicted twice previously of an offence carrying the two years maximum, and if the court is also satisfied that in the interests of the public or himself he should be imprisoned for a "substantial period". To distinguish the indefinite sentence of s. 313a from the indeterminate sentence of s. 321 (1), the sidenote to s. 313a refers to persistent offenders instead of to habitual criminals, but the policies of the two sections are similar. There are other sections of a comparable kind in the Criminal Law Consolidation Act. An example is s. 134, which increases the maximum penalty for simple larceny from five years imprisonment (s. 131) to ten years if the offender has

ever previously been convicted for a felony. A full survey of such sections at this point would go beyond the immediate purpose of evaluating the provisions specifically directed at the habitual criminal or persistent offender.

3.13.2 Evaluation of the Legislation. We have summarized these provisions in some detail in order to make clear their scope. To take an extreme example, it is possible under the law of this State for a persistent petty shoplifter to be kept in prison for life. Notwithstanding the desirability of leaving a wide discretion to the courts in the sentencing of offenders, it is in our opinion clear beyond argument that legislation which permits a result so out of proportion to the social threat posed by the offender cannot be supported. We find the unfettered administrative discretion to recall an habitual criminal who has been released on licence, thereby depriving him of the chance to qualify for discharge after three years without recall, similarly indefensible. We do not, however, rest our recommendation with respect to the habitual criminal legislation on such defects as these because we regard them merely as illustrations of more fundamental faults. The first is the use of the indeterminate sentence itself. We have already stated our objections to this form of sentence (chapter 2, paragraph 3.4 above), and do not need to repeat them here. Secondly, although it would be possible, as s. 134 of the Act illustrates, to make special provision for habitual criminals by increasing the maximum penalty where there is a past record of convictions, instead of by resorting to the indeterminate sentence, it is not in our opinion good sentencing policy to make such special provision at the legislative level. For all the more serious offences the courts already have wide latitude in the length of sentence imposed on the particular offender. A past record is a fact routinely taken into account in the assessment of sentence at the judicial stage. In our opinion it is unnecessary and may be harmful to make yet further allowance for the persistent recidivist, especially in the present draconic form, at the legislative stage. It may be harmful because its use by the courts is likely to be erratic. The reason for this is that a statute which provides for an increase of sentence on the basis of past record rather than present wrongdoing is a serious infringement of the double jeopardy principle (chapter 2, paragraph 4.9.1 above) and is therefore likely to be viewed with distaste by the judiciary and seldom resorted to. In such a situation the offender who finds himself subjected to an increased, and necessarily long, sentence on this basis may well be resentful and uncooperative.

This view of the matter is borne out by experience. The courts are in fact reluctant to declare a recidivist an habitual criminal, s. 313a in particular appearing not to have been used at all, and such prisoners as have been placed in this category not infrequently have an understandable sense of grievance that others with records as long as their own have not. To their other disadvantages, therefore, may be added the circumstance that these provisions are in a state almost of disuse, basically because they run counter to the whole trend of correctional progress and conflict with a fundamental sense of justice. No doubt judicial unwillingness to resort to them could be overcome by making the increased sentence mandatory after a given number of previous convictions, but this amounts to the legislative prescription of a fixed sentence. We have already recommended against legislatively fixed sentences except for certain summary offences (chapter 2, paragraphs 3.3 and 3.9 (*b*) above).

3.13.3 Conclusions on Persistent Recidivists. We therefore recommend the total repeal of the habitual criminal and persistent offender legislation, and of all legislation similar to s. 134 of the Criminal Law Consolidation Act which automatically increases the maximum sentence after a given number of previous convictions, unless, as with certain traffic and regulatory offences, there are special reasons for a legislative gradation of penalties.

3.13.4 Recommendations with respect to Persistent Recidivists.

(*a*) *We recommend the repeal of habitual criminal and persistent offender legislation, and the repeal also of all legislation similar to s.* 134 *of the Criminal Law Consolidation Act,* 1935-1972, *which automatically increases the maximum sentence after a given number of previous convictions, except where, as with certain traffic and regulatory offences, there are special reasons for a legislative gradation of penalties.*

(*b*) *Subject to the foregoing exception we do not recommend that persistent recidivists be placed in a special category for any purpose.*

3.14 Sexual Offenders. Section 77a of the Criminal Law Consolidation Act, 1935-1972, which was first inserted into the Act in 1940, and which has to be read with s. 42p of the Prisons Act, 1936-1972, in respect of the Parole Board, makes special provision for sexual offenders who are thought to offend because they are

"incapable of exercising proper control over [their] sexual instincts". We have already adverted to the problem presented by certain persistent minor sex offenders and concluded with some reluctance that recidivism in this area must be a ground for imprisonment even if there are no indications in the circumstances of the offences that the offender is in any usual sense dangerous to the community (paragraph 3.8.4 above). The questions which arise under s. 77a are whether there is need for further special provision for this type of offender or for more serious sexual offenders.

3.14.1 The Present Legislation. An extensive range of offences of varying degrees of seriousness is covered by the section. It includes rape and the various offences of carnal knowledge, and attempts thereat, indecent assault, indecent interference, acts of gross indecency, abduction, procuring, permitting the use of premises for such purposes, the so-called unnatural offences, and indecent exposure in public. On conviction the court may order the offender to be examined by two doctors to determine whether he is incapable of controlling his sexual instincts. If they report that that is the case, the court may, under s. 77a (3), declare the offender to be of that character and direct that he be detained indefinitely in prison or in such other institution as the Governor specifies, which means in practice either the State mental hospital or an equivalent institution for convicted criminals. Alternatively the doctors may report that although the offender is not incapable of controlling his sexual instincts, it is expedient, either on the ground of mental abnormality or for any other reason, that he be detained in an institution. If the court agrees it may, under s. 77a (4), direct that he be detained in an institution either indefinitely or for a specified period. Into whichever category the offender falls, he may in addition be sentenced in any of the usual ways for his offence. If he is sentenced to imprisonment he serves it before being detained under s. 77a. Once an offender is committed for an indeterminate period under s. 77a he may be released only on the recommendation of the Parole Board that he is "fit to be at liberty". He is obliged, under s. 77a (6), to be examined at least once every three months by the Superintendent or a deputy-superintendent of the State mental hospital, and under s. 42p (1) of the Prisons Act his case must be considered at least once a year by the Parole Board. There is no express obligation to have him examined with a view to release, or to release him even if the Parole Board so recommends, although if the question came before it the Supreme

Court would be justified in construing the legislation to imply these requirements. Courts which can exercise the powers under s. 77a include, where the conviction occurs in summary jurisdiction, special magistrates.

3.14.2 Evaluation of the Legislation. As with the persistent recidivist legislation commented on above (paragraph 3.13), s. 77a is to be evaluated at two levels: whether it is satisfactory on the assumption that its basic postulate, special provision for sexual offenders, is correct; and whether that assumption is correct or necessary. On the first count s. 77a is highly unsatisfactory. On the basis of a single conviction for an offence including an overt sexual element it authorizes an inquiry into the offender's capacity for controlling his sexual behaviour the consequences of which for him may be extremely serious. The offences covered range from rape and carnal knowledge to the mere nuisance of indecent exposure in public. They include offences of abduction, procuring and permitting the use of premises which are not in the same sense sexual offences at all and are highly unlikely to be committed for any purpose other than monetary profit. The belief reflected by s. 77a that two suitably qualified doctors, presumably psychologists or psychiatrists, can conduct an inquiry which will reveal whether the offender is capable of controlling his sexual behaviour is not shared nowadays by those members of the medical profession with experience of forensic psychiatry. The degree of administrative control over the offender which is conferred on this unreliable basis is almost total. These features of s. 77a we regard as going far beyond the needs of the occasion, even assuming that some such legislation is desirable. To this assumption we now turn. The most striking feature of s. 77a in practice is that the section as a whole is very little used. What does happen is that the power to order an inquiry into the offender's mental condition is used reasonably often but that medical reports tend to assert that he is incapable of controlling his sexual instincts only in cases of mental illness so severe as to seriously affect control of behaviour generally, including sexual behaviour. The other powers in the section therefore come into operation only very rarely, not least perhaps because psychiatrists at the present day do not wish to be ordered by the court to attempt treatment which they believe will be ineffective. When added to the defects of s. 77a which have already been listed, this practice suggests that its basic flaw lies in isolating overt sexual behaviour as falling into a special category. The real problem with some offenders is not sexual instinct but mental illness.

Mental illness can manifest itself in many ways, of which overt sexual behaviour is only one. Moreover distorted sexual pressures are not necessarily recognizable as such from their outward manifestations. Depending on the particular individual, criminal behaviour ranging from larceny in the form of kleptomania to fetishistic murders has been identified as having a sexual basis. There is in our opinion no ground at all at the present day for placing offenders who have committed any of the offences contemplated by s. 77a in a special category, and certainly no ground for attaching the consequences of a declaration under the section to that category. Mental illness is a separate issue which we discuss below (paragraph 3.15).

3.14.3 Persistent Sexual Offenders. There is of course such a phenomenon as the persistent sexual offender, and to this we now turn as a particular problem of recidivism. We do not include in our conception of sexual offender someone who commits abduction, procuring or permitting the use of premises. The definitions of these offences in their various forms reveal that they are directed against undesirable ways of acquiring property or making money, not against sexual assaults, sexual contact with under-age girls or children, the so-called unnatural offences, or public exposure. The latter are sexual offences for our purpose. We start from the position that the more serious of these offences are already adequately provided with high maximum sentences. For rape the maximum is life imprisonment, for attempted rape seven years, for carnal knowledge of a girl under twelve life, for other forms of carnal knowledge seven years, and for the so-called unnatural offences between three and ten years. A first conviction of any of these offences will attract the sentence within these wide limits which the court thinks appropriate. Recidivism in this area is not such a common phenomenon as to require special measures going beyond the normal discretionary power of the courts to impose a longer sentence for a second or subsequent conviction. Where recidivism may become a problem with a few offenders is in the less serious area of indecent interference with children and females and public exposure. For reasons which are to be pitied some men are addicted to fondling or exposing themselves to children and women to whom they are strangers. The typical incident of this kind causes no physical harm. We have adverted to the point of view, with which we have much sympathy, that any psychological harm done, particularly

to children, is more likely to be the result of public reaction and prosecution of the offender than of his own actions (paragraph 3.8.4 above), but we recognize equally that these consequences cannot be ignored. It is also true that the furtiveness, strangeness and unexpectedness of these encounters often gives rise to fear and shock which, however regrettable and possibly unfounded, is a factor to be taken into consideration. In recognition of these circumstances we have already accepted recidivism of this kind against children as a criterion for imprisonment (paragraph 3.8.4 above). In considering whether any further special provision is required we draw attention to the maximum penalties prescribed by the legislature for the offences in question. Indecent interference with children or females carries a maximum of one year's imprisonment or a fine of $100 or both, gross indecency with a girl under sixteen two years imprisonment for a first offence and three for 'any subsequent offence", public exposure two years imprisonment for a first offence and four years for "any subsequent offence", and gross public indecency six months imprisonment or a fine of $200. It will be observed that these maxima, bearing in mind that there are more serious offences with which the offender can be charged if the facts warrant it, indicate a legislative decision that this group of offences is not unduly serious. We agree with this point of view. We observe also that in the cases of gross indecency with a girl under sixteen and public exposure recidivism is already expressly allowed for in the maximum sentences prescribed. Finally we note that the maximum sentences for this group of offences are in no way proportionate to the drastic consequences of a declaration under s. 77a.

3.14.4 Conclusions on Sexual Offenders. We conclude that there is no ground on which the continuance of s. 77a in the Criminal Law Consolidation Act can be supported. In conception it proceeds upon faulty, or at best questionable and unproven, assumptions about human behaviour, and in substance it provides a remedy out of all proportion to the supposed ill. Offenders who are in fact dealt with under the section would be better dealt with under provisions for mentally ill offenders generally without making a special category of sexual offenders. Some of the offences to which it applies are not properly classified as sexual offences at all, and both the more and the less serious genuinely sexual offences to which it applies are already adequately catered for by the Act. In the case of the less serious offences the legislature appears

to be in a state of contradiction with itself in that the sections creating those offences prescribe relatively light maximum penalties whereas s. 77a authorizes indeterminate detention. We recommend accordingly that s. 77a be repealed, together with s. 42p of the Prisons Act, suitable transitional legislation being passed to authorize the continued detention as mentally ill offenders, if that is in fact the case, of such persons as are at present detained under the section.

3.14.5 Recommendations with respect to Sexual Offenders.

(*a*) *We recommend the repeal of s. 77a of the Criminal Law Consolidation Act, 1935-1972, and s. 42p of the Prisons Act, 1936-1972, and the consequential enactment of transitional legislation to authorize the continued detention as mentally ill offenders, if that is in fact the case, of such persons as are at present detained under s. 77a.*

(*b*) *We do not recommend the placing of sexual offenders in a special category for any purpose.*

3.15 Mentally Ill Offenders. A difficult problem which cuts across normal correctional principles is the proper disposal of an offender who is mentally ill but who would be in prison if he were not. From the correctional point of view it is undesirable in both his interests, and the interests of other prisoners, and ultimately the interests of society, that he should be imprisoned without regard to his mental state. In some cases it is inhumane. Moreover a prison is not the best place for treatment if he seems susceptible to treatment. Correctional authorities understandably prefer such offenders to be sent to hospital rather than prison. From the medical point of view however, there is a security problem. A modern mental hospital ought to be only as secure as it needs to be. A patient should be kept under highly secure conditions only if his illness is so severe as to require close constraint. A patient who is also under sentence of imprisonment brings with him a requirement of security for correctional reasons which may interfere with his classification on medical grounds. The practical result, since institutions cannot be proliferated or staffed indefinitely, is that if a mental hospital is obliged also to receive criminal offenders it will either have to confine them with more severely disturbed patients than is warranted for some of them on medical grounds, or else turn itself to a greater degree than it would choose, on medical grounds, into a maximum security centre. Either the offenders or the other patients suffer unless they go to different hospitals. In South Australia a recommendation on this point is

not in the hands of this committee because the decision has already been taken and acted upon to build a hospital for mentally ill offenders adjacent to Yatala Labour Prison. Since the matter is out of our hands it would be superfluous for us to express any opinion on the siting or design of this institution. Some questions do arise however on the principles to be applied to the detention of offenders in a mental hospital.

3.15.1 The Present Legislation. Sections 292 and 293 of the Criminal Law Consolidation Act, 1935-1972, deal respectively with defendants acquitted of an indictable offence on the ground of insanity at the time of the offence charged and defendants to an indictable offence who cannot be tried because they are insane at the time of trial. In both cases, on a finding of insanity by the jury, the defendant must be detained for an indeterminate length of time in an appropriate institution. Under s. 293a he can be released on licence on the recommendation of the Parole Board. There is a more general provision in s. 46 of the Mental Health Act, 1935-1969, supplemented by ss. 47-56a. This authorizes the indeterminate detention in an appropriate institution of mentally ill offenders or defendants who are either imprisoned or under trial. The power arises if the person concerned "appears [presumably to those in whose charge he is] to be mentally defective" and proceeds on a doctor's certificate. Time spent by a mentally ill offender or defendant in a mental hospital is to be credited against any term of imprisonment which he is either serving or which may be subsequently imposed if he is yet to stand trial, unless the Director-General of Mental Health Services advises the Governor otherwise.

3.15.2 Conclusions on Mentally Ill Offenders. The main question which arises with mentally ill offenders or defendants is whether to house and treat them separately from the mentally ill generally. This decision has already been taken in South Australia and we therefore make no recommendation on the point. Two specific changes should in our opinion be made in the legislation outlined in the previous paragraph. The statutory use made of the words "mentally defective" produces the expression "criminal mental defective", which we regard as unfortunate because it gives the impression of ascribing criminality to the mental state. We recommend instead the expressions "mentally ill offender" and "mentally ill defendant" for the convicted offender and unconvicted defendant respectively. Secondly, we see no reason why the power in the Director-General of Mental Health Services to decide

whether time spent by a mentally ill offender or defendant in a mental hospital should be credited against a term of imprisonment should reside in any other institution or person than a court, and recommend a change accordingly. Apart from these matters the general question of the circumstances under which mentally ill offenders and defendants should be detained in a security hospital appears to us to differ little, if at all, in principle from the detention of the mentally ill generally, and accordingly to go for the most part beyond our terms of reference. We attach importance to the setting up of machinery for the automatic, regular and reasonably frequent review of individual cases to ensure that no one is forgotten or lost in the system, which is in our opinion a very real danger with the institutionalized mentally ill, and we stress that such machinery should be judicial and not administrative. It should not be the ultimate responsibility of the medical profession or the public service to release offenders from hospital. It should also be axiomatic that an offender whose maximum period of sentence expires while he is in a security hospital is to be transferred to an ordinary hospital for the mentally ill unless for any reason a court orders that his term as a patient is not to be credited against his sentence. Questions arising on the definition of mental illness for purposes of criminal responsibility or fitness to stand trial we regard as appertaining to the substantive law and trial stages of the law enforcement process. Accordingly we do not discuss them in this report on the post-conviction stage.

3.15.3 Psychopathic Offenders. It is appropriate to make special mention of psychopathic offenders because in our present state of psychological knowledge they present a problem of peculiar intractability. The initial difficulty is one of definition. A typical definition of a psychopathic disorder is a persistent disorder or disability of mind, whether including sub-normality of intelligence or not, which results in abnormal, aggressive or seriously irresponsible conduct and which requires and may be susceptible of medical treatment. The point need not be laboured that a definition in such terms as these does little more than reveal uncertainty. It does however bring out three points which seem to be common to discussions of psychopathy. These are that there is lack of agreement on the psychological constituents of a psychopathic disorder, that such disorders are therefore generally described in terms of behavioural characteristics for which it is difficult to give a cogent explanation, and that therefore also the responsiveness

of such disorders to medical treatment, and the form such treatment should take, is uncertain. The term "psychopath" tends to be used to designate people who have manifested unusual difficulty in social adjustment over a period of years, or throughout life, but who are not of defective intelligence or suffering from structural defects of the brain, or epilepsy, and whose difficulties of adjustment have not been manifested by the behavioural syndromes which are conventionally referred to as neuroses or psychoses. It is the outward signs which tend to be stressed. Typically these include, to a greater or lesser extent, lack of emotional control, inability to learn from experience, impulsiveness, lack of foresight, inability to modify infantile standards of conduct, lack of self-reliance, unsatisfactory adjustment to the group, inability to withstand tedium, and irresponsibility. The psychopath can usually enunciate social and moral rules but he does not seem to be able to understand them in the way that others do. He may be described as having a personality defect, rather than a mental disorder, manifested by serious asociality and amorality. His mental activities are characterized by emotional immaturity. There is evidence that in a high proportion of cases patterns of activity in the brain reveal instinctive function and resemble patterns normally found only in children. Parallel evidence of immaturity has been found also in the formation of capillary loops in the nail bed. Psychopathic disturbance is usually lifelong but there is a general tendency for the more violent or vulnerable characteristics to modify with the passage of time. It is customary to classify psychopaths into two overlapping groups: the aggressive and the inadequate. Aggressive psychopaths include those who are violent, quarrelsome, alcoholic, or sadistic and those who acquire a consistent record of violent crime. Inadequate psychopaths include minor delinquents and non-aggressive misfits. Although a psychopath is clearly likely to fall foul of the criminal law it is entirely wrong to make a simple identification between criminality and psychopathy. By no means all criminals are psychopaths or all psychopaths criminals. It follows that offending against the criminal law should not be included among the indicators of a psychopathic disorder, not least because any such approach to the appropriate disposition of the majority of offenders would be highly damaging. To distinguish from the rest those psychopaths in whom antisocial pressures are strong enough to bring them into serious conflict with the criminal law, the term "sociopath" is used in some quarters but this distinction is in our view immaterial to this report.

3.15.4 Conclusions on Psychopathic Offenders. From the point of view of law-enforcement the question arises whether we should recommend that any special measures be taken for psychopathic offenders. We have concluded that in light of the general uncertainty of the subject, and particularly of the lack of reasonably specific medical definition of the condition, no special measures can be safely recommended. There is a school of thought that for forensic purposes such terms as "psychopathic personality" or "psychopath", or equivalents, are too vague to be determinative of any particular course of action and ought to be discarded. For our purposes we agree. We recommend accordingly that an offender who is, or may be, a psychopath in any medical sense should be tried and sentenced in the usual way, the sentencing judge taking into account such personality characteristics as may appear from the evidence before him to the extent which seems to him appropriate, as he would with any other offender. The proper disposition of an imprisoned offender who shows psychopathic signs is a matter best left to the Prisons Department acting on the advice of the staff of the hospital for mentally ill offenders. If the offender incidentally falls within a recognizable category of mental illness, there is ground for ordering his disposition on that basis. If he does not, there is not.

3.15.5 Recommendations with respect to Mentally Ill Offenders.

(*a*) *We recommend that the expression "mentally ill offender" be substituted in all legislation for the expression "criminal mental defective".*

(*b*) *We recommend that the power in the Director-General of Mental Health Services to decide whether time spent by a mentally ill offender or defendant in a mental hospital should be credited against imprisonment be removed to the courts.*

(*c*) *We do not recommend special measures with respect to psychopathic offenders.*

3.16 Offences Committed in Prison. Offences committed in prison fall into two categories: those which would be an offence outside prison also and those which are merely breaches of discipline contrary to prison regulations. Included in the former class are such matters as assaults on prison officers or other prisoners, extortion and destruction of property. Included in the latter are insolence, refusal to obey lawful orders and refusal to

abide by prescribed routines. Escape from prison, or from custody during transfer, is unique in that it amounts to more than a mere failure to obey prison regulations but by definition cannot be committed outside prison. In character it is appropriately assigned to the non-disciplinary category. We recommend that for the avoidance of jurisdictional problems arising from the procedures which we recommend below, neither the Prisons Act nor prison regulations should include offences which are already covered by the general law.

3.16.1 Jurisdiction. Under the present legislation a number of offences, of which assaults, damage to property and indecent behaviour are examples, are included among the disciplinary offences. The significance of this is that jurisdiction to inquire into and impose sentence for them is vested in the Comptroller of Prisons or a visiting justice of the peace. In our view it would be more in accordance with principle for the courts to retain jurisdiction over offences against the general law, including escape, and for jurisdiction over disciplinary offences to be shared between visiting magistrates and the superintendent of the prison concerned, depending on the sentence which may be imposed. The basis on which we recommend that offences against the general law be tried by the ordinary courts is that we see no reason why a prisoner who is at risk of conviction and sentence for an offence which would be equally an offence in the general community should not be entitled to the same safeguards as any other defendant. It is an unnecessary and undesirable infringement of the double jeopardy principle (chapter 2, paragraph 4.9.1 above) that a prisoner should lose his right to trial in the normal courts because he is already serving a sentence for some previous breach of the criminal law. Moreover we attach considerable importance to the safeguard of publicity and judicial trial against any allegation that a prisoner is being unfairly treated. We do not mean to suggest that trials for offences against the general law must necessarily take place outside the prison itself. There may be sound reasons of security or administration why a trial should be held on the prison premises. If a case to this effect is presented to the court with relevant jurisdiction, and the court agrees, there is no insuperable reason why facilities for trial should not be made available within the prison. Disciplinary offences properly so called should become a matter for a visiting magistrate or the prison superintendent and not, as at present, for a visiting justice, or for the Comptroller of Prisons acting through his subordinate superintendents or keepers. In our view magistrates should replace

justices primarily because of the lack of publicity for internal matters of prison discipline. In this situation, which we do not think it is reasonable to change in the direction of greater publicity because such a step would be likely to have an adverse effect on discipline, the possession of a professional judicial qualification not less than that of a magistrate becomes all the more desirable. No doubt in cases of minor breaches of the general law it is immaterial whether a visiting magistrate is acting in that capacity or as a visiting court, for he has jurisdiction in either event. As an additional safeguard against the magistracy acquiring, through familiarity, an administration-oriented approach to disciplinary proceedings, we recommend that the duty of visiting be rotated frequently. We do not envisage that any prison is likely to be so far removed from a centre of population for this scheme to be administratively difficult. In any event travel arrangements to meet sudden requirements for hearings are not difficult to make. The guiding principle, in the interests of maintenance of effective discipline, should be speed of trial. But as we have indicated, we do not recommend the removal of all disciplinary authority from the prison staff to the judiciary. Such a step would be equally undesirable in the interests of effective discipline. We recommend therefore that the prison superintendent also should have jurisdiction over disciplinary offences. The distinction which we recommend between him and a visiting magistrate is that sentences of additional imprisonment up to a maximum of fourteen days, or of a fine if the prisoner has resources which make such a sentence practicable, or of an order to pay or work off compensation, should be within the powers only of a magistrate because they are sufficiently serious to require judicial consideration. The prison superintendent should have powers to order loss of such entitlements as canteen or to direct that the prisoner be kept for a period in closer confinement. Visiting magistrates should of course also have the disciplinary powers of a superintendent. We do not recommend that the Comptroller of Prisons should retain personal disciplinary powers because in our view this is not only a matter of detail inconsistent with the overriding administrative and policy-making functions of his office, but also an area in which superintendents should have autonomy within their own prisons.

3.16.2 Consequential Matters. We distinguish between closer confinement ordered as a disciplinary measure and closer confinement for security reasons. The latter should always be within the powers of the superintendent as a

necessary part of his function of protecting the public, prison staff and prisoners and does not depend on any breach of discipline for its exercise. We see no need to provide for appeals against severity of sentence in disciplinary matters but we recommend that an appeal be available to a visiting magistrate on substantive grounds if a prisoner maintains that the prison superintendent has not complied with the forms of law in relation to the hearing or the sentence imposed. If he advances the same contention in relation to a visiting magistrate, an appeal should lie to a judge. We mention that these recommendations are to be read together with recommendations which we make later in this report (paragraph 3.22.1, 3.22.4 below) with respect to the availability of legal advice to prisoners. We recommend that a prisoner should have the right of legal representation at a hearing before a visiting magistrate, because he is at risk of an additional sentence of imprisonment, but we see no need for such representation at hearings before a prison superintendent. If a sentence of additional imprisonment is imposed we recommend that for the purposes of calculating parole eligibility and conditional release dates, the currency of the original sentence of imprisonment be suspended until the disciplinary sentence has expired.

3.16.3 Recommendation with respect to Offences Committed in Prison. *We recommend that a distinction be drawn between offences against the general law and disciplinary offences to the intent that the former be dealt with by the ordinary courts and the latter by visiting magistrates and superintendents of prisons.*

3.17 Reciprocal Arrangements. We have heard no evidence concerning the possibility of reciprocal imprisonment arrangements between States. We have in mind the quite common situation where an offender who is normally resident in one State commits a crime in another State for which he is sentenced to imprisonment in that other State. In our opinion it would be advantageous, unless the prisoner himself objects, for sentences imposed under these circumstances to be served in the prisoner's home State because this facilitates visiting and contact with family affairs and problems. We attach importance to this consideration because we accept the considerable body of evidence before us to the effect that visiting and family contact is valued by most prisoners and has a beneficial effect upon them. Separation from friends and relatives is regarded as an additional hardship by prisoners from the Northern Territory, some of whom

under present arrangements serve their sentences in South Australia. We therefore recommend that the possibility of interstate reciprocal imprisonment agreements be looked into.

3.17.1 Recommendation with respect to Reciprocal Arrangements. *We recommend that further inquiry be made into the possibility of introducing interstate reciprocal imprisonment arrangements.*

3.18 Prison Work. The main problem in discussing this subject is to decide what purpose prison work serves. We do not suggest that a single purpose has to be decided upon if more than one can be justified. We do suggest that if several aspirations for prison work are pursued simultaneously they must be compatible with each other. Any other course leads to wastage of resources and discontinuity between what is attempted and what is accomplished. This point needs to be stressed because although there is general agreement that prison work is a desirable feature of a correctional system, it appears to us that different people hold this view for a variety of reasons which are not always compatible with each other. Agreement is reached by subordinating prison work, other than routine maintenance, to any other interest with which it conflicts. Prison administrators tend to be in favour of prison work to the extent that it facilitates the running of prisons, as by supplying such useful personnel as cooks and tailors and keeping prisoners occupied, and does not interfere with basic prison routines or transfers between institutions. Employers, trade unions and the community at large tend to be in favour of it so long as it does not entail anything which might be construed as competition with private enterprise, or with the rehabilitation of the physically or mentally disabled through work therapy, or with other charitable enterprises, or with the unemployed, or with the award wage structure. Treasuries tend to be in favour of it to the extent that it recoups part of the cost of imprisonment by supplying government departments with such items as waste-paper bins, slop buckets, school desks, office and school chairs, and filing cabinets. The effects of subordinating prison work to every other interest on which it may impinge is to restrict it to an area of operation which is even smaller than would in any event be dictated by inherent limitations and to confuse the purposes which it can rationally serve.

3.18.1 Inherent Limitations. A starting point for the analysis of the proper scope and functions of prison work is the delimitation of the restrictions from which it must suffer in the nature of things. First there is cost and personnel. This is a particularly important consideration in such a jurisdiction

as South Australia which has a small prison population, numbered only in the hundreds. If for example it is desired to use prison work as a means of retraining prisoners for useful occupations after release, the fact has to be faced that it would be prohibitively expensive to furnish all prisons with a wide enough range of modern machinery to cover a representative selection of technological occupations, although to some extent this can be overcome by engaging prisoners in design and prototype activities on manufactures to be produced in bulk elsewhere. Even if the money were available it would probably be impossible adequately to staff such an enterprise. Secondly there is the inferior capacity and motivation of most prisoners for work of any demanding kind. This affects not only the kind of work which it is worth making available but bears also on the cost factor again, because in a small prison population the number of reasonably talented and assiduous prisoners is smaller still and therefore represents an even greater proportionate expense in terms of training and equipment. Thirdly there is the physically restricted prison environment. The most important consequence of this factor is that no prison work can be undertaken which represents a threat to security. An obvious example is training in the manufacture and repair of firearms. If these inherent limitations on prison work are added to the restrictiveness of the community and prison service attitudes mentioned in the previous paragraph, two things become obvious: that there are significant practical limits to what can be achieved by way of prison work and that clear definition of aims becomes correspondingly more important. There is no point in our recommending changes in established attitudes or practices unless the changes will assist towards not only a useful but also an attainable goal.

3.18.2 Justifications of Prison Work. Prison work is usually justified on either or both of two grounds. One looks to the security of the prison system and asserts that merely keeping the prisoners occupied reduces temptation and opportunity to cause trouble, typically by trying to escape. The other looks to the return of the prisoner to the community and asserts that he will stand a better chance of succeeding after release if he is trained in some saleable skill. Relevant to both justifications is the further assertion that any prisoner benefits from the reduction of boredom. The advantages of better mental attitude thereby achieved are passed on to the prison authorities and the community respectively by way of the prisoner's behaviour. All three of these justifications for a

system of prison work suggest the general principle that the work supplied should be as interesting and purposive as possible. This initial proposition immediately raises the question of productivity as an aim or criterion of success.

3.18.3 Productivity. From the governmental point of view one of the advantages of the current system in South Australia, which to a large extent occupies prisoners in the manufacture of the items of office, school and prison furniture mentioned in paragraph 3.18 above, is that the apparently constant and considerable need for these items is to some extent met. The utilization of prison labour for this purpose does not rest primarily on any supposed benefit either to prisoners or to society by way of retraining them or fitting them for their return to the community. It rests on budget savings which incidentally keep the prisoner occupied. It meets with community approval partly because the manufacture of these items for government use is regarded as non-competitive and partly because their production represents some return to society by the prisoner for the harm he has done. Since the work itself is for the most part uninteresting, repetitive and virtually unskilled, its criminological or rehabilitative value must be regarded as low. Moreover even the material value to society seems to us likely to rest on naive costing. The productivity of even a relatively industrious prisoner is low and the cost of keeping him in prison high, so that any cost-effectiveness evaluation would show contracting out to private industry to be cheaper. But even if this is not the case, any benefit to society to be derived from material productivity of this kind is so small as to be inconsequential in considering whether prisoners might for rehabilitative purposes be better employed. In this context it is to be remembered that the most effective way of countering the cost of sending a man to prison is not to send him there. If his attitudes can be modified to the extent that he keeps out of prison in the future, the saving to society is far greater than some items of office furniture. The reasoning is of course not necessarily related to that particular item of manufacture. It applies with equal validity, for example, to farming, a topic to which we shall return. For the moment the conclusion which we reach, and recommend, is that material productivity be abandoned as a criterion of the success of a prison work programme wherever it conflicts with criminologically more useful aims.

3.18.4 Trade Training. Theoretically the principle that prison work should be as interesting and purposive as possible

links well with the common justification that it can be utilized to train a prisoner in a skill which he can sell on the outside, although the argument is sometimes advanced that since most occupations are monotonous and uninteresting there is no reason why prison work should be different. We return to this below. First is is necessary to draw attention to the problems involved in trade training in prison. The two most significant have been mentioned already (paragraphs 3.18 and 3.18.1 above). They are community attitudes, more particularly employer and trade union attitudes, and cost and personnel. For the most part an ambitious programme of trade training is out of the question in South Australia because of the disproportionate cost of providing up to date equipment and the difficulty of recruiting training personnel. It is too little realized that much of what passes for trade training in prisons is useless to the ex-prisoner because the skills which he acquires are obsolete. Nevertheless there may be areas in which it is possible to provide useful training in a modest compass. If such a development occurs, trade union attitudes become important. It is not unknown for unions to be reluctant to recognize trade qualifications acquired in prison. In some occupations the objection appears to be that training in prison is inconsistent with the apprenticeship system. In some quarters the opinion appears to be held also that trade training converts a prison sentence into what may be called a scholarship at the public expense. The general question whether qualifications acquired in prison should be recognized for later employment purposes turns to some extent on factors going beyond our terms of reference. Indeed the whole subject of prison industry would justify a separate inquiry in more detailed terms than are possible in this report. We therefore do not address ourselves to the question whether qualifications acquired in prison should be recognized generally. We do point out that it is idle to talk of prison work in terms of later employment opportunities, or to institute prison work on that basis, unless such opportunities really do exist. We also point out that the sorts of arguments which are advanced against recognition of trade training in prison are not convincing. For example, the argument that prison training is inconsistent with the apprenticeship system seems to us to lack cogency. If a man is adequately trained, he is adequately trained. To require him to undergo a form of training which is impossible if he is in prison is only a roundabout way of refusing to recognize a qualification acquired in prison without giving a reason for the refusal. If the occupation is one

for which adequate training cannot be given under prison circumstances, that is another matter, and should be the subject of discussion between any union concerned and the Prisons Department. The argument that prison training gives the offender an unfair advantage over others because trade training enables him to turn his sentence of imprisonment into a personal gain is similarly beside the point. No-one given the choice would prefer training in prison to training out of prison. Only the hopelessly institutionalized, who by definition are untrainable for normal work, would regard going to prison as a benefit under any circumstances. Arguments based on the supposed advantages of going to prison have no relation to the real world. The point of allowing a man to acquire a trade qualification in prison is to benefit society by facilitating his re-absorption into it as a non-criminal by giving him an opportunity to get a job. It is unrealistic to argue that he ought to get his training outside prison like everyone else. If he were willing or able to do that he would in all probability not be in prison in the first place. The difference is between returning him to society as untrained as when he was arrested and returning him with the potential to be useful instead of harmful. As far as we can see there is no reason of substance why a man who acquires a trade qualification in prison should not be entitled to recognition of that qualification without regard to the circumstances under which he acquired it. Whether the fact of his having been convicted of an offence at all should be a bar to some occupations, such as the law, is a different question which we take up later (paragraph 3.22.3 below). Our conclusion is that there are enough practical problems involved in trade training in prison for the utmost degree of co-operativeness by outside employment authorities to be highly desirable. We reserved for consideration the curious argument that prison work, including trade training, should not be too interesting because most occupations are monotonous anyway. Once again in our opinion this contention misses the point. The unavoidable monotony and artificiality of prison life is such that from the correctional point of view it is desirable to take every opportunity of relieving tensions by introducing variety. The overall effect of an uninteresting job in the community is much less than in prison because the quality of life itself inevitably is much better. To make a comparison based simply on the occupation itself without taking the surrounding context into account falsifies the picture.

3.18.5 Competitiveness. It was mentioned above (paragraph 3.18) that the scope of prison work tends to be restricted to areas in which its products will not be regarded as competitive with private enterprise, charitable organizations, job opportunities for the unemployed or the wage structure. The last of these relates to the principles on which prisoners should be paid and is therefore deferred (paragraph 3.19.1 below). The other three are conveniently commented on here. As so often in matters concerning the prison system, the belief that prison work is competitive is largely founded on ignorance of the true dimensions of the problem. The fact is that in South Australia the prison labour force is so small, unskilled and, in quantitative terms, unproductive that we are unable to see any competitive problem at all. Our recommendation is that possible competition with non-prison labour be entirely disregarded in planning the structure of a prison work system except to the extent that the extremely small effect of prison labour on the labour market generally needs to be explained to employers, unions and others who take objection on this ground. Were the problem one of any size, it would be necessary to weigh the advantages to society of the correctional potential of prison work against feelings of resentment on the part of employers and the non-criminal labour force, but since in our opinion the question does not as a practical matter arise at all there is no point in entering upon such a problematical calculation.

3.18.6 Aims of Prison Work. The effect of the foregoing discussion is to bear out our opening sentence: that the main problem in discussing this subject is to decide what purpose prison work serves. To this question we now address ourselves. The conclusion to which we have come is that the main aim of prison work should be to keep prisoners interestingly occupied as a means of minimizing the character-distorting effects of imprisonment. This is not as negative as it may sound. We have adverted already (paragraph 3.6 above) to the pressures of prison life and (paragraph 3.4 above) to the disturbing argument that imprisonment is an inherently self-defeating measure. Whatever may be the status of this argument, the pressures of prison life cannot be denied and are to a large extent unavoidable. Against this background the aim of keeping prisoners interestingly occupied seems to us to be a constructive rehabilitational measure in the sense that anything which improves the prisoner's attitude to his sentence and to the society to which he has to return is a benefit. Secondary aims, which properly understood arise naturally out of this

primary aim and should therefore not be allowed to conflict with it, are to promote the effectiveness of the prison system and to maximize prisoners' chances of a successful return to society by specific utilitarian training. Relegating prison effectiveness to a secondary aim means only that whilst work obviously should not be organized in a way which constitutes a positive threat to security, it should also not be distorted in orientation or effectiveness by subordination to inessential prison routines, inter-institutional transfers or the requirements of institutional self-sufficiency. For example, a prisoner who is engaged in, or who will benefit from engaging in, work of a given description should not be removed from or deprived of the opportunity to do that work because he has a skill which his prison or another one needs. A man who can cook tends to be sent to wherever a cook is needed. This is not necessarily the best way of dealing with him, and is certainly not the best way if he is satisfactorily engaged in some other occupation which he does not want to leave. Similarly, and in light of the earlier discussion (paragraph 3.18.3 above), productivity should be disregarded except as a form of training in itself. This means that productivity might be relevant to a prisoner as a method of conveying to him the speed at which he would be required to work in a similar job in the community, but should not be a relevant factor in deciding whether to establish any particular work programme.

3.18.7 Characteristics of Prison Work. It is impractical in the course of the present general report on the correctional system to present a detailed plan for prison work. Nevertheless it is possible to derive from the foregoing principles the main characteristics which suitable work should have. They are one or more of the following: inherent suitability to the restricted prison context; relative cheapness of installation and maintenance; and appeal to the widest range of people. It is to be observed that where inherent suitability or relative cheapness, or both, are present it becomes possible to initiate work of which advantage can be taken by comparatively few prisoners. Two instances which the committee has encountered are voluntary study at secondary or tertiary level and sign-writing. Into the same category, although not profession- or trade-orientated, comes the common phenomenon among prisoners of artistic self-expression by way of model-making, painting or drawing of pictures, and pottery. Artistic expression seems to have wide emotional appeal and may well be of therapeutic value. The standard reached in examples seen by the committee is remarkably high. There is also a

range of trade activities which appears to combine all three of the required characteristics. House painting and paper-hanging are instances. Dismantling, studying and reconstructing cars and motor bikes is a widely popular activity. Panel beating and spray-painting are other possibilities with useful occupational potential. These suggestions are examples only. We mention them only to illustrate the ready availability of activities which are both suitable to the restricted circumstances of a prison, are cheap to install, depend on a modest quantity of readily available materials and in many instances have the additional advantage of later occupational utility. It has to be remembered that there is no reason why a prisoner should be confined to any one activity for any great length of time unless he happens to be one of the few with the intelligence and persistence to undertake further education. Men in this category should in our opinion be given every encouragement, even to the extent, although we recognize that the matter would have to be handled with care, of exempting them from some routine prison chores to avoid interruption. The common denominator of our suggestions, which lies at the heart of our conception of prison work, is that the work on which a prisoner is engaged should be in his own eyes as interesting, satisfying and purposive as possible. The monotony and pointlessness of prison life is possibly the greatest single obstacle in the way of converting imprisonment from a sterile routine to a constructive correctional measure. We do not expect an improvement in prison work along the lines which we envisage to produce startling results. We do expect it to effect a significant improvement in the quality of prison life, and thereby at least to improve the chances of a better mental attitude in the prisoners. Not the least advance would be the removal of the sense, which is widespread at present, that their labour is being exploited.

3.18.8 Length of Sentence. A problem with length of sentence arises under any system which places too much faith in vocational training, for such a system can rarely be applied to the short-term prisoner. It can be argued of course that there is no problem for the very reason that he will be in prison for only a short term. This is incorrect. There may not be the same need to retrain him, at all events as far as the prison authorities are concerned, but there is still the need to keep him occupied while he is in prison. This is one of the many contexts in which error can arise from failing to see the sentence as the prisoner himself sees it. Six months in prison is a far longer time for the prisoner than for anyone else. If prison work is approached along the lines which

we recommend, the problem of the short-term prisoner disappears. The sorts of activities which we envisage as being available are mostly just as suitable for him as for long-term prisoners. A further point with some short-term prisoners is that if they are engaged in an occupation which will suffer from interruption but can be continued in prison, or from inside prison, and the prisoner is suitable for this treatment, efforts should be made to avoid unnecessary interruption. Perhaps the best example is a student who has to serve a term of imprisonment during his course. Such a prisoner is likely to be co-operative, trustworthy and intelligent. There is every reason for allowing him to continue his studies even if this means some departure from normal prison routines.

3.18.9 Classification. The point arising on classification (the procedure of preliminary assessment and disposal of prisoners) is that it should be conducted in a manner which so far as possible enables the prisoner to do what he would prefer to do. This recommendation does not put him in a pointlessly privileged position. We have in mind that a far better assessment of a man can be made if his own suggestions are taken into account, and so far as is reasonable acted upon, than if they are disregarded. There has been advanced to us the argument that it is some kind of a test of a prisoner's character if he is set, at all events initially, to work which he has expressed a preference not to do. In our opinion such a view is entirely mistaken because it overlooks the basic principle that correctional measures are likely to succeed only to the extent that they enlist the co-operation of the offender. Nothing is less likely to produce co-operation than ignoring or deliberately acting counter to a prisoner's own preferences in prison work if it is reasonably possible to act in accord with them. Where it is not possible, explanation goes a long way. We do not regard the idea that a prisoner must in some sense earn the right to an interesting occupation as a satisfactory explanation because it overlooks the point of providing interesting occupations in the first place. Similarly it should be clear from what we have said already that a prisoner should not be classified in a given way simply because that way happens to be convenient to the prison. A standard example of this is a man being sent to a prison because he knows how to cook and a cook is needed there. Apart from prison work, such a policy can operate in disregard of such matters as ease of visiting and family contacts, on the importance of which we have already commented (paragraph 3.17 above). A further point on classification is that a prisoner should not

necessarily be removed as a pre-release measure to a medium or minimum security institution if he is doing perfectly well at an occupation which happens to be available only in maximum security. The relative benefits of the two measures of preparation for release should be weighed with particular regard to what the prisoner himself thinks.

3.18.10 Discipline. Discipline is a more serious problem because of the added restrictions on movement. There is nevertheless no reason why the general principles of prison work should not be applied in this context as much as in any other. This means that work should not be made part of the punishment. If possible, prisoners under punishment should not have their engagement in a given occupation interrupted. If that is not possible, it should be interrupted to the minimum extent compatible with discipline by other means. We stress in this context as in all others that a properly conceived programme of prison work should have as its object an improvement in the attitude of the prisoner by giving him something interesting to do. This value becomes if anything even more important when dealing with the most difficult class of prisoners, those who are under punishment for a failure to accept prison conditions.

3.18.11 Periodic Detention and Pre-Release Employment. None of the foregoing is intended to bear on periodic detention and pre-release employment, which are correctional measures which we consider separately later in this report (chapter 4, paragraphs 8 and 9 below). Our concept of prison work is entirely different from periodic detention. Prison work operates on the basis that imprisonment is the punishment, not work in prison, whereas periodic detention operates on the basis that, as an alternative to sending the offender to prison, he is set to work which he does not otherwise want to do. Pre-release work is not prison work because it is not a means of keeping the prisoner occupied in prison. It is a pre-release measure designed to re-adjust him to working in the community.

3.18.12 Casual Labour. In many prisons prisoners are engaged in such simple maintenance tasks as sweeping, cleaning, weeding and tending market gardens. We do not suggest that this should be discontinued for the significant number of prisoners who appear to be capable of little else, or that a contribution to it should not be the lot of all prisoners. We do suggest that any use of prison labour which gives the appearance of exploiting the prisoners for private advantage is likely to have a bad effect on the attitudes of prisoners and

staff towards each other. This appearance exists even if work done for the staff is genuinely voluntary. Moreover voluntary work is apt to give rise to expectations of special favour, whatever denials are made in advance of the occasion.

3.18.13 Farming. The status of farming as prison work requires special mention because in South Australia the prison farm at Cadell represents a substantial commitment to the idea that farming is prison work particularly suited to the pre-release aims of medium and minimum security. Our recommendations for the future use of Cadell form part of our general discussion of the future use of existing institutions elsewhere in this report (chapter 5, paragraph 13.7 below). The present discussion measures farming against the general principles of prison work developed in the preceding paragraphs. If tested by the criteria of inherent suitability to the restricted prison context, relative cheapness of installation and width of appeal, it appears to fail on all points. Since a farm obviously cannot be run within the confines of a conventional prison, the answer made to the criticism that it is therefore not suitable for prison work is that it is perfectly suitable to a minimum security prison. In our opinion this is the case only if the criminological aims of minimum security predominate and not the requirements of the farm. For the great majority of prisoners it is reasonably clear that the two are incompatible. The purpose of transferring a prisoner who is approaching his release date from maximum to sub-maximum security is to start the process of easing him back into society by familiarizing him with reduced regimentation and restriction of movement. If a prisoner is not sent to maximum security in the first place, the aim is similarly to keep to a minimum the difference between his life in prison and life in the community. It is true that a prison farm which is run with reasonable freedom of movement and individual responsibility for getting jobs done is consistent with these aims. But it also has a basic characteristic which is incompatible with them. This is that most prisoners correctly do not regard a farm as bearing much resemblance to society as they know it. We leave aborigines from the reserves aside as a special problem for later discussion (chapter 6, paragraph 2 below), although we observe that the proposition is clearly true of them also. With that exception, the great majority of prisoners reflect the distribution of population in Australia generally and in South Australia in particular in that they come from urban backgrounds to which farming activities have no relevance. It is not evidence of institutionalization for them to feel more at

home at an urban prison in the area from which they come than at a prison farm in a country district nowhere near their own area. The greater ease of visiting, the availability of prison work of more usual kinds, the greater protection from the climate and the mere consciousness of being in the proximity of a centre of population, all give the urban prisons a considerable psychological advantage over prison farms, even if to the outsider many of the physical facilities of the latter appear to be superior. The major objection to farming as prison work is that for the great majority of prisoners its influence runs counter to the aims of the sub-maximum security detention to which alone it is appropriate. For similar reasons it fails also to meet the criterion of width of appeal. There are no doubt a few offenders from country districts to whom it is attractive, and perhaps a few who take to it for no obvious or predictable reason. But for the majority of prisoners the work it entails is not purposive, because they have no interest in farm products beyond consuming some of them in a processed form as food, and no intention of engaging in farming after release. Neither is the work interesting, for in addition to having no desire to do it in the first place, most prisoners find routine farm work boring and, under most climatic circumstances, uncomfortable. It is difficult to see any rehabilitative purpose being served by removing a prisoner from one environment to another which, for reasons which appear to him to be sound, he likes less and requiring him to do work which, for reasons which appear to him to be equally sound, he positively dislikes. As to relative cheapness of installation and maintenance, it is obvious that no farm on any scale can meet this criterion, particularly with a low-grade labour force. We conclude that farming is unsuitable as prison work. At best it is a very expensive way of meeting the needs of a small minority of prisoners. At worst it positively conflicts with the criminological and rehabilitative purposes which it is supposed to serve. It is no doubt for these underlying reasons that so much stress tends to be put on productivity in the farming context and so much attention drawn to the extent to which the food requirements of the prison system generally are met by prison farms. We have given our reasons already for concluding that emphasis on productivity distorts the aims and achievements of prison work (paragraph 3.18.3 above). Farming affords an excellent example. There is no clearer instance of means becoming confused with ends.

3.18.14 Assistant Director (Work). The importance we attach to the proper organization and supervision of prison

work is such that we recommend the creation at a senior level of the position of Assistant Director (Work) and the appointment to it of a person who understands the reasons for and accepts the foregoing principles. To anticipate a later recommendation (chapter 5, paragraph 4.3.1 below), we envisage that this official would be a member of a team within the prisons branch of a restructured Department of Correctional Services, each of whom has a different specific responsibility within the branch but all of whom collectively constitute an advisory committee for the guidance of the branch and departmental heads and the Minister. One of the responsibilities of the Assistant Director (Work) would be to approve every work programme before it is instituted. Another would be to exercise continuous personal supervision and co-ordination of prison work. In carrying out these functions as well as in the formulation of wider policy for prison work, including relations with employers, unions and the community at large, he should be answerable to the head of the prisons branch and through him to the head of the Department of Correctional Services. This recommendation implies the abolition of the present Prison Industries Committee but it may be helpful for a small advisory committee to be formed for the assistance of the Assistant Director (Work).

3.18.15 Conclusions on Prison Work. Our conclusion on prison work is that the whole conception is in need of rationalization because nowhere in the prison system are there more obvious signs of conflicting interests producing contradictory results. Our recommendation is that the aim of prison work be to keep prisoners interestingly occupied as means of minimizing the character-distorting effects of imprisonment. Far from its present status as an ancillary to the prison system, operating on the periphery of events and subject to any conflicting interest, prison work should be central to the system. It is the most effective means of countering the monotony and pointlessness which are the greatest obstacle to making imprisonment a constructive correctional measure. It is not impossible to devise a system of prison work which both advances these ends and is reasonably economical. Ideally prison work should be characterized by inherent suitability to the restricted prison environment, relative cheapness of installation and maintenance, and appeal to the widest range of prisoners. If it fails seriously on any of these counts it can be expected to be either disproportionately expensive or, more probably, useless in criminological terms. The application of these principles to the South Australian prison system will

entail a number of changes in the present situation. The most important initially should be the appointment of a departmental officer responsible for work with a seniority which reflects the importance to be attached to this aspect of the prison system.

3.18.16 Recommendations with respect to Prison Work.

(*a*) *We recommend that the controlling aim of prison work be to keep imprisoned offenders interestingly occupied as a means of minimizing the character-distorting effects of imprisonment and that conflicting interests other than those of security be subordinated to this aim.*

(*b*) *We recommend that the appropriateness of an occupation for inclusion in a prison work programme be evaluated by reference to the three criteria of inherent suitability to the restricted prison environment, relative cheapness of installation and maintenance, and appeal to the widest range of prisoners, and that no programme be introduced which fails seriously to meet any of these three.*

(*c*) *We recommend that the far-reaching consequential measures implied by the foregoing principles be carried into effect, particularly with respect to the influence of productivity on the present prison work programme.*

3.19 Payment of Prisoners. This has become a vexed question for the same reason as prison work: that there is no agreement on the basic principle which ought to regulate the matter. In accordance with the views which we have expressed already on prison work, one misconception should be disposed of at the outset. This is that payment to prisoners should be related to work in the sense that wages are paid for employment. There are no acceptable analogies between work which a prisoner is directed or encouraged to do and employment which a free man chooses to undertake. No sensible conclusion is likely to be reached on payment of prisoners as long as arguments are advanced which ignore the total context and fasten upon this particular facet of it. For this reason we find no assistance in the anology of the basic wage. The concept of the basic wage is allied to the situation of a free citizen in ordinary employment. Since an imprisoned offender is neither of these things we find the anology unhelpful. It might have some relevance if the object of prison work were to produce manufactures cheaply at the expense of the free labour market. Since this is not the case, and no-one suggests that it should be, and since the prison labour force is so small in numbers and

deficient in quality as to put any such development beyond the bounds of possibility, we discard the basic wage altogether as a standard. Similarly we find no utility in the vague notion that a prisoner should earn his keep, or at least make a contribution towards it. We discard this line of thought because it ignores the correctional context. An offender is not in prison because he wants to be there. The best contribution he could make towards reducing the cost of his imprisonment would be to leave prison. Since he is not allowed to do that, it should be recognized that he is in prison for correctional reasons which have no necessary connection with working for his board.

3.19.1 Purpose of Paying Prisoners. There appear to us to be three correctionally useful purposes to be served by paying prisoners a regular sum of money. The first is to give them some degree of independence in marginal comforts, to enable them to buy small amenities with a range of choice. Taking the view, as we do, that it is imprisonment which is the sentence and not incidental inconveniences, it is a useful amelioration of the inevitable tedium of prison life for such amenities to be available to prisoners as an individual decision and not as a uniform institutionalized issue. Secondly, it is desirable to provide a prisoner, particularly a long-term prisoner, with some opportunity to accumulate a sum of money which is available to him when he is released. We are aware of the argument that the ready availability of such a sum may do more harm than good in some cases but we do not accept this as an objection of principle. Such risks should be diminished by the various pre-release and post-release measures which we suggest in this report with a view to easing the prisoner's transition back into society. Thirdly, a money allowance or entitlement is a useful source of incentive influence. It means that a prisoner can be fined for indiscipline or encouraged to undertake such an activity as self-education by suitably adjusted incentive payments, although in this latter case we caution against too automatic an application of the principle. As has happened with remissions, what is intended as a maximum benefit tends to become a minimum. If incentive payments become the rule rather than the exception they undermine the emphasis on self-motivation which ought to characterize a progressive correctional system.

3.19.2 Recommended Changes. We therefore recommend that prisoners be paid a regular money allowance calculated at a daily rate. We recommend also that the present practice of distinguishing between amounts paid to short-term and to

long-term prisoners be discontinued, that use of the expression "indulgences" be discontinued because it suggests concession rather than entitlement, and that the amount both of the allowance and of the amenities should be much increased. Under present regulations the most that a prisoner can earn is 50 cents a day, and most prisoners do not attain this rate for some time if at all. We do not wish unduly to pre-empt a departmental decision on the precise size of prisoners' allowances but we recommend an immediate increase to $1 a day of allowances to all prisoners regardless of their classification, disciplinary standing or work. In a time of inflation such an increase can be regarded only as an interim measure which should come under further review at once and regular review in the future. A formula should be decided upon which relates the allowance to prisoners not only to the foregoing correctional aims but also to increases in the cost of living and the price of amenities.

3.19.3 Recommendations with respect to Payment of Prisoners.

(*a*) *We recommend that prisoners be paid an allowance on the basis that such a step serves constructive correctional purposes and not on the basis that it is analogous to wages in normal employment.*

(*b*) *We recommend an immediate increase to a standard $1 a day in payment to all prisoners without distinction of category or occupation.*

(*c*) *We recommend the immediate and regular review of payments to prisoners with a view to giving such payments a reasonable relationship to the cost of living having regard to their correctional purposes.*

(*d*) *We recommend a substantial increase in the range of minor amenities available to prisoners for purchase and that the use of the word "indulgences" be discontinued.*

3.20 Prison Education. It is traditional for prison work and prison education to be treated as separate incidents of prison life. The former has connotations of physical labour and the latter of the classroom. We have indicated already that in our view the concept of prison work in this State is in need of rationalization (paragraph 3.18 above). It will have become apparent in the course of our discussion of prison work that there is little, if any, reason to continue to distinguish basically between prison work and prison education. Since we have defined the former in terms

of interesting and purposive activity (paragraph 3.18.6 above), education in the academic sense becomes a form of prison work for suitable prisoners. Alternatively prison education in a wider sense can be seen as another way of describing prison work. But in view of the traditional separation between the two concepts, there is utility in considering what should be the aims of prison education taken initially as an issue separate from prison work.

3.20.1 Aims of Prison Education. Three main aims of prison education can be identified. Before stating them a comment is required on the widespread vague belief that learning improves offenders' attitudes to the community. We neither accept nor reject such a proposition in itself. We do reject it as a basis for a system of prison education because it is lacking in precision. The extent to which it is right or wrong depends on a variety of factors: what is meant by learning and improvement, the calibre of the individual prisoner, the context in which the programme operates, the priority which it is given in the prison system, the quality of the instructing or organizing staff and the extent to which it is purposive in the eyes of the prisoners involved. We therefore prefer to specify aims of prison education rather than assume a justification in terms of general good done to the prisoner. The first aim is to assist towards the reduction of recidivism where there appears to be a positive opportunity to do so. This is one of the points at which the identity of prison education with a properly orientated system of prison work becomes obvious, for trade training falls with equal ease under either head. There is no need to repeat what we have said already about trade training (paragraphs 3.18.4 and 3.18.7 above). Secondly, education of any kind, in prison or out of it, aims to promote the intellectual, emotional and social development of individuals. There is no reason why society's general acceptance of this principle should make an exception for prisoners. It need not be assumed that education has any special effect on prisoners, as opposed to the rest of the population, because the scope of this aim should be only to achieve with prisoners the same results in individual development as with other people. Thirdly, prison education aims at assisting the prisoner to cope with his sentence by providing him with interesting and purposive activities. Once again the identity of aims between prison education and prison work becomes obvious, for the point of keeping the prisoner occupied in this way is to counter the stresses of the artificial prison environment and thereby render his return to the community a less demanding experience

than it otherwise might be. Just as with prison work also, it is to be observed that prison education should not be oriented wholly towards the prisoner's ultimate release. There is no reason why personal development and efforts to counter institutionalization should not be equally applicable to prisoners whose release date is still remote or who may never be released at all.

3.20.2 Characteristics of Prison Education. Education is generally associated with schooling, which in turn implies a system in which a teacher is the central figure and imparts instruction to pupils, who are usually children but may be adults. This is not a desirable model for prison education for at least two reasons. First there is little anology between the circumstances of a prison and those of a school, or between the educational needs and experiences of prisoners and those of children, adolescents, or adults who voluntarily enrol for further education. Secondly, many prisoners have a history of under-achievement and frustration in their school experiences. The legacy of negative associations with schools and teachers may be projected onto the prison education programme unless the prison programme is clearly different. Because of these differences between the requirements of prison education and formal education generally, the emphasis in prison education should be on self-help rather than on instruction alone, including the encouragement of more able prisoners to help with the education of the less able. Officers concerned with education should be called education officers and not teachers and that part of a prison in which facilities are housed should be called the education centre and not the school block. Education officers should be organizers as much as instructors. Precisely what they do necessarily depends on many factors: numbers and types of prisoners, their needs, the resources available in terms of staff, rooms and equipment, the officer's own interests and abilities and the extent to which limitations are imposed by the normal running of the prison. But three main areas of education can be identified: academic, vocational and socio-recreational.

3.20.3 Academic Education. This includes all efforts at educational advancement in a formal sense and ranges from teaching illiterates to read and write to enabling the more able prisoners to undertake courses up to, in some cases, university level. At the lower levels these demands would require the taking of classes in small groups of up to eight or ten prisoners but for more advanced studies the education officer's

role is primarily to provide materials and working rooms, assistance when called on, and, most importantly, encouragement. At higher secondary level and above instruction can be provided most suitably by correspondence courses, but this should not relieve the education officer from overall responsibility for the prisoner's progress. It should be the education officer who approves and arranges for the course, and he should view the success or failure of the enterprise in exactly the same light as he would with prisoners in classes which he is actually teaching. Prisoners should be encouraged to help each other. A point to bear in mind is that very few prisoners have the aptitude or application for anything approaching full-time study. Formal education should be therefore in the usual case only one of two or several activities. This would mean no doubt that most prisoners receiving formal instruction would spend most of their time engaged in the more usual manifestations of prison work; but if the occasional prisoner does prove to have the necessary aptitude and motivation, there is no reason why he should not be engaged in full-time study. Equally there is no reason why prisoners with potential for helping others to study should not be engaged in this activity to the fullest useful extent.

3.20.4 Vocational Education. This has been mentioned already as one of the obvious points of identity between prison education and prison work (paragraph 3.20.1 above). There is no need for further elaboration beyond mentioning that instructional techniques more usually associated with academic education, such as the correspondence course, may be equally relevant here, depending on subject matter. One variation which may be considered is to aim not at complete vocational training but at a number of short courses which have the object of acquainting a prisoner who is serving a short term, or approaching release, with a variety of occupations. The object would be not to train him in any of them but to acquaint him with a number of possible occupations which he could investigate further after release if any of them interested him.

3.20.5 Socio-recreational Education. This comprises activities which are not academically or vocationally orientated but have appeal either as ends in themselves or as changes from other activities. They too have been mentioned already in connection with prison work (paragraph 3.18.7 above). They include artistic self-expression, hobbies, discussion and current affairs groups, debating and sporting activities. As far

as the education officer is concerned they require little more than organization and the provision of facilities. They have the advantage of immediate appeal to the participants and often provide links with the community.

3.20.6 Ancillary Matters. There are a number of incidentals to prison education to which attention should be drawn. Libraries play an even more important role in prisons than in the general community. They should be regarded as a vital component of the educational equipment available to prisoners. In larger institutions the appointment of a qualified librarian as part of the education staff would be justified. In smaller prisons the education officer should be responsible for the library with prisoner assistance. Education officers should be available also for personal counselling. Help of this kind, even if it amounts to no more than listening, should come from prison staff generally, whatever their particular duties. Not only ought education officers to be no exception: there are at least two reasons why they are particularly likely to be approached for advice. The first is that their own level of education probably will be higher than that of many prison officers, which may suggest to prisoners, rightly or wrongly, that they are better fitted to advise. Secondly, the non-custodial and co-operative character of education work in a prison is likely to promote easier relationships than is generally possible with prison officers whose primary concern necessarily is with security. A number of prison education programmes in Australia and elsewhere include the production of monthly magazines. These provide an outlet for prisoners' literary efforts, act as an additional means of communication within the prison and encourage outside support for the programme. Many of these magazines have reached high standards of content and production and are generally exchanged between prisons as a matter of mutual interest. A worldwide exchange programme for prison magazines, called the Penal Press, has been in operation for some years. Participation in this programme would be a further step towards reducing the sense of isolation induced by imprisonment. Finally, prison education has a particularly valuable role to play in respect of pre-release courses. The aim of these courses, which have been developed elsewhere in Australia and are therefore available for study if it is decided to introduce them in South Australia, is to bring to the attention of prisoners who are approaching release after a long sentence the problems they are going to face in the community, and to discuss how to cope with them. They can be viewed in different ways: as

group therapy for example rather than education. If the emphasis is on therapy rather than instruction, the personnel who conduct them should be qualified in psychology or psychiatry rather than education, but this is a secondary matter. The more important consideration is that such courses should be introduced.

3.20.7 Personnel. It is clear from the foregoing outline of the principles which ought to guide the institution of an effective system of prison education, whether conceived of as part of the prison work programme or not, that a wide range of qualifications and abilities will fit a person to be an education officer. Since the whole range of potentially useful skills will not be found in any one person, there is sure to be an interaction between the personnel recruited and the actual programme which is set up. To some extent the programme will depend on the skills of the personnel and to some extent recruitment will depend on existing facilities at any given time, but neither should be allowed to exercise a restrictive influence on the other. Change and experimentation are as valuable in this area as elsewhere, and individual initiative in a field with such potential for the professional educationist is to be encouraged. There is of course a general basic level of qualification which has to be met. Education officers must be qualified teachers, preferably graduates with a diploma in education, and have marked organizational ability. They should have the personal qualities necessary to establish and maintain effective working relationships with other prison staff, both general prison officers and other such specialists as psychologists and probation officers, and the prisoners themselves. Such people would not be so hard to find as may be assumed. Provided that reasonable conditions and future career openings are available, many teachers with a professional interest in the inherent problems of education are likely to respond readily to the particular difficulties of prison education. On present prison population in South Australia, using the ratio of one education officer to each one hundred prisoners or major part thereof, nine officers should be appointed. The question arises whether they should be employed by the Prisons Department or the Education Department. There are advantages in the creation of a separate professional prison education service, similar to the armed forces' education services, but in South Australia such a service would be too small to afford adequate career opportunities to its members. We recommend therefore that prison education officers remain employees of the Education Depart-

ment able to revert to more orthodox teaching positions as and when they wish to do so. This would have the added advantage of keeping prison education officers in ready touch with educational developments generally. Incentive payments could be offered to encourage a period of prison service if necessary, and it should be made clear that such service would be at least equivalent to normal education experience for promotional purposes. Equally it should be open to education officers to transfer to the prison or probation services instead, with credit for their educational experience. Teachers without previous prison experience should receive a period of instruction, or of supervision by experienced officers, to ensure that they understand the purposes and organization of prisons and their relationship to the prison system generally. Responsibility for the inception and development of prison education, and its co-ordination with prison work, should rest with a senior officer with the title Assistant Director (Treatment). His place in the scheme of a reconstructed Department of Correctional Services is dealt with in a later chapter (chapter 5, paragraph 4.3.1 below).

3.20.8 Conclusions on Prison Education. Prison education in South Australia is if anything in even greater need than prison work of rationalization and improvement. To a large extent the aims of each are, or ought to be, identical. The basic link between the two is that each deals constructively with the greatest problem of imprisonment as a correctional measure, which is what to do with prisoners. Each of them has been traditionally treated as ancillary to the prison system, which up to the present time has been excessively influenced by security considerations. There is no reason at all why security should be in any way diminished by progressive prison work and prison education programmes. Indeed such programmes positively assist security by enlisting the interest and co-operation of prisoners and thereby reducing their resentment at the necessary restrictions of prison life. They should be seen as a central feature of the prison system and given priority in future planning along the lines which we have indicated.

3.20.9 Recommendations with respect to Prison Education.

(*a*) *We recommend that the close connection between prison education and prison work be recognized and acted upon as a guiding principle.*

(*b*) *We recommend that prison education be accepted as a function of education and not of imprisonment*

and accorded a corresponding status, facilities and staff.

3.21 Classification of Prisoners. At an early stage after an offender is committed to prison it is desirable to decide in what institution and degree of security he should serve the initial part of his sentence, and in what activities he should be engaged. Existing information on the prisoner has to be evaluated. The sources are such documents as probation and pre-sentence reports, medical or psychiatric reports, any observations made by the court for the assistance of the prison authorities when passing sentence and length of sentence. If the prisoner has spent a long period on remand in prison, a report from the remand centre should be sought also. This is particularly valuable as a counter to the tendency in assessing a prisoner to place too much emphasis on the type of crime he has committed. It is a bad practice, for example, automatically to send an offender who has committed a crime of violence to maximum security, especially if this means to the most restrictive form of maximum security, which is equivalent to a disciplinary or punishment block. It does not follow that a man who has proved dangerous in the community is going to be troublesome in prison. His behaviour on remand is likely to be a better guide than his behaviour in the community from which he has been removed. But the general need for some form of early assessment of prisoners in order to make the best disposal of them is clear.

3.21.1 Present System. At present all prisoners with sentences of one year or more come before a classification committee at Yatala Labour Prison. They do not necessarily appear before the committee at a particularly early stage of their sentences. An interval of a month or more is said to be justified on the ground that it gives an opportunity to observe the prisoner's behaviour. We are not persuaded by this argument. By the time an offender with a sentence of any significance has reached prison to begin serving it, a good deal of information about him is available on which to make an assessment. Although it is no doubt wise for security reasons to err on the side of caution in the initial assessment, there is no reason why prisoners should not be classified for disposal virtually as soon as they arrive. Regular re-assessment should be undertaken to see if changes are warranted. The classification committee itself varies in membership depending on who attends. On a typical occasion it might consist of an Assistant Comptroller of Prisons in the chair, the Superintendent, the Chief Prison Officer, the probation officer attached to the prison and two industries officers.

The committee has before it the usual documents comprising the prisoner's personal history, his criminal record and a psychiatric assessment which includes his rating as an apparent escape risk. After discussion the proposed disposal of the prisoner is decided on. The prisoner is then brought before the committee, told its function and the proposed action with respect to him and asked if he has anything to say. The tone of the observations made to the prisoner is perhaps best described as a pep talk, apparently directed as much as anything at making clear to him that any amelioration of his lot depends on his earning favourable consideration by good behaviour. Prisoners' reactions appear to vary from bewilderment and apprehension to scepticism. Our impression is that few if any of the prisoners accept the committee as acting in their own interests. They seem to regard it with suspicion because they cannot see that it serves a useful purpose. From their point of view a decision about their disposal might just as well be conveyed by the Superintendent or a senior prison officer. They do not believe that the committee pays any attention to their own arguments or suggestions. In consequence many prisoners keep silence, or say little, out of caution. Most of them appear to believe that their disposal is governed more by the internal needs and organization of the prison system than by their own welfare. No doubt such beliefs are endemic among prisoners and not to be unquestioningly accepted. Nevertheless there is ground for concluding, which we have done, that the present classification procedure could be improved.

3.21.2 Recommended System. The main defect with the present system of classification, and the one which more than anything else accounts for the prisoners' scepticism, is its depersonalized character. It has the effect, whether intended or not, of diminishing the authority of the Superintendent, or Keeper, in charge of the prison. This happens because the present system lends itself to the appearance that he is sheltering behind the committee instead of making personal contact with the prisoners. This of course is not a matter of appearance only. There is a considerable reduction in personal contact when a prisoner is confronted by a committee of six or more instead of one man. The prisoner has his personal responsibility for his actions constantly brought home to him but he does not see this principle of personal responsibility reflected in the committee system. His acceptance of the committee's decisions is qualified by this consideration. We regard this as an important matter because one of the difficulties in making

imprisonment a constructive correctional measure is the extent to which prison life is depersonalized. At its worst this can make a prisoner feel that he is regarded as a mere cipher, which is highly undesirable when it is his difficulty of adjustment to community life which has brought him to prison in the first place. Personal contact and influence are of exceptional importance in prison, and the first major decision affecting the prisoner at the beginning of his sentence, his own disposal, should reflect this. To combine this value with administrative necessity we recommend the following scheme. The classification process should be divided into two stages. The first is the prisoner's assignment to a particular prison. This decision should be reached by a departmental committee and there is no reason why the prisoner should be in any way involved in it. The committee should perhaps be called a placement committee and it should reach its decisions on the basis of the written record, as much weight as possible being placed on factors which may affect favourably the prisoner's acceptance of his sentence. These would include such matters as where his family lives and the extent to which he may be expected to be able to benefit by facilities available in a given prison. The overriding concern should of course be security, but we assume that that may be taken for granted as part of the placement committee's deliberations. If there are grounds for believing later that a mistake has been made, the Superintendent of the prison affected can make an appropriate recommendation to the committee for transfer of the prisoner. Once a placement has been made, the Superintendent of the prison to which the offender has been sent should both make and be seen by the prisoner to make all further decisions as to his disposal and activities in that prison. The Superintendent should have his own advisory committee but the decisions should be his, and he personally should make them known to the prisoner. He should afford the prisoner an opportunity for discussion with him of any likely course of action, preferably before even a tentative decision has been made. An early interview, followed by discussion perhaps a day or two later between the Superintendent and his committee, followed by a second interview in which the Superintendent conveys his decision, is what we have in mind. Thereafter the general principle should be that the Superintendent be available to both prisoners and staff as easily and on as informal a basis as is reasonably practicable. Just as the Superintendent himself should not seem remote and uninterested, so should he also not seem more accessible to and interested in the prisoners

than in his own officers. Either appearance undermines classification procedures by distorting the context in which the placement decision operates.

3.21.3 Recommendations with respect to Classification of Prisoners. *We recommend that the functions of the present Classification Committee be divided between a central Placement Committee and the Superintendents of prisons and that greater regard be had by the latter to representations by the imprisoned offenders themselves.*

3.22 Legal Status of Prisoners. Under this heading we consider three related topics which arise consequentially on conviction or imprisonment. They are legal advice and representation for prisoners, legal disabilities of prisoners and the effect of a criminal record on an offender's re-acceptance into society. The last of these is a problem not confined to offenders who have served a term of imprisonment but it is conveniently discussed in that context, partly because of its relationship with legal disabilities of prisoners and partly because a criminal record which includes imprisonment is a more serious obstacle to social rehabilitation than one which does not.

3.22.1 Legal Advice and Representation. Legal advice and representation for prisoners arises in two contexts: where they are charged with offences committed during sentence and where legal problems arise in connection with their private affairs with which they cannot deal because they are in prison. In our opinion it would significantly assist the prison system to attain its correctional goals for adequate facilities to be provided on both counts. As has amply appeared from the terms of this report hitherto, a prison system should have two main objects: security for the public where there appears to be no other reasonable way of dealing with the offender, and rehabilitation of the offender if possible. Both aims rely heavily on co-operation by prisoners. This is particularly true of rehabilitation. Most prisoners appear to accept the justice of their prison sentence but they also, correctly in our opinion, regard the fact of imprisonment as the sentence, or punishment. Incidental hardships are accepted to the extent that they are unavoidable but resented if they are unnecessary or seem to be designed only to make life difficult. It is to this aspect of imprisonment that legal advice and representation is relevant. The prisoner is for obvious reasons more than usually conscious of the omnipresence of the law. The restrictions of his personal freedom of action make him alert to anything which he sees as affecting his rights. His personal

affairs and relationships with his family are often in disarray. Among the most frequent problems are matrimonial disputes and worries about social service benefits and support for his family. The relative difficulty of communication with the outside world and the average prisoner's lack of education and financial resources do nothing to diminish these stresses. Moreover misapprehensions about the law are if anything even more usual among prisoners than in the general community. Since the effect of these factors on prisoners is bad, predisposing them more to resentment than co-operation, we recommend that a legal representation and advice service be set up. This should have the following functions. Where a prisoner is charged with an offence committed during sentence which is triable (paragraph 3.16 above) before a court or visiting magistrate, he should be provided with free legal representation. We cannot see that the fact that he is already in prison should have any bearing on the desirability of a fair trial in relation to a new offence. It is a commonplace that the trial system as we know it works at its best when all parties are represented. This principle is heightened in importance where one of the parties is already in the disadvantageous situation of being a convicted prisoner. It is true that we have not yet advanced to the point where everyone in the community at large is able to afford or get legal representation, from which it may be argued that prisoners ought not to receive special favour. We do not agree with this argument. All that it proves, if anything, is that legal aid generally should be made more widely available, but there are several other countervailing factors. One is that whatever may or may not be the deficiencies of legal aid in this State, a matter which is outside the scope of this report, it is certainly true to say that no-one charged with a serious offence need go unrepresented. Any prisoner undergoing sentence who is tried for an offence committed in prison which is of enough importance to be brought before a court is in a serious position. Moreover such offences are relatively few. Free legal representation would not put much of a burden on the State's resources and would certainly be money well spent in terms both of the principle involved and the realization on the part of the prisoner that he is receiving a fair deal. It can hardly be supposed that offences will increase for the pleasure of being represented. And we draw attention to our previous recommendation (paragraph 3.16.2 above) that representation is not necessary for merely disciplinary offences. We turn to the other aspect of legal representation and advice,

advice on legal matters generally. Here it seems to us highly desirable that prisoners should have access to a legal officer for advice of all kinds and assistance with the preparation of documents. These need not be only strictly legal documents but should include petitions or the completion of forms and applications relevant to the prison itself. All authorities, whether the courts, the Prisons Department or anyone else, benefit from this kind of aid to prisoners because it results in the documents in question being much more clearly drafted than they otherwise would be. If a prisoner is sued, or threatened with legal action, it should be the duty of the legal officer to advise, and if necessary represent him. If it is a question of helping his family to obtain entitlement or cope with legal action, the matter should be left to the ordinary legal aid facilities of the community, although in some instances this situation may be affected by the appointment of the Ombudsman. In our opinion such measures as these would produce a significant improvement in the attitude of the prison population. It goes without saying that legal officers would treat all communications between themselves and prisoners as privileged, and that the circumstances of their employment, whether by the Prisons Department or some other governmental agency, should afford them consequential career protection.

3.22.2 Legal Disabilities. The legal disabilities of a prisoner, other than his loss of the right to physical freedom of movement, are many. To a considerable extent they overlap with the next topic, the influence of a criminal record on re-acceptance by the community. There are for example many statutes which require as a condition of engagement in a particular occupation that the person concerned be not convicted of a criminal offence. The degree and type of offence vary, as does the precise formula under which the disability operates, and sometimes the disqualification is discretionary, but where such a bar operates it obviously applies to the prisoner under sentence with even more force than to the ex-prisoner. In general this is a problem more relevant to the ex-prisoner however, because the very circumstance that he is in prison makes the matter immaterial in most cases to the prisoner under sentence. There is one disability which has come to our notice which applies only to the prisoner while he is under sentence and is in our opinion questionable. It is that under the Constitution Act of the State, s. 33 (2), no-one who has been convicted of an offence punishable with imprisonment for one year or more, and is either under sentence or

liable to be sentenced for it, is entitled to vote for the House of Assembly. There is a similar, but not identical, disability in s. 22 from voting for the Legislative Council which applies to felony or other infamous crime, whatever that expression may mean. Both provisions also include treason. We can see no ground for preserving these disabilities. The right to vote seems to us to have no connection with the question whether the voter is a good or a bad citizen. For this reason we refrain from analysing these provisions in detail and commenting on the anomalies which appear in their terms. We confine ourselves to a simple recommendation that they be abolished. We do not however think it desirable that something of a prison electorate should come into existence. We therefore recommend that prisoners should not vote in the electorate where their prison happens to be but as absentee voters from the electorate of their last known address. Some disabilities are more usually regarded as incidents of prison routine. These affect rights to receive and send correspondence and to receive visitors. Except where a prisoner is confined in maximum security because he is classified as requiring it, as opposed to being there because of pressure on other accommodation or for some similar reason, we see no need for restrictions on mail or for censorship. Censorship is a great indignity and should not be practised unless security requires it. Unless a prisoner is in maximum security because he represents a high escape risk, security cannot be regarded as requiring it. Since restrictions on the amount of mail a prisoner may receive or send are related to the amount of staff time taken up in censoring letters, it follows that if censorship is unnecessary, so are the restrictions. But there is no reason why prisoners should be able to indulge in unrestrained letter writing at the public expense. They should pay for the stamping of their own correspondence. We accept that there is a case for censorship of mail sent to particularly high risk prisoners. Apart from such individual cases, to be determined in each instance by the superintendent of the prison, we see no need to go further than to open letters in the presence of prisoners in maximum security, so as to ensure that no dangerous article is being smuggled in, and to hand them over unread on that occasion. We are not impressed with the argument that plans for escape can be laid in correspondence. A properly run maximum security institution should neither be nor believe itself to be so vulnerable. We have conceded already that an exception can be made for prisoners believed to represent an unusually high risk. We

do not see any reason for opening or reading outgoing mail from any category of prisoner. Precautions against smuggling and conspiracy are necessary, to the limited extent that they are necessary at all, only in respect of incoming material. 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. In accordance with the views which we have expressed on correspondence, we recommend the adoption of a general principle that no restriction should be placed on visiting unless it is clearly justifiable on organizational or security grounds. We recommend also that visiting should be encouraged but that prisoners should not be obliged to meet visitors whom they do not wish to see. The suggestion has been made that accommodation should be set aside for what are termed conjugal visits. These are occasions on which sexual intercourse may take place. We do not recommend such a step because we regard it as compromising the dignity of the woman concerned. She would no doubt feel under some pressure to comply with a request for such a visit. The purpose of her presence inevitably being known to all, and the accommodation provided necessarily being available to all, a picture of personal embarrassment is conjured up which we can regard only with distaste.

3.22.3 Criminal Records. It was mentioned in the previous paragraph that an ex-prisoner's employment may be affected by many statutes which make his previous record relevant. Sometimes there is reference to a record of a given character, such as dishonesty, sometimes to offences of a certain degree, such as felony or offence triable in the Supreme Court, and sometimes only to a requirement that an applicant be a fit and proper person to engage in the occupation in question, but in virtually all cases there is a formula, often discretionary, to which a previous term of imprisonment is relevant. The relevance of a prison record is not limited to employment.

It is a factor in the adoption or custody of children, in immigration and liability to deportation, and may be a ground for divorce. It also disqualifies from jury service, even if the conviction occurred outside Australia but within whatever area is now encompassed by the expression "Her Majesty's dominions". A selection of occupations affected by statute includes appraisers, architects, auctioneers, bailiffs and inquiry agents, dentists, doctors, gold buyers, hawkers, land agents and land valuers, licencees, moneylenders, nurses, physiotherapists, members of the public service, second-hand dealers and taxi drivers. In practice a criminal record is a severe handicap to engagement in any profession, and most other forms of employment, and to obtaining insurance cover. Apart from employment and the holding of many offices, a criminal record has a potential for causing unnecessary and anti-rehabilitative distress at the personal level. The difficulty is that criminal records are not particularly difficult to discover if there is any reason for investigating or taking an interest in a person, and are likely to be reported in the local press, or at least communicated to others who know him, however old the record may be and however much the ex-offender's life style may have changed in the meantime. It is for example normal practice for the previous record to be revealed of anyone convicted of an offence before sentencing him. This is helpful to the court but may be disastrous to the offender if his latest offence is relatively trivial, such as failure to apply for a licence or a minor motoring infraction, and he has long since lived down his past but his earlier offence is publicized. We are satisfied that this is both a very real problem and also a peculiarly intractable one, because it arises at the meeting point of conflicting values. At one extreme there is the argument that once an offender has served his sentence he has paid his debt to society and his record should be destroyed. This is in our view unrealistic and fails to take account of other values. It is clearly relevant to the suitability of a man for many responsibilities that he has been convicted of an offence inconsistent with such responsibilities. Examples would be employment in a bank after conviction of fraud, employment as an armed guard after conviction of robbery with violence and employment as a primary school teacher after conviction of rape of a child. Similarly it is important to a court in sentencing an offender to know what, if any, his previous record is. The destruction of criminal records would seriously hamper police work and valuable research on the incidence of crime and the effectiveness of

correctional methods. For such reasons as these we are of opinion that the destruction of criminal records is in the public interest undesirable. A partial solution to the problems of the genuinely rehabilitated ex-prisoner, or ex-offender, has to be sought along different lines. It has to be borne in mind also that there are some offences, of which the most obvious are motoring offences, to which it would be undesirable to apply any restriction of access. The most obvious point which emerges from hardship situations is the importance of the time factor. The more time that elapses between the last conviction, or completion of sentence, and the subsequent event which brings it to light, the greater evidence is there of rehabilitation and the greater the likelihood of hardship. This suggests that a compromise between hardship and public interest may be found in the concept of a limitation period. In principle it should be possible to work out a scheme whereby after a certain period without further convictions an ex-offender should be entitled to have previous convictions expunged from his record. This is not to say that the record itself should be destroyed but that after a given period has elapsed it should not be publicly produced. To enforce this restriction it should be made an offence to ignore it. Having regard to the power of newspapers in this context, the offence of unauthorized publication of a criminal record should be serious enough to act as an effective discouragement. We recognize that the details of such a scheme would need to be worked out with some care. Apart from such questions of principle as whether the courts should ever be deprived of the whole of a criminal record, and whether special provision should be made for the case where the rehabilitation period for a serious offence has nearly elapsed and there is a prosecution for some trivial infraction, there are likely also to be administrative difficulties in the co-ordination of police records. But as a general proposition we accept that any offender, whatever his offence, ought to have the chance to live down his past, which in practical terms means to escape from the constant danger that it will by chance or misfortune be revealed long after it has ceased to be relevant to his conduct. By way of appropriate rehabilitation times we suggest something of the order of twice the period of the sentence in the case of custodial sentences, with a minimum of five years, and a period equal to the sentence for semi-custodial and non-custodial sentences, with a minimum of two years which would apply also to sentences which are not calculated by time. No doubt this suggestion also needs refinement to be adapted to

various special sentencing situations or such anomalous cases as life imprisonment where the offender is in fact released after a term of years. It is beyond the resources of this report to do more than draw attention to the problem, indicate our general reactions and recommend a more specialized inquiry. We recommend also that any scheme adopted include also a provision that an ex-offender be under no duty, or under only a qualified duty, to reveal convictions protected by the rehabilitation period in answer to questions by employers, insurance companies or others.

3.22.4 Recommendations with respect to Legal Status of Prisoners.

(*a*) *We recommend that legal representation and advice services be provided for imprisoned offenders.*

(*b*) *We recommend that convicted offenders be allowed the same voting rights as ordinary citizens.*

(*c*) *We recommend that restrictions on and censorship of prisoners' mail be discontinued except to the minimum extent necessary for incoming mail in specified cases of high security risk.*

(*d*) *We recommend that visits to prisoners be encouraged and that visiting be subject only to such limitations of time, place and frequency as are organizationally necessary or reasonably required for security to be maintained.*

(*e*) *We do not recommend the introduction of conjugal visits.*

(*f*) *We recommend further inquiry into the problems arising from publication of criminal records.*

CHAPTER 4

SEMI- AND NON-CUSTODIAL SENTENCES; COMPENSATION

1 **Introduction.** In this chapter we consider sentencing alternatives to imprisonment and compensation for victims of crime. The sentences discussed are dismissal without conviction on the ground of triviality, which although not technically a sentence serves a parallel purpose; conditional discharge, bond and supervised probation; suspended sentence; deferred sentence; fines; disqualification; periodic detention; pre-release employment, work release and pre-release hostels; home visits by prisoners; and corporal and capital punishment. We stress three general points. First, as a matter of overall policy, subject to particular exceptions which we indicate in the appropriate places, the whole range of semi- and non-custodial sentences should be available to courts exercising criminal jurisdiction to be used either singly or in such combinations as the courts see fit for any type of offence. Secondly, whilst it is desirable that the courts have available to them a range of choice sufficient to preserve a high degree of flexibility and adaptability in the sentencing process, this should not be carried to the point of over-refinement. If too many overlapping choices are available, the likely result is confusion. It is largely on this ground that we do not recommend, for example, that any sentence other than imprisonment should be suspended or that work release (as opposed to pre-release work) or pre-release hostels be instituted. Thirdly, very little reliable information has been accumulated on the effects of the various sentences discussed in this chapter, especially in South Australia. We recommend as a general policy that statistics be collected and evaluative studies carried out from the time that each measure is brought into operation, and that similar studies be started as soon as possible where a recommended sentence is already in use.

1.1 Initial Recommendations.

(*a*) *We recommend that as a general policy the whole range of semi- and non-custodial sentences be available to courts exercising criminal jurisdiction to be used either singly or in such combinations as the courts see fit for any type of offence.*

(*b*) *We recommend that the proliferation of semi- and non-custodial alternatives to imprisonment be not carried to the point of over-refinement.*

(*c*) *We recommend that detailed evaluative studies be instituted of the actual working of each form of sentence.*

2 **Dismissal Without Conviction.** Although not technically a sentence of any description, we record for the sake of completeness that

occasionally, as under s. 75 (2) (*a*) of the Justices Act, 1921-1972, the court is empowered to dismiss the proceedings without recording a conviction on the ground that the offence proved is trifling. Such a power would not be appropriate to a superior court because an offence triable on information would not be trifling, but in our opinion it is a discretion usefully vested in magistrates and justices of the peace. There is a similar power under the Commonwealth Crimes Act 1914-1966, s. 19B, but it is not within our terms of reference to comment on Commonwealth legislation.

2.1 Recommendation with respect to Dismissal Without Conviction. *We recommend that this power be retained in courts of summary jurisdiction but be not extended to superior courts.*

3 Conditional Discharge: Bond and Supervised Probation. Any offender can be unconditionally discharged if no reason appears for imposing conditions or any other sentence. Conditional discharge means that the offender is released upon certain conditions, expressed in a bond, to which he must adhere for a stated period of time. If the offender abstains from re-offending during the period of his bond, there is an end of the matter. If he does not, he becomes liable to further sentence for the offence for which he was conditionally discharged and also to sentence for his new offence. The basis of the former is that he has broken one of the necessary conditions of his discharge: that he commit no further offences during the period of the bond. There is a slight difficulty of terminology. One of the conditions which may be imposed is supervision by a probation officer. In most jurisdictions this arrangement is referred to simply as probation. In South Australia the one word "probation" signifies discharge on a bond which includes conditions although not necessarily a condition of supervision. For the avoidance of confusion, having regard to the terminology customary in this State, we adopt the term "supervised probation" for the measure which would elsewhere be referred to as probation alone and do not use the unqualified term "probation" at all. The various powers of conditional release derive partly from common law and partly from several statutes which lack co-ordination with each other. One of our recommendations will be that this part of the law be rationalized. As a preliminary it is necessary to set out the effect of the present enactments in some detail. Attention must also be given first to the purposes of supervised probation, for this is the most important of the conditions which a bond may include.

3.1 Supervised Probation. The distinguishing characteristic of conditional discharge is its experimental treatment of the offender. Up to a point this might be said of all semi- and non-custodial sentences except the death penalty, and perhaps, with that exception, of all sentences of any kind, but the experimental aspect is

particularly marked with conditional discharge because it places a high degree of responsibility on the offender to improve his community relationship immediately. Its psychological implications are important because it requires both the agreement of the offender, to enter into a bond, and manifests some degree of trust on the part of authority by releasing the offender back into the community at once. The function of supervised probation is to provide an additional degree of support for the offender who is thought unlikely to be capable of adherence to the conditions of a bond unless he is supervised but otherwise appears to be suitable for this form of sentence. Supervised probation is therefore indicated typically where the offender has not yet manifested a high degree of criminality but does show signs of personal inability to cope with stress. Externally observable factors commonly, although not invariably, associated with such offenders are domestic discord, job instability, excessive drinking and low intelligence. It is particularly important when supervised probation is in question that a pre-sentence report be obtained.

3.2 Powers to Order Conditional Discharge. Courts with jurisdiction over trials on information have power at common law, when no sentence is fixed by law, to release a convicted offender on his own recognizance to keep the peace, be of good behaviour and present himself for sentence when called upon to do so. Such other conditions as the court thinks fit may be included, one of which may be supervision by a probation officer. The undertaking is given orally. As a practical, although not a necessary, consequence neither the probationer nor the probation service is notified in writing of the terms of the bond. Although the superior courts still have this common law power to bind over, it is more usual to rely on statutory powers. Courts of summary jurisdiction have statutory powers only. Section 70 (*ab*) of the Justices Act, 1921-1972, empowers courts of summary jurisdiction, upon a conviction of any offence over which they have jurisdiction, to impose a bond in addition to or in substitution for any other sentence available to them. The section does not provide for notice to be given to the probation service if supervised probation is one of the conditions of the bond. Proceedings for failure to observe a condition are governed by s. 39 of the Act, which requires such proceedings to be started by the issue of a summons and the summons to be served seven clear days before the hearing. There is no power to arrest the offender in the first instance. Under s. 99 of the Act there is a simple power for courts of summary jurisdiction to bind over an offender to be of good behaviour and keep the peace. Since this power does not depend on the offender's entering into a recognizance, no other conditions

can be imposed. For this reason it cannot require supervised probation. Under s. 313 of the Criminal Law Consolidation Act, 1935-1972, the Supreme Court and the District Criminal Court have power to require an offender upon conviction, in substitution for or in addition to any other sentence, to enter into his own recognizance to be of good behaviour and keep the peace. The power extends to the imposition of such further conditions as the court thinks fit, including supervised probation. Once again, however, there is no statutory requirement that in such a case the probation service be notified of the making of the order. Furthermore the statute does not specify a maximum period for the duration of a bond. This makes it available for use in combination with a sentence of imprisonment, the period of the bond starting on discharge from prison. Having regard to the introduction of parole release from prison and our earlier recommendations that sentences of imprisonment be restructured to make greater use of parole (chapter 3, paragraph 3.11), we see little point in retaining the power to use bonds in this particular way. Where imprisonment is in question a suspended sentence is the appropriate alternative (paragraph 4 below). Under s. 14 (1) of the Alcohol and Drug Addicts (Treatment) Act, 1961-1964, a court may conditionally discharge an offender after conviction of an offence in the commission of which it appears from the evidence that intoxicating liquor or drugs played a part if it is proved that the offender is an addict. The offender may be required to enter into a bond to present himself for and undertake treatment at a voluntary centre for a specified period between six months and three years, and during this time to remain under the supervision of a probation officer appointed for the purpose under the statute. There is no special statutory procedure in the event of breach of condition. Upon breach of condition the offender may in the usual way be sentenced for the original offence. Conditional discharge under this statute may be in addition to or substitution for any other sentence. Finally, conditional discharge may be made under the Offenders Probation Act, 1913-1971. Under s. 4 all courts exercising criminal jurisdiction may require an offender to enter into his own recognizance to be of good behaviour for a specified period not exceeding three years. By s. 5 the court may impose a supervised probation condition. By s. 5 (3) the court must notify the Minister that a supervised probation order has been made, whereupon the Minister in turn is by s. 6 under a duty to notify the probationer in writing of the probation officer to whom he is assigned. This procedure is unnecessarily circuitous. No reason appears why the court should not notify the probation service by direct communication. By s. 9

an offender who fails to observe the conditions of his discharge may be brought before the court either by warrant of arrest or on summons. These procedures are suitable if the breach of condition does not involve the commission of another offence, as where there has been persistent failure to accept supervision. It is not suitable where the breach of condition is the commission of another offence, for it can cause difficulties and delays arising out of jurisdictional differences between courts. There are three possible situations. Either the second court is of superior jurisdiction to the court which imposed the bond, or it is of inferior jurisdiction, or the two courts are of equal jurisdiction. Our recommendation is that in the first and third cases the second court decide both issues and that in the second case the inferior court adjourn proceedings until the original court has determined the breach of condition issue. The adoption of these recommendations should result in a reduction in the frequency of multiple concurrent bonds imposed by different courts, which is a feature of the present system and serves no useful purpose. Their adoption would also remove discretion whether to prosecute for breach of condition from the executive branch and leave only the discretion whether to sentence for breach with the courts, which is where the substantive decision should lie.

3.3 Reciprocity of Supervision. The probation services of the different States co-operate on an informal basis in the supervision of probationers who move from one State to another during the supervision period. The opinion appears to be held that failure to comply with directions given by a supervising officer in another State cannot be prosecuted by the State in which the original order was made. This opinion seems to us to be wrong. If a supervision order is made in South Australia, part of the order is that the offender obey directions by the supervising officer. If that officer gives a direction that the offender obey directions given by a supervising officer in a State to which the offender has removed, or intends to remove, that direction has the force of the original order. If disobeyed, it may be enforced by utilizing the service and execution of process legislation of the Commonwealth. If this procedure is thought to be inappropriate, consideration can be given to the enactment of uniform legislation by the States, and by the Commonwealth or its instrumentalities on behalf of the federal Territories, but since we see no present need for such legislation we make no recommendation on the matter.

3.4 Recommendations with respect to Conditional Discharge.

(*a*) *We recommend that both statutory and common law powers to order conditional discharge be reduced to one uniform enactment.*

(*b*) *We recommend that all courts exercising criminal jurisdiction have power to order either unconditional or conditional discharge.*

(*c*) *We recommend that no period of conditional discharge extend beyond three years.*

(*d*) *We recommend that conditional discharge not be available for use in combination with a sentence of imprisonment.*

(*e*) *We recommend that the court have power to impose such conditions on conditional discharge as it sees fit, including supervision by a probation officer.*

(*f*) *We recommend that where a condition of supervised probation is made the court notify the probation service by direct communication.*

(*g*) *We recommend that upon breach of condition the offender be brought before the court either by warrant of arrest or by summons, as seems appropriate to the prosecuting authority.*

(*h*) *We recommend that where the breach of condition is the commission of another offence for which the offender is charged before a different court the second court have power to determine both issues, except that where the second court is of inferior jurisdiction to the original court it should adjourn proceedings until the original court has determined the breach of condition issue.*

4 Suspended Sentence. Suspended sentence is similar to conditional discharge but distinguished from it. Whereas on conditional discharge no further sentence is imposed unless and until there is a breach of condition, under suspended sentence a sentence is imposed at the time of discharge which does not come into operation unless and until there is a breach of condition, when it comes into operation automatically. A second distinction follows from our recommendation that conditional discharge should not be used in conjunction with a sentence of imprisonment (paragraph 3.4 (*d*) above). Suspended sentence should be complementary to conditional discharge in that the sentence which is suspended should be a prison term. Whereas conditional discharge is appropriate for offenders who do not appear to merit a prison term, suspended sentence is appropriate for offenders who may be prevented from recidivism by the knowledge that an automatic prison term will follow a breach of condition.

4.1 Present Legislation. In South Australia the power to suspend sentence came into operation in March, 1970. By s. 4 (2a) of the Offenders Probation Act, 1913-1971, a court exercising criminal jurisdiction may suspend for a period of up to three

years the operation of a sentence of imprisonment which it has imposed. By s. 5 the court may impose such conditions as it thinks fit, including supervised probation. By s. 9 (4) (*b*) the court is under a mandatory duty to bring the sentence of imprisonment into effect by revoking the suspension if there has been a breach of condition. The usual breach of condition is the commission of another offence. It is to be observed that under these circumstances the only discretion with respect to the bringing into operation of the prison term lies with the prosecuting authorities, for the court has none. A parallel situation arises if a probation officer is aware of a breach of condition of any kind. He has in practice a discretion whether to report the breach, but once he reports it and the offender is before the court, the offender must be sent to prison. One of the consequences of this state of the law is that it is possible for an offender to be convicted of his second offence and serve the sentence imposed for it before being brought up for the breach of condition. The court has no power under present legislation to require that he be brought up at any particular time, which is another factor adding to the effective discretion of the prosecuting authorities. It need hardly be said that if a suspended sentence of imprisonment is brought into effect immediately after some other sentence has expired, or at some indeterminate time after the operative breach of condition, without the court being able to control the matter, the entire correctional process is distorted. It runs counter to the emphasis of this report that so significant an area of sentencing decision should be removed from the courts.

4.2 Recommended Amendments. It is to be noted that under English legislation, the Criminal Justice Acts of 1967 and 1972, a court before which an offender who is under suspension is charged with an offence which constitutes a breach of condition must first deal with the suspended sentence. It has wide powers to vary the sentence, or the conditions of suspension, or to make no order, or to make a supervised probation order for the remainder of the original suspension period. The justification for the present situation in South Australia is said to be that the offender under suspension knows exactly what will happen if he commits a breach of condition. This justification is unreal because in fact he does not know. Everything depends on the discretion of the prosecuting authorities, and the probation officer if the offender is under supervised probation. No doubt there is much to be said for leaving discretion in the probation officer whether to report minor breaches of condition, but we see nothing to be said for leaving to anyone but the court the decision how to sentence the offender if the breach consists in the commission of another offence. The basic

fault with the present South Australian legislation is that it assumes the practicability of a situation which it is in fact impossible to bring into effect: absolute certainty that the sentence which has been suspended will come into operation if a further offence is committed. Moreover it is undesirable that there should be complete certainty on this point. If the offender re-offends, a new situation is created. He was not prevented from re-offending by the suspended sentence. Although it is in accordance with the logic of the suspended sentence that in the normal way the prison term come into effect, for otherwise the whole idea lacks credibility, it does not follow that in every case this is the most constructive course of action. The type of second offence committed and the circumstances under which it was committed are relevant considerations. Similarly, the length of time for which the offender has complied with the conditions of suspension, his personal circumstances, and the probation officer's report if he has been under supervision, should all be taken into account. We therefore recommend that South Australia follow the English lead by returning effective control of the suspended sentence to the courts and at the same time enlarging their discretionary powers. To overcome jurisdictional problems we advocate the same solution as was advanced under conditional discharge for the relationship between courts of superior and inferior jurisdiction (paragraph 3.4 (*h*) above). We do not recommend that any circumstances be statutorily specified under which a suspended sentence is mandatory. In England legislation to this effect has been repealed. The court's discretion should not be fettered.

4.3 Evaluation of Suspended Sentence. In South Australia it is still too soon to gauge the value of suspended sentences. An examination of the records of the 210 offenders who were given suspended sentences during the twelve months beginning March, 1970, showed that during that time 95% of the group who had had no previous convictions had not re-offended, 70% of the whole group had not re-offended, and that, as might be expected, the highest rate of recidivism was among those offenders with ten or more previous convictions. We recommend that after perhaps two more years a study be made of the effect of suspended sentences. Such a study should include consideration of the following criticisms which have been advanced: that this form of sentence is unduly lenient; that it is used by the courts where conditional discharge with supervised probation would be more appropriate; that the courts tend to make suspended prison sentences longer than those which take immediate effect; and that suspended sentences are employed more often for offences against property than for offences against the person.

4.4 Recommendations with respect to Suspended Sentence.

(*a*) *We recommend that the courts retain power to suspend the commencement of a sentence of imprisonment upon such conditions as they see fit.*

(*b*) *We do not recommend that this power extend to the suspension of other sentences, having regard to the courts' powers of conditional discharge and to the undesirability of over-complicating the sentencing system.*

(*c*) *We do not recommend that a suspended sentence be mandatory under any circumstances.*

(*d*) *We recommend that the courts be given a general power to vary the original suspended sentence order, as an alternative to enforcing it as it stands, when offenders are brought before them for breach of condition.*

(*e*) *We recommend that upon breach of condition the offender be brought before the court either by warrant of arrest or by summons, as seems appropriate to the prosecuting authority.*

(*f*) *We recommend that where the breach of condition is the commission of another offence for which the offender is charged before a different court, the second court be both empowered and obliged to determine both issues, except that where the second court is of inferior jurisdiction to the original court it should adjourn proceedings until the original court has determined the breach of condition issue.*

(*g*) *We recommend that where the breach of condition is the commission of another offence for which the offender is charged before the same court, the court be obliged to determine the breach of condition issue before imposing sentence for the second offence.*

(*h*) *We recommend that a study of the operation of the suspended sentence in South Australia be undertaken in approximately two years time and that it take into account adverse criticisms of this form of sentence which have been made elsewhere.*

5 Deferred Sentence. In South Australia the courts have no specific power to defer sentence, although both conditional discharge and suspended sentence are partial applications of this idea. Deferred sentence differs from each of these in that without the imposition of conditions of any kind, sentence is simply postponed. Up to a point the courts have in practice a power of deferral because a convicted offender can be remanded while the court considers sentence. The purpose of this

power is for the court to make such further inquiries as it sees fit, typically a pre-sentence report, and to reflect upon the appropriate sentence if the decision is a difficult one. It would be a misuse of this power to utilize remand as a disguised means of deferring the consideration of sentence. The purpose of deferral is to see how the offender behaves in the interim, not to evaluate him at the time when sentence should be imposed if it is going to be imposed at once. In general we are not in favour of delaying sentence but we do not doubt that from time to time a case is presented in which delay seems to offer advantages, provided that it is not indefinite. We note that under the English Criminal Justice Act, 1972, courts are empowered to defer passing sentence on an offender for not more than six months in order to enable the court when deciding on sentence to have regard to the offender's conduct after conviction, including in appropriate cases the making of reparation, and to any change in his circumstances. There seems to be no reason to doubt that the incentive supplied by the deferred sentence motivates some offenders to good conduct. We recommend the adoption of legislation along the English lines accordingly.

5.1 Recommendation with respect to Deferred Sentence.

We recommend that courts exercising criminal jurisdiction be empowered to defer the imposition of sentence for not more than six months from conviction.

6 Fines. The use of the monetary fine as a criminal sanction has become commonplace but insufficient attention has been paid to the question what useful correctional purpose it can serve. Although the fine is not a modern invention, there appears to have been a marked increase in its use during the past fifty years. It is probable that this increase is associated with growing doubts during the same period about the wisdom and utility of short-term imprisonment. Provisional English statistics for 1969 give an indication of how prevalent fines have become. 95% of offenders convicted of non-indictable offences, who are the great majority, were fined. This percentage went even higher, to 98%, for offenders convicted of non-indictable motoring offences, and only down to 89% for all other non-indictable offences. As these figures suggest, the fine is not only common but also more closely associated with some offences than with others, and particularly with motoring offences. Light is cast on the South Australian situation by a study made of the first 2,000 files indexed under the year 1970 in the records of the Adelaide Magistrates Court. The files included some cases in which no charge was laid and some in which the defendant was found not guilty. In 1,385 cases a fine was imposed on a convicted defendant. In some cases multiple fines were imposed. The total number of fines imposed was 1,491. The breakdown of offences is shown in the following table.

Offence	No. of Fines	Range of Fines	Modal Fine (i.e. most frequently imposed)
		$	$
Being drunk in a public place or drinking methylated spirits	254	2– 20	10
Driving under the influence of liquor	26	60–160	No single modal fine. Average fine—$120
Driving with excess alcohol in the blood and similar offences	8	30– 60	60
Disorderly behaviour	25	2–100	No single modal fine. Average fine—$31.70
Urinating in a public place	10	2– 15	10
Using indecent language	28	10– 25	10
Road Traffic Act Offences—			
Speeding—ordinary vehicles	99	10– 50	15
Speeding—commercial vehicles	79	20– 80	30
Excess load and similar offences—commercial vehicles	25	6–326	15
Disobeying traffic signs or lights	61	5– 40	10
Parking offences	18	5– 20	10
Pedestrian offences	7	1– 10	10
Failure to stand and similar offences	43	10– 40	35
Driving without due care	44	5– 40	15
Driving in a manner dangerous	7	25–100	100
Failure to stop, failure to report accident	10	10–100	40
Vehicle defects	78	1– 30	10
Other general safety offences under Road Traffic Act or Motor Vehicles Act	49	4– 30	10
Offences under Motor Vehicles Act	67	2– 60	10
Infringements of Adelaide City Council's by-laws as to parking	100	1– 10	2**
Offences under Road Maintenance Act	90	5–200	50
Offences under Income Tax Assessment Act (Cth.)	41	10 250	50
Offences under Broadcasting and Television Act (Cth.)—			
Failure to obtain radio licence	67	4– 35	10
Failure to obtain television licence	63	5– 75	10
Offences under Licensing Act	30	10–125	50
Offences against the person—			
Sexual	5	50–100	No single modal fine. Average fine—$76
Non-sexual	10	5– 75	10*
Offences against the police	17	8– 90	No single modal fine. Average fine—$26.86
Offences of dishonesty	75	2–100	Too misleading to include
Unlawfully on premises, wilful damage to property	12	10– 40	10
Miscellaneous including 16 offences under Lottery and Gaming Act, 4 taxi-cab offences, 3 drug offences, 4 offences under Building Act, 2 offences relating to prostitution, 1 insufficient means of support	43	1–100	Too misleading to include

* One of the included fines was imposed by the Supreme Court on appeal.

** Average court costs in these cases amounted to $10.55.

6.1 Justifications. It is asserted that wide use of the fine as a criminal sanction is justified on the following grounds. It provides an alternative to imprisonment which can be readily adjusted to the offender's means and the gravity of his offence. By contrast with most other sentences, it is susceptible of easy reversal if an injustice has been done, for it can be repaid. It is economical to the community because it is not an administratively expensive measure to impose and it produces revenue. It is correctionally advantageous both because it keeps the offender in the community and because there is some evidence that fines, particularly heavy ones, may be relatively efficient in the prevention of recidivism in larceny-type offences, including shoplifting. But some of these arguments are clearly open to question. It is unrealistic to emphasize the advantage of a fine as a non-custodial sentence without taking into account the common practice of imposing short-term imprisonment in default of payment. It is equally unrealistic to emphasize the flexibility of the fine in adaptation to the offender's circumstances without taking into account that most fines are imposed without inquiry into those circumstances. Administratively a fine may be cheap to impose but it is dilatory and expensive to recover in case of default. As to recidivism, there is a world of difference between evidence suggesting that fines may be effective and controlled experiments demonstrating that they are in fact effective, not only in themselves but also by comparison with other semi- or non-custodial sentences. It is at least possible that most offenders who are fined would not re-offend anyway because they are small-scale offenders. Information of this calibre does not appear to be available. Another problem which has received too little consideration is that of ensuring that the burden of a fine falls on the offender for whom it is intended and not on his dependants, friends or employer. And notwithstanding its inherent flexibility, there are problems of adapting the fine with equal justice to both rich and poor. It no more follows that a person should be fined more because he is able to pay more than that an offender should be imprisoned because he is unable to pay at all. We conclude that the justifications commonly advanced for the widespread use of the fine are too superficial for uncritical acceptance.

6.2 Correctional Function. The foregoing observations illustrate the basic difficulty with the fine as a correctional measure: that its proper function within the scope of its inherent limitations has not been satisfactorily identified. In itself it can hardly be regarded as reformative, although it may indirectly produce that result. If it does, it must be because it operates by way of deterrence consequent upon retribution. A belief in some quarters

that fines are particularly effective for larceny-type offences appears to be connected with the idea that where the offender is known to have made a calculable financial gain from his offence, or caused a calculable financial loss, a fine which is directly related to that gain or loss has a certain psychological appropriateness in the mind of the offender as well as in the mind of the community. Such a line of thought is beset with so many difficulties that it amounts to no more than speculation. Larceny-type offences are usually committed in a series and the proceeds quickly dissipated. The total gain by the time the offender is finally convicted is likely to be entirely unrealistic as a criterion for assessing the appropriate fine. Moreover the gain to the offender is not often the same as the loss to the victim, which means that the two cannot be equated. Stolen property is disposed of at a fraction of its value, and if money is stolen from such a person as a housewife on a limited budget or a pensioner there is no helpful correspondence between the amount of money taken and the hardship suffered. Even if such calculations can be made, there is no necessary connection between the intended effect of the fine and its actual effect on the offender. Still less is there any connection between the amount stolen and what the offender can afford to pay without committing further offences. In short, any thought of basing the fine on simple deterrence, whether special or general, suffers from the weakness that although deterrence by sentence is widely believed to be effective, especially by that majority of the community who have no experience of the correctional system, very little is actually known about it. The fine shares with the imprisonment for which it is in general intended as a substitute the characteristic of being a sentence imposed in default of a better alternative. This suggests that its limitations ought to be delineated more clearly than hitherto and that it should not be regarded as a virtually automatic outcome of conviction but only as a possible non-custodial sentence to be evaluated against others. Instances are conditional discharge with supervised probation, suspended sentence, deferred sentence, disqualification and periodic detention (paragraph 8 below). There are three factors of particular importance in deciding on the appropriateness of a fine: ability to pay, on whom the burden will fall, and its effect on the possibility of compensation.

6.3 Ability to Pay. To assert that the offender's ability to pay must be taken into account does not imply in the popular sense that there has to be one law for the rich and another for the poor. The law cannot make circumstances equal if they are inherently unequal. It can only take differing circumstances into account in an attempt to arrive at a uniform correctional result within the framework of generally accepted principles of justice. As an

instance, before a periodic detention order is made the offender's physical ability to do work in prospect must be taken into account. If this means that through ill-health he receives a sentence different from what would be imposed on an offender in good health, so be it. Similarly an offender who cannot pay any reasonably appropriate fine, or who cannot pay it without hardship to his dependants, may be sentenced to periodic detention instead. An offender who is so wealthy that no reasonably appropriate, as opposed to extortionate, fine is likely to have any effect on his outlook may also be sentenced instead to periodic detention. The same result is arrived at for superficially opposed but fundamentally identical reasons. An offender between the two extremes may be sentenced to a fine. Here it is the result which is superficially different but in reality it is the same in correctional terms: the most appropriate sentence on the evidence before the court. We conclude that before a fine is imposed the ability of the defendant to pay must be taken into account.

6.4 Legislative and Judicial Sentencing. To avoid misunderstanding of the foregoing and other conclusions reached in this part of the report, we recall the distinction drawn in an earlier chapter (chapter 2, paragraph 1 above) between the sentencing functions of the legislature and the judiciary. Most fines are imposed almost as a matter of routine in courts of summary jurisdiction. It is no doubt impracticable in the majority of cases, which are both numerous and minor, to conduct an extensive inquiry into the defendant's means before imposing a small fine. We take up this matter again below and make recommendations (paragraph 6.9 below). For the moment we observe that if the legislature indicates that a given offence is of such minor importance that at the most only a small fine is the appropriate sentence, there is no reason why the courts should inquire further unless circumstances of particular difficulty present themselves. In general we are directing this discussion to offences for which the scope of judicial discretion is wide, offences for which a fine large enough to cause financial concern to an ordinary member of the community may be imposed.

6.5 Burden of the Fine. A fine is not the appropriate sentence unless there is at least a reasonable likelihood that the burden will be borne by the offender himself. Difficult though they may be to apply in practice, there are two principles which should govern action here to the best extent possible. Hardship should not be caused to the offender's dependants and the offender should not be used as a vehicle to sentence third parties who are not before the court. This is a complex subject. Consequential effects are

not always necessarily bad. It is possible that in some cases a co-operative effort among family or friends to help an offender with the payment of a fine may be positively rehabilitative, but this is hardly a matter to be taken into account when sentencing unless evidence is led which gives it explicit support. Frequently a fine of any significance carries the risk that it will add to the difficulties of an already difficult family situation. No more can be said than that the court should have regard to this possibility and substitute some other semi- or non-custodial sentence if it seems likely to eventuate. More precision can be attained over the use of the fine to sentence third parties. It has been known for a court to impose a fine calculated on the assumption that it would be paid by the defendant's employers because the offender was acting on their instructions. Such reasoning steps outside the proper function of law-enforcement. A sentence may be ameliorated by reason of its adverse effects on third parties. It cannot be increased on that ground. If third parties are to be sentenced they should be convicted in their own right.

6.6 Compensation. The general subject of compensation to victims of crime is dealt with below (paragraph 12 below). We mention it here as the third major factor to be taken into account by the court, in a case where the question can arise on the facts at all when considering the imposition of a fine. If there is a reasonable likelihood that reparation will be made by the offender, and that such an intention will be thwarted by the imposition of a fine, a deferred sentence is indicated rather than a fine.

6.7 Appropriate Offences. The question for what offences a fine should be available as a possible sentence is one of legislative policy. As with other non-custodial sentences, we see no reason in principle why it should be limited to any particular class of offences. The fine should be generally available to the courts as one of their sentencing alternatives to imprisonment.

6.8 Combination with other Sentences. The discussion has assumed hitherto that a fine alone is in prospect. Certain statutes, of which s. 313 (1) (*a*) of the Criminal Law Consolidation Act, 1935-1972, is an instance, authorize the imposition of a fine in conjunction with imprisonment. We cannot see any case for power to fine and imprison simultaneously. As a non-custodial sentence the fine should be an available alternative to imprisonment. It is a correctional contradiction in terms to authorize both at the same time. The idea, which has some currency, that this is an appropriate combination of sentences where there is evidence that the offender is still in possession of the proceeds of a larceny-type offence is misconceived. One of the aims of the law under these

circumstances should be to recover the proceeds. Conditional discharge or deferred sentence are the appropriate ways to attempt this from the correctional point of view. There is no reason why a fine should not be combined with these or other semi- and non-custodial sentences in appropriate cases. Where supervised probation is involved the objection has been made that the result is to turn the probation officer into a debt collector. In our opinion this is a mis-statement of the position. The probation officer bears no responsibility for the recovery of the proceeds if it is a condition of the sentence that they be restored or repaid. His duty stops at reporting the breach of condition, and the reasons for it if known to him, should the condition not be complied with. Any property or money concerned should be returned not to him but to the court or the owner. It should therefore be open to the courts to combine a fine with other sentences except an immediately effective sentence of imprisonment.

6.9 Means, Time to Pay and Default. It has been mentioned already (paragraph 6.4 above) that where a substantial fine is involved there should be a pre-sentence inquiry into the offender's capacity to pay and its possible effect on dependants. Where a small fine is involved some more streamlined procedure is desirable. We recommend that there be supplied to the defendant at the time when he is served with a summons a form on which he can make a declaration of means and commitments. There is a precedent in the present practice of supplying a form on which the defendant can indicate that he pleads guilty and does not intend to appear in court. The court may take such action on this information as it sees fit, and if the information is not supplied may proceed on the assumption that no problem is involved unless there are factors in the evidence to suggest otherwise. If an inquiry seems desirable, sentence should be deferred until it has been made. Inquiries should not be postponed until there has been a default. Time to pay should be a matter of application by the offender at the time of sentence. The courts should have power to make further deferments, or to remit the fine altogether, on the ground of changed circumstances. There remains the possibility of default, by which we mean refusal without adequate cause to obey the order to pay the fine. Discussion of this subject seems to us to have suffered from confusion between recovery of the amount of the fine and punishment of the offender. Since the fine was not, or ought not to have been, imposed to raise revenue, we see no point in providing means for its recovery against the will of the offender if he refuses to pay having the power to do so. We have pointed out already (chapter 3, paragraph 3.7 above) that if the law is to retain credibilty, imprison-

ment must remain the ultimate sanction for disobedience. Therefore if an offender refuses either to pay a fine or to obey any order made in substitution, the court is left with no alternative to imprisonment for the contempt. This is fundamentally a sound course of action because the effectiveness of correctional measures depends on co-operation by the offender. If he will not co-operate, the only purpose left to be served is the reinforcement of the authority of the law. In the case of a fine there are intermediate measures which can be tried first. Depending on the circumstances, the appropriate sentence for the contempt of court might be periodic detention, conditional release, suspended sentence or deferred sentence. Conditions of supervised probation or payment of compensation might also be considered. There is no reason to apprehend that an obstinate offender could either defeat the resources of the correctional system or finish up with an easier alternative to paying a fine. Most fines are in fact paid within a relatively short time and represent the least onerous sentence which the offender could have anticipated. Default cases include errors of sentence, in that subsequent events show that the fine was inappropriate in the first place, and change of circumstances. The number of deliberately intransigent defaults by offenders perfectly well able to pay is almost certainly insignificant. They are indulged in by the small class of offenders, often principled, who cause problems for any correctional system. Their disposition is best left to the common sense of the courts. Abandonment of the idea that once a fine is imposed every official effort must be made to recover the money would save a great deal of administrative time and cost, and also no doubt a certain amount of hardship. It follows from the foregoing observations that the courts should not have power to specify a sentence in default of payment at the time when the fine is imposed. Failure to pay is the new and separate offence of contempt of court and should be dealt with as and when it arises.

6.10 Recommendations with respect to Fines.

(*a*) *We recommend that the power to fine, within limits specified by Parliament, be retained by all courts exercising criminal jurisdiction as one of their non-custodial alternatives to imprisonment.*

(*b*) *We recommend that a fine be an available sentence for all offences.*

(*c*) *We recommend that the courts have power to impose a fine in combination with such other semi- and non-custodial sentences as seem appropriate to them but do not have*

power to combine a fine with an immediately effective sentence of imprisonment.

(*d*) *We recommend that when considering the appropriateness of a fine the courts take into account (in addition to such general factors as the gravity of the offence) the ability of the offender to pay, on whom the effective burden will fall, and the possibility that deferment of sentence will motivate the payment of compensation by the offender.*

(*e*) *We recommend that in considering on whom the effective burden will fall, the courts do not use the offender as a means of imposing a fine on third parties who are not before the court.*

(*f*) *We recommend that for minor offences punishable by a small fine there be served with the summons a form on which the offender may make a declaration of his means and commitments.*

(*g*) *We recommend that in cases of default not amounting to contempt of court the courts make further inquiry with a view to deciding if an extension of time to pay or a substituted sentence is appropriate, and that the courts have power to take either course of action at their discretion.*

(*h*) *We recommend that in cases of default amounting to contempt of court the fine be either remitted or some other sentence substituted, that the offender be sentenced for the contempt at the same time, and that the courts have power to take these courses of action.*

(*i*) *We recommend that the guiding principle on defaults of any kind be the proper disposition of the offender and not the recovery of the fine imposed.*

7 Disqualification. A common non-custodial sentence is either temporary or permanent disqualification from an occupation or activity. This is a sentence suited to the situation where the harm done by an offence is attributable in part to the offender's being authorized to engage in the occupation or activity in question. Whatever the best disposal of the offender, the public interest for the future is safeguarded by ensuring that he ceases to be authorized to act in that way. This being the point of disqualification, it follows that it can be properly combined with any other sentence. In some cases disqualification alone is sufficient but in others the proper disposal of the offender requires disqualification in combination with one or more other sentences. Whether alone or in combination, disqualification has its most useful

range of operation in connection with driving offences, manufacturing and trading offences, and frauds or breaches of trust by professional people, although in the latter case it is more usual for professional governing bodies to impose the effective disqualification than for courts to do so. This is not an entirely satisfactory situation and might be made the subject of further inquiry. In principle it is not desirable that what amounts to an increase in sentence should be within the discretion of a non-judicial body, particularly since an offender's only means of livelihood is likely to be at stake. Moreover professional disqualification may be imposed on the basis only that an offence has been committed, instead of on the basis that the type of offence committed goes directly to professional competence or trustworthiness. We recognize however that wider issues than sentencing alone are involved and therefore confine ourselves to recommending further inquiry. The potential of disqualification in any area should not be over-simplified. For example, to remove an offender's licence to drive does not mean necessarily that he will cease to drive. Under pressure of necessity or self-indulgence he may continue to drive. If he is incapable of driving better than he was when he committed the original offence, this situation is not likely to last long, but it may. But if awareness that driving without a licence is a serious offence causes the offender to drive carefully in future it can be argued that the disqualification has achieved its intended effect, albeit indirectly.

7.1 Recommendations with respect to Disqualification.

(*a*) *We recommend that the use of disqualification be continued as a sentence for offences arising out of authorization to engage in a given activity or occupation, or to occupy a position of trust, and that where its use is prescribed or permitted by the legislature the courts have a general power to use it in combination with any other form of sentence available for the offence in question.*

(*b*) *We recommend that consideration be given to further inquiry into the desirability of leaving a power of disqualification in the hands of private professional organizations where the ground of disqualification is the commission of a criminal offence, as opposed to non-criminal failure to abide by the rules of the organization.*

8 Periodic Detention. The term "periodic detention" is used in at least two different senses and is sometimes confused also with work release. In one sense periodic detention means imprisoning offenders at the weekend but releasing them during the working week to engage in their usual employment. This is not the sense in which we refer to periodic detention. If we wished to discuss this form of sentence we

should refer to it as weekend imprisonment. As it is, we confine ourselves to the recommendation that it be not adopted, partly because it requires an increase in detention facilities for use only at weekends, which in our opinion is an uneconomic use of resources, and partly because we are unconvinced that it adds a significant correctional dimension to the range of measures which we are otherwise recommending in this report. In fairness we should add that our opinion on this point differs from that of the authorities in New Zealand, where several weekend imprisonment hostels are in operation, some of which we have had the opportunity of inspecting. The second meaning of periodic detention, and the sense in which we use the term, is akin to what are referred to in England as community service orders. Offenders are obliged to spend one full day a week, normally Saturday, and sometimes a weekday evening in addition, engaged on a project of community utility. The work involved is usually manual and of a charitable character. The clearance of sites for one purpose or another and the routine maintenance of such facilities as gardens, parks and cemeteries are typical undertakings. Periodic detention in this sense is distinct not only from weekend imprisonment but also from work release, with which we deal below (paragraph 9 below). Work release is a semi-custodial measure for prisoners who are serving a term of imprisonment. They are released during the day to work in normal employment in the community but return to prison at all other times. The form of periodic detention which we describe in the following paragraphs is based on the system in operation for adult offenders in New Zealand, which we have had the opportunity of inspecting. We have confidence in the applicability of the New Zealand experience to South Australia because of the close similarities of derivation, social organization, law and government between the two communities. Periodic detention was introduced in New Zealand in 1962 for offenders between 18 and 20 years of age and extended to adults in 1966.

8.1 Recommended Scheme. Experience has shown that the maximum useful duration of a sentence of periodic detention is six months. We recommend accordingly that this be the maximum sentence which the courts have power to impose on any one occasion. We do not recommend any limit to the number of occasions on which a recidivist offender may be sentenced to periodic detention, any more than we recommend such a limit for any other form of sentence. If this sentence is clearly proving unsuccessful with an offender, the courts will cease to resort to it. Similarly we do not recommend that periodic detention be available for only a limited class of offences. We envisage it as part of the general range of semi- and non-custodial sentencing resources available to the courts. There is no reason in principle why periodic detention should not be combined with other semi- and

non-custodial sentences to meet the requirements of particular cases, but in practice the only likely suitable combination is with supervised probation. The utility of supervised probation is not indefinite. We recommend accordingly that where it is combined with periodic detention the maximum time for which it may be imposed be until the expiry of one year from the end of periodic detention. We recommend also that the court specify whether supervision is to start at the same time as the periodic detention or only on its expiration. Before sentencing an offender to periodic detention the court should receive a medical report assessing the offender's fitness to undertake the work which he will be required to do. Since part of the point of this form of sentence is its intermittent character, there should be a fairly low limit on the proportion of hours each week which must be spent in its execution by the offender. We recommend a maximum of 20 hours. The date and reporting time for the detainee's first attendance at a work centre, and specification of the work centre, should be made by the court. Thereafter the detainee should be subject to the instructions of the warden of that centre. The warden should have the power to require attendance up to the maximum of 20 hours each week on not more than three occasions during the week which are not in normal working hours. The procedure should be for the detainee to work a full day on Saturday projects and attend also for two or three hours on Wednesday and Friday evenings to work on maintaining the centre itself if required to do so. There should be nine working hours on Saturday. Reasons for requiring additional evening attendance vary. Some detainees are of such limited intelligence that they have difficulty in remembering for a full week the obligation to attend. They are assisted if the interval between attendances is halved. Other detainees may show a tendency to slack on the job on Saturday, in which case the imposition of additional attendances by the warden can be a useful disciplinary measure. The warden may conclude in other cases that the sentence will make a more effective impact on the detainee if it interferes with his freedom of action more often than once a week. On all such questions the warden should have wide discretion within stated limits. Although the wardens are the key figures in periodic detention, as the system develops it becomes necessary to appoint part-time supervisors for their assistance. For the determination of policy it is advisable to create committees in each area where work centres are established. These committees should be under the chairmanship of a magistrate and include in their membership persons who keep the scheme in touch with the Department of Correctional Services, local government authorities, employers, unions and charitable organizations. Supervisory

committees composed of persons with a genuine interest in community affairs can play a major role in the success of periodic detention. They are a source of support and advice for the warden, they can take decisions with respect to the institution of particular projects, seek out further areas of employment and negotiate in sensitive employment situations, and keep the scheme in touch with both community and expert opinion. Committees also ensure that no work done by detainees deprives anyone of employment.

8.2 Advantages of Periodic Detention. The main advantage of periodic detention along the foregoing lines is that it provides a means of subjecting an offender to restrictive discipline without removing him from the community or his normal occupation. He is therefore still able to maintain his dependants. This is more beneficial to both the community and the offender than imprisoning him. If a detainee refuses to obey a periodic detention order, or the instructions of the warden, or if he proves nevertheless to be a recidivist, imprisonment remains available as a more drastic recourse, but there is always a proportion of offenders who are sufficiently impressed with the inconveniences of periodic detention not to invite imprisonment. It should be mentioned also that periodic detention has proved successful, in the non-recidivism sense, with some offenders who have already served terms of imprisonment. Possibly the rehabilitative element here is the more humane character of periodic detention by comparison with even an enlightened prison. A caution should be entered against setting standards of success too high. It is not suggested that periodic detention will make a dramatic change in the recidivism rate. The proportion of offenders who never re-offend after this form of sentence may prove to be quite small, although the proportion who do not re-offend during the currency of the sentence is likely to be a good deal higher, especially if it is combined with supervised probation. The point to be made is that in the correctional system success is to be sought where it may be found, and that an accumulation of minor successes adds up to a significant total of benefit to the community. In evaluating periodic detention there has to be taken into account also the actual work done by the detainees, which is a positive gain, and the cheapness of the measure. Most, and perhaps all, of the work entailed in converting an old building or a disused site into a work centre, and maintaining it thereafter, is done by the detainees themselves.

8.3 Required Facilities. The normal routine once a periodic detention centre is in full operation is for detainees to be organized into supervised teams and sent off in trucks with their tools to the project on which they are engaged. Turning up on time,

care of tools and accounting for tools are strictly insisted upon. A work centre need therefore be little more than an assembly point with an office, a secure storeroom, toilets, possibly some recreation facilities, and some rooms for probation interviewing and general use. They should be sited in an area within quick and easy reach of work projects and the detainees' homes, which means in practice in urban areas. It follows that periodic detention will not be available outside the main urban areas and some of the larger country towns, for it is not envisaged that this form of sentence is one which should require the detainee to move far outside his own district. As indicated in the previous paragraph, acquisition of suitable sites should not be an expensive matter. The only other charges on public funds are the salaries of the wardens and supervisors and the provision of tools and transport to projects.

8.4 Staff. The outstanding feature of the correctional service in New Zealand is the quality and enthusiasm of the staff at all levels. In our opinion this is fundamental to the success of any correctional measure. Periodic detention is no exception. There is apparently no shortage of applicants as part-time supervisors, partly because the post can be combined with another occupation. Preference in New Zealand appears to be given to applicants who have some practical ground for wanting additional employment. The assumption, which appears to be borne out by experience, is that a person who has the other qualities required for firm but tactful handling of offenders is more likely to make a good supervisor if he has a sound personal reason for wanting a job than if he is motivated only by a desire to help offenders, however admirable that sentiment may be in itself. The same considerations apply to recruitment of full-time wardens. Personal commitment to correctional work is not necessarily the best qualification for wardenship, although it is clearly desirable that a warden be interested in his work and not indifferent to it.

8.5 Introduction of Periodic Detention into South Australia. We recommend that as part of the preliminary planning for the introduction of periodic detention into South Australia, close regard be had to the detailed administration of this sentence in New Zealand, particularly as to community relations and the types of offenders who have been found to be suited to it, and also to the recent Tasmanian experience of bringing such a scheme into operation. Tasmania is the only State in Australia to have attempted a scheme at all similar to the one described, but this has been done too recently for accurate assessment of its potential. We recommend also that care be taken not to confuse periodic

detention in the foregoing sense with what we have called weekend imprisonment.

8.6 Recommendations with respect to Periodic Detention.

(*a*) *We recommend that periodic detention, as distinguished from weekend imprisonment, be introduced as a semi-custodial sentence generally available to courts exercising criminal jurisdiction.*

(*b*) *We recommend that close regard be had to the structure and administration of periodic detention, in the sense in which that term is used in this report, in New Zealand.*

9 Pre-release Employment, Work Release and Pre-release Hostels. There is conflicting terminology in this area. Our use of terms is as follows. Pre-release employment is the release of prisoners who are approaching the end of their sentence to work in normal employment in the community during ordinary working hours, returning to prison at all other times. Work release is the release of prisoners in the same way but whilst they are serving the body of their sentence and not necessarily only towards the end of it. Pre-release employment may be seen as a special application of the idea of work release. Whereas the main purpose of work release is to minimize the separation from the community and the disruption of his normal course of his life of a prisoner who is engaged in regular employment, or is about to be so engaged, the main purpose of pre-release employment, as its name indicates, is to ease the transition back to society of a prisoner who has been effectively cut off from it for an appreciable period of time. It follows that although there is no reason to draw an absolute distinction between the two measures along these lines, where they are both in operation work release tends to be appropriate for shorter terms of imprisonment and pre-release employment for longer terms. We do not however recommend that they be both put into operation in South Australia. Work release is the older idea and has made a useful contribution to thought in this area. It has evolved into pre-release employment and periodic detention. The latter particularly has taken the place of work release for short-term prisoners. Since one of the main emphases of modern correctional practice is to phase out short-term imprisonment, it follows that work release is ceasing to serve a separate useful function. We accordingly confine our recommendations to the introduction of pre-release employment. Another means of easing the transition back to society, particularly for long-term prisoners, is by releasing them to spend the last few months of their sentence in a pre-release hostel, which bears as much resemblance as possible to an ordinary lodging house or home with paying guests and from where the prisoners can go to work in the normal way. This system is in operation in New Zealand, and as administered in that country has much to be said for it, but we have

concluded that for South Australia's purposes a system of pre-release employment would suffice.

9.1 Recommended Scheme. Pre-release employment places increasing strains on the prisoner as well as assisting him in the transition back to society. It is usually the case that the prisoner's fellow employees do not know his background or status, although he is of course free to inform them if he so wishes. If he does not, it becomes increasingly difficult for him to explain why he is unable to join in social activities or be available at weekends. Even if he does not encounter difficulties of this kind, the requirement that he return to prison when not working becomes more onerous the more successful he is in adapting himself to the outside community. Moreover if he adapts too successfully to his intermediate position, the object of the exercise is defeated, for he remains semi-institutionalized and therefore reliant on the relatively protected prison environment. For these reasons we recommend that no period of pre-release employment be longer than six months. It is the New Zealand experience that very few prisoners remain in the jobs which have been found for them once their prison term has expired. No doubt they associate them with the correctional system from which they are now free. This phenomenon must be clearly explained to prospective employers. The decision to release a prisoner for daytime employment is not a decision which need be reserved for the courts. We recommend that it be within the discretion of the Department of Correctional Services, acting on the advice of the prison superintendent concerned. Perhaps it might be left entirely within the discretion of the prison superintendent, but this could pose problems of uniformity of policy which would offset the advantages of his local contacts with employers. We recommend that once pre-release employment becomes accepted as a normal correctional measure, it be not confined to prisoners who are believed to be safe risks. Those whose reactions to society are less certain are in even greater need of transitional assistance. We point out that there is greater risk involved in the abrupt return of a long-term prisoner to society without any preparation at all than in a controlled and supervised preparation for return, and in this connection we draw attention to our recommended scheme (chapter 3, paragraphs 3.11.4 and 3.11.10 above) for post-release parole, which usefully supplements pre-release employment. The strains of nightly return to custody which have been referred to already should be minimized so far as possible. A prisoner engaged in pre-release employment should therefore be accommodated in minimum security. If this is not practicable he should at least be segregated from other prisoners not so engaged. Consideration

should be given also to requiring prisoners in employment to contribute to the support of dependants and to pay for their own accommodation.

9.2 Recommendations with respect to Pre-release Employment, Work Release and Pre-release Hostels.

(*a*) *We recommend the introduction of administratively controlled pre-release employment not exceeding six months in duration.*

(*b*) *We do not recommend the introduction of work release or pre-release hostels.*

10 Home Visits. In New Zealand a pre-release measure extended administratively to selected prisoners is weekend release for home visits in order to assist towards the resumption of normal family relations on expiration of sentence. Typically a prisoner affected will be allowed to make two or three home visits with subsidized travel and a small sum for necessaries at intervals of one or two months.

10.1 Recommendation with respect to Home Visits. *We recommend that up to three subsidized home visits be administratively allowed to selected prisoners at intervals of not less than one month as a pre-release measure.*

11 Corporal and Capital Punishment. Corporal punishment was abolished in South Australia by the Corporal Punishment Abolition Act, 1971. Had this step not been taken already, we should have recommended that it be taken immediately. In the events which have happened there is no need for us to do more than record our agreement with the present state of the law. Capital punishment is still a legislatively fixed sentence for certain offences, of which the commonest is murder. The courts are therefore obliged to impose it in the cases to which it applies although its use has been effectively abolished by the automatic executive commutation of sentences of death to life imprisonment, which in practice means a term of years. New South Wales, Tasmania and Queensland have abolished capital punishment long since. One of the first acts of the present Commonwealth Government after the convening of Parliament on 27th February, 1973 was to introduce legislation for the abolition of capital punishment in the federal Territories and under Commonwealth law. An abolition bill was passed by the Legislative Assembly of Western Australia in 1972 and is expected to come before the Legislative Council this year. In Victoria there has been only one execution in the past twenty years, in 1967, and public reaction to the event was such as to make it highly unlikely that the death penalty will ever again be carried out in that State. It is evident that in practice as well as law capital punishment in Australia is obsolete. It is equally evident that the fabric of society

remains unweakened. The Australian experience corresponds with experience everywhere else on the effect of capital punishment on the murder rate. There appears to be no difference at all between jurisdictions which retain capital punishment and use it, jurisdictions which retain capital punishment but do not use it and jurisdictions which abolish capital punishment. Moreover it is moraly abhorrent and in the nature of things cannot be changed if a mistake is made. We do not propose once more to rehearse in detail the arguments for and against which have been developed at exhaustive length so many times in the past. In our view the law of South Australia ought to reflect realities. Capital punishment should be abolished, and we recommend accordingly.

11.1 Recommendations with respect to Corporal and Capital Punishment.

(*a*) *We do not recommend the reintroduction of corporal punishment.*

(*b*) *We recommend the abolition of capital punishment.*

12 Compensation. There is periodical discussion of the position of victims of crime who have suffered loss, damage or personal injury. Usually several influences are interwoven. If the offender is thought to have profited, there is a sense that he ought not to be allowed to do so. Similarly, if the victim has suffered loss or injury, there is a sense that the offender ought to make some recompense. Another point of view is that loss from crime is a burden which ought to be assumed by the State in the form of a compensation scheme. The different problems lying behind these viewpoints should be distinguished. The victim of crime is best regarded as being in principle in no different situation from the victim of any other misfortune causing loss or injury. The emotional context is different because of the feelings of resentment aroused towards the offender, but it confuses the issue to take this into account when considering whether victims should be compensated and, if so, by what means. The question what is the best way of treating the victim is different from the question what is the best way of treating the offender, although we recognize that in some instances the two may coincide. An example is the rare case where a compensation order made against an offender in a position to pay is both adequate recompense for harm and the only sentence which appears to be needed. Apart from the difference of principle it has to be remembered that most offenders who cause loss or harm of any significance have no resources out of which to make compensation. If they are sent to prison they will be in no position to acquire any, and if they are not sent to prison there is a significant risk that they will either offend again in order to pay the compensation or else ignore it altogether, whatever the consequences. The fact is that most offenders are not a realistic

source of compensation for victims. Where property is concerned, normal forms of insurance cover much of the ground, especially where the victim is a commercial enterprise or a reasonably well-circumstanced private citizen. We recognize that this is by no means always the case and that insurance rarely applies if the main harm is physical or mental injury. Occasionally it may be worth suing for damages in the civil courts, but this is rarely so. There is therefore ground for accepting that some more general form of compensation for loss or injury by crime would serve a useful purpose. If the general question of principle needed to be argued it would be necessary to consider such questions as whether a scheme of this kind would positively encourage crime. We are of opinion that it would have no effect at all on the crime rate because offenders are not influenced to any known extent by such considerations, but the question of principle is concluded in this State by the Criminal Injuries Compensation Act, 1969. This Act accepts the general proposition that the State should assume responsibility for compensating victims of crime under some circumstances, although it does so in a limited way and has been very little used. There are a number of statutes under which compensation orders may be made against an offender. Under the Criminal Injuries Compensation Act itself such an order may be made up to a limit of $1,000 where the victim has sustained physical or mental injury, pregnancy or nervous or mental shock. If an order is made under this or any other statute for more than $100 the person in whose favour it is made may apply to the Treasurer for payment of the amount specified. The Treasurer refers the application to the Master of the Supreme Court, or a Deputy Master, for a report on how much the victim might be expected to recover for his injury from other sources if he exhausted other remedies which he might reasonably be expected to exercise. If the Treasurer considers in the light of all the circumstances that he is justified in doing so (the expression "justified" is not further defined), he may pay the difference between the amount of the order and the amount recoverable through other remedies out of general revenue. We need not elaborate the proposition that the Act is very cautiously expressed and in its present form is likely to continue to have little impact. We recommend that it be reconsidered with specific reference to the following matters: whether it need be limited to personal injury; whether recovery from general revenue need be limited to orders of more than $100 or to the difference between the amount of an order and the amount theoretically recoverable in other ways; and whether the upper limit of $1,000 on orders under the Act is adequate. Two other notable features of the Act are that it contemplates recovery also by people injured by a defendant who is acquitted, which recognizes the possibility of an acquittal on technical grounds, and the subrogation of the Treasurer to the rights of the victim to the extent of any payment made.

We recommend that consideration be given to making full compensation out of general revenue and subrogating the Treasurer to all the victim's recovery rights instead of deducting the theoretical value of any such rights from the compensation. Consideration should be given also to repealing all other compensation order sections in the interests of simplicity. The only other matter concerns recovery from the offender of any property, or proceeds of property, of which he is believed to be in possession. In our view effective action to this end would involve some form of criminal bankruptcy, but since this is a federal matter which would require consultation with both the Attorney-General of the Commonwealth and the Attorneys-General of the other States, we regard it as beyond our terms of reference except to recommend that the question be looked into.

12.1 Recommendations with respect to Compensation.

(*a*) *We recommend that the scope of the Criminal Injuries Compensation Act, 1969, be extended to encompass a comprehensive scheme of compensation for loss or injury caused by crime.*

(*b*) *We recommend that consequent thereupon other compensation provisions be repealed.*

(*c*) *We recommend that the possibility of introducing criminal bankruptcy be further investigated.*

CHAPTER 5

DEPARTMENT OF CORRECTIONAL SERVICES

1 Introduction. This chapter encompasses primarily organizational matters which either are or should be the concern of a department which we suggest might be suitably named the Department of Correctional Services. We deal with nomenclature in the next following paragraph. Apart from that minor topic we include in this chapter discussions of the structure of the recommended department; staffing, including training, promotion and recruitment; the role of voluntary organizations; the research which should be undertaken and its relation to extra-departmental research; the future use of existing prisons and anticipation of future needs for additional institutions; the use of police personnel and facilities for correctional work; and the Prisons Act and regulations thereunder.

2 Nomenclature. Although in general we do not advocate changes in familiar terminology, we take a different view where names convey either a misleading or an outmoded impression. In our opinion the department responsible for the post-conviction stage of criminal law enforcement should not continue to be called the Prisons Department. We recommend a change primarily because neither the present functions of the department nor those which it ought to fulfil in future are confined to prisons. To that extent the name of the present department is misleading. Secondly, the emphasis of the name "Prisons Department" is wrong nowadays. The object of modern sentencing policy, for reasons which have been made sufficiently clear in preceding chapters of this report, is not on sending offenders to prison but wherever possible on keeping them out of prison. The name of the department should reflect this policy. Our recommendation is that the Prisons Department be renamed the Department of Correctional Services. We are not entirely happy with this name because the word "correctional" may suggest didactic overtones which we do not intend, but no better term which is at once descriptive and reasonably modern in its connotations has occurred to us. The word "corrective" as an alternative to "correctional" appears to us to be even more open to this objection. The word "services" is included in order to reflect the twin concepts that one of the aims of modern sentencing is to perform a positively beneficial service to the community and that the custody, control and treatment of offenders is, consistently with that aim, becoming an increasingly professional occupation with many specialized branches. Further minor changes in terminology appear in the section on the structure of the Department of Correctional Services (paragraph 4 below).

3 Functions of the Department. The functions of the Department of Correctional Services are sufficiently indicated in the departmental structure described below (paragraphs 4.3.1-4.3.3).

4 Structure of the Department. The present structure of the Prisons Department has the Comptroller of Prisons as the permanent head with three officers of equal status immediately below him. They are the Assistant Comptroller (Institutions), the Assistant Comptroller (Treatment) and the Principal Probation and Parole Officer. This arrangement is used to produce two groups of three people to decide policy matters. The Comptroller and the Assistant Comptroller (Treatment) are always involved. The third member is determined according to whether the matter in hand concerns institutions or probation and parole. No doubt on some occasions all four officers meet together.

4.1 Critique of Present Structure. The present structure of the department has one marked weakness and, if our recommendations elsewhere in this report are implemented, will prove to have further deficiencies. The present weakness is that the Assistant Comptroller (Treatment) has too many responsibilities. His participation in all policy making means that he is in effect a deputy to the Comptroller. In addition to this role, which is or ought to be a full-time job in itself, the Assistant Comptroller (Treatment) has institutional duties equivalent to those of the Assistant Comptroller (Institutions) and the Principal Probation and Parole Officer. At present they include chairmanship of the classification committee, the conduct of a pilot project on prisoner's evening activities and involvement in prison staff training. We do not doubt that the present incumbent is performing this variety of duties with distinction, but we regard it as an organizational weakness that any one individual should assume so wide a range of correctional responsibilities. A deficiency in the present departmental structure and policy, rather than an organizational weakness, is that there is no provision for continuing research into the correctional effectiveness of the department's operations. The Assistant Comptroller (Treatment) has attempted some research projects but under the present system these have necessarily been limited in methodology and execution. We consider the general topic of research later in this chapter (paragraph 11 below). If our recommendations are adopted, this deficiency in departmental organization will need to be remedied. Similarly, if periodic detention and pre-release work are to be developed, as we have recommended that they should be (chapter 4, paragraphs 8.6 (a) and 9.2 (a) above), and other expansions of such facilities as prison work and education implemented (chapter 3, paragraphs 3.18.16 and 3.20.9 above), the

changes will have to be reflected in the organization and structure of the department if they are to be effective.

4.2 Probation and Parole. At present the probation and parole services wear the appearance of a small section attached to a large department the primary concern of which is with prisons. This arrangement reflects neither the range of matters with which the department is and should be concerned nor the importance of the probation and parole services in the implementation of correctional policy. The imperfect integration of the probation and parole services into the present Prisons Department has led to suggestions that they should form a separate department of their own. We do not agree. The prison service and the probation and parole services deal with much the same people, use similar skills and have, or should have, similar approches to their work. The emphasis of this report is on greater integration of the various stages of the sentencing process and a higher degree of flexibility in the relationships and interchanges between them. (See further the section on training below, paragraph 5). A separate department of probation and parole would run counter to this recommended policy. In our opinion the place of these services in the correctional system, and the enlarged responsibilities which we envisage for them in a number of areas which have come under discussion in this report, should be reflected in the organization of the department in the manner outlined in the paragraphs which follow.

4.3 Modifications of the Present Structure. We recommend that the Department of Correctional Services be organized on a tripartite basis. The three branches should be concerned respectively with correctional institutions, which means in effect the various kinds of prisons, with community services, which encompasses semi-custodial and non-custodial measures, and with research and planning. On this basis we recommend the following scheme. Directly responsible to the Minister there should be a permanent head of department with the title of either *Director-General or Commissioner of Correctional Services*. The choice between the two names depends on whether it is thought proper to reflect in the title of the departmental head the equivalent importance of this department with the police in the total process of criminal law enforcement. At some stage it may be desirable to create the position of Deputy Director or Deputy Commissioner. This official would be directly responsible to the Director-General or Commissioner. The position should be created only if the volume of work falling to the permanent head warrants his having a full-time assistant at this level of seniority. Immediately responsible to the permanent head, or his deputy if he has one, should be the

heads of the three branches of the department already envisaged. These officials, who would be of equal status, would have the titles *Director of Prisons, Director of Community Services* and *Chief Research Officer*. Devolution of authority and responsibility would then proceed as follows.

4.3.1 Prisons Branch. Immediately responsible to the Director of Prisons, and of equal status with each other, there should be an Assistant Director (Security), an Assistant Director (Treatment) and an Assistant Director (Work). The *Assistant Director* (*Security*) would be responsible for prison administration in its central, custodial, aspect. As his title indicates, the maintenance of security would be his chief concern. Immediately responsible to him in matters of security would be the Prison Superintendents. This is a convenient point at which to record our view that all officers in charge of a prison should have the title Superintendent. The appellation "Keeper" which is at present in use in South Australia is not understood in other jurisdictions and has associations which detract from the dignity of the office. The *Assistant Director* (*Treatment*) would be responsible for all of the treatment services which are available to prisoners, for co-opting extra-departmental medical and educational experts and for junior staff training. Prison superintendents would be immediately responsible to him in respect of these matters in their own prisons. He would be the formal point of contact with the department for medical experts and one of the two points of contact for educational experts, the other being the Assistant Director (Work). It goes without saying that both medical and educational experts would liaise closely with the Superintendent of any prison in which they were working in respect of matters which were his immediate concern. In light of our earlier discussion of prison work (chapter 3, paragraph 18 above, and see especially paragraph 3.18.14), the title *Assistant Director* (*Work*) sufficiently indicates his responsibilities. In accordance with the parallelism to which we have drawn attention already between prison work and prison education (chapter 3, paragraph 3.20 above), he would be the second point of formal contact with the department for educational experts, with whom of course he would have a close working relationship. The Assistant Director (Work) should have available for his assistance in maintaining contacts with employers and the labour force generally a small committee, to be named perhaps the Prison Industries Advisory Committee, comprised of manufacturers, trade union representatives and possibly local government. This committee might advise

also on work release and work for periodic detainees (paragraph 4.3.2 below).

4.3.2 Community Services Branch. Immediately responsible to the Director of Community Services, and of equal status with each other and with the Assistant Directors referred to in the previous paragraph, would be a *Principal Probation and Parole Officer*, a *Supervisor of Pre-release Employment* and a *Supervisor of Periodic Detention*. The titles of these positions sufficiently indicate the responsibilities of the incumbents. As mentioned at the end of the previous paragraph, the two Supervisors in the Community Services Branch might well have the assistance of the advisory committee to the Assistant Director (Work).

4.3.3 Research and Planning Branch. We envisage that the Chief Research Officer in charge of this branch would have a staff of perhaps four or five research officers, at least one of whom should be qualified in statistics and computer science. The general question of research is taken up later in this chapter (paragraph 11 below). At this point we mention only that the work of this branch might be assisted by a small advisory committee which included representatives of such other research establishments as universities.

4.3.4 Qualifications of Personnel. We stress that in our opinion everyone mentioned in this outline departmental structure should have appropriate qualifications and experience. The better these are, the better the results are likely to be. It is particularly important that the Director-General or Commissioner, his deputy if he has one, the Director of Prisons, the Director of Community Services and the Chief Research Officer should be highly paid, well qualified and experienced. The benefit to the community at large of having the best possible people in such positions as these is very great.

4.3.5 Advisory Council. Finally we recommend that the operation of the correctional system as a whole be kept under regular review by a permanent, independent advisory council composed of qualified persons appointed by the Minister and chaired by a judge. This council would be responsible to the Minister and could be called upon to report on particular aspects of the department's work as occasion arose, although we do not envisage that its activities would be limited to particular issues referred to it by the Minister. It should be free to consider proposals from interested bodies and persons at any stage.

4.4 Recommendations with respect to Departmental Name and Structure.

(*a*) *We recommend that the Prisons Department be renamed the Department of Correctional Services.*

(*b*) *We recommend that the Department of Correctional Services have a tripartite structure which reflects the three main correctional functions of custodial security, community service and research and planning.*

(*c*) *We recommend that an independent permanent advisory council be set up, answerable to the Minister, to keep the operation of the correctional system and the formulation of policy under constant review.*

5 Training, Promotion and Recruitment of Personnel. We approach this subject on the following basis. A good correctional system at the present day requires the highest attainable degree of professional skill in its personnel. Although the various branches of the correctional service require a degree of specialization, there is an identifiable body of knowledge which is common to all of them because fundamentally they are all doing the same job and working with the same materials. High morale is essential if their task, which is difficult, responsible and at times dangerous, is to be approached in a manner which serves the best interests of the public. High morale is attainable only if correctional staff have a sense of professional dignity, a clear idea of what they are trying to accomplish, a belief that they are adequately trained and remunerated, incentive career opportunities and confidence in their superiors. We have to report that morale is not high in the South Australian Prison Service in particular because this State's correctional system is significantly deficient in each of these requirements. South Australia is by no means unique in this respect.

5.1 Disunity of Training. The present practice, both in South Australia and elsewhere, is to give workers in different parts of the correctional system quite different training or no training at all. The phenomenon of no training is frequently concealed by the use of some such expression as "in-service" or, more colloquially, "on-the-job" training. We do not deny that theoretical training in any sphere requires adjustment to the realities of life by subsequent practical experience, and that there is much which cannot be learnt in any other way. We do deny that any skilled occupation can be learnt by combining total or substantial ignorance of its requirements and purpose with an immediate need to undertake it. All too often the expression "in-service training" means no more than that the person concerned is expected to learn what he is supposed to be doing at the same time as he is supposed to be doing it. Where

genuine training is provided, disharmony of objectives is revealed by the practice of giving different types of correctional personnel different types of training based on different assumptions and language. Typically, for example, probation officers learn social work techniques but little or no criminal law, court procedure or criminology; senior prison officials learn rules and regulations, elementary bookkeeping and perhaps a subject optimistically called "man management"; while base-grade prison officers learn drill, prison procedures and firearm practice. Training diversity on this scale can hardly be expected to produce a correctional system in which there is much understanding in the various branches of each other's functions or a sense of common purpose.

5.2 **Interchangeability.** We do not suggest that all correctional workers should receive identical training or be wholly interchangeable with each other. It is obvious that junior prison officers and parole officers, for example, do different jobs. Our point is that to the extent that both are aiming to achieve the same goals with much the same people their training should be based on common principles and should induce mutual respect and understanding of each other's task. If the basic proposition is accepted, as it should be, that there is an identifiable and coherent body of correctional knowledge on which the training of all workers in this field ought to be based, it follows that some degree of interchangeability between custodial, semi-custodial and non-custodial officers can be expected. Such a development would have a number of advantages. Junior staff would have the opportunity of finding out by experience which branch of correctional work was best suited to their abilities and interests. Community of experience would promote co-operation and understanding not only between the various branches in general terms but also at the level of individual contact. In the correctional system as a whole there would be a greater potential reserve of staff available for temporary secondment to meet sudden contingencies. There would also be a greater range of selection of staff suitable for promotion and, correspondingly, a greater range of career advancement opportunities for the staff themselves. At the highest levels of responsibility and rank there would be greater scope for the appointment of outstandingly able men, or women (as to whom see paragraph 6 below), whatever their particular specialization. We do not think it desirable in the correctional service, particularly at the higher levels, that promotion within the branches should be either necessarily limited to personnel who have specialized in that branch or, at the other extreme, thrown open to the Public Service at large. Expertise and experience are essential in any occupation with

legitimate claims to professional status but these qualities should be a liberating factor, not a restricting one. A certain amount of interchangeability, founded on a common training base, promotes all these aims.

5.3 **Common Training.** It is possible to be more specific about the common body of knowledge which we have in mind. The initial training of base-grade prison officers presents certain special features which require separate discussion (paragraphs 5.5-5.9 below). We should mention also that there is in South Australia no training course which we regard as an adequate basis for appointment to a senior position in any branch of the correctional service. Therefore we do not undertake a detailed critique of such schemes as exist at present but proceed at once to what in our opinion ought to be available. Assuming as a condition of promotion or recruitment the attainment of an appropriate level of basic education, which ought to be the satisfactory completion of secondary education, and assuming also acceptable attributes of personality and physique, senior correctional personnel and all permanent probation and parole officers should have reasonable knowledge of the following subjects.

(*a*) Relevant legislation and regulations.

(*b*) Criminal law and court procedure.

(*c*) Pre-sentence and post-reception assessment.

(*d*) Basic psychology to increase personal sensitivity and ability to recognize individuals in need of other professional care.

(*e*) Basic sociology with particular references to the problems of aborigines.

(*f*) Counselling techniques, both individual and group.

(*g*) Management principles and techniques.

(*h*) Elementary book-keping.

(*i*) Administration of the Department of Correctional Services and such other relevant government departments as Community Welfare and Mental Health.

(*j*) Theoretical causes of crime.

(*k*) Functioning of the criminal justice system.

(*l*) Philosophy of corrections.

(*m*) Comparative correctional techniques.

(*n*) Elementary statistics and research methods.

To these there should be added on the practical side in the case of probation and parole officers some experience of the work of a prison officer.

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5.4 Construction of a Training Course. There may well be areas of knowledge additional to those specified in the previous paragraph which should be part of the basic equipment of probation and parole officers and senior correctional personnel, but if the foregoing list is taken as a minimum specification it is clear not only that no training course along these lines exists but also that it would not be difficult to construct one. Most of the topics listed are already to be found in the established disciplines of law, psychology and criminology, for which reason these three main aspects of correctional expertise could be made the principal segments of a course. In our estimation such a course would need to be of three years duration or the equivalent in part-time study. Most appropriately it would be taught in a College of Advanced Education. The qualification gained might be called a Diploma of Correctional Science and should be specified as the minimum qualification for appointment to a senior correctional post or as a permanent probation or parole officer. It might be desirable to provide for a limited number of alternative options within the course but such a development ought not to entail a departure from the principle of a course which remains the same in essentials for all correctional personnel who undertake it. Means both could and should be made available for anyone holding this qualification to proceed to higher studies if he wished. The numbers of people undertaking such a course would probably not be large enough to attract the interest of a College of Advanced Education unless some of the component subjects were available also to candidates seeking other qualifications. We do not envisage difficulty on this score. There is commonly a humanities component in technical courses for which many of the correctional subjects would be suitable, and the correctional course as a whole would overlap considerably with courses for trainee social workers. We anticipate that a course along the foregoing lines would attract Commonwealth financial support.

5.5 Prison Officer Function. There are two distinct facets of a prison officer's function. The first is his role as custodian. He is one of the people appointed on behalf of the community to ensure that sentences of imprisonment are carried out. This part of his task requires him to be technically competent in such basic prison routines as the correct manner in which to lock up and release prisoners, search them, count them and keep track of their whereabouts. The second aspect is the exercise of discretion in the handling of prisoners with a view to minimizing friction between the prisoner and his surroundings without jeopardizing security. This part of the prison officer's task reflects the growing emphasis in recent times on the fact that a prisoner is nevertheless a human

being and the belief that ultimately everyone benefits if he is treated as one. There is a great deal of confusion about this part of a prison officer's role. The confusion has arisen partly because modifications of prison routines with a view to promoting the exercise of discretion have too often been seen, by both prisoners and staff, as the result of agitation which has no other basis than a vague idea of reform as a departure from existing practices, whatever they may be. The so-called reforms frequently seem to prison officers, especially to those who have been a long time in the service, a self-defeating way of buying off trouble. It is true that there is a tendency among prison authorities, aware as they are first and foremost of their responsibility for security, to delay ameliorative changes which accord with current thought until pressure of opinion has built up, and then to make changes too quickly and with too little explanation, if any, to prison officers of their altered role. There is no ultimate answer to this problem except improvement in the quality of senior personnel, but much can be done in mitigation by a system of training for base-grade prison officers. Their training should identify and distinguish their two main functions, should not imply that the custodial aspect is in any sense inferior to the discretionary aspect and, above all, should stress the acquisition of knowledge which clearly conveys to the officer the limits of his powers and duties. It is uncertainty on this last point which so often confuses prison officers about the scope and character of the discretion which they are supposed to be exercising and thereby sets them at a disadvantage with militant prisoners.

5.6 Prison Officer Training: Duration. In South Australia currently a five week induction course is provided, followed six months later by a one-week course, making six weeks in all. Thereafter, one day per year is provided for refresher courses. The situation is similar in New South Wales, a three week induction course being followed after nine months by a further three week course, making six weeks in all. Additional in-service courses for senior prison officers and chief prison officers, each of three weeks duration are provided. In Victoria a twelve week induction course is followed by twelve weeks of practical training in an institution, making three months in all. Correspondence courses are available for those seeking promotion but no in-service courses are provided. In New Zealand the initial training of prison officers is either of two weeks duration for adults or two years for cadets, and the larger institutions each have a training officer who provides in-service training. These differences in duration of initial training do not suggest any accepted standard. The inherent

difficulties of the bilaterial New Zealand system are in our opinion best avoided. The Victorian system also is not recommended as a model because in that State prison officer training is conducted in conjunction with the training of youth welfare officers, family welfare officers and voluntary workers. The level of training efficiency achieved is not high. By current standards therefore the six week initial training provided in South Australia is not unduly short, but a detailed analysis of the content of initial training might well reveal that a longer course is desirable. It is not within the scope of this report to enter into that degree of detail.

5.7 Prison Officer Training: Content. As may be inferred from what we have said already (paragraph 5.5 above), the initial training of a prison officer should be in three areas: acquisition of competence in the technical requirements of maintaining secure custody, a grounding in human relations with a view to the constructive exercise of discretion and an accurate understanding of the scope, limits and purposes of his powers. We repeat that the first and third of these bases of training should be in no way subordinated to the second. It is only on a sound foundation of knowledge and understanding of his primary custodial role, and the powers which he is given to fulfil that role, that a prison officer may confidently exercise a constructive discretion. It should be clearly understood that the human relations aspect of a prison officer's task is in aid of his custodial role and not in conflict with it. This means that the common idea that he should be expected to contribute to the reform of a prisoner is a misconception. It may well be that a good prison officer can make a significant contribution to the improvement of a prisoner's subsequent outlook on life by the wise use of discretion in the performance of his custodial duties, but he should not be expected to attempt such a goal as an end in itself at the expense of his main duty. His training should reflect this ordering of values. If there is insufficient time or instructional facilities available for adequate initial training in both, technical competence and a sound knowledge of the regulations and laws which govern his authority and duties must take precedence over any grounding in human relations. A prison officer is not a social worker, although if he is a good officer he may achieve some of the same results. Three propositions follow from these basic principles. The first is that neither technical training in custodial routines nor the learning of regulations and laws should be left to so-called in-service training. When a prison officer enters practical service he should be already sufficiently trained in these matters to be able to apply his knowledge readily to the particular requirements of any prison. Secondly, his training should not be geared

to the routines of any particular prison but should familiarize him with the general principles on which normal custodial practice is based. If this aim is achieved he should become not only adaptable to a variety of institutions but also aware that the more repetitive and monotonous aspects of his duties have a fundamentally important purpose. It may encourage him also to question routines which do not seem to serve a useful purpose. There is no reason why prisoners should be the only people to ask such questions. And thirdly, although something less than 100% grasp of the human relations aspects of a prison officer's training would be acceptable, a high degree of demonstrated competence on the technical side is essential. If an officer is sent into service without, for example, a demonstrably sound knowledge of what he is and what he is not permitted to do with an insolent prisoner, he is not trained and cannot be expected to perform well.

5.8 Human Relations. In case we should be thought to be underestimating the importance to a prison officer of an understanding of human relations we add that in our view the acquisition of such an understanding is a continuous process for all levels of correctional staff rather than something which can be acquired from a short process of instruction. Correctional work at any level involves interpersonal tensions of a high order. In recognition of this, and in order also to help the development of sensitive response to such tensions, we recommend that prison personnel be engaged for one hour a week in staff group discussions. This is a practice adopted in many mental hospitals. Psychiatrists and psychologists on the prison staff might well take a leading part in conducting these groups but discussions should not be their responsibility alone. If a scheme of this kind were introduced, prison officers in initial training might well be included, but the main aim of the recommendation is to promote the continuous personal development of all members of the prison service. One particular point which should be mentioned is the importance of developing awareness of the special problems of aborigines.

5.9 Prison Officer Training: Training Authority. Whatever proves to be the most satisfactory period of time over which the initial training of a prison officer should extend (paragraph 5.6 above), the type of course we envisage is too short to be a realistic proposition for such institutions as Technical Colleges. It follows that the Department of Correctional Services itself should be responsible for initial training. In our recommendations for the structure of this department we suggested (paragraph 4.3.1 above) that this should be the responsibility of the Assistant Director (Treatment).

5.10 Promotion. The view has been expressed to this committee that present methods of assessing the suitability of personnel for promotion within the prison service, or for appointment to senior positions, are insufficiently objective. We have stressed already (paragraphs 5.3 and 5.4 above) that the acquisition of a reasonably demanding qualification along the lines of our recommended Diploma of Correctional Science, administered by a major non-departmental educational institution, should be an indispensable condition for consideration for appointment to a senior position. Parallel provision should be made for promotion within the prisons branch. This could be done quite easily by specifying proportions of the whole diploma course, after attainment of the necessary level of secondary education for entry to the course, as conditions for promotion. For example, it might be appropriate to specify successful completion of one quarter of the diploma course as a precondition for promotion to Senior Prison Officer and one half for promotion to Chief Prison Officer. Such requirements would be not only a guarantee of certain minimum levels of competence, especially if combined with further requirements as to length of service, but, by reducing the available field of applicants for a vacancy in an objective way, would do much to remove suspicions of special favour which are bound to flourish where the criteria of assessment include a large element of personal opinion of senior officers. The necessity for officers to complete secondary education before being eligible for entry to the diploma course means that if many of them are not to be effectively excluded from promotion because they have not reached this level of education at the time of recruitment, provision will have to be made for them to pursue such studies during their service. We recommend that every effort be made by the provision of time, facilities and tuition fees to encourage prison officers in such an enterprise. Failure to do so would have two bad effects. It would lower morale in the junior staff, because the present situation that the majority of prison officers are recruited from men who have not completed secondary education is unlikely to change, and it would keep the level of literacy in the service generally lower than necessary, which would in turn impair its efficiency. Arrangements for entry to the diploma course of candidates of mature age could easily be made with a College of Advanced Education.

5.11 Recruitment. We have no special recommendations with respect to recruitment to the correctional service, beyond the requirement mentioned already (paragraph 5.4 above) that possession of the Diploma of Correctional Science be mandatory for permanent appointment as a probation or parole officer. The department should set its own physical, mental and character requirements in light of the foregoing recommendations.

5.12 Recommendations with respect to Training, Promotion and Recruitment of Personnel.

(*a*) *We recommend that appointment to senior positions in the correctional service, permanent appointments as probation or parole officers and promotion within the prisons branch be based on objectively specified qualifications as to training, education and experience.*

(*b*) *To this end we recommend the creation of a three year College of Advanced Education course leading to a Diploma of Correctional Science as a minimum qualification for appointment to a senior position in the correctional service or to permanent probation or parole officer.*

(*c*) *We recommend that satisfactory completion of a proportion of the diploma course be made the basis for promotion within the prisons branch.*

(*d*) *We recommend that prison officers be given every encouragement by way of time, facilities and tuition fees to advance their secondary education to the point of eligibility to undertake the diploma course.*

(*e*) *We recommend that the initial training of prison officers be structured to emphasize competence in their primary custodial role and exact knowledge of the scope of their powers and duties as a basis for the exercise of sensible discretion in their handling of prisoners.*

(*f*) *We recommend that sensitivity to the human element in the performance of custodial duties be developed by weekly staff discussion groups and that particular attention be paid to problems of aborigines.*

(*g*) *We recommend that no reliance be placed on in-service training for the acquisition of the basic skills and knowledge required of a prison officer, as opposed to the acquisition of experience in the use of that skill and knowledge.*

6 Female Correctional Personnel. It is the present practice to use female prison staff only for female prisoners, which much restricts the opportunities for women to enter the prison service or advance to senior positions within it. Since there are far fewer female than male offenders, and, with the exception of the special problem of aborigines (chapter 6 below), only an insignificant number of them go to prison for any length of time, the principle that women are suitable workers only with female offenders means that the correctional services as a whole, and not merely the prison service, offer few career opportunities to women. We see no reason for continuing this state of affairs. With some minor reservations

about the use of female personnel in male prisons which we specify in the following paragraph, we recommend that the correctional services at all levels and in all capacities be as open to women as to men.

6.1 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 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 t[illegible]al 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. Loss of discipline is no more to be anticipated in this context than with women police officers. Provided that the women themselves are properly trained and have the support from colleagues and superiors which would be accorded to male officers, we can see no reason at all for anticipating disciplinary impairment. There is not a vestige of evidence that women are less able to discipline either themselves or others than men. Obscenity may occur but we can see no reason to suppose that it would be any more of a problem with female officers than with male. To the extent that it occurs in either context it is a matter of discretionary disciplinary handling by the staff. Self-control under such circumstances should be part of the training and character attributes as much of a prison officer of either sex as of police officers of either sex. The possibility of sexual assault is not in our opinion a threat any more serious than the general hazard of the prison service that assaults may occur. Obviously female prison officers would not be placed in situations of unnecessary danger, but neither should male officers. It is most unlikely that women staff would be singled out for attack. The tension-easing effect of women being a familiar sight about the prison would tend against such an event. It would be reinforced also by self-regulatory pressures among the prisoners. Prisoners do not become potential rapists by virtue of being prisoners and sexual assault is not an admired category of offence among them. As to the possibility of occasional serious courtship, we can see no objection to it. The circumstances are no doubt unusual but there

is no inherent harm in such a development. If emotional problems arose they would present no staffing problem greater than the development at the other extreme of personal antipathy between individuals, or personal problems generally. The possibility is not an adequate general objection to the use of female prison officers.

6.2 Phasing in of Female Staff. We draw attention to the danger of over-dramatization of such an issue as this. There are many occupations connected with prisons which could well be utilized to introduce 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.

6.3 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.

7 Aboriginal Correctional Personnel. We recommend that every effort be made to encourage the recruitment of aboriginal personnel. The disproportionately large aboriginal component in the prison population is the subject of comment later in this report (chapter 6, paragraph 2.1 below). We do not subscribe to the view that aborigines should be recruited into any branch of the correctional service in order to be particularly concerned with people of their own racial origins. That approach seems to us to be well-meaning but mistaken, for it reinforces the sense of differentness along racial lines which is the source of much community tension. Our recommendation is directed to associating aborigines with the correctional system on the side of authority as a corrective to the existing situation. At present aborigines encounter the correctional system only in the capacity of offenders.

8 Further Recommendations with respect to Correctional Personnel.

(*a*) *We recommend that particular efforts be made to recruit women, who are at present under-represented in the correctional, service, and aborigines, who are at present not represented at all.*

(*b*) *We recommend that all positions in the correctional service be available to female or aboriginal staff on the same basis as to non-aboriginal male staff.*

(c) *We recommend that a substantial component of female personnel be phased in to the staff establishments of male prisons.*

9 Probation and Parole Service. We have indicated already (paragraph 4.3.2 above) the place in a restructured Department of Correctional Services which would adequately reflect the importance of the probation and parole service to the correctional services as a whole. The Principal Probation and Parole Officer should be one of the three senior officers of the community services branch immediately responsible to the Director of Community Services. In our recommendations for the training of senior correctional personnel (paragraph 5.3 above) we have similarly, in recognition of the particularly difficult and responsible work which they undertake, included permanent probation and parole officers as senior correctional personnel for training purposes. The aim should be that in due course all such officers hold the Diploma of Correctional Science which we envisage (paragraph 5.4 above). In the interim we recommend as a transitional measure that as many positions within the service as is practicable be upgraded to the point where they will attract applicants holding a diploma in social administration from Flinders University, or its equivalent from elsewhere, or a diploma in social science from the Institute of Technology, or its equivalent from elsewhere. In addition, also as a transitional measure, we recommend that suitable training be provided, probably by the Education Department, for persons who are capable of becoming probation or parole officers but are not accepted for university or institute studies. There is evidence which casts doubt on the greater correctional effectiveness of small caseloads in supervised probation as opposed to large caseloads. We do not think that enough research has been done into this question to reach a reliable conclusion. Probation officers themselves certainly work with a greater sense of accomplishment if their caseloads are not discouragingly large. We accept the opinion which has been put to us that a desirable maximum caseload is 45. The present average caseload for an officer working in an urban area is over 80. Caseloads are necessarily less in the country not only because there are fewer offenders but also because more of the officer's time is spent travelling. At present there are 34 probation and parole officers, 27 male and 7 female, working under the direction of the Chief Probation and Parole Officer. To achieve a caseload of not more than 45 an increase of 14 is needed at once even if the duties of the service are not increased, and we recommend accordingly as a matter of urgency. There must also be taken into account that earlier in this report we recommend a restructuring of the prison sentence to put greater emphasis on post-release parole supervision (chapter 3, paragraph 3.11.10 above). A general increase in the numbers of offenders on supervised probation is also to be expected in the normal course of things, particularly having regard to the policy of

keeping offenders out of prison as much as possible. As against these additional pressures on staff resources, we recommend that the use of probation officers as prison welfare officers be discontinued as a misapplication of their skills. These various factors indicate that further increases in the size of the probation and parole service should take place as part of the implementation of other recommendations in this report, but that the increase cannot at this stage be exactly quantified. Two other recommendations to which we attach importance as significantly affecting the efficiency with which the service can work are that enough office accommodation be provided for each officer to interview in private and that enough support secretarial staff be provided to avoid the diversion of officers from their proper duties to clerical tasks. On both counts the present position leaves much to be desired and amounts to a marked misapplication of staff resources which are exiguous in any event. Finally we recommend that volunteers be recruited to assist and work with trained probation officers. We do not envisage that volunteers need be limited to persons of any particular standing in the community. They might well include former offenders who are willing to make their experience available for the assistance of others. Some of the evidence which has been placed before us has come from persons of this description who appeared to have a sound understanding of the problems involved and a strong desire to help. (See further paragraphs 10-10.5 below.)

9.1 Recommendations with respect to the Probation and Parole Service.

(a) *We recommend that staff numbers be increased to, and maintained at, a level which ensures that no officer's caseload exceeds 45 at any one time.*

(b) *We recommend that office accommodation and support secretarial staff be increased to, and maintained at, a level which ensures that officers can always interview in private and are not diverted to clerical duties.*

(c) *We recommend that the use of probation officers as prison welfare officers be discontinued and that probation officers be not stationed in prisons except for purposes of training and experience.*

(d) *As interim measures pending the establishment of a Diploma of Correctional Science as a prerequisite for permanent appointment as a probation and parole officer we recommend that as many positions within the service as is practicable be upgraded to attract persons holding a current diploma of social administration or social science and that training be provided for personnel not accepted for courses leading to such diplomas.*

10 Volunteer Correctional Personnel. The general view which we express in this report is that there should be a marked improvement in the professional standing and skills of correctional personnel in all areas. Nevertheless we recommend also that there should be wider use of volunteer workers. These two recommendations are complementary, not contradictory. It is undesirable that a correctional system should be totally controlled and staffed by highly trained experts. The occupational hazard for experts in any field is that over-familiarity with their own specialized vocabulary, modes of reasoning and assumptions about human behaviour may remove them from immediate awareness of the reactions of the general populace. This phenomenon is of particular importance in the social sciences, for the subject matter of this branch of learning is the behaviour of people. To the extent that the law is based on the aspirations and needs of ordinary people, as ultimately it ought always to be, there should be a place for ordinary people to influence and participate in its operation. As far as correctional work is concerned, participation can be achieved by the widespread use of volunteers. This is not to say that there should be unlimited numbers of them, or that where they disagree with trained personnel the trained personnel should be assumed to be wrong, or that everyone makes a suitable volunteer. In particular it is not to say that everyone who is motivated to do good necessarily does good. Indeed, in correctional work the opposite is all too often the case. A degree of detachment is essential. But it is to say that volunteers have a unique value because they are not wholly part of the official system. Offenders quite often confide more readily in a genuinely interested layman than in a professional psychiatrist or social worker. Where this happens it is usually because the professional is regarded with suspicion by the offender as a manifestation of the official system, or because he unwittingly gives the impression that the offender is just another case, or because he appears simply to be too busy to establish personal contact. The main questions which arise with respect to volunteer correctional workers are what types of work are appropriate for their participation, what restrictions, if any, should be placed on their participation and what should be their relations with professional correctional workers.

10.1 Types of Volunteers. Before proceeding to the discussion of these questions it is desirable to distinguish between two categories of volunteer workers. They may be termed active and passive. In this terminology active volunteers are lay people who have personal contact with offenders or ex-offenders either within or outside of institutions. Passive volunteers are those who participate at a remove by joining such organizations as the Prisoners' Aid Association or the John Howard Society. Generally

they make donations, attend lectures and seminars, read relevant literature and perhaps write letters to the newspaper. For our purpose the practical distinction between the two is that whereas passive volunteers should be given unrestricted encouragement to pursue their interest in correctional work by supporting the bodies to which they belong, active volunteers must necessarily be subject to considerable restrictions. There is of course no absolute distinction between the two forms of correctional involvement. Nearly all active volunteers are likely to be engaged in passive participation as well. Apart from helping the cause of enlightened corrections generally, passive volunteer work is valuable as providing an outlet for many people who might like to be active workers but are unsuitable. It is for example vitally important that free access to offenders should not be allowed to psychologically unstable people or to those who have suffered as victims of crime themselves and have become vindictive as a result, but there is no reason why such people should not engage in passive participation. In this connection we observe that one of the functions of correctional work in a civilized community is to protect the offender from mob or individual vengeance outside the law. The remainder of this section of this report is concerned only with active volunteers.

10.2 Type of Work and Nature of Participation. There are three types of correctional work suitable for volunteer participation. The first is within prisons and consists of prison visiting. The object of prison visiting is to give friendly support to the prisoner and thereby counteract the feeling of isolation or abandonment which militates against the satisfactory adjustment to their surroundings of long-term prisoners. Prison visiting schemes are particularly well-developed in England and in general very highly regarded there. Similar schemes are sponsored in South Australia by the Prisoners' Aid Association. Their expansion is to be encouraged. In some jurisdictions religious groups organize prison visiting. We mention that although prison visiting is a comparatively straightforward activity, there can be certain dangers in it which render its organization in co-ordinated schemes by experienced people desirable. One is that a prisoner may establish a psychological dominance over a visitor which can cause difficulties for everyone. The second area of correctional work suitable for volunteer participation is with ex-prisoners. The main task of the Prisoners' Aid Association is to give help to ex-prisoners who need it. The help given may take the form of clothing, money for meals or accommodation, or advice on employment or personal problems. A specific need in this area is the establishment of post-release

hostels for older ex-prisoners who are socially inadequate and have no family support. It is highly desirable that post-release hostels be run by private organizations. If they are run by a government department they tend to be identified by the ex-prisoner with the system from which he has just emerged, and to be avoided accordingly. The most practical arrangement is for buildings and equipment to be provided from government funds but for the hostels to be run privately. We recommend that the Prisoners' Aid Association be encouraged by the provision of such assistance to extend its activities in this area, and that any other private organization which manifests an interest in such work be similarly encouraged. Thirdly, there is an opening for honorary probation officers. These should be limited to very small caseloads, not more than three or four probationers or parolees. They should be required to undertake an elementary training course of evening lectures and should each be assigned to a professional probation officer who would be ultimately responsible for their work. As an instance of his responsibility, proceedings for breach of probation should be undertaken only by a professional officer, not by a volunteer. Such a system would reduce the average caseload of the professional officers and allow them to advise and guide the volunteers. Professionals would retain the supervision of difficult or high-risk cases and would continue to prepare most pre-sentence reports. Honorary probation officers would be particularly useful in small country towns where the normal range of services cannot be provided, and in city suburbs. Their expenses should of course be reimbursed.

10.3 Advantages of Participation. It is necessary to stress that to regard the use of volunteers in correctional work along the foregoing lines as a form of economy is a basic mistake. There is no question of cheap labour involved. Any tendency to see the matter in that light reduces the effectiveness of the proposal. If appropriate supervision and assistance were given to volunteers there would be no reduction in the required numbers of professional officers. There would be a redistribution of their effort. The main gain from the use of volunteers is community involvement. One of the greatest obstacles to the development of an effective correctional system is the tendency of almost everyone in the community who is not brought into direct contact with the subject to want to know nothing about it. If there were several hundred volunteers in this State, each with a high personal commitment to correctional work, their collective impact on community attitudes to deviant behaviour in general and to criminal behaviour in particular would be both considerable and beneficial. Whilst acknowledging the very different sociological background, we mention that we have reason to believe that the declining crime rates in Japan

are attributable at least in part to the extensive use made in that country of volunteer correctional workers.

10.4 Suitable Volunteers. It is of basic importance that suitable personnel be selected. It is likely that such people as school teachers, clerics, successful businessmen and housewives whose children have grown up will provide the majority of volunteers. They will normally have middle-class backgrounds. Whilst welcoming this probability, which is derived from the experience of other jurisdictions, we mention that a wider sociological selection of workers should also be encouraged. As an example, an active interest in or association with sporting activities is often a useful attribute for a correctional volunteer, whatever his social status, because it provides an immediate point of contact with most prisoners. We recommend also that ex-offenders should not be excluded from consideration for volunteer correctional work. That caution should be exercised is obvious. It is obvious also that no-one is better placed to understand the problems of offenders than offenders or ex-offenders themselves. They are quite widely used in correctional work in the United States. A small step in this direction may be seen in the employment of a few ex-offenders by the Prisoners' Aid Association in South Australia. We do not wish to be misunderstood. We are not recommending that special efforts be made to recruit ex-offenders for voluntary correctional work or that the great majority of them would be suitable for such work. We recommend only that a volunteer who appears to be suitable on other grounds should not be refused on the ground only that he is an ex-offender.

10.5 Recommendations with respect to Volunteer Correctional Personnel.

(a) *We recommend the widespread use of volunteer correctional personnel in those areas to which voluntary work is suited*

(b) *The foregoing recommendation rests on the proposition that the correctional system benefits from community involvement. It follows that volunteer work should be complementary to, and not in substitution for, professional work and that it should therefore not be resorted to as a measure of economy.*

(c) *We recommend that prison visiting, the assistance of ex-prisoners and honorary probation and parole work be the correctional activities selected as suitable for volunteer work.*

(d) *We recommend assistance to voluntary organizations for the establishment of post-release hostels.*

(e) *We recommend that the selection of volunteers be not confined to any particular section or sections of the community and that ex-offenders be not necessarily excluded from consideration.*

11 Research. Correctional research should not be either wholly committed to or wholly excluded from a Department of Correctional Services. In our recommended tripartite structure of such a department (paragraphs 4.3 and 4.3.3 above) we have envisaged that one of the three main branches would be research and planning and that its head, the Chief Research Officer, would have a seniority which placed him immediately beneath the Director-General, or the Director-General's deputy if he has one. This scheme sufficiently indicates the importance which we attach to intra-departmental research and planning. It expresses also our view that properly conducted research should form the basis of planning for the future.

11.1 Non-Departmental Research. Correctional research ought in general to be carried on in three main contexts, or a combination of them: within the department itself, by other governmental agencies and by university departments of criminology or such independent bodies as the Australian Institute of Criminology. Broadly speaking, the type of research which it is most appropriate for each of these different agencies to undertake is dictated by their different circumstances. In this report we are concerned only with research within the Department of Correctional Services but this cannot be properly discussed without some reference to extra-departmental research. It is not difficult to deduce that research of this description is that which either covers a wider range of inquiry than is encompassed by the activities and responsibilities of the department itself or requires a degree of independence which might not be attributed to, or attainable by, the department itself. Other departments of government which quite clearly might become engaged in research on, or affecting, correctional methods are the Police Department, the Department of Community Welfare and the Education Department. No doubt in the normal way the co-operation and assistance of the Department of Correctional Services would be sought and the end result be a combined effort. We make the point only that correctional research by governmental bodies cannot be confined to the Department of Correctional Services alone. Research by university departments of criminology or independent institutes of criminology is likely to cover a wider range of material, and may well dispose of greater funds if grants for specific inquiries are made by grant-giving bodies, than may be available to a government department. Universities and independently funded criminology institutes are also the appropriate bodies if independence of viewpoint is a material consideration. For example, if a government were known to be for or against a particular correctional measure but undertook to abide by the results of research into the matter, it is obvious that greater faith would be placed by the public in an independent inquiry than in a departmental one. Also universities and independent institutes depend upon a high degree of ability in their personnel. It would be a loss to the community to emphasize government departmental research at the expense of the encouragement of research by this reserve of expertise. Independent research by university departments of criminology and comparable institutions should be encouraged and as much co-operation and combined work as possible by the various interested research bodies, both governmental and non-governmental should be undertaken.

11.2 Departmental Research. The view has been expressed to us that the scope for departmental research is limited because the department is committed to its own or governmental policies. As we have indicated (paragraph 11 above), we do not agree. In point of fact the scope for departmental research is great, and much of it could be carried out only with difficulty by anyone else. Its main task should be to provide information on which departmental decisions can be based. The function of this type of research is to provide an aid to the formulation of policy. Much of the work which needs to be done is the straightforward gathering of data but the more completely and efficiently this is done, the more effective the subsequent policy is likely to be. For example, such a comparatively simple matter as the opening or closing of an institution requires for its best determination a wide variety of detailed information: effect on staff, prisoners and surrounding population, access, cost, probable future use, alternatives, comparisons with other such institutions, design and much else. The more thorough and detailed such information is, the sounder, or at least the better-informed, is the ultimate decision. As another example, there should be continuous research into the characteristics both of escapers and the circumstances under which they escape. Since security is a major responsibility of any prisons department or branch, the greatest possible accumulation of objective data, as opposed to assumptions or guesswork, ought to be available in its aid. At present the choice between maximum and minimum security for many prisoners is based on no more than an attempted assessment of their escape potential. There is no need to labour the point. It is clear that the scope for a properly staffed research and planning branch is virtually endless once the decision is taken to base departmental decisions on the best obtainable information as to what is happening in the department itself.

Moreover we do not suggest that all departmental research be confined to the accumulation of relatively simple facts. There is also wide scope for investigating the effects of particular measures, activities and prison routines and in the collection and presentation of statistics. Another considerable area lies in the co-ordination of activity and information with agencies of other States.

11.3 Recommendations with respect to Research.

(*a*) *We recommend the establishment within a Department of Correctional Services of a research and planning branch with the functions of collection of information on which to base policy decisions, the formulation of suggested policy and the implementation of decided policy with detailed planning.*

(*b*) *We recommend that every encouragement be given to the furtherance of extra-departmental criminological research and that combined projects be undertaken whenever practicable.*

12 Police Personnel and Facilities. The South Australian Police enter into the post-conviction sentencing process in two ways. They are responsible for police prisons and police cells and they undertake the conveyance of prisoners in, to and from remote areas. The distinction between police prisons and police cells, or lockups, is that terms of not more than 28 days may be served in the former and of not more than 14 days in the latter. They are used for these purposes in country areas remote from Prisons Department institutions. An objection of principle can be made to this use of police facilities and personnel. It is the undesirability of combining the investigation, arrest and, in effect if not always in form, prosecution functions of law enforcement with the custodial post-conviction function. The qualities which go to make a good policeman, or which have to be developed for effective police work, are not necessarily those required of a good prison officer. It can be said also that it is undesirable that an offender who may in the course of detection, arrest and trial have incurred the dislike or resentment of the police should be placed in their custody after his guilt is established. In general these objections are held in our community to rest upon important principles which should be maintained. In the present context, however, having regard to the minor offences, short sentences and remote areas involved, they are in our opinion outweighed by practical considerations of expense, time and multiplicity of personnel and facilities. The police who are stationed at these distant locations are doing a good custodial job. We see no compelling reason for changing the system. We therefore confine our recommendations to the following. A small number of prison officers should be assigned to

country areas, with suitable transport arrangements, to assist the police in their custodial functions and generally to have regard to such matters as adequacy and quality of cell accommodation, work and welfare which are more properly the concern of the prisons branch than of the police. We do not envisage that there should be one prison officer to every police station. There is too little custodial work at most stations to justify such an arrangement. Each prison officer should be assigned to an area which includes several police stations. Secondly, in the particular case of Coober Pedy, which is growing rapidly and presents pressing problems of law-enforcement, a police prison with ample cell accommodation should be established and staffed as soon as possible. In this instance the appointment of a full-time prison officer would be justified. Thirdly, a survey should be carried out as soon as possible of the adequacy and condition of all police prisons and lockups, particularly in the country, and those which are in poor condition replaced at once. This committee has seen only a selection of them but that experience was enough to show that in a number of places action is urgently necessary. Perhaps the worst example which we saw of neglect to replace premises in which no-one should be confined was Ceduna, but we understand that these cells have now been replaced. Particularly urgent action is still needed at Port Adelaide.

12.1 Conveyance of Prisoners. The police undertake the conveyance of prisoners in remote areas. Formerly this entailed considerable use of police time and vehicles, and to a significant extent still does, but since 21st March, 1971, the position has been ameliorated by the introduction of an air service. It is now customary whenever possible to carry prisoners between the far north and west and Adelaide or Port Augusta by hired light aircraft. During the period 21st March, 1971, to 11th September, 1972, a total of 265 prisoners was carried in this way and 55 missions were made for the purpose. In addition to prisoners the air service is utilized for ferrying police personnel, if their carriage can be combined with the primary purpose of the service, and for moving stores or equipment in addition to passengers. The cost of hire during this time was $9,814.00. It has been estimated that surface transport would have cost an additional $9,211.00 and a further 4,316 man hours of police time. From these figures it can be seen that in its first year and half of operation the air service nearly halved the cost of long distance conveyance of prisoners. If the other incidental benefits to police work are taken into account, not only is there a further significant reduction in the relative cost factor of the service but also there is a marked increase in the efficient use of police personnel in their normal duties. We are satisfied that the introduction of this service was an improvement from every point of view and that it should be

extended. In particular it should be extended to include not only the conveyance of prisoners from Ceduna to Port Augusta and Port Lincoln, which we understand is presently the case or shortly will be, but also other areas as need becomes apparent. It should be mentioned that aircraft cannot always be used even if the service is available. Weather conditions may be unsuitable. The occasional prisoner may have a propensity to violence or be in a physical condition which makes his carriage in a light aircraft undesirable. It is also police practice not to compel prisoners to travel by air if they refuse or show reluctance. Prisoners in any of these categories are rare. It has been mentioned to us also that since most of the prisoners carried are well known to the local police, the likelihood of an accurate assessment of their attitude is high. We have inquired into security in the sense both of keeping the prisoner in custody and of ensuring his safety. We are satisfied on both counts that the present arrangements meet every reasonable requirement.

12.2 Recommendations with respect to Police Personnel and Facilities.

(*a*) *We recommend that the use made at present of police personnel and facilities for custody and conveyance of prisoners in and to and from remote areas be continued.*

(*b*) *We recommend that prison officers be appointed, normally on an area basis, for the assistance of the police in those matters which are more properly the concern of the prisons branch.*

(*c*) *We recommend the establishment of a police prison and the appointment of a full-time prison officer at Coober Pedy as soon as possible.*

(*d*) *We recommend that a survey be carried out as soon as possible of the adequacy and fitness for human occupation of all police prisons and lock-ups, particularly in country areas, and that immediate steps be taken to replace those which are found to be defective. We make special mention of the need for new premises at Port Adelaide.*

(*e*) *We recommend the continuation, and extension where a useful purpose would be served, of the police air service for the conveyance of prisoners.*

13 **Existing and Projected Prisons.** The most striking feature of the South Australian prison system is the very great degree of variation between the different prisons and the programmes they provide. We cite the following as examples. Some prisoners spend up to 17 hours a day in solitary confinement in their cells while others are

housed in pleasant dormitories and are never isolated. Some buildings of recent construction are almost lavish in their facilities while others are so old and dilapidated that, if they are to be preserved at all, their conversion into museums appears to be the only reasonable course of action. Some prisoners are kept hard at work while others are allowed to idle. Some prisoners are studied and classified while others are perfunctorily assigned to places and tasks. Some prisoners are encouraged to improve their education while for others there are no educational facilities available. Some prisoners occupy single cells with pleasant furniture, toilet, wash-basin and two-way radio, while others are crowded four to a cell with none of these facilities. The contrasts are so marked as to make it difficult to believe at times that they occur within the same system. They suggest that South Australia has at present less a single prison system than a collection of loosely-related independent institutions. In principle this is not necessarily a bad state of affairs. A degree of local autonomy and flexibility is preferable to over-centralized regimentation, particularly in a State of such vast geographical expanse and regional and demographic variation. But the problem presented by the present situation is not of that character. Whatever degree of local variation is permitted in the application of general correctional policies, it should operate within a framework of minimum standards and stated aims which apply to all prisons in the State. The present extreme degree of variation in physical conditions, routines and available programmes is undesirable because it creates an understandable sense of injustice in the less well-situated prisoners which militates against the attainment of constructive correctional aims.

13.1 Physical Well-being of Prisoners. It is a fundamental correctional principle that if a choice has to be made in the allocation of resources between the two, good staff are more important than good buildings. Nevertheless the situation in South Australia is now such that minimum standards of accommodation should be decided upon and provided with the least possible delay in order to correct existing inequities. We have in mind such simplicities as adequate ventilation, sewage, light, room, a degree of privacy, and reasonable facilities for reading and study. The decent essentials of physical accommodation are few and easily comprehended. Similarly it is not hard to grasp the importance of regular exercise, and the advantages of inducing it by providing sporting equipment, or the desirability of an adequate and properly balanced diet, regular medical inspection and proper medical, dental and psychiatric services. On all these points the prison system of South Australia is deficient, although the degree of deficiency varies from place to place. Nowhere, for example, is there evidence of expert advice on

matters of diet. The normal prison diet relies excessively on carbohydrates and has much of its already low protein content destroyed by bad cooking. This is a matter of advantage to no-one. It is not even economical. On the medical side it is quite possible in some prisons for an offender to serve the whole of his or her term suffering, for example, from venereal disease because there is no medical check, or no adequate medical check, at the time of induction. In general medical services are quite inadequate. Dental and optical services are if anything less adequate. Simple though it is, the whole question of existing physical standards of life in the prison system of this State needs review in a degree of detail which is beyond the scope of this report. Offenders who are compelled to live in sub-standard conditions and a poor state of health become that much less receptive to any constructive correctional programme.

13.2 Degree of Security. Approximately two-thirds of prisoners in South Australia are held in conditions which either are or could be used as maximum security; that is to say, in single cells within a walled perimeter or secure building. This means that there is almost certainly enough maximum security accommodation available to satisfy South Australia's needs at least until the end of the century, for a large proportion of these prisoners do not need to be placed in maximum security. The incongruity of the present situation is shown by the frequency with which prisoners are locked in secure cells at night but trusted to work outside the walls with little or no supervision during the day. The future building programme should concentrate on the development of medium and minimum security facilities in the implementation of the various measures which we recommend in other parts of this report. The general principle should be that no new cells are provided unless old ones are demolished.

13.3 Staffing. Recalling our observation (paragraph 13.1 above) that staff are ultimately more important than buildings, another incongruity in the present situation is that although considerable sums of money have apparently been, and continue to be, available for the construction of new maximum security accommodation on an almost lavish scale, there are apparently no funds for the implementation, by provision of extra staff, of such a simple measure as an adequate evening programme. Prisoners are locked in for the night at an absurdly early hour for this reason. A marked change of emphasis from buildings to staffing will be necessary if the recommendations of this report are to be implemented with any degree of effectiveness within the limits of a reasonable budget. The present custodial staff-inmate ratios illustrate the same feature of wide variation as other aspects of

this State's prison system. The following table shows them as at February, 1972.

Prison	Capacity	Total staff	Ratio
Adelaide	280	77	1:3.6
Yatala	518	173	1:3.0
Gladstone	121	25	1:4.8
Cadell	180	33	1:5.5
Port Augusta	70	15	1:4.7
Mount Gambier	30	4	1:7.5
Port Lincoln	16	3	1:5.3
Women's	46	18	1:2.6
TOTAL	1,261	348	1:3.6

In the small prisons the problems of high ratios are exacerbated by lack of flexibility in rostering staff and the need to allow for holidays and sickness. Bearing this in mind, the staffing of Port Lincoln and Mount Gambier can be described only as ludicrous. The foregoing table is based on prison capacity. A truer picture of the actual situation as at a typical date, 2nd February, 1972, is given in the following table, which is based on the actual number of prisoners confined.

Prison	Prisoners confined	Total staff	Ratio
Adelaide	243	77	1:3.2
Yatala	362	173	1:2.1
Gladstone	67	25	1:2.7
Cadell	110	33	1:3.3
Port Augusta	37	15	1:2.5
Mount Gambier	10	4	1:2.5
Port Lincoln	17	3	1:5.7
Women's	11	18	1:0.6
TOTAL	857	348	1:2.5

Since at this date only about two-thirds of total prison capacity was being utilized, the staff-inmate ratios shown are generally more favourable. An exception is Port Lincoln. The realities at Port Lincoln and Mount Gambier remain unchanged however, notwithstanding variations in the ratio. Both prisons have too few staff for proper rostering. Their situation illustrates the seldom-realized fact that prisons rely to a considerable degree on the goodwill and co-operation of the prisoners. As another instance of the extreme contrasts within the South Australian prison system, the figures for these two prisons can be compared with those for the Women's Rehabilitation Centre. It is not practicable to recommend an ideal ratio for custodial staff since, as the foregoing tables show, a ratio

alone may be misleading. Whatever the size of a prison, and however under-utilized it may be at any given time, there should be enough staff to ensure proper rostering and allowance for sickness, holidays and leave without diminution of security or normal programmes. The only recommendation we can make is that the general custodial staffing situation be reviewed in light not only of the foregoing discrepancies but also of our recommendations with respect to the correctional system generally. Quite apart from rationalizing the distribution of custodial staff, it will have become evident from the rest of this report that in our view there should be a considerable increase in professional personnel of many other descriptions. We should add that in our opinion also, the economies which will follow from a more efficient and effective correctional system, from the probable continuing decline in both the relative proportion of offenders in prison and the length of time spent in prison, and from the rationalizations of existing use which we recommend in the following paragraphs, should largely offset the initial costs of improving the system.

13.4 Future Use of Existing Prisons. In this and the following paragraphs of the report we summarize the implications for the future use of prisons currently in use of correctional recommendations which we have made already in various contexts. The relevant institutions are Yatala Labour Prison, Adelaide Gaol and the Women's Rehabilitation Centre in Adelaide; the prisons at Mount Gambier, Gladstone, Port Augusta and Port Lincoln; and Cadell Training Centre. As a general principle prisons, in common with other correctional institutions, should be situated in the areas of greatest population concentration. There is a tendency in some quarters to believe that prisons should be in the country, well away from where most people live. We do not agree. It has to be accepted, in the correctional context as in all others, that life in country areas has certain inherent characteristics, the most relevant of which for the present purpose is relative inacessibility of urban facilities. The prison system should be an urban facility because both staff and prisoners benefit from its being as far as possible a normal part of the running of the community, and most of the community is urban. We need not dwell on this point because we have emphasized it already in many parts of this report. An important additional factor is cost and convenience of travel for staff, conveyance of prisoners, judicial officers, legal advisers and other counsellors, non-departmental professional personnel, visitors, stores and services. The greater part of the population of South Australia is concentrated in the area in and around Adelaide and the associated conurbations. As the present distribution of prisons reflects, Mount Gambier, the

Port Augusta-Whyalla area and Port Lincoln are relevant also, not only to varying degrees in their own right as centres of population but also because they serve large country areas to which they are more accessible than Adelaide.

13.5 Maximum Security. In our opinion only two major maximum security prisons for convicted male prisoners are necessary in South Australia. These should be at Yatala and Port Augusta. The need for a detention centre for prisoners on remand is discussed later in this report (paragraph 13.9 below). The Women's Rehabilitation Centre is the only necessary maximum security facility for female prisoners, and we make no recommendation for change in this well-run institution. In recommending that maximum security prisons for male prisoners be reduced to two we assume and recommend the policy, which is implicit also in the whole of this report, that offenders should not be sent to maximum security for short sentences, by which we mean sentences of less than a year's actual imprisonment. In view of their very small numbers such a policy cannot be maintained for female prisoners because the consequent duplication of institutions would not be justified. We mention also that it does not follow from such a policy that a prisoner sent to maximum security will necessarily stay there for a year or more. If he appears to be suitable there is no reason why he should not be reclassified after a short while and transferred accordingly. There is nothing to be said for maximum security as a short-term expedient. Apart from any effect on the prisoner, it leads to a need for much expensive prison accommodation. If this need is not met, the consequence is overcrowding and general frustration of correctional policy. On this basis Yatala should be used as the normal maximum security facility for the whole State except that prisoners from the west, the far north and the country areas adjacent to Port Augusta should be sent to Port Augusta. No doubt from time to time each of these prisons might have to serve as an overflow support for the other, but that is a matter of detail. Under these arrangements a minority of prisoners, both male and female, would be further removed from their families and communities than is desirable but it is not possible to avoid this difficulty altogether in a State as large as South Australia. To ameliorate the situation we recommend that consideration be given to subsidizing prison visiting in cases of hardship. This is done in New Zealand. We do not recommend the maintenance of maximum security facilities for long term prisoners at Mount Gambier or Port Lincoln because such a step involves a disproportionately expensive investment of staff and accommodation for the numbers involved. Our recommendations

entail no change at Port Augusta, which has a new maximum security prison on a munificent scale. All that needed to be done there at the time of our inspection in 1972 was the provision of reasonable sub-maximum security accommodation for female prisoners and of dormitory accommodation for aborigines (chapter 6, paragraph 2.4 below). The female accommodation at that time was totally inadequate and called only for demolition. Changes would be necessary at Yatala to convert it to a purely maximum security facility. This would be neither expensive nor difficult because most of Yatala Prison already is very secure as a matter of construction. The maintenance of security there is made more difficult by the present policy of using it as a conglomerate institution for prisoners of all categories. The only relatively expensive alterations to be recommended at Yatala have nothing to do with its security status but concern such matters as sewerage to the cells and ventilation. Modernizing the buildings should be undertaken at once in any event. The present policy of adding on sub-maximum security accommodation beyond the walls should be discontinued and the present facilities in this category phased out. To the extent that more space is needed for the implementation of recommendations elsewhere in this report, the walls should be extended. The present situation, whereunder many prisoners who are classified, rightly or wrongly, as requiring maximum security at night are during the day confined only by a chain link fence and guards should be ended as soon as possible. The capacity of Yatala should not be increased beyond 400. This figure is in our opinion the largest size at which a prison can operate effectively as a correctional institution which is both secure and constructive in its programmes.

13.6 Mount Gambier, Port Lincoln, Gladstone. Although in the previous paragraph we have recommended against the maintenance of maximum security accommodation at Mount Gambier for long term prisoners, a small amount of such accommodation will have to continue to be available there for prisoners on remand awaiting trial on circuit. Apart from this, we recommend that Mount Gambier Prison be converted to minimum security for a maximum population of 30 short-term prisoners. This will entail some additional minimum security accommodation but this is not an expensive proposition because in its construction elaborate security precautions do not have to be taken. Simple design and relatively cheap materials can be used. Port Lincoln Prison is still undergoing a somewhat leisurely process of construction. It is projected as including both maximum, medium and minimum security prisoners. We recommend that plans for maximum security be abandoned as disproportionately expensive to construct and

maintain. Medium and minimum security for a total population of 60 short-term prisoners should be envisaged. Gladstone prison should be phased out altogether, serving as a medium security local and overflow facility in the interim. It has three disadvantages: it is old, in a country area not close to any urban concentration, even a small one, and represents excess maximum security capacity. Apart from its correctional disadvantages it necessarily entails expenditure by way of maintenance, modernization and travel accessibility which would be better devoted to other projects.

13.7 Cadell Training Centre. Cadell Training Centre has a number of correctional deficiencies. The first, although perhaps minor, is that it is mis-named. It is not a training centre in any sense. It is a prison, conceived of primarily as a minimum security institution but including also a maximum security cell block. In its minimum security aspect it is conceived of also as a prison industry project, the industry being farming. It is situated on the Murray River distant from any urban centre. The local population, who are scattered and not numerous, have never accepted its presence with equanimity. This last factor is not without importance. In towns, prisons of any size are much more acceptable than in thinly populated country areas for at least two reasons: they are less noticeable and the concentration of prisoners is not out of proportion to the general population. The situation at Cadell is that in general, although there are individual exceptions, neither the staff nor the prisoners want to be there and the local people do not want them there. We have canvassed the unsuitability of farming as a prison industry at length already (chapter 3, paragraph 3.18.13 above). It largely accounts for the prisoners' dissatisfaction, although they are affected also by the unfamiliarity of their surroundings and the inconvenience to their families of being so far from Adelaide, and by the misleading expectations which most of them apparently have when they are transferred there. There appears to be a discrepancy, which is perhaps reflected in the inaccurate name "Training Centre", between what they are led to believe before the Classification Committee at Yatala and the reality. Moreover it is inconsistent with even the theoretical aims of Cadell as a minimum security institution that it should include a cell block for a different category of local prisoners or for disciplinary purposes. This produces conflicts of policy and discrepancies of treatment which work to the disadvantage of everyone. As to staffing, the staff at Cadell form an isolated community in themselves, with little opportunity of distraction, entertainment or change of activity. Cadell suffers in short from a combination of inherently dubious correctional potential, failure to adhere to a consistent correctional aim and impossibility of co-ordination with

the local community. For reasons both of correctional accomplishmen and of expenditure which would be better diverted to other projects, we recommend that Cadell be phased out and replaced by more suitable minimum security programmes of the various kinds which we recommend elsewhere in this report.

13.8 Adelaide Gaol. There is general agreement, which we share, that Adelaide Gaol has now become entirely inadequate for the pressures upon it and the variety of purposes it is made to serve. The physical conditions are poor. If the building is to continue in correctional use it should be modernized internally and used as a pre-release work centre (chapter 4, paragraph 9 above). The site is ideal for this purpose because it combines adequate size with easy access to the city and inconspicuousness. The building itself should be preserved if possible for its architectural and historical value. The different functions of Adelaide Gaol for which new provision would have to be made are dealt with in the next paragraph of this report.

13.9 New Prisons. We have mentioned already (paragraph 12 above) the need for a new police prison at Coober Pedy and new police cells at Port Adelaide. We see a need for at least three other new institutions in consequence of our recommendations with respect to existing prisons. The first is a pre-trial detention centre for defendants awaiting trial who are not granted bail. It has been mentioned already (chapter 3, paragraph 3.1 above) that these defandants require maximum security, but for obvious reasons they should not be housed with convicted offenders. Their present accommodation in Adelaide Gaol is deplorable and the length of time which they spend locked in their cells owing to shortage of prison officers indefensible. We have seen a suggested design in complete detail of a pre-trial detention centre. It has persuaded us that if such a building is to serve its purpose to the best advantage its proper design presents a number of unique and important features. The basic problem is to combine the requirement of security with ease of access and a degree of freedom of movement and amenity appropriate to an unconvicted defendant, as opposed to a convicted offender. Also it should be sited within convenient reach of courts and lawyers. We cannot within the scope of this report enter into further detail. We therefore confine ourselves to recommending that a properly designed pre-trial detention centre be built on a site within easy reach of the city. We attach the highest priority to this recommendation. The present situation with respect to prisoners on remand in Adelaide should be remedied at the earliest possible moment. It is not practicable to make a special arrangement of this kind for defendants remanded

to await circuit trial at Mount Gambier and Port Augusta, but the situation in those centres is not comparable. Secondly, at least one new institution should be built in the metropolitan area for prisoners classified to medium or minimum security. The size of this prison, and whether there should be more than one, depends on a number of factors. They include future projections of prison population, the parameters which are adopted of suitability to this level of security, available sites and the speed with which the various transitions which we have recommended in the preceding paragraphs are carried into effect. Thirdly, similar medium and minimum security facilities should be provided in the Port Augusta area. We are not of opinion that there should be a separate prison for offenders undergoing their first prison sentence. In the normal case they will be far from first offenders by that stage.

13.10 Recommendations with respect to Existing and Projected Prisons.

(*a*) *We recommend as a matter of high priority that a properly designed and staffed pre-trial detention centre be built on a site within convenient reach of the city.*

(*b*) *We recommend that at least one new prison be built in the metropolitan area of Adelaide for the accommodation of prisoners classified to medium and minimum security accommodation and that a similar prison be built in the Port Augusta area.*

(*c*) *We recommend that reasonable minimum standards of accommodation, diet and medical, dental, optical and psychiatric services be decided upon and put into effect with the least delay in all South Australian prisons.*

(*d*) *We recommend that no convicted prisoner be classified to maximum security unless his actual term in prison is to be not less than one year and it is not reasonable to classify him to any less rigorous degree of security.*

(*e*) *We recommend that a minimum acceptable ratio of custodial staff to prisoners be determined upon and put into effect in all South Australian prisons, due regard being had in the smaller prisons to the difficulties of rostering small establishments.*

(*f*) *We recommend no addition to present maximum security capacity for convicted offenders.*

(*g*) *We recommend that maximum security for male prisoners be concentrated at Yatala and Port Augusta Prisons.*

(*h*) *We recommend that maximum security for female prisoners continue to be provided only at the Women's Rehabilitation Centre.*

(*i*) *We recommend that medium and minimum security accommodation be provided for female prisoners in the Port Augusta area as soon as possible and that the Women's Rehabilitation Centre continue to be used for this category of female prisoner also.*

(*j*) *We recommend that dormitory accommodation for aboriginal prisoners be provided at Port Augusta Prison.*

(*k*) *We recommend that Yatala Prison be converted entirely to maximum security and limited to a capacity of* 400 *prisoners.*

(*l*) *We recommend that Mount Gambier and Port Lincoln Prisons be converted entirely to medium and minimum security accommodation, save that in the former case some maximum security accommodation be provided for male defendants remanded to await trial on circuit.*

(*m*) *We recommend that maximum security accommodation for male defendants remanded to await trial on circuit at Port Augusta be provided at Port Augusta Prison.*

(*n*) *We recommend that Gladstone Prison and Cadell Training Centre be phased out.*

(*o*) *We recommend that Adelaide Gaol be internally modernized as a pre-release work centre as soon as possible and that its use as a correctional institution be otherwise discontinued.*

(*p*) *We do not recommend the establishment of a separate prison for offenders serving their first prison term.*

(*j*) *We recommend that dormitory accomodation for abosequence of the foregoing recommendations or presently existing, consideration be given to subsidizing prison visits by relatives of prisoners.*

14. Prisons Act and Regulations. It is evident that our recommendations throughout this report will entail the repeal of the present Prisons Act and regulations made thereunder. We draw attention to two points. The first is that neither the Act nor the regulations at present reflect existing practice. The regulations in particular are absurdly out of date in many respects and would need drastic revision to conform with even the present unsatisfactory state of correctional services in South Australia. This is a most undesirable state of affairs in any part of the law. It becomes even more so when questions of liberty and human rights are

affected. Secondly, in the framing of new legislation and the setting of minimum standards for prison administration we recommend that close attention be paid to the *Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations* issued by the Department of Economic and Social Affairs of the United Nations, New York, 1958.

14.1 Recommendations with respect to Prisons Act and Regulations.

(*a*) *We recommend that the Prisons Act and regulations made thereunder be repealed and re-enacted in revised form to reflect accurately the actual state of affairs in the South Australian prison system.*

(*b*) *We recommend that particular regard to be had to the standards for treatment of prisoners recommended by the United Nations.*

SPECIAL PROBLEMS

CHAPTER 6

1 Introduction. In this chapter we advert to two social facts which have adverse repercussions on the correctional system but cannot be dealt with effectively in the context of law enforcement alone. These are the situation of the aboriginal population of South Australia and the widespread dependence on, addiction to or immoderate consumption of alcohol and drugs. Within our terms of reference and resources of inquiry we can do no more than record the significance of these matters to the correctional system and recommend some ameliorative measures. Far more thorough investigation and action than this is needed if the underlying causes of crime attributable to these factors is to be tackled with success.

2 Aboriginal Offenders. The correctional problem presented by the aborigines of South Australia is that they form a component of the prison population out of all proportion to their numbers in the community. The reasons for this state of affairs lie largely outside the criminal law and its enforcement, and therefore outside the terms of reference of this committee, but the state of the aboriginal imbalance in the correctional system is such that we should be failing in our task if we did not draw attention to it in emphatic terms. Aborigines in South Australia, as in all other mainland States and the Northern Territory, are poor in circumstance, opportunity and economy. The reasons are embedded in the history of this country and are not admirable. Conditions have not been improved significantly by measures taken in recent years by federal and State governments or by private organizations. Although South Australia shares with the rest of the nation a history of neglect and ill-treatment of aborigines, and of discrimination against them, its present criminal law is not in terms biassed against aborigines or founded on criteria of racial discrimination. On the contrary, it is unlawful to discriminate against aborigines or other racial minorities. Against this general background the scale of the correctional problem may be stated.

2.1 Scale of the Problem. The total population of South Australia in 1971 is given in the South Australian Year Book for 1972 as 1,172,774, from which it may be inferred that the present population is approximately 1.2 million. The aboriginal component is estimated to be about 9,100. This means that aborigines are less than 1% of the population of this State. Three quarters of one per cent is a fair estimate. We emphasize that figure. Of all male prisoners admitted to South Australian prisons in 1965, aborigines comprised 5%. By 1968-69 this proportion had risen in a steady progression to 25%. During this time the largest single annual

rise was in 1964, when the proportion climbed from 10% to 14%. There have been no significant falls. The present situation is that this single segment of the community, three quarters of one per cent of the whole, supplies upwards of 25%, or one quarter, of male offenders admitted to prison, and that that proportion, on the latest available figures, continues to rise. The proportionate picture for female offenders is even more startling. Owing to the relatively small absolute numbers involved, because there are far fewer female than male offenders, the rate of increase over the same period shows sharp variations both up and down, but the overall progression is the same. In 1956 the proportion of aboriginal females admitted to prison was 18% of all female prisoners. By 1968-69 this figure had risen to 43%, having reached a peak of 57% in 1965-66. Having regard to these figures it is safe to assume that at the present time not less than 25% of all persons admitted to prison are aborigines and that unless some ameliorative steps can be taken that proportion is likely to continue to increase. A balanced picture is however not to be derived from the foregoing figures alone, for they relate to admissions to prison and not to the daily average prison population. If the average prison sentence for aborigines is shorter than the average prison sentence for non-aboriginal offenders, which probably is the case, proportions derived from the daily average prison population over a period of time will be lower. This is borne out by figures which we reproduce below. Before turning to them we caution against drawing unjustified inferences from the probability that aboriginal offenders receive shorter sentences than non-aboriginal offenders. This is not evidence of bias in favour of aborigines. It is more likely to be attributable to a higher proportion of the more serious offences being committed by non-aboriginal offenders. The following table is based on a special study made for the committee of daily average prison populations over a four week period.

Daily Average Prison Population from 7 July to 4 August, 1972

Institution	Total Daily Average Population	Daily Average Aboriginal Population	Percentage of Aborigines
Yatala	350.18	32.96	9.41
Adelaide	239.29	17.68	7.39
Cadell	99.75	12.96	12.88
Mount Gambier	14.96	0.89	5.95
Gladstone	68.71	22.64	32.95
Port Augusta	57.14	26.24	46.62
Port Lincoln	18.64	12.21	65.65
Women's	22.60	7.71	34.12
TOTAL	871.27	133.29	15.30

The statistic comparable with the 25% proportion arrived at above is the final figure of 15.3%, which is the aboriginal percentage component of the daily average prison population for the period specified. Although lower than the 25% of prison admissions for 1968-69, and quite possibly lower still than the 1972 proportion for prison admissions, which is not known to us, it is still out of all relationship with the three quarters of one per cent proportion which aborigines bear to the population at large. Moreover the figure of 15.3% undoubtedly would rise if statistics for police prisons and lockups were included. It will be recalled that in country areas sentences of up to 28 days and up to 14 days respectively are likely to be served in police prisons and lockups. The great majority of prisoners in this category are aborigines. One other statistic should be mentioned. Figures for the same period, 7th July to 4th August, 1972, for female prisoners, both in the Women's Rehabilitation Centre and elsewhere, show that aborigines were 51.35% of the total prison population. This figure has the interesting feature that it is even higher than the 1968-69 proportion of admissions, which was 43%. This may be an indication that the latter proportion has risen steeply again since 1969. Even the 51.35% of daily average prison population does not indicate the true situation in some prisons. At Port Augusta the aboriginal proportion of female prisoners would normally be almost 100%.

2.2 Critique of the Problem. These data are a matter for serious concern. They are yet another indication that the aboriginal population presents to this country and to this State a social problem on a scale which far exceeds the relative numbers of the people involved. We draw attention to an aspect of the situation which is still not widely appreciated. The human suffering, social damage, danger to public health and economic waste involved are becoming widely recognized. Moral community responsibility for aborigines as fellow citizens and human beings is generally accepted in principle, even if action does not as yet match aspiration. But there is a political dimension also. It would be a simple exercise to present the foregoing data as purported proof that the practical impact of the criminal law is discriminatory. Such a demonstration in the hands of skilled advisers could be a powerful instrument of publicity, the use of which might not always be in the best interests of the aborigines themselves, the community generally or the correctional system. Its impact would not be lessened by the absence of aborigines from the prison and the probation and parole services. For these reasons it is urgently necessary both to take such immediate steps as are available to ameliorate the problem and to institute further inquiry into the situation of the aboriginal

population generally in South Australia with a view to tackling the basic causes of their high imprisonment rate. Aborigines should take a major role in such an inquiry and co-ordination with Commonwealth action should be sought.

2.3 Recommended Measures. Within the scope of our terms of reference we make three positive recommendations. The first, which is discussed in more detail later in this chapter (paragraph 3 below), is abolition of the offence of public drunkenness. Strictly speaking this recommendation relates to the substantive criminal law, which will be the subject of a later report, but for practical purposes no such distinction between the different stages of our inquiries can be absolutely maintained. Public drunkenness is overwhelmingly the most common offence committed by aborigines. In theory the one step of abolishing it should reduce the numbers of aborigines in prison by more than half, but it must be recognized that if this offence is no longer available a certain number of aborigines under the influence of alcohol will be charged with disorderly conduct or indecent language instead. There should be a marked reduction in imprisonment rates nevertheless. Our second recommendation is that far greater use be made than at present of supervised probation for aborigines instead of short-term imprisonment. We have seen many cases where aboriginal prisoners were trusted to remain in a place without any physical restraint at all. In general they appear to accept authority without demur. It is reasonable to expect that use could be made of this characteristic in supervised probation. The type of supervision needed would be fairly authoritarian, precise directions being given to the offender, but there can be little doubt that in many cases it would be effective. Thirdly, we recommend that separate statistics be kept of aboriginal offenders, and more particularly of aboriginal offenders who are imprisoned. Such a step would not have any direct effect on imprisonment rates but it would prevent the problem from remaining out of sight. The present annual report of the Prisons Department makes no distinction between prisoners on racial grounds. Whilst we agree with the sentiment which has been expressed to us that there are no aborigines in prison, only people, we regard it as a hindrance rather than a help in this particular application. Progress can be made in any area only on the basis of knowledge. To acquire knowledge all kinds of distinctions have to be drawn. Two of the most obvious are between young and old and between male and female. It would certainly be of no assistance to juvenile or female offenders if no separate information relating to them were available. In the present context we regard the underlying social and correctional problem as serious enough not merely to justify but positively to require the collection

of separate statistics for aboriginal offenders at all stages of law enforcement. We agree that published information of this description may be misused and the purpose of its publication misreprented. If the true purpose of its publication is sufficiently important, as in this case we think it is, that type of risk is part of the democratic process. Even misuse and misrepresentation of information may serve the constructive end of drawing attention to a problem. For this reason we do not recommend that such statistics be collected but released only to approved officials and researchers. They ought to be public knowledge.

2.4 Imprisoned Aborigines. Aborigines who are imprisoned for any significant length of time present a number of special features to which insufficient attention is paid. One which has been mentioned to us on a number of occasions by experienced observers is that aborigines become depressed when placed in single cells. They much prefer dormitories shared with other aborigines. The expensive new prison at Port Augusta, which has a high proportion of aboriginal offenders, has no dormitory accommodation. Similarly, as a matter of elementary correctional principle no prisoner should be held in conditions more secure than necessary having regard to the escape and public safety risk which he represents. This principle is not applied in large prisons with much regard to the aboriginal characteristic of obedience to authority. The new prison at Port Augusta is very secure. Very few aboriginal prisoners need to be confined in that degree of security. The general need for educational, medical and psychiatric treatment programmes is even greater for aborigines than it is for non-aboriginal offenders. In many cases aboriginal prisoners need instruction in basic hygiene. Many lack even an elementary knowledge of the English language for ordinary purposes. A period of imprisonment should be used so far as possible with all offenders to improve their social competence. The more clearly incapable an offender is of managing his own life, the more important it becomes to improve his capacities. Most aboriginal offenders are in the category of inability to cope. In addition to such basic matters as hygiene and language, and we emphasize that we are speaking here of a very elementary level of accomplishment, aboriginal prisoners should be involved in discussion groups on the operation of the law and social welfare agencies. An educational programme should be devised specifically for aborigines and should include a wide range of academic, vocational and socio-recreational activities. An activity at which aboriginal prisoners often excel, perhaps because of their communication problems, is artistic self-expression. This ought to be encouraged. The role of prison officers is of outstanding importance with aborigines. We have recommended already (chapter 5, paragraph 8 (*a*) above)

that determined efforts be made to recruit aboriginal personnel into the correctional service, not to deal specifically with aboriginal offenders but to become a normal part of the system. It is noteworthy that although a few young aboriginal men have been found to undertake police training, not one has so far undertaken the less demanding training of a prison officer.

2.5 Effect of Recommendation. We emphasize that we do not regard our recommendations with respect to aboriginal offenders as more than minor palliatives. The correctional phenomena which they present are merely one facet, albeit an exceptionally disturbing one, of a much wider social problem. No doubt this wider problem ought to be approached at the federal level on a national scale, but we do not see this as diminishing the responsibility of this State or its law enforcement agencies for aboriginal offenders. In prison or out of it, all agents of the law have a special duty to ensure that aborigines who are charged with or convicted of an offence understand what is happening and why. All too often they are inarticulate and ill-informed and unquestioningly accept whatever orders they receive. It is quite possible that many of them are technically unfit to plead because they do not understand the proceedings and have no idea what is the purpose of imprisoning them. These are not reasons for placing them outside the law. They are reasons for taking the view that all law enforcement officers should accept a special responsibility for the welfare of these singularly disadvantaged citizens.

2.6 Recommendations with respect to Aboriginal Offenders.

(*a*) *We recommend that as a matter of general policy the aboriginal component of the prison population be recognized as presenting special problems which require special consideration.*

(*b*) *We recommend that in order to accumulate information on which constructive policy decisions can be based, separate statistics be kept of aboriginal defendants and offenders at all stages of criminal law enforcement.*

(*c*) *We recommend that all law enforcement officers accept a special responsibility for the welfare of aboriginal defendants and offenders.*

(*d*) *We recommend that the widespread use of short-term imprisonment for aboriginal offenders be replaced to the greatest extent possible and as soon as possible by the use of supervised probation.*

(e) *We recommend acceptance of its disproportionate impact on the imprisonment of aboriginal offenders as a ground for abolishing the offence of public drunkenness.*

(f) *We repeat earlier recommendations that the training of correctional personnel include attention to the problems of aborigines and that every effort be made to recruit aborigines into the correctional service, but not specifically for service with aboriginal offenders.*

(g) *We recommend that a further inquiry be instituted into the situation of aborigines in South Australia with a view to the implementation of remedial measures.*

3 Public Drunkenness. In the foregoing discussion of the special problems of aboriginal offenders we have referred to the disproportionate prominence, and effect on the total size of the prison population, of the offence of public drunkenness. This is a general phenomenon, not confined to aborigines. In this part of the report we recommend the abolition of this offence, as serving no useful purpose, and the implementation of consequential measures. The offence of drunkenness in a public place has always been part of the statute law of South Australia. One of its characteristics has been, and continues to be, the legislative specification of short-term imprisonment as an alternative to a fine. Originally the penalty for a first offence was not to exceed £1 or imprisonment for a period not exceeding three days, and for any subsequent offence a penalty not to exceed £5, or imprisonment not exceeding 14 days. The Police Act, 1936, s. 74, increased the fine for any offence to £5 or imprisonment for 14 days. Section 9 of the Police Offences Act, 1953-1972, provides a penalty of $10 or imprisonment for 14 days for a first or second offence, but $20 or imprisonment for three months for a third or subsequent offence. It seems that the legislature, in increasing the maximum term of imprisonment for a third offence to three months, had in mind that a cure for alcoholism might be effected if the offender served a substantial term of imprisonment without opportunity to ingest alcohol. The courts today would not sustain a sentence the length of which was determined by the likelihood of the offender's being cured of alcoholism whilst in prison. Apart from the impropriety of such a sentence, the likelihood of cure is slight. We have received a number of submissions that the offence of public drunkenness should be abolished. Those who have made this submission include the Commissioner of Police, several of his senior officers, many prison officers, and aboriginal welfare organizations. It is apparent that there are certain alcoholics of limited or no means of support who plead guilty to charges of drunkenness with monotonous regularity. The problem of alcoholism may be no greater with them than with more affluent members of the community, but

whereas the latter have the means to be cared for when they are drunk, the former do not. Furthermore the drunkenness of the former usually occurs in a public place, perhaps because they have no other place to which to resort for the purpose, whereas the latter can become drunk in their own homes and commit no criminal offence. There is therefore much to be said for the proposition that this is an offence to which the less affluent are vulnerable. A term of imprisonment appears to have no general or particular deterrent effect. It cannot be seriously suggested that the short term of imprisonment imposed has a rehabilitative effect. It may and often does regenerate the health of the convicted alcoholic. While in prison he has no access to alcohol, is fed regularly and housed. If drunkenness in a public place ceases to be an offence there arises a need for some means of dealing with persons found drunk in public. There are several reasons for this. On humanitarian grounds the drunk should not be left to be run over by passing traffic or assaulted and robbed. The passing motorist should not be required to negotiate a street in which a drunk is lying or weaving his way. The drunk should not be left to die from malnutrition or excess of alcohol. Public order and decorum require that persons who through drunkenness have become an offensive spectacle should be removed from public sight.

3.1 Recommended Measures. Abolition of the offence of public drunkenness removes the authority of the police to arrest people on that ground. Since we accept the view that drunks should not be left on public view, a need arises for substitute measures which will continue to ensure that the police and the prison authorities are not diverted from their proper task of protecting the public by the need to function as a social welfare agency for the inebriated. We point out that this does not mean that there will in future be no drunken offenders. Alcohol plays a part in many offences. If another offence is being or has been committed, abolition of the offence of public drunkenness in no way affects the powers and duties of the police in relation to that other offence. This will no doubt mean that troublesome or aggressive drunks will continue to be arrested and charged on other grounds, a proceeding which is clearly appropriate in the public interest. The problem of the person who is sufficiently drunk in public to draw attention to himself is normally that he is also incapable of looking after himself. He presents a social problem but not a social threat. Apart from possible danger to motorists and the distasteful public spectacle, the only interest involved is his own. He needs a place to sober up. We recommend the establishment of detoxification centres. These are State-owned overnight houses for insensible and exhausted drunks. They cannot be established everywhere. On the present distribution of population we envisage detoxification

centres initially at Adelaide, Port Adelaide, Elizabeth, Stirling, Christies Beach and in each of the larger country towns. In smaller country places such centres are impracticable. For them there appears to be no alternative to continuing the present system of using police cells, designating them as detoxification centres for the purpose. In order to get drunks to the detoxification centres a support staff, including medical facilities, and transport will be needed. Both these staff and the police should be authorized to detain in public places persons whom they reasonably suspect to be drunk and to convey them to a detoxification centre. Since there is no point in taking a drunk to a detoxification centre if he has a nearby home to go to and can identify it, they should be authorized also to take him home, and required to do so if this course of action is reasonable in the circumstances. It is difficult at this stage to estimate what numbers of staff and vehicles will be required for adequate coverage of the main urban areas. We envisage that for some time yet the police will be obliged to continue to undertake this task as the new scheme is phased in. In sparsely populated areas it will necessarily remain a police task. Since the apprehension of drunks will not be based on the commission of a criminal offence, and there will be therefore no obligation to produce them before a court to be charged, questions of civil rights arise. We recommend that every person removed to a detoxification centre be produced before a court, specially convened for the purpose and separate from the centre, on the first weekday morning after apprehension. The court should consist of a magistrate or, where no magistrate is available, two justices of the peace. An ordinary courtroom should be used for the purpose. The responsibility for producing persons detained should rest on the officer in charge of the centre. The court should either discharge the person brought before it or order that he be detained for a further 24 hours, provided that a person may be discharged from a centre at any time on the written authority of the officer in charge. Any such authority should be produced to the court at its next sitting in order that the judicial record of the disposal of detainees should accord exactly with the record of persons admitted. The point of these procedures is fourfold: to afford protection for the police and detoxification staff in the exercise of their powers; to ensure that no-one is detained for more than a minimum period without judicial authority; to ensure that no-one is discharged until he is in a fit condition to leave; and to afford detainees an opportunity to express to a court any protest they may wish to make about the fact of detention. If further inquiry seems to be merited, the court should have authority to order it. There should be a maximum limit of 72 hours on the length of time that a person may be detained in a

detoxification centre on any one occasion. If at the end of that time the person concerned does not appear to be fit to leave, he should be conveyed to a hospital. Police and detoxification staff would need reasonable protection in the exercise of their powers before the stage at which the detainee is produced to the court. We recommend that if the official who apprehended the detainee suspected that he was drunk and had reasonable grounds for doing so, no action for false imprisonment or assault should lie in respect either of his conveyance to the detoxification centre or his detention there until produced to the court, provided that he is so produced on the first available occasion. Finally we recommend that persons who are able to do so should be ordered by the court to pay the cost of their conveyance to the centre, their accommodation and treatment there and meals. Under s. 9 (2) of the Police Offences Act, 1953-1972, a person convicted of drunkenness may be ordered to pay a reasonable sum to cover the expenses of apprehension, conveyance, custody and medical examination. All that appears to be required is an amendment of s. 9 to make it applicable to persons detained in accordance with our recommendations without being convicted of an offence. There is more difficulty in recovering costs from drunks who are taken home. They will not be produced to a court but in all probability they will in general be in a better position to pay than those who are taken to a detoxification centre. Since a record of their conveyance ought to be rendered to the court, perhaps it could be made a matter of routine for an order for costs to be made on that occasion. Officers could be authorized to recover the cost on the spot if the drunk himself or his family is willing to pay at once.

3.2 Recommendations with respect to Public Drunkenness.

(*a*) *We recommend that the offence of public drunkenness be abolished.*

(*b*) *We recommend that detoxification centres be established wherever practicable and that police cells be designated detoxification centres elsewhere.*

4 Alcohol and Drug Addiction. A large proportion of convicted offenders have an alcohol problem even if they cannot properly be classed as alcoholics. For those in prison the only available help appears to be through Alcoholics Anonymous. It is likely that even if a prisoner attends meetings of this society in prison, he will not continue to do so after he leaves. Moreover the non-alcoholic conditions of prison life do not afford any means of testing the effectiveness of attending such meetings. Where an offender is conditionally discharged on bond instead of being sentenced to imprisonment, a condition sometimes imposed is

abstinence from alcohol for a stated period. This condition is difficult to supervise and is not regarded with favour by probation officers. We are sceptical of its utility but we do not go so far as to recommend its abolition.

4.1 Alcohol and Drug Addicts (Treatment) Act, 1961-1964. This statute empowers a court to take action with respect to an offender who is proved to be an addict within the meaning of the Act. An addict is defined in s. 4 to be a person addicted to the excessive consumption or use of alcoholic or intoxicating liquors, or specified drugs, who is thereby at times rendered either dangerous to himself or others or incapable of managing his affairs. Where such a person is convicted of an offence of which drunkenness, or being under the influence of alcoholic or intoxicating liquors or drugs, is a necessary part, or of an offence which was as a fact committed under the influence of drunkenness, liquor or drugs, whether a necessary part of the offence or not, the court may conditionally discharge him. The conditions of the discharge are that he attend a voluntary centre for treatment, remain under supervised probation and abstain from alcohol, intoxicating liquor and drugs except on medical authority. The periods of voluntary treatment, supervised probation and abstention are to be specified by the court and are to be in the first case not less than six months and in the other two not more than three years. There are consequential provisions for further offences. The Act provides also for an Alcohol and Drug Addicts Treatment Board. There is at present a hospital treatment centre under the control of the Board, which can receive in-patients, and an out-patient clinic, both in Adelaide.

4.2 Other Statutes. Certain specific offenders are dealt with under other statutes. A second or subsequent conviction for driving under the influence of liquor under s. 47 of the Road Traffic Act, 1961-1972, carries a mandatory sentence of imprisonment. Disqualification from driving is mandatory on any conviction. A third or subsequent conviction under s. 57b of the Act for driving with a blood alcohol content exceeding .08 grammes also carries a mandatory sentence of imprisonment. Although we have expressed the view as a general principle (chapter 2, paragraph 3.3 above) that legislatively fixed sentences are not good correctional policy, this may represent an area in which the legislature is justified in concluding that for the safety of the public the offender must be removed from the community for a period. It places him in the category of dangerous offenders, as measured by the harm done and the potential for harm. We observe however that unless some effort is made to detach the offender from alcohol, so that he does not revert immediately on being released, imprisonment is only a limited

solution. There is also the Narcotic and Psychotropic Drugs Act, 1934-1972, which creates a wide range of offences connected with drugs and indicates the seriousness with which the matter is viewed by prescribing maximum sentences of a $4,000 fine or ten years imprisonment or both. From 1970 to 1972 there was in operation a mandatory section providing for a suspended sentence of imprisonment under certain circumstances. It was repealed because the judiciary were of opinion that a mandatory sentence in this area was too inflexible for effective use.

4.3 Critique. Problems arising from alcohol and drug addiction, dependence or indulgence have a considerable impact on the criminal law, not only because they raise questions of the extent to which they should be offences in their own right but also because they are the cause of offences of all kinds which do not by definition involve drink or drugs. Apart from the recommendation which we have made already in this chapter for the abolition of the offence of public drunkenness, we regard discussion of the extent to which there should be substantive drink and drug offences as pertaining to a later stage of our inquiries. The wider problem of the influence of alcohol and drugs on society generally is beyond our present competence and terms of reference. It has been dealt with to some extent in the recent report of the Committee of Enquiry into Health Services of South Australia, chapter 10. We express no opinion at this stage on the recommendations of that committee with respect to substantive offences. We have recommended earlier in this report (chapter 5, paragraph 13.10. (*c*) above) that much improved medical and psychiatric services should be made available to prisoners. The need is no less urgent if a substantial proportion of prisoners have an alcohol or drug problem. Such benefits as the public may derive from the imprisonment of offenders who are by reason of drug or alcohol dependence a menace if left at large can only be increased if every effort is made to utilize their prison sentence for curative measures. We have therefore no specific recommendations on this problem which are not already covered by our general recommendations elsewhere. These include research into ways of improving the present situation, which is obviously a matter for the widest co-operation between research agencies both within and outside the correctional system, and into the effects of particular forms of sentence.

4.4 Recommendations with respect to Alcohol and Drug Addiction. *We make no specific recommendations on this subject because such courses of action as we should recommend are covered already by our recommendations generally with respect to the correctional system.*

CHAPTER 7

SUMMARY OF RECOMMENDATIONS

Recommendations with respect to Legislative Sentencing.

1 We recommend no change in the present policy whereby in general the legislature confines its role to the prescription of maximum sentences for offences and leaves to subordinate sentencing authorities wide discretion in sentencing particular offenders up to the prescribed maximum.

2 We recommend that the use of legislatively fixed or definite sentences be confined to such summary offences as those connected with road traffic which lend themselves to effectiveness of enforcement in this manner.

3 Except in the case of life imprisonment we do not recommend the use of indeterminate sentences at all.

4 We do not recommend any change in the legislative prescription of life imprisonment as a maximum sentence for offences to which it is thought to be appropriate.

5 We do not recommend the legislative imposition of minimum sentences but we do recommend the continued use of the minimum sentence concept at the post-legislative level subject always to legislatively prescribed maximum sentences.

6 We do not recommend the legislative ordering of available sentences in a sequence of seriousness for any purpose.

Recommendations with respect to Judicial Sentencing.

7 We recommend that primary responsibility for post-legislative sentencing remain with the courts.

8 We do not recommend that the sentencing functions of trial courts be transferred to any form of non-judicial tribunal, or to any other judicial tribunal than the trial court except in the case of appeal.

9 We do not recommend the appointment of assessors to sit with and assist the courts on sentence.

10 We do not recommend jury participation in sentencing.

11 In conjunction with recommendation (7) above, we recommend that the present practice of leaving the greater part of post-legislative discretion in sentencing to the courts, as opposed to other post-legislative sentencing authorities, be retained.

12 We recommend that the present judicial practice of expressing sentences as maxima, within or up to the maxima set by the legislature, be retained.

13 We recommend that both trial and appellate courts give, or continue to give as the case may be, detailed reasons for sentence, including in appellate courts reference to appellate decisions, learned discussion and the apparent intentions of the legislature.

14 We recommend that the prosecution take a full part in argument and the presentation of evidence on sentence.

15 We recommend that the present availability of appeal against sentence on summary conviction by both defence and prosecution be retained.

16 We recommend that the present availability of appeal against sentence on conviction on information by the defence, with leave of the Full Court, be retained.

17 We recommend that the prosecution have a similar right of appeal, with leave of the Full Court, against sentence after conviction on information.

18 We recommend that in cases where the defence appeals against sentence but the prosecution does not, it be normal prosecution practice to be represented at, and participate in, the appeal.

19 We recommend that in deciding whether to grant leave to appeal, or to allow an appeal, appellate courts enlarge the scope of the ground that the trial judge has acted on a wrong principle to include the case where the trial judge has applied the correct principle, enunciated it accurately, and taken all proper matters into account but nevertheless arrived at a result, whether as to length or as to type of sentence, which the appellate court thinks is wrong; and that as a corollary manifest excess be discontinued as a separate ground of appeal.

20 We recommend that appellate courts have power to increase sentence only on an appeal by the prosecution.

21 We recommend that s. 353 (4) of the Criminal Law Consolidation Act, 1935-1972, be amended to empower the Full Court to receive additional evidence on appeals against sentence without regard to the reason why such evidence was not before the trial court.

22 We recommend the regular reporting of judgments and appeals on sentence in the South Australian State Reports.

23 We recommend that a concise handbook of sentencing be prepared for the assistance of the judiciary and magistracy, and be kept regularly up to date.

24 We recommend that the judiciary and magistracy attend periodical sentencing seminars, make regular visits to the correctional institutions of this State, and of other jurisdictions as the opportunity arises, and maintain personal contact with persons regularly engaged in post-judicial sentencing.

Recommendations with respect to the Parole Board.

25 We recommend that the Parole Board be discontinued and that responsibility for parole release of prisoners be transferred to the courts.

26 Should recommendation (25) not be accepted, we recommend substantial changes in the constitution and mode of operation of the Parole Board.

Recommendations with respect to Pre-sentence Reports.

27 We recommend that the courts avail themselves of pre-sentence reports in all cases where there is reasonable ground to expect that such a report will assist the sentencing process on conviction or at any later stage, but we do not recommend that they should be obliged in any case to order such a report.

28 We recommend that the courts particularly consider ordering a pre-sentence psychiatric, medical or social report, as may be appropriate, where the offender may be mentally ill, or physically unfit to do work which may be assigned to him, or is under 21 and has been convicted of a serious offence, or is unrepresented and is at risk of a sentence of imprisonment of 28 days or more.

29 We recommend that pre-sentence reports not be ordered where the offence is trivial, or does not call for a sentence of imprisonment, or for some other reason does not call for an onerous sentence, or where the offender is unlikely to re-offend, or for the collection of research information alone, or for any other reason ulterior to immediate assistance in sentencing that particular offender.

30 We recommend that particular care be exercised in ordering pre-sentence psychiatric reports.

31 We recommend that a pre-sentence report be not ordered unless there are available suitably trained staff who are able to render the report within a reasonable time.

32 We recommend that in its order for a pre-sentence report the court specify any information which it particularly wishes to have but do not, except where the offender is released on bail to report for sentence on a given date, specify a date on which the report must be available. If undue delay is encountered the court should recall the offender for sentence of its own motion.

33 We recommend that there be no statutory or administrative specification of the contents of a pre-sentence report or a prescribed form for it to take.

34 We recommend that third parties be entitled to insist on anonymity as a condition of supplying information.

35 We recommend that the compiler of a pre-sentence report be entitled to express expert opinion on the probable effect of a non-custodial sentence, but that he be not entitled to recommend the sentence to be imposed.

36 We recommend that the compiler of a pre-sentence report be not empowered to order further examinations or reports but that he be under a duty to draw to the attention of the court any apparent need for them.

37 We recommend that a pre-sentence report be not dependent on the consent of the offender but that he have a right of appeal against such an order, to a single judge or to the Full Court, as may be appropriate to the jurisdiction, on the ground that it will entail unjust delay in sentencing him.

38 We recommend that copies of pre-sentence reports be supplied routinely to both the prosecution and the offender except, in the case of a pre-sentence social report only, where the report contains material not previously known to the offender which in the opinion of the court it would be better not to reveal to him; and that consequentially, where the compiler of a report acquires information which in his opinion may fall into this category, he make it the subject of a separate confidential report to the court.

39 We recommend that both prosecution and offender have a right of cross-examination to challenge the accuracy of any factual statement in a pre-sentence report, except that where cross-examination is impossible because the source of the statement insists on anonymity, the statement be disregarded by the court if its accuracy is disputed by the offender.

40 We recommend that facts stated by the officer preparing the report as within his own knowledge be disregarded if challenged unless substantiated on oath.

41 We recommend that the prosecution be under a duty to draw to the attention of the court suspected inaccuracies not mentioned by the offender.

Recommendations with respect to an Alternative Sentencing System.

42 We recommend the restructuring of sentences of imprisonment on a tripartite basis to consist in principle of equal terms of imprisonment, parole and conditional release.

43 We recommend that although in general the principle of equality between the three parts of the sentence be maintained, the courts have discretion to vary this proportion as they see fit.

44 We recommend that the constituent parts of the sentence be specified by the court at the time when sentence is imposed.

45 We recommend that the Prisons Department have power to apply for the parole release of a prisoner at any time before the expiration of his specified period of imprisonment on the ground that he is suitable for parole release, and that the court have power to vary its original sentence accordingly.

46 We recommend that notwithstanding the foregoing, no offender sentenced to imprisonment be eligible for parole or conditional release until he has served a minimum of three months in prison.

47 To the intent that periods of parole supervision and conditional release should not become unduly long, we recommend that at any time after the expiration of one year's parole supervision an offender may apply to the court, or other paroling authority, for discharge from the balance of his original sentence.

48 We recommend that where a sentence of life imprisonment is imposed, the court specify a non-parole period but no conditional release period, the Prisons Department retaining, as in all other cases, power to apply for its reduction.

49 We recommend that the foregoing scheme not apply to imprisonment for contempt of court, including contempt by way of non-payment of money ordered to be paid.

50 Consequent upon the foregoing recommendations we recommend that the use of remissions of sentence be discontinued.

Recommendations with respect to Consecutive Sentences.

51 We recommend that on any one occasion the courts have power to impose one consecutive sentence but no more.

52 We recommend that the foregoing power be used sparingly but that it apply to all classes of offences without distinction.

53 We recommend that the court when imposing a consecutive sentence should specify non-parole and conditional release periods on the basis that the total maximum period of imprisonment judicially specified be treated as one sentence.

Recommendations with respect to Persistent Recidivists.

54 We recommend the repeal of habitual criminal and persistent offender legislation, and the repeal also of all legislation similar to s. 134 of the Criminal Law Consolidation Act, 1935-1972, which automatically increases the maximum sentence after a given number of previous convictions, except where, as with certain traffic and regulatory offences, there are special reasons for a legislative gradation of penalties.

55 Subject to the foregoing exception we do not recommend that persistent recidivists be placed in a special category for any purpose.

Recommendations with respect to Sexual Offenders.

56 We recommend the repeal of s. 77a of the Criminal Law Consolidation Act, 1935-1972, and s. 42p of the Prisons Act, 1936-1972, and the consequential enactment of transitional legislation to authorize the continued detention as mentally ill offenders, if that is in fact the case, of such persons as are at present detained under s. 77a.

57 We do not recommend the placing of sexual offenders in a special category for any purpose.

Recommendations with respect to Mentally Ill Offenders.

58 We recommend that the expression "mentally ill offender" be substituted in all legislation for the expression "criminal mental defective".

59 We recommend that the power in the Director-General of Mental Health Services to decide whether time spent by a mentally ill offender or defendant in a mental hospital should be credited against imprisonment be removed to the courts.

60 We do not recommend special measures with respect to psychopathic offenders.

Recommendation with respect to Offences Committed in Prison.

61 We recommend that a distinction be drawn between offences against the general law and disciplinary offences to the intent that the former be dealt with by the ordinary courts and the latter by visiting magistrates and superintendents of prisons.

Recommendation with respect to Reciprocal Arrangements.

62 We recommend that further inquiry be made into the possibility of introducing interstate reciprocal imprisonment arrangements.

Recommendations with respect to Prison Work.

63 We recommend that the controlling aim of prison work be to keep imprisoned offenders interestingly occupied as a means of minimizing the character-distorting effects of imprisonment and that conflicting interests other than those of security be subordinated to this aim.

64 We recommend that the appropriateness of an occupation for inclusion in a prison work programme be evaluated by reference to the three criteria of inherent suitability to the restricted prison environment, relative cheapness of installation and maintenance, and appeal to the widest range of prisoners, and that no programme be introduced which fails seriously to meet any of these three.

65 We recommend that the far-reaching consequential measures implied by the foregoing principles be carried into effect, particularly

with respect to the influence of productivity on the present prison work programme.

Recommendations with respect to Payment of Prisoners.

66 We recommend that prisoners be paid an allowance on the basis that such a step serves constructive correctional purposes and not on the basis that it is analogous to wages in normal employment.

67 We recommend an immediate increase to a standard $1 a day in payment to all prisoners without distinction of category or occupation.

68 We recommend the immediate and regular review of payments to prisoners with a view to giving such payments a reasonable relationship to the cost of living having regard to their correctional purposes.

69 We recommend a substantial increase in the range of minor amenities available to prisoners for purchase and that the use of the word "indulgences" be discontinued.

Recommendations with respect to Prison Education.

70 We recommend that the close connection between prison education and prison work be recognized and acted upon as a guiding principle.

71 We recommend that prison education be accepted as a function of education and not of imprisonment and accorded a corresponding status, facilities and staff.

Recommendations with respect to Classification of Prisoners.

72 We recommend that the functions of the present Classification Committee be divided between a central Placement Committee and the superintendents of prisons and that greater regard be had by the latter to representations by the imprisoned offenders themselves.

Recommendations with respect to Legal Status of Prisoners.

73 We recommend that legal representation and advice services be provided for imprisoned offenders.

74 We recommend that convicted offenders be allowed the same voting rights as ordinary citizens.

75 We recommend that restrictions on and censorship of prisoners' mail be discontinued except to the minimum extent necessary for incoming mail in specified cases of high security risk.

76 We recommend that visits to prisoners be encouraged and that visiting be subject only to such limitations of time, place and frequency as are organizationally necessary or reasonably required for security to be maintained.

77 We do not recommend the introduction of conjugal visits.

78 We recommend further inquiry into the problems arising from publication of criminal records.

General Recommendations with respect to Semi-custodial and Non-custodial Sentences.

79 We recommend that as a general policy the whole range of semi- and non-custodial sentences be available to courts exercising criminal jurisdiction to be used either singly or in such combinations as the courts see fit for any type of offence.

80 We recommend that the proliferation of semi- and non-custodial alternatives to imprisonment be not carried to the point of over-refinement.

81 We recommend that detailed evaluative studies be instituted of the actual working of each form of sentence.

Recommendation with respect to Dismissal Without Conviction.

82 We recommend that this power be retained in courts of summary jurisdiction but be not extended to superior courts.

Recommendations with respect to Conditional Discharge.

83 We recommend that both statutory and common law powers to order conditional discharge be reduced to one uniform enactment.

84 We recommend that all courts exercising criminal jurisdiction have power to order either unconditional or conditional discharge.

85 We recommend that no period of conditional discharge extend beyond three years.

86 We recommend that conditional discharge not be available for use in combination with a sentence of imprisonment.

87 We recommend that the court have power to impose such conditions on conditional discharge as it sees fit, including supervision by a probation officer.

88 We recommend that where a condition of supervised probation is made the court notify the probation service by direct communication.

89 We recommend that upon breach of condition the offender be brought before the court either by warrant of arrest or by summons, as seems appropriate to the prosecuting authority.

90 We recommend that where the breach of condition is the commission of another offence for which the offender is charged before a different court the second court have power to determine both issues, except that where the second court is of inferior jurisdiction to the original court it should adjourn proceedings until the original court has determined the breach of condition issue.

Recommendations with respect to Suspended Sentence.

91 We recommended that the courts retain power to suspend the commencement of a sentence of imprisonment upon such conditions as they see fit.

92 We do not recommend that this power extend to the suspension of other sentences, having regard to the courts' powers of conditional discharge and to the undesirability of over-complicating the sentencing system.

93 We do not recommend that a suspended sentence be mandatory under any circumstances.

94 We recommend that the courts be given a general power to vary the original suspended sentence order, as an alternative to enforcing it as it stands, when offenders are brought before them for breach of condition.

95 We recommend that upon breach of condition the offender be brought before the court either by warrant of arrest or by summons, as seems appropriate to the prosecuting authority.

96 We recommend that where the breach of condition is the commission of another offence for which the offender is charged before a different court, the second court be both empowered and obliged to determine both issues, except that where the second court is of inferior jurisdiction to the original court it should adjourn proceedings until the original court has determined the breach of condition issue.

97 We recommend that where the breach of condition is the commission of another offence for which the offender is charged before the same court, the court be obliged to determine the breach of condition issue before imposing sentence for the second offence.

98 We recommend that a study of the operation of the suspended sentence in South Australia be undertaken in approximately two years time, and that it take into account adverse criticisms of this form of sentence which have been made elsewhere.

Recommendation with respect to Deferred Sentence.

99 We recommend that courts exercising criminal jurisdiction be empowered to defer the imposition of sentence for not more than six months from conviction.

Recommendations with respect to Fines.

100 We recommend that the power to fine, within limits specified by Parliament, be retained by all courts exercising criminal jurisdiction as one of their non-custodial alternatives to imprisonment.

101 We recommend that a fine be an available sentence for all offences.

102 We recommend that the courts have power to impose a fine in combination with such other semi- and non-custodial sentences as seem appropriate to them but do not have power to combine a fine with an immediately effective sentence of imprisonment.

103 We recommend that when considering the appropriateness of a fine the courts take into account (in addition to such general factors as the gravity of the offence) the ability of the offender to pay, on whom the effective burden will fall, and the possibility that deferment of sentence will motivate the payment of compensation by the offender.

104 We recommend that in considering on whom the effective burden will fall, the courts do not use the offender as a means of imposing a fine on third parties who are not before the court.

105 We recommend that for minor offences punishable by a small fine there be served with the summons a form on which the offender may make a declaration of his means and commitments.

106 We recommend that in cases of default not amounting to contempt of court the courts make further inquiry with a view to deciding if an extension of time to pay or a substituted sentence is appropriate, and that the courts have power to take either course of action at their discretion.

107 We recommend that in cases of default amounting to contempt of court the fine be either remitted or some other sentence substituted, that the offender be sentenced for the contempt at the same time, and that the courts have power to take these courses of action.

108 We recommend that the guiding principle on defaults of any kind be the proper disposition of the offender and not the recovery of the fine imposed.

Recommendations with respect to Disqualification.

109 We recommend that the use of disqualification be continued as a sentence for offences arising out of authorization to engage in a given activity or occupation, or to occupy a position of trust, and that where its use is prescribed or permitted by the legislature the courts have a general power to use it in combination with any other form of sentence available for the offence in question.

110 We recommend that consideration be given to further inquiry into the desirability of leaving a power of disqualification in the hands of private professional organizations where the ground of disqualification is the commission of a criminal offence, as opposed to non-criminal failure to abide by the rules of the organization.

Recommendations with respect to Periodic Detention.

111 We recommend that periodic detention, as distinguished from weekend imprisonment, be introduced as a semi-custodial sentence generally available to courts exercising criminal jurisdiction.

112 We recommend that close regard be had to the structure and administration of periodic detention, in the sense in which that term is used in this report, in New Zealand.

Recommendations with respect to Pre-release Employment, Work Release and Pre-release Hostels.

113 We recommend the introduction of administratively controlled pre-release employment not exceeding six months in duration.

114 We do not recommend the introduction of work release or pre-release hostels.

Recommendation with respect to Home Visits.

115 We recommend that up to three subsidized home visits be administratively allowed to selected prisoners at intervals of not less than one month as a pre-release measure.

Recommendations with respect to Corporal and Capital Punishment.

116 We do not recommend the re-introduction of corporal punishment.

117 We recommend the abolition of capital punishment.

Recommendations with respect to Compensation.

118 We recommend that the scope of the Criminal Injuries Compensation Act, 1969, be extended to encompass a comprehensive scheme of compensation for loss or injury caused by crime.

119 We recommend that consequent thereupon other compensation provisions be repealed.

120 We recommend that the possibility of introducing criminal bankruptcy be further investigated.

Recommendations with respect to Departmental Name and Structure.

121 We recommend that the Prisons Department be renamed the Department of Correctional Services.

122 We recommend that the Department of Correctional Services have a tripartite structure which reflects the three main correctional functions of custodial security, community service and research and planning.

123 We recommend that an independent permanent advisory council be set up, answerable to the Minister, to keep the operation of the correctional system and the formulation of policy under constant review.

Recommendations with respect to Training, Promotion and Recruitment.

124 We recommend that appointment to senior positions in the correctional service, permanent appointments as probation or parole officers and promotion within the prisons branch be based on objectively specified qualifications as to training, education and experience.

125 To this end we recommend the creation of a three year College of Advanced Education course leading to a Diploma of Correctional Science as a minimum qualification for appointment to a senior position in the correctional service or to permanent probation or parole officer.

126 We recommend that satisfactory completion of a proportion of the diploma course be made the basis for promotion within the prisons branch.

127 We recommend that prison officers be given every encouragement by way of time, facilities and tuition fees to advance their secondary education to the point of eligibility to undertake the diploma course.

128 We recommend that the initial training of prison officers be structured to emphasize competence in their primary custodial role and exact knowledge of the scope of their powers and duties as a basis for the exercise of sensible discretion in their handling of prisoners.

129 We recommend that sensitivity to the human element in the performance of custodial duties be developed by weekly staff discussion groups and that particular attention be paid to problems of aborigines.

130 We recommend that no reliance be placed on in-service training for the acquisition of the basic skills and knowledge required of a prison officer, as opposed to the acquisition of experience in the use of that skill and knowledge.

Further Recommendations with respect to Correctional Personnel.

131 We recommend that particular efforts be made to recruit women, who are at present under-represented in the correctional service, and aborigines, who are at present not represented at all.

132 We recommend that all positions in the correctional service be available to female or aboriginal staff on the same basis as to non-aboriginal male staff.

133 We recommend that a substantial component of female personnel be phased in to the staff establishments of male prisons.

Recommendations with respect to the Probation and Parole Service.

134 We recommend that staff numbers be increased to, and maintained at, a level which ensures that no officer's caseload exceeds 45 at any one time.

135 We recommend that office accommodation and support secretarial staff be increased to, and maintained at, a level which ensures that officers can always interview in private and are not diverted to clerical duties.

136 We recommend that the use of probation officers as prison welfare officers be discontinued and that probation officers be not stationed in prisons except for purposes of training and experience.

137 As interim measures pending the establishment of a Diploma of Correctional Science as a prerequisite for permanent appointment as a probation and parole officer we recommend that as many positions within the service as is practicable be upgraded to attract persons holding a current diploma of social administration or social science and that training be provided for personnel not accepted for courses leading to such diplomas.

Recommendations with respect to Volunteer Correctional Personnel.

138 We recommend the widespread use of volunteer correctional personnel in those areas to which voluntary work is suited.

139 The foregoing recommendation rests on the proposition that the correctional system benefits from community involvement. It follows that volunteer work should be complementary to, and not in substitution for, professional work and that it should therefore not be resorted to as a measure of economy.

140 We recommend that prison visiting, the assistance of ex-prisoners and honorary probation and parole work be the correctional activities selected as suitable for volunteer work.

141 We recommend assistance to voluntary organizations for the establishment of post-release hostels.

142 We recommend that the selection of volunteers be not confined to any particular section or sections of the community, and that ex-offenders be not necessarily excluded from consideration.

Recommendations with respect to Research.

143 We recommend the establishment within a Department of Correctional Services of a research and planning branch with the functions of collection of information on which to base policy decisions, the formulation of suggested policy and the implementation of decided policy with detailed planning.

144 We recommend that every encouragement be given to the furtherance of extra-departmental criminological research and that combined projects be undertaken whenever practicable.

Recommendations with respect to Police Personnel and Facilities.

145 We recommend that the use made at present of police personnel and facilities for custody and conveyance of prisoners in and to and from remote areas be continued.

146 We recommend that prison officers be appointed, normally on an area basis, for the assistance of the police in those matters which are more properly the concern of the prisons branch.

147 We recommend the establishment of a police prison and the appointment of a full-time prison officer at Coober Pedy as soon as possible.

148 We recommend that a survey be carried out as soon as possible of the adequacy and fitness for human occupation of all police prisons and lockups, particularly in country areas, and that immediate steps be taken to replace those which are found to be defective. We make special mention of the need for new premises at Port Adelaide.

149 We recommend the continuance, and extension where a useful purpose would be served, of the police air service for the conveyance of prisoners.

Recommendations with respect to Existing and Projected Prisons.

150 We recommend as a matter of high priority that a properly designed and staffed pre-trial detention centre be built on a site within convenient reach of the city.

151 We recommend that at least one new prison be built in the metropolitan area of Adelaide for the accommodation of prisoners classified to medium and minimum security accommodation and that a similar prison be built in the Port Augusta area.

152 We recommend that reasonable minimum standards of accommodation, diet and medical, dental, optical and psychiatric services be decided upon and put into effect with the least delay in all South Australian prisons.

153 We recommend that no convicted prisoner be classified to maximum security unless his actual term in prison is to be not less than one year and it is not reasonable to classify him to any less rigorous degree of security.

154 We recommend that a minimum acceptable ratio of custodial staff to prisoners be determined upon and put into effect in all South Australian prisons, due regard being had in the smaller prisons to the difficulties of rostering small establishments.

155 We recommend no addition to present maximum security capacity for convicted offenders.

156 We recommend that maximum security for male prisoners be concentrated at Yatala and Port Augusta Prisons.

157 We recommend that maximum security for female prisoners continue to be provided only at the Women's Rehabilitation Centre.

158 We recommend that medium and minimum security accommodation be provided for female prisoners in the Port Augusta area as soon as possible and that the Women's Rehabilitation Centre continue to be used for this category of female prisoner also.

159 We recommend that dormitory accommodation for aboriginal prisoners be provided at Port Augusta Prison.

160 We recommend that Yatala Prison be converted entirely to maximum security and limited to a capacity of 400 prisoners.

161 We recommend that Mount Gambier and Port Lincoln Prisons be converted entirely to medium and minimum security accommodation, save that in the former case some maximum security accommodation be provided for male defendants remanded to await trial on circuit.

162 We recommend that maximum security accommodation for male defendants remanded to await trial on circuit at Port Augusta be provided at Port Augusta Prison.

163 We recommend that Gladstone Prison and Cadell Training Centre be phased out.

164 We recommend that Adelaide Gaol be internally modernized as a pre-release work centre as soon as possible and that its use as a correctional institution be otherwise discontinued.

165 We do not recommend the establishment of a separate prison for offenders serving their first prison term.

166 We recommend that in cases of hardship, whether in consequence of the foregoing recommendations or presently existing, consideration be given to subsidizing prison visits by relatives of prisoners.

Recommendations with respect to Prisons Act and Regulations.

167 We recommend that the Prisons Act and regulations made thereunder be repealed and re-enacted in revised form to reflect accurately the actual state of affairs in the South Australian prison system.

168 We recommend that particular regard be had to the standards for treatment of prisoners recommended by the United Nations.

Recommendations with respect to Aboriginal Offenders.

169 We recommend that as a matter of general policy the aboriginal component of the prison population be recognized as presenting special problems which require special consideration.

170 We recommend that in order to accumulate information on which constructive policy decisions can be based, separate statistics be kept of aboriginal defendants and offenders at all stages of criminal law enforcement.

171 We recommend that all law enforcement officers accept a special responsibility for the welfare of aboriginal defendants and offenders.

172 We recommend that the widespread use of short-term imprisonment for aboriginal offenders be replaced to the greatest extent possible and as soon as possible by the use of supervised probation.

173 We recommend acceptance of its disproportionate impact on the imprisonment of aboriginal offenders as a ground for abolishing the offence of public drunkenness.

174 We repeat earlier recommendations that the training of correctional personnel include attention to the problems of aborigines and that every effort be made to recruit aborigines into the correctional service, but not specifically for service with aboriginal offenders.

175 We recommend that a further inquiry be instituted into the situation of aborigines in South Australia with a view to the implementation of remedial measures.

Recommendations with respect to Public Drunkenness.

176 We recommend that the offence of public drunkenness be abolished.

177 We recommend that detoxification centres be established wherever practicable and that police cells be designated detoxification centres elsewhere.

Recommendations with respect to Alcohol and Drug Addiction.

178 We make no specific recommendations on this subject because such courses of action as we should recommend are covered already by our recommendations generally with respect to the correctional system.

SCHEDULE 1

ORGANIZATIONS FURNISHING SUBMISSIONS

Aboriginal Education Foundation of South Australia Inc., The
Aboriginal Legal Rights Movement
Aborigines Advancement League Inc., S.A.
Abschol
Adelaide Central Methodist Mission

Adult Probation Service, South Australia:

- B. R. Bennett
- W. F. Clarke
- C. R. Colyer
- R. M. Durant
- L. G. Farr
- K. G. Fitzgerald
- F. Gould
- E. H. Hall
- K. Healey
- W. L. Henderson
- J. C. Hunter
- L. J. Kneale
- J. Willson
- M. G. Wollaston

Alcohol and Drug Addiction Treatment Board
Australian Government Workers' Association
Australian and New Zealand College of Psychiatrists, Victorian Branch
Australian Psychological Society, The
Blackwood Church of Christ, Penal Reform Committee
Campaign against Moral Persecution
Centre for Research into Aboriginal Affairs
Churches of Christ Department of Social Service
Department of Community Welfare
John Howard Society of South Australia
Mental Health Services
Prisoners' Aid Association of South Australia (Incorporated), The
Religious Society of Friends, The (Quakers)
S.A. Foundation of Alcoholism (Incorporated in South Australia), The
South Australian Employers' Federation Incorporated
South Australian Institute of Technology, Department of Social Studies
South Australian Police Department
United Trades and Labour Council of S.A., The

INDIVIDUALS FURNISHING SUBMISSIONS

Mr. B. R. Bennett
Mr. E. G. Bowey
Mr. W. F. Clarke
Mr. C. R. Colyer
Dr. W. A. Dibden
Mr. R. M. Durant
Mr. R. Easton
Dr. E. M. Eggleston
Mr. L. G. Farr
Mr. J. D. Fendall
Mr. K. G. Fitzgerald
Dr. J. W. Gabrynowicz
Mr. G. Goodbody
Mr. B. Goode
Mr. F. Gould
Miss E. H. Hall
Mr. J. Hanlon
Miss K. Healey
Mr. W. L. Henderson
Dr. I. Holloway
R. J. Humby Esq., S.M.
Mr. J. C. Hunter
Mr. A. R. Jones
Miss L. M. Kneale
Mr. A. G. Knight
Mr. P. Knott
Mr. S. M. Langsford
Mr. S. A. Lawson
Mr. L. M. Lewis
Mr. C. E. Moffat
Mr. W. H. Schneider
Mr. A. J. A. Scott
Mr. R. Streeter
Mr. S. W. Sweeney
Mr. R. G. Taylor
Mr. D. M. Tregoweth
Mrs. D. Tween
Mr. A. L. Walsh
Mrs. J. Willson
Mr. R. I. Williams
Judge A. B. C. Wilson
Miss M. G. Wollaston

SCHEDULE 2

PERSONS INTERVIEWED

Mr. L. B. Gard, Comptroller of Prisons and Chief Probation Officer
Mr. K. Skegg, Deputy Comptroller of Prisons (Treatment)
Mr. F. Cassidy, Deputy Comptroller of Prisons (Institutions)
Mr. W. L. Henderson, Principal Probation and Parole Officer, Adult Probation Service
Mr. W. F. Clarke, Senior Probation and Parole Officer
Mr. R. M. Durant, Senior Probation and Parole Officer
Mr. T. Harrison, Education Officer, Yatala Labour Prison
Members of the Executive Committee, Prison Officers Association
Mr. H. S. Dean, Chairman, Prison Industries Review Committee
The Honourable Sir Roderic Chamberlain, Chairman, Parole Board
Dr. M. B. Pulsford, Parole Board
Mr. L. B. Gard, Parole Board
Mr. W. Baker, Parole Board
Miss J. Henriott, Parole Board
Mr. W. L. Bridgland, Chairman, Alcohol and Drug Addicts Treatment Board
Mr. J. H. Allen, C.B.E., Alcohol and Drug Addicts Treatment Board

Dr. R. T. Binns, O.B.E., Alcohol and Drug Addicts Treatment Board
Dr. J. W. Gabrynowicz, Medical Director, Alcohol and Drug Addicts Treatment Board
Mr. I. S. Cox, Director, Department of Community Welfare
Dr. W. A. Dibden, Director, Mental Health Services
Dr. C. Radeski, Senior Psychiatrist, Mental Health Services
Dr. L. C. Hoff, Medical Superintendent, Glenside Hospital
Dr. A. A. Bartholomew, Convener, Australian and New Zealand College of Psychiatrists, Victorian Branch
Superintendent N. R. Lenton, South Australian Police Department
Superintendent L. P. Hansberry, South Australian Police Department
Superintendent J. B. Giles, South Australian Police Department
Mr. J. E. Shannon, Secretary, United Trades and Labor Council of S.A.
Mr. P. D. Hadley
Mr. V. Collins
Mr. E. Pelisaroff
Judge J. Muirhead, Judge of the Local and District Criminal Court
Judge A. B. C. Wilson, Judge of the Local and District Criminal Court.

SCHEDULE 3

PRISONS AND POLICE CELLS VISITED

Adelaide Gaol
Yatala Labour Prison
Women's Rehabilitation Centre
Mount Gambier Gaol
Cadell Training Centre
Port Lincoln Prison
Port Augusta Prison
Gladstone Prison
Ceduna Police Prison
Oodnadatta Police Prison
Leigh Creek Police Prison
Woomera Police Prison
City Watch House
Port Adelaide Police Cells
Elizabeth Police Cells
Port Lincoln Police Cells
Port Augusta Police Cells
Gladstone Police Cells
Kingoonya Police Cells
Tarcoola Police Cells
Coober Pedy Police Cells
Marree Police Cells
Andamooka Police Cells

SCHEDULE 4

INSTITUTIONS VISITED IN NEW ZEALAND

Probation Office, Auckland
Probation Treatment Centre, Auckland
Probation Hostel, Herne Bay
Pre-Release Hostel, Mount Eden
Women's Probation Hostel, Mount Eden
Flats for female probationers, Epsom
Post-Release Hostel, St James House, Auckland
Mount Eden Prison, Auckland
Auckland Prison, Paremoremo
Periodic Detention Centre for Adults, Auckland
Salvation Army Range Home Project
Mount Albert Grammar School Hostel Project
Intellectually Handicapped Children Centre Project
Periodic Detention Centre for Youths, Parnell
Periodic Detention Centre, Epsom
Wellington Prison, Mount Crawford
Prison Officer Cadet School, Point Halswell
Wi Tako Prison, Trentham
Periodic Detention Centre for Adults, Wellington
Probation Office, Wellington
Post-Release Hostel, Waipapa House, Wellington
Christchurch Prison (Paparua and Addington Remand Centre)
Rolleston Prison
Detention Centre for Youths, Christchurch
Periodic Detention Centre for Adults, Christchurch
Pre-Release Hostel, Christchurch

PERSONS WITH WHOM THE COMMITTEE CONFERRED IN NEW ZEALAND

Auckland

Mr. I. M. Vodanovich, District Probation Officer, Auckland
Mr. E. G. Buckley, Superintendent (Advisory) Auckland Prisons

Wellington

Mr. B. J. Cameron, Deputy Secretary for Justice
Mr. R. O. Williams, Director of Penal Institutions
Mr. R. C. Te Punga, Divisional Director of Probation
Mr. D. F. McKenzie, Director of Research
Mr. C. Mack, Director of Penal Education

Miss P. M. Webb, Chief Legal Adviser
Mr. N. Kershaw, Staff Training Officer
Mr. D. A. Sandford, Psychologist

Christchurch

Mr. L. B. Harder, Superintendent Christchurch Prison
Mr. M. W. L. Van Hulten, Superintendent's Assistant Christchurch Prison
Mr. L. A. Brown, District Probation Officer

SCHEDULE 5

ENGLISH PRISONS VISITED BY THE CHAIRMAN

H.M. Prison Grendon Underwood, Aylesbury, Buckinghamshire
H.M. Prison Leyhill, Wotton-Under-Edge, Gloucestershire
H.M. Prison Coldingley, Bisley, Surrey

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