

PART D

THE FUTURE DIRECTION OF CORRECTIVE SERVICES

IN THE PUBLIC INTEREST WHAT CHANGES, IF ANY, SHOULD BE MADE IN THE ORGANISATION, ADMINISTRATION AND OPERATION OF THE QUEENSLAND PRISON SYSTEM, INCLUDING, *INTER ALIA*, CHANGES IN RELATION TO THE FUTURE DIRECTION OF CORRECTIVE SERVICES INCLUDING:

- opportunities for further alternative sentencing options;
- the segregation of youthful prisoners, first offenders and low risk prisoners from other prisoners;
- the need for secure confinement of high risk and violent offenders;
- confinement of persons on remand;
- the increased use of community based alternatives to secure the supervised confinement such as parole, release to work and house detention.

17. COMMUNITY CORRECTIONS, THE OPPORTUNITY FOR AN ALTERNATIVE

17.1 The Climate for Reform

The Terms of Reference direct me to look at "... opportunities for further alternative sentencing options", and "... increased use of community based alternatives to secure supervised confinement such as parole, release to work and house detention".

I was asked, when considering the future directions of Corrective Services, to take into account demographic and social factors; the public's attitude towards corrections; the future demand for, and cost of, correctional services; and the development of new programs for the management of offenders.

Further on in the Terms of Reference I was asked to consider "programs for re-integration". After careful consideration it appears to me that in many ways, the issue of further alternative sentencing options, the use of community-based alternatives to prisons and reintegration into society are all one and the same issue. In the end, I have treated them this way.

In my Interim Report, I noted just how awful a place a prison is. My comments in this regard still stand. No matter how open the system is going to become under the Queensland Corrective Services Commission, no matter how much work is put into making them a proper part of the community, I doubt that anyone who has not served a term there can really understand the impact that prisons and deprivation of liberty can have on the individual.

It is incumbent upon society that if adequate punishment can be provided in a setting other than a prison, and if it can be demonstrated that a person can be adequately supervised outside prison, then society ought to take this option in preference to the prison system. Moreover, I stressed, as I do now, the virtual impossibility of providing real corrections in the prison setting. Corrections, which is the business we are in, not prisons, needs a proper setting. To the greatest extent possible, a better place than prisons needs to be provided if we are serious about corrections.

At the moment correctional services are mainly token, and the use of community corrections and its interaction with prisons is *ad hoc*. Without question, there are many people in prison who could be placed into a well designed community correctional setting. There is wide spread agreement about this. I have found an overwhelming consensus that change is needed.

In my Interim Report I indicated that an increased use of community corrections should be able to provide the following benefits:

- considerable economies;
- an increase in the level of basic justice; and
- the opportunity for a genuine attempt at providing corrections in its proper setting.

Several States have lower imprisonment rates than Queensland. The data from my earlier Report show that a genuine attempt to get to the heart of the problem can pay dividends in getting people out of prison. I have included the tables again in this Report.

Table 19: The Use of Imprisonment in Australia

	Qld.	N.S.W.	Vic.	S.A.	Tas.	W.A.
Population: (000s) (1)	2 675	5 605	4 208	1 394	449	1 496
Prisoner Numbers (2):	2 347	3 950	1 984	796	268	1 603
Imprisonment Rate:	.877	.705	.471	.571	.597	1.07

Source: (1) Australian Bureau of Statistics, 1987

(2) Australian Institute of Criminology, 1988

It is also apparent that not so many years ago Queensland was sparing in its use of imprisonment. In 1961 it had one of the lowest imprisonment rates in Australia. Queensland now has one of the highest imprisonment rates.

Table 20: Comparisons of Imprisonment Rates

Year	Qld.	N.S.W.	Vic.	S.A.	Tas.	W.A.
1961-62	.604	.816	.675	.788	.958	.687
1978-88	.877	.705	.471	.571	.597	1.07

Source: Commission of Review and Prisoners Legal Service Inc. Discussion Paper No. 1

(from Australian Prison Trends, A.I.C.)

I am arguing, the people who have contacted me have argued and the case is compelling, that Queensland must change. It appears to me that the State of Queensland is wasting our money putting people in prisons when a more cost effective alternative exists. I am concerned that people are rotting in our prisons, being sodomised, assaulted, brutalised, and criminalised, but not corrected. In other states many of these people would not be in prisons. Before this Review I was not aware of the situation. But, many Queenslanders who are aware are concerned and are appalled, have expressed that concern to me. I have looked at the system, read their submissions, seen the injustices and I join their conviction the system must change.

Up to now, I have been reluctant to use the term "reform" in this Report. To me the word has always seemed to suggest radical change going beyond the bounds of what the community at large really wants. But, when I looked in the dictionary the definition for reform was:

"Reform: Make better by removing, or becoming better by abandoning, imperfections and or faults or errors . . ."

My Terms of Reference required I take into account "the public's attitude." It is coming through very strongly that the public's attitude is that *reform* is desperately needed.

The economic arguments alone for community corrections are strong. As at June, 1988 2 300 people were in prison. But, over 8 500 offenders were being supervised in the community with 2 500 of these undertaking community service work. If only 10% of those engaged in community service work had been imprisoned, it would have been necessary to build an additional prison.

In this section of my Report I will cover the issues and set out the options. I am not a lawyer or criminologist. The views here are based upon the common sense advice I have received from the hundreds of people who have contacted the Commission of Review because they know the issues are so important.

17.2 The Need to Involve the Justice System

Where the Terms of Reference cover issues such as "alternative sentencing options", they impinge on more than just consideration of corrective services. They are a matter for the judicial system as a whole.

Prior to the establishment of this Review the Minister for Corrective Services and Administrative Services, the Honourable Russell Cooper, and the Minister for Justice and Attorney General, the Honourable Paul Clauson, consulted on the inter-relationship between corrective services and the justice system. This Review has had the benefit of advice from, and support of, senior staff of the Department of Justice. Mr John Hincks, the Under Secretary, made available his Deputy Under Secretary, Mr Kevin Martin, to assist the Commission of Review. Mr Conrad Lohe, Assistant Crown Solicitor (Appeals and Advocacy) from the Solicitor-General's Office has almost been a full time member of my Secretariat.

In my Interim Report I recommended the establishment of a "Departmental working party" to prepare a draft Penalties and Sentences Bill. This would provide a vehicle to continue the necessary changes in the use of community corrections. A suitable committee has been established. Mr Kevin Martin has been chairing the committee now called "the Justice Committee on Penalties and Sentences Legislation". The Minister for Justice and Attorney-General, the Honourable Paul Clauson, recently attended conferences in Canada and Italy to review community corrections and prison sentencing practices. Our respective staff were in touch as we sought information about what was happening internationally and how this compared with our own developing ideas. This information has been incorporated in the consideration of what is required.

The system in Queensland is rooted in the past. It needs bringing up to the twenty-first century. The changes needed are substantial and will require modification to the institutions of corrections and the use of corrections. Some issues, however, require more consideration by the community than I have been able to provide in a six month review of the prison system. They are referred to the "Justice Committee" for resolution.

On completion of this Commission of Review, copies of submissions and other material I have gathered on these issues should be made available to the Justice Committee. A summary list of issues referred to that Committee in the following sections of this Report appears below:

- Home Detention
 - It should be a sentencing option.
- Community Corrections Centres
 - They should be a sentencing option.
- Remission
 - Should it be abolished?

- Eligibility for Parole
 - Should prisoners be eligible for parole at 1/3 of sentence as in other States?
 - Should consideration for parole at 2/3 of sentence be automatic?
 - Should sentences of less than six months be eligible for a period of community supervision?
- Amendments to the Fine Option Scheme
 - Other options for debt recovery from non payers of fines need to be considered.
 - The "community work" option should be capable of exercise at the time of default.
- Attendance Orders
 - Should Courts be able to order an offender to attend a Community Corrections Centre and to participate in a specific program?
- Life Sentenced Prisoners
 - When should they be eligible for parole?
 - Should the decision for parole lie with the Parole Board or the Governor in Council?
- Juveniles in Prisons
 - The minimum age for imprisonment in an adult prison should be raised to 18 years.
 - Should responsibility for juvenile corrections pass to the Q.C.S.C.?
- Supervision on Release From Prison
 - For all but the shortest sentences, and perhaps even then, a graded return to the community should be imposed by making community supervision compulsory.
- Time Spent on Remand
 - It should be specifically taken into account in the calculation of the sentence.

17.3 The Fragmentation of Community Corrections

Virtually all prisoners return to the community. It must be our aim to return them better equipped to cope with the demands of living in society and abiding by its rules. One cannot learn how to live better in the community by living in prison. The real business of corrections can best be done in a community setting. Community corrections should not only be the most commonly used sentencing option, but should also provide a major mechanism for release from the prison environment.

I envisage a strong Community Corrections arm of the Commission providing two types of corrective services:

1. a range of community corrections orders as sentencing options for the Courts for people who would be better punished out of prison; and
2. a graded transfer from prison to community corrections as a sentence progresses and as prisoners are prepared for release.

To an extent, the present Probation and Parole Service already provides these two services. But, the use of community corrections is presently fragmented. The prisons service runs:

- Home detention; and
- Release to Work.

These schemes are based on leave of absence provisions and are not well based in the law.

The Probation and Parole Service is responsible for:

- Probation,
- Parole;
- Fine Option Orders; and
- Community Service Orders.

Thus parole is only one of the methods of transfer of a part of a sentence from prison to a form of community supervision. The others are Release to Work hostels, Leave of Absence and Home Detention that are administered by the Prisons Department. If a prisoner misses out on one he can go for another. All these bits and pieces need pulling together both administratively and in law.

The Q.C.S.C. will go a considerable way towards improving administration of the community corrections as all programs will be integrated in one arm of the Commission. I am recommending that the Q.C.S.C. place all external supervision under its community corrections arm. The proposed legislation has been drafted to facilitate this.

I am very critical of the way the leave of absence powers have grown into a method of circumventing parole refusal. *The approach is fraught with risks and is undermining the properly constituted and legislated approach.* The systems need to be brought back into line. The Parliament has intended that the Parole Board be the method by which suitable prisoners are transferred out of prison back to the community. This power needs reinforcing. The legislation I am proposing be adopted will bring together the authority for all forms of release and transfer to a properly organised, responsible and accountable body presently the Parole Board. If this occurred, the Board might best be termed the Queensland Community Corrections Board. In the next sections of this Report I will discuss how this Board should operate and how the establishment of Regional Community Corrections Boards will assist the supervision of all transfers of sentences to community supervision.

I have been arguing throughout my Reports the impossibility of providing genuine corrections in prisons. I have been arguing for graded transfer of supervision back into the community as the way to provide both corrections and programs for reintegration into society. If the Q.C.S.C. is genuine in providing a wide range of programs, hostels and support mechanisms tailored to the offender's needs, then the Community Corrections Boards then have to be serious about placing prisoners out into community supervision before their remission makes them eligible for release.

Leave of Absence for a short period for compassionate reasons should be still the responsibility of the Director-General of Corrective Services, by delegation of the Commission. However, very strong checks should be built into this process. A later section of the Report provides more details on the Leave of Absence.

17.4 Fines

If there is any possible alternative, prison is no place for people who have not paid a minor fine. If the Courts really intended them to go to prison they would have sentenced them to prison in the first place. Fine defaulters contribute greatly to prison crowding, and come into contact with hardened criminals even though their offences are relatively minor by comparison.

The "Fine Option Order Program" was designed to reduce these problems. It provides for the offender to undertake community work in lieu of the fine. It was introduced in 1983. Some flaws in the system are now apparent:

- the offender must appear in Court to request access to be put on the program instead of paying the fine,
 - in excess of 90% of all people fined fail to appear personally in Court and hence cannot be placed on the scheme;
- although most people opting for a fine may have the full intention of paying it, if circumstances change they cannot then go on the program, they must go to prison,
 - if they are picked up by the Police for a \$20 traffic fine that has not been paid they go to prison and it is then too late to go in the program!

Another problem to my mind is the excessive number of hours of work required to pay off a fine. At the moment the system values an offender's time at as little as \$1 per hour. This really makes a mockery of the value to the community of the offender's work. The Draft Bill addresses this issue.

Also, for some people, prison is too easy. If someone owes me money, they do not have the option of going to prison to avoid paying. If they had assets, I could sue and recover the debt from their property. If the fine still had to be paid, as well as imprisonment for default, there would be fewer instances of default. However, debtors' prisons are not appropriate in this day and age. A community-based sentence is the appropriate alternative in lieu of non-payment of a small fine. For large fines, imprisonment is probably still the appropriate alternative to ensure deterrence, but surely not imprisonment for minor traffic offences? The cost of imprisonment is too great to warrant sending small fine defaulters to prison. Prison is for convicted criminals who need removing from the community.

This issue cannot be addressed by the new Corrective Services Bill and therefore I am referring these concerns and recommendations for change to the Justice Committee and the Minister. Urgent action is needed.

17.5 Attendance Orders and Community Corrections Centres

Attendance Orders have been introduced in other jurisdictions as a more severe punishment for offenders than existing community based sentences. An attendance order is a condition imposed by a Court to report to a community corrections centre or to undertake a specific program. Such Orders have merit because they decrease offender leisure time, increase the potential for rehabilitation and meet the public demand that corrections should "do something to change behaviour".

Attendance Orders offer a viable sentencing option for specific groups such as Aboriginals and Islanders and, in consultation with the Aboriginal and Islander community, the Commission could develop appropriate Attendance Programs in the major Aboriginal and Islander population centres. This will specifically address some of the problems which Aboriginal and Islander people experience in the Criminal Justice System.

I believe there is benefit in seeking to provide attendance orders and community centres as sentencing options. I refer this matter to the Justice Committee for consideration regarding its implementation.

17.6 Home Detention as a Sentencing Option

It now seems feasible that the home detention scheme become a sentencing option. This was supported by the Probation and Parole Service. It would be more severe than probation, it would fit the concept of having a wide range of sentencing possibilities, it could be a less severe penalty than prison. There is clearly a place for it. It is, however, a matter for the Justice Committee and I will refer the matter to them for inclusion in the Penalties and Sentences Legislation.

17.7 Improving the Image of Community Corrections

The staff I met in the Probation and Parole Service impressed me with their sincerity, knowledge of their profession, their dedication, commitment and hard work. They are well qualified graduates of our universities, and in most cases they are young with energy and enthusiasm. Some of the very best, most closely argued and thought provoking submissions came from them. Also it is clear that community corrections is a very cost effective approach.

But there is no symbiosis. If ever I have come across an organisation with the incisiveness, excitement and impact of tepid blancmange, this is it. It has all the nice sentiments, all the right buzz words but no drive. In fact it has undersold itself, failed to get resources. For all its faults the Prison Service has been more creative. Community corrections are seen as soft options. The papers talk of people being released on parole. They should be talking of prisoners being "transferred to community supervision". Community supervision should be seen as a tough program where offenders get professional supervision, where if they put a foot wrong they get breached, and where they are serving a sentence, not being "released". No member of the public thinks of Probation and Parole this way and because of that there is a lack of confidence in it and the Service is under utilised.

The public's awareness of community corrections is almost non-existent. When the media has made incorrect statements, no effort has been made to correct them. There has been no planned approach to promote the positive benefits to the community of community corrections programs.

Making a success of community corrections is going to take more than just changing the laws. An essential part of the strategy to vitalise the use of Community Corrections is a change in the image of the service. There is an obvious need for community corrections to market itself. This can succeed only if service delivery matches the expectations of the courts and, more particularly, the community. I am sure it can. It needs leadership and the opportunity to flourish. The Commission will hopefully provide an improved environment.

17.8 Servicing the Courts

The Probation and Parole Service provides reports for Criminal Courts, the Parole Board, and the Commonwealth Attorney-General. Reports required include comprehensive background investigation and assessment of behaviour of offenders. The purpose of such reports is to provide information to the courts in the difficult task of sentencing, and to the Parole Board and Attorney-General when considering applications for release from prison on parole or license.

With the integrated approach to the management of prisoners, to be adopted by the Commission, Community Correctional Officers will be in a unique position to provide information about the background of many prisoners, and with their involvement within the prison environment, the best strategies for the management of offenders during and after incarceration.

The Southport office of the Probation and Parole Service provides an excellent model of a Court Advisory Service. An officer of the Service is always present in the Magistrates Court to offer advice on sentencing. This approach should be widely adopted. A strong and professional Court presence and availability of expert advice will strengthen the reputation of the Service for professionalism, assist the growth in the confidence of the discipline of a community based sentence and will ultimately help the use of this kind of sentence. The development of this approach should be encouraged with vigour by the Director-General, and the Director, Community Corrections with the Judiciary and Magistracy in general. It should be encouraged by the salesmanship of District Managers and Area Supervisors in developing their relationships with individual Courts. Staff providing the Court

advisory service must be totally professional. The Courts must be able to rely totally on their professionalism. They must be professionals. They must look the part.

With all due respect to the present Probation and Parole Service, while they claim to be "professionals", are represented by the Professional Officers Association and in their discussions with me they have differentiated themselves from the prisons people by their professional status, in many cases they look and dress like first year university students. Lawyers, architects, accountants and surgeons are professionals. They look the part and they are treated appropriately and given the respect of professionals. Community Corrections staff must start to look professional also.

As in any service, marketing is important. It is the test of management to instill confidence in the quality and reliability of the service being marketed. I am sure this can be achieved.

RECOMMENDATIONS ARISING FROM THIS SECTION

It is recommended that:

29. • Responsibility for management and administration of the Release to Work Program and the Home Detention Scheme be transferred to the Community Corrections arm of the Q.C.S.C. to provide a co-ordinated approach to Community Corrections and to provide improved management control.
30. • The Parole Board be replaced by a Queensland Community Corrections Board, to be supported by a system of Regional Community Corrections Boards;
 - Community Corrections Boards to have responsibility for all transfers of a sentence from prison to community corrections including Parole, Home Detention and Release to Work.
31. • As prison is not the appropriate place for minor fine defaulters, if there is any possibility of an alternative this should be fully explored.
32. • The Fine Option Scheme be amended to provide more flexibility in the exercise of the option for community work; and
 - The value of the penalty unit should be increased in order to place a more appropriate value on the time offenders spend in community work.
33. • Home Detention become a sentencing option.
34. • Non-prison sentences be expanded to include Attendance Orders and Community Corrections Centres; and
35. • The Community Corrections Service vigorously encourage the maximum possible use of the Court Advisory Service as part of a strategy to sell itself as a professional and effective arm of Corrective Services.

18. COMMUNITY RELEASE SCHEMES ADMINISTERED BY THE PRISONS DEPARTMENT

Leave of absence provisions are used for three purposes associated with maintaining a prisoner's involvement with the community. They are:

- Release to Work,
 - a prisoner can be released for a day or for extended periods to find work,
 - the Prisons Department owns a Hostel in Brisbane where prisoners can live for a period on release to work;
- Home Detention,
 - a prisoner can be released to live at home subject to supervision by prison officers and subject to certain restrictions;
- Special Leave of Absence,
 - this can be used for attendance at funerals, university, or to attend to a family problem.

All schemes are administered by the Prisons Department under authorities vested in the Comptroller-General. However, the legislation is being stretched past its proper mandate, and I have very serious reservations about the use of the present leave of absence provisions.

18.1 The Home Detention Scheme

18.1.1 *Problems With the Scheme*

The Home Detention Scheme releases people on a Leave of Absence provision contained in the present Prisons Act.

There is room for dramatic improvement in this program. There are, at the least, serious flaws in its legislative authority. In fact, it is probably illegal under present legislation. The Probation and Parole submission drew attention to the scheme. The submission said:

"It is of concern that this scheme lacks safe guards, standard public procedures, and published eligibility criteria. Programs of this nature are usually introduced in legislation to ensure accountability, particularly those which lead to release of prisoners from prison".

"Criticism of the programme (Home Detention) has come because of duplication—a number of released persons have been subject to prisonprobation orders and consequently two persons have held some responsibility for the same offender. It has also led to an erosion of the authority of the Parole Board."

"There would seem to be an element of resource wastage in the lack of integration of two like activities (Home Detention and Parole)."

"Community corrections legislation in Queensland is largely outdated, mis-named, administratively cumbersome, and subject to ambiguous interpretation."

(Submission from the Queensland Probation and Parole Service.)

In a special briefing, the Police advised me of some concerns about the way the scheme was operating. I have received information that would indicate there are problems in the management of the scheme. I initiated further enquiries.

The problems as I see them include:

- people have not always been breached for abuse of the trust placed in them when they are placed on the scheme;
- prisoners have been placed on the scheme who shouldn't be,
 - I suspect there is pressure to get people out of the prisons and the standards of selection have fallen;
- Departmental resources have been misused and abused by some staff;
- the standard of supervision has been low;
- the scheme has lacked proper management,
 - although there has been some improvement recently the responsibilities and controls are fragmented;
- I cannot ascertain who is in charge;
 - the Manager Programs was initially in charge,
 - then a Superintendent,
 - then a Deputy Superintendent,

- then a Deputy Superintendent (Special Projects),
- at times it has staggered along with virtually no supervision;
- it is now looked after by a Prison Officer;
- the behaviour of staff involved in the operation of the scheme has on occasions fallen short of what should be expected;
- at present Home Detention is operated by the Prisons Department as a way of relieving prison crowding using a fairly dubious interpretation of the leave of absence provisions of the Prisons Act;
- it has been set up with fanfare and promises and now languishes in a backwater of the Department,
 - it is indicative of the failure of the management of the system that it has been left in this state, at risk, with its potential, and even its continuance, being squandered.

The scheme is under resourced. It has not been developed to any where near its full potential.

“Home Detention has not been expanded to rural areas because of resource problems. The whole programme was operated by borrowing staff vehicles and funds.”

(Submission from Queensland Prison Service.)

Because it is not soundly based and does not have legislated guidelines to which he can refer the Comptroller-General is continually subjected to the pressure of requests to place particular individuals on the scheme. To his credit these are resisted, but clearly the whole position would be fairer and safer if under strict control and guidelines. However, I am not so certain that the staff beneath the Comptroller-General who administer this leave of absence scheme have not bowed to pressure and self interest in dealing with some prisoners under the scheme. Moreover, I am certain that some of the decisions to release under Leave of Absence provisions have been most unwise. The scheme leaves too much power in the hands of too few people subjected to too few checks and balances. The power can be used corruptly, it can be used unwisely, or it can be subjected to false allegations all of which are difficult to test. The problems arising from the N.S.W. leave of absence provisions should be fresh in everyone's mind.

Home detention is too important to be allowed to go off the rails this way. Home detention schemes in this country were piloted in Queensland. It would appear that the pilot has left the ship. It is heading for the rocks. It is an accident about to occur.

18.1.2 *A Proper Legislative Base*

The scheme needs:

- a proper legislative base,
 - the draft legislation will be giving it one;
- proper management,
 - it should be transferred to community corrections;
- expanding and proper resources,
 - the proposed legislation permits, and I am recommending, a major expansion of the scheme with private sector monitoring and Q.C.S.C. supervision.

With the new legislation the home detention scheme will have proper legislative backing and will be quite separate from the use of short-term Leave of Absence. The placement of responsibility for decisions regarding Home Detention and Release to Work with Community Corrections Boards will clean up the present mess where some are let out after careful consideration by a highly qualified, properly constituted Parole Board set up under legislation and some are released under dubious administrative arrangements by the Prisons Department.

18.1.3 *Use of Electronics*

Electronic surveillance has gained substantial acceptance in the United States where the density of population and the sheer number of prisoners are factors which promote cost effective operations. The systems are new and will undoubtedly improve over time.

I had submissions from companies which market the technology. I have read reports from the United States written by prison administrators and community corrections officers. I have received submissions from community groups with an interest in the future directions of corrections urging the merits of this approach. There seems to be no substantial opposition. Companies in the security business say the technology is suitable to private sector operations. Wormald Security, for example, said:

“... if consideration should be given to automated remote identification, then this Company is uniquely equipped to initiate and monitor such remote electronic supervision through our

Central Stations which are the most modern and technically advanced monitoring centres in Australia, manned 24 hours a day/7 days per week by highly trained operators.”

(Submission from Wormald International.)

The Society of Friends (Quakers) have been leading advocates for prison reform for several hundred years. They submitted:

“Both Home Detention and Work Release succeed in shortening the prison component of sentences, and in some cases might replace imprisonment altogether. Improved monitoring systems for offenders who are living at home or away from their hostel will facilitate this move away from traditional imprisonment. Electronic monitoring is available which includes hi-tech means of evaluating the wearer’s consumption of drugs or alcohol as well as determining their physical location. However, we would recommend great caution in pursuing the path of total surveillance. To create an atmosphere of total surveillance is to remove any element of trust otherwise created by releasing a prisoner or offender sentenced by the Court to a form of conditional liberty. If full rehabilitation is an important objective of such release, there must be areas where those so sentenced can make their own decisions free from coercion by the State.”

(Submission from L. Dawes, Religious Society of Friends.)

I am recommending ongoing research and development within the Commission, which will monitor advances in this area, and in other technology which can lead to improved management and control of offenders. It would appear the technology in the field of electronic home detention is sufficiently proven. I have been advised the technology will enable the voice patterns of the offender in the home detention scheme to be analysed, and it can tell with a high degree of probability whether he or she is under the influence of alcohol or drugs, which would be a breach of home detention conditions. As a result:

- I have recommended that this scheme be put out to tender for the private sector to operate;
- I have drafted the legislation to enable this option to be developed.

18.2 Release to Work

While the Release to Work Scheme is administered under Leave of Absence Provisions, I have fewer concerns. But, it is not well consolidated into the management of the Prisons System. It is under resourced.

The draft legislation will integrate Release to Work into the concept of providing a range of correctional facilities. The concept should be expanded to include supervision and operation by church and community groups anywhere in Queensland.

Release to work should only be under the approval of the Community Corrections Boards. The legislation will put in place the proper checks and balances and provide an integrated community corrections operation.

RECOMMENDATIONS ARISING FROM THIS SECTION

It is recommended that:

- 36 • The Home Detention Program be placed on a proper legal basis;
 - Adequate resources be provided to enable a rapid expansion of the scheme;
 - A program utilising electronic monitoring of offenders on Home Detention be piloted.
- 37 • The Q.C.S.C. seek expressions of interest from Community and Church Groups for the operation of Community Corrections Centres as Release to Work Hostels on a fee per offender basis; and
 - The legislation accommodate private sector and public interest group operation of Release to Work facilities.

19. THE PAROLE SYSTEM

19.1 The Parole System

Parole is a system which allows a prisoner to apply to the Parole Board:

- in special circumstances;
- when recommended for consideration by a sentencing judge; or
- at half time;

for transfer from prison to the supervision of the Queensland Probation and Parole Service.

The decision whether to allow an application is made by the Board which consist of the:

- Chairman who is a Judge of the Supreme Court,
- Under Secretary, Department of Justice,
- Under Secretary, Department of Corrective Services and Administrative Services,
- Comptroller-General of Prisons, and
- Three other people:
 - one of whom shall be a woman, and
 - one of whom should be a medical practitioner or a psychologist.

19.2 Perceptions About Parole

The parole system is the single most common grievance of prisoners. Over a third of the prisoners in this State contacted the Commission of Review. Most made detailed reference to the Parole system. Even prisoners who could barely write struggled painfully to document their experiences and frustrations with the system.

Submissions from the public, professionals in the field, interested organisations, lawyers, members of Parliament, and even the Parole Board itself covered many of the same issues as prisoners in being critical of the present system and seeking changes.

The system needs revitalising. In my Interim Report I stated that there are "problems of inequity and inefficiency and a lack of due process in the parole system". In this, my Final Report I need to cover the problems in more detail.

Almost everyone involved is agreed that the system needs change. The only issue under discussion is how much change. In tackling this whole area I have taken as my starting point the submission from The Honourable Mr Justice W. J. Carter, Chairman of the Queensland Parole Board on behalf of the Board. They are expert in this area and have been reviewing their operations carefully to see what changes are required. I enclose his submission in full, and express my appreciation for his assistance and advice. I endorse his approach and I have endeavoured to implement most of the changes he is seeking in the legislation that is being drafted. I have had meetings individually with nearly all members of the Board, including the Chairman, and some past members and those who frequently deputise for members. I am therefore also familiar with the Board's operations. I have also discussed the issues with the Board as a whole.

There are a vast number of submissions that question the rules for parole and raise "justice" and "equity" issues. For instance:

"I hope the changes you have recommended are implemented and the changes include the Parole Act which in some cases would appear to be unconstitutional, an infringement of rights, and discriminatory... I understand and have been informed that I can't appeal to the Parole Board as to their reasoning for their decision not to grant me Parole..."

(Submission from A. J. Ellis—prisoner)

"My half time was up on the 3/3/88. It is currently 30/3/88 and I still have not been told whether I am to be granted parole or not. This is through no fault of my own as I had my application in 4 months before my half time date was due. I was given a letter from the parole board on the 3/3/88 stating that they needed more information, that being a psychiatric report as well as a report from a probation officer. Why can't all this be carried out before your case goes before the board? Especially when it is standard procedure for sex offenders to have a psychiatric report done. The parole advisory board know your offence so why can't they organise all the reports before hand. The whole system is just too drawn out. It makes you tend to think that these people delight in having you on a string".

(Submission from J. R. Tyson—prisoner)

"Prisoners are often denied even the basic rights of knowledge about their future. For example, Parole applicants do not get any feedback why their application was unsuccessful and what

area of their behaviour requires further attention. We are satisfied just to reject a prisoners application and eventually release them without any formal attendance to an obvious deficit in their behaviour. It is just plainly insufficient to maintain the current system which feeds on this one sided and ineffectual style of prisoner management."

(Submission by C. Stewart—prisoner)

"The Commission is no doubt aware that one of the most important problems for prisoners entitled to parole is how to apply for it successfully. Many prisoners are baffled by the decisions of the Parole Board. This bafflement arises from a lack of explanation for the decisions made. Prisoners try to make sense of the decisions by comparing the merits of different inmates who are successful or otherwise in parole applications. Prisoners usually fail to understand the processes followed by the Board. Their chief complaint is that they are offered no guidelines to follow if they wish to improve their behaviour in prison. While we understand that it might be difficult to explain to a deeply disturbed person the reasons for refusal, we are sure that there must be many cases where a little helpful advice through an interview would be sufficient incentive for many prisoners to improve their behaviour patterns and earn parole."

(Submission from L. Dawes, Religious Society of Friends.)

"The present system of parole causes some concern. I have known cases where prisoners have attempted to comply with the system, have been named by prison officials as model prisoners only to receive no encouragement at all from their parole application.

It seems inconceivable that such an appointed Board does not have to give reasons for their decisions.

In the interests of a healthy Corrective Services system, accountability and encouragement to public and prisoners alike are conducive to responsible rehabilitation."

(Submission from Vietnam Veterans Counselling Service.)

In summary, the many hundreds of submissions said:

- The system appears to be arbitrary in its application of criteria for release;
- There are many people in prison who could perhaps be more appropriately serving their sentences in the community but miss out on parole;
- There is little preparation for parole;
- There is little attempt to address the offending behaviour i.e. little or no child abuse or drug abuse counselling etc.;
- The system of remission provides:
 - little incentive for good behaviour while in prison, and
 - a positive incentive to avoid parole;
- Many prisoners are released into the community without supervision who should be closely supervised for a period to ensure they do not re-offend;
- Prisoners are released from prison on parole even after very long sentences with little money or any place to live;
- Prisoners are not allowed to present and argue their own applications;
- No adequate advice is given as to the grounds for refusal of parole;
- There is no appeal against refusal;
- Current procedures are cumbersome;
- Parole Advisory Committees lack a legal base;
- Prisoners are confused about parole;
- There is little attention to special needs groups such as Aborigines, the intellectually disabled, and the grossly socially inadequate; and
- Submissions claim parole applications are easily jeopardised if they run foul of a particular officer.

Some submissions from prisoners claimed that parole success can be purchased by assisting police or prison officials. I am sure that claim is quite untrue, but it is a common perception.

I received submissions in which it was claimed that difficult prisoners get preference for parole to get them out of the way. This is a common perception. For instance:

"In reference to my point of one having to be a trouble maker to be able to get things such as parole, release to work, farm, etc., I have seen it with my own eyes the same as the officers here, also other prisoners.

A person plays up by getting involved in riots, bashings, destroying government property, anything that is against the good nature of the running of the prison. These people get just about everything they apply for such as parole, release to work and so forth."

(Submission from Mervyn J. Rielly—Prisoner.)

I believe that such claims are incorrect. The men and women of the Parole Board are of the highest integrity. The Parole Board is absolutely beyond reproach, but many prisoners do not believe this to be the case. The problems seem to lie in the rules themselves, not the dedicated people who apply them. The perception may also be based upon experiences with Parole Advisory Committees which prepare details and advice for the actual Parole Board.

The issues I have attempted to address are:

- the desire of prisoners to be told why they "are knocked back" for parole;
- the argument that prisoners should be able to make their case in person to the Board who can see them for what they are;
- whether parole eligibility should be at 1/3, the same as other States;
- the desire for an avenue for appeal from the Parole Board;
- the benefits of a period of community supervision before completion of a sentence of imprisonment;
- the submissions that say earned remission time from over task marks is not taken into account in setting the parole period;
- the feeling by prisoners that, in setting a sentence and eligibility for parole, the time spent on remand is ignored,
 - this is just dead time; and
- the impact of remissions on parole.

19.3 A New System for Transfer to Community Corrections

In discussing suggestions for change in the area of parole, more debate was generated amongst my Advisory Committee members than on any other issue. In making recommendations for change this is an area where I tread very cautiously. The recommendations I have made specifically address the complaints made. They do not radically revise the present system. Despite submissions which argued for automatic parole at 1/3 of the sentence less remissions, I have kept in mind the purpose of parole. It is not designed as a quick release scheme for prisoners. It is designed to release prisoners into community supervision. What I have tried to do is make recommendations which will increase the power of properly constituted Boards to place prisoners on community supervision. This part of the Report describes a better integrated system of community corrections that brings Release to Work, Home Detention and Parole into a single conceptional framework administered by the same overall set of rules. I have made recommendations which will make the system more accountable and which will close the back doors through which prisoners are released with little control and doubtful legality.

But, reform could well proceed much further. However, I believe the community, the legal profession, the judiciary, the magistracy, and the Parliament need the fullest opportunity to debate all the issues involved. The Justice Committee and the Penalties and Sentences Bill will continue the process of change.

19.4 Abolition of Parole Advisory Committees

The impracticability of the Parole Board in Brisbane being able to meet sufficiently to gather information on prisoners throughout the State has led to the establishment of Parole Advisory Committees.

It seems few are happy with this system. The Parole Board submission commented unfavourably on the Committees:

"It is the regrettable fact, however, that the Parole Advisory Committee has, I suspect, neither the time nor the resources to ensure that the information which it collects and which it conveys to the Parole Board is in fact sound, credible and reliable. The Parole Advisory Committee in preparing its report and recommendation relies essentially on the documentation available to it, which is not always as comprehensive as it should be, and at the same time it relies on the interview which it conducts with the applicant and on the basis of this material it reports and recommends on the application. It logically follows that if in making its recommendation the Parole Advisory Committee gives weight to a particular fact or circumstances which when investigated is found to be unreliable then the recommendation which is made is potentially worthless."

(Submission from Mr Justice W. J. Carter)

Parole Advisory Committees add another layer between the decision makers and the prisoners. They have no legislative base and give the appearance of pre-empting Board decisions. The submissions of the Probation and Parole Service, the Prisons Department, and senior officers within the Probation and Parole Service all recommend the disbandment of Parole Advisory Committees.

The late Sir David Longland, in his 1985 Report, noted with approval a decision to establish Parole Units in prisons. Three years later there is still no sign of them.

Mr Justice Carter, in his submission, recommended that Parole Units be established as the means of facilitating a better functioning parole system:

"A concern has been expressed to the Board by those associated with the prison that a major complaint within the prison population concerning parole is that prisoners never see the Parole Board; they never have any communication with the Parole Board; they remain skeptical as to whether or not their applications are properly considered by the Parole Board; that the Parole Board meets behind closed doors; that the Parole Board is totally unsympathetic towards applications for parole and finally, that if the Parole Board refuses an application, the prisoner is not told anything other than that fact. Associated with these complaints is the complaint that the prisoner does not know at what time his application for parole will be considered by the Parole Board.

With that in mind the Board resolved that the most effective way of meeting many of the concerns of prisoners is to establish within each prison what can be conveniently called for purposes of discussion the Parole Unit. The Board did not investigate the number of persons that might be needed to staff a Parole Unit. That is a matter of detail which can be worked out if needs be. The Parole Unit within the prison system however same should be identified as and should be presented to prisoners as the permanent representative of the Parole Board within the prison system such that prisoners can readily identify within the prison itself the person or persons who are seen to be representing the Parole Board and with whom individual contact can be made in relation to all matters associated with parole. There are several advantages that can be readily identified by the establishment of parole units. I will attempt to list some of these:—

- (a) The establishment of Parole Units will provide the means whereby there will be personnel permanently located within each prison who the prisoner can readily identify as the persons who are relevant to him in relation to his parole and at the same time it will permit the establishment of a permanent presence within the prison of the parole system. Parole is an integral feature of prison life. It is essential that the parole system be close to the prison rather than removed from it.
- (b) The Parole Unit and its personnel will be available to prisoners on a daily basis and in accordance with the orderly running of the prison, for interview, advice and assistance in relation to all matters associated with parole.
- (c) By this means, valid information concerning parole, generally, and the applicant's application in particular can be made available to prisoners by the persons associated with the Parole Unit.
- (d) By dealing with the Parole Unit on a personal basis, prisoners can be better informed of the matters which are relevant to their application for parole and can be easily informed of the matters which the Parole Board regards as matters of major importance and relevance when it is considering any application for parole. Obviously therefore the Parole Unit can supplement on a personal basis any information already available within the prison as to the matters that ought to be emphasised when an application for parole is made. The new draft form of application should be seen to be relevant in this context.
- (e) The Parole Unit can also ensure the distribution within the prison system of suitable printed material in convenient form which will assist applicants to prepare a meaningful application for parole and which will ensure that relevant material is supplied to the Board and that irrelevant material is excluded. It is a consequence of this as well that when preparing for a Parole Board meeting members can be assured that all relevant material is before them and they will not have to waste valuable time in perusing material which is quite frequently irrelevant and lacks any measure of persuasion."

(Submission from the Parole Board)

Prisoners need advice on how to prepare applications. They need to be interviewed and assessed. The parole system and the prison system as a whole needs better communication. In my Interim Report I recorded the instance of prisoners leaving prison on parole and turning up at the parole office to advise they were there for supervision. Parole Units in prisons will attend to this problem at the workforce while the Commission head office can attend to the present fragmentation at the management level.

I am recommending the abolition of the Parole Advisory Committees and the establishment of a Community Corrections Unit in each prison. This is an administrative matter for the Commission. It does not require any legislative change.

Community Corrections Units require a Community Corrections Officer to be placed full-time in each prison. I would see very considerable merit in having this rotate amongst the Community Corrections staff. However, it would be responsible to the Manager Programs, and to the General Manager. The Programs Unit will provide the basic support for the prison to work effectively in advising the Regional Community Corrections Boards.

The units should operate as a Committee consisting of the Community Corrections Officer, a Supervisory Corrections Officer and suitable staff from the Programs area including the psychologist. The unit will be responsible for ensuring prisoners know when to apply for transfer to Community Corrections. It will assist prisoners understand the requirements they must meet. It will help with applications. It will advise whether prisoners should be placed on Home Detention, Release to Work, Parole or in a Community Corrections Centre. It will advise the Boards on the suitability of applicants for transfer. It will liaise with the Community Corrections Office to ensure suitable arrangements are made for the prisoner who is granted a period of community corrections.

19.5 Regional Community Corrections Boards

The Probation and Parole Service generally has been arguing the benefits of making the parole decision close to the community. It was submitted that Regional Parole Boards—I should prefer to call them Regional Community Corrections Boards—should be responsible for applications from prisoners serving sentences of six months to five years.

While there is a common theme to the proposals, no single submission was sufficiently authoritative or comprehensive to achieve a consensus about all the changes needed. In order to pull all the threads together, I asked the Comptroller-General and the Chief Probation and Parole Officer to consider their official submissions and to try to reach a common position. I asked a number of senior staff in the Probation and Parole Service to further consider the issues and make additional proposals in the light of what was needed. I also asked my Secretariat to work with my advisors from the Justice Department to produce the necessary recommendations for change.

It is widely agreed that Regional Community Corrections Boards are needed. The system has outgrown the capacity of a single Board in Brisbane to meet the demands especially if the back door leave of absence schemes are stopped. Although not a recommendation contained in the Parole Board's own submission I have discussed Regional Community Corrections Boards with them and sought comment regarding any problems they would foresee.

I am now committed to a system of:

- Regional Community Corrections Boards to be established in Brisbane, Townsville and Rockhampton, and
 - perhaps other centres depending on the volume of work;
 - with the Community Corrections Boards having a full-time Secretary;
- The Boards to have responsibility for assessing and approving transfers from prison to community based corrections for sentences less than five years, including
 - Parole,
 - Release to Work,
 - Home Detention, and
 - Community Corrections Centres;
- An officer of the Community Corrections Unit in each prison to interview all prisoners who apply for Parole, Home Detention, Release to Work, or Community Corrections in lieu of prison and provide information to the Boards to assist their decision;
- Regional Community Corrections Boards to consist of the following members,
 - Chairman being a barrister or a solicitor;
 - A Medical practitioner;
 - A person representing the community;
 - A Senior Custodial Correctional Officer;
 - A Senior Community Correctional Officer; and where practical,
 - A member of the Aboriginal or Islander Communities.

The matters they would handle are as follows.

Sentences Under Six Months

At the moment, prisoners serving less than six months are generally not eligible for parole. I do not recommend any change to this. All the major submissions, Prisons, Probation and Parole Service and the Parole Board recommend this remain unchanged. Nevertheless, as short sentences obviously involve less violent offences, there is a strong argument for getting these people into community corrections for much of the sentence. I would like to refer the matter of Parole for short sentences to the Justice Committee to consider as part of the overall package of sentences and penalties it is considering.

However, prisoners on these shorter sentences are eligible for Home Detention and Release to Work. Therefore, I propose that transfer of sentences to these schemes continues, but under the careful supervision of the Regional Community Corrections Boards.

Sentences Six Months to Five Years

The system of transfer from prison to community supervision for prisoners who serve sentences of six months to five years should be administered by Regional Community Corrections Boards.

The Boards should have the power to select an appropriate programs combination of programs, and to alter the level of supervision as the community part of the sentence progresses.

Sentences over Five Years

Regional Community Corrections Boards should receive applications from prisoners serving sentences in excess of five years, including indefinite and life sentence prisoners and make recommendations but not decisions.

They should submit and report to the Queensland Community Corrections Board. But, the Queensland Community Corrections Board should be the body with the authority to approve the transfer.

19.6 Queensland Community Corrections Board

It is proposed that the present Parole Board be restructured as a State Parole Board to be called the Queensland Community Corrections Board. It would be responsible for the transfer to community supervision of those prisoners serving sentences of five years or more. The composition of the "Queensland Community Corrections Board" should be as follows:

- Chairman
 - A Judge of the Supreme Court
- Members
 - A medical practitioner, perhaps a forensic psychiatrist;
- The Director-General of Corrective Services;
- The Under Secretary of the Minister's Department; and
- Three representatives of the Community to include,
 - A female,
 - An Aboriginal or Islander; and
 - A lawyer with an interest in corrections and civil liberties.

This differs in several important ways from the existing Parole Board:

- The numbers are the same at seven;
- The Chairman remains a Supreme Court Judge;
- The Comptroller-General is replaced by the Director-General;
- The Under Secretary of the Minister's Department remains;
- A medical practitioner is still a member;
- The Community representative who is a woman remains; however,
- The Under Secretary of the Justice Department is replaced by a Community representative; and
- One of the other representatives is an Aboriginal or Islander.

The Queensland Community Corrections Board should make determinations on the applications and recommendations described above. I consider it is important that the Queensland Board monitor the administration of transfers to community supervision by the Regional Boards. I propose in the Draft Bill that it have the authority to issue guidelines. At least once a year a member of the

Queensland Board must sit on each of the Regional Boards. The Queensland Board should also act as a Board of Appeal and Review.

It will have the authority to report to the Minister regarding any aspect of the performance of a Regional Community Corrections Board.

19.7 Other Parole Issues

Sources of Advice

I had submissions from prison officers saying they were the ones who worked with prisoners, sometimes for years. Yet of the dozens of prison officers I have asked whether their opinion was sought in making a parole decision, all said no. Reports were done by the Superintendent who may never have seen the prisoner. The interaction between the Regional Community Correction Boards and Correctional Officers will reinforce the change in duties from being just guards.

Appeals Against Regional Board Decisions

I have drafted the legislation to allow appeals to be heard by the Queensland Board, but only after an application has been refused on three occasions by a Regional Board. It envisaged that these would generally not be in person appeals, although that should be left to the discretion of the Queensland Board. This will ensure consistency in the application of the guidelines and rules by the Regional Boards. It also attends to one of the major criticisms in the submissions.

Reasons for Refusal of Parole

A common thread throughout the submissions is that the Parole Board does not appear to have a laid down set of criteria to determine suitability for parole release.

This problem is compounded by the fact that the Parole Advisory Committees, which currently see all applicants personally, and make recommendations to the Parole Board, appear to have no established criteria on how they should arrive at conclusions as to the suitability of each applicant for parole.

Prisoners are particularly bitter about not being told why they are refused parole. They say they do their best, work hard preparing themselves, behave themselves in prison and "get knocked back" while known trouble makers get parole. They say they should be given the reasons why they are refused and then they can do something about it. It makes sense to me.

Not one submission I received recommended against prisoners being given reasons for the refusal of their applications. The Parole Board itself argued this way in its submission.

"The Parole Board, during its September 1987 meeting, acknowledged that there are advantages and disadvantages in giving reasons for refusing parole. On balance, the Board seemed to favour the giving of reasons in short form. After considerable discussion on this subject, the Board came to the conclusion that it is in many cases extremely difficult to satisfactorily express in written form the reasons why parole may be seen to be inappropriate in a particular case and has therefore been refused. On the other hand, I am of the view that the relevant reason could be expressed by a suitable written form of words, but, more importantly, if the Parole Unit is represented at the meeting, the representative of the Board would be in the position of being able to discuss the matter personally with the applicant and could amplify to the extent necessary the reason why the Board had refused parole. In that way the parole applicant is better informed as to the reason why parole was refused. This question of course raises many delicate and sensitive issues which are better expressed by personal contact rather than by the written word and it is anticipated that suitable procedures could be instituted which would permit the applicant to be informed in a suitable way as to the reasons why parole had been refused. There is the additional advantage that on renewing his application, the parolee can address the matters of which he has been informed and by reference to which he had failed on a prior occasion."

I agree that written reasons as well as oral reasons are preferable, and should come from the Boards themselves. I have drafted the legislation to ensure reasons in future for parole refusal will be given in writing.

Appearance In Person

Many submissions from prisoners argued that they should appear in person. There are pros and cons. Many people with Parole Board experience suggested to me that overly well presented and articulate prisoners would have an unfair advantage. Indeed, the Parole Board submission supports this view:

"The Board has expressed the view that if a parole applicant were required to confront the Board in a somewhat formal setting there is a real risk that well meaning and otherwise well-equipped applicants may fail to do justice to their presentation.

Of course, there will be some who would relish the opportunity to appear and who would be able to present, most persuasively, the reasons why parole should be granted. On the other hand, the mere fact that matters are put persuasively, does not necessarily mean that the presentation is worthwhile. On the other hand, there may be many applicants who would be desirous of expressing viva voce matters relevant to his or her application but may be poorly equipped to do so and indeed may not be able to do justice to the case. The result might therefore be that injustice is done to that person because his poor presentation of the material may be seen to reflect an application which has little worth whereas it may well be a very worthwhile application.

The Board has therefore been concerned that whilst the personal attendance of prisoners at meetings of the Parole Board may assist in some circumstances and will relieve some prisoners' concerns, there is a very grave risk that a significant proportion of prison applicants may be severely disadvantaged."

However, with all due respect to members of the Board, I am sure they are underestimating their own powers of discrimination and judgement.

With a single Parole Board, there is the sheer logistical impracticability of attempting personal appearances. However, Regional Boards will solve this difficulty. Therefore, I am proposing that appearances in person be allowed, by prisoners making applications to the Regional Community Corrections Boards.

Advocacy

A number of submissions from legal groups advocated that parole applicants should be able to seek legal representation to present their applications before the Board.

The Prisoners' Legal Service Inc. recommended representation before the Parole Board:

"We think that an applicant prisoner should have the right to legal representation. We are not of the view that this will lead to undue formality. Solicitors and barristers have appeared for a long time before the Medical Boards of the Worker's Compensation Board and yet a speedy and informal procedure has been maintained in that forum. the Right of a legal representative or another advocate (including lay advocates) to appear before the Board will particularly benefit inarticulate prisoners who may not be well suited to presenting their own case."

(Prisoners Legal Service Inc.)

Every person who has had any involvement with the parole process with whom I have discussed the issue has advised me in the strongest possible terms not to accept this proposal. I have sought the advice of people in high legal office and likewise I have been advised that this could be a mistake.

The Honourable Mr Justice Carter, in his Parole Board Submission, argued against this proposal:

"It is said that this problem can be addressed by providing legal representation for all persons who apply for parole.

The Board, however, is of the view that it is not appropriate that the parolee's chances of parole should be measured by the quality of the legal representation which he may be able to enlist. It need hardly be said that the introduction of legal representation on behalf of each parolee would represent a massive cost to the community in legal fees."

(Submission from Mr Justice W. J. Carter)

Mr Justice Carter is a person highly experienced in such matters and obviously I accept his opinion in this regard.

I have come to the conclusion that the right to representation should be in terms only of assisting an applicant with particular difficulties in preparing a case and that in these cases lay representation would be appropriate.

I have drafted the legislation to give the Board discretion to allow an applicant to be assisted by lay representation, where in the Board's opinion it feels such representation would assist its understanding and assessment of the application.

19.8 The Benefits of Community Corrections Boards

The changes in recommending this new approach will have substantial benefits:

- Parole decisions will be made close to the communities to which the offender returns;
- Parole decisions will be far more open;

- The community can be involved in the parole decision;
- People who know the offender best will be involved in the decision;
- An avenue of appeal and review will exist;
- Prisoners will be told why they are refused and what they have to do to become eligible;
- Serious offenders will be considered for parole in a separate atmosphere from minor offenders;
- Good behaviour in prison and on parole will be taken into account and will reduce the quantity of supervision;
- The system will be a positive incentive to apply for parole, not a disincentive;
- Interaction between Regional Boards and Parole Supervisors will be developed and will provide a positive check and control on the quality of parole supervision by local Correctional Officers;
- Prisoners will be told in writing why their applications were unsuccessful;
- Community Corrections Officers will be located in each prison positively encouraging and facilitating community supervision;
- In certain circumstances, prisoners can be allowed to present their own parole applications; and
- Authority for release of prisoners into the community will return to the body intended to have this power by Parliament.

19.9 Future Eligibility for Parole

The major submissions on the subject of parole eligibility were compiled by the Prisons Department, Probation and Parole Service, Mr Justice Carter, Chairman of the Parole Board, Mr Ken Bradshaw, Mr Ross Evans, Mr John Murray of the Probation and Parole Service, and the Prisoners' Legal Service Inc. in a Discussion Paper entitled "Parole in Queensland". Many prisoners also made submissions on the subject.

The submissions covered:

- the length of time to be served before a prisoner should become eligible for parole;
 - some said a third as in other States,
 - others said a half;
- the certainty with which parole was available,
 - the Prisoners Legal Service Inc. argue it should be automatic at 1/3;
 - the Queensland Probation and Parole Service arguing consideration should be automatic at 1/2 sentence.

The range of options put to me is quite complex. One major submission argued 2/3 automatic remission with additional remission to be earned in prison and for time spent in remand to be taken off the sentence. I suspect if we did all this, then prisoners would be getting released on remission almost before they had even committed the crime.

Mr Justice Carter, Chairman of the Parole Board, in his most valuable submission to the Commission, did not propose any alteration to the statutory requirements as to eligibility which now stands at half time for sentences in excess of six months.

The submission of the Queensland Probation and Parole Service proposed that:

"... prisoners serving sentences of more than six months will be automatically considered for parole release when they have served half their sentence." and "all prisoners will be eligible for release under supervised remission after they have completed two-thirds of their sentence".

(Submission from Queensland Probation and Parole Service)

The Prisoners Legal Service Inc. Discussion Paper recommended that "prisoners be eligible for parole release after having served one-third of their sentence less remission" and that "all prisoners should be eligible for parole release".

The Australian Law Reform Commission, in a summary paper titled "Sentencing", published in October 1987, stated *inter alia*:

"prisoners sentenced to fixed terms should be automatically released on appropriate conditions to be specified by the Parole Board after serving the portion of their head sentence fixed by statute."

Many submissions argued Queensland released far too few prisoners on parole; that in assessing the risks they were too conservative and out of line with other states. Mr Col Bevan, on the Committee assisting me and an authority on parole, argued there was no good reason to follow the errors made in other States, that parole in Queensland was held in good regard by other systems for the very reason the Queensland Board was so careful in reaching a decision. But, many submissions argued parole should be "easier" to obtain.

The Prisons Department proposed parole approval for prisoners serving sentences of less than 12 months be on the authority of the Director-General of Corrective Services. They argued:

"It is considered to be overkill to refer sentences of 12 months and below to a Parole Board. These offenders will be out in any case within a brief period. Since offenders, serving 12 months or less, represent more than 92% of the prisoners in the system this would really free up the parole system with minimal serious risk."

(Submission by Prisons Department)

I believe the case is strong for parole eligibility at 1/3. But the system is interlinked with the use of remission, community corrections and sentencing practices.

The Penalties and Sentences Legislation will provide an opportunity to continue the process of reform and I refer to the Justice Committee for consideration all the matters relating to changing parole eligibility.

In referring these matters to the Justice Committee I have briefly set some of my comments. The issues are important and I believe the people who have assisted me on my Secretariat should continue to be involved with the Justice Committee as should the Q.C.S.C.

19.10 The Impact of Remissions

Remission is an administrative arrangement, allowed in law, whereby the Prisons Department may release a prisoner free on the grounds of good behaviour, after serving somewhat less than 2/3 of a sentence. In practice, it means that prisoners tend to be released at 2/3 of a sentence, with additional remission for overtask marks earned for work unless specific action is taken to delay a release until more of the sentence is served.

When Queensland brought the remission system into line with other States with 1/3 remission, for many prisoners it ceased to be worth applying for parole at 1/2 time. Instead of applying for parole at half time and then being supervised while on parole and running the risk of spending the rest of their sentence back in prison if they breach their supervision, by waiting slightly longer, prisoners are released free on remission; hence they can avoid coming under the supervision of a Community Correctional Officer for the balance of their sentences.

A great many prisoners explained this to me with detailed calculations of how this worked in their own case. They were fluent and eloquent about it. They clearly have had a lot of practice thinking about it. For instance:

"The difference between half time when at present parole might be granted, and full time less one-third remission and overtask marks on a sentence of five to seven years makes parole not even worth looking at because the chances of let down because of not meeting the requirements of the parole board that are not listed and no reasons given."

(Submission from G. W. Lawson, Prisoner)

The submission from the Department of Corrective Services and Administrative Services made the same point:

"A matter of concern is the fact that there has been no changes in the process of parole over recent years while over the same time there has been a increase in remission to one-third and the introduction of the Home Detention Programme. These two innovations have made parole look less attractive."

(Submission from M. J. MacNamara, Deputy Under-Secretary)

The Parole Board itself recognises the inherent dilemma:

"In some cases it will happen that at the time he is eligible for parole, the prisoner will have served the major portion of his sentence after allowing for remissions. It will often be a matter of major concern for the Board, particularly in cases of serious offenders, whether on the one hand to refuse parole in the knowledge that the offender will serve a further period of imprisonment or, on the other, to grant parole in the knowledge that he will remain subject to supervision in the community for a period represented by the unexpired period of his sentence irrespective of any remissions."

(Submission from Honourable Mr Justice W. J. Carter)

Prisoners thus are remaining longer in prison instead of proceeding on to parole and this contributes to the overcrowding problem. In my Interim Report I recommended the establishment of the Justice Committee to look at the issue. Since then I have continued to explore the issue.

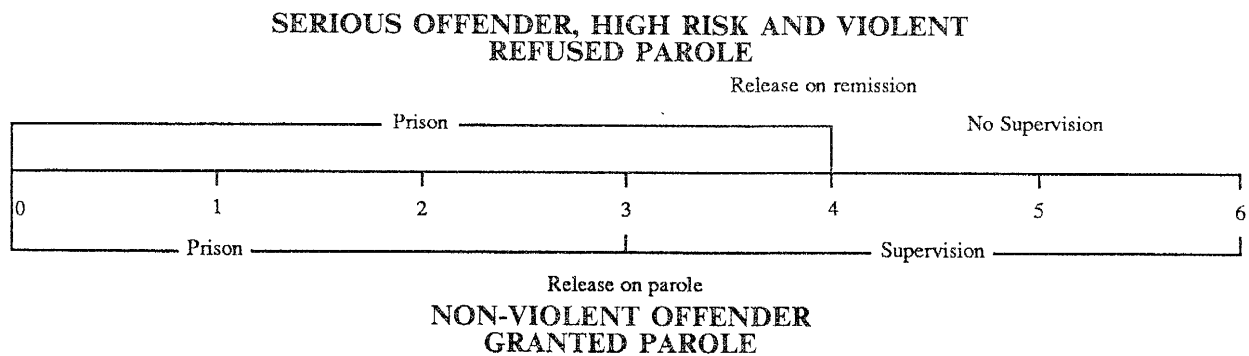
The system of parole is designed to allow prisoners who have demonstrated a degree of trustworthiness out of prison into community supervision. This will normally happen at half time or somewhat later and the prisoner will spend the other half of the sentence being supervised by professional correctional officers in the community with the knowledge that breaking that trust will result in a return to prison for the rest of the sentence.

But, the very worst of thugs with a history of violence who are refused parole need to wait only a relatively short period between the half sentence and the 2/3 remission period to be released. Instead of release into the supervision of professionals as parole does, the prisoner is released completely free. The diagram in Figure 21 illustrates the consequences. It shows the effect of parole and remissions on two sentences of six years. People who are little risk and are granted parole spend the rest of their sentence of three years under supervision. High risk offenders not granted parole actually spend two years less under supervision.

Figure 23: The Amount of Supervision for Two Six Year Sentences

The high risk offender is actually supervised less and has no supervision in the community.

The non-violent offender receives more supervision.



The system seems flawed.

I am suggesting the community needs to look closely at whether it is well served by this process. I feel that rather than remission, community supervision would be preferable.

However, any such change needs to be incorporated into a review of sentences. Hence, this is a matter for the Justice Committee. My arguments are strengthened when it is realised just how few prisoners are actually transferred to community supervision.

In the period July, 1987—30th June, 1988, 745 prisoners applied for parole and 296 were released. During the year nearly five thousand prisoners were discharged from prison. Obviously, the great majority of offenders are released from prison without any form of supervision or monitoring.

It appears to me that the use of remissions defeats the purpose of a sentence. I think most people in the community would be horrified if they realised that someone sentenced to, say, nine years by a judge for a brutal rape is let out before he has completed six years by the prison authorities without any kind of review. The court says nine years but practice says six.

It has been said to me that the system which operates in Queensland, whereby offenders almost all automatically have one-third of their sentences remitted, has resulted in increased sentences across a wide range of offence categories. I have asked judges if this does occur. They have all assured me that it does not occur in their own sentencing.

The Prisons Department sometimes does not give remission. The Comptroller-General says that 10% of prisoners are denied remission. During the course of this Review, Cabinet decided not to recommend Royal Remission on the occasion of the Queen's visit. There have always been Queen's remissions, but not this time. Moreover, it is a Cabinet decision whether "life" prisoners are released on parole or not. It all seems very erratic.

I have had considerable reaction when I suggest there is a strong case for getting rid of remissions altogether.

The Prisons Department submission argues strongly for the retention of the present almost automatic one-third commuting of a prisoner's sentence by remission provisions. The principle argument being, that "there is a need for an incentive for early release from prison". This argument was also advanced by the prison officers on the Committee assisting me. I specifically explored the issue with the Comptroller-General who vigorously defended the case for the retention of remissions at the discretion of prison administrators. I am required to give respect and consideration to the views of the senior prison administrator in the State and his comments cannot be ignored.

On the other hand senior administrators in the community corrections area recommended exactly the opposite. The submission from the Queensland Probation and Parole Service recommended "that the present system of remission be discontinued".

On this subject of whether prisoners will be unmanageable if there is no remission, I remain unconvinced. The Comptroller-General's argument can be addressed by asking: how many presently well behaved prisoners would become unmanageable if remissions were abolished, and earlier community supervision substituted for the remission period? Would prisons really become that much harder to manage?

I read with interest a paper brought to my attention by the Minister for Justice and Attorney-General after his visit to Canada. Titled "The Future of Parole in Canada" it was presented at a Conference in Ottawa on 1st August this year, and was written by the National Parole Board Chairman, Mr Fred Gibson, Q.C. He recommended in the paper that "... the earned remission system be abolished".

In conclusion I believe the evidence is that justice would be better served by the abolition of remissions with an appropriate review of sentencing procedures to be contained in the Penalties and Sentences Legislation. The proposal to abolish remissions will no doubt create widespread debate. Any debate should take into account the views of prison officers who work in the real world, not the theoretical world, of dealing with prisoners. This matter should be referred to the Justice Committee for further consideration. I believe any proposal to do away with remission should *not affect existing prisoners*.

At the moment the amount of remission is increased with "overtask marks". Overtask marks are earned by prisoners for working, and particularly important tasks like head cooks and laundry men get more overtask marks. Prisoners can earn four or six over task marks per week. Every 12 marks converts into one day's special remission. The earning of these marks do seem to be a matter of pride and incentive. Ignoring the case I have been told of where they are miscalculated or the records are lost, prisoners also informed me that all their hard work and earned remission is wasted if they accept parole. They argued that earned remission should come off the length of the community supervision component of their sentence. The argument was supported by the Prisons Department. The overtask mark system has been accused by Aboriginal and Islander groups of being discriminating. Aboriginal and Islander prisoners say they are not given the jobs that earn high overtask marks.

The Department's submission proposed that "remission accrued at the time of parole be subtracted from the community supervision time."

While a system of remissions remains in force, this suggestion makes sense. It would be easy to administer when the two services are amalgamated. I have drafted the legislation to allow for this measure. It will considerably increase the incentives for prisoners to behave themselves in jail and to apply for parole. It is the best, fairest, and simplest way to go. It will be for the Q.C.S.C. and the Community Corrections Boards to establish suitable administrative procedures. This could be done under the present Offenders Probation and Parole Act. I have carried similar provisions over into the Draft Bill.

19.11 Extending the Use of Community Supervision as Part of a Prison Sentence

In the previous section I showed that:

- remissions acted as a disincentive to the use of community supervision following release from prison;
- remission reduced the period of supervision of offenders; and
- only a small percentage of those serving prison sentences served part of that sentence in the community.

I feel this is wrong. It is expensive because it uses prisons instead of community supervision and it releases prisoners straight to the community without a graded release and a period of readjustment. One day prisoners can be in a maximum security prison. The next day they can be at home free. The transition is too abrupt.

I believe that as a general principle, it should be accepted that all prisoners should have a period of supervision in the community prior to release from the sentence on the basis that:

- corrections are better undertaken in a community setting;
- community supervision is a better idea than release on remission.

The changes I have recommended in this Report to be implemented as part of the Corrective Services Bills will go a long way to ensuring this occurs. Transfer of a sentence to community supervision should occur more frequently as confidence in the quality of supervision will be greater with the Q.C.S.C.

However, we could go much further in the use of community supervision. The Justice Committee should consider whether a period of community supervision ought to be a part of any sentence involving prison.

Perhaps instead of remission and release at 2/3 of a sentence, prisoners should automatically transfer their sentence to community supervision at 2/3. Only the most difficult of prisoners, upon specific application of the Q.C.S.C. would be refused such a transfer.

19.12 Indeterminate Sentence Prisoners

Of all the submissions I received, I think probably some of the most lucid, well-written and best argued came from the prisoners sentenced to life imprisonment in Queensland. I must have had fifteen or twenty of them write detailed submissions.

Many of the "lifers" have been in the system for a very long time and appear to be adjusted to a long term of imprisonment. Prison officers tell me they form the most easily managed community within the prison system. They often work hard to make a decent life within the system. They often are the people most capable of settling down in a difficult situation. Quite a few of the submissions I received were written by people who have done extraordinarily well with tertiary studies since coming to prison.

I felt that my Terms of Reference relating to the needs of special groups could not avoid giving consideration to the position of life sentence prisoners in the system. Indeed, I received so many submissions from this group, so strongly argued, that I must give thought to it. The submissions, basically, say that they have committed crimes, but that as human beings they must be given some hope of eventual release. They say they often receive a favourable recommendation for parole, yet this is rejected by a Cabinet Decision.

I received quite conflicting arguments regarding the eligibility for parole of life prisoners.

The Prisons Department submission, specifically stated that:

"... release of life sentence offenders should not go to the political level where, understandably, the headlines of the day can affect a politician's capacity to make an objective decision regarding release.

"Both the Prisons Department and the Probation and Parole Services express a similar view:

"the decision to release prisoners serving indeterminate sentences should rest with the Parole Board, and not Executive Council."

The Parole Board itself recommends this action. A letter from the Honourable Mr Justice Carter, Chairman of the Parole Board supporting this action appears in Attachment 12.

The Australian Law Reform Commission's Summary Paper on Sentencing, dated October, 1987, recommends as follows:

"Legislation should provide that a life sentence prisoner's case must be considered no longer than ten years after the commencement of sentence, and at least annually after the date of first consideration. Parole Boards should consider, on their merits, applications made at any time."

This seems to me to be a reasonable proposal, and should be considered for inclusion in the proposed "Penalties and Sentencing" legislation.

In summary on the one hand, there are submissions of the prisoners and, indeed, staff and the Departments, arguing:

- prisoners do need something to live and work for;
- prisoners can indeed reform;
- that their release can depend upon the elements of chance in that if, for instance, a highly publicised murder occurred in the days or weeks before a parole application, then their application would most likely be refused;

- that parole is recommended by the Parole Board but overturned by Cabinet that really had no real knowledge or expertise in the case;
- prisoners on life sentences had a demonstrated capacity to live and work in, and not be a risk to, the community, and yet there is no established mechanism for their release
 - the release to work hostel really is not a good environment for long term community detention.

On the other hand, I had strong arguments that offences for which life imprisonment is sentenced are of such a major and horrendous nature that only the community as a whole can take upon itself the decision to allow the offender to return to society and the appropriate body that can carry this out is the Government, represented by the Cabinet.

Some submissions claimed a small board, such as the Parole Board, cannot possibly take upon itself these kinds of decisions nor is it structured in a way to be accountable for such decisions. Only the political processes are capable of managing such decisions. Some other States have no indeterminate sentences.

I have listened carefully to both sides of the argument and debated the issues with my Committee, Secretariat, and the groups I have put around myself as taskforce. Given the strong views on the subject, this is a matter that should be debated as a specific issue in the community, amongst the legal profession and the politicians. I therefore refer the issue to the Justice Committee.

19.13 Parole for Aboriginals and Islanders

I have addressed the needs and issues in relation to this offender group elsewhere in this Report.

However, as a group they face specific problems in relation to parole. The Honourable Mr Justice Carter in his submission commented as follows in relation to Aboriginal prisoners:

"The central concern of the Board in relation to Aboriginal prisoners is that their general lifestyle is such that they may not present as appropriate persons for parole. It is obvious that in many cases their parole plan will lack substance. It is almost invariably the case that they may not have suitable permanent accommodation available to them nor will they be able to reasonably look forward to any sort of employment. There is the additional factor of some major importance that so many Aboriginal prisoners have been involved in the commission of offences because of their consumption of alcohol. Much good work is being done in this area. However all of these matters have led the Board to believe that Aboriginal applicants for parole may be seen to have less chance of success than others because of the kind of matters to which I have referred. This is a matter of real concern to the Board and the Board is concerned to satisfy itself that Aboriginal prisoners should not be disadvantaged by reference to these facts."

Reverend Wal Gregory is a member of the Parole Board and has worked closely with Aborigines. He made the following points:

- Aborigines are a special needs group and their cultural background has profound implications for assessment and management.
- The "matey" concept trialled in Canada, whereby elders are encouraged to go into prisons, has proved to be effective in that country, and could be trialled here.
- In his experience, full blooded tribal elders have the best understanding of what Aborigines really think.
- It is of utmost importance that Aborigines in custody, even in minimal supervision situations, be as close as possible to their community, family, and friends.
- There has to be a far more rational plan with respect to what happens after release from prison; the law makes it hard, however, with "wet canteens".

Quite frankly, it is clear to me that the system discriminates against Aborigines. I received submissions seeking an Aboriginal and Islanders Parole Board.

I rejected this concept. Aborigines and Islanders should, in my view have the same justice as other Australians, not special or lesser justice. I would recommend the Government give consideration to the appointment of an Aboriginal and Islander to the Regional Community Corrections Boards. Later in the report I will be making recommendations for strengthening the Community Corrections presence and involvement with Aboriginal communities.

To assist this I have already recommended to the Minister, and he has accepted that the Q.C.S.C. hold several seminars with Aborigines and Islanders, and relevant organisations, next year to ensure that they have an input into policy direction.

RECOMMENDATIONS ARISING FROM THIS SECTION

It is recommended that:

- 38 • Parole Advisory Committees be abolished; and
 - Community Corrections Units be established in each prison to assist the prisoners prepare for community supervision and the parole application.
- 39 • A system of Regional Community Corrections Boards be established with responsibilities for:
 - decisions regarding the transfer of a sentence from prison to community corrections for sentences less than five years: with authority to select:
 - Home Detention,
 - Release to Work,
 - Parole,
 - Community Corrections Centres,
 - or some combination of these; and
 - to vary the conditions of Community Corrections for offenders in order to provide a guarded system of return of offenders to society;
 - The Regional Community Corrections Boards to consist of:
 - Chairman being a Barrister or Solicitor,
 - A medical practitioner,
 - A person representing the community,
 - A Senior Custodial/Correctional Officer,
 - A Senior Community Correctional Officer, and
 - Where practical, an Aboriginal or Islander.
- 40 • The Queensland Community Corrections Board to have responsibilities for:
 - all decisions on transfer to community supervision for sentences in excess of five years except life sentences;
 - to act as an avenue of appeal from a Regional Community Corrections Board; and
 - to supervise and monitor Regional Community Corrections Boards with powers to issue guidelines and to report to the Minister as appropriate on any aspect of the performance of a Regional Board.
- 41 • Community Corrections Boards have legislated authority for the transfer of a sentence from custodial supervision to community supervision, and
 - Community Corrections Boards be able to select a community corrections program from a range of available services; and
 - In deciding whether applicants receive parole it should be an accepted principle that all prisoners should have a period of supervision in the community prior to release on the basis that:
 - corrections are best undertaken in the community setting; and
 - the public interest would be better served if rather than releasing a prisoner free on remission the latter part of a sentence was served under professional supervision by Community Correctional Officers.
- 42 • Prisoners be allowed to make applications in person before Regional Community Corrections Boards.
- 43 • The Community Corrections Boards give reasons in writing for refusal of parole applications, and that such reasons to be sufficiently detailed to enable a prisoner to correct his behaviour to enhance his chances of success in further applications.
- 44 • In the calculation of the period of supervision after transfer from prison, any remissions earned while in prison be taken into account; and
 - The Q.C.S.C. and the Board establish suitable administrative arrangements for this to occur.
- 45 • The Justice Committee consider:
 - whether eligibility for parole should be at 1/3 as in other States;
 - whether automatic community supervision at 2/3 of a sentence should be granted unless the Q.C.S.C. specifically opposes the transfer;
 - the abolition of remissions;

- whether parole for indeterminate sentences should be the sole responsibility of the State Community Corrections Board rather than the Governor in Council after consideration by the Parole Board;
 - whether indeterminate sentenced prisoners should have a set period after which they may be considered eligible to apply for parole; and
 - whether sentences of less than six months should be also considered for eligibility for parole.
- 46 • The Government appoint Aboriginals or Islanders to the Community Corrections Boards.
- 47 • Where, in the opinion of a Community Corrections Board, assistance is required in presentation of a case for transfer to community, then a lay advocate be allowed to assist the applicant.

20. SEGREGATION OF OFFENDERS

20.1 The Issues in Segregation

My Terms of Reference required me to look at the segregation of youthful prisoners, first offenders and low-risk prisoners from other prisoners, the need for secure confinement for high-risk and violent offenders; and confinement for persons on remand.

In practice, there are considerably more groups of offenders that need to be separated from the general run of prisoners. Indeed, I have some doubt as to whether there is such a thing as an average prisoner.

In looking at the problems of segregation the system deals with an enormous range of groups of people. There are:

- hardened criminals;
- petty thieves;
- sex deviates;
- fine defaulters;
- institutionalised recidivists who like prison life;
- ordinary people tempted by passion or greed;
- violent criminals;
- non-violent criminals;
- drug users;
- children;
- people physically or mentally handicapped or both;
- people with AIDS and hepatitis;
- prisoners with children;
- remand prisoners;
- protected prisoners; and
- minority groups, such as Aborigines.

For the purpose of this Report, I believe special and immediate emphasis needs to be given to the segregation of:

- young people,
- violent offenders, and
- those on remand,

from the general prison population.

I know there is overcrowding in the system, and that makes it difficult to provide adequate room for manoeuvring and separating one class of prisoner from another. The recent appointment of a Director of Induction and Classifications has actually gone some way towards ensuring the transfer of prisoners from one institution to another happens in a reasonably systematic fashion.

At the individual prison level however, there are problems. In particular, Brisbane Prison does not seem to be capable of managing reasonable segregation. During the Review I came across several cases of individuals on minor crimes with short sentences being assaulted in 2 Division and young boys who were placed in yards with hardened criminals with obvious consequences. The most violent mix with the most inoffensive; young offenders, some as young as sixteen, mix with older and seasoned criminals. Putting all the groups together in the one prison, is really a recipe for disaster. And so it has proved.

But, what has appalled me more than anything, I think, was that submission after submission from prisoners made passing reference to the violence, assaults and sexual harassment they were receiving from other prisoners, or were witnessing. I say that they mentioned it in passing because it was apparent that it is so endemic that it is accepted as part of prison life. The submissions seemed to assume that I, and anyone else dealing with the system, would have been aware of this. It was not a cause for outrage anymore. It has become customary—prisoners have become dehumanised. Just as prisoners are a part of the system, so is violence and assault. I have had submissions from boys aged about seventeen or eighteen, expressing their fears and their horror of what has been threatened and done to them by older prisoners, and hoping that the Commission of Review will be able to get them out of the situation in which they find themselves.

At the moment, the prisons are geared to cope with the worst offenders. You will find the situation where prisoners, just trying to do their time, end up giving offence to the "heavies" and

suddenly, they need protection. We have large numbers of prisoners in the system under protection. It has been estimated that 10% of the prison population is regarded as being on some form of protection. We have the rather ludicrous situation of prisoners being on protection from other prisoners on protection. This is getting silly and costly.

I am now convinced that past and present efforts to manage even basic segregation of different types of offenders within our prisons are failing. Segregation does not work and as things stand it can not work. The approach I am recommending is built on classifying and assessing prisoners at reception and determining an appropriate place for them. An appropriate place does not mean a group of cells in Brisbane Prison or even necessarily in a particular wing of a prison. It means we have very specific places and very specific programs identified within the system for particular groups of offenders, and we make sure that the management of the system is capable of putting them where they should be. In the sections below I discuss the types of facilities and programs that need to be put in place for particular groups of prisoners.

20.2 Children in Prisons

It was a surprise to me how many people under 18 are in prisons. At any one time there are about 50. Officially, they are too young to drink in a hotel, to vote, or hold property. In some cases they are too young to legally drive a car. Yet they are put into adult prisons.

The Human Rights and Equal Opportunity Commission submission states:

"The State has a special obligation to children and young people, set out in the 'Declaration of the Rights of The Child: Principle 2 establishes that the child is entitled to 'special protection' and is to be given opportunities and facilities to develop in a healthy and normal manner. Principle 9 establishes that the child is to be protected from all forms of neglect, cruelty and exploitation. Existing procedures in the Queensland prison system do not provide adequate protection to young prisoners. All necessary measures must be taken both to separate vulnerable young prisoners and to maintain supervision adequate for their protection at all times."

(Human Rights Commission Submission)

Queensland is one of only two States in the Commonwealth that has legislation that nominates 17 years as the age at which a person is treated as an adult in criminal proceedings. All other States use 18 years as the age of majority in criminal matters.

It is a matter of common sense that the system segregate persons under the age of eighteen while these people continue to be imprisoned. This is only a short term solution. In my view people under 18 just should not be in adult prisons. They are children in law, children in terms of rights and responsibilities. In other States they are in law required to go into juvenile institutions. This should be the case in Queensland. They just should not come into the prison system. To stop the entry of these young people into prison requires a redefinition of 'child' in Queensland legislation. Amending the appropriate legislation would remove this small vulnerable group of people from the prison environment.

The transfer of children (aged under 17) from juvenile detention facilities to adult prison is an infrequent but none the less disturbing action. The Human Rights and Equal Opportunity Commission recommended "that provisions permitting the placement or commitment of juveniles to adult prison be repealed". I believe that a review of the legislation would restrict transfer to persons aged 18 or over.

The Director of Children's Services and the Minister for Family Services have the authority to place a child in a prison. They are placed in prison only because they are not wanted in juvenile establishments. However, the prison system is such that this authority should never be exercised.

I feel strongly about this matter. I have already written to the Minister for Corrective Services and Administrative Services recommending he seek amendments to the Children's Services Act. The amendments I am seeking will place responsibility for these young offenders who are in fact still children firmly with the Department of Family Services which already has responsibility for juvenile detention and correctional centres.

A similar issue arises with community supervision.

I accept that this change will have some impact on the running and resourcing of juvenile corrections in that Department. But, resources are not the issue—justice and fairness are.

I have discussed this with Mr Allan Pettigrew, the Director-General of the Department of Family Services. In reviewing the problem of children in prison it strikes me that there are many common issues shared by juvenile and adult corrections. I believe that given the specialized nature of

corrections, the Justice Committee should investigate the appropriateness of placing responsibility for juvenile corrections under the Q.C.S.C.

20.3 Segregation of Youthful Offenders

I have had a number of submissions arguing that young and impressionable offenders need to be given special treatment by the system to give them every opportunity to change. If we are in the business of corrections, and I believe that we are, then we must provide special services and programs for this particular vulnerable age-group.

Many of the submissions received, including some from prisoners, expressed real concern that young offenders were mixing with experienced and violent offenders. There is absolutely no doubt that these young offenders are placed in situations where they are physically or sexually assaulted and threatened. What is horrifying is the assumption that it is just a normal part of the prison experience and that nothing can be done to prevent it happening. No real investigation occurs and little action is taken.

The numbers of young people in prison is significant. Table 21 below shows that nearly 700 prisoners are 19 and under.

Table 21: Age of People Admitted to Prison

		Age				
		17	18	19	20	21-24
No. Admitted	Male	69	283	322	283	1 055
	Female	1	13	11	15	60

(Source: Prisons Department)

It seems only common sense that youthful offenders should be segregated from other, more hardened prisoners. Yet I am told that accommodation in the system is not capable of providing for this to happen. I have been told by prison administrators that attempts to provide "boys' " prisons routinely fail. They say that many young offenders coming into adult prisons for the first time have a long history of crime. They are, I am told, often violent young thugs, who act tough to prove their status in the world of an adult prison. Prison holds no fears for them and they are disruptive and violent and difficult to manage.

I have had a look at arguments put to me, in particular by the Comptroller-General of Prisons and a number of senior prison staff, including some of my Committee, that young offenders are better accommodated with older prisoners, who provide a stabilizing influence. This suggests that an appropriate role model for young offenders are the older prisoners. Really, this is exactly what we are trying to avoid. A considerable number of submissions were concerned with young offenders and stressed the seriousness of placing them with older prisoners. The phrase "prisons become universities of crime" comes to mind in this regard. It is wrong that hardened prisoners should be used to provide a desirable role model for young offenders. Rather, the whole purpose of a corrections service is that the appropriate role model is a correctional officer who works closely with young offenders. The present approach by the prison management is a model that may well help with the internal management of prisons but is not a suitable model for the provision of correctional services to young offenders in this State.

A significant number of young first offenders admitted to prison are serving short sentences for non-violent crimes. Past attempts to establish separate facilities for young prisoners have not met with success partly because all classifications of young offenders were mixed together. Not only should young offenders be segregated from older prisoners but certain types of young offenders should be segregated from others. An 18 year old in prison for non payment of a traffic fine shouldn't be mixed with an 18 years old violent rapist.

Neither society nor the management of the prison system should be allowed to wash their hands and responsibility when faced with the challenge of properly providing for these people. If we are serious about corrections, then those young people, no matter what their previous record, who are facing their first period of imprisonment in an adult institution, should be targeted for special correctional attention. If we are not prepared to try with this group, then the system should give up trying to be a system of corrective services and accept the role of being just a system of punishment with consequential brutality and increased crime rates. We need to make sure that reality reflects our espoused ideals. Otherwise we should stop pretending to be corrective services and become simply prisons.

I am of the view as is my Committee, that the Q.C.S.C. must almost start all over again with services in this area. The model that I have accepted is that young offenders must be separated in the prison system. They need special services, counselling and opportunities and facilities that are quite separate from those in which hardened, adult offenders are contained.

I explored these ideas with Father Dethlefs and Dr O'Connor. Father Wally Dethlefs has spent his life time working in the juvenile justice system including detailed studies in America and Europe, prison chaplaincy and counselling and is presently a Hearing Commissioner with the Human Rights Commission of Inquiry into Homeless Children and Young People. Dr Ian O'Connor is a Lecturer in social work at the University of Queensland. He is an expert in juvenile justice systems. They strongly endorse the need to get young people out of adult prisons. I quote their comments below:

"1. Young People and the Criminal Justice System

Within the juvenile justice system there are few non-custodial corrective orders—in fact only one, i.e. supervision. Because of high case loads, Child Care Officers are often unable to carry out this order.

Frequently the supervision orders of court are not implemented by the department. It is not uncommon for these children to re-appear in court charged with another offence and to be committed to care and control. They have not had the benefit of a community based corrective order.

Juvenile offenders are no longer a priority for the Department of Family Services. Given the number of young persons in prisons who have been in child welfare institutions it is imperative that the rehabilitative ethos recommended by your inquiry is extended to the juvenile justice system. The range of non-custodial corrective orders for juveniles needs to be expanded, and priority should be given to their implementation.

2. Inappropriate Transfer of Juveniles into Adult Corrections

We note with concern that a significant number of young people, some as young as 15 years old, are being transferred from juvenile institutions into adult corrections. Over the last 6-12 months we believe these numbers have increased significantly. Legally, juveniles can be placed in adult prisons *either* directly by a Children's Court Magistrate or Judge, or be transferred administratively. We strongly believe that juveniles should be retained in juvenile institutions while adults should be detained in adult prisons.

3. Special Provisions for 18 Year Olds and Under

Young people aged 18 years and under should be subject to special classification procedures.

- i. there needs to be special emphasis on diverting them out of prison;
- ii. special programmes need to be developed within the city to achieve this,
 - e.g.—attendance centres
 - community work
 - options youth (a Canadian project) etc.
- iii. for those who need to be incarcerated special facilities should be established to cater for them, conducted by specially trained and highly motivated staff and with programmes heavily weighted towards rehabilitation and re-integration into society;
- iv. we believe that existing models in Australia, e.g. in South Australia and Victoria, should be studied with a view to establishing something similar in Queensland. Two programs which come to mind would be the Youth Training Centre, Maimsbery in Victoria and the Stuart Section of McNally in South Australia.
- v. special provision should also be made for young Aborigines, young women and young people with mental disability.

4. Special Provisions for 19-21 Year Olds

We believe that special attention should also be directed at providing appropriate facilities (as suggested above) for people aged 19-21 years."

(Correspondence from Father Dethlefs and Dr O'Connor)

Recently, on a trip to the Northern Territory I had a lengthy discussion with the Territory's Minister responsible for corrective services. I was impressed by the ideas he has developed for the establishment of forestry camp alternatives. Staff from Corrective Services should inspect operations of facilities for youthful offenders in the Northern Territory, with specific reference to their suitability for establishment in Queensland. I have in mind that these would be outdoor work and physical skills orientated and would be of a low security rating.

I have discussed the need for this kind of facility with Rev. Allan Male, Brother Paul Smith and Sister Bernice Heffernan of my Committee, all of whom have lengthy experience working with

juvenile offenders and the provision of accommodation and support services. They endorse the proposal.

Rev. Allan Male, runs the Shaftesbury Citizenship Centre at Spring Hill for young offenders. This could be an appropriate model to develop. There is a place for community and church groups in the provision of such services. I believe we should be seeking expressions of interest from suitable community groups, and accrediting them as we would other private sector organisations. We would then carefully select and assess prisoners for such programs. Supervision should be very high and close. Programs would be personal improvement and "life skills" orientated.

A low-security classification, of course, would be essential for people attending such courses. The Q.C.S.C. could provide funding on a per person per day basis.

We need to be prepared to be both creative and experimental as currently, little is working well with young offenders.

Many youthful offenders do not have an adequate support base in the community. They end up in prison as there is no other alternative for them. The Corrective Services Commission must be committed to providing *a range of facilities* to cater for the corrective needs of the society it serves. I believe that young offenders who are in prison for the first time with sentences of twelve months or more should spend at least three months of that sentence in a community-based centre before release. Again strong community involvement in this program should be sought.

Some facilities I have in mind would need a security component, but programs as basic as reading and writing, skills for living, getting a job, physical education, welding, car repairs and such like could be provided in the centres with security requirements. I do not expect a high rate of success but that should not prevent us from trying.

In basic summary, the sentences of young offenders should be served in special facilities with special programs. The ideal resources do not currently exist. This issue is so important, and so urgent, and the problem so neglected, that I am urging immediate action. We need experts advising the Q.C.S.C. how to handle young offenders both in prison and in community corrections. I recommend the establishment of a Young Offenders Advisory Committee to report to the Q.C.S.C. It could include Mr Trevor Carlyon from the Prisons Department, Brother Paul Smith of Boys Town, Sister Bernice Heffernan, the Rev Allan Male, a person from the Aboriginal community, Dr O'Connor, Father Dethlefs and Rev. Wal Gregory. This Committee should be given very specific terms of reference to develop an immediate action plan for the removal of young and first offenders in an adult prison from the existing prison system, the finding of suitable alternative accommodation, and the speedy development of a suitable range of programmes to attempt to divert them from their offending behaviour, and to develop skills which would assist their integration into society. The emphasis by the Q.C.S.C. should be on innovation. What is being done now is failing.

20.4 Secure Confinement of High Risk and Violent Offenders

Those prisoners that are high security risks are currently held in maximum security prisons. The new prisons that are being built have a greater capacity to both contain and segregate these prisoners. But, the new prisons are designed to house both maximum and medium security prisoners.

The Prisons Department submission argued strongly against establishing a separate unit for maximum security prisoners:

"Prisons Department current view is that separate high security units are counter productive. This is not to suggest that high risk prisoners should simply be dispersed amongst the general population . . .

The Department argues that many countries, and indeed States of Australia, have decided to open specific separate units for these problem prisoners. The results are disastrous, Jika Jika in Victoria and Katingal in New South Wales spring to mind. The prisoners who go there lose the moderating influence of other prisoners. Their behaviour worsens rather than improves."

(Prisons Department Submission)

I accept that the new prisons have a greater potential to manage high risk prisoners but the problem of those prisoners who are persistently violent toward staff and inmates remains as does the issue of whether it makes good sense putting high security prisoners in the same prison as medium and low security prisoners.

From what I have seen in Queensland prisons and interstate, and discussed with prison administrators, I cannot get away from the reality that the system ends up being corrupted by the presence of high security prisoners in the same place as medium and low security prisoners. No real corrective services can be provided in a setting dominated by the "heavies".

I recently visited the new Mobilong Prison in South Australia. The Mobilong system is relaxed and provides a very good work environment. I discussed what was happening with senior officers of the Department, officers of the general run whom I met in my walk around the prison, and Superintendents of the prison. They all said that if prisoners who were intractable did find their way into Mobilong and sought to exert influence, other prisoners would have nothing to do with it. They were the first to turn their backs. They wanted to get on with the education and work programs and just finish their sentences. The education courses available were in demand and well attended. The prisoners were enthusiastic about them. This prison was nothing like any I have seen in Queensland.

I am now of the view that to provide corrective services, the only workable solution is to remove the persistently violent from the mainstream of prison life. There are two ways it can be done. Problem and violent prisoners who cannot or will not participate in the corrective directions being taken by the mainstream of the prison population can be targeted with special and intensive programs. Whether persistently violent inmates can be reintegrated into normal prison life remains to be seen. But I have submissions from prison officers and administrators who argue that it can work. Alternatively, they can be permanently placed away from the general population.

We really should take the "heavies out of the system". They are quite few in number, most disruptive, and they are at odds with the philosophy of corrective services.

One particularly impressive submission from Prison Officers D. Tuck and M. Morris suggested the establishment of a Special Care Unit similar to that established in New South Wales. I understand the Prisons Department supports this concept and has arranged preliminary training for two officers in this Unit.

I endorse the approach and I am recommending that a "Special Care Unit" be established.

Over and above this the system needs a proper high security place to house really intractable prisoners—those who do not want to co-operate and abide by the rules, and those who are seriously disruptive and who disturb the majority of the prisoners who clearly just want to get on with doing their sentence. This is not to say that the Department should cease to attempt to work with these people. The Special Care Unit concept, which I endorse, would provide the door by which prisoners could go from very high security containment for intractables, back to the prison population. However, any disruption, manipulation of the system, or "stand-over" of those prisoners in medium security prisons, who are getting on with what they want to do, should be stopped immediately. I think perhaps a maximum of two chances in a Special Care Unit should be provided.

I appreciate the concerns that the experiences of Grafton, Bathurst and Joka Joka should not be repeated. The overall system I have recommended be put in place together with the recommendations contained in the Interim Report, the openness and accountability of a Commission, the discipline of an operational audit, Official Visitors, the special Police Prison Liaison Office, should all open the system and prevent the kind of abuses which went on in secret behind closed walls in those gaols.

The "out of sight, out of mind" syndrome that permitted and encouraged abuses has gone. The Commission of Corrective Services in Queensland will certainly not be "out of sight, out of mind". But, prisoners who are not prepared to behave themselves and who disrupt the general prison population must be isolated. There is no other sensible way.

A potential site to isolate intractable prisoners is the Security Patients Hospital when this facility is vacated on completion of the Department of Health's new forensic hospital. This should provide sufficient accommodation to house those more difficult prisoners I have been referring to. Within that facility there would be considerable opportunity to provide an upgraded standard of security. The new prison at Wacol would then house only high security prisoners who were prepared to work with the system and not disrupt it.

I expect the more secure facilities for intractable prisoners should be staffed by security staff given very specific training. It is not a programs prison, and should not be made into one. I reiterate, however, the importance of keeping the system open to public scrutiny. It must remain accountable.

20.5 Prisoners on Remand

Earlier in this Report I discussed the design, operations and purpose of the Pre-Trial Centre. I need to reiterate that remand prisoners are not sentenced or as yet, found guilty of any crime. They need to be treated quite differently. It is fundamental that they be segregated from convicted prisoners.

Prisoners on remand should be given quite different sets of conditions. It is important, in my view, that they have better access to visits. They need access to lawyers, and to legal facilities. I see good reasons for having quite a different policy on telephones and mail for prisoners on remand.

I think after the Pre-Trial Centre in Brisbane has been tested, it would be appropriate for the Q.C.S.C. to explore the development of Pre-Trial Centres in provincial cities.

These could well be all put out to tender by the Q.C.S.C. for private enterprise to both construct and to run.

One issue put consistently to the Commission of Review by prisoners is that remand time is "dead time" By this they mean that they spend time on remand before being found guilty. This could be as much 12 to 14 months, and a great many spend 6 to 9 months on remand. I am aware that sentencers may take into account any time spent on remand but I can report that the perception of prisoners is very much that remand time is lost. And of course to an extent they are right because they cannot get any remission of that part of the sentence served on remand.

Time spent in prison on remand is no holiday. I discussed this issue in particular with the Honourable Mr Justice Mathews who actually sent me a paper from United States outlining a scheme there where the time spent on remand is worth double in terms of the calculation of how long should be spent on the remainder of the sentence. Perhaps this would be too radical for our system. However I believe that justice seen to be done is better justice and there would be merit in having explicit calculation of the effect of remand time on a sentence. This is a matter for the Justice Committee to examine.

20.6 Other Special Units

We need other programs for people who have difficulty coping with the prison environment, because they have lacked the mental capacity to do so. The new prisons should have the capacity to provide reasonably satisfactory facilities for this and other groups needing a degree of special management. I have dealt with the needs of the Intellectually Handicapped, A.I.D.S. sufferers and protection prisoners in the section of this Report on Special Needs.

20.7 Assessment Committees

The decision that determines whether a prisoner is high, medium or low risk, or requires segregation, has been the responsibility of classification committees at each prison. These committees do not always have a role in the transfer of prisoners. The Superintendent of each prison has had the capacity to transfer prisoners without referral to any assessment group. The level of assessment of offenders has remained rudimentary.

"Efforts to resolve the problem have recently focused on the process of prisoner classification. Until recently the classification procedure has been only to question whether prisoners would be put in maximum, medium or minimum security institutions, or in different housing units within institutions.

In place of these broad issues series of decisions must now be made regarding the prisoner's ability to benefit from programs, their need for academic intervention, their vocational promise and needs and their psychological and intellectual deficits."

(Prisons Department Submission)

In essence, what is required is better assessment of all prisoners to decide the level of risk they pose and to plan his/her term of imprisonment. Much greater use must be made of information from Community Corrections, the family of the offender and other community groups who have had contact.

Each prisoner coming into the system needs to be carefully assessed to provide a security classification, select an appropriate placement within the system, and advise on a program of corrections. At regular intervals during a period of imprisonment the situation of each prisoner needs to be reviewed.

My contact with Dr Adrian Sandery of the South Australian Department of Correctional Services and their establishment of assessment committees at each prison has convinced me that a similar system is needed in Queensland corrections.

Some modifications are required to adapt the system to Queensland which is much larger than South Australia. What I am proposing is:

- An Assessment Committee,
 - to be based in head office,
 - under the responsibility of a Manager, Assessment and Transfer, and including,
 - Director Custodial Corrections;
 - Director Community Corrections;
 - A psychologist or medical practitioner;
 - A Manager Programs, from one of the Correctional Centres.

The Committee needs to monitor all assessments and transfers to ensure sentence plans are developed. It needs to set guidelines, and to check that prisoners are being properly assessed and do progress through the correctional system.

I have been concerned at the process of transfers between prisons organised by telephone calls between Superintendents. There seems to me to be something not quite right about some of the moves to suppress trouble makers by transferring them without notice. All transfers between prisons should only occur with the formal explicit approval of the Manager, Assessment and Transfer. He needs to satisfy himself that the proper guidelines have been met and due processes followed.

Queensland is too big for the Committee to see individual prisoners as occurs in South Australia. South Australia has only one major reception prison. Queensland will have four, spread over 1 000 klms.

To ensure each prisoner is properly assessed and has his sentence plan regularly reviewed, at each prison, we need Assessment Teams to work subject to guidelines issued by the Assessment Committee. They should have the following functions on intake:

- collating of all relevant information relating to a prisoner's entry into prison;
- initial interview to determine acute needs and immediate placement.

These teams should comprise appropriately trained prison officers and other professional staff where available, including psychologists.

We also need to ensure ongoing management of prisoners. The Teams, to be located in each prison, should:

- determine security classification;
- determine the facility appropriate to each prisoner's correctional sentence; and
- determine review dates and sentence plans;
- determine and monitor program participation and overall progress towards release.

RECOMMENDATIONS ARISING FROM THIS SECTION

It is recommended that:

- 48 • The Prisons Department immediately arrange the removal of any person under 18 years from Brisbane Prison into accommodation where they can be separated from adult offenders, that instructions be given regarding the need for separation and that the implementation of this instruction be closely monitored;
 - Legislation defining the age of children be amended to ensure offenders under the age of 18 years cannot be admitted to a prison; and
 - The Justice Committee consider the merit of transferring responsibility for juvenile corrections to the Q.C.S.C.
- 49 • A special effort be made to develop programs suitable for all groups of young offenders, including violent and non-violent offenders, the programs to include special pre-release programs and community detention centres;
 - Special training orientated programs such as:
 - welding,
 - car repairs,
 - basic reading and writing,
 - physical education, and
 - getting a job.
- 50 • The Q.C.S.C. seek expressions of interest and enter into immediate discussions regarding private sector and community operated detention facilities for young offenders,
 - a pilot programme should be undertaken using the Rev. Allan Male's approach; and
 - Staff from the Corrective Services inspect operations of facilities for youthful offenders in the Northern Territory, with specific reference to their suitability for urgent establishment in Queensland.
- 51 • A Young Offenders Advisory Committee be established to develop an immediate action plan for the removal of young offenders from adult prisons, the Committee to report to the Q.C.S.C. on programs, placement and policies, and progress for young offenders who are in prison.

- 52 • Assessment Teams, responsible for prisoner assessment and orientation, be established;
 - An Assessment Committee be established in head office with the responsibility for developing systems for prisoner security classifications and sentence planning; and
 - The position of Manager, Assessment and Transfer, should be included in the Commission structure to ensure adherence to policy and oversight of consistency in the placement and transfer of prisoners.
- 53 • The Justice Committee examine the merit of a change in the way remand time is taken into account in the calculation of sentences.