PARLIAMENT OF WESTERN AUSTRALIA

REPORT OF THE JOINT SELECT COMMITTEE ON PAROLE

Presented by the HONOURABLE JOHN HALDEN, MLC

AUGUST 1991
REPORT OF THE JOINT SELECT COMMITTEE ON PAROLE

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JOINT SELECT COMMITTEE

ON PAROLE

Legislative Council
Hon. John Halden (ALP), Chairman
Hon. Barry House (LIB), Deputy Chairman
Hon. Tom Butler (ALP)

Legislative Assembly
Mr Max Trenorden (NPA)
Mr Bill Hassell (LIB) resigned 25 May 1990
Mrs Cheryl Edwardes (LIB) appointed 22 June 1990
Mrs Pam Buchanan (ALP) resigned 20 April 1990
Mr Ted Cunningham (ALP) appointed 25 May 1990

Staff
Secretary: Miss June McKinnon/Mr Mark Hilditch
Advisory/Research Officer: Mrs Jane Burn
JOINT SELECT COMMITTEE ON PAROLE

TERMS OF REFERENCE

To inquire into and report on parole and more particularly –

(a) whether there should be:

(i) a system of parole involving the release of prisoners prior to the expiration of the sentence imposed by a court;

(ii) a system of fixed sentences.

(b) the function of parole and its effectiveness as part of the criminal justice system;

(c) a comparison of the current system with that it superseded and systems in similar jurisdictions;

(d) whether, on an analysis of the current system, changes are necessary or desirable in relation to:

(i) the circumstances in which eligibility for parole may be ordered by the court;

(ii) the addition, removal or alteration of the statutory criteria under which a court determines that eligibility;

(iii) the factors, and the formulae, which determine the date of eligibility for release or consideration of release on parole and the period of parole;

(iv) whether, and under what circumstances, release should be automatic or at the discretion of the Parole Board;

(v) the addition, removal or alteration of the statutory criteria under which the Board makes decisions and recommendations about parole or its revocation;

(vi) the impact of parole on a sentence including its influence on eligibility where allowance is made by the court in passing sentence for time spent in custody before trial and sentencing;

(vii) the relationship between, and effects of, remissions and other prison programs on the parole system;

(e) the relationship between parole, remissions under the prisons legislation and other forms of release under that legislation, and the impact on sentences of the combined effect of parole, remissions, work and other forms of release.
REPORT OF THE JOINT SELECT COMMITTEE ON PAROLE
AUGUST 1991
BACKGROUND

On September 7 1989, the Parliament of Western Australia appointed a Select Committee to enquire and report on parole. The Committee comprised members of all parties and from both Houses.

In his motion supporting the establishment of the Committee, the Hon J.M. Berinson, Attorney-General, stated:

"When the new parole system came into effect in June last year [1988], I indicated publicly that it should be subject to review after a reasonable period of operation. Intense public interest in the parole system which has been aroused by a number of recent high profile cases, reinforces the desirability of the review at this time.... Given my earlier undertaking to review the system as well as recent expressions of community concern, the Government has agreed to recommend the appointment of a Joint Select Committee to review and make recommendations on all aspects of the parole system."

The Chief Justice of Western Australia, the Honourable David Malcolm has described the sentencing of offenders as "the most discussed and least understood topic" and from its deliberations the Committee believes that this description applies equally to the issue of parole.

The Macquarie Dictionary defines parole as:

a. the liberation of a person from prison, conditional upon good behaviour, prior to the end of the maximum sentence imposed upon that person;

b. the temporary release of a prisoner.

Related keywords according to the Thesaurus are, however, not only "agreement, promise, conditionality and discharge," but also, "exoneration and independence" and it is perhaps those connotations that cause the perceptual problems with the meaning and effect of parole.

The essential elements of parole have always been perceived from an administrative perspective as justice done and protection for society, balanced with the appropriate amount of rehabilitation and economic need.

Parole should perform the dual function of providing incentive to reform while in prison and support and supervision on release. Supervision alleviates public concern at the potential risk to society of the early release of some offenders but it may not address society's requirement that an offender should receive his 'just deserts'.

Parole in its present form may be said to have its Australian origins in a report in 1951 by the late A. R. Whatmore, the Inspector-General of Penal Establishments in Victoria. He defined parole as:

"... a method of releasing prisoners from institutional treatment to life in the community under prescribed conditions and with the aid of adequate supervision. It is
not a right or reward for good conduct. It provides the parolee with help and guidance over the difficult period when he endeavours to re-adjust himself to life in the community; it retains control so that he may be returned to custody if he breaks the conditions of his parole. Parole is part of the sentence."

The basic philosophy of parole has remained much the same for the past 40 years. Pressure for change may be motivated by any one of the four essential elements -

i) 'just deserts',

ii) protection for the community,

iii) rehabilitation and,

iv) economic need,

depending largely on public opinion at the time. Currently both government and the public perceive a need to make changes in the field of corrections;

(i) to prevent increasing overcrowding in prisons and the escalating costs of traditional custodial sentences;

(ii) to alleviate public fears of increasing violence in society and a perception that criminals are 'getting away with it';

(iii) to address the growing belief that prison does not rehabilitate.

In his remarks in the Legislative Council when proposing the establishment of the Committee, the Attorney-General also said:

"... The proposed Joint Select Committee will not have an easy task. As the terms of reference indicate, the parole system does not operate in a vacuum and any proper consideration of it must be in the context of the broader law enforcement system in which it operates."

At an early stage in its deliberations, the Committee became aware of the seriousness and depth of the task before it. Members have spent the last two years examining a subject about which there are innumerable opinions and vast quantities of literature and now present the following report.
INTRODUCTION

The notion of parole is only one part of the criminal justice system and in practical terms only arises for consideration after the imposition of a sentence of imprisonment. An examination of parole in isolation from the inevitable precursors to its application would have produced a distorted and unrealistic picture of a sentenced prisoner’s expectations and the Committee has therefore taken the broader view of parole and its ramifications for the criminal justice system as a whole.

Many of the general public’s perceptions about criminality are based on discussions of ‘crime rate’ statistics in the media which provides the prime source of information about crime and the major influence on public attitudes and perceptions. As is often the case, these statistics can be misleading.

A report by David Indermaur entitled "Perceptions of Crime Seriousness and Sentencing" indicated that most people were concerned about violent crime, and generally responded to general questions about crime with crimes of violence in mind. Violent crime comprises about half of crime reported in the mass media but only 5% of offences dealt with by the courts.

The Committee supports the community’s low tolerance of crimes against the person, but strongly believes that it is important for the credibility of the whole criminal justice system that the community is provided with accurate knowledge and understanding of the system and not just a cultivated impression and should be aware of other reasons for an apparent upsurge in crime.

The Chief Justice of Western Australia, the Honourable David Malcolm has described the sentencing of offenders as "the most discussed and least understood topic" and from its deliberations the Committee believes this to be equally true of parole.

"The judiciary is not immune from criticism. The robust review and criticism of judicial decisions is an essential part of freedom of speech in a democracy. Such criticism, however, must be based on accurate and reasonably detailed information. If it is right that the public have the right to know, it follows that they have a right to know the full facts. A fair and accurate report of court proceedings is not one coloured in the one case by comments on the outcome by relatives of a victim or in another by relatives of an accused. Such reporting tends to distort rather than inform public opinion on such important matters. I remain firmly convinced that

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1 Report tabled at the Criminology Research Council of Australia: Adelaide: November 1990

2 Address by the Chief Justice at the Press Club Luncheon - Sentencing Offenders - The Most Discussed and Least Understood Topic? - Western Australian Law Week 1989
superficial or sensational information which leads to demonstrably inaccurate perceptions about crime, the criminal justice system, sentencing and the judiciary is calculated to undermine rather than to underpin the democratic strength of our society.

The Committee has received further evidence from the Chief Justice and from the Executive Director of Outcare that there is concern amongst the professions and aftercare agencies that inaccurate reporting damages the fabric of the criminal justice system and has the potential to destroy the community's confidence.

In his evidence before the Committee, Mr. Peter Sirr, the Executive Director of Outcare said:

"In respect of the public perception of parole, the media has a positive role in working with the criminal justice system. We do not believe it is playing such a role; it is real knee jerk news creation. It is not journalism at all."

Fluctuations in prison populations not only reflect the amount and seriousness of crime but may also be indicators of a wide range of judicial, penal, social and economic variables and it is no easy matter to isolate the more influential factors.

Twenty years ago far less crime was reported either to the police or in the media. This can be explained to a large extent in changing social attitudes and values and can perhaps be best illustrated by using the example of sexual assault. At that time, discussion of sexual assault was 'taboo' and victims stigmatised, and only a small proportion of rape cases was reported. Today, with more open discussion of such subjects and less tolerance of sexual crimes, more cases of rape are reported to police and more offenders are charged.

In the last available figures, collected in 1986, it was reported that 30.6 cases of rape per 100,000 females were reported to the police, compared with 2.2 in 1966. The number of offenders charged by the police had risen from 4.2 per 100,00 in 1966 to 14.8 in 1986, giving the appearance of an apparently dramatic increase in sexual crimes.

People are less tolerant of violent crime, and are more vocal in demanding changes in the law to protect the community. Police training is more extensive and more offenders are being apprehended with more sophisticated methods of detection. All of these factors impact upon the most often used measure of a criminal justice system, the statistical

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3 Address by the Chief Justice to the Law Society, the Australian Journalists' Association and the Criminal Lawyers' Association: Public Forum on Sentencing, "Dealing with the Offender", The Sentencing Process: August 6 1989

4 Prisons and the Process of Justice, Rutherford (1986)

5 Counting Rapes: Broadhurst: Criminology Australia: July/August 1990
'imprisonment rate' and may indicate an upward trend. The prevailing public attitude in Western Australia is that government should 'get tough' with offenders. This is not a phenomenon unique to Western Australia nor to Australia as a whole. From the volume of international literature made available to the Committee during the course of its deliberations, it has become obvious that there is widespread and world-wide criticism of criminal justice systems. One response is that rising crime rates call for harsher penalties and greater use of incarceration to protect the community and punish offenders. The Committee accepts concerns about the safety of the community as valid and does not withdraw from the notion that punishment of offenders should be a major objective of any criminal justice system.

In spite of different values, cultures and legal systems, internationally, general judicial practice still favours imprisonment as the toughest response to crime. The existence of prisons is often justified on the grounds that imprisonment may provide punishment of the offender, protection for the community, deterrence and the opportunity for reform. However, with many jurisdictions facing an increasing prison population and a growing crime rate, the view that imprisonment has limited value in terms of reformation, produces little deterrent effect, and is more likely to aggravate the problem by allowing offenders to socialize, is gaining acceptance.

Incarceration provides the opportunity for failed offenders to teach failed offenders failed techniques thus maximising their chances of returning to prison. It is a harsh environment where people are vulnerable to assault, rape and abuse and become accustomed to living in fear.

"Most importantly, the prison experience is an experience of institutionalization in an artificial environment. That environment...fails to facilitate the reintegration of offenders into their community and the society more generally."

Prison systems are capable of swallowing vast quantities of public money in an attempt to meet public demand for a solution to the problems of criminality and increasing fear in the community. If incarceration appears neither to solve nor alleviate the problem, public confidence in the system as a whole is likely to be further damaged.

At the Eighth United Nations Congress on Prevention of Crime and the Treatment of Offenders 1990 attended by the Chairperson of the Committee, there was almost unanimous acceptance of the belief that alternatives to imprisonment must be sought. Many delegates gave evidence of a move by the judiciary in their respective countries to

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6 see Appendix 6: Bibliography
7 National Report of the Royal Commission into Aboriginal Deaths in Custody: para 25.1.3

9
use non-custodial alternatives in preference to incarceration in a wider range of cases. 8

Middle East 9
There is a growing trend in all Arab countries to avoid imprisonment for first offenders and to apply a suspended sentence with supervision instead. Deprivation of certain rights such as passports, driving licences or other permits, and removal of professional status have been found to be more effective than incarceration. It was suggested that being placed in the community in a disadvantaged position was likely to have a greater psychological effect on an offender than isolation from normal life in a prison.

Africa 10
Continuous and apparently insoluble prison overcrowding in many African countries has led to a review of sentencing practice. Faced with the evident inadequacy of imprisonment to contain crime, the financial strain on Third World economies and the damage to society caused by the cultural and social stigma attached to a prisoner and his family, Nigerian judges have elected to impose fines in 47% of cases brought before them. In the District Courts of the Gambia, fines, restitution and compensation are the only sentences used and in the magistrates courts, those alternatives comprise 70% of all sentences. The effects of these policies are yet to be evaluated.

Germany (West) 11
Shortly after World War II, West Germany began to remodel its criminal justice system based on the principle that "offenders...should be released as soon as it seemed acceptable for both the offender and society." 12 In 1975, Germany adopted a new criminal code and decriminalized a number of petty misdemeanours "...in recent years.....the boldest step in decriminalization in Europe" 13. The use of short term imprisonment was also permanently restricted on the grounds that it was "anti-rehabilitative". Today the major alternatives to incarceration are the day-fine

9 ibid.: 8 above
10 ibid.: 7 above
11 The following paragraph applies to Germany (West) prior to unification
12 Cartledge, Tak and Tomic-Malic. Probation in Europe
13 On Doing Less Harm, Chapter 6, David Fogel, 1988
and the suspended sentence. 14

The Council of Europe's Prison Information Bulletin (1988) 15 reported that between 1983 and 1986 all countries, with the exception of West Germany averaged an increase in prison populations of 3 per cent per annum. In West Germany, however, there had been an annual reduction of 3.5 per cent.

An evaluation of this reduction, published in 1990 16 -

"narrows down the possible explanation for this decline to a substantial shift in the way prosecutors and judges perceive and carry out their functions....by remanding and sentencing fewer offenders to custody. Initiated by a fundamental questioning of the efficacy and moral legitimacy of pre-trial detention, especially for young offenders, a kind of perestroika is occurring in the West German criminal justice system."

Part of the decline in the prison population may be attributed to a decrease of one-third in the number of remand prisoners. There does not appear to have been any significant fall in the number of juveniles in the 14–20 age group, the group most responsible for crime, nor in the number of crimes reported to the police – which has increased – which might explain the dramatic fall of 50% in the number of young adults (aged 18–20) sentenced to imprisonment and the decrease in the overall prison muster of 15 per cent.

The most likely explanation appears to lie in a drop in the number of prosecutions of both juvenile and young adult offenders combined with a much more restrictive use of incarceration and a greater use of the fine and suspended sentence.

Scandinavia 17

Almost 20 years ago, in May 1972, a Danish Ministry of Justice Working Party reported on its aim to reduce the use of imprisonment and treat minor property offenders with greater leniency. Today in Denmark, the fine is the most frequently used sentence and the introduction of 'semi-detention', or imprisonment during leisure time is being seriously considered. 18

A similar philosophy was established in Finland in the late 1960's and early 1970's through the decriminalization of certain offences, the review of criminal sanctions for

14 ibid. 13 above
15 Prison Information Bulletin No. 11 Strasbourg
16 Decarceration in the Federal Republic of Germany: How Practitioners are Succeeding where Policy-Makers have Failed, John Graham, Research and Planning Unit, Home Office, London. Published in British Journal of Criminology, Vol. 30 No 2 Spring 1990
17 ibid. 8 above
18 On Doing Less Harm, Chapter 2, David Fogel, 1988
other offences and the advancement of alternative sanctions. Today 90% of sentenced offenders are fined and of the 10% who receive sentences of imprisonment, half are given unsupervised conditional sentences. The use of long indeterminate sentences has been restricted to repetitive violent offenders of whom there are only 4 in the current prison muster. New proposals include parole for all prisoners and a new type of community supervision called 'mandatory reporting' supervised by the police.\textsuperscript{19}

Norway is considering the imposition of stricter conditions as a sanction for breaches of suspended sentences and parole rather than a sanction of imprisonment.\textsuperscript{20}

The Swedish National Council for Crime Prevention has recommended a new sanction called 'intensive supervision' as the most severe alternative to prison. This sanction would be reserved for the more serious and repeat offenders and would be more intrusive and inconvenient for the offender.

(Unsupervised conditional sentences followed by conditional sentences with supervision precede 'intensive supervision' in the three-tier system.)

Frequency of reporting, decided by the sentencing judge would be the focus of the sanction. The judge would also determine whether the offender would report to the police, the correctional authorities, or both.\textsuperscript{21}

\textit{New Zealand}

'Diversion Schemes' now operate in all New Zealand Police jurisdictions.
The object of the scheme is to prevent further penetration into the legal process for first offenders of minor crimes where the offender has admitted guilt, has shown remorse and is prepared to pay full reparation. The scheme has met with almost universal acceptance from police officers, the legal profession, the judiciary, victims and offenders. It has a degree of self-accountability by virtue of the consensus of all parties involved and is also subject to management audit. For the 2 years ending December 31 1989, only 1.4% of the 2172 offenders 'diverted' out of the criminal justice system under the new scheme have reoffended.\textsuperscript{22}

\textsuperscript{19} ibid. 18 above
\textsuperscript{20} ibid. 18 above
\textsuperscript{21} ibid. 18 above
\textsuperscript{22} Information from New Zealand Consulate-General, NZ Police Liaison Office
Canada

In July 1990, in response to earlier reports by the Canadian Sentencing Commission and the Standing Committee on Justice, the Canadian Federal Government published a consultation package called "Directions for Reform: Sentencing, Corrections and Conditional Release". The aim of the proposals is to make the criminal justice system more consistent, fair and accountable and to bring sentencing and correctional practices in line with public values and concerns and thereby rebuild public trust and confidence in the law. The recommendations include the avoidance of sentencing disparity, the availability of a broad range of sentencing options, more effective correctional programs tailored to individual needs and stricter measures for violent offenders. The purpose and principles of sentencing, corrections and conditional release would also be explained in the interests of better public information.

United States

At the opposite end of the spectrum, the USA has attempted to counteract its spiralling crime rate with harsher and more frequent use of sentences of imprisonment and a curtailment of parole. America's prison population grew from 400,000 in 1984 to 1,000,000 in 1990 and is expected to reach 2,000,000 by 1995. Prison beds are being constructed at the rate of 1800 per week but prisons remain occupied to a dangerous level of overcrowding. In a survey of corrections administrators undertaken in 1988, 47 states reported crowded prison systems and identified judicial sentencing practices as the primary cause of overcrowding in their states. The irony of the American experience, however, is that in many states the public demand for more frequent incarceration and longer sentences has produced the situation where prisoners are actually serving less time than before. The construction of new prisons has been unable to keep pace with the increasing numbers and length of prison terms and authorities have been forced to release offenders at an earlier stage of their sentence because there is no more available space in the prisons. The actual length of time an offender can be expected to serve has in fact decreased from 18 months in 1984 to 12

23 Report by the Minister of Justice and Attorney General, and the Solicitor General of Canada

24 From the evidence before the Committee by Mr Ian Hill, Executive Director, Corrective Services

25 Study carried out for the American Corrections Association
months in 1987. For marginal offenders (those targeted for alternatives to prison), the average may be considerably less. In California, Texas and Illinois, 2-3 year sentences often translate to less than 6 months of actual time served. In Oregon crowding is such that a 5 year sentence can translate to 3-4 months of real time served.  

The prison system in Los Angeles, designed for a population of 13,000 is now expected to house 22,000 as a result of the new sentencing practices. Consequently existing inmates are being selectively released to make way for new offenders. Between May 1988 and May 1989, 115,000 misdemeanour inmates were released early under federal court order and one prisoner found his 14 day sentence 'commuted' to just 14 hours — a rate of 2.5 minutes to the hour. 

It is feared that this situation may in fact be adding to the crime rate. The Chief Probation Officer of LA County, Barry Nidorf, notes: 

"Even worse is the realization that as the number of crimes increases, the availability of incarceration decreases. This vicious circle is not lost on offenders. If they commit more crimes, they cause more overcrowding, spend less time in jail, and are quickly out and free to commit another round of crimes.

Except for the very worst and most violent criminals, the sanction of incarceration has become an empty threat. Bargain rates on incarceration embolden offenders; reflect negatively on the law itself; and most seriously, threaten to undermine the only weapon the courts can use to protect the community—the force of criminal sanctions."  

The American criminal justice system is in crisis and the search for alternative sanctions to alleviate the overcrowding problem and restore public confidence in the system has become a top priority. Nidorf goes on to say: 

"We cannot build our way out of this crisis.
The community has no choice except to reserve scarce jail and prison cells for those who need to be locked away and find other ways to impose criminal sanctions on petty offenders and non-violent felons. More restrictive and intrusive sanctions are needed to afford real community protection. They have to be demanding and unpleasant. And they have to send the message that crime carries a cost even if, because of crowding, that cost may no longer be incarceration."  

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27 Community Corrections— Turning the Crowding Crisis into Opportunities by Barry Nidorf, Chief Probation Officer of LA County Published in Corrections Today: October 1989

28 ibid.27 above

29 ibid.27 above
Joan Petersilia, Director of the Criminal Justice Program, of the RAND Corporation, presents a formidable argument against the effectiveness of imprisonment and the viability of intensive and intrusive community based programs. She puts forward the theory that, in America at least, prison has for a certain type of prisoner become a status symbol rather than a stigma, that it may actually unite prisoners with family and friends in a community of their own socio-economic group rather than isolate them and may provide an environment little different from, and often better than, their normal living environment.

More importantly, she argues that it now appears that many prisoners elect to serve their sentences in prison rather than expose themselves to the rigours of the intensive supervision and interference of a community-based program. In the words of George Bernard Shaw, in his essay on Liberty almost a century ago:

"...Liberty means responsibility. That is why most men dread it."

Public pressure and the imminent collapse of its prison system are forcing correctional authorities throughout the United States not only to develop a new breed of community-based sanction but also to take long-term steps towards better management of correctional systems, such as capacity-based sentencing guidelines.

Australia

Evidence received by the Committee and endorsed by a number of witnesses, supports the validity of the suggestion that community-based programs can be more onerous and intrusive for some offenders and that for some people, prison represents an easy option. However, there is also evidence that there is a large socio-economic group for whom imprisonment still carries a stigma. Many prisoners feel alienated from their peers, isolated from the support of their families and find conditions in prison an unacceptable deterioration in circumstances and deprivation in real terms.

The Committee has received no evidence to suggest that imprisonment has achieved any greater measure of success in Australian jurisdictions than elsewhere. The Executive Director of Corrective Services in Western Australia stated to the Committee:

"No prison anywhere in the world rehabilitates prisoners. That is a statement which causes a fair amount of distress to humanity because it is hoped that people put in custody and who are

30 The RAND Corporation undertakes research on matters affecting the public interest: education, civil and criminal justice, regulatory policies, health, defence etc.

31 When Probation Becomes More Dreaded than Prison. Published in Federal Probation, March 1990

provided with expensive programs are likely to change for the better. However nowhere in the world has it been demonstrated that that is the case. We have found that most prisons operating programs, as we understand it, may be successful with only one or two per cent of the population."

In the past 30 years, most major reports on sentencing and parole in Australia have advocated the greater use of alternatives to imprisonment. 33

The reality, however, is that the rate of imprisonment has in fact increased over that time which indicates that policies and sentencing procedures have not changed to the level required to keep prison musters down. 34

To quote again from the evidence of Mr Ian Hill:

"...the evidence certainly in the western world is that the judiciary is notoriously non-responsive."

One evaluation of the ‘truth in sentencing’ policy which commenced in New South Wales in September 1989 indicates that in just over a year the prison population increased by between 1400 and 1800. If those rates continue, the expected number of prisoners would be 8000 by 1994. Before the amendments to the legislation, there was a prison muster of 3000.

The Executive Director Of Corrective Services gave his evaluation in his evidence to the Committee:

"...If you ask the police, the newspapers or the hardliners in New South Wales what effect this has had on street crime in the community there and whether everyone feels safer and more content, the answer will be no. For some reason it all seems worse."

The first evaluation of the effect of the new policy published by the NSW Department of Corrective Services in 1990 reported the following:

1. The average time (to be) served in custody has increased.
   * The average minimum or fixed terms handed down following the change in legislation (294 days) are significantly longer than the average time served in custody prior to the change in legislation (244 days).
   * The overall increase of 50 days in the average time to serve in custody is equivalent to an overall increase in the prison population of 525 additional sentenced prisoners held on any day.

2. Less prisoners are receiving periods of community supervision and for those with periods of community supervision, the average period of supervision is shorter.

33 see Appendix 5 items 1,4–5,8,10–13,18,21–23,25–26

34 see Appendix 6
* After the change in legislation a significantly smaller proportion (31.8%) had sentences which included a period of community supervision than before (56.0%).

* The average period on community supervision, for those given any community supervision, was much shorter following the change in legislation (205 days) than prior to the change in legislation (799 days).

3. The average aggregate sentences handed down following the change in legislation are shorter.

* The average aggregate sentence (sum of minimum and additional terms) handed down following the change in legislation (360 days) was shorter than the average aggregate head sentence prior to the change in legislation (738 days)."

In his opening comments to the Annual Report for the year ended 30 June 1990, the Director-General of the NSW Department of Corrective Services reports the necessity for the construction of three new gaols to cater for the increase in prisoner numbers. The Report goes on to note:

"During the year under review, there has been a continuing escalation in prison numbers which outstripped the accommodation currently available in the gaol system. This has been a very significant issue affecting the Department's ability to perform its functions.

During 1989–90, the NSW prison population continued to increase so that at 24 June 1990 there were 5457 prisoners in full-time custody and 869 periodic detainees..... The daily average of 5002 (excluding periodic detainees) is the highest ever recorded.

The prison population varied during the year from a low of 4772 to a high of 5457 prisoners. It is of interest to note that the lowest number (4772) for this year was higher than the highest population point in any financial year prior to 1988–89.

**Managing Gaol Crowding**

Strategies implemented to manage gaol crowding pending further prison construction included the development of a plan from December 1989 to make optimum use of every available cell. Functional cells which had been appropriated for stores or other use, were cleared and returned for use as prisoner accommodation. 

Conversely, the Northern Territory has put great effort and resources into developing alternatives to incarceration especially for Aboriginals who comprise 69% for the total prison population and over half of whom are serving terms of 12 months or less. There has been a 15% fall in the imprisonment rate and Aboriginal communities are now involved to a much greater extent in supervising and assisting offenders.


36 pages 7 and 20
Youth diversion programs and station placement programs have been designed as more productive sanctions for young offenders. The "Drug Abuse Resistance Education" scheme operating in schools has been adopted by New South Wales and South Australia in a move towards prevention of crime by education.

The Committee has reached the conclusion that the sanction of imprisonment should remain at the top of the sentencing hierarchy. However, the conclusion of most major reports in the past thirty years that the use of imprisonment as a sanction is over-utilised, is evidenced by a consistent rise in imprisonment rates.\(^{37}\)

Parole is also necessary in human terms to assist offenders in the return to normal life, but must be rigorously and intensively supervised to ensure that the community is protected during that re-assimilation process.

To that extent, many of the recommendations in this report are not new. In the Committee's opinion, the apparent failure of past recommendations to produce tangible solutions to the continuing problems is not because of an intrinsic fault in the reasoning behind the recommendations, but because for the most part programs and alternatives to imprisonment have never been backed by adequate funding or resources. The programs and alternatives have never been adequately explained to the community nor to the prison population. The community has not been involved in the design or implementation of the alternatives, and the lack of positive results has been attributed to the unsoundness of the schemes rather than on a deficiency in the initial planning. Many programs never had a chance of benefitting the offender nor the community and many have destroyed the community's confidence in the criminal justice system as a whole.

The Committee has focussed its recommendations towards redressing those deficiencies and improving the operation of the criminal justice system in Western Australia.

\(^{37}\) see Appendix 5 items 4,7–8,10–13,18,20–23,26.
HISTORY, AND CURRENT SYSTEM IN WESTERN AUSTRALIA

HISTORY

The Nineteenth Century

Conditional release can trace its origins to earlier systems of conditional pardon, clemency indenture, transportation of offenders and ticket-of-leave. As early as 1617, the English Privy Council decided to transport some of its offenders overseas as an alternative to execution. The initial destination for many of the first transportees was the Americas as indentured servants but following the War of Independence and the loss of the American colonies to England, another destination for convicts was needed and the continent of Australia became the next choice.

The Governor of the first penal colony in New South Wales was given the power to grant conditional release which soon became known as the ticket-of-leave system and was the forerunner of the modern form of parole.

The operation of this system in Australia was described in 1837–38 by the Select Committee on Transportation as follows:

"A convict, transported for seven years, obtains, at the end of four years; for fourteen years, at the end of six years; for life, at the end of eight years, as a matter of course, unless his conduct has been very bad, a ticket of leave, which enables him, according to certain regulations, to work on his own account. This indulgence on the whole has a very useful effect, as it holds out hope to a convict if he behaves well, and is liable to be re-assumed in case of misconduct."

This allowed the convict to live independently in an assigned area within the colony and was later adopted for a limited period in the 1840's by Sir Alexander Maconochie in his administration of the Norfolk Island penal colony. Maconochie saw the ticket of leave as also having a useful rehabilitative function and developed the 'mark' system whereby the convict could by good behaviour merit certain rewards. The basic concepts of Maconochie's system were adopted by Sir William Crofton in the Irish "progressive" system. There were four stages in Crofton's programme: an initial period of solitary confinement and instruction; specific work assignments; transfer to an open institution and, assuming success in this latter stage, the convict would be awarded his ticket-of-leave or parole.

This enlightened approach to the treatment of offenders soon began to fade into the background never to re-emerge in exactly the same form, when it did not immediately produce the desired effects and after a huge public outcry in England. It was replaced by a new scheme of convict discipline and employment which was doomed from the start as
it congregated large numbers of convicts together at stations where there was no call for
their labour, a factor exacerbated by the onset of an economic depression in the colonies.
William Denison, Lieutenant-Governor of Tasmania, commented that the only certainty of
the scheme was that;
"with very few exceptions, the convict issues from the probation station a worse man than when
he entered it."
Then followed a return to the 'classical' school of criminology where the major concern
was not with the root cause of the crime nor the appropriate penalty to treat those causes
but with imposing a punishment which was proportionate to the seriousness of the crime.
This led to the suggestion that a judge should only decide on the guilt of an offender and
that the legislature should set up a Code of exact penalties.
In the late 19th century emphasis shifted again to the more 'scientific' consideration of
causes of crime, the appropriate treatment of that crime and the balance of retributive,
punitive and deterrent elements in the punishment. It was in this climate of thought in
1898 that a Royal Commission into the Penal System in WA was established.
The Commission upheld the classical view that the sole function of a judge should be to
decide whether an accused was guilty and proposed that a 'Board of Medical Jurists'
should decide when that accused should be considered eligible for release. Although this
proposal never became fully adopted in practice it still had an obvious influence, and the
introduction of indeterminate sentences for habitual offenders in 1918 which remain today
in sections 661 and 662 of the Criminal Code owes its existence in part to the Royal
Commission's deliberations.

1918–1963
Under section 661 of the Criminal Code an offender must have at least 2 previous
convictions to be considered an habitual offender. Section 662 allows the sentencing court
"if it thinks fit, having regard to the antecedents, character, age, health, or mental condition of
the person convicted, the nature of the offence or any special circumstances of the case ..."
to order the detention of an offender 'during the Governor's pleasure' at the expiration of
the term of imprisonment imposed or without imposing a term of imprisonment.
These 'special' sentences were to be served in a reformatory prison but in the absence of
any such institution to this date such offenders have always been housed in traditional
prisons.
The Indeterminate Sentences Board had responsibility for deciding the date and
conditions of release and was the forerunner of the Parole Board established in Western
Australia in 1963.
Victoria was the first state in Australia to set up a sentencing and parole system in 1956
after the late A. R. Whatmore's report to the Victorian Government in 1951. Whatmore adopted the prevailing humanitarian approach to the subject and visited various correctional establishments and authorities throughout the world particularly in the USA and United Kingdom before making his report. His basic philosophy and his definition of parole may be summarised in two extracts from his report:

"From this brief discussion, emerges the basic principle that protection of society is the primary consideration, and in seeking to achieve this protection, stress must be laid on the use of every effective agency in the rehabilitation or reformation of the individual delinquent ....... Time alone may expiate a crime but will not reform the offender, and to be effective the treatment programme of any prison must constantly lead to the day of ultimate release, and be closely and effectively co-ordinated with the difficult period immediately following such release ....... Parole is part of the sentence".

Whatmore's report led to the passage of the Penal Reform Act 1956 and the introduction of the system of sentencing and parole which has remained largely unchanged in Victoria to this day. He recommended the introduction of determinate sentencing under which the sentencing court imposed not only the maximum sentence but also the minimum term to be served by a prisoner before becoming eligible for parole and the appointment of a Supreme Court judge as Chairman of the Parole Board. This innovative proposal is believed by some experts in the corrections field to have increased public confidence in Parole Board decisions.

The late 1950's and early 1960's saw a change in the composition of the prison population in Western Australia with a sharp increase in the number of young and Aboriginal offenders. Following Whatmore's report to the Victorian legislature, parole was seen as having obvious potential as a management and ideological tool to address this problem.

In 1963 the Offenders Probation and Parole Act introduced into Western Australia a system very similar to that adopted in Victoria.

The Offenders Probation and Parole Act 1963

The major provisions of the 1963 Act may be summarised as follows:

1. The establishment of a seven member Parole Board under the chairmanship of a Judge or retired Judge of the Supreme Court appointed by the Governor on the recommendation of the Minister. (Section 21)

2. The introduction at the absolute discretion of the court of a minimum term during which a prisoner sentenced to a term of imprisonment of not less than 12 months would not be eligible for parole. (Section 37)

3. The introduction of a mandatory minimum term where a person was sentenced to a term of imprisonment of 12 months or more, unless the court considered
that the nature of the offence and the antecedents of the convicted person made parole inappropriate. (Section 37)

4. Section 41 gave the Parole Board discretionary power to make an order that a prisoner be released from prison on parole at any time after the expiration of the minimum term set by the sentencing court.

The Act, however, gave no direct guidance to the Board as to the way it should exercise its discretion nor as to the factors it should weigh in reaching its decisions. This led to criticisms of the Board's operation and paved the way for the enquiry headed by Mr K. H. Parker QC. in February 1979.

THE PARKER REPORT

Parker's terms of reference were 'to consider and report on the use and operations of parole, minimum security institutions and leave from prison'. In respect of parole Parker found that:

"Our parole system is not in serious difficulty and there is no reason to abolish parole in Western Australia."

The report recognised the importance of parole both in the rehabilitation of some offenders and in economic terms to the community but at the same time noted the disrepute which attached to the system when certain offenders were released on parole. There was also an increasing view that the minimum sentence was becoming the real sentence and that parole was a means whereby convicted offenders were avoiding their 'just deserts'.

Parker made the following recommendations:

1. It should no longer be mandatory for a Court sentencing an accused person to 12 months imprisonment or more to declare the prisoner eligible for parole. The court should be given the discretion to order a minimum term unless the judge was of the opinion that any one or more of the following would make release on parole inappropriate or undesirable:
   (i) the nature or circumstances of the offence,
   (ii) the antecedents of the offender,
   (iii) the likely residence and circumstances of the offender after release,
   (iv) any other matter.

2. A person declared eligible for parole must serve half of the sentence imposed by the Court before being considered for release.

3. Alternatively the Court could in exceptional circumstances fix a minimum term of not less than six months during which a prisoner would not be considered for parole.

4. The Parole Board should be required to recommend release on parole only if it
was satisfied that release would not:

(i) increase the risk that the prisoner would reoffend while on parole,
(ii) unduly depreciate the seriousness of the offence,
(iii) promote disrespect for the law,
(iv) adversely affect public confidence in the administration of justice.

5. A parolee who has had parole cancelled, should be given credit for "good behaviour" of up to one quarter of the unserved portion of his sentence.

6. Remission of 10% of the minimum term should be discontinued to alleviate public concerns that prisoners were not serving an appropriate proportion of their sentence.

No immediate action was taken on these recommendations although they were further considered by a sub-committee of the Law Society and subsequently by a 'Committee of Inquiry into the Rate of Imprisonment in Western Australia'.

That Committee reconfirmed the usefulness of parole –

"..... there is a place for a modified type of parole in the present system. In our view the supervision and assistance which can be given to a person recently released from prison is of real value and it would be a grave loss if such a service was no longer available." –

and proposed the following amendments to the current system:

(i) Judges should impose a finite sentence which reflects the court's opinion of the gravity of the offence and the person convicted.
(ii) Sentences of less than 12 months should be unconditional and without parole.
(iii) Sentences of between one and two years should be subject to a period of parole supervision equal to the duration of the sentence imposed.
(iv) Release on parole from sentences of more than two years, should be subject to supervision of two years.
(v) Where a person is serving an aggregate of several terms the effective total should be considered as one term for the purpose of calculating the period to be served on parole.
(vi) Courts should be empowered to order that there should be no release on parole in certain special circumstances.
(vii) Upon conviction of a breach of parole the appropriate court should have power to impose the specified penalties.

The changes to the system under the 1988 legislation closely followed the Committee's recommendations and were a continued attempt to maintain the balance between a rational and coherent sentencing system and continued public confidence in and respect for the law.
THE CURRENT SYSTEM

Acts Amendment (Imprisonment and Parole) Act 1987

The legislation which introduced the current system came into force on June 15 1988 with the intention of:

"... chang(ing) the parole system to meet the main points of the criticism of it. However the basic philosophy of parole is retained. Some have argued in fact that parole should be abolished. The view is rejected by the government on the basis that parole in practice has proved useful and constructive in very many cases. It remains an important alternative in the available range of prison and community based penalties". 38

The Act introduced the following amendments to the Offenders Probation and Parole Act 1963 (now entitled the Offenders Community Corrections Act 1963):

(i) The concept of minimum terms was abolished and only one term is now imposed by the courts.

(ii) Parole is only available where the court makes a positive order to that effect.

(iii) In such circumstances, the date of eligibility for parole is fixed by application of a statutory formula.

(iv) Parole periods are for a minimum of six months and a maximum of two years.

(v) In most cases release on parole is virtually automatic, but the Parole Board has an unfettered discretion to defer, refuse or cancel parole and to determine its own procedures.

(vi) As an added incentive to continued good behaviour on parole, credit of one half 'clean street time' is allowed against head sentences.

(vii) Offenders subject to the old minimum term and who complete an uninterrupted period of two years on parole are entitled to remission of the remainder of their sentence.

(viii) Offenders on the previous system of parole when the amending legislation was proclaimed are entitled to remission of sentence on the completion of the existing order, or two years uninterrupted parole, whichever occurs first.

THE EFFECTIVENESS OF PAROLE

An important principle underlying parole is the need to balance the likely advantages of the phased and controlled resocialization of offenders and the accompanying benefits to offenders, their families and society with the potential risk to the community of further offences.

In his paper "Parole in Western Australia" 39, Ivan Vodanivich, former director of

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38 Extract from the Second Reading Speech of the Hon. J.M. Berinson, Minister of Corrective Services; Hansard p.5349, 29 October 1987

39 Published in "Current Australian Trends in Corrections", edited by David Biles, 1988
Community-Based Corrections in Western Australia states:

"A paradox of the 20th century is that while rates of imprisonment have been escalating in practically every English speaking democracy, alarmingly so over the past 20 years, yet in this same period there has been growing realisation that imprisonment is not the appropriate sanction for the vast majority of crimes. This in turn raises the question which has been around for a long time now - what can be done about this problem and has parole helped or has it worsened the situation?"  

One way of evaluating the success of parole is to compare the statistics for recidivism of prisoners released on parole with those released after a finite sentence with no parole. Vodanovich goes on to note:

"An examination of parole effectiveness in Western Australia over a 20 year period to June 1985 revealed that 68.8 per cent completed the parole period. The results are better than most people realise and this is all the more remarkable considering the socio-economic disadvantages many parolees suffer and the climate of professional and public disillusionment directed towards the parole process."  

This theory has been confirmed by the latest study 41 produced by the Crime Research Centre attached to the University of Western Australia. The study found quite significant differences in the recidivism rates for prisoners released unconditionally - 48.6% - compared with those released to parole - 32.3%.

In accordance with the results of this recent evaluation of the effectiveness of parole and the evidence of witnesses before the Committee, the Committee cannot dispute that parole is an important and essential part of an offender's resocialisation.

40 ibid. 39 above

41 The Recidivism of Prisoners Released For the First Time: Reconsidering the Effectiveness Question", Broadhurst and Maller, (1990) 23 ANZJ Crim
CORRECTIONS IN AUSTRALIA
<table>
<thead>
<tr>
<th>PAROLE</th>
<th>NT</th>
<th>WA</th>
<th>NSW</th>
<th>QLD</th>
<th>SA</th>
<th>TAS</th>
<th>VIC</th>
</tr>
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<tr>
<td><strong>i) Automatic/Discretionary</strong></td>
<td>D Parole Bd</td>
<td>D Court + Parole Bd</td>
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<td>D Parole Bd</td>
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<td>D Parole Bd</td>
<td>D Parole Bd</td>
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<tr>
<td><strong>ii) Length of NPP</strong></td>
<td>D Court HS - 12 mths +</td>
<td>1/3 - HS up to 6 yrs</td>
<td>3/4 - HS 6 mths +</td>
<td>1/2 - HS 6 mths +</td>
<td>D Court on HS 12 mths +</td>
<td>Longer of 6 mths or 1/2 HS</td>
<td>?</td>
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<tr>
<td><strong>iii) Length of Parole Period</strong></td>
<td>Remainder of HS</td>
<td>6 mths - min 2 yrs - max</td>
<td>Remainder of HS</td>
<td>Remainder of HS</td>
<td>Remainder of HS with 6 mths min</td>
<td>Remainder of HS</td>
<td>Remainder of HS</td>
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<td>iv) Parole Board discretion</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>v) Supervision on Parole</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes - HS 3 yrs +</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>vi) Clean Street Time</td>
<td>No</td>
<td>Yes - 1/2 period prior to breach</td>
<td>Yes</td>
<td>No</td>
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<td>No - breach increases NPP</td>
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<td>A</td>
<td>No - (discretionary merit time under new Act)</td>
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<td>(b) Amount</td>
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<td>1/10</td>
<td>Up to 28 days</td>
<td>1/3</td>
<td>1/3 added to parole period</td>
<td>1/3</td>
<td>No - (discretionary merit time under new Act)</td>
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<td>ii) On HS</td>
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<td>(a) Automatic/Discretionary</td>
<td>A (in effect)</td>
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<td>No</td>
<td>No</td>
<td>A (abolished under new Act)</td>
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<tr>
<td>(b) Amount</td>
<td>1/3</td>
<td>1/3</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>1/3 (abolished under new Act)</td>
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<td>III OTHER COMMUNITY SUPERVISED SENTENCES</td>
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<tr>
<td>i) CSO</td>
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<td>ii) Fine Default CSO</td>
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<td>x</td>
<td>See item (x)</td>
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<td>iii) Fine Option CSO</td>
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<td>iv) Work Release</td>
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<td>v) Home Detention</td>
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<td>vi) Periodic Detention</td>
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<td>vii) Probation</td>
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<td>viii) Good Behaviour Bond</td>
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<td>ix) Attendance Centre</td>
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<td>x) Drink/Driving Offenders Program</td>
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<td>xi) Pre-Sentence Supervision</td>
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<td>xii) Supervised Suspended Sentence</td>
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</table>

* Work & Development Order in WA
WESTERN AUSTRALIA

LEGISLATION

Prisons Act 1981
Offenders Community Corrections Act 1963 (formerly Offenders Probation and Parole Act) as amended by the Acts Amendment (Imprisonment and Parole) Act 1988
Community Corrections Centres Act 1988

PAROLE
The current system was introduced in 1988 following changes to the Offenders Community Corrections Act 1963.

Under S.37A -

If the sentencing judge considers it appropriate having taken account of eg. the nature of the offence, the antecedents, the circumstances of the convicted person and any other relevant matter he may order that a prisoner be eligible for parole as follows:

(i) For sentences of up to 6 years after 1/3.

(ii) For sentences of more than 6 years after 2 years less than 2/3.

(iii) Where the offender is given a number of different sentences, separate parole orders are to be made for each sentence.

Release on parole is by written order of the Parole Board but is in effect automatic, provided the offender gives his written agreement to comply with the conditions laid down by the Board.

The Parole Board also considers cases referred by the Executive Director, Corrective Services and applications from prisoners serving sentences of 5 years or more for crimes of violence ('special terms' under section 40b(1) Offenders Community Corrections Act 1963).

In such cases, the Board has an unfettered discretion to delay or refuse parole after expiry of the non-parole period, having taken into consideration the nature and circumstances of the offence and the degree of risk to the community. The Board's decision is conveyed in writing to the offender.

For prisoners serving life sentences, after 20 years of the sentence has been served, the Board may make recommendations to the Governor for the prisoner to begin a 12 month pre-release program. On successful completion of this program, the Board may recommend that the prisoner is ready to begin a 3 month community-based work release program. If a satisfactory report is received from the supervising officer, the Board may then recommend to the Governor that the prisoner could be released on parole. The order for release on parole must be tabled in both Houses of Parliament within 15 sitting days of being made.

Breach of Parole
A breach, for which the offender is sentenced to further imprisonment, automatically cancels parole. Where a term of 3 months or less is imposed for a breach of parole, the Board may reinstate the original parole order.

An offender is credited with 1/2 of the time spent on parole prior to the breach (clean street time).
The Board may re-release on parole a parolee whose parole has been cancelled. The parole period is either equal to the previous parole period or from the time of re-release to the end of the head sentence.

Breach rate is around 26%.

REMISSIONS
The non-parole period (NPP) is automatically reduced by 10% unless the offender is guilty of misconduct whilst in custody.
(Prisons Act Regulations)

One-third of the head sentence is automatically remitted under s. 29 of the Prisons Act 1981. Thus an offender who is sentenced to 6 years' imprisonment will serve only 4 years, comprising 2 years' custodial sentence less 10% for good behaviour and 2 years on a supervised community sentence.

OTHER FORMS OF COMMUNITY BASED CORRECTIONS

Probation
Probation continues to be the most commonly used community based order with 2,597 out of a total of 4,965 orders issued in 1988/89. The breach rate is 23%.

Community Service Order
1780 orders to complete unpaid community work instead of serving a term of imprisonment of between 4 and 240 hours were issued in 1988/89.

Breach rate 18%.

Work Release Orders
6 months prior to release on parole or to freedom, the Parole Board may order the release of prisoners who have served at least 12 months of their sentence to participate in strictly supervised community work programs.

Home Leave
Prisoners who have served 12 months of a sentence and are eligible for release on parole or to freedom may, 12 months prior to their release date, be allowed Home Leave to visit a specified friend or relation.

Work and Development Orders
The Parole Board was empowered to issue Work and Development Orders under provisions of the Community Corrections Centres Act 1988.

These orders are closely supervised programs of unpaid community work and personal development activities aimed at enhancing successful integration into the community and to assist in finding employment.

WDO's are used in the new scheme to divert fine defaulters from prison. Defaulters are required to undertake 14 hours work per week for each week default imprisonment, comprising 6 hours personal development programs and at least 8 hours community work.

39 orders issued in 1988/89 with no cancellations.
Community Corrections Centres
Under the Community Corrections Centres Act 1988, 16 centres were established as bases for the supervision of offenders serving community based orders.

SUPERVISION OF ABORIGINAL OFFENDERS
WA shares with NT the problem of high Aboriginal crime rate, but its size and sparse population makes options to incarceration very difficult to administer.

Aboriginals comprise approximately 1.8% of the population of imprisonable age but 35% of the prison population.

62% are serving sentences of less than 12 months.

42% for crimes of violence

Corrective Services now employs Aboriginal Community Corrections Officers at Port Hedland, Roebourne, Kalgoorlie, Northbridge, Geraldton, Albany, Broome and Kununur in an attempt to allow Aboriginal offenders to undergo community supervision in their own area with selected members of the community taking on the supervisory role under the guidance of Aboriginal Community Corrections Officers.

Aboriginal Prison Visitors Scheme
Now operating in the Perth Metropolitan, Broome, Eastern Goldfields and Greenough areas to give Aboriginal prisoners access to support in adjusting to imprisonment.
WESTERN AUSTRALIA STATISTICS

Area – 2,525,000sq kms

Population of imprisonable age –
  Non-Aboriginal – 1,189,022
  Aboriginal – 20,933 (1.8%)

Imprisonment rate – 117 per 100,000 total population

1,568 offenders interned in correctional institutions –
  1,477 males
  91 females

Aboriginals in prison – 35% of the total prison population
  62% serving sentences of 12 months or less

15 correctional institutions

4,965 supervised in the community
  19% Aboriginal

Home Detention implemented in April 1991

Total corrections staff 1,575
  Prison staff 1,110
  Community Corrections Staff
    (including 7 managers of country branches) 77
  Aboriginal Community Corrections Staff
    (of which 6 are country based) 7
  Administrative Staff 388
NORTHERN TERRITORY

LEGISLATION

Prisons (Correctional Services) Act – Remissions
Parole of Prisoners Act

PAROLE
Discretionary non-parole period (NPP) on a sentence of 12 months or less.
Compulsory non-parole period on a sentence of more than 12 months unless the court is of the opinion that the nature of the offence or the prisoner's antecedents do not warrant a lesser term or the offender is sentenced to life imprisonment.

The length of the NPP is at the judge's discretion.

Prior to the expiry of the NPP a prisoner becomes eligible for consideration for parole by the Parole Board, chaired by the Chief Justice of the Northern Territory.

Parole is not a right and is entirely at the discretion of the Board. However 70% receive favourable consideration.
If parole is granted, the parole period is for the remainder of the head sentence.

Breach of parole results in return to prison for the balance of the head sentence.
There is no credit for "clean street time".

A 1989 amendment to the Parole of Prisoners Act now allows the Chairman of the Parole Board, at his discretion, to take breach action after the expiration of the parole period for a breach which occurred during the parole period but of which the Board had no knowledge. With no credit for clean street time this would mean that the whole of the remainder of the sentence from the end of the NPP would have to be served.

REMISSION
Virtually automatic remission of 1/3 may be deducted from the head sentence but not from the Non-Parole Period.
Remission may be granted on a sentence of more than 28 days.
The Director of Correctional Services may grant an additional 7 days per year at his discretion.
Remission already earned under the Prison Act may be deducted from the term which remains to be served following a breach of parole.

OTHER FORMS OF COMMUNITY BASED CORRECTIONS

Community Service Orders
5 advisory committees throughout the Territory assess and approve suitable work projects for offenders.

Prison numbers in 1988/89 fell by 15% following greater use of the Community Service Order and the introduction of the diversionary program for fine defaulters.

Fine Default Diversionary Program
Offenders convicted of minor offences and fine defaulters may now be sentenced to community work instead of imprisonment.
3,013 participated in the scheme in the 1989/90 financial year.
The success rate is about 80%.
Home Detention

Amendments to the Criminal Law (Conditional Release of Offenders) Act allow courts to impose a prison sentence but suspend the sentence in favour of a Home Detention Order with the approval of the Director of Correctional Services and the consent of the offender, and after assessment of the offender's suitability and home and family circumstances.

Main offences for which HDO is used are alcohol-related driving and driving whilst disqualified.
A maximum of 12 months detention may be ordered.

Home detainees are subject to stringent restrictions and constant surveillance with not less than twice-daily checks.
Breach of conditions means immediate imprisonment.
42 surveillance officers are employed.

HDO is being trialled for Aboriginal offenders from remote communities. So far there has been reasonable success but there are problems with surveillance in remote areas.

Legislation to allow the use of electronic devices is proposed.

71 people underwent home detention in 1989.
ABORIGINALS IN THE NORTHERN TERRITORY

The NT's high Aboriginal prison population - 69% of the total - has given rise to concerted efforts in the area of crime prevention.

55% are serving sentences of less than 12 months
45% for crimes of violence.

The police force is amongst the highest paid in the western world and has the longest training program - including anthropology and conflict resolution - in Australia.

10% of the police force is Aboriginal with 24 Aboriginal police aides operating in remote areas.

Individual communities propose suitable recruits for interview by the police. This ensures acceptance by the community and avoids kinship or "skin" problems.

Their initial role was routine paperwork but the success of the scheme has meant an increase in duties to include summonses, preparation of prosecution files and full bail/arrest procedures. In the Nguiu community the police aide has also been empowered to take intoxicated persons into protective custody.

Aboriginals pose some unique problems because of the parallel application of tribal law which often has greater influence over community members, e.g. the use of payback law which an offender may have to face in addition to a "white" sentence.

It was discovered that some juveniles were using a term of imprisonment in place of the traditional "manhood" initiation ceremonies.

The police now have a strong emphasis on prevention and have developed a four-pronged strategy in an attempt to cut down the crime rate:-

(i) Strategic policing -
Increased use of intelligence work, undercover operations and electronic surveillance;

(ii) Problem-solving policing -
Expansion into negotiation and conflict resolution;

(iii) Community policing -
Creation of an effective working relationship between the police and the community;

(iv) School-based policing -
All NT secondary schools have a resident police constable. After opposition from teachers, students and parents when the scheme was first introduced in 1984 there is now strong support from all sectors.

The constables are used as counsellors and mediators as well as operating the "Drug Abuse Resistance Education Scheme" (DARE) introduced in 1987.

The DARE program has been adopted by both NSW and Victoria.

A unit in "Youth and the Law" is now compulsory for Year 10 students.

In 1985 the Junior Police Ranger scheme was introduced to develop peer leadership, bush skills, survival techniques, fire safety, self-assessment etc. The scheme has now been extended into remote areas.
Further programs specifically designed for juveniles are:

(i) youth activities program – camps for 13-17 year olds.

(ii) youth diversion program – work experience for juveniles with criminal records in the Police garage, St John's Ambulance and Aboriginal Legal Aid etc.

(iii) Blue Light Discos – discos organised by off duty police.

The Cell Visitor Scheme was set up following the recommendations of the Muirhead Commission into Aboriginal Deaths in Custody. The main aim of the scheme is to prevent the feeling of despair, isolation or desertion which often leads to rapid deterioration in physical or mental health. Local Aboriginal or part Aboriginal members of the community, or in remote areas, family members are nominated to liaise between prisoner and police.
NORTHERN TERRITORY STATISTICS

Area – 1,300,000 sq kms.

Population of imprisonable age –
   Non-Aboriginal – 106,817
   Aboriginal – 19,111 (18%)

Majority of population are under-30 males – the most criminally active sector of society.

Imprisonment rate for 19 year old males is 2,211 per 100,000 compared with WA, the next highest, at 571 per 100,000.

Murder rate 3x that of any other state.

Overall Imprisonment rate – 299 per 100,000 – the highest in Australia.

351 offenders interned in correctional centres
   348 males
   3 females

Aboriginals in prison – 69% of total
   55% are serving sentences of less than 12 months

6 correctional institutions (including Gunn Point Prison Farm and Nhulunbuy Police Prison).

1 mobile work program

71 in Home Detention

Total corrections staff – 383
   Prison Staff 290
   Community Corrections Staff 49
   Full-time Aboriginal staff 6
   Part-time Aboriginal staff 12
NEW SOUTH WALES

LEGISLATION

Sentencing Act 1989 - parole
Prisons (Amendment) Act 1988 - Corrective Services Commission abolished
State Law (Miscellaneous Provisions) Act (No.3) 1988 - periodic detention
Crimes Act 1989 - life sentence means for natural life.

PAROLE
The Sentencing Act 1989 replaced the Probation and Parole Act with the following objectives:-

(i) to promote "truth in sentencing" by requiring convicted offenders to serve in prison, without any reduction, the minimum or fixed term set by the court.

(ii) to provide that prisoners who have served their minimum term of imprisonment and who are of good behaviour may be released on parole for the remainder of their sentence.

The major provisions of the legislation are:

(i) the court lays down a mandatory minimum term of imprisonment.

(ii) the court also lays down an additional term during which the prisoner may be released on parole.

(iii) except under special circumstances, the additional term must not exceed one-third of the minimum term.

(iv) the court for reasons stated at the time of sentence, may decline to set a minimum term and additional term and can instead set a fixed term of imprisonment.

(v) on sentences of less than 6 months there is a fixed minimum period with no remissions.

(vi) on sentences of more than 6 months the court:
(a) may impose a straight term of imprisonment;

(b) must impose a minimum period of imprisonment - usually 75% of the head sentence. The non-parole period may be backdated to take account of the time spent in custody before sentencing, or commences from the imposition of sentence.

(c) may impose both a minimum and a maximum period of imprisonment. The maximum term is normally the minimum term plus 1/3, eg. minimum 6 years, maximum 8 years. The sentencer may in special circumstances add more than 1/3 to the minimum term.

(vii) on all sentences exceeding 3 years, at the expiry of the minimum term, and at the discretion of the Parole Board, the prisoner may be released on supervised parole for the remainder of the maximum sentence.
Parole is no longer automatic. Parole Board considers eligibility for parole 60 days before expiry of NPP. If parole is denied the prisoner will serve the remainder of the maximum term in custody.

(viii) where a sentence of less than 3 years is imposed the prisoner may be released to unsupervised parole unless the court orders supervision.

(ix) If parole is revoked because of a breach by the parolee, he or she will be returned to prison from the date of the breach offence to the end of the maximum term but may be reparoled at any time.

(x) S.41 of the Act allows credit for "clean street time".

REMISSIONS
The former one-third remission was abolished by the new legislation.
Serious breach of prison discipline will increase the minimum sentence by 28 days per breach as determined by the official prison visitor.

All existing prisoners will have a new minimum and maximum term set, calculated by crediting them with remissions already earned plus an allowance for remissions on the balance of their non-parole period and head sentence.

LIFE SENTENCE
Under the Crimes Act 1989 offenders sentenced to life imprisonment will spend the rest of their lives in gaol.

EFFECT OF THE NEW "TRUTH IN SENTENCING" LEGISLATION
(i) Increase in the prison population
In the first 8 months of operation, prison musters had increased by 119 more than the predicted 200.
It appears that the non-parole period has increased from one-third or one half to 3/4 of the head sentence.

(ii) Abolition of remissions
The new system offers no remissions and can increase a prisoner's custodial sentence by 28 days per serious offence as ordered by the official prison visitor. Under the previous legislation, the NPP could be reduced by as much as 1/3 by remissions.

This could have the effect that some of the worst prisoners who have committed serious breaches whilst in custody are released without any supervision because their additional sentence has been absorbed by increases in the minimum term.

OTHER FORMS OF COMMUNITY BASED CORRECTIONS

Community Service Orders
A total of 3,935 offenders were granted CSO in 1989. 390 (about 10%) were the subject of breach action and some offenders continued as volunteers after their assigned number of hours was completed. The system is expected to develop.

Community Service Orders (Fine Default) Scheme
The CSO (Fine Default) Amendment Act 1987 and the Miscellaneous Acts (Fine Default) Amendment Act 1987 allowed community work at the rate of $100/8 hours as an option to those who default on fines other than those under the Motor Traffic Act 1909. However
since its inception in January 1988, fewer than 25% of fine defaulters are registering with Probation and Parole offices and even fewer are completing their assigned hours of work. A research project is currently underway to establish whether the new program only delays the entry of fine defaulters into gaol.

**Attendance Centre Program**

Programs are highly structured with the emphasis on returning responsibility to individuals. There are 5 core programs:—

* employment
* money management
* positive alternatives to dependencies
* personal development
* drink-drive education

plus—

* basic education – literacy, numeracy and English as a second language

The programs are run by staff from the CES, Department of Health, Credit Line, TAFE and Drug and Alcohol Agencies.

71% of offenders are directed to the program via CSO
29% are referred by a Probation and Parole Officer
20% of all offenders are enrolled in the Basic Education program
87% of all attendees are male
54% are aged 17–22

**Periodic Detention**

Periodic Detention is a legislative sentence of imprisonment which permits offenders to serve their sentence at weekends and thereby maintain normal employment and family life.

Detainees must work 8 hours at the weekend in specified places eg. in charitable organisations, homes for the elderly and disadvantaged and also in maintenance and building. There are programs at several gaols. Centres are now housing up to 570 detainees per weekend. Each detainee costs $2,500 pa (Compare $40,000pa in prison)

**Home Detention**

There is a proposal to set up a Home Detention program. The program will be an alternative to a custodial sentence in an institution and will be conditional on:

* a nightly curfew
* maintenance of employment
* intensive supervision

Electronic surveillance is being investigated.

**Voluntary Community Organisations**

In 1988/89 grants and subsidies of around $973,000 were allocated to various Prisoner Aftercare, Family Support Groups and religious organisations providing halfway houses etc.

**Prisons in NSW**

NSW has the third highest (after WA and NT) imprisonment rate of 98 per 100,000 of total population

There is serious overcrowding with an increasing prison population following the
Sentencing Act 1989, faster processing in the Courts, increases in the police force and improved community policing.
New gaols are being constructed and after a favourable report on private prisons by consultants Kleinwort Benson, the privatisation of minimum security prisons and remand centres is under consideration.

80% of prisoners are serving sentences for drug related offences and there are drug programs at each institution but there is an increasing incidence of AIDS infected prisoners. Following the stabbing of a prison warden with a blood filled syringe and his subsequent diagnosis of the AIDS virus, the authorities moved to confiscate prisoners' personal property to prevent the trade of property for drugs and syringes. The initiative has sparked riots in a number of institutions.

Aboriginals are 8.2% of the total prison population.

PRE-RELEASE PROGRAMS

90-100 inmates participate in the Work Release program at any one time.
A total of 284 prisoners were placed on the program in 1989/90 with 39 being removed for various breaches.
Inmates are sponsored by members of the community who are responsible for transportation to and from the place of employment.
From their earnings, releasees contribute to their board and lodging, family expenses, compensation ordered by the courts, fares etc.
NSW STATISTICS

Area – 802,000 sq kms

Population of imprisonable age –
Non-Aboriginal – 4,317,640
Aboriginal – 31,912 (0.7%)

Imprisonment rate – 98 per 100,000 total population

5,261 offenders interned in correctional institutions
4,972 males
289 females

Aboriginals comprise 8% of prison population:
33% serving sentences of 12 months or less

31 correctional institutions

12,798 supervised in the community
4.5% Aboriginal

Home Detention – program still under consideration

Total corrections staff – 3,529
Prison Staff 2,564
Community Corrections Staff 497
Administrative Staff 468
VICTORIA

LEGISLATION

Corrections Act 1986
Corrections (Remissions) Act 1988
Penalties and Sentences Act 1985
Crimes (Amendment) Act 1986 Part 3v
Corrections (Amendment) Bill 1989
Community Welfare Services Act 1970
Sentencing Act 1991

PAROLE

Provisions relating to parole are contained in the Community Welfare Services Act 1970.

(i) Sentences of more than 2 years
    as part of the sentence, a compulsory minimum term that is at least 6 months less
    than the NPP

(ii) Sentences less than 2 years but more than 12 months
    at the sentencing judge's discretion, as part of the sentence, a minimum term that is
    at least 6 months less than the NPP

(iii) Parole is automatic to the extent that a prisoner does not have to apply to the Board

(iv) The Parole Board may in writing order a prisoner's release on parole at the expiry of
    the minimum term on the terms and conditions prescribed in the order.

(v) All prisoners are now required to participate in the more intensive conditions for the
    first 3 months. Some may be required to undertake a longer period of intensive
    supervision especially if parole has previously been denied.

    Intensive parole conditions may be:-

    (a) to report at least twice weekly;
    (b) to be employed or undertaking an approved educational or training course;
    (c) if neither employed or training, to undertake approved community work for the period
        of intensive supervision or until employment or training is found

    PLUS at the discretion of the Parole Board:-
    (d) to participate in an approved personal development program;
    (e) to reside in a specific place;
    (f) to avoid the company of nominated persons;
    (g) to avoid certain areas;
    (h) to undertake treatment for drug or alcohol abuse.

(vi) A parolee is regarded as still under sentence until the parole period is completed
    without breach or he is otherwise discharged from his sentence.

    A further term of imprisonment of more than 3 months automatically cancels
    parole. The Board may note the breach but take no action, issue a warning, vary
    conditions, cancel the order.

(vii) There is no credit for 'clean street time'.

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The Parole Board is currently examining further improvements to its operation and administration by:

- further tailoring parole order conditions to meet individual needs
- promoting the development of further programs in the community to meet those needs
- linking programs and treatment in prison with programs and treatment in the community
- developing community education and knowledge of the parole process

REMISSIONS
One-third of the head sentence is automatically remitted.

PRE-RELEASE PERMIT
The Parole Board may order a permit of not more than 1/3 of the sentence to a prisoner who:

(a) is serving a sentence of 12 months or more
(b) has served at least 3 months but not more than 12 months of the sentence

('prison sentence' means the minimum term, where parole has not been granted at the end of the minimum term, a period determined by the Board or where there is no minimum term, the sentence)

A prisoner who has successfully completed a period on pre-release may be exempted intensive parole conditions.

PREVENTIVE DETENTION
Under the Community Welfare Services Act a person sentenced for an offence to a term of 2 years or more who has at least 2 previous convictions carrying sentences of 2 years or more since the age of 17, may, for the protection of the public, be detained in prison for a term of not more than 10 years in lieu of sentence. A minimum term is also fixed.

SENTENCING ACT 1991
The Sentencing Act 1991 was passed by Parliament before the winter recess and was aimed to introduce changes to establish the principle of 'truth in sentencing' but without increasing the length of a sentence. The Attorney-General, Mr. Jim Kennan stated that the changes were to ensure that:

"...the period served reflects the sentence passed."

The purposes of the Act as stated in the Preliminary section are as follows:-

(a) to promote consistency of approach in the sentencing of offenders;

(b) to have within the one Act all general provisions dealing with the powers of courts to sentence offenders;

(c) to provide fair procedures—
(i) for imposing sentences; and
(ii) for dealing with offenders who breach the terms or conditions of their sentences;

(d) to prevent crime and promote respect for the law by—
(i) providing for sentences that are intended to deter the offender or other persons from committing offences of the same or similar character; and
(ii) providing for sentences that facilitate the rehabilitation of offenders; and
(iii) providing for sentences that allow the court to denounce the type of conduct in which the offender engaged; and
(iv) ensuring that offenders are only punished to the extent justified by-

(A) the nature and gravity of their offences; and
(B) their culpability and degree of responsibility for their offences; and
(C) the presence of any aggravating or mitigating factor concerning the offender and of any other relevant circumstances; and
(b) promoting public understanding of sentencing practices and procedures;

e) to provide sentencing principles to be applied by courts in sentencing offenders;
f) to empower the Full Court to give guideline judgements;
g) to provide for the sentencing of special categories of offender;
h) to set out the objectives of various sentencing and other orders;
i) to ensure that victims of crime receive adequate compensation and restitution;
j) to provide a framework for the setting of maximum penalties;
k) to vary the penalties that may be imposed in respect of offences under the Crimes Act 1958;
l) generally to conform to the sentencing laws of Victoria."

In effect the Act introduces the following changes:–
(a) the abolition of remissions and early release;
(b) the statutory definition of sentencing principles in Victoria;
(c) provision for the Full Court to set down sentencing guidelines to stipulate, inter alia, the criteria for selection of a particular sentence and the purpose of sentencing offenders;
(d) the introduction of a new sanction – the intensive correction order;
the order is just short of imprisonment but more severe than community-based orders and can include stringent conditions such as supervision by community corrections officers and attendance at treatment programs;
(e) the imposition of an additional minimum term for further offences committed by prisoners serving life sentences – previously such further terms were served concurrently
(f) the introduction of cumulative jail terms for fine defaulters instead of concurrent terms which previously allowed a defaulter to clear thousands of dollars in fines by serving a few days in prison;

BUILDING A LAW-ABIDING SOCIETY TOGETHER
The Victorian Government’s law and order policy was published in the paper entitled "Building a Law-Abiding Society Together" (BLAST) in 1988. The Corrections Amendment Bill 1989 which is still being debated in the Legislative Council makes fundamental changes to the law governing sentencing, parole, remissions, early release and rehabilitation.
Proposed Amendments under the Corrections Amendment Bill 1989

Sentencing
(i) The establishment of a task force to review current legislative maximum sentences and recommend new ones where necessary;
(ii) the production of a sentencing manual for judges and magistrates;
(iii) the production of sentencing information for judges and magistrates by the Bureau of Crime Statistics;
(iv) imprisonment for fine default to be used only as a last resort.

Parole
(i) All sentences to be expressed as a principal term plus parole to indicate clearly the manner in which a sentence of imprisonment is to be served.
(ii) Parole will be more intensively supervised by the following:
   (a) compulsory attendance at Community Corrections Centre at least 3 times per week
   (b) the completion of 8 hours' community work per week
   (c) the completion of 6 hours' supervised personal development per week
   (d) the level of supervision may be scaled down subject to progress
(iii) All parole decisions to be taken by the Parole Board chaired by a Supreme Court judge

PRE-RELEASE PERMIT
Pre-release permits and release transition programs have been abolished.

REMISSIONS
(i) automatic remissions of sentence were abolished under the Sentencing Act 1991*
(ii) merit time is to be earned and assessed each month
(iii) merit time to be reduced to 1 day in 4, further reducing to an allowance of 1 day in 7 in the next 5 years
(iv) serious offence whilst in custody may result in an additional term which may absorb any period to be spent on parole

*The Starke Committee had recommended the total abolition of all remissions but expert opinion has subsequently favoured some form of earned remission as incentive to good behaviour.

HOME DETENTION
It is proposed under the new legislation (Corrections Amendment Bill) that for the last 6 months of the sentence of low risk prisoners who have behaved well for the majority of their sentence. The decision to grant home detention would be at the discretion of the Parole Board. Prisoners would be responsible for the cost of surveillance and would have to perform community work at the weekends.
OTHER FORMS OF COMMUNITY BASED CORRECTIONS

Community Based Order
On 1 June 1986 major amendments were made to the types of non-custodial orders available in Victoria. Probation Orders, Attendance Orders and Community Service Orders were abolished and replaced with Community Based Orders (CBO). The CBO may have one or more program condition attached to it as directed by the Court or Community Corrections Officer. Conditions may be:-

(a) to undertake educational or other programs of between 20 and 400 hours in 12 months
(b) to perform unpaid community work of between 20 and 500 hours in 12 months
(c) to be supervised by a Community Corrections officer
(d) to undergo assessment and treatment for alcohol or drug addiction or for medical, psychological or psychiatric condition
(e) to submit to testing for alcohol or drug use
(f) to reside in specified premises
(g) to avoid the company of nominated persons
(h) to accept any other condition the Court may consider necessary or desirable

Environmentally oriented projects such as waste paper collection and recycling, tree planting on French Island to improve koala habitat and railway land improvement have been included in community based programs.

Adventure Based Counselling Projects
The aim of these projects is to combine outdoor and recreational activities with traditional counselling and supervision to increase offenders' self-esteem, sense of achievement and ability to participate in group environment.

ABORIGINALS
Each of the 22 Community Corrections Centres has an Aboriginal Liaison Officer. Aboriginal Community Justice Panels have been established.
7 of the 33 Official Prison Visitors have a special interest in Aboriginals.

OTHER ETHNIC GROUPS
A Vietnamese Community Corrections Officer is employed to assist with problems and as interpreter for the Vietnamese community.

VOLUNTARY ORGANISATIONS
Community Corrections Committees consisting of local representatives from the police, courts, magistrates, trade unions and volunteer agencies have been established to act as liaison between the community and corrections staff. Volunteer Community Corrections Officers are used quite extensively in substance abuse, recreational and counselling programs.
VICTORIA STATISTICS

Area - 228,000 sq kms

Population of imprisonable age -
   Non-Aboriginal - 3,249,428
   Aboriginal - 7,159 (0.2%)

Imprisonment rate - 51.5 per 100,000 of total population - the lowest in Australia

2,256 offenders interned in correctional institutions -
   2,128 males
   128 females

Aboriginals in prison - 3.8% of the total prison population
   53.5% serving sentences of 12 months or less

14 correctional institutions

5,319 supervised in the community
   1.3% Aboriginal

Home Detention - proposed in the Corrections Amendment Bill

Total corrections staff - 2,259
QUEENSLAND

LEGISLATION

Corrective Services Act 1988
Corrective Services (Administration) Act 1988
Corrective Services Amendment Act 1988

In 1988 the Prisons Department and the Probation & Parole Board were replaced by Corrective Services Commission.

PAROLE

Prisoners serving sentences of 6 months or more are eligible for parole after 50% of sentence has been served and may apply to the appropriate Community Corrective Board situated at each of the major prisons.
The State Board deals with prisoners serving sentences of 5 years or more
5 Regional Boards deal with prisoners serving sentences of less than 5 years

Parole is not automatic and must be applied for.
Parole is served for the remainder of the sentence.
There is no automatic remission when a prisoner is on parole.
There is no credit for "clean street time".

REMISSION

A prisoner serving a sentence of 2 months or more is eligible for 1/3 remission of the custodial sentence subject to good behaviour. Remission is not automatic and may be lost or not granted.

In addition to the 1/3 remission, a prisoner may be granted:
1 day for each Christmas Day in custody,
14 days early release on a sentence over 2 years,
1 day for every 12 "over-task" marks earned.

[the above provisions are contained in the Corrective Services Regulations 1989, regs 21-28]

OTHER FORMS OF COMMUNITY BASED CORRECTIONS

Community Service Order
3,065 orders issued in 1988/89.
The required hours must be completed within 12 months.
CSO was introduced as an alternative to payment of a fine and 2,717 orders were made in 1988/89.

Release to work scheme
Prisoners housed in a special hostel at Kennigo St are released for a day or longer to find work. They return to the hostel at night and pay for their board. The balance of earnings is banked on their behalf.

Pilot program for reoffending drink drivers
22 selected offenders of the 4,000 who were repeat drink driver offenders were admitted to probation on the condition that they attended a 7 month course involving the Justice, Police, Health and Transport Depts and St. John Ambulance.
The program may be extended by legislation to be combined with Home Detention.
Home Detention

Selected prisoners are released to live at home under certain restrictions supervised by community corrections officers. Applications are approved by Community Corrections Boards. Sex and violent offenders are not eligible. Prisoners are allowed to leave home for work and essential activities such as shopping or medical attention. After a settling-in period they may be allowed a weekly pass to participate in positive social activities with family or other approved persons. Unemployed home detainees are required to perform 2 days per week community service and fully employed detainees must complete 1 day's community work usually at the weekend. Proposed legislation is likely to make home detention a sentencing alternative. Electronic surveillance also under consideration.

Intensive Supervision

This is a program which provides a punitive, rehabilitative and behavioural approach to the management and control of heroin addicts on probation. The program combines group therapy, life skills training, high level of surveillance, care in drug rehabilitation centres with the final sanction of punitive action through the courts.

VOLUNTARY COMMUNITY ORGANISATIONS

In the latter half of the 1988/89 financial year QCSC made grants of $101,000 to voluntary community organisations providing eg, halfway houses and family support

PRISONS

In 1988 the Sir David Longland Centre was opened at a cost of $28 million - half the cost of a proposed new facility in NSW which was consequently postponed. In 1989 the Queensland Government opened Australia's first private prison at Borallon. In 1990 individual assessment of each prisoner was introduced. Custodial officers and professionals assess each prisoner within a month of incarceration. Both parties enter into a signed agreement of each prisoner's goals whilst in prison eg, enter counselling, basic literacy skills. A prisoner is not entitled to privileges such as television, work etc without an agreement. Agreements are reviewed monthly.
QUEENSLAND STATISTICS

Area - 1,727,000 sq kms

Population of imprisonable age -
  Non-Aboriginal - 2,089,250
  Aboriginal - 33,268 (2%)

Imprisonment rate - 76 per 100,000 of total population

2,390 offenders interned in correctional centres
  2,275 males
  115 females

Aboriginals in prison - 17% of total
46% serving sentences of 12 months or less

11 correctional institutions including Kennigo St Work Release Centre

9,500 offenders supervised in the community
  2.8% Aboriginal

51 in Home Detention

Total corrections staff - 2,035
  Prison Staff 1,465
  Community Corrections Staff 153
  Full-time Aboriginal staff 2
  Part-time Aboriginal staff 12
  Target of 10% Aboriginal staff by 1993
  Administrative Staff 417
SOUTH AUSTRALIA

LEGISLATION

Correctional Services Act 1982
Criminal Law (Sentencing) Act 1988
Statutes Amendment and Repeal (Sentencing) Act 1988

PAROLE
On sentences of more than 12 months there is a compulsory non-parole period. Eligibility for parole is entirely at the discretion of the judge but is virtually automatic provided the parolee accepts the Parole Board’s conditions. There is no set formula and no pattern of an average NPP has emerged since the legislation was introduced in 1982. Research published in January 1988 seems to indicate that the average NPP has increased by 50%.

The Parole Board has no discretion to refuse to grant parole. It's main function is to determine parole conditions and monitor parole performance. Conditions are either "standard" or "designated", the latter being more stringent. For an offence carrying a term of imprisonment committed while on parole the court is empowered to make a new term cumulative on the original sentence. There is no statutory credit for 'clean street time'. The NPP is reduced by 1/3 automatic remission (formulated at 15 days per month) However time remitted is added to the parole period and not deducted from the head sentence. The parole period extends from the expiry of the NPP to the end of the head sentence. There is no maximum period on parole.

Prisoners serving life sentences after 1981 had a NPP set by the court. The Board may recommend release and appropriate conditions to the Governor. Parole is for a maximum of 10 years for a "lifer".

REMISSION
NPP is automatically reduced by 15 days per month or 1/3

Provisions of the Correctional Services Act 1982 allowed remissions to be deducted from either the NPP or the head sentence. It is not clear whether the legislation intended for remissions to apply to both. The Secretary of the Parole Board stated that remissions are deducted only from the NPP although the Executive Director indicated remission was deducted from the head sentence.

Under the Criminal Law Consolidation Act 1986 judges are now directed to take remissions into account when fixing the length of a sentence or NPP. A survey of prison officers produced wide-spread criticism of automatic remissions. The majority were of the opinion that remission should be earned and not given as a right.

OTHER FORMS OF COMMUNITY BASED CORRECTIONS

Community Service Orders
The Criminal Law (Sentencing) Act 1988 introduced the CSO as a sentencing option and it has since become the preferred non-custodial sentence to such an extent that its use has outstripped resources especially in rural areas.

In 1988/89 4,700 CSO were issued.
Fine Option CSO
This new program for people legitimately unable to pay fines has been slower to develop and there are still management problems caused by the delay in advice of applications and the openness of the system to abuse (cf the problems experienced in NSW).

Supervised Suspended Sentence
The Community Service Order scheme is used to implement the supervised suspended sentence.

Home Detention
Provision for early release to Home Detention was made in the Correctional Services Act of 1982.

Initially for offenders serving sentences of 1–12 months but now extended to those with longer sentences approaching release on parole.
Under the Bail Amendment Act 1987 offenders may be placed in home detention as part of the bail agreement.
Conditions are a strict curfew, no alcohol and regular reporting.
A breach of conditions results in an immediate return to prison.
Electronic surveillance was introduced in November 1988. Costs are met by the Dept of Correctional Services.
Authorities estimate that the cost of keeping an offender in home detention is approximately 1/5 of the cost of custody in a prison.

1988/89, 121 offenders were on Home Detention Orders.
29 (24%) breached and were returned to prison, mostly for alcohol or drug related offences.
Participants are supportive of the scheme.
60% are employed or taking adult education courses.
The authorities believe that home detention produces the ideal combination of protection for the community, cost savings for the administration and the opportunity for rehabilitation for the offender.

ABORIGINES
An Aboriginal Liaison Officer has been appointed to assist in development programs and involve local communities.
A second officer is to be appointed in the Port Augusta area.
The Department has conducted a recruitment drive to encourage more Aboriginal correctional officers.
The prison at Port Augusta has been redesigned specifically for Aborigines following recommendations in the Muirhead Royal Commission into Aboriginal deaths in custody that isolation and a feeling of helplessness were major contributing factors to Aboriginal suicides.

Prisoners at Port Lincoln jail are given a key to their cell to encourage a sense of responsibility for their own belongings. They have a view of the bush through the bars on the windows and access to cassettes of their own tribal music.

Pitjantjarra Lands Project
A project officer was appointed in February 1989 to introduce a community service and fine option program in the Pitjantjarra Lands. The project has received the support of the local Aboriginal community and application has been made to the government for funding to continue.
PRISONS

The changes to the parole and remission legislation in 1982 appear to have increased the length of the average custodial sentence and consequently overcrowding problems have been exacerbated.

In 1988/89 additional high and medium security prison accommodation was provided. Other new programs include the Pets as Therapy program at Northfield and extension of educational programs in liaison with TAFE.
SOUTH AUSTRALIA STATISTICS

Area – 984,377 sq kms

Population of imprisonable age
   Non-Aboriginal – 1,067,837
   Aboriginal – 8,029 (0.75%)

Imprisonment rate – 67 per 100,000 of total population

871 offenders interned in correctional institutions –
   831 males
   40 females

Aboriginals in prison – 12% of the total prison population

47% serving sentences of 12 months or less

9 correctional institutions

4,704 supervised in the community
   9.3% Aboriginal

121 in Home Detention

Total corrections staff – 1,165
   Prison Staff 837
   Community Corrections Staff 148
   Administrative Staff 180
TASMANIA

LEGISLATION

Parole Act 1979
Parole Amendment Bill 1989

Corrections became part of the Department of Community Services from July 1 1989.

PAROLE

After 6 months' imprisonment or 50% of the sentence, whichever is longer, an offender may become eligible for parole. Prior to April 1987, eligibility for release on parole was after 6 months or 1/3 of the sentence which ever was longer. 3 months before the possible release date an offender must make his own application to the Parole Board. The Board meets with the applicant and after the interview and a pre-release report will decide whether or not to make a parole order.

Parole is for a minimum of 6 months even if the sentence already served and the parole period exceed the original sentence eg. an offender who was due to be released the following week was granted parole and remained under supervision for 6 months! There is no set formula for the length of the parole period which is entirely at the discretion of the Parole Board. If parole is granted, the parolee will be supervised by a parole officer who reports on each case to the Board at least every 3 months depending on the conditions imposed on the parolee. If parole is refused, an offender may make a further application 3 months later. A parolee is considered to be still under sentence and if a breach is committed and parole revoked, the parolee will be returned to prison to serve the remainder of the sentence with no credit for clean street time.

Parole for dangerous criminals and "lifers" is decided by the Attorney General on the recommendation of the Parole Board.

REMISSIONS

1/3 automatic remission from the NPP.

OTHER FORMS OF COMMUNITY BASED CORRECTIONS

Community Service Order
CSO may be imposed as a penalty in its own right and as an option for fine defaulters with a maximum of 240 hours.

Supervised Suspended Sentence
Sentences may be either wholly or partially suspended.

Probation
Imposed on conviction only as a conditional discharge or in addition to a fine CSO or prison sentence.
TASMANIA STATISTICS

Area - 68,000 sq kms

Population of imprisonable age
   Non-Aboriginal - 331,259
   Aboriginal - 3,486 (11%)

Imprisonment rate - 52 per 100,000 of total population

According to the most recent National Prison Census (for year ended June 1990), the rate of imprisonment in Tasmania -52 per 100,000- is only marginally ahead of the Victorian rate of 51.5 per 100,000.

245 offenders interned in correctional institutions
   236 males
   9 females

Aboriginals in prison - 4%

50% serving sentences of 12 months or less

3 correctional institutions

1,620 (approx) supervised in the community
   6.6% Aboriginal

No Home Detention

Total corrections staff - 286
   Uniformed Prison Staff
   Admin, clerical, nurses, trade supervisors and drivers
   Community Corrections Staff
   Aboriginal staff

58
REFERENCE MATERIAL

Annual Reports and information from officers of :-

Western Australia
Department of Corrective Services
Parole Board

Northern Territory
Department of Health and Community Services: Correctional Services
Parole Board

New South Wales
Department of Corrective Services

Victoria
Office of Corrections
Adult Parole Board

Queensland
Queensland Corrective Services Commission

South Australia
Department of Correctional Services

Tasmania
Department of Community Service
Adult Parole Board

Australian Institute of Criminology
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published March 1990

Australian Prisoners 1989
Results of the National Prison Census 30-6-89
published May 1990

Articles and Discussion Papers

Western Australia
History and Application of Parole in WA:
Dept of Corrective Services

Aboriginal Imprisonment in WA
Marshall Smith in "Current Australian Trends in Corrections"

Northern Territory
Remote Area Policing: Community, Aboriginal and Youth Initiatives
Paper prepared for the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders

Testing the Future of our Last Frontier

Northern Territory Home Detention
Dennis Challenger, Assistant Director, Information and Training
Criminology Australia Sept/Oct 1989

Parole Board Manual of Procedures

New South Wales
Truth in Sentencing: New Legislation Analysed
Law Society Journal August 1989

NSW looks at Private Prisons
Directions in Government April 1990

Sentencing Robbers in NSW
Ivan Potas April 1990

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Explanatory memorandum Corrections Amendment Bill 1989
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August 1988
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Queensland
Queensland shows the Way
Lyndall Crisp, Bulletin Sept. 5 1989

Dreamtime or Genocide
Desmond Zwar. Bulletin Nov. 21 1989

Corporate Punishment
Karen Kissane. Time March 19 1990

Not a Warehouse for Crims

South Australia
The Impact of Parole Legislation Change in South Australia
Dept of Correctional Services, Research and Planning Unit

SA Home Detention
Lloyd Ellickson, Co–ordinator, Home Detention, SA Dept of Correctional Services
Criminology Australia Sept/Oct 1989

Prisoners get a Key in the new–style jail
Article in the Daily News July 10 1990

Tasmania
Parole in Tasmania
published by the Tasmanian Probation and Parole Service
EUROPE

There is widespread consensus of opinion in Europe that certain offences and certain categories of offenders merit imprisonment. Crimes involving drugs, serious acts of violence against the person or the environment, serious 'white collar' crime and aggravated theft are crimes which most jurisdictions would consider inappropriate for non-custodial sanctions. Perpetrators of those crimes with the addition of habitual offenders and the mentally ill would normally be expected to be sentenced to terms of imprisonment.

However, a survey of European countries conducted by the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, also indicated scepticism with the effectiveness of imprisonment as a sanction and the growing belief that incarcerative sentences can hamper an offender’s prospects of readjusting to society.

Of all the countries surveyed, only two—Finland and Romania—did not include probation and conditional or supervised suspended sentences in their range of non-custodial sentences.

Community service, involving the performance of a prescribed number of hours of unpaid community work, as a separate sanction is still in the experimental stage in many countries. Suspension of driving or other licence, deprivation of certain rights or removal of professional status as principal sanctions are noted in less than half of the respondents.

As noted in most other jurisdictions around the world, the fine is the most common sanction. Most European countries are faced with the problem of fine default. Ireland, for example, more than 50% of all receptions into prison are as a result of non-payment of fines. Systems which operate the day-fine method based on an offender’s ability to pay have considerably reduced the problem and in 1984 Sweden recorded terms of imprisonment for fine default. A number of countries noted compensator payments as alternatives and more than half had introduced confiscation of person property.

There appears to be wide provision for the combination of custodial and non-custodial sanctions and for the application of different non-custodial alternatives.

\[\text{References:}\]


43 Ibid. 42 above


45 Ibid. 42 above
Strengthening the conditions attached to non-custodial sanctions to increase their credibility, and encouragement, either explicit or implicit in official policy, has been used by some countries.

Promotion of non-custodial sanctions is evident in the form of court precedents and sentencing guidelines and an increasing trend towards statutory measures such as the requirement to justify a sentence of imprisonment, the relaxation of limiting conditions on the use of non-custodial sanctions, the abolition of short terms of imprisonment and the review of statutory imprisonment for certain offences.

All respondents agreed that there should be wider use of alternatives to imprisonment which could imply that there is still a reluctance on behalf of the courts to move away from traditional penalties. Problems with the practical implementation of some non-custodial sanctions may partially explain some of this reluctance.

It was suggested that sentencing judges, more familiar with judicial policies than with assessing data drawn from the social situation of an offender, opt for more traditional sanctions. This could be a particularly strong influence given the pressure of time under which most courts operate and the more time-consuming process involved in including pre-sentence reports and the results of other social factors surrounding the offender in any choice of sanction.

Many jurisdictions reported a lack of confidence in the ability of correctional authorities to administer efficiently community-based sanctions and all criticised the poor exchange of information between judges, correctional authorities, police and the general public concerning alternative methods of dealing with offenders.

There was also an indication that in many jurisdictions, newly established non-custodial sanctions have been imposed in place of existing sanctions, not as a substitute for incarceration, and that breaches of conditional sentences served in the community have resulted in longer prison sentences than would have been served if a community-based sanction had not been imposed.

The conclusions that European criminal justice administrators have reached indicate that exact evaluation of an increased use of non-custodial sanctions and their impact on prisons, offenders and the crime rate is a science yet to be developed but all agree that such sanctions are at least as successful as imprisonment and that they lack many of the drawbacks.
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<td>West Germany</td>
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**Key**
1. probation
2. supervised suspended conditional sanction
3. community service
4. open, ambulant or contract treatment
5. suspension of driving or other licence
6. deprivation of rights
7. removal of professional status
8. local banishment, exclusion order (Scotland)
9. England / Wales: attendance centre order
   Scotland: caution for good behaviour
   France: execution par fractions

**Key**
1. fines
2. compensatory payments
3. confiscation of personal property
4. finding of guilt with no sanction
5. as above, conditional on no offence being committed
6. conditional / suspended sentence, with no supervision
7. admonition
8. offender’s undertaking of good behaviour for set period
9. decision on sanction deferred for period
x. West Germany: admonition with suspended fine
SCANDINAVIA

Scandinavia comprises four countries – Denmark, Finland, Norway and Sweden – with differing crime trends and criminal policies although as a whole all four experience high levels of property crime and low levels of violence. Highly legalistic systems of control, brief prison sentences (the average being less than 6 months), the absence of juvenile courts and detention centres, the utilisation of a variety of conditional sentences, stricter penalties for drunken driving and the movement away from the treatment model are common policies.

Ministers of Justice from each country periodically meet and there are various permanent bodies (e.g. the Scandinavian Research Council for Criminology, and the Scandinavian Committee for Criminal Law.) However, the four countries remain individual with differing policies. This is particularly so in the administration of parole and in the treatment of fine defaulters – Denmark and Norway automatically imprison fine defaulters whereas Finland and Sweden do not.

Inkeri Anttila in 1971 attempted to give each country a national ‘crime control image’ for the purposes of international consumption. She described Denmark as a country of "psychiatrists and psychologists where offenders are seen as needing either 'institutional treatment' or 'other treatment'" but where institutional treatment is more conservative than that employed in Sweden which has a "permissive penal philosophy because the official ideology strongly stresses the importance of humane sanctions".

In Finland she characterises as a country of "harsh sentences where breaking the law is taken seriously" compared with Norway where prison sentences are applied with "extreme reluctance" because prisons are not viewed "as treatment institutions".

While crime, particularly against property, has risen, the rate and absolute numbers of prison populations declined over the 1975 to 1978 in Denmark, Finland and Norway with only a 2% rise in Sweden.

More than two-thirds of prison sentences were for less than 6 months, and those of more than 4 months usually translated to 2.7 months in real time as parole is normally available after two-thirds, or sometimes half, of the sentence has been served.

The major methods employed in reducing Scandinavian prison populations have been the reduction of the length of prison sentences by reducing statutory penalties, the more extensive use of parole and a greater emphasis on the use of alternatives to incarceration. The fine is the major alternative to prison in Scandinavia with probation and conditional sentences as other widely used options.

The Nordic reluctance to imprison is based on 2 arguments:
(i) intense and prolific academic research challenging the treatment model; and
(ii) demand for prison reform by various private organizations.


48 ibid. 46 above
In the past twenty years the 'romance of rehabilitation' has fallen into disrepute and has lost its place in correctional philosophy. Experts have reached the conclusion that the rhetoric surrounding the concept has for many years masked its inefficiency and current research seems to indicate that the least criminally involved can actually be harmed by supervision and 'treatment' programs. More positive results were evident when the help consisted of concrete assistance with employment, lodging and finance.

DENMARK
Between 1975 and 1980, belief in the effectiveness of 'treatment' for offenders diminished and today the indeterminate sentence, based on incapacitation rather than 'therapy', remains only for the serious offender. Danish penalties and penal measures include:

- fines,
- 'lentent imprisonment' ie shorter sentences with more privileges, sentences of imprisonment which are limited to a minimum of 30 days and a maximum of 16 years,
- suspended sentences,
- conditional release (parole),
- pardon,
- release by the court,
- respites from prison,
- waivers of prosecution and
- the rarely used option of preventive detention.

Parole, available since 1930, may be granted to an ordinary prisoner serving a minimum of 4 months after two-thirds of the sentence but not if less than 30 days of the sentence remains.

Eligibility is assessed by the prison staff after determining the prisoner's readiness and willingness to abide by the parole conditions. More complex cases are referred to the Ministry of Justice.

Parole periods may extend from less than one year to more than three.

Further alternatives under consideration include:

* semi-detention which entails detention during leisure time,
* community service orders ie. unpaid work on community projects from 40–200 hours and,
* moving forward eligibility for parole to one half of the sentence.

FINLAND
Of approximately 300,000 offenders receiving sentences in 1985, over 90% were fined. Of the remaining 10% who received sentences of imprisonment, half were given unsupervised conditional sentences.

If a prison sanction is imposed the offender is paid wages but is required to pay maintenance and damages to the victim.

The reduction in the use of imprisonment may be credited to efforts towards decriminalization, rewriting penal provisions for other offences and the advancement of alternatives.

For example, the reduction in the penalties for theft in 1971 made way for the use of fines and legislation in 1977 allowed for the impositions for fines for drunk drivers. As roughly half of all prison sentences had been imposed for drunken driving this led to a significant
reduction in the overall prison population.⁴⁹

Harsh parole eligibility laws were eased in 1976. First offenders had to serve half of their sentences, and recidivists two-thirds. The absolute minimum was reduced from 4 to 3 months for parole eligibility, with the result that more prisoners became eligible for parole earlier.

Proposals currently under consideration include:

* the reduction of the statutory minimum and maximum sentences to six days and ten years (from 14 days and twelve years),

* mandatory parole for all prisoners with a reduction in the minimum eligibility date to fourteen days and

* revocation of parole only on the conviction of a new offence attracting a prison sentence.

Proposed new measures include:

* the 'punitive warning', which would replace the absolute discharge with the effect that the warning would remain on record if the offender chose to ignore it, and

* a new form of community supervision known as 'mandatory reporting to be supervised by the police'.⁵⁰

NORWAY
The most frequently used sanctions in Norway are the suspended sentence and the fine. However, an alternative prison sentence is fixed simultaneously in case of default. A fine may also take the form of a suspended sentence. Indeterminate sentences, or preventive detention, with release only by court order are still used. The life sentence remains the heaviest penal sanction.

Conditional release on parole may occur after two-thirds of the sentence has been served or after a minimum of 4 months. Offenders conditionally released serve probationary periods from 1 to 5 years. Prison authorities set and amend conditions of parole. Most parolees are placed on supervision and a breach of the conditions or conviction attracting a further sentence means that the unexpired portion of the parole and the new sentence will have to be served.

Initially probation and parole services were in the hands of the private sector, but volunteers were eventually replaced by social workers who were transferred to the civil service at the end of 1979.

Non-institutional sentencing permits the judge to postpone the serving or pronouncement of a sentence. Postponement initiates a probationary period of from two to five years. The offender may be required to pay damages or make restitution as one of the conditions. Supervision is ordered in only 15–20% of cases. In the event of a breach, the offender may be imprisoned for both offences, given a new suspended sentence for both, placed on

⁴⁹ Joutsen, The Role of Imprisonment in Finland, Research Institute of Helsinki, 1979

⁵⁰ Backman: Finnish Criminal Policy in Transition: Department of Law, University of Helsinki
supervision or given new conditions.

Expansion of the role and resources of Probation and Aftercare Service (PAS) are under consideration in Norway.

SWEDEN
Penalties for punishable violations cited in the Penal Code (1965) range from fines to life imprisonment. Only fines and imprisonment are called penalties. All other measures are considered alternatives to penalties (e.g., conditional sentences, probation, discretionary remissions of prosecution, and pardons).

The police are not obliged to report all offences and may themselves impose fines for minor crimes. The prosecutor need not prosecute each offence and may take the opportunity of diverting a case where the offence is punishable by fine. The most common type of fine is the day-fine, the number of which depends on the gravity of the offence. Almost half of all cases involve fines in conjunction with a suspended sentence.

Prison sentences are imposed for a minimum of fourteen days to ten years (twelve years for multiple offences) with a minimum term of three months. After serving two-thirds of a determinate sentence or half in special cases, an offender is eligible for parole, although a minimum of 3 months must be served. Statistics seem to indicate that judges are inclined to impose sentences closer to the minimum.

In 1977 an influential document by the National Swedish Council for Crime Prevention recommended a new penal system for Sweden. The working group concluded, inter alia, that imprisonment should be used for only the gravest crimes, always be determinate, and that the length of the sanction should be able to be further reduced.

The Swedish three-tiered, non-custodial sanctioning system has received considerable interest in the USA, Canada and the UK. The system combines the following hierarchy of sanctions:

(i) a conditional sentence with a trial period of 2 years without supervision; breach may result in revocation of the order or a new sanction or the imposition of a day-fine;
(ii) supervision with a range of conditions for a minimum of 2 months to 2 years;
(iii) 'intensive supervision', the severest alternative to imprisonment, is designed to be more intrusive and inconvenient for offenders; the frequency of contact with correctional authorities and the length of the sentence is at the discretion of the court.
(WEST) GERMANY

The penal system in (West) Germany, like many others was characterized by serious overcrowding. However unlike many others which saw increases of 3% for the 5 years from 1983 to 1988, the prison population in Germany has declined by 3.5%.

Part of the decrease is undoubtedly due to a fall in the number of prisoners held on remand, but the rate per 100,000 of sentenced prisoners has also fallen by about 15%.\(^{51}\)

It seems that this dramatic reversal in trends can be partly explained by a considerable decline in the number of young people in the 14-20 year old age group, the group responsible for the majority of recorded crime. Concurrently, however, there has been an increase in the number of crimes reported to the police especially burglary, fraud and those involving drugs although violent offences have slightly decreased.

Experts seem to agree that those two factors appear to have offset each other and cannot be responsible for the falling prison population nor can changes to the parole legislation which occurred in 1986 have had more than a minimal effect on the overall figure for the 5 years from 1983-88.

It would seem therefore, that the significant changes in prosecution and sentencing practices and judicial policy are responsible for the decline in the prison population.

The shift from the 'rehabilitative' model and the adoption of the notion that an offender should be released from prison as soon as acceptable to both society and the offender had begun in 1975 with the introduction of a new penal code.

The new criminal code decriminalized a number of petty misdemeanours, resulting in a three-degree approach: felonies, misdemeanours, and violations. Violations are primarily economic and traffic offences fall outside the scope of the criminal code. 50% of all recorded crime in Germany relates to traffic offences.\(^{52}\)

In West Germany the public prosecutor has the standing of a judge. Withdrawal of cases is at the discretion of the public prosecutor who is authorised to waive prosecution in cases where the offender admits guilt and where prosecution would not be in the public interest. The public prosecutor may also postpone prosecution for a set period of time and impose conditions, such as victim compensation, payment to the state, or performance of community service work. Completion annuls the conviction.

The power of the prosecutor to waive prosecution or use existing discretion more widely, appears to have had a significant effect on the number of young offenders diverted from prosecution and hence on the numbers sentenced to imprisonment. Some of the offenders who have been 'diverted' may have attracted a custodial sentence on the basis of their previous record had they been sentenced in court and those who subsequently appear before a court of law will have lesser records if previous offences had been dealt with informally.

It also appears that judges are increasingly avoiding sentencing young offenders to terms of imprisonment and in 1986 less than 8% received custodial sentences.

In particular, the number of young adults in the 18-20 age group sentenced to terms of

\(^{51}\) Graham, Decarceration in the Federal Republic of Germany: How Practitioners are Succeeding where Policy-Makers have Failed: Research and Planning Unit, Home Office, London. Published in the British Journal of Criminology. Spring 1990

\(^{52}\) David Fogel: On Doing Less Harm: A Survey of Western Alternatives to Incarceration, 1988
imprisonment declined by 50%.

The fall in the numbers of adult offenders sentenced to imprisonment has not been quite so dramatic but there has nevertheless been a drop of 17.5% when most other jurisdictions internationally have recorded sharp increases. This has occurred in spite of an increase in average sentence length in the same period and an apparent decline in the incidence of crime, particularly crimes of violence.

Although it is perhaps too early to say whether the decline in the imprisonment rate has produced a corresponding decline in the crime rate there is no evidence of any increase.

This is in sharp contrast to the American experience where it appears that longer sentences are producing shorter stays in prison because of chronic overcrowding and there has been a marked increase in the incidence of crime.

The trend away from shorter sentences and towards greater use of longer sentences has been developing in Germany since the 1970s on the grounds that short terms were counter-productive. In 1969 terms of less than one month were abolished and special restrictions were placed on sentences of up to six months. In 1974 community service orders were introduced for fine defaulters in place of prison sentences and suspended sentences were made applicable to prison sentences of less than 12 months.

It seems that judges may now also be choosing alternative sanctions in preference to the minimum 6-month custodial sentence in borderline cases, reducing the numbers in custody further.

The primary penal sanctions are prison sentences with a maximum of 15 years or life, and fines. Other penal measures entailing loss of liberty include commitment to psychiatric facilities, institutions for addiction treatment, social-therapeutic institutions, and confinement with high security for public safety (preventive detention). Non-institutional measures, called preventive measures, include revocation or suspension of a driver's licence, and prohibition to practise a profession.

The major alternatives to incarceration are the day-fine and the suspended sentence. In more than 80% of criminal cases fines are the preferred sentence modelled on the Scandinavian system of day-fines.

The German version of the day-fine is calculated considering the offender's monthly income, less current financial obligations and divided by the number of days in a month. The daily total is then multiplied by the prison sentence equivalent to establish the total fine which is payable in a lump sum unless payment by instalments is authorised.

The new code also introduced the discretion to convict without sentence.

The prosecutor may impose a form of pre-trial probation by postponing prosecution conditional on the successful completion of the probationary period, or may convict without sentence where the harm inflicted on the offender during the commission of the offence makes further punishment superfluous.

Probation in Germany is the supervision of offenders on suspended sentences and prisoners with remitted sentences. Under the code, judges must place all offenders sentenced to a maximum of six months on probation if the prognosis is favourable. The length of probation ranges from 2 to 5 years, averaging around 3 years. Statistics indicate that the courts suspend approximately two-thirds of all prison sentences.
UNITED STATES OF AMERICA

More than 11 million offenders become involved with the U.S. criminal justice system each year.

In 1987 300,000 adults were in local jails; 580,000 in correctional facilities; 362,000 on parole; and 2.2 million on probation. These figures continue to increase every year, causing continuing pressure on correctional resources.\(^{53}\)

The imprisonment rate in America is 10 times that of the Netherlands, and double the rate in the United Kingdom. Because of public demand for a tougher approach to crime, the prison population has doubled over the past 10 years. Yet America continues to have the highest level of violent crime, as well as the highest rate of incarceration in the world.\(^{54}\) Clearly, more frequent use of the sanction of imprisonment and longer sentences has not produced the desired effect.

The real consequence of the 'get tough' policy is that overcrowding in the nation's jails and prisons in the last decade has reached crisis point. This has resulted in offenders being released earlier than previously in order to make room for newly arriving offenders. The Los Angeles prison system, designed to house 13,000 is now expected to accommodate 22,000 prisoners. Between May 1988 and May 1989, 115,000 misdemeanour inmates were released early by federal court order and one prisoner was released from a 14-day sentence after serving only 14 hours – a sentence of two and a half minutes for each hour of the original sentence.\(^{55}\) In California, Texas and Illinois, 2–3 year sentences have translated to six months of actual time served and in Oregon, a 5-year sentence may become three to four months.\(^{56}\)

This "revolving-door justice" has further destroyed confidence in the criminal justice system and is justifiably a major concern for corrections officials, the courts, and other criminal justice agencies. The sanction of incarceration appears to have become an empty threat to most offenders and the whole system is in imminent danger of collapse.\(^{57}\)

An inevitable response by corrections experts is the urgent search for alternatives to imprisonment whilst at the same time endeavouring to restore public confidence in the justice system. The main thrust currently is the diversion of offenders to community-based sanctions.

Most jurisdictions are currently establishing, or experimenting with, various intensive supervision programs involving much more stringent and intrusive conditions than have previously applied to traditional forms of probation and parole.

Conditions which may be imposed include:


\(^{55}\) Barry J. Nidorf, *Community Corrections—Turning the Crowding Crisis into Opportunities: published Corrections Today, October 1989

\(^{56}\) Ibid. 54 above

\(^{57}\) Ibid. 55 above
(i) electronic surveillance,
(ii) random weekly visits,
(iii) searches of the parolee's home,
(iv) regular random tests for alcohol and drugs,
(v) nonsocialization orders,
(vi) community work coupled with employment or participate in training and education programs.

There is insufficient data to date to indicate whether these new standards of community-based sanction will "punish and control serious offenders effectively enough" to meet the community's view of imprisonment - the imposition of 'just deserts' and protection by 'incapacitation' of the offender. However, there is evidence to suggest that some offenders see the new intensively supervised community programs as more punitive than short prison terms. In a field experiment conducted in Marion County, Oregon, one-third of selected eligible offenders given the choice of serving a prison term or participating in an intensive supervision program, chose imprisonment.

In a 1975 report David Fogel noted:

"One reason for preferring incarceration is simply that we have not found another satisfactory severe punishment." 61

Joan Petersilia observes:

"Perhaps, if we can show that other sanctions can be equally severe, then the United States will begin to get over its preoccupation with imprisonment as the only suitable sanction for serious offenses. If this occurs, corrections costs could be reduced. But more importantly, since these programs require the offender to work and participate in treatment, rehabilitation is more likely." 62

The importance of parole also received a boost in a recent paper on future justice:

"... Parole should be continued in the first critical months after a formerly incarcerated offender's release, for the protection of the public and for the resocialization of the offender. Of the ex-inmates who have returned to prison, most violated the law again during the first few weeks out of confinement. The transition from confinement to the free world is very difficult for the ex-inmate, and supervision and counselling by the parole officer often makes the difference between a successful reintegration or a return to crime." 63

There is no doubt that the United States has now accepted that incarceration is not the answer and that it must pursue and develop alternatives to imprisonment if it is to avoid a forecasted prison population of 2 million by the year 2000 and restore public confidence in and support for the American criminal justice system.

58 Oregon Department of Corrections manual
59 ibid. 54 above
60 ibid. 54 above
61 We Are the Living Proof: The Justice Model for Corrections. Fogel. 1975
62 ibid. 54 above

72
Australian and Canadian systems of law are both based on English common law, and since sentencing laws and structures in both countries are still firmly rooted in nineteenth century thinking, similar criticisms and proposals for reform have been made in both.\textsuperscript{64} For this reason, and because both Australia and Canada continue to experience problems with their indigenous peoples, an examination of the Canadian system and proposed reforms is relevant.

The Law Reform Commission of Canada initiated attacks on Canada's sentencing laws and structure in the 1970s.\textsuperscript{65} Few of the commission's proposals contained in these various research papers, working papers and final reports were immediately embraced and enacted by the Parliament, although they were "very influential informally in changing sentencing practices and encouraging experimental projects on community-based sanctions".\textsuperscript{66}

In 1987 the Canadian Sentencing Commission released an extensive report entitled "\textit{Sentencing Reform: A Canadian Approach}", which analysed the inadequacies and deficiencies of the current sentencing structure. Criticisms contained in the report included:

\begin{itemize}
  \item unjustified disparities in sentences imposed,
  \item the lack of guiding policies for sentencing,
  \item maximum penalties too high to provide realistic guidance to judges,
  \item uncertainty and disparity caused by the operation of parole and remission
\end{itemize}

The Commission also found the public had little confidence in the system, and complained of lack of clarity and predictability, apparent leniency, and insufficient mechanisms to consider victims' needs and concerns. The Commissioners concluded that there was an over-reliance on imprisonment, which was seen as an expensive sanction accomplishing little.

With a view to creating a comprehensive and integrated sentencing structure, they recommended:

\begin{itemize}
  \item[(a)] a statutory statement of the purpose and principles of sentencing;
  \item[(b)] the abolition of all mandatory minimum penalties (other than for murder and high treason);
  \item[(c)] the replacement of the current maximum penalty structure for all offences (other than murder and high treason) with a structure of maximum penalties of 12 years, 9 years, 6 years, 3 years, 1 year, 6 months;
\end{itemize}

\begin{enumerate}
\item[64] Professor Gerry Ferguson. \textit{Sentencing Reform in Canada and Australia}, University of Victoria 1990
Research Paper: \textit{Studies on Diversion} (1975)
\item[66] \textit{ibid. 64 above}
\end{enumerate}
(d) the abolition of parole (except for mandatory life sentences).

(e) a reduction in statutory remission from one third to one quarter of the sentence;

(f) the abolition of "automatic" imprisonment for offenders who default in the payment of fines (except where the default is wilful).

(g) the establishment of presumptive guidelines that indicate whether a person convicted of a particular offence should normally be given a custodial or a community sanction, with the judicial discretion to depart from these guidelines where appropriate and provided written reasons are given;

(h) the establishment of a "presumptive range" for each offence normally requiring incarceration, with the same judicial discretion to depart from the guidelines in appropriate cases;

(i) the creation of a permanent Sentencing Commission to develop presumptive ranges for all offences, to collect and distribute information about current sentencing practice, and to review and, in appropriate cases, to recommend to Parliament the modification of presumptive sentences in the light of current practice or appellate decisions;

(j) the provision of necessary financial resources to develop and encourage widespread use of community sanctions and the development of principles and criteria for the use of community sanctions;

The Commission's reasons for recommending the abolition of parole included:

i) the inability to predict accurately when it is safe to release a prisoner;
ii) the incompatibility of the 'just deserts' sentencing policy with the alteration of sentences imposed; and
iii) that the discretionary decision to release produced a lack of equity, predictability and certainty in sentences, and contributed to the general public's misunderstanding of the meaning of a sentence of imprisonment.

This recommendation provoked much debate but the consensus of opinion settled on the view that, "despite the views of the Commission, it is highly unlikely that parole will be abolished in Canada in the immediate future". 67

Surveys of public opinion and of sentencing reform protagonists in Canada indicated little support for the abolition of parole (7%) and the majority were in favour of its retention provided the current system was extensively reformed. 68

The Report of the Standing Committee on Justice and the Solicitor General "Taking Responsibility" in 1988, echoed many of the findings and recommendations of the Law Reform Commission, but endorsed the concept of parole. Major reforms were contemplated, and the conclusion drawn was that incarceration was an overused and frequently ineffective sanction for non-violent offenders. The same views were evident in the draft amendments to the Parole Act 1988.

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68 Survey conducted by Environics in 1989
In 1990 in its report entitled "Directions For Reform: Sentencing, Corrections and Conditional Release", the Canadian Federal Government proposed a number of wide-ranging reforms to address criticisms of the criminal justice system.


The proposals were "designed to bring more fairness, clarity and consistency to the [criminal justice] system" and to bring sentencing and correctional practices in line with public values and concerns by:

i) rebuilding public trust;
ii) ensuring equity and predictability;
iii) greater integration among the components of the system;
iv) reintegration of offenders into the community whilst ensuring its protection;
v) more effective sentencing and sentence administration;
vi) fairness and accountability;
vii) a reduction in the over-use of incarceration and the development of alternatives;
viii) adequate management of special classes of offenders (eg. Red Indians);
ix) meeting the needs of victims;
x) the enunciation of clear purposes and principles.

To this end some of the major recommendations included:

1. The establishment of a legislative statement of the purpose and principles of sentencing to clarify the objectives of sentencing, provide guidance to judges on what they should consider, and contribute to the development of national sentencing policies for approval by Parliament.

2. The creation of a permanent Sentencing and Parole Commission to develop sentencing guidelines, review parole policies and ensure better integration of the sentencing and parole purposes and functions.

3. Clarification through the Criminal Code of questions concerning procedure and evidence for use at the sentencing hearing in order to produce greater consistency, fairness and accountability in the sentencing process, and to provide the basis for a structured information-gathering process to be uniformly applied across Canada.

4. The creation of a new process of means testing for the imposition and collection of fines, limiting the use of incarceration as the last resort in cases of wilful default.

5. Consultation to develop the greater use of intermediate sanctions, such as fines, community service orders and restitution programs which would be less costly and more effective in many cases.

6. The extension of judicial discretion to allow the deferralment of full parole eligibility for violent and serious drug offenders from the present 1/3 of sentence to ½ of sentence, to reflect the community's concern that serious offenders should spend a longer portion of their sentences in the institution before becoming eligible for conditional

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69 Kim Campbell, Federal Minister of Justice and Attorney General of Canada, 6 July 1990
7. The deferment of day-parole eligibility from 1/6 of the sentence to 6 months prior to full parole eligibility, to ensure the time spent in prison more accurately reflects the intention of the sentence.

8. First-time federal offenders sentenced for non-violent crimes would receive a streamlined parole review on reaching their parole eligibility date at 1/3 of their sentence, and would be released under supervision unless there was evidence of danger to the community to emphasise the reintegration of non-violent offender, and the belief that imprisonment is over-used.

9. The replacement of earned remission with a fixed statutory release after 2/3 of the sentence has been served. The National Parole Board would have authority to detain violent or serious drug offenders until expiry of their sentence.

10. The creation of a new type of unsupervised temporary absence from prison, allowing offenders to participate in community service or personal development programs in the community. Maximum security offenders would not be eligible.

11. Amendments to the Parole Act:
   (i) to ensure the primacy of public protection in parole decision-making,
   (ii) to require annual reviews of offenders who have reached parole eligibility,
   (iii) to increase the accountability of the Board and
   (iv) to make parole hearings more accessible to outside observers.

Specifically recognised in the Canadian reports is the disproportionate representation of indigenous peoples in federal institutions, compared with their percentage of the general population.

In 1987, at the time of the Daubney Report, native offenders made up 9.6% of the sentenced prisoners, but represented only 2% of the Canadian population.

Their proportion was much higher in certain areas, reaching 31% in the prairies.

The Daubney Report also noted that since the early 1980s,

"the rate of growth in the Native proportion of inmates in Federal institutions has exceeded the rate of growth of the inmate population as a whole". 70

That Report made 12 recommendations aimed at addressing the inadequacies of the system with regard to Red Indian offenders.

These included:

Recommendation 68:
The development of a greater number of programs offering alternatives to imprisonment for Native offenders.

Recommendation 71:
The education of non-natives of Red Indian special needs.

70 Taking Responsibility (The Daubney Report) 1988, page 211
Recommendations 70/74:
Increased involvement of Red Indian people within the system as instructors, liaison workers, teachers, etc.

The disparities with regard to the Red Indian people were also recognised in the 1990 Report which made recommendations aimed at the prevention of incarceration where viable alternatives exist, and consideration of special needs in order to reduce the high rate of recidivism.
Recommendations have also been proposed to increase participation by Red Indians in conditional release programs.
The Daubney Report \(^{71}\) noted that Red Indian people had a lower probability of being released on parole than the general inmate population – in 1987, 18.3\% of Natives were released on full parole, compared with 42.1\% of the general inmate population. They were also less likely to participate in rehabilitative programs, were less familiar with the release preparation system and were more likely to waive release eligibility opportunities.

Recognising this and the other above disparities "efforts in this area have begun in advance in this current round of initiatives".\(^{72}\)

To this end the Canadian Government has adopted some of the above recommendations and is developing corrections programs specifically for native offenders, involving and employing native people within the system where possible, increasing staff awareness of native offender issues, and working in cooperation with some provinces and native groups.
The proposed Corrections Bill also contains provisions to permit Red Indian communities to assume varying degrees of responsibility for their own offenders.

The Canadian Federal Government views the over-representation of its indigenous peoples within the criminal justice system as a priority, and as such is endeavouring to ensure that:

"all components of the system provide for the equitable treatment and sentencing of, and provision of appropriate programs for, Aboriginal offenders". \(^{73}\)

\(^{71}\) ibid.70 above

\(^{72}\) Directions for Reform: Sentencing, Corrections and Conditional Release 1990, page 25

\(^{73}\) ibid.72 above
The table below is taken from a paper entitled "A Comparison of Crime in Australia and other Countries" published by the Australian Institute of Criminology in June 1990. Samples of 2000 in each country were asked a number of questions relating to issues of crime, sentencing and victimisation.

The following figures show the percentage of those surveyed who were in favour of a fine, imprisonment or community service for a recidivist burglar.

<table>
<thead>
<tr>
<th>Country</th>
<th>Fine</th>
<th>Prison</th>
<th>Community Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>8.5</td>
<td>35.6</td>
<td>45.7</td>
</tr>
<tr>
<td>West Germany</td>
<td>8.8</td>
<td>13.0</td>
<td>60.0</td>
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<tr>
<td>Norway</td>
<td>23.0</td>
<td>13.8</td>
<td>47.0</td>
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<td>Finland</td>
<td>18.9</td>
<td>15.0</td>
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<tr>
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<td>8.2</td>
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</tr>
<tr>
<td>Canada</td>
<td>10.7</td>
<td>32.5</td>
<td>39.2</td>
</tr>
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</table>
(per 100,000 overall)

<table>
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<tr>
<th></th>
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<td>109</td>
<td>102.5</td>
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<td>77</td>
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<tr>
<td>Belgium</td>
<td>65</td>
<td>66</td>
<td>62.5</td>
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<tr>
<td>Cyprus</td>
<td>35.8</td>
<td>40</td>
<td>33.4</td>
<td>41</td>
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<tr>
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<td>60</td>
<td>63</td>
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<td>75.6</td>
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<td>84</td>
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<tr>
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<tr>
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<td>60.4</td>
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<tr>
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<tr>
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<tr>
<td>Spain</td>
<td>38.6</td>
<td>44.3</td>
<td>57.5</td>
<td>64.6</td>
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<td>75.8</td>
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<tr>
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<td>49</td>
<td>49</td>
<td>51</td>
<td>56</td>
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<tr>
<td>Switzerland</td>
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<td>62</td>
<td>63.5</td>
<td>66.6</td>
<td>-</td>
<td>73.1</td>
</tr>
<tr>
<td>Turkey</td>
<td>-</td>
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<td>139</td>
<td>102.3</td>
<td>99.4</td>
<td>95.6</td>
</tr>
<tr>
<td>UK</td>
<td>87.5</td>
<td>86.9</td>
<td>96.5</td>
<td>95.3</td>
<td>95.8</td>
<td>97.4</td>
</tr>
<tr>
<td>England/Wales</td>
<td>-</td>
<td>84.8</td>
<td>-</td>
<td>93.3</td>
<td>94.1</td>
<td>96.7</td>
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<td>-</td>
<td>108.9</td>
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<tr>
<td>N. Ireland</td>
<td>-</td>
<td>141.3</td>
<td>-</td>
<td>116</td>
<td>119.1</td>
<td>114.2</td>
</tr>
</tbody>
</table>

DISCUSSION AND RECOMMENDATIONS

PAROLE

1. The majority of the submissions received have supported the continuation of parole as an important and essential part of an offender's resocialisation. They have confirmed the view that the provision in a sentence of a period of supervision in the community, rigorously enforced by sanctions but offering the opportunity for support and guidance ensures that prisoners remain in custody only as long as is strictly necessary whilst at the same time providing a greater chance of personal reform for the offender and a more cost-effective alternative for the community.

The estimated parole success rate of 70% measured both by the number of successfully completed parole orders 74 and also by the incidence of reoffending 75 is a good indication of the advantages of a supervised sentence served in the community.

The Broadhurst/Maller study concluded that—

"...those released unconditionally (after serving finite sentences) had higher reincarceration than those released on parole, while those released after the payment of fines fell between. This suggests that parole has positive effects in reducing the probability of returning to prison and/or that parole procedures select for a group with improved prospects."

Table 2 from the study quotes:

<table>
<thead>
<tr>
<th>Recidivism for Non-Aboriginal Males</th>
<th>Recidivism for Aboriginal Males 76</th>
</tr>
</thead>
<tbody>
<tr>
<td>Released to freedom: 48.6%</td>
<td>Released to freedom: 77.4%</td>
</tr>
<tr>
<td>Released to parole: 32.3%</td>
<td>Released to parole: 66.6%</td>
</tr>
</tbody>
</table>

The corollary of these statistics could be interpreted to show a positive disadvantage for the community and the prisoner in release without any supervision at all. It is often those prisoners who have attracted the longest prison sentences for the most serious crimes who have been granted no eligibility for conditional release. They are released into society with little preparation for freedom and no measure of control by the authorities while they adjust to normal life.

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74 Parole Board Annual Report 1988/89 and statistics overleaf

75 Broadhurst/Maller study: The Recidivism of Prisoners Released for the First Time: Reconsidering the Effectiveness Question. June 1990 23 ANZJ Crim

76 see pages 100–121 of this report
PAROLE ORDERS TERMINATED FOR ABORIGINALS
01/07/90-31/12/90

No parole orders were terminated by death.
PAROLE ORDERS TERMINATED FOR NON-ABORIGINALS
01/07/90-31/12/90

- 75.14%
- 9.14%
- 6.86%
- 1.43%
- 7.43%

No parole orders were terminated by death.
RECOMMENDATION

The principle of parole as an essential and integral part of the correctional system has been confirmed by the majority of people who have made submissions and the Committee recommends the continuation of a system of supervised and conditional community sentence which provides support for the prisoner and protection for the community.

2. The Committee has become aware during the course of its discussions that the concept of parole is widely misunderstood not only by the general public but by the media and the prisoners themselves. In its misunderstood form, parole as a term has become tainted and discredited in the eyes of the community. To redress these misconceptions new terminology should be used to reflect more accurately that 'parole' is a part of the sentence, served and supervised in the community, and that acceptance of, and compliance with the conditions are integral parts of that sentence.

RECOMMENDATION

Parole should be renamed **SUPERVISED COMMUNITY SENTENCE** to convey to the general public and to the prisoner more accurately the meaning and effect of strictly conditional release.

3. Protection of the community must remain the prime consideration in any decision whether to release an offender to a supervised community sentence (parole). To make that principle a part of the written law will ensure that public safety is uppermost in the minds of the judiciary and correctional authorities.

RECOMMENDATION

A statement that the paramount consideration in granting a supervised community sentence (parole) should be the protection of the community should be embodied in the **Offenders Community Corrections Act**.

4. Much of the evidence received by the Committee has contained statements of the lack of knowledge and information about the existing parole system available not only to the general public but also to authorities and prisoners themselves.

It is vital to the success of community corrections that the community’s approval and confidence in the system be enhanced. To achieve this an educational program should be developed with the aim of encouraging greater involvement by the community.

To improve communication and thereby promote greater understanding of the
operations of the renamed Community Sentence Board, the Committee proposes changes to the composition of the current Board. In the interests of better communication between the judiciary and the Board, the Chairman of the Board should in future be a practising judge able to provide input of current sentencing practices. Membership of the Board should be expanded to include one additional community member who should be an independent statutory officer with primary responsibility for liaising with prisoners to ensure the free flow of information between the Board, the Department of Corrective Services and offenders. A full-time statutory officer has operated successfully as a member of the Adult Parole Board in Victoria since 1974, (see overleaf for duty statement)

RECOMMENDATION
The current Parole Board should be renamed the Community Sentence Board with the following further changes:

i) membership of the Board should be increased to 8 by the addition of a community representative;

ii) the additional community member should be an independent full-time statutory officer appointed by the Governor, reporting directly to the Chairman with responsibility for:
   a) liaison between the Board, the Department and prisoners;
   b) visiting prisons and community corrections centres to ensure that prisoners and corrections officers are fully informed about supervised community sentence issues;
   c) explaining and discussing Board decisions

iii) the judicial member appointed as Chairman should concurrently hold office as a judge of the Supreme Court.

iv) the quorum for meetings should be the Chairman or member presiding and 4 other members of whom two must be community members.

v) A provision should be included to allow urgent interim decisions to be taken by a special subcommittee comprising the Chairman, a community member and one other member of the Board.

5. From its discussions it has become apparent that the current system of automatic conditional release, confirmed by the sentencing judge unless he or she elects to deny that privilege, continues to receive widespread support from most sections of the Establishment and the community at large provided that the prir consideration by any decision making authority is that of public safety.
Main Duties:

To attend meetings of the Board.

To visit all prisons and departmental offices for the purpose of ensuring that prisoners who come within the jurisdiction of the Board, prison staff and other departmental staff working in the parole field are aware of the nature of the parole scheme and its operation.

To conduct hearings for prisoners who come within the scope of the scheme.

To explain and discuss Board decisions when release on parole has been deferred for a time or when parole release has been denied.

To hear representations from prisoners and to provide information and advice when prisoners enquire with a view to having their cases further considered by the Board.

To bring cases to the attention of the Board for further consideration as necessary.

To assist in ensuring field operators both in the prisons and parole areas are informed of changes that occur from time to time in Board practice and policy.

To pass on to these servicing officers information concerning Board guidelines, followed from time to time, with a view to keeping these officers better informed as to Board thinking in various situations and to provide assistance in the handling of cases and in the preparation of reports that may be from time to time required to be furnished.

To advise as required on the interpretation and application of sentences and in the applying of the variables - remission, PSD, etc. - to provide for a consistent approach in the handling of matters.

To bring to the attention of the Chairman any matter that may require a question of law to be decided.

To be available to discuss cases with both prison and parole staff.

To be available to discuss cases and to hear representations from prisoners' families and friends and their legal representatives.

To liaise with senior departmental officers on matters affecting legislation relative to the parole scheme.

To advise the Board on a regular basis of the general activities of the Full Time Member.

To provide a means of liaison between the Board and its immediate administration and the prison and parole administration.

To monitor generally the functioning of the scheme to ensure an efficient, effective and consistent mode of operation.
Mode of Operation:

All prisons are visited on a regular basis. On average country institutions are visited three to four times per year – should circumstances warrant more frequent visits are undertaken. The three sub prisons and the two main office areas at Pentridge, the Front Office and the 'D' Division Records Office, are visited in a similar manner.

Due to numbers a different approach is applied when visiting country areas; generally details and the status of all parole type cases are briefly checked. Any discrepancies that come to notice are drawn to the attention of senior prison staff. If perchance a prisoner has not been informed of his situation he will be seen and advised. Under normal circumstances prisoners whose cases have been considered by the Board will be interviewed. In those situations where release on parole has been deferred or denied, the decision, the basis for same and other related matters will be explained and discussed. Prisons become eligible for release - minimum term expiring, and those having review dates – cases previously deferred released, will be interviewed and matters pertaining to the pending determination of the individual's case by the Board, discussed. In these cases emphasis is placed on the post release situation, the general conditions and requirements of parole and the individual's obligations as a parolee.

At Pentridge, due to the larger numbers, priority is given to those requesting interviews. Over a period of time however, all cases will be checked and as occurs in the country a percentage of those due for release will be interviewed etc.

The various regional offices servicing country prisons are visited on a regular basis with either the staff as a whole or individual officers being seen and matters pertaining to the operation generally brought to attention. Any changes that may occur in practice, administrative procedure etc., are highlighted. As these offices supervise parolees, matters pertaining to the post release situation are also covered.

Close contact is maintained with the staff of the Special Supervision Unit who are responsible for the preparation of reports and the eventual supervision of the more difficult cases. The officers of this Unit are seen regularly.

Other regional offices which provide the supervisory services both in the metropolitan area and the country area are also visited from time to time. Matters relating to the post release situation are emphasised on these visits.

General access to the Full Time Member is facilitated by contact with the Board's office in Melbourne. Arrangements however can and have been made in liaison with country regional staff for relatives etc., to make contact when the Member is in country areas.
The certainty of conditional release enables an offender to adjust to the term to which he has been sentenced and enables correctional authorities to provide the resources and staff to manage offenders released under supervision into the community.

RECOMMENDATION

All prisoners should be eligible for a Supervised Community Sentence (parole) except those:

i) who have been adjudged unsuitable by the sentencing judge

ii) for whom the Executive Director, Corrective Services, has exercised his discretion to refer consideration for community sentence eligibility to the Board

iii) who have refused a supervised community sentence (parole) or have asked for it not to be granted.

The Parole Board is currently obliged to give special consideration before confirming parole to prisoners who are serving sentences of not less than 5 years for serious crimes against the person, defined as 'special term' in section 40b(1) of the Offenders Community Corrections Act. A 1987 study drew the conclusion from a survey of 554 Perth residents that most respondents answered general questions about crime with violent offences in mind and that of the 76% who felt that sentences were not severe enough, 80% reported that they were thinking of sentences handed down to violent criminals.

The Committee endorses public concerns that violent criminals should be dealt with severely to protect the community and believes that a widening of the application of the 'special term' will allow the Community Sentence Board more control over a wider range of prisoners convicted of offences against the person.

RECOMMENDATION

The "special term" currently defined in s.40b(1) of the Offenders Community Corrections Act as a sentence of not less than 5 years or more imposed in respect of offences of violence against the person, should be amended to include sentences of not less than 3 years for offences of that nature.

Under the 1988 amendments to the Offenders Community Corrections Act 1963, it was established that a prisoner should be entitled to one-third remission of the head sentence and that eligibility for parole would fall after one-third of a

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77 Indermaur, Public Perception of Sentencing in Perth, Western Australia 1987
sentence of 6 years or less, and after two years less than two-thirds of a sentence of more than 6 years.

The Committee has received no evidence to indicate that ordering eligibility for parole at a later point in the sentence would have any greater benefit for an offender or for the community. From experiences in New South Wales and the USA there is evidence that such a policy is more likely to increase the prison population to an unacceptable and intolerable level.

The Executive Director of the Western Australian Department of Corrective Services has indicated that an increase in the parole eligibility date from one-third to one half of the sentence would by late 1994 necessitate the construction of an additional maximum security prison of 400 beds with a further requirement for 400 beds by 1998 and 200 more by 2002. In the light of other evidence which casts doubt on the effectiveness of imprisonment in the reform of offenders and indicates a possible increase in criminality, the Committee does not recommend any amendment to the present formula.

The Committee has directed its attention in this and other recommendations to measures which will ensure that offenders accept a supervised community sentence (parole) as part of their sentence and that not only in the eyes of the public but also in the eyes of the offender, supervision of offenders in the community is improved and more stringent.

The Committee believes that the greater scrutiny of 'special term' prisoners given by the Community Sentence Board and the widening of that term proposed in Recommendation 6 will confirm the priority of public safety.

**RECOMMENDATION**

Eligibility for Supervised Community Sentence (parole) should remain at the one-third mark on sentences of 6 years or less and at two-thirds less 2 years on sentences of more than 6 years.

8. The Committee has received no contrary evidence to indicate any change is necessary to the optimum length of a term of supervised community sentence (parole). When a minimum parole period of 6 months and a maximum of 2 years were set in the 1988 legislation, it was argued that those periods of time represented the time within which the greatest benefits in terms of resocialisation and adjustment were likely to occur and further that a period longer than 2 years may be counter-productive. This view had been expressed in the 1981 'Dixon
TOTAL MALE PRISONER FORECAST
WITH PAROLE AFTER HALF SENTENCE SERVED

YEAR

MUSTER
3000
2900
2800
2700
2600
2500
2400
2300
2200
2100
2000
1900
1800
1700
1600
1500
1400

capacity must lower must +10%
EXPLANATORY NOTES TO FIGURE 2

Figure 2 is a projection of the total male prisoner muster to the year 2002 but assumes a change to Parole legislation wherein prisoners serving parole terms must serve 50% of their sentence in prison.

The capacity line represents the projected total male standard bed capacity (closed and open security) both prior to, and after the additional beds at Bunbury and Casuarina (less Fremantle) are expected to be available.

The muster line shows the projected total male daily average muster. As can be seen by comparing this line with capacity, the total daily average muster exceeds available accommodation by mid 1992. Therefore, periodic overcrowding and consequently double bunking will continue to occur at peak muster periods commencing immediately. This will include Casuarina and Bunbury from the time they are opened.

The muster +10% line shows the projected male daily average muster plus 10% (a reduction of 5% on the Australian Standard margin for prison bed occupancy). A 10% margin is considered the minimum workable margin and means that more accommodation is required to be commissioned immediately.

It is this line which must be compared to capacity for planning purposes.
"Like a term of probation, parole tends to be self-defeating and ineffective if it continues for too lengthy a period. This is one of the very real problems at present faced because of the disparity in many cases between the maximum and minimum terms of imprisonment imposed. The greater the disparity the longer the period to be serviced on parole must be and in practice this has quite often had serious consequences for parolees. Accordingly it is considered any period spent on parole in excess of two years is undesirable."

RECOMMENDATION

The minimum period on Supervised Community Sentence (parole) should be 6 months and the maximum 2 years.

9. The Committee has received a number of criticisms of the inability in the current legislation to aggregate sentences for the purposes of calculating an eligibility for community sentence (parole) date. The need to estimate a separate eligibility date on each sentence handed down, makes sentencing cumbersome, necessitates complicated and time-consuming calculations for corrections administrators and causes confusion for prisoners and prison officers alike.

RECOMMENDATION

Statutory provision should be made to allow the aggregation of sentences for the purpose of calculating eligibility for a Supervised Community Sentence (parole) by the Department of Corrective Services.

10. The Committee is of the opinion that the continued operation of the one-third remission of head sentence, earned as a privilege and which can be lost for breaches of the law, is sufficient incentive for a prisoner to behave, and that the additional 10% remission of the custodial sentence is more likely to reduce public confidence in the truth of the sentence than to provide the prisoner with any greater benefit.

The Committee has received evidence that part of the general public's misconception of parole, is its confusion with the operation of remission and its apparent automatic nature.

Remission must therefore be seen not only by the prisoner but also by the general public.

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public as a privilege which will be taken away if the prisoner breaches the law.

**RECOMMENDATION**

One-third remission of head sentence should remain but on the basis of being a privilege which can be lost for breaches of the law.

11. See Recommendation 10. above.

**RECOMMENDATION**

The existing 10% remission under the Prison Regulations should be abolished.

12. The Committee is of the opinion that to maintain the effectiveness and the credibility of a supervised community sentence (parole), it is important that the attached conditions are tailored to ensure that the community is adequately protected, that the conditions imposed are rigorously supervised and that the individual prisoner is given the maximum opportunity for self-improvement. The range of conditions available to Community-Based Corrections must be sufficiently wide and flexible to allow each case to be dealt with on its own merits and permit the development of other conditions should the need arise. This flexibility should produce a number of desirable results.

Firstly, supervision will become more intensive and breaches will therefore be easier to detect and sanction. Secondly, the offender will become more aware that his sentence in the community carries obligations and responsibilities, and thirdly, the community will no longer view a community based sentence as a 'soft option'. The flexibility of programs should also allow the opportunity for 'scaling down' conditions as the term of a supervised community sentence (parole)progresses to provide incentive for continued good behaviour.

**RECOMMENDATION**

Prisoners serving a supervised community sentence (parole) could be subjected to a range of supervision conditions including:

i) treatment programs

ii) Community Service Orders

iii) specific treatment programs

iv) non-association orders

v) electronic surveillance

vi) random visits to their homes and places of employment.

vii) random telephone calls.

viii) other such conditions as may be appropriate.
The Committee has become increasingly aware during the course of its discussions and research that the major concern of the community and the major criticism of the conditional community sentence (parole) system is the fear of further offences by violent and sexual offenders and the apparent lack of safeguards.

To alleviate this fear, the Committee proposes the creation of intensive programs specially designed to provide counselling and behavioural treatment for repeat violent offenders against the person as one of the conditions of that offender's supervised community sentence (parole).

**RECOMMENDATION**

Repeat offenders of serious crime against the person should be placed on intensive treatment and supervision programs as a major term of their conditions whilst serving a supervised community sentence (parole).

In the interests of the protection of the community and the community's continued confidence in the criminal justice system, it is essential that judges have the discretion to order certain offenders convicted of repeated crimes of violence against the person to serve their full custodial sentence without the opportunity of a supervised community sentence (parole).

However, the Committee is of the opinion that it is often prisoners who have received the longest sentences for the most serious crimes who are in need of counselling and assistance on their return to the community. This is particularly true of prisoners convicted of serious violent and sexual crimes.

Finite sentences should therefore be countenanced only in extreme cases for the protection of the community and should always contain a component of pre-release counselling and development programs.

**RECOMMENDATION**

All prisoners who have been judged ineligible for supervised community sentence (parole) because of the nature of the crime or their antecedents, and who are serving sentences of 2 years or more in prison should be given the opportunity of rigorous pre-release programs combined with work and home release, during the last 6 months of their custodial sentence to assist in their transition to release in the community.

The priority of the protection of the community can only be superseded by that of the protection of the victim and it is with these criteria in mind that the Committee recommends greater information for the victim and that the victim be given the opportunity to request certain extra conditions to be imposed on an
offender's community sentence (parole). Where the victim is also a member of the offender's family, the request may take the form of an order for the offender to reside elsewhere.

RECOMMENDATION
The Community Sentence Board should be required by the sentencing judge to consider victim safety when making any decisions pertaining to the community sentence (parole) of a prisoner convicted of a serious crime against the person. Victims of serious violent crime and immediate family of any prisoner shortly to be considered for Supervised Community Sentence (parole) should:

i) be informed of that consideration;

ii) be given the opportunity to make written submissions regarding the conditions of that community sentence eg. orders of non-association or non-harassment or requiring the prisoner not to reside in the family home;

iii) be notified of the Board's decision prior to release.

16. Approximately 70% of offenders serving supervised community sentences (parole) successfully complete the sentence. The Committee has therefore formed the opinion that more rigorous supervision in the community and the threat of suspension or revocation of a community sentence (parole) for a breach of the Criminal Code whilst serving such a sentence should be sufficient control for most community detainees. The Committee therefore concludes that there is no extra benefit to be gained from allowing credit for only half of the time spent serving a community sentence (parole) prior to a breach.

RECOMMENDATION
Prisoners who breach a Supervised Community Sentence (parole) by re-offending should receive full credit for the period of time spent serving a supervised community sentence (parole) prior to the commission of the offence ('clean street time').

PUBLIC CONCERN, PUBLIC ATTITUDES AND LACK OF KNOWLEDGE
17. Public attitudes, perceptions and confidence are vital to the success of any corrections system and the Committee has become aware of widespread confusion with, and a lack of understanding of, the present system. This has been presented in the form of direct comments on the lack of available information or in obviously misinformed comments and the Committee is of the opinion that many of the general public's criticisms are based on misleading information or on conclusions without any factual backing.
It therefore recommends that an extensive educational and public relations exercise should be undertaken by the Department of Corrective Services in conjunction with the police, the Law Society, the judiciary and the Community Sentence Board to explain in plain terms the components of a sentence, how each of those components is applied, the range of conditions which a prisoner on serving a supervised community sentence (parole) may be required to fulfil and the consequences of breaches of any of those conditions.

The Committee further recommends that there should be a greater interchange of information between the police, judiciary and the Department of Corrective Services so that all parties involved in the sentencing of a prisoner may be kept continually informed of the effect of their decision on each other, the prisoner and the community.

RECOMMENDATION:

An extensive public relations and education program should be undertaken by the Department of Corrective Services with participation by the police, the judiciary and the Law Society. Additional funding should be provided for this purpose.

The Committee acknowledges and supports the public perception that the judicial system and the sentencing judge, magistrate or Justice of the Peace should be the focal point of the criminal justice system and that it is from the open forum of the courtroom that a clear message to the community of the meaning of the sentence should emanate.

As discussed in Recommendation 17, the Committee has been disturbed by evidence of widespread misunderstanding of the sentencing process which has led to reduced confidence in the criminal justice system as a whole but applauds the practice of a number of judges who include a detailed explanation of their choice of sentence and the meaning and consequences of that sentence. The Committee believes this practice, if adopted by all judges and magistrates would lead to greater understanding by the general public of the sentencing system.

The Committee also believes that the courtroom is the most appropriate place for the meaning and explanation of supervised leave to be given.

There have been cases, where the Parole Board has been criticised for decisions to grant parole to certain prisoners.

The Parole Board is an administrative body which, of necessity, operates in camera to protect individual prisoners. An unfortunate by-product of this modus operandi is sometimes lack of understanding of, and confidence in, the system.
By explaining in open court the effect of a Supervised Community Sentence (parole) and the consequences of breaches of that sentence, the judge, magistrate or Justice of the Peace ("judicial officer"), as the respected focal point of the criminal justice system, can ensure that the public and the sentenced prisoner accept that Supervised Community Sentence (parole) is an integral part of the sentence and will attract the same rigorous enforcement as the custodial portion of the sentence.

RECOMMENDATION

All sentencing judicial officers should be encouraged to explain more fully the reasons for their choice of sentence, the meaning and effect of that sentence and the portion which is to be served in the community to emphasise not only to the general public but also to the offender that a Supervised Community Sentence (parole) is still part of the sentence.

Prisoners have indicated to the Committee that they are given insufficient information about their sentence. It is particularly important that the details of the sentence and the likely length of their incarceration are explained to first offenders who may be apprehensive and intimidated by their surroundings.

RECOMMENDATION

All sentenced prisoners should be advised of voluntary correctional programs available to them, the operation of remission, how that remission may be lost and details of the Supervised Community Sentence, within 72 hours of their arrival at a prison.

SENTENCING PRACTICE

The Committee confirms the philosophy of imprisonment as a last resort. However, for the principle to be properly applied, the judicial officers must be encouraged not only to make use of the available alternatives or a combination of those alternatives as they deem appropriate, but also to become involved with the Department of Corrective Services so that sentencers and sentence administrators are able to monitor the success of programs and the efficient deployment of staff and resources and pool their experience to develop alternative programs.

RECOMMENDATION

(i) A sentence of imprisonment should be applied only if the judicial officer is convinced, having regard to any guideline judgments, the nature of the offence and the maturity and antecedents of the offender, that the paramount principle of the protection of the community would be placed
in jeopardy, that other options have already failed, or have an extreme likelihood of failure.

(ii) Judicial officers should be encouraged to become more aware of alternatives to imprisonment and the development of new options and should be given complete discretion to use the full range of sentencing options, or combination of those options as they see fit.

21. The Committee has formed the opinion that imprisonment does not rehabilitate. The function of prison is to punish offenders by deprivation of liberty and to protect the community by removing them from society. Reform or resocialisation has a greater chance of success in the community in normal surroundings and there is strong evidence that involvement by prisoners in the community programs supervised in the community will force change where prisons do not. The Committee encourages the continuing development and monitoring of community-based programs with the emphasis on flexibility to enable the tailoring of programs to suit individual needs. However, it has received evidence that the current funding process is cumbersome and that delays in receiving approval for a community project often result in loss of interest and motivation by prospective participants and a corresponding loss of faith in community-based corrections staff.

RECOMMENDATION

i) For alternatives to imprisonment to work it is essential that appropriate funding and resources be allocated by State Government not only to community-based correctional alternatives but also to non-government and local government authorities operating in the community. This should be achieved by redirecting some funding from current prison-based programs to community-based programs.

ii) The process for allocation and approval should be streamlined so that projects or programs are readily available when needed thus ensuring the continued interest, respect and credibility of participants.

22. From evidence and strong views expressed to the Committee by both the judiciary and the Department of Corrective Services, the Committee has formed serious doubts about the effectiveness of a short term of imprisonment except where

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80 Broadhurst/Maller Study: The Recidivism of Prisoners Released for the First Time: Reconsidering the Effectiveness Question 1980

90
offences of violent or sexual assault are involved. The "short, sharp shock" theory has begun to lose ground in favour of the belief that there is the potential for greater harm for an offender from exposure to the prison system.

For the year ended 30 June 1990, 4988 sentences were handed down and of those, 3130 were for terms of less than 3 months, the total increasing to 3729 if sentences of 3–6 months are included. Prisoners serving sentences of less than 3 months represented approximately 20% of the daily average prison muster of 1623.8 for the year ended 30 June 1990.  

Many shorter sentences arise as a result of default in payment in fines. The Committee believes that judges should be given broader discretion to exact payment of fines, such as payment by instalments, garnishment of wages, salary or social welfare benefits, and seizure of assets. Furthermore, a sentence of imprisonment should not replace the fine but should be used as a further sanction if an offender has wilfully not complied with an order or has no reasonable excuse for not complying.  

To provide acceptable alternatives for those offenders would not only make space in prisons for those from whom the community has every right to expect protection but might also prevent the beginning of a cycle of recidivism by needless exposure to the prison system.

**RECOMMENDATION**

Head sentences of 3 months or less, with exceptions for offences of violence against the person, should be abolished or repealed.

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23. In a number of its recommendations the Committee has expressed its concern with the high imprisonment rate current in Western Australia compared with other States and jurisdictions. On analysis of the statistics the figures quoted in Recommendation 22 above indicate that a very high proportion of those imprisoned are sentenced to short sentences of less than six months for fine default or minor public order offences.

Of equal relevance is the public misconception of the nature of the crime for which most offenders are incarcerated and their concern at the apparent inconsistency in sentences handed down for similar offences leading to calls for harsher punishments.

It is in the area of the shorter sentences, the majority of which are handed down

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81 see Appendix 6 for further statistics

82 see Recommendation 27
by the lower courts, where the Committee believes the greatest impact on prisoner numbers can be made. However the Committee is also of the belief that without adequate guidelines from the higher courts, an across-the-board abandonment of sentences of a particular duration would merely result in longer sentences being handed down and exacerbate rather than alleviate the situation.

It is partly for this reason and to provide judicial officers with the opportunity to set up a sentencing information database and inform Parliament of any discrepancies, inconsistencies or anomalies in the sentencing arena of which it believes Parliament should be aware, that the Committee recommends that the powers of the Court of Criminal Appeal should be strengthened to include a monitoring and advisory role. The Victorian Sentencing Act 1991 has recently empowered the Full Court to give guideline judgements, inter alia,

"(a) to promote consistency of approach in the sentencing of offenders.....
(e) to provide sentencing principles to be applied by courts in sentencing offenders......
(h) to set out the objectives of various sentencing and other orders."

RECOMMENDATION

1. The Court of Criminal Appeal should be empowered to give guideline judgments to be followed by Courts when sentencing a convicted person in the following circumstances and with the following attributes:

   (i) in determining any application for leave to appeal against sentence or any appeal

      (a) either by a convicted person or by the prosecution;

      (b) whether or not the judgment is necessary for the determination of that application or appeal;

   (ii) of its own motion; or

   (iii) at the request of the Crown.

   (iv) A guideline judgment may set out:

      (a) the criteria to be applied in selecting a particular sentencing option;

      (b) the appropriate range within which discretion should be exercised in relation to the selection of a particular sentencing option;

      (c) the aim of sentencing persons convicted of a particular offence or class of offence;

      (d) the criteria to be applied in determining the seriousness of a particular offence or class of offence;

      (e) the criteria to be applied in mitigation to reduce a term of
imprisonment or any other sanction which would otherwise be imposed;
(f) the weight or relative weight to be given to any particular criteria;
(g) matters relating to the principle of imprisonment as a last resort as stated in s.19A of the Criminal Code, with particular reference to the need to consider the appropriateness of imprisonment for certain offences eg drunkenness, minor public order offences, fine default, minor breaches of community sentences (parole);
(h) any other matter which the Court considers relevant.
(v) Guideline judgments may be reviewed, varied or revoked in any subsequent proceedings by the delivery of a further guideline judgment.

2. The Chief Justice may report to Parliament on any sentencing matter he or she believes should be brought to Parliament's attention with particular regard to:
   (a) the effects of sentencing over a period of time on the prison population;
   (b) the effects of certain statutory penalties and the need for penalties to be reviewed;
   (c) the effects of sentencing options.

3. A sentencing information database to provide accurate data of sentencing matters should be established for research, forecasting and statistical purposes.

24. Although beyond its terms of reference, the Committee has become aware during the course of its deliberations that a large proportion of offenders, and particularly Aboriginal offenders, have entered the criminal justice system as juveniles. They have experienced their first custodial sentences as detainees in one or more of this State's Juvenile Detention Centres and from that point forward, finding it impossible to break the criminal cycle, have progressed through the ranks of adult institutions.

The Chief Justice of Western Australia, the Honourable David Malcolm, observed from a recent study visit to Europe;

"Victoria currently has a rate of imprisonment less than half that in Western Australia..... My understanding of the position is that there is no significant difference between the crime rates or the patterns of offending between Western
Australia [and] Victoria. My understanding is, in the juvenile crime area, we [Western Australia] actually prosecute more children than South Australia, Victoria and Queensland combined.

On our recent visit to Europe in looking at how other countries have achieved reductions in the rate of adult imprisonment, we discovered that the answer most frequently given was the rate of juvenile detention; and reducing the rate of juvenile detention reduces the rate of recidivism, reduces career criminality and lowers the rate of adult imprisonment."

RECOMMENDATION

Because a large proportion of adult prisoners have experienced their first detention as juveniles, the Committee would call on the Government to instruct Ministerial or Departmental working parties and encourage the Legislative Assembly's Select Committee on Youth Affairs

(i) to examine the high imprisonment rate for juvenile offenders;

(ii) to investigate further the problem of the 'juvenile crime circle' by targeting recidivists;

(iii) to identify and develop alternatives to imprisonment for young offenders.

25. The Committee is aware from evidence received and from experience in their own constituencies that the problems and the solutions in the Perth metropolitan area are different from those in country and regional areas.

Perth does not have the added complication of organising community based programs and supervising offenders in communities remote from corrections facilities and resources.

Aboriginal offenders, many of whom live in remote communities, present particular problems. Correctional authorities are becoming aware that the transportation of such offenders to the facilities in the metropolitan area is more likely to exacerbate the situation than to produce any lasting benefit, but most regional judges and magistrates are faced with no alternative.

To nurture the respect and confidence of local authorities, community-based corrections in country areas must be adequately funded and resourced to enable correctional authorities to establish community work programs and effective supervision of offenders in situ. The maxim that 'justice must be seen to be done' is particularly important in areas which are isolated from Government and where often the effect of a crime is felt more acutely than in more impersonal metropolitan areas.
RECOMMENDATION

Country and regional areas must be adequately resourced from state funds minimum per capita of resident population basis.

REVIEW OF THE CRIMINAL CODE

26. As stated in the Introduction to this report, the Committee has considered in the context of its precursors, sentencing and imprisonment. Certain which impact on sentencing policy generally and where reform or revisited thought necessary to enhance judicial discretion and to improve the community's perception, understanding and confidence in the sentencing process have brought to the Committee's attention.

A number of submissions have questioned the rationale for the sentence 'Governor's Pleasure'. This is a sentence of indeterminate length which might be imposed upon habitual offenders and is open to review after 5 years. Committee believes that the necessity and appropriateness of such a sentence should be re-evaluated in the context of modern sentencing policy. The inflexibility of statutory sentences for crimes of manslaughter, murder and wilful murder was dramatically illustrated by both the "Nina" case and the "P" case. Violent crime against the person is rightly of particular concern to the community and the Committee believes that a widening of judicial discretion in such cases will enhance the public's perception of the punishment 'fitting the crime' and generally boost confidence in the judicial process whilst at the same time not detracting from the gravity of the offence.

Similarly, the incidence of serious 'white-collar' crime has increased together with the demand for penalties commensurate with the general public's expectation of such offences. Often the perception is that long sentences do not redress the wrongs done to the fabric of society especially in the case of corporate crime an public becomes confused when repeat violent sexual assaults attract penalties than crimes of corporate theft. The Committee believes that such penalties should be greater flexibility to combine custodial and monetary sanctions to fit the nature of the injury.

The value of very short sentences has been debated in Recommendation 2 the greater use of alternatives to imprisonment for minor offences advocated. Some minor offences have been decriminalised in recent years eg. drunken and some offences under the Road Traffic Act. The Law Reform Commission is currently reviewing the Police Act 1892 with the aim of repealing obsolete se

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83 pages 7–18
and the Committee believes that this process should be extended to the Criminal Code.

RECOMMENDATION

There should be a general review of the Criminal Code and in particular:

i) the sentence of 'Governor's Pleasure';

ii) statutory sentences for crimes of manslaughter, murder and wilful murder;

iii) sentences for white collar crime to allow judges greater discretion in mixing sentences of imprisonment, means-tested fines and community based penalties;

iv) a comparison of penalties for crimes against the person with penalties for crimes against property;

v) decriminalisation of certain minor offences.

IMPROVED USE OF FINES

27. This topic has been discussed at some length in relation to the proposal to abolish sentences of 3 months or less and introduce a wider range of alternative sanctions (Recommendation 22) and in the confirmation of the philosophy of imprisonment as a last resort (Recommendation 20).

Much of the concern about the effectiveness of fines, centres on the almost unqualified option available in all cases to serve a term of imprisonment instead of paying the fine regardless of the offender's ability to pay. This option has two undesirable effects.

Firstly, many of the prisoners serving short terms of imprisonment are there by reason of default in the payment of a fine. Of the 4988 sentences handed out in the year ended 30 June 1990, 2549 were for default of fine only. This is an inefficient use of scarce and expensive resources when the cost of housing a prisoner is $1,000 per week. (see tables overleaf)

Secondly, the effect of the penalty becomes devalued. In Victoria recently an offender was able to 'cut out' around $13,000 worth of parking fines by serving a term of imprisonment of less than a week. This anomalous situation has recently been addressed in the Sentencing Act 1991 which has introduced cumulative prison sentences for fine defaulters instead of concurrent terms.

The fine is often a more appropriate sanction than imprisonment and should be more widely used as an alternative. In order for it to work effectively, however, and not merely delay the entry of an offender into the prison system, the enforcement procedure must be changed so that incarceration for default is only
(NUMBER OF RECEIVALS SERVING FINE DEFAULT ONLY ALSO SHOWN)
PRISON RECEIVALS BY MONTH (SENTENCED PRISONERS ONLY)
used if an offender has wilfully not complied or can present no reasonable excuse for not paying.

RECOMMENDATION

A new process for the imposition, collection and enforcement of fines should be established with the following characteristics but without affecting the current scheme of conversion of fines to Work and Development Orders:

i) the ability of a person to pay should be established before setting the level of the fine;

ii) the courts should be given greater flexibility when dealing with defaulters such as garnishment of wages, salary or social welfare benefit payments and seizure of assets;

iii) incarceration should only be used if a defaulter has wilfully not complied with a fine order or has no reasonable excuse for not paying.

PRISON ISSUES

28. The continual increase of prison capacity is no longer universally considered to be the means of reversing the trend in an increasing crime rate. 84 There is now little argument against the view that this simplistic approach to the problem can be no more than a short term management tool at tremendous cost to the taxpayer.

Furthermore, the argument that imprisonment achieves positive behavioural reformation, used as justification for absorbing vast quantities of public money in new prisons, has often distracted attention from the undesirable side effects of incarceration. With the wider acceptance of the view that imprisonment is often counter-productive has come the realisation that any long term solutions for the control of increasing crime are more complex and must be sought in the wider context of corrections philosophy.

The over-representation of Aboriginals in the criminal justice system in Western Australia is notorious. 85 Currently Aboriginals comprise 46% of the prison receivials and 1.8% of the overall population. Most are serving short sentences for public order and traffic offences. Most are imprisoned because there are no local alternatives. Most of the sentences of imprisonment passed on Aboriginals violate the principle of imprisonment as a sentence of last resort confirmed in nearly all

84 see Introduction pages 7-18

85 see Aboriginals in the Criminal Justice System pages 100-121 of this report
major reports in the criminal justice field for the past thirty years. 86
Much of the Committee’s research has focussed on the premise that the overall
imprisonment rate in Western Australia is unacceptably high compared with the
rest of Australia 87 and on the reasons for the greater use of imprisonment in this
state.
Many of the recommendations in this report propose the development and
resourcing of a wider and more flexible range of alternative sanctions with the
intention of making the best use of corrective services resources.
An alternative, proposed in 1986 by Rod Broadhurst of the Crime Research Centre
at the University of Western Australia, was a moratorium on the expansion of
prison capacity to ensure that imprisonment is utilised as the institution of last
resort. 88
A similar proposal has been adopted by the Department of Correctional Services
in South Australia where a maximum prison muster is maintained, similar to the
maximum number of hospital beds operated by most Health Departments in
Australia. When that maximum is likely to be exceeded, offenders closest to
release on parole are screened for their suitability for release at an earlier date.
In Western Australia, s. 31 of the Prisons Act permits the Executive Director of
Corrective Services to discharge a prisoner at any time during the 10 days
immediately before the prisoner is due to be released; this does not apply to
prisoners eligible for parole.
With the most efficient use of correctional resources in mind, the Committee,
whilst in no way detracting from the achievements of the staff of open security
institutions, has become uncertain as to the real benefit to the State and to the
prisoners themselves of open imprisonment.
Prisoners may well gain more from a supervised resocialisation program in the
normal and realistic environment of the community to which they will be shortly

86 see Appendix 5

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**Australian Prison Trends: April 1991**

<table>
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<th>Imprisonment Rate per 100,000 head of total population</th>
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<tr>
<td>Northern Territory</td>
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<td>Western Australia</td>
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<tr>
<td>New South Wales</td>
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<td>Tasmania</td>
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<td>Victoria</td>
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released. Resources may be more effectively utilised in the development of programs in the community designed to assist prisoners in the transition from institutionalised life to normal everyday life where they are suddenly faced with responsibility for themselves.

RECOMMENDATION

i) That the Government institute a review of the best and most efficient use of correctional facilities.

ii) That the purpose of open security prisons be reviewed and other alternatives such as mobile prisons 89 be considered.

29. The most recent corrections statistics 90 indicate that:

(i) For 50% of remand prisoners, remand is their first experience of prison;
(ii) 30% are being held for crimes of violence;
(iii) 50% held on remand are eventually given non-custodial sentences.

At a cost of $1000 per week per prisoner the use of imprisonment for remand purposes seems to the Committee to be not only a costly and inefficient use of prison space and corrections resources but also needlessly exposes people who may subsequently be found innocent to the harshness of the prison environment and, in some instances, to the undesirable influence of convicted offenders.

It is essential that only those offenders for whom there are no alternatives but imprisonment are held in custody and that prison 'beds' are reserved for those people from whom society must be protected. The Committee particularly encourages an extension of the new Home Detention system for prisoners held on remand provided there are adequate conditions of behaviour to ensure there is minimal risk to the safety of the community or themselves.

(see Recommendation 12)

RECOMMENDATION

The use of imprisonment for persons on remand should be limited and the system of Home Detention be extended to include suitable candidates provided there are adequate conditions to ensure there is minimal risk to the community or themselves.

89 see Aboriginals in the Criminal Justice System Appendix A section (v)
90 see Appendix 6 and tables overleaf

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<table>
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<tr>
<th>PRISONERS ON REMAND - NUMBER RECEIVED, CURRENT AND OUTCOME BY SEX AND RACE</th>
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<tr>
<td>Total on remand at 30/6/90</td>
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<tr>
<td>Number received on remand during period</td>
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<td>Total on remand for all or part of the year</td>
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<tr>
<td>Number released to bail</td>
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<tr>
<td>Number released ex-court</td>
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<tr>
<td>Number sentenced to imprisonment</td>
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<tr>
<td>Number release - other</td>
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<tr>
<td>Total on remand at 31/05/91</td>
</tr>
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</table>
Figure Three shows that approximately 37 per cent of all prisoners received on remand will subsequently receive a custodial sentence. In addition some of those in the bail category may have also received a custodial sentence. When these two categories are taken together it appears that less than 50 per cent of all those received for remand in the 1989/1990 financial year received a custodial sentence.

Those released ex-court include those who went on community service orders. The "Other" category includes those who were awaiting extradition, deportation etc.
Figure Four shows remand receiveals by outcome and aboriginality. It would appear that there is little difference between the two groups. A slightly higher percentage of non-Aboriginals received a custodial sentence and were released ex-court. A slightly higher percentage of Aboriginals received bail.
Figure Six (A) shown the major offence of those prisoners who were remanded and consequently received a custodial sentence.

As shown in Figure Six (A) the majority of offenders were remanded for non-violent offences such as "Burglary", "Other Theft" and "Traffic Offences". Taken together these categories of major offence make up nearly 50 per cent of all of those offenders who are received for remand and then given a custodial sentence.
Figure Seven (A) shows those remand receivals who received a custodial sentence by the length of the head sentence given.

As shown in the figure above, nearly 40 per cent of head sentences were for 3 months or less.
Figure Seven (B) indicates that of those prisoners received as remand and who were consequently sentenced 45 per cent received an effective sentence of 3 months or less.
ABORIGINALS IN THE CRIMINAL JUSTICE SYSTEM

The late William Clifford, Director of the Australian Institute of Criminology, in 1982 described the Aboriginal people as "the world's most imprisoned group". 91

The Royal Commission into Aboriginal Deaths in Custody reported:

"One of the most significant findings of the Commission has been the massive over-representation of Aboriginal people in all forms of custody and, most particularly, in police custody. As has been pointed out in a number of different places in this report, according to the findings of the Commission's Research Unit, the overwhelming number of offences for which Aboriginal people find themselves in police custody are not serious crimes, but alcohol related street offences. Not all but a great deal of police intervention in the lives of Aboriginal people, therefore, is not in response to potentially harmful conduct, in relation to either persons or property, but is routine. Not only, then, does it reinforce the subordinate position of Aboriginal people in the broader society; it also acts powerfully to define them in the eyes of the broader society as deviant." 92

In terms of the imprisonment rate of Aborigines in Western Australia, this statement would appear to be true as Aborigines comprise roughly 1.8% of the overall population but -

- 46% of the prison receipts 93
- 98% of prisoners held in police lock-ups 94
- 93% are serving sentences of 12 months or less
- 55% for fine default

The Vincent Report 95 found that of the 10.5% of prisoners processed through police lock-ups in 1986, 91.7% were Aboriginal and nearly all of those prisoners were serving sentences for drunkenness or fine default. (see tables overleaf)

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91 Australian Institute of Criminology, "The world's most imprisoned group" Reporter Vol. 4

92 National Report of the Royal Commission into Aboriginal Deaths in Custody, para.13.1:2

93 Department of Corrective Services: Prisoners Received and Distinct Persons 1/7/90-31/5/91

94 Ibid.: Lockup Receivals Chart for the year ended 30/6/91

95 Interim Enquiry into Aboriginal Deaths in Custody in Western Australia, January 1988
<table>
<thead>
<tr>
<th>Gender</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>NT</th>
<th>ACT</th>
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<tbody>
<tr>
<td>Males</td>
<td>701</td>
<td>166</td>
<td>1,303</td>
<td>2,181</td>
<td>595</td>
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<td>75</td>
<td>75</td>
<td>85</td>
<td>95</td>
<td>83</td>
<td>71</td>
<td>79</td>
</tr>
<tr>
<td>Females</td>
<td>73</td>
<td>32</td>
<td>437</td>
<td>739</td>
<td>102</td>
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<td>15</td>
<td>5</td>
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### ABORIGINAL

### NON - ABORIGINAL

<table>
<thead>
<tr>
<th>Gender</th>
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<th>Qld</th>
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<td>4,238</td>
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<td>2,278</td>
<td>497</td>
<td>482</td>
<td>421</td>
<td>18,377</td>
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<tr>
<td>Per cent</td>
<td>93</td>
<td>91</td>
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<td>88</td>
<td>91</td>
<td>94</td>
<td>94</td>
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<td>92</td>
</tr>
<tr>
<td>Females</td>
<td>343</td>
<td>439</td>
<td>312</td>
<td>285</td>
<td>214</td>
<td>33</td>
<td>32</td>
<td>38</td>
<td>1,696</td>
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<td>Per cent</td>
<td>7</td>
<td>9</td>
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<td>12</td>
<td>9</td>
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<td>6</td>
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### PERSONS

<table>
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<th>Qld</th>
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<th>SA</th>
<th>Tas</th>
<th>NT</th>
<th>ACT</th>
<th>Aust</th>
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<td>4,452</td>
<td>5,378</td>
<td>4,384</td>
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<td>554</td>
<td>1,873</td>
<td>445</td>
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<tr>
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<tr>
<td>Females</td>
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<td>764</td>
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<td>318</td>
<td>36</td>
<td>317</td>
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<tr>
<td>Per cent</td>
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<td>10</td>
<td>6</td>
<td>15</td>
<td>9</td>
<td>12</td>
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TABLE 7.6  MOST SERIOUS OFFENCE OF SENTENCED PRISON RECEIPTIONS, ABORIGINAL AND NON-ABORIGINAL, APRIL 1989

<table>
<thead>
<tr>
<th>Offence</th>
<th>Aboriginal</th>
<th></th>
<th></th>
<th>Non-Aboriginal</th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percent</td>
<td>Number</td>
<td></td>
<td>Percent</td>
<td></td>
</tr>
<tr>
<td>Homicide</td>
<td>4</td>
<td>1.2</td>
<td></td>
<td>13</td>
<td>1.0</td>
<td></td>
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<tr>
<td>Assault</td>
<td>40</td>
<td>11.9</td>
<td></td>
<td>87</td>
<td>6.6</td>
<td></td>
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<tr>
<td>Sex Offences</td>
<td>11</td>
<td>3.3</td>
<td></td>
<td>42</td>
<td>6.6</td>
<td></td>
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<tr>
<td>Other Against Person</td>
<td>1</td>
<td>0.3</td>
<td></td>
<td>13</td>
<td>1.0</td>
<td></td>
</tr>
<tr>
<td>Robbery</td>
<td>1</td>
<td>0.3</td>
<td></td>
<td>28</td>
<td>2.1</td>
<td></td>
</tr>
<tr>
<td>Break and Enter</td>
<td>25</td>
<td>7.4</td>
<td></td>
<td>144</td>
<td>11.0</td>
<td></td>
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<tr>
<td>Fraud</td>
<td>2</td>
<td>0.6</td>
<td></td>
<td>71</td>
<td>5.4</td>
<td></td>
</tr>
<tr>
<td>Theft</td>
<td>28</td>
<td>8.3</td>
<td></td>
<td>212</td>
<td>16.2</td>
<td></td>
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<tr>
<td>Property Damage</td>
<td>14</td>
<td>4.2</td>
<td></td>
<td>19</td>
<td>1.4</td>
<td></td>
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<tr>
<td>Fine Default</td>
<td>133</td>
<td>39.5</td>
<td></td>
<td>258</td>
<td>19.7</td>
<td></td>
</tr>
<tr>
<td>Justice Procedures</td>
<td>18</td>
<td>5.3</td>
<td></td>
<td>110</td>
<td>8.4</td>
<td></td>
</tr>
<tr>
<td>Good Order Offences</td>
<td>11</td>
<td>3.3</td>
<td></td>
<td>39</td>
<td>3.0</td>
<td></td>
</tr>
<tr>
<td>Drug Offences</td>
<td>3</td>
<td>0.9</td>
<td></td>
<td>60</td>
<td>4.6</td>
<td></td>
</tr>
<tr>
<td>Traffic Offences</td>
<td>37</td>
<td>11.0</td>
<td></td>
<td>204</td>
<td>15.5</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>9</td>
<td>2.7</td>
<td></td>
<td>12</td>
<td>0.9</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>337</td>
<td>100.0</td>
<td></td>
<td>1,312</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>

7.2.5 Perhaps the most striking fact revealed by Table 7.6 is that 39.5% of the Aboriginal sentenced prison receptions were for fine default, whereas only 19.7% of the non-Aboriginal receptions were for fine default. This matter receives more attention in Chapter 23.5. The second point of interest is that Aboriginal people made up 20.4% of all sentenced prison receptions. This is to be compared with the percentages of Aboriginal people in prison, as revealed by the annual prison censuses, which over the past decade have ranged between 13% and 15%. It can be seen therefore that the flow of Aboriginal people into prison is considerably higher than the number at any one time. This is explained, at least in part, by the higher proportion of Aboriginal people received on fine default or sentenced for offences which attract relatively low penalties. People imprisoned for fine default would normally stay in prison for short periods only, infrequently for periods of months.
In a police survey taken during August 1988 *, it was found that more Aboriginal people - 54.2% - than non-Aboriginal people were in custody and that they were over-represented in police custody at a rate of 43 times that of non-Aboriginal people. It is essential to look at the events leading up to this situation to attempt to explain why the current sentencing practice with regard to Aboriginal offenders appears not to have achieved established sentencing goals.

"No adequate assessment of the Aboriginal predicament can be made so long as the historical dimension is lacking; it is the absence of information on background which has made it easy for intelligent persons in each successive generation to accept the stereotype of an incompetent group." 97

Estimates of the size of the Aboriginal population at the time of the first European colonisation of Australia, vary from 300,000 to around 1.5 million living amongst perhaps 500 different tribes, each with its own language, dialect and customs.

For at least 50,000 years prior to colonisation, Aboriginal groups had governed themselves by means of a complex system of ritual and tribal law which prescribed almost every aspect of life. Most property was under communal ownership and there were no written laws. Disputes were settled by lengthy discussion and transgressors against the tribe could be dealt with by the elders of the community by 'community service', banishment, corporal, and in extreme cases, capital punishment meted out in public.

The early settlers did not wish to understand nor appreciate that Aboriginals had a culture and society that had existed in a structured form for far longer than their own.

"The basic assumption, then, was that the aborigines were not really people—not in the way that Europeans were.....This attitude made it much easier to treat them hhighhandedly, to evade consulting them on issues that directly concerned them, to override their wishes when these were expressed, and, often not even try to understand what was being said. And generally it set the pattern for a one sided relationship which is only now beginning to change for the better." 98

Blackburn J. in 1971 commented that the Aboriginal system of law in place at the time of colonisation:

"...shows a subtle and elaborate system highly adapted to the country in which the people led their lives, which provided a stable order of society and was remarkably free from the vagaries of personal whim or influence. If ever a system could be called 'a Government of

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96 National Report of the Royal Commission into Aboriginal Deaths in Custody. para. 13.5.24

97 The Destruction of Aboriginal Society: Rowley 1972

98 Pioneers and Settlers: Berndt and Berndt 1978
However there was much debate in the early nineteenth century on whether the Aboriginal people were capable of maintaining their own law and order or whether they should be controlled by the law the Europeans brought with them. This public discussion soon gave way in the face of the practicalities of administering European justice in a country where the distances between settlements were far beyond the understanding of the average Englishman used to English village life and remain so today. The authorities lacked the comprehension, interest and the resources to develop and adapt the British system to the special circumstances and conditions of Aboriginals and a blind eye was turned to 'frontier justice' which became adopted in practice if not accepted in public. A special mounted police force was established to protect and control Aborigines but its function soon became mostly punitive.

In 1837 it was recorded in the proceedings of the Legislative Council:

"The Council have all along thought that, although the amelioration and civilisation of the Aboriginal people was an object highly desirable, yet the protection and security of the lives and property of the British subject was a matter of more urgency and still greater importance."

The above pronouncement gave rise to the the policy of controlling Aborigines for the good of society and themselves.

The continued lack of appreciation by authorities and the general public that an Aboriginal offender may have any special needs different from those of the non-Aboriginal offender remains one of the major obstacles to the resourcing and administration of corrections today.

Within a hundred years of colonisation, the dismantling of the Aboriginal tribal system and traditional way of life together with the effects of introduced disease and poverty had led to a dramatic fall in the Aboriginal population to an overall total of around 60,000.

With the decline in the population went the "subtle and elaborate system [of law]"

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99 Millrrpum v Nabalco Pty Ltd

100 Dying Inside: chapter 3–The History: Duncan Graham: 1989

101 National Report into Aboriginal Deaths in Custody 1991: para. 10.3.19

102 Report of the Royal Commission Upon All Matters Affecting the Well Being of Persons of Aboriginal Descent in Western Australia: Judge Lyn Cuthbert Furnell: July 1974

103 Address by the Hon David Malcolm before The Society for the Reform of the Criminal Law Edinburgh Conference 1990: Equality in the Administration of Criminal Justice: Gender, Race and Class: The Criminal Justice System and Aboriginals in Australia
referred to in Blackburn's judgement.\textsuperscript{104}

In 1904, Western Australia established a Royal Commission into Aboriginal matters under Dr. W. E. Roth. This report stipulated the need for protection of Aboriginal people and the effects of alcohol and opium and advanced the theory that Aboriginals should be strictly controlled, both for their own good and for the benefit of the community generally. It advocated a policy of segregation of Aboriginals: compulsory removal to settlements and institutions and by their banishment from towns whilst not in employment. It also officially recognized the problem of half-caste children and advocated their removal from the Aboriginal environment.

Dr. Roth's recommendations were embodied in the Aborigines Act 1905 — "an Act to provide for the better protection and care of the Aboriginal inhabitants of Western Australia" which gave the Chief Protector the statutory authority to introduce measures for relief, protection and control of Aboriginal people.

A further Royal Commission in 1934 under H.D. Moseley gave rise to the amendment of the previous legislation in the Native Administration Act 1936. This legislation imposed penalties for a number of actions which were not offences for non-Aboriginals to commit, placed Aboriginal children under the legal guardianship of the Commissioner until they reached the age of 21, irrespective of any living parents or relatives empowered the Minister to have Aboriginal people taken into custody, removed from entering prescribed towns or areas without a permit and empowered to demolish and relocate Aboriginal camps. It also adopted a strong paternalistic attitude to the continued provision of food, medical attention and education.

The Royal Commission established in 1974 under Judge Furnell concluded that:

"To the extent to which European settlement had been able to reach them over the years, Aborigines had suffered physical, social, economic and moral change." \textsuperscript{105}

The Native Administration Act 1936 continued in force until 1964 and with it the key policy of 'protection from themselves' by shielding Aboriginals from responsibility for their own actions and imposing rigid personal controls. This 'protection' has had the effect of making Aboriginals resentful of authority and in particular that of the police who, in the absence of other resources, were frequently used as 'protectors' under this legislation.

Perhaps more than any other factor, the past enforced removal from traditional communities and the current movement to urban and metropolitan areas in se

\textsuperscript{104} Duncan Graham: \textit{Dying Inside}; Chapter 3—The History; 1989

\textsuperscript{105} Ibid. 102 above
employment is thought to have contributed to the breakdown of the family as an important unit in the community and the resultant isolation, lack of discipline and sense of failure experienced by many Aboriginals living in unfamiliar areas.\textsuperscript{106}

It was not until 1967 that Aboriginal people were granted citizenship under the Constitution Alteration (Aboriginals) Act. Many things changed with the passing of that legislation. Aboriginals were given the 'freedom' to consume alcohol and to be within a town area after nightfall. After years of enforced dependency, they were given back responsibility for their own lives and with the return of responsibility, came the expectation of self-determination and self-management but with no training, no authority and no resources.

To quote Mrs Sue Gordon, Magistrate in the Perth Childrens' Court:

"The words "self-determination" and "self-management" were used with alarming consequences for Aboriginal people. Overnight huge financial programmes were developed, foisted on Aboriginal people along with purchases of businesses and they were expected to become mini-business managers and aim for self sufficiency in set periods of time.

The theory was tremendous, the reality a nightmare. I would say that aboriginal people in some cases managed fairly well, but littered around Australia are the failures...stores, pastoral properties, small businesses, community accounts and the indictment against Aboriginal people for not managing has been ongoing for the past 10-14 years.

What we had was great ideas given out, "managed" by public servants who with the best will in the world tried but very few had any relevant qualifications to be able to truly assist." \textsuperscript{107}

No consideration of Aboriginals in the criminal justice system can be made without reference to the affects of alcohol on Aboriginal communities.

Australia has the highest per capita consumption of alcohol in the English-speaking world and it is estimated that about 350,000 Australians, black and white, have a drinking problem. Thirty five per cent of the people placed in police custody are there for public drunkenness. \textsuperscript{108}

The Committee is aware that the problems associated with alcohol are not solely applicable to Aboriginal people and that a large proportion of Aboriginals do not drink. However the effect of the number of Aboriginal people who drink in the public eye tends

\textsuperscript{106} "Linking Juvenile Offending to Local Problems", Mrs Sue Gordon at the Aboriginal Community Justice and Crime Prevention Forum, Alice Springs, April 1991

\textsuperscript{107} ibid. 106 above

\textsuperscript{108} Drug Problems in Australia—An Intoxicated Society
to outweigh the greater number who do not drink or drink in a 'responsible' manner. 109 Nevertheless the Expert Working Group which reported to the Royal Commission found

inter alia:

* Of those Aboriginal people who do consume alcohol, the majority drink at levels which are considerably higher than the wider population and which are considered hazardous or harmful to health, according to guidelines released by the National Health and Medical Research Council.

* Alcohol use is widespread among young Aboriginal people. Although regional differences occur, drinking almost becomes normative for young adult Aboriginal males.

* Similar patterns of alcohol consumption are found among other indigenous populations including Pacific Islanders, Maori and North American Indians. 110

Marshall Smith, an Aboriginal Community Corrections Officer from Roebourne, in his evidence before the Committee, estimated that alcohol was a contributory factor in 80-90 per cent of all offences by Aboriginals ranging from the lesser crime of 'disturbing the peace' to the more serious violent offences.

"Whatever we look at, alcohol is the biggest issue and we must parallel that with other things". 111

The Royal Commission into Aboriginal Deaths in Custody found:

"Alcohol is having a devastating effect on the Aboriginal people of Australia..... Sickness and death, violence and despair, exclusion from education and meaningful employment, families and communities in disarray; we have heard all of this and have heard many Aboriginal people, those most affected, attributing this tragic state to alcohol. 112

The Royal Commission also found that for some Aboriginal people, the legal right to drink and the equality of Aboriginal and non-Aboriginal people have come to be related. 113

A study carried out for the Commonwealth Department of Housing and Construction in 1985 established the connection between unemployment, low economic status and

109 Report of the Royal Commission into Aboriginal Deaths in Custody: para 15.2.30


111 Marshall Smith, Aboriginal Community Corrections Officer, Roebourne

112 para. 15.2.1

113 para.15.2.7
imprisonment.\textsuperscript{114} The Royal Commission into Aboriginal Deaths in Custody noted the close correlation of poor education, unemployment boredom leading to excessive alcohol use, petty crime and often crimes of violence.\textsuperscript{115}

One of the major themes at the Australian Institute of Criminology Conference - 'Healing our People: Aboriginal Community Justice and Crime Prevention Forum' held in Alice Springs in April this year was the damage and destruction which the consumption of alcohol causes to the individual, to families and communities and the threat it poses to the future of Aboriginals as a race. This was reinforced by the experiences of visiting speakers from North American Red Indian communities.\textsuperscript{116}

Delegates were unanimously agreed that alcohol was the major problem to be beaten and that it could only be beaten from within by the Aboriginal people themselves.

The movement towards positive action by communities against alcohol and drug abuse is gathering momentum and should receive support from government as part of the general strategy to reduce the over-representation of Aboriginals in the criminal justice system and the level of violence in many communities.

There is growing action amongst the women of many traditional communities, to try and prevent the damage and violence to individuals and communities caused by excessive alcohol use. To focus attention on the problem and thereby bringing on themselves a measure of the violence against which they were protesting, 200 town and bush women led by Rosie Kunoth-Monks marched through Alice Springs in May last year. Lack of response by politicians in the wake of this protest forced them and others to the conclusion that action against alcohol and drug abuse and domestic violence must, and can only be, instigated by Aboriginals.

The women of the town council of Aurukun, a community in northern Queensland, recently achieved their election to the council on a platform which opposed the extension of the canteen and drinking facilities amidst great opposition from many of the men of the community. The number of strictly 'dry' communities and outstations around Australia is increasing as are the numbers of people wishing to live in those communities. Apart from the visible problem of public drunkenness in Aboriginal people and the damage to their communities, the greatest effect of alcohol can be found in the disproportionate number of Aboriginal people in custody. As can be seen from Table 7.3

\textsuperscript{114} Study into Homelessness and Inadequate Housing, Canberra. 1985

\textsuperscript{115} paras. 17.1.20 and 17.1.22

\textsuperscript{116} Eric Shirt, Poundmakers Lodge, Hay River Treatment Centre, Alberta, and Andy and Phyllis Chelsea, Alkali Lake Indian Reserve Council, British Columbia.
and the supporting paragraph (overleaf), the vast majority of people taken into custody in August 1988 were incarcerated for public drunkenness. Overall, regardless of the legal status of public intoxication, drunkenness accounted for 57% of Aboriginal custodies. Given the strong correlation between imprisonment and further imprisonment, the frequent use of custodial remedies for drunkenness can be seen to be a contribut factor in the over-representation of Aboriginal people in the criminal justice system. Although, not strictly about parole, some appreciation of the underlying issues Aboriginal society today and their relevance to the over-representation of Aboriginal people in Western Australia's prisons is essential in order to begin to address situation. The subject is prone to emotion but the facts remain that:

(a) an Aboriginal male is likely to be sentenced to a term of imprisonment for an off for which a non-Aboriginal would receive a fine or a non-custodial sentence of sort;
(b) he is at least ten times likely to serve a term of imprisonment than the average r. Aboriginal;
(c) in Western Australia, he is 43 times more likely to be imprisoned than a r. Aboriginal.
(d) he is 8 times more likely to serve more than one custodial sentence;
(e) 25–33% of the male Aboriginal population of Western Australia has been incarcerated repeatedly.  

The situation is likely only to deteriorate as demographers estimate that by 2001, median age of Aboriginal males and females will increase from 17/18 years to 22 years. As the latter age group is the one most represented in custodial statistics, if current rates of imprisonment and detention continue, the proportion of Aboriginal prisoners will be even greater than it is now.

It is also believed that age at imprisonment for the first time is strongly related to recidivism. Young prisoners, both Aboriginal and non-Aboriginal, have very much higher probabilities of failure. In a survey of released prisoners between 1975 and 1987, it found that 86% of Aboriginals under 20 returned to prison compared to 59% over 20. Both figures are considerably higher than the non-Aboriginal counterpart groups of

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117 National Report of the Royal Commission into Aboriginal Deaths in Custody, VI, chapter 7: Reasons for Custody

116 ibid.: Chapter 6: Aboriginal People in Custody – Some Basic Facts: Figure 6.1, Table 6.4

119 Department of Corrective Services Statistics and Tables

120 Broadhurst/Maller study, "The Recidivism of Prisoners Released for the First Time: Reconsidering the Effectiveness Question": 1990 23 ANZJ Crim
### TABLE 6.3: PRISONERS IN CUSTODY, BY JURISDICTION, 30 JUNE 1989

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Aboriginal</th>
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<th>Not stated</th>
<th>Total</th>
<th>Per cent Aboriginal</th>
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<td>9</td>
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<td>21</td>
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<td>-</td>
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<td>10,967</td>
<td>172</td>
<td>12,964</td>
<td>14.3</td>
</tr>
</tbody>
</table>

(a) Percentage of those prisoners for whom Aboriginality or non-Aboriginality was stated in the census.
(b) Including ACT.

### TABLE 6.4: ABORIGINAL PRISONERS BY AGE GROUP AND JURISDICTION, 30 JUNE 1989<sup>(a)</sup>

<table>
<thead>
<tr>
<th>Age group</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>NT</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 20 years</td>
<td>67</td>
<td>11</td>
<td>69</td>
<td>103</td>
<td>9</td>
<td>-</td>
<td>42</td>
<td>301</td>
</tr>
<tr>
<td>20 - 24 years</td>
<td>148</td>
<td>31</td>
<td>120</td>
<td>165</td>
<td>39</td>
<td>2</td>
<td>76</td>
<td>581</td>
</tr>
<tr>
<td>25 - 29 years</td>
<td>86</td>
<td>20</td>
<td>89</td>
<td>113</td>
<td>24</td>
<td>3</td>
<td>53</td>
<td>388</td>
</tr>
<tr>
<td>30 - 34 years</td>
<td>61</td>
<td>7</td>
<td>50</td>
<td>59</td>
<td>19</td>
<td>1</td>
<td>18</td>
<td>215</td>
</tr>
<tr>
<td>35 - 39 years</td>
<td>34</td>
<td>7</td>
<td>41</td>
<td>43</td>
<td>4</td>
<td>2</td>
<td>4</td>
<td>135</td>
</tr>
<tr>
<td>40 - 44 years</td>
<td>14</td>
<td>7</td>
<td>21</td>
<td>21</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td>66</td>
</tr>
<tr>
<td>45 - 49 years</td>
<td>3</td>
<td>3</td>
<td>6</td>
<td>9</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>26</td>
</tr>
<tr>
<td>50 years &amp; over</td>
<td>2</td>
<td>-</td>
<td>10</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>14</td>
</tr>
<tr>
<td>Unknown</td>
<td>-</td>
<td>-</td>
<td>6</td>
<td>55</td>
<td>-</td>
<td>-</td>
<td>47</td>
<td>108</td>
</tr>
<tr>
<td>Total</td>
<td>415</td>
<td>86</td>
<td>412</td>
<td>568</td>
<td>102</td>
<td>9</td>
<td>242</td>
<td>1,834</td>
</tr>
</tbody>
</table>

(a) This table does not include Aboriginal juveniles in detention facilities other than gazetted prisons.
### TABLE 7.3: PERSONS TAKEN INTO POLICE CUSTODY AUGUST 1988, BY OFFENSES INVOLVED AND ABORIGINALITY OR NON-ABORIGINALITY(a)

<table>
<thead>
<tr>
<th>Offence</th>
<th>Aboriginal</th>
<th></th>
<th>Non-Aboriginal</th>
<th></th>
<th>Total</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>Per cent</td>
<td>No.</td>
<td>Per cent</td>
<td>No.</td>
<td>Per cent</td>
</tr>
<tr>
<td>Homicide</td>
<td>17</td>
<td>0.4</td>
<td>139</td>
<td>1.1</td>
<td>156</td>
<td>0.9</td>
</tr>
<tr>
<td>Assault</td>
<td>393</td>
<td>8.5</td>
<td>919</td>
<td>7.0</td>
<td>1,312</td>
<td>7.4</td>
</tr>
<tr>
<td>Sexual offences</td>
<td>38</td>
<td>0.8</td>
<td>201</td>
<td>1.5</td>
<td>239</td>
<td>1.3</td>
</tr>
<tr>
<td>Other against person</td>
<td>1</td>
<td>-</td>
<td>34</td>
<td>0.3</td>
<td>35</td>
<td>0.2</td>
</tr>
<tr>
<td>Robbery</td>
<td>18</td>
<td>0.4</td>
<td>201</td>
<td>1.5</td>
<td>219</td>
<td>1.2</td>
</tr>
<tr>
<td>Break and enter, fraud and theft</td>
<td>668</td>
<td>14.4</td>
<td>2,896</td>
<td>22.0</td>
<td>3,564</td>
<td>20.0</td>
</tr>
<tr>
<td>Property damage</td>
<td>91</td>
<td>2.0</td>
<td>296</td>
<td>2.2</td>
<td>387</td>
<td>2.2</td>
</tr>
<tr>
<td>Justice procedures</td>
<td>198</td>
<td>4.3</td>
<td>705</td>
<td>5.4</td>
<td>903</td>
<td>5.1</td>
</tr>
<tr>
<td>Drunkenness</td>
<td>2,153</td>
<td>46.4</td>
<td>3,081</td>
<td>23.4</td>
<td>5,234</td>
<td>29.4</td>
</tr>
<tr>
<td>Other good order offences</td>
<td>804</td>
<td>17.3</td>
<td>1,180</td>
<td>9.0</td>
<td>1,984</td>
<td>11.2</td>
</tr>
<tr>
<td>Drug offences</td>
<td>25</td>
<td>0.5</td>
<td>1,024</td>
<td>7.8</td>
<td>1,049</td>
<td>5.9</td>
</tr>
<tr>
<td>Drink driving</td>
<td>170</td>
<td>3.7</td>
<td>1,650</td>
<td>12.6</td>
<td>1,820</td>
<td>10.2</td>
</tr>
<tr>
<td>Other traffic offences</td>
<td>56</td>
<td>1.2</td>
<td>733</td>
<td>5.6</td>
<td>789</td>
<td>4.4</td>
</tr>
<tr>
<td>Other offences</td>
<td>7</td>
<td>0.1</td>
<td>84</td>
<td>0.6</td>
<td>91</td>
<td>0.5</td>
</tr>
<tr>
<td>Total</td>
<td>4,639</td>
<td>100</td>
<td>13,143</td>
<td>100</td>
<td>17,782</td>
<td>99</td>
</tr>
</tbody>
</table>

(a) People apprehended and placed in protective custody owing to intoxication, where it is not an offence, are not included in this analysis of offences.

**7.1.11** The report indicates that a total of 8,536 cases of public drunkenness leading to custody occurred, making up, nationally, 35% of the cases for which the reason for custody is available. (This proportion varied between the jurisdictions, with the Northern Territory having the highest proportion: 70%.) Overall, some 46% of the public drunkenness cases were Aboriginal people and more than three-quarters of the female drunkenness cases (78%) were Aboriginal. Drunkenness cases made up 57% of the Aboriginal custodies compared with 27% of the non-Aboriginal custodies. These data indicate that, throughout Australia, a substantial proportion of the work of police officers involved in community policing and lockup supervision was handling public drunkenness cases. This applies in all jurisdictions regardless of the legal status of public intoxication.
which 63% and 35% returned to prison. It was also found that Aboriginals in the group were much younger than the non-Aboriginals - 39.8% were under 20 years of age compared with 18.6% of the sample of non-Aboriginals.

The Committee agrees with the comments of Marshall Smith in his Paper "Aboriginal Imprisonment in Western Australia":

"It is clear that there is no one solution to the problem of Aboriginal imprisonment. We cannot expect one programme or innovation to work for all offenders but even a small reduction in the overall rate of recidivism will have a significant effect on the number of offenders we find in prison in the years to come."

Throughout this report, the Committee has reinforced the principle that imprisonment should be a sentence of last resort. From the Committee's observations of the ineffectiveness of imprisonment in deterrent or resocialisation terms for Aboriginals this principle should hold doubly true for Aboriginal people.

Yet in Western Australia, Aboriginals comprise 34.5% of the total prison muster but less than 2% of the overall population and of those in prison, around 60% are serving sentences of less than 3 months. The current system is patently not achieving the perceived needs of the community or the offender.

Alternatives to traditional imprisonment for Aboriginal people have been developed in other states. The Northern Territory, which used to have the highest imprisonment rate for Aboriginals has effected a reduction of around 15%, largely by its changed policy on fine default. Its D.A.R.E. (Drug and Alcohol Resistance Education) program to combat drug and alcohol abuse is now in operation in South Australia and New South Wales and its community policing system used as a model.

Queensland has opened the first Aboriginal Community prison run by Aboriginal people under contract to the Queensland Corrective Services Commission.

Both the Northern Territory and Queensland have successfully trialled mobile prisons, transportable to areas where labour is required; a walking track has been constructed in the Simpsons Gap National Park and prison labour was used extensively in the

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121 published in "Current Australian Trends in Corrections":1988:Editor David Biles

122 Department of Corrective Services Statistics: 1/7/90 to 31/5/91


124 see Appendix A

125 Gwandalan Community Correctional Centre, opened 25 August 1990 see Appendix A

126 Doug Owston, Secretary, NT Department of Correctional Services: Alice Springs Conference: April 1991
clear-up operation of the floods in Charleville.
Both jurisdictions plan to continue this program. 127
South Australia operates an Aboriginal Community Service Order program run by
Aborigines to perform work in and for Aboriginal communities.128
New South Wales has instigated a Post-Release Program specially designed to suit the
needs of Aboriginals.129
Just as imprisonment has proved neither 'successful' nor appropriate for Aboriginals,
parole and many of the other non-custodial alternatives, in their current format, have
proved equally inappropriate. It seems to the Committee, from its discussions and
observations, that alternatives have been unsuccessful because the programs are often
neither relevant nor meaningful in an Aboriginal context and are often logistically
impractical, impossible to supervise and culturally insensitive.
The employment of more Aboriginal people at all levels of corrections would ensure that
programs become relevant and pay sufficient attention to cultural needs and
circumstances. The Department of Corrective Services is already implementing this policy.
The Department, and evidence from Aboriginal witnesses, also drew to the Committee's
attention that a prime contributory factor in the lack of success by Aboriginal people on
parole is that many do not appreciate that once released from prison on parole, they are
still strictly under sentence and must adhere to the conditions attached to any community
sentence order. 130

The lack of understanding of the system appears to contribute to the negative experiences
which many Aboriginal people have had when in contact with the criminal justice system.
It is essential that more Aboriginal people are employed in the field of corrections and a
public relations exercise by the Department of Corrective Services should be aimed at
neutralising those negative feelings to encourage more interest in employment in this
area.
To this end, Aboriginal people should not be judged unsuitable for employment purely
on the grounds of lack of bureaucratic sophistication, short employment history or lack of
previous experience. Nor should the possession of a criminal record, except in certain
circumstances, be a contra-indication of suitability for employment. Less emphasis
should be placed on the interview process and more on the approval and advice of
outside referees, particularly in the area of acceptability to the Aboriginal community,

127 Graham Dalton, Deputy Director-General, Queensland Corrective Services
Commission: ibid.126
128 A program trialled in the Pitjantjatjara Lands, South Australia
129 A pilot program funded by ATSIC, begun in September 1989
130 Submission to the Committee by the Department of Corrective Services: 1990

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cultural knowledge and sensitivity and experience of the tribal network and commitment. It is in order to make the criminal justice system more relevant and effective for both offenders and the community that the Committee continues the theme set in the previous general section of the report by making the following recommendations.
SENTENCING PRACTICE

1. Imprisonment should be a sentence of last resort and where there are alternatives, imprisonment for Aboriginal people should be avoided unless their continued presence in the community presents the likelihood of danger to the community or themselves.

2. As discussed in Recommendation 22 of the first section of the Report, the Committee confirms its view that short terms of imprisonment — 3 months or less — are likely to be more detrimental than helpful and that short prison sentences are particularly inappropriate for Aboriginal offenders.

3. A term of imprisonment for default should not be used where the original offence was not punishable by imprisonment. 131

4. A wider range of options to custodial sentences should be developed and used to take into account tribal and traditional aspects where appropriate and the logistical difficulties of imprisonment for offenders, families and correctional authorities.

5. The Committee commends for further consideration in Western Australia, the recommendation of the Australian Law Reform Commission:

"It should be provided in legislation that, where a person who is or was at a relevant time a member of an Aboriginal community is convicted of an offence, the matters that the court shall have regard to in determining the sentence.... include so far as they are relevant, the customary laws of the Aboriginal community, and the customary laws of any other Aboriginal community of which some other person involved in the offence.... was a member at a relevant time." 132

6. The Committee recognises that in some instances, Aboriginal offenders may be subject to both statute and Aboriginal law. Consistent with the principle of avoiding double jeopardy, further consideration should be given to the

131 "Report on Aboriginal Customary Laws", ALRC 31 1986, para 533-4

132 Confirming the recommendation in the ALRC Report on Aboriginal Customary Laws ALRC 31 1986
appropriate incorporation and application of Aboriginal customary law in sentencing.

SUPERVISED COMMUNITY SENTENCE

7. The implications and operation of a community sentence (parole) and the consequences of not complying with the conditions must be explained to a prospective community detainee and to the community in which he or she is to be detained.

The Department of Corrective Services should, in its public relations campaign (Recommendation 17) enlist the assistance of Aboriginal groups and organise meetings with Community Councils to ensure that adequate information about community sentencing is freely available and in an easily understandable form.

8. Aboriginal prisoners could be subjected to the same range of supervision conditions as any other prisoner but special provision must be made to accommodate:

(i) the cultural importance of funerals;
(ii) the attendance at tribal meetings;
(iii) the use of a 'dry' community as an address for parole, home detention and reporting purposes.
(iv) supervision of parolees and other community detainees by a nominee of a community for reporting purposes where communication with Corrective Services officers is difficult to maintain on a regular basis.

SELF-DETERMINATION

One of the strongest and most frequently repeated themes at the Conference on Aboriginal Community Justice in Alice Springs was the need for Aboriginal solutions to Aboriginal problems. This is endorsed by Commissioner Elliott Johnston in the National Report into Aboriginal Deaths in Custody:

"Self-determination – the gaining by Aboriginal people of control over the decision-making processes affecting themselves, and gaining the power to make the ultimate decisions wherever possible – is, therefore, a key underlying issue considered by the Commission." 133

The Committee recognises the importance and supports the involvement of Aboriginals at all levels of the justice system, from police, court officials and prison officers through to community corrections officers and community support groups and makes the following recommendations to achieve this goal:

133 National Report of the Royal Commission into Aboriginal Deaths in Custody: Vol. 2: Chapter 20
9. Aboriginal community groups should be called upon to initiate and design community-based programs for offenders in their communities in liaison with the Department of Corrective Services.

10. Organisations and community groups should be provided with funding and resources and should be accountable financially for funding provided for approved community programs. The programs should be subject to constant review by the Department of Corrective Services.

11. Provision should be made for Aboriginal offenders to perform work for Aboriginal communities under Community Service Orders.

12. New instructions and criteria for funding for approved community programs should be developed and should include:
   (a) consultation with Aboriginal organizations;
   (b) the use of plain English;
   (c) emphasis on the assessed needs of a particular community;
   (d) the flexibility to accommodate different styles of presentation;
   (e) speedy processing and administrative procedures.

13(a) Aboriginal communities should be consulted and encouraged to accept responsibility for the control and supervision of their own community detainees.

13(b) However where there is a risk of danger or disruption to the community, offenders must not be forced upon them.

14. The employment of more Aboriginals should be encouraged at all levels of the criminal justice and correctional systems to supervise and provide support and advice to Aboriginal offenders and to police, court and correctional officers.

15. Communities should be able to nominate persons responsible for supervision of community detainees subject to the approval of the Department of Corrective Services in accordance with the spirit of the approved programs. Appointed nominees would be paid by the Department of Corrective Services.

ALCOHOL AND SUBSTANCE ABUSE

The Interim Report of the Royal Commission into Aboriginal Deaths in Custody found:

"that police lockups and to a lesser extent our prisons, are being utilised too freely to cope with persons who can in no way be termed 'criminals', who are to put it simply, grossly
disadvantaged by reasons of fundamental underlying social causes .... Our police and custodial facilities should not be used as clearing houses for the temporary accommodation and repair of the sick, the undernourished and the alcoholics.....police and prison personnel are neither trained nor equipped to assume the role of health or ambulance workers with the basic caring and diagnostic skills this involves...."

The National Report of the Royal Commission into Aboriginal Deaths in Custody endorsed those findings.\textsuperscript{134}

A decision of the Full Court in 1975 had stated the case against the use of imprisonment for drunkenness:

"No sentencing within the limits of s.54 of the Police Act will lead to the rehabilitation , that is to say, to the cure of an alcoholic, and no sentence within those limits will deter either the person so sentenced or others who are similarly addicted to alcohol from drinking. No question of retribution can arise."\textsuperscript{135}

As stated in the preamble to this section of the report, evidence given to the Committee has indicated the causal link between alcohol and the disproportionate numbers of Aboriginal people in custody. Whilst recognising that some communities have already established detoxification centres without Government support, the Committee makes the following recommendations to extend this process:

16. There should be alternatives to imprisonment for 'drunk and disorderly' offences. Aboriginal people should not be sentenced to periods of imprisonment for behaviour induced by alcohol and substance abuse only because there is no alternative, unless that behaviour presents a danger to their family or the community.

17. Communities should be encouraged to establish detoxification centres, and supported when they do, to deal with community offenders incapacitated by alcohol or drug abuse.

18. Detoxification Centres should be under the administration and supervision of the Alcohol and Drug Authority. Aboriginal nursing staff should be employed where possible and funding and resources for training of staff from the community should be made more available.

19. Maintenance of the centres should form part of the Aboriginal Community Service Order Program or Work and Development Order Program.

\textsuperscript{134} Chapter 15: The Harmful Use of Alcohol and Other Drugs

\textsuperscript{135} Murphy, Davis and Ward v. Watson 1975 WAR 23

114
As indicated earlier in the report, the Committee has formed the opinion that imprisonment is frequently inappropriate and harmful to Aboriginal offenders. In 1986, Rod Broadhurst of the Crime Research Centre in Perth commented on the ineffectiveness of imprisonment for Aboriginal people:

"This self-generating cycle of Aboriginal imprisonment produces chronic levels of recidivism approaching for all intents, certainty of failure......

High rates of imprisonment and recidivism challenge defensive aims such as incapacitation and punishment as well as the reductionist aims of correction and deterrence. We can infer that the utilitarian pretensions of prison have less face value than for their European counterparts. It also suggests that imprisonment as a method of control out of cultural context is by and large ineffective and, despite the growth of alternatives, remains the ost commonly applied sanction for Aboriginal offenders.

Such persistent over-use of imprisonment weakens deterrent, reformative and even punitive aims producing ultimately only institutional dependency."

Almost a hundred years ago, the Royal Commission on Native Welfare in 1899 had reported its belief that there was little to be gained by imprisoning Aborigines, and that imprisonment appeared not to be a deterrent to others because all that the group perceived was that "a man had disappeared".

It can be doubly harmful to Aboriginals living in rural and remote areas for whom there is often no other alternative. Imprisonment for those Aboriginals means removal not only from the community but from the locality, and relocation in a metropolitan area with the corresponding disruption and additional stress for families and isolation from community and tribal links for offenders. Transportation of offenders to metropolitan or urban prisons is also a costly use of the resources of the Department of Corrective Services

20. There should be a review of the Offenders Community Corrections Act to ensure that the necessary administrative machinery is in place to establish a wider range of community–based programs appropriate to metropolitan, rural and remote Aboriginals.

21. A range of programs capable of practical application and adaptation to the needs and different characteristics of metropolitan, rural and remote communities should be developed.


137 Thomas and Stewart. (1978), Imprisonment in Western Australia: Evolution, Theory and Practice
22. Programs should be based on need and initiated, developed and supervised by individual communities in liaison with the Department of Corrective Services which should provide the resources, funding and ongoing support.

23. There should be an integrated approach by the Department of Corrective Services and Aboriginal communities to ensure that community work, as a condition of any community sentence, benefits as far as practicable, the offender's own community to encourage his or her identification with that community and the community's perception of reparation by that offender.
Where it is not possible for the work to be performed for an offender's own community, other Aboriginal communities, with due regard to tribal differences, should benefit.

24. To ensure the continued interest of the participants and to maintain confidence in and respect for correctional authorities, funding for community based programs should be:
   a) provided as quickly as possible
   b) adequate to set up and run the program
   c) available before the project starts

25. The Department of Corrective Services should investigate the practicality and merits of establishing in Western Australia programs operating in other states. For example:
   i) Aboriginal Community Service Orders in South Australia.
   ii) Night Patrols in rural towns in the Northern Territory.
   iii) Post-Release Program for Aborigines in New South Wales.
   iv) Aboriginal Community Prisons in Queensland
   v) Mobile prisons in Queensland and Northern Territory.
   vi) Drug Abuse Resistance Education Program (DARE) in operation in Northern Territory schools.
   vii) Wilderness Projects for juvenile and young adult offenders in the Northern Territory.
   viii) Crisis Support Unit in Victoria

\[138\] Brief details of these programs are attached in Appendix A
APPENDIX A

(i) *Aboriginal Community Service Orders: South Australia*

As a consequence of a complaint in 1987 by Mr. A. J. Cannon, Stipendiary Magistrate, about the lack of sentencing options for courts sitting in the Pitjantjatjara Lands, the Minister for Community Welfare recommended that the Department of Correctional Services "investigate the appropriateness and feasibility of developing community programs for offenders in the Pitjantjatjara Lands."

The Department reported back in late 1988 and a project officer was appointed in February 1989.

Recommendations included *inter alia*:

1. **That the program be established along the lines suggested by a consensus of people living within the area and include the following:**
   
   a) each Community appoint its own supervisor;
   b) the Community Council decide where offenders are to work;
   c) offenders be incorporated into existing work programs;
   d) female offenders work in areas separate from the men;
   e) community service programs operate for one week each month;
   f) ceremonies, funerals, special occasions, important meetings and community functions be acknowledged as valid reasons for absence;

2. **That consideration be given to the establishment of a reciprocal arrangement with the Northern Territory Department of Correctional Services to cater for those people living near the borders of the Northern Territory and to take account of and allow for the mobility of some of the communities.**

3. **That a member of the Anangu Pitjantjatjara Council be a member of the panel appointed to interview applicants for a Departmental officer stationed in the area.**

4. **That the Department of Correctional Services conduct training programs for Community Service Program Supervisors and that the Supervisors be provided with uniforms.**

5. **That the program be implemented in gradual stages, one community at a time.**

6. **That before implementation, the Departmental Officer be 'introduced' to each community.**

7. **That the officer arrange to meet with each Community Council to discuss work programs and other relevant matters.**

8. **That the officer attend bi-monthly Court sittings held in the various communities.**

9. **That offenders be able to apply to the Clerk of the Court, on the day of sitting for Community Work/Fine Option**

10. **That the Court try to rotate its Sittings to include all communities.**
The Report also noted:

"Experience has shown that if a project involving Aborigines is to be successful, then the Aborigines need to be involved in the planning, structuring, implementation and machinations of such programs. The consultation process for this project has been lengthy and involved, but at no stage have the people of the Anangu Pitjantjatjara Lands been misled or coerced into supporting procedures which they do not fully understand, or do not really want. Each community has been dealt with as a separate entity, and each community's ideas incorporated into a program best suited for that particular community. The Communities of the Anangu Pitjantjatjara Lands want and need Community Service Programs as a sentencing option. To deny the people of the Anangu Pitjantjatjara Lands access to Community Service programs, is to preclude them from sentencing options available to other persons appearing before the Courts in South Australia. However, any programs established within the area will need to be structured differently from those already operating within South Australia, under the direction of the Department of Correctional Services, and have the flexibility that is culturally necessary to ensure their success."

The program has been trialled successfully with a 95% completion rate and is now being considered for extension into other areas.

(ii) Night Patrols: Northern Territory

The Julalikari Council organizes voluntary night patrols of the ten aboriginal town camps in the Tennant Creek area. A prime aim is to monitor behaviour and try to prevent conflict with the police or each other, often by picking up intoxicated persons and delivering them back to their camp or to the Tennant Creek Sobering-up Centre. The Councillors who organize the patrols are seeking to provide the structure for self-policing, seeking help from the police on their own terms and in relation to the priorities set by the Aboriginal people themselves. The scheme is being trialled in Alice Springs.

(iii) Post-Release programs: New South Wales


The objectives of the scheme are to:

(a) reduce the high rate of Aboriginal recidivism;
(b) facilitate Aboriginal ex-prisoners' transition from prison to the community;
(c) divert Aboriginal offenders from custodial sentences;
(d) encourage program participants to undertake training and education relevant to their needs;
(e) encourage participants to undertake further training in areas that build upon training they received in the program;
(f) assist participants to find stable employment.

Programs should address the individual and community needs of Aboriginal people and should be adaptable and creative in order to attract and maintain participants. It can be applied to Aboriginal people on bail remand, probation, parole or released from prison 'full-time'.

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It is funded by ATSIC but the funds are distributed by the New South Wales Probation and Parole Service to four Aboriginal Community Organizations who each select their own Aboriginal Project Officers to run the programs.

iv) **Aboriginal Community Prisons : Queensland**

Following the Review into Corrective Services in Queensland headed by Mr. Jim Kennedy in 1988, a number of innovative changes were introduced.

The former Department of Corrective Services was replaced by the Queensland Corrective Services Commission who now operate a number of correctional facilities under contract with various community organisations. One such organisation is the Brisbane Tribal Council which was instrumental in the establishment of the Gwandalan Community Correctional Centre in Brisbane, opened in August 1990.

The Centre is a gazetted prison which provides accommodation for 15 black and 10 white offenders. It offers them a wide range of rehabilitation programs designed to assist in the transition back to the community together with assistance in finding employment.

In order to be selected to attend the Centre, an offender must:

i) have served a certain proportion of his sentence;

ii) request transfer

iii) present no violent risk to the community

The conditions of attendance are:

i) participation in personal development programs;

ii) performance of community work for an Aboriginal community 2 days per week;

Prisoners are treated like other open security prisoners and are allowed weekend leave of absence to a specified location. Unacceptable behaviour or a breach of any of the rules or conditions will result in a return to prison. The 'failure' rate in the first year of operation was 10%.

The Centre was constructed by Aboriginal people and government funding was supplemented by money from the Department of Employment, Education and Training. The staff of the Centre are all Aboriginal and accredited by the Queensland Corrective Services Commission after careful scrutiny of their attitude and aptitude but the preclusion from employment on the grounds of a criminal record has been removed.

The Brisbane Tribal Council under the direction of Don Davidson, is planning to extend the program through other facilities and is investigating the establishment of ancillary projects and support systems in conjunction with the Centre eg a diversionary facility and detoxification centre to deal with alcohol problems, community service programs for the benefit of Aboriginal communities.

v) **Mobile prisons : Queensland and Northern Territory.**

In Northern Territory, a mobile work camp for 20 minimum security prisoners has been established. They have been employed to construct nature trails and a disabled persons track in the Simpsons Gap National Park. The program has been found to be particularly appropriate for Aboriginal offenders and is likely to be extended for other similar projects.

In Queensland, a mobile workforce of medium security prisoners was used to clear up
and reconstruct after the floods in Charleville. The program was a great success and received the full support of the community. The Queensland Corrective Services Commission intends to extend the scheme to other appropriate community projects and to amend the working conditions of supervising corrections officers on the lines of the 'fly in–fly out' arrangement used by many mining companies.

vi) Drug Abuse Resistance Education Program (DARE): Northern Territory 140

D.A.R.E. is a primary prevention program aimed at children who have not yet experienced drugs, the definition of which includes alcohol and tobacco. Its goal is to reduce the incidence of drug abuse through the presentation of a prevention curriculum by specially selected and trained uniformed police officers. The idea originated from Los Angeles and became the subject of a feasibility study and a trial at 2 Darwin primary schools in 1988. The school and community response was encouraging and an independent evaluation of the scheme conducted in April 1989 confirmed the benefits of a positive approach to drug use prevention rather than the traditional emphasis on the harmful effects of drugs and alcohol. It was also found that a police officer, properly trained and in full uniform provided a real impact on and focus for children. The project was extended and is now offered at all Northern Territory primary schools and is under consideration by the School of the Air in Katherine and Alice Springs. The curriculum focusses on 4 major areas:

i) the provision of accurate information about alcohol and drugs;
ii) the teaching of decision–making and assertiveness skills;
iii) the teaching of resistance to peer pressure;
iv) the provision of ideas for positive alternatives to drug use and stress management through enhanced self-esteem, interpersonal and communication skills and the formation of support groups using positive role–models.

vii) Wilderness Projects: Northern Territory

This project has proved particularly successful for Aboriginal offenders as it presents the right combination of physical work and exercise with education, discipline and responsibility but in a rural environment.

The accommodation is constructed by the participants and the work projects are to service the requirements of the Conservation Department. Offenders are expected to cook their own meals, work and take part in exercise and educational programs.

It offers a tougher option than traditional detention but has proved successful in terms of completion rates and the project is expected to be continued.

viii) Crisis Support Unit: Victoria

Although not operating exclusively for Aboriginal people in Victoria, this scheme has obvious merit for Aborigines. The scheme is a joint venture between the Police, Health and Community Services departments in Victoria.

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Paid volunteer crisis counsellors accompany police on calls relating to domestic or victimless crimes, e.g. drug or alcohol abuse, where there is no risk of violence. The team of 4-5 trained counsellors operate on the 6pm–2am shift, seven nights of the week in order to deal with various forms of "crisis" and take over from police officers where possible. The Co-ordinator of the Unit follows up the "crisis" in order to ascertain whether further support is required by any of the participating departments.

The scheme was initially received with great scepticism by the police but has proved so successful in diffusing potentially "criminal" situations and allowing police resources to be employed more effectively, that the police themselves supported its continuance when it appeared that further funding would not be available.\textsuperscript{141}

\textsuperscript{141} Information supplied by the Crisis Support Unit, Melbourne.
RECOMMENDATIONS

1. The principle of parole as an essential and integral part of the correctional system has been confirmed by the majority of people who have made submissions and the Committee recommends the continuation of a system of supervised conditional release which provides support for the prisoner and protection for the community.

2. Parole should be renamed *SUPERVISED COMMUNITY SENTENCE* to convey to the general public and to the prisoner more accurately the meaning and effect of strictly conditional release.

3. A statement that the paramount consideration in granting a supervised community sentence (parole) should be the protection of the community should be embodied in the *Offenders Community Corrections Act*.

4. The current Parole Board should be renamed the Community Sentence Board with the following further changes:
   i) membership of the Board should be increased to 8 by the addition of one community representative;
   ii) the additional community member should be an independent full-time statutory officer appointed by the Governor, reporting directly to the Chairman with responsibility for:
      a) liaison between the Board, the Department and prisoners;
      b) visiting prisons and community corrections centres to ensure that prisoners and corrections officers are fully informed about supervised community sentence issues;
      c) explaining and discussing Board decisions
   iii) the judicial member appointed as Chairman should concurrently hold office as a judge of the Supreme Court;
   iv) the quorum for meetings should be the Chairman or member presiding and 4 other members of whom two must be community members;
   v) a provision should be included to allow urgent interim decisions to be taken by a special subcommittee comprising the Chairman, one community member and one other member of the Board.

5. All prisoners should be eligible for a Supervised Community Sentence (parole) except those:
i) who have been adjudged unsuitable by the sentencing judge
ii) for whom the Executive Director, Corrective Services, has exercised discretion to refer consideration for community sentence eligibility to the Board
iii) who have refused a supervised community sentence or have asked for it to be granted.

6. The "special term" currently defined in s.40b(1) of the Offenders Community Corrections Act as a sentence of not less than 5 years or more imposed in respect of offences of violence against the person, should be extended to include sentence of not less than 3 years for offences of that nature.

7. Eligibility for Supervised Community Sentence (parole) should remain at the one-third mark on sentences of 6 years or less and at two-thirds less 2 years of sentences of more than 6 years.

8. The minimum period on Supervised Community Sentence (parole) should be 6 months and the maximum 2 years.

9. Statutory provision should be made to allow the aggregation of sentences for the purpose of calculating eligibility for Supervised Community Sentence (parole) by the Department of Corrective Services.

10. One third remission of head sentence should remain but on the basis of being a privilege which can be lost for breaches of the law.

11. The existing 10% remission under the Prison Regulations should be abolished.

12. Prisoners serving a supervised community sentence (parole) could be subjected to a range of supervision conditions including:
   i) treatment programs
   ii) Community Service Orders
   iii) specific treatment programs
   iv) non-association orders
   v) electronic surveillance
   vi) random visits to their homes and places of employment
   vii) random telephone calls
viii) other such conditions as may be appropriate.

13. Repeat offenders of serious crime against the person should be placed on intensive treatment and supervision programs as a major condition of their conditions whilst serving a supervised community sentence (parole).

14. All prisoners who have been judged ineligible for Supervised Community Sentence (parole) because of the nature of the crime or their antecedents, and who are serving effective sentences of 2 years, should be given the opportunity of rigorous pre-release programs combined with work and home release, during the last 6 months of their custodial sentence to assist in their transition to release in the community.

15. The Community Sentence Board should be required by the sentencing judge to consider victim safety when making any decisions pertaining to the community sentence (parole) of a prisoner convicted of a serious crime against the person. Victims of serious violent crime and immediate family of any prisoner shortly to be considered for Supervised Community Sentence (parole) should:

i) be informed of that consideration;

ii) be given the opportunity to make written submissions regarding the conditions of that community sentence eg. orders of non-association or non-harassment or requiring the prisoner not to reside in the family home;

iii) be notified of the Board's decision prior to release.

16. Prisoners who breach a Supervised Community Sentence (parole) by re-offending should receive full credit for the period of time spent on serving a community sentence (parole) prior to the commission of the offence ('clean street time')

17. An extensive public relations and education program should be undertaken by the Department of Corrective Services with participation by the police, the judiciary and the Law Society. Additional funding should be provided for this purpose.

18. All sentencing judicial officers should be encouraged to explain more fully the reasons for their choice of sentence, the meaning and effect of that sentence and the portion which is to be served in the community to emphasise not only to the general public but also to the offender that a Supervised Community Sentence (parole) is part of the sentence.
19. All sentenced prisoners should be advised of voluntary correctional programs available to them, the operation of remission, how that remission may be lost and details of the Supervised Community Sentence program, within 72 hours of their arrival at a prison.

20. i) A sentence of imprisonment should be applied only if the judicial officer is convinced having regard to any guideline judgments, the nature of the offence and the maturity and antecedents of the offender that the paramount principle of the protection of the community would be placed in jeopardy, that other options have already failed, or have an extreme likelihood of failure.

   ii) Judicial officers should be encouraged to become more aware of alternatives to imprisonment and the development of new options and should be given complete discretion to use the full range of sentencing options, or combination of those options as they see fit

21. i) For alternatives to imprisonment to work it is essential that appropriate funding and resources be allocated by State Government not only to community-based correctional alternatives but also to non-government and local government authorities operating in the community. This should be achieved by redirecting some funding from current prison-based programs to community-based programs.

   ii) The process for allocation and approval should be streamlined so that projects or programs are readily available when needed thus ensuring the continued interest, respect and credibility of participants.

22. Head sentences of 3 months or less, with exceptions for offences of violence against the person should be abolished or repealed.

23. 1. The Court of Criminal Appeal should be empowered to give guideline judgments to be followed by Courts when sentencing a convicted person in the following circumstances and with the following attributes:

   (i) in determining any application for leave to appeal against sentence or any appeal

      (a) either by a convicted person or by the prosecution;

      (b) whether or not the judgment is necessary for the
determination of that application or appeal;
(ii) of its own motion; or
(iii) at the request of the Crown.
(iv) A guideline judgment may set out:
(a) the criteria to be applied in selecting a particular sentencing option;
(b) the appropriate range within which discretion should be exercised in relation to the selection of a particular sentencing option;
(c) the aim of sentencing persons convicted of a particular offence or class of offence;
(d) the criteria to be applied in determining the seriousness of a particular offence or class of offence;
(e) the criteria to be applied in mitigation to reduce a term of imprisonment or any other sanction which would otherwise be imposed;
(f) the weight or relative weight to be given to any particular criteria;
(g) matters relating to the principle of imprisonment as a last resort as stated in s.19A of the Criminal Code, with particular reference to the need to consider the appropriateness of imprisonment for certain offences eg drunkenness, minor public order offences, fine default, minor breaches of community sentences;
(h) any other matter which the Court considers relevant
(v) Guideline judgments may be reviewed, varied or revoked in any subsequent proceedings by the delivery of a further guideline judgment.

2. The Chief Justice may report to Parliament on any sentencing matter he or she believes should be brought to Parliament's attention with particular regard to:
(a) the effects of sentencing over a period of time on the prison population;
(b) the effects of certain statutory penalties and the need for penalties to be reviewed;
(c) the effects of sentencing options.

3. A sentencing information database to provide accurate data of
sentencing matters should be established for research, forecasting and statistical purposes.

24. Because a large proportion of adult prisoners have experienced their first detention as juveniles, the Committee would call on the Government to instruct Ministerial or Departmental working parties, and encourage the Legislative Assembly's Select Committee on Youth Affairs,
   (i) to examine the high imprisonment rate for juvenile offenders;
   (ii) to investigate further the problem of the 'juvenile crime circle' by targeting recidivists;
   (iii) to identify and develop alternatives to imprisonment for young offenders.

25. Country and regional areas must be adequately resourced from state funds on minimum per capita of resident population basis.

26. There should be a general review of the Criminal Code and in particular:
   i) the sentence of 'Governor's Pleasure';
   ii) statutory sentences for crimes of manslaughter, murder and wilful murder;
   iii) sentences for white collar crime to allow judges greater discretion in mixing sentences of imprisonment, means-tested fines and community based penalties.
   iv) a comparison of penalties for crimes against the person with penalties for crimes against property;
   v) decriminalisation of certain minor offences.

27. A new process for the imposition, collection and enforcement of fines should be established with the following characteristics but without affecting the current scheme of conversion of fines to Work and Development Orders:
   i) the ability of a person to pay should be established before setting the level of the fine;
   ii) the courts should be given greater flexibility when dealing with defaulters such as garnishment of wages, salary or social welfare benefit payments seizure of assets;
   iii) incarceration should only be used if a defaulter has wilfully not complied with a fine order or has no reasonable excuse for not paying.
28. i) That the Government institute a review of the best and most efficient use of correctional facilities.
   ii) That the purpose of open security prisons be reviewed and other options such as mobile prisons be considered.

29. The use of imprisonment for persons on remand should be limited and the system of Home Detention be extended to include suitable candidates provided there is no risk to the community or themselves.
SENTENCING PRACTICE

1. Imprisonment should be a sentence of last resort and where there are alternatives, imprisonment for Aboriginals should be avoided unless their continued presence in the community presents the likelihood of danger to the community or themselves.

2. As discussed in Recommendation 22 of the first section of the Report, the Committee confirms its view that short terms of imprisonment – 3 months or less – are likely to be more detrimental than helpful and that short prison sentences are particularly inappropriate for Aboriginal offenders.

3. A term of imprisonment for default should not be used where the original offence was not punishable by imprisonment.

4. A wider range of alternatives to custodial sentences should be developed and used to take into account tribal and traditional aspects where appropriate and the logistical difficulties of imprisonment for offenders, families and correctional authorities.

5. The Committee commends for further consideration in Western Australia, the recommendation of the Australian Law Reform Commission:

   "It should be provided in legislation that, where a person who is or was at a relevant time a member of an Aboriginal community is convicted of an offence, the matters that the court shall have regard to in determining the sentence... include so far as they are relevant, the customary laws of the Aboriginal community, and the customary laws of any other Aboriginal community of which some other person involved in the offence... was a member at a relevant time."

6. The Committee recognises that in some instances, Aboriginal offenders may be subject to both statute and Aboriginal law. Consistent with the principle of avoiding double jeopardy, further consideration should be given to the appropriate incorporation and application of Aboriginal customary law in sentencing.

SUPERVISED COMMUNITY SENTENCE

7. The implications and operation of a community sentence (parole) and the
consequences of not complying with the conditions must be explained to a prospective community detainee and to the community in which he or she is to be detained.

The Department of Corrective Services should, in its public relations campaign (Recommendation 17) enlist the assistance of Aboriginal groups and organise meetings with Community Councils to ensure that adequate information about community sentencing is freely available and in an easily understandable form.

8. Aboriginal prisoners could be subjected to the same range of supervision conditions as any other prisoner but special provision must be made to accommodate:

(i) the cultural importance of funerals;
(ii) the attendance at tribal meetings;
(iii) the use of a 'dry' community as an address for parole, home detention and reporting purposes.
(iv) supervision of parolees and other community detainees by a nominee of a community for reporting purposes where communication with Corrective Services officers is difficult to maintain on a regular basis.

SELF-DETERMINATION

9. Aboriginal community groups should be called upon to initiate and design community-based programs for offenders in their communities in liaison with the Department of Corrective Services.

10. Organisations and community groups should be provided with funding and resources and should be accountable financially for funding provided for approved community programs. The programs should be subject to constant review by the Department of Corrective Services.

11. Provision should be made for Aboriginal offenders to perform work for Aboriginal communities under Community Service Orders.

12. New instructions and criteria for funding for approved community programs should be developed and should include:

(a) consultation with Aboriginal organizations;
(b) the use of plain English;
(c) emphasis on the assessed needs of a particular community;
(d) the flexibility to accommodate different styles of presentation;
(e) speedy processing and administrative procedures.

13(a) Aboriginal communities should be consulted and encouraged to accept responsibility for the control and supervision of their own community detainees.

13(b) However where there is a risk of danger or disruption to the community offenders must not be forced upon them.

14. The employment of more Aboriginals should be encouraged at all levels of the criminal justice and correctional system to supervise and provide support and advice to Aboriginal offenders and to police, court and correctional officers.

15. Communities should be able to nominate persons responsible for supervision of community detainees subject to the approval of the Department of Corrective Services in accordance with the spirit of the approved programs. Appoint nominees would be paid by the Department of Corrective Services.

ALCOHOL AND SUBSTANCE ABUSE

16. There should be alternatives to imprisonment for 'drunk and disorderly' offences. Aboriginal people should not be sentenced to periods of imprisonment for behaviour induced by alcohol and substance abuse only because there is no alternative, unless that behaviour presents a danger to their family or community.

17. Communities should be encouraged to establish detoxification centres, supported when they do, to deal with community offenders incapacitated by alcohol or drug abuse.

18. Detoxification Centres should be under the administration and supervision of the Alcohol and Drug Authority. Aboriginal nursing staff should be employed wherever possible and funding and resources for training of staff from the community should be made more available.

19. Maintenance of the centres should form part of the Aboriginal Community Ser Order Program or Work and Development Order Program.
20. There should be a review of the *Offenders Community Corrections Act* to ensure that the necessary administrative machinery is in place to establish a wider range of community-based programs appropriate to metropolitan, rural and remote Aboriginals.

21. A range of programs capable of practical application and adaptation to the needs and different characteristics of metropolitan, rural and remote communities should be developed.

22. Programs should be based on need and initiated, developed and supervised by individual communities in liaison with the Department of Corrective Services who should provide the resources, funding and ongoing support.

23. There should be an integrated approach by the Department of Corrective Services and Aboriginal communities to ensure that community work, as a condition of any community sentence, benefits as far as practicable, the offender’s own community to encourage his or her identification with that community and the community’s perception of reparation by that offender. Where it is not possible for the work to be performed for an offender's own community, other Aboriginal communities, with due regard to tribal differences should benefit.

24. To ensure the continued interest of the participants and to maintain confidence in and respect for correctional authorities, funding for community-based programs must be:
   a) provided as quickly as possible
   b) adequate to set up and run the program
   c) available before the project starts

25. The Department of Corrective Services should investigate the practicality and merits of establishing in Western Australia programs operating in other states. For example:
   i) *Aboriginal Community Service Orders* in South Australia
   ii) *Night Patrols* in rural towns in the Northern Territory
   iii) *Post-Release Program for Aborigines* in New South Wales
   iv) *Aboriginal Community Prisons* in Queensland
v) Mobile prisons in Queensland and Northern Territory
vi) Drug Abuse Resistance Education Program (DARE) in operation in Northern Territory schools
vii) Wilderness Projects for juvenile and young adult offenders in the Northern Territory.
viii) Crisis Support Unit in Victoria
GLOSSARY OF TERMS

parole
The portion of an offender's sentence which is served under supervision in the community.

minimum term
The period during which an offender was not eligible to be released on parole. This period is now referred to as the non-parole period.

non-parole period
The period which a prisoner is required to serve before becoming eligible to be released from prison on parole.

(paragraph 37A of the Offenders Community Corrections Act 1963)

parole eligibility date
The date at which a prisoner is deemed by the sentencing court to be eligible for consideration to serve the remaining part of his sentence under supervision in the community. In Western Australia the parole eligibility date is established by statutory formula.

Parole Board
An autonomous body chaired by a judge of the Supreme Court representing a range of community and correctional interests with the following powers:

(i) the issuing of parole orders
(ii) the deferment or withholding of parole after the parole eligibility date
(iii) the variation, suspension or cancellation of parole orders

breach of parole
Non-compliance with any of the terms or conditions of a parole order or conviction of an offence for which the penalty is a further term of imprisonment may be deemed a breach of parole.

'clean street time'
The period of time during which a parolee complied with all the terms and conditions of his/her parole order and committed no further imprisonable offence.

head sentence
The total sentence imposed by the court without reductions for remission or parole.

remission
(a) The automatic reduction of one-third of the total head sentence as an incentive to good conduct
(b) The reduction of the non-parole period by 10% for good conduct whilst in custody

*finite sentence*
A sentence for which no eligibility for parole has been ordered by the sentencing court.

(b) A sentence of less than one year.

*special term*
A term of imprisonment of not less than 5 years imposed in respect of an offence of serious violence against the person.

*periodic detention*
Periods of imprisonment served by an offender eg. at the weekend.

*sentence during 'Governor's pleasure'*
An indeterminate sentence imposed on an offender who is judged by the court to be either an habitual criminal or because of the nature or circumstances of the offence or the offender's character or mental condition.

*statutory sentence*
A fixed sentence imposed by statute for a particular offence.

*suspended sentence*
A sentence of imprisonment which will be imposed if the offender commits further offences or fails to comply with the terms and conditions of the sentence.

*remand*
Time spent in custody following arrest and prior to trial and sentence.

*home detention*
A home detention order may be made in respect of a prisoner who is serving a term of imprisonment of less than one year, who has served one third of the term imposed, who is not eligible for parole. The order is subject to strict conditions and supervision.

*community service order*
An order imposed instead of a term of imprisonment requiring a convicted offender to perform a specified number of hours of unpaid work.

(i) A court of petty sessions is appointed to supervise the order
(ii) the offender is required to report in person at a specified place or to specified person
(iii) a community service order may require an offender to pay damages for injury or compensation
(iv) a community service order may require an offender to attend education programs
(v) a sentencing court may impose a probation order or other disqualification in addition to a community service order

(section 208 of the Offenders Community Corrections Act 1963)

work and development order
A judge may impose a work and development order instead of a term of imprisonment on an offender who has defaulted in payment of a fine.
An offender given such an order is obliged to participate in a community corrections program pro rata the sentence of imprisonment which would have been imposed.

work release order
A prisoner who has served at least 12 months of his/her sentence may become eligible for consideration by the Parole Board for strictly conditional release from prison for:
(i) participation in a community based program;
(ii) to seek or engage in gainful employment;
(iii) to work for a charitable or voluntary organization approved by the Chief Executive Officer.

antecedents
An offender's previous history.

rate of imprisonment
The number of prisoners expressed at a rate per 100,000 head of total population.

recidivism
Repeated or habitual relapse into crime.
COMMITTEE'S TIMETABLE

The Committee met 29 times between 18 October 1989 and 16 August 1991.

VISITS BY THE COMMITTEE

Parole Board
Canning Vale Prison
Karnet Prison Farm
Fremantle Prison

Various sentencing days in the District Court, the Supreme Court, the Court of Criminal Appeal.

OVERSEAS AND INTER-STATE VISITS


    Havana, Cuba  27 August - 7 September 1990

    Attendance by the Chairman as a member of Official Australian Delegation.

* Australian Institute of Criminology Conference entitled 'Healing our People': Aboriginal Community Justice and Crime Prevention Forum.

    Alice Springs, 2 – 5 April 1991

    Attendance by the members of the Committee and the Advisory/Research Officer.
WRITTEN SUBMISSIONS

The Committee received written submissions from the following:

- Judges of the District Court
- Sister Bernadine Daly
- People Against Child Sexual Abuse
- Liberal Party of Australia - Bullcreek, Bateman Branch
- Christian Justice Association
- Parole Board
- Judges of the Supreme Court Bench
- Department of Corrective Services
- Outcare: Civil Rehabilitation Council of WA (Inc.)
- Law Society of WA
- Crown Prosecutor (in consultation with the Solicitor General and Crown Counsel)
- Criminal Law Association
- WA Police Union of Workers
- Aboriginal Legal Service
- Long Term Division, Fremantle Prison

and 68 submissions from private individuals.
ORAL SUBMISSIONS

Hon. David Malcolm, Chief Justice of WA  
Hon. Judge Heenan, Chief Judge of The District Court  
Hon. Judge Charters, District Court  
Hon. Judge Clarke, District Court  
Hon. Judge Hammond, District Court  
Hon. Judge Healy, District Court  
Hon. Judge Kennedy, District Court  
Hon. Judge O'Dea, District Court  
Hon. Judge Whelan, District Court  
Hon. Judge Williams, District Court  
Mr Steve Sparkman, Senior Community Corrections Officer  
Mr Kevin Parker, Solicitor General  
Mr Ian Hill, Executive Director, Department of Corrective Services  
Mr Marshall Smith, Community Corrections Officer (Roebourne)  
Mr Frank Zanetti, Acting Commissioner of Police  
Detective Inspector R. M. Bowers  
Superintendent A. I. Davies  
Detective Superintendent C. G. Ghockson  
Mr Brian Hiscock, Senior Prison Officer  
Mr Brian Leicester, Prison Officer  
Mr M. J. Brennan, Police Union  
Mr R. T. Gasgoigne, Police Union  
Mr Terence Gott, Police Union  
Mr Peter Sirr, Executive Director, Outcare  
Mrs Sue Gordon, Magistrate, Perth Childrens' Court
The Hon J M Berinson, Attorney General

Mr John Bridge, Co-ordinator Aboriginal Visitors Scheme (AVS)

Mr Albert Corunna, Aboriginal Visitors Scheme (AVS)

Ms Linda Dorendorff, Project Officer Aboriginal Visitors Scheme (AVS)

Ms Merrilyn Green, Geraldton Streetwork Aboriginal Corporation (AVS)

Ms Carol Gunning, Lecturer Ministry of Education (AVS)

Ms Julie Harris, Aboriginal Visitors Scheme (AVS)

Ms Abigail Harry, Aboriginal Visitors Scheme (AVS)

Mr Maitland Hedlam, Aboriginal Visitors Scheme (AVS)

Ms Lorraine Jackson, Aboriginal Visitors Scheme (AVS)

Mr Kevin Lewis, Aboriginal Visitors Scheme Boulder (AVS)

Mr Timmy Loyd, Aboriginal Visitors Scheme (AVS)

Ms Lorraine Marshall, Aboriginal Visitors Scheme (AVS)

Ms Daisy Mamo, Aboriginal Visitors Scheme (AVS)

Ms Jessie Moses, Aboriginal Visitors Scheme (AVS)

Ms Marie Pryor, Aboriginal Visitors Scheme (AVS)

Ms Sylvia Pryor, Aboriginal Visitors Scheme (AVS)

Ms Barbara Rose, Aboriginal Visitors Scheme (AVS)

Mr Leo Thomas, Health Worker Kalgoorlie (AVS)

Ms Dorothy Winmar, Aboriginal Visitors Scheme Bentley (AVS)

Mr Ralph Winmar, Employment Officer Eastern Region Aboriginal Employment Services

Ms Debby Woods, Aboriginal Planning Authority

Mr Rod Broadhurst, Senior Research Fellow, Crime Research Centre, University of Western Australia
BRIEFINGS

* Mr Neil Morgan, Lecturer in Law, University of Western Australia
* Mr Rod Broadhurst, Senior Research Fellow, Crime Research Centre, University of Western Australia
* Mr Bill Bykerk, Secretary, Parole Board
* Ms Laurene Dempsey, Legal Adviser, Parole Board
* Mr Ian Vaughan, Assistant Director, Prisoner Placement, Department of Corrective Services
APPENDIX 5

EXTRACTS FROM PARLIAMENTARY AND LAW REFORM COMMISSION
REPORTS SEMINARS, CONFERENCES AND DISCUSSION PAPERS
ON ASPECTS OF SENTENCING, IMPRISONMENT AND PAROLE
1960


"Since local prison conditions are what they are, even today, almost everywhere in the world, and since for want of material resources reforms come about slowly, there is no doubt that criminal penalties suitable as alternatives to short-term imprisonment should be used as widely as possible."

(Page 75)


"180: Despite the authoritative recognition of the necessity for compulsory after-care, and despite the acceptance of the conditional release by most nations, the fact remains that only a relatively small percentage of prisoners are released on parole ..."(Page 43)

1965


"Perhaps the most urgent matter in this field today is to promote the widespread acceptance of probation by the community, so as to ensure its introduction into many countries and the extension of its use where it has already taken root. It is now increasingly being recognized that the public must be educated to approach the advantages of probation and be well informed of its rehabilitative merits. Furthermore, the public must be convinced that probation does not present a greater risk to the community than any other treatment measure. A public relations programme is thus called for. It is submitted the same is to be said of parole.

(Page 19)

As regards the conversion of fines into subsidiary imprisonment, it is felt that this method is discriminatory and unacceptable, particularly as there are other ways of setting the obligation ......" (Page 23)

1973

4. "SENTENCING TO IMPRISONMENT: PRIMARY DETERRENT OR LAST RESORT?"; Proceedings of the Institute of Criminology; No. 16; 10 May.

(a) The Honourable Mr Justice K. S. Jacobs, The President of the Board of Appeal, Supreme Court, Sydney.

"This brings me to the proposition that, though the sentence of imprisonment is the primary deterrent for more serious crime, using that phrase in the sense to which I
have referred earlier, it does not follow that the actual serving of the whole or any major part of that sentence in actual incarceration is a necessary condition of the deterrent. It is here that the various concepts of the suspended sentence and the release on probation become very important ... In such a scheme it is in my view important that the judge be entrusted with a choice not only in mercy but also as the instrument of any social policy of reformation or rehabilitation.

I would express the conclusion that the modern concept of parole in New South Wales under the Parole of Prisoners Act can meet many of the desired requirements provided that the sentence is regarded as the reflection of the community's disapproval and the release on parole as a controlled attempt at rehabilitation and saving of expense to the State.

...... A sentence of imprisonment of short term should in my view be truly a last resort. Though it may be a deterrent its disadvantages to the prisoner and to the community are outweighed by any such advantage. The sanction which the community requires can be met by another form of punishment, particularly by a fine ......

Whatever be the alternatives I think that prison should be so much the last resort that there should never be a sentence of imprisonment of less than one year or possible two years and the sentence of imprisonment should only be able to be imposed in very special circumstances, perhaps as an extended sentence only, for purposes of attempted rehabilitation with a fixed non-parole period of six months."

(b) Mr W. R. McGeechan, AASA, ACIS, Commissioner of Corrective Services for NSW.

Quoting from the Portolesi Case in the Court of Criminal Appeal where it was said:

"Some of the statistical studies placed before us showed, it was submitted, not only that non-institutional treatment is as good as imprisonment in terms of reconviction rates but that fining is positively better than other probation or institutional treatment. Other parts of the material submitted to us were relied upon as indicating that imprisonment was inferior to community-based treatment so far as the reconviction rate is concerned and that long sentences are more effective, from this point of view, than short ones."

The material relied upon was said to lead to the conclusion that the future of correctional systems lies in greater use of community-based treatment and on abatement of the use of imprisonment.

Mr McGeechan commented:

"Now with these principles I am wholeheartedly in accord ......".

5.

"FIRST REPORT: SENTENCING AND CORRECTIONS" (THE MITCHELL REPORT); Criminal Law and Penal Methods Reform Committee of South Australia; July.

"The problems of imprisonment are therefore likely to be with us for a long time yet. In our view these problems can best be dealt with by continuing to make available and experiment with non-custodial and semi-custodial sentences, by much improving the administration of the prison system for both staff and prisoners, and by establishing clear criteria for the imposition of a prison sentence on an offender with a view to not taking that step unless there appears to be no reasonable
alternative.

In our opinion supervision after release from prison is a useful and helpful measure from the point of view of both the community at large and the offender in particular. We recommend its adoption as an automatic consequence of any prison sentence of more than 3 months.

6. "PAROLE AND REHABILITATION" – Paper Prescribed by Mr Justice Allen (Chairman, NSW Parole Board) at the Austral–Asian Pacific Regional Forensic Sciences Conference 'Crimes of Violence', 20–24 April. [Reported in: Proceedings of the Institute of Criminology; No. 26; 'Parole in Practice in NSW; (Seminar); 17 March, 1976].

"One of the major recommendations made by the Second United Nations Congress on the Prevention of Crime and Treatment of Offenders was this:

"It is desirable to apply the principle of release before the expiration of the sentence, subject to conditions, to the widest possible extent, as a practical solution of both the social and the administrative problem created by imprisonment."


The greatest cause of recidivism is the release of prisoners without support, accommodation or enough money into the same environment which prompted them to turn to crime in the first place.

Because of the clear link between the lack of pre-release and after care and recidivism, some form of positive assistance to overcome this problem is obviously vital, not only for the prisoner, but for the community.

Despite disagreement about the form that alternatives to or variations of imprisonment should take, there is general agreement on the fundamental point that prison should be used as a last resort.

8. "THE FAILURE OF IMPRISONMENT: AN AUSTRALIAN PERSPECTIVE"; Roman Tomasic and Ian Dobinson; Law in Society Series (No. 3).

"...... it is very doubtful whether the prison environment is the most appropriate, or for that matter the most desirable, place in which to impart skills of use to the community at large.

Although we recognise that prisons cannot be abolished overnight, it is a widely acknowledged criminological opinion that at least four out of five prison inmates could be released immediately without any danger to the community. Moreover, it is also widely agreed that most prisoners ought not be in prison. Consequently ... future reforms of the prison system should move in the direction of emptying prisons
and that alternatives ought not to entrench new forms of coercion."

9. "A REPORT ON PAROLE, PRISON ACCOMMODATION AND LEAVE FROM PRISON IN WESTERN AUSTRALIA" (The Parker Report); Mr Kevin Parker QC; February.

"All of this leads me to the firm recommendation that parole should be continued in WA. However, significant changes are necessary.

Parole offers significant advantages to those who need supervision and counselling to help them adjust to life outside prison and to cope with its difficulties, and also to those who learn from exposure to the criminal justice system. The community benefits from these advantages. As long as they can be maintained without causing undue risk to the community from offences by parolees, and without shaking public confidence in the criminal justice system because it appears too lenient, it seems desirable that it be maintained."


On the recommendations contained in the Report of the Royal Commission into NSW Prisons (the 'Nagle Report'):
"Running through these recommendations and elsewhere in the Report is a clearly discernible philosophy based on recognition of the limitations of imprisonment as a general corrections agency. It espouses acceptance of the policy that imprisonment should be minimized, and greater reliance placed on supervising and treating offenders in the community. It may be inferred from Mr Justice Nagle that the policy becomes virtually mandatory when the offender being dealt with does not represent a danger to the community."

11. "STATE DIRECTION AND FUTURE OF CORRECTIONS: PART II - ALTERNATIVES TO IMPRISONMENT"; Proceedings of the Institute of Criminology; No. 38; 9 May.

(a) 'Foreword'; Associate Professor R. P. Roulston, Director, Institute of Criminology.

"There has been for some time a growing disenchantment and scepticism of the effectiveness and desirability of incarceration as a penal sanction and an increasing recognition that imprisonment should be used only as a last resort. The costs and other unsatisfactory features of imprisonment have led to proposals for various alternatives...

A predominant view that clearly emerged from the seminar was substantially in accord with one of the conclusions that subsequently appeared in Discussion Paper No. 10 of the Australian Law Reform Commission.

"that neither retributive, deterrent nor reformative principles of punishment justify the use of imprisonment except as a punishment of the last..."
Considering, however, the large "non-dangerous" component of the prisoner population and the equally skewed distribution of manpower to guard them, it is reasonable to question whether the Department can continue to adopt a passive stance in relation to its recipient role. Surely a heavy responsibility rests on the Department to be critical of the morality, sense and utility of sending people to prison for relatively short terms. Almost all of these prisoners will not be engaged in a deliberately designed rehabilitative programme. They will simply serve out time - for what purpose? Can we afford that?

By what measure can we justify sending a person to prison for one day? Have we bothered to enquire as to what are the disruptive effects on family, job, social standing, or financial circumstances of sending a man to prison for one month? Will the community suffer any the greater if "non-dangerous" offenders are not sent to prison but are dealt with in the community? For how many of the 76% of this type of prisoner can useful corrective programmes be devised? At a cost of up to $300.00 per week, per person, can such expenditure be justified in terms of greater community protection achieved by imprisonment as compared with that achievable through community-bases alternatives?

It is my thesis that prisons are necessary, but only to the extent that they are needed to hold those relatively few offenders who are a real and frightening threat to the community. Both on the grounds of morality and utility no justification can be advanced for using very costly imprisonment to deal with persons convicted of committing "non-dangerous" criminal or socially unacceptable acts. The prospects for an alternative policy being formulated and implemented will be greatly advanced when the Department of Corrective Services clearly identifies the "non-dangerous" component in the prison population, informs its political leader of the absolute inappropriateness of using prisons to deal with these people and unequivocally insists that the scarce and highly expensive resources allocated to the operation of prisons be re-apportioned to develop alternative programmes for the "non-dangerous" offenders and to up-grade institutions and correctional programmes for the few serious offenders.

Very many of the recommendations of the Nagle Royal Commission into NSW Prisons are of a cosmetic nature. Because of their bulk, concentration on the prison environment and appearance of effecting widespread changes, there is a real risk that the primary intention of the Royal Commission will be obscured, perhaps ignored. That intention is contained in one recommendation which, if it is adopted and acted upon in the precise spirit that gave it expression, will mark a monumental change in the history and direction of corrections in NSW Mr Justice Nagle very simply said;

"Alternatives to imprisonment should be used as extensively as possible, and prisons should be used only as a last resort."


*1979 Figure 147
"Having accepted the permanency of gaols, it should then be recognised that there are a number of pressures on the penal system which have led to the development of alternatives to prison for some offenders and for some offences. These pressures combine to say and to insist that prison should be used only for serious crime and sometimes as a last resort for less serious crime.....

It should be pointed out that the imprisonment rate in NSW is high compared to that in the State of Victoria next door. We appear to imprison at twice the rate of our Victorian brother. That fact supports the argument that there is a case for a greater and more imaginative use of alternatives to imprisonment in NSW."

(d) "A Comprehensive Plan"; The Probation and Parole Officers Association of NSW; Presented by Mark Robertson, B.A., President of the Association.

"This Association considers that the role of the Probation and Parole Service has been crucial in providing alternatives to imprisonment. It not only provides the primary controlled alternative by means of supervision and guidance of offenders, but facilitates the use of most other alternatives by its advisory function to the Courts and complementing interaction with other alternatives".

Imprisonment is without dispute the most costly sentencing option available to the Courts in both financial consequences to the community and in human terms with regard to the offender's future social functioning. It is little wonder that Mr Justice Nagle recommended that:

"Alternatives to imprisonment should be used as extensively as possible, and prisons should be used only as a last resort." "


(a) "Prisons - Improvements in Progress?"; Barry O. Todd; Chairman, Prison Officers' Branch, Public Service Association of NSW.

"Alternatives to imprisonment will continue to expand, such as periodic detention, work release schemes, parole and probation....

... Government should abandon the idea of building large gaols. Smaller gaols catering for about 50 - 100 prisoners is the ideal, and this ideal should be pursued".

(b) 'Nagle refused to look into the future'; Bob Jawson, Secretary, Prisoners Action Group. Quoting from Reverend Sternhammer, Member of the Swedish Parliament, 1840."

"All the miserable talk about improvement - moral improvement - that results from imprisonment is humbug. No man can improve in isolation. Improvement is inconceivable if not tested while living in social contact with other people."

(c) 'The future of Corrective Services in NSW'; Probation and Parole Officers' Association of NSW.
"The Association agrees fully with the Royal Commission [The Royal Commission into NSW Prisons – Mr Justice Nagle] recommendation:

"... Imprisonment should be used as a last resort and those imprisoned should be kept in the lowest appropriate security."

Unless a balance between prison and community-based philosophies is developed in the proposed Prisons Commission, there are unlikely to be initiatives to contain the prison population and expand the wide range of alternatives to imprisonment as recommended by the Royal Commission. Sadly, a reactionary trend is already apparent.

The proposed gaol at Parklea to cost $13 million, might be justified as a replacement to existing old gaols as set down by the Royal Commission recommendation,

"Old prisons which are made redundant by the construction of new institutions should be used for some public purpose or destroyed".

However, with the reconstruction at Bathurst and talk of other prison construction one wonders whether the Government is serious in attempting to carry out the clear intent of the Royal Commission that "alternatives to imprisonment should be used as extensively as possible, and prison should be used only as a last resort".

...... The Association is strongly of the view that no further expensive prison construction should be undertaken without first examining the alternatives. There is no point in building further prison accommodation which has a tendency to be filled and then looking for alternatives. It is in the public interests both in terms of effective correctional policy and in terms of cost savings to explore and expand alternatives to imprisonment. Already New South Wales imprisonment rate of 74.6 per 100,000 exceeds the national average of 64.9 per 100,000.

...... The Probation and Parole Service on 2 March 1978, passed a motion stating that there appears to be good reason for considering the introduction of legislation to provide fixed sentences with automatic release and parole supervision if such supervision is considered necessary by the original sentencing authority."

(d) Discussion

(i) L. K. Downs; Associate Commissioner of Corrective Services, NSW

"Considerable thought has been given to alternatives to and variations of imprisonment ... Both the Department of Corrective Services and the Departments of the Attorney-General and of Justice are looking at these. ... We are preparing information that we will submit to the government, together with officers of the Department of the Attorney-General, so that the courts will have the opportunity of diverting offenders from the gaols."

(ii) R. J. Downs; Chairman of the Long Bay Sub-Branch Prison Officers' Association.

"... we believe that if you want to lessen the pressure of the population in gaols it is very easy; do not put people in gaol for not paying fines, but get the money out of them somehow; do not put a
drunk in gaol, if he is an habitual drunkard, he is a sick man, put him somewhere else; do not put a drug addict in gaol; do not put the vagrant in gaol. Look at the bail system. Make it easier for silly young men to stay out of gaol during a remand period ... we fully support reform in these areas."

... rehabilitation is out. Three quarters of these people are completely beyond the stage of rehabilitation, so why don't we concentrate on the young people and stop them coming in".

(iii) Mark Stiles: Representing Architects Against Prison.

"I believe that it is impossible to design better prisons, and that the attempt to design better prisons is misguided. The attempt to build so called "model prisons" is impossible."


"13. These considerations have led us to the conclusion that neither retributive, deterrent nor reformative principles of punishment justify the use of imprisonment except as a punishment of the last resort ... It is the view of the Commission that rational and humane sentencing would be best achieved if it were guided by the principle that the least punitive sanction necessary to achieve social protection should be imposed and that, as far as consistent with social restriction, preference should be given to the use of non-custodial sentencing options.

46. Two firm objectives need to be kept in mind during the planning process involved in the design of a new correctional system for the Territory. First, the long term objective should be to reduce as much as possible the number of persons held in any form of custody in the A.C.T. Ultimately, only those offenders who require imprisonment as punishment and to protect society should be kept in prison ..."

47. Secondly, for the balance of the contemporary A.C.T. offender population who now receive prison sentences, the objective should be to provide the least disruptive and punitive form of custodial sentence appropriate'.

87. The Commission’s View: Although a benevolent attitude does appear to be adopted towards fine defaulters in the A.C.T., the Commission has formed the tentative view that a more formal system should be established to ensure that persons who fail to pay fines should, so far as possible, not serve sentences of imprisonment ...

1981


" One matter frequently misunderstood by the public is the nature of parole itself. Most members of the public regard a prisoner on parole as being simply at liberty and as a necessary corollary the public consider the minimum terms set by the courts as far too short. However a person on parole is certainly not at liberty in the
ordinary sense but is subject to many restraints and restrictions a fact normally overlooked both by press and public alike.

... we believe there is a place for a modified type of parole in the present system. In our view the supervision and assistance which can be given to a person recently released from prison is of real value and it would be a grave loss if such a service was no longer available. The difficulty is however in finding a system which will preserve these benefits while avoiding the present difficulties inherent in the law as it now stands.

Parole has undoubted advantages in many cases because of the availability of professional assistance and counselling during the critical period which follows release from prison. Like a term of probation, parole tends to be self-defeating and ineffective if it continues for too lengthy a period. This is one of the very real problems at present faced because of the disparity in many cases between the maximum and minimum terms of imprisonment imposed. The greater the disparity the longer the period to be serviced on parole must be and in practice this has quite often had serious consequences for parolees. Accordingly it is considered any period spent on parole in excess of two years is undesirable.

At the other end of the scale periods of parole of less than 12 months are regarded by the Probation and Parole Service as of limited value. For this reason the Committee recommends when a finite sentence of less than one year is imposed then release should be unconditional and with no parole.

As it is desirable no convicted person should serve at any time a period of more than two years parole so it is recommended where a person is serving an aggregate of several terms whether imposed at the one time or at different times the effective total term imposed should be considered as one term for the purpose of calculating the period to be serviced on parole.

The Board could have the power to impose special conditions on any person commencing his period of parole and it could continue to exercise important powers in relation to those persons serving life sentences or detained on an indeterminate basis because of unsoundness of mind or perhaps in one or two other cases."

1982

15. "SENTENCING, PAROLE AND RECIDIVISM" NSW DEPARTMENT OF CORRECTIVE SERVICES No. 1; (Research publication) March 1982.

"Conclusions: The Parole system does work in some part as a method for early release of those prisoners who are better risks. The prediction scale indicated that on the basis of characteristics that predict recidivism, those prisoners who were released having served less than half their sentence had a 71% expected chance of success, those released on parole having spent half or more of their sentence a 65% expected chance of success, and those released after serving the whole of their sentence a 61% expected chance of success.

Thus, contrary to popular beliefs, parole does tend to keep worse-risk prisoners in prison for longer periods than better risk prisoners.

Thus there is no evidence that early release tends to make released prisoners more
likely to become involved in criminal activity. Indeed the pattern of results gives some hope (albeit not statistically significant) that parole supervision may be slightly improving the chances of success and holding a prisoner for his full sentence may be reducing his chance of success."

16. "PAROLE AND REMISSIONS" (2nd Report); Sentencing Alternatives Committee of Victoria; June.

"There can be little doubt that a properly administered parole system is capable of conferring considerable benefits both upon the community and upon the prisoners to whom it applies. Those benefits may be assessed, both from the penological and from the financial points of view". (Para. 2.18)

1985


"The management of prisons and the supervision of prisoners is a difficult and complex discipline in itself. If one of the purposes of punishment is reform and rehabilitation of offenders, it is obvious that part of their prison management must include their preparation for release and assimilation back into the community. One of the methods of achieving reform and rehabilitation is undoubtedly the release of prisoners on parole and submission to supervision by the Probation and Parole Service ......

Whatever method is used to facilitate reform and rehabilitation, it should not include reduction of sentences fixed by the courts. The authority of the courts and the public's confidence in them are too fundamental to the role of justice in society to be usurped by executive action.

The power of the law should remain in the blindfolded female figure with the scales in one hand and sword in the other, despite her deficiencies."

1986

18. "SENTENCING IN AUSTRALIA"; Edited by Ivan Potas; Australian Institute of Criminology and Australian Law Reform Commission; Seminar Proceedings No. 13; 18 – 21 March.

(a) "Welcoming Address"; Professor Richard W. Harding, Australian Institute of Criminology, Canberra.

"How many times has it been pointed out that if a fine is an appropriate penalty in the first place, imprisonment is not a suitable one in the second place". (Page 20)

...... It concerns short-term imprisonment. His Honour Mr Justice Smith of the Supreme Court of Western Australia has provided a profile of Western
Australian prisoners from which it emerges that prisoners received to serve short sentences (i.e. less than three months) constitute an increasing proportion of the Western Australian prison population. Currently it is running at 62 per cent. This translates, in the case of Western Australia, into about 10 per cent of the prison population at any given time. Much the same pattern will be found in all jurisdictions. If no prisoners at all were received as a consequence of fine default, there would still be a sizeable number of persons sentenced to very short terms. Is this effective, either penologically or financially? I very much doubt it."

(b) "Opening Address"; The Hon. Jim Kennan, MLC, Attorney-General of Victoria.

"As part of the process of developing a response to community concern about sentencing practices and about administrative interference eroding the sentences of courts, last year I circulated in Victoria a Sentencing Discussion Paper suggesting various modifications to the existing law. Following the circulation of that Paper I then convened a meeting of judges, magistrates, police officers, prosecutors, defence lawyers, academics, officers from the Office of Corrections and representatives of interest groups concerned about victims of crime. Strangely enough, that meeting reached widespread and quite speedy agreement around a number of issues which are, I believe, reflected in these principles:

1. That the courts should be the primary decision makers in sentencing and that if administrative discretion reduces the sentence of a court by impact of remissions and pre-release schemes, then the impact of those discretions must be better understood and exercised in the context of both better understood guidelines and tighter guidelines.

2. That courts should have the widest possible range of sentencing options open to them including imprisonment, flexible community service orders, 'shanded' sentences involving imprisonment followed by community service orders, suspended sentences and fines.

3. That we need to know a lot more about the impact of various forms of sentencing options on future criminal behaviour of the person concerned.

4. That there is a need for a better community understanding about sentencing rules and the difficulties in sentencing practice.

5. That imprisonment should be a sentence of last resort and that there is a recognition that some people who may have been sentenced to a term of imprisonment for an offence twenty years ago might well be dealt with by way of an alternative disposition today but, on the other hand, a new range of offenders were emerging committing serious crimes such as drug trafficking which needed to be dealt with by way of substantial prison sentences.

6. That indeterminate sentences such as life imprisonment were undesirable and courts should be allowed to fix as far as possible a determinate sentence ......

Given that the number of prison beds in the current climate is likely to be near to or smaller than the potential demand for space, we must have a system which ensures that those people who need to be in prison should be in prison, and that we should
not have in prison taking up that valuable and needed space those people who could be suitably dealt with by way of alternative disposition. In the last twenty years we have probably made substantial progress in getting this alignment closer to being correct. The prison population, at least in Victoria, no longer has, except in the most blatant case, persons who are defaulting on fines and no longer has any of the many people in it for the sort of relatively small offence by people with no substantial criminal history who one may have expected to find in a typical Victorian prison twenty or twenty-five years ago. In other words, our prison system is being increasingly made up of persons who have committed either very substantial crimes or who have a history of substantial repetition of crimes."

(c) 'Criminal Justice, Rights and Sentencing: A Review of Sentencing Policy and Problems'; Andrew Ashworth, Fellow and Tutor in Law, University of Oxford.

"Custodial sentences represent the legal system's strongest measure against convicted offenders. Criminologists and others have contributed to a widespread appreciation of the detrimental effects of custody on the personal and social development of inmates, and there are now few who would disagree with the proposition that custodial sentences should be used sparingly."

(Pages 56-57)

(d) 'Commentary Upon Dr Ashworth's Paper'; The Hon. Mr Justice Nicholson, Supreme Court of Victoria; Chairman, Adult Parole Board of Victoria.

"In short the courts have recognised that persons can be rehabilitated, albeit usually by their own efforts, and usually outside the prison system. I think that anyone with any experience of prisons and prison systems must recognise that rehabilitation does occur, although it is often despite the system rather than because of it. In my opinion, however, it is a matter of regret that despair at the rehabilitative effects of punishment has led to the present policy of humane containment when it may well be that greater opportunity afforded to convicted persons for rehabilitation would lead to improvement in many individual cases.

This attitude has similarly led, in my opinion, to a complete abandonment of rehabilitative efforts aimed at persons coming out of the prison systems, leaving this entire area to well-meaning voluntary agencies."

(Page 80)

(e) 'Judicial Role in Sentencing'; The Hon. Mr Justice Frank Vincent QC, Supreme Court, Victoria.

"We employ a range of dispositions in the criminal justice system, yet the justification for most of them is, at least, unproven. No one has been able to tell me what particular efficacy there is in gaoling any individual for any particular period of time, or why it is for example an armed robber might be sentenced to seven or eight years. What purpose do we intend to achieve in the fixing of such a tariff? These systems have just grown up haphazardly, they have no inherent worth or justification that has ever been established as far as I am personally concerned. I find still that in spite of all of the changes which have occurred in our society that the people who fill the courts and the penal institutions are still the poor, and those who are socially disadvantaged, whose options are reduced, whose moral culpability is probably of the lower order, or the individuals whose behaviour is not really influenced by the esoteric concepts of deterrence, who probably only know about the criminal justice system from what they learn from watching the television. Many do not derive the
benefit of reading the learned judge's dissertations on these matters because they cannot read anyhow. These are the people who in fact we are sentencing for the most part.

When judges are faced with this combination of difficulties what they do is what they have always done. They try within the practical parameters of the options which they see open to them to achieve some measure of justice according to the standards of the time."

(f) 'Sentencing in Magistrates' Courts'; Kevin Anderson, Deputy Chief Magistrate, NSW.

"Many people have said that imprisonment should be a sentence of last resort. Lip-service is paid to that statement, but it is often ignored in practice. If it is to become a canon of sentencing practice, it must be by legislation. It is proposed therefore, that legislation should declare that imprisonment is a sentence of last resort."  (Page 197)

(g) 'The Sentencing Council-Revisited'; The Hon. Justice MDS Kirby CMG; President of the Court of Appeal, Sydney.

"Community concern about apparent disparities in punishment of convicted offenders is one of the major sources of discontent with the Australian Legal System." (Page 207)

(h) 'Deinstitutionalisation: A Description and Assessment'; Kenneth Polk, Lecturer, Criminology Department, University of Melbourne.

"If nothing else, the sharp rise in the costs of imprisonment suggest that at some point policy makers must begin to treat imprisonment as they would other scarce and expensive resources, to be allocated carefully, judiciously, and only where the circumstances dictate that such an extreme sanction is appropriate. If you will, prison sentences are too precious to waste ...... (Page 261)

In terms of the general processes discussed earlier in this paper, the conclusion is that actual reductions in the size of prison populations are more likely to be achieved, it would appear, from legislative and judicial action in terms of one or another form of decriminalisation (especially reduction of levels of penalty) than from the creation of decarceration programs, especially those based in community treatment models. At the same time, such efforts to reduce prison size may depend upon the simultaneous development of wider programs expanding resources for employment, education and housing (among others) not just for prisoners, but for all citizens. Ultimately, the specific and narrow concern for prison reform may have to be cast within a wider framework of social justice for all. Lacking this wider concern for social justice, decarceration may contribute directly to the expansion of the very forms of coercive control that it appears to be designed to narrow." (Page 262)

(i) 'Probation and Parole; Australian Capital Territory, New South Wales; More Problems than Prospects'.

"It is recommended that there be a shift of financial resources to create practical alternatives to imprisonment. (Page 280)"
As long as we hold the same attitudes towards punishment as the aim of our system rather than a last resort strategy we will continue to have high imprisonment rates and high numbers supervised on community corrections."

("Has Parole A Future?"; Ivan Vodanovich; Director, Probation and Parole Services, Perth WA.

"In practical terms, in relation to the offender it was considered parole should normally fulfil two important functions. First to ease the transition from prison to normal life by providing practical help; secondly to give the parolee continuous support and control over some period of time till he could manage on his own to lead a law abiding life.

In his article "Don't Throw The Parole Baby Out With The Justice Bath Water", Allen Breed, former Director of the National Institute of Corrections, Washington, D.C. gives three reasons for the continuing survival of parole in the United States:

(a) Sentencing systems that have replaced parole have not proved to be any fairer, more predictable or less confusing.

(b) Parole boards that have put their own house in order by establishing term-setting guidelines have done much to eliminate the capriciousness to which the conviction process is open.

(c) Studies over several years clearly indicating that parolees had a revoke rate of only 24.8 per cent as compared to the mandatory releases whose return rate was 30.9 per cent.

On the question of whether parole has a future the reply is categorically Yes. Parole still has a place in sentencing policy."

("The Limits of Sentencing Reform"; Janet Chan; Australian Law Reform Commission, Sydney.

"That 'decarceration movement', concerned with reducing the use of imprisonment and increasing the use of non-custodial sentencing options, became popular in the sixties in the United States; it has now spread to most western industrialized nations ..."

Although these reforms may have arisen chiefly from a bureaucratic-utilitarian consideration of reducing costs and improving efficiency (see Scull, 1984), decarceration is generally seen as a humane policy: prisons are such brutalising and oppressive institutions that they should only be used as a 'last resort'. "

On the results of sentencing reform up to 1985:

"Results of Decarceration

Effect on prison population. There is now a large body of literature which supports the finding that decarceration, including the introduction of no-custodial sentencing options, has not been successful in reducing the use of imprisonment (see, for example, Cohen, 1985; Chan and Zdenkowski, 1985; Austin and Krisberg, 1982; Scull, 1984). The statistical evidence suggests that in Britain, Canada and the United States the rates of
imprisonment are not decreasing and in some cases even increasing. Australian imprisonment rate data from 1961 to 1985, the period during which community-based corrections measures were introduced, show some slight decline in some states and substantial fluctuations in others (Chan and Adenkowski, 1985, 17–19). Weatherburn (1986) has documented the failure of repeated attempts to reduce the New South Wales prison population in recent history.

Expansion of the system. There is substantial evidence that 'prison alternatives' are frequently used for offenders who would not have been incarcerated in the first place, so that they are not used genuinely as alternatives to imprisonment. Indications are that a substantial proportion (between one-third to two-thirds) of the offenders given 'alternative' sentences such as community service orders and attendance centre orders would not have gone into prison in the first place (Cohen, 1985, 50–6; for Australian research see Rook, 1978; Fox and Challinger, 1985). These options are often seen as intermediate between imprisonment and good-behaviour bonds and are used as such. Community service orders are also considered as a good alternative to fines, especially for the impecunious.

Correctional expenditure. The cost-saving objectives of decarceration have also not been realised, since prison populations and the employment of criminal justice personnel continue to rise in most jurisdictions. Correctional expenditures in most countries have actually shown a steep increase in recent years, far exceeding the effect of inflation (see Chan and Ericson, 1981; Chan and Zdenkowski, 1985).

This brief documentation of the results of sentencing reform serves to highlight some of the more consistent findings in the literature. It is obvious that individual programs do vary in terms of degree and quality of impact, but the overall message of evaluation research to date has been largely negative.

Sentencing reforms have secured a limited degree of compliance among the participants, but most have found ways to circumvent the intentions of the reform. Structuring discretion has the tendency of increasing sentence severity, while shifting powers from the more visible exercise of judicial discretion to the less visible exercise of prosecutorial discretion. The problem of disparity remains. Determinate sentencing also has the potential of exacerbating prison overcrowding when executive discretion is removed. 'Doing justice' is easily translated into 'getting tough' (Cullen and Gilbert, 1982) when put into practice.

Decarceration, on the other hand, has not proved to be the cure of prison overcrowding. As a fiscal measure to reduce expenditure, it has not lived up to its promise. The criminal justice system has in fact taken in more clients under various sentencing options which are meant to be alternatives to imprisonment, while the prospects of controlling the use of prisons seem more remote than ever. 'Doing less' has somehow resulted in 'doing more': depersonalisation only leads to the rise of more professionals, charged with the new task of classification and assessment of clients on the 'outside' (see Cohen, 1975, Chapter 5).

(m) 'Sentencing of Federal and ACT Offenders: Some Reform Proposals'; George Zdenkowski; Commissioner, Australian Law Reform Commission.

"I consider that the reintegration into the community of offenders is a desirable and important objective ..."
... Accordingly, possibilities along the following lines should be explored:

* imprisonment, where an appropriate penalty, should be used as a last resort;
* prima facie, non-violent property offences ... should not attract imprisonment as a penalty;
* prima facie, offences which involve serious violence should attract imprisonment as a penalty ...

"THE USE OF IMPRISONMENT BY VICTORIAN MAGISTRATES" (APPENDIX N); Report Prepared for the Victorian Sentencing Committee; Dr Kenneth Polk, Dr Davit Tait, July.

4.1 The vast majority of sentences handed down by magistrates do not involve consideration of imprisonment.

4.2 When imprisonment is considered an option, alternatives to imprisonment are used about twice as often by magistrates as immediate custodial sentences ... An estimated 5 per cent of sentences passed in magistrates courts in 1986 involved immediate prison sentences ... Another 8% involved options to imprisonment.

Those [magistrates] less inclined to use imprisonment in general took the view that prison served no positive purposes, and should be used only when all options were used up, and thus there was little option but a prison sentence. The other [magistrates] had a different view. For them prison might serve some rehabilitative purposes, that providing some offenders with a short, sharp shock might give them a chance to think about the consequences of criminal activity, or that perhaps that time in prison would remove offenders "from bad influences". The latter "employed prison sentence is about twice as often as" the former."

"SENTENCING: PRISONS"; The Law Reform Commission; Discussion Paper No. 31; August.

45. Prison Overcrowding ... There are 2 possible responses to this problem: either building more prisons or looking for ways of decreasing the prison population. In the Commissions view, the second option is preferable'.

54. The media and public opinion. Sensationalist treatment of criminal justice issues by segments of the media can seriously retard efforts to improve prison conditions. Their treatment of prisoners and prisons creates many false impressions. This has in turn contributed towards the public's unsympathetic perception of prisons and prisoners. It is important that proposed reforms to prison conditions and management are properly understood and responsibly reported by the media."


9. Imprisonment: an unsatisfactory punishment ...
Imprisonment is the most costly form of punishment both in economic and social terms. It does not have a good record in terms of crime prevention and may often be counterproductive in this regard. In the Commission's tentative view, imprisonment should not be used by sentencing courts unless they are clearly persuaded after considering all other options that no other sanction is appropriate. There is now widespread support for the view that imprisonment is an unsatisfactory form of punishment in many ways ...

10. **Imprisonment as a last resort.** In its *interim Report, Sentencing of Federal Offenders* (ALRC 15), the Commission concluded that imprisonment as a sanction should be used only as a punishment of last resort ...

12. **Comparative developments.** There has been considerable support for the general principle of the use of imprisonment as a measure of last resort and s. 17A of the *Crimes Act 1914 (Cth)* has been referred to as reflecting the principle that ought to apply in jurisdictions to which it does not apply. Various legislative provisions which reflect the desire to restrict the use of imprisonment have been introduced in a number of jurisdictions. Sections 11 and 13 of the *Penalties and Sentences Act 1985 (Vic)* are in similar terms to parts of s. 17A of the *Crimes Act 1914 (Cth)*. The Victorian legislation has a broader scope and only excludes from the application of the principle offences punishable only by imprisonment. The *Criminal Justice Act 1985 (NZ)* contains a general restriction on the use of imprisonment. Where an offender is convicted of an offence punishable by imprisonment, the court is required to have regard to the desirability of keeping offenders in the community as far as is practicable and consonant with the safety of the community. Where the court considers a prison term ought to be imposed the court is directed to impose the shortest term which, in its opinion, is consonant with community safety. The limitation is expressed to be subject to the presumption in favour of imprisonment for violent offenders. The New Zealand legislation goes further, however, and draws a distinction between violent offenders and offenders against property. Violent offenders who are convicted of an offence punishable by imprisonment for a term of five years or more are liable to a full time custodial sentence unless the court is satisfied that there are special circumstances relating to the offence of the offender.

14. The Commission is of the tentative view that imprisonment should be a sanction of last resort.

29. ... there is a strong case for arguing that a fine should be used more frequently as an alternative to imprisonment.

31. ... In the Commission's view imprisonment for fine default should be abolished for federal and ACT offenders except in the case of wilful refusal by offenders who have the means to pay ...
(a) "The Political Imperative"; The Hon. J Kennan; Attorney-General and Minister for Corrective Services, Victoria.

"In Victoria, the Penalties and Sentences Act 1985 legislates that imprisonment is to be a sanction of last resort. The Act has not defined 'last resort', but in practice it is understood by sentencers, the community and by Parliament to include those people whose crimes or criminal pattern are so obviously dangerous by community standards that the community would reasonably expect them to be imprisoned. Imprisonment in Victoria is thus restricted to violent offenders, recidivists and so on."

(b) "Sentencers' Reactions"; M. W. Gerkens, Stipendiary Magistrate, Victoria.

"These points illustrate the reasons why judicial officers needed little legislative encouragement to treat imprisonment as a punishment of last resort and to make appropriate use of the alternative dispositions provided. Unhappily, the prison population continues to grow apace".

(c) 'A Further Commentary'; George Zdenkowski; Commissioner in Charge of Sentencing Reference, Australian Law Reform Commission.

"It is now widely recognised that it is desirable for imprisonment to be used as a measure of last resort. In various jurisdictions (in Victoria, in Federal Legislation, and in New Zealand) the principle has been laid down by the statute. In other places (for example, WA) the courts have adopted the approach without waiting for a statute."

1988

23. "SENTENCING"; Australian Law Reform Commission; Report No. 44.

Extracts from the major themes of the report

(i) Reducing emphasis on imprisonment

Retention of imprisonment. A major theme of this report concerns the nature of imprisonment and the role it should play in the criminal justice system. Imprisonment is, and will continue to be, an important part of the system of imposing punishment for offences against federal and Australian Capital Territory laws. Justice requires that serious offences be matched by a severe punishment. Since the abolition of the death penalty and of 'cruel and unusual' punishments, imprisonment is the most severe punishment that can be imposed. For some serious offences, it will be the only just punishment. Its abolition as a sanction would leave the criminal justice system without a punishment of the degree of severity appropriate to some crimes.

The need for less imprisonment. Nevertheless the emphasis that the criminal justice system places on imprisonment is considered to be excessive. Severe punishments
can be imposed on offenders without resorting to imprisonment as frequently as the law does at present. This report gives a number of reasons why the emphasis on imprisonment should be reduced:

- The experience of imprisonment is negative and destructive for the offender. In nearly all jurisdictions prisons are overcrowded, leading to stress for prisoners and staff and severe management problems. The lack of useful activities, including work experience, in many prisons leads to boredom and frustration for prisoners.

- The cost of imprisonment is enormous and the returns few. In 1985–86 the Commonwealth paid New South Wales $2,419,000 for the recurrent costs of accommodating about 60 Australian Capital Territory prisoners.

- The severity of prison as a sanction is underscored by reserving it for the most serious cases. The value of imprisonment as a punishment option will be enhanced by its being used more sparingly.

- Reducing the emphasis on imprisonment complements, and is linked with, the principled approach to custodial orders which is recommended in the report.

- It is the policy of all Australian governments, including the federal government.

(ii) Parole should not be abolished; its place in the punishment process should be more clearly emphasised.

(iii) Retention of imprisonment, but reducing emphasis

10. Imprisonment is and will continue to be an important part of the system of imposing punishment for offences against federal and Australian Capital Territory laws (paragraph 40). Nevertheless, the emphasis that the criminal justice system presently places on imprisonment should be reduced, and more emphasis should be placed on non-custodial sanctions, particularly community based sanctions (para. 41).

(iv) Imprisonment the punishment of last resort

11. Crimes Act s 17A policy affirmed. The policy of the Crimes Act 1914 (Cth) s 17A is re-affirmed: imprisonment should be the punishment of last resort (para. 55).

(v) 'Resource implications':

The report firmly endorses greater use of non-custodial orders. Community corrections are vastly less expensive to administer than imprisonment, bestow benefits on the community through work programs, and reduce the likelihood of recidivism by enhancing the offender's self-esteem ... (Summary/xxv)

(vi) Imprisonment and parole one sanction.

21. Imprisonment and parole are not different and independent processes, but dual aspects of the one punishment. That punishment is and should be seen
to be subjection to the control of the State for a specified period. For a part of that period, to be fixed by law, the mode of control is detention in prison. For the balance of the period, progressively more relaxed state control is exercised over the offender through the imposition of parole conditions while the offender is in the community. Those conditions are part of the punishment: a part designed to achieve rehabilitative objectives (para. 73).

Accordingly, parole should not be abolished, but reformed. (para. 72)

(Summary/xxx)

24. COMMISSION OF REVIEW INTO CORRECTIVE SERVICES IN QUEENSLAND UNDER THE CHAIRMANSHIP OF MR J. J. KENNEDY
EXECUTIVE SUMMARY OF THE FINAL REPORT September.

3. Imprisonment to be used as a last resort for most non-violent offences ...

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.

33. Home Detention become a sentencing option.

34. Non-prison sentences be expanded to include Attendance Orders and Community Corrections Centres.

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 such 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

41....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;

48. There should be a major review and reform of sentencing practices."

1989


1.4. The supervision of offenders and prisoners should emphasise their continuing part in the community, not their exclusion from it. Thus every effort must be made to involve the wider community to assist correctional staff in developing and maintaining programs. In the case of prisons, programs must be developed which prepare prisoners for release ...
1.6. Correctional programs should be developed which assist prisoners to integrate into the community after release. Continuity of programs should exist between prisons and community based corrections. Prior to release from prison, offenders should have made available to them services of government and private agencies that will assist in their social integration.

4.30. Community corrections officers and volunteers providing advice to the Courts must avoid recommending imprisonment without first considering the appropriateness or otherwise of community correctional or other available sentences. In so doing, the community corrections officer or volunteer must take into account the risk posed to the community by the offender, the offence-related needs of the offender, and the community expectations of punishment, reparation, deterrence and protection.

1990


(a) **Forward;** Ugo Leone; Director U.N. International Crime and Justice Research Institute.

"The Research Workshop on Alternatives to Imprisonment originates from widely shared concerns about the negative effects that imprisonment has on society, the offender and the criminal justice system. These concerns range from administrative and financial costs to doubtful effects of prison in terms of offender's humane treatment and reinsertion in the community. These have generated a wide search for alternative sanctions, which in turn, has resulted in a great amount of debate, legislation, projects and research. While the search is still underway, many doubts have been raised as to the effectiveness and costs and overall and particular benefits of the application of alternative measures. The United Nations has in general a favourable attitude towards development of alternatives to imprisonment. Part of this has been a highlighting of the need to promote research and exchange of information and experience in this field."

(b) "**Alternatives to Imprisonment in Australia and New Zealand**"; Dennis Challenger; Australian Institute of Criminology, Assistant Director.

"Sentencers in Australia and New Zealand now work under a general instruction to use imprisonment sparingly. That instruction has received some legislative embodiment ...For instance, The Victorian Penalties and Sentences Act 1985 requires in section 11, that:

" ... a court must not pass a sentence of imprisonment on a person unless the court having considered all other available sentences, is satisfied that no other sentence is appropriate in all the circumstances of the case." (Page 249)

163
11TH APRIL, 1973

Prisoners received from Court under Sentence during 1971–1972

(These are total receptions and not distinct persons)

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<thead>
<tr>
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<th>Male</th>
<th>Female</th>
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<th>% of Total Receptions</th>
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<tr>
<td>From Higher Courts In default of fines</td>
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<tr>
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</tr>
<tr>
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<td>10,740</td>
<td>805</td>
<td>12,535</td>
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</tr>
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</table>

77.24% are received from Lower Courts, 22.76% are received from Higher Courts and of Total Receptions from the lower Courts i.e., 9682, 56% are in default of fines.

Source: Extracted and calculated from computer printouts – Commonwealth Bureau of Census and Statistics, Research and Statistics Division
21 MARCH 1979

NATIONAL PROBATION AND PAROLE STATISTICS

The Table below presents the gross numbers of probationers, parolees and prisoners in each State and Territory together with the rates per 100,000 of population for each correctional option.

<table>
<thead>
<tr>
<th></th>
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<th>Rates</th>
<th>Parolees No.</th>
<th>Rates</th>
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1 NOVEMBER 1978

ADULT PRISONERS, PROBATIONERS AND PAROLEES,
AUSTRALIAN STATES AND TERRITORIES,

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Source: Australian Institute of Criminology – I. Potas and D. Biles

Rate: Prisoners per 100,000 of the population.
INTERNATIONAL TRENDS

"CURRENT INTERNATIONAL TRENDS IN CORRECTIONS"; Edited by David Biles; Selected papers from the Australian Bicentennial International Congress on Corrective Services, Sydney; January, 1988.

(a) "International Trends in the Treatment of Offenders"; Norval Morris, USA.

"There is increasing experience throughout the world with lesser degrees of confinement than the usual secure prisons ... These experiments have made it clear that for a considerable number of prisoners reduced confinement is sufficient - better for them and cheaper for us". (Page 3)

(b) "The Future of Prisons – A View From Japan"; Keisei Miyamoto, Assistant Deputy Vice-Minister, Ministry of Justice, Japan.

"It seems that there is a growing worldwide tendency to avoid incarceration as much as possible. In the case of Japan, we have been highly deliberate and limiting in sentencing criminal offenders to imprisonment for quite a while ... and the numbers of convicted prisoners per 100,000 population was 38 in 1986, which was one of the smallest ratios in the world". (Page 88)

(c) "Widening the Community Base"; Graham Armstrong, NZ.

"In summary then, the review of New Zealand's penal policy indicated overuse of the sanction of imprisonment and urged the expansion and development of the range of community based sentences."

The Report of the Penal Policy Review Committee [NZ] adopted the following statement of objectives for community based measures:

1. Offenders ought as far as possible to be dealt with by community based measures which stand in their own right. Resort to imprisonment as a sanction ought to be justified only as a last resort. (Page 183)

(d) "Programme Based Prisons"; Hans Tulkens; Netherlands.

"...... the heart of a penal policy plan should be as restricted a use of prison as possible. It means that imprisonment indeed should be a last resort, not however as an abstract slogan without engagement, but as part of a well designed programme and policy. To realise that, the functions and applications other sanctions should be well and controllably developed". (Page 212)

Prison programmes ... should fit in with a total penal system's plan in which imprisonment really is functioning as the last resort. This should be achieved by introducing non-custodial sanctions and making them function as alternatives by stressing their quality as punishments in the sense of the obligatory fulfilment of imposed duties, implemented and controlled by a designated authority. Furthermore the restricted use of imprisonment should be realised by making early (conditional) release and parole function according to their legal purpose, ie. in order to offer opportunities for rehabilitation. Therefore early release and parole should be granted at the earliest moment and as a rule, not as an exception." (Page 215)
"STEMMING NZ YOUTH'S HEADLONG RUSH TO JAIL"; Article from the 'Auckland Herald'; 6 August, 1990.

"New Zealand's prison system has 2 alternative futures.

The first demands the building of 2 new jails every year to keep pace with the flow from the courts. The second requires a change to the rules by which people are locked up.

The Government has decided that its only hope of reversing lives of crime - while containing costs - is to go with the latter and put the responsibility for dealing with criminals on the communities that raised them.

....The future programmes aimed at keeping those people out of jail will lean more towards such sentences as probation, periodic detention, and community care or community service.

The Justice Department's Probation Service will have more work in the new scheme of things."
MISCELLANEOUS STATISTICS
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<th>ABORIGINALITY</th>
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</table>

* See Explanatory Note 5.

**FIGURE 6 - RATIOS OF PRISONERS PER 100,000 POPULATION BY JURISDICTION AND ABORIGINALITY**
## PRISONERS RECEIVED AND DISTINCT PERSONS

01/07/90 TO 31/05/91

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<tr>
<th>PRISON</th>
<th>SENTENCED ABORIG</th>
<th>SENTENCED OTHER</th>
<th>UNSENTENCED ABORIG</th>
<th>UNSENTENCED OTHER</th>
<th>TOTAL ABORIG</th>
<th>TOTAL OTHER</th>
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<tr>
<td>Pardelup</td>
<td>5</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Roebourne</td>
<td>290</td>
<td>39</td>
<td>27</td>
<td>15</td>
<td>371</td>
<td>235</td>
</tr>
<tr>
<td>Wooroloo</td>
<td>201</td>
<td>457</td>
<td>0</td>
<td>1</td>
<td>659</td>
<td>142</td>
</tr>
<tr>
<td>Wyndham</td>
<td>184</td>
<td>8</td>
<td>63</td>
<td>2</td>
<td>257</td>
<td>161</td>
</tr>
<tr>
<td>East Perth</td>
<td>0</td>
<td>18</td>
<td>0</td>
<td>1</td>
<td>19</td>
<td>0</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>2428</strong></td>
<td><strong>2591</strong></td>
<td><strong>449</strong></td>
<td><strong>842</strong></td>
<td><strong>6310</strong></td>
<td><strong>2000</strong></td>
</tr>
</tbody>
</table>
SENTENCE TYPES FOR SENTENCED PRISONERS RECEIVED
01/07/90 TO 31/05/91

Default of fine only

Finiti

Parole

\[ \text{ABORIG} \quad \text{OTHER} \]
Figure Six (B) shows quite distinct differences for the type of major offences between aboriginal and non aboriginal offenders who were received for remand and then sentenced.

The major differences appears to be for the major offences of "Assault" where by far the largest number of those sentenced were Aboriginals. Additionally a higher percentage of Aboriginals were sentenced for "Other Theft", "Justice Procedures", and "Good Order".

A higher percentage Non aboriginals than Aboriginals were sentenced in relation to most other categories particularly "Traffic Offences", "Burglary" and "Drug Offences".
7.2.8 From Table 7.7 it can be seen that, for both Aboriginal and non-Aboriginal prisoners in 1989, their presence in prison can be primarily accounted for by reference to only seven offence categories: break and enter, assault, sex offences, theft, homicide, robbery and drug offences. Nevertheless, there are some interesting differences between Aboriginal and non-Aboriginal prisoners in relation to the most serious offence leading to conviction or charge. The proportions of Aboriginal prisoners held for assault, sex offences and breaking and entering are much higher than the equivalent proportions of non-Aboriginal prisoners, but the opposite is the case for drug offences and robbery. It is also to be noted that at the less serious end of the scale, there are proportionately more Aboriginal than non-Aboriginal prisoners held for traffic, good order offences, property offences and for the group of offences known as "justice procedures", which includes breaches of orders and fine default. *Why this may be so will be considered in Chapter 23.*

**TABLE 7.7**

MOST SERIOUS OFFENCE OF CONVICTION OR CHARGE, ABORIGINAL AND NON-ABORIGINAL PRISONERS, 30 JUNE 1989

<table>
<thead>
<tr>
<th>Offence</th>
<th>Aboriginal</th>
<th>Non-Aboriginal</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>%</td>
</tr>
<tr>
<td>Homicide</td>
<td>161</td>
<td>8.8</td>
</tr>
<tr>
<td>Assault</td>
<td>322</td>
<td>17.6</td>
</tr>
<tr>
<td>Sex offences</td>
<td>256</td>
<td>14.0</td>
</tr>
<tr>
<td>Other against person</td>
<td>24</td>
<td>1.3</td>
</tr>
<tr>
<td>Robbery</td>
<td>117</td>
<td>6.4</td>
</tr>
<tr>
<td>Break and enter</td>
<td>352</td>
<td>19.3</td>
</tr>
<tr>
<td>Fraud</td>
<td>20</td>
<td>1.1</td>
</tr>
<tr>
<td>Theft</td>
<td>193</td>
<td>10.6</td>
</tr>
<tr>
<td>Property damage</td>
<td>49</td>
<td>2.7</td>
</tr>
<tr>
<td>Justice procedures</td>
<td>113</td>
<td>6.2</td>
</tr>
<tr>
<td>Drug offences</td>
<td>25</td>
<td>1.4</td>
</tr>
<tr>
<td>Good order offences</td>
<td>46</td>
<td>2.5</td>
</tr>
<tr>
<td>Traffic offences</td>
<td>102</td>
<td>5.6</td>
</tr>
<tr>
<td>Other</td>
<td>45</td>
<td>2.5</td>
</tr>
<tr>
<td>All offences</td>
<td>1,825</td>
<td>100.0</td>
</tr>
</tbody>
</table>
7.2.9 Even though Table 7.7 statistically shows Aboriginal prisoners with lower percentages than non-Aboriginal prisoners for some offence categories, such as robbery and drug offences, this does not indicate that Aboriginal people are less likely than non-Aboriginal people to be imprisoned for these offences. On the contrary, as Walker\(^3\) has clearly demonstrated, and as the data in Table 7.7 confirm, for every offence category Aboriginal people are over-represented in the prison statistics. Aboriginal people comprise just under 1.1% of that part of the Australian population that is 17 years of age and above, and yet they comprise a much higher proportion of the persons imprisoned for each offence category. This point is most readily demonstrated by rearranging the figures in Table 7.7 to show the percentages of prisoners in each offence category who are Aboriginal. This has been done in Table 7.8. Thus, for example, whereas 8.8% of the Aboriginal prisoners were shown in Table 7.7 to have homicide as their most serious offence of conviction or charge, Table 7.8 shows that of all the persons in prison for homicide, 12.1% were Aboriginal.


**TABLE 7.8:** MOST SERIOUS OFFENCE OF CONVICTION OR CHARGE, ABORIGINAL AND NON-ABORIGINAL PRISONERS, AND PER CENT ABORIGINAL PRISONERS, 30 JUNE 1989

<table>
<thead>
<tr>
<th>Offence</th>
<th>Aboriginal</th>
<th>Non-Aboriginal</th>
<th>Total</th>
<th>Per cent Aboriginal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homicide</td>
<td>161</td>
<td>1,167</td>
<td>1,328</td>
<td>12.1</td>
</tr>
<tr>
<td>Assault</td>
<td>322</td>
<td>760</td>
<td>1,082</td>
<td>29.8</td>
</tr>
<tr>
<td>Sex offences</td>
<td>256</td>
<td>1,046</td>
<td>1,302</td>
<td>19.7</td>
</tr>
<tr>
<td>Other against person</td>
<td>24</td>
<td>119</td>
<td>143</td>
<td>16.8</td>
</tr>
<tr>
<td>Robbery</td>
<td>117</td>
<td>1,397</td>
<td>1,514</td>
<td>7.7</td>
</tr>
<tr>
<td>Break and enter</td>
<td>352</td>
<td>1,620</td>
<td>1,972</td>
<td>17.8</td>
</tr>
<tr>
<td>Fraud</td>
<td>20</td>
<td>504</td>
<td>520</td>
<td>3.8</td>
</tr>
<tr>
<td>Theft</td>
<td>193</td>
<td>1,219</td>
<td>1,412</td>
<td>13.7</td>
</tr>
<tr>
<td>Property damage</td>
<td>49</td>
<td>177</td>
<td>226</td>
<td>27.7</td>
</tr>
<tr>
<td>Justice procedures</td>
<td>113</td>
<td>587</td>
<td>700</td>
<td>16.1</td>
</tr>
<tr>
<td>Drug offences</td>
<td>25</td>
<td>1,260</td>
<td>1,285</td>
<td>1.6</td>
</tr>
<tr>
<td>Good order offences</td>
<td>46</td>
<td>142</td>
<td>188</td>
<td>24.5</td>
</tr>
<tr>
<td>Traffic offences</td>
<td>102</td>
<td>449</td>
<td>551</td>
<td>18.5</td>
</tr>
<tr>
<td>Other</td>
<td>45</td>
<td>520</td>
<td>565</td>
<td>8.0</td>
</tr>
<tr>
<td>All offences</td>
<td>1,825</td>
<td>10,967</td>
<td>12,788</td>
<td>14.3</td>
</tr>
</tbody>
</table>
8.2.3 From this graph it can be seen that for all aggregate sentence categories up to and including "1 and under 2 years" there were proportionately more Aboriginal prisoners, but the opposite was the case for all longer sentence categories including Life and Governor's Pleasure. These findings are consistent with those reported in Research Paper No. 6 of the Commission's Research Unit, which were based on 1987 data. This suggests the conclusion that Aboriginal prisoners are not given heavier sentences than non-Aboriginal prisoners and may, in some cases, be given lighter sentences. Since that research was carried out, however, further research has uncovered additional facts. The Research Unit's Research Paper No. 19 has shown that, for all Australian jurisdictions, the level of Aboriginal over-representation in non-custodial corrections (essentially probation, parole and community service orders) is considerably lower than the level of Aboriginal over-representation in prisons. This may possibly be because of a belief held by judges, magistrates and parole authorities that Aboriginal offenders are either less able or less willing to comply with the requirements of non-custodial orders. It may also be relevant to note that non-custodial sentencing options may not have been available in some remote areas. These considerations suggest that some courts may, at least in some cases, order for Aboriginal defendants a short prison sentence where for non-Aboriginal defendants the sentence would be non-custodial. Chapter 23.5 deals with this in more detail.
### TABLE 8.5: AGGREGATE SENTENCES IMPOSED ON SENTENCED ABORIGINAL PRISONERS, 30 JUNE 1989

<table>
<thead>
<tr>
<th>Aggregate sentence</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>NT</th>
<th>Aust</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 1 month</td>
<td>2</td>
<td>-</td>
<td>7</td>
<td>8</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>20</td>
</tr>
<tr>
<td>1 &amp; under 3 months</td>
<td>2</td>
<td>3</td>
<td>29</td>
<td>34</td>
<td>1</td>
<td>-</td>
<td>2</td>
<td>71</td>
</tr>
<tr>
<td>3 &amp; under 6 months</td>
<td>21</td>
<td>6</td>
<td>40</td>
<td>74</td>
<td>12</td>
<td>-</td>
<td>16</td>
<td>169</td>
</tr>
<tr>
<td>6 &amp; under 12 months</td>
<td>66</td>
<td>13</td>
<td>56</td>
<td>93</td>
<td>11</td>
<td>4</td>
<td>31</td>
<td>274</td>
</tr>
<tr>
<td>1 &amp; under 2 years</td>
<td>58</td>
<td>14</td>
<td>47</td>
<td>96</td>
<td>13</td>
<td>-</td>
<td>55</td>
<td>283</td>
</tr>
<tr>
<td>2 &amp; under 5 years</td>
<td>76</td>
<td>15</td>
<td>82</td>
<td>76</td>
<td>15</td>
<td>2</td>
<td>58</td>
<td>324</td>
</tr>
<tr>
<td>5 &amp; under 10 years</td>
<td>54</td>
<td>16</td>
<td>80</td>
<td>71</td>
<td>22</td>
<td>-</td>
<td>33</td>
<td>276</td>
</tr>
<tr>
<td>10 years and above</td>
<td>38</td>
<td>3</td>
<td>22</td>
<td>8</td>
<td>2</td>
<td>1</td>
<td>14</td>
<td>88</td>
</tr>
<tr>
<td>Life</td>
<td>6</td>
<td>3</td>
<td>25</td>
<td>39</td>
<td>7</td>
<td>1</td>
<td>3</td>
<td>84</td>
</tr>
<tr>
<td>Total</td>
<td>323</td>
<td>73</td>
<td>388</td>
<td>499</td>
<td>83</td>
<td>8</td>
<td>215</td>
<td>1,589</td>
</tr>
</tbody>
</table>

8.2.1 As with many other aspects of the use of imprisonment in Australia, the most valuable source of reliable information is the annual census of prisoners conducted by the Australian Institute of Criminology. Table 8.5 has been constructed from the published results of the census of 30 June 1989. It shows the aggregate sentences imposed on all Aboriginal prisoners under sentence in each jurisdiction on that date. Unsentenced or remand prisoners have been excluded from this table, as also have the small number serving periodic detention orders in New South Wales at that time. A person under a periodic detention order is required to spend specified periods, such as weekends, in prison. From this table it can be seen that most Aboriginal prisoners had been sentenced to terms of well over one year but that the proportions of long and short-term prisoners were not identical in all jurisdictions. For example, there seem to be proportionately more short-term Aboriginal prisoners in Western Australia and Queensland than elsewhere.
FIGURE 9.2: PERSONS TAKEN INTO CUSTODY AUGUST 1988, ABORIGINAL AND NON-ABORIGINAL, BY JURISDICTION

TABLE 9.1: POLICE CUSTODY RATES, ABORIGINAL AND NON-ABORIGINAL, BY JURISDICTION, AUGUST 1988

<table>
<thead>
<tr>
<th>State</th>
<th>Aboriginal rate</th>
<th>Total rate</th>
<th>Non-Aboriginal rate</th>
<th>Total rate</th>
<th>Level of Disproportion</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>1,312</td>
<td>103</td>
<td>87</td>
<td>123</td>
<td>15</td>
</tr>
<tr>
<td>Vic</td>
<td>1,570</td>
<td>170</td>
<td>117</td>
<td>132</td>
<td>13</td>
</tr>
<tr>
<td>Qld</td>
<td>2,840</td>
<td>237</td>
<td>170</td>
<td>237</td>
<td>17</td>
</tr>
<tr>
<td>WA</td>
<td>7,730</td>
<td>385</td>
<td>180</td>
<td>385</td>
<td>43</td>
</tr>
<tr>
<td>SA</td>
<td>4,877</td>
<td>239</td>
<td>187</td>
<td>239</td>
<td>26</td>
</tr>
<tr>
<td>Tas</td>
<td>640</td>
<td>135</td>
<td>123</td>
<td>135</td>
<td>5</td>
</tr>
<tr>
<td>NT</td>
<td>4,776</td>
<td>1,415</td>
<td>429</td>
<td>1,415</td>
<td>11</td>
</tr>
<tr>
<td>ACT</td>
<td>1,976</td>
<td>197</td>
<td>185</td>
<td>197</td>
<td>11</td>
</tr>
<tr>
<td>Aust</td>
<td>3,539</td>
<td>183</td>
<td>131</td>
<td>183</td>
<td>27</td>
</tr>
</tbody>
</table>

(a) Police custody August 1988 per 100,000 population at the 1986 census.
(b) Ratios of Aboriginal custody rates to non-Aboriginal rates.

9.2.6 The Aboriginal custody rates reflect this pattern. Western Australia had by far the highest Aboriginal custody rate, at 7,730 per 100,000, with South Australia and the Northern Territory also having rates substantially above the national rate. It will be noted that the States which have the highest Aboriginal populations, Queensland and New South Wales, had custody rates lower than those in a number of other jurisdictions.
### TABLE 9.2: CUSTODY RATES FOR PERSONS TAKEN INTO POLICE CUSTODY FOR REASONS OTHER THAN PUBLIC DRUNKENNESS, AUGUST 1988

<table>
<thead>
<tr>
<th>State</th>
<th>Aboriginal rate</th>
<th>Non-Aboriginal rate</th>
<th>Total rate</th>
<th>Level of disproportion</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>929</td>
<td>71</td>
<td>83</td>
<td>13</td>
</tr>
<tr>
<td>Vic</td>
<td>920</td>
<td>78</td>
<td>82</td>
<td>12</td>
</tr>
<tr>
<td>Qld</td>
<td>1,221</td>
<td>120</td>
<td>149</td>
<td>10</td>
</tr>
<tr>
<td>WA</td>
<td>4,909</td>
<td>169</td>
<td>298</td>
<td>29</td>
</tr>
<tr>
<td>SA</td>
<td>3,464</td>
<td>168</td>
<td>204</td>
<td>21</td>
</tr>
<tr>
<td>Tas</td>
<td>551</td>
<td>100</td>
<td>110</td>
<td>6</td>
</tr>
<tr>
<td>NT</td>
<td>1,128</td>
<td>221</td>
<td>431</td>
<td>5</td>
</tr>
<tr>
<td>ACT</td>
<td>738</td>
<td>119</td>
<td>124</td>
<td>6</td>
</tr>
<tr>
<td>Aust</td>
<td>1,845</td>
<td>101</td>
<td>128</td>
<td>18</td>
</tr>
</tbody>
</table>

(a) Police custodies for the designated groups August 1988, per 100,000 population at the 1986 census.  
(b) Ratios of Aboriginal custody rates to non-Aboriginal rates.

### TABLE 9.3: ABORIGINAL AND NON-ABORIGINAL ADULT IMPRISONMENT RATES AND LEVELS OF DISPROPORTION, BY JURISDICTION, 30 JUNE 1989

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Aboriginal</th>
<th>Non-Aboriginal</th>
<th>Level of disproportion</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>1,300.4</td>
<td>118.1</td>
<td>11.0</td>
</tr>
<tr>
<td>Vic</td>
<td>1,201.3</td>
<td>73.2</td>
<td>16.4</td>
</tr>
<tr>
<td>Qld</td>
<td>1,238.4</td>
<td>100.8</td>
<td>12.3</td>
</tr>
<tr>
<td>WA</td>
<td>2,665.6</td>
<td>101.5</td>
<td>26.3</td>
</tr>
<tr>
<td>SA</td>
<td>1,270.4</td>
<td>76.5</td>
<td>16.6</td>
</tr>
<tr>
<td>Tas</td>
<td>258.2</td>
<td>69.3</td>
<td>3.7</td>
</tr>
<tr>
<td>NT</td>
<td>1,271.5</td>
<td>124.5</td>
<td>10.2</td>
</tr>
<tr>
<td>Aust</td>
<td>1,464.9</td>
<td>97.2</td>
<td>15.1</td>
</tr>
</tbody>
</table>

(a) Prisoners per 100,000 of the relevant adult (17 years and above) population at the 1986 Census of Population and Housing.  
(b) Including ACT.

### TABLE 22.13: PERSONS SERVING ORDERS, BY THE TYPE OF ORDER AND ABORIGINALITY, WESTERN, AUSTRALIA, 30 JUNE 1987

<table>
<thead>
<tr>
<th>Order type</th>
<th>Aboriginal</th>
<th>Not stated</th>
<th>Total</th>
<th>Per cent Aboriginal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation, supervised</td>
<td>261</td>
<td>1,792</td>
<td>2,053</td>
<td>12.7</td>
</tr>
<tr>
<td>recognizance</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community service order</td>
<td>133</td>
<td>702</td>
<td>835</td>
<td>15.9</td>
</tr>
<tr>
<td>Parole/licence</td>
<td>156</td>
<td>657</td>
<td>813</td>
<td>19.2</td>
</tr>
</tbody>
</table>

The percentage of the prison population at census date 30 June 1987 who were Aboriginal was 30.9%.


Interim Inquiry into Aboriginal Deaths in Custody in Western Australia. (1988) Western Australia.


LAW REFORM COMMISSION OF CANADA:


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**SPEECHES / ADDRESSES / WORKSHOPS**


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