REPORT of the
ROYAL COMMISSION
on
ALLEGATIONS IN RELATION TO PRISONS... etc
SOUTH AUSTRALIA

REPORT

of the

ROYAL COMMISSION

on

ALLEGATIONS IN RELATION TO PRISONS UNDER THE CHARGE, CARE AND DIRECTION OF THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONAL SERVICES AND CERTAIN RELATED MATTERS

Appointed by Commission dated 7 October 1980

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1981
SOUTH AUSTRALIA

REPORT

To His Excellency Sir Keith Douglas Seaman, Esquire, Knight Commander of the Royal Victoria Order, Officer of the Most Excellent Order of the British Empire, Knight of Grace of the Most Venerable Order of the Hospital of St John of Jerusalem, Bachelor of Arts, Bachelor of Laws, Governor in and over the State of South Australia and its Dependencies in the Commonwealth of Australia.

May it please Your Excellency:

By a Commission dated 7 October 1980, I was appointed to be a Royal Commission to inquire into and report upon a number of matters set out in that Commission and in certain events to recommend such legislative or other action as I considered appropriate.

I have completed my inquiries and have the honour to present to Your Excellency my report and recommendations in relation to those matters.

11 December 1981

GRESLEY CLARKSON
Royal Commissioner
SOUTH AUSTRALIA
(To Wit)

His Excellency Keith Douglas Seaman, Esquire, Officer of the Most Excellent Order of the British Empire, B.A., LL.B., Knight of Grace of the Order of St John, Governor in and over the State of South Australia and its Dependencies in the Commonwealth of Australia:

To

The Honourable Gresley Drummond Clarkson, Q.C., of 54 Marine Parade, Mosman Park in the State of Western Australia.

Greeting:

WHEREAS there have been allegations of graft, corruption, misappropriation of goods and irregular practices at prisons under the charge, care and direction of the Director of the Department of Correctional Services.

WHEREAS there have been allegations of sexual and non-sexual assaults committed at the said prisons.

WHEREAS there have been allegations relating to the security of the said prisons and the discipline of the prisoners held therein.

WHEREAS there have been allegations relating to the presence of unauthorised material within the said prisons.

I, The Governor, with the advice and consent of the Executive Council of the State of South Australia DO HEREBY APPOINT YOU to be a Royal Commission to inquire into and report upon the matters referred to above, including where appropriate the prevalence of the occurrence of such matters, the periods over which they have occurred and the persons responsible for such occurrences, and in the event that any such allegations are found by you to be true, to recommend such legislative or other action as you consider appropriate.

And I give you full power and authority to do all such other acts and things as may be necessary and which may lawfully be done for the due execution of this Commission.

Given under my hand and the Public Seal of South Australia, at Adelaide, this 7th day of October 1980.

By command,

K. T. Griffin for Premier

Recorded in the Register of Commissions, Letters Patent, etc., Volume XIV.

J. N. Holland, Clerk of the Council

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1. INTRODUCTION

SUMMARY OF TERMS OF REFERENCE

The commission recited that there had been allegations:

(i) of graft, corruption, misappropriation of goods and irregular practices at prisons;
(ii) of sexual and non-sexual assaults committed at the said prisons;
(iii) relating to the security of the said prisons and the discipline of the prisoners held therein;
(iv) relating to the presence of unauthorised material within the said prisons.

The commission required me to inquire into and report upon the abovementioned matters, including where appropriate the prevalence of the occurrence of such matters, the periods over which they had occurred, the persons responsible for such occurrences and, in the event that any such allegations were found by me to be true, to recommend such legislative or other action as I considered appropriate.

It will be noted that whilst the general nature of the allegations are set out, the commission does not state when or by whom they were made and it was necessary to examine a number of events and publications leading up to the issue of the commission in order to identify the allegations to which the commission referred. This examination and the determination of the scope of the inquiries authorised are dealt with at page 4.

REPRESENTATION OF INTERESTED PARTIES

Section 13 of the Royal Commissions Act, 1917, provides that subject to any direction of the Commission, any person giving evidence before the Commission may be represented before the Commission by counsel or solicitor.

The allegations referred to the Commission for inquiry affected the Department of Correctional Services, a number of correctional officers and a number of prisoners and former prisoners, and each of these sought to be represented.

Apart from Mr B. T. Lander, counsel appointed to assist the Commission, the following counsel were given leave to appear:

G. L. Muecke for the Department of Correctional Services.
D. H. Greenwell for the Public Service Association and the Australian Government Workers Association (now the Federated Miscellaneous Workers Union of Australia (S.A. Branch)) both being Associations to which correctional officers belong.
S. W. Tilmouth and G. Hiskey for the clients of the Aboriginal Legal Rights Movement and Mr Hiskey for the relatives of Michael Gordon Semmens.
M. L. Abbott for Mr B. D. Sandery and a number of other prisoners who wished to give evidence.
G. F. Barrett for approximately twenty-five prisoners who wished to give evidence.

As the Commission developed, Mr Abbott and Mr Barrett were jointly available to act for any prisoner who wished to instruct them and, from time to time, Miss S. O'Connor of the Legal Services Commission which was instructing Messrs Abbott and Barrett, appeared in their place.

Mr D. Smith acted as counsel assisting the Commission for the hearing at Port Augusta.

PUBLICATION OF THE COMMISSION'S PROCEEDINGS

Section 6 of the Royal Commissions Act authorises a Commission to sit in public or in private and section 5 empowers it to publish such information obtained in the exercise of its functions as it thinks fit.

On a few occasions the Commission sat in private to receive evidence or to hear argument, but the general rule adopted was that in view of the nature of the allegations being investigated, it was in the public interest that the evidence should be taken in public and be available for publication.
Efforts were also made to ensure that the Commission’s inquiries came to the notice of potential witnesses. Between 17 October 1980 and 14 April 1981 a total of ten advertisements was placed in four newspapers circulating in South Australia. While the Commission was taking evidence, daily reports of proceedings were published in newspapers and radio and television news services. A number of communications were received by the Secretary from members of the public.

On the first day of the sittings, counsel for the department was asked for assurances that the term of reference of the Commission would be made known to prisoners and that communications from prisoners to their legal advisers or to the Commission would not be liable to censorship.

Counsel was subsequently able to give an assurance that notices containing the terms of reference were being exhibited on notice boards in the prisons and were being read at parades. He was also able to say that sealed letters addressed by prisoners to the Commission or to any legal adviser acting for prisoners would be passed on unopened to the Commission.

SITTINGS AND ITINERARY

The sittings of the Commission commenced on 23 October 1980 and finished on 11 August 1981. During that period 162 witnesses were called (see Appendix 1). The evidence of a further nine witnesses was received in written form (see Appendix 2).

Four hundred and eighty-five exhibits were received.

The Commission sat on 119 days and its proceedings are recorded in 13,076 pages of transcript.

Towards the end of the sittings, the Commission circulated to counsel for comment a draft summary of the various allegations which had been identified under each heading in the terms of reference. A final summary amended to meet suggestions made by counsel was distributed to the intent that counsel’s submissions on each allegation should be made in writing and in the order set out in the summary.

The Commission carried out inspections of the following institutions on the dates indicated:

<table>
<thead>
<tr>
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<tr>
<td>D Division, Yatala Labour Prison</td>
<td>3.11.80</td>
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<tr>
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<td>16.2.81</td>
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<tr>
<td>Gladstone Gaol</td>
<td>20.2.81</td>
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<td>Adelaide Gaol</td>
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PROCEDURE OF THE COMMISSION

Evidence

The many allegations of improper conduct which fell within the terms of reference made it desirable to adopt some procedure which would assist the continuous and smooth running of the Commission.

Section 7 of the Royal Commissions Act empowers a Commission to conduct its proceedings and inform its mind in such manner as it thinks proper. It is not bound by the rules or practices of any court or tribunal as to procedure or evidence. At the same time it would be unfair to the person concerned not to test by the adversary system evidence of alleged misconduct, and it would be shortsighted of a Commission to disregard completely the wisdom and long experience, as reflected in their procedures, of other tribunals or Commissions called upon to examine disputed allegations of improper conduct.

On 13 November 1980 counsel received a draft of some guidelines in respect of the procedure to be followed before the Commission. These guidelines, prepared by the Commission, were considered by counsel and were discussed on 14 November 1980 when they were adopted as general guidelines for the taking of evidence by the Commission.
These general rules were aimed firstly at ensuring that counsel had some reasonable opportunity of obtaining prior instructions on evidence to be given in the Commission and secondly, at limiting cross-examination substantially to matters raised in a witness’s proof of evidence.

The rule that proofs of evidence should be circulated three days before a witness gave evidence was generally adhered to and reduced the possibility of applications for adjournment by counsel who might otherwise have been taken by surprise.

The number of occasions on which counsel found it necessary to apply for leave to cross-examine on matters not dealt with in the witness’s proof was surprisingly small.

The guidelines are set out in Appendix 3.

Hearsay Evidence

The general rule adopted was that while hearsay evidence was received for the purpose of suggesting further lines of investigation, it was not accepted as cogent evidence of disputed substantive fact.

Standard of Proof

As indicated elsewhere in this report (Appendix 5) the Commission is not a court. No inevitable legal consequences follow its conclusions and legal rights are not affected. At the same time, its conclusions, especially if critical of a person, may be widely reported and may create in the public mind much the same reaction as an adverse finding in a court of law.

It is important to appreciate that the standard of proof which has been adopted is not that of the criminal law. The standard adopted is one of reasonable satisfaction according to the probabilities having in mind always the gravity of the allegation, the inherent likelihood of the event occurring, and the likely consequences of an adverse finding.

General

The rules and standards set out in this section owe much to those adopted by Mr Justice Nagle in the Royal Commission into New South Wales Prisons, 1976-1978.

TIME LIMITS ON PROCEEDINGS

By the end of March 1981 evidence was still being presented in support of the allegations referred to in the terms of reference.

On 3 April 1981 a last call was made for a proof or summary of evidence of any witness not yet heard but wishing to support any such allegation to be given to the Secretary by 23 April 1981.

It was also indicated that a similar time limit would be set in due course for witnesses wishing to give rebutting evidence. The date subsequently set for correctional officers was 24 July 1981 and for the department 31 July 1981.

These limitations were substantially met and as mentioned earlier, the evidence was concluded on 11 August 1981.

Deadlines were then set for the written submissions of counsel.

The 28 August 1981, subsequently extended to 1 September 1981, was set as the date by which counsel should complete and exchange with one another their submissions.

The 4 September 1981 was fixed as the date by which comments by counsel assisting the Commission would be distributed to the other counsel.

The 14 September 1981 was the date by which any responses by counsel should reach counsel assisting the Commission. In fact the last submissions were received on 29 September 1981.

Counsel were requested not to release the content of any submission before 14 September 1981 and it was indicated that the Commission would release all submissions to the news media after that date. The submissions were released on 30 September 1981 embargoed to 6.00 p.m. on 1 October 1981.
TERMS OF REFERENCE

General

The full terms of reference of the commission appear at page v.

It is clear that the substance of the matters to be investigated must be taken to have occurred, or at least to have commenced prior to the issue of the commission which is dated 7 October 1980.

The commission does not set out when these allegations were made or by whom, but to determine the scope of the inquiry it was necessary to answer both these questions.

The first and second recitals refer to conduct which is clearly misconduct or defective conduct, for example, graft and assaults.

The fourth recital refers to the presence of unauthorised materials in prisons and carries with it the notion that a prohibition against the presence of certain materials has been breached because of some improper or negligent conduct.

Some doubt whether or not the conduct giving rise to the state of affairs described in the third recital is criticisable conduct may be said to arise because what is referred to is not the insecurity of prisons and the indiscipline of prisoners but the security of prisons and the discipline of prisoners.

It is improbable however, if one bears in mind the other terms of reference, that an inquiry by Royal Commission would be launched into allegations of proper conduct and, in my opinion, the doubt is resolved by the fact that the only allegations made regarding security and discipline were allegations of laxity in relation to them.

I conclude then, that each of the four terms of reference refers either directly to allegations of misconduct or defective conduct or to a state of affairs alleged to be due to misconduct or defective conduct.

It is, I think, also clear that the subjects of the inquiry are not the allegations themselves but the 'matters' identified in the allegations, that is, graft, assaults, breaches of security and other matters specified in the recitals. I therefore adopted the view that to come within the scope of the inquiry a matter must fall within the subject matter specified and it must have occurred, or at the very least, have commenced before 7 October 1980 and must have been the subject of an allegation made before that date which was sufficiently notorious to have come to the notice of the Government or its advisers.

Generally it may be said that the matters investigated were the subjects of allegations made during 1980 but before the issue of the Commission.

The report of the consultant Mr F. Cassidy, which was highly critical of Yatala Labour Prison and its administration, was prepared in February 1980 although the substance of its contents was not made public until some months later.

The escape of J. A. Tognolini on 28 June 1980 appears to have centred public attention on the prison system and in particular, Yatala Labour Prison. In the following months until the issue of the Royal Commission, a number of allegations regarding the matters subsequently referred to in the terms of reference were made in Parliament and in the press, and the Government had available to it the Cassidy Report and a further report detailing deficiencies at Yatala made by Messrs N. R. Lenton and D. Hornibrook following Tognolini's escape.

In addition, some results of the Public Accounts Committee's investigation of the canteen system, which alleged substantial stock shortages, careless recording and the unexplained disappearance of relevant documents, became public knowledge.

In the absence of particularity in the terms of reference, it became necessary at an early stage of the inquiry, to identify the matters to be investigated and in his opening, counsel assisting the Commission listed the allegations made and related each matter the subject of an allegation to the relevant term of reference. This listing, amended as a result of suggestions from other counsel, became in due course the document finally distributed to counsel.

A copy of this document in its final form is in Appendix 4.
It is possible that there may be matters the subject of allegations which would fall within the terms of reference but which have not been raised or investigated. If there are, they have escaped the vigilance of all counsel and of the Commission and its staff.

Not all evidence of events occurring after 7 October 1980 was excluded. I indicated to counsel that to investigate properly a matter referred to the Commission, it might well be necessary to look at events which occurred or circumstances which existed after that date.

Two possibilities I referred to were words or conduct constituting an admission of a relevant allegation or circumstances which should be taken into account in preparing my recommendations. I did not attempt any exhaustive identification of the events occurring or circumstances arising after 7 October 1980 which I thought might properly be considered.

Subject to these qualifications, the general rule adopted was that an event or circumstance which did not occur or exist before 7 October 1980 and which was not the subject of an identifiable allegation made before that date, was not within the terms of reference.

Finally, it should be noted here that a number of allegations which were made remain unsupported by evidence. These are referred to in various places in the report.

PROPOSAL TO EXTEND TERMS OF REFERENCE

At the commencement of the inquiry counsel for the correctional officers, supported by counsel for the prisoners, sought to obtain an extension of the terms of reference to include, for instance, all aspects of the activities of the department and the cost effectiveness of current correctional practices.

The Premier (the Honourable D. Tonkin) had discussed the request with the representatives of the correctional officers and had stated in Parliament that, "I have no doubt that if in his wisdom the Royal Commissioner believes that the Government should be approached in regard to making a change to the terms of reference, he would do so."

The view I took was expressed in my ruling on 6 November 1980, and since the view that the terms of reference should have been extended has been reiterated in the submissions of counsel for the prisoners and for the Unions, I set out that ruling in full:

"These proceedings in which we are engaged constitute merely an inquiry; they are not proceedings in a court of law. The function of this body is to inquire into the matters referred to it, to report thereon to the Governor in Council and to the extent that the terms of the Commission require it to make recommendations.

"No conclusion reached as a result of the inquiry has legal consequences or affects the rights of anyone.

"A Commission is not appointed to try persons for offences nor to punish anyone guilty of an offence; that is the function of the courts. The function of a Royal Commission is essentially to investigate the matters referred to it.

"With that preliminary comment I turn to the suggestion that I should recommend an extension of the terms of reference.

"For purposes of government, information is sought in a variety of ways, by select committees, standing committees, annual reports of statutory bodies, inquiries authorised by particular statutes and by Royal Commissions, by departmental and inter-departmental inquiries and so on. Each method has its own use and it is a matter for the Government to determine when it requires information on a particular subject matter, what form of inquiry it will use.

"Here, the information given to me indicates that at the present time there are three inquiries in progress which should be noted. Firstly, there is a current study by the Public Service Board of staff members and levels of classification at institutions. Secondly, steps were taken in September of this year to establish a joint review of the Department of Correctional Services by independent consultants and officers of the public service. The terms of reference of this inquiry include matters relating to security measures, organisation structure and staffing, the cost effectiveness of the present system and recruitment and officer training. Thirdly, there is this Commission which is required to inquire into recent allegations relating to misconduct in prisons, the security and discipline of prisoners and the presence of unauthorised materials in prisons.

"The submission made by counsel for the Public Service Association and the Australian Government Workers Association is that I should recommend that the terms of reference of
the Commission should be widened to include matters, many of which are within the terms of reference of the other two inquiries. This submission is supported in effect by counsel appearing for a number of prisoners.

'It should of course be made quite clear immediately that I have no power at all myself to widen the terms of reference. At the same time there is nothing of which I am aware to prevent my recommending that the terms of reference be widened if I think such a recommendation should be made. Equally clearly there is nothing to prevent the Governor in Council rejecting any such recommendation which might be made.'

'In considering the submission made to me I naturally turned to see what has been done by experienced and distinguished commissioners in past inquiries. From my reading and my own knowledge I am aware of two sets of circumstances in which a Royal Commission may properly recommend that its terms of reference be enlarged.

'The first is where there is some deficiency in the terms which is apparent on a reading of the commission. To take an unlikely case, the terms of the commission may, on close examination, authorise an inquiry into one matter but require recommendations regarding another. In such a case the Commission would ask for clarification as soon as the discrepancy was discovered.

'The second is where, as the evidence unfolds, it is found that the purpose of the Commission cannot be fully achieved without inquiring into matters which, while inter-related with, are distinct from the matters specified for inquiry in the terms of reference. An example of this occurred in 1975 in the Royal Commission conducted by the late Judge Johnston into allegations made by prisoners at Yatala. The original terms of reference related to a number of incidents most of which were alleged to have occurred from 24 October 1974 onwards at Yatala. By a further commission some two months later, Judge Johnston was appointed to inquire into similar incidents which were alleged to have occurred during the period of 20 to 23 October 1974, that is, in the three days immediately preceding the date of the incidents the subject of the original terms of reference.

'Neither of these sets of circumstances exist here. The terms of reference are not specific in that they refer to allegations which have been made without specifying by whom or when those allegations were made. This means that the Commission as an early task will be called on to identify these allegations with greater particularity and counsel assisting the Commission no doubt has this task in hand. But there is nothing so far to indicate that there is, on the face of the Commission, a deficiency of the sort to which I have referred.

'The second set of circumstances to which I have referred has not arisen for the simple reason that no witness has yet been called to give evidence.

'Whether it will arise is something for the future.'

'I do not say that there are no other circumstances in which a Commissioner might properly ask for an extension of the terms of reference, nor do I exclude the possibility that some recommendations by this Commission might impinge on matters within the terms of reference of the other inquiries to which I have referred. What I do say is that I see no good reason at this stage for recommending any amendment to the terms of reference, and that at any time I would need considerably more than the existing circumstances to persuade me to recommend that an inquiry limited to the matters within prisons, specified in the present terms of reference, should be converted into a wide ranging inquiry into the penal system of South Australia.

'As I said earlier it is for the Executive to decide the best means by which it makes inquiries and collects information. It has chosen a combination of methods and I have no reason, nor do I presume to comment on the plan adopted.'

No extension of the terms of reference was made.

POWERS OF THE COMMISSION RELATING TO EVIDENCE AND WITNESSES

Again, early in the Commission's proceedings, application was made pursuant to Section 69 of the Evidence Act, 1929-1974 for orders forbidding publication of the names of witnesses and of parts of the evidence.

After consideration I concluded that Section 69 of the Evidence Act which conferred certain powers on 'courts' as defined in Section 68, did not extend to Royal Commissions.

My ruling is set out in Appendix 5.

Following this ruling the Royal Commissions Act, 1917 was amended by including Section 16a, which conferred on this Commission, and this Commission only, powers similar to those conferred on courts by Section 69 of the Evidence Act.

During the proceedings of the Commission a number of orders were made under Section 16a, most of which have already been rescinded.
ORDERS

It is now ordered that all existing orders made under Section 16a of the Royal Commissions Act be revoked, and the transcript of any evidence taken in private under Section 6 of the Royal Commissions Act is released for publication.

PRISONERS' STATEMENT

On 23 February 1981 the Commission received a document signed by 184 prisoners at Yatala indicating their understanding of some of the evidence which had already been given and stating that the signatories as a body wished to make a number of admissions and assertions. These are set out in Appendix 6.
2. IMPROPER USE OF PRISON LABOUR, PROPERTY AND FACILITIES

WORK PERMITS

The main allegations under this heading related to the misuse of what is known as the ‘permit system’.

Some of the allegations arose from a misunderstanding by prisoners of what the permit system was.

The system has been in operation at all institutions for a number of years and most of the complaints related to the system at Yatala.

Under the system, correctional officers and a few other public servants such as departmental employees, are able to requisition to have work done or goods supplied by the prison workshops.

A requisition may relate to a particular job for the requisitioning officer such as the manufacture of a particular article to specifications, or the spray painting of a car, or to an item produced in quantity by workshops such as a wheel-barrow.

The procedure was designed to operate in the following way. The requisitioning officer would complete his requisition or ‘permit’ in triplicate in a book of forms and the request would be approved or the work authorised by the Superintendent, a Deputy Superintendent or the Supervisor of Industries. The first or white copy and the second or pink copy would go to the correctional industry officer in charge of the appropriate workshop while the third or yellow copy would remain in the permit book. A form of the permit appears in Appendix 7.

The completed article, together with the pink copy of the permit, was given to the officer who requisitioned the work and the pink copy was his authority to take the goods from the institution. The white original on which was shown the price to be charged to the officer should be returned to the office where that amount was debited against the officer’s pay.

This system was open to abuse and was abused in a number of ways.

The main weakness of the system was that once a permit had been issued, there was no real attempt to supervise the system and no check was made of what happened to each copy of the permit.

As long as an officer could produce the pink copy of the permit at the gate he could remove the completed article from the prison without any check whether a charge had been raised. There was nothing to ensure that the white copy was returned to the office and as long as it was not, no charge was raised.

In some cases the officer concerned took the pink copy of the permit with him. In others it was handed in at the gate. There was no instruction that the pink copy should be returned to the office.

In some cases the white or yellow copy was merely marked ‘cancelled’, and in one case, where there was no record of the white or pink copy, any record of the transaction at the prison was effectively destroyed by the removal from the permit book of the yellow copy.

Further defects were that prior to the setting up of the Commission, there was no serious attempt to cost each job in detail and some charges made seem extraordinarily low.

The Director agreed that the permit system had been abused and was open to fraud on the part of officers.

During July 1981 the Commission’s staff examined 4,000 permits which had been authorised in the two-year period to 26 May 1980. Two hundred and eight original permits were not produced for inspection. Of these, eighty-one were permits granted to correctional industry officers.

On thirty-nine occasions the officer receiving the permit was the officer who authorised its issue.

The Commission was informed that further investigation of these apparent discrepancies would be made and the Commission has now been informed by memorandum dated 18 November 1981 that of the original permits missing, recovery action has been completed or is in progress in respect of 130 of them for amounts totalling $586.

I comment on the evidence of two officers who gave evidence regarding permits obtained by them.
C.I.O. Elsworth had had some spray painting of his car done some four years before he gave evidence. At the end of June 1981 the white and pink copies of the permit were missing although naturally he had removed the car from the prison. No cost of the work which he estimated at $45 had been raised against him nor had he made any payment.

A permit had also been issued to the same officer for the making of a fibreglass box. This job was complete but had not been paid for.

I am satisfied that in each case Elsworth deliberately avoided paying for the work done, by the simple expedient of ensuring that the first or white copy of the permit was not returned to the office and, consequently, no charge was raised.

I am also satisfied that he was less than truthful in some of the answers he gave in evidence. For reasons which I discuss elsewhere (page 84) I leave to the appropriate authorities the question whether any further action should be taken.

In about February 1980, C.I.O. Capone obtained a permit to have some work done in the remodelling of doors and frames. After Elsworth's evidence had been made public, Capone raised a charge on a new permit for the work on the doors and frames and paid for it.

Work done under a permit on a wardrobe for Capone had not been paid for and he admitted in evidence that he had cancelled the permit to avoid paying for the work. This was a clear abuse of the system by one of those responsible for its proper operation.

I think it a fair criticism to say that the Department has been slow to meet the weaknesses of the permit system which have appeared and that such changes as have so far been introduced since the Commission commenced do not remedy the substantial defects which exist.

Whether the system should be permitted to continue is a question of some substance. I am inclined to the view that it should be continued if safeguards can be devised to minimise the opportunities for abuse and steps are taken to ensure that everyone concerned—and that includes the prisoners working in the workshops—know how the system works.

The workshops are intended to fulfil the important function of providing training and experience for the prisoners. A difficulty which the prison authorities face is that not enough work for efficient management and training is always available. Nor is there a sufficient variety of work. With the full development of the workshop compound at Yatala, these difficulties will be accentuated. The permit system, while providing a valuable variety of work, accounts for approximately 25 per cent of the total work available. It constitutes about 50 per cent of the work in the garage. Both the Director and the Manager of Industries (B. Cunningham) favour the retention of the system for substantially the same reasons as those I have already expressed.

Since the system has been operating for some years it was surprising that some of the prisoners who referred in their evidence to work done for the benefit of officers, were not aware that such a system existed while others who knew there was a system had no knowledge of how it worked.

This lack of knowledge has clearly led to misunderstandings and a dissatisfaction on the part of prisoners based on the belief that officers were improperly obtaining advantage from the use of government materials and prison labour.

It is not for me to design a system which would meet the present criticisms. There are, however, some minimum requirements which can be stated. These are:

(a) A reasonably detailed description of the work required on each permit.

(b) A reasonably detailed estimate of the cost of the work and a reasonable charge for it. This requirement has been largely met by the recent introduction of a costing sheet for each job.

(c) If the present system of using a permit in triplicate is to be continued, the ultimate collection of all copies of the permit in the office recording the completion of the work, the amount to be charged and the removal of the article from the prison.

(d) Regular supervision of the system including periodical checks on apparently uncompleted jobs.

(e) Security of all records and of serially numbered forms.
YATALA CANTEEN

The Yatala Canteen was the subject of investigation and comment before the appointment of the Royal Commission.

The canteen was established in 1967 to provide amenities for inmates at Yatala. Over the years the operations of the canteen have been extended to carry an increasing variety of stock and to provide stock for canteens at the other institutions controlled by the Department. The situation has now been reached where the canteen carries over 200 items of stock and its sales exceed $350,000 per annum. Profits resulting from a mark-up of cost price, which is at present 10 per cent, are applied to provide sporting and similar equipment for inmates.

In February 1980 the Public Accounts Committee received information suggesting malpractices in the canteen and requested the Auditor-General to audit the accounts of the Yatala Canteen and to prepare a report for the Public Accounts Committee.

The Auditor-General's report of 23 May 1980 disclosed careless record keeping and, for a four week period ending on 28 December 1979, shortages of stock amounting to $1,245.

A subsequent review by the Public Accounts Committee reached the conclusions that canteen records had been falsified to cover deficiencies, that the recording system was ineffective, security poor, and supervision inadequate.

The Committee also concluded that some canteen records had been destroyed to hinder the investigations of the Public Accounts Committee.

Responsibility for the shortages could not be determined either by the audit or by the inquiries of the Public Accounts Committee.

The Committee had intended to extend its inquiries into other aspects of the prison system but following the appointment of the Royal Commission it decided to defer further inquiries until after the Commission.

The criticisms contained in the Auditor-General's report and the findings of the Public Accounts Committee were disclosed in an article published in the Advertiser newspaper on 4 October 1980 and these allegations clearly fell within the terms of reference of the Commission.

I have not considered myself bound by any finding of the Public Accounts Committee and have conducted my own inquiries but I have reached substantially the same conclusions regarding the physical and financial management of the system and the records of the canteen as those reached by the Public Accounts committee.

It should be noted that the deficiencies to which I am about to refer have now been substantially remedied. The Auditor-General's report of 23 May 1980 was made available to the Director and while the Public Accounts Committee was somewhat critical of the reactions of the Director and of the Superintendent of Yatala to that report, it appears that a similar review in May 1981 of canteen operations by the Auditor-General showed an overall satisfactory position.

The system in outline is that stock is purchased from suppliers and received into the canteen. The weekly purchases of each inmate recorded on a 'buy sheet' are debited against his earnings and a cheque for the total purchases is drawn and credited to the canteen account. The canteen then recommences the cycle by ordering more stock from suppliers.

The audit completed in May 1980 showed that substantial losses of stock had occurred. The period selected for examination by the auditors was the four week period from 1 to 28 December 1979. A complete analysis was made of all purchases. Then quantities and prices for each item purchased and sold were prepared from the canteen records. Variations were found to exist between the balances of stock held as ascertained by audit on the one hand and by the canteen records on the other.

To establish that the deficiencies were not due merely to errors in recording the stock held at the beginning of the four week period, that is, on 1 December 1979, the same analysis and calculations were made for the two week period from 15 to 28 December 1979. The stock deficiency for the four week period was found to be $1,245 and for the two week period—which was the latter half of the four week period—$475.
It is beyond question that a loss of stock to the value of $475 occurred in the fortnight ended the 28 December 1979.

Since one cannot be certain what the opening stock was on 1 December 1979, the exact loss for the period from 1 to 14 December 1979, cannot be stated, but since the same system with its various weaknesses was in operation both before and after December 1979, I am satisfied that substantial amounts of stock were removed from canteen stocks during the relevant period.

Whether one extends for one year the calculated monthly loss of $1 245 or more cautiously, the calculated fortnightly loss of $475, the possible annual cost of the malpractices which were occurring could have been of the order of $12 000 to $15 000.

It should be noted that the Public Accounts Committee, by comparing actual results with an estimated profit based on a profit mark-up, calculated that the loss was approximately $15 500 per annum or $31 000 for two years.

Without criticising these estimates, I prefer to express my conclusion as being that the established loss for a 14 day period in December 1979, was $475 and that with the same system operating before and after that period, substantial losses were incurred.

That these losses could continue without detection for a lengthy period was due to a number of circumstances.

The Department accepts the findings of the Auditor-General in the May 1980 report. It must therefore be taken to acknowledge that there was careless record keeping and ineffective reporting of results of the kind necessary to enable policy decisions to be made and supervised.

The Department must also be taken to accept in effect that responsibility for the shortages cannot now be clearly determined because the system in operation did not sufficiently restrict access to the canteen nor define the duties of those in it, nor establish a sufficient check of goods coming into the canteen and being received by inmates.

The evidence before the Commission established that prior to June 1980 the canteen's operations were quite unsatisfactory. As a result of ill-health, inexperience and lack of training, the officers charged with the duty of supervising the canteen were not able to do so. Indeed, on a number of occasions they sought, or were given advice from inmates employed in the canteen on matters on which they should have been instructing the inmates.

The deficiencies in the canteen system continued undetected in part because of a failure on the part of the prison authorities or the departmental staff to provide supervision. Although an internal audit officer had been appointed in 1977 he did not commence these duties until February 1980, after the bulk of the losses now being investigated had occurred.

No business with an annual turnover of about $350 000 could trade profitably with the staff and supervision which was provided for the Yatala Canteen.

Although it cannot now be said precisely how the losses occurred, the evidence suggests a number of methods, a combination of which could account for them.

One was the giving by an inmate working in the canteen to another inmate of more than that inmate had ordered or been charged with. The resulting shortages in stock were concealed by the practices of writing into the records less stock than was actually received and by inflating the price of stock.

It seems reasonably clear that the ignorance of basic accounting methods on the part of the canteen officers, together with the absence of any internal checking, permitted the apparent balancing of books which any accurate stocktaking or comparison of purchases with stock and sales would have demonstrated to be wrong.

There were also wide variations in the costing of some items, especially cassettes, but the records were such that it was not possible to determine whether or not the results had been manipulated.

Early in 1979 a serially numbered order book was found to be missing. A delivery of television sets was made by a supplier pursuant to a telephone order in which the number of one of the missing order
forms was given as authority for delivery. The sets were returned. There is no other evidence of order
forms in the missing book or any other documents being misused to make unauthorised orders.

It appears probable that some canteen records were deliberately destroyed at about the time of the
Public Accounts Committee's investigations. There is nothing to show who destroyed them. The
documents which were found to be missing were weekly ledger sheets. However, monthly ledger sheets
to which the information on the weekly sheets had been transposed were available. The difficulty of
unravelling the canteen accounts sprang more from the poor state and incompleteness of the existing
records than from the absence of any document destroyed.

A number of other allegations of improper conduct relating to the canteen were made but not
sustained. For instance, I am satisfied that some soft drinks sent to the officers' club were replaced
promptly.

One prisoner associated with the running of the canteen at the Cadell Training Centre alleged
improprieties in the supply of canteen stores to that Centre. These matters were investigated at my
request by Mr. S. O'Neill, an officer of the Auditor-General's office. Two matters in particular should
be mentioned.

The prisoner said in effect that Cadell was debited with the amount of stock ordered and not the
amount sent. Mr. O'Neill checked the monthly stock reconciliations between the 24 August 1979, and
the 28 December 1979, and found only minor variations between the actual stock said to be held at
Cadell and its stock estimates in the Yatala records. Admittedly the records available to Mr. O'Neill
covered a period of only four months but what records there are do not support the allegation made.

It was also said that Yatala's running sheets indicated stock at Cadell to the value of $6,000 while
in fact its value was $2,800. The only records showing stock at Cadell at the figure of $6,000 is a
record entitled, 'Stock Controlled Institutions—Canteens', but balances in this record cannot safely be
compared with actual stock because of the time lag which occurs in recording sales.

The review by the Auditor-General of May 1981, disclosed as previously mentioned that the overall
situation is now satisfactory.

The probabilities are that at least the substantial part of the losses complained of at Yatala was
directly attributable to the deliberate oversupply of goods by persons working in the canteen to their
fellow prisoners. There is no acceptable evidence of unlawful appropriation by officers.

But I am satisfied that these substantial losses which occurred in the period of about two years
prior to May 1980, could not have occurred but for the poor supervision and inadequate recording
system provided by the Department.

MISAPPROPRIATION OF GOODS

There was some evidence of the disappearance in recent years of materials from Yatala Labour
Prison. Officer Glink reported that in April 1979, 168 bricks, valued at $20 and donated by the
Education Department, were removed from Yatala without authority. It is assumed that no-one other
than an officer would have had the opportunity or facilities to remove the bricks. It appears that there
was some investigation whether a departmental vehicle had been used in the removal of the bricks but
without result.

On 1 July 1980, Officer P. R. Gunther reported that some paint was missing from the paint shop
in May 1980. There was no sign of forced entry and it is assumed that no-one could have obtained
entry to the shop without a key. The Supervisor of Industries instructed Gunther to conduct a stocktake
which disclosed a total shortage of 42 four litre cans with a value of between $600 and $700. Gunther's
view was that only prison staff could have removed the paint. There is nothing to show whether the 42
cans were taken at the one time or over a period. The Director was unaware of the quantity of the
paint missing and there was some misunderstanding between him and the Manager of Industries as to
the investigation to be made of these losses.

Neither within the prison nor at the Department was a proper investigation made of these lost
materials.
3. ALLEGED GRAFT AND CORRUPTION

The Honourable Peter Duncan was reported in the Advertiser newspaper of 11 September 1980 as saying that his investigations had indicated widespread corruption in the Department of Correctional Services.

At the Commission's hearing on 19 November 1980 counsel assisting the Commission said:

'I approached Mr Duncan in relation to the various allegations he has made in Hansard and also that he has made in newspapers as will show out when I discuss the matters into media. Mr Duncan assured me of his full co-operation and advised me that he has given the whole of his material to Mr Barrett and Mr Barrett will be conducting those allegations before you, sir. Mr Barrett confirms that that is the case.'

By 26 May 1981 counsel for the prisoners had called no evidence of alleged corruption and counsel assisting the Commission wrote to Mr Duncan referring to a number of allegations including this one and inquiring whether there was any information which Mr Duncan might make available relating to the allegations referred to.

In response to a further inquiry by counsel assisting the Commission, Mr Duncan wrote on 27 August 1981, saying:

'I thought I made it quite clear to you at our earlier discussions that I had no first hand information to put before the Commission. However I now appreciate, following your second letter, that you desire to have formal notification of that fact. Accordingly I now wish to advise that there are no matters known to me personally which I could usefully have put before the Commission.'

I have understood the situation to be that any information Mr Duncan wished to make available to the Commission has been made available through Mr Barrett and the witnesses who have been called.

This leaves as the only direct allegations of corruption of which evidence has been given, two allegations in which in my view the term 'corruption' was not used in its ordinarily accepted sense.

Mr Cassidy in his report stated that some officers said that the promotion system was corrupt. He understood the term to be used in relation to a procedure whereby when appointment to a position was being considered, the practice of the Department was to appoint to that position in an acting capacity the candidate the Department favoured thus giving that person when the time came for making the appointment the advantage of having acted in that position.

One of the officers who told Mr Cassidy that the system of promotion was corrupt gave evidence and said that he used the word in the sense of 'tainted, without integrity, to ruin something, to lower the quality by change or error, to degenerate, to waste' and not in the sense of involving bribery or giving or taking something in return for favours.

The officer who gave this evidence exhibited a genuinely held belief that he had been badly treated in relation to promotion. He appeared to be a person who had studied to advance himself in his occupation but who did not get on well with a number of officers senior to him and who felt that he had been disadvantaged because of his religion.

Certainly there was no evidence of corruption in its more commonly used sense as involving moral evil or a willingness to take bribes, and I am not persuaded by the evidence to find the promotion system in the Department corrupt in the sense in which the officer concerned used that word.

I may have misunderstood that part of the officer's evidence but the thrust of it to me was that he had been dissuaded from applying for appointment as training officer by the suggestion that such an appointment might hinder his future chances of promotion only to find that for others the appointment had, if anything, appeared to improve their prospects of promotion.

The findings in this report in relation to the abuse by some officers of the permit system may perhaps be described as findings that those officers were in that respect corrupt but there is no evidence to justify a finding of widespread corruption in the Department nor that the appeal system which I understand to be in use throughout the public service, is deficient in the ways suggested.
4. IRREGULAR PRACTICES
RESULTING IN DEATHS OF PRISONERS IN CUSTODY

On 21 August 1980 it was alleged in the House of Assembly that 'there have been in Yatala Gaol over the past twelve months at least six deaths of prisoners' and 'that for that number of people to have died in the prison during that period is an absolute scandal'.

On 28 August 1980 in a question in the House, a request was made for the reports of investigations into the deaths of 'Copping, Mogorov, Bowman, Essa, Sullivan, Ash, Alchin and Brown'. The request was refused.

The evidence before me indicates that during the two years preceding 7 October 1980, nine persons died in prisons or in custody in South Australia and four of them died in the twelve months preceding 21 August 1980 either in Yatala or in hospital after being transferred from Yatala.

The Director's evidence was that there was no record of the prisoner by the name of Essa, that a prisoner by the name of Alchin was discharged from Port Augusta Gaol on 14 October 1980, and that Ash was an asthmatic who died in gaol in about 1971.

There is nothing to suggest any unusual circumstances existed in respect of these deaths except in relation to the deaths of Messrs Mogorov, Bowman, Lattas and Semmens.

Mogorov is recorded as having died on 12 February 1980 following a fall at the Northfield Security Hospital and Lattas as having committed suicide in Adelaide Gaol on 2 July 1980. Bowman is recorded as having committed suicide at Yatala on 17 January 1980 and Semmens as having died at Port Augusta Gaol on 23 July 1980 as the result of a brain haemorrhage. I have heard evidence relating to the deaths of Messrs Bowman and Semmens and deal later in this section with the circumstances in which those deaths occurred. No evidence was offered nor did I seek any relating to the deaths of Messrs Mogorov and Lattas. Inquiries under the Coroners Act could, of course, be instituted if the appropriate authority saw fit.

**Coroners Act and Prisons Act**

There is one allied matter which should be mentioned.

The Coroner, during the inquest into Bowman's death, remarked on an apparent conflict between provisions of these Acts and counsel before the Commission have requested me to make a recommendation that the relevant legislation be amended to resolve the difficulty.

Section 12 of the Coroners Act, 1975 provides that the subject to that Act an inquest may be held in order to ascertain the cause or circumstances of the death of any person while detained or accommodated in any government institution.

Section 6 of that Act defines government institution to mean amongst other things a prison as defined in the Prisons Act or an institution as defined in the Medical Health Act, 1935.

Section 14 (1) of the Coroners Act provides that the State Coroner shall hold an inquest or direct another coroner to hold an inquest if he considers it necessary or desirable that an inquest be held or if the Attorney General directs him to do so.

Section 45 of the Prisons Act, 1936 provides that an inquest shall be held on the body of every prisoner who dies within any prison.

I think that as a general rule, where a death occurs in a prison or where a death may be attributable to events or circumstances occurring in a prison, it is in the public interest that there should be a public inquiry into the death.

This is the most effective way of satisfying any disquiet arising from the inevitable lack of independent observation of the relevant circumstances and from the rumours likely to arise from that lack of information.

If that view is accepted then a provision in terms of Section 45 of the Prisons Act would be too narrow. There may well be cases where the cause of death is to be found in the prison but the death occurs in a public hospital.
My recommendation is that the relevant legislation be amended to provide in effect that the Coroner shall hold an inquest to ascertain the cause or circumstances of the death of any person where the death or any act or circumstances contributing to the death occurs in a prison.

There may still be cases where it is thought that in the public interest there should be no inquest. If the general rule is to be so qualified it could be provided that an inquest shall be held in the circumstances specified unless the Attorney-General otherwise orders.

Christopher Paul Bowman

Bowman committed suicide in his cell at Yatala in the early hours of 17 January 1980. He had been due for release in April 1980. He was a young man apparently of quiet demeanour.

After his death a letter was found in his clothing in which he expressed the intention of preventing others from degrading him to a level he could not live with and implying that he had been 'stood over' and that his death might have a purpose if it prevented such behaviour being ignored in the future.

At the request of the deceased's mother, an inquest was held. The Coroner concluded that the deceased had been subject to sexual overtures and demands from fellow prisoners and that it was probable that he was obliged to take part in homosexual acts under threat of violence and that he was thus led to a feeling of extreme degradation and hopelessness.

The pathologist's report indicated that there were a number of cigarette burns of recent origin on Bowman's body.

G. K. McCartney, a fellow prisoner of the deceased, gave evidence at the inquest that the deceased had been raped and assaulted by a group of prisoners on a number of occasions before his death.

These serious allegations came clearly within the terms of reference of the Commission.

Unfortunately the inquiry in the Commission into these allegations was somewhat hampered for the reasons I now describe.

The witness McCartney gave evidence which went beyond that given by him in the Coroner's Court including a detailed description of a pack rape on Bowman by a group of prisoners, some of whom McCartney named.

The following passage is taken from the transcript:

**Answer:** ... I can't recall the events of the morning too well, but more so I can remember the events that happened in the lunchtime of the same day, because I saw part of this fifth take place. I came in from number 2 yard to get some sports gear. I came through the barrier and no questions were asked to me and I proceeded into A Division shower block. I did not see any officer on the barrier but also saw officers sitting in the box. I went in the barrier and there is two sports rooms on the lefthand side. While I was there I went to go to the toilet. As I was going into the toilet it was there that I saw the event that was going on. What I saw actually horrified me; I couldn't get out of there quick enough. Chris was being raped.

**Question:** Just stop there. What did you actually see.

**Answer:** He was being raped.

**Question:** By whom, by how many, what did you actually see.

**Answer:** There were guys having anal intercourse with him.

**Question:** Do you mean that you saw more than one having anal intercourse with him or did you only see one.

**Answer:** I saw one at a time.

**Question:** Who was that or do you not know.

**Answer:** I really couldn't get out of there quick enough.

**Question:** How many people were there in the immediate vicinity of that incident.

**Answer:** There were six.

**Question:** Who were they.
Answer I cannot recall the six of them, three of them I could.

Question Who were the three that you can recollect.

He then named three prisoners and the transcript proceeds:

Question Was either of them having intercourse with Chris Bowman or not.

Answer I cannot really remember, Mr Barrett, I got out of there quick enough.

As will be seen a number of aspects of this account required clarification. Although McCartney says he saw Bowman raped by his attackers 'one at a time', he does not say whether he saw any of the three men he named rape Bowman although his last answer indicates perhaps that he did not.

Before McCartney was cross-examined on this evidence he indicated that he did not wish to be cross-examined in relation to the Bowman affair because he had been threatened that if he continued to give evidence on that subject his life would be endangered.

I should say that I had some doubts whether the witness was under the threat he claimed. He had given similar evidence about the alleged rape at the Coroner's inquiry and had already given his evidence-in-chief before the Commission. At the same time he had been held in maximum security while giving evidence and the threats of which he spoke would not be altogether unlikely if under cross-examination he fortified the evidence he had given by identifying Bowman's assailants.

My choice was, on the one hand, to require the witness to answer questions in cross-examination with the prospect that his safety might be endangered if he did answer or he might become liable to punishment if he did not or, on the other hand, not to proceed with his cross-examination and thus diminish the weight of his evidence. I chose the latter course.

The difficulties arising from the evidence relating to Bowman did not end there.

The witness Munn gave evidence suggesting that Bowman had taken an LSD tablet the day before his death, that he took it while in a depressed state of mind and that the drug accentuated this depression causing him to commit suicide.

In my view Munn was not a truthful witness.

There is some evidence regarding Bowman which I think is indisputable. His written statement of 9 November 1979, clearly shows that he was being sexually harassed in the locker shop and that this was happening 'all the time'. His complaint to C.P.O. B. A. Townsend about a fortnight before his death was to the effect that he was being sexually harassed. The cigarette burns to his body were of recent origin and I do not accept that they were self-inflicted.

Munn claimed to be Bowman's closest friend in prison. Bowman's death was in January 1980 but Munn said nothing until he gave a statement to an investigating officer acting for the Commission. That statement is dated 10 December 1980. Munn was aware of the evidence given before the Coroner.

In his statement Munn says Bowman had confidence in him and would certainly tell him of any problems he had and that until the day before his death Bowman exhibited no signs of depression or worry about the gaol situation.

This evidence just cannot stand against the written complaint made on 9 November 1979 and his complaint to Townsend, neither of which Munn was aware of nor did Munn have any knowledge of the cigarette burns. The evidence of S. Collins can be criticised on similar grounds.

All these events occurred before the time when Bowman allegedly took LSD. In the light of Bowman's complaints it is ludicrous to suggest as Munn does that when prisoners approached Bowman about performing homosexual acts with them, he ignored them or 'laughed it off', and it is quite mystifying if Bowman and Munn were as close as Munn claimed that Bowman never spoke of the two official complaints he had made and of his grounds for making them.

Even if I accept as correct that part of Munn's story relating to the taking of LSD by Bowman and its likely effect when the taker is 'in the wrong mood', I doubt whether this affects to any real degree what I regard as the most important aspect of this affair and that is the apparent failure of the prison authorities to investigate Bowman's two complaints.
The written complaint made on or about 9 November 1979, showed that the harassment was in the locker shop by two persons in that shop whose christian names were stated and the nickname of the person who made a threat of violence was also stated.

The second complaint was after Bowman had made a formal written request for an interview. The complaint was made about two weeks before Bowman died. There is no evidence of any record of this interview. Townsend had been aware of the original written complaint. Apparently he had arranged for it to be taken by Officer Kelly but he admitted to the Coroner that he may have overlooked the complaint at his interview with Bowman. The transcript of the proceedings before the Coroner records the following passage:

*Question* And when he came to you fourteen days before his death and wanted protection your attitude was quite clear, wasn't it—no names, no protection.

*Answer* If you want to put it bluntly, yes.

I appreciate there must be formidable difficulties in investigating this sort of complaint in a prison. Disclosures made in the course of an investigation may place the complainant in a worse position that if he had not complained. However, the point here is that there is nothing in the evidence to suggest any serious investigation of either complaint.

I am unable to say whether the failure was the responsibility of a particular officer, but it is easy to see that if Townsend at the interview when the second complaint was made did not recall the gist of the first complaint, not as much attention would be given to the matter as should have been.

Bowman was driven to take his own life by the treatment received from his fellow prisoners. He would have received no comfort from the apparent lack of concern on the part of the prison authorities. Those authorities failed to take proper care of Bowman.

Michael Gordon Semmens

Most of the evidence of the circumstances surrounding the death of Michael Gordon Semmens was heard at Port Augusta.

Early in the proceedings at Port Augusta a statement of agreed facts was tendered. These facts are as follows:

1. At about 9.45 p.m. on Wednesday, 16 July 1980, Semmens was arrested at the New Exchange Hotel on a warrant for non-payment of fines and costs by Constables Kiser and Thomas.

2. Constable McCormack received Semmens at the watch-house at the Port Augusta police station at about 9.55 p.m. and he remained in the police lock-up overnight.

3. At about 11.30 a.m. on 17 July 1980, Semmens was received by the front gate officer at the Port Augusta Gaol by Prison Officer Sloan.

4. At about 9.30 a.m. on Friday, 18 July 1980, Semmens was subject to a routine medical examination by Dr Yeung at the Port Augusta Gaol.

5. At about 3.00 p.m. on Monday, 21 July 1980, Semmens was examined at the Port Augusta surgery of Dr Yeung.

6. Shortly after 11.45 p.m. on Wednesday, 23 July 1980, Prison Officer Whenan found Semmens in an unusual position lying on the floor of his cell (No. 48) with his leg cocked up on a bed. The Chief Prison Officer was contacted and a doctor and the police were called.

7. Dr McIntyre pronounced life extinct at 12.30 a.m. on Wednesday, 24 July 1980.

8. The opinion of Dr Manock, pathologist, is that Semmens died as a result of secondary brain haemorrhages due to a right sided subdural haematoma.
Counsel for the relatives of the deceased framed what he referred to as the areas of concern as follows:

(1) On Wednesday, 23 July 1980, the deceased, Semmens, was obviously ill and his state of health was such that the prison authorities should have been aware of this and should have sought medical opinion, particularly bearing in mind that on Monday, 21 July 1980, the prisoner had been medically examined and that the medical examination recorded on the medical record indicated the possibility of concussion.

(2) The failure of the prison authorities to summon such assistance indicates either a failure to properly maintain or record the changes and condition of a sick inmate, such as Semmens, or a failure to accept responsibility for caring for a sick prisoner in this situation. This is an irregular practice.

(3) The failure of Prison Officer Merritt to take seriously or heed a request by the deceased for medical attention was, in the circumstances, improper and an irregular practice.

A number of additional facts should be noted.

It appears that shortly before his arrest Semmens was involved in a fight in a hotel bar during which he fell and hit his head. With the advantage of hindsight it can be said that the injury to Semmens’ head occurred then.

Nothing unusual in Semmens’ behaviour or appearance was noted on 17, 18, 19 and 20 July. He underwent a routine medical check at the gaol by Dr Yeung on Friday, 18 July, when he made no complaint and nothing unusual was noted.

The first recorded complaint by Semmens was at 3.45 a.m. on Monday, 21 July, when Semmens told Officer Whenan that he had a headache and a partial blurring of vision. He also said that prior to his arrest he had been involved in a brawl and had hit his head.

Whenan’s entry in the night watch journal for Monday, 21 July 1980, include:

... 0345 Semmens Cell 48 complaining of headaches given two Panadene...
... 0745 Cell 48 reported sick ...

Whenan says that at the end of his shift at 8.00 a.m. on 21 July he told Chief Correctional Officer Steele that Semmens had complained of headache and blurring of vision and had said that he had been ‘knocked about the head’. Whenan also says he told Steele ‘it would more than likely be a good idea to have him checked out’ to which Steele had replied that he would ‘get him seen to’. Steele could not recall Whenan telling him anything but that Semmens was sick.

Steele then visited Semmens who told him he had a headache between his eyes and at the back of his head and that it was as a result of a fight. Steele rang Dr Yeung, told him this and made an appointment for Semmens to see the doctor that afternoon.

It should be noted that the only relevant record of these events and complaints commencing in the early hours of Monday morning up until Semmens visited the surgery is the brief record of Whenan set out above.

Dr Yeung examined Semmens who complained of a very bad headache and sore neck. Dr Yeung observed bruising over the right eyebrow and on the right cheek which he estimated to be three or four days old. The examination indicated a slight pain on neck movement.

Dr Yeung in his evidence said his diagnosis was probable concussion although what he wrote on the medical card at the time was ‘a bit concussed’. He prescribed an analgesic and an anti-depressant and told the escorting officers he would see Semmens on his routine visit to the prison on the following Friday. He did not tell them what his diagnosis was although it was written on the medical card which they took back with them to the prison.

Semmens was returned to his cell.

At 3.00 a.m. on Tuesday, 22 July, he called Officer Whenan and again complained of headache. Whenan gave him two Capadex tablets which had been prescribed by Dr Yeung and Semmens appears to have spent that day in his cell.
The witness Gollan said Semmens told him that his head was not too good. Gollan claims to have reported this remark to Officer Jones who has no recollection of it.

On Wednesday, 23 July, in the morning, Semmens told Steele that he felt lousy but at 4.00 p.m. said he had no headache but had a sore throat.

Semmens either refused or did not eat his meals on Tuesday and Wednesday.

The evidence regarding events on the night of Wednesday, 23 July, is somewhat confusing. I accept the version given by the witness Mercer, which is supported by Officer Merritt.

Mercer said:

‘At about 8.20 p.m. I heard a man in the cell, I knew to be Semmens, starting to yell and bang on door and he was yelling, “Come here I want to talk to you.” Kept saying this for a while and kicking and banging the door. He was making lots of noise and I pushed the button, operated a two-way intercom and asked Mr Merritt to come up, “Can you come up and do something about the guy next door, he is going off his brain.” Mr Merritt said, “I’ll be right up” and he came to my cell and asked me of the problem. I told him the man next door was shouting and carrying on and sounds like he’s drying out or in the horrors. Mr Merritt opened Semmens’ trap and asked what’s the matter. Semmens said he wanted to get out of his cell. Mr Merritt said, “I can’t let you out, I haven’t got a key.” Semmens asked for his trap to be opened and Mr Merritt said “It is.” Semmens wanted to come next door and talk to me (Mr Mercer). Mr Merritt said he couldn’t no key. Then Mr Merritt said “Lay down and go to sleep, get some rest.” Mr Merritt shut Semmens’ trap and then came to me (Mercer) and said something I couldn’t grasp about the button to the effect that if Semmens carried on to push the button again. Then Mr Merritt shut my trap and I went to sleep. When I emerged from my cell next morning at 8.00 a.m. the door and trap to Semmens’ cell was still closed. Then I went to breakfast and was told of Semmens’ death—“deceased” was written. I assumed it was Semmens. Whilst I was going to sleep he (Semmens) was still banging and making a noise. Couldn’t hear anything else clearly because I was going to sleep.’

In particular I do not accept that there was an occasion or occasions when Semmens called for a doctor. I think the witnesses who said that this occurred have misconstrued what they heard including talk of a doctor being called when Semmens’ body was discovered.

Another issue was whether there was a ‘sick in cell’ tag on Semmens’ cell door. I am satisfied there was and that it had been there since Monday.

Merritt says he did not see the tag on Semmens’ cell. He says he knew from the journal that Semmens had been given two tablets for a headache but that when he saw Semmens after Mercer’s call, Semmens did not appear to be in any trouble whatsoever.

Merritt further says that if he had seen a sick tag on the cell door he would have acted differently by asking Semmens about his health, asking him whether he felt ill and whether he was on medication. He says he did not know Semmens had been to a doctor and if he had known that he would have called in the Chief Officer.

Merritt’s conversation with Mercer and then with Semmens took place between 8 and 9 p.m. Mercer says it occurred at about 8.20 p.m. and Merritt at 8.45 p.m. Even if Merritt had called in the Chief Officer and a doctor had been summoned, it seems doubtful in the light of subsequent events whether the appropriate surgical procedures could have been arranged in time to prevent death.

Merritt gave a statement to the police in the early hours of the morning of Thursday, 24 July, before he went off duty. He stated then and has consistently maintained on oath since that he was not aware of a sick tag on Semmens’ cell door. I have found that the probability is that there was one. Merritt cannot explain how, if there were one, he failed to become aware of it.

Merritt was not on the day shift that week. He would not therefore have been involved in the supplying of meals to Semmens in his cell. He says that on the Tuesday shift, he had no occasion to register there was a sick tag on Semmens’ cell. There was some evidence that there were others apart from Semmens who were sick in their cells.

Is it likely, assuming the sign was there, that for some reason Merritt failed to see or to register the sign when at Mercer’s request he went to Semmens’ cell?
To say it is probable the sign was there and probable that Merritt overlooked it does not seem, in the circumstances, to advance the present inquiry much further. The circumstances to which I refer are that Merritt did not know Semmens had been in a fight, had bruises on his head, had complained of blurred vision and had been examined by Dr Yeung who said Semmens had ‘a bit of concussion’.

With that additional knowledge and whether there was a ‘sick in cell’ sign on Semmens’ door or not, I think it more than probable that Merritt would have acted differently from the way he did.

Whilst I find that the sign was probably on Semmens’ door on the Wednesday night, I further find that the system for recording information regarding prisoners’ symptoms and health and for passing it between the medical officer and the prison and between prison officers was quite inadequate.

Counsel assisting the Commission and counsel for the deceased’s relatives both considered the medical examination on the Monday to be a critical point in the story. Dr Yeung was aware that Semmens had a headache which had persisted for a period which must have commenced before Steele rang him. He observed bruises on Semmens’ head and found indications of a stiff neck. He did not know of the complaint of blurred vision and to him there were no symptoms indicating neurological abnormality.

Both counsel thought that Dr Yeung had enough information to alert him to the possibility of the danger which existed and that he should have done more than he did.

This view was apparently supported by the evidence of Dr Manock, the Director of Forensic Pathology in South Australia. I doubt however, whether the evidence is sufficiently clear to justify this conclusion which seems to assume that Dr Yeung did not carry out a sufficient neurological examination.

Dr Yeung was asked whether when examining someone whom he suspected to have had a concussion of some sort he looked for signs indicating some sort of brain irritation such as a subdural haematoma. He said yes. He was then asked what the signs were and he said they were the reactivity and quality of the size of the pupils and he said, ‘On that occasion his pupils were equal and reactive and then we test the power of the hands—of the muscles of the hands and legs and we also test the reactivity of the . . . jerks, ankle jerks and arm jerks. Also we test—notice the way he speaks.’

Later he added, ‘. . . I would sort of screen the neurological abnormalities and there were none and there was no other reason to suspect something as serious as a subdural . . .’ (my emphasis).

The relevant part of Dr Manock’s evidence is as follows:

**Question** Doctor, I think that when this man was examined on the Wednesday, it was then said that he had been involved in a fight late in the previous week, that he had this headache and a sore neck and there was a diagnosis made of probable concussion.

**Answer** Yes.

**Question** It appears that perhaps it was not said, at that stage, that the deceased had complained of partial blurring of his vision. How important would that extra fact be in respect to diagnosis and possible treatment in deciding whether a man went back to a cell or went to hospital or—

**Answer** I don’t think that that on its own would make very much difference, your Honour.

**Question** That additional fact would not make much difference.

**Answer** No, I don’t think so, your Honour. I think some physical finding or abnormality in the central nervous system would make all the difference; if the reflexes were unequal or reacted sluggishly, then this kind of information would immediately, I hope, lead to hospitalisation but the examination that I read about in Dr Yeung’s evidence did not detail a full neurological examination; how much evidence he could extract from the examination he made, I am not quite sure.

**Question** I am not quite clear. Do you mean that this additional fact added to the examination that was made—

**Answer** Would make little difference.

**Question** Would make little difference.

**Answer** However, that fact, added to the results of a full neurological examination may have made some difference.
Unfortunately, Dr Manock was not referred to the passage from Dr Yeung's evidence which is set out above and he was not asked in what way Dr Yeung's examination may have been deficient. On the face of it, Dr Yeung did what Dr Manock suggests should have been done.

It should also be noted that Pethedine was offered, not as Dr Manock surmises because the pain was so great, but because of Semmens' inability while in prison to obtain ready access to a doctor.

It is said, in effect, that when Semmens was returned to prison on the afternoon of 21 July the die was cast and what happened thereafter had no effect on Semmens' death.

I doubt whether this is so. I understand Dr Manock to say that the cause of death, the secondary haemorrhage, occurred immediately before death and he said, 'If surgery intervenes before secondary haemorrhages occur, then the person will recover.' If this is so then death might have been avoided by an operation on the Tuesday or Wednesday. Whether the specialised surgery required was available in Port Augusta I do not know.

But one must also bear in mind that the injury which Semmens suffered was not one of which obvious symptoms would necessarily be seen. The injury is, as Dr Manock says, remarkably difficult to diagnose. There is, therefore, no certainty that closer observation by untrained observers such as correctional officers would have resulted in further medical treatment or examination.

I think the most that can be said on this aspect is that more detailed observations made more often with the result of earlier observations available to the observer would have increased the chances of a proper diagnosis being made.

The real weakness which appears from this unfortunate death is the absence of appropriate regulations and general orders setting down the procedures to be followed with sick prisoners. I have mentioned elsewhere the difficulties which arise in relation to the regulations (page 24). The present regulations are out of date and not followed by the prison authorities. Unfortunately, nothing has been substituted. There is an urgent need for regulations and orders which acknowledge the duty which the authorities bear to take reasonable care of sick prisoners, which set out the observations to be made, the procedures to be followed and the records to be kept.

In the present case observations which are now known to have been important were not recorded and were not passed from officer to officer, from officer to doctor, or from doctor to officer.

No doubt the addition to the staff of a matron who is a qualified nursing sister or a medical orderly would greatly improve the standard of observation and the records. There appears to be no good reason however, why the disadvantages flowing from the lack of continuity in the shift system should not be overcome by the adequate recording and passing on of relevant information. Such a record is likely to be of more assistance on a medical examination than the answers of a sick and inarticulate prisoner.

STANDOVER TACTICS

The Honourable P. Duncan was reported in the "Sunday Mail" newspaper of 31 August 1980 as saying that there was a mafia of hard-core criminals operating a standover racket who prey on the weaker for sex and drugs and that the Department did nothing to curb this group but on the contrary placed members of it in coveted jobs.

There was also a reference to a confidential memo that the Department had received.

Naturally enough the Department declined to produce the memo which was received in confidence, and no witness came forward to support it. Also, not surprisingly, no prisoner personally admitted the use of standover tactics although in a statement received by the Commission on 23 February 1981 and signed by over 180 prisoners, it was said, 'Rape, sexual assault and sexual harassment occur in prison as they do in the wider community and they are deprecation of the crimes as they are in the wider community.'

I think it appeared clearly enough that some prisoners are the subject of sexual assaults and what might be called standover tactics, but the evidence did not establish that any identifiable group of prisoners was responsible. This sort of activity occurs more in Yatala than in other institutions.
The Department is well aware of the problem and there is no evidence to suggest that it is indifferent to it. But the apparent reluctance of prison authorities to investigate complaints unless they are in writing and name the persons involved could encourage a suggestion that no sufficient steps are taken to control the behaviour complained of. However, it appears that the Department by its creation of areas for protected prisoners indicates a policy of protecting the more vulnerable in the prison community.

The treatment of the prisoner Hein by C.C.O. Townsend could no doubt account for some of the criticisms which have been made.

Superintendent Hughes gave evidence that it was not unusual for a senior officer to pay special attention to a young prisoner who was thought to be vulnerable or who needed assistance and that he had approved Townsend adopting such a relationship with Hein.

As a result of this it seems some prisoners thought Hein was unduly favoured by Townsend and Townsend himself has heard that some officers thought that he showed favouritism to Hein.

One prisoner complained of Hein being quite often in Townsend’s office and using his telephone and there were suggestions, denied by Townsend, that Townsend had intervened to prevent charges being made against Hein.

The evidence contains many illustrations of how, in the closed community of a prison, prejudice, frustration and resentment are fed and magnified and the relationship between a young, well-known prisoner and a senior officer would be a fertile breeding ground for rumours of undue favouritism and even misconduct. Except that Townsend may have been too zealous in fostering this relationship, I find no impropriety established nor do I accept any of the other allegations set out at the beginning of this section.

SECURITY RATING AND CLASSIFICATION OF PRISONERS

The principal complaint was that a prisoner had no real opportunity to present arguments to either the classification or security committee.

A prisoner’s classification is important, not only because it determines where he is accommodated and where he may work—and that is important enough—but because it may have some influence on the decision of the Parole Board.

For reasons expressed below, I do not find it necessary to record in detail the consideration I have given to this subject.

When the system was first explained I had misgivings regarding the propriety of it. I had in mind that either committee may, in broad terms, be making a decision which was a prerequisite to the exercise of a power giving rise to legal consequences (R v. Collins ex parte ACTU—Solo Enterprises Pty Ltd [1976] 8 A.L.R. 691) and that as a general rule natural justice may require that the person affected by the decision be given an opportunity to be heard. However, I find it unnecessary to pursue this aspect further.

Firstly, I understand from the Director’s evidence that since the matter was raised in the Commission, a direction has been issued that a prisoner appearing before the Classification Committee is to be told his security rating.

Secondly, the final submission by the Department by its counsel is that it is not unreasonable that the authorities at each institution, wherever possible, inform the prisoner of his rating, the reasons for it, and allow him the opportunity to comment either to the Security Committee itself or to the Classification Committee.

I assume that the qualification ‘wherever possible’ refers only to the rare case where, for good reason, the normal procedure cannot be followed. With this assumption, the suggested procedure seems to me satisfactory.

Thirdly, it seems that a decision of the Classification Committee is reviewable by the Ombudsman. To a large extent that removes the necessity for any appeal but provides a safe-guard for the prisoner.
The alternative is to provide for an internal appeal from the Classification Committee to a review board with wider representation and some more senior officers.

I recommend that the procedure now suggested by the department should be adopted.

CENSORSHIP

Counsel for the Department questions whether this subject matter falls within the terms of reference. Censorship may be used to preserve security and to protect the interests of the community. Abuses of censorship such as the use of information obtained thereby for personal gain or to harass a prisoner’s relatives or friends would, I think, clearly be an irregular practice.

The Criminal Law and Penal Methods Reform Committee (called, after the Chairman, the Hon. Justice Mitchell, the Mitchell Committee) considered this matter in its first report published in July 1973. It said, ‘Except where a prisoner is confined in maximum security because he is classified as requiring it as opposed to being there because of pressure on other accommodation or for some similar reason, we see no need for restrictions on mail or for censorship. Censorship is a great indignity and should not be practised unless security requires it. Unless a prisoner is in maximum security because he represents a high escape risk, security cannot be regarded as requiring it. . . . We accept that there is a case for censorship of mail sent to particularly high risk prisoners. Apart from such individual cases to be determined in each instance by the Superintendent of the prison, we see no need to go further than to open letters in the presence of prisoners in maximum security so as to ensure that no dangerous article is being smuggled in and to hand them over unread on that occasion.’

Mr Justice Nagle in his report on prisons in New South Wales which was issued in 1978 went somewhat further. His recommendations were (page 386):

(1) The reading or censorship of prisoners’ mail should be made an offence under the prison regulations.
(2) Prison authorities should retain the right to inspect incoming mail for contraband.
(3) Correspondence between prisoners and their legal advisers and Members of Parliament should, in all cases, be privileged and private.

There was some evidence before me of insensitive behaviour by officers while censoring mail in the presence of prisoners and there were many indications that prisoners resent censorship.

I agree substantially with the views of the Mitchell Committee but I add another circumstance which I think justifies censorship of outgoing mail and that is when a prisoner is known to write offensive or threatening letters to persons outside the prison. Also, problems relating to the misuse of drugs have increased substantially since the first report of the Mitchell Committee and this fact should be taken into account.

For the purpose of my recommendations I specify three classes of prisoners, the first being high risk prisoners whom the Superintendent judges should be in this restricted class either because they are a high security risk or have written or threatened to write offensive or threatening letters. They may or may not be maximum security prisoners. The second group is constituted by other maximum security prisoners and the third by all other prisoners.

I recommend the following:

(1) Censorship of mail to be carried out only by an officer holding the office of Divisional Chief or above.
(2) High risk prisoners—incoming and outgoing mail censored.
(3) Other maximum security prisoners—incoming mail opened to check for contraband. A random sample of both incoming and outgoing mail to be censored.
(4) All other prisoners—a random sample of both incoming and outgoing mail to be censored. Further random sampling of incoming mail to be checked for contraband.
(5) Outgoing mail from any prisoner to his solicitor to be privileged and not liable to censorship.
(6) It should be an offence for an officer to disclose the contents of a censored letter except to a senior officer in the course of duty.

Random sampling is a great inhibitor. No writer can be sure that the letter will not be censored.

It is true that information can be passed into and out of prison by an intermediary and indeed, this happens now in spite of the existing censorship rules. However, the use of intermediaries does enhance the chances of discovery.

The grounds on which a letter may be censored should be restricted to those indicated above, that is, that the letter breaches security or is offensive or threatening. The present requirement in regulation 86 that, 'A prisoner must confine himself strictly to his own domestic or private matters, must not comment on the discipline or arrangements of the prison or on public or political affairs', should be repealed.

SECURITY INSPECTION—SENIOR OFFICER ALLEGEDLY UNDER INFLUENCE OF ALCOHOL

In the course of his investigations for his report Mr Cassidy visited Yatala on a number of occasions, at least one being at night. After this latter visit, in a conversation with C.C.O. McCusker he criticised what he had seen.

Some days later, on 5 February 1980, McCusker visited the prison at 2.50 a.m. and a number of officers then on duty who saw and spoke to him during his investigation concluded that McCusker was affected by alcohol.

It is unnecessary for me to summarise the evidence which was given. I am satisfied that McCusker visited the prison quite properly in the course of his duties and made an inspection. I am also satisfied that while he was able to perform the inspection he was obviously affected by liquor as the officers who gave evidence have said.

It was unwise for McCusker to appear at the prison in the condition in which he was and the incident should have been reported to the Superintendent, which it was not.

INCOMPLETE OR DEFECTIVE RECORDS

The importance in a prison system of keeping complete and accurate records which can be readily available is obvious.

Mr Justice Nagle, in his report, referring to the state of departmental records in New South Wales said it 'exemplifies the absolute dependence which any outside scrutiny of the Department's activities or its treatment of prisoners has on adequate records. It is the only means by which decisions made concerning individual prisoners may be ascertained and their justification assessed. The importance of records in the prison system cannot be over-emphasised.'

The records kept within the Department and the institutions are not impressive. Many records which, according to the regulations should be kept, are not kept and many records which are kept are not well kept.

The regulations (see, for instance, Regs 200 and 247) require a number of records to be made and neither the Director nor the Superintendent of Yatala was concerned that the regulations were followed. As the Superintendent said, he kept whatever books were necessary for the proper running of the institution rather than those which he was required to keep pursuant to the regulations.

Even although the current staff training manual (precis 22/1) contains a list of some twenty or so records to be kept in country gaols, the Director conceded that all the records named were not kept.

Of the records which are made I have already in this report referred to some deficiencies in the Yatala Canteen records, the journal at Port Augusta, the records of the permit system.

To this should be added the extraordinary situation that a copy of general orders known to exist could not be found for Messrs Lenton or Hornibrook to peruse whilst preparing their report.
A general or 'salmon' file is kept for each prisoner. The files for most of the prisoners who gave evidence were produced to the Commission. They were poorly kept, rarely complete and many lacked essential information. Documents when put in a file are not secured and are not placed in chronological order. Even if one knows the document wanted and it is on the file, it is necessary to sift through the file until the document is found.

The fact that the documents are left loose in the file greatly increases the chances of their being lost, misplaced or removed. I instance two examples.

The first is the file of P. G. Wilson which includes documents referring to the alleged assault on him by two officers (see page 35). Two important records, the tape or transcription of an interview with Officer Mead and the letter of complaint which Wilson wrote to the Ombudsman and asked the Deputy Superintendent to hold are both missing.

Secondly, the file of Campion was produced because of the alleged assault on him by two senior officers (see page 29). An important document, a written statement made by one of the officers shortly after the incident, was not on the file. A photocopy of the original appeared during the Commission. Questions arise as to what happened to the original and how it came to leave the file or perhaps why it never reached the file.

Two further examples should be noted.

A written report by Officer Webb regarding the incident on 22 September 1980 in which R. D. Byrne claims to have been assaulted is missing as also are the written reports of three officers concerning another incident in which Byrne claims to have been assaulted on 23 September 1980 (see pages 46 and 47).

HOSING OF PRISONERS

Allegations were made that a fire hose had been turned on prisoners on some seven occasions in the last three years. Three of these allegations may be disposed of immediately. The allegation that Bratoli was hosed was made by another prisoner who did not claim to have seen the incident. Bratoli did not give evidence. The allegation regarding Sutton was made by the same complainant and although it is not altogether clear, my understanding is that the incident was not witnessed by the complainant. In any event, Sutton gave evidence and made no complaint of being hosed. The use of the hose in the cell of P. G. Wilson appears to have been to extinguish a fire started by Wilson.

The allegations in respect of Byrne on 22 September 1980, Sandery on 27 September 1980, and in the S Division workshop on 28 July, I shall deal with later. This leaves the allegation regarding N. Mena in late 1979.

Mena claims that on arrival at Yatala from Adelaide Gaol he was put into D Division. He says that having committed no offence he complained and was hosed by Senior Officer Evans. Evans denied this and Officer Cooper said that he, with Evans’ approval, used the hose.

Cooper’s justification was that Mena had tipped the contents of his toilet bucket onto the floor of the cell and he used the hose for two reasons, firstly to get into the cell and then to clean it up.

Although Evans disclaimed any knowledge of the incident, I accept Cooper’s evidence that what he did was approved by Evans.

Mena was not asked to clean up his cell nor to move to another cell while it was cleaned, nor was he warned that the hose was to be used. The hose was admittedly directed at Mena for a period which Cooper variously estimated as being from thirty seconds to a minute and a half. Mena also complains that he was left overnight without dry clothing or blankets. This is denied by Cooper. I am unable to make a finding on this aspect.

I have concluded that regardless of the state of Mena’s cell, the hose was used to subdue him. It was a crude attempt by Evans and Cooper to impress on a newly admitted and unco-operative inmate where the authority lay within the Division.

There were no instructions indicating to officers when a fire hose may be used against an inmate. Its use on this occasion illustrates the sort of improper conduct on the part of officers which is likely to be inhibited by doing away with D Division as a separate entity (see page 73).
The use of fire hoses and water cannon is an accepted method of controlling riotous or disorderly situations. My criticism is not of the use of a fire hose when justified by such purpose but of the present uncertainty as to when it may be used and who can authorise its use.

Similarly, in situations where the use of force against, say, one person is justified, the use of a fire hose to restrict that person in a particular place or attitude or to hamper his vision and physical movements may well avoid injuries which might otherwise occur.

What is missing is a clear instruction setting out the circumstances in which a fire hose may be used against a person and who may authorise that use.

In fact the problem raised by this case is much greater than the uncertainty arising from the absence of instructions on the use of hoses. It raises the question when may an officer use force against a prisoner. The officers did not act here either in self-defence or to prevent an escape. This problem is discussed in a more appropriate place (see page 27).

OTHER IRREGULAR PRACTICES

A number of other allegations, some of them very vague, of improper practices were made. These ranged from the accusation that officers stood by and watched prisoners being assaulted to a suggestion that some officers endeavour to set one prisoner against another.

In relation to these matters insufficient evidence has been given to justify my making any findings.
5. ALLEGATIONS OF ASSAULT

ASSAULTS IN PRISONS

Many allegations of violence and threats of violence in prisons were made in Parliament and in the press in 1980, and much of the Commission's time has been taken in hearing evidence relating to these allegations.

A number of allegations made in general terms were general conclusions drawn from a number of particular reported incidents in which it was alleged a threat was made or an assault committed. The Commission has, as far as practicable, endeavoured to identify and inquire into each of these particular incidents.

There are cases of express threats, implied threats, and in at least one case, a possible threat to a prisoner perceived by a Supreme Court judge which influenced him in sentencing a person convicted of a crime.

Some of the allegations related to events which involved prisoners only and some to assaults on officers by prisoners, but by far the greatest group was that of allegations that prisoners had been assaulted by officers.

Two allegations of an assault on a prisoner by officers related to Adelaide Gaol. A number of general allegations not identifying any person involved related to the Women's Rehabilitation Centre and all the rest related to Yatala Labour Prison. None related to country institutions.

I have been concerned how to deal with this huge mass of evidence. I have concluded that it would not be helpful to reproduce any large portion of it in this report. For those who are interested the whole of the evidence is recorded in the transcript which exceeds 13,000 pages. I have prepared my report on the incidents to which I am about to refer, adopting the general rule that the evidence justifying a finding is summarised only when I have made a finding adverse to any person.

Legal Considerations

Many of the incidents complained of by prisoners as assaults are categorised by the officers as being the use of minimum force or, as it was sometimes called, 'minimum restraint', required to enforce obedience to an order.

It is clear that the Department and its officers take the view that officers may use whatever force is reasonably required to enforce compliance with an order. However, I suggest there are doubts whether, under the present law, force can be lawfully used for that purpose on all occasions.

It is sufficient for my purposes to draw attention to the doubts which exist.

The Prisons Act contains no express authority for the use of force on prisoners and such provisions as there are in the regulations must depend for support on the power in Section 14 of the Act to make regulations for the 'safe custody, management, discipline ... of ... offenders ... '

Regulation 48 requires prisoners promptly to obey orders from officers. Regulation 58 makes a prisoner 'making the slightest movement' indicative of an attempt to escape or to commit an assault on any person with an instrument or weapon liable to be shot.

Regulation 135 provides that an officer is empowered and required to lock up any prisoner guilty of disobedience to the rules of the prison to await the Director or the Visiting Justice. Regulation 136 provides that an officer shall not strike a prisoner unless obliged to do so in self-defence or to prevent an escape and regulation 137 that in any case in which force has to be applied to a prisoner, no more force than is necessary shall be used.

Regulation 178 provides in effect that a prison officer is deemed to be a constable and has all the powers which a constable has by common law statute or custom.

It may well be uncertain whether all these regulations are justified by Section 14 of the Act but in any event there is no equivalent to the Victorian regulation 169 which reads:

'169. In enforcing obedience by prisoners an officer shall be firm but temperate, carefully avoiding the use of harsh or irritating language or gestures, and shall resort to force only when absolutely necessary.'
An argument could be erected that to disobey an order of an officer is an offence (Section 46, Prisons Act) and that an officer having the powers of a constable (regulation 178) might arrest the offender without warrant (Section 75(1) Police Offences Act) although such arrest would require that the offender be taken to the nearest police station (Section 78 Police Offences Act). I do not pause to consider the merits of this argument because the cases with which I am now concerned are not cases in which a power to arrest is relevant.

No doubt there are many cases apart from threatened assault or escape in which officers should be authorised physically to restrain a prisoner and is therefore entitled to the protection of the Act. For example, when a prisoner appears likely to injure himself or when he refuses to leave some place of danger or presumably when he refuses to transfer from one cell to another or refuses to be searched.

But what of the case where a prisoner is ordered to remove some item of clothing and to hand it to an officer and the prisoner refuses to do so? Is the officer authorised to remove the clothing forcibly or should he merely charge the prisoner with failing to obey an order?

Again, what of the case of a prisoner who refuses to take his hands from his pockets when paraded before an officer? Is an officer authorised forcibly to take the prisoner’s hands from his pockets?

It will be seen that situations similar to these occur in the cases now to be discussed and the question which is now raised constitutes a compelling argument for a review of the regulation making power in the Act and for a clearer and more comprehensive definition of the rights and duties of officers and prisoners in both the Act and regulations.

M. S. German

The Advertiser newspaper of 19 September 1980 carried a report of the sentencing of German by the Honourable Mr Justice Zelling in the Supreme Court. His Honour is reported as saying that normally he would have

‘no hesitation in ordering that the sentences for a canteen breaking and the armed robberies of two elderly women be served.

However, the Crown had been unable to suggest how the man could be protected in gaol either from being compelled to enter into sodomy or from being seriously assaulted if he did not submit.’

On 16 September 1980 the Director, in response to an inquiry, wrote to the Crown Solicitor stating that it was impossible for the Department to give a guarantee that no harassment of any sort would take place against an inmate but that where threats of violence and homosexual advances were made to inmates, the Department, on becoming aware of this, alleviated the situation by placing the inmate in a ‘protected area’.

It was, I suggest, inaccurate for the Crown to inform the Judge that the Crown had been unable to suggest how the man could be protected in gaol from the dangers specified.

It appears that when German was in Yatala on a previous sentence he had complained that he feared a named prisoner. He was then given protection in Yatala and subsequently transferred to Cadell.

At the time the Director gave evidence on 7 August 1981 German was a prisoner in Adelaide Gaol working in the kitchen. He had recently made an application to remain at Adelaide Gaol and had indicated that he wished no longer to have special protection.

Increases in staff and the installation of electronic monitoring equipment have improved internal security at Yatala and the opening of the new industrial complex should lead to further improvement. To place a prisoner in a protection area appears to provide reasonable safety from harassment, sexual or otherwise, although as the Department rightly says it cannot guarantee safety.

Assaults Not Proven

In a number of cases allegations of assault were made by some person other than the one allegedly assaulted and that person himself did not give evidence complaining of assault. In none of those cases
Section 46,
as the date when
of assault. For
not in force.

have been established
which, in my view, have not been established and which require no further discussion. These relate to:

K. J. Shaw made a number of allegations of assault at both Yatala and Adelaide Gaol. There is little, if any, evidence corroborating Shaw's allegations. I found him to be an unreliable witness and am not satisfied that the assaults to which he refers are established.

I should also mention G. K. McCartney who referred in general terms to assaults by prisoners on other prisoners which he had witnessed. He was disinclined to give any particulars which would have justified further investigation. I also found him in many respects to be an unreliable witness.

I have no reason to disbelieve McCartney's uncontradicted statement contained in his evidence at theBowman inquest, the transcript of which was tendered in the Commission, that he had been cut on the stomach by another prisoner. However, I was not asked to observe the scar nor did McCartney give any further evidence relating to the incident.

ALLEGED ASSAULTS BY OFFICERS AT YATALA

Introduction

I now propose to deal with eleven incidents in each of which it is alleged that one or more prison officers assaulted a prisoner at Yatala. One of these incidents occurred in 1976, two in 1978, five in 1979 and three in 1980. For reasons which I have already discussed I did not investigate any assault alleged to have occurred after the date of my commission, 7 October 1980.

R. L. Campion—9 April 1976

At about 3.30 p.m. on 9 April 1976 Campion, who had been working in the brick yard, being dissatisfied with the bonus he was receiving, decided to cease work. He was paraded before Acting Deputy Superintendent Bray who ordered him to be confined to his cell. He was escorted there by A.C.C.O's Townsend and McCusker.

Campion was in a foul mood as the two officers were aware. On the way to his cell he was told by Townsend to do up a button and he swore at Townsend.

Campion says that he went to his cell, took off his shoes, lay on his bed, turned on his radio and commenced to read a book. Townsend came to the cell and entered it and words were exchanged. Then, according to Campion, he swore at Townsend who hit him in the mouth. At that time, he says, McCusker was not present. A scuffle developed and then McCusker came in and grabbed him by his hair. Campion was, by this time, on the floor. Both of the officers kicked him. He pulled the bed over himself trying to jam the officers against the wall and to get away from their boots. When he got up on the other side of the bed the two officers were leaving the cell, Townsend without his hat. When Townsend returned to get it Campion spat at him.

Campion said he then wrecked his cell because he was upset by the assault. He said, 'I was just finished being assaulted by two senior prison officers and I was pretty uptight at being assaulted by these prison officers so I took it out—I couldn't take it out on them so I took it out on my cell'.
Campion was charged before two Visiting Justices with damaging his cell, to which he pleaded guilty, and with assaulting Townsend, to which he pleaded not guilty.

At the hearing he put to both Townsend and McCusker when they gave evidence that they had assaulted him. Each denied it. Campion was found guilty and sentenced to four months imprisonment.

Thereafter Campion armed himself with a knife he made and a small bottle of sulphuric acid to protect himself if assaulted by officers again. These weapons were subsequently found in his cell.

He says he did not tell the Superintendent on the daily inspection of the assault because he thought it would be pointless and although he had heard that an officer had seen the assault, he was told that the officer would not risk his job by supporting Campion's story. The officer was subsequently indentified as Officer Davis. Davis, some considerable time later, confirmed he had witnessed the assault and said he could not give evidence of it because he would lose his job.

Campion concedes that prior to the alleged assault he was rude, arrogant and annoyed and had sworn at Townsend.

In cross-examination it was put to Campion that at that time a prisoner confined to his cell was required to remove his boots, that Townsend, on coming to his cell, told him to take off his boots and that he kicked Townsend and subsequently threw his boots at Townsend. Campion denied all of this except to say that he was using his feet when attempting to fend off the officers.

Townsend's written statement was that he ordered Campion to remove his boots, that McCusker bent down to take Campion's boots off and that Campion lashed out with his leg hitting McCusker in the face. At the same time Campion tried to get off the bed and struck Townsend on the jaw. Townsend denied striking Campion and could not recall McCusker taking Campion by the hair.

This statement, which on page 14 is dated 26 May 1981, goes on to refer to a typewritten unsigned report dated 9 April 1976 and ostensibly made by him and which was in Campion's file. That report says that Townsend entered Campion's cell to tell him he was to be charged with disobeying an order when Campion became violent and started to thrash out with legs and arms hitting Townsend on the jaw, and that McCusker then came to Townsend's assistance. Townsend said that report was not correct and that it did not agree with the handwritten report which he had made to the Superintendent.

As it now appears this typewritten statement which Townsend rejected is an accurate copy of the handwritten report of 9 April 1976, the signature to which McCusker identifies as being in Townsend's handwriting. It is also an accurate copy of the statement of facts made by Townsend on the charge sheet.

McCusker also gave a written statement. It is undated but he records that before making it he had read the statements of Campion and Davis.

McCusker says that Campion entered his cell and lay full length on his bed, that at that time a prisoner locked in his cell for misconduct had to remove his boots and put them outside the cell. Campion, who had not removed his boots, was ordered to do so and refused and 'accordingly Mr Townsend and I entered the cell for the purpose of removing Campion's boots'.

He denied that he used violence as either Campion or Davis alleged. He said that before he was able to remove Campion's boots, Campion lashed out with his foot striking McCusker a severe blow on the chin, causing him to stumble backwards. There was then a confused scuffle. He cannot recall whether Campion's boots were taken off or not.

When shown the typewritten copy of Townsend's statement of 9 April 1976 he denied its accuracy until shown the photocopy of the handwritten copy bearing what he identified as Townsend's signature.

When confronted with a photostat of the report he made on 9 April 1976, McCusker was forced to withdraw his evidence that Campion had kicked him on the chin with a boot. That earlier report made on the day of the incident gave a different version. It said that Campion, on entering his cell, removed his boots and lay on his bed and that Townsend entered the cell 'to make the usual check for water and a sanitary bucket. At this time Campion rose from his bed and punched A.C.P.O. Townsend forcibly in the mouth. I then entered the cell to assist and was kicked in the mouth by the prisoner.'

It will be seen that even on 9 April 1976 there were differing versions from McCusker and Townsend as to why they had to enter Campion's cell and the third version which both first gave in
evidence before the Commission was shown to be insupportable because the order requiring boots to be removed to which reference was made had ceased to exist some considerable time before this incident.

It is a reasonable inference that both McCusker and Townsend thought that their respective reports of 9 April 1976 were no longer available until photostats of them were produced at the Commission.

Officer Davis was the floor officer at the relevant time. He said he followed Townsend and McCusker to the floor on which Campion’s cell was. He saw Campion lying on his bed, his boots off, reading a book. He saw Townsend take hold of Campion’s hair near the left sideboard or ear and McCusker, who went to assist Townsend, was kicked in the jaw. He said Townsend punched Campion several times. Townsend and McCusker left and he heard Campion wrecking his cell.

His account of the violence does not agree with the account of Campion or either of the officers although he was adamant that Campion had his boots off, that McCusker was kicked in the jaw after the melee began and that Townsend was the first to use violence. He also says that at a later stage McCusker held Campion by the hair and Campion agrees with this.

Davis was upset by what he considered to be the use of undue force by two senior officers on a prisoner. He attempted to discuss the matter with two more senior officers but says he was discouraged by each of them.

The evidence of Capriulo, an officer of 20 years standing, was appalling. It was not his duty, he said, to report an assault on a prisoner by a prison officer. He would always assume if violence occurred it was the prisoner’s fault.

But in one respect Capriulo’s evidence was valuable.

Townsend had denied that Davis was ever in a position from which he could have observed what was happening in Campion’s cell and said that Davis gave the evidence he did out of personal spite. Bray said in evidence it was well known that Davis had some sort of vendetta against the two officers concerned.

Capriulo said that he heard shouting in the wing and came out of the library door to see Davis standing a few feet from and facing Campion’s cell from which the shouting was coming and he saw McCusker standing in the doorway of the cell.

Capriulo retreated hastily to the library and closed the door. He says he did this to isolate the prisoners in the library from the disturbance. I think he also found it convenient to isolate himself. He did not wish to hear or see anything.

I am satisfied that Campion was assaulted in that whether or not a punch preceded the hair pulling, the first use of violence was by Townsend. Furthermore, I am satisfied that the application of force to Campion by Townsend with McCusker aiding him continued beyond any point where it might have been necessary in order to extricate themselves from a melee they had precipitated.

Although Townsend does not claim to have been provoked by Campion I think he would have been greatly angered by Campion’s attitude and behaviour.

I also think that these officers entered Campion’s cell not for any of the three reasons expressed in the written reports and statements, but with the intention of harassing Campion.

There was no need for them to have entered the cell or indeed to have passed Davis to whom they could have given appropriate instructions.

Campion could have been informed from the doorway that he was to be charged. The suggestion that it was necessary to check water and toilet bucket is not convincing. Campion was returning to his own cell, not an unoccupied one, and there was nothing to suggest these facilities were not available in it.

The final attempt at justification, the physical removal of Campion’s boots, even if it had been true which it clearly is not, would almost certainly have provoked Campion to violence. The simple remedy was to charge Campion with whatever breach of orders he had committed and, when he had quietened down, to inform him of the charges.

This is a case where an allegation of misconduct on the part of officers should not have been allowed to fester for five years and to bring about a miscarriage of justice.
Davis reported the matter to Bray who was then acting as Deputy Superintendent and to Mr Walsh. In my view an allegation by one officer that another officer has assaulted a prisoner is so serious that an investigation should not be abandoned merely because the complainant is unwilling to put his complaint in writing.

A clear procedure for the investigation of irregularities is set out in Regulation 169 and Davis should have been ordered by Bray to put his report in writing as required by that regulation (see also Reg. 279). In addition to reports from Townsend and McCusker, reports should have been called for from the two other officers on duty in that Wing at the time and a statement obtained from Campion who should have been examined by the doctor.

A thorough investigation at that time may have prevented the miscarriage of justice which occurred when Campion was sentenced to a further term of imprisonment for assaulting Townsend and may also have prevented some of the rumours of violence which surfaced in newspaper reports prior to the setting up of the Commission.

I. Tichy—1978

On an occasion in 1978 Tichy was transferred to D Division. The date on which this occurred is not clearly established.

Evidence before the Commission proceeded on the basis that it was on 10 November 1978 but counsel for the prisoner submits that it was on a day prior to 5 August 1978 because on that date Tichy was convicted of an offence of failing to conform with prison rules and the failure was said to be the failure of Tichy to undergo an anal inspection on the occasion when this alleged assault occurred.

I think there was considerable confusion as to the occasion to which Tichy was referring in his evidence although it should not have been difficult for the prison authorities to have verified the exact date from the existing records. Tichy says that as a result of this incident he was charged with failing to conform with the prison rules and Officer Kelly says Tichy was charged with assaulting him. Records of these proceedings should be available.

The orders applicable to D Division provided that a prisoner, on admission, should undergo a strip search and an anal inspection.

Tichy says that on this day he submitted to a strip search which involved the removal of all clothing; he was then required to spread-eagle himself against the wall facing it, and officers searched his hair, mouth and feet and the rest of his body. He was then asked to spread his buttocks which he refused to do.

So far the evidence is clear.

Tichy says he refused to undergo an anal search unless a doctor or medical officer was present. He says that Officer Kelly then drew his baton and advanced towards him. Tichy, in defence, grabbed hold of the baton and then the rest of the officers which included Harrison then grabbed and knocked me to the floor. Kelly started hitting me with the baton.’ He said that other officers kicked and punched him.

In an earlier statement he had said, ‘Prison Officers Kelly and Cooper bashed me. Kelly came in with the rest of the screws. Four or five behind him started to pull out their batons. I grabbed hold of it and he lurched at me. They knocked me to the ground and Kelly hit me a few times.’

Later, when this discrepancy had been pointed out and he was asked was it Harrison or Cooper with Kelly, he said, ‘You mean the two officers that I seen bashing me that time? Harrison and Kelly. There were another three officers there but I can’t remember exactly their names.’

Kelly said Tichy refused to be strip searched and became violent towards him and other officers present. Tichy was restrained and charged with assaulting Kelly. Kelly maintained that Tichy refused to strip.

Kelly said he did not remember being present when Harrison strip searched Tichy. He recalled an occasion when there was a strip search of Tichy when Tichy was charged but that on that occasion he refused a strip search, not only the anal inspection. On that occasion Tichy tried to strike Kelly. There were several officers present, one of whom he thought was Douglass. Tichy swung a punch at Kelly ‘because we moved in to strip search him’. There was ‘a bit of a melee’ during the strip search.
After Tichy threw the punch, Tichy was restrained by the officers present and his clothes were forcibly taken off although 'I am not really sure whether that continued or whether he stopped to say, “Alright, I’ll take them off”.'

Officer Harrison recalled an occasion on which an anal search of Tichy was conducted by Kelly and himself. He could not remember the date. He said that Kelly and himself were the only officers present and no officer was outside the cell. He recalled the incident because Tichy claimed he was hit with a baton. No baton was used. Tichy was not at all violent although he did verbally refuse to bend over.

'He was turned to face the wall. As he was turned to face the wall he bent over. I then knelt down to check the anal passage. Tichy was then stood up. There was only P.O. Kelly and myself in the cell and we just told Tichy to get dressed and he got dressed. He offered no violence, no verbal threats and we just walked out of the cell.'

When asked if force was used on Tichy he said, 'P.O. Kelly grabbed him by the hand and he was turned to the wall and he bent over'.

He said that there was no scuffle and that he remembered the incident vividly.

It seems to me that either the witnesses are speaking of different incidents or their recollections are so imperfect as to be unreliable.

As has been mentioned, Tichy gave two different accounts of how many officers were present, how many had batons and how many drew batons. He finally said that only Kelly drew a baton.

Although he complains of bruising as a result of the assault and says he asked to see a doctor and was refused, he made no complaint on the Superintendent’s daily parade nor at the surgery. On the other hand, assuming this incident occurred in November 1978, it appears that he sought legal advice regarding the charging of 2 officers with assault.

Kelly says that Tichy refused to strip at all and that at least some of his clothes were removed forcibly. Both Tichy and Harrison contradict this. Kelly says that there were other officers present. Harrison says that only Kelly and himself were present. Kelly says that Tichy became violent. Harrison says there was no violence. They did agree that neither of them had a baton.

Although Harrison said that Kelly and himself only once strip searched Tichy, I find it difficult to believe that Harrison is referring to the same incident as that described by Kelly. On Harrison’s version of the facts, Tichy could not have been convicted of assaulting Kelly.

Some common ground can be found in the respective accounts of Tichy and Kelly and it is possible they are speaking of the same incident.

The date of the occurrence of which Kelly speaks and particulars of the other officers on duty that day could, with comparative ease, have been identified from the prison records and it is surprising that none of them was called, unless of course, as appears possible, no such incident took place on 10 November 1978.

I regret to say that I found the evidence of Kelly unconvincing. At the same time, the evidence of Tichy on this incident does not satisfy me that an assault on him by Kelly and a number of other unidentified officers took place in any way substantially similar to the way he claims.

**I. Tichy—5 May 1979**

Tichy further complained of an assault on him by a prison officer following a demonstration which occurred on 5 May 1979.

The demonstration ceased in the early morning of 6 May, and Tichy and the remaining prisoners left the yard.

Tichy complains that while he was being escorted by a number of officers to D Division, the officer behind him kicked him several times on the back of his legs and swore at him.

Tichy did not complain to anyone and although the kicks resulted in bruises, no-one saw them.
Tichy said he knew the officer by sight but was unable to identify him by name.

No-one else gave evidence of this incident. No other prisoner complained of violence being used on this occasion.

On this state of the evidence, I am unable to make any useful finding.

P. G. Wilson—20 December 1978

Wilson made 2 complaints regarding events which occurred on 20 December 1978. The first concerns an incident, not an assault, when the dog 'Zac' under the control of Officer Kelly was brought to Wilson's cell in the early morning when he refused to empty his toilet bucket. The second is an allegation of assault by Officers Townsend and Kelly later in the morning.

'Zac'

At the relevant time Wilson was confined in D Division. He agreed that he had refused to empty his toilet bucket and that Kelly brought 'Zac' into the Division. Wilson said at first that the dog was taken into his cell but this was denied by both Kelly and Townsend and in cross-examination Wilson agreed that the dog sat outside his cell.

The presence of the dog apparently persuaded Wilson to obey the order he had been given.

I am satisfied the dog was not taken into the cell and that because of its presence Wilson obeyed the order given.

The presence of the dog achieved the result which I would assess avoided the use of violence. To what extent it gave rise to resentment is a question raised by the second incident on that day.

Alleged assault

Later in the morning Wilson was being noisy and unco-operative and Townsend decided that if Wilson did not quieten down he would be moved to No. 1 cell.

Wilson asked to see the medical orderly Tomes and a message was sent for him.

Townsend's version of what then happened differs markedly from the account given by Tomes.

Townsend says Tomes arrived while Wilson was still locked in his cell and that after some further heated exchanges between Wilson and officers, Tomes spoke to Wilson offering to take him to the surgery for an x-ray, that the cell was then unlocked and Wilson commenced to follow Tomes out of the Division.

Townsend says that Wilson suddenly stopped, swung around and with his clenched fist, lunged at Kelly who was following Wilson. Kelly grabbed Wilson by the wrist and forced him against the wall, that in the struggle Kelly and Wilson both fell to the floor, that Wilson was then restrained by Townsend taking his other arm and that Tomes spoke to Wilson and quietened him.

Tomes gave evidence that when he first arrived Wilson was already out of his cell and struggling with Kelly. Wilson was pummelling, spitting at and abusing Kelly. He saw Kelly 'strike Wilson away from him with his fist to Wilson's chest' causing Wilson to stagger back about three paces.

Tomes was alarmed by this because Wilson had previously swallowed some metal objects which were still in his stomach. Tomes said, 'Stop this at once', to which Kelly, who appeared angry, replied, 'The little sod has been pummelling me and spitting on me and I am not going to take that'.

Kelly and Wilson did not fall to the floor while Tomes was there.

Kelly's version is that without warning, Wilson turned around, abused him, and started to spit and kick at him knocking his cap and tie off. He crowded Wilson against the wall without punching him. He has no recollection of falling to the floor with Wilson nor of Tomes being present or speaking to him.

The effect of Wilson's evidence is that he turned around to abuse Kelly because Kelly made a comment about using the dog again and that Kelly grabbed him and threw him against the wall.
Kelly's remark to Tomes that he was 'not going to take' what Wilson was doing is revealing. It indicates Kelly was sufficiently angered to retaliate rather than merely to control and this, I think, is what happened.

I think that Kelly used more force than was necessary to control Wilson. I appreciate that Wilson's conduct was unreasonable and perhaps even provoking but Kelly knew that Wilson was extremely difficult to handle and at that stage had metal objects in his abdomen. He also knew that Tomes, who was present when Kelly used violence towards Wilson, could handle Wilson without violence.

P. G. Wilson—7 January 1979

The Commission spent a great deal of time investigating an allegation by Wilson that on 7 January 1979 in D Division at Yatala he was assaulted by Officers Townsend and Kelly.

This account commences with a summary of the relevant events.

Early on Sunday, 7 January 1979, Wilson was in S Division. He was transferred on the instruction of Townsend to the observation cell in D Division because he refused to make up his bed pack. Some little time later Townsend and Kelly entered the observation cell and Wilson alleges that they then assaulted him.

On Monday, 8 January, Wilson complained to Acting Superintendent Ellickson. On Thursday, 11 January he was released from D Division to A Division. On that day he saw Dr Alton and complained of the assault. Dr Alton examined him and asked him to write an account of his complaint.

In the meantime, Ellickson, after receiving the complaint on 8 January had spoken to Townsend and Kelly and possibly Mead who was also present at the time of the alleged assault. Ellickson was satisfied with Townsend's explanation.

Some days later, Ellickson heard that Wilson was writing a letter to the Ombudsman complaining of an assault on him by officers. Ellickson saw Wilson in A Division which places this interview some time after his transfer to that Division. Wilson agreed to withhold his letter until Ellickson had conducted an investigation.

Ellickson, in the presence of another senior officer, Bray, interviewed Wilson and two other prisoners, J. G. Wilson and J. J. Williams. These interviews were recorded. Ellickson cannot recall whether he recorded his interviews with Townsend and Kelly.

Ellickson also spoke to Albrown, a medical orderly, and the prison chaplain, Rev. King, on 12 January and on that day recorded the substance of his conversation with each of them.

Ellickson as Acting Superintendent reported to the Director of the Department, Mr Gard, who assigned Assistant Director Stewart to investigate.

Wilson was transferred to Modbury Hospital on Friday, 12 January and on 15 January was interviewed by Stewart who recorded the interview.

On 16 January Wilson was charged and convicted before a Visiting Justice of making false allegations against Townsend and Kelly.

On 19 January Stewart made his report to the Director.

There is no dispute that when Wilson was transferred from S Division to the observation cell in D Division on the morning of Sunday, 7 January 1979, he had failed to make up his bed pack to an acceptable standard. In the observation cell he still refused to make up the pack.

There is a conflict of evidence whether the sticks which are folded into the pack were available to Wilson in the observation cell. Wilson says they were in his bedding which went with him when he transferred from S Division to D Division and Townsend, in a report made on 15 January says that on that occasion Wilson 'walked willingly from S to D Division carrying his blankets and wooden bed pack sticks'.

Officer Mead gave evidence that he obtained and issued bedding to Wilson in the observation cell and that Wilson had no bed pack sticks.
Substantial conflicts of evidence occur regarding events after Wilson left S Division. I have already referred to Townsend’s report of 15 January which referred to Wilson walking willingly to D Division. However, in his evidence before the Commission Townsend said, ‘When Wilson was informed that he was to be transferred he became abusive and violent and it necessitated Prison Officer Kelly and myself entering the cell and restraining him physically (without the use of any device) and transporting him from S to D Division. During the transfer we were subject to verbal abuse and physical violence. However, both Mr Kelly and myself expected this and restrained him without any harm to the inmate. Wilson was taken into D Division and put into the observation cage. He was given a bed pack and told that if he could make the bed pack up and behaved properly then he would be transferred back to S Division.’

After Wilson was transferred to the observation cell, he still did not attempt to make up his bedding properly. Townsend says that Wilson commenced to yell and to shout obscenities and to threaten violence. He says also that Wilson ‘threw the contents of his plastic toilet bucket around the cell and through the wire mesh’.

The evidence of Officer Mead who accompanied Townsend and Kelly to Wilson’s cell is that although Wilson was refusing to make up his bedding, he started to make a lot of noise only after Townsend and Kelly had entered the cell and Kelly had taken hold of him.

Townsend says he decided to transfer Wilson to No. 1 cell from the observation cell because otherwise his behaviour would have disrupted visits which would occur later in the day.

Townsend and Kelly entered the cell and Mead remained outside watching. Townsend says Wilson was ‘screaming, kicking, spitting, abusing us and making every effort to resist the transfer’ and that ‘what then transpired is very difficult to recollect’. He says the intention was to restrain Wilson in order to take him to No. 1 cell and he says, ‘Punches and slaps, although not intentional, may well have been thrown in an attempt to restrain him.’ He denies that either he or Kelly carried a baton. He added, ‘If Wilson was hit by either Mr Kelly or myself in the struggle that preceded the transfer from the observation cell to No. 1 cell, then it was purely unintentional and occurred in the course of attempting to restrain him for the purpose of the transfer.’

Speaking of the bruises which Wilson subsequently had, Townsend said, ‘I will however, say that in the ensuing struggle which was quite traumatic resulting in Mr Kelly and myself losing our feet on the slippery floor on at least one occasion, Wilson might well have been pushed against the metal bed and the floor, the wall and the bars of the cell and could have sustained bruising to the lower back, right buttock and right lower side which would have been consistent with any bruising found on his person on examination by a medical officer . . .’

Townsend also said that Wilson did not complain to him about an alleged assault on 7 January.

In his report of 8 January 1979 Townsend says Wilson was removed with the minimum restraint and that both Wilson and himself fell to the floor before Wilson was completely over-powered.

The report which Townsend made on 15 January contains the following passage: ‘At this stage things became very hectic but I remember grappling with Wilson and we fell onto the corner of the bed. The next thing I can remember is getting to my feet. P. O. Kelly appeared to have some control over Wilson who, at this stage, was still screaming abuse and threats.

Wilson at this stage appeared hysterical and would not keep quiet. I slapped his face with an open hand a couple of times and said, “If you don’t shut up I will shove this down your throat”, showing my clenched fist.

This action appeared to have the desired effect and he quietened down. We then transferred him to No. 1 cell.’

Despite Townsend’s statement that no complaint by Wilson of assault was made to him, it is quite clear that Townsend was present and took part in a conversation on 8 January when Wilson complained to Acting Superintendent Ellickeon of the assault.

The admission by Townsend that he had struck Wilson in the face did not appear in the report of 8 January nor in the statement of evidence tendered to the Commission. Townsend said he had not
included it in his statement because he could not remember it. He could remember neither the slapping nor the making of the report of 15 January.

Kelly's statement to the Commission was made after seeing Townsend's statement and was similar to it. Kelly speaks of Wilson's verbal abuse and threats of physical violence and says, using the same words as Townsend, that Wilson 'threw the contents of his plastic toilet bucket around the cell and through the wire mesh'.

Kelly says he entered the cell behind Townsend. Wilson, who was screaming, punching, spitting and kicking, jumped onto the bed. Townsend tried to get hold of him but Wilson jumped off the bed. There was a scuffle and Townsend and Wilson fell. Kelly then tried to get over Townsend to hold Wilson and Kelly also slipped and fell. All three then got to their feet and Kelly and Townsend got hold of Wilson's arms thus restraining him. Kelly denied that either Townsend or he had a baton or that Wilson was hit with one. He said he remembers an occasion when Townsend and Wilson 'fell against the bed and onto the floor' and says Wilson's injuries, if he had any, could be thus explained.

When Kelly gave his evidence Townsend's report of 15 January in which he records his slapping of Wilson had not been disclosed.

When asked if Townsend had hit Wilson during the incident he said he may have done but he did not see Townsend hit Wilson in the face and that while there may have been an accidental hit, there was no deliberate one. He also said that if it had occurred, he would have seen Townsend lift his arm and strike Wilson across the head but he saw no such thing.

Townsend's statement in his report of 15 January was then put to Kelly who said that he had no recollection of Townsend slapping Wilson. Kelly also said he was unaware that Wilson had suffered any injury. He was unable to explain the statement in Townsend's report of 15 January that 'Prison Officer Kelly did note that he had a mark on his left thigh' or the entry signed by him in the D Division journal, 'mark on right leg caused by falling while being restrained.'

The onlooker was Mead. His statement to the Commission which was put to Kelly contains the following passage: 'To the best of my recollection Mr Townsend came up to the cell and said, 'Make up your pack and you can go back to S Division.' Wilson became violent. Mr Townsend and P.O. Kelly went into the cell and a struggle developed during which Mr Townsend fell on the floor. Wilson stood up and became hysterical. Mr Townsend slapped Wilson open-handed across the face. Wilson regained some of his composure, Wilson was restrained by Mr Townsend and P.O. Kelly and he was placed in No. 1 cell.'

When Townsend and Kelly entered the cell Mead was not aware that they intended to move Wilson to No. 1 cell. He thought Wilson was being removed from the bed on which he was sitting in order that he could make the bed pack.

Regarding the struggle which he said developed, Mead's account was that Townsend and Kelly entered the cell, Kelly first. He was asked, 'How did the struggle develop?' to which he replied, 'By trying to get Wilson to stand up on the floor.'

Mead said that Kelly took hold of Wilson to stand him on the floor by taking hold of his right arm and trying to pull him off the side of the bed and that in doing so Kelly kicked over the toilet bucket. Townsend grasped Wilson's left wrist with his left hand and the upper left arm with his right hand. Townsend then slipped on the now wet floor, releasing his grip with his right hand, steadied himself against the wall retaining his grip with his left hand. Townsend did not fall over although one knee was bent forward and he was in a crouched position. Townsend regained his balance, Wilson became hysterical, and with Kelly holding Wilson's right arm with both hands and Townsend holding Wilson's left wrist with his left hand, Townsend with his right hand slapped Wilson once in the face.

Earlier in his evidence he said Townsend slipped 'and Wilson then fell'. Later he said, 'At no stage in the observation cell did Wilson fall to the ground', and that Townsend did not fall on to Wilson. Later he reiterated that Wilson did not fall and that he would have seen it if it had happened.

It was put to Mead directly that Townsend's evidence was that he fell on top of Wilson to which Mead replied that Townsend slipped but supported himself on the wall and that he did not observe Townsend fall on top of Wilson nor did he observe Wilson fall against the bed.

Mead agreed that nothing he saw could explain Wilson's bruises.
The only written account before the Commission which Wilson gave of this incident came from Wilson's prison file and was written on Northfield Security Hospital letterhead. It reads as follows:

'Sir, I am writing this statement to you. Sir, this is how it was on Sunday the seventh as I remember it. I was in S Division that morning. I was told that my bed pack was not up to scratch, so after the unlocking I was sent back to fix it. I was told that if it was not done properly I would have to stay in my cell. I was getting upset by this time, but was not abusing the officers. Mr Townsend had then said that I would have to go over to D Division where I would have to stay until my bed pack was finished. So then I went over to D and was put in the observation cage where I became even more abusive to the officers, so then Mr Townsend had come into the cage waving this baton into my face. I then pushed the baton away because I thought that he was going to hit me, then Mr Townsend gave the baton to Mr Kelly and grabbed me and threw me on the bench and they had hit me in the face and head and then he grabbed me—stand me up and Mr Kelly had then hit me with the baton across the thigh and the leg and the back. This is all I remember. Signed Peter Wilson.'

The investigation which followed this incident has some peculiar features.

On Monday, 8 January, Ellickson was Acting Superintendent. When he first visited the Division on that morning Wilson was in a highly disturbed state and Ellickson could not obtain any coherent statement from him. He decided to return a little later in the morning which he did. Wilson had calmed down and then complained he had been assaulted by Townsend and Kelly on the previous day.

Ellickson immediately sought out Townsend who said he could possibly have hit Wilson not with a punch but with a forearm while trying to grab or restrain him.

According to Ellickson's written statement to the Commission, Ellickson 'was satisfied after speaking to Mr Townsend that he had used no more force than was necessary to physically restrain Wilson in moving him' although in his evidence he said that he 'was a bit in two minds'.

Unbeknown to Ellickson, on the same day, 8 January Wilson had also complained of the assault to the prison chaplain, Rev. King, and Wilson says he also complained to the medical orderly Albrow.

The circumstances in which Ellickson re-opened his inquiry and in which the Assistant Director became involved have already been referred to.

Transcripts of Ellickson's interviews in the presence of Bray with Wilson, J. G. Wilson and J. J. Williams are available.

Mead thinks that Ellickson recorded his interview and it seems probable that the interviews with Townsend and Kelly were not recorded. No tape or transcript relating to any of these three interviews was produced.

Ellickson also spoke to the prison chaplain.

In the meantime, Wilson had also complained to Dr Alton who made arrangements for his admission to Modbury Hospital and who asked him to put his complaint in writing.

Ellickson says that he again saw Wilson on 15 January at the hospital before Stewart interviewed Wilson. Wilson then told him that there had been a scuffle in the cell, that no baton was used and that he had been 'put up to it' by other inmates in the yard.

It should be noted that Wilson had made his first complaint on the morning of Monday, 8 January and was not released into the yard until the afternoon of Wednesday, 10 January or Thursday, 11 January.

Ellickson says that he reported these admissions to Stewart before Stewart interviewed Wilson but that Stewart intended to go on with his proposed interview with Wilson 'to get Wilson on tape regarding his allegations. Whether he actually said his withdrawal or his false complaint I cannot accurately say.'

Stewart interviewed Wilson at the hospital on 15 January. The transcript of the interview is available. Stewart asked Wilson to put his allegations in writing and to give the document to Officer Daubney. He says that after his interview with Wilson he expressed to Ellickson his doubts as to the truth of Wilson's allegations. He further says that on the following day he spoke to Daubney who read to him what Wilson had written and which consisted of three sentences including the statement that he was not going to detail the assault. Stewart says he later spoke to Ellickson who had spoken to Wilson.
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I am unable to reconcile these accounts.

Ellickson says that he told Stewart before Stewart interviewed Wilson that Wilson had admitted the allegations were untrue.

Stewart says that after his interview with Wilson he expressed doubts to Ellickson whether Wilson's story was true and that it was later still that Ellickson, after hearing what Wilson had written as a result of Stewart's request, told him that Wilson had admitted his allegations were untrue.

In the circumstances it is unnecessary for me to say which account, if either, is accurate although I would hesitate to accept that Stewart, knowing Wilson had admitted his allegation was untrue, set out to trap him into making the same admission in a tape recording which could be used to support proceedings against Wilson.

What does appear from this investigation was the inefficiency of the method used and the gaps in the records kept.

Townsend made two written reports on 8 and 15 January in the latter of which he admitted having struck a prisoner 'a couple of times'. No inquiry was made into this admission and Townsend was never asked to explain why the admission was not made in the first report.

Kelly, if he was asked for a written report as Ellickson seems to suggest, apparently never made one. Certainly one was not produced.

There is no record of a statement, written or recorded, by Mead and there was no investigation of the substantial differences in the account of the incident given by Mead on the one hand and on the other, Townsend and Kelly.

There was no investigation of Wilson's allegation repeated in Dr Alton's report that his requests made three days in succession to see the doctor were not met.

Dr Alton and Stewart each asked Wilson to prepare an account of his complaint. Only one of these accounts, presumably that sought by Dr Alton, is on the file although it is clear that Wilson did prepare and give to Daubney the statement requested by Stewart.

The letter which Wilson wrote to the Ombudsman and which he gave to Ellickson is missing. It is important because Wilson agreed with Stewart that it was Wilson's version of what had happened and it was the first written version given by him.

No report was prepared by Ellickson. His recollection of some of the events which occurred in January 1979 was, understandably enough, imperfect and I am concerned with his recollection of the interview with Wilson on 15 January when he says Wilson admitted his allegation was false and that he told Stewart of this before Stewart interviewed Wilson. My concern arises from two considerations. First, that Stewart did not put the admission to Wilson and second, that Ellickson did not mention it when preparing the particulars in support of the charge made against Wilson and heard on 16 January of making false accusations. Ellickson wrote, 'I carried out a full investigation and could find no evidence to substantiate the accusation'. It would have been the simplest thing to say instead that Wilson had admitted that the accusation was false.

Finally, no record was kept of the size and appearance of the bruises which Wilson had. As will appear, I think this omission is of great importance.

I regret that I find it necessary also to criticise Stewart's conduct of the interview with Wilson on 15 January 1979.

The transcript of the interview comprises 25 pages. The first seven pages appear to be directed at the extent to which Wilson had, before the incident, been abusive and threatening.

Page 8 and a small part of page 9 and page 10 refer directly to the alleged assault and very little of the remaining 15 pages has any direct reference to it.

At page 10, without asking whether Wilson was slapped or admitting that he was, Stewart, having
obtained an admission that Wilson was hysterical, suggested that it is the usual practice with hysterical people to slap them across the face.

Towards the end of the interview the question was put, 'How long were you in A Division before you decided to get some action on this, if you like to use that term?' This was a double question which took no account of the fact that a complaint had been made to the Acting Superintendent at the first reasonable opportunity on the day following the alleged assault.

The interview concluded in the following way:

*Mr Stewart:* How much truth is in it, anyhow?

*P. Wilson:* The baton is true, sir.

*Mr Stewart:* Yes, but the rest of it.

*P. Wilson:* Yes, it is very hard to find sometimes, is it not?

*P. Wilson:* Yes, sir.

*Mr Stewart:* Very hard to find.

*P. Wilson:* Sir, if it was possible—I know I have made accusations, but can a person back down on making an accusation?

*Mr Stewart:* Not really, you have to say it is a pack of lies if you are going to back down, because what you are really saying now is 'I'm not too sure if what I am saying is correct', are you not? That is what you are telling me?

*P. Wilson:* Yes, sir.

*Mr Stewart:* I thought that is what you would be saying and I don't think a lot of what you have said is too correct today. That is a fair comment, is it not?

*P. Wilson:* Yes, sir.

*Mr Stewart:* You sit down tonight and write it out. I will be back to see you and you give me your version of what happened together with what you said and if you abused anybody you say so, because I want to—as I said, I worked here for six years as a deputy superintendent and I have been abused by the best of them and I know what sort of language you have used and you put that down and we will see how that compares with what you have been saying. Alright.

*P. Wilson:* Yes.

It should be remembered that Wilson, at this time, had made his complaint to Ellickson and had told his story to Albrown and the prison chaplain. His interview with Ellickson and Bray had been recorded and he had again been interviewed by Ellickson on his return to A Division on Thursday, 15 January. He had been under pressure from fellow prisoners to press his complaint. He was in hospital under treatment.

During the interview he told Stewart that he was confused, that he did not want to remember the incident, that he did not want to continue the interview, and had asked at one stage for the interview to be taken more slowly.

In all these circumstances, when he asked whether a person can 'back down on making an accusation' it should have occurred to the person conducting the interview that apart from the obvious inference that the question was prompted by the fact that the allegation was false or at least overstated, that alternatively, it might have been prompted by the conclusion that it was not worthwhile making an allegation against a senior prison officer even if it were true.

I do not accept that a person cannot withdraw an accusation without admitting that the accusation was a pack of lies and Stewart himself accepted this by adding that what Wilson was really saying was that he was 'not too sure that what he was saying was correct'. Wilson should have been told that a serious allegation had been made which would be thoroughly investigated whether he withdrew it or not and that the authorities could best get at the truth if he were to co-operate by telling all that he knew of the incident but that he could remain silent if he wished.
In my view it would be unsafe to conclude from the interview that Wilson was withdrawing his complaint or admitting that it was false. It is equally likely that as a young man with natural disabilities and suffering the additional pressures to which I have referred and being interviewed by an unsympathetic and disbelieving senior officer, he decided he would be in less trouble if he abandoned his accusation than if he persevered with it.

On the following day, 16 January, while Wilson was still in hospital, he was charged with making false accusations against Townsend and Kelly. He was dealt with by the Visiting Justice on the same day.

He pleaded guilty and was sentenced to 21 days loss of remission. All this occurred four days before Stewart made his report of 19 January to the Director but the day after Townsend’s written acknowledgment that he had struck Wilson several times.

Some comment should be made on Stewart’s report. The purpose of the report is not altogether clear because by the time it was written, Wilson had pleaded guilty to the charge of making a false accusation against the officers and had been sentenced.

The report refers to reports prepared by various officers. The only prepared reports disclosed by the evidence are the two from Townsend and one from Dr Alton, if he falls within the description of an officer. Also, there is a passage in the transcript of Stewart’s interview with Wilson indicating that Stewart then held a written report compiled by Albrow which has not been produced.

There are four matters in the report which require mention.

Firstly, the report says of Wilson: ‘Although a number of other senior staff and the Visiting Justice both before and after Mr Ellickson’s visit had asked him whether he had any complaints, he did not raise the matter with them.’

There is no record of any senior officer other than Ellickson, and Bray, who was present with Ellickson at the recorded interview with Wilson, asking whether Wilson had any complaint and his failure to raise the matter with the Visiting Justice when he had already made a complaint to the Acting Superintendent seems to be of no significance.

Secondly, the description of Wilson’s account of the incident as a ‘very well rehearsed pattern of the proceedings of the supposed assault’ was not supported by the record of interview nor by Stewart’s evidence.

Thirdly, the statement that Wilson ‘admitted in the end that most of his statements in the interviews were false’ seems to me to be inaccurate and Stewart admitted as much in his evidence.

Perhaps the most baffling aspect of the report is the way it deals with the complaint against Townsend.

The first paragraph of the report records this complaint as being that Wilson was ‘hit in the face by A.C.P.O. Townsend’. I have pointed out elsewhere the statement made during the interview with Wilson regarding slapping hysterical people in the face which indicates Stewart was aware that Townsend admitted having slapped Wilson.

The report of 19 January not only omits any reference to the admission by Townsend that he had hit Wilson in the face when Wilson was held by both Townsend and Kelly but it goes on to say, ‘I am of the opinion that any action taken by A.C.P.O.I. Townsend and P.O. Kelly was justified in protecting themselves from his aggression . . .’

If Wilson came to the conclusion that it was not worthwhile to continue with his allegation, there appears to have been some justification for his attitude.

It is, of course, clear that Wilson was assaulted by Townsend who, on his own admission, struck Wilson in the face more than once.

The further question is whether he was hit with a baton. Townsend, Kelly and Mead all deny that either Townsend or Kelly carried or used a baton. Against this is the evidence of a disturbed and emotionally upset young man.

I have seriously considered the suggestion that Wilson was struck not by a baton but by a bed pack stick which could reasonably be called a batten, but Wilson’s description of the weapon he says
was used leaves no doubt in my mind that he is referring to what might be called a police baton. He described it as bluish-black in colour with a strap and with rubber on the outside.

The most important evidence which might have confirmed Wilson's story is no longer available, namely a detailed and accurate account of the bruises. Dr Alton can no longer recall anything of significance about them except that they were consistent with Wilson having sustained injury from physical trauma. I would have thought that was true of most if not all bruises.

Wilson's account given to Dr Alton on 12 January together with the bruising was sufficient to cause Dr Alton to write his report of 12 January recording the complaint.

With such a serious complaint against two officers, one a senior officer, it is highly unfortunate that the bruises were not photographed or sketched. At the least, a detailed account should have been made of their appearance and relationship to one another.

It is true that Dr Alton said in evidence that the bruises were not inconsistent with Wilson having been hit by a baton but even this cautious opinion can carry little weight if Dr Alton cannot remember what the bruises looked like.

In the circumstances, and despite my grave suspicions, I am unable to find that the assault on Wilson was made with a baton.

But the disturbing aspect of this case is the offhand manner in which Townsend's admission that he struck Wilson was dealt with.

It is not clear whether Ellickson knew of this admission before Stewart commenced his investigation, but as I have said, the fact that Stewart put to Wilson that the 'usual practice' with hysterical people was to slap them across the face indicates that Stewart knew on 15 January, the date of Townsend's report, that this was included in Townsend's account of the affair. This was confirmed by Stewart in his evidence.

This admission seems to have been accepted without comment or further inquiry. Townsend was not asked to explain why he had not included this account in his first report of 8 January and Kelly was not asked about it. If Kelly had been asked then the disturbing fact would have been revealed that Kelly did not see the slapping although, according to Townsend, Kelly was at that time holding Wilson.

The upshot of it all was that no action was taken against Townsend who committed an assault while Wilson, who had complained of that assault, lost 21 days remission because he said the assault was made by a baton when it might only have been by hand or fist.

My conclusion is that on 7 January 1979 Townsend assaulted Wilson by threatening him with his fist and by striking him about the head several times with his hand or fist. Kelly, by holding Wilson when Townsend struck him, aided Townsend in that assault.

Comment
These crises in the handling of Wilson on 20 December 1978 and 7 January 1979 illustrate an important problem which arises in the custody of unstable prisoners who are said to be in what is known as the 'grey area'. Their problems make it difficult to hold them in the ordinary prison regime and since treatment is unlikely to assist them, there is resistance to their being held in the Security Hospital.

The problem is forcefully expressed by Townsend in his report of 8 January 1979, the final paragraph of which read:

"Unfortunately I am at wit's end as to what to do with this prisoner. I have tried all types of approaches but they only work for a short period. I cannot recommend any area where this prisoner can be housed. It is not fair on the staff of this institution or especially S and D to put up with the continuous tantrums or abuse from this prisoner. He is disruptive to the good order and discipline of the prison. The only alternative I can suggest is to keep him subdued with medication."

B. D. Sandery—11 May 1979
The areas of dispute regarding this incident are quite small.

Following the demonstration of 5 and 6 May 1979, Sandery and others were placed in S Division.
On 11 May, Sandery and at least one other prisoner were making a considerable noise and shouting threats to officers and their families. The Superintendent decided to move Sandery and the other prisoner to D Division.

When Sandery's door was opened he threw the contents of his toilet bucket over two of the officers. A.C.C.O. Townsend then sprayed Sandery with C.S. Lance. The effect of this substance is to cause disorientation and to affect vision temporarily. Sandery sat on his bed. A number of officers then entered the cell and carried him bodily to D Division.

Sandery makes three complaints. He says that whilst being carried to D Division he was struck a number of times by truncheons carried by the officers moving him. He also complains of the use of the dog 'Zac' by which he says was permitted to come too close to him and which intimidated him, and of the use of the C.S. Lance.

I make no finding as to the alleged use of batons. It was not put to Superintendent Hughes nor to Townsend, who was in charge of the officers, nor to Kelly who had control of the dog 'Zac', that Sandery was hit with batons. A number of the escorting officers were identified and some gave evidence that I can find no record of it being put to them that Sandery was assaulted.

Sandery himself was temporarily disorientated and blinded and may well have confused rough handling with blows.

Counsel for the prisoners says that the reaction of the officers to Sandery's noise was grossly out of proportion and did not justify the use of C.S. Lance nor the presence of the dog.

I do not accept these submissions.

Sandery was known to be a difficult and determined prisoner. He made it clear that he would resist removal from his cell. The use of C.S. Lance enabled him to be physically removed without any great degree of physical violence and with no injury other than the temporary incapacitation of Sandery.

Sandery's complaint regarding the dog, as I understand it, is principally that it should not be used to intimidate prisoners but to discover drugs.

Much depends on how the dog is used. If the handler excites it and puts the dog in a position where it could savage a person who is nearby or the handler puts himself in a position in which he could be assaulted thereby encouraging the dog to attack his assailant, the presence of the dog would not, in my view, be justified.

I do not think the position existed here.

There may well be prisoners who would not be alarmed by the prospect that their behaviour will inevitably require the use of force by officers.

My own view is that any reasonable measure such as the proper use of C.S. Lance or the presence of a well-trained dog at an appropriate distance which overall reduces the risk of violence or injury will often be justified.

If, as Sandery alleges that while he was being carried he felt the breath of the dog on his head and its paw scraped the side of his head, it was allowed to get much too close to him, but having regard to all the other evidence and Sandery's temporary disablement, I think he over-estimated the threat which the dog posed to him.

B. D. Sandery—27 September 1980

On 22 September a search of Sandery's cell revealed a number of prohibited items including a home made gun or zip gun of .22 inch calibre, and a round of .22 ammunition.

On his return that day from court proceedings related to other matters, Sandery was transferred to No. 1 cell in D Division. He objected to this and embarked on a course of anti-social behaviour which he says was designed to ensure his removal from No. 1 cell. He blocked his toilet and smeared food and excreta on the walls. He refused to leave his cell, shower, or change his clothes. Eventually it was decided by the prison authorities to remove him by force.

Sandery makes two complaints. First that a fire hose was turned on him without warning and that he was assaulted by prison officers who entered the cell to remove him.
As to the first complaint, Sandery drew a distinction between being ordered to come out of his cell and being offered a chance to do so. He said that had the officers opened the door and said, 'We are transferring you', he would have gone into another cell 'especially when they got dressed up in their riot gear'.

I do not think I understand this argument. If the health hazard in his cell was created to ensure his removal from that cell, the object would have been achieved whether he was ordered to change cells or asked if he wanted to change.

But in any event it was put to Sandery that at about 4 p.m. on the preceding day he made it clear he was not coming out of his cell and with this he agreed. He did not explain to anyone that he would come out if ordered and I think the authorities were justified in assuming that this refusal to leave the cell would apply on Saturday as it did on Friday.

Further, Officer Chapman who was in charge of the group which entered the cell, says that on opening the outer cell door he called on Sandery to cease his resistance and come out quietly and that Sandery shouted at him.

Chapman says the fire hose was used to remove the residue of four days' meals and excreta which Sandery had piled up between the iron grille and the cell door and to knock down paper dinner plates stuck to the inner grille with excreta. While the fire hose was being used, an officer unlocked the inner door.

According to the records there were ten correctional officers and a medical orderly present, and also C.C.O. McCusker for at least part of the time.

Five officers entered the cell, the first being Officer Cooper who carried a canvas shield and a baton. Sandery tried to push a handful of excreta into Cooper's face. He grappled with Cooper and they both fell to the floor. Sandery was then overpowered by the officers, handcuffed and carried to another cell.

Sandery's complaint is that when he fell to the floor with Cooper, unidentified officers punched him in the neck and back, that Cooper, when he stood up, punched him and that when he was being carried to another cell, Officer Driver punched him in the stomach.

The three officers who gave evidence of this incident, Chapman, Cooper and Driver, each denied that he punched Sandery or saw anyone punch him.

Sandery did not say he was injured or exhibited any signs of injury after this incident and there is naturally enough no direct corroboration that Sandery was punched.

Cooper was carrying a baton and must have been extremely upset by Sandery's partly successful attempt to rub excreta in his face. If Cooper intended to strike Sandery it is strange that he used his fist as Sandery says rather than the baton.

I have no doubt that everyone concerned in this affair was very upset and that it was no time for niceties.

Sandery was resolute in his intention to resist. The officers, angered and disgusted by Sandery's use of excreta as well as violence to resist them, were determined to overpower and remove him. In doing so no doubt they handled Sandery roughly and forcibly, but I am unable to find on the evidence that he was deliberately punched by any officer.

R. Rofe—22 September 1980

On 22 September 1980 Rofe was transferred to D Division. He submitted to a strip search but refused an anal search. Officers Cooper, Howgate and H. A. Driver were present. The three officers and Rofe gave evidence of what happened at the time of the search and there was some evidence of subsequent proceedings before Visiting Justices.

It should be borne in mind that at the relevant time Rofe had just been strip searched and he was therefore standing naked with his hands on the wall, his back to Cooper and his feet about six inches apart.

Rofe's account was that Cooper told him to bend over and that Rofe refused. He refused twice. Cooper tried to force Rofe's head down by pushing on Rofe's neck. Rofe, who still had his hands on the wall, was able to resist. Cooper handed his glasses to Howgate and then tried again unsuccessfully.
to push Rofe's head down. He then said, 'Spread them', to Rofe and attempted to force Rofe's legs further apart by kicking the inside of his ankles and knees. At the same time, Rofe alleged, Cooper was punching and abusing him. Rofe, now angered, clenched his right fist and turned around initially intending to punch Cooper but thought better of it and did not. However, his right elbow came in contact with Cooper's body. Cooper tried on several more occasions to part Rofe's legs, but failing to do so left the cell. As he did so, Rofe said he would charge Cooper with assault and that he wanted to see the Chief.

When the Chief (Chapman) arrived Rofe told him he had been assaulted and Chapman told Rofe he would be charged with assaulting Cooper.

Rofe says that Howgate told him that clenching his fist in D Division constituted an assault and that for that reason he pleaded guilty when charged with assaulting Cooper but that he told the Visiting Justices that Cooper had assaulted him and what Howgate had told him. He also said he understood he was being charged with assaulting Cooper by clenching his fist and that when he found the assault was said to be constituted by elbowing Cooper, he thought it too late to correct the position because he had already pleaded guilty.

This is not all true. The records show that after the assault charge had been read to Rofe by one of the Visiting Justices including the particulars that he elbowed Cooper in the ribs, he made a statement which includes the following passage:

"When I went into D Bottom, it is true that I refused to bend over and spread the cheeks of my behind so they could have a look and after he repeated the order a couple of times Mr. Cooper became quite agitated and he started to—he tried to spread my legs and he did that by kicking my legs from under me. He then hit me on the side of the ribs simultaneously with both hands and he placed his hands on the back of my head and tried to bend me over. It was then I turned around. I didn't—I intentionally restrained myself from hitting Mr. Cooper but then I turned around and I tried to push his arm away and it was then that I must have hit him in the rib cage with my elbow."

Rofe did not tell the Visiting Justices what Howgate had said about clenching a fist in D Division.

I also note the difference between Rofe's evidence that Cooper was abusing him and punching him in the kidneys and the legs for thirty seconds or a minute and his statement to the Visiting Justices that Cooper hit him on the side of the ribs simultaneously with both hands.

While Rofe's evidence on these particular aspects was unsatisfactory, so were parts of the evidence of the prison officers.

Howgate was reluctant to describe Cooper's action as a kick although he agreed that Cooper moved his booted foot into contact with Rofe's naked foot. He said that this was done before Cooper asked Rofe to bend over and agreed that the only reason there was an incident was because of this action of Cooper.

His suggestion that when Rofe said to Cooper, 'I am going to charge you, sir', he could have meant that he was going to run at him and hit him was nothing less than an impertinence.

Cooper denied kicking or punching Rofe. His description of his action was that he placed his foot between Rofe's feet and then with his knee tried to force Rofe's legs apart. To do this to a naked man from behind would, I think, be as provocative as kicking his ankles.

Driver's evidence was, in effect, that Cooper attempted to push Rofe's legs apart with his foot.

Cooper's statement to the Visiting Justices included:

"During the course of the search I told Rofe to place his hands on the cheeks of his behind and bend over in a forward position. Rofe refused..."

It seems to me likely that Cooper told Rofe to spread his buttocks and then, without warning, attempted to spread his legs and that this in turn led to the incident in respect of which Rofe was charged.

Bearing in mind the discrepancies between Rofe's evidence and what he told the Visiting Justice, I cannot, on his uncorroborated evidence, find that Cooper punched him. I am however, satisfied that Cooper assaulted Rofe by kicking his ankles.
A professionally qualified tribunal might well have refused to accept a plea of guilty to the assault charge against Rofe without first considering whether or not Rofe was provoked.

One further aspect should be noted. Rofe made a complaint to a Chief Prison Officer that he had been assaulted by an officer. From all appearances this complaint was disregarded. No report was called for from either Howgate or Driver and apparently Chapman himself made no report. The only report recorded is that of Cooper in support of the charge against Rofe and there is nothing in evidence to indicate that Rofe’s complaint was even recorded in the D Division journal.

R. D. Byrne

Byrne complained of three specific assaults on him by correctional officers, the first on 20 November 1979 in Adelaide Gaol, which is dealt with later, the second on 22 September 1980 at Yatala, and the third on the following day, 23 September 1980, also at Yatala. I deal with each separately.

22 September 1980

Following the discovery on 22 September 1980 in Sandery’s cell of a number of prohibited items, there was a great deal of noise from the prisoners in B Wing including shouting and abusive language.

Officer Driver concluded that Byrne was responsible for one particular comment and closed the trap in Byrne’s door. This led to protests from Byrne who became more and more agitated and commenced to smash the furniture in his room. He also forced out the eyehole or peephole in the door.

Officer Petrie, the officer in charge of the watch, with Officer James, approached Byrne’s cell and Byrne threw chemical fluid from the toilet through the hole in the door. It is probable that Byrne, when he threw this liquid, was unaware that an officer was immediately outside the door. The fluid hit Petrie in the face and temporarily blinded him. He was led away by Driver to wash the fluid from his eyes and face and at the same time he says he ordered James to roll out the fire hose because he thought it the best way to subdue Byrne.

James rolled out the hose and turned it on, directing it through the hole in the door into Byrne’s cell. James said that in using the hose he acted on his own initiative to ensure the safety of Petrie who he thought was lying blinded near the door or just crawling away. He was also concerned, in view of the hole in the door, with the security of the cell.

At that stage there was no suggestion of any officers entering the cell and it is clear that Petrie had already left the scene with Driver before the hose was used, and I am satisfied that it was turned on and directed into Byrne’s cell as a retaliation against the throwing of the toilet chemical by Byrne.

There was no order in existence regarding the use of fire hoses against prisoners. This is a deficiency which should be remedied. C.C.O. McCusker, in his evidence, took the view that a fire hose should only be used against a prisoner on the order of the Superintendent and I agree with that opinion.

Byrne continued his noise and destruction and eventually McCusker was called to the scene. It seems that a misunderstanding then arose which exacerbated the problem.

McCusker decided that Byrne could not stay overnight in his cell. Apart from the furniture, which had been largely wrecked, there was also toilet chemical on the floor. McCusker was apparently unaware that there was also water from the fire hose in the cell.

Byrne wished to see a psychologist whom he named and said also that he wished to see him before he left his cell. Byrne formed the impression that McCusker agreed to that request while McCusker claims he maintained that Byrne could see the psychologist in the morning but must change to another cell that night.

When Byrne continued to refuse to leave the cell, McCusker decided that he should be removed.

By this time Byrne had barricaded his door with his bed and other articles and had smashed his table and armed himself with one of the wooden legs off it.

Officers Webb and James were detailed to enter the cell first and Officer Burfitt to follow and to handcuff Byrne. Webb, James and Burfitt were armed with batons and Webb and James each carried a shield and wore a helmet.
Webb entered the cell pushing aside the barricade which had been erected and was immediately attacked by Byrne who, with the table leg, hit him a glancing blow on the helmet and left shoulder. Webb's account is that he then dropped his baton and thrusting the shield out in front of him, struck Byrne knocking him to the ground; in falling, Byrne lost his grip on the table leg he had been holding. Webb, who is a big and powerful man, said that he hit Byrne with the shield as hard as he could and his assessment made in his evidence was that Byrne, having been knocked over and disarmed, the use of the baton was no longer necessary. He said however, that Byrne, when knocked over, continued to resist by attempting to kick the officers.

James's evidence was that Byrne directed several blows with the table leg at Webb and that he, James, hit Byrne several times with a baton about the arms and shoulders to immobilise him. The clear inference was that Byrne was not immediately felled by Webb.

If James hit Byrne while Byrne was still standing and attacking Webb, there can be no real criticism of his action. Webb says that he was first into the cell, that James was on his right and that the others were behind him. He could not say whether Byrne was hit with a baton. He was not aware of it.

Burfield admitted that he used a baton to strike Byrne's leg after Byrne fell to the floor. It is questionable whether such an action would discourage the victim to stop struggling and kicking as Byrne was, but it was a confused and tense situation. Byrne was undoubtedly resisting to the limit of his physical powers, his removal from the cell.

In these circumstances, whilst I think there is something to be said for the argument that James and Burfield used their batons unnecessarily, I must take into account the incident as it occurred in the heat of the moment and not as it appears in a sober analysis of the evidence. Bearing this in mind and considering all the circumstances, I give James and Burfield the benefit of the doubt.

Webb, I think, in doing what he did was doing no more than his duty.

This incident had an aftermath and the prison officers do not come out of it well.

Before the officers entered Byrne's cell he, anticipating violence, put his portable cassette recorder on the window sill high in his cell. The recorder subsequently was found in the office of the Chief Prison Officer in the Division. It was then obviously badly damaged.

The Chief Officer Chapman saw that it had several broken knobs and a broken aerial but made no inquiries as to how the damage occurred and although it had been suggested to him that the recorder was not in Byrne's cell at the time of the incident on 22 September, he did not put this suggestion to Byrne.

McCusker's evidence conflicts with that of Chapman.

McCusker says he retrieved the recorder from the floor of Byrne's cell soon after the incident of 22 September and put it in Chapman's office. McCusker could not say whether it was damaged or not because he did not test it but it appeared undamaged.

The fact that McCusker found the machine on the floor indicates that it may have fallen from the window sill but it seems to me that the damage which Chapman describes would have been apparent to McCusker if it had existed when he retrieved the recorder.

The probabilities are that at least the damage apparent on a visual inspection was caused whilst the recorder was in the custody of officers and no satisfactory explanation of this damage has been attempted.

23 September 1980

On 23 September the day following the incident just described, Byrne was in D Division.

An incident occurred in which Byrne again complains that he was assaulted by officers.

Perhaps the most important aspect of this matter is that it illustrates the way in which proper inquiries into matters affecting prisoners' rights and treatment can be effectively frustrated by a defective records system.
During the afternoon, Byrne left his cell and went for a shower. During his absence his cell was searched. At some stage a broken plastic cup which could have been used as a weapon was found in the cell. Also, after Byrne's return from the shower he was told to put out the clothes he had been wearing. He refused and commenced to stuff them into the toilet bowl. A number of officers entered the cell to restrain him from doing so and violence ensued.

Written reports were made out by the officers concerned and placed with the broken cup in a large envelope in the filing cabinet in the office of the Chief Officer of S&D Division. However, all that was produced to the Commission was the broken cup. The written reports are missing.

The importance of these accounts given shortly after the incident is demonstrated by the doubts which arose from the recollections of those involved in the incident.

On the evidence now available it is not clear whether Byrne took his clothes to the shower or not. Obviously if he did the broken cup could not have been found in his clothes during his absence. Because of some confusion with another incident, it is also not clear whether Officer Cooper carried a baton into the cell or not.

On one account the broken cup, when discovered, was left in the cell until Byrne returned from the shower, on another, that it was removed before he returned.

It is not clear whether the search conducted in Byrne's absence revealed a broken cup or merely some fragments of one.

There are similar discrepancies in the evidence of the officers and Byrne as to what happened after the officers entered the cell. In the present confusion of the evidence, I cannot decide whether the violence used against Byrne was justified or excused.

Obviously there would be a greater chance of determining what happened on this occasion if the written reports made immediately after the incident were available to refresh the witnesses' memories and to compare with their evidence given some six or nine months later.

There is nothing to indicate whether the reports were even read by a senior officer and why they are not in Byrne's file remains unexplained.

The inefficiency of the records system as it then existed has frustrated the investigation by the Commission of a serious complaint made by a prisoner against officers.

**S Division workshop barricade—28 July 1979**

A considerable amount of evidence regarding this incident was given, much of which is unnecessary for me to record.

On this day there were originally seven inmates in the workshop when some of them decided they would not leave the workshop. Two of the prisoners left and the remaining five then indicated to the prison authorities that they would resist any efforts to remove them.

They barricaded the door to the workshop and made or acquired some weapons for themselves including a pointed broom handle, iron bars and other items.

There is a little dispute regarding the early stages of the incident.

After the five prisoners indicated they would stay in the workshop, a decision was taken to remove them and the Special Operations Squad, a body of officers trained to deal with emergency situations, was briefed and then assembled in the workshop area in the presence of Superintendent Hughes and Assistant Director Stewart.

Fire hoses were run out and one officer was issued with a partly filled can of C.S. Lance.

The prisoners remained intransigent and the hoses were then turned on to force them away from the doorway in order that the barricade could be moved. At the back of the workshop was a doorway leading to a toilet area. This doorway was covered by a sheet of particle board, the bottom portion of which had been broken off enabling access into that area to be gained by crawling.

When the hoses were turned on, four of the prisoners were forced to the back of the workshop where they took refuge from the water in the toilet area. Some weapons were taken with them. The
remaining prisoner, Sandery, remained sheltered immediately behind the barricade where he could not be reached by the fire hoses.

Eventually Sandery was sprayed with some C. S. Lance which affected his vision and he also retreated under the particle board into the toilet area. The officers, armed with batons and in some cases, shields, and wearing helmets, were then in a position to enter the workshop.

In spite of all the preparation no-one had the key to the padlock securing the door and there was some delay while bolt cutters were used. The door was then opened and the barricade pushed aside.

The officers then entered the workshop and approached the doorway to the toilet area where they called upon the prisoners to come out. Attempts to remove the particle board were unsuccessful and no-one attempted to enter the toilet area since this would have required the officers to go in one at a time and crawling or at least stooping, a position in which they would have been vulnerable to attack.

However, removal of the remaining particle board was made unnecessary by indications that the prisoners were about to come out into the workshop.

The real dispute and the principal issue with which I am concerned is whether, when the prisoners came out, they were assaulted.

Three of the prisoners gave evidence. They complained that whilst they came through the doorway crawling and obviously with no sign of resistance, they were roughly handled and hit with batons and fists while being removed to cells in D Division.

The general import of the officers’ evidence was that no more force was used than was necessary to control the prisoners and to remove them and that there was no general or indiscriminate use of batons as the prisoners alleged.

It is my clear conclusion from the evidence that the prisoners in response to repeated demands by the officers to come out from the toilet area came out unresisting and unarmad.

There was at this time amongst the officers a great deal of shouting and even some excitement, and a number of officers were pressing around the toilet doorway. Certainly some officers would not have been able to see the prisoners coming through the toilet doorway and they and others may not have appreciated that the prisoners were coming out without resistance and without weapons. In view of the prisoners’ previous behaviour, the officers who could see the prisoners emerging were entitled to view this latest development with some caution.

Nevertheless, the situation was that at least four of the prisoners, if not all five, came through the doorway on their stomachs or knees and showing no sign of aggression. Despite this a number of them were hit with batons.

In the conflict of the evidence, it is not possible to determine the order in which the prisoners came out nor the identity of the officers who used their batons or who took charge of each prisoner.

Apart from the evidence of the prisoners of batons being used, three prison officers gave evidence of prisoners being hit.

Officer Townsend, who was in charge of the Special Operations Squad, saw an officer hit a prisoner around the legs several times with a baton while the prisoner was kicking at the officer. He thought it an excessive use of the baton.

Officer Lewis, who admitted striking a prisoner with a baton, was clearly unjustified in doing so. He struck on the shoulder a prisoner who was prostrate on the floor on his stomach and who had been told to stay down and appeared to be doing so. He said he hit the prisoner to subdue him. Again, Townsend thought the use of the baton excessive.

Officer Roberts also admitted hitting a prisoner with a baton although he claimed to have acted in self-defence.

It is remarkable in the light of the prisoners’ evidence and the admissions by Lewis and Roberts that no officer who gave evidence other than Townsend admitted to seeing a baton used. What Lewis and Roberts did must have been observed by a number of officers clustered near the doorway to the toilet area.
The removal of the prisoners to D Division was, on the evidence, swift and rough. As I have said, I think some of the officers involved may not have realised that the prisoners had already surrendered and it is understandable that the prisoners who were being hurried along, some in headlocks, were unco-operative.

The use of the batons to which I have referred occurred near the entrance to the toilet area. In the face of the denials by the Superintendent and Assistant Director, I am not prepared to find that batons were used near the entrance to the workshop or on the way to D Division when the prisoners were in the view of those officers.

Some of the prisoners complained of their treatment on admission to D Division including delay in the issue of dry clothing and bedding. It was however, a difficult time for the staff and I am not satisfied that there was any misconduct at this stage on the part of the officers.

Several of the prisoners complained that they had been assaulted. Apparently no record (other than at the surgery) was made of the complaints and they were not investigated.

My finding is that when the prisoners surrendered in the workshop there was insufficient discipline and control exercised by the officers. While I think the prisoners' accounts of the repeated use of batons and other physical violence are exaggerated, I am satisfied that batons were used at least on some of the prisoners when they first left the toilet area and that the removal of the prisoners to D Division was carried out in an unnecessarily rough manner.

I have stated elsewhere and repeat here that any complaint by a prisoner of assault on him by an officer should be immediately recorded. It should also be reported to the Superintendent and properly investigated.

AT ADELAIDE GAOL

S. W. McBride—31 August 1978

On 31 August 1978 McBride swore at Officer Marchesi and was paraded before a senior officer who told him he would be charged. After leaving the office he said to Marchesi, 'I suppose you think you are a big man now.' Marchesi promptly paraded McBride again before the senior officer.

He says that as he stood before the desk Marchesi told him to stand to attention and took hold of McBride's elbows and pulled them towards the middle of his back. Marchesi says he took hold of McBride's arms to remove his hands from his pockets, telling him to stand to attention.

When Marchesi took hold of McBride's arms, McBride turned sharply around, breaking the grip and told Marchesi to take his hands off him. McBride says that at this stage he was angry and could have sworn at Marchesi.

McBride says that the Chief Officer on the other side of the desk then grabbed his hair and pulled him backwards onto the desk and that other officers present then punched him in the stomach whilst Marchesi tried to twist his legs. At this stage he was struggling violently and swearing. He says he was eventually overpowered and taken, still struggling, to A Wing. He agreed that in the course of that journey he told Marchesi he would kill him.

Marchesi says violence erupted when McBride was told to stand to attention. He refused and Marchesi took McBride's wrists and placed his arms by his side whereupon McBride spun around and commenced to raise his closed fists in a threatening manner. At that stage he was restrained by the officers present and taken to A Wing.

The senior officer was apparently C.C.O. Keynes. It is unfortunate that he cannot recall the incident. If, as Marchesi says, Keynes helped after McBride became violent, Keynes must have been involved in restraining a violent man in his office yet has no recollection of it.

There are, I think, two problems.

The first is whether Marchesi was guilty of assault by trying to place McBride's arms at his side. I have mentioned elsewhere (page 27) some of the legal implications of such an action. Technically, I think it was an assault although none of the officers present at that time would have regarded it as such. The common view would be that expressed by Marchesi that he was using the minimum of force required to ensure compliance with a lawful order.
This action of Marchesi can be contrasted with his action when escorting McBride to A Wing. At that stage McBride was struggling and making threats in a way which could have indicated to the officers that they would be assaulted by McBride if he could get free of their restraint.

The second problem is to determine whether McBride was assaulted after Marchesi tried to place his arms at his side.

The evidence leaves so many questions unanswered. McBride’s turning around after Marchesi had taken hold of his arms—was this a mere breaking of the grip or a prelude to assault? The taking hold of McBride’s hair—did it occur, and if so, was it to prevent McBride assaulting Marchesi or was it an over-reaction by an officer angered by McBride’s intransigence? The gripping of McBride’s legs during the struggle—this may well have occurred; if so, was it done in the course of restraining McBride or merely in order to hurt him?

Whatever the answer to these questions, it seems to me that McBride’s action in turning suddenly towards Marchesi and swearing at him might reasonably have been construed as the commencement of an assault on Marchesi thus justifying any reasonable efforts to restrain McBride. If one assumes that McBride was grabbed from behind by the hair, this may have been the only way in which Keynes could have prevented an assault on Marchesi and, on the assumptions I have made, I would not be prepared to say that such a restraint was unreasonable.

R. D. Byrne—20 November 1979

This was a confused incident. Byrne had appeared before a Visiting Justice and apparently was annoyed by the proceedings. He appears to have been rude and unco-operative and the Visiting Justice ordered that he be removed. Officer Olsen escorted him outside.

Since Byrne was upset it was at least prudent that a careful watch be kept on him during his return from the court to A Wing at Adelaide Gaol.

My distinct impression from the evidence is that the escorting officers may have been too zealous in their attentions and gave Byrne the impression they were containing him too closely. One or more officers held Byrne when he thought he should be allowed to walk without restraint. As he put it, ‘I was protesting and trying to tell them that I could walk by myself’.

Byrne’s reaction to the restraining holds was to resist them and this resistance and the intensified efforts to control him then exploded into a violent struggle involving Byrne and five or six officers and which continued from outside the court, through the wire meshed passage known as the laneway to A Wing.

It is not possible to identify the various stages in the escalation of the struggle and I am unable to discern in the evidence any clear indication of how precisely the violence started or whether more violence than was thought reasonably necessary was applied by any of the actors involved. In these circumstances I am not prepared to find that Byrne was unlawfully assaulted.

Byrne felt sufficiently strongly about the incident to make a written complaint arising from this incident that he had been assaulted by Officer Olsen who, he said, punched and kicked him.

This complaint was investigated and apparently reports were obtained from four officers who were present and Byrne was examined by the prison doctor.

The result of the investigation was that the complaint was not justified. That could quite properly have been the end of the matter but it was not. Byrne was charged and subsequently convicted of the offence of refusing or neglecting to conform with the rules, regulations or orders of the prison, or otherwise offending by making false allegations of assault by an officer.

My recommendation regarding this offence of preferring any false or frivolous complaint against an officer or a prisoner is set out elsewhere (page 80).

AT WOMEN’S REHABILITATION CENTRE

The Sunday Mail newspaper of 3 August 1980 carried a report alleging brutal bashings at the Women’s Rehabilitation Centre by the gaol’s mafia groups, homosexual advances from long-term prisoners to newcomers, and rough treatment of prisoners by officers including allegations that one inmate had her head shaved and that several had been beaten.
One inmate, J. Singh, who has been at the Centre for four years, gave evidence before the Commission. Her evidence was that there was no brutality, bashing, organised beating, or mafia groups at the Centre. She also said that inmates sometimes verbally insulted members of the staff and that while homosexual advances are made, no pressure is put on heterosexual women. In particular she said that no inmate had had her hair shaved off and that while fighting is not a rare thing between prisoners, members of the staff do not use undue force.

Singh’s evidence was supported by four other inmates whose statement was tendered by counsel assisting the Commission and who said that there was no truth in the report of 3 August 1980. This view was also expressed by the Superintendent of the Centre.

No-one came forward to support any allegation made in the article and I have no hesitation in finding that the allegations in it are not established.

ASSAULTS BY PRISONERS ON PRISONERS

General

The evidence relating to these assaults was not voluminous and came from a small number of people. Many allegations did not identify the attacker and where they did, many of the persons against whom allegations were made chose not to give evidence.

The complaints which were made show the existence of a difficult long-standing and well recognised problem.

People are sent to prison as punishment not for punishment.

It is clearly the responsibility of the authorities to take reasonable steps to protect the person and property of a prisoner from injury or damage.

Most of the prisoners who are assaulted by their fellow prisoners are persons who have committed offences which, in the prisoners’ ethic, are considered disgraceful, for instance, sexual offences against children, and who appear incapable of effectively defending themselves in situations of physical violence.

These persons face an unenviable dilemma. If they report and identify their attackers they are regarded as informers and subjected to further violence. If they do not report the attackers then the attackers conclude that they can continue to harass their unfortunate victims with impunity.

The additional difficulty is that whilst a prisoner can be afforded a degree of protection by being confined away from potential attackers, this usually involves the acceptance by him of restrictions on his movement and activities to which other prisoners are not subjected.

I have not set out details of the attacks which were alleged in evidence nor named the prisoner who claimed to have been assaulted or the alleged attackers. Prison authorities are well aware of the persons to whom I refer and their names are recorded in the transcript of the Commission’s proceedings. I omit their names in this report in the hope that the report will not provide an excuse for further assaults on victims still serving sentences.

I mention briefly two cases to illustrate the problem.

One prisoner was assaulted for a packet of cigarettes and had part of a finger bitten off. He refused to name the aggressor.

Another prisoner has, in about three years, been assaulted on some 60 to 80 occasions. He has been assaulted with a billiard cue, boots, fists, a steel jug and an ashtray. He has been threatened with knives and on one occasion he was gashed by a razor blade which had been implanted in his soap. He has been forced under threat of physical injury to lick the boots of other prisoners. He lives in daily fear of injury.

Although there were some general statements to which I have referred elsewhere that on occasion officers turned away from or did not intervene when incidents such as those occurred, there was no case established where an officer had seen but disregarded an assault or similar incident.

There was evidence that on some occasions, as, for instance, when inmates are showering, officers on duty tend to congregate together rather than patrol actively.
Probably a combination of measures, more institutions, more variation in accommodation within institutions, more active patrolling and investigation by staff, more encouragement of inmates known to be susceptible to attack, might reduce, although it is unlikely ever completely to prevent, attacks of this nature.

R. Radanaiaciek—Alleged Knife Throwing Incident

R. Radanaiaciek gave evidence that on the morning of 21 August 1980 he was watching a front end loader operating near the door to the canteen at Yatala when he felt an object hit his left arm and heard it hit the wall. Immediately thereafter he found on the ground near him a 'home made' knife consisting of a sharpened piece of steel about 8 inches long.

He concluded someone had thrown the knife at him.

He says he reported the incident to a probationary officer, Wood, to whom he gave the knife.

Wood said he told Radanaiaciek that at about the relevant time he saw a prisoner, Hein, in the area who appeared to jump up and throw something although he did not actually see anything leave Hein's hand.

Wood says Radanaiaciek asked him to inform Officer Crompton of the incident in order that Crompton might get in touch with Radanaiaciek's solicitor, Mr Duncan. Wood also says that he did not communicate with Crompton although Mr Duncan informed the Director that morning of the alleged attack and referred to it in Parliament later in the day.

Wood reported Radanaiaciek's complaint to Chief Officer Townsend. He did not tell Townsend that he had seen Hein in the area. On the contrary, he indicated there was no-one in the area. He says he did this because he was aware of some special relationship between Hein and Townsend and thought no action would be taken against Hein and that he, Wood, might be victimised.

Superintendent Hughes and Deputy Superintendent Ellickson both took part in an investigation of the incident.

There are a number of difficulties arising from the evidence. The knife identified as being handed by Wood to Townsend was said by Radanaiaciek and Wood not to be the knife which Radanaiaciek had handed Wood. Wood's explanation of his failure to tell Townsend or any other senior officer of what he saw Hein do is unimpressive.

Hughes and Ellickson both thought Radanaiaciek's story was a fabrication. This is understandable because without the incident which Wood later said he saw and on his immediate story that there was no-one else in the area at the time, there was no-one who could have been in a position to throw the knife at Radanaiaciek.

Although Wood's reasons for not telling any senior officer what he told Radanaiaciek about Hein do him no credit, his evidence does tend to corroborate that of Radanaiaciek.

There is the further consideration that if Radanaiaciek's story is a fabrication, then either Wood conspired with Radanaiaciek to invent the whole story or there was the extraordinary coincidence that Radanaiaciek, having decided that on his invented story he would say he was near the front end loader when the knife was thrown, Wood actually saw a person jump and appear to throw something at a time and in a direction which accordeed with the invented account.

In the absence of some evidence of joint purpose or at least of association, I cannot accept the first alternative and the second is a coincidence so great that I find it unbelievable.

I have been impressed by the fact that counsel assisting the Commission, counsel for the Department and counsel for the officers all agree for the reasons they give, that Radanaiaciek's story is probably a fabrication but nevertheless, for the reasons I have set out, I think the probabilities favour the story Radanaiaciek told and I look at Wood's part in this affair on the assumption that he accepted Radanaiaciek's story.

Even on this basis, Wood's part is not a creditable one. His failure to report what he observed probably led to Radanaiaciek's allegation being disbelieved. In addition, he gave an intentionally incorrect report to Townsend and did not have sufficient trust in the Superintendent and the two Deputy Superintendents to make an accurate report to any of them. Such an attitude on the part of a probationary officer of seven months' standing I find astonishing and certainly not in accord with his clear duty.
6. SECURITY AND DISCIPLINE OF PRISONERS

SECURITY

Introduction

Security within a prison has two aspects. The first is the containment of the inmates; that the escape is prevented and the ingress of unauthorised persons into the prison prevented.

The second is to ensure that the physical and mental well-being of the prisoners and of the keepers is protected as nearly as practicable to the same extent as in life outside the prison. In the latter sense the term connotes safety.

Both aspects are of prime importance in an efficient penal system and the requirements which relate to both are suitable accommodation, trained staff, and standard procedures.

I have had the assistance of three recent reports which are concerned with security at one or more of the institutions in South Australia. These are the report by Mr Cassidy (page 55), the report Messrs. Lenton and Hornibrook relating to the escape by Tognolini (page 57), and the report of Messrs. Touche Ross (page 58). I refer to each of these reports in this chapter.

Escapes

The number of escapes in a given period is not necessarily a safe guide to the standard of security in an institution. Quite often the escapes are not from within a medium or maximum security area; some are, in effect, breaches of faith by prisoners who abscond from employment outside the securitised areas of the prison.

A number of escapes in 1979 and 1980 received much publicity either because of the notoriety of the escapees or the unusual methods used.

The relationship between the daily average number of prisoners, the number of staff and the number of escapes in the ten years to 30 June 1980 is shown in the following table:

<table>
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<tr>
<th>Year</th>
<th>Daily Average Prisoners</th>
<th>Institutional Staff as at 30 June</th>
<th>Proportion of Prisoners to Staff</th>
<th>Escapes (Exhibit A46)</th>
<th>Proportion of Prisoners to Escapes (Daily Average)</th>
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<td>(1)</td>
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<td>36</td>
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<td>749</td>
<td>414</td>
<td>1.88</td>
<td>14</td>
<td>57</td>
</tr>
<tr>
<td>1979-80</td>
<td>840</td>
<td>440</td>
<td>1.91</td>
<td>24</td>
<td>35</td>
</tr>
</tbody>
</table>

(1) Source—Correctional Services annual reports.
(2) Exhibit A46: Table submitted by Director of Correctional Services.

It will be seen that these figures would not support the view that the number of escapes each year is increasing nor that the proportion of escapes in the prison population is increasing nor that the rate of prisoners to institutional staff falling from 2.76 in 1971 to 1.91 in 1980 is reducing the number of escapes in each year.
Escape Committee

The prisoner K. J. Shaw gave a detailed account of a committee of prisoners which he said operated in Yatala to plan and provide equipment and outside assistance for escapees. This evidence was not corroborated; on the contrary, a number of prisoners denied the existence of any such committee as also did C.C.O. McCusker who considered himself in a position to know.

The persons alleged by Shaw to be members of the committee could not have met frequently because some were held for substantial periods in S or D Divisions, and special tattoos which Shaw claimed members had were, on inspection, found not to exist.

I agree with the submissions that whilst groups of prisoners may from time to time discuss methods and prospects of escape, and whilst some prisoners may assist others or may be more interested or adept than others, no continuing escape committee exists.

Particular Escapes

Some aspects of recent escapes should be noted.

Tognolini

Tognolini, who had escaped from Mount Gambier Gaol with Thrun on 29 November 1978, again escaped on this occasion from Yatala on 28 June 1980. This escape was the subject of the report by Messrs. Lenton and Hornibrook (see page 57).

Sandery

Sandery’s escape on 13 August 1979 was from the Central District Criminal Court and not from Yatala.

He escaped by climbing through a hole in the ceiling of the cell in which he was held. These cells have subsequently been strengthened by the addition of steel mesh to the ceilings.

Rofe, Kitchen and Smythe

These three men escaped from Yatala on 24 April 1980 and Rofe gave evidence regarding the method employed.

There are two disturbing features which should be noted.

Firstly, Rofe and Smythe attempted to break out about two nights before their successful attempt. For that purpose they concealed a 35 kg press in a dustbin and carried it to Rofe’s cell where it was concealed. Later the press was used in an attempt to force apart the steel bars. This attempt was unsuccessful and the press was returned to the library from whence it had been taken and nothing in relation to the attempted escape was detected.

Secondly, the movements of the patrolling officers both outside and within the building were so regular that the escapees were able to prepare a plan which they were confident would not be interrupted by patrols.

Cassidy Report

On 10 December 1979, the Director wrote to the Superintendent, Yatala Labour Prison, informing him that Mr F. Cassidy, a former Superintendent of Yatala and former Assistant Director of the Department, had been appointed as a consultant. The letter stated that this action had been taken as a result of the series of escapes from Yatala and to assist the Assistant Director in the preparation of a report on a number of matters including institutional security standards and security procedures.

Mr Cassidy made his report in February 1980 although it was not until August 1980 that it reached the Chief Secretary as an appendix to Assistant Director Stewart’s report of that month.

Mr Cassidy was criticised by both the Unions and the prisoners’ counsel. It was suggested he was old-fashioned and unduly influenced by military procedures.
It was put to him that during his investigation he had on one occasion entered the prison when affected by alcohol and that on others he had been sarcastic, rude and uncouth. He denied these allegations and the officers who it was suggested to him would be called to establish these allegations were not called.

The value of the Cassidy Report is to be judged by the evidence towards the end of the Commission by Superintendent Hughes. His evidence shows that of 33 recommendations made, Hughes considered 27 of them as being within his province. Of these, 22 had been accepted and implemented wholly or in part. Of the remaining 5, one, that the Superintendent hold a daily conference with Deputy Superintendents and Chief Officers, the Superintendent was instructed by the Director to adopt but he did not continue it and another, that the Superintendent take part in a daily inspection is, in part, supported by this report. At least the Superintendent should visit S and D Divisions daily.

Mr Cassidy made a number of criticisms which are set out in allegations listed in Appendix 4 to this report.

Two of these criticisms in particular require further comment.

**Capability and fitness of Superintendent**

The first was the consultant’s view that the Superintendent was incompetent, spent too much time on sick leave, was unenthusiastic and that the job was beyond him.

As a result of the evidence and my own observations, I do not agree with this criticism.

In the years to 30 June 1978 and 1979, Hughes was forced to take considerable sick leave but such absences in recent times have been considerably less.

My own conclusion is that the Superintendent could usefully spend more time out of his office but that generally his duties are not beyond him and he is regarded with respect by the staff and—what I regard as of considerable importance—by the prisoners.

**A.G.W.A. activities**

The second criticism to which I refer is that relating to the activities of the A.G.W.A. (Prison Officers Branch) which is now part of the Federated Miscellaneous Workers Union of Australia to which the general duty officers belong. Mr Cassidy said this Union was resistant to change, made unfair demands, and interfered with management.

One should proceed with caution when commenting on matters which have been the subject of industrial dispute or action but there are some matters which I think can usefully be said.

It seems clear, and presumably the Union itself would not disagree with the observation, that it resists any attempt to reduce the amount of work on which its members are employed.

The further comment with which the Union may not agree is that this resistance leads to an inflexibility of attitude which at times hampers efficient administration. For instance, why the Union thought there should be a post for general duty officer in the new laundry is ‘for the simple reason we used to have them before’.

Similarly, when asked why correctional industry officers do not perform custodial work at Yatala, the President of the Union, Officer Fowler, said, ‘We are not saying they can’t do it. What we are saying is that they shouldn’t do our work. I mean we are employed as custodial officers. They are employed as industry officers and that’s all there is to it.’

Again, a suggestion that a Chief Officer being on duty on a particular watch was not acceptable if that officer was to take charge as opposed to supervising, Fowler said, ‘You’ve got to realise that we have been doing this job for over fifty years . . . why should we relinquish it? . . .’

The extent to which the Union has become involved in management decisions is illustrated by the following passage relating to a shortage of staff in relation to fixed posts:

‘The callback situation is attempted by the administration chief. If he cannot get them he notifies their Superintendent. The Superintendent will either close down areas or come to
the Union and say, "Look, this is the situation. Can we move Joe Bloggs from so-and-so?" If we think it is not too important a post, we will say yes. If we think it's an important post that he wants to move and it will be a security risk, we say no.

*Question:* What happens then?

*Answer:* Then the area is closed down.

The evidence indicates to me an unusual willingness on the part of the administration to consult and comply with Union wishes and in my view this goes to confirm Mr Cassidy’s suggestion that the Union goes beyond its proper function of looking after the member’s interests and intrudes into the management’s sphere of responsibility.

The report in April 1981 resulting from the Custodial Staff Review of the Department reached this same conclusion. It states:

‘It was clearly evident to the review team that the day to day administration of Adelaide Goal and Yatala Labour Prison is hindered to a large extent by the management’s propensity to accommodate the wishes of the unions, particularly the Miscellaneous Workers Union.

While we recognise the right of both unions to protect the interests of their members, we consider that over a period of time their involvement in the running of institutions has developed to a stage of de facto management.’

However, I appreciate that there is another forum for this debate and therefore do not go beyond the general conclusions I have stated.

**Lenton/Hornibrook Report**

In the early hours of 28 June 1980, J. A. Tognolini escaped from B Division at Yatala Labour Prison, The method used was unusual in that an unknown number of men broke into the prison thus preparing the line of escape and provided Tognolini with oxy-acetylene equipment to cut the bars on his cell window.

The whole operation was skilfully planned and executed and the chances of its success were enhanced by a number of deficiencies in the security at Yatala.

It seems certain that those who planned the escape had an intimate knowledge of the security procedures adopted there during the night watch. Even so, it is food for thought that the planners adopted a scheme which involved the use at night of oxy-acetylene cutting equipment with the noise, sparks and smoke which accompanied its use, to cut the lock on a gate in the main security wall and then the bars in Tognolini’s cell.

In fact, the use of the cutting equipment was seen only by a prisoner in B Division who reported to the officer on duty that there were men on the roof with guns and a rope and that someone was trying to break out using ‘oxy’.

This story was not accepted by the officer concerned nor by two more senior officers to whom he related it because the prisoner had emotional and behavioural problems, and little credence was placed in the claims he made.

In November 1980, after Tognolini’s recapture in Queensland, he was asked about his escape and speaking of the officers on duty said, ‘It still amazes me how the outside fellow wasn’t aware of it. My mate was at the window for about an hour. The inside fellow didn’t go through the gate.’ This latter comment presumably related to the fact that the officer on duty in the wing could not have inspected Tognolini’s cell until he had called the officer in charge of the watch to unlock a barrier.

Tognolini’s mate who ‘cut him out’ was, according to Tognolini, Werner Thrun, who had himself escaped from Yatala on 12 November 1978 by means which have not yet been identified.

Following Tognolini’s escape Messrs Lenton and Hornibrook were appointed to inquire into the circumstances surrounding the escape and to make recommendations as to security measures necessary to prevent a similar occurrence in the future.
The report disclosed a number of deficiencies in the buildings and equipment, the actions of the staff and the security procedures laid down.

It was reported that the lighting was poor and that vision along the perimeter walls was obstructed by buildings.

In addition, the staff was inadequate resulting in towers being unmanned at night. There were insufficient yard patrols and unsatisfactory investigation of the inmate’s report of intruders. No general orders specifying the duties of the officer in charge of the watch could be found. Messrs Lenton and Hornibrook concluded that the main factors aiding the escape were that the towers were not manned and the yards were insufficiently patrolled.

A number of recommendations were made, most of which have already been or are in the process of being adopted including the manning of towers at night, increased yard patrols, the installation of camera surveillance equipment and microwave detectors, and the issue to all staff of standing orders and instructions.

Two further suggestions which were more controversial were that patrolling officers should be issued with hand guns and that punch clocks should be introduced for patrols.

I agree with the Department’s view that the danger of officers being overpowered and their guns taken from them out-weighs the possible increase in security which results from carrying them.

There is an urgent need that more active patrolling be encouraged and that it be irregular. When the route and timing of patrols can be predicted the patrols are largely wasted. But it is not an easy matter to organise irregular patrols; there is always a tendency to adopt a pattern.

Some procedure such as punch clocks not only ensures that visits are made to the places where the clocks are, but it also provides a record from which the regularity of the patrols can be assessed.

The disadvantage of punch clocks, apart from the usual aversion which most users have, is that their location is set and anyone planning to attack patrolling officers know that they will come to the clock.

Under the system now proposed by the Department, patrolling officers will not only have two-way radios but at Yatala and at Adelaide Gaol they will be observed by the officer in charge of the surveillance centre.

Confirmation that the patrols are being undertaken and their pattern can be obtained by a record kept in the surveillance centre of the time and place of sightings. It should also be practicable for some officer, either in the surveillance centre or elsewhere to record reports of progress by the patrolling officers.

These records should go an appreciable way towards avoiding the regularity of patrols on which Roche and his fellow escapees relied and the inadequacy in the number of patrols which the evidence has suggested.

**Touche Ross Report**

The Touche Ross investigation which has already been referred to (see page 54) was carried on while the Commission was sitting and the firm’s report was issued in April 1981.

Section 6 of the report relates to security.

I doubt whether the available information at present justifies the assertion at page 143 of the report that the number of escapes from South Australian prisons is increasing overall (see page 54). I understand from information supplied by the Department that there were only six escapes in the year ended 30 June 1981. But all the indications are that plans to escape are becoming more elaborate and sophisticated.

Subject to that comment I agree with the general thrust of the assessments and recommendations in the report and it therefore becomes unnecessary for me to deal in any detail with many of the matters considered.
Some matters I have already dealt with and I now draw attention particularly to the recommendations in the Touche Ross Report relating to the appointment of a locksmith and an armourer, the provision, proper maintenance and safe custody of firearms and restraint equipment such as handcuffs and gas, and the distribution of adequate instructions covering emergencies such as fire, riot, the taking of hostages and the use of firearms.

One matter that is of prime importance but which may not yet have been fully recognised as such is the exclusion of prisoners from the surveillance or control centre and from areas immediately adjacent to it. No inmate should be allowed any opportunity to see what equipment is in the centre, where it is located, or how it is operated, nor to assess the means by which the centre is kept secure or the procedures adopted to control ingress and egress.

**The Dog Squad**

Evidence was given of the effective use of the dog squad in detecting drugs and there was no opposition to the use of dogs for that purpose.

There was also evidence that on three occasions the dog 'Zac', handled by S.P.O. Kelly, was present when prisoners were being moved from their cells and submissions were made that the use of dogs in those circumstances was improper.

I have already expressed my views regarding the use of dogs in such circumstances when discussing an incident involving B. D. Sandery on 11 May 1979 (see page 42). There is however, another aspect worthy of comment.

The dog squad was formed in 1978 when Kelly attended a training course and acquired the dog 'Zac'. The primary function of the dog was to detect drugs although Kelly described it as a 'general purpose dog' as opposed to a guard dog but included amongst its uses security escorts, illegal intruders, general security patrolling, riot assistance and defusing potentially violent situations. These functions seem to go well beyond the uses specified when the squad was first established.

In my view the important fact which emerged from the evidence is that without the function of the squad being clarified, the squad has grown to include five dogs—and their handlers—which are in frequent use.

It may well be that the Director and Kelly, as a result of their discussions, have a common understanding as to the uses to which the squad may be put and I can appreciate that there may be some reluctance to publish too widely what those uses are.

At the same time I think there should be a written instruction defining for those who handle the dogs and for those senior officers authorised to permit their use, the purposes for which the dogs may be used and any restrictions on those purposes.

It should also be made quite clear which officers identified either by rank or office, may sanction their use within a prison for any use other than the detection of drugs in the absence of prisoners.

My view is that only the Superintendent, or in his absence from the prison, a Deputy Superintendent, should have such authority.

**Sit-In**—5 May 1979 and 30 September 1980

Evidence was given of two occasions on which a group of prisoners stayed in a yard and refused to follow the normal prison routine.

The first occurred on the 5 May 1979 and the second on the 30 September 1980.

Although on the first of these occasions some damage was done by prisoners to a shed, the disturbance ended peacefully without any physical force being used and without injury to any person.

A number of different reasons were given by prisoners for the incident on the 5 May 1979. B. D. Sandery, who appears to have taken a somewhat dispassionate view, says in effect that the authorities tried to disband the prisoners peacefully and that talks broke down only when the original demand that a prisoner by the name of Williams should be released from D Division became converted to what Sandery described as the ridiculous demand that all prisoners in D Division should be released.
Sandery was told that when the Deputy Superintendent said that anyone who did not leave the yard would be charged with riot, a prisoner replied that he had heard that last time. Sandery added that if he had heard that comment, he would have walked out of the yard because it more or less forced the administration to lay charges.

All the remaining prisoners left the yard early on the following morning in the face of preparations by the officers to enter the yard and remove the prisoners forcibly. A number of prisoners were subsequently charged with taking part in a riot.

The incident on 30 September 1980 came at the end of a period in which there had been a number of allegations of violence and other misconduct on the part of prison officers in Yatala.

It is unnecessary to record all that happened. One question which was raised was whether Superintendent Hughes honoured undertakings which he gave that if the prisoners returned to work he would speak to them in their workshops and that there would be no repercussions if they left the yard peacefully. I am satisfied that the undertakings were intended to apply only to those prisoners who returned to work on the day of the incident and that those undertakings were honoured. Again, as in the former incident, there was no violence or injury.

My impression of both incidents is that the prisoners' actions were more an expression of frustration than a well-organised campaign to enforce demands.

Counsel for the prisoners says that although the Superintendent said that during the later of these incidents he discussed the prisoners' problems with them, it was probably more correct to say that there was aimless talk on both sides with the prisoners trying to impress the authorities with their problems and the authorities trying to impress upon the prisoners that they should return to their cells.

Be that as it may, the situation was successfully talked out without violence.

My firm opinion is that there was no improper conduct on the part of any officer on either of these occasions and that on both occasions the Superintendent handled the situation sensibly and reasonably.

**DISCIPLINE OF PRISONERS**

**General**

The terms of reference refer to allegations relating to the discipline of the prisoners held at prisons.

Considerable evidence was called to show that the procedures employed for the disciplining of prisoners who commit offences in prison were unsatisfactory and these procedures are examined in the next section of this report.

In general terms, it is difficult to isolate the discipline of prisoners from the morale and discipline of correctional officers. Low morale and lack of discipline in those responsible for the efficient conduct of a correctional institution will ordinarily be reflected in a lack of proper supervision of inmates and a general dissatisfaction on the part of both officers and inmates which hampers efforts to achieve the objectives sought in the institution.

Most of the evidence related to the Yatala Labour Prison and it is principally to that institution that the following comments are directed.

During the hearings some criticism was directed at procedures referred to as a system of army discipline which had been adopted by Mr F. Cassidy who was the Superintendent at Yatala Labour Prison from 1963 to 1969.

The criticism appeared to be made on the assumption that the discipline of the armed services related only to smart drill movements and saluting. This is, however, an unduly restricted view. At least two other aspects are worth mentioning.

Firstly, service officers, commissioned or non-commissioned, are required always to treat as a paramount consideration the welfare of those in their charge and secondly, by general and routine orders and repeated instruction, every effort is made to ensure that all servicemen understand what they can and cannot do when serving in one of the armed forces.
Methods of prison administration have changed and the same emphasis is no longer placed on, for instance, drilling but in other matters such as those mentioned, prison administrators might well gain something of use from service procedures.

Mr F. Cassidy, in his report, dealt with, amongst other things, institutional standards and security procedures and while his report refers mainly to various aspects of security at Yatala, he reported that apathy and hopelessness had beset officers through a decline in the discipline of both officers and prisoners and he noted a lack of communication, supervision and leadership.

In 1980 a team was established to conduct a review of custodial staffing to be made jointly by the Public Service Board and the Department of Correctional Services in consultation with the two Unions.

In its reports released in April 1981 the team stated: ‘Our interviews with officers at Yatala Labour Prison indicated a low staff morale. Almost all officers complained of poor communication both upwards and downwards.’ The team stated that generally it was in agreement with these comments and pointed to a high incidence of sick leave, overtime and absence on worker’s compensation in the Department.

The maintenance of a reasonable standard of discipline amongst the prisoners and the maintenance of an efficient administration within the institution go together. Such discipline is not achieved solely by regulation and sanctions but by a number of factors including high morale and good discipline in the staff.

Prisons Act, Regulations, Rules and Orders

Perhaps the most important factor encountered in an examination of prisoner discipline is the uncertainty which surrounds the present rules, orders and regulations for the running of the institutions.

A number of factors combine to create this uncertainty. The present regulations made under the Act and parts of the Act itself are out of date and have been for a considerable time. The result is that many regulations are disregarded by the prison authorities.

In cross-examination the Director agreed that there were some forty regulations which were breached or not adhered to in the Department and in Institutions, that it was departmental policy not to adhere to a substantial number of regulations and that some of the breaches related to the safety, health and welfare of prisoners.

The Superintendent of Yatala displayed the same attitude by saying, ‘The regulations as they stand, I tend to disregard and use common sense.’

This is a quite untenable position for two very senior officers to adopt as any reasonable consideration will show. If these two officers can say which regulations they will disregard, have more junior officers and prisoners the same discretion?

Until August 1980 the general orders were largely obsolete and being out of print were unavailable to correctional officers.

Prisoners have even less opportunity than officers to know what rules they should follow. The unavailability of printed rules, different interpretations of known rules by different officers, and the enforcement of some rules by some officers and not by others leave prisoners in a state of confusion in which they see even a minor privilege as depending on the decision of a particular officer at a particular time. On a number of occasions a prisoner, when asked what he could do in given circumstances, replied by saying, in effect, ‘It depends on who is the officer in charge at the time.’

Prisoners’ Views

On 23 February 1981 the Commission received a general statement relating to discipline at Yatala from twenty-four prisoners. The substance is set out in Appendix 8.

Procedures for Disciplining Prisoners

Probably no other subject was more keenly examined before the Commission. Counsel for the prisoners raised a number of objections to the present system and submitted proposals for alteration and the Department also recommended changes.

Sections 46 to 50 of the Prisons Act set out a number of offences by prisoners and provide for the trial and punishment of offenders. Section 46 contains what might generally be called disciplinary offences such as disobeying the order of an officer or being idle or negligent in his work. It also contains a number of simple offences which are offences under the general law when committed by any person,
for instance, the committing of an assault or wilfully and without authority destroying property. These
go of enquiries may be inquired into by the Director or a Visiting Justice, and the penalties referred to in
Section 47 may be imposed.

Section 48 enables two Justices to impose in respect of more serious offences a maximum penalty of imprisonment for one year.

Nothing in the Prisons Act appears to prevent the trial and conviction in the ordinary courts of law
of an offence under the general law.

Relevant Provisions

Section 14 of the Act empowers the Governor to make regulations relating to a number of matters
including the safe custody, management and discipline of offenders confined in a prison or penal
establishment, and Section 15 authorises the making of regulations relating to the government of gaols.

Regulation 285 requires a Visiting Justice to ‘hear all complaints against prisoners which may be
brought before him, and deal with such cases according to law’.

Regulation 221 provides that ‘no punishment or privations of any kind shall be awarded except by
the Director or a Visiting Justice’. It further provides that the Superintendent shall have power to
place refractory prisoners in separate confinement until the next visit of the Director, or in his absence,
the Superintendent is required to report to a Visiting Justice at his first subsequent visit. Under
Regulation 222 the Superintendent may parole such a prisoner pending the arrival of the Visiting
Justice or, for minor offences, discharge with a warning on promise of good behaviour.

Since 1963 a distinction has been drawn by the Department on the advice of the Crown Solicitor
between privileges which by Section 47 (1) (d) can be forfeited only by the Director or a Visiting
Justice by way of punishment and amenities such as wireless, films or sport which may be withdrawn.
The Director, from time to time, has authorised Superintendents and their deputies to deal with minor
offences by warning, caution or reprimand, or by the withdrawal for a period not exceeding one month
of such amenities as wireless, films, television or sport.

These provisions form the basis on which the present disciplinary procedures against prisoners is
erected.

Two further provisions should be noted at this stage.

Section 40 of the Prisons Act provides that, ‘In order to prevent the contamination arising from
the association of prisoners’, any prisoner may, by order of the Director with the concurrence of a
Visiting Justice, be separately confined during the whole or any part of his imprisonment.

The evidence of Mr B. S. Dickson, Deputy Superintendent (Custodial), at Yatala, was that a
prisoner was housed in D Division (the disciplinary Division) under this section only ‘on very rare
occasions’ where the particular prisoner concerned ‘has demonstrated such a great propensity for
violence or refusal to conform with the rules of the prison that no other alternative offers itself than
indefinite confinement in D Division’.

The danger is that the section is capable of being used for disciplinary purposes but an order may
be made under this section without the prisoner having an opportunity to state a case against an order
being made, and the order can be for indefinite confinement.

The other provision is regulation 74. This provides that if at any time it appears to the Visiting
Justice or the Director that it is desirable for the maintenance of good order or discipline or in the
interests of the prisoner ‘that he should not be employed in association with others’, the Superintendent
may be authorised to arrange ‘for him to work temporarily in a cell and not in association’. It is within
the discretion of the Superintendent to arrange for such prisoner to be employed in association again
whenever he considers this desirable.

The practice has arisen of Visiting Justices ordering confinement under regulation 74 as a
punishment for an offence.

In my opinion this is an improper use of the regulation. The regulation is concerned only with the
prisoner’s place of work and does not justify his transfer to D Division where no work is provided. The
punishments which may be ordered by a Visiting Justice are set out in Section 47 of the Prisons Act
and they do not include confinement.
Mr Dickson sought to justify the present use of the regulation by pointing out that D Division is the only section in the prison where losses of privileges, indulgences and tobacco can be supervised properly. This may well be so but the present practice is to make an order under regulation 74 when no order is made under Section 47 for the forfeiture of privileges, indulgences or tobacco. Since there are no privileges in D Division the effect of the present practice is to achieve both a transfer to D Division and a forfeiture of privileges by an order which, though purporting to be made under regulation 74, is not authorised by that regulation. If it is intended to impose as a punishment a forfeiture of privileges, then an express order should be made under Section 47, and if the forfeiture can be enforced only in D Division, then some amendment of the Act may be necessary enabling a Visiting Justice or other disciplinary body to order a transfer for the period of forfeiture to separate confinement.

Present Disciplinary Powers

In order to appreciate the effect of the recommendations made later, it is desirable to understand what powers are at present exercised and by whom. If one accepts for the present that Section 40 and regulation 74 may be used for disciplinary purposes, then at present the following persons exercise the powers shown.

A Divisional Chief may warn, caution or reprimand and may withdraw radio. It is not clear whether a Divisional Chief may withdraw other amenities.

A Chief Correctional Officer may warn, caution or reprimand and withdraw any amenity.

A Deputy Superintendent may warn, caution or reprimand and withdraw any amenity. He may send a prisoner to D Division 'for investigation' pending a hearing before Visiting Justices.

The Superintendent may do anything which his deputy may do and in addition may release a prisoner held under an order made under regulation 74.

The Director has the same powers under Section 47 of the Act to hear and punish Section 46 offences as a single Visiting Justice. He may make an order under regulation 74 and with the concurrence of a Visiting Justice, an order under Section 40.

A Visiting Justice orders confinement under regulation 74, under Section 47 may order loss of remissions to a total of one month, may forfeit privileges and indulgences for up to 28 days, may forfeit earnings up to $10, may order the prisoner to pay compensation to the owner of real or personal property damaged by the prisoner, may caution and may concur in an order under Section 40.

Two Visiting Justices (commonly called a double bench) may, under Section 48, make any order which a Visiting Justice is authorised to make under Section 47 and may sentence the prisoner to imprisonment with hard labour for up to one year.

It is important to note that this summary is based largely on the existing practice. Whether there is a legal foundation for all of it may be open to question. Apart from the difficulties already referred to in the use of regulation 74, regulation 221 provides that no punishment or privation is to be awarded except by the Director or a Visiting Justice and some doubts could well arise whether the Superintendent, to whom powers have been delegated by the Director, is authorised in turn to delegate those powers to officers under him.

Further, it may well be that the withdrawal of an amenity is not a forfeiture of a privilege, but whether it is a punishment or privation which may only be awarded at present by the Director or a Visiting Justice is a nice point.

A clear case is made out for the amendment of the Act and regulations to define what disciplinary powers should be exercised in respect of prisoners and by whom.

Procedures Before Visiting Justices

The preliminary steps in this procedure as described by Mr B. S. Dickson, Deputy Superintendent (Custodial) at Yatala are as follows:

'In the majority of cases a prisoner is paraded before his Divisional Chief by a General Duty Officer who informs the Chief in general terms of the incident of which the officer complains. Should the Chief decide that his disciplinary powers are insufficient he asks the
General Duty Officer to prepare a report and submit it in writing. That report is forwarded to the Superintendent or his deputy who decides whether or not the prisoner will be remanded to the Visiting Justice. If he decided to so remand him the officer’s report is sent to the Chief of S and D Divisions who draws up the charge sheet and incorporates in it the report of the officer concerned. That charge sheet is then forwarded to the Superintendent who endorses it with his decision. If the charge is to proceed before the Visiting Justice the inmate will either be held in D Division or returned to work and to his own Division. The hearing will then proceed in the normal course before the Visiting Justice. If the Superintendent decides not to remand the prisoner to the Visiting Justice he will endorse his decision on the officer’s report.

A number of complaints were made by prisoners regarding this procedure.

The first was that when the prisoner is to be dealt with by a Visiting Justice, the prisoner may be sent to D Division ‘for investigation’. This results in the prisoner being held in that Division until the case is heard by a Visiting Justice which may not be for anything up to a week and, in some cases, longer. It is difficult to see why any investigation of the alleged offence should require the prisoner’s presence in D Division for any substantial period. The prisoner, being in custody, is available at any time for questioning and witnesses for the prosecution can be interviewed without regard to where the prisoner is held.

Mr Dickson says that in his experience as many prisoners do not go to D Division when charged as those that do, but some weight is given to the prisoners’ complaint by his statement that the general rule is that ‘it is only where violence has occurred or where an inmate has been particularly disrespectful to staff’ that the inmate is held in D Division pending his appearance before the Visiting Justice.

There may well be circumstances which justify a prisoner being segregated for a short period whilst temper cool or evidence is obtained, but segregation can presumably be effected without using D Division and without the loss of privileges and amenities which ordinarily occurs in that Division.

It is surprising that the authorities find it necessary to segregate in D Division as many as one-half of those charged. This may well account for the view expressed by prisoners that the sending of a prisoner to D Division ‘for investigation’ is punishment before trial. This is a not unreasonable view where, in the absence of other factors justifying segregation the charge relates to alleged violence or disrespect.

A weakness of the present system which emerged from the evidence is that in some cases the charges are quite inappropriate. One example will illustrate the point. An inmate in a workshop was seen sniffing some rags impregnated with thinners. The prisoner knew that sniffing thinners was prohibited and had been warned when joining the workshops that anyone sniffing thinners would be charged. Instead of being charged with disobeying an order or some similar breach, the prisoner was charged with having in his possession ‘articles not furnished by the establishment, namely rags smelling heavily of thinners’. Both the rags and the thinners were issued to the prisoner for use in the workshop. The Visiting Justice did not question the charge and the prisoner pleaded guilty. Perhaps justice was done but only by chance.

Another complaint was of lack of notice of the proceedings before a Visiting Justice. In some cases the charge or a statement of the alleged facts on which the charge was based was not made known to the prisoner until immediately before or at the hearing. In other cases where some information was supplied, no notice or information was given in writing.

There are also complaints about the difficulty in obtaining legal advice or representation.

Amongst a number of complaints regarding the hearings themselves, two in particular should be noted.

The first was that on some occasions when the Justice was about to consider his decision, the prisoner was sent out but a prison officer remained with the Justice. Such a practice is clearly improper. The hearing takes place within the gaol, the Justice is escorted by prison officers, a prison officer acts
as prosecutor and ordinarily, the evidence against a prisoner is given by prison officers. To all this is added the fact that when the Justice is about to consider his finding or the appropriate sentence, a correctional officer is left apparently in a position to discuss with the Justice without the prisoner being present the decision the Justice is about to make. Whilst I have no doubt that Visiting Justices would not permit themselves to be influenced in such circumstances, the prisoner may quite understandably misconstrue the situation.

The second is a practice apparently quite common that the prisoner is not allowed himself to put questions directly to a witness in cross-examination. He is required to relay his question through the Justice. I appreciate as counsel for the Department has pointed out that this practice has been accepted in some cases as permissible.

There may well be occasions when a prisoner is confused or nervous or even aggressive and when his interests would be best served by the Justice questioning a witness on his behalf. Ordinarily however, he should be given the same rights as the prosecutor, and if he wishes to question a witness, and in doing so conducts himself reasonably, he should be permitted to do so.

I have had the advantage of reading the decision of the Full Court given on 24 September 1981 in *The Queen v. Walter Bridgland and John Ackland*, the Visiting Justices of Yatala Labour Prison *ex parte Robinson* (1981) 95 L.S.J.S. 482.

I should record that on 5 May 1981 while Robinson was giving evidence before the Commission I declined to hear evidence of the matter the subject of those proceedings. As it transpired, Robinson’s complaints regarding certain proceedings before the Visiting Justices were similar to those made to me by other prisoners and on which I have already commented.

The consideration by the Full Court in Robinson’s case of the relevant statutory provisions must surely add considerable weight to the move for statutory reform.

**Suggestions for Reform**

A number of suggestions regarding disciplinary procedures in prisons has been made over recent years and as mentioned earlier, detailed submissions were made to the Commission.

**United Nations Text**

A basic text to which one should look when considering matters such as the present is the Standard Minimum Rules for the Treatment of Prisoners which were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders on 30 August 1955 and which was approved by the Economic and Social Council of the United Nations on 31 July 1975.

In Australia a committee set up as a result of a seminar conducted by the Australian Institute of Criminology in 1976 drafted amendments to relate the United Nations text to Australian conditions. The result was the publication in 1978 by the Institute of *Minimum Standard Guidelines for Australian Prisons*. 
The rules in the United Nations text relating to disciplinary offences in prisons and the Australian text of those rules are set out below:

**U.N. TEXT**

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

(a) Conduct constituting a disciplinary offence.

(b) The types and duration of punishment which may be inflicted.

(c) The authority competent to impose such punishment.

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

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

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

**AUSTRALIAN TEXT**

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

(a) Conduct constituting a disciplinary offence.

(b) The types and duration of punishment which may be imposed.

(c) The authority competent to impose such punishment.

32. (a) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same act.

   (b) Reports of misconduct shall be presented promptly to the competent authority who shall decide on them without delay.

   (c) No prisoner shall be punished unless he has been informed in writing of the offence alleged against him in language he can understand and given a proper opportunity to present his defence.

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

   (e) Where the act is such that the penalty could entail an extra sentence there shall occur a full judicial hearing.

Attention is directed to the requirements of the Australian text that written notice of the offence alleged should be given to the prisoner who should have a proper opportunity to present his defence and that where the penalty can entail an extra sentence, there should occur a full judicial hearing.

**Views of Mitchell Committee**

This subject was considered by the Mitchell Committee in its first report in 1973. The reports of this body are commonly called the Mitchell Reports after the Chairman, the Honourable Justice Mitchell, and for convenience I will adopt that description.

The committee dealt with offences committed in prison in two groups, those which would be an offence outside prison and those which were mere breaches of discipline. The committee’s view was that offences against the general law should be dealt with by the courts and disciplinary offences by Visiting Magistrates or the Superintendent.

The effect of these recommendations would have been to substitute a Magistrate for Justices and the Superintendent for the Director in the hearing of offences. The guiding principle, it was suggested, should be speed of trial. It was also suggested that in disciplinary matters, there should be an appeal only on the ground that there had not been compliance with the forms of law while in other matters, since they were being dealt with in the ordinary courts, an appeal under the Justices Act would lie.

The committee favoured the provision of legal representation before a Visiting Magistrate but not before a Superintendent.

**United Kingdom Experience**

These procedures have also been the subject of review in the United Kingdom where disciplinary matters within prisons are dealt with by Governors and Board of Visitors corresponding to Superintendents and Visiting Justices in the South Australian system.
In 1973 a Working Party consisting of members of Boards of Visitors, officers of the Prisons Department, and members of the prison service, were appointed to review arrangements for the hearing by Governors and Board of Visitors of disciplinary charges against prison inmates.

The report made in April 1975 makes a number of valuable comments which may be summarised as follows:

(1) The need to invoke formal disciplinary proceedings is an overt acknowledgment that the normal tools of management have proved unsuccessful.

(2) A skilled staff can deal with a great many minor incidents of misconduct without recourse to formal measures.

(3) The inevitable tensions associated with an incident the subject of proceedings should be dispelled as soon as practicable by a fair and speedy hearing.

Under that system matters come first before the Governor who deals with some cases himself and refers others to the Board of Visitors. Grave offences are reported to police for investigation and any proceedings which follow take place in the ordinary courts.

The rules require a charge to be laid as soon as possible, the prisoner is informed before the hearing by being served with a written report setting out the charge and with a written explanation of the procedures to be followed at the hearing.

The Working Party's recommendations regarding the role of the Governor at a hearing before the Board of Visitors included that he should sit apart from the Board to make it clear that he is not one of those conducting the adjudication; that on any occasion when the prisoner is to withdraw from the room, the Governor should precede him (cf. Robinson's case) and that if any question is directed by the Board to the Governor as, for instance, regarding the practical difficulties involved in carrying out a particular award, this should be done only in the presence of the prisoner who should be asked if he wishes to make any comment.

The Working Party also criticised the making of a blanket order for the withdrawal of privileges and indicated that any order for the withdrawal of privileges should be selective.

In 1976 the substance of the Working Party's recommendations were accepted and in the following year two booklets were published setting out the procedure for the conduct of the hearing of a disciplinary charge by the Governor and by the Board of Visitors respectively.

Similar publications, including written explanation for prisoners of the procedure at the hearing, would be of undoubted value in South Australia and should be produced.

**Prisoners' Submission**

The submissions made by counsel for the prisoners, which I deal with later, were as follows:

'1. That the judicial functions of the single Visiting Justice and the double bench be replaced by a Visiting Magistrate except where a prisoner elects to have a charge alleging an offence against the general law heard in an ordinary court.

'Prisoners say that offences or breaches of discipline which carry fines or additional imprisonment are sufficiently serious to be heard by a Magistrate. Where the charge alleges a breach of the general law prisoners should be able to elect to be dealt with in an ordinary court or to be dealt with before the Visiting Magistrate.

'2. The practice and procedure of the Visiting Magistrate's court should be as nearly as possible the same as that applicable in Courts of Summary Jurisdiction.

'The practices and procedures of the existing Visiting Justices courts which, according to counsel for the prisoners, need modification, include the following:

'(a) A lack of appeal. There should be a right of appeal to a single Judge or the Supreme Court.
(b) Restrictions on the right to representation. A duty solicitor service should be available at each prison. A prisoner should be able to contact either the duty solicitor or make arrangements for his own lawyer to appear. Prisoners should have the right, as they do in at least one interstate prison (Parramatta) to have a lay advocate such as a fellow prisoner appear for them.

(c) A written charge is generally not shown to a prisoner until he appears in court. One should be served on him at least 24 hours before his appearance.

(d) Restrictions are often placed on the number of witnesses a prisoner might call in his defence. There should be no such restrictions.

(e) The prison authorities remain with the Visiting Justice while the prisoner's guilt or penalty is being determined in his absence. This should cease.

(f) The courts are not open to the public. They should be open as outside courts.

(g) The courts are held within the gaol premises, the Justices depending on prison authorities for their entry to, conduct around and exit from the premises. This alone gives the appearance that the Justices are not independent of the prison authority. Justice should be seen to be done impartially and even-handedly not as it is at the moment. Visiting Magistrates should sit in a court outside the prison and it need not be far away. There presently appears to be no insuperable difficulty in having even "high risk" prisoners brought before outside courts when required.

(h) There is a very restricted number of Justices (three) appearing on the bench at the moment. Magistrates should be on a large roster so that there is no one of them who becomes "identified" with the prisoners court.

(i) Prisoners appear in court in their prison clothes. They should be able to appear in their own clothes if they wish.

(j) Records relating to charges found not proved should be destroyed.

3. The Superintendent should retain jurisdiction to deal with disciplinary matters but his powers of penalty should include only loss of defined amenities and cellular and closer confinement for 24 hours with power in a Visiting Magistrate to extend this.

'Cellular confinement here means confinement to the prisoner's own cell. Closer confinement means confinement to a maximum security section of the prison. Confinement to other than a prisoner's own cell should only be ordered in cases where there is a clear and urgent need to remove the prisoner from his own cell for his own protection or because he has attempted to escape and it is reasonably feared that he will repeat the attempt using materials from his own cell. Upon cellular or closer confinement the prisoner should forthwith be permitted to contact a solicitor and after no more than 24 hours he should be brought before a Visiting Magistrate who may deal with the matter in the usual way or remand the prisoner until the matter can be further determined.

'The amenities the Superintendent can withhold should not include such things as reading material, radio and smoking requirements. Cellular and closer confinement by definition exclude films, canteen, sport, etc.

'The Superintendents' powers should not be divided into "disciplinary" and "security" categories as envisaged by the Mitchell Committee Report. Security should not be used as a catchcry for arbitrary and unjustified punishment without explanation to the prisoner. With modifications outlined above relating to cellular and closer confinement and its consequences the Mitchell Committee's recommendations as to appeal from and representation before the Superintendent are endorsed.'

In addition, it was submitted that legal representation should be available and that there should be a general right of appeal against a decision of a Visiting Magistrate to a Supreme Court Judge.
Department's Submission

The Department in its submission favoured three tribunals, the Superintendent, a visiting tribunal consisting of a Magistrate or two Justices, and the ordinary courts. Both offences against the general law and disciplinary offences could be dealt with by the Superintendent or the visiting tribunal. The Superintendent, it is recommended, may order forfeiture of privileges or indulgences for a period not exceeding twenty-eight days and may order the forfeiture of up to ten days remission. There should be no legal representation before the Superintendent but an appeal would lie to the visiting tribunal with no further appeal.

The visiting tribunal, whilst bound to observe the requirements of natural justice, would not be bound by the ordinary rules of evidence. An appeal would lie only where the tribunal has not complied with the forms of law. Apart from powers similar to those set out in Section 47 of the Prisons Act, the visiting tribunal, when constituted by Justices, should have power to imprison for twenty-eight days, and when constituted by a Magistrate, for ninety days. Legal representation should be permitted.

Discussion and Recommendations

With all these suggestions and the possible variations of them, a very large number of courses is open and it becomes necessary to decide on what basis the selection should be made.

I prefer to set down a number of general considerations against which any suggestions should be tested. These are formulated having regard to the requirements that they must, at the least, be fair to the prisoner, reasonably practicable for the administrator, and accepted by general community standards.

In my view it is reasonable to distinguish between offences against the general law and disciplinary offences and to provide different methods of dealing with these two groups.

Some difficulty exists in relation to offences which fall into both groups, trivial offences, repeated offences and, as the first Mitchell Report indicates, the offence of escaping from custody, but putting these difficulties aside, it seems proper that mere disciplinary offences should be dealt with by the prison authorities and breaches of the general law by a tribunal having expertise in that field.

It seems to me quite wrong in principle that a member of the community charged with an offence who is entitled to obtain legal advice, legal representation, a trial before a professionally qualified Magistrate, and if convicted, a right of appeal, should be entitled to anything less merely because he is in prison when charged with that offence. If this view is accepted, many of the difficulties raised by the evidence and the submissions disappear.

I am satisfied that the authority to deal with breaches of discipline in the prison should reside in the Superintendent. He is the person responsible for the proper running of the institution and he should have all powers necessary for that task.

At present the Director has disciplinary powers similar to those of a Visiting Justice. The conferring of such powers on the Director in respect of inmates of a particular institution is inconsistent with the overall responsibilities which he has and as the Mitchell Report points out, detracts from the autonomy of the Superintendent.

This proposed transfer of authority from the Director to the Superintendent is consistent with the submissions of counsel for the Department and counsel for the prisoners. In fact, it would be in accordance with the existing practice which is that the Director does not exercise the powers conferred on him by Section 47 of the Prisons Act. The evidence of Superintendent Hughes of Yatala Labour Prison, is that in his 26 years' experience, a Director has not to his knowledge exercised those powers.

Whether there should be an appeal from a decision of the Superintendent should, in my view, depend on the powers exercisable by him. If, as at present, the Superintendent may not increase the period an inmate is to be in prison, that is, if the Superintendent has no power to impose a term of imprisonment, nor to forfeit remissions of sentence, I see no need for a right of appeal. If, on the other hand, the Superintendent has that power, then, just as an appeal lies from a court which imposes a term of imprisonment, so an appeal from the Superintendent should lie to a professionally qualified tribunal.

My understanding of the present system is that a prisoner accused of an offence is brought before the divisional chief who may warn, caution, reprimand or withdraw the amenity of using a radio.
If the divisional chief thinks a matter should be dealt with at a higher level, he obtains a written report from the general duty officer reporting the alleged offence and sends it to the Superintendent or his deputy who decides whether to deal with the matter himself or to remand the prisoner to the Visiting Justice or presumably, if the matter is sufficiently serious, to seek the aid of the police in investigating the matter.

Substantially, this procedure places the responsibility of deciding where the offence should be dealt with on the Superintendent. His decision in effect determines whether the matter will be dealt with him or by a Visiting Justice or, subject to the police investigation, in the ordinary courts.

If the tribunal to try offences by a prisoner against the general law is a Magistrate and all the attributes of proceedings in the ordinary courts exist, such as prior notice, legal representation, conviction only on evidence admissible under the general law, and a right of appeal, it seems of little moment whether that function is performed by an ordinary court constituted by a Magistrate or by a special tribunal constituted by a Magistrate. Considerations of security and cost when balanced against the advantages which could flow from a public hearing may well determine whether the court or tribunal should sit in public or not.

General Principles

The principles which I suggest should be borne in mind when deciding the jurisdiction, structure and procedure of the tribunals to deal with offences committed in prisons are as follows:

1. (a) A person charged with an offence against the general law should not, merely because he is in prison for some other offence, be deprived of any assistance or safeguard he would have had if not in prison.

   (b) A person should only be deprived of his liberty after a full judicial hearing by a professionally qualified tribunal. If, for any reason, this principle cannot be observed at the original hearing, there should be an appeal to such a tribunal.

2. (a) A person charged with a disciplinary offence should ordinarily be dealt with by the Superintendent.

   (b) The Superintendent should ensure that the principles of natural justice are observed but should not be bound by the ordinary rules of evidence.

3. The regulations should list the privileges and amenities which may be forfeited or withdrawn, by whom and for what reason. Selective orders should be made where practicable.

4. All persons charged should be entitled to legal advice if it is sought, and except where the charge relates to a disciplinary offence and the tribunal cannot impose imprisonment or loss of remission, the person charged should be entitled to legal representation at the hearing.

SECURITY AND DISCIPLINE DIVISIONS AT YATALA

S (Security) and D (Disciplinary) Divisions are two wings of B Division at Yatala Labour Prison which have been converted for their present uses. The prison authorities consider them to be vital resources within a maximum security institution and important for the good management of the whole prison.

A great deal of evidence given by prisoners consisted of criticism of the regimes which operate in these two Divisions and of allegations of maltreatment including the use of physical violence against prisoners by correctional officers.

S Division

S Division is the maximum security section at Yatala and indeed, prisoners at other institutions whose security rating justifies it, are transferred to S Division.

The inmates held there are those thought likely to attempt to escape or to harm others or themselves. There are also those thought to be at unusual risk in the ordinary prison community.

Maximum security is achieved by the physical construction of the building, close and constant supervision, and restriction of movement.
The privileges and amenities of prisoners held in this Division are similar to those of prisoners in Divisions other than D Division except, of course, that the restrictions applied to movement prevent their taking part in sporting or other activities outside the Division.

The attitude of the authorities as explained by Deputy Superintendent Dickson, is that since confinement in S Division is for reasons of security and not discipline, the Superintendent of Yatala could order that a prisoner spend the whole or any part of his sentence in S Division but that the practice has developed of making an order for separate confinement under Section 40 of the Prisons Act. Such an order provides some safeguard for the prisoner in that the order is made by the Director with the concurrence of a Visiting Justice and on the recommendation of the Superintendent.

There is evidence that the Security Committee each month considers the case of each prisoner in S Division and that a prisoner's movement into or out of S Division may be influenced by the Classification Committee.

Whilst the self-imposed restriction on the Superintendent's powers may be commendable in that it affords both the administration and the prisoner with some protection, there are several deficiencies. For instance, it is doubtful whether the confinement under the regime in S Division constitutes the 'separate confinement' contemplated by the Section but since the present practice resolves the doubt in favour of the prisoner, no difficulties have yet appeared. Also, it is still open to the Superintendent to order confinement in S Division without recourse to Section 40 and, since the order purports to be one made solely on security grounds, such an order can be made without the prisoner's knowledge and without his having an opportunity to make submissions.

Prisoners complain of the boredom and frustration which result from the absence of any sustained and useful activities in the Division but otherwise the main criticism is not so much of the Division itself, as of the procedures relating to admission to and discharge from the Division.

The Mitchell Committee distinguished between closer confinement ordered as a disciplinary measure and that ordered for security reasons. Counsel for the prisoners rejected this distinction and I accept that there is a real difficulty because the risk of unfairness lies in the very act of classifying the confinement as being for the one purpose or the other. There may be elements of both.

The general submission of the prisoners that a person confined to any cell should be permitted forthwith to communicate with a solicitor and should be brought before a Visiting Justice within 24 hours is, I think, not practicable but I agree that a person before being transferred to S Division ostensibly for security reasons should be given the opportunity, if he wishes it, to speak against the move. I think also that his continued confinement should be considered each month, as at present, by the Security Committee, and that if either the Security or Classification Committee recommend his release and the Superintendent does not accept the recommendation, the prisoner should be able to appeal to a Visiting Magistrate.

D Division

The regime in D Division is a rigorous and depressing one under which prisoners sometimes spend less than one hour each day out of their cells. This should be compared with the Minimum Standard Guidelines for Australian Prisons referred to elsewhere which provides that every prisoner who is not employed in outdoor work should have the opportunity, for an absolute minimum of one hour, of suitable exercise in the open air daily, if weather permits.

Nor does the present practice meet the desired standard of Regulation 68 which provides that a person under separate treatment or close confinement shall receive exercise in the open air, if practicable, for at least two hours daily.

Confinement in D Division ordinarily involves deprivation of privileges and indulgences and restrictions on work, smoking, radio, television, reading materials, exercise, education, canteen purchases, sports and films. No personal items are permitted in cells.

It is interesting to note that of the twenty-one allegations of assaults by correctional officers on prisoners, contained in the evidence, thirteen are alleged to have occurred in D Division at Yatala. Whether the complaints are justified or not—and I have said a number of them are—their frequency says something regarding the relationship between prisoners and staff in that Division.
The various paths which lead to confinement in this Division are:

(1) For investigation (pending appearance before a Visiting Justice).

(2) For training.

(3) Pursuant to the order of a Visiting Justice under Regulation 74 (to work not in association with others).

(4) For observation because of a medical or mental condition or threatened suicide.

(5) Pursuant to an order under Section 40 (to prevent contamination by association).

(1) Confinement for investigation

Although used in as many as half the cases remanded to a Visiting Justice, it can be justified in only a few exceptional cases and there does not appear to be in any of them any authority under the Prisons Act or regulations for the deprivations and restrictions which follow confinement in D Division.

The evidence established clearly that some senior officers disregarded regulations in favour of what they saw as desirable and commonsense. Possibly, one of the casualties is Regulation 221 which provides that no punishment or privation is to be awarded except by the Director or a Visiting Justice.

(2) Confinement for training

Although used as a form of punishment, this does not appear to have any statutory basis. Let it be assumed that full effect may be given to the Director's delegation of 13 November 1963 of disciplinary powers to Superintendents and to the Superintendents' delegation to officers of and above Divisional Chief of the power to warn, caution, reprimand and withdraw radio for one month. Even then, there does not appear to be any officer in a prison who is authorised to exercise the power conferred by Section 47 on the Director or a Visiting Justice to forfeit privileges and indulgences for up to twenty-eight days, but such a forfeiture occurs when a prisoner is confined in D Division for training.

(3) Pursuant to a Visiting Justice's order under Regulation 74

I have explained elsewhere (page 63) why this regulation does not justify the order which Visiting Justices have purported to make under it.

Counsel for the Department argues that it is an order made for the maintenance of good order and discipline. This may well be so but the argument disregards the limited scope of the order which may properly be made, namely, an order 'to arrange for him to work temporarily in a cell and not in association'.

It is evident that a prisoner may work temporarily in a cell and not in association without being deprived of privileges and indulgences and without having any of his amenities restricted.

A Visiting Justice may order the forfeiture of privileges and indulgences for up to twenty-eight days and if that is intended, the order particularising the privileges and indulgences should be made in those terms. Whether such an order itself justifies confinement in D Division with all its consequences is a matter of difficulty which should be clarified by amendment of the relevant provisions in the manner already suggested.

(4) Confinement for observation

It is unfortunate that the open fronted observation cell is in D Division. If, for instance, a prisoner is being held in the observation cell because he is ill, there seems no reason why he should be subject to or even associated with the rigorous regime of that Division. The observation cell would be better placed elsewhere.

(5) Section 40 orders

I have already referred to the dangers which may arise in the use of this Section (page 62). It remains to add that the Section which authorises separate confinement does not expressly or by
necessary implication authorise the deprivation of privileges and amenities which attends confinement in D Division. Whilst separate confinement obviously excludes the prisoner from participating in group sporting or recreational activities, it does not seem to follow that there should be any automatic restrictions on the use of radio, television, tobacco, reading material and personal items of cell furniture.

Recommendations

My firm view is that D Division as it at present exists should be abolished.

There is much to be said for the proposal that difficult and ill-disciplined prisoners should be dispersed rather than concentrated and the same policy can be followed within a particular institution.

The isolation which results from having a separate punishment Division has disadvantages.

There is a tendency for the same group of correctional officers to be always concerned with the most difficult prisoners and this leads either to extra strain or to a hardening of attitudes.

In addition, there is little outside observation of how the prisoners are treated or how they behave. Prisoners may be mistreated with comparative impunity or they may, by shouting and screaming, give the impression they are being mistreated when they are not. In either event, tension within the prison generally is increased.

There is in addition a greater opportunity for a prison officer guilty of negligent or improper conduct to conceal the deficiency.

An alternative is to have one or more cells in each maximum or medium security wing. These cells may be specially furnished and secured as punishment cells. The responsibility for controlling the more difficult inmates is then shared between all or at least a larger group of officers and the conduct of both officers and prisoners is more readily observed by other officers and perhaps other persons including prisoners.

There are, of course, disadvantages, not the least being that noisy prisoners will disturb a greater number of people but these difficulties should be capable of solution by careful selection in the positioning of punishment cells, care in their construction and appropriate changes in staffing duties.

The suggestion for the abolition of D Division as it at present exists is supported by counsel for the Department and counsel for the prisoners. The Superintendent of Yatala considered the suggestion meritorious and worthy of further investigation. Counsel for the correctional officers opposes it on a number of grounds:

> The first is that inmates are sent to D Division for disciplinary reasons and should be isolated from the rest of the prison.

This submission strengthens the suspicion that Section 40 orders and orders for confinement `for investigation' and `for training' are often disciplinary in nature; however, this does not appear to support an argument that all inmates guilty of breaches of discipline should be confined in the same Division and separate from other prisoners. Nor do I accept that `special staff' are required to supervise these inmates. If the special staff are those with a less tolerant attitude, existing tensions could well be exacerbated.

The argument that D Division prisoners have a tendency to become abusive, threatening and disruptive raises the question whether their behaviour becomes more anti-social because of the frustrations which the regime in D Division creates. There were some indications in the evidence that prisoners recognised as creating very difficult management problems in D Division sometimes were less difficult in another Division or in the Northfield Security Hospital.

There is one substantial change which should be made to the routine in D Division.

The Minimum Standard Guidelines for Australian Prisons provides:

> `30. While confinement to a separate area to facilitate the withdrawal of privileges as a disciplinary measure is acknowledged, the Superintendent and the medical officer shall daily visit prisoners undergoing disciplinary confinement and shall advise the central administration if they consider the termination or alteration of the punishment necessary on grounds of physical or mental health.'

Regulation 202 requires the Superintendent, as far as practicable, to visit and inspect every Division of the prison once at least every 24 hours.
Regulation 219 requires the Superintendent to deliver to the medical officer 'lists of such prisoners as are placed in solitary or separate confinement'.

Regulation 302 requires the medical officer on each visit to see the prisoners in close confinement for prison offences.

Superintendent Hughes said it was not practicable for him, with the many demands on his time, to inspect each Division each day.

The medical officer (Dr M. V. Alton) agreed that with some relief from his normal duties, he would be able to visit D Division each day to check each inmate.

The problem is one of priorities and my view is that the health and well-being of inmates in disciplinary confinement should be given a very high priority by both the Superintendent and the medical officer.

Daily visits by these two officers to prisoners held in such confinement would enable these officers to keep under observation inmates who are likely to be mentally disturbed or upset and should avoid complaints of the nature made twice by prisoners before the Commission that requests for medical attention by inmates of D Division had been ignored.
7. ALLEGATIONS REGARDING PRESENCE OF UNAUTHORISED MATERIALS IN PRISONS

INTRODUCTION

Section 46 of the Prisons Act makes it an offence for a prisoner to have in his cell or possession any article not furnished by the establishment or allowed to be in the possession of a prisoner and Regulation 64 provides that no prisoner shall have in his possession any unauthorised article.

A prisoner’s private property, including his clothing, is stored and returned to him on discharge.

The amount and type of personal property held by a prisoner in his cell varies from one institution to another and often from one Division to another but many prisoners have their own radios, portable television sets or cassette players. Prisoners held in disciplinary wings are usually not permitted any personal property.

During 1980 a number of allegations were made regarding unauthorised materials in prison, although most of the allegations referred to Yatala.

Mr Cassidy, in his report, referred to a noticeable increase in the number of knives and other metal articles manufactured in the workshops. There were also references to the discovery of drugs and escape equipment.

I deal briefly with these allegations and the evidence relating to them under the following headings:

WEAPONS

The evidence does not enable me to say that there has been an increase in the number found. There was some evidence of ‘home made’ knives and zip guns being made at Yatala. From my examination of one of the zip guns I formed the impression, as a layman, that if fired it might be of some danger to the user but of course it would also be a danger to the victim and it could easily be mistaken for a genuine pistol.

One of these zip guns, together with hacksaw blades, a file and other articles, were found in Sandery’s cell in S Division on 22 September 1980. It appears that these items were passed to Sandery through the cell window, the mesh on which—and also the bars—had been cut but the cut not detected.

This example illustrates the extent to which a clever and determined inmate with assistance from other inmates can, at least for a time, circumvent the security system of a prison.

Also on 22 September the authorities at Yatala discovered two bombs made from battery cases and drink cans containing matchhead powder and a butane cigarette lighter expertly fashioned into a device which was ‘quite lethal’. As a result butane gas lighters were withdrawn from the Yatala Canteen.

On the same day three ‘Molotov cocktails’ made from coffee bottles containing kerosene with a rag wick and other items were discovered in a toilet cistern.

DRUGS

One would expect the general increase in the use of drugs in the community would be reflected in the prison community and it seems to be accepted that drug finds in prisons, not only in South Australia, have increased in recent years.

In the seventeen months from October 1978 to March 1981 drugs were found at both Yatala Labour Prison and at Adelaide Gaol and in areas adjoining those institutions. Items found were twenty-three separate quantities of Indian hemp totalling about one kilogram, thirteen syringes, seventy-seven Valium tablets, and two quantities of amphetamines.

The Department attributes the increased number of discoveries to the use of the dog squad.
Although some records are kept of the drugs discovered, there appears to be no record kept of their destruction. Difficulties experienced in police and customs organisations in recent years in Australia show it is essential that the quantity, amount and description of each discovery should be carefully recorded and that the destruction of impounded drugs be carefully supervised and recorded.

**ESCAPE EQUIPMENT**

Many tools such as screwdrivers, chisels, levers and ropes are available in the workshops and many other items such as grappling hooks can be manufactured there.

The rope which was an essential piece of equipment in the Roße escape was made from nylon string from library parcels. The ladders used in Tognolini's escape came from the joiners and carpenters shop.

**DISCUSSION**

An increase in the amount of unauthorised material found does not necessarily mean that increasing amounts of such materials are available in prisons. Much of the increase in discoveries results from more efficient methods of search. A good example is the establishment of the dog squad which, with one dog, immediately increased the number of discoveries of drugs with a further increase occurring when the squad was increased to five dogs.

Another example is the use of metal detectors in cell searches where the searching of mattresses is made simpler and more effective.

At some stage searches may occur so often and be so efficient as to reduce the number of attempts made to move unauthorised material.

For instance, the procedure to be introduced when the new industrial complex comes into operation when there will be, in effect, a metal detector search, a strip search, and a change of clothing for each prisoner moving from the complex to the wings, should constitute both an efficient method of detection and an effective deterrent.
8. RECOMMENDATIONS

INTRODUCTION

It is a common criticism of bodies or persons asked to make recommendations that they see the answers to any problem to be more buildings, more staff and more money, and no doubt some of the recommendations which follow are open to that criticism; some however, are not.

Some recommendations have already been set out in the preceding text. These arise from the subject matter discussed in the section of the report in which they occur but some recommendations arise from a number of sections and they are listed here. For convenience all recommendations are set out in this chapter.

DEPRIVATION OF LIBERTY AS THE PUNISHMENT

It is important to achieve a regime which recognises that when the punishment for crime inflicted by the courts is imprisonment, that deprivation of liberty is itself the punishment. This deprivation carries with it restrictions on movement and communication, but additional sanctions such as assaults or threats of it or any other 'cruel and unusual punishments' are unauthorised and it is the responsibility of the prison authorities to take all reasonable care to prevent them.

SEGREGATION

It is important also to appreciate the advantages which can flow from a carefully supervised policy of segregation.

A compelling argument for segregation in prison was put by one prisoner with twenty-four years' experience of being in and out of gaol. His view was too much attention was given to the segregation of the hardened criminal and that the young or inexperienced prisoner who had not already served a sentence should be segregated from the moment of his arrest. His experience was that for a first offender who, for that reason was given a suspended sentence, it was already too late. In the months awaiting trial, if not on bail, he had received his 'criminal education'; he learnt 'the way to avoid capture rather than the way to avoid the need for capture... He has learnt enough addresses; he has learnt enough names of fences; he has learnt enough methods of opening doors and stealing cars and obtaining drugs.'

This prisoner said that even within some of the existing institutions there were a number of yards which would enable some segregation to be achieved but there was no serious attempt at it—prisoners moved freely from one yard to another.

This view that there is inadequate segregation is, I think, of basic importance when considering the security and discipline of prisoners. It involves on the one hand the cost of obtaining it in buildings, staff, equipment and procedures, and on the other, the return in the form of more security and freedom from violence from prisoners and the real chance of preventing the 'criminal education' of newcomers.

This latter aspect is one I regard as being of particular importance. In evidence which occupied over 13,000 pages, I do not recall any witness saying that the present prison system in South Australia achieved any substantial degree of rehabilitation. At least, all reasonable steps should be taken to ensure that it does not provide specialist training for criminals.

BUILDINGS

The number and type of buildings available to the Department controls its capacity to segregate in a separate building prisoners of a particular classification and the Director pointed out in his evidence that there are not sufficient maximum security prisons to enable the Department to adopt the policy of dispensing high risk prisoners.

The new remand centre, when built, will accommodate up to 200 persons who are on remand or awaiting sentence or awaiting assessment under sentence.
A new cell block is to be constructed at Port Augusta Gaol.

Other proposals at various stages of assessment include the re-opening of Gladstone Gaol as a maximum security institution, another country institution and a modern maximum security unit at Yatala.

My recommendation is that whatever buildings are undertaken, adequate provision should be made for the inexperienced prisoner whose chances of recidivism are likely to be increased by contact with more experienced criminals.

Those in this group will not necessarily be minimum security risks nor young nor remand prisoners. They will be identified by painstaking classification procedures. If they have to be held in an institution with other prisoners, they should be strictly segregated. Preferably they should be accommodated in a separate institution. A similar segregation policy could no doubt be adopted in the new remand centre when it is available for use.

I also recommend that the existing general policy be continued to provide flush toilets and electric power in cells and a new visitors' complex at Yatala.

STAFF

Fixed Posts

Efficient management is hampered by the excessive number of fixed posts for the custodial staff at Yatala in particular.

The present position seems to be that the preservation of a set number of fixed posts results in the inefficient use of manpower and the appointment of additional staff does not necessarily reduce the requirement for overtime; it may only increase the number of persons available to do it.

Greater flexibility should be obtained by giving the Superintendent at Yatala greater latitude in assigning staff to positions where they are needed to meet the various demands arising during a shift.

Legal Practitioner

The need for regulations and orders to be kept comprehensive and up to date and the disarray disclosed in the investigation of offences and in procedures for disciplinary action make a strong case for a legal officer on the departmental staff to advise the Director, and where necessary Superintendents, to draw up procedures and to assist generally in relation to all disciplinary and court procedures.

CANTEEN

I support the view that prisoners should not be employed in the canteen. There is little in the storeman's work and the small amount of clerical work which is rehabilitative. Prisoners employed in the canteen can be put under pressure for favours by other prisoners and they could become the first to be blamed for any discrepancies.

The cost of providing reasonable amenities to prisoners is, in my view, a proper charge on public funds and an efficiently operated canteen system reduces the cost of such amenities.

The Department should investigate the advantages and disadvantages of making the canteen at each institution, or at least some of them, autonomous. There is insufficient information available to me to suggest the answer.

CLOSURE OF D DIVISION

My recommendation for the closure of D Division and for alternative arrangements are set out at page 73.

PERMIT SYSTEM

What I recommend should be the minimum requirements to be met in the reorganisation of this system are:
(a) A reasonably detailed description of the work required on each permit.

(b) A reasonably detailed estimate of the cost of the work and a reasonable charge for it. This requirement has been largely met by the recent introduction of a costing sheet for each job.

(c) If the present system of using a permit in triplicate is to be continued, the ultimate collection of all copies of the permit in the office recording the completion of the work, the amount to be charged and the removal of the article from the prison.

(d) Regular supervision of the system including periodical checks on apparently uncompleted jobs.

(e) Security of all records and of serially numbered forms.

'GREY AREA' PRISONERS

This term is used to describe unfortunates who cannot be treated as suffering from some psychiatric illness but who nevertheless suffer from emotional or personality problems which make it difficult to accommodate them in prison. The extent of the troubles which can arise and their effect on even experienced and senior staff are illustrated by the case of P. G. Wilson discussed at page 42.

There is at present the beginning of what might prove to be a satisfactory program for dealing with these persons. Assistant Director Scandrett-Smith described the 'revolving door' concept which is being discussed and under which certain prisoners would move between the Northfield Security Hospital and Yatala and other prisons.

In such a scheme the hospital becomes more a place of refuge than of treatment.

From the evidence of the Deputy Director and of Dr Gorton I conclude that the future of this program depends on current negotiations and no one sought any recommendation from the Commission in respect of it.

I should, however, say that if for any reason the proposed scheme were not to come into operation, there will be an urgent need to find an alternative under which the prisoners concerned can be given skilled care in suitable surroundings. I feel sure that indefinite accommodation in D Division, for instance, is unsuitable. The members of staff have no training in dealing with such cases and neither the accommodation nor the regime is suitable for them.

HOMOSEXUAL ACTIVITIES

Although homosexual acts between consenting adults is no longer a criminal offence in South Australia, the clear policy of the Department is actively to discourage the practice in prisons because of its effect on discipline and the favoured position which homosexuals would apparently otherwise have when compared with others.

I have carefully considered the evidence and the submissions which have been made on behalf of the prisoners concerned and I am firmly of the view that to accede to those submissions would itself be discriminatory.

No ordinary sexual relations are permitted in institutions in South Australia and I agree with the view of the Mitchell Committee that conjugal visits, no matter what preparations are made, compromise the dignity of the women visiting the institution.

At present persons found engaging in homosexual activities are charged with the offence of, for instance, being in a cell without permission or during prohibited hours.

The simple and direct approach would be to prohibit all sexual activities in prisons and if a breach of that prohibition occurs, to charge the offenders accordingly.

INSPECTORATE

In modern times it is unfair to expect Visiting Justices to have the knowledge, time and expertise to investigate complaints made by prisoners.
An inspectorate should be established, presided over either by the Ombudsman or a special Prisons Ombudsman or a Magistrate with power to investigate complaints by prisoners, and for that purpose, to enter a prison and to require the production of documents and the attendance for questioning of any person.

Correspondence from prisoners to the inspectorate should, as with the Ombudsman, be privileged.

Visiting Justices should retain their present role of inspecting facilities at prisons, recording complaints and, in addition, transmitting them to the inspectorate.

‘FALSE OR FRIVOLOUS’ COMPLAINTS

Without detracting from the recommendation for a general review of the existing Act, I wish to refer to section 48 (2) of the Act which makes it an offence for a prisoner to prefer ‘any false or frivolous complaint, charge or accusation against any officer of the prison or any prisoner confined therein’.

It is at least arguable that ‘false’ in this context means ‘wilfully false’ but the prison authorities have not apparently adopted that view in all cases. In relation to the prosecution of P. G. Wilson on 16 January 1979 under this provision, two matters should be noted.

Firstly, the offence is apparently regarded so seriously that it is a ‘double bench’ offence dealt with by two justices who, sitting together, could sentence the prisoner on conviction to up to twelve months’ imprisonment. This tends to support the view that ‘false’ in its context here means knowingly false and not merely incorrect.

But Wilson was not dealt with by a ‘double bench’. The charge against him was that he ‘did fail to conform to the rules of the prison by making false accusations about C.P.O. Townsend and P.O. Kelly’.

This charge was presumably laid under Section 46(1) (p) which provides that no prisoner shall ‘refuse or neglect to conform to the rules, regulations or orders of the prison or otherwise offend’. It may be doubted whether there is any relevant rule of the prison which Wilson failed to conform to but he was liable to a lesser penalty if dealt with for a breach of Section 46 rather than a breach of Section 48, and in my view, the offence should carry the lesser penalty provided by Section 46 and not the heavier penalty in Section 48.

Secondly and more importantly, Deputy Superintendent Ellickson’s statement of particulars in support of the charge did not allege that the accusation was, to Wilson’s knowledge, false but that he, Ellickson, could find no evidence to support it.

It would be a most unsatisfactory position if a prisoner who makes an honest but mistaken allegation against an officer or another prisoner could be made liable for up to twelve months’ imprisonment.

It would discourage genuine complaints which should be investigated because there is the threat implied, if not made expressly, that if the complaint is not established the complainant may in turn be charged.

The position should be put beyond doubt by providing that it is only when the complaint is false to the knowledge of the complainant or frivolous that an offence is committed.

HOURS CONFINED IN CELL

There were many complaints in the evidence of the large proportion of each day which prisoners spend in their cells. In institutions where there are no night activities the total period is about 15 or 16 hours which most witnesses who referred to the subject agreed was too long.

The benefits for a prisoner of longer periods spent out of his cell in educative or relaxing activities seem obvious as also do the staffing and security problems which such activities raise for the prison authorities.

In some institutions elsewhere, evening activities are arranged on a rotational basis so that each wing has the benefit of those activities once or twice a week.
Probably differences in security problems will require a different solution in each institution but that should not prevent earnest and detailed consideration being given to the reduction of the number of hours each day which prisoners ordinarily held in cells now spend locked in those cells.

Superintendent Hughes expressed the view that ideally prisoners should be out of their cells from 7 a.m. until 8 p.m. He also said that when he was Keeper of Gladstone Gaol, on four nights a week, at least during the summer, inmates were out of their cell until 9 p.m.

My recommendation is that the Government should adopt the general policy that, as far as practicable, the routine of prisoners ordinarily held in cells should be so arranged as to enable those prisoners to spend at least 12 hours per day out of their cells. Some further qualification may be necessary in respect of security factors or adverse weather conditions, but the general intention of the recommendation remains.

RECORDING OF EVENTS IN PRISON

Superintendent Hughes, when speaking of the barricade in the S Division workshop on 28 July 1979 said, 'I wish I'd had a photograph of it all or a tape.' This remark related to one of the incidents in relation to which the variations in the evidence were enormous.

In almost every case where evidence was given of an occasion on which the use of violence was alleged, there were wide discrepancies between the various accounts. This applied not only to occasions when the use of any violence was denied but also to occasions, for instance, where officers maintained that the only violence used was the minimum required to restrain a prisoner.

Many of the difficulties which arose were attributable to some degree to the lack of proper records made at the time of the disappearance of records which were known to have been made.

Notable exceptions were the use of a tape recorder for some interviews and for the recording of hearings before two Visiting Justices.

I am convinced that a record compiled by the use of tape recorders, video tapes and still photographs would greatly reduce the extent of potential disagreements or misunderstandings arising from any incident or discussion, and in particular that knowledge on the part of those engaged in a confrontation that the incident is being recorded will result in more circumspect behaviour.

The installation of surveillance equipment at Yatala and at Adelaide Gaol has greatly improved the capacity to record events on video tape at those institutions.

I think that at all institutions orders should provide that on any occasion such as a disturbance or a combined refusal to obey an order, one officer should be nominated by the Superintendent as a recorder whose function it should be to record in writing the time at which each development occurs and the time and substance of each order given. He should be able to produce in due course a complete and detailed account of the sequence of events, of action taken and the identity of the persons concerned.

Where practicable this record should be supplemented by tape recordings and video taping and photographs.

I also recommend that greater use should be made of tape recorders at all hearings for offences within a prison. In many cases the expense of transcribing the tapes will not be necessary, the tapes being preserved for a specified period as the appropriate record.

ACT AND REGULATIONS

The existing Act and regulations are out of date and do not reflect modern thinking in the administration of penal institutions nor present practice in South Australian institutions. Their repeal and replacement are now a matter of considerable urgency. Many provisions are openly disregarded by administrators with the approval of the Department and many are now incapable of application. The Act is not wide enough to support a number of the regulations nor a number of existing practices.

The first Mitchell Report (1973) and the Johnston Report (1975) both recommended urgent reform.

Further recommendations, some of which would require legislative amendment, have been made by the Touche Ross Report and by this report.
There is at present a draft Act and regulations in existence. My earnest recommendation is that possible amendments to those drafts be considered in the light of the reports to which I have referred and that priority be given to the introduction of the appropriate legislation and to the making of regulations.

These comments do not apply to Part IVA of the Prisons Act dealing with probation and parole, which subjects are not within the terms of reference of this Commission.

In addition to the general review and updating of existing legislation recommended above, there are recommendations for specific amendments relating to matters discussed in this report. The references to them are as follows.

**Prisons Act**

1. (a) Define the circumstances in which reasonable force, restraining devices and firearms may be used by officers and on whose authority.

   (b) Confer power to make regulations to give effect to (a).

2. (a) Repeal existing provisions conferring powers on Director and Visiting Justices in respect of offences against the general law by prisoners.

   (b) Allocate such powers to Magistrates.

   (c) Confer power to make regulations creating disciplinary offences, the hearing of charges and specifying what punishment can be imposed and by which authority.

3. (a) Amend Section 40 to give the Superintendent power with the consent of a Magistrate to order separate confinement for a limited period for security reasons.

   (b) Provide that the prisoner concerned is entitled to be heard before the order is made if he so wishes.

4. (a) Amend Sections 46 and 48 to clarify that the offence of making a false charge is of knowingly making a false charge.

   (b) Include offence in Section 46 not Section 48.

5. *Inspectorate:* Establish an inspectorate presided over by the Ombudsman, a special Prisons Ombudsman or a Magistrate to investigate prisoners' complaints with power to enter a prison, inspect documents and question witnesses.

6. Amend Prisons Act and Coroners Act to provide circumstances in which an inquiry is to be held into the death of a prisoner.

**Regulations Under Prisons Act**

1. Prescribe procedures to be followed and records kept in respect of sick or injured prisoners.

2. *Classification Committee:* Adopt procedure recommended by Department.

3. *Censorship:* Recast regulations to provide—
   1. Censorship of mail to be carried out only by an officer holding the office of Divisional Chief or above.
   2. High risk prisoners—incoming and outgoing mail censored.
   3. Other maximum security prisoners—incoming mail opened to check for contraband. A random sample of both incoming and outgoing mail to be censored.
   4. All other prisoners—a random sample of both incoming and outgoing mail to be censored. Further random sampling of incoming mail to be checked for contraband.
   5. Outgoing mail from any prisoner to his solicitor to be privileged and not liable to censorship.
6. It should be an offence for an officer to disclose the contents of a censored letter except to a senior officer in the course of duty.

(4) **Regulation 86—Correspondence**: Recast to repeal sub-regulations (b), (c), (d) and (f) and to make (a) more liberal.

(5) **Complaints of assault or other improper conduct against officers**: Provide procedure for immediate recording of complaint, proper investigation and notification to Superintendent.

(6) **S and D Divisions**:

   (a) Daily inspection by Superintendent and medical practitioner.

   (b) Superintendent to approve confinement in either Division.

   (c) If confinement in S Division approved against recommendation of classification or security committee, prisoner has right of appeal to Magistrate.

(7) **Disciplinary offences**: Repeal existing provisions and specify disciplinary offences, the penalty for each and by what authority it is to be imposed.

(8) **Disciplinary proceedings**: Specify detailed procedure for commencement including notice and particulars to be given to prisoner, legal advice, legal representation and procedure on hearing.

(9) **Sexual relations**—of any kind prohibited in institutions.

(10) **Searches**: Anal inspection—

    (a) Reason to be noted.

    (b) Entry of any body orifice only by medical practitioner.

(11) **Specify**—

    (a) By whose authority and in what circumstances an officer may use

       • a fire hose against a prisoner or in a cell;

       • restraining equipment such as handcuffs, C.S. Lance or similar substances;

       • batons;

       • dogs;

       • firearms.

    (b) Immediate written report of use.

(12) Provide for register of unauthorised materials found, their description and the certifying of their disposal.

**ORDERS AND OTHER DOCUMENTS**

(1) Expand existing orders to include:

   (a) Detailed procedure for permit system.

   (b) Improved records and filing equipment.

   (c) Circumstances in which prisoners may be held in D Division other than when convicted of an offence (e.g. in special circumstances, for investigation).

(2) **Disciplinary proceedings**: Publish—

   (a) Booklets specifying procedures before Superintendent and Visiting Magistrate.

   (b) Explanatory notes for prisoner when charged specifying rights and duties.

   (c) Information booklet for prisoners setting out the daily routine, amenities available, restrictions which apply, procedures to be followed when seeking information or making requests or complaints.
(3) Provide—

(a) That orders at each institution provide, in the event of any disturbance, for the appointment of an officer as a recorder to record the sequence of events, the substance of orders given and the identity of persons involved.

That where practicable, this record be supplemented by tape recording, video taping and photographs.

(b) That greater use be made of tape recorders to record proceedings relating to offences within prisons.

ALLEGED MISCONDUCT

In some instances I have found what may generally be described as misconduct on the part of persons named and the question has been raised whether I should make any recommendation that action should be taken in any such case against that person and if so, as to the nature of the action to be taken.

There are two substantial differences between my inquiry and any subsequent proceedings which might be instituted.

Firstly, I am not bound by the ordinary rules of evidence. I am entitled to use, and have used, such information as comes to my knowledge as I think is relevant and which it is fair to use.

Secondly, my conclusions as I have explained elsewhere (page 3) are based on a standard of proof different from that adopted in criminal proceedings and I cannot, as counsel for the Unions suggests, adopt different standards for different issues.

There are two other factors which are relevant.

Any person who has allegedly behaved in an improper or discreditable manner is entitled to require that the appropriate procedures be carried out such as a trial in the ordinary courts or a hearing before a disciplinary tribunal.

Also, the action which an authority may take may include options unknown to me or between which I cannot make an informed choice. Whether in a particular instance where misconduct is established the appropriate remedy is reprimand, the instituting of disciplinary or criminal proceedings, or suspension, or dismissal, or no action at all, depends on facts such as previous service which are unknown to me and are beyond my terms of reference to pursue.

I think the proper course is for me merely to record the result of my inquiries, which I have already done. The absence of any recommendation by me in respect of possible action against any person should not be taken as an indication either that I do or that I do not think that further action is justified.
LIST OF WITNESSES

ALFORD, A. L.
ALLEN, A. D.
ALEXANDER, J. C. H.
ALTON, DR. M. V.
ARENS, O.
AUSTIN, B. W.
BARLOW, K. A.
BIRCH, G.
BITHELL, D.
BONHAM, R. H.
BRADSHAW, R. A.
BRAY, D. G.
BURFITT, J. D.
BYRNE, J. C.
BYRNE, R. D.
CAMPION, R.
CAPONE, C.
CAPRILLO, J.
CAREY, G. N.
CASSIDY, F.
CHAPMAN, C. B.
CLARKE, B. H. W.
CLEWORTH, B. C.
COFFMAN, C. R.
COFFMAN, S. SHEARER, J.
COOPER, G. E.
COOPER, R.
CRITTAL, R. P.
CROMPTON, G. M.
CUNNINGHAM, B.
DALL, K. P.
DAUBNEY, D. M.
DAVIS, L. W.
DEANGELIS, D. T.
DELANEY, T.
DICKSON, B. S.
DOERING, G. A.
DRIVER, H. A.
DRIVER, R. E.
DUNLOP, P. A.
DUNSTAN, S. G.
DURANT, R. M.
EASON, G. G.
EASTWOOD, B.
EDWARDS, G. F. T.
EDWARDS, P. E.
ELLIKSON, L. E.
ELLIS, M. W. J.
ELLIS, R. C.
ELSWORTHY, D.
ENGELHARDT, M. L.
EVANS, E. L.
EVANS, D. G.
EVANS, G. A.
FLETCHER, B.
FOWLER, K. R.
FRITH, B. G.
FUCHS, A.
FULCHER, M. J.
GAGE, A. H.
GATT, J. A.
GAYLOR, J. D.
GOLLAN, C. A.
GORTON, DR. H. C.
GRIEBACH, C.

HALL, P. A.
HARDING, D. W.
HARRISON, G. T.
HAYWARD, R. J.
HISCOCK, N. C.
HODGE, P. D.
HOMER, A. J.
HOWGATE, A. S.
HUGHES, G. A.
HUMPHREY, C. S.
JAMES, C. E.
JONES, A. I.
JONES, P. B.
JORGENSEN, A.
JURISCH, H. J.

KELLY, A. M.
KEYNES, V. S.

LANE, W. S.
LAWLEY, R.
LEHMANN, L. J.
LEMMON, I.
LENTON, N. R.
LEWIS, E. J.
LEWIS, L. M.
LLOYD, T. N.

McADAM, A. S.
McBRIDE, S. W.
McCARTNEY, G. K.
MCCLUSKEY, J.
MCINNES, M.
McINTYRE, I. N.
MANOCH, Dr. C. H.
MARCHESI, G. L.
MARSHALL, A.
MEAD, J. G.
MEAKIN, J. A.
MENA, N.
MERCER, P. M.
MERRITT, W. O.
MIHAIOV, B.
MIJATOVIC, M.
MILLER, J. W.
MORGAN, B. S.
MUNN, P. W. B.

NEVE, B. M. F.

OLSEN, J. W.
O'NEILL, S.
O'SHEA, L. J. E.
## APPENDIX 2

### PERSONS NOT CALLED BUT WHOSE STATEMENTS WERE TENDERED

<table>
<thead>
<tr>
<th>Name</th>
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<tr>
<td>ADDLETON, A.</td>
<td>KARGER, N. J.</td>
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<td>BATTY, A. O.</td>
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ROYAL COMMISSION 1980
RELATING TO PRISONS

STATEMENT REGARDING THE PROCEDURE OF THE COMMISSION

The following general proposals relating to the evidence of witnesses before the Commission are circulated for the consideration of counsel:

1. Persons wishing to give evidence will be expected to present to the Secretary of the commission either personally or by counsel at least three days before the evidence is called a written statement of the evidence of the witness.

2. The written statement will be distributed to such counsel as have been given leave to appear generally. Except for the purpose of obtaining instructions the contents of a written statement shall not be disclosed until after a witness has confirmed them in evidence.

3. Ordinarily the evidence of a witness will be led by counsel for the person or body in whose interest the witness is called.

4. The evidence of the witness will be led by the witness or someone on his behalf reading the statement and by the witness after he has made whatever amendments he desires confirming the truth of his statement under oath or affirmation.

5. The witness will then be cross-examined on behalf of such parties as obtain leave to cross-examine.

6. Ordinarily, the scope of any cross-examination will be restricted to the subject matter of the evidence given by the witness.

7. Counsel assisting the Commission will adopt an independent role and may call such witnesses himself and cross-examine witnesses not called by him to ensure as far as practicable that all relevant information comes to the notice of the Commission.
SUMMARY OF ALLEGATIONS RELATED TO TERMS OF REFERENCE

TERMS OF REFERENCE:
1. GENERAL.
2. IDENTIFYING ALLEGATIONS.
3. PREVALENCE, PERIOD, PERSON RESPONSIBLE.

ALLEGATIONS OF GRAFT, CORRUPTION, MISAPPROPRIATION OF GOODS AND IRREGULAR PRACTICES AT PRISONS:

4. IMPROPER USE OF PRISON LABOUR, PROPERTY AND FACILITIES.

(1) Work permits
   (a) Prison officers are alleged to use prison materials when having items made in the workshops for their personal use.

   (b) Failure to pay.

(2) Removal of paint, bricks
   (a) Paint, bricks and other materials are alleged to have been stolen from within the prison.

   (b) Everything from ‘snappy’ trailers, ‘fine furniture’, cheap car resprays to barbecues and bins can be bought for bargain basement prices—through the system.

   (c) A trailer can be bought for $125. ‘Extra’ priced one on the retail market—$1 000.

   (d) Bricks can be bought for $10 per 100. On the outside, the average price is $19 per 100.

   (e) Steel being used as a TV antenna tower at a prison officer’s house on the Cadell Training Centre.

   (f) 300 bricks escaped a prison officer’s complaint and report was not followed up.

   (g) An officer grazing his own cows at Yatala.

   (h) Single permit can be used over and over again.

   (i) Steel taken to be used on holiday houses belonging to a prison officer.

   (j) Trailers made at cost of $20 and permit disclosed that material was supplied by officer but in fact it was not.

   (k) Fencing has been made from new tubular steel at no cost to some persons.

   (l) To cover up undercharging and missing goods, sheds built in prison have been overcharged as has the new N.E. tower.

(3) Vegetables
   (a) Senior prison officers have vegetables and other produce from the prison taken each week to their homes in prison vehicles.

   (b) Very senior member of Department receiving food from Yatala Labour Prison.

Sunday Mail
31.8.80
Hon. P. Duncan

Advertiser
4.10.80

Advertiser
4.10.80

Advertiser
4.10.80

Advertiser
4.10.80

Advertiser
4.10.80

Advertiser
4.10.80

Advertiser
4.10.80

Advertiser
4.10.80
5. YATALA CANTEEN

(1) P.A.C. investigation and report
   (a) Vital documents have vanished.
   (b) The Auditor General described financial management at Yatala in a
       report to the P.A.C. on May 23 this year this way: 'Substantial
       shortages in stock, careless record keeping and the ineffective report
       of canteen performance.'
   (c) There were no records for the period July 7, 1979 to January 3, 1980.
   (d) To date no satisfactory explanation has been given as to the whereabouts of $1 254 to $2 600 missing from Yatala Canteen last December.
   (e) Prisoners and prison officers have pilfered from the canteen.
   (f) Evidence before the P.A.C. of a fake order docket system.
   (g) On one occasion last year no key was necessary to gain access to the canteen.
   (h) Standover tactics by 'tough' prisoners.
   (i) Soft drinks are taken to supply the prison officers' club.
   (j) Goods from Yatala to Cadell were short-changed.
   (k) The prison canteen made $5 208 less than it should have.
   (l) Report of the P.A.C.
   (m) Issue of goods and cassettes at no cost or very cheaply.

6. GRAFT AND CORRUPTION

(1) He (Hon. P. Duncan) said his investigations had indicated widespread corruption in the Department of Correctional Services.
(2) 'You have got to be a Yes Man'
    You want to know how to get on in Yatala... 'You have got to be a yes
    man or a Freemason.'
(3) Prison officers label the gaol promotional system as 'cronyism'.
(4) Some officers even complain that the appeals system is not above board.
(5) Officers say promotion system corrupt.
(6) Officers involved in trafficking drugs claim prisoners and prison officers.

7. IRREGULAR PRACTICES

(1) Resulting in deaths
   (a) There have been six deaths in the last twelve months—Yatala Labour
       Prison responsible.
   (b) An inquiry was sought into the deaths of Copping, Mogorov, Bowman,
       Essau, Sullivan, Ash, Alchin and Brown.
(2) Standover tactics
   (a) A mafia of hardened criminals is operating a standover racket.
   (b) Confidential memo: 'I am quite sure that the Department must be
       aware of those in the standover group at Yatala who prey upon the
       weaker for sex and drugs.'
(c) To be blunt the Department has taken no action to either curb or eliminate this very dangerous group at Yatala, in fact, it chooses to ignore facts placed before them and continues to place these men in some of the most coveted jobs available often under very little supervision and in some cases able to move about the prison at will.

(3) Relating to—

(a) Discipline procedures—

(i) Prison officers had told 'Extra' that there is little point in reporting some prisoners who appear to be immune from disciplinary action from senior officers—instance, a drug offence.

(ii) Other prisoners are punished harshly for minor misdemeanours.

(iii) Prisoners assaulting other prisoners in view of officers with no action taken.

(b) Classification of prisoners.

(c) Censorship.

(d) Setting one prisoner against another.

(i) Some officers take an active part in setting prisoner against prisoner.

(e) Favourites for information—

(i) Privileges and top jobs are held out to some in exchange for information.

(ii) Some prisoners receive favoured treatment from the officers.

(f) Mail and visits—

(i) Fourteen signed statutory declarations by prisoners claiming physical abuse, interference with mail and visits and contravention of prison regulations by authorities.

(4) Security inspection—senior officer allegedly affected by liquor.

(5) Incomplete or defective records.

(6) Hosing down prisoners

(a) Sandery.

(b) Byrne.

(c) Bratoli.

ALLEGATIONS OF SEXUAL AND NON-SEXUAL ASSAULTS AT PRISONS

8. ALLEGED VIOLENCE AND THREATS

(1) At Yatala

(a) A large number of people have expressed very grave fears for the safety of prisoners in the gaol.

(b) A prisoner cut on the stomach with a knife.

(c) Another prisoner had a knife thrown at him this morning.

(d) There is another aspect—namely ensuring the safety of the prisoners while they are in that institution. These prisoners face a greater danger than the community would face if some prisoners escaped from the institution.

(e) If nothing is done there will be more deaths in that gaol, more hangings, more suicides and more prisoners injured and stood over.

(f) Homosexual violence is prevalent in Yatala and often ignored by prison officers.
(2) **Women’s Rehabilitation Centre**

(a) Brutal bashings by the gaol’s mafia groups.

(b) Homosexual advances from long term prisoners which places newcomers in dangerous situations.

(c) Alleged rough treatment from a number of warders ‘who believe prisoners should be made to serve their sentences the hard way’—
   (i) a girl had her head shaved;
   (ii) I saw several girls beaten.

(3) **Bowman case**

(a) A group of prison officers at the Yatala Labour Prison was involved with prisoners who homosexually raped and assaulted other prisoners, a prisoner told a Coroner’s Inquest yesterday.

(b) The group of prisoners had tortured, bashed, raped and harassed a prisoner for at least a fortnight before the prisoner was found hanging in his cell the Inquest was told.

(c) There are certain officers in there involved with crimes, so knitted tight that the officers perform homosexual activities on certain criminals in there.

(d) One prisoner had a close relationship with a senior prison officer.

(e) The prison officer was outside the Coroner’s Court.

(4) **German case**

(a) Threat of sodomy in gaol—German— remarks of Zelling J. in sentencing.

9. **ASSAULTS ON OFFICERS**

(1) Prison officer Webb attacked.

(2) Webb is the sixth officer in six months to be attacked.

(3) Prison officer had disinfectant thrown in his eyes.

(4) A home made bomb was thrown at two prison officers in the Yatala Labour Prison on Tuesday night.

(5) An officer knocked to ground and dragged along (possibly on 22.9.80).

10. **ASSAULTS BY OFFICERS ON PRISONERS**

(1) Prisoners claim Sandery being beaten.

(2) An attack on a prisoner by prison officers in A Division in 1976.

(3) An attack on a prisoner by an officer and an A.C.P.O. in D Division in 1979.

(4) An assault on a prisoner after refusing drug therapy.

(5) Specific assaults:
   (a) Lucky, P.
   (b) Cooper
   (c) Draper, R.
   (d) Byrne, R.
   (e) Austin, B. W.
   (f) Wilson, P. G.
   (g) McBride, S. W.
   (h) Tichy, I. V.
(i) Sandery, B. D.
(j) Campion, R. L.
(k) Rohe, R. M.
(l) Mills, R.
(m) Cook

11. ASSAULTS BY PRISONERS ON PRISONERS

ALLEGATIONS REGARDING SECURITY AND DISCIPLINE OF PRISONERS

12. ESCAPES

(1) Tognolini escape.

(2) Seventeen persons have escaped from Yatala in the last 12 months.

(3) Escape of——
   (a) Tognolini.
   (b) Thrun.
   (c) Sandery.

(4) Nine days ago intruders are thought to have scaled the wall and started
   the brick making machine. The towers were not manned at the time.

13. ESCAPE COMMITTEE

(1) Feedback from prisoner informants indicate an escape committee exists
   in Yatala who plan the escapes and arrange cars to pick up escapees near the
   prison precincts for a price.

14. CASSIDY REPORT

(1) Summary of Recommendations at page 27.

(2) Summary of allegations:
   (a) Incompetent management.
   (b) The Superintendent must accept a major part of the responsibility.
   (c) Apathy and hopelessness has beset officers through a decline in discipline (officers
       and prisoners), lack of communication, supervision and leadership.
   (d) A.G.W.A.  
       (i) stubbornly resistant;
       (ii) unfair demands;
       (iii) unrealistic appreciation of the difficulties.
   (e) Too soft approach by management and Visiting Justices towards persistent hard core
       offenders.
   (f) Correctional industry officers fed up with constant closure of workshops.
   (g) Breakdown of morale caused by personnel officer.
   (h) Prisoners aggressive and hellbent on stirring up trouble—hard core determined to escape.
   (i) S Division not the strict disciplinary unit it was.
   (j) Urgent action to relieve pressure off Yatala with regard to hard core security prisoners
       who are using standoff tactics on the younger element.
   (k) Yards untidy and dangerous on a view.
   (l) Barriers not padlocked.
   (m) Cell storerooms left unlocked.
   (n) Prisoners out making toast.
   (o) Correct keys not available.
   (p) Corridor doors unlocked.
   (q) Searching procedures of prisoners inadequate.
(r) Escapes—a combination of breakdown in security procedures, human error and neglect by officers.

(s) Escapes caused by failure:
   (i) A.C.C.O.S
   (ii) management.

(t) The escape from hospital in which P.O. Chance was involved was a direct result of negligence on his part.

(u) Cell doors unserviceable.

(v) A noticeable increase in number of knives and other metal articles manufactured in workshops and smuggled into the Divisions.

(w) Staff shortage: Prison officers feeling the pressure of excessive overtime. The officers are overtired and not alert.

(x) Correctional industry officers very dissatisfied with frequent closure of workshops.

(y) The decision that correctional industry officers no longer supervise prisoners in the dining room ... is having a serious effect on security.

(z) Lack of supervision—prisoners find other outlets—fights, planning escapes and standover tactics.

(aa) Hard core prison element is taking advantage of and imposing their will on young offenders.

(ab) Some officers are convinced that the system of promotion is corrupt.

(ac) Placing of nominees in vacant promotional positions is suspected to be illegal.

(ad) Management has been neglected.

(ae) Mr Hughes—
   (i) continually on sick leave;
   (ii) staff not getting leadership;
   (iii) doubtful he can perform at his best when on duty;
   (iv) confines himself to his office;

(af) Chief correctional officer alleges inspections not carried out.

(ae) Mr Hughes—
   (i) is lazy;
   (ii) has lost enthusiasm for his work;
   (iii) the position is beyond his limitations.

(ah) Officers on escort duty constantly asleep.

(ai) Ambulance stretchers located in A and B Divisions are used by the night officers in the Divisions for sleeping.

(3) The Cassidy Report.  

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15. LENTON/HORNIBROOK REPORT

(1) The Terms of Reference.

(2) No general order specifying the duties of the officer in charge of the watch.

(3) A prisoner reported the escape to prison officer M. S. Smith.

(4) Mr McConnell, Watch Officer, showed poor judgement in not taking action to check the prisoner’s story.

(5) The number of staff was quite inadequate to exercise the requisite standard of supervision over the prisoners and gaol security.

(6) Mr McConnell has no recollection of ever seeing the general order.

(7) Senior prison staff have inspected journals but have taken no action to require compliance with general orders.

(8) The means for detection, apprehension and control were totally inadequate.

(9) The lighting was poor.

(10) The officers had no torches issued to them.

(11) An officer was asleep on duty.

(12) The officer in charge of the watch should be an officer of the substantive rank of chief correctional officer.
(13) The lack of tower manning and insufficient yard patrols were the prime causes of the escape effected on 28 June 1980.

(14) There is a security risk in the present system where prisoners enter or leave the prison van outside the entrance.

(15) Prison officers are not adequately able to protect themselves from armed intruders.

(16) Present staffing numbers are clearly inadequate.

(17) The callback system could be productive of apathy, and lowering morale and job interest within the prison staff.

16. LACK OF SECURITY

(1) The Basic lack of security.

(2) Lack of security in Thrun escape.

(3) For some years grave concern has been expressed over the level of security at Yatala and other institutions and at the frequency of escapes.

(4) It is clear that the present position in S.A.s correctional institutions has in large measure been the accumulated result of years of neglect and indifference.

(5) Although staffing and lack of equipment hampered security at the prison, the main problem was 'trying to do 20th century work in a 19th century building'.

(6) Prison officers patrolled the gaol at night armed only with a ballpoint pen, a notebook and two-way radio, usually without any officer providing visual back-up from a watch tower.

(7) (a) Adelaide Gaol was not entirely secure.

(b) Lack of security worried him (Bonham).

(c) I fear for the security of the institution as a whole and especially the staff.

17. SECURITY GENERALLY

(1) Staff

(a) S.A. prisons are hopelessly understaffed. We need 35 or 37 more officers at Yatala to secure the place properly.

(b) Staff confidence obviously has been dismissed (sic) by recent incidents.

(c) When sufficient G.D.O.s are not available to man all security posts, the first sections of the prison to be closed down are the workshops where P.I.O.s have the greater responsibility.

(d) The A.G.W.A. says 40 extra custodial officers are needed. And G.D.O.s at Yatala say all staffing requirements could be met from existing numbers if P.I.O.s did custodial duties.

(e) Callback—some officers have worked fifteen weeks straight without a day off.

(f) The stress and strain tells on my blokes—fifty heart attacks in the last two years (Moody).

(g) Shutting down the workshops is bad news for the crims too.

(h) Some of the main problems at Yatala Labour Prison:

(i) shortage of general duty officers;

(ii) too many prison industry officers;

(iii) lack of security at night;

(iv) prisoners allowed to spend too much on indulgences;

(v) all staff should be in one Union or all staff should be called correctional services officers;

(vi) not enough gaolers' conferences;

(vii) manning strength;

(viii) lack of basic training by senior staff.
(i) Sandery's cell:
   (i) When a search of Sandery's cell was made the bars were found to be cut.
   (ii) Some of the bars in Sandery's cell had been sawn.

(2) Buildings
   (a) We need more accommodation in the remand area. Adelaide Gaol remand section is over-full. Numbers have doubled over the last ten years (Director).

(3) Procedures
   (a) No written instructions for prison officers until printed last week.

(4) Arms
(5) Riot equipment
(6) Fire equipment
(7) Electronic surveillance
(8) 5 May 1979 'sit in'
(9) 28 July 1979 barricade
(10) 30 September 1980 'sit in'
(11) Visits

18. PROCEDURES FOR DISCIPLINING PRISONERS

ALLEGATIONS REGARDING PRESENCE OF UNAUTHORISED MATERIALS IN PRISONS

19. WEAPONS

(1) A noticeable increase in the number of knives and other metal articles manufactured in workshops and smuggled into the Divisions.

(2) Homemade .22 pistol found in Sandery's cell.

(3) Warders find armoury—
   (a) Three molotov cocktails, two boxes of matches, a handmade knife and an iron bar.
   (b) Hacksaw blades, iron rods, a file, rope and a handmade zip gun.
   (c) Two bombs.

(4) A prisoner locked in the security division at Yatala must have had a very considerable amount of assistance to be able to obtain the pistol.

(5) .22 pistol and ammunition had been found in the maximum security cell of Bruce Sandery.

(6) It was common knowledge this prisoner often carried a knife and had used it.

(7) Box of .22 ammunition in boot of officer's car in sprayshop for spray paint.
20. DRUGS

(1) Drugs, including narcotics administered by injection, are freely available within the prison.

(2) In a sworn affidavit, a former prisoner states that drugs are easily obtainable in the prison.

(3) Syringes are kept by some prisoners.

21. ESCAPE EQUIPMENT

(1) Unauthorised articles and escape material conveyed to the yards and divisions.

(2) Lenton/Hornibrook Report:
   (a) ladders;
   (b) oxy-acetylene equipment;
   (c) length of string—Tognolini.

(3) (a) A quantity of escape equipment, namely a knotted sheet rope, a homemade stiletto knife, a quantity of pepper and two pairs of sandals found in the wall of the laundry near where Tognolini worked.

   (b) In the covers of a large encyclopaedia that had been posted to Tognolini were two hand operated cutting devices capable of cutting high tensile steel plus a high tensile steel hacksaw blade.

RECOMMENDATIONS
RULING ON SECTION 69 OF THE EVIDENCE ACT

My second problem relates to the suppression of the names of witnesses and parts of the evidence. To appreciate the problem it is necessary to consider first the proceedings within the Commission itself, and then the publication of reports of those proceedings. It is clear that the Commission may conduct its proceedings in such manner as it thinks fit and it may take evidence in public or in private. Provision for this is made in Sections 6 and 7 of the Royal Commissions Act. As to publication of reports of the Commission's proceedings, the position is not clear. The Commission itself may publish such information obtained in the exercise of its function as it thinks fit, but the Royal Commissions Act contains no express provision enabling the Commission to prohibit the publication of reports of proceedings which take place in the Commission. Section 69 of the Evidence Act enables courts in the circumstances set out to hear evidence in private and to forbid the publication of specified evidence in the name of party, witness or person alluded to in the evidence. Penalties for breach of Section 69 are provided in Section 71.

In my opinion a Royal Commission is not a court for the purpose of Section 69 of the Evidence Act and I shall state shortly my reasons for saying so. A court is defined in Section 4 of the Evidence Act as follows:

"Court includes any court, judge, magistrate or justice and any arbitrator or person having authority by law or by consent of parties to hear, receive and examine evidence."

In my opinion a Royal Commission would fall within that definition as being a person having authority by law to hear, receive and examine evidence, and for most purposes of the Evidence Act that is the definition of court which is relevant, but the legislature when considering what bodies should be empowered to suppress the names of witnesses and evidence adopted a different definition of court. Section 2 of the Evidence Publication Act 1917, which is reproduced as Section 68 of the consolidation of the Evidence Act in 1929, provides in this part, that is, Part VIII relating to publication of evidence:

"Court means the court, judge or magistrate before whom any legal proceeding is held or taken, and also a justice sitting for the preliminary investigation of any matter, a coroner by or before whom an inquest is held and any person acting judicially."

It is I think quite clear from that definition that Section 69 can only apply to a Royal Commissioner if he is a person acting judicially within the meaning of Section 68.

I have already in my earlier remarks pointed out that the Commission is not a court in the popular sense of that word. Its inquiries have no inevitable legal consequences nor are legal rights affected. Counsel assisting the Commission suggested that if necessary I could distinguish between acting judicially and exercising judicial power, and that whilst I was admittedly not exercising judicial power I might be able to conclude that the Commission acts judicially. Such a distinction may exist in respect to constitutional cases concerned with the judicial power of the Commonwealth, see for instance *Australian Stevedoring Industry Board and another ex parte Melbourne Stevedoring Company Proprietary Limited* (1953) 88 C.L.R. 100, but that is not a distinction relevant here and one which in the present circumstances I do not think can be drawn. The development of modern administrative law has seen the determination of a large number of cases in which the duty to act judicially has been referred to. I attempt no summary of them—for those interested they are discussed in Whitmore and Aaronsen's 'Review of Administrative Action' at page 427 and the following pages.

I was referred by counsel assisting the Commission to the decision of Stephen J. in *R. V. Collins* [1976] 8 A.L.R. 691 and I would like to refer to a particular part of that judgment which appears at page 695 of the report. This was a case in which an attempt was made to obtain the issue of a prerogative writ against a Royal Commission. His Honour said:

"The reported conclusions of the Commission no doubt serve to inform the mind of government and may in consequence to a greater or lesser extent be instrumental in shaping the course of future legislative or executive initiatives, but they neither directly determine or of their own force affect rights nor does the reporting of particular conclusions satisfy some condition precedent to the exercise of power which will in turn affect rights or otherwise give rise to legal consequences."
His Honour refers to a number of cases including Testro Bros. Pty. Ltd. v. Tait (1963) 109 C.L.R. 353 and the judgments therein contained, from which it is quite clear that a Royal Commission does not make a determination of rights. It is therefore not under an obligation to act judicially in the sense in which those words are used in the statute. I would not like the use of this expression to be misunderstood. What I say is, that while with the assistance of counsel I have every expectation that this inquiry will be conducted justly and fairly, I am in my view not acting judicially within the meaning of that phrase in Section 68 of the Evidence Act.

As I mentioned in the course of earlier discussions, I am aware that, sitting as a Royal Commissioner in Victoria in 1950, Lowe J. prohibited the publication of certain evidence given which had been given in private and also particulars of two witnesses who feared intimidation. There appears to have been no discussion regarding the power to make such orders and they were not challenged. For the purpose of that inquiry it was deemed by statute to be a proceeding in the Supreme Court before a judge of the Supreme Court and this may well explain why orders made on that occasion cannot, in my view, be made here.

Counsel assisting the Commission has already indicated that in the event of my ruling as I have, he intends, with the support of other counsel appearing, to approach the Attorney General to recommend some legislative amendment which would enable the Commission to exercise powers similar to those contained in Section 69 of the Evidence Act. From what I have been told by counsel of the evidence likely to be called, I think that this is a proper step. I add only this, that I think it is quite clear that no blanket order, to use Mr Abbott's phrase, could in my view be made under Section 69 of the Evidence Act; each case must be considered on its merits and on its own particular facts. This I think appears quite clearly from what was said by Cox J. on 9 July last in a case relating to a prosecution under the Customs Act, to which counsel assisting the Commission has been good enough to refer me.

If therefore the solution were the mere application of Section 69 of the Evidence Act to Royal Commissions, or to this Royal Commission, it would be necessary that a separate application would need to be made in respect of each witness as he appeared to give evidence. The alternative would be some change in the form of the legislation.
ADMISSIONS AND ASSERTIONS MADE TO COMMISSION BY A GROUP OF PRISONERS AT YATALA LABOUR PRISON—
23 FEBRUARY 1981

ADMISSIONS

Escapes, etc.

1. Conditions in prison are so inadequate and repressive that most prisoners at some time during their confinement discuss, in a general way, escapes from the prison.

2. Many prisoners discuss how they might themselves escape or how they might help others to do so.

3. A few prisoners take action to escape but either give up or get caught before the plans can be carried out.

4. There were about seven escapes from Yatala involving fifteen prisoners in the last two years. Only seven of these prisoners remained at large for longer than a week and only two are still at large.

5. Most escapes were known by only a small number of friends and associates of the escapee(s) before they took place.

6. An escape committee does not exist in Yatala, nor do any of the other committees mentioned by the witness.

7. Close friends and associates of an escapee will often do what they can to help him escape, but secrecy is an essential prerequisite for a successful escape. To suggest that a group of ten to fifteen prisoners vote on an escape and then take part in its execution is ridiculous.

Homosexuality

1. Deprived of all but the slightest contact with the opposite sex in prison, homosexuality is not uncommon.

2. Many prisoners who take part in homosexual relationships do so only when they are in prison.

3. It is not uncommon for prisoners to protect consenting homosexual partners from the attentions of others.

4. Rape, sexual assault and sexual harassment occur in prison as they do in the wider community and they are deprecated in prison just as they are in the wider community.

5. No suitable alternatives such as separate showering facilities, etc., are available to homosexual prisoners. They are forced to mix with the general prison population in every way whether or not they want to.

Misappropriation, etc.

1. There has been misappropriation from the canteen but it is not known by whom. We, the undersigned, have not received any illicit goods from prisoners working in the canteen.

2. There has been some misappropriation of library tapes coming into the prison.

3. Gambling takes place in the prison.

4. Some prisoners do manage to secure for themselves better issues of clothing and minor amenities than others, as in any community.

Drugs

1. Drugs occasionally get into the prison.
ASSERTIONS

1. The deprivation of liberty which a prisoner experiences is his punishment. Given he must undergo this isolation, conditions inside the prison should be as near as possible to reasonable conditions outside. Prisoners do not seek to live luxuriously, just adequately.

2. Conditions at Yatala are so inadequate that discontent among prisoners sometimes finds expression in the ills described in evidence before the Royal Commission. In particular:

(i) The lavatory facilities in the cells are disgraceful consisting as they do of buckets or plastic porto potties. Plastic porto potties are suited only for the purpose for which they were designed, namely occasional holiday use. They leak and fall apart in gaol. This is terribly important to prisoners confined to their cells for between sixteen and eighteen hours a day.

(ii) Washing facilities are inadequate. There are no reticulated facilities in the cells.

(iii) There are no cells with power points. If prisoners or their families can provide funds for televisions or other electrical equipment, the prisoners' families generally have to subsidise the cost of batteries to run them because it usually costs more than a prisoner's wages to pay for the batteries.

(iv) The exercise yards and their 'equipment' are inadequate to provide the most basic outdoor recreational needs of prisoners.

(v) Opportunities to participate in activities such as debating, drama, music and creative arts has been drastically reduced over recent years.

3. If the Royal Commission is unable to inquire into and report upon the adequacy of the conditions in prison, it will be unable to constructively help overcome the causes of prisoner discontent which contribute to the ills the Commission is hearing about.

4. A fair and consistent application of the rules and regulations governing prisoners is impossible. They are outdated and repressive. The unfair and inconsistent application of the rules and regulations by prison authorities is a major cause of discontent among prisoners.

5. Homosexuality is not an offence in South Australia where citizens can exercise a choice of sexual partners. It is effectively proscribed in prison where there is no such choice. Prison officers prosecute sexual behaviour in the prison by selectively applying the outdated rules and regulations which govern prisoners generally. This is a cause of discontent among some prisoners. Rape, sexual assault and sexual harassment should continue to be proscribed as they are in the wider community.

6. The Visiting Justice system as an unjust one for the hearing of alleged breaches of prison discipline. It is also a major cause of discontent among prisoners.

7. There must be provision for regular review of prison conditions by a monitoring agency separate from the Department for Correctional Services.

8. The time spent by prisoners confined alone in their cells is excessive. It is not necessary for security. It simply makes the gaol cheaper to run. The time in cells should be reduced.

9. The choice of work is too limited. There is inadequate training and pay for labour is insufficient to provide the basic necessities of tobacco requirements, newspapers and toiletries.

10. S and D Division conditions are nothing short of cruel. They utilise sensory deprivation as punishment. Incarceration there is used indiscriminately by senior prison authorities as punishment before trial and represents an additional punishment in a system already designed as punishment.

11. Liaison between inmates and administration is almost non-existent. A prisoner liaison committee should be set up to meet with administration on a regular basis to discuss problems within the prison.

12. Incoming and outgoing mail is censored. This should cease. Only such scrutiny as is required by security should be permitted.

13. There are restrictions on visitors to prisoners which are unnecessary for security. Visitors cannot smoke or even carry pen and paper. There is discrimination in the granting of contact and extended visits.
**STAFF PERMIT**

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**APPROVED**

Name of Yatala Officer (Block Letters)

*Superintendent*  

Signature
STATEMENT OF SOME PRISONERS AT YATALA LABOUR PRISON 
RELATING TO DISCIPLINE

Rules and Regulations

We, the undersigned, inmates of Yatala Labour Prison, had never seen or had read to us a copy of the prison rules and regulations until counsel representing us at the Royal Commission drew them to our attention. We have, on the other hand, been told about some of the rules by prison officers or fellow prisoners. We say that each prisoner should be provided with a copy of the rules and regulations which govern his conduct while in prison.

Having learnt of the rules and regulations we say that many of them are outdated and repressive. We say they should be amended and that we should be consulted during the amending process.

The present rules and regulations are enforced discriminately which leads to a feeling of injustice in those against whom action is taken.

Discipline cannot be properly maintained if the rules and those policing them do not command a measure of respect from those they govern.

The Visiting Justice Courts

We have had personal experience on the Visiting Justice courts which are part of the mechanism set up to deal with breaches of prison rules and regulations. These courts are not independent dispensers of justice but are the highest point in the disciplinary hierarchy in the prison. If the ordinary prison officer does not deal with the disciplinary problem he refers it to his superior. If the Superintendent does not deal with it he refers it to the Visiting Justices whose court is effectively controlled by the prison administration.

Individual prisoners will give evidence of particular injustices within their own knowledge but the Visiting Justice system is inherently unjust and the following are the major complaints we make about it:

1. The prison authorities appear to have control of the Visiting Justice(s) and the proceedings.
2. There is no appeal from the decisions of the Visiting Justices.
3. Prisoners have no right of representation before a single Visiting Justice.
4. The right to have representation before a court of two Visiting Justices is vigorously suppressed.
5. Prisoners are rarely given written notice of the charge or charges against them.
6. Prisoners have no choice to have their charges heard in an outside court.
7. Prisoners charged are generally placed in D Bottom or some other area of detention before being dealt with by the Visiting Justices.
8. Prisoners are generally taken out of the court while the Visiting Justices deliberate on the prisoner’s guilty and/or penalty in the presence of prison authorities.