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THE UNIVERSITY OF SYDNEY
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PROCEEDINGS

OF THE

INSTITUTE OF CRIMINOLOGY

1971 No. 2

SOCIAL
DEFENCE

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Report of a seminar on

SOCIAL DEFENCE

The Contribution of the Correctional Services

held in

the State Office Block at

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on 10th June, 1971

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THE INSTITUTE OF CRIMINOLOGY, SYDNEY UNIVERSITY LAW SCHOOL

Address: 173–175 Phillip Street, Sydney, N.S.W. 2000.

The Institute of Criminology is an organization within the Department of Law of the Sydney University Law School for teaching and research in criminology and penology. It is under the immediate direction of the Challis Professor of Law, Professor K. O. Shatwell.

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SEMINAR ON
"SOCIAL DEFENCE:
THE CONTRIBUTION OF THE CORRECTIONAL SERVICES

CHAIRMAN'S OPENING ADDRESS

THE HONOURABLE SIR LESLIE HERRON, K.B.E.,C.M.G.,
Chief Justice of New South Wales

First of all may I make very welcome the Minister of Justice for New South Wales, the Honourable J. C. Maddison, who is going to present a case for a Ministry of Social Defence. That is something new, something that I think is modern, and if I may say so, Mr Minister, we are very pleased that you are going to contribute this modern approach. We also have an introduction to the papers on corrective services by Mr W. R. McGeechan, the Commissioner of Corrective Services, and we are pleased to welcome his contribution. Then we have four papers presented by officers of the Department of Corrective Services. Mr D. N. Pyne will be speaking on probation, Mr J. E. Nash on the custodial function, Mr R. Donnelly on conditional liberty, and Mr B. Barrier on the special work release programme.

Before introducing the subject I would like to welcome you all and to say that it is very satisfying to see such an extra-ordinarily good attendance here this afternoon. I thank the Institute of Criminology for its interest in raising these important social and legal questions, and welcome particularly the speakers. As I have said, we are to be favoured with a series of papers on the topic of social defence. This to my mind means crime control as applied to today's society.

Australia's history over the past two hundred years is of value in illuminating the present, and may I draw your attention on this subject, by way of contrast with today, to the plight of prisoners and the state of the prison system in England before the First Fleet arrived at Port Jackson in 1788. Let us remember on an occasion such as this the Act of 19 George III, Chapter 74, passed in 1779 in consequence of the loss of the American colonies and the end of transportation of hundreds of prisoners annually to America. The Act provided that –

> *"In lieu of transportation male prisoners should be punished (note the word* punished *in an Act of Parliament) by being kept on board ships or vessels for the security, employment and health (mark that, too) of the persons to be confined therein, and by being employed on hard labour in the raising of sand, soil and gravel from and cleansing the river Thames and any other river navigable for ships of burthen."*

Thus the notorious hulks came into existence, and the hulks became grossly overcrowded. Sir Victor Windeyer says in his book *Legal History* that they were "a disgrace to a civilized country". Howard agitated for reform, and in 1784 the Act of 24 George III, Chapter 56, was passed providing for transportation of felons. By Order in Council of 1786 New South Wales was nominated for this purpose, and the First Fleet left one year later, in May 1787.

One cannot dwell upon those days without a feeling of nausea. Many of the convicts were sent here for political offences – for instance, the Scottish Martyrs, the Irish exiles and the Dorchester labourers. New South Wales derived much benefit from such settlers, no doubt. But conditions in the gaols and the hulks were terrible. They were overcrowded, insanitary and filthy. One runs out of adjectives to describe the filth and squalor of these terrible dens of iniquity. But crime increased nonetheless.

Today we are in a world of change. The annual cost in New South Wales alone of the remedial prison system and allied services is $53,000,000 in one year. But still we haven't achieved control of crime by punishing the offender. We have only one realistic form of punishment for crime in this State, namely, imprisonment; for capital and corporal punishment are unacceptable, as are fines for the majority of serious indictable offences. And yet crime, particularly amongst young people, is on the increase.

And so we must look for a more sophisticated approach by endeavouring to ascertain the criminogenic factors in society, and endeavour to protect the community from crime by moulding public opinion and other policies of prevention, not punishment. This approach of community education, parole and probation supervision, sophisticated custodial methods and rehabilitation programming are all under close scrutiny today by experts and by the sophisticated men you will hear speak later.

Today's papers seek to throw light, not heat, on new approaches to correctional services. Let us hope that a Ministry of Social defence, if the Minister is able to launch such a modern vehicle, will awaken in the community a refreshing outlook on correctional services, and that the winds of change will blow down the corridor of public apathy and dispel the ignorance of the community, which is, I think, one of the main forces holding back this ideal of social defence.

INTRODUCTION

GORDON HAWKINS
Associate Professor of Criminology

One result of the outbreaks of unrest, riot and revolt in various prisons in Australia and America in recent years has been that correctional systems in those countries have once again become the subject of public attention. They have also been subjected to vigorous critical attacks which have come both from the punitive right and the revolting left.

Unfortunately just as there is no consensus as to the significance of the prison disturbances so also there is no general agreement regarding what should be done. On one hand it is argued that we should abandon reformist dreams and return to older and sounder punitive principles. On the other hand it is said that correctional reform has not failed because it has never really been tried; it has not yet been treated as a serious enterprise.

Both parties are agreed that some action is necessary. But it is impossible to extract a coherent, practicable programme from the cloud of conflicting catchwords and slogans. Yet one truth emerges from the clamour of debate. It is abundantly clear that the penological ideals first clearly articulated by the Quakers of the late 18th century have not yet been realized. We are still a long way from achieving the objective of a correctional system which would be both protective of the community and humane and helpful to the offender.

In the circumstances it is appropriate that an attempt should be made to eschew rhetoric and make both an objective examination of the realities of the present situation in the correctional field and an assessment of future needs and possibilities. It was to this task that the seminar on the contribution of the correctional services to social defence was addressed.

In his closing remarks, at the conclusion of the seminar, the Director of the Institute of Criminology, Professor K. O. Shatwell, said that he regarded the seminar as "one of our most successful operations". The correctness of his judgment can be confirmed to some extent by reading the papers which are reproduced here. They are, as he pointed out, of "high quality". But leaving aside the question what the precise criteria of success are in this context, it is worth pointing out two features of this seminar which rendered it distinctive.

In the first place all of the contributors from the Minister of Justice and the Commissioner of Corrective Services to the four officers from the Department of Corrective Services are active participants in the field of corrections rather than outside observers. This is comparatively rare in seminars of this kind. The point was brought out by Mr J. E. Nash in speaking to his paper on The Custodial Function. "I am pleased" he said "at having this opportunity as a prison officer to discuss the custodial

function of the corrective services as seen by a prison officer. Too often in the past, unfortunately, we have relied on the kindness and goodwill of other people to act as our spokesmen. . ."

The involvement or commitment of the contributors meant that both in the papers themselves and their presentation and discussion there was an element of concreteness which is frequently missing from debates about matters of this kind. It is one thing to be told by a sociologist that prison officers in maximum security institutions work under considerable pressure. It is quite another to hear a prison officer like Mr Nash give an actual "example of a pressure point" in the daily routine of such an institution.

It is true of course that personal involvement is not without dangers. Observers who have some kind of interest in the matter under review may often be subject to conscious or unconscious bias which prevents them from making wholly objective judgments. In this case however – and this is the second distinctive feature of the seminar – all the participants displayed a remarkable degree of objectivity and freedom from bias or dogmatism.

Thus the Minister of Justice, the Honourable J. C. Maddison, M.L.A., far from making extravagant claims emphasized that there was "no short term solution" to the crime problem. He said that "only when we call in aid the scientists, the behavioural scientists, the psychologists, the criminologists and many other people with special skills, are we going to make the advances which I think the community will demand of us". Similarly the Commissioner of Corrective Services, Mr W. R. McGeechan, spoke of "recognized inadequacies" in the corrective services and said "we need a far more diverse programme. . . we need far more expertise".

Mr D. N. Pyne, Senior Probation Officer, in his paper on Supervision in the Community is frank about the relative ineffectiveness of probation supervision as a means of dealing with "the socially inadequate person" and drug offenders. Mr J. E. Nash is equally candid. "The concentration of prisoners within closed institutions is" he says "the greatest single factor mitigating against any real contribution towards a rehabilitative process by the Prison Service". He adds that "Only a comparatively small proportion of prisoners represent such a risk to society that they warrant this costly, and probably harmful, form of control".

Mr Nash concludes his paper with a list of proposals designed to achieve "a more realistic and useful programme". Mr R. Donnelly of the N.S.W. Parole Service in speaking to his paper principally devoted himself to describing "the difficulties in function experienced by a parole officer in the performance of his duties", and spoke of "problems and difficulties which should never have occurred". Like Mr Nash, he too concluded with a list of proposals for reform, and emphasized the need for "a searching evaluation of our own effectiveness in terms of procedure, techniques and results".

Mr B. Barrier, Work Release Co-ordinator, N.S.W. Department of Corrective Services, who followed Mr Donnelly and delivered the final paper on Work Release expressed wholehearted agreement with Mr Donnelly's plea for additional research. But he was able to add that although "answers are not yet forthcoming" a research programme on work release had in fact already been commenced.

Yet although there was considerable emphasis on defects and deficiencies in the correctional system it would be misleading to suggest that the overriding note was one of pessimism. It is true that the Minister of Justice in his plea for the establishment of a Ministry of Social Defence did not encourage facile optimism. Indeed he says in his paper, "The conservatism of past policies gives little cause for satisfaction in the results to date and evokes despondency for the future". At the same time however in his eloquent presentation at the seminar his emphasis was on the positve steps to be taken to avoid the sort of pollution of the social environment which because of past neglect we now suffer in our natural environment. And it may be that our best hope for the future lies precisely in the fact that those who are working in the field of corrections today have, as is clear from the papers which follow, moved beyond the sanguine ingenuousness and comfortable certitudes of the past to a more realistic appraisal of the complexity and difficulty of the task which lies before them.

THE CASE FOR A MINISTRY OF SOCIAL DEFENCE IN NEW SOUTH WALES

THE HONOURABLE J. C. MADDISON, B.A.,LL.B.,
Minister of Justice for New South Wales.

In one form or another national governments have established Ministries of Defence whose primary aim has been to prepare their countries to withstand external aggression – indeed by the quality of their preparedness they hope to show that such aggression should not be undertaken because of the inevitability of its failure. Policies are formulated based on diplomatic and intelligence information; man-power and supply needs are assessed; priorities are established and attitudes determined by the prevailing climate of opinion very often conditioned by the attitude of the government in power.

The totality of a defence policy thus falls to the Ministry of Defence and the Minister directs and announces policy. In Australia, of course, the subsidiary Ministries of Navy, Army and Air Force are expected to work within the framework of the overall policy and to translate the policy of effective action. At least that is the simple theory of the hierarchic structure and whilst it is inevitable that guidelines on occasions become tangled, broadly it works well and is understood by the public.

As yet in Australia nationally, and more particularly in the States because of their constitutional responsibility, social defence policy in a total sense has been ignored. Indeed, the term "social defence" is virtually not known in this country, except in limited academic and correctional administration circles. What then does the term imply?

It means all policies which a government adopts to protect its citizens against crime and all policies designed to prevent or to mitigate against crime occurring. Perhaps "social defence" can be equated with a crime control programme.

Such a programme must, however, extend far beyond the avenues conventionally regarded as having relevance to the control of crime.

The police, courts, and corrections, recognized as the agencies appropriate to deal with crime after it has occurred, all need new impetus and redirection to bring to their work upgraded staff, scientific resources and research. The totality of their aims is to apprehend the offender, and then by virtue of sentence and, where necessary, by supervision in full-time or part-time custody or in conditional liberty affect a transformation in the offender's attitude towards others in his society. Whilst the aims may be easily stated, their fulfilment through deterrence or treatment or understanding or rehabilitation or whatever remains difficult, in some cases virtually impossible. So many offenders by the time they reach the court are case-hardened by virtue of their environment or in some cases indeed by their biological pre-disposition.

In any event the "transformation" which is sought requires the assistance of trained staff skilled in medical science, behavioural science and the social sciences supplemented by continuing research programmes. Such a programme can be possible only when there is an acceptance by courts, politicians and people that there is more to a crime control programme than the deterrent effect of punishment, custodial or otherwise.

But beyond this narrow approach there must be a consideration of policy designed to prevent crime before it occurs. The repeated plea for more and better equipped and trained police officers must not be overlooked. Such a plea must be satisfied but there are yet other avenues of action which must be considered – the provision of trained staff in increasing numbers to detect, in schools particularly, emerging delinquent trends and the provision of decentralized community advisory centres to assist in all aspects of aberrant human behaviour.

In addition, most departments of government should assess the social defence implications of proposed policies. It would certainly be a starting point if administrators before implementing new policies or indeed continuing existing policies were to ask, "Are the policies likely to produce criminogenic factors in society?" In all probability the answer would be, "What are the criminogenic factors? We don't know, we have not the data on which to base a judgment, we have not the skilled staff to make such a judgment." At least to condition such questions would be to point up a new dimension in policy formation and to highlight how inadequate are existing resources in determining the type of society less likely to induce crime.

The Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Japan last year concluded that social defence planning should be an essential part of planning for national development.

The report of the Congress refers to the need for those concerned with social defence policies to "maintain a constant dialogue with the economic and social planner and to pay particular attention to the modification, changes and shifts of policy needed in education, health, housing, industrial and regional development and legislation." This report emphasises by implication, if not directly, the swing away from the importance of considering the causes of crime to the importance of considering ways and means of eliminating from society or varying the impact in society of criminogenic factors. The United Nations Report also emphasises the comprehensive nature of the ideal social defence policy designed to reduce the incidence of crime.

It is a belief in the need for a total unified policy in social defence and embracing the conventional departments concerned with the prevention and detection of crime and the correction of offenders and extending to the new dimension of environmental planning that has led to the consideration of the case for a single Ministry of Social Defence in New South Wales.

The Present Position in New South Wales

Four Ministers are presently concerned directly with the control of serious crime and delinquency in this State – the Premier, the Attorney-General, the Minister of Justice, and the Minister for Child and Social Welfare. In addition, the Minister for Transport is responsible for the administration of statutes concerning motor traffic offences, the Chief Secretary administers certain Acts which create offences carrying substantial penalties up to a maximum prison sentence of five years. Such Acts include the Summary Offences Act, 1970, and the Pistol Licence Act, 1927.

The Premier is responsible for the administration of the police force; the Attorney-General administers the Crimes Act and is responsible for statutes, practices and procedures in the higher criminal courts; the Minister of Justice is responsible for the administration of the Department of Corrective Services, covering prison, probation and parole services for offenders 18 years and over, and for the administration of the Courts of Petty Sessions dealing with summary offences; the Minister for Child and Social Welfare is responsible for the correction of juvenile offenders up to the age of 18 years.

The cost to government revenue in the financial year ending 30th June, 1970, of police, corrective services and child welfare corrections amounted to more than $53 million*. When to this sum is added the cost of administering the superior courts (Court of Criminal Appeal, Central Criminal Court, Courts of Quarter Sessions) and the Courts of Petty Sessions in their criminal jurisdiction which it is impossible to assess because of the difficulty of apportionment between the civil and criminal jurisdictions of the courts, there is already a very substantial outlay for a conventional crime control programme, yet it is doubtful if the programme is really controlling crime in this State.

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* Police: $42,234,441; Corrective Services: $8,886,802; Child Welfare: $2,251,511. (Child Welfare is an estimate only, because of difficulties of exact apportionment of purely correctional responsibilities).

Table A hereunder sets out increases in recent years of persons at particular dates under supervision of the Department of Corrective Services and the Department of Child and Social Welfare.

Table A

	Department of Corrective Services		Department of Child Welfare	
	In Prison	*On Probation*	*On Probation*	*In Institutions for delinquent and truant children*
30.6.1960	3010	1018	4246	977
30.6.1965	3240	2238	6288	1160
30.6.1970	3832	4487	7620	1359
31.3.1971	4161	4524	N/A	1396

Whilst the statistics relating to persons in prison show an increase in the demand for accommodation and services, other statistics show that fewer persons are being sentenced to imprisonment and that sentences are increasing in length. The total receptions into prison for the years ending 30th June, 1960, 30th June, 1965, and 30th June, 1970, are relevant and are set out in Table B.

Table B

Date	*No. of receptions into prison*	*No. of receptions into prison under sentence*
Year ending 30.6.60	16,538	12,133
Year ending 30.6.65	15,328	10,735
Year ending 30.6.70	16,195	9,821

Table C discloses the comparative length of sentences for males serving twelve months imprisonment or more and received into prison during the years mentioned.

Table C

Sentence	*Year ending 30.6.60*	*Year ending 30.6.65*	*Year ending 30.6.70*
1 and under 2 years	867	823	620
2 and under 5 years	480	473	794
5 and under 10 years	66	80	155
10 years and over	12	22	35
Life	10	18	10

Total receptions into institutions for delinquent and truant children for the years ending 30th June, 1960, 30th June, 1965, and 30th June 1970, are set out in Table D.

Table D

Date	*No. of receptions into institutions for delinquent and truant children*
Year ending 30.6.60	1,666
Year ending 30.6.65	1,772
Year ending 30.6.70	1,784

The New South Wales statistics of higher criminal courts 1969 and 1970 show that of persons convicted in these courts, 40.1% in 1969, and 41.3% in 1970 had prior convictions at some time in the children's court. In 1969 and 1970, 28.6% and 27.8%, respectively, of those convicted had no prior convictions.

The raw statistics quoted in the foregoing paragraphs do not require skilled interpretative comment to justify the conclusion that the conventional methods are not controlling crime. When to this is added the increases in crime reported to the police as disclosed in Table E, the magnitude and complexity of the problem of crime control can be appreciated.

Table E

Date	*No. of offences reported to police*
Year ending 31.12.60	31,968
Year ending 31.12.65	41,302
Year ending 31.12.69	62,403

Let it be said at once that the figures quoted in Table E and the figures published in Sydney press in May, 1971, do not of themselves justify conclusions as to the true incidence of crime. They are, of course, gross figures and in addition many factors are known to induce at various times the freer reporting of crime by citizens.

The figures published in May, 1971, are known to be the result of new computerized techniques used by the Police Department for the first time and cover offences of all kinds, serious and trivial, and in the latter category offences never before collated because of the economics of manual

collection. But it is essential that the total crime scene be recorded to permit of the isolation out of serious from trivial, to highlight the high crime rate areas, to enable public education programmes on self protection to be advanced, to establish trends in types of offence and for many other purposes to make more effective the role of the police service.

In New South Wales four departments of government, the Department of the Attorney-General, Police Department, the Department of Corrective Services and the Department of Child and Social Welfare, whilst enjoying close interdepartmental co-operation, nevertheless pursue independent policies and espouse independent philosophies, subject only to those occasions when the Executive Government as a government redirects legislative policy or infrequently directs administrative policy.

That there is overlapping by these departments administratively there can be no doubt; staff training, criminal records and statistics would be cases in point. The desirability of statistical audit from point of report of crime to arrest, to sentence, to child welfare or corrective services assessment, to discharge and re-establishment or otherwise in the community has obvious merit requiring the closest co-ordination and unified direction.

That there are divergent attitudes, divergent policies, within these departments there is equally no doubt. Such divergences reflect different emphases on the nature of the criminal, the nature of particular crimes and the appropriate way in which the offender should be treated. Thus, police officers often express, not publicly, their concern at particular sentences imposed or when a particular offender is released on parole. Conversely, parole officers have expressed concern at the application by police officers of the law as to consorting.

These are all understandable differences flowing from the different function and purpose the particular officer seeks to fulfil. No doubt there are other conflicts between the officers of the departments concerned, all of which should be capable of resolution in the interests of a unified policy of crime control. It should be stated that what is said here is not in any way to be taken as a criticism of the individual departments concerned.

Except insofar as police activity acts as a deterrent to crime, or encourages citizens to take their own protective measures, and except insofar as the Department of Education and the Department of Child and Social Welfare by early intervention by counselling and advice save the emergent delinquent, all activities and programmes of the four departments are directed towards dealing with actual offenders after crimes have been committed. There is at present no department of government charged with the responsibility overall of developing policies designed to reduce the incidence of crime by identifying the criminogenic factors in society and campaigning to eliminate them or at least to modify them.

A New Structure in Government

In the opening paragraph of this paper reference is made to the Ministry of Defence in any country having as its main objects the preparedness of the country to withstand agression from without, to withstand such agression by force if necessary and preferably to deter such aggression.

Similarly, a Ministry of Social Defence should prepare and execute policies designed to marshall resources to protect citizens from criminal aggression, to reduce the incidence of such aggression, to demonstrate the inevitability of failure from such aggression and to condition public opinion in an understanding of the complexity of controlling such aggression. This all involves, as stated by President Johnson's Commission on Law Enforcement and Administration of Justice, "an understanding by the community of the limited capacity of the criminal justice system for handling the whole problem of crime".

No matter how ideally one would like to see self-contained within one Ministry all agencies, all resources concerned with a unified social defence policy, this would not be practicable in some instances and would be undesirable in others.

For example, the responsibility of the Attorney-General as legal adviser to the government, responsible for the appointment of judges and the administration of superior criminal courts and the criminal law and the prosecution of indictable offences, is so long established and understood and interrelated that it would seem unwise, if not impracticable, to vest the criminal process of the administration of criminal law in a Minister of Social Defence.

This is not to say that the substantive law itself and the procedures of the criminal court are not of paramount importance in effective social defence policies. The need for constant review of the criminal law and maximum penalties reflective of contemporary society attitudes and the speedy disposal of cases after arrest without impairing individual rights are well recognized. The need, therefore, for close consultation between a Minister of Social Defence and the Attorney General would be of paramount importance.

Similar considerations would apply to relations between the Minister for Transport and a Minister of Social Defence in relation to traffic offences.

Reference was earlier made to certain statutes administered by the Chief Secretary and having social defence connotations. These statutes are inappropriately placed with the Chief Secretary and clearly should be transferred to the Attorney-General's administration.

What then should be the structure of a Ministry of Social Defence?

Firstly, there should be brought under the one administration the operational agencies of police, corrective services and child welfare in its correctional capacity. Whilst the main role of the police force, namely, the prevention and detection of crime, is distinct from that of the courts and the supervision of adult and juvenile offenders after conviction by the Department of Corrective Services and the Department of Child and Social Welfare, all have the same goal of preventing the commission of criminal offences. Each pursues a different course to achieve this goal which if it forms part of an integrated total social defence policy is more likely to succeed than if different courses run counter to one another.

What course should be followed at any time depends on many factors, some of which are conditioned by available resources within the individual department, for example, finance and man-power, but others of which should be conditioned by the availability of complementary resources in other departments or by much broader considerations of social defence policy looked at as a whole.

To be more specific by way of example – what proportion of police resources should be devoted to the detection of prostitution as against the investigation of fraud or the theft of motor vehicles or breaking and entering and of petty larceny? What should be the criteria for prosecuting juvenile offenders? Public policy and public opinion will substantially affect the decisions made but interpreted now by only one department in isolation. Again, sentencing policy, vested in the unfettered discretion of the courts in most instances, is not required to take account of the facilities and effectiveness of the resources of supervision provided by the correctional agencies. Such examples highlight, of course, the deficiencies of the operational agencies not being able to provide the complete service and programmes to deal necessarily effectively with all reported crime and all convicted criminals.

Whilst it would be proposed to bring police, corrective services and child welfare corrections within a Ministry of Social Defence, the Police Department would retain its identity as such but there are compelling policy and practical reasons for merging adult and juvenile corrections. These include the arbitrariness of drawing a line at chronological age 18 and classifying those under and over that age to separate institutions as against a unified department which would classify to the programme most likely to exploit talents and lead to successful re-integration into the community. That there will always be a need particularly in the younger age groups for separate institutions broadly based on age there can be no doubt, but age is a poor measure of intellectual and emotional maturity and a poor determinant of the appropriateness of classification.

Then because of the continuing problem of crime and delinquency that flows through so many offenders from early youth into adulthood, there is a need for common philosophies and programmes under unified direction. Administrative convenience and economy in regard to records, statistics, staff training, staff appointments and promotions and research would be substantial.

Secondly, there would need to be detached from the Department of the Attorney-General and of Justice the Bureau of Crime Statistics and Research at present being established. This Bureau is charged with the responsibility of co-ordinating and directing through all agencies the gathering of all statistics relative to measuring crime, sentences and the correction of offenders and to the interpretation of them. The paucity of statistical information of this kind in New South Wales and in Australia generally has been criticised on many occasions and has hindered the evaluation of the effectiveness of the work of all agencies charged with the responsibility of controlling crime – police, courts and corrections.

As the name of the Bureau implies, it will also be charged with promoting research, both intra- and extra-government. This will require expanded research resources in government departments within and without those forming part of the Ministry of Social Defence. The President's Commission on Law Enforcement and Administration of Justice suggested that at least 3% of the budget of the criminal justice system should be allocated to research, and Professors Norval Morris and Gordon Hawkins in their recent book The Honest Politician's Guide to Crime Control suggest it should be 5%. Whatever funds in future are provided in New South Wales will be an improvement on the present position where research by government agencies and departments is virtually minimal and the only research has been carried out by the Institute of Criminology at the University of Sydney.

The Bureau is to be advised by a Committee consisting of members whose talents are a blend of academic and administrative experience. Chaired by the Under Secretary of the Department of the Attorney-General and of Justice, the Committee has three members from the staff of this Institute, namely, Professor Shatwell, Mr P. G. Ward and Dr W. E. Lucas, and seven members of the Advisory Committee to the Institute, namely, Dr W. A. Barclay, Director of State Psychiatric Services; Professor T. Brennan, Professor of Social Administration, University of Sydney; Professor S. Encel, Head of the Department of Sociology, University of New South Wales; Mr F. D. Hayes, Director of Probation and Parole, Department of Corrective Services; Mr W. C. Langshaw, Under Secretary and Director, Department of Child Welfare and Social Welfare; His Honour Judge A. Levine, a District Court Judge and Judge of Quarter Sessions; and Mr W. R. McGeechan, Commissioner of Corrective Services. In addition, the following are members of the Committee – Professor Charles B. Kerr, Professor of Preventive and Social Medicine, University of Sydney; Professor A. H. Pollard, Professor of

Economic Statistics, School of Economics and Financial Studies, Macquarie University; Superintendent R. H. Lucas, Senior Police Prosecutor; Mr L. C. Holmwood, Deputy Vice-Chancellor, Macquarie University; Mr R. G. Walker, Deputy Commonwealth Statistician, Government Statistician of New South Wales.

This Advisory Committee was structured by virtue of the experience of its members to fix within the broad charter of a Ministry of Social Defence extending into but beyond the areas of responsibility of the conventional departments dealing with the control of crime. Thus, the Bureau should be geared to advise on the factors in the community which can be shown to be conducive to delinquency and crime. It would need therefore to contain qualified sociologists, criminologists and research staff for consultation with all departments of government concerned with development and planning; such consultation would need to extend to advising on specific projects, the establishment of research facilities within departments for initiating policies and evaluating the success of programmes.

In all projects sponsored by a Ministry of Social Defence emphasis must be placed on evaluative research, not only to assess the benefits of programmes but to show to governments and to the community the return from the investment made.

A third major requirement in the Ministry is an Advisory Committee from inside and outside government to keep under review the sentencing principles and policies of the courts, the legislative provisions for sentencing, the administrative aids for more effective sentencing in controlling crime and to promote sentencing seminars and discussions. This Institute of Criminology pioneered sentencing seminars in Australia and they have proved invaluable in bringing together judges and magistrates and administrators concerned with the prosecution and correction of offenders. The free exchange of views has brought a better understanding of the respective roles of the parties involved in the criminal justice system. The proposal to establish an Advisory Committee within a Ministry of Social Defence would not be intended to supplant in any way this Institute, but rather to complement the work of the Institute and to focus attention on the key to a crime control policy, namely, the sentence of the court.

Fourthly, there would be a need to set up a section within the Ministry to make known the programmes undertaken, the research being done, the results of such research. Generally, this would be a promotion and information section capable of projecting not only in a technical professional way to specialist and professional groups, but perhaps more particularly to the public at large. Social defence policies must be understood by the layman and he must be satisfied that the investment in such policies from his tax is for his benefit, more often, of course, in the long term than in the short.

The problem here is that governments reflecting expressed community views are most often expecting a quick return and results from an expenditure made. Thus, many continue to see the control of crime as achieved only by the use of maximum sentences. As previously mentioned, whilst sentences are progressively getting longer, they do not seem in themselves to be effectively controlling crime. To move into some of the areas which should be the concern of the Ministry of Social Defence as previously discussed will take considerable time to evaluate. Will the community be prepared to wait, is the question. Only if the communication is constant and understood, is the answer, and initially this will require recourse to tested experience in other countries. How relevant such experience is to local conditions is another matter.

The conservatism of past policies gives little cause for satisfaction in the results to date and evokes despondency for the future. The resources of science must be called in aid of the criminal justice system and in aid of an environment less likely to be crime inducing. This will require a substantially greater investment in social defence than hitherto experienced in this country.

President Johnson's Commission stated in summary, as applicable to the United States of America – 1. "We will not have dealt effectively with crime until we have alleviated the conditions that stimulate it." 2. "To lament the increase in crime and at the same time to starve the agencies of law enforcement and justice is to whistle in the wind." 3. The officials of the criminal justice system "must be willing to take risks in order to make advances. They must be bold."

These imprecations apply equally to New South Wales and would best be fulfilled by a Ministry of Social Defence.

INTRODUCTION TO PAPERS ON CORRECTIVE SERVICES

W. R. McGEECHAN, A.A.S.A.,A.C.I.S.,
Commissioner of Corrective Services, New South Wales

The four officers from the Department of Corrective Services, viz.,

Mr D. N. Pyne, Dip.Crim.,
Senior Probation Officer,
Adult Probation Service;

Mr J. E. Nash,
General Division Training Officer,
Department of Corrective Services;

Mr R. Donnelly, B.Soc.Wk.,
Parole Officer,
New South Wales Parole Service;

Mr B. Barrier, Dip.Soc.,
Work Release Co-ordinator,
Department of Corrective Services

will be presenting their views and observations on some functions of the Department of Corrective Services.

In terms of a selected sample, I consider that these four officers typify the desirable and attainable models of a contemporary Corrective Service concept.

The intention of the presentation is simply to demonstrate the views of some officers of the Service representing some areas of the overall philosophy. The time available will not allow each of the speakers to present other than the briefest of profiles in the areas nominated for their observations and, clearly, a great deal will not be said which in a more exhaustive treatment would better demonstrate the principles sought.

The views of the contributors will attempt to demonstrate some of the choices available, but without being fully exhaustive so far as the various shadings of programmes are concerned.

There may be evidence in the theme adopted by some of the speakers of some suggestion of confusion in identifying with the precise requirements of their respective roles. One would believe this symptom is perfectly reasonable in an atmosphere of change where broadened outlooks and self-examination is prevalent. The ultimate definition of role may take considerable time and in the interim I would personally question the validity of any precisely identified role in the functional areas other than those of purely a mechanical origin.

The overall policy of the Service is to attempt to place into the community a stable, better adjusted, socially oriented ex-offender with an acquired philosophy of better citizenship than has been evidenced in the past. The policy programme must, of necessity, have a high incidence of failure but the ideal has a sound basis and the demonstrated results of the past would not allow a permanent adoption of erstwhile attitudes.

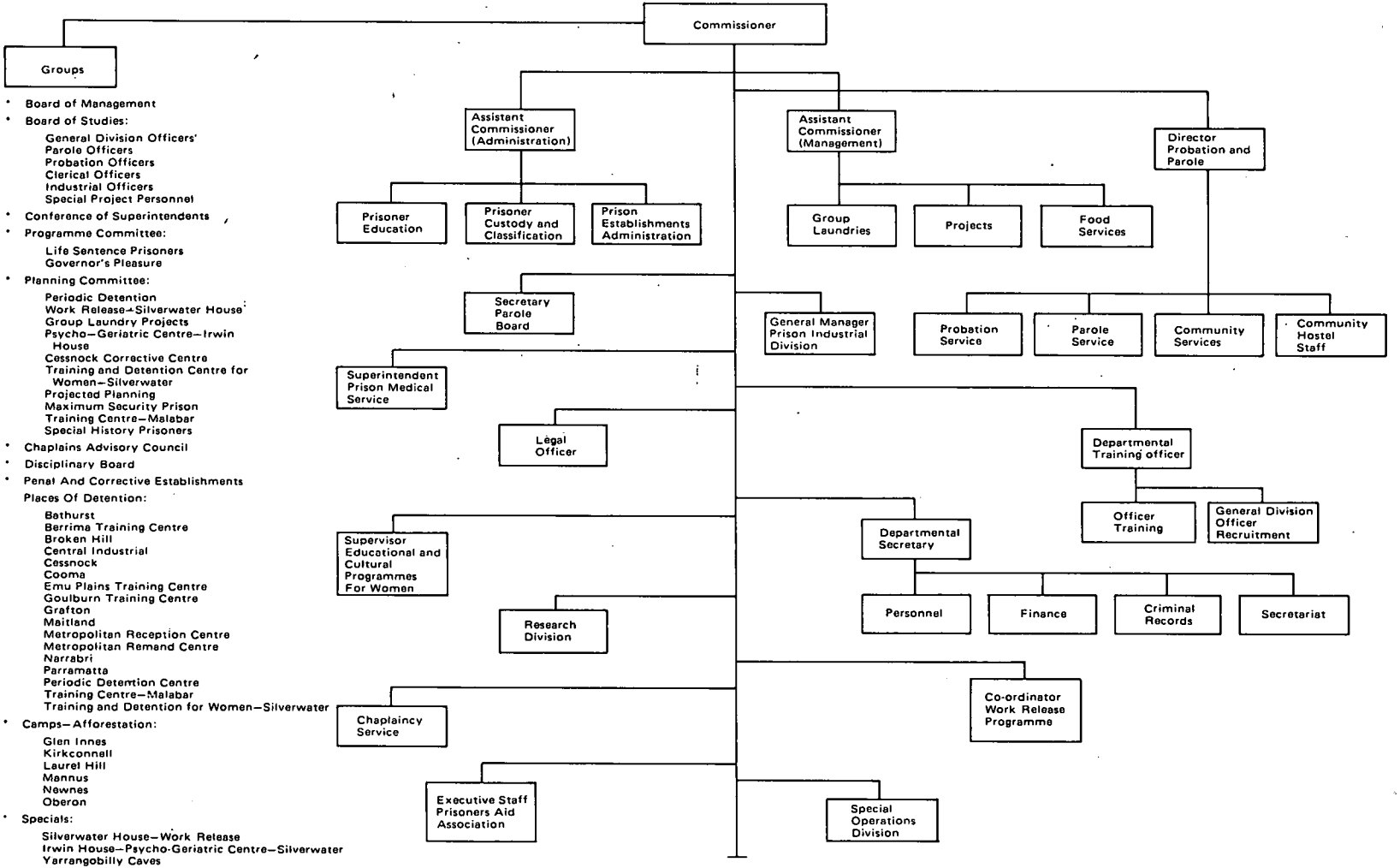
The functions of the Service are carried out in a large number of separate settings and areas ranging from the community area to the twenty-six places of detention. These places of detention range in form from the extremes of security to the most liberal of penal sentence forms.

It is not intended to illustrate lengthy tables of historic matter as most of these are invariably contained in the Annual Report of the Department of Corrective Services and this report is available to interested petitioners.

Diverse and contemporary programmes are being both operated and planned to meet the recognized inadequacies and needs of the past and attempts made within recognized tolerances to project, in theoretical model form, the needs of the future.

As a matter of formal record, may I observe that the evolution of a corrective and diagnostic service may only proceed on a pragmatic yet selective plan paced to the level of social acceptance by the community at large?

DEPARTMENT OF CORRECTIVE SERVICES
ORGANIZATION CHART 1970/1



SUPERVISION IN THE COMMUNITY: PROBATION

D. N. PYNE, *Dip.Crim. (Sydney)*,
Senior Probation Officer,
N.S.W. Adult Probation Service.

Historical and Philosphical Genesis

1. It will be twenty years, on 31st July, 1971, since the New South Wales Adult Probation Service was established. The Service was originally conceived as a court-oriented organization, operating under the administration of the Attorney-General, to offer pre-sentence reporting and supervision of offenders principally to Chairmen of Quarter Sessions Courts. The Probation Service was organized under a Principal Probation Officer and officers were accountable to the courts for the submission of pre-sentence reports and supervision of offenders.

2. It is a primary responsibility of criminal courts to protect the public interest. The Adult Probation Service was founded on the principle that this responsibility may be better discharged, in selected instances, by the release of offenders under supervision and guidance. It presents the offender with the alternative of conducting himself as a responsible citizen or of being brought back before the court for sentence for the original offence.

The American Bar Association's Special Committee on Standards for the Administration of Criminal Justice approved a draft in August 1970 of Standards relating to Probation. In Part I, General Principles, 1.2 Desirability for Probation, the draft states,

> Probation is a desirable disposition in appropriate cases because,
>
> (i) it maximises the liberty of the individual while at the same time vindicating the authority of the law and effectively protecting the public from further violation of the law;
>
> (ii) it affirmatively promotes the rehabilitation of the offender by continuing normal community contacts;
>
> (iii) it avoids the negative and frequently stultifying effects of confinement which often severely and unnecessarily complicate the reintegration of the offender into the community;
>
> (iv) it greatly reduces the financial costs to the public treasury of an effective correctional system;
>
> (v) it minimises the impact of the conviction upon innocent dependents of the offender.

These propositions have equal force and equal validity in the New South Wales situation.

3. The major initial focus in New South Wales was on first offenders and persons under the age of thirty years who were convicted in Courts of Quarter Sessions. Almost negligible service was provided to Courts of Petty Sessions and country operations were strictly limited. Probation Officers only appeared in the Supreme Court, Petty Sessions and Children's Court jurisdictions by specific invitation of the presiding judicial officer.

Current Philosphical Position

4. In line with progressive world-wide trends in criminology the Adult Probation Service is now one specialized function in an integrated range of corrective practices controlled by the Minister of Justice and administered by the Commissioner of Corrective Services. Adult Probation has become the initial corrective process in a co-ordinated overall pattern of social defence against the adult offender. Probation remains very much an integrated part of the total process of the administration of justice as a court-oriented organization, but has now also become more directly linked with the operations of other related corrective programmes.

5. While a Director of Probation and Parole Services is the administrative head of both Services, the operations are directed separately by a Principal Probation Officer and a Principal Parole Officer. Each Service maintains its separate professional function, allowing specialized skills, techniques and experience to be used to best advantage in dealing with these two broad groups of offenders. The fact that the conviction and subsequent release on recognizance of probationers is frequently unknown to the community at large creates a strong desire in these offenders that supervision proceed on a completely confidential basis, without approach to other persons or agencies. This desire must be respected as much as possible if the probation relationship is to be developed to its fullest potential. The use of community resources in probation, accordingly, proceeds on a strictly individual basis, such agencies being called upon as can best contribute to the special requirements of each individual situation, with the full prior concurrence of the probationer.

6. At present a widening of "Probation" activities is being sought both by the Minister and the courts. Country Courts of Quarter Sessions and both Metropolitan and Country Courts of Petty Sessions are seeking the service of Probation Officers. Since 1969 a permanent service has been provided to Central Court of Petty Sessions and approximately one-third of our cases now come from this jurisdiction.

Plans to widen Petty Sessions operations and to service fifteen country Courts of Petty Sessions await implementation.

7. The professional practice of probation is directed towards the achievement of more permanent goals than inhibition of anti-social behaviour, under authoritative restraint. Techniques are employed in an endeavour to develop within the probationer those qualities of character which lead to the permanent assumption of a stable and responsible manner of living. A wider variety of offenders is now supervised by the Service and there is an increasing concentration on less remedial offenders than formerly.

8. Referring to "sentencing" in his opening address to the Institute of Criminology's Sentencing seminar in 1967 the Chief Justice, The Honourable Sir Leslie Herron, stated (1) that,

> *The position of the Court is balanced between the competing claims of the traditional ideas of punishment on a culpability or deterrent basis and more modern ideas of rehabilitative treatment.*

The pre-sentence report prepared by Probation Officers increases the amount and quality of information upon which judicial officers may base better-balanced sentences.

Pre-Sentence Reports

9. Because of conflicting considerations in achieving the competing goals of society's protection, an offender's punishment, deterrence and reformation and the deterrence of others from future offences, sentencing has become increasingly a matter of unique, individual decisions.

10. Individualization of sentencing is based on the widest amount of relevant information about the offence, the offender and society. Pre-sentence reports endeavour to present reliable and significant facts concerning the social background and characteristic behaviour of an offender, as well as indicating his attitudes both to the offence and to his proposed future conduct. An attempt is made to reflect the offender against his cultural environment in such a way as to reveal how his standards and behaviour compare with those of society generally. It is recognized that offenders will be returned to society and that judicial officers may be assisted considerably by a probation officer's assessment of the particular sub-cultural situation of individual offenders.

11. It is basic to pre-sentence reporting that facts and judgments are obtained from persons and organizations who have observed the offender's attitudes, actions and reactions during his critical

developmental stages and in situations of both stress and relaxation. A balanced assessment is sought of the offender's strengths and weaknesses in order to assist the court in determining how best to sentence and to assist any, and all, those supervisory, guiding agencies which may have subsequent responsibility for the offender.

12. His Worship Mr Wood, S. M., of the Tasmanian Petty Sessions jurisdiction, in a paper to be presented at the forthcoming seminar on "Confidentiality" in Brisbane, has drawn attention to an area which has always been of extreme importance to New South Wales probation officers in preparing pre-sentence reports. He states,

> *One must not overlook the fact that some offenders and their families are very adept at manipulating situations for their own purposes, and some see immediate advantage to themselves in imparting confidences to the probation officer to secure his sympathetic involvement in the hope that a favourable report will be submitted to the court.*

13. This question of assessing and counteracting "witness bias", either for or against an offender, is one of the crucial responsibilities or pre-sentence reporting, and indeed, of any function involving the judgment and control of human behaviour. The New South Wales Probation Service insists on as wide an inquiry as possible into all aspects of an offender's background and social living so that supporting and/or conflicting opinions can be gathered to allow the best balanced total assessment prior to sentencing. The wider the range of significant opinions the less likely one is to rely mistakenly on biased evaluations. The value of this wide range of contacts will be again referred to in my remarks on supervision.

14. Notwithstanding the utmost precautions and in spite of the widest possible inquiry within the available time, it is often salutary to compare judgments made of a probationer at the pre-sentence report stage with judgments based on, say, a subsequent three-year period of supervision. This can be particularly applicable in cases, for example, where a Petty Sessions Court has been obliged to deal with a matter without the "luxury" of an adequate remand period, or, say, where the major part of an offender's background and previous social history lies interstate.

15. Despite the possibility of bias in a pre-sentence report, to the best of my knowledge there is no decided case of an appeal based on incorrect information or patently biased assessments contained in such a report during the past twenty years. Probation officers present their reports on oath and may be examined by Judge, Crown Prosecutor and defence counsel on their evidence and opinions.

16. It is an important principle of pre-sentence work in New South Wales that an offender acting on the advice of his legal representative has an initial right to accept or reject an offer by the Adult Probation Service to prepare a pre-sentence report. This is only subject to the judiciary's ultimate right to inform itself in any way it sees fit in relation to sentencing.

17. Although a pre-sentence report is primarily designed to assist the court in determining an appropriate sentence, it is frequently of value to other bodies and persons who have a subsequent responsibility for, or involvement in, an offender's future management. It may, for example, be of assistance to the Parole Board, Department of Public Health (psychiatrists), the Parole Service, Department of Corrective Services custodial and training staff, and private individuals such as psychiatrists or medical practitioners. It certainly is of primary importance to probation officers in the discharge of their supervisory function.

Supervision

18. Perhaps the most important concept to be stressed in this area of a probation officer's work is that society properly designates him as an officer of the Court, exercising a delegated function. The judicial officer (Justice, Judge or Magistrate) has the responsibility of interpreting society's wishes regarding individual offenders and specific offences, at a particular point in a society's development. It is a matter for either the Legislature (interpreted by a judicial officer) or a judicial officer interpreting the common law, to indicate the appropriate course of action in dealing with an offender. It then becomes the duty of the probation officer, in cases allocated to him, to ensure absolute compliance with society's clearly defined minimum standards.

19. It becomes mandatory for a probationer to be of good behaviour, to remain in employment, to accept normal family responsibilities, and avoid undesirable associates. Whilst it is recognized that many persons who have offended against the criminal law will take considerable time to change their behaviour patterns, relatively little tolerance is exercised, as a general rule, where these minimum standards are not being met.

20. However, considerable discretion is exercised in the general approach to supervision and guidance. It has been clear from the beginning of Probation Service operations, twenty years ago, that the courts intend probation officers to exercise discretion and tolerance in their rehabilitative efforts. The usual wording of the common law recognizances relating to probation supervision says, inter alia, "... and to obey all reasonable directions of that Service". It is the obvious

intention that a probation officer should be "reasonable", and in practice this discretion is so exercised. Every effort is made to encourage the development of self-dependence and flexibility in probationers, simultaneously with seeking their acceptance of normal community responsibilities.

21. Perhaps the initial major task of a probation officer, in his supervisory capacity, is to resolve the conflicting demands of the authoritarian and rehabilitative responsibilities which he is required to discharge. In operational terms this usually becomes a matter of developing a relationship of trust and confidence between the probationer and the probation officer, where emphasis is on future goals rather than past failures. It is imperative in developing this relationship that a probation officer be completely honest with his client. The probationer must have no illusions. He must firmly understand that irresponsible, anti-social behaviour will not be tolerated and that persistent or flagrant breaches of good conduct will, in fact, be reported to the court. As the same time it is made clear that the principal emphasis will be on assisting the probationer to develop those personal strengths and social techniques which will better enable him to cope with society's requirements. This approach does work in practice, as is evidenced by the relatively low "breakdown" rate of offenders whilst under supervision.

21a. It has been the experience of the Adult Probation Service that offenders released on probation after the preparation and presentation of a pre-sentence report respond better than those placed under supervision without a report having been prepared. It seems that an offender is more prepared to critically examine his behaviour, moral values, relationships with other people, and his attitudes when he has been apprehended and is facing the possible loss of his freedom. He is usually prepared to talk more objectively about himself and his conduct at this stage and to evaluate his future in more realistic terms. Similarly, other persons closely and significantly connected to an offender tend to examine what has brought the offender to the position of being convicted of a criminal offence. Additionally, they are often prepared to review their own conduct, attitudes and relationships with the offender from the point of view of assessing the effect of their influence of the offender's previous behaviour. Quite often the beginnings of a confidential relationship between a probation officer and the future probationer and his family is established at this point.

On the other hand, many offenders who are released under supervision without a pre-sentence report being prepared, are reluctant to talk, as they have obtained their freedom and have no wish to examine their conduct. They often express the view that they "got this far on my own and I don't need you now".

22. The value of the pre-sentence report as a contributing factor in the development of a positive relationship between the probationer and his probation officer in the supervisory situation cannot be over-stressed. Although it is painstakingly emphasized at the pre-sentence stage that a pre-sentence report is prepared primarily for the assistance of the court, and not directly for the benefit (or otherwise) of the offender, it is very frequently the case that the offender identifies his conditional liberty as being directly related to the pre-sentence report. Consequently this contributes to the quick establishment of a co-operative, counselling relationship.

23. This favourable climate often extends to many of those significant persons who were interviewed originally in relation to the offender's background and character. This is an extremely important by-product, as quite often these people are of tremendous importance in the supervisory and rehabilitative casework. Personal and social behaviour is largely a matter of inter-personal relationships, and often there is as much work to be done with, and through, significant associated persons as there is with the probationer himself. For example, it is quite unprofitable to be counselling a probationer-husband towards more harmonious, tolerant attitudes in his marital situation whilst his wife is persisting in unreasonable demands and poor personal conduct. Modification of her attitudes and conduct is part of *his* rehabilitative programme. Experience suggests that the influence of an objective third party can achieve change in such situations where the two partners themselves are too subjectively involved. The contact made with his wife during pre-sentence inquiries paves the way for follow-up guidance work in the supervisory stage.

24. Similarly, a probation officer is often able to extend his influence for change in a probationer by modifying the attitudes of employers, family, associates, other government, local government and private social agencies who have dealings or contact with his probationer. Many of these contacts have been made initially at the pre-sentence level. A probation officer is expected to develop an expert knowledge of his community and to know personally a wide range of "key" people, public and private, in those districts where he operates.

Extension of the Supervisory Function

25. There is growing evidence of more responsibility being delegated to the Adult Probation Service, both by the judiciary and the medical profession. As a direct result of the Institute of Criminology's 1967 Sentencing seminar, Chairmen of Quarter Sessions and Stipendiary Magistrates frequently delegate to this Service the responsibility of

terminating the "reporting" condition of a recognizance where deemed appropriate. This expression of confidence has been appreciated by this Service and the successful exercise of this delegated responsibility may be measured by the fact that, to date, in only one case where early termination of reporting has been approved has the probationer breached the remaining "good behaviour" conditions of his recognizance during the unexpired term of the recognizance.

26. Whilst the Probation Service always faithfully and responsibly supervises the orders made by courts, close attention is paid to ensuring that the Service operates within strict legal bounds. Recently a recognizance set a period of supervision, but included an additional condition which allowed this Service to *extend* a probationer's period under supervision if deemed necessary.

It is considered that society's interests and those of the offender would be better served if such decisions remained with judicial officers and were administered through judicial rather than executive procedures. It seems that an offender may reasonably claim that he was being deprived of legal rights in such as instance if a probation officer, rightly or wrongly, ordered an additional year's supervision after the completion of the period initially ordered by the court. It seems proper that a court should hear evidence to determine whether an additional "penalty" should be imposed and that an opportunity should be given to the probationer to contest such evidence.

27. Dr Barclay, Director of State Psychiatric Services, in a paper presented at the Institute of Criminology's 1967 Sentencing seminar, stated (2) that,

> *I think the psychiatrist who takes on the psychiatric treatment of an offender as a condition of a Bond needs the Probation Officer and should not be placed in the position of having to make the sorts of decisions that the Probation Officer, who has the responsibility, is able to make. The psychiatrist does not want to be placed in the position of having to "dob the patient in". . . .the psychiatrist needs the Probation Officer to act as an agent.*

A government psychiatrist recently wrote in connection with a particular case,

> *Unfortunately Mr . . . . . is not strongly motivated to treatment and common experience under these circumstances is that, without strong motivation, treatment is ineffective. I would say, however, that if he was prepared to be involved in treatment it would, I think, be possible to help him achieve greater maturity and deal with the insecurity that lies behind his exhibitionism. . . . It occurs to me that if he does not become*

involved in treatment it could be of great assistance in reducing the risk of more offences for him to obtain a measure of guidance and supervision through such an organization as the Adult Probation Service.

This man was eventually placed under Probation Service supervision and whilst he remains unmotivated for psychiatric treatment, for a diagnosed and treatable psychiatric problem, a probation officer is "responsible" for his behaviour. This sort of delegated responsibility is always accepted and every effort is made to influence the client towards the desired motivational state so that psychiatric treatment may be under-taken. However, it seems to be an area where society's needs are being met at less than desirable standards and where a probation officer may, perforce, exceed his proper professional responsibility.

28. The ever-increasing pressure of the resources of officers of the Department of Child Welfare and Social Welfare has encouraged Children's Court Magistrates to place young offenders of 17 years of age under the supervision of the Adult Probation Service. These young persons represent a special problem at that age, as quite often the period available under mandate for effective supervision is quite inadequate. This over-lapping of function between Child Welfare Department and Adult Probation Service points to the fact that in practice a loosely co-ordinated social defence system already exists. Already problems have arisen, because of legislative difficulties, in taking effective action in the event of mandate breaches.

29. Current sentencing, in all jurisdictions, seems to reflect more confidence in, and a better understanding of, the probation system. There is an increasing selectivity in the cases being placed under probation supervision. Generally speaking there is a tendency to place under supervision those who most need constructive discipline and/or assistance in coping with personal difficulties of adjustment. This has led to an increasing caseload of more "difficult" cases. Perhaps the best example of this is the tremendous upsurge in supervision of drug offenders, many of whom are both unmotivated and unco-operative.

30. Probably one of the most frustrating and worrying supervisory problems faced by probation officers, and indeed practically every social defence agency in the community, is that of the socially inadequate person. This person usually is intellectually handicapped to a degree which considerably hinders the development of insight. Learning, as a result, is almost entirely a trial and error, conditioning process. The person is practically incapable of setting, and working towards, long-term goals, and most behaviour is related to immediate needs. Quite often such a person is from a family background where the parents and siblings are similarly restricted and can offer little

constructive help. These persons are usually poor employees, showing little persistence, difficult to train, and requiring more than normal supervision in task performance. It might be truly said that they are not offenders in the usual sense, but fit more into the concept of diminished responsibility. At present there appears to be no wholly satisfactory approach to this category of offender. They are clearly not "prison" material, nor is psychiatric inpatient care an appropriate solution. They are in need of a "controlled" environment in the sense that they can best operate when someone is not only doing their thinking and planning for them, but also supervising their day-to-day behaviour. Probation supervision, in co-operation with all interested persons and agencies, is a poor "best" of the available alternatives at the moment, but there is too much "unsupervised" time when this type of person can spontaneously react to his spur-of-the-moment desires or to the poor influence of the type of associate who is prepared to accept such a limited person.

31. The most dramatic increase in a single area of probation supervision has taken place in respect of drug offenders. In 1967 thirty drug offenders were placed under supervision and, at the time of preparing this paper, the Service was responsible for approximately 450 such cases. As a general rule drug users are not primarily concerned over their dependence on drugs, nor do many of them see themselves as law-breakers in the usual sense. They tend to regard their behaviour as a moral matter rather than criminal, and consequently many are not positively motivated towards change. However, they are anxious to avoid imprisonment and, though a negative form of motivation, this is employed by probation officers during a substantial period of the recognizance of most drug offenders. This is in accord with overseas experience, where best "treatment" results have been obtained under authoritarian conditions, Most voluntary treatment programmes appear to founder, except perhaps Narcotics Anonymous-type programmes where good personal motivation for change is present.

Through insufficient data is yet to hand, perhaps our 1968 figures may provide some "suggestive" evidence of probation effectiveness with drug offenders. The recognizances of the 62 offenders on probation as at 30th April, 1968, have now all expired. 34 of these (12 intravenous, 22 non-intravenous) successfully completed probation, while 28 (21 intravenous, 7 non-intravenous) either committed further offences or were breached for failing to observe the conditions of their recognizances. By comparison, 196 probationers from an overall total of 1603 were classified as breakdowns as as 30th April, 1971 (approximately 12½% as compared with the "drug" rate of approximately 48½%).

As the real test of any rehabilitative programme is always how a person copes with life in the community, probation as a community-oriented technique seems well fitted to provide the authoritative and supportive guidance which appears essential during the testing period of drug offenders.

32. As a result of recent interstate conference of Principal Officers it has been agreed, administratively, that each State of the Commonwealth will accept supervisory responsibility for the other States' probationers. Whilst at present this carries no legal force, effective work is being done in practice, based on co-operation between the various Services and upon the willingness of probationers to participate.

33. Procedures exist for reporting probationers' progress to judges and magistrates throughout the supervisory period. Such progress reports often provide information which enables judicial officers to become aware of the effects of sentences. These reports are discussed with probationers so that they may profit from the opinions expressed therein. This can produce significant motivational gains in particular circumstances. Also, on occasions, helpful comments by the Judge or Magistrate provide encouragement to the probation officer concerned and sometimes extra stimulation to the probationer.

34. Because of specialized training and experience of probation officers it seems desirable that consideration be given to altering s.558 of the Crimes Act to allow appropriate persons on recognizance to be supervised solely by such officers. Currently offenders are required, under this section of the Act, to report 3-monthly to the Police Department. In many instances this is a formality without much constructive purpose either to the offender or to the Police Department. Indeed, many well motivated probationers have expressed the view that it is a waste of time, while others consider that it is detrimental to their rehabilitation because it tends to keep their "criminal" image alive in the eyes of others. An opposite but significant view expressed by some offenders is one of resentment towards probation officers who inquire thoroughly into an offender's activities and conduct (and verify it), whereas the policeman "checks me off in a few minutes". This latter view tends to militate against the development of a satisfactory rehabilitative relationship.

Personnel and Training

35. The personal effectiveness of any probation officer rests on three basic fundamentals, viz., personality, motivation and training. Qualifications and training alone are futile in this work, involving as it does repeated confidential interviews with the probationer and other related, significant persons. The qualities of personality and motivation which lead to the establishment of trusting personal relationships are

crucial to effective performance. On the other hand, personality and motivation, without adequate training can be not only unproductive of positive results, but even dangerous.

36. Professional training is a matter of some controversy. Certain authorities demand a high standard of university qualification, but others consider that whilst a certain minimum training in professional social work is patently necessary, probation involves certain specialities which can only be met by in-service programmes.

37. The position in New South Wales is considerably complicated by difficulties regarding university training in social work for males of mature years. Because of the short supply of mature-age graduates the Probation Service has adopted a policy of recruiting from three main sources. Firstly, those suitable graduates who are available; secondly, mature-aged persons who undergo a 12-months in-service training course; and thirdly, selected matriculated students who enter a 5-year cadetship whilst undergoing full-time university training. All officers, irrespective of the source of recruitment, are required to study additional, selected subjects peculiar to this field, and to work for a substantial period with experienced probation officers to gain field-work skills.

38. It is also recognized that a probation officer has a continuing responsibility to update his knowledge and broaden his experience, and to this end considerable encouragement is provided for officers to seek additional qualifications and experience throughout their careers. Unfortunately the pressure of work tends to keep officers concentrated upon their day-to-day duties. To some extent this tends to minimise opportunities for professional development of those officers engaged in active field duty.

39. Morris and Hawkins, in their recent book, The Honest Politician's Guide to Crime Control, recommend (3) that,

> *. . . the prison warden, to be entirely effective in his job, should not only be informed concerning probation and parole work but also should have had a period of active involvement in casework in the community.*

They suggest that this principle should extend to senior officers in probation and parole and institutions, and conclude that no one should reach a high position in the correctional system without a variety of experience inside and outside the walls.

40. In line with this concept, the recent meeting of State Principal Probation and Parole Officers approved, in principle, the interchange of officers between State Services.

Conclusion

41. There is a growing body of opinion among those persons and organizations directly engaged in the various fields of social defence that "treatment" procedures should be, or even must be, more community-oriented. This implies that members of the community can help, should help, and more importantly, will help. It also presumes, may be doubtfully, that the offender has no objection (or has no right of objection) to community involvement in his "treatment". It seems very important to clearly identify the role and responsibility which the community assigns to its representatives and then to ensure that these functions are not prematurely surrendered or delegated.

42. The social health of a society depends heavily on its members' acceptance of, and conformity to, the moral and legal rules framed by society for its preservation and well-being. When individuals breach moral rules society usually relies on informal community pressures to exert a modifying influence. However, breaches of law are entrusted to the care of official representatives, presumably because human history has shown the need for direct, immediate and "objective" action in this area. The action cannot wait; the threat to society must be met and removed; and only then can consideration be given to the longer-term task of effecting changes in that "anti-society" individual.

43. This brings us to the point where society's official representatives (the judiciary, police, corrective institutions, probation and parole services) have to decide when, and how far, society desires to be involved in the process of an offender's readjustment. On this point Dr Barclay, in his seminar paper, stated (4),

> *It would appear that the present penal system is in the midst of a movement towards community penology. I can only offer the comment that we in the psychiatric service can anticipate most of the problems that you are going to strike (we are already receiving the unfavourable publicity that doubtless you are going to get your share of)...*

It might well be that society has more reservations, at this stage, about actively involving itself with readjustment of "criminals" than it has with the "mentally ill".

44. Society traditionally, and in my view quite properly, holds its official representatives accountable for the conduct of offenders whilst they are under society's sanctions. It is this question of accountability which seems to be the central issue for decision in any movement towards community-oriented treatment. The value of "treating" an offender in society, where he is exposed to those pressures, responsibilities and temptations with which hitherto he has failed to

cope, can never be denied. So far as probation is concerned, its officers are accountable to the community, through the community's judicial system, for the better behaviour of offenders, and any change in this responsibility may best come from community initiative.

45. Correctional agencies have a responsibility to share their knowledge and experience and to stimulate and improve community education in this particular field. Crime is a community problem and society has a responsibility to be better informed and more involved. Certainly there exists a great potential for community involvement which should be fostered, but perhaps a careful, planned integration would be preferable to a precipitous, ad hoc involvement.

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THE CUSTODIAL FUNCTION

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The functions of the prison Service as part of the Department of Corrective Services of New South Wales are generally accepted as incorporating –

1. The primary responsibility to maintain safe custody, ensuring that the sentences imposed by the courts are carried out.

2. The impartial application of standards of accommodation, diet, clothing, conduct and treatment defined as policy by legislation, and the provision of facilities for training and education.

3. The attempt by various methods to modify the attitudes of inmates to such an extent that their actions upon release will be essentially law abiding rather than law breaking.

These responsibilities appear to be similar to those professed by prison systems elsewhere in the world.

Perhaps the most frequent criticism of the operational application of these functions refers to the tendency of prison officers to concentrate their attention and resources mainly upon the aspect of safe custody. A careful examination of the Prisons Act suggests that they are well advised to do just that. Section 35 of the Act, Part VII (Offences) states –

> *Any person, who being an Officer of a Prison or member of the Police Force, and having, for the time being, the actual custody of a prisoner –*
>
> *(a) wilfully permits him to escape from custody, shall be guilty of a felony and shall be liable to penal servitude for a term not exceeding seven years; or*
>
> *(b) negligently permits him to escape from custody shall be guilty of a felony and shall be liable to penal servitude for a term not exceeding two years.*

The second area of function, which we may broadly term as treatment, also attracts legal sanction for any individual failure to apply the standards detailed in the Regulations. Regulation No. 4 makes provision for a penalty not exceeding $40.00 for any breach of the Regulations. It will be noted that the possible penalty is a good deal less severe than those that may be incurred by an officer who, wilfully or negligently, fails to ensure the safe custody of a prisoner in his charge.

The third area is much less definitive and, realistically, the Act does not seek to impose any penalty for failure to rehabilitate, which is the term most commonly used. For clearer understanding perhaps we may consider the meaning to be the modification of anti-social attitudes presumably held by the convicted person. By observation, however, it is apparent that many convicted persons are anti-social only to a very limited degree, if at all.

The conflicting nature of demands to maintain safe custody and internal good order and the requirement to rehabilitate is well recognized. A formidable array of theorists has studied the cause/effect relationships of this conflict. It is suggested that most of the recommended solutions are based on the erroneous proposition that the re-education of staff, leading to improved understanding and collaboration between custodial and rehabilitative elements, will resolve the problem. Yet, particularly in the case of the larger maximum security prisons, the problem remains unresolved.

In my opinion, the functional requirements of the Prison Service as they are generally understood, and having in mind existing facilities, are unrealistic and incompatible. Rehabilitation, as currently defined, is not an attainable aim for a closed prison. This view appears to be implicit in the Act.

The prison system should receive, classify (mainly on the basis of apparent or predicted behaviour) and assign prisoners to the appropriate degree of institutional security. The function of the individual institution should be recognized as being to maintain the degree of security necessary to ensure custody and to provide the appropriate standards of discipline, treatment and training.

The major objective of imprisonment should be to prepare a prisoner for progression to specialized rehabilitative agencies and facilities, needed as an integral part of the correctional programme. Such agencies and facilities would be able to impose a much greater degree of freedom and responsibility on the inmate than is feasible in a prison, and would need to operate in much closer contact with the community. The present work release programme is a practical application of this philosophy.

The resources available to the Service to carry out the aims previously stated include institutions, personnel, a classification process, and the power of the Commissioner to make rules and to approve practices and procedures.

Institutions

In New South Wales, as is usual with most prison systems, the institutions are classified by degree of security, i.e., maximum, medium, and minimum security or open establishments. In addition to the security

classification, prisons are further classified in relation to the types and classes of prisoners who may be committed to them. The prisoner population is approximately 4,000, and of this number about 80 per cent are concentrated within the maximum security prisons.

The physical facilities of the prisons in New South Wales vary. Most of the principal prisons were built during the 19th century, and some of those still in use are over a hundred years old. These prisons were built when the predominant theory of imprisonment was secure custody, punishment and deterrence. Many of them are far from being suitable for implementing modern correctional practices, and overcrowded conditions add to the problems of proper supervision and control.

Institutional Personnel

The degree of efficiency with which institutional objectives can be achieved is largely dependent on the quality of the staff available. Leadership is of course vital, but the superintendent must have under his command officers who are sufficiently experienced and who are well trained, well disciplined and loyal.

The staff organization of the institutions varies according to their size and purpose, but is generally scalar. The responsibilities of a superintendent are defined in Prison Rule 62:

> *The Superintendent is responsible to the Commissioner for the conducting and supervising of the entire service of the prison within the Policies of the Department.*

To assist him in this difficult task he has a deputy superintendent to whom is delegated much of the executive control of staff and inmates. Subordinate staff includes a range of custodial and industrial prison officer ranks and a small clerical staff. In addition, there are a number of professional and specialist officers, both full time and part time. A Visiting Justice (Stipendiary Magistrate) is appointed to each prison to adjudicate upon serious disciplinary infringements by prisoners and to investigate complaints by prisoners of "any partial, harsh or tyrannical treatment". (Rule 188). Custodial and industrial prison officers comprise about 69 per cent of the total staff of the Department of Corrective Services.

Classification of Prisoners

Regulation 10 of the Act states, in part –

Each prisoner shall be included in one of the following classes:

(a) Unconvicted.
(b) Appellants.

(c) Debtors.
(d) Maintenance confinees.
(e) Remediable.
(f) Recidivist.
(g) Intractable.
(h) Homosexual.

Classifications (a) to (d) are automatically imposed by the nature of the commital to prison or by particular judicial process. Classifications (e) to (h) are internally imposed, mainly by the Classification Committee at Long Bay, and these are subject to periodic review by institutional sub-classification committees. Prisoners with well documented histories of recidivism may be dealt with by an Allocation Committee, while some short-sentenced prisoners – in general, under 12 months – can be processed by reception boards.

Prison Rules, Practice and Procedure

Prison Rules are made under authority contained in Section 49 of the Prisons Act –

> *The Commissioner may, with the approval of the Minister, make rules not inconsistent with this Act for the management, good government, supervision and inspection of prisons.*

The institutional administrator may add to the Rules by the issuance of Local Orders (Rule 2), and may approve of procedures relating to institutional routine. The daily schedules of prisons and open institutions are set out in Regulations. These rather rigid specifications may be departed from with the approval of the Commissioner, as indeed they must be in the case of the more specialized institutions.

Difficulties of Function: External

The forces bearing on prison practice causing confusion as to aims and resistance to needed change are both externally imposed and internally created, and the two are interrelated. Gresham Sykes (1), in his study of a maximum security prison, put the matter concisely –

> *The custodian. . .can find little comfort in the conflicts and ambiguities of the free communities' directives concerning the proper aims of imprisonment.*

Prison administrators and officers at the institutional level have been forced to adopt a defensive posture by the ambivalent expectations of a society which on the one hand insists on punishing and deterring the criminal and on receiving maximum protection against his depredations, and on the other hand pays lip service to the soothing mythology that once

behind bars the offender becomes simply an unfortunate victim of society who, with the proper care, understanding and tolerance on the part of correctional officers, will miraculously be converted from a wolf to a lamb. Such comforting illusions need to be dispelled. We have both lambs and wolves within the prison walls. The wolves cannot be transformed to lambs – or even sheep – by the provision of additional comforts and a few sessions of group counselling alone.

Perhaps the most heartening aspect of the contemporary social climate is that correctional personnel are ceasing to defend and to apologise for the real and alleged deficiencies in the prisons systems. Milton Luger (2), in a timely article, draws an analogy between correctional personnel and deprived minority groups. He implies that now is the time for protest by such groups. Truly, we do not need to defend. On the contrary, we need to show an aggressive willingness to inform and to evaluate current practices. The challenge must be clearly issued to society to choose among the known alternatives in correctional treatment and to elect whether to provide the resources and the support necessary to allow their effective implementation.

Difficulties of Function: Internal

The two major areas with which problems of function are most frequently associated appear to be staffing and inmate overcrowding in the closed prisons. The problems can be more widely related to the custodial elements previously described: institutions, personnel, classification, and rules.

Staffing

The recruitment of prison officer staff is reasonably successful and, at the same time, reasonably selective. About 20 per cent of applicants to the service are accepted. The main problem is the retention of these recruits, only about 50 per cent of whom complete their probationary (12 months) period of service. The greatest rate of loss occurs within the first six months of employment, though after the first twelve months the rate of loss appears to decrease fairly sharply. Tensions generated within maximum security institutions and magnified by overcrowding fall heavily on prison officers during their early service, when they are least equipped to bear them. They deal with prisoners mainly in the mass situations, where relationships are impersonal and prisoner resentment against the whole process of law enforcement tends to focus on the uniformed officer.

Relationships between more experienced officers and prisoners are usually better. Terence and Pauline Morris (3), in their study of Pentonville, were astute enough to observe that –

> *Where officers and prisoners spend time together in small groups they are compelled to regard each other as individuals.*

The more senior officers have learned to move with relative ease and confidence in the prison situation and to temper the rigid application of rules with discretion. Such discretion may not be possible for the less experienced officer, who, assured from some quarters that he is the person most able to influence prisoners, is faced, for instance, with Rules 8 and 9:

> *An officer shall not gossip with a prisoner, nor allow any familiarity on the part of the prisoner towards himself or any other officer of the prison, nor shall he on any account speak of his duties or any matter of discipline or prison arrangements within the hearing of a prisoner.*
>
> *An officer shall not speak to a prisoner unnecessarily nor shall he by word or gesture or demeanour do anything which may tend to aggravate or excite any prisoner, except so far as may be necessary for the proper discharge of his duties.*

These rules, sensibly applied, are like many others, a useful safeguard against over-enthusiasm on the part of the officer and against attempts by prisoners to take advantage of relative inexperience, but if rigidly interpreted by a supervising officer they contribute to the role confusion that is evident particularly among probationary prison officers.

Overcrowding

The concentration of prisoners within closed institutions is, in my opinion, the greatest single factor mitigating against any real contribution towards a rehabitative process by the Prison Service. Only a comparatively small proportion of prisoners represent such a risk to society that they warrant this costly, and probably harmful, form of control. Proper supervision of those who do warrant such measures is made more difficult by the presence of those who do not. The problem, of course, is to correctly identify those prisoners who are in fact both security risks and socially threatening.

Some of the factors that appear to contribute to the present situation are short sentences, time consuming classification requirements, and the lack of institutional alternatives.

During the twelve months 1969/70, of the total number of sentenced prisoners received, 72.8 per cent were serving sentences of 6 months or under. At the level of 12 months and under, the figures were 82.3 per cent. A good many of these people are social inadequates, drunks, vagrants and petty thieves. They throw a quite disproportionate work load on the admission and discharging facilities of a prison, as well as upon accommodation and other services. Possible solutions to this problem include new consideration as to the need for some of these sentences and the provision of more specialized institutions such as the psycho-geriatric concept now operating at Silverwater.

The classification process is slowed down by the tremendously time consuming job of gathering data and completing psychological and educational testing. In some cases, by the time the process is completed, the sentence, reduced by remission, may have expired. A further impediment to quicker classification is the present requirement that all prisoners with a non-parole period designated in their sentence must appear before the Classification Committee. This requirement has appreciably swelled the ranks of prisoners whose case must be considered by the Committee.

It may be of interest that informal pressures from both prisoners and staff can contribute to overcrowding. Prisoners are often resistant to change and will try to find ways of remaining in the prison to which they are first received. Officers who seek to retain a skilled or particularly co-operative prisoner in their work section find some ingenious ways to subvert classification decisions.

The degree of overcrowding is even greater than figures indicate. The actual available accommodation in closed institutions is more a measure of what is, rather than a measure of what should be. The tendency has been, necessarily, to look for ways to maximise cellular accommodation rather than to try to establish optimum capacities.

Conclusion

It would be foolish to imagine that at this stage of our knowledge we can dispense with the maximum security prison. Indeed, they are as much a legitimate part of the overall programme as any other facility. It seems reasonable to assume, as does Daniel Glaser (4), that the optimum use of alternatives to committal and of conditional liberty concepts will tend to compress hard core recidivist criminal offenders into the prisons. Despite the contributions of allied correctional services, it is apparent that the Prison Service will continue to exercise a major role for many years to come. The achievement of a more realistic and useful programme by this Service requires –

1. A more informed and supportive community.

2. Improved managerial and operational efficiency at the institutional level. This involves –

   (a) A better, i.e., longer, retention of prison officer staff in order to gain the advantages of training and experience.

   (b) Increased emphasis on the provision of training and supported educational opportunities for staff, accompanied by a decreased emphasis on promotion by rigidly interpreted rules of seniority.

(c) Continuous communication of policy from administration to staff, designed to lessen the possibility of role confusion. This must be accompanied by supportive staff supervision at the institutional level.

(d) Continuous review and rationalization of prison rules, practices and procedures.

3. Continued and intensified diversification of the types of institutions, with the emphasis on smaller, more specialized units.

4. Streamlining of classification procedures, accompanied by a greater degree of risk taking, designed to permit a large reduction in the number of prisoners at present confined in maximum security prisons.

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CONDITIONAL LIBERTY

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Conditional liberty, as we all know, encompasses all forms of release under conditions of a convicted person. In New South Wales this involves release on recognizance under common law or the Crimes Act; on parole under the Parole of Prisoners Act; or on licence under the Crimes Act or the Habitual Criminals Act.

However, it is not my intention to discuss release under recognizance. Firstly, Mr Pyne has already covered this topic exhaustively, and, secondly, I do not feel competent to comment in this area. Thirdly, I feel that this is too good an opportunity to be wasted.

I am a parole officer and wish to talk about parole. The Parole Service in this State is involved not only with the supervision of persons released to conditional liberty under the provisions mentioned above, but also in preparing these persons for release. Therefore consideration of the parole function cannot be divorced from our institutional duties.

The contributions made by a parole officer to the Correctional Service can, for the purposes of this paper, be divided into three areas:

1. The institutional area.
2. Supervision of persons released under a form of conditional liberty.
3. The community.

But firstly, what is a parole officer? A parole officer in New South Wales is a skilled professional social worker. He has completed extensive tertiary training and must be eligible for membership of the Australian Association of Social Workers. This means the more recent recruits to the Service have completed a minimum of four years full-time university training. Many of my colleagues are not only social workers but are also qualified sociologists and/or psychologists. I have some doubts, however, if any of us have been quite game enough to call ourselves criminologists.

It should be pointed out that approximately 50 per cent of our staff is female. Please note that this is not merely due to the difficulties of recruiting sufficient male staff. The female contingent is at least as efficient professionally as the male, and it has been found that they are peculiarly effective when working with multi-recidivist type prisoners. It is therefore regarded as necessary for the staff of the Parole Service to be comprised, in part, of females.

What does the Parole Service have to offer to Corrections? One could say, merely a skilled professional social work service. However, it would probably be more effective to describe to you what a parole officer does in his day-to-day routine.

Here it is necessary to start in the institution, because it is here that we make our first contact with our client. It is also here that many of our problems arise, which, if not corrected at an early stage, can lead to almost insuperable problems at a later date.

When the prisoner first enters an institution he is in a state of shock. An attempt is therefore made to contact him as soon as possible after his reception to deal with personal crises and social disruption caused by the individual's removal from his family and the general social structure. This often means contact must also be made with his family to explain what his sentence really means, to give counselling, and to refer the family to appropriate social agencies for assistance if this is required, as it almost invariably is.

At this stage it is often found that prisoners, and members of their families, are unaware of what has been the intention of the sentencing authorities. Certainly, most prisoners are confused by the imposition of a non-parole period and usually expect release to parole to be predicated upon lack of conflict with the custodial staff during the period of their imprisonment. This concept also appears to be held by many custodial officers.

Following this initial contact, the prisoner is seen from time to time by parole officers, usually in a one-to-one counselling situation, but sometimes in a group-counselling setting. The aim of this counselling process is to prepare the prisoner for release, whether he be granted release under a form of conditional liberty or not. This involves examining with the prisoner the events leading up to his conviction, interpreting to him the demands of society, and demonstrating how he can achieve his own goals within a law-abiding framework.

After continued contacts for a period of time the parole officer is in a position to submit a report to the release authorities, i.e., the Parole Board, the Commissioner of Corrective Services, the Minister of Justice, or the Federal Attorney-General. Such reports usually contain a description of the prisoner's social background, an assessment of his relevant attitudes, an assessment of his post-release plans, a recommendation regarding any additional conditions which may be felt desirable in evaluation, and a recommendation as to whether the prisoner should be released to conditional liberty or not.

In addition, the parole officer assesses and makes recommendations to the Commissioner as to the need for psychiatric treatment or assessment, assesses and makes recommendations re prisoners considered for work release programmes, and makes reports to the Minister for Immigration regarding prisoners who are being considered for deportation.

Difficulties can arise here when prisoners are not available for interview, as the parole officer has a statutory obligation to provide the reports required, often within certain time limits. It is at this point also that problems arise regarding lack of communication between custodial staff and parole officers, and there is often a failure in the flow through of resource material.

After submission of these reports, contact with the individual prisoner is usually relaxed, although it would be desirable to maintain it until his release either under conditional liberty or otherwise. This relaxation occurs mainly because of a lack of time by parole officers, due, in turn, to lack of sufficient trained staff. However, an attempt is made to see the prisoner after the decision of the release authority is made and to interpret this decision to him. Once again, the parole officer is severely limited at this point because he is not usually given the reasons of the release authority for release or refusal.

The supervision of prisoners released on parole, on licence, is perhaps the most taxing of all our duties. One must understand that the man who is released from prison has, often for his own survival and for a period of years, had to conform to the value systems of a community of deviants. The prison community *knows* it has been rejected by society. The mere fact that it is behind walls is a tangible expression of society's rejection. As a reaction to this, the prison community rejects in turn the values of that society and society's representatives. In particular, this rejection is concentrated on the controlling agents, i.e. the social defence personnel, e.g. police, custodial staff, parole officers, etc.

Conservation within the prison setting is fairly limited. It tends to comprise complaints about the controlling agents and their methods, what crimes prisoners have committed and how they were caught, what crimes they will commit in the future and how they will not be caught, discussion of sexual activity by prisoners within and without the prison setting, etc.

All this tends to build up feelings of difference and persecution in the prisoners. When the individual may have been in prison for anything up to twenty years it will be realized how difficult it is to overcome these learned attitudes upon release. Even the parolee or licence-holder himself will discover that no matter how much he wants to stay out of trouble he will automatically assume attitudes and behaviour patterns inappropriate to life

outside the prison setting. This will usually take him quite a long time to avoid. Certainly such changes very rarely occur before six months after his release, and some of them may never alter.

The first and foremost problem of the parole officer is to build up a feeling of trust and understanding between himself and his client. Because of the reasons mentioned before, this is often unachievable. But a sincere effort is made. The parole officer is committed by the ethics of the social work profession to the view that every individual has a potential for change. Therefore he must keep trying to bring about this change, no matter what occurs in the relationship. To do this he must overcome the mistrust which the client feels towards the parole officer as an authority figure, and then attempt to deal with the individual justifications which every offender has for his actions. Similarly, he must have regard for the social environment in which the conditional libertee is performing and try to get him to develop insight into personality problems which are retarding his personality growth and which may have some bearing on his criminal deviance.

It is important to realize that parolees and licence-holders are not free, they are prisoners-at-large. Thus our work involves counselling our client not only within society's broad norms but also within the specific restrictions of his parole order or licence.

The parole officer has to assist his client to find employment and accommodation, to point out to him the possible consequences of a change in either of these without the provision of reasonable alternatives, and to attempt to justify and/or interpret society's rejection, because this does still occur.

The parole officer refers his client to community service organizations where appropriate, and assists him in the best presentation of his problems to these agencies. He refers the conditional libertee to ministers or priests for religious counselling, and to hospitals or doctors for medical treatment when these appear needed.

The parole officer is also required to make progress reports to the appropriate release authorities on the conditional libertee's performance, and to make recommendations as to whether there are any alternatives to revocation when it appears there may be danger of breakdown.

The conditional libertee at this stage is dependent upon the good offices of his supervising parole officer for the presentation of his case to the appropriate authority. This places a great deal of responsibility on the parole officer, as his report is often the only material on which the authority with power to revoke can base a decision.

Assessment of the possibility of breakdown usually is an intuitive procedure for the parole officer, based on the conditional libertee's responses in the interview situation and his general performance whilst under supervision. Often the first indication is a notification by the fingerprints branch of the Police Department that arrest has occurred. It is believed police often have fore-knowledge of possible deviant behaviour of our clients which, if we were aware of it, could prevent further crime and perhaps even assist our client to remain at liberty.

When a conditional libertee is arrested and charged with an offence it has been in the past our policy to make ourselves available to either the defence or prosecution, on request, and to report to the court on the performance of the defendant whilst under supervision. However, we have recently been instructed not to appear in court except on subpoena.

Perhaps the most economically productive of all our work is when we work directly within the community. Here we address, on request and with the approval of the Commissioner of Corrective Services, senior school pupils, community service organizations, and seminars such as this.

We often interview employers and prospective employers personally, to explain the difficulties and potential problems which a released prisoner might face. Finally, we act as professional consultants to Civil Rehabilitation Committees. These Committees, as you are probably aware, are comprised of representatives of community service organizations and interested individuals. The Committees' purpose is to assist in the rehabilitation of prisoners and their families.

The parole officer, in this instance, has received training in "community organization" in his university courses. He refers cases which he believes can benefit from Civil Rehabilitation assistance to the Committees and gives guidance and counselling to committee members over the handling of difficult cases.

We find the committees and individuals who accept the work of parole advisers to particular conditional libertees of great assistance to us. So much so, that I doubt we could be as effective as we are without their assistance. These people are particularly useful because they are volunteers and the conditional libertee does not usually see them as authority figures. Thus the committee member or parole adviser can often make progress where the parole officer cannot make effective contact.

I believe we and our clients are part of an integrated and intermeshing society. We can help society by assisting the conditional libertee to assume a useful and non-deviant place in the community. We can assist the

conditional libertee by doing our utmost to ensure society is aware of its responsibility in the causation of deviant behaviour and the difficulties and problems faced by the deviant attempting to overcome his past and re-establish himself in the community.

However, we need assistance:

1. We need greater and more effective communication within our own department and the other areas of social defence, i.e., the judiciary and the police.

2. We require a rationalization of clerical and administrative procedures so that the client receives the attention he needs, so that our time is not wasted on straightening out problems and difficulties which should never have occurred.

3. We *must have* a searching evaluation of our own effectiveness in terms of procedures, techniques and results.

RESEARCH,
RESEARCH,
RESEARCH.

WORK RELEASE

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Work Release in New South Wales is as yet a relatively new project. Silverwater House, currently the only centre in the State of New South Wales from which selected prisoners are permitted to work in the community on an equal footing and on a competitive basis with the general work force, was officially opened by the Honourable J. C. Maddison, Minister of Justice for New South Wales, on February 27th, 1970.

If a definition of Work Release is required, it might best be stated as "a supervised process enabling selected prisoners to follow an approved occupation in free society". In this it is not a substitute for probation or parole, and any individual admitted to the programme remains technically a prisoner. The Centre is designed to help the readjustment in society of the prisoner. Emphasis, then, is on non-custodial care based on a realistic approach to the management of prisoners who, during their working hours, are at liberty.

At the present time in France about 10 per cent of the penal population is engaged in community based work release activities, and in the United Kingdom something less than one per cent of the prison population is so engaged. The plan here in New South Wales, following recent studies, is to place into the community-oriented schemes about 10 per cent of the penal population, i.e. in the relatively short run of some five years.

As the emerging programme has been studied, attempts have been made to evaluate society's reaction to this particular form of treatment and detention, and whereas one would find it hard to accept that our educated and relatively enlightened community would expect a continuing philosophy of punishment, it is nevertheless still doubtful as to the real levels and views of the community attitude.

Individually and collectively, the work release inmates have behaved very well in the plan. In the period of almost two years that the plan has been operative, four prisoners have failed to conform with the "local rules" relating to individual behaviour and have been returned to the areas of closer custody rather than permitted to remain in the model.

Following the removal of each of the four individuals from Silverwater House it is interesting to note that the remaining members of the scheme immediately raised the question at the voluntary group discussion which is

normally held on a weekly basis. In each case an unsolicited reaction was that the group itself, if given a judicial role, would have been more punitive when considering an appropriate course of action for breach of rules.

Our resources have not allowed us to make a close study in the areas of family responsibility and directed parental control in the case of a prisoner with children. The only effective observation which may be made is that a far more effective communication and rapport is established with the family unit, and it would appear, without attempting to suggest a final assessment, that the prisoner maintains the "head of the family" role even though still divorced physically "except from time to time whilst on leave" from his personal domestic responsibilities other than the role of general provider for the family.

A detailed study was completed based on 34 of the Work Release inmates. It is acknowledged that the sample is essentially a small one and need not be wholly representative of any other group in the penal area. However, the sample is relative to its own area of study. Some parts of the restricted study may be of interest.

The following Table illustrates the number of children in the nuclear families of the inmates.

Table 1

Number of children	*Frequency*	*% of total sample*
1 child	4	11.76
2 children	8	23.53
3 children	6	17.65
4 children	1	2.94
5 or more children	3	8.82
No children	11	32.36
Not known	1	2.94
Total	34	100.00

The understanding is that this Table would not relate well to the prison population generally, because part of the criteria for selection of inmates is the family group. This is not to mean that single people do not enter the plan but rather, other things equal, preference is given to a man with a family to support both in the economic sense and in the less material areas of support.

Almost 62% of the men on work release were either married or maintaining a de facto relationship. The figure relates quite well to other groups in the penal setting and is set out in detail in the Table following.

Table 2

Marital status of work release males	*Number*	*% of total sample*
Single	10	29.41
Married	20	58.83
Widowed	–	–
Divorced	–	–
Separated	2	5.88
Deserted by spouse	–	–
De facto	1	2.94
Not stated	1	2.94
Total	34	100.00

Families are encouraged to visit on a weekly basis and inmates are provided with facilities for telephoning their own families. An appropriate play area is provided for children as visitors.

The study demonstrates that the religious affiliation of the work release inmates closely resembles the religious affiliation of the general population, and the schedule shows:

Table 3

Denomination	*Frequency*	*% of total sample*
Church of England	16	47.06
Roman Catholic	13	38.24
Presbyterian	3	8.82
Methodist	–	–
Salvation Army	–	–
Other Christian	2	5.38
Hebrew	–	–
Other non-Christian	–	–
No religion	–	–
Not stated	–	
Total	34	100.00

The age range of prisoners in custody at this time ranges from 17 years of age to well over 80. The age range of the work release inmates is expressed in Table 4.

Table 4

Age groups	*Frequency*	*% of total sample*
18–20	2	5.88
21–24	7	20.60
25–29	8	23.53
30–34	5	14.71
35–39	3	8.82
40–44	3	8.82
45–49	4	11.76
50 and over	2	5.88
Total	34	100.00

In the case of the work release inmates of 50 and over our records show that they turned to crime at ages of 50 and over, and could perhaps be described as criminals of opportunity.

Almost 68% of the work release people had completed some or all of the junior high school years, i.e., up to fourth form inclusive, whilst 34% had completed some or all of senior high school years. The men on the work release plan, therefore, had received generally more education than the average population.

The range of occupation of the work release inmates prior to imprisonment shows quite a large spread (Table 5).

Table 5

Occupation	*No.*	*Occupation*	*No.*
Accountant	6	House renovator	1
Bank clerk	2	Naval lieutenant	1
Biscuit maker	1	Painter/paper hanger	1
Butcher	2	Salesman	3
Cabinetmaker	2	Sales representative	1
Clerk	3	Solicitor	1
Driver	1	Stationmaster (asst.)	1
Entertainer (P/T)	1	Storeman	2
Fitter & Turner (A)	1	Town clerk	1
French polisher (A)	1	Tipper driver	1
Hotel manager	1	Welder	1
	Total		35*

* Although there are 34 in the sample one had a full-time job as well as a part-time job.

The comparison of the work release inmates with the general population demonstrates an over-representation in professional and technical occupations as well as clerical work; a discrepancy exists in the areas of crafts, production/process work and labouring occupations. The criteria for selection for the plan does not set out to achieve this, except that within the range of application of the criteria some inbuilt provision may provide this. The committee concerned with the selection gives emphasis to personal qualities, the question of potential danger to society generally, the establishment of a position of trust within the institution – at both official and unofficial levels. One of the inbuilt controls is the apparent lack of addictive traits, and our evidence of experience suggests a higher incidence of abuse or misuse of alcohol in the more manual areas of human endeavour as distinct from the professional and quasi-professional areas.

The intention has been to place prisoners into work in the community with two things paramount in mind. The job placement should desirably allow for continuity of employment after release and, with this thought in mind, the job should provide not only the material sustenance essential to support the family group but also to provide the appropriate job satisfaction to the ability level of the person concerned. The following Table illustrates the jobs held by the men during the work release period.

Table 6

Occupation	*No.*
Business machine mechanic	1
Butcher	2
Cabinetmaker	2
Clerk	13
Cool-room fabricator	1
Factory work	1
Fork-lift driver (trainee)	1
French polisher (apprentice)	1
Laundry hand	3
Lathe operator	1
Leading hand - wool store	1
Office manager	1
Storeman, storeman/packer	6
Total	34

The item in the schedule "clerk" is a collective term, and the three most highly paid positions attained in the work release plan have been in this class. In the following Table this principle is well demonstrated.

Table 7

Comparison of major occupational groups for the men during work release with those in the general population

Major occupational group	*No.*	*% for study sample*	*% for general population 1966*
Professional, technical and related workers	–	0.00	7.68
Administrative, executive & managerial workers	1	2.94	7.95
Clerical workers	13	38.24	8.41
Sales workers	–	0.00	5.81
Workers in transport & communication occupations	–	0.00	7.77
Craftsmen, production process workers and labourers	17	50.00	44.46
Service, sport and recreation	3	8.82	4.48
Other	–	0.00	13.44
Total	34	100.00	100.00

The previous history of the offender is given a careful consideration, and multiple offenders are not precluded from the plan. The Table following shows the previous history of delinquency in juvenile areas for those in the work release sample.

Table 8

No. of charges	*Frequency*	*% of total sample*
1	–	–
2 – 4	1	2.94
5 or more	1	2.94
No charges	32	94.12
Total	34	100.00

In the past about one-sixth of the work release population has had an adult criminal history prior to the present offence.

The spread of sentences may be of interest, although in itself it relates not unreasonably to the blander areas of the prison population.

Table 9

Sentence length	*No.*	*% of total sample*
Short sentence – less than 3 months	–	–
Medium sentence – 3 months to less than 12 months	–	–
Long sentence – 1 year to less than 2 years	7	20.59
Severe sentence – 2 years and over	27	79.41
No sentence	–	–
Total	34	100.00

The spread of offences would read largely like that of any other penal area including some of the more secured environments.

Table 10

Type of offence	*No.*	*% of total sample*
Malicious wounding*	4	9.53
Break enter & steal	3	7.14
Larceny, receiving	18	42.86
False pretences, &c.	11	26.19
Drunk	–	–
Behaviour, language, &c.	–	–
Vagrancy	–	–
Drugs	–	–
Embezzlement	3	7.14
Other offences	3	7.14
Total	42†	100.00

* Includes robbery and manslaughter.
† Includes 7 multiple offenders

What is being demonstrated, of course, is that on the diagnostic approach the individual personal qualities of the person may take precedence over the offence, that is, in the prisoner classification process.

Any over-representation as compared with the prison community proper would rest in malicious wounding, larceny and false pretences, but the vagrancy type of crime would be dramatically under-represented.

The philosophy of community-based programmes is to require the sentenced prisoner to accept personal responsibility for his own life and future as well as the acceptance of responsibility, in all the usual senses, in his family unit.

Most prisoners agree with the thought that it is easier to "do time inside" than to have all the usual symbols of freedom but with psychological fetters.

The programme has a good deal of merit from the economic standpoint: the savings to the State in both the present and the future forms are demonstrably excellent and, perhaps more importantly, contribute to the family welfare.

Problems for work release and staff are varied and frequent. Difficulties relating to employers, thankfully, have been few. Co-operation from the Commonwealth Employment Service has been invaluable. In some respects, sympathy from co-workers and employers has been an added burden to work releasees in encouragement to undertake actions at variance with house rules, e.g., invitations to a home, club, etc., or failure to report poor performance or unwarranted tardiness.

The scheme remains a learning process for all concerned. Appraisal, revision, research and innovation must remain the guidelines to the most effective method of expansion of work release. Given all this, community acceptance will be the yardstick or accelerator as to how far and how fast the work release project may find encouragement in New South Wales.

APPENDIX I

Reparation by the Offender

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In November 1966 the United Kingdom Advisory Council on the Penal System was requested by the then Home Secretary to consider how the principle of personal reparation by the offender might be given a more prominent place in the penal system. Special consideration was to be given to the position of the professional criminal. The Council's report was submitted to the Home Secretary in August 1970. The report demonstrates that the existing powers of courts were wider than was often realized and that they had been inadequately utilized by the courts. However, it was considered that the powers should be rationalized and extended in certain respects, and it was recommended that there be a significant increase in the use made of these powers by the criminal courts.

1. The Position in New South Wales

An examination of the statutory provisions in New South Wales reveals that this State is considerably in advance of the United Kingdom in this area and that many of the recommendations made by the Council have already been implemented by New South Wales legislation. It is doubtful whether more than minor alterations would be necessary to implement in New South Wales the remaining recommendations of the Council.

Subsection 3 of s.554 of the Crimes Act, 1900–1968, empowers a court of summary jurisdiction to direct any person convicted of any offence to pay a sum not exceeding $300 to the person aggrieved for injury or loss sustained by reason of the commission of the offence. The sum is to be paid to the Clerk of the Court, by whom payment to the person aggrieved will be made, and such direction is deemed to be a conviction or order within the meaning of the Justices Act, 1902 (as amended) and the provisions of that Act relating to the recovery of such sums of money ordered to be paid shall apply to sums directed to be paid by way of compensation.

S.437 of the Crimes Act empowers the court by which a person was convicted of any felony or misdemeanour, or any judge thereof, to direct that compensation not exceeding $2,000 be paid out of the property of the offender to any person aggrieved for injury or loss sustained through or by reason of such offence. By virtue of the operation of s.3 of the Crimes Act and the second schedule thereto, both sections 437 and section 554 apply in respect of all offences whether at common law or by statute and in whatever court the offence is tried so far as the provisions can be

applied. For the purposes of both sections "injury" is defined as meaning bodily harm, and includes pregnancy, mental shock, and nervous shock. In exercising the power granted under either section the court is directed to have regard to any behaviour of the aggrieved person directly or indirectly contributing to the injury or loss sustained by him, and may have regard to any other relevant circumstances.

Section 457 of the Crimes Act provides that any order for sums to be paid by way of compensation under section 437 of the Act, when recorded by the Prothonotary, shall have the effect of a judgment of the Supreme Court at law and be enforceable by execution as any such judgment is ordinarily enforced. The section also avoids every alienation of the offender's property made after the commission of the offence and within twelve months before the conviction other than alienations for valuable consideration to persons taking without notice or knowledge of such offence. Section 468 of the Act provides that upon the avoidance or vacating of the conviction such orders made under section 437 shall become of no effect and the person shall be restored to all that he may have lost thereby.

Section 438 provides for the summary restitution of property stolen, received or embezzled. The court's power to make such orders extends to the making of orders when the person indicted for the offence is acquitted.

Section 469 of the Act provides that the Supreme Court, or any judge thereof, at any time within six months after any conviction for felony may on application by the Crown or a creditor of the offender direct that his estate be placed under sequestration, such direction when recorded by the Prothonotary to have the effect of a sequestration order made under the Bankruptcy Act. Every person having any claim against the offender, whether for damages in respect of any wrong or otherwise, shall be deemed a creditor within the meaning of the section. Such claims are to be determined and damages assessed in such manner as the court or judge may direct.

The power of the Children's Court by virtue of the Child Welfare Act, 1939 (as amended) extends to the specifying of payment of a sum of money by way of compensation as a condition of a recognizance, but not as a condition of any order. Subsection 4B of section 83 of that Act provides that the relevant subsections of section 554 of the Crimes Act shall apply to a Children's Court dealing with a young person but not otherwise. Subsection 4C provides that the provisions of section 437 of the Crimes Act shall not apply to a Children's Court.

Section 23 of the Evidence Act, 1898, provides that where it is necessary to prove, inter alia, the conviction or acquittal of any person charged with any offence, or that any person was sentenced to any punishment or pecuniary fine, evidence of such facts may be given by the

production of a certificate showing such facts or purporting to contain the substance of the record, indictment, conviction, acquittal, sentence or order. Subsection 4 of that section provides that any such certificate shall be evidence of the particular offence or matter in respect of which the same was had, if stated in such certificate. This section is of rather limited value in civil proceedings arising out of criminal offences as it is not available where it is only necessary to prove facts common with those that must have been proved in order for the offender to have been convicted, and not to prove the actual conviction.

The Criminal Injuries Compensation Act, 1967, provides for the payment of compensation by the State to persons suffering injury by virtue of the commission of criminal offences by others. Such compensation may be paid where an award has been made under section 437 or section 554 of the Crimes Act and that direction is for a sum in excess of $100. An aggrieved person may also apply for compensation where the accused is acquitted. In all cases where payment is made the State is subrogated to the rights of the aggrieved person against the convicted persons. The Act only provides State compensation for persons suffering injury, and does not extend to other loss.

2. The Council's Recommendations

As already indicated, the report of the Advisory Council recommended many changes that have already been implemented in New South Wales legislation: it is possible to combine an order for compensation for personal injury with any sentence; the courts have a general power to order compensation for loss of or damage to property occasioned by any offence, including damage to property stolen or taken without authority and which is later recovered; victims are not required to make application to the court for compensation or restitution as a condition precedent to the ordering of compensation, nor is it a right to be exercised only at the victims' discretion; in New South Wales it is possible to obtain an order of bankruptcy and sequestration of the estate of any criminal, whereas the Council in its report suggested that such a scheme be set up in a limited manner as an experimental project.

Many of the limitations of the powers recommended to be retained or adopted do not apply in New South Wales, and there appears to be little value in adopting such limitations. Whether or not existing powers should be exercised would appear to be better left to the discretion of the court concerned. Such limitations include: the retention of the bar to civil proceedings for common and aggravated assault; the limitation of compensation to direct consequences of offences; the limitation of compensation to common law offences and the exclusion of compensation in the case of regulatory offences; the exclusion of compensation in criminal proceedings relating to the consequences of road traffic offences.

One of the major values for New South Wales conditions in the report of the Council is contained in the recommendations relating to the aims and uses of the power to order reparation and compensation. It is clear that at all stages the Council bore in mind the multitude of duties and considerations to which criminal courts have regard when sentencing an offender, and it was also borne in mind that an order for compensation may in some circumstances be inimical to the reformation of the offender and therefore to the needs of society. Accordingly, it was considered that there could be no question of requiring criminal courts to make compensation orders in every case, nor was any advantage seen in requiring them always to have regard to the possibility of ordering compensation. However, concern was expressed that in the administration of justice the interests of the victim and the necessity of preventing offenders from enjoying the fruits of crime tend to be overlooked, and it was hoped by them that reparation would be given greater prominence and that the courts would make much wider use of the powers given them in this field. It was suggested as a general rule that courts should consider the granting of compensation where there has been an appreciable loss to the victim except where enforcement appears to be impracticable, where a need to resolve difficult issues of liability or quantum makes civil remedies more appropriate, or where reparation would conflict with the sentence for the offence. It was felt that mere difficulty of assessment should not necessarily preclude the ordering of compensation but was a factor to be considered. Where the claim is substantial and the offender is able to make some payment the courts should be able and willing to order compensation. It was considered that a greater readiness of the courts to use their powers and the consequent increase in the number of compensation orders made might result in the meeting of social demands for justice for the victim as well as for the offender, although it may result in criticism that the use of the powers is arbitrary and in many cases ineffective.

The Council pointed out that the Civil Defence Act, 1968, removed the obstacle to civil litigation constituted by the previous inadmissibility of the conviction as evidence, in subsequent civil proceedings, of the offender's guilt. Amendment to the New South Wales provisions in the Evidence Act may well be of value. It was also suggested that criminal courts should be able to order compensation or restitution in respect of offences taken into consideration. It would also be of value in New South Wales if provision was made for compensation in respect of such offences, and perhaps the provisions of the Evidence Act should be extended to permit evidence of these offences to be given in civil proceedings arising out of the offences, perhaps as admissions. The report considered the question of dual criminal and civil proceedings relating to compensation and stated their view that neither the institution of criminal proceedings nor the exacting of compensation should exclude any civil remedy possessed by the victim, but that the victim should not be entitled to recover more than the amount of his loss. The civil courts should therefore take account of any orders for compensation made by the criminal courts, as they no doubt do in New

South Wales. It was considered that imprisonment in default of payment of compensation ordered in criminal proceedings should not extinguish any part of the offender's civil liability. A judgment in civil proceedings should be a bar to compensation orders in criminal proceedings. If offenders have paid compensation ordered in criminal proceedings which later appears to be excessive when quantum of damage is finally established in a court of civil jurisdiction it is impracticable to disturb the situation, but where the offender has not fully complied with the order then provision should be made for a review of the order of the criminal court.

The Council saw no advantage in providing for the delegation of the assessment of quantum to a civil court or administrative agency, and therefore presumed that compensation in criminal proceedings would tend to be confined to cases where liability and the amount of the victim's loss are reasonably clear, and probably to cases where the amount is small. A general limit was recommended for summary proceedings, the general limit to be $400, but it was suggested that no limit should be placed on the amount of compensation that could be ordered by Courts of Assize and Quarter Sessions. The full Council, differing from the meeting of the Sub-committee preparing the report, considered that the limit existing on the amount of compensation which might be ordered in care proceedings dealing with juveniles ($100) should perhaps be retained in respect of those under 14 years of age, where payment would normally be made by the parents of the child, but that the upper limit in respect of those aged 14 years and upwards should be the limit applicable in other summary proceedings. An examination of prison earnings made it quite clear that the levels of earnings are too low to admit payment of reparation, and it was difficult to see how a satisfactory scheme of reparation based on prison earnings could be devised in the near future. Clearly, in the case of some prisoners reparation out of prison earnings would adversely affect their rehabilitation by preventing them from saving reasonable sums for their discharge. The difficulties about combining custodial sentences with compensation orders which are to be enforced after the offenders are released were clear, but the Council did not wish to rule out the possible combination of compensation orders with sentences of detention. However, such orders should be made only where the offenders have assets which could properly be applied towards reparation or where the sentence is sufficiently short to justify the making of a compensation order.

It was recommended that first priority should be granted to orders for compensation in the application of sums paid by the offender. Lady Wootten's Sub-committee on non-custodial and semi-custodial penalties recommended elsewhere that there should be a power to defer sentence on conditions, and it was considered by the Council that the power could be used where an offender had promised to make reparation and the court wished to test the strength of his resolve before passing sentence. No material advantage was seen in using probation, conditional discharge or suspended sentences as a means of inducing offenders to pay compensation.

3. Conclusion

I would suggest that in view of the report by the Council and the current operation of the system in New South Wales consideration be given to the following:

(a) The possibility of allowing the provisions of s.554 of the Crimes Act to apply to children in proceedings in Children's Courts, but perhaps with a lower maximum figure. (The present maximum figure applicable to young persons would appear to be satisfactory).

(b) An increase in the maximum amount possible to be ordered by courts of summary jurisdiction under s.554 of the Crimes Act.

(c) The removal of the maximum figure imposed by S. 437 of the Crimes Act.

(d) Amendment of the Evidence Act to enable evidence of convictions and offences taken into consideration to be used as evidence in civil litigation arising out of criminal offences.

(e) The expansion of existing provisions relating to compensation to offences taken into consideration. A similar amendment to s.438 of the Crimes Act might also be considered.

(f) A substantial increase in the use, by the courts, of the available provisions. Such an increase would appear to amount to a considerable advance in the administration of criminal justice in this State.

V. C. N. Blight, Government Printer, New South Wales – 1972